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ACT UP wins anonymous testing case

by David Jones
Q-Notes Staff

DURHAM—A Durham judge has concluded that the state's decision to limit anonymous HIV testing to 17 sites should be found null and void. The State Health Department announced promptly that it intended to ignore the findings of the court and proceed with its plan to end all anonymous HIV testing.

The court decision came as a result of a lawsuit filed by ACT UP/Triangle in August 1991 after the State Health Department persuaded the Commission for Health Services to reduce the number of anonymous test sites from all 100 counties to a few regional sites, and then end all anonymous testing by 1994. The case was heard in Durham in February 1992.

On July 5, 1992, Administrative Law Judge Brenda Becton issued a 14-page decision finding that while the state does have the legal authority to restrict services to regional centers, the anonymous HIV testing decision was made in a way that is "arbitrary and capricious."

The ruling does not directly require the state to change policy. It is the result of an administrative hearing and is only a "recommended decision," or a recommendation that the Health Services Commission adopt the findings and conclusions of the court. The state is required to take the issue back to the Commission for review. ACT UP and the state will be able to present additional written comments to the Commission which will consider the matter at its November, 1992 meeting. State Health Director Ronald Levine said that he would not propose any policy changes to the Commission.

ACT UP's Steve Harris, who organized the lawsuit, responded, "This is just the beginning. If they think that we are going to fold, they are very mistaken. We will take this

as far as we need to."

If the Commission takes no action, or acts in any way that is inconsistent with the findings of the court, ACT UP may seek a judicial order in State Superior Court or Federal District Court to compel the State to correct the flaws the Durham court found with State policy.

Although the power of an administrative law judge is limited, the court's decision was a careful and compelling rejection of the State Health Department's defense of its plan to phase-out anonymous testing.

The judge noted that the state has at-

tempted to change its criteria for evaluating HIV-testing strategies. The court found that the state "Previously...had considered anonymous HIV testing to be a critical component of efforts to get essential risk reduction information to those at highest risk for HIV infection...." However, the opinion pointed out that the state's new objectives were to encourage confidential testing as an end in itself by "a significant shift or reduction in the availability and accessibility of anonymous testing."

Judge Becton noted that the state had argued in the past that "...the availability of

anonymous testing fosters trust in public health efforts among those at risk for HIV," and that "Trust in the public health efforts increased the willingness of those at highest risk for HIV infection to seek public health assistance and adhere to public health recommendations regarding transmission of HIV."

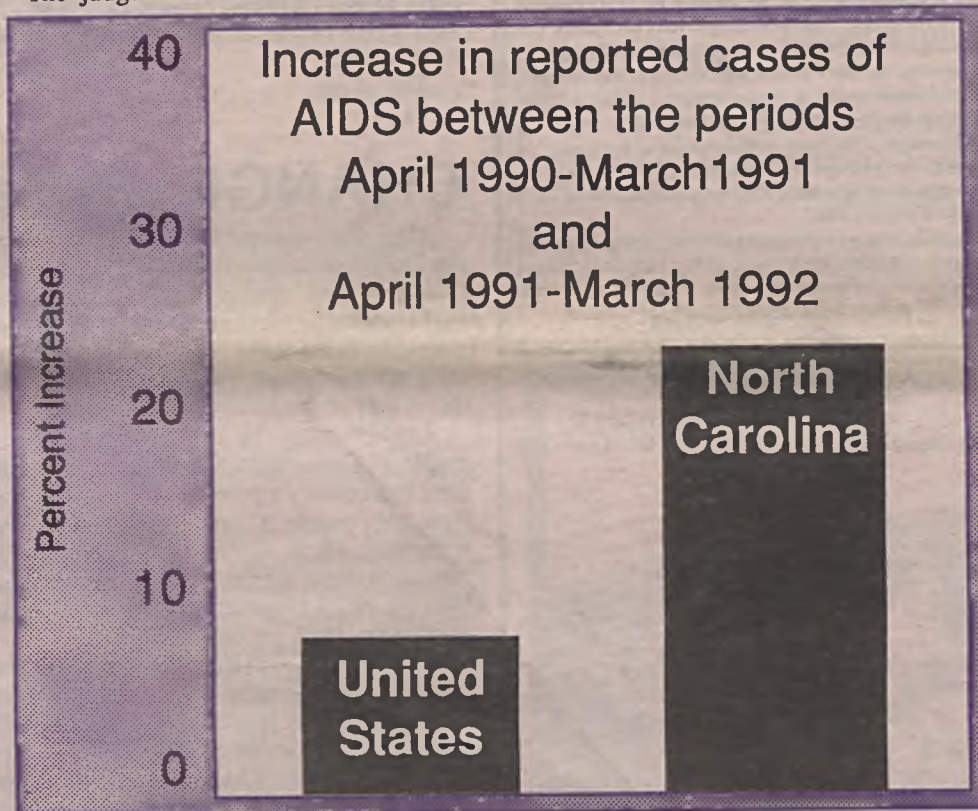
She also found that health care professionals "believe that there is no public health rationale for decreasing access to anonymous HIV antibody testing and that doing so will result in an increase rather than decrease in the spread of the disease in North Carolina."

In abandoning its earlier policy of encouraging testing generally for one that seeks to reduce access to anonymous testing specifically, Judge Becton ruled that the state must show that the new policy "furthers the detection, control and prevention of HIV infection," and that "the basis for the change must be clearly articulated."

The court opinion notes that the state argued that the new policy of discouraging anonymous testing was implemented in order to improve the state's ability to notify the partners of people who test positive for HIV. However, Judge Becton found that "... partner notification cannot take place unless infected persons present themselves for testing and are also willing to provide the necessary information about contacts...." Further, she found that the state has not had adequate staff to carry out HIV partner notification, that the state has not conducted any studies to evaluate the effectiveness of partner notification and that the proposed policy change was made before any scientific study had been designed to measure its effect.

When it came to selecting the sites that would retain anonymous testing until 1994, Judge Becton found numerous inconsistencies in the state's rationale and noted several

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Local BWMT co-chair elected to National Board

by Frank Dalrymple
Q-Notes Staff



As of June 27 this year, Charlotte resident Brad Caldwell began serving an elected two-year term on the National Board of Directors of Black and White Men Together/Men of All Colors Together (BWMT/MACT).

Since the formation of the Charlotte-area chapter of BWMT/MACT, some three years ago, Caldwell has served as its co-chair, and will remain in that seat until the end of the year.

Attending the candidates forum in Dallas, Caldwell delivered a speech before the 153-member House of Delegates that detailed his position on racism and community relations, and his plans for national growth within the organization.

One of eight candidates vying for six seats, he placed third in the voting, following two incumbents.

His term will conclude in mid-1994.

The national board, which is based in Chicago, is comprised of fourteen board members, four of whom are officers.

With a seven to seven balance between men of color and whites, each member supervises a regional district comprised of three local chapters.

Caldwell will oversee and advise MACT/Triangle-area, BWMT/Atlanta, and BWMT/Memphis.

The national board adviser for the Charlotte-area chapter is Doug Reynolds of MACT/Kansas City.

Also appointed to the demanding post of Chairman of the Resource Development Committee, Brad will attend national quarterly board meetings each year. Usually, two are held in Chicago, and possibly one will take place in Charlotte next year.

Faced with heavy fundraising and advisory chores, he is excited about the work ahead, and also plans to develop at least two more Southeast regional chapters, "possibly Columbia and Virginia Beach."

When asked about the misconceptions of BWMT/MACT, Caldwell offered, "Like other gay and lesbian organizations, people first think we're a sexual group, which we're not. We are a political, social group. We cater to all cultures and our goal is to stamp out racism and homophobia."

Q-Notes congratulates Brad Caldwell, and wishes him continued success locally, and even greater success nationally.

Antigay discrimination resolution passed by CRC Subcommittee

by Gordon Rankin
Q-Notes Staff

CHARLOTTE—On Tuesday, July 14, the Discrimination Subcommittee of Charlotte's Community Relations Committee (CRC) adopted a resolution that sexual orientation, familial status, age and disability status be added to the existing list of factors (race, national origin and gender) under which a person may not be discriminated against according to the city's Human Relations Ordinance. The motion, if next adopted by the full CRC and then ultimately by the Charlotte City Council, would become the first public law in the State of North Carolina to prevent discrimination on the basis of sexual orientation. While the Town of Chapel Hill has adopted a resolution to prevent such discrimination in the hiring of town employees, its policy is not law and is equivalent to the policies of corporations such as IBM.

John Quillin, a Charlotte resident, chaired a task force late last year and early this year to review the existing law and to spearhead the attempt to modify it when it was initially suggested that the law required modification. Quillin is the only openly gay member of the Discrimination Subcommittee and shares its chairing responsibilities occasionally with others.

"We now expect the resolution to go before the full CRC in August and before City Council as early as September, but that may not be in our best interest," he said, citing the

fact that his subcommittee is presently consulting with gay and lesbian-friendly Council members in order to formulate the best strategy to ensure the resolution's passage into law. Anthony Fox, an Assistant City Attorney for Charlotte, has also been consulted on a continuing basis.

As part of the effort, Quillin and others are forming a coalition to steer the motion. The coalition is to be an entity independent of the CRC or the Discrimination Subcommittee and will be composed primarily of members of the Charlotte area gay and lesbian community.

The importance of the proposed changes to the Human Relations Ordinance lies primarily in the fact that public accommodations, which are addressed in its first section, could no longer refuse services to gay men and lesbians based simply on their sexual orientation. A "public accommodation" is any facility which is not a private club (e.g., restaurants, theaters and parks) or any other "private" facility. An example of a private facility would be a country club. However, gay bars and heterosexual night clubs may be considered private establishments for the purposes of ABC law, but not with regard to public accommodation.

Quillin said that legal definition, as exemplified above, is often a very difficult subject to sort through and is abundant in loopholes. He first joined the CRC when he learned that

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