

## Request for a Search and Seizure Warrant in the Matter of Mr. Richard W. Shepard's Remains

By Nels Highberg

A law enforcement officer or an attorney for the government requests the search of persons or property located in: Henderson, Texas, USA. According to the Social Security Death Index (SSDI), Mr. Richard Walton Shepard died in Henderson, Texas, on August 23, 1997. The SSDI also reveals that Mr. Shepard's father, James Lewis Shepard, died on December 2, 2006, and his mother, Ruth Scott Shepard, died on January 23, 2012. This warrant has been filed at the behest of Dr. Nels P. Highberg, a friend who learned of Mr. Shepard's death in 2001 and has been wanting to know what happened to his physical remains ever since.

Affidavits establish probable cause to search and seize property related to the case described above for the following reasons: Was he buried? Was he cremated? Was there a funeral or memorial service? Is there a place friends can go to pay their respects? Is it possible to obtain "closure" after learning what was done to Mr. Shepard's body in the days following his death? What would "closure" mean in this situation? Is this just the same old story of a man in the 1980s moving from a small town to the big city searching for love but instead encountering a virus that would incrementally destroy his body until he died in that same small town? Are these the right questions to ask more than twenty years after Mr. Shepard's death? Is there any point to searching after the passage of so much time?

Facts Establishing Probable Cause and/or the Grounds for This Search: According to testimony, Dr. Nels P. Highberg (then Mr.) met Mr. Richard W. Shepard on Saturday, March 20, 1993, at The Gaslight, an adult bookstore in the 3500-block of Bellaire Boulevard in Houston, Texas (it closed in 2010). They traveled approximately five miles to Dr. Highberg's apartment in the 1600-block of West Main and engaged in a range of consensual sexual activities and conversation before exchanging phone numbers, at which time Mr. Shepard returned to his apartment. On Sunday, March 28, 1993, Mr. Shepard called Dr. Highberg and asked him to dinner and drinks the following Friday, April 2, in the Montrose district of Houston where a range of gay bars and restaurants have been located for decades before and since.

Subsequently, the two developed a close friendship. Dr. Highberg was 23 and a student at the University of Houston. Mr. Shepard was 38 and a supervisor with a construction company in north Houston. They had much to talk about such as music, movies, and television shows. Though they maintained a regular sexual relationship, they did not consider themselves to be dating or to be a couple. They were each seeing and having sex with other men but were spending more and more time together, especially on the weekends, throughout the spring and summer of 1993.

At the time, Dr. Highberg was also dating a married man, [name redacted], who worked at [name redacted] and was a deacon in the [name redacted] church. Dr. Highberg was thirty years younger than [name redacted]. Testimony reveals that Dr. Highberg found it difficult to end the relationship, believing he should be happy a man in such esteemed positions within the community wanted to be with him at all.

Mr. Shepard encouraged Dr. Highberg to end this relationship while reminding Dr. Highberg it was ultimately his decision whether or not he would continue to put up with everything [name redacted] was doing: making Dr. Highberg wait by the phone for hours on days [name redacted] said he might be able to come by, refusing to be seen in public with Dr. Highberg if he considered Dr. Highberg's mannerisms or dress to be "too faggy," and expecting Dr. Highberg to perform oral sex on [name redacted] because he was married to a woman who was unwilling to do so (such activities were always consensual even when emotionally troubling).

Records indicate Dr. Highberg earned a BA in English from the University of Houston on Saturday, May 15, 1993; he was set to move to Columbus, Ohio, the following September to attend The Ohio State University and earn an MA in Women's Studies. Mr. Shepard allegedly believed this was an odd choice for a degree and wondered how Dr. Highberg would be able to find a job and maintain an adult standard of living with such a degree, but he also understood that this graduate program had offered Dr. Highberg a tuition waiver and employment so he could continue to live on his own.

Until September, Dr. Highberg struggled financially while working thirty hours each week earning minimum wage as an assistant in an art gallery two blocks from his home. Mr. Shepard paid for meals, drinks, movie tickets, and cover charges at area bars such as Rich's and Heaven for himself and Dr. Highberg on weekends throughout the summer. Dr. Highberg consistently expressed his gratitude until one night in late June when Mr. Shepard said, "Shut up about it already. I like you. I like spending time with you. You're leaving in a few months. Let's just enjoy being together while we can." Testimony makes clear Dr. Highberg was unsure if he would have been able to eat consistently while also paying rent and utilities let alone see any movies or go out dancing if it were not for Mr. Shepard. His electric bill, for example, was often more than the \$250 he paid monthly in rent because it was summer in Houston and running the air conditioner was necessary.

Dr. Highberg admits he enjoyed being seen with Mr. Shepard at said clubs because Dr. Highberg and others found Mr. Shepard to be especially attractive primarily due to his masculine appearance. He had bright blue eyes and a well-maintained blonde mustache. Mr. Shepard often objected to the natural changes his body was undergoing with the progression of age such as thinning hair. Dr. Highberg, however, loved running his hands through Mr. Shepard's thick chest hair and kissing the taut muscles along his neck and groin. They would occasionally visit an adult bookstore or bathhouse together. Dr. Highberg would point out to Mr. Shepard that he rarely had any problems finding a sexual partner, so he must not be as unattractive as he thought his aging body to be; Mr. Shepard counter-argued that these men were often too stupid to engage in a prolonged conversation post-orgasm.

September arrived, and Dr. Highberg prepared for his move to Ohio. He was still involved with [name redacted], waiting for the move to provide an end to a relationship he could not allegedly choose to end himself. [name redacted] was not happy he could no longer receive oral sex on Sundays in between church services and gym workouts because Dr. Highberg was at Mr. Shepard's apartment. But [name redacted] just put forth a tad more effort to visit during the week.

Dr. Highberg's journals and letters from the time reveal he found graduate school to be as terrifying and stimulating as did almost everyone else around him. He spoke to Mr. Shepard on the phone at least every other day. If Dr. Highberg called first, Mr. Shepard would make him hang up so he could call Dr. Highberg and keep the charges on his own phone bill. Every few weeks, [name redacted] would send a "Thinking about You" card; the last card arrived in March 1994. Blowjobs were not possible across state lines. Dr. Highberg spent time with Mr. Shepard over the Christmas break and spring break when he returned to Texas to see his family. They spent much of their time watching *I, Claudius* or the *Beavis and Butthead Moron-athon* while stretched across the couches in Mr. Shepard's apartment. Whenever they were apart, the phone calls continued.

In April 1994, Dr. Highberg called Mr. Shepard only to find that his phone had been disconnected. He was confused. He was afraid. A week later, Mr. Shepard called Dr. Highberg to tell him he had moved back to the small town where he had grown up in east Texas and was living with his parents again. He said the construction company where he was working had stopped paying him and other employees. He decided to leave Houston altogether. Dr. Highberg was concerned and still confused but knew there was nothing he could do. As Mr. Shepard often reminded him, they had to take responsibility for their own lives and their own choices.

Phone calls became intermittent at best. Though Mr. Shepard's mother always answered the phone politely, Dr. Highberg's testimony reveals he felt she was disgusted whenever he called, as though Dr. Highberg was a reminder of the life in the city Mr. Shepard had left behind, a life she seemed to wish Mr. Shepard had never lived. Mr. Shepard never contradicted such statements when Dr. Highberg expressed them. Mrs. Shepard would often state Mr. Shepard was out or asleep and that she would give him a message; Mr. Shepard rarely received such messages, however.

Dr. Highberg began dating Dr. Gary L. Garrison, an attorney in Ohio, during November 1994. They would move in together within a year and would eventually marry on November 2, 2005, when Connecticut legalized such unions. By that time, Dr. Highberg had earned a PhD in English from the University of Illinois at Chicago in 2003. He and Dr. Garrison had moved to Connecticut that year so Dr. Highberg could start a position as a professor at the University of Hartford where he continues to work to this day. Dr. Garrison earned a PhD in history from the University of Massachusetts in 2016.

Before Dr. Highberg had moved in with Dr. Garrison, the phone in his graduate dorm room rang. Records indicate it was early on Saturday, January 21, 1995. It was Mr. Shepard. "I'm in the hospital," he said. "I have AIDS." Dr. Highberg knew many people who were living with

AIDS and even more who had died. He was still groggy from shock and sleep, but Dr. Highberg asked about Mr. Shepard's treatment and his doctors. He asked about Mr. Shepard's family, at which point Mr. Shepard began to cry. "They've been really good to me. I was surprised, but they've been really good." Soon after, the call ended, Dr. Highberg spent the day at Dr. Garrison's townhouse.

Dr. Highberg, young enough to have learned how to engage in sexual activities without transferring the Human Immunodeficiency Virus from one person to another, was not concerned about his own health. He had had sex with men who were HIV-positive or had AIDS, but he had subsequently tested HIV-negative himself. His concern centered on Mr. Shepard. Were the doctors actually pursuing the best treatments even though no treatments at the time seemed truly effective? Was his family really caring for him? Did he feel loved? Did he feel alone? How long would he live?

Dr. Highberg last spoke to Mr. Shepard at approximately 3:30 PM on Wednesday, June 7, 1995; records show that Dr. Highberg had just turned in his last seminar paper of the quarter, an analysis of AIDS in poetry for a Queer Theory and Literature course. He was taking the bus from campus to Dr. Garrison's home and had a thirty-minute wait before his transfer would arrive. He saw a pay phone and called Mr. Shepard. His mother said he was asleep, and Dr. Highberg asked her to wake him. She sighed loudly but did so. It took a few minutes for Mr. Shepard to get to the phone. He did not have much to say about his life but asked Dr. Highberg questions about his classes, his teaching, and Dr. Garrison. Mr. Shepard stated he was happy with the details he was learning about Dr. Garrison. Dr. Highberg had to work up some courage to ask a question that had been on his mind for months. "If something happens to you," he slowly began, "would your mother know how to contact your friends?" He said, "She knows." The conversation soon ended.

Testimony reveals how Dr. Highberg often thought of calling Mr. Shepard, but he would never get past looking at the phone. He felt like a nuisance. He felt like he reminded not just Mr. Shepard's mother of his past life but also Mr. Shepard himself. Dr. Highberg felt like he was bragging when he talked about his classes, his teaching, his relationship, his future. He also felt that such topics were meaningless to someone dying of AIDS. He knew these thoughts were excuses instead of reasons. Still, neither spoke to the other again.

Dr. Highberg and Dr. Garrison bought a house together in Columbus, Ohio, in 1996. In 2001, Dr. Highberg was studying for his doctoral qualifying exams. He had spent every Saturday at the Whetstone Public Library reading for them. One August afternoon, after reading a series of articles on silent film, Dr. Highberg saw a few empty seats at the computers in the corner. He sat at one. The Internet was fairly new; social media was nonexistent. The computer's screen had links to topics such as "Find a Science Fair Project" and "Read World News." He clicked the link for "Search Your Family's History." Without much conscious thinking, Dr. Highberg followed the steps on the Social Security Death Index and searched for Mr. Shepard. His name appeared instantly. He had died four years earlier on August 23, 1997, a few weeks before he would have turned 42. Dr. Highberg left the library, rode the city bus to his home, walked in through the front door, and told Dr. Garrison, "Richard's dead."

Dr. Highberg immediately began wondering if Mr. Shepard was in a grave he could visit. He found the name of the local newspapers in the county where Mr. Shepard's parents had lived. No such thing as online archives existed at the time. He thought of making a trip to Texas to search the physical archives himself, but he called the local library first and asked for help, saying he was trying to find out what had happened to his friend, wanting to learn if there was an obituary with details. The librarian was kind, as Dr. Highberg has always found librarians to be. She took down Mr. Shepard's name and date of death and said she would call the next day. She did, but she had found nothing. She gave Dr. Highberg the name of another librarian at the closest university that had more resources than her small county library. That librarian was just as kind and just as unsuccessful.

As years passed and more information became available on the Internet, Dr. Highberg would regularly search for information regarding Mr. Shepard's remains. He never found anything. State law in Texas says no one outside of the immediate family could ask for a copy of a death certificate without family permission; Dr. Highberg knew he would never acquire such permission. Sites like Ancestry.com made thousands of documents easily available. Dr. Highberg could trace his family back to the Swedish man who immigrated to the United States through Charleston, South Carolina, in 1875. But he never found anything more about Mr. Shepard. The information he found through the Social Security Death Index has been all he has ever been able to obtain.

Dr. Highberg views this Request for a Search and Seizure warrant as his last chance to learn if Mr. Shepard is buried in a place he can visit. He tells himself he deserves to know the facts of Mr. Shepard's death, but it is more likely he feels guilt for allowing Mr. Shepard to be so alone in his final years. Dr. Highberg thinks visits to a grave every few years will absolve him.

They will not.

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