If statistics give any indication, the number of cases of AIDS and the number of legal disputes involving AIDS will continue to grow until a cure is found or a vaccine is developed.

By John Heilman

Early in 1983, Raymond Orsini, an Airman First Class with the Air Force, was diagnosed as having Acquired Immune Deficiency Syndrome (AIDS). Unable to continue on active duty, Orsini requested a medical discharge from the service.

John Heilman is an attorney and a member of the West Hollywood City Council.

In response, the Air Force at first recommended that Orsini be retained on active duty, but Orsini appealed the decision to a formal Physical Evaluation Board. By the time the appeal was heard, the disease had already progressed so rapidly that Orsini was sleeping 12 to 14 hours a day. His speech was rambling and at times incoherent as a result of months of high fever. Left with little choice, the Air Force agreed to discharge Orsini for medical reasons.

However, Orsini's troubles were not yet over. The appeal board also made a finding that Orsini had committed misconduct by contracting the disease, presumably engaging in prohibited homosexual activity. The board's additional finding meant that Orsini would be discharged without medical benefits.

Although ravaged by the disease, Orsini refused to give up his battle. Orsini contacted Susan McGreivy, an attorney with the American Civil Liberties Foun-
dation of Southern California. Advised that ACLU attorneys were about to file a lawsuit against the Air Force, the Air Force Physical Review Council finally recommended that Orsini be temporarily retired with full medical benefits. If his condition improved, he could return to active duty.

"I hope there isn't another member of the military who has to face the same blatant harassment, personal humiliation and loss of respect that I was forced to encounter," said Orsini. "We will have to grapple with conflicts involving employees, schoolchildren and prisoners, just to name a few. While answers are beginning to emerge to some of the issues like job discrimination, resolution of more complex disputes such as mandatory testing in prisons will take more time. At the center of the disputes are classic issues involving society's response to death, illness and homosexuality.

All of the disputes are the result of the fragile but deadly HTLV-III virus that causes AIDS, a fatal syndrome that destroys the body's immune system, resulting in opportunistic diseases such as Pneumocystis Carinii, a parasitic pneumonia, or Kaposis Sarcoma, a rare form of cancer that causes purple or brown spots or lesions on the skin. AIDS patients also may develop severe infections with yeasts, parasites or viruses. Although medical researchers have made great progress in understanding the virus, the disease continues to spread.

Indeed, if statistics give any indication, the number of cases of AIDS and the number of legal disputes involving AIDS will continue to grow until a cure is found or a vaccine is developed.

For instance, when Orsini was first diagnosed, only 2,000 cases of AIDS had been diagnosed in the United States. Now, the number is over 18,000, with almost a quarter of them in California, and approximately 1,500 cases in Los Angeles County alone. More than half of those diagnosed have already died and the average life expectancy from the date of diagnosis is approximately one year.

The number of those diagnosed as having AIDS do not tell the whole story, however. It is estimated by medical experts that at least 100,000 people in the country are afflicted with AIDS-related complex (ARC), an immune system disorder caused by the same virus responsible for AIDS. ARC was first thought to be a precursor to AIDS, but it is now believed to be a separate immune-system disorder caused by the HTLV-III virus. Persons with ARC have manifestations of immune impairment without meeting the epidemiological criteria for AIDS. In addition, at least 1 million people nationwide are believed to have been exposed to the virus, and up to 300,000 of them are expected to develop AIDS. Exact figures on the number of persons who have ARC or who test HTLV-III positive are not available. Under current federal and state guidelines, only cases of AIDS must be reported to centers for disease control or appropriate state agencies.

UNCERTAINTY AND FEAR

Much about the virus and the disease remains a mystery to medical researchers. For example, why do some people who are exposed to the virus develop AIDS and others remain healthy? The uncertainty and the related fear it engenders are what lead to discrimination against those with the disease, according to David Schuman, a deputy city attorney in Los Angeles. Schuman is in charge of enforcing the city's ordinance prohibiting discrimination against those with AIDS. "Unlike other types of discrimination, AIDS discrimination involves a fear about one's own health," he explained. "There is a fear that you can catch AIDS by mere presence around someone who has the disease."

Rather than entering into an adversarial contest with those accused of discriminatory practices, Schuman said the city attorney's office seeks to resolve disputes through mediation and education. "While we have the traditional legal tools to deal with discrimination, we have a special awareness that AIDS discrimination stems from a fear that is particularly amenable to education and rapid attitudinal change," Schuman said.

The ordinance, which Schuman is charged with enforcing, prohibits discrimination against those with AIDS, those who have related medical conditions and, importantly, those who are merely perceived as having AIDS. The ordinance prohibits discrimination in employment, rental housing, business establishments, city facilities and educational facilities.

Passed unanimously in August 1985 by the Los Angeles City Council, the ordinance was "designed to protect people who are being discriminated against because of ignorance, bigotry and fear," according to the bill's sponsor, Councilman Joel Ochoa.

Similar ordinances have been passed in San Francisco, Hayward, West Hollywood and, recently, New York City. The ordinances generally provide for enforcement either by a civil action for damages by the aggrieved party or by an action for an injunction which can be brought by the party or the city attorney.

MEDIATION AND EDUCATION

According to Schuman, his office has handled about 35 cases of "substantial nature," mainly in the areas of employment and housing discrimination. To date, all of them have been resolved through mediation and education. No cases have come before the court, due to the ordinance to Schuman's knowledge and "no one has pushed us to the wall" with recalcitrance.

Part of the reason may be in Schuman's emphasis on educating the perpetrator of discrimination and avoiding stress to the victim. "Our first step is to truly give the [alleged discriminating] party an opportunity to be heard and to communicate our wish to seek a rapid resolution of the problem. Whatever justification that party might have for his behavior, we want to create an understanding of the underlying human issues," Schuman said. Schuman said that his office feels an obligation to allay the fears about AIDS that cause people to discriminate.

In addition to the city attorney's office, private attorneys are also handling a number of AIDS discrimination cases, but many of these are settled without publicity. According to one private attorney, AIDS discrimination cases are particularly amenable to confidential settlements before any action is filed. "My client didn't want everyone in the world to know he had AIDS. His employer didn't want the customers to know that one of the employees had AIDS. The desire to avoid adverse publicity can create a unity of purpose that makes settlement an easier task," he said.

In one recently settled private case, an employee, who asked not to be identified, was fired from his job as a secretary, but a week later he was told he could still get his paycheck, so long as he didn't come back to the office. "At first I felt betrayed. I didn't know how they could do this to me. Everyone where I worked had always been so nice; it just threw me for a loop. It left me in a state of depression for a long period," he said.

The secretary reluctantly contacted a private attorney who negotiated a settlement.

1 The HTLV-III virus is transmitted primarily through "sexual contact, needle sharing or less commonly by transfusions of blood or blood components. Direct blood-to-blood or organ-to-organ contact is not necessary to transmit the virus. There is no evidence that AIDS can be transmitted through air, water, food or casual body contact."

N.Y. Department of Health

"100 Questions and Answers about AIDS" (1986)

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ment agreement whereby the secretary was paid one year's salary as severance pay. The secretary is now working for another company.

"Once I started working again my health improved drastically," he said. "The discrimination I experienced was so stressful. When you have AIDS, you really need to be in a healthy state of mind to help your body."

California attorney Luis Maura went through a similar traumatic experience. Maura was practicing law with a bankruptcy firm in Fort Worth, Texas, when doctors diagnosed him as having AIDS. "I was concentrating on getting my health back so I could go back to work. Work was a purpose, a motivation. It gave me a sense of integrity and pride," Maura recalled. "But when the partners found out what I had, they told the office manager not to even send flowers to my hospital room and I was told not to come back.

"That kind of discrimination just hacks away at your knees. It means you can’t support yourself anymore. It just adds to the stress and problems you are already experiencing," Maura said.

Since coming to California, Maura has been rediagnozed as having ARC rather than AIDS. Maura has also joined the AIDS Project Los Angeles as its director of programs where he counsels many people on where they can obtain legal assistance.

According to Maura, many of the individuals he speaks to have legitimate complaints, but don’t pursue them. "There’s a shift in priorities after someone is diagnosed. A lot of people feel it’s not worth their energy to fight back. They just say they don’t need the extra stress," he said. Of course, others are so ravaged by the disease that they are physically unable to fight back.

But for those who do pursue their claims, the potential exists for substantial monetary awards even though the victims of discrimination may not live to enjoy them. Illegal job discrimination can have a disastrous impact on someone with AIDS according to Dr. Neil Schram, head of the Los Angeles City/County AIDS Task Force. "People may lose their jobs, they may lose their homes and their medical insurance. And the additional stress of being unemployed has a negative effect on the immune system. A person can be ruined," Schram said. A victim of discrimination can recover actual damages under most ordinances, plus punitive damages in appropriate cases.

In Los Angeles, for example, the city ordinance states that "any person who violates [the ordinance] shall be liable for actual damages, costs and attorneys fees. In addition, the court may award punitive damages in a proper case."

Even when there isn’t an ordinance prohibiting discrimination, other legal remedies can be pursued by victims of AIDS discrimination. For example, the California Department of Fair Employment and Housing has taken the position that AIDS is a disability and therefore an impermissible reason to discriminate under existing state regulations.

Similar laws on the federal level are also being used to challenge AIDS discrimination. In a recent dispute, attorneys in Texas have filed a complaint on behalf of a cafeteria worker who was dismissed after his employer discovered that the man tested positive for the presence of the HTLV-III virus in his blood, although he does not have AIDS.

In response to the widespread fear of AIDS, a statewide initiative has been proposed providing that AIDS is an infectious, contagious and communicable disease and therefore subject to existing quarantine and isolation requirements.

The complaint, filed with the U.S. Department of Health and Human Services, alleges that the man’s dismissal violates Section 504 of the Vocational Rehabilitation Act of 1973 which prohibits discrimination against the disabled.

ANTI-GAY BIAS

Attorneys for some AIDS discrimination victims are also using ordinances and regulations prohibiting sexual orientation bias to assist their clients. Although gay activists insist that AIDS is not a "gay disease," attorneys who handle AIDS cases claim that anti-gay attitudes are frequently at the heart of people’s actions. Seventy-three percent of those afflicted with AIDS are gay and bisexual men. Other groups considered at increased risk for AIDS include past or present abusers of intravenous drugs, Haitians who entered the U.S. after 1977, hemophiliacs and sexual partners of persons in the high risk groups.

"In some instances the discrimination is more because people find out you’re gay, not because of AIDS," Maura said. According to Schram, some of the public fear concerning AIDS and the resulting discrimination is caused by people who want to destroy the civil rights of gays. "Their strategy is to use AIDS to create fear and panic in the community so they can try to put gays and lesbians back in the closet. They continuously raise the issue of casual transmission of the disease to heighten people’s fears despite the fact that all the medical and epidemiological evidence demonstrates that the disease cannot be transmitted casually."

While anti-gay bias is no doubt part of the reason for AIDS discrimination, it is also true that not all who want to isolate themselves from people with AIDS are anti-gay bigots. One man with AIDS said, "a lot of people are just scared. They don’t understand that you can’t get the disease by casual transmission. Even a lot of gay men don’t know the symptoms or how it’s spread. I feel terrible when people don’t want to be around me because I have AIDS, but I understand. If I didn’t know about the disease I’d be scared, too."

LAROCHE INITIATIVE

In response to the widespread fear of AIDS, a statewide initiative has been proposed providing that AIDS is an infectious, contagious and communicable disease and therefore subject to existing quarantine and isolation regulations. Specifically, the initiative mandates that, in addition to AIDS cases, health care workers must report cases in which patients test positive for the HTLV-III virus. In addition, the initiative provides that those conditions are subject to quarantine and isolation statutes and requires health offices to fulfill their statutory duties to preserve the public health from AIDS. The initiative is currently being circulated by followers of perennial presidential candidate Lyndon LaRouche. Circulators have formed the Prevent AIDS Now Initiative Committee (PANIC) to support their efforts.

Supporters and opponents already are squaring off over the intent and meaning of the initiative. According to Jim Duree, a spokesperson for PANIC, the intent of the initiative is "to begin applying standard public health criteria to a deadly disease. The initiative is the beginning of a comprehensive public health mobilization to deal with the disease." Duree says that PANIC is in favor of comprehensive screening and placing people with AIDS or ARC in quarantine, although the initiative itself does not set up a quarantine.

On the other hand, ACLU attorney Randall Wick of Orange County be-
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Furthermore, Mendoza said, “No one in this department believes we ought to loosen the confidentiality requirements.” However, he explained that “as public health officials, we’d like access to information such as that obtained in a hospital setting because they institute infection control measures.” Specifically, the department wants hospitals and other health care providers to identify MediCal patients with AIDS or AIDS-related conditions. “It’s important for planning purposes to know how many we may have to reimburse,” Mendoza said.

Some medical experts, including Schram, immediately rejected the proposals as “irrelevant” to the fight against the disease and “without any epidemiological basis.” Schram and others contend that current tests can only determine whether or not someone has developed antibodies to the virus which causes AIDS. The test cannot determine whether someone has AIDS or will develop AIDS. Although people who have been exposed to the virus are presumed infectious, Schram emphasized that the disease is not casually transmitted; it can only be spread through blood or certain types of sexual conduct. For Schram, education about how to prevent the spread of the virus is the answer, not mandatory testing and isolation.

Duree, however, contends that education is not effective and that mandatory testing is needed. “You cannot deal with the disease merely by education . . . because that clearly is not working. We need to isolate those who are capable of transmitting the virus,” Duree said. “The idea that we’re denying civil liberties is bogus. Viruses don’t have civil rights.” Duree also charges that the disease can be transmitted casually and that there is a “massive cover-up by the gay lobby and the Center for Disease Control.”

Benjamin Schatz, director of the AIDS Civil Rights Project of the National Gay Rights Advocates in San Francisco, dismisses such charges as ludicrous. Schatz believes that the current effort to impose mandatory testing is the most dangerous threat to civil liberties because it involves government coercion and increased potential for alleged discrimination and quarantine. Schatz, one of the few attorneys nationwide who specializes in AIDS discrimination, said that in addition to housing and job discrimination, some of the major problem areas involve insurance, schools and the military.

**INSURANCE**

Schatz has filed several complaints against insurance companies for practices which allegedly discriminate against persons with AIDS or gay men in
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tremely expensive and usually fatal disease” which “represents a tremendous liability risk for a health insurance company such as Great Republic. If Great Republic did not attempt to avoid insuring people who have AIDS, Great Republic estimates that it would have to raise its premiums substantially to all of its policyholders. In order to avoid an insurance crisis within its own business, Great Republic is trying to avoid insuring people who have AIDS.”

According to Dr. Michael Roth, co-chair of the California AIDS Commission, there are other insurance problems. “People lose their jobs and then don’t have the money to take over their policies.” And, said Roth, most insurance companies will not reinstate the policies. “The disease is expensive and the insurance companies don’t want to pay. But their profits are so enormous that I don’t buy it when they say they can’t afford to cover these costs,” he said.

“After all, isn’t the whole point of insurance to protect people from catastrophic losses?”

Schatz believes that changes in the insurance industry will be forthcoming. He was recently appointed by the National Association of Insurance Commissioners to a committee which is formulating a national policy on AIDS and insurance.

SCHOOLS

The presence in schools of students or teachers with AIDS sets off sparks almost everywhere the issue arises. The conflict pits the rights of those with the disease to work or attend school against the fears of other children and their parents, even if the fears are not justified by medical information. Adding to the complexity of the issue is the assertion by some that it is unwise to send a child with AIDS to school because the child will be exposed to too many different illnesses and will be unable to fight them off.

Legal and policy decisions have gone both ways across the country and no clear trend has yet emerged. In one recent case, Orange County Superior Court Judge Harmon Scoville ordered a fifth-grade student reinstated in school. The student, who does not have AIDS, was barred after it was learned that he had been exposed to the virus as a result of blood transfusions that he had received to treat his hemophilia. School officials did not appeal his reinstatement.

In another case, a school district in Racine, Wisconsin has decided to bar both teachers and students with AIDS. But the teachers’ union there has filed a suit challenging the policy, claiming it violates the state’s anti-discrimination laws. Similar disputes are occurring throughout the country, but may decline as cases of transfusion-related AIDS decline because of improved blood-testing methods.

MILITARY

The current dispute regarding AIDS and the military stems from the U.S. Department of Defense’s recent decision to require testing of all military personnel and recruits. Recruits who test positive are denied entry to the armed forces and personnel who test positive and have signs of any illness are separated for medical reasons. However, personnel who test positive and are healthy are retained on active duty but their health is monitored and they must remain stationed near major medical centers.

Two challenges to the policy of barring recruits are pending. In one case, Judge Louis Oberdorfer in Washington, D.C. denied nine recruits’ request for a preliminary injunction and they are currently pursuing an administrative appeal. A similar case was filed in San Diego by attorney Tom Homann with the assistance of the Military Law Task Force of the National Lawyers Guild.

Kathy Gilberd, a legal worker with the task force, said that in addition to the recruit issue, the military’s mandatory testing program has several problems that will be subjected to legal challenges. The first area involves breaches of the confidentiality that is promised to those who are tested. “We’ve seen widespread dissemination of test results and harassment of personnel who test positive,” Gilberd said. But Elaine Henrion, a spokesperson for the Department of the Army, replied, “That’s simply not true. The service makes every effort to maintain confidentiality. The doctors and psychiatrists are very careful. Confidentiality is something that everyone is very aware of.”

According to Gilberd, another problem area in the military is the use of admissions made to doctors regarding homosexual activity or drug use. People who test positive and admit homosexual activity to their doctors can wind up being discharged administratively for homosexuality and as a result lose their medical benefits.

On top of the legal problems, medical experts are afraid the military’s policy will discourage those who test positive from reporting how they became exposed. According to Gilberd, “People are being real quiet and it’s going to skew the epidemiological data.”

Henrion acknowledges that some military personnel may be reticent about how they contracted the disease. “Soldiers know that homosexuality and drug use are incompatible with military service and some of them may not be as open as people outside the service,” she said. “But our doctors believe they are getting accurate information from their patients, many of whom are reporting homosexual or bisexual activity to their doctors. The doctors I have spoken to from Walter Reed Hospital are just as concerned about getting accurate information as doctors are outside the service. That’s why confidentiality is so important.”

Gilberd, however, is not optimistic about the impact and effectiveness of the military’s testing and separation policy. “The military is not set up to safeguard people’s rights to confidentiality and privacy. And it can’t conduct needed safe sex programs because the military establishment can’t deal with homosexuality,” she said.

Even though the legal issues raised by AIDS group themselves into distinct areas, Schatz claims that there are so many new developments and so much work that it’s hard to concentrate on any one area. “You have to respond to the latest crisis,” he said.

And it’s clear that crises will continue to occur given the spread of the disease and the fear that many people still have concerning AIDS.

EDUCATIONAL PROGRAMS

Until a cure or vaccine is found, education is the only solution that makes sense to most experts. According to Roth, “The discrimination is there and will continue to grow. Most of it is hysterical with no sound medical basis. We need to educate people about the disease in order to stop the discrimination and the spread of the disease.”

Even education programs, however, can become controversial if they are too explicit in dealing with what specific activities are safe or unsafe. Last August, the Los Angeles County Board of Supervisors banned distribution of a pamphlet
The pamphlet was intended for use in drug treatment programs to educate intravenous drug users (high risk candidates for AIDS) about the probability of contracting the HTLV-III virus from contaminated needles, and other dangers of injecting drugs. Among the controversial messages in the pamphlet was a section advising "if you continue to inject drugs, the following measures will reduce your risk."

A majority of the supervisors ordered the pamphlet banned, stating that it was "incongruous that the County should spend taxpayer dollars and the time of public employees in teaching people the ‘safe’ way to inject deadly substances into their bodies. Instead, drug abuse programs should address themselves to getting people off drugs and helping restore them to useful, productive roles in our society."

In January, the supervisors approved a new pamphlet titled "AIDS and Other Dangers of Shooting Drugs" for use by county-funded drug treatment programs and other organizations with an identifiable high risk AIDS clientele.

Federal officials earlier in the year delayed funds to various organizations in a dispute over how explicit or graphic materials could be.

Private educational programs don’t always raise the same concerns. Several large companies such as Wells Fargo, Pacific Bell and Transamerica have developed programs that educate workers about transmission and prevention of the disease.

Anthony Oliver, Jr., an attorney with Parker, Milliken, Clark, O’Hara & Samuelian, advises the employers he represents to set up training programs about AIDS “so the fears of employees are relieved.”

According to Schulman, “Employers have a self-interest and a humanitarian reason for developing and sponsoring such programs.” The programs help employers avoid discrimination claims while helping to stop the spread of the disease, he explained.

But even with the most sophisticated and well-designed educational programs, AIDS as an issue is not going to disappear. The number of people with the disease continues to grow each day. And while medical advances are being made, confusion and fear continue to exist. As a result, conflicts involving the disease are certain to multiply. In the words of Schram, “At least for the foreseeable future, the problem of AIDS is here to stay.”

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