2008-2009 Report of the AIDS Legal Project  
Duke University School of Law

I. Overview: In the 2008-2009 academic year, 24 students in the AIDS Legal Project represented clients under the supervision of Duke Law School clinical faculty members. Low-income HIV positive clients received high-quality legal assistance in 207 cases involving benefits advocacy, estate planning, guardianship planning, discrimination and breaches of confidentiality. Students met with clients at the law school and throughout the state at medical clinics, AIDS services agencies, and at hospital bedsides. Client and students alike benefited from the work of the AIDS Legal Project. As students navigated the complexities of their clients’ legal needs, they developed as professionals, honing their legal judgment and leadership skills while mastering the practical skills and substantive law necessary to effectively represent their clients.

II. Impact of the Project’s Work on Clients and Students: More than 20 years into the AIDS epidemic, fear, stigma, and misinformation still abound in our communities. The law strikes an uneasy balance between protecting the public health and the rights of people infected with HIV. For the broader community, there is an urgent need to stop the spread of the disease. For people living with HIV, there are also concerns about privacy, autonomy, and discrimination, along with a desire to live a full and productive life in the best possible health. Cases handled in the clinic reflect these broader client goals and concerns.

1. Discrimination: Students in the clinic handled several HIV discrimination cases this past year involving the application of North Carolina law as well as the federal Americans with Disabilities Act and the Rehabilitation Act of 1973. Because of their HIV infection, several clients experienced discrimination: One client was refused treatment by a health care provider, another was denied admission to a massage school, yet another lost his professional license, and two clients were fired from their jobs—one as a restaurant waiter and the other as an aide in a rest home. One case is still on-going, but in each of the remaining cases, the students achieved some measure of justice for their clients. The two employers and the massage school agreed to undergo training on the causes and transmission risks of HIV and to adopt anti-discrimination work-place policies, in addition to paying damages to the clients. One client re-gained his professional license.
Students were given primary responsibility for handling these cases. In order to effectively represent their clients, students had to work with them and others to gather the facts, analyze the applicable law to develop a legal theory, and figure out a strategy to achieve positive results for the clients. This always involved the often sensitive task of interviewing and counseling clients who had been stung by the discrimination they had experienced. Once the students understood the facts and the law, they communicated the clients’ demands to the discriminator through a persuasively worded demand letter followed by a period of negotiation. In some cases, the students had to resort to litigation which involved drafting a legal Complaint, filing and responding to Motions and conducting discovery before reaching the desired result for the client.

2. **Breaches of Confidentiality:** Because of the fear of discrimination, most of our clients keep their HIV status extremely private, often telling only one or two people in addition to their medical providers. This year, clients had their medical privacy breached in a number of settings including a doctor’s office, a hospital emergency room, a case management agency, and a school setting. In working on these cases, students became well-versed in the federal HIPAA law and North Carolina’s HIV confidentiality statute. An advanced student in the client conducted extensive research on the remedies available to these clients and prepared a legal memorandum along with a “breach of confidentiality check-list,” and sample “Jane/John Doe” Complaints and Motions that would allow clients to proceed anonymously in litigation involving allegations of confidentiality breaches.

3. **Benefits Advocacy:** Each student in the clinic this past year represented at least one client who was seeking disability benefits or access to health care through Medicaid. When these clients reach us, they have usually been waiting for over a year for their disability to be approved. The failures of the Social Security disability system have been covered extensively in the media—in an article on the front page of The New York Times in 2007, in a 2008 Washington Post column, and in a two-part series by Katie Couric, also in 2008. The number of applicants awaiting a decision has swelled to more than 750,000. This past year students worked with several clients who were either homeless or in marginal living situations. Through their efforts, students were able to gain benefits for multiple clients allowing those clients to stabilize their living situations, buy food, and get much-needed medical care.

Students handled appeals for clients within the administrative framework set up by Social Security. Students won their benefits cases with exceptional legal work. In many cases, they were able to short-circuit the lengthy wait experienced by most claimants by presenting persuasive evidence to the Administrative Law Judges, thus obviating the need for a hearing. Students worked with treating physicians to understand the complexities of their clients’ medical conditions, after which they summarized the providers’ opinions in affidavits. They interviewed and drafted statements from witnesses who knew the client, and
ultimately drafted legal memoranda for the Administrative Law Judge. Three students handled full disability hearings ultimately winning approval of benefits for their clients.

4. **Estate Planning:** Each student in the clinic had the opportunity to work with clients to prepare their wills and advance directives. For many clients, this planning involved setting up trusts for children. Not only did students learn the substantive aspects of estate planning law, they also learned to comfortably and sensitively discuss difficult end-of-life decisions with their clients. For some students, this meant discussing these issues with clients who were in the end-stage of their disease; for others, the clients were still healthy and planning for the future. In all cases, clients gained the peace of mind that goes with having made legal plans for their end-of-life medical care and having provided for the future care of their children and the distribution of their belongings after death.

5. **Planning for Children:** Several students used North Carolina’s standby guardianship statute to help their clients make future guardianship plans for their children. One student handled a hearing to have a grandmother appointed for a child whose mother had become too sick to care for him. Other students worked to have guardians appointed for children whose parents needed to make contingency plans for them in case their health failed or they died. The work of the students in handling these cases provided crucial stability to the children and families involved. Students gained experience in handling hearings, drafting legal documents, and, perhaps most importantly, working with clients to understand the complex family dynamics involved in guardianship planning.

6. **Road Trips:** Students in the clinic have had the opportunity to take several “road trips” to agencies that serve HIV positive clients throughout the state. Students meet with clients to prepare their wills, advance directives, and guardianship designation. Sometimes, students made presentations to groups of clients focused on their legal rights. This year, students traveled with clinic faculty to Cumberland, Edgecombe, Forsyth, Granville, Guilford, Halifax, Harnett, Nash, Richmond and Robeson Counties to meet with clients. By the end of a road trip day, students have lost their anxiety, honed their interviewing skills and solidified the substantive knowledge related to the documents they are preparing.

**III. Clinic Work Leads Student to South Africa:** After working with clients in the AIDS Legal Project for two semesters, Dineo Mpela-Thompson was inspired to seek an international externship with the AIDS Law Project and Treatment Action Campaign in South Africa. Under the sponsorship of Clinical Professor Carolyn McAllaster, Mpela-Thompson spent the 2008 semester working with these groups on issues related to access to antiretroviral medications for HIV positive South Africans. Mpela-Thompson says that “I think the biggest skill I gained from both the AIDS Clinic and the externship was learning how to communicate to lay people….If we can’t translate all of the complex legal principles we learn in the classroom into plain language for the people we are trying to help, it’s hard to have any relationship with them and that, in large part, is what the
practice of law is about.” Mpela-Thompson says that her South African experience helped her narrow her career goals: “I now know that I want to do something in the field of public health, specifically HIV-AIDS related.”

IV. Conclusion: Students in the clinic this past year learned important lessons about not only legal doctrine, but also law practice, ethics, professionalism, and the dynamics of the lawyer-client relationship. Most also affirmed the goals that brought them to law school in the first place—to do justice and to serve the community. Clients, on the other hand, received high-quality, free, assistance with legal problems related to their HIV diagnosis.