

AIDS and public disclosure

By Deni Elliott

The chance of my client being contagious was a one in a million chance. There's got to be bodily fluid contact and there's not going to be that kind of contact in a pediatrician's office. Even then, even if there is that bodily fluid exchange, there's only a one in three chance that he's going to pass the disease on to someone else. So, what you have is a one in 3 million chance.

— M. William Nelson,
attorney for Dr. Robert Huse

Transmission of AIDS between patients and health care workers is a special concern. No professional relationship is as physically intimate as that between doctor and patient.

The risk of health care workers contracting AIDS from a patient is small. No more than 1 percent of the 1,875 U.S. health care workers who have been reported to the federal Centers for Disease Control as sick with AIDS are thought to have developed the infection through professional contact with infected patients, said Susan Freisem, CDC nurse epidemiologist.

The risk of patients being infected by health care workers seems to be even less. The CDC has no confirmed cases of AIDS cases developing in patients through professional contact with a health care worker, said Freisem.

In September 1987, Dallas, and then the nation, came to know Dr. Robert J. Huse as the Texas pediatrician who had tested positive for exposure to human immunodeficiency virus, or HIV, the agent that causes acquired immune deficiency syndrome.

The *Dallas Morning News*, along with other local media, identified Huse by name.

Here, reporters and editors from *The Morning News*, which competes for readers with the *Dallas Times-Herald*, explain how they made their decision to identify Huse. Principals involved in this case discussed their perspectives in interviews conducted during December 1987 and January 1988.

September 1987 found Robert J. Huse in his 12th year as a successful pediatri-

cian in the politically conservative Dallas suburb of Mesquite. The 44-year-old doctor said that he had had more than 5,000 office visits each year for the preceding three years. Patients described him as caring and expert, a doctor who would treat a child when no money was available for his fee.

Huse, who had tested positive for antibodies to HIV in July 1985, said that he chose not to disclose his HIV status because "I knew there was no danger of a physician spreading the disease, and I knew what would happen when parents of my patients found out."

However, when Huse sought a temporary restraining order against a past lover, Tyrone Sims, on Aug. 31, 1987, he identified himself in the legal documents. According to Huse's petition, Sims, who had lived with Huse from September 1984 until July 1987, blackmailed him with threats of disclosure and told some of Huse's employees and patients that the doctor had AIDS.

In retrospect, Huse said that he would have filed his petition as "a John Doe" if he had known of that option; Huse's attorney, M. William Nelson, said Huse "didn't think he had anything to fear by using his name."

"Sims hadn't threatened to go to the media," said Nelson. "Why would the media focus on this case? I've had cases with inflammatory subjects, but I've never had a case seize the media's attention like this one."

Morning News court reporter David Jackson had been alerted to the impending Sept. 11 hearing by an anonymous phone tip to the night city desk days before. Other news organizations received similar calls. Jackson said that covering both criminal and civil cases keeps him so busy that it is unlikely he would have known about the hearing without a tip.

Jackson retrieved copies of Huse's original petition for a temporary restraining order and the order itself, signed Sept. 1. The order forbade Sims from initiating communication with Huse's patients, associates or employees or with "any other person regarding the plaintiff's physical or medical condition." The Sept. 11 hearing was to provide Sims an opportunity to argue against a continuance of the restraining order.

Jackson said that the uncertainties of

the court system led to the story being held until the hearing, as is the case with most civil hearings. "Two things could happen to the case," he said. "It could get settled or it could get pushed back."

Morning News Metro Editor Tom Watts said that, prior to the hearing, "There was no real substance to fit the story around."

George Rodrigue, day city editor, said, "We felt that the guy (Huse) had come in asking for privacy and protection. It made some sense to us, more on a human level than on a journalistic level, to let the guy have that shot before we wrote anything about it, to give the courts an opportunity to grant him or deny him what he was seeking."

"David (Jackson) and I talked about this for a few seconds and he thought that it was better to wait. . . . Clearly, anything we did would deny him the relief he was seeking."

The news staff at *The Morning News* "agonized" over their decision of how and when to run the initial story, and whether to identify the doctor by name, an editor said. Along with discussions among the reporter, the assistant city editor for government and the day city editor, the story was discussed by the day city editor and the metro editor with the managing editor and assistant managing editors at the 3 p.m. budget meeting and again by the assistant city editors at the 4:30 metro meeting.

"The paper was fairly sure of the price that Dr. Huse would pay," said Don J. Smith, an assistant city editor who handles the paper's AIDS coverage.

Morning News editors think the paper is among the nation's best in its coverage of AIDS. It published a four-page special section on AIDS last June that included color, full-page graphics and non-euphemistic discussion of AIDS prevention.

"We've had an AIDS reporter for two years," Watts said. In addition to the full-time beat reporter, the *Morning News* AIDS staff includes a medical writer who writes some AIDS stories and editor Smith.

Smith said that the paper has averaged two AIDS stories a week for the last six months. Dallas ranks ninth in the number of AIDS cases reported.

The Huse story raised a new challenge in the newspaper's AIDS coverage. "The

most obvious issue is that we don't name AIDS victims," said Watts. "That's just policy. We don't name AIDS victims unless they are willing to go public with it.

"Our feeling was that here was somebody who was twice victimized by AIDS, and a great deal of our discussion was, 'Aren't we victimizing him a third time by using his name in the paper?'"

The story of Huse's lawsuit had been broken the day before in the *Mesquite News*, a three-times-a-week, Harte-Hanks newspaper with a circulation of less than 10,000 in the Dallas suburb where Huse practiced.

The initial *Morning News* story, which appeared on the front page of the metro section the morning of Saturday, Sept. 12, both illustrates and explains how Dr. Huse became newsworthy. The first four graphs of the 11-inch story read:

A state district judge on Friday refused to seal the records of a lawsuit in which a Mesquite pediatrician sued his former roommate after the man allegedly told people that the doctor has AIDS.

Dr. Robert John Huse, 44, who denied he has AIDS but said he fears that the rumors will destroy his practice, is seeking \$75,000 in damages and an injunction against Tyrone Wesley Sims. A hearing is scheduled for Oct. 23 before state District Judge John McClellan Marshall, who made the decision not to seal the records.

"I'm going through so much," said Huse, "I want to get through this weekend. I've got a lot of thinking to do."

Huse tested positive for the acquired immune deficiency syndrome virus in 1985. However, local and national health officials say that a person who has the virus has no more than a 30 percent chance of contracting the disease over the next five years.

Smith said that the play of the story was right: "To put it front page would have had the potential to create some fear; inside the metro section would have been burying the story."

In retrospect, Jackson said that he wished the story had been done before the day of the hearing. He said he knew that the story was going to be out and, considering the national attention it received, he wishes that he had broken it.

While Jackson was holding the story for the hearing on Friday, Sept. 11, *Mesquite News* reporter Jeff Kerber was writing a front-page article on the suit for Friday morning's paper. Kerber called Huse's attorney for comment on Thursday afternoon and the attorney, in response, asked the court for a restrain-

ing order against the newspaper. In part, the supplemental request read:

"Due to the present climate of AIDS hysteria, the plaintiff's reputation and medical practice will potentially be destroyed if this court does not recognize the emergency situation which exists and restrain the *News* from running a story on the plaintiff or this lawsuit until a hearing can be had and issue a gag order and seal the papers filed in this court's jacket for this cause.

"The homosexuality issue, as well as the AIDS issue, and the general public's irrational reactions to both will probably result in patients' parents refusing to let the plaintiff continue to treat their children without any justification.

"Therefore, the *News*' threat to run a story on the plaintiff's medical condition and past, personal relationship with Sims in a local newspaper in the very conservative community of Mesquite, Texas forces the plaintiff to seek injunctive relief from this court because this threatened story will unjustly feeds (sic) the general public's paranoia regarding AIDS and homosexuality."

Predictably, the brief filed by the *Mesquite News*' attorney in opposition to Nelson's request argued that prior restraint of publication is unconstitutional under the Texas and U.S. Constitutions.

Judge Marshall refused to hear the request that Thursday afternoon, saying he would hear it Friday morning in conjunction with the scheduled hearing. At that time, he declined the request to seal the records or issue a restraining order against the *Mesquite* paper, but continued the temporary restraining order against Sims.

"The court proceeds from a strong commitment to First Amendment openness," Marshall said. "It's a bad policy for courts to seal things away."

Neither the existence of public court records nor coverage by other news media provided sufficient justification for *The Morning News* to identify Huse, according to editors interviewed.

Watts, the metro editor, pointed out that the paper withholds names of sexual assault victims and juveniles even when a court case is involved or other media have used the name.

"We've got over 400,000 readers who we feel would question our principles if we went ahead and used the name in those cases," Watts said. "It's the subject of the story that we're trying to protect, regardless of what anyone else does. It

can become a real question of sophistry if we were to allow ourselves the option of using the name just because everyone else did. We establish our own principles and, for the most part, carry them out."

Yet, if the reason for withholding identity was protection of Huse, argued Rodrigue, the day city editor, a *Morning News* story could not cause significantly more harm to the doctor than had been caused by the *Mesquite News*. Although the suburban paper's circulation of less than 10,000 is minuscule when compared with *The Morning News*' circulation of more than 400,000, Rodrigue pointed out that those 10,000 subscribers were people who lived in the community where Huse worked.

A fact known to 10,000 is not confidential and soon the entire community would have known about it anyway, said Rodrigue.

The decision to identify Huse was, in the minds of those interviewed, a combination of factors that tipped the balance in favor of publication.

Said Rodrigue, "His case was the crystallization of the debate over whether doctors should have to disclose things to their patients. . . . There's the question of how much confidentiality people are entitled to be given by the courts. . . . There's the issue of any AIDS victim getting blackmailed by somebody who knows, which raises the whole question about testing for AIDS. How confidential can these things be? . . . And, then there was some harm to other doctors in the community from not printing his name. . . . By saying 'a Mesquite pediatrician' or 'a Mesquite doctor,' lord knows what damage we would have caused to other people."

Morning News Managing Editor Bill Evans said he tried to put himself in the place of the reader when he thought about referring to Huse in the story as "a Mesquite pediatrician" or "a local doctor."

"I guess I'd call my pediatrician and say, 'Are you the one?'" he said. Evans said that withholding identification of Huse would have "cast a cloud" over the entire group.

Watts said, "It was a matter of fairness to everyone, but a fairness question in reverse. Usually, we bend over backwards to be fair to the person that we're writing about. Here we were writing hoping, in my mind, to try to be fair to everyone but that poor guy."

Yet, *The Morning News* recently published a story that included information about an unnamed teacher and a couple of students who were HIV-positive, Watts said. "I felt less of a problem with that, given the numbers involved, than I did with what I felt was a fairly select group in Mesquite," he said.

Watts said that the school district wouldn't say which of the 200 schools were involved and that he didn't press hard for the information. "I am more interested in trend or overview stories on teachers or students in the school rather than specific stories about specific individuals," he said.

A final reason for publication provided by those interviewed was that parents would be interested in knowing if their children's doctor was HIV-positive.

"I'd want to know that about my physician," said Terry Box, an assistant city editor who handled Jackson's story. "Even if the odds are extremely rare (for transmission), I'd want to know."

Said Watts, "I fully subscribe to the theory that the physician in that case could treat these patients without fear of infecting them. But, knowing the concerns that are brought up through ignorance of AIDS and how it is transmitted, there would be an awful lot of people who would be concerned if their children were being treated by the pediatrician with the virus."

The Morning News, along with other local media, responded to that concern and then wrote stories about how the parents' concern was expressed. In a 23-inch, Page One follow-up story by reporter Curtis Rist five days later — "Uproar over doctor's infection by AIDS virus stuns officials" — *The Morning News* reported that Huse was leaving his practice and that "his caseload fell from a daily average of about 25 patients to only six on Tuesday."

The story focused on reassurances from local doctors and the Centers for Disease Control that children were not at risk of getting AIDS from their pediatrician. Although quotes from angry parents appeared in other local and national media coverage — including statements that a parent wanted Huse "crucified" and another wanted him "run out of town" — the only parent quoted in Rist's story was one who supported Huse.

"We didn't attempt to fan public paranoia," said Rodrigue. "We try in whatever we write about AIDS to inform people sufficiently so that we will not raise

those fears. However, we know that those fears are out there."

Indeed, one couple filed suit against Huse (later dropped through a negotiated dismissal), claiming that he had knowingly endangered their children and asking for \$500,000 in damages.

Attorney Nelson speculated that parents' reaction to the disclosure may have been as much an expression of homophobia as fear of AIDS. In his view, the media reports did fan public hysteria without justification.

Box, the assistant city editor, said he wished that *The Morning News*' coverage had stopped with the initial story.

"The thing I disliked most about the whole situation was how the story began to escalate," Box said. "I wouldn't have had any problem with it if we had handled it like other civil suit cases. . . . For the most part, *The Morning News* rarely gets carried away, but we're under pressure from the *Herald*. . . . I would hope in the future that we can handle it strictly as a civil suit, not as some unfolding drama in the suburbs."

The six stories about the case published in *The Morning News* from Sept. 12 through Oct. 1 included the effect media coverage had on Huse and his medical practice, but treated Huse sympathetically, focusing instead on the larger issues the case raised.

For example, the first story contained statements from local doctors and the CDC that patients cannot get AIDS from their doctors, but did not include information concerning the fact that Huse, and others who are HIV-positive, can transmit the disease.

That, Watts said, was an error of omission. The story was neither written nor edited by the staff's AIDS specialists. The AIDS editor was not at work that day. "I suspect that had it been done that way or if we had teamed it more, a sentence to that effect probably would have been included," Watts said. Later stories did include information on methods of AIDS transmission.

As noted above, *The Morning News*' second Huse story, which ran Sept. 17, included no quotes from angry parents, but focused on the medical community's disbelief at the panic caused by the disclosure.

The third day of *Morning News* coverage, Sept. 21, included two Huse stories. One, a 13-inch article by Rist — "Problems surround testing for AIDS; Need for confidentiality is stressed" — ran on

Page 11A. The story began:

While hospitals and medical officials consider what to do about AIDS among health care professionals, others have focused on problems that arise from testing for HIV, the human immunodeficiency virus that is linked with the deadly disease.

A simple test for the disease has been available for the last three years. But because of complications — including emotional trauma and possible loss of jobs or health insurance if positive results are made public — many warn against widespread testing and consider anonymity a critical factor.

Some point to the case of Dr. Robert J. Huse, the Mesquite pediatrician who said his practice has been ruined after the disclosure that he tested HIV-positive two years ago. The bitter reaction, they say, is proof of the need for confidentiality in testing.

Another Huse story written by Rist ran that day — "Mesquite case spurs new AIDS debate; Questions surround health workers." The 31-inch Page One story began with Huse's attempts to sell his practice, but moved quickly into the larger question of transmission of AIDS by health care workers.

Other coverage included a 6-inch story on Sept. 26 announcing the lawsuit filed against Huse and a 10-inch story on Oct. 1 that reported on Huse's last day as a pediatrician in Mesquite.

In mid-November, the Texas Medical Association issued a policy statement, in line with the American Medical Association, that physicians need not disclose their HIV status to their patients.

Those interviewed said such a recommendation probably would have no effect on how they would handle a story such as that of Robert Huse.

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About this report...

The 1988 Ethics Committee of APME found that life may not be as simple for editors as one would have hoped.

Now we all agree of course that names make news. That's simple enough, yet editors and crime victims in the news may be coming closer together on a conclusion that names sometimes do not make justifiable news. And how about that accidental celebrity, the relatively private person who suddenly is thrust onto the public stage?

Then there are at least two professors who suggest that the media are too concerned with image, rather than about the job they are doing. They raise questions about the spate of credibility studies, suggesting that real ethics relates to the character of the medium, while credibility is only what people think of us. Do we pander to the public rather than lead it?

We are certainly still grappling with one of the leading issues of today: AIDS. Is there a legitimate story in a pediatrician who tests positive for exposure to human immunodeficiency virus? Is the sexual orientation of a doctor a legitimate subject to report to his patients in a newspaper? Handling obituaries for AIDS victims is still a tough one. Are survivors listed and limited only to the biological family or are companions also listed as survivors?

Ethics is hardly a new discovery in our society and this committee's studies tend to suggest that journalists may be more sophisticated about difficult questions in this business.

And finally, we find ourselves still split on just when and if to correct errors in our publications: should it be if they are major rather than minor errors and should it be only if requested? Maybe the criterion is still just to say that if it is wrong, it should be corrected. It's not that simple, our latest survey finds.

Maybe we shouldn't expect to find simple answers, but rather recognize the tougher ethics questions and pursue these studies and others for the answers.

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