Prison Break

Is locking up HIV-positive people fueling stigma?

November 1, 2008 By James Wortman

“HIV is a virus, not a crime.”

So said Edwin Cameron, an HIV-positive South African Supreme Court of Appeal judge, in a speech at the XVII International AIDS Conference this past August in Mexico City. In earshot of some of the most influential people in the global HIV/AIDS community, Cameron discussed an alarming trend: the increase in the criminalization of HIV-positive people around the world.

Ideally, the law should protect individual rights and prevent wrongdoing in a society. And the punishment should fit the crime. Why, then, was an HIV-positive homeless man in Texas who was arrested for drunk and disorderly conduct sentenced in May to 35 years in prison? Because he spit in an arresting officer’s face, and a prosecutor said the man’s saliva was a “deadly weapon.”

Regardless of the homeless man’s potentially malicious intent—he announced his HIV status after spitting in the officer’s mouth and eye and appeared to want to hurt him—the U.S. Centers for Disease Control and Prevention (CDC) affirms that while HIV can be found in bodily fluids such as saliva, tears and sweat, contact with these fluids has never resulted in the transmission of HIV.

“The ‘deadly weapon’ the man was accused of wielding was no more than a toy pistol—and it wasn’t even loaded,” Cameron said in his speech. “Ratcheting up the [charges] because the man had HIV was thus inappropriate, unscientific and plain wrong.”

A person who points a harmless object at another person and expresses a desire to harm that person may harbor an arguably punishable malice toward another, but should he or she be sentenced with the same severity as someone who wields an actual deadly weapon—and threatens to or succeeds at killing with it?

In Zimbabwe, people can be sentenced up to 20 years in prison for the crime of “deliberate transmission of HIV” even if there is only a possibility that they are HIV positive and have engaged in anything that might present a risk of transmission. In Sierra Leone, knowingly exposing another person to HIV—whether or not the act results in transmission—is illegal. This pushes the issue too far. It’s one thing to know you are HIV positive, conceal your status and expose someone to HIV with the intent of passing along the virus, but such cases are rare. More often, people are unaware

of their HIV status or, like the aforementioned homeless man, are ill-informed about how they could possibly pass along HIV, even if that is their intent.

HIV laws that are overly harsh or too broad-reaching can make positive people feel like criminals. And when people feel like criminals they may be less likely to access care and treatment—the very treatment that could render them less infectious regardless of their actions. According to a recent statement by the Swiss National AIDS Commission, antiretroviral medications can decrease HIV transmission risk from positive people to their negative sexual partners—if they are taking their medication as prescribed and have an undetectable viral load. Wouldn't, then, overly harsh laws that may deter people from getting treatment be downright counterintuitive to the mission of protecting public health?

"These laws are a throwback to the myths and prejudices that marked the very beginning of the AIDS pandemic," says Scott Long, director of advocacy group Human Rights Watch's (HRW) Lesbian, Gay, Bisexual and Transgender Rights Program. "It's sad and sick that we are having to refight those old battles now."

As *POZ* reported in our July/August issue ("Death on the Nile"), HRW has been investigating Egyptian law enforcement's alleged torture and detainment of men who have sex with men (MSM) just for being HIV positive. Under the country's so-called "debauchery" laws, a positive status is grounds for prosecution.

Long adds, "In some cases, governments that aren't willing to put resources into effective outreach and prevention, much less effective care, simply think that throwing the law at people is a substitute for real action."

In September, *The London Free Press* in Ontario, Canada, reported that a local man, Edward Kelly, was sentenced to five years in prison for not disclosing his HIV-positive status to a woman with whom he had unprotected sex. No transmission took place, but Kelly's actions were arguably irresponsible. A prison sentence may indeed be appropriate for knowingly putting someone else's life at risk. But many other misguided legal decisions help promote institutionalized stigma of MSM, women, intravenous drug users, the homeless and others.

So when is punishment appropriate? "Criminalization is in general warranted only in cases where someone sets out, well knowing he has HIV, to infect another person and achieves this aim," Cameron said in his closing statements. Let's match the punishment to the crime and not allow fear to drive a judge or jury's decision. If the nondisclosure of other sexually transmitted viruses that can lead to death (like hepatitis B and C) were criminalized, perhaps HIV would not seem so exceptionalized and therefore, so stigmatized.

SOUNDING OFF

Over the past several years, there have been an increasing number of reported cases of HIV-positive people being charged with criminal transmission of HIV to others. We asked you what you thought. Here's what some of you said…

Patricia M. Clark, Kalamazoo, MI, diagnosed in 1991
These laws were created out of fear and ignorance. Hep C attacks the liver and can eventually cause death, yet there are no laws surrounding it. It also promotes the idea that HIV-positive people are out there, infecting others as maliciously as possible. Yes, we have all heard the extreme cases where this seems to be true, but for the most part, it is way off. Transmission among those who are living with HIV and do not know it would seem to me to be a higher social problem.

Jack R. Miller, Jersey City, NJ, diagnosed in 1994
Do I feel people deserve jail time and a lifetime criminal record for transmitting HIV to someone else? NO! I want them to do a two-year community service sentence in an area where HIV/AIDS rates are high and resources are next to none or non-existent. But being sexually active, I feel that if people are of sound mind and body, then they're responsible for protecting themselves and their sexual partners.

Nick Nicholas, Jackson, MS, diagnosed in 2007
In biblical times, lepers were required to call out "unclean, unclean" to those who approached in order to warn them away. Today, I am required by law to disclose my HIV status to any potential sexual partner. I think of this as the modern day version of that, and many do run in terror when I disclose my status. These laws serve only to further stigmatize those of us living with HIV/AIDS.

Martell Randolph, Los Angeles, diagnosed in 2000
Criminalizing those who are HIV positive does nothing to eradicate the public perception of HIV as a death sentence. People living with HIV are living healthy and productive lives and contributing to society as a whole—just like people who are negative. To equate just having HIV with committing a criminal act is more indicative of the perception of HIV, rather than its actual relationship to a criminal act.

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