

# The Ninth Gordon Ransome Oration — Some Medico-Legal Aspects of Aids

by Professor Tommy Koh, Singapore's Ambassador to United States of America

Mr Deputy Prime Minister, Dr N C Tan, the Master of the Singapore Academy of Medicine; Dr Lim Say Wan, the Master of the Malaysian Academy of Medicine and the President of this Congress; Dr Chee Yam Cheng, the Chairman of the Organising Committee; Professor Michael Oliver, the President of the Royal College of Physicians, Edinburgh; Ladies and Gentlemen,

It is a great honour for a lawyer to be invited to address this distinguished gathering of doctors. As you know, lawyers are not often the objects of love or other lesser but still positive feelings by doctors. It is also very gratifying to have been invited to deliver a lecture in memory of the late Professor Gordon Ransome, whom I had the pleasure of knowing and whose diagnostic skills were legendary. My credentials for delivering this oration are extremely meager. The little knowledge of medicine that I have learnt was mainly from my wife, especially during her fifth and sixth years as a student in the local medical school. She used to come home so exhausted from her hospital rounds and lectures that she had great trouble concentrating on her text books in the evening. I used to read her text books aloud to her and, in the process, absorbed a little knowledge about medicine. But, as they say, a little knowledge is a dangerous thing. Sometimes, when my wife's friends called to complain that they were not feeling well, I could not resist the temptation to ask them for their signs and symptoms and, on a few occasions, even volunteered a diagnosis and prescription. My wife has often warned me that one day I may be prosecuted for practising as a quack!

## Acknowledgements

I shall now turn to the topic of my oration. I would like to begin by acknowledging my intellectual debt to the report, "Confronting AIDS" by the Institute of Medicine of the US National Academy of Sciences; to the US Surgeon General's Report on AIDS; to the Report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic; to the World Health Organization; to Dr Ong Yong Wan's paper "AIDS in Singapore" and to Miss Eleanor Wong's paper on the "Legal Implications of AIDS".

### *World's Greatest Public Health Threat*

The Report of the US Presidential Commission has described the human immunodeficiency virus as presenting "the world community with the greatest public health threat of this century".<sup>1</sup> The virus appears to be of relatively recent origin. In 1980, small numbers of patients in several widely separated locations sought treatment for an unusual pattern of disease symptoms.\* In all cases, their physicians found that even the most aggressive treatment proved ineffective in controlling the unusually virulent infections. Many patients had Kaposi's sarcoma, a skin lesion usually benign, but aggressively malignant in these patients. Others had pneumocystis carinii pneumonia, a rare lung infection. Many patients had both, and all were unresponsive to treatment and rapidly died. The cause of the disease, now called the human immunodeficiency virus (HIV), was first identified in France and the United States in 1982.

### *Size of Problem*

Today, of the 175 countries which report to the World Health Organization, 136 have recorded cases of AIDS.<sup>3</sup> It is estimated that between 5 and 10 million people worldwide are currently infected with HIV.<sup>4</sup> In the United States alone, by 6 June 1988, the number of AIDS cases reporting to the Centers For Disease Control (CDC) totalled 64,506.<sup>5</sup> The CDC has estimated that between 1 million and 1.5 million Americans have been infected by the HIV.<sup>6</sup> AIDS has become the leading cause of death in New York city among men from 25 to 44 and for women from 25 to 34.<sup>7</sup> By 1992, about 500,000 Americans will have died or progressed to the later stages of the disease.<sup>8</sup>

### *Regional Patterns of AIDS*

Three patterns of AIDS are discernable in the world.<sup>9</sup> First, in North America, parts of South America, many Western European countries, Australia and New Zealand, most AIDS cases occur among homosexual and bisexual men and urban intravenous drug abusers. Second, in most of Africa and parts of the Caribbean, most cases occur among heterosexuals. Third, in Eastern Europe, the Eastern Mediterranean, Asia and most of the Pacific, only small numbers of cases have been reported thus far. In Singapore, there have been 22 reported cases of HIV infection; 21 males and one female.<sup>10</sup> Four have died, 18 are still alive. Of the four who have died, 3 were homosexuals and 1 contracted the disease through infected blood transfusion whilst undergoing surgery overseas.

### *Aids Defined*

The acronym "AIDS" stands for Acquired Immune Deficiency Syndrome. The evidence that AIDS is caused by HIV is scientifically conclusive. The virus attacks a person's immune system and damages his or her ability to fight other diseases. Without a functioning immune system to ward off other germs, he or she becomes vulnerable to infection by bacteria, other viruses and malignancies, which may cause life-threatening illnesses. There is, at present, no cure for AIDS and no vaccine to prevent AIDS.

### *HIV and AIDS*

According to the report of the US Presidential Commission, the term AIDS is becoming obsolete and the problem is more correctly defined as "HIV infection". The reason is that AIDS focusses only on the later stages of the disease. The CDC has divided HIV into four mutually exclusive groups based on a presumptive chronology of infection and the presence of clinical findings.

### *HIV Infection Aids*

Do all persons who are infected with HIV develop AIDS? Current information suggests that the vast majority of persons who carry antibodies for HIV will eventually progress to AIDS." A group of homosexual men in San Francisco has been studied for the longest time because samples of their blood were available from earlier hepatitis research.<sup>12</sup> After 8 years, more than 40% of the HIV-infected members of the group have developed AIDS. A similar proportion has developed symptoms of HIV infection and is expected to progress to AIDS. Mathematical modelling of the incidence of AIDS in this cohort predicts the possibility that 100% will develop AIDS within 13 years after the initial infection.

### *How is the HIV Transmitted?*

HIV is transmitted in the following 5 ways.<sup>13</sup> First, through sexual contact. Second, through the use of contaminated needles or syringes. Third, through exposure to infected blood or blood products. Fourth, through receiving the tissues or organs of an infected donor. Fifth, from mother to child across the placenta or during delivery.

### *Sexual con tact*

HIV infection can be transmitted from man to woman and from woman to man through vaginal and anal intercourse.<sup>14</sup> Heterosexual transmission of HIV is an established fact. Although the present number is small, cases acquired through heterosexual transmission constitute the fastest growing group in the United States. In the United States, the epidemic began in a few cities, within a closed community of mainly homosexuals who practised high risk behaviours such as multiple partners.<sup>15</sup> In Africa, HIV infection appeared in great numbers first in the heterosexual community.<sup>16</sup> Prostitution appeared to have played a major role in its spread. Prostitution is not uncommon in some urban areas in Central and East Africa and the prevalence of HIV infection among the prostitutes tested in those areas is quite high (25% to 88%).

### **Intravenous Drug Abusers**

Studies of intravenous drug abusers have shown an association between HIV seropositivity and both the frequency of drug injections and the sharing of drug injection equipment.<sup>17</sup> Several studies have shown that once HIV is introduced into a community of intravenous drug abusers, its spread is rapid and the majority of the community soon become infected. In the United States, intravenous drug abuse by HIV-infected persons, pose the greatest danger that HIV will reach epidemic proportions in the general heterosexual population." The explanation for the danger is the following. 90% of all intravenous drug abusers are heterosexuals. 30% of this population comprises women. Between 30 and 50% of female intravenous drug abusers have engaged in prostitution. Thus, there exists a possibility that a pool of infected prostitutes might be created. HIV infection could then enter the heterosexual community through the male customers of female prostitutes.

### *Exposure to Infected Blood or Blood Products*

According to the report, "Confronting AIDS", between 66 and 100% of blood transfusion recipients became infected if donors either tested positive for antibodies to HIV or later became antibody positive or developed AIDS.<sup>19</sup> Thus, the large dose of the virus which transfusion represented, coupled with this particular route, appears to be a very efficient transmission path. Since August 1985, the Blood Transfusion Service in Singapore has introduced HIV antibody testing on all donated blood.<sup>20</sup> In 1986, in order to reinforce the safety of the blood bank, interviews with

donors with high risk behaviour have been implemented. Donors have also been asked to sign a form stating that they have not made any false declaration. According to Dr Ong Yong Wan, the Head of the Singapore Blood Transfusion Service, between August 1985 and 31 March 1988, 158,366 units of blood had been tested. Of these, 6 HIV positive donations were detected. According to the Surgeon General's Report, blood banks are as safe as current technology can make them.<sup>21</sup> However, because antibodies do not form immediately after exposure to the virus, a newly infected person may unknowingly donate blood after becoming infected but before his or her antibody test becomes positive, Dr C Everett Koop has estimated that this might occur less than once in 100,000 donations.

#### *Some Fallacies about HIV Transmission*

There are many common fallacies concerning HIV transmission. The US Surgeon General's Report has identified several of these.\*\* First, you cannot get AIDS from casual social contact, for example, shaking hands, hugging, crying, coughing, sneezing, swimming in pools, or eating in restaurants (even if the restaurant worker has AIDS or carries the HIV virus). Second, you cannot get AIDS by sharing bed linens, towels, cups, straws, dishes, eating utensils, toilets, telephones, office machinery or household furniture. Third, you cannot get AIDS by donating blood. Fourth, there is no danger of AIDS infection from visiting a doctor, dentist, hospital, hairdresser or beautician. Fifth, there is no danger in visiting a patient with AIDS or caring for him or her. Normal hygienic practices, like wiping for body fluid spills with a solution of water and household bleach will provide full protection. Sixth, there are no known cases of AIDS transmission by insects such as mosquitoes. Seventh, dogs, cats and domestic animals are not a source of infection. Eighth, although the HIV has been found in tears and saliva no instances of transmission from these fluids has been reported.

#### *Should Aids be made a notifiable disease?*

In Singapore, AIDS has been listed in the schedule to the Infectious Diseases Act of 1976. This was done in April 1985, "to facilitate surveillance and monitoring and to establish a case reporting system".<sup>23</sup> As part of surveillance and monitoring, testing is carried out on various groups. Male prostitutes are tested for HIV antibodies monthly and female prostitutes are tested every 3 months. A Communicable Disease Centre at Tan Tock Seng Hospital has been established as the centre for clinical evaluation, treatment and follow-up of AIDS patients and for those with AIDS-related conditions. Facilities for in-patients and outpatients are available. Outpatient follow-up is also provided at the Middle Road Hospital.

The Infectious Diseases Act confers on the Director of Medical Services and his staff the power to require any person to be medically examined; the power to require a person to undergo treatment; the power to remove any person who has failed to submit to test or treatment to a hospital; and the power to detain and isolate anyone suspected to be a carrier or contact.<sup>24</sup> The Singapore law requires any person, including a doctor, who suspects anyone of suffering from or being a carrier, to report that person to the Director. This duty overrides the confidentiality of the doctor-patient relationship.

The United Kingdom has not classified AIDS as a notifiable disease. In the UK, in order to obtain an order to detain an AIDS patient, the local authority must either show that he will not, on leaving the hospital, have suitable accommodation in which proper precautions could be taken to prevent the spread of the infection or prove that if the patient left the hospital he will not take proper precautions to prevent the spread of AIDS either at home or anywhere that he might be expected to go. The situation in the United States is generally similar to that in the UK.

#### *Confidentiality of HIV Information*

In the United States, it is feared that if the law requires the reporting of those infected with the HIV to public authorities in order to trace sexual and intravenous drug contacts, those infected with the virus will go underground and out of the mainstream of healthcare and education. For this reason, the current public health practice in the United States is to protect the privacy of the individual infected with the HIV and to maintain the strictest confidentiality concerning his or her health records. The rights and interests of the individual must, however, always be balanced against the rights and interests of others. For this reason, the report of the Presidential Commission has recommended the enactment of a federal statute that will carefully balance the need for confidentiality of HIV information against the protection of the public health.<sup>25</sup>

The Commission upholds the view that confidential HIV information should not be disclosed without the written consent of the individual except under the following circumstances. First, to the members of the team comprising doctors, nurses and others, which is providing healthcare to the patient. Second, to healthcare workers who have been accidentally exposed to the blood or blood contaminated body fluids of the patient. Third, for statistical reports if used

in such a way that no person can be identified. Fourth, to health authorities for epidemiological or patient notification purposes. Fifth, to blood, organ, semen or breast milk banks that have received or will receive blood, organ, semen or breast milk from the patient. Sixth, to a spouse or sexual partner when the patient will not inform such party regarding his condition. Seventh, to the victim of a sexual assault by the patient.

The Commission acknowledges that adherence to the principle of confidentiality does not relieve one of responsibility to protect those who may unknowingly be in immediate danger of being exposed to the HIV. Notification to third parties at risk is an instance when the confidentiality of HIV-related information may be breached.

#### *Discrimination against HIV-Infected Persons*

Can a prospective employer in Singapore require a candidate to undergo a test for AIDS? The answer is yes. Can a prospective employer refuse to employ a HIV-infected person? The answer is in the affirmative. Can an employer dismiss an employee on the ground that he or she is infected with HIV? Eleanor Wong has argued that "the AIDS victim could challenge a premature dismissal as wrongful if it is based solely on the fact that he has AIDS. The situation would of course be different if the victim can be shown to be guilty of some misconduct or the disease has so debilitated him as to render him unfit for work."<sup>26</sup>

Because of the larger number of persons, in the United States, who have been infected with the HIV, the issue of discrimination against them has taken on an importance which does not exist in Singapore. The Report of the Presidential Commission states that, "In general, because HIV is blood-borne and sexually transmitted, there is no need to treat those infected with HIV in a manner different from those not affected in such settings as the workplace, housing and the schools. Therefore, discrimination against persons with HIV infection in the workplace setting or in the areas of housing, schools and public accommodation, is unwarranted because it has no public health basis."<sup>27</sup>

#### *HIV Transmission and Criminal Law*

Extending criminal liability to those who knowingly engage in behaviour which is likely to transmit the HIV to others is consistent with the criminal law's concern to punish those whose behaviour result in harmful acts. In Singapore, as Eleanor Wong has argued, a HIV-infected person can be prosecuted for murder or attempted murder if he does an act with the intention of causing death or knowing that the likely result of his act is the causing of death. He can also be prosecuted for causing hurt, which is defined to include disease, or grievous hurt, which is defined to include any hurt which endangers life. He could also be prosecuted for cheating.

In reviewing the application of traditional criminal law to HIV infection, the Presidential Commission came to the conclusion that, "use of traditional crime such as murder or attempted murder to prosecute an individual for HIV transmission presents such difficulties as proving that the intent of the HIV-infected person was to cause the victim's death and proving that the act of transmission was the actual cause of death. Although the assault model provides a more useful tool for criminal prosecution of HIV transmission, the penalties for assault would prove too lenient in those cases where the transmission was intentional."<sup>28</sup>

The Commission recommends the adoption of a criminal statute directed to those HIV-infected individuals who are likely to result in the transmission of HIV. The statute should impose on HIV-infected individuals who know of their status, specific affirmative duties to disclose their condition to sexual partners, to obtain their partner's knowing consent, and to use precautions.

#### *HIV Transmission and the Civil Law*

An AIDS carrier is open to civil suit for damages brought by the dependent or estate of a person who contracts AIDS from him and subsequently dies. Damages could include loss of earnings or income and for costs of medical care and treatment. However, in order to succeed, the plaintiff must prove that the defendant either intentionally inflicted hurt on the victim or knew or ought to have known that he or she had AIDS and failed to take reasonable precautions against transmitting the virus.

### **Conclusion**

During the last 40 years, the world has made tremendous progress in its war against infectious diseases. Many of the dreaded diseases of the past, such as smallpox, have been eradicated. The sudden appearance of the HIV and AIDS epidemic and its exponential growth have shaken our confidence in medicine's ability to conquer disease.

The epidemic has raised some of the same issues which the world had to grapple with in previous epidemics, for ex-

ample, the balance between individual liberties and the public good, the responsibilities of physicians towards their patients, and the proper role of education in changing the behaviour that spreads the disease. Each society must find its own answers to these questions, partly on the basis of universal principles of medical ethics and humanity and partly, on the basis of its own culture and values.

The world has become such a small and interdependent place that the fight against the HIV and AIDS epidemic cannot be undertaken by any country alone. At the 1986-1987 World Health Assembly, the world's leaders acknowledged that the epidemic required a global strategy. The Assembly charged WHO with providing the leadership in the international fight against AIDS. WHO has established the Global Programme on AIDS (GPA). GPA, in conjunction with UNDP, is coordinating the Global Blood Safety Initiative to safeguard blood supplies from the HIV and other pathogens.

AIDS is a terrifying disease in that it is fatal and the patient appears to be infectious for life. It is, however, a preventable disease. It can be controlled by changes in personal behaviour. The fact that there are comparatively few cases in the countries of East and South-East Asia is ample proof of this. Governments have the responsibility to inform their citizens about AIDS and citizens have the responsibility to avoid high-risk behaviours which would expose them to the virus. The spread of AIDS is neither inevitable nor unstoppable.

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