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Updates on HIV-related Case Law and Legal/Policy News

We have no recent cases from the United States Supreme Court, Eighth Circuit, the Minnesota District or Minnesota state courts. Here are some interesting cases from around the country:

From CNN.com, Man Found Guilty of Serial HIV Assaults (11/9/2004): A judge in Thurston County, Washington found Anthony Whitfield guilty of deliberately exposing 17 women to HIV through unprotected sex. Five of the women have tested positive for HIV. Williams, who is 32, faces a maximum of 137 years in prison on 17 counts of first-degree assault with sexual motivation and other charges. Health officials claim that as many as 170 people have been exposed to the virus, counting subsequent partners of women he slept with. No additional persons have tested HIV-positive however 45 people refused to be tested or could not be found. According to defense attorney Charles Lane, Whitfield was addicted to methamphetamine and used women for shelter, money and sex but did not mean to inflict “great bodily harm” as required for a first-degree assault conviction.

From kaisernetwork.org, South African Government’s “Gross Negligence” Prompted AIDS Group to Sue for Release of Treatment Timetable, TAC Says (11/5/2004): Treatment Action Campaign, a South African AIDS advocacy group, argued in court that South Africa’s “gross negligence and unconstitutional conduct” was the cause of its failure to release timetables for the rollout of its HIV/AIDS antiretroviral treatment program. The government was supposed to attach a document (“annexure A”) to its plan released in November 2003; this document provided information about the patient treatment targets and timetables as well as expectations of when the government hoped to achieve certain program objectives in specific provinces. TAC representatives had requested the release of “annexure A” some 11 times before health department informed them that the Cabinet did not adopt the document. TAC also coordinated protests by thousands of HIV/AIDS advocates in cities across South Africa to demand release of the timetables. In her affidavit, quoted in *Cape Times*, TAC Chair Zackie Achmat said, “A reasonable plan will contain time frames and targets to ensure that the quality of life and the right of life of people living with HIV/AIDS are progressively realized.” According to the *Kaiser Daily HIV/AIDS Report* dated October 27, 2004, approximately 11 percent of South Africa’s 45 million people are estimated to be HIV-positive.

From kaisernetwork.org, Maryland Comptroller Schaefer Clarifies Proposal for Public HIV Registry, Calls for Registry of “Known Givers of AIDS” (10/26/2004): Maryland Comptroller

William Schaefer (D), who recently called for a public registry of HIV-positive people in Maryland, clarified his proposal to target “those who are known givers of AIDS,” according to the *Baltimore Sun* (October 23, 2004). Schaefer stated on the Baltimore radio station WBAL that, “To me, a woman on the street, a prostitute that intentionally gives a woman AIDS, that person should be on the registry.” Maryland does track HIV cases using names however Schaefer’s spokesman, Michael Golden, stated that the comptroller wants to compile a list of persons convicted of knowingly transmitting HIV. Even though such information is already public, according to Golden the information is not “published in the way the state’s sex offender registry is.” Schaefer acknowledged on the radio that he does not expect success for his proposal.

Brown v. Johnson, 2004 WL 2335187 (Oct. 18, 2004): An 11th Circuit panel ruled that John Ruddin Brown, a prisoner living with HIV, may pursue his claim under 42 USC section 1983 against a prison administrator and doctor regarding deliberate indifference to his medical needs. Brown argued that he missed medications for prolonged periods of time due to prison negligence in maintaining inventory and that the prison doctor did not seem to be bothered by this problem. The court determined that the deliberate indifference standard under the 8th Amendment could be met in this case because Brown was not complaining about differing opinions concerning his medication but rather a total withdrawal of medication that left Brown vulnerable to serious complications from HIV infection.

United States v. Gibson, No. 04-CR-0374, plea agreement filed (W.D. Wash., 8/19/2004): An employee at a Washington state cancer treatment center pleaded guilty to stealing the identify of an extremely ill patient and then using the information to run up \$9,000 in credit card bills. According to the government this is the first identity theft case prosecuted under the privacy provisions of the Health Insurance Portability and Accountability Act (HIPPA). Gibson used the patient’s name, birth date and social security number to apply for credit cards and purchase jewelry, video games, home improvement materials, porcelain figures, gas, and groceries. Gibson pleaded guilty to a single count of wrongful disclosure of individually identifiable health information under HIPPA and through the plea agreement he will serve between 10 and 16 months in a combination of federal prison incarceration and home or neighborhood detention. He must also make restitution to the credit card companies and the patient. If the plea agreement is rejected he could be sentenced to maximum prison term of 10 years and fined \$250,000.

Wilson v. J&L Melton, Inc. d/b/a McDonald’s Restaurant, No. A04A1725 (Ga. Ct. App., 10/7/2004): A Georgia appeals court dismissed a negligence suit against McDonald’s for serving a customer blood-tainted french fries. The customer, Luenell Wilson, who noticed blood spots on the inside of her fries container causing her to vomit, claimed that she suffered emotional distress as a result of her fear of contracting HIV or hepatitis after eating the fries. The red spots on the container were confirmed as male blood by the Laboratory Corporation of America; the testing, however, consumed the sample, preventing McDonald’s from confirming the presence of blood. Wilson has tested negative for HIV and hepatitis but she continues to receive counseling for panic attacks and sleeplessness related to her fear of contracting a disease from contaminated food. The trial court granted summary judgment in favor of McDonald’s and the Georgia Court of Appeals upheld the decision noting that there was no evidence that Wilson was exposed to HIV or hepatitis. She was only able to show alleged damages for emotional distress caused by her fear of exposure to the diseases.

MAP Legal Services Case of the Month: Two MAP Clients Granted Asylum Based on HIV Status

Recently two MAP clients from Tanzania and Zambia respectively were granted asylum based on their HIV status. Both were placed for representation through our immigration clinics. Volunteer attorney Michelle Rivero represented one of the clients and Minnesota Advocates for Human Rights represented the other. To win an asylum case, an individual must show that the harm they would suffer if forced to return to their home country would amount to persecution. Lack of adequate health care, however, is generally not considered persecution. The biggest challenge in these cases, therefore, is demonstrating government culpability or connection with the denial of health care. In both of these cases MAP's immigration law clerk, Jill Dabrowski, provided significant research and case development. We are thrilled that these clients will now be able to remain in the United States, maintain health, and pursue their dreams.

For more information on HIV and Asylum see the 2004 edition of *Human Rights* magazine, entitled, "Human Rights and HIV/AIDS: Tied Together." from the American Bar Association Section of Individual Rights and Responsibilities. The issue is available online at <http://www.abanet.org/irr/hr/fall04/home.html>.

Spotlight on MAP Legal Services Volunteer: P. Arthur Moe

P. Arthur Moe retired from the Air Force after 20 years in 1980 and worked as a business consultant as well as a college adjunct professor teaching accounting, finance, marketing and management until 1993 when he entered Hamline Law School. He has been a solo practitioner in Brooklyn Center since 1996 and still teaches graduate and MBA courses in accounting and finance for Cardinal Stritch University. He received a bachelor's degree in economics from InterAmerican University in Puerto Rico and received an MBA from Southern Illinois University. Moe's legal practice is general but focuses on wills, trusts, estate planning (including business succession), elder law, medical assistance and probate, with business planning and business development as a secondary interest area. Moe can be reached at Moe Legal Services, 3300 County Road 10, Suite 514, Brooklyn Center, MN 55429-3068, (763) 585-0200, pmoelaw@msn.com.

Minnesota AIDS Project Public Policy News

Visit MAP's Web site to stay abreast of the new policy developments on the state, national and international levels at www.mnaidsproject.org/policy/index.htm#heading01. You can also keep up with the latest developments in HIV policy news by signing up for email updates of the *MAP Advocate* at the site.

The *MAP Community Forum Series* continues December 1, 2004 with *Untying Our Hands: A Different Direction for Fighting the Global Epidemic* featuring Congresswoman Betty McCollum, Minnesota Fourth District. U.S. policies and funding initiatives to address the global epidemic, particularly in Africa, have met with everything from praise to disdain. As a member of the U.S. House of Representatives' International Relations Committee, Congresswoman Betty McCollum was involved with drafting the U.S. plan for responding the global AIDS epidemic.

She has also visited African countries to learn about we could do to really have an impact. For World AIDS Day, she steps forward to challenge us all to think differently about how to stop the global AIDS epidemic. Additionally, the MAP 2004 Paul and Sheila Wellstone Lifetime Achievement Award will be presented to State Representative Karen Clark. The event takes place from 10:30 a.m. to noon at the Macalester College Student Center, Davis Lecture Hall, 1600 Grand Ave., St. Paul. Co-presented with Outfront Minnesota, District 202, and Macalester College student organizations. For more information contact MAP Public Policy at (612) 341-2060 or (800) 243-7321.

2004 HIV Resource Guide Available

MAP has copies of the *2004 HIV Resource Guide* available for free. This book contains current information about Minnesota HIV-related prevention and service programs. Services are broken down by type and a brief description is provided for each organization. This resource guide is also available on-line at www.mnaidsproject.org. Visit the [Web site](#) and then click on "HIV Resource Guide." Copies of the 165-page book are available free of charge, by contacting the MAP AIDSLine, 612-373-2437, 800-248-2437, TTY: 612-373-2465/888-820-2437, or mapaidsline@mnaidsproject.org.

Learn More About MAP Programs

During the first week of each month, the MAP AIDSLine sends out its *MAP AIDSLine Update* to subscribers involved in HIV prevention and service in Minnesota. The email newsletter includes information on HIV-related events and programs throughout Minnesota. If you wish to subscribe please contact the MAP AIDSLine at mapaidsline@mnaidsproject.org or 612-373-2437 or 800-248-2437.

People living with HIV often encounter barriers while navigating the complex health care and other service systems they need. MAP's Systems Advocates work to make these systems more responsive to the needs of those affected by HIV - through research, policy recommendations, education and training. The areas of focus are housing, women and families, corrections and substance use. Each month the Systems Advocates program publishes *Systems Works*, an email newsletter describing current activities and providing many valuable resources. If you wish to subscribe please contact Nicola Havens, MAP Systems Advocate, at (612) 373-9161 or nhavens@mnaidsproject.org.

MAP Corrections Systems Advocacy Needs Assessment Report

Nationally, rates of HIV and hepatitis C are higher in prisons than in the general population. While the recorded number of prisoners in Minnesota is low, many prisoner rights advocates believe the actual numbers are much higher. Minnesota AIDS Project's recently completed needs assessment report compiles interviews, observations and research to offer recommendations for a framework to address and serve Minnesota offenders with HIV. If you would like a copy of this report please contact Nicola Havens, MAP Systems Advocate, at (612) 373-9161 or nhavens@mnaidsproject.org.

Farewell to Staff Attorney Caroline Palmer

After five years of outstanding service MAP staff attorney is leaving our legal program to become Pro Bono Development Director for the Minnesota State Bar Association. Caroline joined MAP as a National Association for Public Interest Law (now known as Equal Justice Works) fellow in 1999. During her two-year fellowship she established the Minnesota Family Legacy Project and developed legal services for families with HIV. At the conclusion of her fellowship MAP retained Caroline to continue our work with families and provide general legal services. Caroline was recognized for her compassionate and excellent work on behalf of her clients when she was named an “Up and Coming Lawyer” by Minnesota Lawyer in 2003 and a “Rising Star” by Minnesota Law & Politics in 2004. Although we will miss Caroline, our legal program looks forward to working with her in her new capacity. Congratulations, Caroline!