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THE WHITE HOUSE  
CORRESPONDENCE TRACKING WORKSHEET

22010

INCOMING

DATE RECEIVED: AUGUST 17, 1987

NAME OF CORRESPONDENT: MS. JEAN O'LEARY

SUBJECT: WRITES REGARDING A DONATION MADE TO NATIONAL  
GAY RIGHTS ADVOCATES IN THE MEMORY OF JOHN  
VASON -- ENCLOSES COPY OF THEIR CURRENT NEWS  
LETTER AND AN ARTICLE DESCRIBING A LAWSUIT \*

ROUTE TO: OFFICE/AGENCY	(STAFF NAME)	ACTION		DISPOSITION	
		ACT CODE	DATE YY/MM/DD	TYPE RESP	C D
CHUCK DONOVAN		ORG	87/08/17		C 870819
	REFERRAL NOTE:				
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FILE

COMMENTS: \* AGAINST THE FEDERAL GOVERNMENT

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES: \_\_\_\_\_  
MI MAIL USER CODES: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

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*ACTION CODES:          *DISPOSITION          *OUTGOING          *
*                       *                       *CORRESPONDENCE:  *
*A-APPROPRIATE ACTION  *A-ANSWERED          *TYPE RESP=INITIALS *
*C-COMMENT/RECOM       *B-NON-SPEC-REFERRAL *           OF SIGNER *
*D-DRAFT RESPONSE      *C-COMPLETED        *           CODE = A   *
*F-FURNISH FACT SHEET  *S-SUSPENDED         *COMPLETED = DATE OF *
*I-INFO COPY/NO ACT NEC*                       *           OUTGOING *
*R-DIRECT REPLY W/COPY *                       *                       *
*S-FOR-SIGNATURE       *                       *                       *
*X-INTERIM REPLY       *                       *                       *
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# NGRA

510170  
National  
Gay  
Rights  
Advocates

A PUBLIC INTEREST LAW FIRM

President Ronald Reagan  
1600 Pennsylvania Avenue  
Washington, D.C.

August 12, 1987

Dear President Reagan,

This letter is to let you know that a donation has been made to National Gay Rights Advocates in the memory of John Vason.

In case you are not familiar with NGRA, we are a public interest law firm, established to defend and advance the rights of gay men and lesbians. Since we do not charge the people we represent, our work depends on the donations we receive. You will find a copy of our most current newsletter enclosed. I hope that you find it interesting and informative.

NGRA has been in the forefront of the struggle against AIDS discrimination. Our AIDS Civil Rights Project has won several precedent-setting cases involving discrimination against people with AIDS.

This particular donation will help us fight for the creation of a "Medical Manhattan Project." We are urging the government to create a Manhattan Project for AIDS, and to act as quickly and resourcefully as it possibly can in order to find a cure for this dreadful disease. NGRA's first step in this process has been to file a lawsuit, which demands that government agencies act much more urgently in the testing and licensing of new medications that might help cure AIDS and related illnesses. Enclosed is an article which describes in more detail this lawsuit.

This donation means a great deal to NGRA and those we can help. We couldn't do it without the help of those who support us.

Sincerely yours,

*Jean O'Leary*  
Jean O'Leary  
Executive Director

**Executive Director**  
Jean O'Leary

**Legal Director**  
Leonard Graff, Esq.

**Directors**  
*AIDS Civil Rights Project*  
Benjamin Schatz, Esq.

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# NGRA Sues Federal Agencies

*"We Refuse to Tolerate Further Delays," Says O'Leary*

by Anne-Christine d'Adesky

The first civil class-action lawsuit of its kind has been filed against the federal health agencies by people with AIDS (PWAs).

On June 24, California plaintiffs Randall Mark Klose, Donald C. Knutson, and National Gay Rights Advocates (NGRA) filed a legal complaint in the U.S. District Court of Columbia against the National Institutes of Health (NIH), the Food and Drug Administration (FDA), and the U.S. Department of Health and Human Services (HHS), for the agencies' alleged "improper conduct" in the area of testing and approval of experimental AIDS drugs.

The complaint was made on behalf of the 1.5 million Americans who have been exposed to HIV, the so-called "AIDS virus," since AIDS first appeared in the United States in 1980.

"We know that the HHS, FDA, and the NIH are well aware of a number of encouraging drug therapies and treatments," said Jean O'Leary, Executive Director of the San Francisco-based NGRA. "We also know that they are not doing enough to make them available to seriously ill and dying people. We demand an accountable system which will ensure public access to, and public

scrutiny of, the testing of these drugs."

The lawsuit charges that the NIH has deliberately favored drug companies which manufacture NIH-sponsored drugs, and blocked other promising drugs by setting stricter standards for their testing and approval.

A dozen drugs, including ampligen, AL-721, ribavirin, and isoprinosine, were listed as drugs the FDA has "deliberately delayed or ignored," the NGRA complaint said. While plaintiffs praised the FDA's fast track record for the speedy release of the FDA-approved AZT, and for DDC, it accused the agency of "arbitrary and capricious behavior" in its overall drug-testing policy.

The NIH was singled out for allegedly failing to spend \$47 million of Congressionally-approved funds for the treatment of PWAs with promising drugs.

U.S. Secretary of Health and Human Services Otis R. Bowen, FDA Commissioner Frank E. Young, and NIH Director James B. Wyngaarden, were also named as defendants in the lawsuit.

The complaint was filed as a class-action suit because the NGRA believes "There are questions of law or fact common to the class" of HIV-antibody positive individuals. Current statistics from the Centers for Disease Control indicate that 60 Americans a day are

diagnosed as having been exposed to HIV, while 35 PWAs die each day. The NGRA suit argues that without early treatment with experimental AIDS drugs, "every person diagnosed as having AIDS will die of the disease, on average, within less than two years."

## "Conflicts of Interest"

The specific charges are that NIH has favored drug companies with NIH contracts, such as Burroughs-Wellcome and Hoffman-LaRoche, which would legally constitute "conflicts of interest," says the NGRA. These conflicts take the form of "royalty payments from manufacturers licensed to develop NIH-sponsored drugs, and the NIH researchers' desire for self-aggrandizement," the lawsuit states. By contrast, the successful manufacture of drugs by companies without a contract with NIH would threaten "the individual work and reputation of NIH researchers," plaintiffs argue.

Many people believe that AZT has set a new standard of approval of experimental AIDS drugs. But the NGRA says the FDA has applied stringent procedures for the approval of non-NIH-sponsored drugs which were not applied to AZT or DDC. An example of the FDA's alleged erratic behavior in testing drugs is ribavirin, considered by many to be an effective antiviral drug and which is less toxic than AZT. Ribavirin, the NGRA states, has



been on "clinical hold" by the FDA, despite the fact that the U.S. Customs Service allows the importation of a one-month supply of the drug from Mexico. Such contradictory policies, says the NGRA, "are forcing law-abiding citizens to become criminals in a desperate effort to save their own lives."

The NGRA is demanding that government agencies and their respective leaders adopt, publish, and implement appropriate rules for NIH government research into drug testing to which the public would have access. They also want Bown and Wyngaarden to publicly account for the expenditure of the \$47 million.

The FDA should establish the same standards for all Investigational New Drugs that it did for AZT, the NGRA says. Finally, they are asking the FDA and Young to implement and publish regulations that would allow Citizens Petitions for the emergency investigation of new drugs.

"We refuse to tolerate one further day of confusion, delays, and scientific secrets," said O'Leary. "It is our intent with this lawsuit to ensure that therapeutic drugs are made available to people with AIDS quickly and safely." ■

## Defending Our Rights... Creating New Law

# AIDS Employment Discrimination Ruled Illegal in California

In a sweeping victory for people with AIDS, the California Fair Employment and Housing Commission unanimously ruled that persons with AIDS are protected against job discrimination. The 7-member Commission awarded back pay to the estate of John Chadbourne, and indicated that California employers who continue to discriminate based on AIDS will be required to pay punitive and compensatory damages.

A former Raytheon quality control analyst, Chadbourne was barred from returning to work by Raytheon upper management who "believed," contrary to medical evidence, that he might casually transmit AIDS in the workplace.

NGRA represented the estate of John Chadbourne in pursuing this employment discrimination claim. It was the first AIDS employment discrimination case in the country to go to trial. Our co-counsel, Peter F. Laura and Chris Redburn, wrote the brief for the Commission. They work for the Law Office of Leroy Walker in Los Angeles, and the Employment Law Center in San Francisco, respectively.

### NGRA Protects Lesbian Family

Susan L. Schaefer felt the full impact of homophobia this spring when her landlord, who is also her employer, raised Susan's rent 95% upon only 3 days notice. She then deducted the rent increase from Susan's paycheck, leaving Susan and her young daughter only \$20. The landlord took this action against Susan when she learned that Susan is a les-

bian and is involved in a relationship with another woman.

A resident of Northern California, Susan, her family partner and daughter turned to NGRA for assistance. NGRA Legal Director Leonard Graff took swift and immediate action. In just 5 days NGRA was able to get the illegal rent increase refunded to Susan. In addition, we were able to get the date of a future rent increase rolled back 6 weeks, thus giving Susan and her family sufficient time to find another apartment.

### White House Demonstration

On the opening day of the International Conference on AIDS, People with AIDS and ARC, lesbians and gay men from around the country staged a sit-in in front of the White House. The protesters blocked all traffic on Pennsylvania Avenue until they were arrested. The purpose of the demonstration was to focus attention on the slow pace of the Reagan administration in dealing with the AIDS crisis. The demonstrators demanded that a medical "Manhattan Project" begin immediately to find a cure for AIDS, develop a vaccine, and to increase protections for civil liberties.

Many of the protesters were leaders of major gay, lesbian and AIDS service organizations, including NGRA Executive Director Jean O'Leary. NGRA played a pivotal role, along with the Human Rights Campaign Fund, in organizing the demonstration. All of the major networks and newspapers covered the event and showed America

that their government was just doing too little to combat the AIDS crisis. NGRA also coordinated the legal arrangements in advance of the demonstration and provided the legal defense for all protesters who were arrested.

### Supreme Court Gives Hope to People With AIDS

The U.S. Supreme Court ruled in March that people with contagious diseases are protected by a federal law which bars discrimination against people with a handicap. The case, *School Board of Nassau County v. Arline* involved a teacher with tuberculosis. The real debate, however, centered around the validity of the Department of Justice's (DOJ) infamous memorandum on AIDS, issued in June of 1986.

By a 7 to 2 vote, the court rejected the D.O.J.'s argument that the Federal Rehabilitation Act permits discrimination based upon unreasonable fears of contagion. The Court stated that:

"Allowing discrimination based on the contagious effects of a physical impairment would be inconsistent with the basic purpose of [the Act], which is to ensure that handicapped individuals are not denied jobs or other benefits because of the prejudiced attitudes or the ignorance of others ... Society's accumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairment."

*(Continued on next page)*

## Supreme Court Gives Hope to People With AIDS

(Continued from front page)

In a footnote, the Court stated that it was not deciding whether discrimination against people who are HIV seropositive is prohibited by the Act. Nonetheless, the language of the opinion is far reaching, and most legal scholars agree that both HIV seropositivity and AIDS are covered. NGRA filed an *amicus curiae* brief in the case, along with the Employment Law Center, Bay Area Lawyers for Individual Freedom, and Lambda Legal Defense.

## Greg Johnson Gets His Day in Court

The Illinois Supreme Court has rejected an appeal by Lincoln Christian College (LCC) in its ongoing effort to deny Greg Johnson his college degree. As a result, LCC will be forced to go to trial and defend its actions.

Alleging that Greg is gay, LCC has withheld his diploma since June of 1981. Greg has completed all his course work and paid all the fees required for graduation. When a fellow student told the Dean of Students that Greg is gay, the Dean sent Greg to a therapist, who attempted to "convert" him to heterosexuality. So, in addition to suing LCC, NGRA has also sued the therapist.

NGRA's cooperating counsel in Illinois is Melinda Levine of the prestigious Chicago law firm of Jenner & Block. LCC is located in Lincoln, Illinois, in the southern part of the state.

## Progress Against Great Republic

The California Supreme Court rejected the efforts of Great Republic Insurance Company to block a trial in *NGRA v. Great Republic*. Great Republic's attorneys filed an emergency appeal of a trial court decision last fall making it subject to state and local laws prohibiting discrimination on the basis of sexual orientation. The case will now proceed to trial, where Great Republic must now show that it does not, in fact, discriminate against gay people.

NGRA and the Employment Law Center filed the lawsuit in San Francisco Superior Court on May 5, 1986. Great Republic is charged with discriminating against men they presume to be gay in an attempt to avoid AIDS related claims. They targeted unmarried men who work in stereotypically gay occupations such as florists, interior decorators, or jewelry or fashion designers.

Chris Redburn of the Employment Law Center, a project of the Legal Aid Society of San Francisco, is co-counsel on this case.

## NGRA Urges Confidentiality

In March, the California Medical Association (CMA) voted to relax consent requirements for HIV antibody testing and thereby allowing physicians to violate doctor-patient confidentiality in the context of AIDS. NGRA publicly criticized the CMA because allowing doctors to inform sexual partners of test results without the consent of the patient will cause people to avoid physicians altogether, thereby increasing the spread of AIDS. As a result of our efforts, NGRA was invited to meet with the President of the C.M.A., along with key officials from the San Francisco Medical Society and Bay Area Physicians for Human Rights to draw up new model guidelines.

## Anti-Gay Insurance Discrimination in Texas

NGRA has filed a discrimination complaint against the National Home Life Assurance Company for refusing to sell life insurance to a Texas man who named his same-gender roommate as his beneficiary. National Home is requiring Gregor MacGregor to prove that his beneficiary has an "insurable interest" in his life, because the two men are "unrelated." NGRA's complaint has been filed with the Texas State Board of Insurance.

NGRA is alleging that National Home is using the beneficiary issue as a smokescreen for weeding out gay men. Such discrimination directly violates guidelines issued by the National Association of Insurance Commissioners. Moreover, Texas law specifically recognizes that insurance applicants have the right to name anyone they choose as a life insurance beneficiary.

## International AIDS Conference

NGRA attorney Benjamin Schatz, was invited to make three presentations at this year's Third International Conference on AIDS in Washington, D.C. The conference, with over 6,000 attendees, is the leading gathering of AIDS experts in the world. In addition to making presentations on the issues of employment and insurance, Schatz, along with NGLTF's Jeff Levi and Lambda's Tom Stoddard participated in a roundtable discussion concerning issues of access and discrimination.

## IN BRIEF . . .

. . . NGRA is developing model sodomy reform legislation to be used by activists in states that still criminalize gay and lesbian sexual activity. We are also preparing a report to illustrate how sodomy laws adversely affect us outside the criminal context.

**NGRA** National  
Gay  
Rights  
Advocates

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Director, AIDS  
Civil Rights Project:  
**BENJAMIN SCHATZ**

### OUR PURPOSE

National Gay Rights Advocates is a nonprofit, public interest law firm involved in litigation to advance the civil rights of lesbians and gay men throughout the country. It is a tax exempt 501(c)(3) organization under Internal Revenue Service regulations. All contributions are tax-deductible.

## CDC Rejects Mandatory Testing

NGRA, along with NGLTF, HRCF, Lambda, the ACLU, AIDS Action Council and other groups went to a conference in Atlanta organized by the U.S. Centers for Disease Control (CDC) to oppose mandatory HIV antibody testing. As a result, the CDC has rejected the idea of mandatory testing. In a report submitted to the White House on April 30, the CDC rejected the idea of mandatory testing and called for guarantees of confidentiality and non-discrimination as a prerequisite for expanded voluntary testing. NGRA will be watching to see whether and to what extent Mr. Reagan decides to water down these recommendations for political reasons.

## Aetna Charged with Illegal Testing

NGRA has won a victory after filing a formal complaint with the California Department of Insurance against Aetna Life & Casualty Company. NGRA had charged the nation's fourth largest life insurer with requiring Bob Machado of San Jose to submit to the HIV antibody test. California law forbids insurers to use the test.

Following an investigation, the Department of Insurance ordered Aetna to process Mr. Machado's application without requiring an antibody test. The Department has also ordered Aetna to notify all of its California agents and underwriters that it is illegal to require California applicants to submit to the HIV antibody test.

## NGRA Opposes Potential Profiteering from Unproven AIDS Drugs

NGRA has submitted a formal response to the Food and Drug Administration concerning proposed deregulation of experimental drugs to treat people with AIDS. NGRA has applauded that portion of the proposal which would allow people with AIDS to gain access to experimental drugs before final FDA approval has been obtained. However, NGRA strongly criticized the FDA's plan to allow drug manufacturers to sell unproven experimental drugs at large profits to participants in clinical trials and treatment protocols.

In its comments to the FDA, NGRA explained that allowing drug manufacturers to charge virtually whatever they wish for experimental drugs will actually restrict, not expand access to drugs: Medicaid and most insurance plans will not pay for experimental drugs, and most people with AIDS are in dire financial straits. NGRA urged the FDA to maintain long-standing policy and prohibit the sale of drugs to participants in drug trials. NGRA further urged the FDA to limit pricing of unapproved drugs sold to non-participants to actual manufacturers cost of production and distribution.

## Insurance Company Doctor Threatens Violence

NGRA has filed a multi-agency complaint against American Founder's Life Insurance Company, and a physician in its employ, for assaulting an insurance applicant. The physician allegedly shouted "I ought to punch your face in you faggot bastard" after applicant Ken Snowden

questioned the legality of a company release form which required him to agree that his blood could be tested for HIV antibodies. In addition to violating California's ban on HIV antibody testing by insurers, the physician may also have violated California's Ralph Civil Rights Act, which specifically prohibits violence or threats of violence against any person because of sexual orientation or disability. Violators of this Act are subject to a fine of \$10,000 by the California Department of Fair Employment and Housing (DFEH).

NGRA filed administrative complaints with the DFEH, the California Department of Insurance, and the California Board of Medical Quality Assurance. In addition to seeking a minimum of \$10,000 in damages, NGRA seeks revocation of the physician's license and a ban on the release form used by American Founder's.

## NGRA Publications

1. **AIDS and Your Legal Rights.** This booklet covers issues such as testing, confidentiality, employment, insurance and public discrimination.
2. **Wills Give You Power.** An examination of the issues you need to know to fulfill your last wishes—including probate, taxes, joint ownership and estate planning.
3. **Security Clearances: Your Rights and the Law.** An overview of important considerations in the granting of security clearances for gay men and women who work for the government or for government contractors.
4. **The Pros and Cons of the HTLV-III Antibody Test.** (NGRA and the Bay Area Physicians for Human Rights). A pamphlet addressing the medical and legal concerns of those who have taken, or are considering taking, the HTLV-III antibody test.
5. **Tax Strategies for Lesbians and Gay Men.** Tells you how to pay less taxes legally. This booklet, written in a question/answer format, is informative and easy to understand.

*A single copy of the above publications is free to NGRA members; \$1.00 each for non-members. Inquire about reduced rates for large quantities.*

6. **AIDS Practice Manual: A Legal and Educational Guide** (NGRA and the National Lawyers Guild). A detailed manual providing instruction and sample forms for lawyers on AIDS related legal issues. \$10.00.
7. **AIDS and Handicap Discrimination: A Survey of the 50 States and the District of Columbia.** A study which reveals that most states will prosecute complaints of AIDS-related discrimination; and that all have rejected the Justice Department's interpretation of the protections under federal handicap law. Members \$5.00. Non-members \$10.00.
8. **Bowers v. Hardwick.** The historic opinion of the U.S. Supreme Court that the constitutional right to privacy does not protect gay and lesbian relationships from criminal sanctions. Includes an eloquent dissenting opinion by Justice Blackmun. Members \$10.00. Non-members \$15.00.
9. **Position Paper on AIDS and Insurance.** Detailed policy analysis of insurance discrimination issues, including sexual orientation discrimination, use of the HTLV-III antibody test, and refusal to pay legitimate AIDS-related claims. Members \$4.00. Non-members \$8.00.

*All prices include postage and handling.*

## Confidentiality Law Upheld

In a major victory, the California Court of Appeal has held in *People v. Barlow* that the results of the HIV antibody test cannot be disclosed without the subject's consent. Brian Barlow, a member of the San Francisco Gay Marching Band, was arrested after an altercation with right wing protesters who were attempting to disrupt the San Diego Gay Pride Day celebration last June. The police claim Barlow bit two officers as they were trying to restore order.

The state prosecutors wanted Barlow tested for the HIV antibody so they could charge him with "attempted murder." They asserted that since Brian was from San Francisco and since he was in the Gay Pride Parade, he was very likely infected with the HIV virus.

In rejecting the prosecutor's arguments the court held:

"While some cultures require a leper to ring a bell to warn the passerby, our Legislature has not so stigmatized the victims of AIDS. Our skies are not black with smoke from cities burned to prevent the spread of plague."

NGRA filed an *amicus curiae* brief focusing on the issue of transmissibility. The brief was written by San Francisco attorney Mark Vermeulen and submitted jointly with the American Civil Liberties Union of San Diego. San Diego attorney Thomas Homan also helped with preparing the brief. Brian Barlow is represented by Peter J. Hughes, a San Diego attorney specializing in criminal defense law.

The California Supreme Court has upheld the court of appeal decision, but ordered that the case not be published in the law reporters.

## Gay Father Wins Child Visitation Case

NGRA and the ACLU of Illinois have won a favorable settlement in *Doe v. Doe*, an important AIDS related case. At his ex-wife's request, an Illinois court had ordered John Doe, in November, 1985, to submit to an HIV antibody test as a prerequisite to overnight visitation with his two daughters. In June of 1986, NGRA successfully overturned the court order. Nonetheless, Ms. Doe continued her legal efforts to deny John overnight visitation on the grounds that his homosexuality placed his children in moral and medical danger. However, on April 1, just before a trial was scheduled to begin, Ms. Doe backed down and agreed allow John full visitation rights.

Working on the case were NGRA co-counsel Michael Closen, law professor at John Marshall Law School, and ACLU attorneys Harvey Grossman and Barbara Hirsch.

## Harvard Law Review Publishes Schatz Article

The Harvard Law Review, the nation's most prestigious legal journal, published an article by Benjamin Schatz, Director of NGRA's AIDS Civil Rights Project, in its June, 1987 issue. His article, entitled "AIDS and Insurance: Underwriting or Overreaching," includes a detailed

discussion of sexual orientation discrimination and HIV antibody testing by insurers. It will be an invaluable resource for lawyers doing AIDS related discrimination cases. NGRA members can obtain a copy by sending \$5 to NGRA.

## New Survey on AIDS and Employment

NGRA has released the nation's first study to identify American Corporations and their policies on AIDS-related issues. *American Corporate Policy: AIDS and Employment* presents the results of a survey of America's "Fortune 1,000" employers. Positive responses from corporate giants such as Bank of America, CBS, Chevron, Citicorp, DuPont, Goodyear, Transamerica, GTE and Westinghouse demonstrate that many of America's corporate leaders recognize their legal and moral obligation to employees with AIDS or related conditions.

Results are encouraging. Fully 67% of our respondents indicated that they prohibit employment discrimination against employees with AIDS or related conditions. Virtually all reject mandatory HIV antibody testing and have health insurance plans that pay for employees' AIDS-related medical expenses.

The 34-page report also addresses such issues as workplace education, reasonable accommodations, confidentiality and written policies on AIDS. It is available to members of NGRA for \$10. The cost for non-members is \$15.

## Employment Discrimination Complaint Filed in Los Angeles

NGRA has filed a complaint against a Los Angeles firm charging sexual orientation discrimination in the hiring process. We are representing Gary E. Lawe, a designer who applied for a job at Indian Wells Estates. Gary has extensive design experience in San Francisco.

After asking Gary if he was single, the interviewer from Indian Wells said, "I don't work well with single men from San Francisco, if you know what I mean." He then went on to say that Indian Wells had a very conservative clientele that wouldn't react well to gays.

It is because of the precedent setting decision in *GLSA v. Pac. Tel. & Tel.* (now Pacific Bell) that Mr. Lawe and all lesbians and gay men in California have protection from employment discrimination. NGRA recently settled the class-action case against Pacific Bell for \$3 million, the largest ever for gay discrimination.

## IN BRIEF . . .

- NGRA filed Freedom of Information Act requests at the National Institute of Health and the Office of Personnel Management to monitor for sexual orientation and AIDS discrimination.

- NGRA Legal Director Leonard Graff has been working with California Assemblyman Art Agnos' office on legislation protecting confidentiality of HIV test results and protections against sexual orientation discrimination in the workplace.