Journal of Homosexuality

Publication details, including instructions for authors and subscription information:
http://www.tandfonline.com/loi/wjhm20

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Christopher Disman
Published online: 12 Oct 2008.

To cite this article: Christopher Disman (2003) The San Francisco Bathhouse Battles of 1984, Journal of Homosexuality, 44:3-4, 71-129, DOI: 10.1300/J082v44n03_05

To link to this article: http://dx.doi.org/10.1300/J082v44n03_05

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The San Francisco Bathhouse Battles of 1984: Civil Liberties, AIDS Risk, and Shifts in Health Policy

Christopher Disman
San Francisco

SUMMARY. In the mid-1980s, controversy emerged in a number of American cities over the roles gay bathhouses and sex clubs might play in the spread of AIDS, and in raising safe-sex awareness. In 1984, San Francisco became the first city where political debates broke out over AIDS-related policies for bathhouses and sex clubs. These debates were dominated by questions of public health and gay civil liberties. A variety of proposals were put forward during 1984 to try to reconcile these two concerns, or to give one a higher priority than the other. Certain officials in San Francisco’s government, and members of its gay/lesbian/bisexual community, strongly disagreed over whether the businesses should be closed, should make their own AIDS-prevention efforts, or should continue operating under new regulations. Policies implemented for the city’s baths were disconnected from the known AIDS risk of different sexual behaviors, and from research findings on AIDS and the local baths. Political and judicial decisions concerning San Francisco’s bath-
houses and sex clubs that were made in 1984 had continuing influences on these businesses through the later 1980s and the 1990s. [Article copies available for a fee from The Haworth Document Delivery Service: 1-800-HAWORTH. E-mail address: <docdelivery@haworthpress.com> Website: <http://www.HaworthPress.com> © 2003 by The Haworth Press, Inc. All rights reserved.]

KEYWORDS. Bathhouse, AIDS, sex club, San Francisco, civil liberties, public health, gay

INTRODUCTION

There are no gay bathhouses in San Francisco in 2001, but there are a number of businesses in the city that men can pay to go to, to meet other male patrons for sex. Historical and semantic confusions have muddled the question of how the city’s bathhouses closed between their heyday in the 1970s, and their absence in the 1990s as the city’s sex clubs reemerged. Many statements have been made which exaggerate the authority of officials in San Francisco’s City government to close these businesses, and which oversimplify the drawn-out story of how the businesses closed or changed.

One of the most prominent statements representing these misunderstandings came at the end of the 1993 HBO film adaptation of And the Band Played On, based on the late Randy Shilts’s 1987 book about the initial years of the AIDS epidemic. Shilts was a gay reporter for the San Francisco Chronicle, who had often written articles about AIDS and the city’s baths.\(^1\) After the action of the HBO film closes, journalistic frames of text summarize aspects of the epidemic that the film focuses on. The mistaken text of one frame begins, “San Francisco’s gay bathhouses were closed in 1985.”

The accuracy of the statement that the city’s gay bathhouses were closed at all hinges on the questions of who closed each one, how willingly, and when. It also hinges on the definition of the term bathhouse as it’s distinguished from informal terms for other kinds of businesses that provide space for sex between patrons. I’ve used the blanket term “the baths” for all these businesses.\(^2\) In 1984, a City official did order the closure of most of San Francisco’s baths, but most of these businesses defied the order. One judge ordered them closed again and another judge let them reopen, and then the city’s regulation/closure story
dragged on from 1985 to 1989, shifting in focus by the 1990s from San Francisco’s bathhouses to its sex clubs.

I’ve referred here to San Francisco’s City government, and San Francisco’s gay/lesbian/bisexual community, simply as “the City” and “the community.” In 1984, the baths emerged as a point of friction among certain City officials and community members, over what were the most appropriate methods to fight AIDS. Local arguments over the baths centered on whether closing them would be legally feasible for the City or epidemiologically necessary, and not on whether they were the primary locations in San Francisco where men were contracting AIDS.

Many members of the community argued that regulating the baths would be more effective than closing them, and that they should be used to educate patrons how AIDS was transmitted, at a time when raising AIDS awareness was still an urgently important goal. Many community members were also deeply concerned that closing the baths would lead to efforts in San Francisco and elsewhere to close down gay bars where patrons also cruised for sex partners, and to efforts to reestablish California’s and other states’ anti-sodomy laws.

Local debate over the baths became irreversibly enmeshed with City-government decisions in early 1984. From March to December 1984, different San Franciscans made their most strenuous efforts to close the city’s baths, keep them open, or change them. That year San Francisco had the highest urban per capita prevalence of AIDS in America, and the year was the most turbulent in the history of the local baths.

The history of AIDS very often involves hostility and indifference. But it is relatively easy to believe that the San Francisco officials named here made sincere efforts to check the spread of AIDS, and did their best, by their own lights, to act for the welfare of men who had sex with men in the city. Community debate centered on whether these efforts really were in the community’s best interests, or were unwarranted interference in gay and bisexual men’s lives.

My focuses will be on AIDS-containment strategies that were publically considered by the City in 1984 concerning former San Francisco businesses that provided space for sex between men, and on public statements about these strategies made by representatives of community organizations. At times, extraneous political pressures influenced City officials’ positions on the baths, inching them towards or away from regulation or closure. Eventual policy decisions disregarded which sexual activities were considered high or low risk for AIDS, and
disregarded research findings available in mid-1984, indicating that attendance at San Francisco’s baths was not correlated with AIDS risk.

SAN FRANCISCO’S BATHS FROM THE 1970s TO 1984

Bay Area residents, men from across Northern California, and tourists went to the men’s bathhouses, sex clubs, and back rooms of bookstores, adult theaters, and bars in San Francisco. Many of them were openly bisexual and gay, and others confined their sexual encounters with other men to these businesses, and to certain city alleys, parks, restrooms, and beaches. In early 1984 there were fourteen men’s bathhouses and sex clubs in San Francisco, with average monthly attendance rates that had ranged from 3,500 to 12,000 patrons. That April, the owner of a medium-sized local bathhouse said he could gross $500,000 “in a good year.” AIDS had already made 1984 the worst year yet for business at the baths.

Allan Bérubé’s 1984 article “The History of Gay Bathhouses” is reprinted in this volume, and contributed to dialogue over the baths that year. In it, Bérubé described sexual and nonsexual facilities and social events that the baths had come to offer. They had a variety of functions: they were spaces to find other men for sex; businesses to make money; safe havens from homophobia and places to celebrate gayness; places to eat, exercise, or sit in a jacuzzi; uncomfortably critical evaluation grounds for male attractiveness; and places to sleep overnight for men who were too drunk to drive after the bars closed.

San Francisco writer Armistead Maupin mentioned the baths in several of his 1970s-80s Tales of the City books. In the first, 1978, book several characters go to the Club Baths at Eighth and Howard, the largest bathhouse in the city. Jon, one of the series’ most sympathetic characters, is closeted in this book. He escapes a dinner party and drives from Sea Cliff to South of Market:

At times like this, the tubs was an easy way out. Discreet, dispassionate, noncommittal. He could diddle away a frenzied hour or two, then return unblemished to the business of being a doctor.

It was really his only choice.

Maupin’s Babycakes was published in 1984; like his first book, it had been serialized first in the San Francisco Chronicle. In Babycakes, an
English character named Teddy describes group sex he’s had at the Hot-house, a bathhouse men especially went to for sexual fantasy and role-playing scenes. Teddy reflects that “One learns a lot in orgy rooms. Camaraderie. Patience. Humor. Being gentle and generous with strangers. It’s not at all the depravity it’s cracked up to be.” He cocked his head in thought. “Just a lot of frightened children being sweet to one another in the dark.”

Michael sipped his tea.

Frank Browning spoke with Maupin in the early 1990s, “at the dawn of the sex resurrection” of the sex clubs in San Francisco. He summarizes their radio interview by writing,

The parks and the bathhouses have been places of freedom and fraternity in Maupin’s life. . . . “I learned,” he says with a chuckle, “that you could tell the difference between a nice guy and a bastard in the dark.” In the baths, he found remarkable qualities of communication with men whose names he never knew, men with whom he did not even have sex, with whom he embraced and then moved on.

The book of And the Band Played On offers a sharp and more or less uniform contrast from these views. Shilts repeatedly focuses on an increasing sensationalism in the baths by 1980, which he portrays as eliminating intimacy and caring from patrons’ interactions. The baths are described as “an amalgam of good and bad elements” in a 1983 book on gay liberation, co-authored by three women and a man, with a prefatory quotation by San Francisco’s highest openly gay elected official that year, Supervisor Harry Britt. The authors mention an “ease of sexual objectification” between patrons, which chimes with Shilts’s portrayals, but they also write that what “we can be proud of in the baths are the elements that we will seek in the new society [which gay liberation may realize]: friendship and caring, delight in sexual play, and an experimental approach to sexuality.”

The topic of sexual delight faded into the background by 1984, in most of the local debate over the baths. In another 1984 article, Allan Bérubé described the bathhouse controversy in San Francisco as a “sexual panic” that had the potential to diminish the community’s sexual freedom and civil liberties. He wrote that as gays and lesbians had gained political ground since the 1950s, “a tension has developed be-
between our political movement and our sexual desires.” He suggested that the community’s actual political successes had introduced a note of ambivalence over whether to celebrate or downplay sexual aspects of gay/lesbian/bisexual culture.

Bérubé wrote that since accusations of lewdness had been prime ammunition in political salvos at gay rights, “We change the subject away from sex so we can defend our right to free assembly and our right to privacy” with less difficulty, as a recurring political tactic when the community was under siege.14 Pleasure itself was a relatively rare topic in community members’ defense of the baths in the mid-1980s. Community attitudes about gay sexuality often manifested either through anger at potential losses of civil liberties that safeguarded homosexual privacy, or uncertainty about the exact value of sexuality, since it had given AIDS opportunities to spread in the community.

**EARLY ASPECTS OF AIDS IN SAN FRANCISCO**

In the 1970s, sexually transmitted diseases (STDs) were increasingly common among men who had sex with men in San Francisco, in or out of the baths, although the ferocity of AIDS would have been very difficult to predict before the epidemic hit.15 At least some men used condoms in some baths in the 1970s,16 but their use was rare since nonviral STDs could be cured. A local hepatitis B epidemic in the late 1970s was something of a harbinger for AIDS.

The first AIDS cases in San Francisco surfaced in 1981, with 8 cases by August and 2 deaths. By mid-1983 the numbers had risen to 249 local cases and 72 deaths, and to 550 cases and 213 local deaths by mid-1984.17 The City and the community began mobilizing against AIDS well before the local baths became a source of public contention, and there was considerable cooperation between them. Many community members were involved in professional work in San Francisco, including the political and medical fields. This factor greatly strengthened San Francisco’s response to AIDS.18

Randy Shilts’s journalism, his book *And the Band Played On*, and the HBO film adaptation of it have been influential in shaping public understanding of both the early AIDS epidemic, and the role of the baths in the spread of AIDS. In his book and journalism, Shilts strongly implied that the baths had to close before any effective local work could be done against AIDS. This is a very debatable contention, and it was peripheral to the mid-1980s debates over the baths in San Francisco.
In 1984, both community workers and City officials acknowledged that high-risk sex between men was spreading AIDS in bedrooms as well as the baths. Dr. Mervyn Silverman was the director of the San Francisco Department of Public Health (the DPH), and played the most important single role in the city’s unfolding bathhouse debates. He believed a generally accepted estimate that “the number of people regularly frequenting the bathhouses probably represented 5 percent of the gay population,” or “maybe at most 10” percent. Years later, he said that “If bathhouses were the only place that people were being infected [with HIV], closing them wouldn’t have been an issue. It was very clear that 90 percent of the gay community was having the same kind of sex, maybe with fewer people, maybe a little variation on the theme.”

It was known by 1983 that AIDS was spread through direct contact with blood or semen, and not through casual contact. Gay and bisexual men represented about 75% of the total American cases then, and about 95% of the San Francisco cases. The terms AIDS patients and AIDS victims were commonly used. San Franciscan Mark Feldman spoke at the first Candlelight Memorial March in the city in May 1983, and affirmed, “I am a person with AIDS . . . a human being, not a victim, and only a patient when I am in a hospital.”

The plural of the term Feldman coined became the name of an organization with chapters in San Francisco and other cities–People With AIDS (PWA). This term was incorporated into the Denver Principles, which were drafted by PWA activists at a 1983 conference. The principles included recommendations that no one “scapegoat people with AIDS, blame us for the epidemic or generalize about our lifestyles.” PWA also recommended that people with AIDS practice only low-risk sex, and inform sex partners that they had AIDS. PWA also affirmed the rights of people with AIDS to “as full and satisfying sexual and emotional lives as anyone else.”

At a cancer symposium, Silverman of the DPH said that in 1983, “we began to see policemen driving down the streets of the Castro District wearing surgical masks, nurses refusing to care for AIDS patients, [and] a bus driver refusing to touch a transfer that was handed to him by a possibly gay male.” Silverman said that by March 1984, San Franciscans in general had come to feel much less anxiety about AIDS because of DPH education efforts. But because of the baths, local debate over political, medical, and gay-rights aspects of AIDS intensified very soon after this statement. Michael Helquist, a local gay journalist, described this period as “a very charged, very emotional, and very unpleasant time.”
In April 1984, different health officials announced the discoveries of LAV and HTLV-III, which turned out to be the same virus; renamed HIV in 1986. The theory of this single etiological trigger for AIDS emerged conclusively in November 1984.\(^{25}\) Widely available tests for viral antibodies were expected to be forthcoming then, but there were strong community concerns about potential discrimination against people who tested positive. In a November 1984 interview, the editor of a community paper suggested to Silverman that his actions over the baths had increased local men’s distrust of government, and reluctance to participate in a badly needed, federally funded epidemiological study of AIDS. Silverman acknowledged this possibility, but asserted that the DPH would protect the confidentiality of test results.\(^{26}\)

**THE BATHS, AIDS AWARENESS, AND RISK LEVELS**

As early as July 1981, in an interview with AIDS clinician Dr. Alvin Friedman-Kien, Dr. Lawrence Mass raised the question in the *New York Native* of whether the baths could be targeted for closure if AIDS were found to spread in them. Friedman-Kien said he doubted it, unless a communicable disease were isolated for AIDS that was “being spread from a specific location because of that location.”\(^{27}\) These emphases on causation and location remained at the center of public health questions of AIDS and the baths beyond 1984. In the early 1980s, other people inside and outside the community suggested either that the baths were ideal locations to distribute condoms and raise AIDS-awareness among people at sexual risk for AIDS, or that men would continue to engage in self-destructive behaviors at the baths until they were closed.\(^{28}\)

Fear of AIDS contributed to a very sharp slump in business at San Francisco’s baths by mid-1983. Shilts wrote in the *Chronicle* that attendance was down by 50% at the Sutro Baths, and that this was an unusually mild annual decrease for a local bathhouse that year.\(^{29}\) In 1983 the Sutro Baths published ads in community papers telling readers to use condoms, and reminding them that sexually, “It’s Not Where You Do It, It’s How You Do It” that created AIDS risks.\(^{30}\) In mid-1983 the Hothouse was closed by its owner Louis Gaspar, who said, “I don’t think it’s where you have sex that causes AIDS,” but “I just couldn’t stay open when I felt I might be somehow responsible for people getting it.”\(^{31}\)

In late 1983, a community reporter paraphrased Silverman of the DPH as emphasizing that “the type of sexual activity in which one engages (not sharing bodily fluids), is far more important than the number...
of sexual contacts one has, in reducing the risk of contracting AIDS. He strongly urged the use of condoms.35 In January 1984, six of the eight bathhouses in San Francisco agreed to the City’s request that they distribute condoms to patrons, and were praised for it by DPH representatives.33 But in crucial statements he made and orders he issued later in 1984, Silverman neglected these two emphases on avoiding fluid exchange and using condoms during sex.

In these early years of the epidemic, the community and health officials agreed on a strong need to continue raising awareness, especially among all men who had sex with men, of what AIDS was and how it was spread. Community papers did a much better job at discussing sex and risk than mainstream newspapers. Men who had sex with men, but had limited involvement with the openly gay and bisexual community, had correspondingly limited access to accurate information about sexual risks for AIDS. The baths were much more practical forums to reach these men than city parks with nighttime, homosexually active reputations.

A chart for risk guidelines that ran in community papers was produced in June 1984 by the San Francisco AIDS Foundation (SFAF) (Figure 1). The chart’s classifications of safe, possibly safe, and unsafe activities are different in some important ways from the received HIV-risk standards of 2001. Fellatio with withdrawal before ejaculation was only listed as possibly safe, and fellatio with ejaculation was listed as definitely unsafe. Insertive and receptive anal sex with a condom were listed as possibly safe.34 HTLV-III was discovered in saliva in 1984. Federal and local authorities issued strong reassurances that the public at large didn’t need to worry about AIDS risk “if a gay waiter sneezes on your steak.” But in 1985, the SFAF took out ads in community papers discussing the uncertain safety of French kissing.35

Also in June 1984, the community-based Bay Area Physicians for Human Rights (BAPHR) issued a wallet-sized card with the same categories of risk levels and sexual behaviors (Figure 2). A number of San Francisco baths stocked these and other AIDS-education materials, and in fall 1984, one bathhouse owner claimed to have distributed about 5,000 of BAPHR’s cards.36 But during 1984, different local baths showed uneven levels of commitment to promoting AIDS awareness.

1983: SILVERMAN AND LARRY LITTLEJOHN

Debate over the baths in San Francisco had begun, erratically, by 1983. Different people disagreed deeply about how urgent an issue the
baths were in light of AIDS, and whether they ought to change or be changed. That May, longtime gay activist Larry Littlejohn wrote to urge Silverman to try to check the spread of AIDS by closing the city’s baths. In the 1960s Littlejohn was a president of the Society for Individual Rights, a pioneering San Francisco gay-rights group whose magazine ran reviews praising different baths.

In his reply to Littlejohn, Silverman made claims that would later rebound on him, writing that it would be “inappropriate and in fact illegal for me to close down all bathhouses and other such places.” Silverman also felt that closure would “insult the intelligence of many of our citizens and it would be an invasion of their privacy to take such an action.” He said the primary goal of the DPH was to cooperate with other organizations “to educate the public, both gay and straight,” about how AIDS could be spread.
That September, Silverman replied to another letter from Littlejohn. He wrote that owners of local baths were cooperating with the DPH in risk-reduction work. Warnings about AIDS-risk behaviors had been posted, attendance had decreased, and there seemed to be less group sex at the baths. Silverman wrote, “My fear is that if the bathhouses were to close the community might perceive that the problem of AIDS is solved. This is, of course, patently incorrect.” He also feared that if the baths were closed, patrons might “immediately switch to other locations where we would have less access to post warnings and provide...
some education.” He disagreed with Littlejohn about the potential medical or social benefits of closure, given the current state of knowledge about AIDS and the “substantial civil rights issues connected to a policy to close the bathhouses.” These issues included national freedom-of-assembly rights, and a state guarantee of consenting adult Californians’ right to engage in sexual behavior.

In October 1983, federal officials indicated that the regulation of sexual conduct involving AIDS risks was a thorny decision that local officials would have to make for themselves, since federal rights and various state and local sexual privacy rights were involved. San Francisco’s mayor Dianne Feinstein and Silverman’s boss, the city’s chief administrative officer, both favored the closure of the city’s baths. But because of City-Charter constraints on them, San Francisco’s AIDS decisions rested largely with Silverman. Through 1984, the brunt of the responsibility was on Silverman to decide how to use or not use the DPH’s authority to try to manage the spread of AIDS among San Franciscans.

JANUARY-FEBRUARY 1984: THE CHRONICLE, AIDS, AND THE BATHS

In the early 1980s the gay press offered almost all the coverage of AIDS that was available in nontechnical language, although from 1981 to 1984, the San Francisco Chronicle published more AIDS stories than the New York Times and Los Angeles Times combined. In mid-1983, Randy Shilts wrote a Chronicle article about DPH AIDS cautions for the Gay Pride parade, when the city and its baths saw a regular, large influx of tourists. Shilts quoted Supervisor Harry Britt’s speculation that people who were still going to baths despite AIDS risks were “either unaware of the problem or have a psychological investment in going that is so strong that they’re willing to risk their lives.” This generalization implied that all patrons went to the baths for high-risk sex.

On 3 February 1984, Shilts gave his first quotations criticizing the baths from AIDS researchers and clinicians who were willing to be named. Shilts quoted local gay doctor Donald Abrams as saying he didn’t favor City closure of the baths, “but they need to close because of lack of business. I’m in favor of a boycott.” Shilts also quoted Dr. James Curran, head of the AIDS Activity Office at the federal Centers for Disease Control, as saying, “I’d like to see all the bathhouses go out of business.” Curran later objected—saying, “I didn’t see a role for government in leg-
islanding behavior or legislating change,” and “concerns about bathhouses should come from the gay community rather than from government.” In another interview Curran said he wasn’t “in favor of bathhouses,” but “I didn’t say most of the things in the article!” Curran said about Shilts that “He means well but he doesn’t ask himself why he writes what he does.”

In a 4 February Chronicle article, Shilts quoted local gay clinician Dr. Marcus Conant’s rhetorical question about the baths, “What are we going to do about compulsively promiscuous men?” Shilts also quoted Harry Britt as saying, “Sexual activity in places like baths or sex clubs should no longer be associated with pleasure—it should be associated with death.” Britt also claimed that Shilts misrepresented him, and “wants to shut down the bathhouses and tried to get someone to say that.” Shilts was quoted in the Advocate as insisting that “he has no opinion on whether bathhouses should close. ‘I write news stories, not editorials,’” Shilts said.

In the 4 February article, Shilts also ran an SFAF poster that showed two naked men embracing, and promoted lower-risk sex (Figure 3). Shilts wrote that “AIDS researchers privately have mocked these efforts,” which focused on “the fun to be had with ‘safe sex.’” Shilts wrote that Britt had said, “We need a new style of education campaign.” A few days later, the Chronicle’s gossip columnist Herb Caen wrote, “MAYBE YOU MISSED that anti-AIDS poster put out by the AIDS Foundation. If so, you bettah off [sic].” Caen wrote, “For what I suppose are non-racist reasons the black man [in the poster] is elegantly built . . . while the white fellow is an overweight blob with a large posterior.” He summed up the poster as “All quite adorable and ineffectual. What is needed is something tough, like a skull and crossbones and a few harsh words, such as ‘Stop acting stupid or you gonna die, suckah.’”

The distribution of the poster and other educational materials to the baths was facilitated by the Department of Public Health. Years later Silverman would say about Shilts’s articles,

I remember he talked about the [DPH’s] lackluster AIDS education plan. The thing was, he didn’t say, “So-and-so said it was lackluster.” Lackluster was his word, and that’s not reporting. That’s commenting. It’s opinion. So I finally got tired of this really biased treatment. In fact, I got so upset—obviously, none of us like to be criticized, but it’s okay if at least there’s balance—that I cut him off from access to me.

He ended up writing me a note saying, “I’m sorry, you’re right, I shouldn’t do this, and I promise not to do it again.” Not
FIGURE 3. AIDS-Awareness Poster, San Francisco AIDS Foundation, Early 1984. © and courtesy of the SFAF; photograph by Mick Hicks.
promise not to be critical, but promise not to be so biased and one-sided. I used to call his editor and say, “For God’s sake, put him on the editorial page.”

THE LITTLEJOHN PETITION

The bathhouse debates’ momentum became irreversible on 27 March 1984. At the monthly meeting of the Harvey Milk Lesbian/Gay Democratic Club, Larry Littlejohn distributed a press release stating his intention to seek 7,332 signatures on a petition for a new ballot initiative, to direct that “sexual activities among patrons of public bathhouses should be prohibited” in San Francisco.

Until then, the local bathhouse debates had mostly been conducted behind the scenes—in personal letters and private meetings, or for the readers of the gay press. The main exceptions were Shilts’s quotations in the Chronicle and two men’s July 1983 article on AIDS in the mainstream California magazine, describing the baths as “a perverse and inchoate symbol of gay liberation itself.” But Littlejohn’s announcement immediately turned up the heat on community concerns and City plans—rattling the lid, so to speak, off the simmer of the discussions of the previous year, and bringing the debates to a boil.

No one seemed to doubt that over one percent of the city’s population would sign Littlejohn’s petition, or that a Yes vote was overwhelmingly likely, or that this vote would look to the rest of the country like an indirect but still crushing moral condemnation of gay sexuality, by the bulk of the electorate of the country’s gay mecca. The initiative would have been put on the ballot in August for a November vote. August became a galvanizing deadline for action, for community activists and City officials who felt concern about the community’s civil rights and its public image.

In the coming months, circumstances strongly impelled or compelled many City officials and community members to go on record with a statement on whether and how the baths should be allowed to operate. To propose any relevant policy, it was necessary to address or dodge the concerns of public health and gay civil rights—often bluntly favoring one over the other. The two priorities were often seen as being difficult or impossible to reconcile. Dennis Altman’s sensible, reconciling assessment is that “there can be genuine disagreement on this question that need not imply one is homophobic.”
In the first week of March 1984, Silverman had made a speech addressing these two priorities, and echoing many of the statements he’d written in 1983 to Littlejohn. In the speech, Silverman had said that in terms of civil liberties, closure could “lead to the passage of restrictive legislation” that would damage “the social fabric or political rights that have been made by lesbian and gay individuals.” As for public health, he also said closing the baths “would, in the first place, not end the [high-risk sexual] activities that have taken place in them, and equally important, we would lose the potential of reaching” people with AIDS-education messages at these centralized venues. These statements demonstrate a ten-month continuity in Silverman’s anti-closure stance on the baths, from May 1983 to early March 1984. After Littlejohn’s 27 March announcement and the turmoil that followed it, Silverman began what would eventually be a 180-degree shift in his positions.

COMMUNITY RESPONSES TO THE LITTLEJOHN PETITION

Littlejohn’s announcement aroused a good deal of community anger. Many written attacks on him were personal, ranging from his being called “LittleBrain,” “Judas Littlejohn or Lazydick Arnold” in another letter to the editor of the Bay Area Reporter, the community’s “traitor extraordinaire” by the B.A.R.’s editor himself, and, in effect, the hemorrhoid on the asshole of the gay community by the owner of the Sutro Baths. But Littlejohn seemed to maintain a steady confidence that a ban on bathhouse sex was for the community’s greater good, and an awareness of his own good faith in proposing the ballot initiative.

Before he made his announcement, Littlejohn discussed his intentions with Shilts, Supervisor Britt, and with Carole Migden of the Milk Club, who all shared his view that the baths were more dangerous to the community than beneficial. Britt changed his position on the baths a number of times that year, and the reservations he sometimes did express were often very equivocal. Migden and Bill Kraus of the Milk Club became two of the community’s most consistent advocates for the baths’ closure. Kraus said it would be “increasingly difficult to tell straight politicians that there is a terrible crisis if we don’t act like there is a crisis ourselves.” Migden compared the baths to typhoid-infected swimming pools, and said that since closure was now practically inevitable, community leaders should try to salvage control of the situation by calling for closure themselves. She also strongly opposed Littlejohn’s
Littlejohn’s announcement kicked off a frenetic series of meetings between dozens of members of community political, business, medical, legal, and activist organizations. Some people wanted Silverman to close the baths himself, and others were reluctant to assist in any DPH closure efforts. Michael Helquist and Rick Osmon wrote a clear, approximately 10,000-word summary of the next five days of community members’ intense networking, brainstorming, resolutions, disagreements, retractions, and clarifications for the community paper *Coming Up!*59

The activity crystallized somewhat on the night of 29 March, when the president of the Stonewall Democratic Club and the activist owner of the Valencia Rose cabaret held a forum there on the looming possibility of the baths’ closure. They invited Silverman and anyone who was interested to come and speak. Around a hundred people went, including “a large cross-section of the Lesbian/Gay leadership.” Silverman was candid and forceful about the bind that he and the community were facing, saying that the ballot petition was “crazy,” but that a recent rumor that AIDS incidence was dropping was “bullshit. It’s going up everywhere.” The meeting lasted over two hours, and speakers opposed to immediate closure outnumbered those in favor by about five to one.60

**SILVERMAN’S FIRST PRESS CONFERENCE ON THE BATHS**

Silverman had already called an 11 a.m. press conference for the next morning, 30 March; it was widely anticipated that he would close the baths. Over 200 people went to the conference, including a group of anti-closure demonstrators who smiled and wore towels around their waists. Different signs they carried read, “Today the Tubs, Tomorrow Your Bedroom,” and “Out of the Baths and Into the Ovens?”61 Another sign read, “Out of the Tubs and Into the Shrubs,” expressing the belief that if the baths were closed, a number of men would keep meeting for sex in city parks and other places where condoms and AIDS-education materials were unavailable.

In a key, 1992-93 oral history conducted by Sally Smith Hughes, Silverman described a meeting he had that morning, before the press conference, with City Attorney George Agnost. Agnost told Silverman that the DPH needed far more information before a legally viable effort could be made to close the baths. Silverman had been open to the idea of closure before this talk, but now he decided against it. After consulting
Agnost, he met with Mayor Feinstein, Harry Britt, the chief of the SFPD, and a number of doctors and political activists. Silverman told them he had already made up his mind not to close the baths that day.

In the interview with Hughes, Silverman described how he said to everyone, “Just for the hell of it, how many of you now think I should close the bathhouses, and how many think I shouldn’t?” The room was evenly divided. Silverman told Hughes, “The way it comes out in Shilts’ book is as if that [question] was the determining factor. . . . One of the problems I had with Randy was his selective listening. His version is even going to be in the television movie that’s coming out.”62 The biggest historical errors in the HBO film’s portrayals of the bathhouse debates center on this event.

Silverman arrived at the auditorium almost an hour late.63 A DPH official had received a telephone death threat for Silverman if he closed the baths, and he put on a bulletproof vest before he went in. When he was seated, Silverman simply announced, “I am not discussing the opening or closing of the bathhouses at this point.” He said he was delaying his decision after considering various “facets of this issue, some of which had basically nothing to do with medicine and some of which do.”64 Years later, Silverman reread his own words to Hughes—“‘and some of which do.’ And I’m not sure what that ‘some’ would be. I may have thrown that in just to throw people off a little bit. But the real issue was the legal aspect” of the City Attorney’s having told him, “You can’t do it, because you don’t have the necessary evidence to close them down.”65

What Silverman called his “non-press conference” can still be seen as the first important City action on the baths that year: a public decision to postpone making a decision about regulation or closure. That day, Silverman announced that there was nothing to announce yet, apologized for keeping the crowded room waiting, said he’d try to issue a clear policy statement within a week or so, and left the room to the sustained applause of some audience members. Nevertheless, City Attorney Agnost hazarded a medical opinion for the Chronicle that day, that the “scientific basis is quite sound and quite convincing” to support a City move to close the baths.66

**POSITIONS ON CLOSURE FROM ACTIVISTS AND THE MAYOR**

Many letters about this controversy would be drafted in 1984 by coalitions of members of community organizations, delegates of single
groups, and individuals. Gay author Frank Robinson had signed a tentative letter to Silverman favoring closure. He was concerned what would happen if AIDS “jump[ed] the fence,” and began spreading widely among heterosexuals. He asked who would want to take bets on “whose lifestyle will be blamed? . . . What kind of defense could we offer as to having tried to contain the disease ourselves?”

On 1 April, members of two of the community’s Democratic clubs, bath-owners, and representatives of some AIDS service organizations held a meeting to draft a letter to Silverman opposing any “unilateral action by the city and to formulate alternatives” to closure. On 2 April, Bobbi Campbell, R.N., issued a response to the Littlejohn petition on behalf of the local chapter of People With AIDS (PWA). Campbell had been the first San Franciscan to come out publicly as having AIDS in 1981. He had been on the cover of *Newsweek* in August 1983, and he would die in August 1984. His letter encapsulated many of the positions that other anti-closure groups took during the year.

Campbell said that PWA members believed that closing the baths “is not the real issue; rather, the issue is the education of gay men as to what specific sexual practices” carried risks for AIDS. He also suggested concrete changes for the baths. While he made risk behavior a more important issue than location, he wrote that the baths “should make structural and functional changes to encourage and facilitate low-risk, safe-sex practices,” and discourage high-risk practices by turning up their lights, supplying educational materials and condoms, and closing orgy rooms—large, comfortable spaces for group sex.

Campbell wrote that closing the baths could have “nationally detrimental effects on how gay men view ourselves and how we are viewed by society.” He wrote that closure could give a green light to other city governments to close gay bars along with their baths, and that “increased discrimination against gay men in general and people with AIDS in particular” could follow. PWA doubted that other cities would understand that any San Francisco closure effort was only “a political shellgame to avert a more restrictive petition initiative” here. Campbell described the Littlejohn petition as “the worst possible approach to the AIDS crisis,” and declared that PWA was now on the record opposing both the petition and any efforts to close the baths.

Many community members shared Campbell’s concerns that closure could have a city-by-city domino effect, leading to bath-closures in other places; and also what could be called a civil-liberties erosion effect on gay civil rights, in and beyond San Francisco. In an undated position statement, the National Gay and Lesbian Task Force (NGLTF) in
Washington also expressed its concerns that closure efforts could work towards “the re-institution of sodomy statutes and other violations of the right to privacy,” in American states where anti-sodomy laws had been revoked. In 1984 these laws were in force in half the states. The NGLTF affirmed a right to personal sexual decision-making that would recur in other community stances on the baths, emphasizing that “The regulatory powers of government . . . should not extend to the direct or indirect coercion of individuals regarding their private, consensual sexual activity.”

San Francisco’s mayor, Dianne Feinstein, was the head of the AIDS Task Force of the U.S. Conference of Mayors and had organized an AIDS Awareness Week in 1983, inviting people with AIDS and their families to her office. Feinstein was widely known to feel real and deep concern for people with AIDS. However, her attitudes towards gay men’s sexuality in general, and sexual creativity in particular, were less supportive. Five days after Silverman’s press conference, the mayor made her first on-the-record statement about the bathhouse controversy, saying, “My own opinion is that if this was a heterosexual problem, they would have been closed.” She said, “The bottom-line question here is death. AIDS means one thing, and that is that you die. And therefore, if you want to avoid it, the message has to go out. Not in a namby-pamby way.”

**SILVERMAN’S SECOND PRESS CONFERENCE ON THE BATHS**

Five days later, on Monday, 9 April, Silverman announced that “all sexual activity between individuals [is to] be eliminated in public facilities in San Francisco where the transmission of AIDS is likely to occur.” The ban was aimed at city “bathhouses, sex clubs and the back rooms of certain bookstores,” as “Locations which particularly foster meetings between gay and bisexual men who ‘indulge in multiple sexual encounters.’” In *And the Band Played On*, Shilts describes the order as “regulations to ban high-risk sexual activity”; this description is inaccurate. Silverman made no mention of risk levels, or distinctions between different sexual activities that were considered likely or unlikely to transmit AIDS.

Silverman announced his having met the week before with “a panel of national, state and local AIDS experts” to ask for recommendations for the baths. He said the ban represented “the unanimous position of
this group,” and had the support of both “AIDS experts and gay leaders.” He held this press conference seated at his desk at the DPH, flanked by a number of gay men he’d met with the day before, in a second consultation to discuss policies for the baths. He said, “Look at the group standing behind me,” which included community activists and Drs. Don Abrams and Marcus Conant. “This is not a government-against-group thing.”

Unfortunately, Silverman’s statements created the impression that it was the men standing around him as he announced his ban who had unanimously approved this new regulation policy, rather than the first group he’d convened on 3 April. The day before his announcement, 8 April, Silverman had neglected to tell this second group of local men about the earlier group’s unanimity or any resolutions he’d come to, himself, to ban all sex in the baths. But Silverman now called “upon all members of the gay community to work with us as we move through these uncharted waters together.”

A San Francisco Examiner sub-headline on the story read, “Gay leaders support policy, Silverman says.” But many of the people Silverman had met with the day before had disagreed and would disagree with this attempt to regulate the baths. Several of the people who literally stood behind Silverman as he made his statement were taken by surprise by his blanket ban on all sexual activity in the baths, regardless of condom use or fluid exchange, and withdrew their support.

For instance Tom Peretti, of the community’s Concerned Republicans for Individual Rights, said that the Monday press conference Silverman had held “came off quite different than at the meeting” on Sunday. Peretti said, “I feel used, manipulated.” Psychiatrist Rick Andrews attended the 3 and 8 April meetings. When he was asked whether he supported Silverman’s ban, Andrews said, “I support what I believe is his intent,” but also confirmed that at the Sunday, 8 April meeting, Silverman “told us he was going to leave the area of ‘safe sex’ open.” Steven Richter of Bay Area Lawyers for Individual Freedom wrote in an open letter to Silverman that he was “more than annoyed” to hear that Silverman had implied that Richter supported the ban, when no vote had been taken on Sunday. Richter advised Silverman “that I intend to vigorously oppose the action you announced.” And Rev. James Sandmire of the Metropolitan Community Church (MCC) wrote, in an open letter to Silverman,

I am disturbed by several statements you made at the news conference yesterday. I understand my concern is shared by others who
attended the meeting with you on Sunday. . . . it was my understanding that both bathhouses and other establishments would be allowed to develop creative programs that were erotic in nature and that sexual activity not involving the exchange of blood and semen would be encouraged. . . .

I want you to know I believe in your ethics and motives. Please clarify this issue for us. . . . We minister to [AIDS patients] and their families [at MCC] and we see them die. Accordingly, we will support any reasonable course to combat this disease.

However, some of us are among the early supporters of gay liberation. We will not support anything that diminishes our rights.81

**FOLLOWING UP THE BAN, AND EIGHT LOCAL BATHS**

Littlejohn announced he would drop his petition initiative, since Silverman’s ban covered the petition’s regulatory measures.82 Silverman left the “legal fine points” of his ban’s actual enforcement for the City Attorney’s Office to draft in time. Silverman said he would ask for health inspectors to be empowered to make unannounced visits to bathhouses and report on any sexual activity, for which the owner’s license could be revoked. Bathhouse patrons would not have been penalized.83

Silverman faced significant legal obstacles if he tried to enforce the ban, because bathhouse licenses were granted by the Police Department, not the DPH. And years later, Silverman described how “there was absolutely no regulation on sex clubs. None. We charged $300 to license a pretzel vendor, and yet sex clubs, which were making tons of money, were unlicensed.”84 Silverman did have the state-issued, emergency authority to quarantine any building whose premises were contaminated with a pathogen, but it was well understood by 1984 that AIDS was only directly spread by people, not rooms.

Silverman’s ban may have contributed, along with very steep declines in business, to the self-closures of four local baths in the next two months, starting on 15 April with the Liberty Baths. In contrast to Shilts’s description of the “cold, hard stares of the bathhouse attendants,” a former patron described the place as having had a “wonderfully good-humored” staff, “thrilling” wall paintings, and the most intimate atmosphere of any local bathhouse.85

On 21 April the Catacombs, a club mainly known for fisting, held the last in its series of closing parties. Former patrons described the owners’ providing condoms, gloves, showers, and surgical soap, and said,
“They started educating their clientele from the start about safety.” Hal Slate, the owner of the Caldron, closed it in May; the club was especially known for watersports (sex play with urine), but had also hosted twice-weekly, masturbation-only nights, and had sponsored safe-sex education events in the previous year.

The Sutro Baths was closed by its owner Bill Jones on 3 June. The business had attained a good standard of accuracy with its 1983 AIDS slogan, “It’s Not Where You Do It, It’s How You Do It.” In late April 1984, four other local bathhouses produced an ad that implied all sex on their premises would be inherently safe, whatever patrons did. The Club Baths at Eighth and Howard, the Club San Francisco bathhouse on Ritch Street, Animals, and the 21st Street Baths ran this ad along with three out-of-town baths. It was titled, “baths . . . not the problem but part of the solution!” It stated that “A full range of activities await your pleasure in our unique, clean environments,” and “You’re invited to be part of the solution. Redeem the coupon below and discover that sex can be safe and pleasurable.” Above the coupon was the slogan, “your pass to safe sex.”

A lower corner of the ad displayed a resolution by various baths’ owners, in fine print, to “disseminate objective information about A.I.D.S.” to their patrons. But the ad itself contained no information about how AIDS could be either spread or contained. It ignored the links between AIDS risk and fluid-exchange sex, on or off the baths’ premises—making no mention of condoms, risk levels of different sexual activities, or activities that the owners encouraged or discouraged at their businesses. This combination of invitations and omissions was as misleading as Harry Britt’s and the mayor’s previous implications that all sex at the baths automatically equaled risk and death. The ad only made a simplistic negations of Britt’s and Feinstein’s equations of bath-attendance with AIDS risk, by implying that the baths, as places, were risk-free.

THE MAYOR AND THE SFPD

In a 27 March statement made on the day the Littlejohn petition was announced, Feinstein had acknowledged that “The closure and non-closure of the bathhouses is a public health issue not in the jurisdiction of the mayor,” but said she had asked Silverman to make sure that AIDS-education materials were updated in the baths weekly. Feinstein had also said, “It is fair to say I am greatly concerned about the rapid
spread of this deadly disease and I am watching the situation as closely as I can.”

A 31 May *Examiner* story revealed that the mayor’s watch on the situation had been close enough to be considered municipal espionage by very angry community members. Within four days of Littlejohn’s petition announcement, Feinstein had ordered on-duty, plainclothes San Francisco policemen to go into the baths, pose as patrons, and write a report for her on the sexual activities they saw. When the chief of the SFPD sent the mayor this report, he included another report of secret bath-surveillance made at an unspecified date, which the police had produced on their own initiative.

The *Examiner* article marked the beginning of the SFPD’s brief, open role in the bathhouse debates. When the police surveillance was revealed, Feinstein insisted that “the mayor has a right to get the facts about a situation,” that her orders had been “entirely justified,” and that “My concern with this has nothing to do with anything I may or may not think about morality. It has to do with life versus death.”

Feinstein refused to make the reports publicly available. She claimed, “I cannot release them,” though she had shown the second report to Silverman, who said, “It just described what goes on in bathhouses. It didn’t tell me anything new.” Two unidentified city officials who also saw the report confided to Randy Shilts that it was “very explicit, very graphic,” and said, “It definitely would get an X-rating.” The reports were never released to the public.

**COMMUNITY RESPONSES, AND PAST INTERACTIONS WITH THE SFPD**

A broad array of community members condemned the police surveillance. Harry Britt called the reports “unconscionable,” and expressed disbelief that the mayor would even order them.” Sal Rosselli of the Alice B. Toklas Democratic Club said the mayor “should call a meeting with gay leaders and commit herself against ever doing this again.” A political aide to one of the City Supervisors said Feinstein “did make the concession that she would never do it again using police.” Rosselli said that in light of the “close relationships” between Feinstein and many community members, “we would expect her to come to us and ask for this information.” The owner of Animals also said, “There are enough people in the gay community who frequent bathhouses who the mayor could just ask about what goes on there.”
The SFPD surveillance revelations provided the “immediate impetus” for two investigative articles by Helquist and Osmon on the baths’ different environments and patrons’ behavior in them, which ran a few months later in the community paper Coming Up! The journalists toured the baths as fellow patrons and openly gay men, for the sake of putting two community members’ perspectives into the public record. They described individual men they met in different baths, covering the land-mined controversy in straightforward language. The articles are further described below, and are reprinted in this volume.

The community paper the Bay Area Reporter ran an editorial by publisher Bob Ross on the mayor’s surveillance order, called “Big Sister’s Watching.” Protest letters to the editor in the paper were deeply critical of Feinstein. Most were reasonably polite, but two letters also ran without comment by editor Paul Lorch, saying, “One understands and accepts that there are probably as many pussy-whipped males under the dome of City Hall as there were eunuchs in the harem of the Ottoman Sultan,” and calling Feinstein a “Jewish Princess.”

Dorothy Ehrlich, executive director of the Northern California chapter of the American Civil Liberties Union, wrote Feinstein “to express our profound objection” to the surveillance, which “unjustifiably invaded the privacy rights of the patrons of these establishments,” who had gone “with a reasonable expectation that their activities will be free of government intrusion and that other patrons will be persons who share a common purpose.” She wrote, “It is inconceivable” that patrons “would have expected that intimate and perfectly legal activities were being observed by an on-duty government agent and recorded for a police report.”

The SFPD had made advances against homophobia, but in 1984 many transgendered, lesbian, gay, and bisexual San Franciscans had experienced harassment, entrapment, extortion, arrest, mass arrests, announcements of their arrests at workplaces and in the media, or battery by local police in the previous years and decades, for their gender-expressions or sexuality alone. From 1978 to 1979, many members of the SFPD had expressed sympathy for Supervisor Dan White in the months after he shot gay Supervisor Harvey Milk and the city’s progressive Mayor George Moscone, whose death had automatically raised Feinstein from president of the Board of Supervisors to mayor.

A wave of police harassment of the community followed the murders, culminating after the White Night riot in May 1979, after White received the lightest possible verdict for the shootings—manslaughter. Five to ten thousand outraged community members rioted at City Hall,
smashing windows and setting police cars on fire. Later that night police stormed a Castro bar, shouting “dirty cocksuckers” and “sick faggots,” and indiscriminately battered patrons there and people on the street for two hours.\footnote{101}

Trust between the local police and the community had only been restored very gradually. In the fall of 1983, Feinstein had sent a letter to the U.S. Attorney General to say that because of the gravity of White’s crimes and the lightness of his sentence, “talk of his impending parole has in my view rekindled the passions that erupted five [and four] years ago.” Feinstein vigorously urged White’s continuing punishment,\footnote{102} but 1984 had begun with White’s release from jail.

On 6 January 1984, an afternoon protest rally at Union Square had drawn four thousand demonstrators, and a rally that night in the Castro drew nine thousand, to bear witness to the community’s continuing grief and anger.\footnote{103} That summer, any use of police authority by the mayor to restrict the baths might have hit the community on very old bruises. Gay and bisexual men had turned to the baths for decades to celebrate their sexuality without fears of outside violence, except for the community’s memories and awareness of sometimes brutal police raids on the baths.\footnote{104}

\section*{THE MAYOR, THE SFPD, THE CITY ATTORNEY, AND THE SUPERVISORS}

On 11 June, less than two weeks after the police surveillance of the baths was revealed, the mayor canceled public, Police-Department hearings that had been scheduled for 27 June. City Attorney George Agnost criticized the mayor’s decision, since it disrupted regulatory plans for the bathhouses that his office, the mayor, and the police had been preparing together.\footnote{105}

Agnost was the City’s primary legal advisor and representative. The SFPD hearings would have been an effort to give legal teeth to Silverman’s 9 April sex ban, via authority given in the San Francisco Civil Code to the SFPD, since bathhouse licenses were granted by the Police Department rather than the Health Department. At the hearings on 27 June, new regulations for bathhouses would have been proposed for construction details and sexual behavior. Each bathhouse would have had to meet these new standards to keep its license, but the Code amendments could only have passed after public hearings.\footnote{106}
The new plans included a few changes that were similar to Bobbi Campbell’s suggestions for the baths, for instance proposals for brighter lighting. But the plans also included a system of in-house monitors; the prohibition of oral sex, anal sex, analingus or rimming, fisting, and scatology; and the elimination of all private rooms and gloryholes (a hole in a wall that allows the performance of fellatio through it).

Like Silverman’s ban, these regulations failed to mention AIDS-risk levels or sex with condoms, and solo and mutual masturbation were neither prohibited nor explicitly permitted. If a bathhouse had violated these regulations, it could lose its license for 90 days or permanently, and patrons who had sex could have been expelled. Bathhouses would have been required to post these guidelines on their walls. Unlike the SFAF’s and BAPHR’s AIDS-education literature, the regulations were couched in highly clinical, roundabout language. The B.A.R. reported it was Feinstein who insisted that the earlier word penis be substituted with “the copulatory organ” and its placing.

Twelve days after the Examiner revealed the police surveillance from that March, the mayor canceled the hearings for the SFPD regulation proposals, and switched political directions. On 11 June she encouraged the Board of Supervisors, the city’s legislature, to pass an ordinance rescinding the SFPD’s authority to grant and revoke bathhouses’ licenses, and transfer that authority directly to the DPH.

City Attorney Agnost’s evaluation was that even if the licensing transfer were successful, any later DPH action taken against the baths would fail a judicial challenge. Agnost believed that “the sex ban regulations could be enacted immediately” if the mayor stuck with the SFPD proposals, which his office had finished drafting three days before, rather than turning to the Supervisors. But Feinstein “described this as a helpful move to give [the Supervisors] an opportunity to act first,” and said, “the board is going to be acting on the issue soon.”

Four days later, the Supervisors announced a forty-five-day postponement of their decision on the licensing transfer. Supervisor Richard Hongisto, a former San Francisco sheriff who was a staunch supporter of the lesbian and gay community, “said he wanted more information on the legal and social ramifications” of the proposed transfer. A good deal of anger would have greeted any decision regarding the city’s baths, and the Board stayed out of the controversy. The mayor threatened to reconvene the SFPD hearings, but never did. The proposed SFPD regulations and the licensing transfer proposal were dead ends in the struggles over the baths.
The Bay Area Physicians for Human Rights’ June newsletter included a position statement on the baths in terms broad enough to include the Supervisors, SFPD, and DPH, asserting that past governmental “Attempts at legislating sexual behavior have only changed locations of that behavior, not curtailed it.” BAPHR’s statement began, “There is no definite evidence” that “closing bathhouses would reduce the risk or incidence of AIDS.” They “strongly state, however, that multiple, anonymous sexual contacts, occurring in any location,” increased AIDS and STD risks and should be avoided. BAPHR renewed their commitment to promote “safe sex practices in all areas, including bathhouses.” They stated their continuing beliefs “that voluntary efforts by the gay community are the appropriate methods to achieve this goal,” and “that government intervention in the sexual behavior of consenting adults should be avoided.”

The Consenting-Adults Bill had been successfully sponsored in the state legislature in 1976, after persistent efforts by Assemblyman Willie Brown to repeal California’s anti-sodomy laws. In 1978, the San Francisco District Attorney applied this law to the baths, saying “There’s no question this was a private place.” The DA’s establishing city bathhouses as private places quashed an SFPD raid and set of arrests at the Liberty Baths.

The crux of later prosecution of the local baths was whether their entire, enclosed premises could be considered private, or were fair targets for government restrictions as commercial, public spaces. Since 1984, the question at the center of local debate over the baths has been whether they should be permitted to have private, closed rooms inside their premises.

**THE DNC, THE SUPERVISORS, AND JOHN O’CONNELL**

Nineteen eighty-four was a presidential election year, and the Democratic National Convention was held in San Francisco, beginning on 16 July. Feinstein was a potential vice-presidential candidate, and there was a widespread assumption that she’d wanted the bathhouse debates to be concluded before the convention started, and the national media arrived. In large part due to the work of Bill Kraus of the Milk Club, the Democrats’ final platform included commitments to a search for the causes of AIDS and a cure, an end to the exclusion of lesbians and gays from immigration and from the military, and an end to homophobic violence.
On 29 July, homophobia in the Bay Area led to murder. A San Franciscan named John O’Connell was walking on Polk Street, when four men from Vallejo attacked him and a friend, and kicked and beat them. O’Connell’s head hit the curb when he fell, and he never regained consciousness, dying three days later. His attackers had called them “motherfucking faggot queers” and attacked two other men that night.

They attacked O’Connell a dozen blocks due north of City Hall, on the forty-fourth of the forty-five days that the Supervisors had set aside before announcing their SFPD/DPH bathhouse-licensing decision. On 10 August, the Board announced their refusal to make the transfer. Supervisor Hongisto mentioned the murder of O’Connell, and said news of the transfer could look like an encouraging triumph for homophobia in the area. Echoing Bobbi Campbell’s concerns about the Littlejohn petition, Hongisto said the transfer might also encourage politicians in other states and cities to close their baths as well as their gay bars. Campbell died five days later, on 15 August 1984.116

THE DPH AND AVAILABLE EVIDENCE ON AIDS AND THE BATHS

Silverman had supported the licensing transfer attempt; his position on the baths had hardened through the summer and fall, moving beyond his April ban on sex between individuals, and far beyond his 1983 letters to Littlejohn and his speech in early March 1984. One of the Supervisors had said the Board had “not been given one bit of evidence showing a causal link between the outbreak and spread of AIDS and people’s behavior” in the baths.117 There was very little clear research that Silverman could cite, linking bath-attendance with AIDS risk.

Two studies of AIDS and San Francisco’s baths were made available in 1984; the first was conducted by Leon McKusick, William Horstman, and Arthur Carfagni, who had released their results in February. As the year progressed, the authors disagreed completely about how their data should be interpreted or used to argue for or against closing the baths. On 3 April 1984, McKusick and a fourth man, Steve Morin, sent a memorandum to Silverman “in part to refute the notion that there are no data indicating that the closing of the baths would reduce the incidence of AIDS.” McKusick and Morin believed that “closing or altering bath-houses could have a major impact on reducing high risk sexual behaviors and therefore the incidence of AIDS transmission.” Carfagni dissented altogether in October, writing that “The conclusions and interpretations in
[McKusick and Morin’s] Memorandum . . . do not represent the conclusions of the original study [by McKusick, Horstman, and Carfagni], and I do not concur in them.” Carfagni said that the three men’s original “study does not indicate that bathhouse closure would be effective or appropriate and those conclusions should not be drawn from this study.”

More seriously, Dean Echenberg, Silverman’s deputy for communicable diseases, had received a letter on 10 July from William Darrow, a senior research sociologist with the AIDS Activity Office at the Centers for Disease Control (the CDC). In the words of Ronald Bayer in Private Acts, Social Consequences, after analyzing data from a study conducted with men from San Francisco, Darrow questioned “the very foundation of the public health case for regulation or closure” of the baths.

Darrow had looked for antibodies to LAV in frozen, stored blood samples that had been drawn from gay men in San Francisco in a 1978-80 study of hepatitis B. Some of the same men had been re-examined in 1984, with renewed questions about their sexual behaviors. In his letter to Echenberg, Darrow reported his conclusion that “although numbers of partners and AIDS are significantly related, and men who go to bathhouses tend to have greater numbers of partners, bathhouse attendance [itself] is not significantly associated with AIDS” (Bayer’s interpolation and Darrow’s emphasis).

Citing a 1986 interview with Echenberg, Bayer writes that when Echenberg and Silverman received Darrow’s letter, they “were furious and indeed would expend some effort to force a modification of the letter’s conclusions by protesting to Darrow’s superiors at the CDC. Ultimately, they were successful at wresting a new analysis, with conclusions that were more compatible with the effort to justify the regulation of the bathhouses. But that was not to be for three months,” in October—exactly in time for the court case on the baths. In the meantime, Darrow had also sent his letter to another man in the city, and its contents became public. Bayer writes that over that summer, Silverman and Echenberg had to confront the inevitable political consequences of the new CDC findings as gay leaders seized upon the Darrow letter in an effort to force a retreat.

Silverman resisted such pressure and continued to bridle under the bureaucratic restraints that had thwarted his plans to regulate the baths.

100 GAY BATHHOUSES AND PUBLIC HEALTH POLICY

Downloaded by [Santa Clara University] at 18:38 05 December 2013
In October, the Bay Area Physicians for Human Rights sent Silverman an open letter which was printed in the B.A.R., announcing that they had obtained the Darrow information “which you, Dr. Silverman, have had since August.” (This was a very late estimate of the letter’s arrival time.) BAPHR warned that “Closure of bathhouses will harm the public health objective” of raising AIDS awareness, and that it would create “a dangerous precedent” for the DPH to order closure “without supporting data, without sufficient input, [and] in contradiction to existing medical information.”

THE HUMAN RIGHTS COMMISSION AND COMMUNITY-BASED INVESTIGATIONS

In August the City’s Human Rights Commission unanimously adopted a resolution opposing “any action by the City of San Francisco to . . . prohibit or regulate private consensual sexual activity in any bathhouse or sex establishment, absent a showing that it is a necessary and essential public health measure supported by clear and convincing medical and epidemiological evidence.” The Commission noted that “health professionals cite types of sexual behavior, and not location, as the causative factors in the transmission of AIDS.”

That summer, journalists Helquist and Osmon completed their investigative tours of all the men’s baths or regular sex parties in the city, and printed their findings in the July and September issues of Coming Up! In a 1995-96 interview with Sally Smith Hughes, Helquist said that the Chronicle’s and Examiner’s coverage of the baths had been “very lurid, but they didn’t really tell you what it was that was going on” in them. Helquist said, “a lot of lesbians didn’t have an idea” of what the baths were like. “A lot of gay men didn’t have an idea. They were either scared, intimidated, or not interested.” Helquist told Hughes, “The popular notion of, you go in the door and you walk into an orgy was far from true. A lot of people would point out, you can end up walking for hours up and down the hallways and it wasn’t very interesting or exciting [laughter].”

Helquist and Osmon described how they and their partners at the businesses negotiated sexual safety boundaries. They also described how well or how badly each business provided condoms and AIDS-education materials. Among their conclusions were that the businesses “have a long way to go before they can accurately claim that all efforts are being taken to encourage low risk activities,” but that the City’s ac-
tions “need not interfere with an individual’s right to privacy and free choice.” Silverman and the main doctors in the city who were involved in the bathhouse debates all received copies of these articles, but ignored them in their subsequent portrayals of the baths as sites promoting high-risk sex.

**PUBLIC OPINION, THE MAYOR, AND SILVERMAN**

Two sources help illustrate the opposing pressures on Silverman at this time. First, the writer Frances Fitzgerald visited the city in 1984, and interviewed a number of San Franciscans. A pregnant journalist said that officials had given varying estimates of the risks that AIDS posed to the general population. She told Fitzgerald, “Look, the doctors and the health department people . . . told us not to worry about going to restaurants since AIDS isn’t contagious” via social contact. But there were new reports that “saliva might transmit the virus. . . . Well, the one thing they do know is that AIDS can be sexually transmitted. And yet they won’t close down the places where all the sex goes on. It’s unbelievable.”

This journalist saw City delays in closure efforts as being medically incomprehensible, whereas local sociologists Stephen Murray and Kenneth Payne stated in 1988 that “Traditional moralism better explains” many AIDS policies, including restrictions on the baths, “than does existing scientific evidence.” The local journalist saw Silverman as stalling and failing to protect the public, but Murray and Payne implied that “Verifiable medical facts were not necessarily of interest” to Silverman in the end, and dismissed him as proving himself, in time, to be more of a politician than a doctor. They attributed his eventual restrictions on the baths to political expediency, and criticized him for caving in under pressure from the mayor and others.

Silverman believed that Feinstein’s express concern for public health was only the “surface issue” of her involvement with the bathhouse debates. In his 1992-93 interviews with Hughes, Silverman said, “What I think is, she wanted me to clean up the city.” He mentioned the SFPD bathhouse-surveillance report from March 1984, saying, “There were a number of things that obviously indicated high risk behavior. There were a lot of things in there which had nothing to do with high risk behavior, but that were abhorrent to her. The interactions that took place in these locations were basically abhorrent to the mayor. I think sex is an issue for her. And especially this kind of blatant, raw sex.”
On 12 September 1984, the Examiner reported that the week before, Silverman had made a decision to close San Francisco’s baths, and told the mayor so. Feinstein now said, “I am waiting for him to take the action he outlined to me,” and said, “My feeling is that if you believe in what you’re doing, do it. If your decision doesn’t stand up in court, at least you’ve tried.”

The next day Silverman issued a statement, cautiously summarizing his current political planning. He acknowledged the “reduced patronage” at the baths, which had led to the closure of some of them. He also acknowledged that “To some extent, the community has begun to change as the result of alterations in individual behavior,” and that individual behavior was the “major issue” for preventing the spread of AIDS.

However, he said that since “political considerations” had prevented the SFPD/DPH licensing transfer, there were two more options he was considering. He encouraged “the affected community to take action with regard to sex clubs, bathhouses, and other establishments which facilitate unsafe sexual behavior . . . to close all [these] remaining facilities.” Otherwise, he himself might close “those facilities which encourage multiple anonymous sexual contacts . . . . Individual rights are an important consideration in this process. However, we consider health to be our uppermost priority.” He said he would make no further statements on the issue until he had a decision to announce publicly—again demonstrating a readiness to wait, and let time pass before he declared any political commitments. The statement of his plans and priorities was also a fair warning.

**BATH OWNERS AND THE SFAF**

Three days later, on 16 September, owners of area baths formed an Adult Entertainment Association. They committed themselves to certain kinds of self-regulation through closing orgy rooms, boarding up gloryholes, turning up the lights, distributing free condoms, and stepping up their AIDS-education efforts. Bob Owen, owner of the sex club the Academy, said he had passed out free condoms since April, and said, “As far as I know, all the orgy rooms in the City are closed.” A few days later, Helquist and Osmon let Owen know that the new wooden covers over the Academy’s gloryholes were still easy to slide open, despite his claims to have seen to them. Owen initially threatened to eighty-six them from his club and from “every other place in the
city,” but later he apologized, and said he’d “freaked out, because those coverings were secured” as far as he knew.131

In late September, the AIDS Foundation announced that it had been consulting with community political clubs about how the community itself might promote low-risk sex at the baths. Together, the SFAF and club representatives reached a surprising consensus, across political-party and club-rivalry lines, about standards for the businesses. The standards would have included minimum lighting in the baths, prominent AIDS-awareness materials, SFAF representatives’ in-house tabling, and periodic, P.A.-system announcements, reminding patrons of the dangers of the sexual transmission of AIDS and urging them to use condoms. SFAF executive director Jim Ferels hoped to bring the baths’ owners into this coalition, and get them to agree to these guidelines. Baths that agreed to the guidelines would have been given signs for their doors to advertise their compliance. Baths that rejected the guidelines might have been picketed by members of the SFAF and political clubs.132

Modifying the baths hadn’t been one of the possibilities Silverman had weighed in his last press statement. But Ferels said, “Silverman and I talk on the telephone almost daily,” and he sent Silverman updates on the coalition’s progress.133 These talks and memoranda kept Silverman abreast of these community-based efforts to change and monitor the baths, as another apparent example of Silverman’s efforts to gather input and work towards the broadest consensus that could be reached. He was famous in the city for preferring this kind of political networking, as the most stable groundwork for government action.

SILVERMAN AND THE PRIVATE INVESTIGATORS

On 27 September, the day the Bay Area Reporter ran the SFAF coalition story, Philip Ward and Daniel Collins of the City Attorney’s Office wrote Silverman about how the DPH could gather information about unsafe sex in the baths, to prepare for a City prosecution of the businesses if they resisted a DPH closure order. Ward and Collins advised Silverman to “conceivably [utilize] private investigators to irregularly surveil [sic] the suspect establishments on five to ten separate occasions for purposes of determining if high risk behavior is taking place.”

They cautioned that “Though it may be obvious to you that many bath houses and sex clubs are locations where such high risk behavior . . . takes place, it will be necessary to establish this as a matter of proof.”134
High-risk sex was therefore still uppermost in the minds of City officials, despite Silverman’s April ban on all sex between individuals in the baths, regardless of an activity’s AIDS risk; and despite the attorney-drafted SFPD regulations that were scrapped in June, which would have also ignored condoms and fluid exchange.

Silverman followed the City attorneys’ advice, hiring four private investigators to go to different baths and write reports on sexual behavior they saw between patrons. One of the investigators was an off-duty Berkeley police officer. The mayor was informed of the decision to send them into the baths. The B.A.R. later stated that the owner of the firm who employed the men was a friend and political supporter of the mayor, though she hadn’t been aware of the choice of his firm. The DPH paid the owner $50,000, “without prior appropriation of funds.” The B.A.R. said that an umbrella group for ten community organizations investigated the expenses, and calculated that less than $10,000 of the fee went to the private investigators. A DPH official denied this allegation. Fourteen businesses were investigated: six bathhouses, four sex clubs, two adult bookstores, and two adult theaters. The investigators visited each business from two to four times, and their surveillance continued through 7 October.

In And the Band Played On, Shilts writes that “Even Silverman, who was not naive about what went on in gay bathhouses, was shocked by what the investigators found.” According to Shilts, it was “when he read the investigators’ reports” that Silverman “had no doubt as to what course of action he would take,” since “Just about every type of unsafe sex imaginable, and many variations that were unimaginable, were being practiced with carefree abandon at the facilities.”

The investigators wrote their reports with fewer claims to insight into the patrons’ feelings than Shilts makes and with less imagination, although one investigator estimated that a video lounge at the Ritch Street bathhouse could seat twenty to thirty patrons, and declared that there was “ample space for individuals to participate in almost any sexual act desired, including anal intercourse,” although he said only four or five men were in the room at the time, and only two were engaged in a sexual act—masturbation. It was never stated whether any of the investigators were gay or bisexual; unlike Helquist and Osmon, all of them refused all offers by patrons to have sex.

The four men often noted the races of men at the businesses, including employees who weren’t having sex. For example, “I observed a white male of about thirty years of age orally copulating another white male.” “I saw two black males dressing who said that this area was great
because of the privacy.” The “black male was having anal intercourse with this blonde white male.” A “Latino-style male . . . masturbated and inserted a very large rubber penis-shaped object into his rectum.” And “the oriental male then leaned over and took no. 5’s penis into his mouth. The three relaxed and began to talk and I left the area.”

The investigators mentioned smelling poppers (amyl nitrite) several times, and smelling and being offered marijuana. They also gave two accounts of methamphetamine use, with one injection and an offer to share the needle, as Shilts writes in And the Band Played On. But Shilts’s choice of the words “casually” and “cheerfully” to describe the IV drug use and offer are embellishments on the investigators’ descriptions, which didn’t convey a general atmosphere of light-hearted, willful perversity. A typical statement in all four reports was, “At no time did I observe anyone who appeared to be an employee of the business attempt to control or stop the above described sexual activity.” Sometimes there was none to describe—“There was no sexual activity seen on this floor. Men were watching Hill Street Blues on television.”

It’s impossible to give a precise tally of the different kinds of sexual activities in the reports. The investigators were unable to name activities that they heard behind the closed doors of private rooms. They recorded many activities they did see without giving the numbers of men engaged in them, and wrote that they sometimes lost count of people, often because of dim lighting. They also mentioned sexual activities between men without saying how often an activity was performed, or between how many men. It was difficult to know if men swallowed semen during fellatio. Many of the reported activities were simultaneous or by the same man in one night, and none involved condoms. All the same, the investigators’ mentions of anal sex were decidedly outweighed by lower-risk activities.

In his description of Silverman’s means and ends, Ronald Bayer sums up this surveillance in Private Acts, Social Consequences by writing that the four reports achieved the desired impact. Whatever the actual tabulation of safe, unsafe, and possibly safe sex acts observed might have revealed, the descriptions portrayed the existence of activity that would serve to shock the sensibilities of the conventional and disturb those concerned with the transmission of a deadly disease.

With evidence in hand to buttress the decision he had already made, Silverman moved directly against fourteen sex establishments, declaring them public nuisances.
On 9 October, Silverman ordered the closure of fourteen baths, writing that their space “encourages and facilitates multiple unsafe sexual contacts.” (He allowed sixteen other investigated theaters, clubs, and other local adult businesses to stay open, as posing no AIDS risks.) In his closure order he asserted that “When activities are proven to be dangerous to the public and continue to take place in commercial settings, the Health Department has the duty to intercede and halt the operation of such establishments.” Bayer describes this assertion by writing,

Thus did Silverman reject the claims of those who sought to protect the bathhouse by the invocation of the principles governing the state’s relationship to private sexual behavior between consenting adults. . . . Gone were the concerns about privacy that had been so prominently featured in Silverman’s responses to Larry Littlejohn. . . . Having obtained what he believed was the political support of important elements in the gay community for closure, he could discard the rhetoric of individual liberty.

Silverman’s order concluded, “Make no mistake about it. These fourteen businesses are not fostering gay liberation. They are fostering disease and death.” Laurie McBride, president of the Golden Gate Business Association, the community’s unofficial chamber of commerce, said that “Rather than fostering health,” Silverman’s remarks were “fostering bigotry and hate.”

The SFAF issued a same-day press release on 9 October about the order. Jim Ferels was quoted as saying, “AIDS is not caused by places/establishments; all evidence indicates AIDS is primarily transmitted by specific behaviors which can take place anywhere.” The general statement’s last paragraph was, “We urge that our community not allow Dr. Silverman’s action to distract gay men from their most important mission—individually protecting themselves and their partners from AIDS.”

Six of the businesses re-opened within a few hours on the advice of their attorneys, who considered that Silverman had no legal right to enforce his order. All but two of the businesses reopened by the next night. The technical term was that the order was “to abate a public nuisance.” The verb abate in this transitive sense means “to put a stop to,” rather than the more usual intransitive sense, “to diminish gradually.” But there were several indications that attendance levels and AIDS-risk
activities in the baths had already been abating, in the second sense of the word, for months before Silverman’s second order. These indications were five San Francisco baths’ having gone out of business in the previous year, the conclusions that summer by Helquist and Osmon that most men they saw at the baths appeared “to have adopted the broader set of safe-sex guidelines” recommended by the SFAF and BAPHR, and the community changes in sexual behavior and the dramatic reductions in business at the baths, which Silverman had acknowledged in his last press statement the month before.

In *And the Band Played On*, Shilts describes Silverman’s 9 October closure order as “the final act of the San Francisco bathhouse drama.” He says there was “little evidence that very many gays cared much about” it, because of a 300-member protest rally in the Harvey Milk Plaza. The gathering was certainly small compared to the 6 January rallies over the release of Dan White, or the 1,000-strong August gathering to mourn Bobbi Campbell. But Shilts also acknowledges that only one community organization, the Milk Club, publicly supported Silverman’s order. The Lesbian Rights Project and the board of directors of the California branch of the National Organization for Women (NOW) were among the organizations that opposed it.

Other writers echo Shilts’s descriptions—James Kinsella writes that when “Silverman finally closed the bathhouses, it was anticlimactic. There was little protest against a decision that had plagued Silverman for a year.” Neil Miller states that “once Silverman made his decision, the bathhouse fight was essentially over. The baths never reopened. Eventually the issue just faded away.” These characterizations of the 9 October order as the culminating event of the local bathhouse controversy neglect the two months of intense legal fighting that immediately followed the order, the further 1986-89 rulings in the court case, and the fallout of the case in the 1990s.

**PEOPLE OF THE STATE OF CALIFORNIA V. OWEN ET AL.: THE PLAINTIFFS’ CASE**

Bayer writes about the closure order that “Ultimately Silverman’s decision transformed the political struggle . . . into a legal confrontation to be fought out in the courts,” in “the adversarial system of justice.” In fact the City moved the next day, 10 October, with a 400-page complaint for the California Superior Court. The City requested a temporary restraining order, a preliminary injunction, and a permanent
injunction against the fourteen baths, with the case to be heard first by Judge William Mullins. The *Examiner* reported it was “the first time in history the San Francisco Health Department [had] to go to court in an attempt to have its mandate obeyed.”

The City declarations included eighty-five pages of the private investigators’ surveillance reports. In his own declaration, Silverman wrote that the businesses’ owners had ignored his repeated requests to prevent sexual behavior among patrons, and that they “foster, promote, harbor, encourage, and derive profit from multiple sexual encounters.” Silverman wrote that when “sexual activity takes place in a commercial setting, this government has the prerogative and duty to intervene.”

Dr. Marcus Conant described AIDS patients of his who told him they repeatedly went to the baths for unsafe sex, and saw no ethical problems in doing so. Drs. Donald Abrams and Paul Volberding both recounted a meeting that May at the AIDS Clinic at San Francisco General Hospital, when an unnamed bathhouse owner had said to them, “Let’s face it—we both make money from these guys; we make money when they come to us, and you make money when they come to you.” Volberding reported the statement as, “we make money from their sex, you make money when they’re sick.”

**COMMUNITY RESPONSES, JUDGE MULLINS’ ORDER, AND THE COURT OF APPEALS**

On 10 October, members of seven organizations released a statement that “Closing the baths is wrong and dangerous.” They paraphrased Darrow’s July opinion that “there is no correlation between the risk of acquiring the disease and bathhouses,” and adapted Silverman’s March 1984 claims that a closure effort “sends out the wrong message that government has finally done something effective and conclusive. It has not.” The signers felt that Silverman’s order also signaled to the general public that gays and lesbians were “worthy of censure,” and concluded instead that it was the City’s integrity that had been compromised, by the plaintiffs. A flyer was also produced for a separate “Emergency Action Planning” meeting three days later, calling for suggestions for defending the baths, including a “call to oust” Silverman.

Judge Mullins issued a temporary restraining order (TRO) on 15 October, finding for Silverman and the City attorneys, and ordering that the nine bathhouses and sex clubs remain closed for fifteen days. Mullins excepted the adult theaters and bookstores from the TRO on free-
dom-of-speech grounds. He had denied the following organizations the right to submit friend-of-the-court briefs opposing closure: Bay Area Lawyers for Individual Freedom (BALIF), BAPHR, and the Northern California branch of the ACLU. Mullins said that when the TRO expired on 30 October, Superior Court Judge Roy Wonder, a Reagan appointee, would decide whether to grant the City’s requests for preliminary and permanent injunctions.

On 18 October, attorneys representing the remaining defendants filed a petition in the State Court of Appeals to end the TRO. Two-to-one, the panel of appeals judges decided without prejudice not to vacate the TRO, leaving a way open for the defense attorneys to appeal their case again, if necessary, and leaving the next rulings to be made by Judge Wonder. Defense attorney Thomas Steel requested that Wonder’s review be delayed from 30 October to 8 November, so the defense could have more time to review the City’s brief and seek declarations of support from medical experts in AIDS. The Appeals Court granted the delay, but the TRO was extended to 8 November as well.

The Court of Appeals’ decision left the rulings to be made by a lower tier of the courts. Government officials’ refusal to participate in the contentious regulation and closure efforts was therefore both vertical and horizontal—down levels of a single branch of government, as it also was in the Department of Health and Human Services’ 1983 announcement to local health departments; and between different governmental branches and offices, as it was in the Board of Supervisors’ decision not to make the SFPD/DPH licensing transfer.

**THE DEFENDANTS’ CASE, AND JUDGE WONDER’S FIRST RULING**

The defense began gathering medical testimony from San Francisco and other cities. Shirley Fannin, the chief epidemiologist of Los Angeles, doubted that “closing the bathhouses would decrease the opportunities for high risk individuals” to meet for sex, “since the potential for transmission is carried with the individual wherever they choose to engage” in high-risk sex. Roger Enlow, director of New York City’s AIDS Activity Office, declared for the defense that he had “become familiar with virtually all of the medical and epidemiological evidence” about AIDS transmission, and knew “of no evidence that definitely implicates the site of the intimate sexual contact, over and above individual sexual choices,” as a determining factor for AIDS transmission.
Outside the court, defense attorney Meriel Burtle pointed out to reporters that the sexual behavior of bathhouse patrons was, in itself, “completely legal and protected by state law.” Burtle said, “I think the city is taking advantage of a certain distaste that some straight people have for gay sex,” since “many straight people are tolerant of gays as long as they don’t have to think about or read about what they do in bed.” But since the four investigators were unable to describe what happened in the baths’ closed private rooms, most of the sex in their reports happened out of bed.

The progress of the case shifted on 9 November, when Judge Wonder allowed six patrons of the baths to file an intervening lawsuit in the proceedings, who claimed that their free-association rights had been infringed by the City’s closure order. Among the group of new plaintiffs were two members of the Northern California ACLU’s Gay Rights Chapter, and David Lourea, founder of the Bisexual Center and executive director of Bisexual Counseling Services. These plaintiffs’ case was combined with the case of the City against the nine remaining businesses, with a single ruling to cover all complaints. On 14 November, Wonder heard the arguments of the City, the defense attorneys, and the attorneys for the baths’ patrons.

He issued his first preliminary injunction on 28 November, refusing to close the businesses as the City had requested. Wonder’s three-page ruling focused instead on pragmatic ways to prohibit high-risk sex in the businesses. He ordered that they could legally operate as long as they contained no private rooms operated without a hotel license, and removed the doors from their rooms, booths, and video cubicles. The businesses were also to employ at least one monitor for an average of every twenty patrons, who would circulate every ten minutes, watching for “high-risk sexual behavior” as that phrase was defined by the AIDS Foundation, and expelling patrons who engaged in it.

Wonder also ordered each business to “participate in the education of its patrons toward the prevention of high risk sexual activity including but not limited to that [education] suggested” by the SFAF, and post the injunction in each room and hallway. If the City became aware of violations of the injunction, it could write the business a complaint, which the business would have five days to correct. If the business ignored the complaint, the City could “proceed with all remedies allowed by law.” The injunction was to remain in force until the public health director declared that the AIDS epidemic in San Francisco was over. This is the only authority that this ruling gave the director of the DPH over the defendant baths.
RESPONSES FROM THE CITY, THE DEFENSE, AND OTHERS

The City had rebuffed previous defense offers to try to reach an out-of-court compromise. In a same-day statement, the mayor said that she was “very disappointed” with Judge Wonder’s decision. She described the ruling as “vague and uncertain,” creating “difficult problems of enforcement,” and expressed concern that requiring the businesses to hire their own monitors “has the effect of setting up a spying system within bathhouses that must surely be repugnant to all—especially those who patronize the bathhouses.”

Silverman said years later that the mayor “was just about ballistic” when she heard Wonder had reopened the businesses. On 3 December 1984, during a trip to New York City, Silverman said that if AIDS had been spreading in “a whorehouse” in San Francisco, he would have shut it down faster than the baths. Silverman said he knew his closure effort “destroyed me politically in San Francisco, but I wouldn’t have had it any other way.” He said he was not “prohibiting sex…. If you can only get your rocks off in one building, you’ve got a problem. I don’t.” With some regional chauvinism, a New York Native reporter closed an article by writing that “With the baths closed, Silverman speculated that ‘the guy’ who otherwise could be ‘laying on his stomach’ there is prevented from having sex with as many partners as someone outside battling San Francisco’s notorious wind and rain.”

Assistant City Attorney Philip Ward also expressed confusion over what he called the vagueness of the ruling. Defense attorney Thomas Steel replied that “The city attorney finds the order hard to understand because he doesn’t want to understand it. Judge Wonder’s ruling is completely clear. It reverses Dr. Silverman’s order and sends a clear message to all that there is no legal basis to close the baths.” Steel also called Wonder “more enlightened” than Silverman for making a clear distinction between high- and lower-risk sex, but he still described the injunction as “a serious violation of bathhouse patrons’ privacy.”

Dennis Altman, an Australian, describes this ruling as the result of “an extremely American process. I can imagine no other country in which a Health Department order, based on claims about the transmission of an epidemic disease, could be overruled by a judge following a suit in which both the owners and patrons were represented.” Shilts ignores Wonder’s second, December ruling in And the Band Played On, describing the bathhouse issue as “out of the way” after 28 November 1984, despite calling Silverman’s 9 October closure order the final act of the drama of the baths.
Shilts also says the November ruling “put into effect the anti-sex regulations that Dr. Mervyn Silverman had proposed in mid-April”—implying that the November ruling and April ban were virtually identical. But Wonder broke with Silverman’s April ban on sex between individuals to make the first official distinction between impermissible high-risk and permissible lower-risk sexual activities in the businesses, as the SFAF then defined high-risk sex. The 28 November ruling was an authoritative order more in line with Silverman’s statements in December 1983, when he’d urged local men who had sex with men to use condoms and not exchange body fluids. Silverman neglected risk distinctions in both his 1984 orders for the baths.

**SILVERMAN, THE CITY ATTORNEYS, AND JUDGE WONDER’S SECOND RULING**

After Feinstein omitted Silverman from a task force whose job was to restructure the upper levels of the DPH, on 11 December he announced his resignation from the department, effective 15 January 1985, after seven years as its director. Silverman wrote the mayor an exit letter with genuine grace in it—wishing her well, and saying it had been a privilege to serve the City and County of San Francisco during very difficult years. A *Chronicle* reporter wrote that “His resignation was accepted promptly by Mayor Dianne Feinstein in a cool letter thanking him for his service but omitting any regret over his resignation.” Silverman went on to become a co-founder and executive director of the American Foundation for AIDS Research (AmFAR).

Also on 11 December, Deputy City Attorney Collins issued a subpoena for “any and all” documents held by the baths, including sign-in books and cards that recorded patrons’ names and addresses. Thomas Steel announced his intention to ignore the subpoena and said the owners would risk jail before handing the lists over, which would force the City to apply for a court order. Collins said the City attorneys needed the records to calculate how many monitors each business would have to hire, at different times of the day and week. In the meantime, the owners had generally agreed to remain closed, pending a 19 December hearing in Judge Wonder’s court which the City attorneys had requested. Only one club had reopened, posting the injunction and hiring monitors.

On 20 December, Wonder issued a modified preliminary injunction, now granting the health director the right to define high-risk sexual be-
The SFAF were to have some say in defining the term *high risk*, but in the event of any disagreements, the definitive authority would rest with the DPH’s director. 179 From this decision through the last, 1989 reopening of the case, the guidelines Silverman drafted for the businesses remained static, applied only to sex between men, and took no account of condom use or fluid exchange in the assessment of the AIDS risk of oral or anal sex. Tom Steel pointed out that the new ruling contradicted “commonly accepted safe-sex standards that Silverman himself endorsed.” He called it “pathetic” that “community-wide education” for AIDS had been compromised for “a measly advantage in a lawsuit.”

Judge Wonder now allowed the businesses only one day, rather than five days, to correct their violations of the injunction in response to City complaints, and monitors were now expected to make weekly reports to the City attorneys of any violations that occurred. Collins dropped the effort to obtain the baths’ records. 180 This was the final significant City decision made concerning the businesses in 1984, and the last significant decision made in this round of conflict over the baths.

**SAN FRANCISCO’S BATHHOUSES AND SEX CLUBS AFTER 1984**

Some events in the next few years lent weight to community members’ fears that closing San Francisco’s baths might have been the thin end of a wedge for further strikes at gay civil liberties. There was no national wave of bath or bar closures, but the Superior Court’s rulings may have influenced other cities’ and states’ closure efforts for their baths. For instance in 1985, New York State’s Public Health Council instituted local-discretion regulations for the state’s baths. A number of baths were closed successfully in Manhattan, while a bathhouse in Buffalo was permitted to re-open by a New York county court, on the grounds that the business had been insufficiently investigated before its prosecution. In 1986, the governor of Georgia signed legislation outlawing businesses in the state that allowed oral or anal sex on their premises.181

In 1986, the U.S. Supreme Court upheld Georgia’s anti-sodomy law with its *Bowers v. Hardwick* ruling, denying a national right to same-sex sexuality between consenting adults. Also, Proposition 64 was put on California’s November 1986 ballot, to allow for the “discretionary quarantine by local health authorities” of HIV-positive people,
and for discretionary bans on public funerals for people who died of AIDS. After an opposition campaign by community organizations and civil libertarians, California voters defeated Prop. 64 by 71%.182

As for San Francisco’s baths, conflict over them was much more sporadic and less heated after 1984. But Judge Wonder’s two rulings temporarily damped down and permanently transformed the controversy, rather than ending it. A few local baths remained open. One masturbation-only men’s group has held parties at various San Francisco locations from 1983 to 2001.183 Another masturbation-focused men’s sex club remained open through 1984, was never prosecuted, and was torn down in the late 1990s to clear ground for the city’s LGBT Community Center.

By the 1990s, local papers began making statements that were off base, to varying degrees, about when and how the city’s bathhouses closed. A recent example is a 1999 SF Weekly article which began, “Officially, there have been no bathhouses in San Francisco since 1984, when health officials grappling with the AIDS crisis shut [them] down.”184 Four of the prosecuted baths did reopen in the months after Judge Wonder’s second ruling, though all four closed within two years. A large bathhouse that had closed some years before also briefly reopened.185 In 1986, Wonder revoked the hotel licenses of the Slot sex club and Animals bathhouse, on the grounds that their private “rooms are not being used for lodging . . . but for unsafe sexual activity.” Both businesses closed afterwards, and also in 1986 the bathhouse at Eighth and Howard became a homeless shelter.186

The 21st Street Baths closed in 1987, after two of the same private investigators who made declarations in 1984 entered the business undercover, and made new reports for the ongoing People v. Owen et al. case. The owners agreed to close to avoid further prosecution. In 1989 a permanent injunction prohibited the business, technically San Francisco’s last bathhouse, from ever reopening.187 This was the only permanent injunction issued for the case, and its last ruling. Its rulings applied only to the defendants and not to other businesses in the city, but the case has continued to be influential.

New sex clubs were operating in the city by 1986, and continued opening as established businesses in the 1990s. The history of San Francisco’s bathhouses and older sex clubs has often been blurred in coverage of these clubs. A Chronicle reporter wrote in 1993 that some gay people in the city favored closure of the new sex clubs, but “few city leaders are willing to speak out, lest they be branded homophobic. . . . When Dianne Feinstein was mayor, the bathhouses were closed. But . . .
Frank Jordan, The Nice Mayor, wouldn’t want to hurt anyone’s feel-
ings.” A doctor wrote to the Chronicle, in protest, that “closure of the
bathhouses by Feinstein and Silverman in the early ’80s was an error in
public health”—making a similar, implied over-estimation of the mayor’s
and DPH director’s independent spheres of authority. Two Chronicle
columnists added to these mistakes in a 1996 article, by writing that sex
clubs “are nothing new in San Francisco. They have, however, become
increasingly popular since officials closed down the city’s two dozen
bathhouses.” This sentence also glided too lightly over the word closed,
and multiplied by four to get the number of bathhouses the City prose-
cut twelve years earlier.¹⁸⁸

Nineteen eighty-four was a watershed year for San Francisco’s baths.
A distinction that William Leap makes between the words place and
space is useful for illustrating the changes that happened that year.
Drawing on others’ theories in his discussion of sexual spaces, Leap
distinguishes place (an actual physical location) from space (various
uses, meanings, perspectives, and practices that people impose on a
place).¹⁸⁹ To use this distinction, in April 1984 the City tried to prevent
all the baths in San Francisco from operating as sexual spaces, and that
October it tried to eliminate certain baths entirely, as sexual, commer-
cial places. By the 1990s, local baths’ continued presence and operation
became increasingly secure, and debate over the baths since then has fo-
cused on some San Franciscans’ wishes to reintroduce visually private
places to the premises of the city’s baths.

Private rooms are still banned in local sex clubs. Despite the closing
of the People v. Owen et al. case in 1989, the DPH has continued to
claim the authority to ban private rooms, and require employee moni-
tors in all sex clubs. The current DPH director stated in 1999 that bath-
houses could also legally reopen in the city if they maintained the
DPH’s guidelines, although no bathhouses have opened, partly because
saunas and pools are much more expensive investments than parti-
tions.¹⁹⁰ Traditional men’s bathhouses in Berkeley and San Jose, which
respectively are about twenty- and sixty-minute drives from San Fran-
cisco, were open in 1984 and have remained open, and have continued
to offer private rooms. None of San Francisco’s current sex clubs have
bathhouse licenses, private rooms, or the usual range of bathhouse ame-
nities, although one club has steam and shower rooms and another has
showers and a jacuzzi.

The 1984 debates over San Francisco’s baths provide a necessary
context for understanding the regulatory situation of the city’s current
sex clubs, but the clubs’ story since the later 1980s is a separate phase of
the baths’ history. During the 1990s, the DPH relaxed its formal definitions of risk to permit sex with condoms in the clubs, achieving a better reconciliation of health priorities with both sexual liberties and generally received HIV-transmission guidelines. The current sex-club standards are therefore an unofficial blend of Judge Wonder’s November and December 1984 rulings, with the same requirements for monitored, open rooms, but with much more rational DPH definitions of what constitutes lower-risk, permitted sex. Despite ongoing, municipally peculiar constraints, these San Francisco businesses continue to provide settings for consenting adults to meet for safer sex with latex supplies on hand, and affirm a value for sexuality itself.

ACKNOWLEDGMENTS

A number of people provided direct and indirect help with earlier drafts of this article. The author is especially grateful to several people who read it and made extremely constructive editorial and historical comments, many of which benefited the article, although remaining errors in it are the author’s.

Terence Kissack took time from his dissertation to offer very useful writing suggestions. Michael Helquist loaned files of papers on the baths that he had kept from the mid-1980s, creating an initial, excellent starting base for understanding the topic. Both he and Rick Osmon provided supportive, detailed, and very helpful suggestions for the article.

Above all the author is indebted to William J. Woods for suggesting that a history article on the controversy over the baths would be a worthwhile project. His continuing encouragement has been invaluable.

NOTES

1. And the Band Played On, directed by Roger Spottiswoode with a screenplay by Arnold Schulman (New York: HBO Home Video, 1993), motion picture; and Randy Shilts, And the Band Played On: Politics, People, and the AIDS Epidemic (New York: Penguin Books, 1987). The HBO film includes an acknowledgement that some characters were invented, and “certain events were created or combined for dramatic purposes.” I disagree with many of Shilts’s written interpretations of events in San Francisco’s mid-1980s bathhouse debates. I see him as having tended to embellish on people’s actions and leap to assumptions about their motives, to sway public opinion against the baths with his news articles, and to infuse more drama into the narrative of And the Band Played On. Nevertheless, I admire the scale of the work he undertook in writing the book.

2. San Francisco has nonsexual bathhouses, but I’ve used the word “bathhouses” here to refer to businesses providing space for sex between patrons, as well as amenities like swimming pools, hot tubs, steam rooms, and private rooms. I’ve used the
phrase “sex clubs” for businesses providing private rooms and/or open spaces for sex between patrons, and used the phrase “the baths” for both these kinds of business, and sexually active back rooms in adult bookstores and theaters. The baths weren’t brothels—patrons paid for the opportunity to meet other patrons for sex, not to have sex with employees. Some patrons at all-male baths had outside sex with women, and by the mid-1980s a few local baths had times when they welcomed people regardless of sex or gender.

3. I’ve used the word City with a capital C to refer to the government of the City and County of San Francisco, and city with a lower-case c to refer to San Francisco’s population and land. I’ve also used the umbrella phrase “the community,” rather than the usual contemporary phrases “the Gay community” or “the Lesbian/Gay community,” to refer to San Franciscans who identified as bisexual and gay men, trans gendered people, and bisexual and lesbian women. This community also extended across the Bay Area, although the evolving policies for the baths I describe applied specifically to San Francisco. Examples of this inclusive use of the term community appear in the minutes to meetings of the Lesbian/Gay Advisory Committee to the San Francisco Human Rights Commission, for instance on 15 May 1984, 2-3. Women in the community participated in local debates over the baths, especially Roberta Achtenberg and Carole Migden. Achtenberg was misidentified as a male attorney named Robert for two days running in the San Francisco Examiner, on 9 and 10 October 1984.


5. One measure of the year’s importance is the Annual Index to the San Francisco Chronicle. In 1983, under the term BATHS, three AIDS-related articles were listed concerning San Francisco; in 1984 there were fifty-seven, in 1985 there were ten, and in 1986 there were four. In another brutal year, arsonists hit three local baths from 1977-78, causing a death at each. See Susan Stryker and Jim Van Buskirk, Gay by the Bay (San Francisco: Chronicle Books, 1996), 77-8.

6. R. King, “The Numbers Show . . . .”, letter to the editor, California Voice, 19-25 April 1984. King managed the Liberty Baths, and said these figures could be “verified by numerical sequence registration cards” at the businesses.


11. Shilts, And the Band Played On, for instance pp. 23-4, 45-6, 57-9, and 89.


16. Michael Rumaker’s narrator steps on a used condom in the orgy room in A Night at the Baths (Bolinas: Grey Fox Press, 1977), 61.


18. Michael Helquist, electronic mail to author, 13 February 2002. One example of a San Francisco official who fought AIDS with great dedication in the early 1980s is Dr. Selma Dritz of the Department of Public Health, a heterosexual woman honored in Shilts’s And the Band Played On and played in the HBO film by Lily Tomlin.


34. San Francisco AIDS Foundation, “Can You Pass The Safe Sex Test?” June 1984. The chart was printed in a number of 1984-85 issues of the Bay Area Reporter, and as a stand-alone poster.


38. All the advertisements illustrating Bérubé’s “The History of Gay Bathhouses” in the December 1984 issue of Coming Up!, the text of which is reprinted in this volume, were taken from issues of the organization’s magazine, Vector. For a description of Littlejohn’s activism in the 1970s see Bayer, Homosexuality and American Psychiatry: The Politics of Diagnosis (New York: Basic Books, 1981), 103-7.


42. Alwood, 233.


49. Herb Caen, San Francisco Chronicle, 7 February 1984, sec. A.

50. Silverman, oral history conducted by Sally Smith Hughes, 120. Also see James Kinsella, Covering the Plague: AIDS and the American Media (New Brunswick: Rutgers University Press, 1989), 157-84 for descriptions of Shilts’s private life, early career, and often “sensational—and wrong” stories (p. 159).

51. Collier and Horowitz, “Whitewash.”

52. See W. E. Beardenphl, “Controlling the Queers,” San Francisco Sentinel, 12 April 1984 for a description of the legal processes that would have followed a Yes vote, and been necessary to enact this new health policy for city bathhouses.


55. Scott O’Hara, “RE: LittleBrain,” letter to the editor; Spinstar, “Traitor in Our Midst,” letter to the editor; and Paul Lorch, “Killing the Movement,” editor’s Viewpoint feature, Bay Area Reporter, 5 April 1984. The Bay Area Reporter or B.A.R.’s editorial trend in 1984 was to oppose any effort to close the baths, sometimes with vitriolic personal attacks by Lorch. See Roger Streitmatter, Unspeakable: The Rise of the Gay and Lesbian Press in America (Boston: Faber and Faber, 1995), 251-9 and 274 for allegations of bias in the paper because of baths’ advertisements in it. Streitmatter interviewed B.A.R. reporter George Mendenhall in 1993, and quotes him as saying that by 1983 the paper was “bleeding. Without the ads for the tubs, we weren’t sure we’d survive. Our finances were in the toilet.” The B.A.R. survived, and with a different tone is still the local LGBT community’s main newspaper. See note 98.


59. Ibid.

60. Ibid.

61. This slogan is an extreme example of the fear that closing the baths could begin an unraveling of legal protections for not only gay civil rights, but gay human rights. For contemporary conspiracy suspicions about the origins of AIDS, see for instance Paul Angara, “Homosexual Genocide!” letter to editor, California Voice, 29 March-4 April 1984; and Stryker and Van Buskirk, 112.

62. Silverman, oral history conducted by Sally Smith Hughes, 153.
Footage of his arrival appears in *After Stonewall: From the riots to the millennium*, produced and written by John Scagliotti (New York: First Run Home Video, 1999), documentary.

Shilts, “Silverman Delays on Gay Bathhouses,” *San Francisco Chronicle*, 31 March 1984. Shilts was backtracking substantially from his previous day’s headline—“S.F. Planning to Close Gay Baths.”

Silverman, oral history conducted by Sally Smith Hughes, 154, 153.

Shilts, “Silverman Delays on Gay Bathhouses.”

Frank M. Robinson, “Not Just an Open and Shut Case.”


Bobbi Campbell, open letter from People With AIDS, 2 April 1984.

Ibid.


Seth Rosenfeld and Harris, “City bars sex at baths: Gay leaders support policy, Silverman says,” *San Francisco Examiner*, 10 April 1984, morning edition, sec. A.


Silverman, oral history conducted by Sally Smith Hughes, 157.


Fisting is the very careful and gradual engulfment of the fingers and then the heavily lubricated hand of a partner, by the rectum or vagina of a person with extensive experience of rectal or vaginal penetration and relaxation. See Osmon’s sidebar on fisting and the Catacombs in *Coming Up!*, July 1984.

sures, Shilts’s polemic writing on the issue, and safe-sex campaigns in the baths. She
gives especially valuable insights into how the South of Market district, where many
baths were concentrated, was destructively changed by AIDS.
88. Shilts, “A Farewell ‘Orgy’ at Sutro Baths: Casualty of AIDS Crisis Closes
89. The ad ran on the back page of the California Voice, 26 April-2 May 1984.
90. See notes 43, 47, and 73 for Britt’s and Feinstein’s statements.
91. Shilts, “Gay Campaign to Ban Sex in Bathhouses,” San Francisco Chronicle,
92. Dave Farrell, “Cops spy on bathhouses: Mayor ordered secret visits; report
93. Shilts, “Feinstein Defends Use of Bathhouse ‘Spies,’” San Francisco Chroni-
cle, 1 June 1984.
94. Osmon and Helquist, “Behind Feinstein’s Police Surveillance Of Baths,” Cali-
fornia Voice, 7-13 June 1984.
95. Farrell, “Cops spy on bathhouses.”
96. Shilts, “Feinstein Defends Use of Bathhouse ‘Spies.’” Shilts wrote that the
mayor ordered the operation in March and that it happened over a weekend. Littlejohn
announced his petition drive on 27 March, so the police must have made their observa-
tions between Friday, 30 March and Sunday, 1 April.
97. Ibid.; and Brian Jones, “Cops Spy on Baths; Mayor Won’t Apologize for Covert
98. Bob Ross, “Big Sister’s Watching,” publisher’s Viewpoint feature, Bay Area
Reporter, 7 June 1984; and letters to the editor by Martin F. Stow, “Dianne Cuts It,”
and Alan Grant, “More on Dianne’s Spies,” Bay Area Reporter, 14 June 1984. This
was Lorch’s last issue as the paper’s editor; Brian Jones was its next news editor.
99. Printed in the Bulletin of the Northern California Gay Rights Chapter of the
American Civil Liberties Union 1, no. 1 (1984): 2-3, Periodicals Collection, the Gay,
Lesbian, Bisexual, Transgender Historical Society of Northern California.
100. For examples see John D’Emilio, “Gay Politics and Community in San Fran-
cisco Since World War II,” in Martin Duberman, Martha Vicinus, and George
Chauncy, Jr., eds., Hidden from History: Reclaiming the Gay and Lesbian Past (New
York: Meridian, 1990), 456-73; Stryker and Van Buskirk, 73-81; and Helquist, “The
Sexual Politics of Dianne Feinstein.”
1983.
103. Dion B. Sanders, “SF Protests Mark White’s LA Release,” Bay Area Reporter,
104. For a description of police vandalism, assault, and battery in a series of con-
certed bathhouse raids in Toronto in February 1981, and a massive local-community
protest of the raids, see Gerald Hannon, “Raids, rage and bawdyhouses,” in Flaunting
It!: A decade of gay journalism from The Body Politic, eds. Ed Jackson and Stan
Persky (Vancouver: New Star Books, 1982) 91-4 (my thanks to William J. Woods for
this reference); and Bérubé’s “The History of Gay Bathhouses” in this volume.
106. San Francisco Civil Code, Article 26, sec. 2633.


115. Shilts, And the Band Played On, 468.


119. Bayer, Private Acts, Social Consequences, 43; see note 37.

120. Ibid.


123. Helquist and Osmon, “Sex & the Baths: A Not-So-Secret Report,” and “Beyond the Baths: The Other Sex Businesses,” Coming Up! July and September 1984, respectively; and Helquist, oral history conducted by Sally Smith Hughes, 17.


127. Silverman, oral history conducted by Sally Smith Hughes, 156-7. On p. 158, Hughes followed up Silverman’s understanding of the mayor’s motives by saying, “Well, it’s an illustration of how personality enters into history,” to which Silverman replied, “Absolutely.”


135. Silverman, deposition to defense attorney Thomas Steel, People v. Owen et al., v. 6.


138. In 1984 the Jaguar Adult Book Store had a bi-level sex club up- and downstairs.

139. Shilts, And the Band Played On, 481.

140. Declaration of James G. Campbell, pp. 15-16, People v. Owen et al., v. 1.

141. Ibid., p. 3; Declaration of David Anderson, p. 6; and Declaration of Pierre Merkl, pp. 7, 22, and 21, from People v. Owen et al., v. 1.

142. Shilts, And the Band Played On, 481. The description of the IV drug use is in the Declaration of Kevin Aiken, p. 4; and on p. 2 of his declaration Anderson describes being offered speed once and marijuana twice at one business (People v. Owen et al., v. 1).

143. Aiken, pp. 15-16; and Anderson, p. 8, People v. Owen et al., v. 1.

144. Having made these caveats, I tried to count only the discrete instances of sexual activities in the four reports. My own estimates are that they include the following, approximate, distinct instances of each activity: 142 instances of oral penetration, 80 of solo or mutual masturbation, 21 of anal penetration, 10 rimming, 14 fistings or instances of anal penetration with one or more fingers, and 2 urine scenes.


152. Helquist and Osmon, “Sex & the Baths.”


157. A partial title of the case is *People of the State of California v. Ima Jean Owen et al.*, or *People v. Owen et al.* The full, initial title included the names of three City plaintiffs (Agnost, another City attorney, and Silverman) versus over forty individual defendants owning fourteen businesses. The carton of case records contains eight substantial files, referred to here as v. 1-8.


160. The signers were Roberta Achtenberg (who was later an attorney for patrons of the baths) of Bay Area Lawyers for Individual Freedom, Thomas Steel (who was later an attorney for baths’ owners) of the Northern California Bathhouse Association, and members of Bay Area Physicians for Human Rights, the American Civil Liberties Union of Northern California, the Golden Gate Business Association, People With AIDS, and the American Association for Personal Privacy (a group of civil-rights scholars who worked to maintain sexual civil liberties).

161. “Safe-Sex Solidarity Against the Scapegoat Scam” flyer, Ephemera Collection, the Gay, Lesbian, Bisexual, Transgender Historical Society of Northern California.

162. Dennis J. Opatrny, “9 defiant gay sex clubs close down,” *San Francisco Examiner*, 24 October 1984, sec. A. Jaguar Books was among the bookstores excepted; Mullins ordered the stores and theaters to exclude sexual facilities from their premises.


165. Ibid.


168. Ibid.


170. Silverman, oral history conducted by Sally Smith Hughes, 160.


176. See note 32.


190. For the current City guidelines for sex clubs, see the DPH AIDS Office’s undated “Minimum Standards for Operation of Sex Clubs and Parties.” For an explanation of the need the DPH director perceives for these standards see Mitchell H. Katz, letter to San Francisco’s HIV Prevention Planning Council, 20 May 1999, 4-5; and for a statement of the sources of the DPH director’s authority to set the standards see Jean S. Fraser, Deputy City Attorney, and Louise H. Renne, City Attorney, letter to Health Commission President Lee Ann Monfredini and the DPH Health Commission, “Re: Authority of Director of Public Health To Issue Standards Relating to Sex Clubs,” 15 June 1999.