HIV Panic Again Trumps Justice, Education

January 6, 2014 By Sean Strub

A Pennsylvania paper yesterday had alarming news about another case of HIV criminalization. A 25-year-old woman from the central part of the state, not far from where I live part of the time, was charged with sexual assault, simple assault and recklessly endangering another person -- because she allegedly did not disclose her HIV status to a sexual partner. The sexual assault charge alone is a second-degree felony in Pennsylvania, punishable with up to a 10-year sentence.

The article violated her privacy by printing her name and the town where she lives, thereby outing her HIV status to her community. This type of irresponsible reportage leads to a conviction in the court of public opinion before the woman even goes to trial. It is particularly cruel, since she may not be guilty of a crime, nor ever put anyone else at risk of acquiring HIV.

The article doesn't note whether her sex partner acquired HIV, but I would bet just about anything that he did not. There is no reference to whether or not condoms were used, whether she even had a detectable viral load or was even on anti-retroviral treatment. Even in the absence of condoms and the presence of a viral load, the risk of transmission from women to men in the U.S. is extremely low; only a handful of cases nationwide each year.

The truth is, many prosecutors and law enforcement personnel mistakenly believe the risk of HIV transmission in given circumstances is much greater than the reality. It is easy to blame their ignorance, but an equal measure of responsibility falls on HIV educators, the government and the media. They consistently over-exaggerate the risk of transmission from women to men and under-report how effective anti-retroviral therapy is at reducing or eliminating the risk of HIV transmission.

This exaggeration of the female to male transmission risk goes back to the earliest years of the epidemic. Some believed we had to scare straight men into thinking they were at serious risk of sexually acquiring HIV in order for the government to respond. Not only is transmission from women to men in the U.S. rare -- only a handful of cases each year -- but to date there has not been a single proven case of sexual transmission from any person with HIV, man or woman, who is known to have an undetectable viral load. There is one suspect case, in Germany, but it ultimately relies on the memory of one of the parties involved; it isn't proven.

I write in my new memoir *Body Counts* about how Dr. Joseph Sonnabend resigned as amfAR's

medical director in 1985 partly in protest over a press release they issued concerning heterosexual transmission risks. That deception created widespread misperceptions--and resulted in panics like Oprah predicting on-air that 60 million Americans would have HIV by the year 2000. Here's a link to a Simon Collery's blog post on this issue from a couple of years ago.

When we challenged this widely-held perception at *POZ*, in Patrick Califia's article, Vagina Monologues, it generated angry letters. Men who claimed to have acquired HIV from women wrote and said we were accusing them of secretly being homosexual or IV drug users.

So many HIV criminalization cases are won or lost in the early stages of an investigation or after a prosecution -- but before the trial. Sadly, in my experience it seems like most of those who get charged for non-disclosure are poorly-served by their legal counsel. The science and legal issues involved are so complex, a proper defense needs deep expertise in HIV criminalization, HIV transmission science and the issues involved in disclosing one's status.

Cases like this one in Pennsylvania show how such deceptions ultimately end up hurting us all. Charging the woman with a crime is an outrage that should be treated by HIV advocates with just as much energy and passion as we muster when a school refuses to admit a child with HIV, or an employee gets fired for having HIV. Our failure to respond similarly to unjust criminal charges against people with HIV is a mistake that ultimately only heightens stigma for us all.

My heart goes out to this woman. If she reads this, I hope she'll get in touch with me through the Sero Project and I can refer her and her attorneys to resources to help with her defense, such as the experts at AIDS Law Project of Pennsylvania, who work with people with HIV charged in this kind of case.

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