He Said, He Said

Sometimes, asking the question isn't enough

April 1, 2004 By Naomi Wax

Thomas Lister says that when he logged on to the gay-hookup site m4m4sex.com one night in March 2000, he wanted a blow job—not to become the tattered poster boy for HIV criminalization. Then 34, back in San Francisco after two years on the East Coast and, he claims, HIV negative, Lister says he arranged to get oral service from someone who wanted no reciprocation, so he saw no need to ask about the other man's HIV status. The randomness of online cruising led Lister into the Castro home of Ron Hill, a 42-year-old member of the San Francisco Health Commission who had developed AIDS in 1996 and made a point of revealing it to anyone in the media who'd ask. Lister says that he had no idea who Hill was—and that Hill never volunteered his HIV status. "If things in that first meeting had gone any further," Lister tells *POZ*, "that discussion would have taken place."

But there was a second meeting. And a third. Indeed, Thomas Lister and Ron Hill, despite their more immediate goal that evening, tumbled into a committed romantic relationship. In fact, by their second date—at which, according to Lister, Hill assured Lister that he was HIV negative—they decided to forego condoms entirely, a decision that had a certain throwing-caution-to-the-wind aspect, especially for two sexually adventurous gay men. Lister, for his part, had performed in a barebacking porn video not long before hooking up with Hill, though his role was, he says, limited to getting blown. Even the case of gonorrhea Lister came down with just two weeks after meeting Hill did not give either man second thoughts about having unprotected sex. A month later, the two men were already speaking of each other as "family," as in the Easter card Hill presented to Lister, which read, "Thomas, your presence in my life is so very, very precious to my heart. I love you and look forward to many, many wonderful Easters together.'' It was signed, "Your family, Ron and Boukie [the dog].'"

Soon, of course, the brand-new family was feeling the predictable letdown following such a breathless buildup. After some weeks of suspicion and infidelity, a breakup and a second chance, the couple hit a wall, finally crashing and burning after an Alaskan cruise. By that August, Ron Hill and Thomas Lister were no longer speaking. They had known each other only five months.

Now, four years later, Lister is HIV positive, Hill is said to be on his deathbed, and the civil and criminal lawsuits Lister brought against his former lover for allegedly lying about his HIV status and intentionally infecting him have thrown a familiar harsh light on the sexual practices of gay men. This bizarre story could not have broken at a worse time: Crystal use, barebacking and

infections are spiking in the gay community, while the far right is gunning for abstinence in prevention and criminalization of transmission. Tolerance for the troubles HIVers have long had with these matters is at a new low. The rhetoric of "responsibility" is on the rise, and both friends and enemies are asking, "What took so long?" Suddenly HIV positive gay men are being not asked but told to clean up their acts. To always disclose before sex. To always use condoms. *To stop infecting negative gay men—or else.*

The Lister-Hill headlines hit like a bombshell, sending the San Francisco gay and HIV community running for the hills—led by Ron Hill, who literally fled the city. That left the empty legal stage to Thomas Lister and his self-proclaimed fight for justice against the city's HIV positive former health commissioner, who seemed, in Lister's version, at best a sick sociopath, at worst a cold-blooded murderer. (Ron Hill, having refused *POZ*'s many requests for comment, spoke through his public defender, Peter Fitzpatrick, who insisted only that Hill and Lister never had unprotected sex.) Though the motivations at the heart of the lawsuits are outrageously atypical and murky—why would Hill want to infect Lister? Alternately, why would Lister fabricate such a story?—the Lister-Hill case has, in the current judgmental climate, threatened to demonize all HIVers who shirk the responsibility of full disclosure and safety.

Of that first Internet hookup with Lister in March 2000, Lister recalls, "It moved for both of us rather quickly. He was 'the one,' pretty much almost instantly from meeting him." On their second date, Lister volunteered that he was HIV negative—*after* having intercourse!—and asked Hill's status point-blank. He says that Hill said he was negative too. So Lister took a chance on latex-free love. He says Hill told him that "everything would be fine [without a condom]."

The sudden case of gonorrhea gave him no pause. Lister says he initially mistook it for a relapse of a non-STD condition he'd contracted four months earlier, and was surprised at the diagnosis. The only possible source was Hill, he claims. "I thought that anyone who is a health commissioner, especially in this city, wouldn't lie about something like [STDs]," Lister told the *San Jose Mercury News* in October 2003. "So I trusted him."

In 1997, San Francisco Mayor Willie Brown had appointed Hill to the health commission, filling the seat reserved for an HIVer. (Brown did not respond to interview requests for this article.) A registered nurse, Hill had been somewhat active in the Stop AIDS Project and San Francisco AIDS Foundation; plus, he was a close friend to local Democratic Party higher-ups. The public mission of this mediagenic team player was to advocate for HIV prevention. In the summer of 1999, when activists protested the commission's decision not to reopen the city's gay bathhouses, Hill told the *San Francisco Examiner* that he "fully backs the health chief's position to keep bathhouses outlawed," and, according to the paper, "described himself as the only commissioner on the seven-member panel who is gay and has AIDS."

Hill's supporters, therefore, find Lister's claims that he didn't know his professionally HIV positive boyfriend's HIV status preposterous. "Ron Hill told everyone he was HIV positive and never kept it a secret from anybody," says San Francisco Health Commissioner Lee Ann Monfredini, who served with Hill.

But Lister counters that he had been living in New York City during the bathhouse controversy, trying to break into musical theater. After two years and modest success, he'd tired of the stock theater circuit and returned to San Francisco—where he'd lived for most of the 1990s—taking a job as a website project manager. When he met Hill six weeks later, Lister was totally in the dark about local civic culture. "Honestly, I didn't know there was a health commission in the city of San Francisco," he says, "let alone there *was* this unspoken rule that one of the seven members was HIV positive."

Looking back now, Lister sees pieces of the puzzle in certain strange behaviors of Hill's. While Lister introduced Hill to his friends and family, Hill kept their relationship strictly separate from the rest of his life. "Any time he'd arrange to get together with friends of his, the plans would get changed or canceled," Lister says. "Several times I had asked about going to one of the health commission meetings just to attend, to learn more about what he did. He discouraged me from doing that."

Public defender Fitzpatrick questions how Lister could have spent so much time with Hill and not noticed he was taking daily doses of HIV meds and suffering from HIV wasting. But Lister explains that on their second date, Hill mentioned cancer: "He said he'd lost weight during chemo treatments and was taking medication to help him put weight back on." At the time, Lister says Hill was a lean six foot three and "didn't strike me as skinny, scrawny or underweight. He had no telltale signs of being ill." Lister swears that it never crossed his mind that his lover, a homosexual in his early 40s in one of the world's most HIV-ravaged neighborhoods, just might have the virus.

So Lister thought Hill handsome and healthy, and spring 2000 was a season of high hopes. Hill had more or less moved into Lister's condo. The two discussed buying property together. To celebrate Hill's birthday in May, they spent the weekend at a romantic getaway overlooking the Pacific, exchanged silver rings and discussed a commitment ceremony. They had come a long way from m4m4sex.com.

Or had they? Only two months into their committed union, Lister began to suspect that Hill was cheating on him. "I'd find little papers with first names, phone numbers and suggestive e-mail addresses," Lister recalls. "Ron denied anything was going on. He said he talked to people all day about health issues for his job." But Lister's doubts persisted, and so did his snooping. To lay a trap for the lover he no longer trusted, Lister posted a fake profile on the m4m4sex website. Soon Hill took the bait. Lister says he immediately ended the relationship—until a crushed Hill pleaded in a June 2000 e-mail, "You have never had, nor will you ever have, a more true person as me, the nerve of you!" It remains obscure what Hill meant, or Lister understood, by the word *true*.

In any case, Lister agreed to give love another go. The couple booked an Alaskan cruise for July—a future to commit to. But Lister's suspicions—and snooping—only escalated. Alone in their stateroom one afternoon, he riffled through Hill's briefcase. His discovery made scraps of papers with strangers' phone numbers seem petty. He found a letter from Hill's doctor referring to Hill's "being treated for HIV and AIDS wasting," Lister says. "I couldn't believe what I was reading. Not only was there a risk to my health, but he had lied to me about his status. Nothing at that point

was making sense to me about anything. About him, about our relationship, about being on this vacation together."

Not wanting to confront Hill on the capacity-crowd ship—switching rooms wasn't an option—Lister decided to wait until they returned to shore the following week. But four days after finding the letter, Lister says he developed a 104-degree fever. His muscles ached, he had no appetite and "was sicker than I've ever been in my life." He believes that's when he began to seroconvert.

Back home, Lister immediately visited his doctor and tested negative for HIV (he says he wasn't aware of the more expedient PCR test). He also confronted Hill. To Lister's shock, he says, Hill continued to deny he was positive—despite the documented evidence. "He never even said he was sorry," Lister says. Lister ended their relationship and began waiting for the other shoe to drop: HIV.

In early October, Lister read in the *San Francisco Chronicle* that Hill had resigned from the health commission. The final sentence of the article referred to Hill's having filled the seat reserved for an HIVer. Although Lister doubts that Hill's resignation had to do with his fear of Lister's going public, Monfredini later told the *Chronicle* that Hill resigned "when his problems with the alleged HIV assault were 'about to surface.'" All other newspaper reports said his resignation resulted from $3,100 in bad checks he'd passed at a Sonoma County furniture store two years earlier. There had been a warrant out for Hill's arrest since January 2000, though when it caught up with him he denied everything, according to the *Chronicle*. Hill had been convicted on a similar count in 1998 in Sacramento and was being investigated by the San Francisco DA's office for allegedly bouncing checks at several antique stores there. Hill pleaded not guilty, saying that his former boyfriend—a pre-Lister 12-year relationship—had closed out their joint account and then broken his promise to cover the checks.

When Lister read of Hill's resignation, he e-mailed Hill, wanting an admission, an apology, anything. Instead, Lister says, he got a series of e-mails from Hill saying that Lister didn't know what he was talking about. In late October, an HIV test confirmed Lister's worst fears. In December, he filed a police report and asked the San Francisco DA's office to press criminal charges against Hill. "Deep down inside I just felt [what Hill did] was wrong," Lister says. "I felt that 'Gee, if he lied to me, I wonder if he lied to other people.' And if that were the case, maybe they weren't willing to do anything about it. I felt like I had to, so I started that process."

The DA's office didn't exactly welcome Lister. They were skeptical that there were sufficient grounds upon which to proceed. Under California state law, infecting someone with HIV isn't a crime in itself. Prosecutors must prove that the accused *knowingly and intentionally* infected an unaware person—a felony punishable by up to eight years in prison. California's heavy burden of proof (found in only three other states) means the statute is rarely invoked.

In February 2001, having been foiled by the DA's office, Lister filed a civil suit. By then Hill had disappeared from San Francisco and didn't respond to the charges. In February 2002, the case was finally heard by the San Francisco Superior Court—without Hill—and Lister was awarded a $5

million default judgment (which Hill hasn't paid, claiming through his lawyer that he was never served properly with the suit). Lister continued to press the DA's office for a criminal suit, saying now, it's "a matter of principle. Ron was a health commissioner—even when I learned of his HIV status and confronted him, he denied he was positive. It just didn't feel right to me." Lister was understandably hell-bent on retribution. He says that he hoped that the man he loved—and who knowingly had unsafe sex with him—would serve jail time.

"It was a very mean-spirited thing to do to Ron," Monfredini says. "I am shocked at anyone going after someone so open about their HIV status." Hill also deemed Lister's actions vindictive, reportedly telling Fitzpatrick he "believed he was being smeared by someone with a vendetta against him." Why Lister should have a vendetta against Hill remains to be clarified.

It is no surprise that Hill, despite his incriminating disappearance, has a few supporters. What is surprising is that Lister doesn't have more. San Francisco's typically contentious gay and HIV communities have largely kept silent about this case—a silence that, as the cliché has it, speaks volumes. The moment Lister went to the DA to press charges, he placed himself, however unwittingly, beyond the pale of political correctness—and compassion. For 20 years, laws that criminalize HIV transmission have been the bête noire of HIVers, raising the specter of quarantine and worse. No matter how just his cause—and few stopped to consider that if Lister was telling the truth, then he was performing a public service by fighting to get Hill off the streets—Lister was effectively cut loose. And so, after reading about senior Republican congressional staffer Roland Foster's crusade for investigating Seth Watkins (the San Francisco Department of Public Health AIDS prevention counselor who rather courageously told the *New York Times* that he engaged in unsafe sex without disclosing his status), Lister contacted the religious right's go-to guy on AIDS, who, he says, made some phone calls on his behalf, including one to the San Francisco DA's office. Foster says that because Lister's "case did not involve federal laws, we merely acted as a resource, providing legal advice and information." Foster has condemned California's stringent law, dubbing it "pretty much meaningless."

"It never entered my mind that I was helping the right wing or the Republicans in any effort to do anything against the gay or HIV community," Lister says. "Foster was someone who was willing to provide me with support."

A man from Livermore, California, who'd read about Lister's civil case in the paper, came forward in March 2002, saying he'd had a one-night stand with Hill in March 2000. Identified in the media as Christopher M., he claimed Hill didn't disclose that he was positive and refused to wear a condom when they had intercourse. He says he tested positive for HIV a month after their meeting. Most disturbing was that Christopher M., like Lister, reported that during sex, Hill would pull him forcefully close as he had an orgasm, refusing to let go until he had come. Was this proof of intent? Was it even true?

Spurred by the civil victory, the new plaintiff and, likely, by Foster's call, the DA's office finally pressed charges last fall. "It was such an extreme case that we felt we should go ahead and try it," former DA Terence Hallinan says. Even if the prosecution didn't win the case, they would get "the

legislature to see how difficult the current burden of proof makes it to prosecute."

After a grand jury indicted him, Hill was tracked down in Grass Valley, California, in the Sierra foothills, where he'd been living near relatives. He was arrested, pleaded not guilty and spent three weeks in jail on $100,000 bail. Fitzpatrick secured his release in early October, arguing that his serious illness rendered jail time unfair punishment. Hill had "gone to Grass Valley to die," Fitzpatrick told the *San Jose Mercury News*. "He had 66 T cells. He'd gone to be with his family and…on the word of people like this, they haul him to jail. It's just tragic.'' Hill's release was conditional upon his not accessing the Internet or having sexual contact with others. Back in Grass Valley, Hill wrote a letter to the DA, saying he was "certain" he never exposed Lister to AIDS. "I am devastated,'' he wrote, "that someone who has worked in the trenches from the beginning of AIDS, one who has lived a very public life with my status trying to be a living example of living with and not dying with AIDS, I would have these kinds of lies told against me.'' A trial date was eventually set for early December.

While Hill was in jail, Lister appeared on Fox's *The O'Reilly Factor*. Conservative host Bill O'Reilly called Hill's alleged actions "staggering" and "despicable," adding, "So basically he just lied to you and didn't care." Lister was also sympathetically profiled by *People*. Then, on December 9, 2003, the Hill case went before the San Francisco Superior Court. The local dailies covered the story, but what advocates may have feared—the broad-brush tarring of all gay HIVers as potential Hills—never materialized. The allegedly ill Hill did not appear in court. Fitzpatrick raised questions about Lister's claims to a history of safe sex, referring to the barebacking film, and he pointed to inconsistencies in Lister's and Christopher M.'s testimonies, which prosecutor Greg Barge refuted. Fitzpatrick also questioned Christopher M.'s motives in coming forward after Lister had won the $5 million judgment. He characterized the accusers' liaisons with Hill as "normal relationships." Finally, he argued that even if Hill had lied about his HIV status, there wasn't enough evidence to prove that *he had intended* to infect Lister.

Judge Kay Tsenin agreed. She threw the case out, saying there was insufficient evidence to support the charges. Hallinan, once so hesitant to prosecute, now says, "That should never have happened."

Lister doesn't consider the decision a defeat, saying the media coverage has brought attention to the importance of disclosure. "It has grown into a cause for me, being able to increase awareness," he says from Tampa, Florida, where he moved to be near friends. "I hope it allows people who are HIV positive to be more comfortable in having these conversations with their sexual partner and eventually get over their fear of rejection." As for his plans, Lister says, "If the DA's office believes it is worth appealing the judge's decision, then I'm inclined to pursue it further. However, three years after filing the police report, I feel the greater good to be done is to get the law changed in…states where proving intent is an element. This way others who find themselves in a similar situation as me won't have to struggle with an ineffective law."

The right's Foster says that he "was not surprised by the outcome. Intent is an exceptionally high bar to prove, even when a suspect, such as Hill, knowingly acts in a reckless manner that

endangers others. What surprised me is that the case attracted the public's attention, was even featured in *People* magazine and gave AIDS organizations an opportunity to educate people about HIV prevention and disclosure, and they instead cowered under a rock."

"It's not our job to comment publicly on criminal cases," says Shana Krochmal, the Stop AIDS Project's communications director. "But the case did facilitate increased communication in the gay community at large and in our organization's positive men's program. [It] highlights exactly why it's important to establish stronger community norms that support disclosure. Decreasing the social stigma of HIV helps encourage change in behavior."

But according to longtime prevention activist Walt Odets, this case is less about stigma than flat-out lying—a not uncommon tactic by HIVers that springs from realistic fear of rejection by neggies. To detect whether a potential partner is telling the truth, Odets recommends that "when asking someone's HIV status, if they say they're negative, ask them how they know that. People have a whole range of answers, from 'Well, I'm probably negative because of the way I behave sexually' to 'I had a PCR last week.'"

Of course, if you hook up with an HIVer who not only lies about his status but—consciously or not—wants to infect you, Odets' advice is moot. For not only sick sociopaths and cold-blooded murderers lie. Robert Klitzman, co-author of *Mortal Secrets: Truth and Lies in the Age of AIDS*, interviewed some 70 HIVers for his book and says, "in a related study one third of gay men admitted they'd given false information about their HIV status to potential partners."

So was Hill a monster? Or was Lister on a vendetta? Or is the truth of their hit-and-run relationship somewhere in between? Lister maintains that Hill didn't win the case; four years later, Hill maintains that he's innocent. But there is no winner in this hall-of-mirrors clash. Hill, on his deathbed, has seen his legacy of public service come to dust. The gay and HIV communities have fled from the hot-potato issue. That leaves Lister, HIV positive and acutely aware of the difficulties of disclosure, and Foster, a far-right politico in bed with a gay HIVer. And justice for none.

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