

HIV Bias in Health Care Stuns Woman

As a person living with HIV since 1988 who also had a history of anal cancer, the woman was rigorous about her health care.

Since 2008, she had seen the same colorectal specialist at a Pennsylvania medical center who had recommended an annual anoscopy. Although she found the procedure unpleasant and it caused her anxiety, she knew it was potentially lifesaving by detecting problems early. In June 2018, she called the practice to schedule her annual procedure and was told her longtime doctor no longer worked there, so she made an appointment with another doctor.

Adrian M. Lowe, a senior staff attorney with the AIDS Law Project, said the woman discussed her medical history when she met with the new doctor. She mentioned her concern that her HIV put her at increased risk of cancer. The woman, a recently retired mental health professional, immediately noticed a change in the doctor.

"She told us that the minute she mentioned she had HIV, he sat back in his chair and his demeanor changed," Adrian said. "The client alleged the doctor told her he would not perform the procedure because it was unnecessary and abruptly ended the appointment."

It was clear to the woman that the **Continued on Page 6**

Lending a hand from Pennsylvania: A Win in N.J. Against HIV Criminalization

A determined client who believed he had done nothing wrong and two tenacious public defenders in New Jersey have struck an important blow against HIV criminalization.

A 45-year-old Asbury Park man met another man through a dating app in 2018 and the two ultimately had consensual sex three times. As the man included "treatment as prevention" in his dating profile, he believed his partner understood he was taking medication, was undetectable and could not transfer HIV to another person.

After the men talked about HIV, the partner seemed alarmed. Not long later he asked for the Asbury Park man's latest HIV test results. He texted a photo of his recent test, which showed he had no detectable level of HIV. Still, the man filed a complaint with his local police depart-Continued on Page 4



TOGETHER AGAIN: The AIDS Law Project's Team 0008 was thrilled to participate together in AIDS Walk Philly 2021 on Oct. 17, a year after everyone had to walk separately because of the Covid pandemic.

Back row, from left: Housing Attorney **Shamus Brennan**, Board Treasurer **William J. Freshwater**, Senior Staff Attorney **Adrian M. Lowe**, Senior Housing Attorney **Jeni Wright**, Jeni's daughter **Lila**. Front row, from left: Jeni's son **Jonah**, William Way LGBT Community Center Executive Director **Christopher Bartlett**, Executive Director **Ronda B. Goldfein**, Managing Attorney **Yolanda French Lollis**.

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the exterminators, a 79-year-old man who loved his apartment faced eviction. Page 2

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HOPES STILL UP FOR SAFEHOUSE

Despite legal setback at the U.S. Supreme Court, advocates for Safehouse remain confident it will prevail. **Page 6**

GILEAD LAWSUIT CONTINUES IN CALIFORNIA COURT

A suit in California court contends Big Pharma firm Gilead violated privacy of clients on HIV medications. **Page 8**



FROM THE EXECUTIVE DIRECTOR

Justice Prevails in New Jersey

Friends,

This issue of *Good Counsel* shares some exciting news from across the Delaware River: On Oct. 6, New Jersey Acting Attorney General **Andrew J. Bruck** issued guidance to prosecutors statewide to prevent inappropriate enforcement of New Jersey's HIV criminalization statute.

According to Bruck, "New Jersey's 24-year-old law criminalizing sexual activity by those living with HIV fails to recognize current realities and further stigmatizes the disease. This guidance is designed to ensure that people are not prosecuted unjustly and that we do not undermine publichealth strategies aimed at encouraging testing, treatment, and prevention."

Josh Hood and Victoria Howard, assistant deputy public defenders in Monmouth County, were defending an Asbury Park man charged with violating the New Jersey HIV criminalization law, and their efforts helped lead to the guidance.

The New Jersey law was new to Josh and Victoria when they were assigned the case, but their good judgment and common sense told them something was wrong. They reached out to the AIDS Law Project of Pennsylvania, and we provided substantive guidance on HIV criminalization. We also tagged in our colleagues at **The Center in Asbury Park, Garden State Equality, Hyacinth AIDS Foundation, North Jersey Community Research Initiative, and SERO Project** to join us in an amicus brief opposing the charges.

Despite a first-round loss in Superior Court, Josh and Victoria didn't back down, because their client didn't. Knowing he had done nothing wrong, he refused to accept a plea. With his determination and theirs, they were preparing for trial the day they heard the good news.

Please join us in applauding the Asbury Park man, Josh, Victoria, and Acting AG Bruck. We love it when the good guy wins.

Ronda

GOOD COUNSEL BY E-MAIL

Want to get the newsletter electronically? Sign up at **AIDSLawPa.org/e-newsletter**.

Bedbugs Almost Force Elderly Man From Home

The 79-year-old man was "literally crying" at the thought of having to leave his Philadelphia apartment. It was ideal for him, being near his health care providers and friends.

The landlord had told him his lease would not be renewed because he had not done enough to deal with his apartment's bedbug infestation, and he had an unauthorized person living with him. The infestation was so bad his home health aides had suspended visits.

A longtime client of the AIDS Law Project, he met with **Jeni Wright**, our senior housing attorney, to see what could be done. She quickly determined he was physically unable to comply with the long list of preparations the exterminator required before treating the apartment.

"He's frail and severely underweight," Jeni said. "He can barely bend over to tie his own shoes."

She convened a meeting with everyone involved, including the landlord's representatives, the subsidy provider, the property manager, the client's case manager, and the client. The property manager came prepared to not renew the lease.

Jeni pointed out how much support the man had at the meeting and that they came with a plan to address the problems.

She also argued that federal law protects disabled people and requires "reasonable accommodations" be made by housing providers in situations such as this.

Furthermore, she

reminded the property manager that the City Council had adopted an ordinance that went into effect in January 2021 that tenants living in government-subsidized buildings are not financially responsible for bedbug remediation. Jeni was one of the housing advocates who wrote and lobbied for the ordinance, so it was particularly satisfying for her to invoke it.

Jeni's vigorous advocacy changed the manager's mind.

The team worked hard to meet the terms for lease renewal. The extensive preparations were finally completed and a date was set for the extermination.

That left the issue of the unauthorized person living in the apartment, who the client convinced to move out.

Jeni thought the case was closed, but less than a month later he contacted her again. He had received a formal notice to vacate, with a threat that a lawsuit would soon be filed, because his friend allegedly was living in his unit again.

The client said the man was a longtime friend who frequently helped him with various household tasks, but he was adamant he did not live in the apartment. Jeni's investigation confirmed that the friend lived with his sister. She sent a strongly worded letter to the property management company, and in the end the notice to vacate was revoked and our client's lease was renewed.

As a bonus, his home health aides have returned and resumed therapeutic treatments now that the bedbug infestation is gone.



The quest for justice, even when the client is completely in the right, can often be derailed by traumatic events, including financial, health and family problems.

A 50-year-old woman living with HIV came to us in May when she was on the brink of being homeless. She had rented a room from an acquaintance who had a lease on an apartment in West Philadelphia. Although she had been paying rent to the acquaintance, that person was not paying rent to the landlord.

The landlord got a default judgment against the lease holder, who moved out instead of dealing with it, leaving our client facing potential eviction.

She called us for help and AIDS Law Project housing attorney **Shamus Brennan** was assigned her case. She explained that she could not challenge the judgment because she had already used her money to pay the rent on her room, and now couldn't afford to stay. She just needed some time to find a new home for herself and her dog.

The landlord, however, was not willing to wait for her to go, and began to illegally make the unit uninhabitable. He placed a lock on the kitchen door and turned off the electricity and water.

The client turned the service back on, but by the end of the

month the landlord had removed all plumbing fixtures from the unit including the toilet and bathtub. In desperation, our client tried to move to another unit in the building and gave a deposit to the landlord's agent, who refused to return it when he rented the unit to someone else.

"She was distraught," Shamus said.

Shamus began negotiating with the landlord's attorney, warning him of the legal consequences of the landlord's illegal eviction measures, but he couldn't reach the client. She had no phone and could only call when she could borrow one. She repeatedly missed scheduled meetings.

When the client ultimately came to our office to meet, she told Shamus that her daughter had been killed just days before the meeting and she was struggling to cope, while at great risk of homelessness.

The landlord's attorney offered \$1,500 in a "cash for keys" settlement, which Shamus was able to increase to \$2,000, but once again he had trouble contacting the client as she had been hospitalized. She was discharged in early August and able to make plans to move.

"She had been treated badly, but was pleased she finally had money and a chance to move on," Shamus said.

Disability Benefits Restored for Transgender Woman

A Delaware County transgender woman who received disability benefits told the Social Security Administration in September 2020 that she was expecting a \$14,000 personal injury settlement.

She told them about it again during an annual eligibility review in January.

Now 34, she has lived with HIV since she was 19. She had spent part of the settlement money for necessary gender reaffirming surgery, which she knew she could do and remain eligible for disability benefits.

Jacob M. Eden, senior staff attorney for the AIDS Law Project, said the woman was shocked when she got a letter in February stating that her benefits would be suspended because she receives ongoing miscellaneous payments of \$9,999 per month.

But she has never received any such payments.

"She was worried about being able to pay her bills," Jacob said. "She didn't understand why this was happening after she properly reported the settlement."

Jacob immediately appealed and requested ongoing payments until his client had a chance to present evidence rebutting the erroneous income. The field office refused, denying our client her rights under a longstanding U.S. Supreme Court case, *Goldberg v. Kelly*, to present her case before turning off her benefits.

After a dozen phone calls and faxes escalating up the chain of command, an SSA district manager agreed to provide ongoing benefits to our client until her appeal was heard. Jacob then won the appeal for ongoing benefits.

"She was very happy and grateful we were on her side," Jacob said. "She knew she couldn't have handled the situation on her own."

We're Still Remote, But Just a Call or Click Away

The AIDS Law Project is continuing to work remotely due to the Covid pandemic but remains easily accessible to our clients.

All calls to our office are answered live during intake hours (9:30 a.m. to 1 p.m., Monday to Friday) and referred to an intake advocate for a call back on the same business day. Calls after intake hours are returned the next business day. Callers may reach us at 215-587-9377 or 267-520-0024.

Requests for assistance also may be made online at https://www.aidslawpa. org/on-line-intake. We will respond to online requests within eight business hours.

Clients may be seen by appointment in our office, as necessary. We require our staff to be fully vaccinated. Staff and clients are required to wear a mask for the entire client visit.

For updates on benefits and services, go to our Coronavirus Bulletin Board at http://aidslawpa.org/coronavirus-bulletin-board/.

THE AIDS LAW PROJECT AT WORK

A Win in N.J. Against HIV Criminalization

Continued from Page 1 ment.

Ultimately, in June 2019 a local assistant prosecutor took the case to a grand jury, which handed down three counts of violating a 24-year-old New Jersey law that makes it a crime for an individual living with HIV to engage in certain sexual activity without the informed consent of their partner. Each count carried a potential prison sentence of three to five years.

Many states have similar laws that were adopted in the early days of the HIV epidemic, largely motivated by fear. The laws remain on the books even as advancements in medical treatment over the past several decades

have transformed HIV into a manageable, chronic disease.

Josh Hood and Victoria Howard, assistant deputy public defenders in Monmouth County, took up the man's case. They contacted the AIDS Law Project and were advised to make sure the man's name was not disclosed to protect him from HIV stigma. Although having a defendant's name redacted from a criminal proceeding is difficult, Josh and Victoria succeeded.

"Our experience with the AIDS Law Project was eye opening," Josh said. "It became very clear to us that this prosecution was clearly an injustice."

In March 2020, the public defenders filed an exhaustively researched motion to dismiss in Superior Court based in part on constitutional grounds. The AIDS Law Project filed an amicus brief on behalf of New Jersey, Pennsylvania, and national organizations that advocate for people living with HIV.

The Superior Court denied the



Josh Hood and **Victoria Howard**, assistant deputy public defenders in Monmouth County, relentlessy fought New Jersey's law criminalizing certain sexual activity by people living with HIV.

motion, saying it wasn't its role to rule on constitutionality or the merits of the statute.

The assistant prosecutor had offered the man a pre-trial diversion program, often an attractive option for those facing a potential prison sentence. He had no interest, saying he had done nothing wrong.

"His determination not to settle the case kept pushing us forward," Victoria said.

Josh and Victoria continued to prepare for trial and on Oct. 6 told the assistant prosecutor that their client was not interested in a deal.

Later that same day they got a call that shocked and delighted them: The District Attorney in Monmouth County, New Jersey, would no longer be pursuing criminal charges against their client.

That good news was followed up with word that New Jersey Acting Attorney General **Andrew J. Bruck** had issued new guidance to prosecutors statewide to prevent inappropriate enforcement of the HIV statute.

"New Jersey's 24-year-old law criminalizing sexual activity by those living with HIV fails to recognize current realities and further stigmatizes the disease," Bruck said in a statement. "This guidance is designed to ensure that people are not prosecuted unjustly and that we do not undermine public-health strategies aimed at encouraging testing, treatment, and prevention."

Although nothing has been said explicitly, it strongly appears that the hard work by Josh and Victoria contributed to the decision.

"We firmly believe this case influenced the decision and brought an end to these draconian prosecutions," Josh said.

All that was left was to call their client and tell him the news.

"He burst into tears," Josh said. "A tremendous weight had been lifted from his shoulders."

THE AIDS LAW **PROJECT AT WORK**

Home Health Aide Cuts **Threaten Vulnerable Clients**

A change to how Pennsylvania pays for home health aides for Medicaid recipients has put some of our clients at risk of potentially dire consequences.

Jacob M. Eden, senior staff attorney for the AIDS Law Project, said Pennsylvania once made hour determinations and paid for the aides directly. But beginning in 2018, the commonwealth began contracting with private managed care companies to do the job. The state pays the managed care company a flat rate per beneficiary, which resulted in the managed care companies cutting costs by limiting a client's home health aide hours.

The new system was implemented in phases until it covered the entire state by January 2020. Although no cuts were allowed initially, Jacob said the "gloves came off" in late 2020, as the Covid pandemic was peaking in Pennsylvania. The companies have a financial incentive to provide the minimum amount of care needed to keep clients from the more expensive option of going into a nursing home, Jacob said.

"It's brutal," he said. "It's leaving vulnerable people by themselves without help to do basic things, from preparing meals to using the bathroom."

Three recent cases Jacob handled illustrate the severity of the situation.

One client is legally blind and had been experiencing blackout episodes for unknown reasons. Based on the blackouts, he was provided with 24/7 supervision in 2019. After an annual review in December 2020, his overnight hours were cut.

Five nights after the reduction, he had a heart attack in the

middle of the night. It was only once the morning home health aide came that an ambulance was called

Another client with a traumatic brain injury needed supervision and support for daily living activities. His hours were reduced earlier this year from 16 a day to four a day.

In a case Good Counsel reported in the Spring 2021 issue, a double amputee had her eight-hours-a-day, sevendays-a-week of home aide cut in half.

In each case the clients were distraught, fearful, and unsure how they were going to be able to cope with the basics of daily life without the assistance they previously received. In each case they tried unsuccessfully to appeal the cuts before turning to the AIDS Law Project.

Iacob also had numerous appeals denied before he started negotiating directly with the legal departments of the managed care companies, armed with medical records and letters he had collected from primary care providers.

Jacob said the Covid pandemic also may have exacerbated the situation. A yearly, in-home assessment is required to qualify for the benefit, but it had been suspended in favor of phone assessments, which may not accurately reflect reality.

"There is something important about actually going into a home, seeing the person and understanding what their needs are," Jacob said.

Ultimately, Jacob was able to have each client's original home health aide hours restored to their great relief. But he has little doubt that there will be more battles to fight on this front.

ABOUT US

WHAT WE DO

The AIDS Law Project of Pennsylvania is a nonprofit, public-interest law firm. We publish Good Counsel semiannually for our friends, volunteers and colleagues committed to protecting the rights of people with HIV and those at risk of HIV. Last year, we worked on 1,741 legal issues for 996 clients, nearly all people with HIV. We help people navigate the legal system, the welfare system, the housing system, and the worlds of public and private insurance. We provide education and training to professionals who work with people living with HIV.

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HOW TO HELP

Remember us at workplace giving time. When you donor-designate in your workplace giving campaign, remember your neighbors served by the AIDS Law Project of Pennsylvania.

United Way of SEPA: Specific Care Option #09067 Combined Federal Campaign: Donor Option #36027

THE AIDS LAW PROJECT AT WORK

Safehouse Renews Fight

overdose prevention services that the nonprofit Safehouse wants to bring to Philadelphia remain confident it will prevail, despite a challenging legal landscape.

Supreme The U.S. Court declined on Oct. 12 to review the split decision of the U.S. Court of Appeals for the Third Circuit that blocked Safehouse from opening the first supervised consumption site in the country. That decision overturned a District Court judge's ruling that Safehouse's proposed activities would not violate federal law.

Safehouse vice president, AIDS Law Project's executive director Ronda B. Goldfein, said it would now return to the District Court to pursue claims not previously litigated, including that the religious beliefs of Safehouse leaders compel them to save lives during the overdose epidemic that has ravaged Philadelphia and the nation.

As that litigation proceeds, the Biden administration will be required to take a position, which it avoided by waiving its right to respond to the Safehouse petition to the Supreme Court, she said.

In 2020, the opioid overdose crisis killed 1,214 people in Philadelphia. Reported drug overdose deaths in the U.S. hit a record high of more than 96,000 in the 12-month period ending March 2021, accord-

Advocates for the life-saving ing to data released Oct. 13 by the U.S. Centers for Disease Control and Prevention's National Center for Health Statistics.

> Safehouse was founded in 2018 with the goal of opening an overdose prevention site, including safe consumption and observation rooms staffed by a medical staff prepared to administer overdose reversal if needed. More than 100 sites have existed in Europe, Canada and Australia for over 30 years.

> "The ongoing litigation around Safehouse has led more people to think about supervised consumption sites and the role they can play in fighting the overdose epidemic," Ronda said.

> Safehouse's medically based model would provide a range of services, including on-site initiation of medically assisted treatment, recovery counseling, education about substance use treatment, basic medical services and referrals to supporting services such as housing, public benefits and legal services.

> "We promised families who lost a loved one to opioid overdose that lawful supervised consumption would one day be available in the U.S. for those in need, sparing another parent, sibling, cousin, or friend the pain of a preventable death," Safehouse said in a statement. "We are moving forward to fulfill those promises."



Photo by Ailish Dougherty

A dancer dazzles the audience with his aerial moves during a performance of Rub Harder by the physical theater troupe Brian Sanders' Junk on Oct. 16. Despite intermittent rain, more than 100 people turned out for the benefit for the AIDS Law Project. They were treated to a show that included acrobatics, tenderness, and lots of humor in the parking lot outside Junk's space at 2nd and Spring Garden streets in Philadelphia. For a list of sponsors who helped make the event a success, go to www.aidslawpa.org/ wp-content/uploads/2021/10/Sponsors.mp4.

Continued from Page 1

doctor did not want to treat her because she had HIV. She'd had a similar incident with a dentist in the 1990s but had thought the medical profession had progressed since then.

"She was in disbelief," Adrian said. "She was angry."

She filed a complaint with the medical center's patient relations department and received a response mischaracterizing her complaint as an issue of poor bedside manner, not HIV discrimination. They offered her two \$5 gift cards to a grocery store as a gesture of good will.

That's when she contacted the AIDS Law Project.

Meanwhile, her digestive disease specialist referred her to a new provider, who performed the anoscopy and removed suspicious specimens for biopsy. Lab tests confirmed they were pre-cancerous. The new doctor's treatment plan for

our client includes a twice-annual anoscopy.

Adrian wrote to the medical center and doctor offering them an opportunity to resolve the case prior to litigation.

When the medical center continued to mischaracterize the incident as an issue of bedside manner, Adrian filed a complaint in December 2018 with the Pennsylvania Human Relations Commission, which launched an investigation.

The commission's process was slow and cumbersome, and the medical center fought the complaint at every stage.

Finally, in November 2020, the medical center agreed to settlement mediation. On Dec. 14, 2020, a session before a commission mediator ended with a financial settlement. Even then, the medical center took seven months to pay the woman.

"She's still mad at them, but she's glad it's over," Adrian said. "She feels vindicated."

THE AIDS LAW PROJECT AT WORK

Covid Complicates Assistance on Advance Planning

Helping our clients to prepare advance planning documents has always been an AIDS Law Project priority.

We held a series of "Will-o-Rama" clinics this year after requests grew for medical advance directives and estate planning as the Covid pandemic raged on.

We had lengthy phone conversations with clients to document their wishes, but in-person meetings are needed to complete the documents. Each requires two witnesses, and some require a notary seal. With our staff working remotely, it was a challenge to assemble the personnel needed to complete the documentation.



From left at the May 13 Will-O-Rama are paralegal and notary **John C. Marrero**, senior staff attorney **Adrian M. Lowe**, paralegal **SayBria Nelson**, and our client **Daniel Angelis** and his partner **Bill Kaisla**.

Clinics were held on May 13, July 15 and Sept. 30. Meetings were carefully scheduled to minimize the number of people in our office and allow time to clean the surfaces in the conference room. The counseling, review, and drafting were done in advance by email, postal mail, over the phone, and via videoconference.

A total of 16 clients, ranging in age from 32 to 78, received multiple documents.

INSIDE THE AIDS LAW PROJECT



WELCOME: Emilia Martinez has joined the AIDS Law Project as our data entry specialist. She is a senior at Temple University.



WELCOME: We are overjoyed to have a new member of our extended family. Nia Alexandria Migisi Lollis was born Sept. 2 to parents Jordan Caldwell Lollis and Faith Ochenge Lollis. Proud grandmother Yolanda French Lollis is our managing attorney. **THANK YOU:** Our summer interns were an immense help in serving our clients. Below, from left, **Linnea Kelly** is a second-year student at Temple University Beasley School of Law, **Evelyn Mangold** is a third-year student at the University of Pennsylvania Law School, and **Cydney Murray** is a second-year student, also at Temple.



FAREWELL: Rebecca R. Richman, who oversaw special projects for the AIDS Law Project, has left to pursue other opportunities. We thank her for her work and wish her well.



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Please dig a little deeper

For more than a year, we have conducted AIDS Law Project business as (almost) usual. But this comes with an unexpected cost. Equipping our staff to work remotely has been a big expense.

Please consider digging a little deeper for our Fall appeal. And if you can give us a larger gift, we'll return the favor. For each gift of \$250 or more, we will send you a snazzy AIDS Law Project of Pennsylvania T-shirt. As modeled by our receptionist **Arlene Vasquez**, the T-shirt reads "AIDS Law Project of Pennsylvania" on the front and "AIDS is Hard Enough, Justice Shouldn't Be" on the back. T-shirts are available in white or black, crew or V-neck. Sizes run from small to 2XL. Please specify your color, cut, and size. Supplies are limited.

Use the envelope in this newsletter to order or go to www.aidslawpa.org and click on the "Donate" page.

Lawsuit Against Gilead for Privacy Breach

An Alabama man was mortified when an envelope for him turned up in his workplace mailroom with the return address *HIV Prevention Team* in bold red letters. An Indiana man, so protective of his confidentiality that he fills his HIV-related prescriptions at a different pharmacy chain from where he gets his other medications, was shocked to receive the same mailing. And a Missouri man, who lives in a 22-unit apartment building, found the mailer addressed to him in plain view on top of the residents' mailboxes.

These are just three instances in which the mailing from California-based Big Pharma firm Gilead Sciences alarmed recipients. Gilead develops and sells prescription drugs,



including those for the treatment and prevention of HIV. Its drugs include Truvada and Descovy, the only ones available for the prescribed medication regimen known as pre-exposure prophylaxis (PrEP) for people who want to avoid contracting HIV. The company maintains a patient-assistance program to provide free or discounted PrEP to enrollees, who were guaranteed confidentiality.

The three men are now plaintiffs in a lawsuit against Gilead for violating their privacy filed in California Superior Court by the AIDS Law Project of Pennsylvania, joined by the law firms **Berger Montague** and **Langer Grogan & Diver**. The lawsuit demands Gilead reform its mailing procedures and pay monetary damages to the plaintiffs.

As the case is litigated, those affected by Gilead's privacy breach should contact the AIDS Law Project at 215-587-9377. Additional information about the lawsuit is available at www.aidslawpa. org.