

# Issue Brief

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## ACQUIRED IMMUNE DEFICIENCY SYNDROME AND MILITARY MANPOWER POLICY

Updated February 12, 1988



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ACQUIRED IMMUNE DEFICIENCY SYNDROME AND MILITARY  
MANPOWER POLICY

SUMMARY

In October 1985, the Department of Defense (DOD) began screening all applicants for Human Immunodeficiency Virus or HIV (the cause of AIDS). Such screening was and remains controversial. Screening of active duty personnel on a large-scale basis began in January 1986. In April 1987, DOD released the most recent version of its policy on AIDS and military personnel. DOD policies and actions with regard to AIDS are being carefully watched and scrutinized by Congress and other Federal and State agencies because of the ground-breaking role DOD has taken on AIDS.

According to DOD policy, applicants who test positive for HIV infection are not eligible for enlistment or appointment to the military. This policy also sets guidelines on the assignment of active duty personnel with HIV infection, disease surveillance and health education, retention, separation, safety of the blood supply, and limitations on the use of information.

In addition to the testing of applicants and military personnel, DOD must consider four areas involving its personnel and the AIDS virus. First, concerns exist over the career implications the AIDS virus could present to DOD personnel. These concerns include the limitations of assignments imposed on persons who test positive for HIV infection, effects of providing information concerning the source of infection on duty assignments, and retention of infected personnel.

Second, AIDS can be expected to have an impact on military health care should the rate of infection significantly increase. AIDS is an expensive illness to treat and, as such, could compete for financial resources against other health care services provided by DOD. In addition, it is not currently clear how the treatment of AIDS under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) will be handled.

Third, efforts to protect military personnel and dependents from HIV infection raise concerns in that such policies must work between the competing tensions of protecting the uninfected without violating individual civil rights.

Finally, AIDS has caused controversy to the extent that U.S. military personnel stationed overseas have been accused of spreading the disease to foreign nationals in host nations. Efforts to prevent service members from spreading the disease have been implemented. To this end, personnel who test positive for HIV infection are not eligible for deployment overseas. Because the number of AIDS/HIV infection cases in the services has remained relatively small, there has been no noticeable effect on overseas deployments. However, should the number of cases increase substantially, the ability of the military to station personnel overseas may be hindered. Current statistics, however, have shown a leveling of the incidence of HIV infection in the military services.

### ISSUE DEFINITION

Acquired Immune Deficiency Syndrome (AIDS) was recognized by the Centers for Disease Control (U.S. Public Health Service) as a disease in 1981 (Fauci, "The Acquired Immunodeficiency Syndrome (AIDS)," 102 Ann. Internal Med. 800, 1985). This contagious and always fatal disease has sparked considerable controversy worldwide. Policies designed to prevent the spread of the disease, primarily transmitted sexually or through blood products or through sharing needles by intravenous drug users, have been criticized by some as violating individual civil liberties through the imposition of standards of morality. Conversely, charges have also been made that the Federal Government is not doing enough to protect the general population from the spread of this feared illness.

In October 1985, DOD began testing all recruits entering the armed services for evidence of infection with HIV (human immunodeficiency virus, the cause of AIDS). In addition to testing all recruits, the services began testing those personnel already serving. Beyond the issue of testing, DOD has considered and in some cases implemented other policies in dealing with the AIDS virus. These issues include restrictions on the deployment of exposed personnel overseas, the effects such exposure may have on the careers of military personnel, health care concerns (including providing care for personnel suffering from AIDS), and the foreign affairs issues concerning U.S. military personnel serving abroad and the AIDS virus. To date, DOD has created one of the most comprehensive policies dealing with AIDS infection.

Taking the lead in dealing with contagious diseases is not unique to the Department of Defense. The ability to apply large-scale medical surveillance and treatment has made the military an ideal institution within which larger social policies are often formulated.

Congressional interests have centered around insuring that DOD policies are fair in that they maintain individual civil liberties and rights to privacy, but also that such policies are effective in preventing the spread of this deadly disease.

This issue brief will discuss those issues dealing with military manpower policy and the AIDS virus, including the level of the AIDS infection or HIV infection rates in the military; efforts to control the spread of AIDS to and among military personnel; and AIDS in the context of military personnel stationed overseas.

## BACKGROUND AND ANALYSIS

### Scope of the Problem

Acquired Immune Deficiency Syndrome (more commonly known as AIDS) is a contagious and deadly disease primarily transmitted sexually or through the exposure to blood or blood products (e.g. transfusions, sharing syringes). AIDS in the United States has been found to be concentrated in certain groups: male homosexuals and intravenous drug users (approximately 90% of all AIDS cases). Concerns exist, however, that AIDS can be spread through heterosexual contact, as is the case in Africa where approximately equal numbers of males and females have contracted the illness. While AIDS is increasing among women, the incidence of AIDS has increased greatest among minorities, in general.

### AIDS in the Military

With the recognition of AIDS as a distinct disease in 1981, the Department of Defense has maintained statistics on active duty military personnel who were diagnosed as having AIDS. As shown in the following table, a total of 274 AIDS cases have been reported by the DOD between the years 1982 and 1986. Further, it has been reported that with the full implementation of active duty testing in 1987, 1.5 per 1,000 active duty personnel have been identified with serological (blood serum) evidence of HIV infection (rates per 1,000 for each service: Army, 1.4; Navy, 2.5; Marine Corps, 1.0; and Air Force, 1.0). Active duty personnel who test positive for HIV infection either were infected while in the service or were infected prior to entering the service (i.e., before screening military applicants began). While it is possible for a person to test negative during the screening process and actually be infected, such an occurrence is extremely unlikely. Likewise, the occurrence of a false negative during testing of active duty and reserve personnel (i.e., an HIV infected person testing negative) is also extremely unlikely (see section on Testing).

According to data published on the results of screening for HIV infection by the armed services (see Burke, Donald S., et al., Human Immunodeficiency Virus Infections Among Civilian Applicants for United States Military Service, October 1985 to March 1986, Demographic Factors Associated with Seropositivity, New England Journal of Medicine, July 16, 1987, p. 131), "(T)he mean prevalence of HIV infection (among applicants for military service) was 1.5 per 1,000." By December 1987, this rate was reported by DOD to be 1.4 per 1,000. Although HIV infection rates have continued to increase among the general population, the rate among military applicants has actually decreased slightly.

AIDS Cases  
Among Military Personnel

<u>Year</u>	<u>Cases</u>
1982	1
1983	17
1984	28
1985	70
1986	158
<u>Total</u>	<u>274</u>

Source: J.F. Mazzuchi, OSD(HA), Feb. 1, 1988.

#### Description of Department of Defense Policies on AIDS

On Apr. 20, 1987, the Department of Defense released a memorandum specifically dealing with the DOD policy on Human Immunodeficiency Virus (HIV). (The HIV has been reported under other labels including HTLV-III or LAV; for the purposes of this issue brief, HIV will be used.) The following represents a summary of provisions contained in that memorandum. For the full text of this policy, see DOD, OSD Memorandum, Policy on Identification, Surveillance, and Administration of Personnel Infected with Human Immunodeficiency Virus (HIV), Apr. 20, 1987.

The DOD policy on AIDS can be broken down into six subgroups: Accessions (new entrants into military service); Surveillance and Health Education; Retention; Separation; Blood Supply; and Limitations on the Use of Information.

1. **Accessions.** Under current Department of Defense policy, all personnel entering the military are screened for exposure to the AIDS virus (i.e., serological evidence of HIV infection using a commercial enzyme-linked immunosorbent assay (ELISA) serological test, and, if positive, the ELISA is repeated and an immunoelectrophoresis test (Western blot) is conducted). If found to have tested positive on two ELISA tests and the Western blot test, the individual is not eligible for appointment or enlistment for military service. (Under testing conditions, an individual is tested using the ELISA. If positive, a second ELISA is indicated. If the first ELISA test is positive and the second negative, however, a third ELISA is conducted. The outcome of the third ELISA will be used to determine if the Western blot test is indicated. In other words, two positive ELISA results out of a maximum of three ELISA tests are required before the Western blot test is indicated.) For enlisted personnel, testing normally occurs at the Military Entrance Processing Station (MEPS) or at the initial point of entry to military service.

Officers may enter the service through other channels: Officers Candidates School/Officers Training School (OCS/OTS), Reserve Officer Training Corps (ROTC), service academies, special commissioning programs. For those who enter through OCS/OTS, testing is conducted when the individual reaches candidate status. Positive testing results in an honorable or entry level discharge. (Processing of those in OCS or OTS with prior military service is administered in accordance with service regulations described below.)

Tests are also administered to those in the pre-appointment programs -- ROTC. If a positive HIV serologic test is in evidence, the individual is disenrolled from the program at the end of the academic term (semester, quarter, etc.). Financial assistance is likewise terminated at the end of the academic term. No attempt to recoup assistance already provided is made if the individual disenrollment is based solely on serological evidence of HIV infection.

Individuals attending service academies who test positive are separated from the academy and discharged. The Secretary of the service, on appropriate authority, may delay such separation until the end of the academic year (including to graduation if the cadet/midshipman would normally have graduated at the end of that year). When the sole purpose for the separation from the academy is evidence of HIV infection, an honorable discharge is granted.

Individuals entering the service through special programs (such as the Judge Advocate General program or through programs involving allied health professionals) are separated from the service if evidence of HIV infection is found. As with those in the ROTC program, individuals separated from the service in these special programs based solely on the presence of HIV infection are disenrolled at the end of the academic term and no effort at recoupment is made.

The above provisions are applied to those entering the Reserve Components as well as the active duty armed forces.

**2. Disease Surveillance and Health Education.** With over two million personnel on active duty deployed worldwide, it is virtually impossible to test all military personnel at a particular time or in a particular location. Likewise, certain personnel, because their mission involves force readiness, for example, are of greater concern when it comes to testing. For these reasons, DOD has set testing priorities (including periodic retesting) in the following order: "(1) military personnel serving in or subject to deployment on short notice to areas of the world with a high risk of endemic disease or with minimal existing medical capability; (2) military personnel serving in, or pending assignment to, all other overseas permanent duty stations; (3) military personnel serving in units subject to deployments overseas; (4) other military personnel or units deemed appropriate by the respective military department such as medical personnel involved in the care of HIV infected patients, patients presenting at sexually transmitted disease clinics (e.g., patients seeking treatment at clinics for sexually transmitted diseases), patients admitted to alcohol and drug rehabilitation units, patients at prenatal clinics;

(5) all remaining military personnel in conjunction with routinely scheduled periodic physical examinations."

Educational and informational programs will be offered, on a voluntary basis, to all non-military beneficiaries seeking health care at the above mentioned clinics. Such material includes an explanation of current information on the AIDS virus, its means of transmission, etc. Further, these individuals will be offered, on a voluntary basis, testing for HIV infection. Policies regarding the sponsorship of dependents and others overseas will be drafted by DOD. At present, there are no plans or requirements for such individuals to be screened for HIV infection. Dependents may voluntarily be tested for AIDS infection, avail themselves of educational and informational programs offered by DOD and, of course, remain eligible for health care benefits as prescribed by law.

Active duty personnel with serological evidence of HIV infection will be provided medical counseling and appropriate educational materials. Medical monitoring of HIV infected individuals will be conducted for assessment and review of current policies. It is important to note that a finding of positive HIV infection shall not be used as a basis for any disciplinary action against any individual.

In order to monitor HIV infection, military medical care organizations are required to report to the appropriate civilian and military authorities (as required by State or other jurisdictional law and/or reporting requirements) a diagnosis of HIV infection. Along with notification, health authorities will initiate preventive medical intervention to include counseling, immediate health care, and counseling of others at risk (including sexual partners, blood banks, and other appropriate individuals or organizations such as civilian and/or host-nation disease reporting centers).

The Secretaries of the military services may limit assignment of personnel who show evidence of HIV infection for the purpose of protecting the health and safety of other military personnel. These individuals will be limited to duty assignments within the United States.

**3. Retention.** Active duty personnel with evidence of HIV infection who are found otherwise fit for duty in accordance with military medical standards are eligible for continued service in the armed forces. In this respect, such individuals are treated the same as others with evidence of other progressive illnesses (such as cancer that is in remission and does not inhibit or restrict the service member from performing his or her normal military duties). Personnel with evidence of HIV infection without evidence of physical or neurological impairment will not be separated from the service solely on the basis of such evidence of HIV infection.

Reserve Component personnel (including members of the National Guard) who evidence HIV infection are not eligible for extended active duty, i.e., periods greater than 30 days. Reserve Component personnel not serving on extended duty will be transferred to Standby Reserve only if they cannot be assigned to the Selected Reserve in accordance with current regulations. The Selected Reserve refers to "(T)hat portion of the Ready Reserve consisting of units and, as designated by the Secretary



concerned, of individual Reservists required to participate in inactive duty training periods and annual training, both of which are in a pay status. The Selected Reserve also includes persons performing initial active duty for training." (see 10 USC 268(b)).

**4. Separation.** DOD regulations cover several situations.

Military personnel who are infected with HIV and who are (medically) determined to be unfit for further duty shall be retired or separated pursuant to Chapter 61, Title 10, United States Code as implemented in DOD Directive 1332.18 of Feb. 25, 1986, or Section 1004(c), Title 10, United States Code.

Military personnel with serologic evidence of HIV infection who are found not to have complied with lawfully ordered preventive medicine procedures for individual patients are subject to appropriate administrative and disciplinary action, which may include separation.

Separation of military personnel with serologic evidence of HIV infection under the plenary authority of the Secretary concerned, if requested by the individual, is permitted.

Separation policies therefore are intended to insure fair and compassionate treatment of infected military personnel, as well as to protect uninfected personnel. Health benefits available to separated individuals depend on the type of separation received which, likewise, depends on the reasons for separation.

**5. Safety of the Blood Supply.** Protecting the blood supply or health of potential donors (i.e., service members) is of critical importance to DOD and therefore a central issue. Combat or combat-related injuries, especially during major battles, require large supplies of blood for transfusions. In certain cases, "battlefield transfusions" are required. In such circumstances, extensive testing facilities may not be readily available. Protecting the blood supply from HIV infection is an important rationale behind DOD policy.

Armed Services Blood Program Office policies, Food and Drug Administration guidelines, and accreditation requirements of the American Association of Blood Banks shall be followed by the Military Departments and Unified and Specified Commands and by civilian blood agencies collecting blood on military installations. In the event that units of blood shall not be screened for infectious agents prior to transfusing (contingency or battlefield situations), the Armed Services Blood Program Office in coordination with the Military Departments and Unified and Specified Commands shall provide guidance to operational units.

**6. Limitations on the Use of Information.** Information obtained from a service member during or as a result of an epidemiologic assessment interview (used for discovering the source of the infection and thereby tracking the spread of the illness) may not be used against the service

member in a court martial; nonjudicial punishment; involuntary separation (other than for medical reasons); administrative or punitive reduction in grade; denial of promotion; an unfavorable entry in a personnel record; a bar to reenlistment; and any other action considered by the Secretary concerned to be an adverse personnel action (see P.L. 99-661, section 705(c)).

Laboratory tests may not be used as a means of separation from the service except in those instances alluded to above.

The limitations on the use of information do not apply, however, to certain personnel actions considered "nonadverse." For example, information offered by the service member that indicates that the individual became infected through habitual intravenous illicit drug use may be used to remove the individual from particular assignments (such as explosive ordnance disposal or deep-sea diving), or to deny or revoke the individual's access to a security clearance.

It is important to note, however, that actions taken as a result of such information should not be unfavorably entered in the individual's personnel record. While such a reassignment needs to be entered, it need not reflect negatively on the individual in the personnel record. Likewise, information that an individual has evidence of HIV infection is not an unfavorable entry in a personnel record. (Note: Information entered as the result of failure to follow a lawful order -- instructing the service member to comply with preventive medical counseling, i.e. not to donate blood, etc. -- is reason for separation from the service and will be included in the personnel record as such.)

### Issues

The DOD policy on AIDS has been the source of debate that represents perhaps the epitome of this controversial social and medical issue in terms of individual civil rights and privacy and protection of the general public from this deadly disease. It is between these competing perspectives that DOD must formulate policies that best insure force readiness.

### Testing

Because testing, in general, has remained controversial, the DOD decision to test military applicants and personnel evolved only after lengthy consideration. Nevertheless, a number of arguments have been raised both for and against testing military personnel and military applicants. Those against testing have cited the following arguments.

-- Testing will be used to persecute and stigmatize homosexuals in the military.

-- Testing is not without errors, and such errors may cause irreparable damage to a person.

-- Testing positive for exposure to the AIDS virus is not proof that a person will ultimately contract the illness: there exists a great disparity in estimates on the rate of those who test positive for AIDS antibodies ultimately developing the disease. This rate is variously speculated to be between 5%-100%. According to the Public Health Service, 20%-30% of HIV infected persons will develop AIDS within five years.

-- Testing negative does not guarantee infected applicants will be prevented from entering the service. An individual may become infected and test negative due to the fact that the HIV infection has not been present for a sufficient period of time to be detected by testing procedures. (It usually takes between 6-12 weeks for detectable levels of HIV antibodies to develop.)

-- Given the inaccuracies of testing, lack of proof that a positive result will lead to AIDS, and the relative infrequency of the illness, costs of service-wide testing are unjustified. Since testing began, the DOD has paid nearly \$43 million to private laboratories for screening results and is expecting to pay \$25.5 million in 1988 for Reserve and active duty testing.

-- Positive test results may be used unfairly against the service member.

-- Precedents for such testing of AIDS are lacking.

-- Allowing the service to test will open the door to large-scale testing in the public and private sectors that may not be subject to controls that will protect the rights and civil liberties of the individual.

Those arguing in favor of testing have stated the following points.

-- The issue of homosexuality in the military is not relevant because the policy of the armed services regarding the barring of homosexuals from entry into the military is clear. Recruits who are known to be or who are acknowledged homosexuals are not eligible for entry into the military.

-- The two tests used by the services -- the ELISA and the Western blot -- together are a statistically accurate indicator of the presence of HIV infection. The first (ELISA) has a relatively high rate of false positives, i.e., some will test positive who have not actually been exposed to the virus. If an individual twice tests positive on the ELISA, the more sensitive Western blot test is indicated. By using both tests, it is estimated that the rate of false positive findings is one per 100,000.

-- While testing is expensive, the cost of treating infected personnel admitted into the service can be tremendous. Annual costs for testing recruits are estimated to range from \$4 million to \$5 million (Washington Post, Military Will Screen for AIDS Exposure, Oct. 19, 1985, p. A12). The lifetime costs of caring for an AIDS patient are estimated to be between \$70,000 and \$150,000. Based on these estimates, the 158 AIDS cases confirmed in the military in 1986 will cost the taxpayer

between \$11,060,000 and \$23,700,000. (Estimates are based on data published in a Rand Note, by Anthony Pascal, The Costs of Treating AIDS Under Medicaid: 1986-1991, May 1987, p. vi). A major concern of policy analysts is that if the services do not test for AIDS, those who believe that they may contract the illness, and lack insurance or other medical protection, may enter the service as their only viable alternative to acquire access to medical care. In essence, this would force the military to deal with a social and medical problem that should be dealt with by other appropriate agencies.

-- It is undeniable that the often "hysterical" reaction toward AIDS will lead to unwarranted and prejudicial attitudes toward those who test positive for HIV infection. However, the services have taken steps (A) to insure that positive test results do not lead to adverse personnel actions, and (B) to educate personnel concerning AIDS in order to deal realistically and compassionately with the illness, calm the "hysteria," and eliminate unwarranted prejudice.

-- Although testing precedents regarding AIDS may be lacking, the services do screen for other communicable and, arguably, less dangerous illnesses and conditions, as well as for drug use.

-- Maintaining the health of military personnel is essential for force readiness.

-- Screening military personnel for HIV infection acts as a safeguard from infection via blood transfusions and therefore protects the blood supply.

-- Currently, the services provide one of the only sources of reliable statistics on infection rates. The ability of health care professionals to measure, track, and thereby understand the illness and its means of transmission is crucial to preventing further spread of the illness and to finding a cure. The Department of Defense provides the central source of data on the infection rate in the United States through its screening of applicants.

### **Career Implications**

Military personnel are concerned as to the effects that testing for HIV infection may have on their careers. In particular, these individuals are concerned about the effects of testing positive, or actually developing the disease. As noted above, testing positive may subject the service member to prejudicial attitudes regarding AIDS. To the extent that the services are capable of educating personnel, particularly superiors, it is expected that they will be able to eliminate the effects of such attitudes.

Also, it was noted that the Secretary of the service concerned is authorized to limit the assignment of personnel who test positive for HIV infection, but who remain eligible for active duty. The nature of military service often requires that personnel serve in a number of billets or job positions and that these assignments occur at different places (including overseas). To the extent that such limitations serve to

restrict or reduce a service member's opportunities for assignment to these overseas duty stations, they will reduce the member's opportunities for advancement.

Recent research has indicated that HIV infection alone can result in impaired coordination, cognitive difficulties, or other neurologic disfunctions. Individuals in sensitive or potentially dangerous duty assignments may be reassigned as a result of such impairment. Again, such an outcome based solely on HIV infection may limit the career opportunities of HIV-infected personnel who do not otherwise exhibit a secondary illness indicative of AIDS.

Another policy that will certainly affect the careers of certain personnel involves those situations in which a service member reveals information regarding the source of exposure to the virus (such as drug use) and is then removed from his or her job activity because of this disclosure. This policy will discourage personnel from being frank regarding their exposure to the illness to the extent that members will cite exposure via means that will not be threatening to their careers. Thus, while such disclosures are used to remove personnel from positions that could endanger themselves or others (e.g., removing a narcotics addict from ordnance disposal), if these disclosures threaten the member's career, he or she will likely be discouraged from revealing information regarding exposure.

Finally, the issue of retention may be affected by DOD policies regarding AIDS. Personnel who test positive for HIV exposure are less likely to separate from the service given the limited range of medical alternatives presented to them in the civilian society and the expense such civilian medical care may bring. In essence, the knowledge of AIDS exposure may actually discourage such personnel from leaving the service.

#### Health Care Concerns

As noted above, the potential costs of caring for AIDS patients are high. Including the costs of covering dependents, the final cost of military medical care could grow rapidly if the spread of AIDS remains unchecked. Spiraling medical costs could, in effect, compete for limited resources with the primary mission (force readiness) of the military health service system. The extent to which the DOD health care budget could absorb such an increase and still maintain levels of care currently available is not known.

Conversely, fearing that the services may become a repository of AIDS cases, some have advocated a more aggressive separation policy for those with HIV infection, ARC, or AIDS. While such a policy would increase levels of protection for uninfected service members, it could prove disastrous to those separated. Such individuals would be arguably "dumped" from the services without insurance, medical care, or employment. Likewise, such a policy is contrary to the notion that the military services "take care of their own."

At present, the number of AIDS and HIV infection cases in the military appears to have leveled off. In fact, because of testing, educational programs, etc., it is expected that the number of AIDS or HIV infection cases in the military may actually decline. However, the possibility exists that the number of AIDS or HIV infection cases in the military may increase. In order to contend with these problems, a number of policy outcomes may be anticipated if AIDS begins to spread rapidly within the military services. Cost containment policies can be expected. One means of cost containment may include shifting the burden of dependent care for AIDS to the private sector -- CHAMPUS. Under CHAMPUS, the beneficiary pays part of the cost of medical care. Such a policy of shifting the care of dependents or retirees who have AIDS to CHAMPUS would generate a significant growth in the cost of operating CHAMPUS. In addition, such a policy may be viewed as one of "dumping" AIDS patients by the military on the civilian health care community -- a community that may or may not be able to absorb the added burden. In essence, this raises the question of who -- civilian or military community -- should provide care and facilities for the treatment of AIDS victims.

Specific structures within the DOD may be created to deal specifically with AIDS. It is possible that DOD could establish particular medical facilities to treat AIDS patients at regional centers rather than dispersing such treatment facilities. Such a concentration of AIDS-related care in a few facilities would allow the services to maximize the amount of care available and minimize costs.

#### **Protecting Military Personnel and Dependents**

The major emphasis regarding protecting military personnel from the AIDS virus has involved testing personnel, screening blood supplies, and developing educational initiatives. While testing procedures are a direct means of protecting personnel from HIV infection, educational initiatives represent an indirect means of protection. By informing personnel of the illness itself, its means of infection, etc., it is expected that military personnel will be self-regulating to the extent that they will modify their own behavior to minimize the possibility of exposure. More aggressive programs may help prevent the spread of the illness, but are viewed as intrusive and threatening to individual civil liberties. Coupled with other programs, such as anti-drug abuse and anti-prostitution programs, it is argued that educational programs can be an effective means of deterring the spread on AIDS and respecting individual rights.

Recently, the services were confronted with the case of an individual who was found to be a carrier of the AIDS virus and who did not voluntarily restrict his sexual behavior. The service sought to court martial the soldier on the grounds that such behavior represented an assault on his unwitting sexual partners. In this instance the military is forced to decide between protecting the unknowing future sexual partners of this soldier and violating the soldier's right to privacy. According to DOD policy, the soldier's violation of orders based on preventive medical counseling, in this context, provides justification for separation under current policy regarding AIDS. However, since criminal charges of assault have been made, the issues involved in this court

martial go well beyond simple separation from the service for failing to comply with a legal order. Without exact legal precedent in this situation, this on-going case is being watched closely by social and legal analysts.

Dependents who have AIDS present a special concern to DOD officials. Compulsory testing of dependents is not currently authorized. Nevertheless, dependents could be a source of infection for service members. Likewise, a dependent who is known by DOD health care officials to have a HIV infection is beyond the social/medical control of the services. What responsibilities or liabilities the services have to protect civilians or military personnel from sexually transmitted HIV infection from an infected military dependent are not clear.

Arguably, the military could take a more aggressive policy of protecting personnel by conducting more frequent testing and removing HIV infected personnel from the military environment. Such measures could go far to protect the rights of uninfected personnel and thereby ensure the readiness of the military. However, more aggressive measures are certainly more expensive, are more likely to threaten individual civil rights, are not likely to be viewed as compassionate to the AIDS victim, and would set a questionable precedent for the civilian and private sectors to follow.

#### **Foreign Affairs Issues**

A large number of foreign nations host U.S. military personnel and U.S. military installations. Some critics of U.S. military personnel abroad (in the Philippines, for example) have stated that these personnel are responsible for spreading the AIDS virus among foreign nationals. Under current policy, military personnel who test positive for exposure are not subject to overseas deployments. In addition, personnel stationed overseas who test positive are returned to the United States. Under this policy, it is expected that the charge that U.S. military personnel are bringing the AIDS virus to foreign lands will be diminished.

However, once the virus is contracted, military personnel who are unaware they have the disease or who are infected and fail to refrain from sexual activities may be responsible for the continued spread of the disease overseas. Likewise, personnel who contract the disease while overseas and then are rotated to the United States bring the disease home with them. (Personnel returning from overseas under normal rotation policy are not routinely tested for HIV infection in the process of returning to the United States.) Current policy seeks to restrict the spread of the AIDS virus overseas through routine testing and to care compassionately for those individuals infected by returning them to the United States where they may be monitored and provided with the care and counseling needed. More aggressive policies, such as limiting off-base or liberty activities in areas which have high endemic rates of HIV infection (such as certain areas of Africa) may be considered, but have not yet been adopted.

By limiting the number of personnel who may be stationed overseas, the services likewise limit the defense capabilities of the United States. Because the number of AIDS or ARC cases or cases of HIV infection is very small, this represents an insignificant effect on military manpower policies. However, should the number of cases expand, the options concerning overseas deployments could become increasingly limited.

While concerns of U.S. personnel spreading the disease overseas have received considerable attention, the issue of U.S. personnel spreading the disease from overseas to the U.S. has not received much attention. Arguably, measures equally as aggressive as those used to protect foreign nationals from infection by U.S. service members could be applied to protect U.S. civilian from infection by U.S. service members returning from overseas.

#### LEGISLATION

##### **H.R. 345 (Dannemeyer)**

Prohibits "the transfer of body fluids by Federal officers and employees or members of the armed forces of the United States who have acquired immune deficiency syndrome," and for other purposes. Introduced Jan. 1, 1987; referred to Committees on Energy and Commerce, on Armed Services, and on Post Office and Civil Service.

#### CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS

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- U.S. Congress. House. Committee on Small Business. Subcommittee on Regulations and Business Opportunities. AIDS antibody testing. Hearings, 100th Congress, 1st session. Oct. 19, 1987. (Print not yet available.)
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