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AIDS: AN OVERVIEW OF THE BRITISH, AUSTRALIAN, AND AMERICAN RESPONSES

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As public awareness of acquired immune deficiency syndrome (AIDS) increases, the legal and regulatory mechanisms being applied, and those being contemplated, are becoming more significant. Attempts to protect individual rights while safeguarding the public from a communicable virus which is generally fatal¹ and has no known cure,² are presenting many unprecedented legal questions. The questions cover a broad spectrum, including public health law, employment law, insurance law, medical law, civil rights, and laws related to public education. In the process of dealing with these issues in the United States, a review of the actions being taken in other countries is pertinent. This Article will describe the current efforts to control the spread of the disease in two Commonwealth jurisdictions: Great Britain³ and Australia.⁴ An overview of the United States response at the federal level⁵ and a survey of the legal issues being crystalized at the state and local level⁶ will also be presented.

While AIDS first surfaced around 1979 in urban areas of the United States, particularly in New York and California,⁷ it is a disease which has also appeared throughout the world, though in com-


¹ For a general discussion of current medical knowledge about AIDS, see Sicklick & Rubinstein, A Medical Review of AIDS, 14 Hofstra L. Rev. 5 (1985).
² See id.
³ See infra notes 23-63 and accompanying text.
⁴ See infra notes 64-139 and accompanying text.
⁵ See infra notes 140-60, 191-211 and accompanying text.
⁶ See infra notes 161-90, 212-22 and accompanying text.
paratively minimal numbers.\(^8\)

The reported incidence of AIDS in European and Commonwealth countries did not really begin until 1981, and at first the numbers were negligible.\(^9\) In October 1983, there were 268 recognized cases in Europe.\(^10\) In a relatively short time, there was a significant increase so that by January 1985 there were 700 cases in Europe and 118 in the United Kingdom.\(^11\) Nine hundred and forty cases were reported in Europe by March of 1985.\(^12\) At the end of September 1985, Australia reported 134 “full AIDS” cases\(^13\) and by December 1985, the European figure rose to 1600.\(^14\) The number of AIDS victims in Canada increased from 15 in 1982, to 40 in 1983, to 116 in 1984, and 202 as of November 11, 1985.\(^15\) These figures are rather small in comparison to the staggering figures reported by the Centers for Disease Control of 14,519 cases of the disease in the United States as of November 4, 1985.\(^16\) Given the relatively small number of cases in the Commonwealth countries, one might have expected them to pay little attention to the disease on an official level. This, however, is not the case. In 1985, Great Britain promulgated regulations to protect the public by dealing with victims of the disease.\(^17\) As early as 1984, Australian jurisdictions began enacting limited liability blood transfusion laws and Australia was, in fact, the first country to institute blood screening tests on a nationwide basis.\(^18\)

Throughout the history of man, control of disease has been a

\(^8\) See D. Altman, AIDS IN THE MIND OF AMERICA 15 (1986). Some parts of Asia may have escaped the disease so far and the worst incidence may be in Central Africa. Id.


\(^10\) Id. at 4.


\(^12\) Curran, Morgan, Hardy, Jaffe, Darrow & Dowdle, The Epidemiology of AIDS: Current Status and Future Prospects, 229 SCI. 1352 (1985) (citing 34 Morbidity & Mortality Weekly Rep. 471 (1985)).


\(^15\) The Ethics of AIDS, Maclean's, Nov. 18, 1985, at 44, 45.

\(^16\) J. Mason, Acting Assistant Secretary for Health, Department of Health & Human Services, statement before the Republican Study Committee, U.S. House of Representatives (Nov. 7, 1985) (available from the Department of Health & Human Services).

\(^17\) See infra text accompanying note 36.

\(^18\) See infra text accompanying notes 70-71.
major concern. While society has always had a clear concept of the contagiousness of certain diseases, the task of containing or eliminating them has often been so overwhelming that it could not be accomplished without government involvement. Thus, the victims of menacing diseases such as black death, pneumonic plague, and smallpox, among others, became the immediate object of legislation. To a great extent, these regulatory measures are the foundation of the modern administration of disease control.

I. ENGLAND

In Great Britain, the government's historical approach to the control of disease has been to encourage individual initiative rather than intruding upon an individual's personal liberty. Through primarily educational means, the government has traditionally sought to persuade infected individuals to subject themselves to treatment or refrain from infecting others. At times, such an approach results in resistance, as it presupposes a sense of social responsibility on the part of the public. Such resistance has sometimes led to more radical attempts at control. An example of such an attempt in England involved the compulsory treatment of venereal disease in the mid-1800's. The Contagious Diseases Prevention Act was passed for this purpose in 1864, with substantial amendments passed in 1866 and further amendments passed in 1869. The Acts, which applied only to naval and military stations, required periodic compulsory medical examination of prostitutes. If a woman was found to have syphilis or gonorrhea, she could be detained in a hospital facility for three to nine months. The Acts created controversy and intense public opposition. Critics claimed that the legislation violated the spirit of the British constitution by imprisoning or confining one without "the lawful judgment of his peers." The Acts were re-

20. Id.
21. Id.
22. Id.
24. Contagious Diseases Act, 1866, 29 & 30 Vict., ch. 35.
25. Contagious Diseases Act, 1869, 32 & 33 Vict., ch. 96.
26. Contagious Diseases Prevention Act, 1864; Contagious Diseases Act, 1866; Contagious Diseases Act, 1869.
28. Id.
29. Id. at 203 (referring to the Magna Carta, 39th cl.).
pealed by the Contagious Diseases Acts Repeal Act, 1886,30 following an indefatigable campaign led by such persons as Florence Nightingale and Josephine Butler.31 No further action was taken to control venereal disease in Great Britain until 1913 when the Royal Commission on Venereal Diseases was appointed to investigate, inter alia, methods of preventing the diseases, with the understanding "that no return to the policy or provisions of the Contagious Diseases Acts, of 1864, 1866, or 1869, is to be regarded as falling within the scope of the inquiry."32 The Commission issued its report in 1916, recommending that local authorities be given the power to provide free diagnosis and treatment regardless of whether the person was a resident of that locality.33 This helped to preserve the anonymity of the individuals involved. The report also addressed proper community education.34 The recommendations of the Commission were accepted and gradually implemented.35

This brief historical example provides insight into prior British thinking concerning the control of infectious, sexually-transmitted diseases. In examining their present attempt to control AIDS, however, the British penchant for protection against the infringement of liberty is not nearly so clear.

On the regulatory level, the Public Health (Infectious Diseases) Regulations, 1985,36 were issued by the Secretary of State for Social Services. Under these statutory regulations, AIDS is to be considered a notifiable disease for the purpose of some provisions of the Public Health (Control of Disease) Act, 1984.37 The provisions relate to compulsory medical examination,38 compulsory removal to a hospital,39 compulsory detention in a hospital where the patient is already hospitalized,40 isolation of the body of an AIDS victim who has died outside of a hospital,41 and disposal of the body of a victim.

30. 49 & 50 Vict., ch. 10.
31. In 1869, Mrs. Josephine Butler, wife of the Principal of Liverpool College, founded the Ladies National Association for the repeal of the Contagious Diseases Acts with the support of Florence Nightingale and others. W. Frazer, supra note 27, at 202.
32. W. Frazer, supra note 27, at 339.
33. Id. at 341.
34. Id. at 340-41.
35. Id. at 341.
37. Public Health (Control of Disease) Act, 1984, ch. 22.
38. Id. § 35.
39. Id. § 37.
40. Id. § 38.
41. Id. § 44.
after dying in a hospital. The Act’s provisions requiring doctors to report instances of a specified notifiable disease to public health authorities do not apply to AIDS cases. This temporary anonymity is all that protects the AIDS victim from complete government obstruction.

The compulsory sections become applicable on the order of a justice of the peace who may act ex parte. A medical examination order can be issued only if a doctor, selected by the local district authority, provides a written certificate stating that there is reason to believe the person is suffering from AIDS or is an AIDS carrier, and that in the interest of himself, his family, or the public, he should be examined. If the individual is already being treated by a doctor, however, an order cannot be issued without that doctor’s consent. The local authority’s doctor may enter the premises of the suspected victim to carry out the order.

An order for removal or detention to an area or District Health Authority hospital can also be issued ex parte by a justice of the peace upon an application by an official of a local authority. The magistrates must be satisfied that without the order, proper precautions to prevent the spread of AIDS cannot or will not be taken in the victim’s home or in other frequented locations. One who leaves the hospital in contravention of such an order “shall be liable on a summary conviction to a fine” and the court may order him to be returned to the hospital.

It is interesting to note that the regulations do not apply to section 36 of the Public Health Act, which permits the issuance of a court order for a compulsory medical examination of a “group” if “there is reason to believe that one of a group of persons, though not

42. Id. § 43.
43. Id. § 10, 11. Notifiable diseases, to which all provisions of the Act apply, are cholera, plague, relapsing fever, smallpox and typhus. Id. § 10.
44. Id. §§ 35, 37, 38.
45. Id. § 35.
46. Id. § 35 (1)(c).
47. Id. § 35 (2).
48. Id. § 38. This section, as applied to other notifiable diseases, authorizes a court order to prevent a patient from leaving a hospital only where there is a reason to believe that he would not have proper accommodations in which precautions would be taken to prevent the spread of the disease. Id. In relation to AIDS sufferers, however, the language of the regulations suggests that an order may also be issued on grounds related to the behavior habits of the patient. See Stat. Inst., 1985, No. 434, §§ 3(1)-3(2).
suffering from a notifiable disease, is carrying an organism that is capable of causing it . . . .”51 Such a request need only be made by “the proper officer of the local authority for a district,” not necessarily a medical practitioner.52 Since there is no explanation of this exclusion, and the definition of a “group” is not carefully prescribed, one can only speculate that the central government was concerned about the possible arbitrary application of such a provision to certain high-risk groups such as homosexuals and intravenous drug users. Nor were the 1985 regulations made applicable to section 21 of the Act,53 which regulates attendance at school by victims of a notifiable disease.54 This later exclusion may become the subject of further controversy as AIDS cases begin to appear in the school setting. The British press has reported at least one school case in which a nine-year-old hemophiliac received an AIDS-contaminated blood transfusion.55 Parents of the child’s classmates became alarmed about the possible infection of other children since the nine-year-old has been permitted to return to school.56

Under the Act, there is a specific right to appeal a magistrate’s order to the Crown Court.57 Consequently, although a person may be initially confined without personally appearing in a judicial forum, he does have an opportunity to be heard at a later proceeding. There has been at least one case involving a review of a magistrate’s ex parte order. In September 1985, Manchester magistrates issued a three week detention order for a twenty-nine-year-old man based on a statement by the medical officer for the Monsall Isolation Hospital that the patient was “bleeding copiously and trying to discharge himself.”58 The court order was lifted about ten days later when a hearing was held and it was determined that the patient’s condition had substantially improved and the Manchester city council, who originally applied for the order, was satisfied that there was no justifiable reason for his continued detention.59 However, Mr. Justice

52. Id.
53. STAT. INST., 1985, No. 434, § 2(2).
57. Public Health (Control of Disease) Act, 1984, ch. 22, § 67(2).
Russell, a high court judge sitting in the Crown Court at Manchester, opined that the original order was proper, given the medical evidence before the magistrates. This discussion reveals that the current British regulatory approach to the control of AIDS represents a significant departure from their historical attitude toward the control of communicable diseases. It is difficult to imagine a more intrusive regulatory scheme: compulsory medical examinations based only on suspicion, and compulsory hospital detention, allowable without the individual being given an opportunity to be heard, except to appeal a detention order. Where AIDS is concerned, the British apparently feel that the need to protect the public easily outweighs the individual's interest in freedom from government intervention.

The current British approach to AIDS control and prevention has several nonregulatory aspects as well. The government-funded Medical Research Council is coordinating biomedical research projects while the Department of Health and Social Security is funding a program to support the treatment, care, and counseling of AIDS victims. In addition, interim guidelines for the purpose of diminishing the risks of exposure for doctors, nurses, and other medical staff caring for AIDS patients have been issued, and in October of 1985, nationwide screening of all blood donations for AIDS virus contamination began, using tests approved by the Public Health Laboratory Service.

II. AUSTRALIA

The Australian approach to control and prevention is less uniform than that of the British since it is being regulated at the state level. Nevertheless, there has been a substantial amount of cooperation and collaboration between state and Commonwealth health officials; following the passage of some state measures, however, the Australian Commonwealth government expressed concern and opposition to "intemperate legislative action" which would discriminate against people with AIDS.

3, col. 8.
60. Id.
against "risk groups or those suffering from the disease."\textsuperscript{65}

The nonregulatory Commonwealth response resembles that taken in England.\textsuperscript{66} The Australian National Health and Medical Research Council has funded special research projects on the disease and has formed a working group "to consider all available information on AIDS."\textsuperscript{67} A public information statement was issued and infection control guidelines were adopted by the Council.\textsuperscript{68} Policy guidelines for the handling of AIDS victims or carriers employed in the Australian civil service have been issued by Australian Public Service Unions and the AIDS Task Force in the Australian Department of Health.\textsuperscript{69} In April 1985, well before similar steps were taken in any other country,\textsuperscript{70} blood screening kits were made available in every blood bank facility in Australia, as well as to local hospitals and doctors.\textsuperscript{71}

In response to the public’s anxiety and prejudices, state regulatory and legislative responses were rapid.\textsuperscript{72} The effect of this has been to inhibit the litigation of issues involving common law liability in AIDS cases. The earliest cases of AIDS were identified in three of the six Australian states: Victoria, New South Wales and Western Australia.\textsuperscript{73} All three of these jurisdictions have since enacted new legislation or have extended existing laws to include the fatal virus.\textsuperscript{74} Queensland and the Australian Capital Territory have also passed pertinent legislation. As early as July of 1983, Queensland declared AIDS a notifiable disease under its Health Act.\textsuperscript{75} It was the first Australian state to pass an AIDS law. Following three 1984 incidents in Brisbane, in which babies died after receiving blood transfu-

\textsuperscript{65} AUSTRALIAN INFORMATION SERVICE, EMBASSY OF AUSTRALIA, AUSTRALIA NEWS, No. 24, AIDS: Estimate of Cases Falls 5, 6 (Dec. 5, 1985).
\textsuperscript{66} See supra notes 61-63 and accompanying text.
\textsuperscript{67} DIRECTOR—GENERAL OF HEALTH, ANNUAL REPORT, 1983-84, PARL. PAPER No. 107, at 40, 168 (1985). The Australian Minister for Health, Dr. Neal Blewett, recently announced that the government would provide $A1.5 million for research into AIDS in 1986. AUSTRALIAN INFORMATION SERVICE, EMBASSY OF AUSTRALIA, AUSTRALIA NEWS, No. 2 News Brief: Medical Research 8 (Feb. 6, 1986).
\textsuperscript{68} See DIRECTOR—GENERAL OF HEALTH, supra note 67, at 40.
\textsuperscript{69} AUSTRALIAN INFORMATION SERVICE, EMBASSY OF AUSTRALIA, AUSTRALIA NEWS, No. 1, Public Service: AIDS Disclosure Not Required 4 (Jan. 23, 1986).
\textsuperscript{70} Penington, supra note 64, at 19.
\textsuperscript{71} Id.
\textsuperscript{72} Id.
\textsuperscript{73} See DIRECTOR—GENERAL OF HEALTH, supra note 67, at 40.
\textsuperscript{74} See infra notes 95-96, 98 and accompanying text.
\textsuperscript{75} QUEENSL. GOV'T GAZ., No. 76, at 1481 (July 2, 1983).
sions from an individual believed to be an AIDS carrier, the Health Act Amendment Act (No. 2), 1984, was passed. This law specifically extends provisions of the Queensland Health Act 1937-1982 to acquired immune deficiency syndrome. Subject to a maximum fine of A$200, a doctor treating a person with a venereal disease, AIDS, or the AIDS virus antibodies must notify the state Director-General of Health. The doctor is required to state the "age, sex, occupation and marital status of the patient," and, in the case of AIDS only, the doctor must also state "the name and address of the place of residence of the patient." A similar notification provision applies to the "person in charge" of the laboratory where a pathological examination of a specimen shows the presence of the AIDS virus. Stiff penalties of A$10,000, as well as the possibility of imprisonment for two years, or both, are imposed on the AIDS victim or carrier who infects another person. The only exceptions to these sanctions are where the parties are married or where the party who contracted the disease knew about the condition of the AIDS sufferer and "voluntarily ran the risk of being . . . infected."

Prior to the passage of this law, there was a proposal in Queensland that the crime of manslaughter be applicable in a blood donation death case, and the Queensland government issued a warning that it would extradite for such an offense. The question of criminal liability for afflicting an infectious disease on another person raised some interesting questions under the early common law.

In an 1888 British case, The Queen v. Clarence, a husband was charged with maliciously infecting his wife with a venereal disease, where the wife had consented to intercourse but was unaware of her husband's infection. Mr. Justice Stephen stated in his opinion: "Not only is there is no general principle which makes the commu-
cation of infection criminal, but such authority as exists is opposed
to such a doctrine in relation to any
disease." 88 The Justice further
pointed out, approvingly, that in an earlier case, The King v. Van-
tandillo, 89 a distinction was made between acts against a person and
acts against the general public, such that "to carry a child which
had the small-pox along a street" was a public nuisance rather than
a crime. 90 In light of this authority and in conjunction with the
state's concern for protecting the public welfare, a law imposing
strict liability for specific conduct was incorporated into the Queen-
sland public health statute rather than a law imposing criminal lia-
ability for the mens rea of the infectious individual. 91

Other provisions of the Queensland public health law require a
person who suspects he may have AIDS to consult a physician
within three days or be fined A$1,000. 92 Even though the privacy of
a patient is mandated under section 59 of the Health Act, 93 the 1984
amendment allows an official to "give information to any department
or official of the Government of the Commonwealth having, in his
opinion, a legitimate interest in possessing the information." 94

Other Australian states have only recently enacted AIDS-re-
lated legislation. In February 1985, Western Australia, 95 followed
soon after by New South Wales, 96 the Australian Capital Terri-

88. Id. at 39.
Health Act Amendment Act, 1982, No. 57 § 9, 1982 Queensl. Stat. 823, 825, and Health Act
Amendment Act (No. 2), 1984, No. 103, § 3(a), 1984 Queensl. Stat. 1195, 1196.
1195, 1197.
Gaz., No. 13, at 517 (Feb. 8, 1985). The Blood Donation (Limitation of Liability) Act, 1985,
No. 88 (W. Austl.), was passed later in 1985 and it contains provisions (§§ 6-8) similar to the
legislation providing indemnity against transmission of the AIDS virus in other states.
96. Human Tissue (Amendment) Act, 1985, No. 61 (N.S.W.).
27 (Austl. Cap. Terr.).
98. Health (Blood Donations) Act, 1985, No. 10192 (Vict.).
Act specifically limits the liability of a hospital or its agent, a blood donation facility, or an administering doctor in actions brought by or on behalf of a person (or by his dependent) who claims to have contracted AIDS:

(i) by reason of having been administered blood supplied by the Society or a hospital or a blood product derived from blood supplied by the Society or a hospital;
(ii) by reason of having been involved in the taking, testing, handling, producing, supplying or administering to a patient of blood supplied by the Society or a hospital or a blood product derived from blood supplied by the Society or a hospital;

or

(iii) from a person who contracted the prescribed disease in a circumstance specified in subparagraph (i) or (ii).100

The Australian Capital Territory law provides a similar liability limitation.101 Before any of these limitations apply, the blood or blood product must have been tested for AIDS antibodies and bear a certificate indicating that the result was negative.102 These states also require that the Red Cross or hospital obtain a declaration from the blood donor relative to his likelihood of infection.103


100. Health (Blood Donations) Act, 1985, No. 10192, § 4 (Vict.).

As originally passed, that section referred to the Schedule containing the form the declaration must take:

DECLARATION BY PERSON INTENDING TO DONATE BLOOD

WARNING

Supplying blood that may be infected with AIDS (Acquired Immune Deficiency Syndrome) may endanger the life of recipients of the blood, or of blood products derived from the blood. Testing procedures used may not detect the infection.

I have read the above warning and paragraphs 1 to 9 below and hereby declare that, to the best of my knowledge——

1. I have not engaged in male to male sexual activity during the past 5 years;
2. I have not injected myself, or been injected with, any drug not prescribed by a qualified medical practitioner within the past 5 years;
3. I am not suffering from night sweats, weight loss, persistent fever, diarrhea or swollen glands;
4. I have no reason to believe that I am suffering from AIDS (Acquired Immune Deficiency Syndrome) or any disease related to it;
Somewhat earlier, in 1984, Queensland introduced signed declarations from blood donors stating that they were not homosexuals. A penalty of A$10,000, two years in jail, or both, was imposed for a false statement. Since homosexuality is illegal in Queensland, the potential blood donor who is homosexual would most likely refrain from donating blood rather than risk the penalty of perjury or the fear of exposure. If, however, the homosexual was part of a group program where blood was to be donated, i.e., a workplace or charitable organization where the decision to donate is made as a group, the individual would be forced to either lie or admit homosexuality. In order to reduce this possibility of forced exposure, other states have added questions to their declaration statements regarding other health risks, i.e., hepatitis and malaria, so that homosexuality would not be the only basis on which the refusal to accept blood was based.

Liability does exist in the Australian Capital Territory, Victo-

5. I have not received a blood transfusion or recurring treatment with human blood products within the past 5 years;
6. My spouse or sexual partner does not come within the categories described in items 1, 2, 3, 4 and 5;
7. I have not been treated by acupuncture, had my ears pierced or been tattooed within the past 5 years;
8. I have not been in a tropical area where malaria occurs within the past 12 months or had an attack of malaria or taken anti-malarial drugs within the past 2 years;
9. I have not had jaundice or hepatitis in the past 12 months or been in close contact with any person suffering from those diseases within the past 6 months.

I am signing this declaration in the presence of a member of the staff of the Red Cross Society.

NAME OF DONOR

(Signature of donor)
(Signature of witness)

However, by the Blood Donation (Acquired Immune Deficiency Syndrome) (Amendment) Ordinance, 1985, No. 55, § 3 (passed in October 1985), the Australian Capital Territory repealed the Schedule, thus deleting the declaration form and substituting instead language calling for “a form approved by the Minister.”


106. Penington, supra note 64.
107. Id.
ria, and Western Australia when the specific requirements have not been met or when there are "reasonable grounds for believing" that a false declaration was made by a donor.108 The same applies if there were "reasonable grounds for believing" that the blood or blood product contained the AIDS virus and "reasonable" steps were not taken to see that the infected blood was not used in a transfusion.109 In the Australian Capital Territory and Victoria, criminal liability is imposed on the donor who makes a false declaration.110 Civil actions, however, cannot be brought against a donor by a donee who has become afflicted with AIDS unless the donor has been found guilty of making a false declaration prior to his donation of blood.111 Similar legislation enacted in New South Wales requires a blood bank facility to obtain a witnessed certificate from each donor as to the medical suitability of his blood.112 In the event there is reason to believe the donor may be infected with AIDS, hepatitis, or malaria, the blood facility would commit an offense punishable by a A$200 fine if the transfusion proceeds.113 In New South Wales the


110. Section 7 of the Blood Donation (Acquired Immune Deficiency Syndrome) Ordinance, 1985, No. 27 (Austl. Cap. Terr.), reads: "A person who in a declaration . . . makes a statement that is false in a material particular is guilty of an offence punishable, on conviction, by a fine not exceeding $5,000 or imprisonment for a term not exceeding 2 years, or both."


That no person who knows he—
1) has acquired immune deficiency,
2) has had sexual relations with a male since 1977,
3) is an intravenous drug user, or
4) received a blood transfusion within the past year, may intentionally donate blood.

Any person who violates this section shall be subject to imprisonment for not more than 10 years.

112. Human Tissue (Amendment) Act, 1985, No. 61, Sched. 1, § 21C (N.S.W.).

113. Human Tissue (Amendment) Act, 1985, No. 61, Sched. 1, § 21C (N.S.W.); Human Tissue Act 1983, Regulation, 1985, No. 294, § 2 (N.S.W.), specifies that the certificates must be "retained for a period of not less than 10 years from the date on which the
A donor who knowingly signs a false certificate is liable for a fine of A$5,000, imprisonment of one year, or both.\footnote{114}

The Australian response to AIDS goes beyond the regulation of blood donations. In August of 1984, AIDS was proclaimed an infectious disease\footnote{115} under section 28 of the New South Wales Public Health Act, 1902.\footnote{116} Citizens petitioned their elected representatives, praying “[t]hat your honourable House will protect our community from the AIDS epidemic, and will do all it can to promote the healthy heterosexual lifestyle, especially in our education system.”\footnote{117} In December of 1985, the 1902 Act was amended\footnote{118} requiring doctors treating AIDS patients to notify public health officials of this fact or receive a fine of A$1,000.\footnote{119} Although the amendment does not demand that doctors reveal the names and addresses of their patients in the first instance, the New South Wales Chief Health Officer may require doctors to provide this information at a later time by seeking an order in a non public district court hearing.\footnote{120} Compulsory medical treatment may be required for anyone who is reasonably suspected of having the disease\footnote{121} and detention in a hospital may be ordered.\footnote{122} A person who knows he is suffering from AIDS is subject to a A$5,000 fine if he engages in sexual intercourse without informing his partner of the risk involved.\footnote{123} There is no provision for imprisonment.

In Western Australia, AIDS was proclaimed both an “infectious” and a “dangerous infectious disease” by orders of the Governor in January 1985.\footnote{124} This had the effect of extending provisions of the Health Act\footnote{125} to the syndrome. Under the Act, there may be a certificate was signed—.”

\footnote{114. Human Tissue (Amendment) Act, 1985, No. 61, Sched. 1, § 21D (N.S.W.).}
\footnote{115. N.S.W. Gov't Gaz., No. 123, at 4118 (Aug. 3, 1984).}
\footnote{116. Public Health Act, 1902, No. 30, as amended, 9 N.S.W. PUB. ACTS 278 (1961).}
\footnote{117. N.S.W. PARL. DEB. (Hansard), 48th Parl., 2d Sess. 9520 (Nov. 13, 1985).}
\footnote{118. Public Health (Proclaimed Diseases) Amendment Act, 1985, No. 183 (N.S.W.).}
\footnote{119. Id., Sched. 1, § 2.}
\footnote{120. Id.}
\footnote{121. Id.}
\footnote{123. Public Health (Proclaimed Diseases) Amendment Act, 1985, No. 183, Sched. 1, § 2.}
\footnote{125. Health Act, 1911-1965, 19 W. AUSTL. REPR. ACTS (1966), as amended.}
compulsory medical examination,126 quarantine or isolation,127 or removal to a public health hospital.128 There are also extensive notification provisions which apply to someone occupying the same premises as the AIDS victim,129 to a treating physician130 and to a hospital.131

While most of the constitutional power to control the spread of an infectious disease such as AIDS lies with the states, there are some Commonwealth powers that may be used. The Constitution of Australia provides that the Parliament may enact laws with respect to quarantine.132 Pursuant to this power, the Quarantine Act was passed133 under which the Governor-General may declare the existence of an epidemic134 and may "give such directions and take such action as he thinks necessary to control and eradicate the epidemic . . . by quarantine measures or measures incidental to quarantine."135 A "quarantinable disease" can be any disease so declared by the Governor-General.136 There is also an unusually broad provision allowing the Minister administering the Act to deal with an emergency situation "where, in the opinion of the Minister, an emergency has arisen which requires the taking of action not otherwise authorized by this Act."137 Anyone failing to comply with these sections is subject to a maximum fine of A$1,000 or imprisonment up to one year.138 These powers are very extensive, giving the Governor-General power to take quick action in an emergency situation and to override state quarantine legislation by proclamation.139 It may be difficult however, to determine if a detention provision in state public health legislation is to be considered "quarantine by legislation." Thus, the legal relationship between state and federal laws is, as yet, unclear and in need of judicial interpretation.

126. Id. § 251(5).
127. Id. § 251(8).
128. Id. § 263.
129. Id. § 276(1)(a)-(b).
130. Id. § 276(1)(c).
131. Id. § 276(5).
132. AUSTL. CONST. § 51(ix).
134. Id. § 2B(1), at 865.
135. Id. § 2B(2), at 865.
136. Id. § 5, at 866-67.
137. Id. § 12A(1), at 869.
138. Id. § 12A(2), at 869.
139. Id. § 2A(1), at 865.
III. UNITED STATES

A. The Legislative Response

The nonregulatory response in England and Australia is a microcosm of the approach being taken in the United States. Congress has responded directly to the AIDS crisis by appropriating research money for various government health agencies.\(^{140}\) While some of the agencies charged with responding to public health emergencies began their AIDS research efforts as early as 1981,\(^{141}\) Congress did not specifically appropriate funds until 1982.\(^{142}\) At that time, a continuing resolution was passed specifically appropriating two million dollars to the Centers for Disease Control.\(^{143}\) The following year, a supplemental appropriation of approximately twelve million dollars was passed to fund various programs at the Centers for Disease Control, at the National Institutes of Health, and at the Alcohol, Drug Abuse and Mental Health Administration; however, the total Public Health Service expenditure on AIDS research in fiscal year 1983 was $28,736,000.\(^{144}\)

As awareness of the disease grew, so did the federal funding commitment. In 1984, 1985 and 1986, total funding for research programs increased from $41,600,000\(^{145}\) to $84,101,000\(^{146}\) to $244,307,000.\(^{147}\) The current budget proposal for fiscal year 1987

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140. See Pear, Health Agency Proposes Doubling Reagan Budget Request on AIDS, N.Y. Times, July 6, 1986, at 15, col. 1. The current congressional appropriations for AIDS research include $134.7 million to the National Institutes of Health, $9.5 million to the Food and Drug Administration, $62.1 million to the Centers for Disease Control. Id.; Acquired Immune Deficiency Syndrome Research Funding: Hearings Before the Subcomm. on Departments of Labor, Health and Human Services, Education, and Related Agencies of the Senate Comm. on Appropriations, 99th Cong., 1st Sess. (1986) [hereinafter cited as Research Funding Hearings].


147. Telephone interview with Herrell Little, supra note 141. See Act of December 12,
RESPONSES TO AIDS includes the sum of approximately $213,000,000 for AIDS projects.\textsuperscript{148} Unlike previous appropriations, the fiscal year 1987 proposal carries a total dollar figure for AIDS research rather than designated amounts for individual agencies.\textsuperscript{149} This is consistent with President Reagan's proposed consolidation of all federal programs involved in AIDS research into the office of the Surgeon General.\textsuperscript{150}

In contrast to England, the United States has taken very little federal action outside of the appropriations process. The first substantive action taken was a floor amendment to the 1986 Health and Human Services appropriations bill offered by Representative Robert Dornan of California.\textsuperscript{151} The amendment empowered the Surgeon General to use any AIDS research monies to close places such as bathhouses or massage parlors where the disease was likely to be transmitted.\textsuperscript{152} In fact, this was merely a reiteration of the Surgeon General's existing authority under his statutory duty to take necessary actions to control communicable diseases.\textsuperscript{153}

In the 99th Congress, there are several bills pending which substantively address the AIDS issue. Representative William Dannemeyer of California has introduced five bills, including one which would prohibit discrimination against those providing health care in federally funded facilities who choose to use protective garments.\textsuperscript{154} Another Dannemeyer bill would prohibit AIDS victims from practicing medicine or rendering health care in federally funded facilities.\textsuperscript{155} Other Dannemeyer bills include one which would deny fed-
eral funds to any political jurisdiction that permits certain public bathhouses to operate,\textsuperscript{156} and one which would make it a federal offense for an AIDS victim or carrier to intentionally donate blood.\textsuperscript{157} All of the bills have been referred to committees and no action has yet been taken.

Senator Daniel Moynihan of New York and Congressman Mickey Leland of Texas have introduced bills requiring the Secretary of Health and Human Services to make grants to state and local governments to support education and information dissemination projects concerning AIDS, as well as to operate AIDS blood testing facilities.\textsuperscript{158} Representative Theodore Weiss of New York has introduced a bill that would waive, for five years, the twenty-four month waiting period for medicare eligibility for AIDS victims.\textsuperscript{159} There have been numerous appropriations hearings, but only a few legislative and oversight hearings concerning the crisis.\textsuperscript{160}

Most of the legislative response in the United States has originated at the state and local levels. Seventeen states have considered AIDS-related legislation, but only nine states have actually en-

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In 1983, New York and California passed laws establishing policies for responding to AIDS and directing a coordinated state effort toward promoting AIDS research, distributing information to high-risk groups, and supporting educational and training programs for those administering health care. Illinois enacted legislation in 1984 directing its health department to conduct public information campaigns regarding AIDS. Florida and California passed laws in 1985 aimed at protecting the states' blood supplies. Both of these laws encourage individuals in high-risk groups to obtain blood tests at alternate testing sites established by the states, and offer some protection from the disclosure of the test results. Limited disclosure is permitted on a need-to-know basis, but impermissibly disclosing information regarding an individual's test results can lead to civil and criminal sanctions. In 1985, Wisconsin also passed a law prohibiting the disclosure, without informed consent, of test results to anyone but the individual being tested, his health care providers, and certain others under specified conditions. Florida and Wisconsin specifically forbid the use of the HTLV-III blood tests for purposes of determining insurability or suitability for employment. California, Nevada, and Washington have laws specifically exempting companies and persons dealing in the processing and distribution of donated blood from the strict liability provisions of the Uniform Commercial Code.

Numerous other bills have been considered and rejected by the

165. Fla. Stat. Ann. § 381.606(4)(West 1986); CAL. HEALTH & SAFETY CODE § 1603.3-.4 (West 1986). New York is considering a bill that would prohibit the test from being disclosed to anyone but the subject of the test or the health department "in conjunction with a scientific study." Carroll, Revised Bill Would Limit AIDS Test Use, N.Y. Times, Feb. 24, 1986, at B1, col. 5.
169. CAL. HEALTH & SAFETY CODE § 1606 (West 1979); NEV. REV. STAT. § 460.010 (1986); WASH. REV. CODE ANN. § 70.54.120 (Supp. 1986).
various state legislatures. An Ohio bill would have declared AIDS to be contagious under state communicable disease acts, thereby empowering state health officials to respond by implementing isolation policies.\(^{170}\) It would have also prohibited school children exposed to the virus from attending school.\(^{171}\) Pennsylvania has considered a bill that would make it a first degree misdemeanor for a person, knowing he has AIDS, to transmit the disease to another person through sexual contact.\(^{172}\) New Jersey had a similar bill introduced.\(^{173}\) Another bill in Pennsylvania would have required the HTLV-III blood test as a condition to issuing a marriage license.\(^{174}\) New Hampshire has considered legislation making it a felony for homosexuals to donate blood.\(^{175}\) In Texas, the state health commissioner sought legislative authority empowering him to quarantine AIDS patients.\(^{176}\)

A great deal of legislative response has also occurred at the local or municipal level. Not surprisingly, those cities with the highest number of reported cases have been the most active in the AIDS crisis.\(^{177}\) A Los Angeles ordinance is an example of the city's detailed effort to legislate regarding AIDS.\(^{178}\) The ordinance has broad application, covering areas of employment, housing, medical, and dental services, business establishments, and city facilities and services.\(^{179}\) In the employment area, prospective employers are prohibited from refusing to hire, promote, or deny other opportunities to those who suffer from AIDS, those who have been exposed to the


\(^{171}\) Id.


\(^{175}\) H.B. 79, 149th Reg. Leg. Sess., N.H. (1985), cited in UNIVERSITY HEALTH POLICY PROJECT, supra note 161, at 13 (noting, however, that the measure was overwhelmingly defeated in committee).


\(^{177}\) UNIVERSITY HEALTH POLICY PROJECT, supra note 161, at 36. The cities are Atlanta, Baltimore, Boston, Chicago, Houston, Los Angeles, Miami, Minneapolis, Newark, New Orleans, New York City, Philadelphia, San Francisco and the District of Columbia. Id.


\(^{179}\) See id. §§ 45.82-.85, reprinted in AIDS, Employer Rights and Responsibilities, supra note 178, at 64-67.
virus, or those who are suspected of having AIDS.\textsuperscript{180} The only exceptions to these policies are (1) if the condition affects an individual's ability to perform employment functions,\textsuperscript{181} and (2) medical, health, and life insurance coverage can be either denied or reduced\textsuperscript{182} because the employer will incur greater expenses providing such coverage to AIDS victims, particularly in the case of the self-insuring employer. The ordinance also makes it unlawful for any person or entity to discriminate against tenants or prospective tenants suffering from AIDS or any related condition.\textsuperscript{183}

With few exceptions, business establishments\textsuperscript{184} and educational institutions,\textsuperscript{185} as well as city government officials responsible for city facilities and services,\textsuperscript{186} are prohibited from discriminating against anyone who suffers from the disease. Further, the Los Angeles ordinance prohibits any person or entity from disseminating any information which would indicate an intention to engage in an unlawful discriminatory practice outlined in the ordinance.\textsuperscript{187} Violation of the ordinance can result in assessing actual damages, costs and attorney's fees, and even punitive damages against the violator.\textsuperscript{188} There are also provisions for injunctive relief.\textsuperscript{189} Actions of bona fide religious organizations are exempt from the ordinance, as well as actions of any other individual or organization that are aimed at protecting the health and welfare of the general public.\textsuperscript{190}

\begin{thebibliography}{99}
\bibitem{180} Id. \textsection 45.82(A), reprinted in \textit{AIDS, Employer Rights and Responsibilities}, supra note 178, at 64.
\bibitem{181} Id. \textsection 45.82(B)(1), reprinted in \textit{AIDS, Employer Rights and Responsibilities}, supra note 178, at 65.
\bibitem{182} Id. \textsection 45.82(C), reprinted in \textit{AIDS, Employer Rights and Responsibilities}, supra note 178, at 65.
\bibitem{183} Id. \textsection 45.83, reprinted in \textit{AIDS, Employer Rights and Responsibilities}, supra note 178, at 66.
\bibitem{184} Id. \textsection 45.84, reprinted in \textit{AIDS, Employer Rights and Responsibilities}, supra note 178, at 66-67.
\bibitem{185} Id. \textsection 45.86, reprinted in \textit{AIDS, Employer Rights and Responsibilities}, supra note 178, at 67.
\bibitem{186} Id. \textsection 45.85, reprinted in \textit{AIDS, Employer Rights and Responsibilities}, supra note 178, at 67.
\bibitem{187} Id. \textsection 45.87, reprinted in \textit{AIDS, Employer Rights and Responsibilities}, supra note 178, at 67.
\bibitem{188} Id. \textsection 45.89, reprinted in \textit{AIDS, Employer Rights and Responsibilities}, supra note 178, at 68.
\bibitem{189} Id. \textsection 45.90(B), reprinted in \textit{AIDS, Employer Rights and Responsibilities}, supra note 178, at 68.
\bibitem{180} Id. \textsection 45.93, reprinted in \textit{AIDS, Employer Rights and Responsibilities}, supra note 178, at 69.
\end{thebibliography}
B. The Administrative Response

At the regulatory level, federal efforts dealing with the AIDS crisis have been meager. Because of the novel issues produced by the epidemic, federal agencies appear to be awaiting direction through legislation. Nonetheless, there have been at least four specific regulatory efforts to deal with the problem.

One response has been a regulation proposed by the Department of Health and Human Services which would add AIDS to a list of conditions that may exclude immigrants from entering the United States as permanent residents. Although the proposal does not specifically mandate that immigrants be tested for AIDS, its language suggests that the Secretary of Health and Human Services can order the test. The proposed order is currently being reviewed by the Office of Management and Budget and, if approved, will be published in the Federal Register as a proposed regulation.

A second response has been proposed amendments to social security entitlement programs. For example, on February 11, 1985, the Social Security Administration issued interim regulations adding AIDS to the list of presumptive disabilities, “where the disease has progressed to the point where the individual is unable to work.” Under this regulation, the AIDS victim is entitled to supplemental social security income payments. The agency is also in the process of revising its policies so that those suffering from “AIDS related complex” can qualify for benefits. Medicare assistance is also available to the AIDS victim, but one does not qualify until twenty-four months after petitioning for benefits.

A third response has been an informal determination by the Department of Labor’s Office of Federal Contract Compliance Programs that persons with AIDS are protected from employment discrimination under section 503 of the Rehabilitation Act of 1973.

192. Cimons, supra note 191, at 11, col. 3.
195. Id.
196. See Sicklick & Rubinstein, supra note 1.
197. Telephone interview with Dean Moore, Disability Officer, Social Security Administration (Jan. 29, 1986).
198. 42 C.F.R. § 408.12 (1984); See H.R. 3602, supra note 159, which would waive the 24 month waiting period for AIDS victims.
The Act prohibits most government agencies (§ 501) and federal contractors (§ 503) from discriminating in employment based upon the handicapped condition of the employee.\(^\text{200}\) Interestingly, on June 20, 1986, the Office of Legal Counsel of the Department of Justice issued an opinion interpreting section 504 of the Rehabilitation Act.\(^\text{201}\) The opinion states that although a person diagnosed with AIDS is handicapped under the law, an employer may discharge an employee notwithstanding section 504, based on the fear of co-workers that the disease may be casually transmitted.\(^\text{202}\)

A fourth-response has involved the armed forces and AIDS. The military services have implemented testing programs of all incoming recruits and all active-duty personnel.\(^\text{203}\) A prospective recruit testing positive will not be permitted to enlist and military personnel testing positive face the possibility of limited duty or even discharge.\(^\text{204}\)

In the nonregulatory area, the federal response has been primarily research and information dissemination by public health service agencies. Specifically, the Centers for Disease Control has been monitoring the crisis, compiling a significant amount of statistical and medical information, coordinating the national effort,\(^\text{205}\) and publishing recommendations for those interacting with persons suffering from the virus.\(^\text{206}\) The National Institutes of Health has been


\(^{\text{201}}\) Cooper, Memo from Assistant Attorney General Cooper on Application of Section 504 of the Rehabilitation Act to Persons with AIDS, DAILY LAB. REP. (BNA) No. 122 (June 25, 1986).


\(^{\text{206}}\) Recommendations for Preventing Transmission of Infection with Human T-Lymphotrophic Virus Type III/Lymphadenopathy—Associated Virus in the Workplace, 34 MORBIDITY & MORTALITY WEEKLY REP. 682-86, 691-95 (Nov. 15, 1985).
in the forefront, expending enormous sums on research efforts.\textsuperscript{207} The Food and Drug Administration has been instrumental in working with other agencies to develop the HTLV-III tests and a potential vaccine.\textsuperscript{208} The Alcohol, Drug Abuse and Mental Health Administration began its research and information dissemination efforts when intravenous drug abusers were identified as a high-risk group.\textsuperscript{209} Coordinated research efforts and information exchange programs have been emphasized involving public health officials and scientists from many countries and international health organizations, as well as national, state and local officials.\textsuperscript{210} The President’s proposal to consolidate these national efforts would facilitate an even greater coordinated effort among agencies.\textsuperscript{211}

The greatest administrative response, however, has occurred at the state level. Primarily, efforts have focused on research, information gathering, outreach programs, public education campaigns, and alternate site blood testing programs.\textsuperscript{212} As the disease spreads, how-

\begin{table}
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\hline
\textbf{Institute} & \textbf{FY82} & \textbf{FY83} & \textbf{FY84} & \textbf{FY85} & \textbf{FY86*} \\
\hline
Cancer & $2,400$ & $9,790$ & $16,627$ & $26,874$ & $27,218$ \\
Heart, Lung & 5 & 1,202 & 4,871 & 9,323 & 10,718 \\
and Blood & & & & & \\
Allergy and & 297 & 9,223 & 19,616 & 23,273 & 25,903 \\
Infectious & & & & & \\
Diseases & & & & & \\
Division of & 564 & 699 & 1,356 & 2,802 & 1,657 \\
Research & & & & & \\
Resources & & & & & \\
Neurological & 31 & 684 & 1,510 & 1,168 & 1,435 \\
Eye & 33 & 45 & 60 & 200 & 96 \\
Dental & 25 & 25 & 81 & 97 & 655 \\
Office of the & 0 & 0 & 0 & 0 & 66,990 \\
Director & & & & & \\
\hline
\textbf{Totals} & $3,355$ & $21,668$ & $44,121$ & $63,737$ & $134,672$ \\
\textit{*} & & & & & \\
Includes Gramm-Rudman-Hollings Budget cuts and rescission cuts. \\
\end{tabular}
\caption{NIH EXPENDITURES FOR AIDS RESEARCH}
\end{table}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{207} Telephone interview with Shirley Barth, \textit{supra} note 205.
\item \textsuperscript{208} \textit{Id.}
\item \textsuperscript{209} \textit{Id.}
\item \textsuperscript{210} \textit{Id.}
\item \textsuperscript{211} \textit{See Cimons, supra note 150, at A19, col. 3; Strobel, supra note 150, at 9A, col. 5; OFFICE OF MGMT. \& BUDGET, supra note 148, at 22.}
\item \textsuperscript{212} \textit{See infra notes 214-22 and accompanying text.}
\end{itemize}
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ever, state and local health officials may begin to exercise extraordinary powers pursuant to public health laws, such as quarantine or compulsory medical examinations.\textsuperscript{213}

One local administrative reaction to AIDS has been the consideration and adoption of school attendance policies by local school boards.\textsuperscript{214} Many of the policies are contained in informal letters. Massachusetts, for example, has adopted specific guidelines for local school attendance policies.\textsuperscript{215} The guidelines were recommended by the Governor's Task Force on AIDS for implementation in the Massachusetts public school system.\textsuperscript{216} New Jersey's Department of Health has also submitted recommendations for the school system to the State Department of Education.\textsuperscript{217}

Various city health departments have implemented policies concerning the treatment of AIDS patients by health care providers.\textsuperscript{218} New York City, for example, reorganized its health department to include an office designed to study the particular needs of the gay and lesbian communities.\textsuperscript{219} Through its new Office of Gay and Lesbian Health Concerns, the New York City Department of Health has developed intensive educational and training programs. The city's Human Resources Administration, a member of the city's Interagency Task Force on AIDS, also began special programs including information distribution, counseling, and home care for low-income patients.\textsuperscript{220}

There has been some state administrative action addressing the rights of AIDS-infected individuals in the workplace. Generally, the administrative response is developing on a case-by-case basis, as adjudicatory or rule-making actions are commenced within the state agencies responsible for administering employment discrimination
laws. For example, in California, an employment discrimination action is pending before the California Fair Employment and Housing Commission, alleging that AIDS is a handicap under a state law similar to the federal Rehabilitation Act of 1973. Almost all states have laws protecting employees from employment discrimination based on physical handicap or disability.

C. The Judicial Response

American legislative and regulatory action lacking, the judicial branch has been forced to consider and resolve novel issues affecting those involved in the AIDS crisis using traditional legal standards. There are, however, as in both England and Australia, few reported decisions in which AIDS is an element of the issue. A survey of pending litigation shows that the cases filed involve a variety of factual situations and utilize numerous legal theories. A number of cases have been instituted considering isolation policies within prisons and school systems. Other cases involving donations of con-


222. See Leonard, Discrimination, in AIDS LEGAL GUIDE: A PROFESSIONAL RESOURCE ON AIDS-RELATED LEGAL ISSUES AND DISCRIMINATION 67 n.2 (Lambda Legal Defense & Educ. Fund, Inc. 1984), wherein the author states that "[a]ll of the states have laws protecting private sector employees from employment discrimination based on physical handicap or disability except Alabama, Arizona, Arkansas, Delaware, Idaho, Mississippi, South Dakota and Wyoming." Id.

223. Case Law Scarce for Lawyers Involved in AIDS Suits, supra note 221, at 29, col. 1.


In Cordero, residents of a New York state correctional facility challenged the constitutionality of segregating AIDS sufferers from the general population. The plaintiffs alleged that such a policy violated their rights under the fourteenth, eighth and first amendments. Addressing the plaintiff's fourteenth amendment equal protection claims, the federal district court held that under the stated circumstances the analysis was inapplicable, but even if it were applicable, AIDS sufferers were not a "suspect class." Id. at 10. Furthermore, the court stated that the government's objective was clear and met the rational basis test. Id.

The plaintiff's fourteenth amendment due process claims also failed. The court reasoned that prisoners retain "only a narrow range of protected liberty interests [and] . . . that the transfer of an inmate to less amenable and more restrictive quarters for nonpunitive reasons is well within the terms of confinement ordinarily contemplated by a prison sentence." Id. (citing Hewitt v. Helms, 459 U.S. 460 (1983)). The court concluded that under these circumstances, a hearing was not required before prison officials could act. Id. In addressing the eighth amendment and first amendment questions, the court held that the "cruel and unusual"
taminated blood and failure to disclose information to sexual partners or to prospective purchasers of property, have been filed. There have been challenges to government efforts to regulate places in which homosexual acts occur. Suits involving discrimination in employment are pending and those involving discrimination in provision of the eighth amendment only requires that prison officials provide inmates with adequate food, clothing, sanitation, medical care and personal safety. Thus, the needs of the penal institution outweigh a prisoner's rights to privacy, free expression, and free association.

225. See Tarr, supra note 176, at 29, col. 1; Schwarz & Schaffer, AIDS in the Classroom, 14 Hofstra L. Rev. 163 (1985).

Courts have a difficult time balancing interests where a student has AIDS and the school board adopts a segregation policy. School boards in Denver, Colorado; New Haven, Connecticut; Plainfield, New Jersey; Troy, Georgia; and Kokoma, Indiana have adopted segregation policies denying students with AIDS access to school. Tarr, supra note 176, at 29, col. 2. On the other hand, the Massachusetts and New York school boards have determined that school children with AIDS should be permitted to attend school. Id. at 28, col. 1. This determination is consistent with CDC recommendations. See Education and Foster Care of Children Infected with Human T-Lymphotropic Virus Type III/Lymphadenopathy Associated Virus, 34 Morbidity & Mortality Weekly Rep. 517, 519 (Aug. 30, 1985).


227. Tarr, supra note 176, at 29, col. 3; Case Law Scarce for Lawyers Involved in AIDS Suits, supra note 221, at 29, col. 1.

228. A case currently pending involves a real estate transaction where the prospective buyer, after having paid a deposit on a house, learned that one of the occupants died of hepatitis and was suspected of having AIDS. Roberts v. Heramb, No. 5943942 (Alameda County, Super. Ct. filed Jan. 31, 1985), cited in Galante, AIDS' Expanding Legal Frontiers, Nat'l L.J., Feb. 3, 1986, at 8, col. 3. The buyer alleged that the seller of real property has a duty to disclose all material facts concerning the property, which includes the fact that an occupant suffered from a fatal, infectious disease. Galante suggests that the court in Roberts must balance the seller's right to privacy with the buyer's right to full disclosure of material facts. Id.

229. Local governments, in their attempt to regulate homosexual gathering places, have been subjected to judicial scrutiny. See Georgia v. Fleck and Associates, Inc., 622 F. Supp. 256 (N.D. Ga. 1985) (where a local government, under a public nuisance statute, has sought to permanently close an establishment where homosexual acts allegedly occur). See also Case Law Scarce for Lawyers Involved in AIDS Suits, supra note 221, at 29, col. 3 (indicating that New York has adopted emergency measures authorizing local governments to close certain establishments but that other jurisdictions have been thwarted by constitutional challenges).

230. Employment policies which treat employees suffering from AIDS differently from other employees are premised on the fear that AIDS may be transmitted through casual contact, notwithstanding medical assurances to the contrary. CDC Guidelines on AIDS in the Workplace, reprinted in AIDS: Employment Rights and Responsibilities, supra note 178, at 87-95. See Leonard, Employment Discrimination Against Persons with AIDS, 10 U. Dayton L. Rev. 681 (1985).

At the present time there are a number of AIDS related employment discrimination ac-
housing are also likely to arise. It has also been speculated that AIDS may enter the courtroom in custody disputes. In addition, employers and insurance companies who attempt to implement HTLV-III blood testing before hiring or insuring anyone, may find themselves in court. The judicial branch is also being called upon

tions pending in both federal and state courts, as well as in administrative agencies. See, e.g., Shuttleworth v. Broward County, No. 85-6623 (S.D. Fla. filed Aug. 12, 1985), cited in Tarr, supra note 199, at col. 2 (where a county budget analyst, allegedly fired because he had AIDS, appealed the action to the Florida Commission on Human Relations which ruled that AIDS was a handicap under Florida law and that the County had acted improperly); U.S. Allege

s Hospital Bias in AIDS Case, Wash. Post, Aug. 10, 1986, at A7, col. 1 (wherein a North Carolina hospital has been accused of employment discrimination in connection with an employee who has AIDS).

In addition, there are a few cases now pending which test whether provisions of state handicap statutes protect AIDS victims from employment discrimination. See, e.g., Dep't of Fair Employment and Hous. v. Raytheon Co., Nos. FEP83-84, L-1-0310F, L-33998 (Cal. Fair Employment & Hous. Comm'n filed Feb. 5, 1985) (where an employee, placed on involuntary medical leave in 1983 after being diagnosed as having AIDS, has brought suit against his employer who refused to allow him to return to work, based upon a state law that bars employment discrimination against handicapped individuals) (discussed in Case Law Scarce for Lawyers Involved in AIDS Suits, supra note 221, at 29, col. 1).

231. Discrimination against AIDS victims in the housing arena may produce a multitude of legal actions. In a related situation, which may indicate the judicial response in housing discrimination cases, a court issued a preliminary injunction against a housing cooperative which was attempting to evict a doctor because he treated AIDS victims. State v. 49 W. 12 Tenants Corp., N.Y.L.J., Oct. 17, 1983, at 1, col. 1 (N.Y. Sup. Ct.). The action was brought under a New York human rights law prohibiting discrimination on the basis of disability in the rental of public accommodations and commercial space. Id. In this instance, the doctor's office fell within the commercial space provisions of the law. Id. Interestingly, the state attorney general's office joined the plaintiff in this action.

232. Speculation that AIDS may enter the courtroom in domestic relation matters is based upon two decisions where a parent used herpes against the other parent in a court battle to alter visitation rights. See A.K.P. v. J.A.P., 684 S.W.2d 762 (Tex. Ct. App. 1984); Buckner v. Buckner, 677 S.W.2d 874 (Ark. Ct. App. 1984), both discussed in Case Law Scarce for Lawyers Involved in AIDS Suits, supra note 221, at col. 2.

233. There are a variety of problems associated with employers instituting a policy of HTLV-III blood testing for employees. The most significant problem is that it presumes that testing positive for the AIDS antibody means that the person has AIDS and that testing negative means the opposite. Scientifically, one cannot reach such conclusions from the results of the HTLV-III tests. Sicklick & Rubinstein, supra note 1, at 9. In addition, the concept behind instituting these tests in the employment setting presumes that AIDS will directly affect the individual's ability to perform employment functions or that others in the workplace might contract AIDS from the individual. As of this writing, there is no scientific evidence to establish that suffering from AIDS will affect one's ability to perform any employment function, although there are some industries where special precautions are taken. See generally, AIDS, Employer Rights and Responsibilities, supra note 178, at 87-95. Similarly, there is no evidence that AIDS can be transmitted through casual contact. Sicklick & Rubinstein, supra note 1, at 8.

Testing for AIDS has also been suggested and even implemented by insurance companies. See Bruske, Insurers Pulling Out of D.C., Wash. Post, June 28, 1986, at B1, col. 4. Lawsuits
to interpret whether criminal sanctions may be imposed against individuals with AIDS.\textsuperscript{234} All of these situations require the courts to balance the rights of individuals with the rights of the general public.

**CONCLUSION**

This overview has pointed out the many parallels in approach of the three different governments to the outbreak and potential spread of a serious public health danger. All three systems are allocating significant resources to pertinent research activities and dissemination of information. At that point, however, the similarity ends, for both England and Australia are ahead of the United States in adopting specific regulatory and legislative controls. The effect of the swift actions taken in England and Australia appears to have been to restrain potential litigation and to establish a means of control. The United States should take heed. AIDS has created a health crisis with such enormous potential proportions that without substantive legislative action at the federal and/or state level, it seems unlikely that our judicial system will be able to deal with the problem as quickly as is necessary to assuage the public’s anxieties.

\textsuperscript{234} See People v. Richards, No. 85-1715-F4 (68th Dist. Ct. Mich.), cited in Galante, \textit{supra} note 228 (where an AIDS victim was charged with assault with intent to commit murder for spitting on four police officers). \textit{See, e.g.,} People v. Julius, No. 761210 (San Francisco, Mun. Ct.); People v. Prairie Chicken, No. CRE-77357 (San Diego County Sup. Ct.) (\textit{both discussed in} Galante, \textit{supra} note 228, at 8, col. 1).