

# Attacks on Gay sex clubs set scary precedent

by Richard D. Mohr

While you were at the beach this summer, the police continued shutting down Gay bathhouses and bookstores across the country with blessings, even proddings, from some within the Gay community itself. In the mid-1980s, self-styled savior of the Gay community Randy Shilts became a millionaire through his calls for the state to discipline "irresponsible" Gays. Shilts himself would then die of AIDS, apparently unable to live by the advice he would have the government coercively impose upon others. Doctor heal thyself.

Michelangelo Signorile and Gabriel Rotello are Shilts's avatars for the mid '90s — founders of a euphemistically baptized organization, Gay and Lesbian HIV Prevention Activists, which calls for the state to close Gay bathhouses to stop irresponsible Gay behavior. In New York City's new Gay paper, *LGNY* (June 15), Signorile claims the state is needed in our sex lives, because "there are a million reasons why someone is not in the right frame of mind to say no when someone is not using a condom." But Signorile himself not three seasons earlier had written a column for *Out* (October 1994) in which he recounts his own recent unsheathed rectal penetration by a sailor in Hawaii. Doctor heal thyself.

Clearly the Gay community has its share of Elmer Gantrys. But are Gay men being sexually irresponsible in the AIDS crisis? The question is particularly poignant, for now everybody is educated about modes of HIV transmission, and yet the rate of new infections among Gay men has crept back up to a level where over time as many Gay men will become infected as if none took any preventive measures against infection in the first place — up to, that is, the disease's saturation point. According to the *Journal of*

*Acquired Immune Deficiency Syndromes*, that figure could be as high as two-thirds of all sexually active urban Gay males.

While you were at the beach last year, the *New England Journal of Medicine* (Aug. 11, 1994) reported a study which strongly suggests that Gay men are not being unusually irresponsible — or which at least gives us a benchmark for what counts as "irresponsible" for purposes of public policy. For 20 months the study tracked 256 heterosexual married couples who had one HIV-positive spouse at the start of the study. All couples received HIV testing and safe-sex counseling every six months. The results: "Of the 256 couples who continued to have sexual relations for more than three months after enrollment in the study, only 124 (48.4 percent) used condoms consistently for vaginal and anal intercourse." Bluntly put: Less than half practiced safe sex. Among the couples who did not use condoms consistently, the infection rate was 4.8 percent annually — twice the infection rate among Gay men now and well above the rate leading to saturation among the heterosexual spouses.

Since it would never cross anyone's mind to coercively intervene in these marriages for their members' own good, something other than genuine paternalistic concern must be motivating those who would use the coercive power of the state to intervene in the sex lives of Gay men. Anti-Gay attitudes by police and self-hate by purportedly Gay-affirming bathhouse activists seem the likeliest candidates.

But even if their motives were pure, is paternalistic intervention by the state legitimate in bathhouses and back rooms? No. To see this, one need only believe that consensual sexual behavior falls under the right to privacy. When a person's interest in liberty rises to the level of a right, then the interest is morally in-

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sulated from paternalistic interventions. For what having a right means is that its possessor is sovereign — has final authority — in making decisions and acting on them across the range of activities covered by the right.

This immunity from coercion holds even if the exercise of the right involves the death of its possessor. We see this principle at work when health conflicts with freedom of religion. For example, the state cannot legitimately coerce people to have blood transfusions against their religious belief that a transfusion will damn them for all eternity. So too if a person's sexual behavior is covered by a right, then paternalistic interventions against it are morally impermissible. Gabriel Rotello in *Out* (July 8) states that he is willing to accept "a moderate restriction in civil liberties" for Gays. By comparison, Rotello's position makes Sen. Jesse Helms (R-N.C.) look like Har-

vey Milk.

More subtle bathhouse opponents have recycled Old Left slogans claiming that bathhouses unchecked put "profits over people." These activists try, at least nominally, to preserve privacy rights while attacking commercialism. But given that the only thing that goes on in bathhouses is sex and everyone recognizes that, to close a bathhouse is directly to target private behavior. To try to justify state coercion of bathhouses because they charge a fee for admission is as good as arguing that the state can tell you what to pray to an icon because you purchased a votive candle to light before it from the church that houses it.

Indeed, bathhouses are more obviously sites of privacy than are hotels, where all sorts of non-private activities go on, like conferences, dining, and shoe-shining. As a reality check, Leftist bathhouse activists should ask themselves when the state will close the Ritz-Carlton because men and women are having sex without condoms there. Not in our lifetime; not ever.

More generally, we respect people as people when we respect them as choosers and deciders, molders of their own destinies and agents acting in freedom. By providing sites for consensual encounters resting at the very core of liberty, bathhouses are star cases of institutions that respect persons as persons.

Bathhouse activists would do well to heed Justice Louis Brandeis's vindicated 1928 dissent on the greatest perils to liberty: "The greatest dangers to liberty lurk in insidious encroachments by men of zeal, well-meaning but without understanding."

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