AIDS raises series of civil liberties issues

By DAVID RAIZMAN
The AIDS epidemic has unfolded a complex series of legal questions, pitting protection of the public health against the fundamental civil liberties of people with AIDS.

Concern over violations of civil liberties falls into four main areas:
• Housing, employment and insurance discrimination against gays and members of other high-risk groups.
• Whether compulsory testing for the HTLV-III virus will be allowed.
• Disclosure of test results.
• Discrimination in housing, employment and insurability against those who test positively for HTLV-III.

Several other issues, like the legality of closing the gay bathhouses, have also emerged from the AIDS crisis.

Discrimination Against High-Risk Groups

Employment and housing discrimination does not violate the civil rights of gays, according to Columbia Law Professor Gerard Lynch, since discrimination against gays has been upheld as constitutional in the absence of explicit laws to the contrary.

One irony presented by the AIDS crisis is that gays who have AIDS are protected from discrimination in housing and employment by laws safeguarding the handicapped.

"Just when we were starting to make some gains in being accepted into society at large, the AIDS epidemic has closed most of the doors that were starting to open," said a gay Columbia graduate student who asked not to be identified.

The biggest civil liberties loss, according to Lynch, is the major setback the AIDS epidemic brought to the gay rights movement in general.

"Until and unless there's some easily available cure or immunization," Lynch said, "it's going to be a long time before people are going to think affirmatively and liberally about expanding gay people's civil rights."
Compulsory Testing

Many public health officials and community leaders argue that certain new job applicants should be tested for the HTLV-III virus.

The Pentagon recently announced that it would test all new military recruits and is considering testing its current forces.

There is historical precedent for mandatory disease testing on public health grounds, according to Columbia Law Professor Frank Grad, author of a public health law treatise. Prenuptial blood testing is the most prominent example of compulsory examination.

"There is no question but that there is a very broad range of police powers in these situations," Grad said.

Employment and insurance applicants routinely take physicals and blood tests as part of the application process. Although New York City law prohibits AIDS testing by anyone other than the Health Department and selected research facilities, such tests are probably constitutional, according to Lynch.

The potential inaccuracy of the HTLV-III tests could bring wrongful discrimination in employment and other areas, according to Daniel Fass, member of the Columbia Gay and Lesbian Alliance. Other than those who test "falsely" positive, many of those with accurate positive test results exhibit no illness and present no risk to those around them, according to researchers.

Disclosure of Test Results

Civil libertarians strongly object to disclosure of HTLV-III test results.

Gay advocates fear that names of those with the virus will be leaked to insurers, employers and others who may discriminate against those who test positively. Since the list may contain the names of those who test "false" positive, healthy individuals may be unable to secure jobs or health and life insurance.

In compliance with Health Department protocol, blood specimens sent to New York Ci-
ty health officials for HTLV-III testing are encoded. The results are then relayed by numerical code to the doctor and patient.

The physician-patient privilege guarantees the secrecy of the test results. Nevertheless, some fear that the code—and therefore the results—may become public.

Grad said that disclosure of confidential test results to any private party would be an unlawful breach of duty unless the local government had established a “need to know” in order to protect public health.

The 1977 Supreme Court decision in Whalen v. Roe clearly upholds the ability of governments to collect medical information on its citizens. Doctors are legally required to report incidence of infectious disease to the Centers for Disease Control in Atlanta.

**Using Positive Test Results**

Republican mayoral candidate Diane McGrath has suggested that people with AIDS may need to be quarantined or otherwise restricted.

Others say that since the disease spreads in a few, definable ways, such measures are unnecessary and violate civil liberties.

Grad says there is significant precedent to quarantine and restrict public movement of people with communicable disease, like “Typhoid” Mary Robertson in 1922. But such regulation must be “reasonable” or “ra-
Most experts agree that quarantine is not medically necessary.

"Since it is not likely that children will undertake sexual intercourse or needle use in the classroom," Grad said, "it is not likely to be transmitted there," and a child with AIDS should be allowed to attend public school.

Argument of the legal issues raised by the AIDS crisis continues daily in several of the nation's courts, including the State Supreme Court in Queens that is to decide whether a young child with AIDS can attend New York public schools.