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October 28, 1986

The Honorable Edwin Meese
U.S. Attorney General
Chairman Pro Tempore
President's Domestic Council
U.S. Department of Justice
Washington, D.C. 20530

Dear Ed:

As Chairman of the President's Domestic Council, you have the authority to bring the AIDS crisis and the crisis of the inaction of public health officials to the attention of the President. At present, the U.S. is experiencing a health catastrophe of historic proportions and a moral crisis of equal magnitude and yet inaction is the unfortunate course chosen by the Public Health Service. I urge you to consider my recommendations before this epidemic expands beyond the grasp of public health control.

At present 24,085 persons have been diagnosed with Acquired Immune Deficiency Syndrome (AIDS). Of that number, 13,442 are already dead and the remaining number are expected to die within five years. A recent report by the Centers for Disease Control (CDC) projects that by 1991 the cumulative number of AIDS cases will total more than 270,000 and the number of deaths will exceed 179,000. In addition, it is estimated that between 1,000,000 and 1,500,000 persons are infected with the AIDS virus and are capable of transmitting the disease. Until recently it was hoped that only 25-30% of those infected would become victims of full-blown AIDS. However, recent evidence indicates that more than 1/3 of those exposed will progress to the fatal stages of the disease and all of those exposed will experience some substantial impairment of their immune system. If this scenario fails to illustrate the severity of the health crisis at hand, there is more.

Perhaps the most disturbing aspect of this bleak projection is that individuals who suspect they may be infectious and those who know they are infectious continue to engage in high-risk activities proven to spread this disease, although there have been improvements. Despite the authority of public health officials to halt this type of

intervene saying that isolation orders or restrictions on sexual activities infringe on the civil rights of AIDS victims. The issue at hand is not the civil rights of any victim nor of any potential victims, it is finding a way of stopping any and all activities that may spread this 100% fatal disease. The AIDS virus does not have rights, and the rights of individuals who persist in engaging in certain activities are outweighed by the rights of those unsuspecting persons whose lives are placed at risk. It is a blatantly selfish action for an individual to reject or ignore knowledge which would assist him in preventing the death of another. Yet we are faced with the unfortunate facts that many victims of AIDS refuse to acknowledge that any transfer of body fluids could result in the death of another. Persons who suspect they may have been exposed are refusing to get tested because they are afraid of losing their jobs, their friends and the support of their families. While denial and disbelief are understandable reactions, AIDS victims must be forced to acknowledge the severity of their illness and take responsibility for the consequences of their actions and inactions. The U.S. Public Health Service is the entity which should be setting and implementing these vital standards.

I have met with Assistant Secretary Windom on this matter as well as his predecessors and remain unsatisfied that this Administration is committed to taking responsible action in responding to the AIDS epidemic. For this reason I have introduced a number of legislative efforts aimed at curtailing the spread of AIDS.

In the waning days of the 99th Congress I introduced two bills which I believe are the lynchpin for altering the devastating course of this disease. The first bill will make it a crime for federal employees, members of the armed services and those in federal buildings who know they have AIDS or who know they carry the virus to knowingly transfer body fluids. The penalty for engaging in this prohibited conduct will be enforced isolation for a period of five years under the supervision of a public health officer or until a cure is found. It is anticipated that this legislation will be difficult to enforce and will be used only in those rare circumstances where transmission of the virus is purposeful, knowing or where the actor evidences extreme recklessness. In attempting to prosecute an offense pursuant to this legislation, it would be necessary to prove that a particular person was the source of contagion and that the individual possessed the requisite degree of intent necessary to prove culpability.

Although criminal prosecution for transmission of the AIDS virus could be accomplished in most jurisdictions under theories of homicide, manslaughter, attempted murder and criminal assault, this legislation is designed to spell out a federal policy of deterrence

and to put the federal government on record in opposition to any high-risk conduct known to transmit AIDS. In my judgement, it is good public policy for the federal government to state outright that such behavior is unacceptable to society.

Several jurisdictions currently address venereal diseases specifically and recognize a violation of public health orders as a misdemeanor. The California Health and Safety Code Section 3198 makes it a misdemeanor to "expose any person to, or infect any person with any venereal disease" and to "marry or have sexual intercourse" if the individual is infected with venereal disease and knows of such condition. In addition, Section 3354 of the California Health and Safety Code makes it a misdemeanor to violate any public health order dealing with communicable disease and assesses a fine of \$25-\$500, imprisonment for not more than 90 days, or both.

The purpose of this bill is to deter future high-risk conduct and to encourage recognition that high-risk activities known to spread AIDS are criminal under current law and should be treated as such. No civil rights claim can overcome the fact that knowingly passing on a fatal disease is ethically wrong. Society cannot and must not condone different standards of conduct for AIDS victims because they are fatally ill. We must show compassion while taking the preventive steps necessary to control proliferation of this terrifying disease. In my judgement this bill will encourage such action.

The second legislative effort I introduced at the close of the 99th Congress is a resolution expressing the sense of Congress that States should enact the following laws in an attempt to deal with the AIDS problem:

- legislation which would require that the blood testing required before a couple may be married include a negative test result from a test for AIDS or a test to determine if an individual is a carrier of the virus;

- legislation that would require that tracing of individuals with venereal disease include individuals with AIDS, or those determined to be carriers of the virus, and that upon notification of the positive result of such test, the individual at risk be counseled respecting the potential for spreading the disease;

- legislation that would encourage designated hospitals to offer blood transfusions which are made directly between the blood donor and the person receiving the transfusion;

- legislation that would require individuals seeking a license to practice medicine, nursing, or any other health care profession to have a negative test result from a test for AIDS, or a test to determine if an individual is a carrier of the virus; and

- legislation that would outlaw sodomy.

I introduced this bill with the hope that States will enact this legislation and will take these and other prudent steps to curtail the spread of AIDS. Some claim that the states are the only ones with jurisdiction over the health threat of AIDS. While I concur with the assessment that the States should retain jurisdiction, I do not agree with the assessment of those that indicate that States are solely responsible. An overwhelming federal interest has been created in this issue based on the magnitude of the burden created by the health care costs of the present victims of AIDS and the potential burden of the 270,000 victims estimated to have the disease by 1991. The disabling effects of this debilitating disease dictate that AIDS victims cannot care for themselves in the final stages of illness. In most instances the states and the federal government are the only entities able to shoulder the cost burden of adequate medical care. In this instance the realities of the massive burden imposed on the federal government raises what is generally considered a state issue to the level of mandated federal involvement.

Earlier in the 99th Congress I introduced a series of five bills in response to the inaction of the Public Health Service on issues which were brought to my attention by constituents in my home state of California or by guidelines promulgated by the Centers for Disease Control.

The first in this series of bills expresses the sense of Congress that children with AIDS be educated outside the public classroom and be provided alternative forms of education. This bill was introduced in response to the August 30, 1985 guidelines promulgated by CDC. These guidelines failed to provide any rational recommendations to school districts actually faced with this problem. They advocated that each child be dealt with on a case-by-case basis and that confidentiality be accorded the highest priority. In my judgement it is appalling that a child with a disease which is 100% fatal and decried as a mystery to the medical community be not only encouraged to attend school but to do so anonymously so that other children are precluded from taking appropriate precautions. Most recently, UPI reported the first apparent case of AIDS virus transmission between children. In West Germany, a young boy who received AIDS from a blood transfusion reportedly infected his older brother by biting him on the arm. Similar cases of biting have been reported, but until this case, subsequent infection had not been shown. Based on increasing medical information which indicates that persons with AIDS often suffer brain involvement, referred to as dementia, the only prudent means of dealing with children with AIDS is to educate them in a setting removed from others where high-risk behavior cannot occur.

The second bill would implement a recommendation from several nurses that health care workers with AIDS be prohibited from working

in close contact with patients. CDC guidelines released on November 15, 1985 were in opposition to this legislation and recommended that health care workers not undergo any serologic testing for AIDS based on the rationale that the disease was fragile and posed no risk to co-workers or patients. These recommendations appeared to me to be patently irresponsible in light of available scientific evidence which indicated that the AIDS virus can live up to 10 days outside by the body in room temperature. Although I do not believe that AIDS is casually transmitted, I do feel that all medical evidence should be considered when making a decision of this magnitude. The guidelines also contradicted the request of nurses that all patients exhibiting symptoms of AIDS be tested so that nurses could determine the appropriate precautions to be taken.

A third bill would permit health care workers to wear protective garments when treating AIDS patients at their discretion. This legislation was introduced in response to complaints by California nurses that they were being denied the use of standard precautionary measures based on hospital policy that the sensitivities of the AIDS patients be a priority. While I believe that we must do everything possible to improve the spirits of fatally ill patients, I believe the health and morale of our health care workers must be given priority.

In responding to the AIDS crisis, PHS overlooked the most obvious means of attempting to curtail the spread of AIDS. It failed to recommend that public health authorities shut down public bathhouses. This blatant omission was notable and even Congress felt compelled to respond. On October 2, the House passed an amendment by a vote of 417 to 8 which gave the Surgeon General the power to close public bathhouses. When I introduced legislation on October 30, 1985 on this issue Dr. Mason, then Assistant Secretary for Health, told me that such action was unnecessary and would only serve to alienate the homosexual community. On March 14, 1986 CDC finally issued guidelines recommending closure of these AIDS factories. Despite this recommendation a few bathhouses remain open in California.

The fifth bill in my original package dealt with making it a crime for persons with AIDS, or for those who carry the AIDS virus, to knowingly donate blood. Evidence that the Public Health Service is not pursuing policies based solely on the concern for the public health but on political considerations can be seen in PHS's inappropriate handling of our blood supply. Virtually all hemophiliacs in the U.S. and elsewhere who have received clotting factor concentrates derived from blood collected in the U.S. prior to 1985 have become infected with the AIDS virus. Nine thousand hemophiliacs and twenty thousand transfusion recipients are now permanently infected with the AIDS virus. These statistics serve to illustrate the magnitude of this truly historic tragedy which has been visited upon innocent

individuals, through no actions of their own. The most regrettable part of this reality is that the contamination of our nation's blood supply could largely have been avoided if the Public Health Service had appropriately restricted all high risk groups, specifically male homosexuals, from donating blood at the outset of the AIDS epidemic.

AIDS was recognized as a blood-transmitted disease as early as 1982 and as a disease peculiar to homosexuals, intravenous drug users and Haitians at approximately the same time. Despite this evidence, PHS recommended in 1985 that intravenous drug users, which comprise 13% of the identified cases, be prohibited from donating blood, while suggesting that polygamous male homosexuals, who comprised 73% of the known cases, refrain from donating blood. These initial guidelines served to encourage male homosexuals who considered themselves monogamous, to donate blood. At the time these guidelines were issued, PHS knew that the incubation period for AIDS may be as long as eight years and that a recent Kinsey report indicated that the longest relationship between homosexuals averaged one to three years, and yet the recommendation only requested male homosexuals who had been polygamous in the past six years to refrain from donating. Following the release of these guidelines, PHS admitted that they were a product of compromise between the homosexual community and public health authorities.

On August 8, 1985 I wrote to PHS suggesting that all homosexuals be placed in the same category as intravenous users, namely, that they be prohibited from donating blood. On September 6, 1985 my recommendation was partially implemented and the new recommendations requested "all males who have had sex with another male since 1977 to refrain from donating." In October 1985 the Red Cross began affixing a sticker to its blood donation literature which stated "males who have had sex with another male since 1977 must not donate blood." The official guidelines issued by PHS have never been changed.

The result of the PHS's failure to recognize the risks involved in encouraging male homosexuals to donate blood and in relying exclusively on the ELISA test is the almost certain death of two Colorado residents who recieved AIDS through transfused blood. According to the June 20, 1986 issue of Morbidity and Mortality Weekly, a 31-year-old donor who showed a negative reading in a test for the AIDS antibody in April 1985 and August 1985 donated contaminated blood in August 1985. Two recipients of the August transfusion are now infected with the virus and test antibody positive although neither currently exhibits symptoms of AIDS. The donor of this contaminated blood admitted that he had participated in a homosexual encounter earlier that year. In light of the 4% false negative rate of the ELISA test, self-exclusion of high-risk donors is the only completely reliable method of excluding contaminated blood.

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It is urgent that we shift from complacency to action in preventing future cases of AIDS. In my judgement, the best way to accomplish this is to discard the naive assumptions and simplistic solutions which have hampered our progress to date. We have avoided these and other options out of fear of being labeled discriminatory. It is time to explore any and all options which may lessen the burdens of this frightening disease. It is most properly the jurisdiction of the Public Health Service to take these vitally needed actions but in the absence of prudent management of PHS I urge you, as Chairman of the President's Domestic Council, to mobilize the necessary resources in this Administration. The sobering reality is that AIDS is an epidemic and all reasonable measures aimed at slowing its spread must be considered not just those politically expedient ones.

The AIDS epidemic will result in a profound loss of life. In the next five years the number of deaths attributable to AIDS will exceed the number of U.S. military deaths which resulted from World War II. It is a tragedy for any nation to lose so many productive citizens in the prime of life and to bear the societal cost of such a devastating disease. The Centers for Disease Control estimate that the average medical cost for a victim of AIDS in the next five years will approach \$46,000, resulting in a total of \$69 billion in health care costs. This cost will be borne largely by state and federal governments and, to a lesser degree, by our health insurance institutions. While I do not advocate prioritizing the cost of health care at the expense of saving lives or improving the quality of life for victims of AIDS, I do believe that cost restraints must be considered in determining which solutions present acceptable options.

I would appreciate a detailed response to my recommendations. In addition, I hope to meet with you to discuss this matter further in the first months of the next session of Congress. I look forward to your prompt response.

Sincerely,



William E. Dannemeyer
Member of Congress

WED/hah

cc: Members of the President's Domestic Council