

Campus Blood Drive Suspension: Advocacy or Critical Thinking? By Asbjorn Osland* ©2008

San Jose State University (SJSU), followed by the San Jose City College and Evergreen Community College District, decided in early 2008 to suspend blood drives based on the opinion that the ban on donations from men who have had sex with men (MSM) was discriminatory. Though the faculty senate at Sonoma State University voted on April 24, 2008 to suspend blood drives too, the university president decided to allow blood drives to continue. The incident brings up a number of questions: Is it a right to donate blood? What rights do recipients have? Is the FDA too inflexible? What can one learn about decision making processes from this experience?

San Jose State University (SJSU), followed by the San Jose City College and Evergreen Community College District, decided in early 2008 to suspend blood drives based on the opinion that the ban on donations from men who have had sex with men (MSM) was discriminatory. Though the faculty senate at Sonoma State University voted on April 24, 2008 to suspend blood drives too, the university president decided to allow blood drives to continue concluding “that there was no legal ruling that a federal policy banning blood donations from homosexual men violated anti-discrimination policies.”¹

President Don Kassing orders the blood drive suspension based on perceived discrimination against MSM

“It was clear-cut policy issue,” says Seth Hodge, the SJSU residential life coordinator who filed the complaint that brought the issue to Kassing’s attention. We’re not discouraging people from giving blood; we’re saying it can’t happen on our property because of our non-discrimination policy.”² The SJSU director of institutional planning and inclusive excellence, Rona Halualani, stated, “The overwhelmingly unquestioned nature of the FDA’s policy underscores how much we need to reexamine the issue and create a dialogue about it as informed citizens.”³ She saw the decision as one that honored all campus members.⁴ “The FDA is like a rusty old barge that’s stuck in a muddy slough,” says Wiggys Sivertsen, SJSU professor of sociology and longtime advocate for human rights. “And it’s going to take a battering ram to push it out into the ocean of enlightenment.”⁵

President Kassing stated: ⁶

... I am suspending all blood drives at San José State University on the grounds that the U.S. Food and Drug Administration’s lifetime blood donor deferral affecting gay men violates our non-discrimination policy. ... A university employee brought this matter to my attention. He referred to the language in San José State University’s non-discrimination policy ...

... AABB, America’s Blood Centers and the American Red Cross – three organizations that stake their reputations on blood supply safety – have reviewed the same data and come out in favor of relaxing the deferral. In a joint statement, they

* Professor Asbjorn Osland prepared this case, which was developed solely for the basis of class discussion. This case is not intended to serve as an endorsement or illustration of effective or ineffective management.

said they “believe that the current lifetime deferral for men who have had sex with other men is medically and scientifically unwarranted and recommend that deferral criteria be modified and made comparable with criteria for other groups at increased risk for sexual transmission of transfusion-transmitted infections.” The FDA deferral for such groups is 12 months, according to the AABB Full-Length Donor History Questionnaire.

AABB, America’s Blood Centers and the American Red Cross also offered their vast resources – a great many of the nation’s blood collection centers – to assist with any additional research required by the FDA. I am troubled the FDA has not, to our knowledge, made progress with additional research, nor disclosed if and/or when an FDA committee will vote again on the deferral for men who have sex with other men. Meanwhile, the lifetime deferral affecting gay males as a group remains in place when it may be safe and appropriate for these men to be treated individually, as is the case with people of other sexual orientations.

Several weeks after the announcement, the president fielded questions from the campus media:⁷

Q: How easy of a decision was it for you to suspend blood drives on campus?

A: ... We approached this thing, I think, in a very thoughtful way. We felt that based on what we learned (researching) that our discrimination policy needed to be adhered to. And that the FDA position on this has been controversial for at least 10 years - and that there is a pretty interesting scientific argument out there that the FDA needs to take a look at the policy. That’s been advocated by a number of agencies and groups that I think need to be respected. ...

... We’re not telling anyone not to donate blood. In fact, I think we would say the opposite, ‘Please donate blood.’

We would hope the FDA would change its policy at some point. The scientific arguments are considerable ... they need to get on that and take a look at it ... because we would argue it’s discriminatory.

The experience we’re having on this has been ... a very strong anti-gay set of responses that are ugly, nasty kinds of things. ... We’ll get people accusing us of being politically correct, which I would argue is a very shallow view of what we’ve done. The blood supply argument: that has substance. ... And people engaged in that side of the argument really, really care about it and are concerned. And then you would get what I would label as a very informed opinion and that’s paid attention to this issue and understands ... that the FDA could and should reconsider their argument. ...

Q: How quick of a decision was it for you?

A: We probably spent a good four or five months on this ... maybe six months. ...

Q: Did you ask when talking to the FDA officials: Why is that the focus is on homosexual individuals and not other communities of a high risk of HIV?

A: ...It really hits home on the issue. What really violates the nondiscrimination policy is that like-risks are not treated the same under the FDA's policy. And that's where the university's policy and the FDA's come into conflict. ...And they don't have an answer to that.

On February 18, 2008, the Academic Senate passed a resolution (SS-S08-1) in support of the blood drive suspension. The language of the resolution referred to non-discrimination, "creating a diverse community guided by core values of inclusion, civility, and respect for each individual" and that blood drives are discriminatory because "Food and Drug Administration regulations prohibit gay men from donating blood because of their sexual orientation and not because of unsafe sexual practices ..." The resolution claimed that the president had "... exercised great consideration and care in balancing the needs of the greater community with the core values of the University" and it commended him "... for his courage, leadership and commitment to academic principles of equal opportunity and respect for human dignity ..." The resolution concluded that "San José State University continue the suspension of blood drives until the Food and Drug Administration rescinds its policy of discrimination against gay men."⁸

Long-term controversy in FDA

In 2000, the FDA⁹

... narrowly voted to maintain the ban on blood donations from homosexual men. The vote was 7-6 to maintain the ban. Under the FDA's rules, men cannot give blood if they have had sex with another man at least once since 1977. The FDA had considered changing the blood donation rule to ban only men who had had sex with another man within the past five years. The rule came into force originally in 1985 to protect the blood supply from HIV.

Critics claim that the ban is discriminatory and outdated, as other high risk groups such as prostitutes, intravenous drug users, and promiscuous heterosexuals are deferred from donation only one year from their last high risk encounter.

Moreover, more sensitive HIV screening tests are used now than when the rule was initially formulated. Since blood and blood products are in short supply many favor lifting the ban. But how many MSM would remain celibate for one or more years so that they could donate blood?

Even with the current restrictions, blood screening is imperfect. Of 12 million units of donated blood each year, 10 HIV infected units slip through, accounting for two to three cases of donor transmitted HIV infections a year.

MSM – incidence of AIDS

"In 2006, the largest estimated proportion of HIV/AIDS diagnoses among adults and adolescents were for men who have sex with men (MSM), followed by persons infected through high-risk heterosexual contact," 50% and 33% respectively. "Although blacks, or African Americans, made up only 13% of the population in the 33 states, they accounted for almost half of the estimated number of HIV/AIDS diagnoses made during 2006."¹⁰

“... in California men who have sex with men continue to account for approximately 2/3 of HIV infections.”¹¹

Other groups were also advised not to donate or banned. Banned for life are people who use drugs intravenously and sex workers.¹² The Food and Drug Administration guidelines exclude others too but stipulated:¹³

DO NOT DONATE IF YOU:

- Have AIDS or have ever had a positive HIV test
- Have ever used needles to take drugs, steroids, or anything not prescribed by your doctor ...
- Are a male who has had sexual contact with another male, even once, since 1977
- Have ever taken money, drugs or other payment for sex since 1977
- Have had sexual contact in the past 12 months with anyone who has AIDS or a positive HIV test, intravenous user of drugs not prescribed by your doctor, a sex worker who received payment for sex since 1977, or in the case of a woman that had sex with a banned MSM
- Have had syphilis or gonorrhea in the past 12 months
- In the last 12 months have been in juvenile detention, lockup, jail or prison for more than 72 hours ...

FDA critics question how a woman could have sex with a man suffering AIDS and be deferred for a year, for example, and MSM are effectively banned for life. Because of the epidemiological studies that have shown that MSM have high rates of HIV, there is the perceived risk of accepting a donor capable of transmitting HIV prior to detection. Since this is true of other high risk behaviors, critics of the FDA policy contend that one group is targeted, not risk factors.¹⁴

March 2008 blood drive across the street from SJSU¹⁵

Some students disagreed with the SJSU suspension of blood drives and organized a blood drive at the Grace Baptist Church, a site that hosts numerous social services. The American Red Cross representative said the volunteers did a great job for an off-campus site. A fraternity president said, “... in the end the people who are suffering are those who need (blood) daily.”

Michele Hyndman, the Public Relations Director at the Stanford Blood Center, stated (email September 03, 2008):

Stanford Blood Center typically collected 300 donations each year at SJSU. The American Red Cross collected 500 each year. ... Currently, 20% of our blood collection comes from students in high school and college. Particularly with students, if donating is not convenient, most won't seek it out on their own. If we're on campus and it's convenient, they donate. It's not as simple as saying “We're not discouraging people from giving blood; we're saying it can't happen on our property” because that's exactly what the ban does - keep people from donating.¹⁶

Some countries ban gay male donors and others don't

Italy defers people who have engaged in “risky activities.” Argentina, Australia, Japan and Hungary defer for one-year since last exposure, South Africa has a five-year deferral and

New Zealand defers for ten years since last exposure. The countries with indefinite deferrals (i.e., exposure since 1977 or lifetime exposure) include the following: Canada, US, UK, France, Switzerland, Holland, Norway, Denmark, Sweden, Germany, Finland, Iceland, and Hong Kong.¹⁷ Russia and Thailand have lifted their bans.¹⁸ The prevalence of HIV/AIDS in southern Africa makes the distinction between MSM and heterosexual behavior less relevant since the general risk is high.¹⁹

Risk analysis

Leiss, Tyshenko, and Krewski (January 31, 2007)²⁰ maintain that changes to the donor deferral policy must result in improved or equivalent levels of safety to what presently exists. The analysis must comprise both risk procedures and ethical considerations. In terms of risk, the authors concluded that MSM donors present far greater risks than what they perceived as the current profiles of other donors. Since there are always very low risks that the various detection tools would fail, the authors concluded that changing the MSM deferral policy to no deferral or to a 12-month deferral would increase the risk of tainted blood being transmitted to recipients. Researchers could assess whether or not another deferral period would be better than what is now essentially a lifetime ban.

When asked for his view on the matter, William Leiss (O.C., Ph.D., FRSC, Scientist, McLaughlin Centre, University of Ottawa) stated (on August 25, 2008):²¹

Those that regard the MSM exclusion from blood donation as being unfairly discriminatory are not being inherently unreasonable, because this is an issue on which reasonable persons can disagree. I agree with the philosopher Hegel, who defined tragedy as “the struggle of right against right”; the issue in question is a tragedy of this sort. If one accepts the view that risk estimation has a legitimate place in blood donor policy, and that evidence-based risk assessment is appropriate here, then it seems true to say that a certain period of MSM exclusion is justified on precautionary grounds. I hold the view that the current evidence base justifies a five-year exclusion (five years sexually abstinent), taking into account both known pathogens (especially HIV) and the possibility that as-yet-unknown pathogens may be relevant to this judgment. Thus a shorter period of exclusion would amount to a risk transfer between MSM and blood recipients, which I believe is unethical.

On the other hand, the same principles stipulate that one should not accept a period of deferral longer than that which evidence and a reasonable level of precaution can support. Thus I reject the lifetime deferral currently applied in the U.S., Canada, and the EU.

In this context, is the decision by college- and university-based organizations, to ban blood donor clinics from campuses, an appropriately ethical act? I think not, because, from a tactical perspective, what it appears to be doing is using blood recipients as hostages in this disagreement. And that is unethical.

I believe that such organizations should use other strategies to seek to build support for a change in MSM donor deferral policy, such as the setting up of information sessions about the issue, and encouraging other bodies to join them in fostering an informed debate about blood donor and risk management policies. This debate should and could include what alternative types of donor screening would allow one to

believe, with a high degree of confidence that an alternative system would assure as high a degree of blood safety as that which obtains at present.

When asked for his view on the matter, Dr. Jay P. Brooks (MD, MBA, Professor of Pathology, University of Texas Health Sciences Center San Antonio, TX) stated (August 23, 2008):

In short, I view blood donation as a gift. Gifts can either be accepted or refused. Otherwise it is not a gift. Blood collection centers act as surrogates for recipients in delineating deferral criteria. The FDA ultimately promulgates the final rules. While several organizations - the American Red Cross, the American Association of Blood Banks, and America's Blood Centers - have urged the FDA to alter the current lifetime ban on men who have had sex with other men since 1977, none has urged dropping the ban altogether. These organizations have been somewhat vague on this point, but they support either a five year or one year deferral period. Given that not many people are going to be voluntarily celibate for one or five years in order to be able to donate blood, the changes urged by these organizations will have little impact in allowing more gay men to donate.

Randy Shilts's excellent book "And the Band Played On" depicts the FDA and blood collection centers as being slow in deferring gay donors in the early 1980's and the impact that this had on the high rate of transfusion associated AIDS during that period. The FDA and blood collection centers were reluctant to eliminate gay men as donors for the very reason that it would appear discriminatory. It is ironic that the same organizations are now being criticized for being slow to allow these donors back into the donor pool.

When it comes to donor deferrals, I certainly oppose unfair discrimination. However, our primary concern must lie with the safety of the blood supply. Our laboratory tests are imperfect.

In a 2004 article²² by Dr. Brooks, he stated, that "two studies have indicated that changing the rule would increase the risk of human immunodeficiency virus (HIV) transmission" (p. 280).

Is rejecting MSM blood discriminatory?

The term discriminatory is often used in the legal context yet a search did not find any lawsuits.²³ Several leading SJSU professors and administrators viewed the president's decision to suspend blood drives from campus as value based; prohibiting MSM from donating blood was perceived as discriminatory and therefore contrary to the values of the campus. One important value for the campus is diversity. It's one of the more diverse campuses in the nation – more than 59% minority.²⁴

Would SJSU's decision influence the FDA?

In March 2008 President Kassing and Associate Vice President for Public Affairs, Lawrence Carr met with FDA officials and the FDA stated that science would dictate its policies, according to Carr, but he was unaware of any new research by the FDA on the matter. "Even if San Jose State disappears entirely from this discussion tomorrow, it's not going to be

over,” says Carr. “The discussion is happening in places where it needs to happen for change to occur.”²⁵

Questions that remain

Is it a right to donate blood? What rights do recipients have? Is the FDA too inflexible? What should be the time horizon for abstinence from sex with MSM before they could be considered as donors? If the time horizon were relaxed, is it realistic to assume that many MSM would be celibate for the requisite time prior to donating blood? Should universities suspend blood drives until the FDA reassesses the lifetime prohibition on donations from MSM? What can one learn about decision making processes from this experience?

¹ Norton, L. May 29, 2008. SSU won't ban blood drives: Armiñana rejects faculty resolution opposing FDA's barring of gays from donations. THE PRESS DEMOCRAT.

² Giving blood spurs discussion for change. Summer 2008. Panorama. Retrieved on August 30, 2008 from http://www.sjsu.edu/wsq/docs/wsq_summer08.pdf.

³ Giving blood spurs discussion for change. Summer 2008. Panorama. Retrieved on August 30, 2008 from http://www.sjsu.edu/wsq/docs/wsq_summer08.pdf.

⁴ One clarification – the FDA policy had been questioned by the leading blood organizations, gay advocacy groups, and the FDA itself. Refer to the following: Gay Men's Blood Still Not Safe Says The FDA. 24 May 2007. Retrieved on August 23, 2008 from <http://www.medicalnewstoday.com/articles/71959.php>.

⁵ Giving blood spurs discussion for change. Summer 2008. Panorama. Retrieved on August 30, 2008 from http://www.sjsu.edu/wsq/docs/wsq_summer08.pdf.

⁶ President's Message: Campus Blood Drives. January 29, 2008. Retrieved on September 12, 2008 from <http://www.sjsu.edu/president/communications/archives/kassing/blooddrives/letter.html>.

⁷ President fields questions from campus media. February 13, 2008. Spartan Daily (SJSU student news service).

⁸ Quotations retrieved on September 12, 2008 from <http://www.sjsu.edu/senate/SS-S08-1.pdf>.

⁹ Josefson, D. September 23, 2000. FDA declines to lift ban on homosexual men as blood donors. BMJ, 321:722.

¹⁰ HIV/AIDS in the United States. Revised August 2008. Center for Disease Control. Retrieved on September 12, 2008 from <http://www.cdc.gov/hiv/resources/factsheets/us.htm>.

¹¹ Explaining the MSM Deferral. Stanford School of Medicine Blood Center. <http://bloodcenter.stanford.edu/donate/MSMDeferral.html>

¹² Gay Men's Blood Still Not Safe Says The FDA. 24 May 2007. Retrieved on August 23, 2008 from <http://www.medicalnewstoday.com/articles/71959.php>.

¹³ Retrieved on August 23, 2008 from <http://www.fda.gov/cber/dhq/dhq11/dhq11e.htm>. The FDA also published an extensive list of questions and answers entitled “FDA Policy on Blood Donations from Men Who Have Sex with Other Men” (see <http://www.fda.gov/cber/faq/msmdonor.htm>).

¹⁴ Reik, R. A., Burch, J. W., Vassallo Jr., R. R. & Trainor, L. 2006. Unique donor-suitability issues. Vox Sanguinis, 90, 255–264.

¹⁵ Wright, T. posted 3/18/08. “Students host donor drive a block away.” Spartan Daily.

¹⁶ Stanford Blood Center Statement Regarding SJSU's Decision to Suspend Blood Drives – see http://bloodcenter.stanford.edu/press/releases/2008_SJSU.html. Explaining the MSM Deferral – see <http://bloodcenter.stanford.edu/donate/MSMDeferral.html>.

¹⁷ Leiss, W., Tyshenko, M., Krewski, D. January 31, 2007. MSM Donor Deferral Risk Assessment: An Analysis using Risk Management Principles – A Report for Canadian Blood Services. McLaughlin Centre for Population Health Risk Assessment. University of Ottawa.

¹⁸ Mangum, C. 7/15/2008. Red Gold. Advocate, Issue 1011.

¹⁹ Franklin, I. A. 2007. Is there a right to donate blood? Patient rights; donor responsibilities. Transfusion Medicine, 17, 161–168.

²⁰ Leiss, W., Tyshenko, M., Krewski, D. January 31, 2007. MSM Donor Deferral Risk Assessment: An Analysis using Risk Management Principles – A Report for Canadian Blood Services. McLaughlin Centre for Population Health Risk Assessment. University of Ottawa.

²¹ Leiss W, Tyshenko M, Krewski D. January 22, 2008. Men having sex with men donor deferral risk assessment: an analysis using risk management principles. Transfusion Medicine Reviews, (1): 35-57.

²² Brooks, J. P. 2004. The rights of blood recipients should supersede any asserted rights of blood donors. Vox Sanguinis, 87, 280–286. At the time he wrote the article, he was Director of Transfusion Medicine, University of Oklahoma Health Sciences Center, Oklahoma City, Oklahoma 73104, USA.

²³ The database used “provides access to federal and state case law, the United States Code Annotated (USCA), the Code of Federal Regulations (CFR), the Federal Register (July, 1980-present), state statutes and administrative codes, American Jurisprudence 2d (law encyclopedia), American Law Reports (ALR) 2nd-5th and federal series, and more than 900 law journals and reviews.” Email (August 28, 2008) from the SJSU reference librarian.

²⁴ Calculated based on SJSU official data for fall 2005 taken on September 13, 2008.

http://www.apb.sjsu.edu/Data_&_Reporting/Students_by_Gender_&_Ethnicity/2006-table09-11.cfm.

²⁵ Giving blood spurs discussion for change. Summer 2008. Panorama. p. 9. Retrieved on August 30, 2008 from http://www.sjsu.edu/wsqa/docs/wsqa_summer08.pdf.