

AMERICAN
UNIVERSITY

WASHINGTON COLLEGE of LAW

LAW

HEALTH LAW BULLETIN

A PUBLICATION OF THE WCL HEALTH LAW AND JUSTICE PROJECT

Volume 2, Issue 1, Jan. 2006

SPECIAL FOCUS ON THE AIDS/HIV CRISIS

What is the WCL Health Law and Justice Project?

The Health Law & Justice Project (HLJP) is a student-run organization that seeks to promote health from a rights-based approach by encouraging professional development, expanding the health law curriculum, and raising awareness of the right to health. HLJP accomplishes these goals by sponsoring panel discussions with practicing attorneys and professors; organizing community service events; and hosting “downtown practitioner meetings” which give students the opportunity to meet with practicing lawyers at their places of work to discuss current issues and career development.

HLJP Officers

Christian DeVos, Chair

Tolu Fadeyi, Co-Chair

Ellee Walker, Co-Chair

Bobbie Douglas, Treasurer

Tim Curry, Events Coordinator

Matt Berlin, Events Coordinator

Emily M. Cowley, Secretary

Liz Chien, Recruitment Coordinator

Prof. Corrine Parver, Faculty Advisor

Founders' Celebration Event: February 15, 2006 — “Women’s Health in Developing Countries: Effects of Access to and Quality of Health Care on their Economies”

The Health Law and Justice Project, in coordination with the Women’s Law Association, the International Law Society, Black Law Students Association, and the Health Law Project of the LLM Program on Law and Government, is pleased to present **“Women’s Health in Developing Countries: The Effects of Access to and Quality of Health Care on their Economies”** on **February 15, 2005 from 10:00am-1:30pm in Room 603.**

In 2000, United Nations members set forth a bold and ambitious agenda in the U.N.'s Millennium Development Goals (MDGs), namely: to promote human development and raise the quality of life for all individuals. Yet many of these MDGs—especially poverty reduction, gender equality, improvement of child and maternal health and combating HIV/AIDS—cannot be achieved without first addressing women's health issues generally. Worldwide, illnesses and deaths from poor reproductive health account for one-fifth of the global burden of disease and, each year, more than half a million women die during childbirth or due to pregnancy-related complications. A panel of practitioners in the fields of public health, international development and economics will address the extent to which investing in women's health in developing countries can help strengthen individuals' capacities to live more productive lives and break out of poverty cycles, thus promoting sustainable economic development. **A luncheon will follow the panel discussion.**

World AIDS Day 2005

By: Tim Curry, 2L

On December 1, 2005, people around the globe celebrated World AIDS Day, an international day of observance dedicated to raising awareness of the HIV/AIDS pandemic. To commemorate the event, the Health Law and Justice Project, the Black Law Students Association, the South Asian Law Students Association, and the Center for Human Rights and Humanitarian Law co-sponsored an educational display in the WCL lobby to alert students, faculty, and staff to the realities of the HIV/AIDS crisis locally, nationally, and internationally. In addition to the educational efforts, the sponsoring groups also held a bake sale, which raised over \$350 for the Whitman-Walker Clinic, a non-profit organization in DC that provides medical, legal, and social services for people living with HIV and AIDS.

In the more than two decades since AIDS was first diagnosed, scientists have made some amazing advances in treating the symptoms of HIV-infection. The sad reality of this progress, however, is that many people believe that HIV/AIDS is no longer a serious threat. While people who contract HIV are living much longer than ever before, there is still no cure for the disease and millions of people still die from it.

HIV/AIDS in Washington, DC

Many people are unaware that the HIV/AIDS crisis is worse in the District of Columbia than anywhere else in the United States. While DC's population accounts for only 0.13% of the total US population, it is home to 2% of the entire AIDS cases in the country.¹ While health officials are not required to

¹The Kaiser Family Foundation.

keep records of the number of people in DC who test positive for HIV, the virus that causes AIDS, estimates indicate as many as one in five DC residents is HIV-positive; that's 20% of the population.² This puts the city of Washington on par with some of the worst national crises in the developing world. For example, with 21.5% of its population infected with HIV, South Africa's rate is only slightly higher than that of DC. When comparing DC to other African countries like Kenya, which has an HIV rate of 6.7%, or Nigeria, which has a rate of 5.4%, the gravity of DC's predicament becomes clear. The scourge of AIDS is not just a problem of the developing world, it is an every-present crisis in one of the most powerful cities in the developed world.

AIDS is the 8th leading cause of death in the US, while in DC it is the 3rd leading cause of death.³ More strikingly, however, AIDS is the number-one cause of death for DC residents between the ages of 30 and 44.⁴

Do You Know Your Status?

One of the reasons that HIV spreads so easily is that many people who are positive do not even know that they are infected. As a result, they do not realize that they need to take measures to protect themselves or their sexual partners. You cannot be responsible for the actions of others, but you can take responsibility for yourself. The Centers for Disease Control (CDC) recommends that anyone who is sexually active—especially persons who have had three or more sexual partners within a 12-month period—should be tested for HIV at least once a year.⁵

If you are going to get tested, it is important for you to know the different ways testing may be conducted. Anyone who gets an HIV test can do so either confidentially or anonymously. In a **confidential test**, your results become a part of your medical record. Like other parts of your medical record, this information is protected, and generally remains confidential. However, once this information becomes part of your medical record—even a student's medical record at a college or university—it may be seen by people who are legally allowed to access your medical records. Insurance companies will have access to this information if you ever apply for health benefits or life insurance. Government public health officials and some employers may even be able to access this information in some cases.⁶ Any HIV test that you take at your doctor's office or that you take at the request of a potential employer, such as the US Government, is a confidential test.

The only way to guarantee that you control the test results is through an **anonymous test**. Most states have anonymous test sites, where your name is not taken and is never linked in any way to the test result. Usually, you are given a number that you must present in person to obtain the results. The only people who will know the results are those whom *you* decide to tell. The results never become a part of your medical record unless you choose to share your status with your doctor.

²The American Foundation for AIDS Research (amfAR). ³amfAR. ⁴Id.

⁵Centers for Disease Control and Prevention (CDC), www.cdc.gov.

⁶American University GLBTA Resource Center, Office of Campus Life.

The following is a short list of places in the DC Metro Area where you can find anonymous and confidential testing:

In Washington:

American University Health Center

Anonymous or Confidential

Appointment or Walk-In

Call 202-885-3380

Cost: \$30

Whitman-Walker Clinic

1701 14th Street, NW

Anonymous or Confidential

Call for HIV testing appointment:

202-332-3926

Free, \$25 donation requested

Virginia:

Alexandria Health Department

Anonymous or Confidential

Cost: Free

No appointment necessary

Maryland:

Montgomery County Health Department

Anonymous or Confidential

Cost: Free, \$10 donation requested

Appointment Required (24hrs in advance)

Call 240-777-176

For a more complete list see American University's GLBTA Resource Center website at:

www.american.edu/ocl/glbta/resources/info_hiv aids.html.

HIV Criminal Statutes

Each state has its own criminal codes and each treats HIV transmission differently under these codes. In **Maryland**, section 18-601.1 of the criminal code makes it a misdemeanor to knowingly transfer or attempt to transfer HIV to another person, which is punishable by fine not exceeding \$2,500 or imprisonment not exceeding 3 years or both.⁷ Section 18.2-67.4:1 of the **Virginia** criminal code makes it a felony to engage in sexual acts intended to transfer HIV to another person and a misdemeanor for a person who is HIV-positive to have sexual intercourse without first disclosing to the other person that he or she is infected.⁸ Furthermore, section 32.1-289.2 makes it a felony to donate or sell, or allow someone to donate or sell, blood, other body fluids, organs or tissues from someone known to have HIV.⁹ In the **District of Columbia**, there is no criminal statute specific to HIV transmission.¹⁰ However, an HIV-positive man was sentenced to a 21 years prison term in 2005 after pleading guilty to aggravated assault, child sex abuse, and cruelty to children for knowingly engaging in unprotected sex with teenage girls.¹¹

HIV/AIDS, Race, and Gender

In the early years of the HIV/AIDS crisis in the United States, the virus was most commonly associated with gay men, most notably gay white men. In the last few decades, HIV/AIDS has proven to be no discriminator or of race or gender. African Americans have been particularly hard-hit by the growing crisis. Although representing just 12% of the US population, over half of new HIV diagnoses in recent years have been among African Americans.¹² More shockingly, African American women, account for up to 72% of new HIV diagnoses in all US women.¹³ Nationwide, AIDS is among the top three causes of death for African American men between the ages of 25 and 54 and of African American women between the ages of 35 and 44.¹⁴

Conclusion

HIV/AIDS is a crisis, not only in Africa or other parts of the developing world, but right here in the United States. Ironically, the nation's capital resembles many developing world countries in its inability to combat the disease and halt the spread of the infection. One of the best ways to help prevent its spread is for every person to get tested for the virus. Knowing your status is key. Unfortunately, many people who are infected do not know it and therefore do not take the proper precautions to protect themselves or others. HIV/AIDS is not someone else's problem, it is everyone's problem. Educate yourself and do your part to help prevent the spread of the disease.

⁷HIV Criminal Law & Policy Project. ⁸Id. ⁹Id. ¹⁰Id.

¹¹Woodlee, Yolanda. "For Exposing Partners to HIV, Man Gets 21 Years", Washington Post, November 4, 2005, p. A01.

¹²2004 Global AIDS Epidemic Update, Joint United Nations Program on HIV/AIDS

¹³Id. ¹⁴Id.

TEAM WCL RAISES MONEY TO FIGHT AIDS

By: Emily M. Cowley, 2L

On Saturday, October 1, 2005, Team Washington College of Law participated in AIDS Walk Washington to raise money for the Whitman Walker Clinic. As a team with only 15 members, we raised over \$1,300! (only a little less than the regular American University team which had 48 members) After completing the walk, we celebrated our hard work with Bloody Mary's and brunch. Good times for a good cause!



Team WCL supporting the fight against AIDS in AIDS Walk Washington, Saturday, Oct. 1, 2005

Exploring the Legal Aspect of HIV/AIDS Law Today

By: Sarah Leinicke, 2L

The Health and Law Justice Project and the Women's Law Association co-sponsored an event "Legal Aspects of HIV/AIDS Law Today," to address current developments in HIV/AIDS law and policy. The event was held on November 7, 2005, a month in advance of World AIDS Day. The speakers included: Todd Pilcher, Director of Legal Services at the Whitman-Walker Clinic, and Diane Griffin, Women of Color Policy Associate at the National Minority AIDS Council. Among other topics, Mr. Pilcher addressed the impact of HIV/AIDS on Washington, DC's immigration population. Ms. Griffin spoke about the disparate impact of HIV/AIDS on women of color, and the National Minority AIDS Council's efforts to increase national dialogue surrounding women's health and HIV/AIDS. Prof. Corrine Parver, Executive Director of the Health Law Program and HLJP faculty advisor, moderated the event.

Spotlight on Professor David Chavkin

By: Mari Ferguson

If you've been able to enjoy the variety of health law classes offered at WCL, thank Professor Chavkin. After working in a variety of health law areas, Professor Chavkin helped create WCL's health law curriculum and currently teaches Health Law and directs the Civil Practice Clinic.



Both during and after graduating from UC Berkeley, Professor Chavkin worked in legal services and dealt with welfare and public benefit issues for the poor. He was involved in the first major class action suit against HMOs for violations of provisions of care requirements and, as his career continued, his focus remained on civil rights issues in health care. He fought against segregated hospitals, the failure to serve those who spoke limited English, and the failure to provide adequate care to deaf patients.

Some of his other career highlights have included Deputy for the Office for Civil Rights and Assistant Attorney General of Maryland. He was also involved with the passage of the Americans with Disabilities Act.

While the majority of jobs in health law are found representing doctors for malpractice, if you're interested in working in government as health lawyer, Professor Chavkin has a number of recommendations for you: in federal government, lawyers are needed in both the Office of General Counsel and in program jobs writing regulations and policies. At the state level, lawyers are hired by Attorney Generals where they act as counsel, develop policy, and litigate. Agencies, like Medicaid Fraud Control Units, also need lawyers with a background in health law.

When schools started to introduce health law courses, there were two ways of teaching health law: to combine health and medicine or to focus on public health. Professor Chavkin decided to combine the two schools of thought so students at WCL could understand the access and financing side of health care, as he says that area is where many students will end up practicing.

Professor Chavkin suggests taking advantage of externships in policy, trade associations and government to supplement the health care courses offered at WCL; he also advises students to take Administrative Law and not to load up on too many Health Law courses in one semester but, rather, to take one or two such courses per semester and take other classes to make yourself more marketable. If you want a hands-on experience at WCL, consider applying for the Civil Practice Clinic this Spring. Students help clients who may be fighting for access to Medicaid or may work with clients to write wills and advanced directives.

To search the externship database for health law externships, go to www.wcl.american.edu/externship/. For more information about the Civil Practice Clinic, go to www.wcl.american.edu/clinical/civil.cfm.

***Eliminating Health Disparities:
Congress Discusses the Minority Health Bill at WCL***

By: Emily M. Crowley, 2L

On November 22, 2005, HLJP co-sponsored a program entitled: "Eliminating Health Disparities: Congress Discusses the Minority Health Bill" with the Black Law Students Association (BLSA) and the Asian/Pacific American Law Students Association (APALSA).

This summer, Members of Congress in the "Tri-Caucus" (comprised of the Congressional Asian Pacific American Caucus, the Congressional Black Caucus, and the Congressional Hispanic Caucus) joined the House Democratic Leader, Nancy Pelosi, to reintroduce the "Healthcare Equality and Accountability Act," ground-breaking bicameral legislation that addresses persistent health care disparities by providing access to quality medical treatment for minority patients across the country. The bill targets issues such as lack of insurance and language barriers that often prevent minority patients from receiving timely and effective healthcare. Emily S. Ihara and Aranthan S. Jones II, two Congressional staffers involved in researching and drafting this legislation, discussed the intersection between law, policy and health in a lively, interactive discussion moderated by Prof. Corrine Parver.

Emily S. Ihara is the H. Jack Geiger Congressional Fellow in the Office of Congressman Mike Honda. Ms. Ihara initiated off the panel discussion and provided the audience with background information on the Minority Health Bill- describing the basic provisions in the bill. What was most notable was the breadth of issues and concerns covered by this legislation. Generally, this bill proposes: improved culturally and linguistically appropriate care; increased diversity in the healthcare workforce; reduction of the occurrence of disease and disease-related complications suffered disproportionately by minorities; improvement of data collection and reporting of minority health data; increased accountability of departments responsible for minority health; and strengthening of institutions that provide care to minority populations.

Ms. Ihara noted that the bill has been put on the backburner because of recent events including the avian flu and Hurricane Katrina, and that most Congress members (both Republican and Democrat) have been reluctant in signing off on this legislation because of potential cost. However, Ms. Ihara argued that this could be a cost saving measure because of the interrelatedness of the provisions of this bill and many of the crises facing this country.

Aranthan S. Jones II, Senior Advisor on Healthcare, House Committee on Ways & Means, followed Ms. Ihara's presentation and supplemented it by providing background on the political process, explaining how policies are *really* made on Capitol Hill. His presentation was powerful, energetic and thought-provoking.

Mr. Jones explained that a major challenge in reforming American health care is that the American political process focuses on how much we spend rather than what we get for our expenditures. Health care decisions are essentially life and death decisions. By focusing solely on the financial ramifications of such decisions, Congress neglects to focus on the most important aspect of health care – the human aspect. Moreover, when Congress talks about health care, it divides the issue into two categories: the public sector (ex. Medicare, Medicaid, CHIPS) and private sector insurance. Such a differentiation recognizes the existence of two separate and distinct health care systems- one for low-income Americans and one for everyone else. Are we really ok with enshrining such health care disparities? If so, we are passing legislation with racial and ethnic implications.

So, he asked: How to change the American health care system? Should it be wholesale (completely reinventing the system) or incremental? Both have ethical and logistical problems. Mr. Jones argued for a balanced approach. For example, one of the reforms he suggested was a reinvention of the U.S. tax code either to promote quality of care or support universal health care.

Ms. Ihara and Mr. Jones painted a grim albeit realistic picture of the current health care system in the United States. Reform is not out of our reach. But promoting awareness, equality and access is essential and we can all be a part of that process.

Courses for Students Interested in Health Law and Justice Spring 2006

- ***Current Trends in American Health Policy:*** Provides an overview of coverage and reimbursement issues, the legislative and regulatory processes governing the US health care system, access and quality of health care, the Medicare Reform Act and prescription drug benefits, employer-sponsored health care, problems of the uninsured, federal ERISA law and state regulation of insurance. Also considered are HIPAA and patient privacy protections, health care reform proposals (past and present), AIDS, advances in biotechnology, genetics, and other recent developments in health care policy. LAW- 719-001, Prof. Parver, 3 credits, M/W 6:00-7:20pm.
- ***Managed Care and the Law:*** An overview of the managed care area within the health care industry and a review of the fundamental concepts and attributes of managed health care including the environmental forces that led to the creation and continued evolution of managed health care. The course will provide an overview of the federal role in managed care (ERISA, Medicare, Medicaid, HIPAA), regulatory (Any-Willing-Provider statutes, preexisting conditions, appeals of coverage denials) and policy issues involved in managed care organizations (MCOs). In addition, relevant background including, but not limited to types of MCOs and an overview of federal and state regulation of managed care; MCO consumer protections such as external review; trends in managed care litigation; credentialing; accreditation of health care organizations; and contracting issues in MCOs. LAW- 719-002, Prof. Saad, 2 credits, M 8:00-9:50pm.

- ***The Law and Genetics:*** Genetics and the Law is intended to introduce students to the many ways in which the legal system, construed broadly, is influenced by and influences the science of genetics. This course also aims to introduce students to the ethical and societal concerns raised by new genetic technologies and how the law addresses these issues or may do so in the future. LAW-719-003, 2 credits, Prof. Farrell, W 8:00-9:50pm.
- ***Advanced Food and Drug Law:*** LAW-795-013, 2 credits, Profs. L. Grossman and Lambert, Tu 4:00-5:50pm
- ***Biotechnology and the Law:*** Considers the state of biotechnology, its successes, problems, and promise. It presents an overview of regulatory, legal, political, and ethical considerations of this new technology based on the manipulation and transfer of genes. The focus will be on both the coordinated regulatory framework in the United States and possible overlapping and occasionally conflicting activities of the Environmental Protection Agency, Food and Drug Administration, National Institutes of Health, and Department of Agriculture. The course will consider developing case law. Also, it will examine the international regulation of biotechnology; the human genome project, including issues of privacy, confidentiality, and genetic information; and the implications of biotechnology for intellectual property/patent law. The course will examine the legal and regulatory complexities in the United States because biotechnology is not regulated by any single law or any one federal agency. LAW-920-001, 3 credits, Prof. Cohen, M/W 4:00-5:20pm.
- ***Disability Rights Law Clinic and Seminar:*** Students in this two-semester clinic represent people with mental and physical disabilities in a variety of contexts—special education, guardianship, access to public accommodations, and international human rights settings, among others. The clinic focuses especially on the interaction between people with disabilities and the various systems that affect their lives. Students work in teams of two under the supervision of a faculty member and are responsible for all aspects of the client's case. The clinic is open to second-, third- and fourth-year students. Clinic: 4 credits, LAW-764-001, Prof. Dinerstein; Seminar: 3 credits, LAW-756-006, Prof. Dinerstein, W 9:00-11:50am.
- ***Pension and Employee Benefit Law:*** Provides an introduction to the federal regulation of the pension system and evaluates the policy underpinnings of the current system of pension regulation. It will focus on the legal rights established to protect individual employees as well as the requirements designed to produce equitable treatment for rank and file employees. Although most of the applicable requirements are contained in the tax law, we also examine certain non-tax questions, such as issues of age and sex discrimination in the pension system, medical care for retirees, and fiduciary responsibilities under ERISA. LAW-745-001, 3 credits, Prof. Abramowitz, M/W 5:30-6:50pm.

- ***Administrative Law:*** A study of the structure, powers, and processes of administrative agencies that are the source of much of our nation's law. Topics include the delegation of power to agencies, the constitutional right to a hearing, agency procedures of adjudication and rule making, information law debates, judicial review of agencies, and administrative reform. 3 credits, LAW-601-001, Prof. Varona, M/W 12:00-1:20pm; LAW-601-002, Prof. Popper, M/W 6:00-7:20pm.
- ***Fraud, Waste and Abuse in an Era of Corporate Transparency:*** Examines developments in corporate and white-collar crime. Particular emphasis is given to crimes involving financial institutions, government contractors, and companies whose manufacturing processes harm the environment. Legislation examined includes the Money Laundering Control Act; the Bank Secrecy Act; the Comprehensive Environmental Response Compensation and Liability Act (CERCLA); the Clean Water Act; the Racketeer Influenced and Corrupt Organization Act (RICO); and mail and wire fraud provisions. Attention also is given to the sentencing of corporations and individual white-collar crime defendants under federal sentencing guidelines. LAW-602-001, 3 credits, Prof. O'Neil, Th 7:30-10:10pm.
- ***Reproductive Rights:*** 2 credits, LAW-795-017, Prof. Bridgewater, Tu 10:00-11:50am.

ANNOUNCEMENTS

Founders' Celebration Events:

1. *Women's Health in Developing Countries: The Effects of Access to and Quality of Health Care on their Economies*
February 15, 2006
10am-1:30pm, Room 603
2. 2006 Administrative Law Review Symposium Program: *"Cracks in the System: The Adequacy of the U.S. Health Care Regulations in a Global Age"*
March 2, 2006
1pm-5pm, Room TBA

Downtown Practitioner Meetings:

Congressional Black Caucus Health Brain Trust

Panel Discussions:

Refugees' Rights to Health Care: Problems and Responses
Litigating Public Health Disasters: Alien Torts Claim Act & International Law
Avian Flu and the Legal Implications of Closing Borders
Big Pharma or Big Brother? Debating the Role of Pharmaceuticals in Managed Care
Euthanasia and the U.S. Constitution

If you have any questions, would like more information about HLJP or would like to join the HLJP list serve, please email hljp@wcl.american.edu.