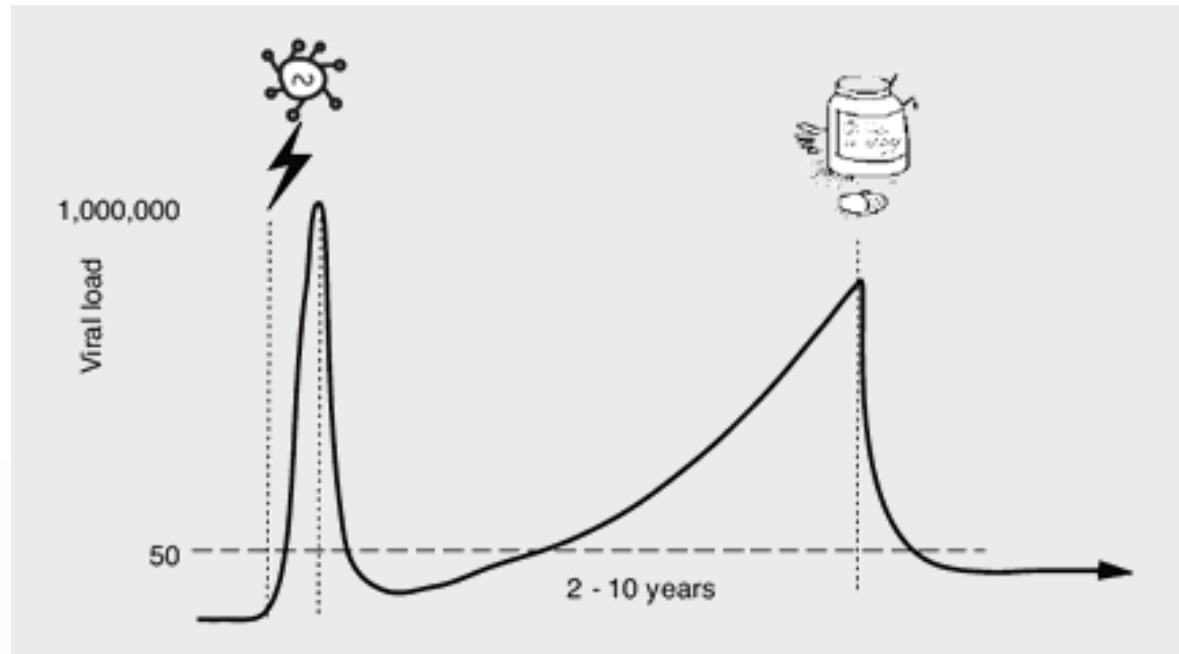




Undetectable and the law



Robert James



If you wanted a simple answer...

- Law is not the place to find it
- If there is no case then no answer
- We have had no case of a person with an undetectable viral load going to court
- We probably never will in England
- That will not stop police from investigating and charging people though



Laws in the UK come from 2 places

- Parliaments – statutes, decided by MPs or MSPs or AMs or MLAs.
- (only one person in this photo is an MP)



- The Courts – case law, decided by judges
- (Also the EU has membership rules which are part of our law)



England, Wales and NI OAPA* 1861 Section 20

- “Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty”



- *Offences Against the Person Act 1861



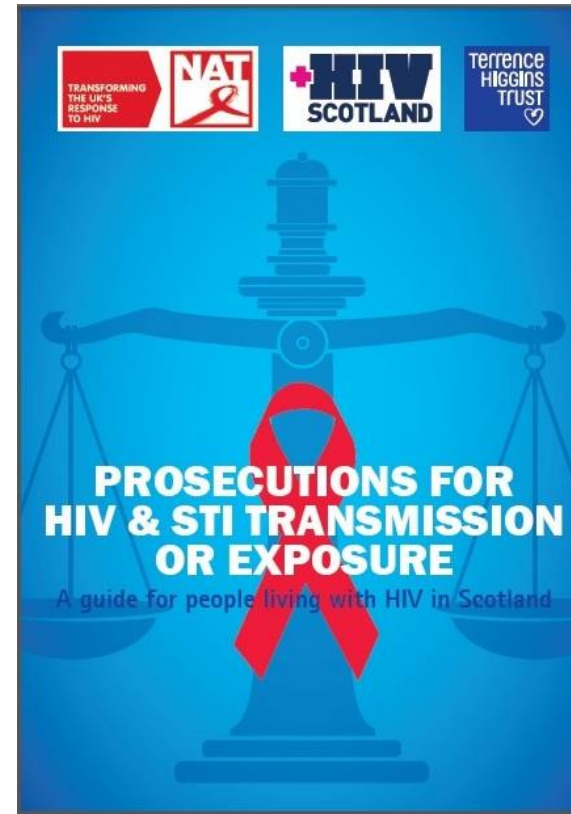
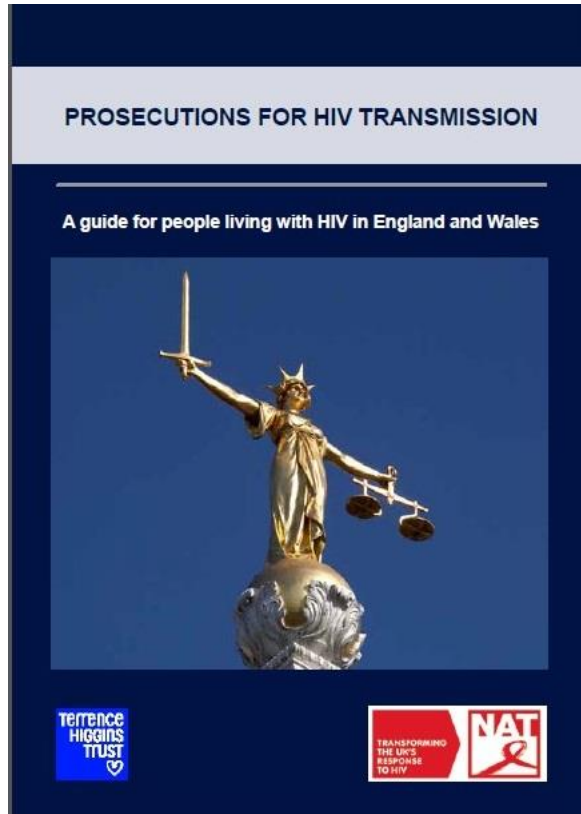
Scotland – from case law

- ‘Culpable and reckless conduct’ or ‘causing real injury’.
- The Crown Office and Procurator Fiscal Service (COPFS) guidelines state that it would be when a person has recklessly transmitted HIV or another STI where recklessness is defined as "*“gross or wicked, or criminal negligence, something amounting, or at any rate analogous, to a criminal indifference to consequences”.*" *Paton v HMA 1936*





Leaflets on the law



http://www.nat.org.uk/media/Files/Publications/May_2010_Prosecutions_for_HIV_Transmission.pdf

<http://www.nat.org.uk/media/Files/Publications/scottishprosecutions2013.pdf>



English and Welsh cases

- Over 25 trials since 2003
- Only 2 women and only 3 gay men prosecuted
- 4 Acquittals
- Not just HIV; one conviction for hepatitis B transmission, one for non-sexual gonorrhoea transmission and one for herpes transmission
- See www.nat.org.uk



Scottish cases

- 4 trials since 2001
- HIV – 4 heterosexual men
- 1 Acquittal but ‘sectioned’
- Not just HIV; one conviction for transmission of both HIV and hepatitis C and
- One of the men convicted of transmission and 2 counts of exposure
- See www.nat.org.uk



To tell or not to tell?

- No legal requirement to disclose...
- ... but it can be a defence in court





Phylogentic analysis

- Can prove innocence – cannot prove guilt
- Affects when you plead
- Don't believe CSI or Law and Order (they were both very, very wrong)





Advice to prosecutors

- There is advice to prosecutors in both England (CPS) and Scotland (COPFS) on this charge
- They describe the things prosecutors will generally need to do in order to successfully convict a person
- Both mention undetectability means reduced risk of transmission



If accused you must get specialist advice

- Most criminal lawyers will NOT know how to defend these cases
- THT Direct – 0808 802 1221
- NAT

Thankyous

- NAT and i-Base for pictures