Founder’s Letter

June 1, 2005 By Sean Strub

The trend to prosecute people with HIV who have sex deemed “unsafe” (as defined by state legislatures) or without disclosing their status is terrifying.

Some HIVers serving time—such as the “serial infector” who galvanized the new French activist group Femmes Positives, described by David Thorpe in this month’s cover story—may deserve to be where they are. Lying about your status and putting someone at risk should be a criminal offense.

But this trend is not truly about state legislators targeting those people with HIV who infect others intentionally or because they lied about their HIV status. If it were, the laws would be more rational, more like what the HIV positive women of Femmes Positives are demanding in France. Instead, in many of the 24 states where it is illegal for HIVers to have unprotected sex, it makes no difference whether or not an infection takes place or whether the sex act is high, low or no risk. If you have condomless sex without first telling your partner that you have HIV, you can be prosecuted, period. In some cases, you can be prosecuted even if you do inform your partner in advance.

These laws are not written to support the fundamental tenets of HIV prevention or public- health measures. They are not even written to shift the responsibility of protection to people with HIV. They are written to force and frighten HIVers to disclose their status, not only in sexual situations, but in general, regardless of the consequences to us. They also, insidiously but inevitably, reinforce our guilt and shame about being sexual at all. Rather than stoking our sense of responsibility, they strip us of our rights, exposing how much of society may actually view us: as dangerous, irrational, untrustworthy, deserving imprisonment.

Having HIV is still profoundly stigmatizing; the initial reaction to a diagnosis is typically some level of shock followed by depression, anxiety, even panic. When you are infected by a lover who has lied to you, these feelings are only confounded.

So while I sympathize with the fury of the women of Femmes Positives, who have become activists in part to put the men who infected them behind bars, I also understand how difficult it is to disclose that you have HIV, even to a lover.

Finding the strength to share your status with intimate partners is not something that comes quickly or easily. It is certainly not something the law can effectively compel out of fear.

The creation of a sense of community among people with HIV, such as has been facilitated by the magazine you hold in your hands, has contributed greatly to giving HIVers a space safe enough to find the courage to disclose their status. And the sooner, the better; the longer one waits, the harder it is to disclose.

That is why I wonder about the men—and it is men we are talking about here, because the vast majority of infections worldwide are male to female—who may not yet know they have HIV and who lie by omission, keeping their high-risk behaviors a secret from a wife or girlfriend. Should they be put in jail?

Drawing the line between men who know they have HIV and lie to partners they infect, on the one hand, and those who are in denial, poorly educated about transmission risks or too ashamed to tell their partners their status, on the other, will be very difficult for Femmes Positives (even more so if they remain unsupported by France's gay AIDS establishment and expand their association with France's political right wing).

The development—and, yes, the tragedy—of Femmes Positives reminds us of the sexual inequality driving the global epidemic. Heterosexual marriage has been called "the main vector" of HIV transmission worldwide. The laws we need to end the epidemic are not those that criminalize transmission but those that equalize power between women and men.

The human-rights guidelines issued by the U.N.—which the U.S. has refused to sign—put it succinctly: "Laws should be enacted to ensure women's reproductive and sexual rights, including the right of independent access to reproductive and STD health information and services and means of contraception, including safe and legal abortion and the freedom to choose among these, the right to demand safer sex practices and the right to legal protection from sexual violence, including provisions for marital rape."

Empowering women to control and take responsibility for their own bodies will do much more to end the epidemic than locking up husbands and boyfriends who are too scared, selfish, angry, mean, depressed or stupid to disclose their status and protect their partners.

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