

AIDS: HANDICAP OR NOT ?

INTRODUCTION

Acquired Immune Deficiency Syndrome (AIDS) is a problem of economic, ethical, legal, medical, political, and social dimensions. One issue that cuts across the legal and social dimensions of AIDS is the possibility of discrimination in the workplace. The thesis of this paper is that persons who have contracted AIDS or ARC (AIDS-related complex) or who are infected with the virus (HTLV-III [human T cell lymphotropic virus type III] or HIV [Human Immunodeficiency Syndrome]) or who are perceived as carriers of AIDS are "individual[s] with [a] handicap(s)"¹ and thus protected by anti-discrimination statutes.

Part I will describe the significance of the AIDS problem and the nature of the syndrome. Part II will analyze whether persons with AIDS, ARC, HTLV-III, or who are perceived as having AIDS, are individuals with a handicap within the meaning of the Rehabilitation Act of 1973 (the Act). Part III reviews case law dealing with the issue of whether AIDS can be classified as a handicap. Part IV discusses the reason for classifying such persons as handicapped.

PART I

"The United States Public Health Service has called Acquired Immune Deficiency Syndrome (AIDS) the nation's number one health priority."² The extent of the AIDS problem is apparent when one considers both the number of persons who have contracted AIDS and the number of persons who are estimated to be infected with the virus. By May of 1988, the Center for Disease Control (CDC) had received a total of 62,000 reports of AIDS cases.³ The total is

¹. 29 U.S.C. Sec. 706(8)(b) (Supp. IV 1986). The Rehabilitation Act of 1973 utilized the phrase "handicapped individual" and was amended in 1986 to "individual with handicaps":

The term "handicapped individual is changed to "individual with handicaps." This change was suggested by persons representing individuals with disabilities who testified before the Subcommittee that by retaining the adjective "handicapped" before the noun "person" the legislation might be inadvertently adding to the stereotype that persons with handicaps are less worthy.

H.R. 571, 99th Cong., 2d Sess. Sec. 5, reprinted in 1986 U.S. Code Cong. & Admin. News 3471, 3487.

². Note, *The Constitutional Right of AIDS Carriers*, 99 Harv. L. Rev. 1274 (1986) (citing to U.S. PUBLIC HEALTH SERVICE, FACTS ABOUT AIDS I (1984)).

³. Washington Post, June 3, 1988, at A1 & A14. In Virginia, 784 cases of AIDS have been reported, while it is estimated that between 23,000 to 78,000 persons are infected with HTLV-III. 6 Port Folio Magazine 10 (August 16, 1988).

expected to continue to increase in the future.⁴ Approximately 1.5 million Americans are infected with the virus that has the potential of causing AIDS or ARC.⁵

HTLV-III is the virus that may or may not cause AIDS. A person infected with the virus may remain asymptomatic, develop ARC, or progress to a case of AIDS.⁶ AIDS is the possible severe result of HTLV-III infection. "AIDS is a syndrome"⁷ that attacks and breaks down the immune system of a person and makes him susceptible to infection.⁸ The suppressing of the immune system makes the body susceptible to "opportunistic" diseases.⁹ *Pneumocystis carinii* pneumonia¹⁰ and Kaposi's sarcoma¹¹ are two examples of opportunistic diseases associated with AIDS.

The symptoms of AIDS are physical and mental. Physical effects range from weight loss to consistently swollen glands, coughing or shortness of breath to skin rashes and spots.¹² AIDS also decreases the ability of the mind to remember

⁴. Washington Post, June 3, 1988, at A1 & A14. "According to the most recent PHS estimates, that figure [62,000] will grow nearly five times to 300,000 by the end of 1992." *Id.*

⁵. *Id.*

The Public Health Service (PHS) estimates that up to 1.5 million Americans are now infected with the AIDS virus. Many of them do not know they are infected. And federal officials now believe that infected people could all eventually become ill if no effective treatment is developed. *Id.*

⁶. V. Gong, *AIDS: Facts and Issues*, 10-12 (V. Gong and N. Rudnick, eds. 1986).

⁷. W. Banta, *AIDS in the Workplace*, 1-2 (1988). AIDS opens people up to disease and infection that results in death. AIDS does not directly cause the fatality. *Id.*

⁸. P. Douglas & L. Pinsky, *The Essential AIDS Fact Book*, 13 (1987). The Center for Disease Control defines AIDS as:

absence of all known underlying causes of cellular immunodeficiency (other than HTLV-III/LAV infection) and absence of all other causes of reduced resistance reported to be associated with at least one of those opportunistic diseases.

W. Dornette, *AIDS and the Law*, 264 app. B (1987).

⁹. P. Douglas & L. Pinsky, *The Essential AIDS Fact Book*, 15 (1987).

¹⁰. V. Gong, *supra* note 6, at 65-67.

¹¹. *Id.* at 80-85.

¹². *Id.* at 49-53.

or recall information (dementia).¹³ The almost certain result of AIDS is death.¹⁴ ARC (AIDS-related complex) is a less severe, usually non-fatal possible result of HTLV-III infection.¹⁵ ARC may or may not progress into AIDS.

AIDS is an acquired syndrome. The weight of data lies against being infected via casual contact with a person infected with the virus, ARC, or AIDS.¹⁶ HTLV-III cannot be transmitted through contact such as handshakes, hugging, sharing of food and beverages with a person who is either infected with the virus, ARC, or AIDS.¹⁷ The reason for this is that the virus is fragile.¹⁸ For example, the human skin acts as a barrier to the virus and prevents it from entering the bloodstream.¹⁹ The virus must enter the bloodstream of a person to represent a danger of infection.

Transmission occurs in a number of ways. The first is the transfer of bodily fluids (semen, vaginal, cervical secretions) during sexual contact.²⁰ The transmission can occur during vaginal, rectum, or oral-genital sex and to a

¹³. Picot, *Living in the Shadows of AIDS*, 6 Port Folio Magazine 9 (August 16, 1988).

¹⁴. Washington Post, *supra* note 4, at A1 & A4.
Because no one has ever been cured of AIDS, a 99 percent AIDS rate [based on a study of homosexual men] means that virtually all would die unless a treatment is developed. 'The picture gets worse as we see more data,' said Dr. William W. Darrow, a researcher at the federal Center for Disease Control (CDC). 'We have to assume this model would hold up for all other infected groups as well.' *Id.*

¹⁵. V. Gong, *supra* note 6, at 13.

¹⁶. Douglas & Pinsky, *supra* note 9, at 19. "Every major scientific study has concluded that AIDS *cannot* be transmitted by casual contact." *Id.*

¹⁷. See generally P. Douglas & L. Pinsky, *The Essential AIDS Fact Book*, 19-21 (1987), R. Liebmann-Smith, *The Question of AIDS*, 42-57 (1985).

¹⁸. Douglas & Pinsky, *supra* note 9, at 20.

¹⁹. *Id.* at 18.

²⁰. R. Liebmann-Smith, *The Question of AIDS*, 42-46 (1985).
Epidemiological studies showed that a person could contract AIDS from sexual contact with a single infective individual, that one could be exposed to such an individual and *not* contract the disease, and that some people could apparently infect others without themselves being clinically ill. *Id.* at 45.

greater degree if there exist abrasions to the lining of the vagina, rectum or areas of the mouth.²¹ Transmission may also occur with the sharing of unsterilized needles associated with intravenous-drug use,²² the transfusion of infected blood and blood products,²³ and perinatal.²⁴

PART II

The Act²⁵ will be used as a reference point to determine whether those afflicted with the virus, ARC, or AIDS, or perceived to be infected with AIDS are individuals with a handicap. Section 504 of the Act provides that any program that receives federal funding may not discriminate against an otherwise qualified individual with a handicap based upon the existence of the handicap.²⁶ The congressional purpose behind section 504 was to prevent individuals with handicaps from being discriminated against in all phases of life.²⁷

The Act distinguishes between three categories of persons for purposes of determining whether a person has a handicap: 1) those individuals with either "a physical or mental impairment which substantially limits one or more of such person's major life activities,"²⁸ 2) those persons who have "a record of such an impairment,"²⁹ or 3) those persons "regarded as having such an impairment."³⁰

²¹. Douglas & Pinsky, *supra* note 9, at 18-19.

²². Liebmann-Smith, *supra* note 20, at 46-50.

²³. *Supra* note 9 at 19.

²⁴. *Id.*

²⁵. Pub. L. No. 93-112, 87 Stat. 355 (1973) (codified as amended 29 U.S.C. Sec. 701-796 (Supp. IV 1986)).

²⁶. 29 U.S.C. Sec. 794 (Supp. IV 1986).

No otherwise qualified individual with handicaps in the United States, as defined in section 706(8) of this title, shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance....*Id.*

²⁷. S. Rep. No. 1297, 93rd Cong., 2d Sess. Sec. 4, *reprinted in* 1974 U.S. Code Cong. & Admin. News 6373, 6388.

Section 504 was enacted to prevent discrimination against all handicapped individuals,....in relation to Federal assistance in employment,.... or any other Federally-aided programs. *Id.*

²⁸. 29 U.S.C. Sec. 706(8)(B)(i) (Supp. IV 1986).

²⁹. 29 U.S.C. Sec. 706(8)(B)(ii) (Supp. IV 1986).

Regulations promulgated define a physical or mental impairment as either a physiological disorder³¹ or any mental or psychological disorder.³² "Major life activities" encompass the daily tasks of living such as working.³³ A person who "has a record of impairment" has either a history of impairment and recovery or has been misclassified as having an impairment.³⁴ A person "regarded as having such an impairment" is either a person with a handicap that does not substantially limit major life activities, except for a person's attitude toward him³⁵, or a person who does not possess an impairment but is treated as possessing the impairment.³⁶

An "otherwise qualified handicapped" person is one who with reasonable accommodation by an employer or none at all can perform the tasks of a job.³⁷ Assessment as to whether reasonable accommodation can be achieved takes in such factors as undue hardship to the employer, the size of the business or

³⁰. 29 U.S.C. Sec. 706(8)(B)(iii) (Supp. IV 1986).

³¹. 45 C.F.R. Sec. 1232.3(h)(2)(i)(A) (1987). A physical or mental impairment means:

(A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs, cardiovascular, reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine;....*Id.*

³². 45 C.F.R. Sec. 1232.3(h)(2)(i)(B) (1987). A physical or mental impairment can also mean:

(B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. *Id.*

³³. 45 C.F.R. Sec. 1232.3(h)(2)(ii) (1987). 'Major life activities' means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. *Id.*

³⁴. 45 C.F.R. Sec. 1232.3(h)(2)(iii) (1987).

³⁵. 45 C.F.R. Sec. 1232.3 (h)(2)(iv)(A) & (B) (1987).

³⁶. 45 C.F.R. Sec. 1232.3(h)(2)(iv)(C) (1987).

³⁷. 45 C.F.R. Sec. 1232.3(i) (1987).

program, facilities, budgetary constraints, type of business or program, and the nature and cost of accommodation.³⁸

In determining whether the handicap status of the Act applies to persons encompassed within the AIDS issue, three groups of persons must be differentiated: those individuals with AIDS, those individuals that exhibit symptoms of ARC, and those individuals that are either carriers of the virus but asymptomatic, members of high risk groups (ie. homosexuals), family members of AIDS or ARC victims, or those persons perceived as having AIDS. Persons with AIDS are individuals with a handicap substantially limiting major life activities. AIDS victims suffer both physical and mental impairment. The regulations defined physical impairment as any physiological condition that impacts upon certain body systems.³⁹ AIDS impacts upon both the hemic and lymphatic systems of the immune system.⁴⁰ HTLV-III attacks the immune system (breaking down the function of the hemic and lymphatic systems) and opens the body up to opportunistic diseases and infection.

While the regulations promulgated do not speak explicitly of the immune system, one author has concluded that the statutory definition of physical impairment should not be read narrowly and is not an all inclusive list of physical impairments.⁴¹ Dementia is also an example of a physical impairment affecting

³⁸. 45 C.F.R. Sec. 1232.10 (1987).

³⁹. *Supra* notes 31, 32.

⁴⁰. See generally Note, *AIDS and Employment Discrimination: Should AIDS be considered a handicap?*, 33 Wayne L. Rev. 1106 (1987); Note, *Does it qualify as a "Handicap" under the Rehabilitation Act of 1973?*, 61 Notre Dame L. Rev. 583 (1986).

⁴¹. Note, *Does it qualify as a "Handicap" under the Rehabilitation Act of 1973?*, 61 Notre Dame L. Rev. 583-84 (1986). The declared congressional purpose behind the Rehabilitation Act suggests that Congress's concern was on providing equal opportunity for employability to persons with handicaps:

The purpose of this chapter is to develop and implement,...., and the guarantee of equal opportunity,....,for individuals with handicaps in order to maximize their employability, independence, and integration into the workplace and the community.

29 U.S.C. Sec. 701 (Supp. IV 1986). The purpose reflects the intention to integrate those with handicaps into society. Such a goal supports the view that the statute should be broadly interpreted and applied.

AIDS victims.⁴² AIDS victims meet the first criteria of physical or mental impairment.

The second criteria, that the impairment must be one that "substantial[ly] limits", is harder to clarify because the regulations do not directly speak to this issue.⁴³ The plain language of the regulations show that "substantial limits" modifies "major life activities." Because AIDS is a crippling disease and in most cases causes death, a person with AIDS lacks control over his body's response to the virus and thus the physical impairment is a substantial limit to a major life activity (fighting illness).⁴⁴

Additionally, AIDS is a substantial limit in the sense that a stigma is attached to persons with AIDS. The stigma results in isolation and non-participation in society.⁴⁵ One author has suggested that "substantial limits" refers to employability and the proper question is to what extent does the impairment affect employability.⁴⁶ Regardless of the manner in which "substantial limits" is construed, it is clear that one must assess the impact of the physical impairment upon one or more major life activities.

"Major life activities" as suggested by the regulations encompass the ability to live day to day.⁴⁷ AIDS makes the victim non-resistant to infection and in need of constant medical treatment. The victim is unable to care for himself in a normal fashion. Maintenance of good health is one example of a major life

⁴². Picot, *supra* note 13, at 9.

AIDS is a disease of loss, loss of control of one's body, one's mind, one's life. As the disease progresses, AIDS victims suffer not only physical but mental deterioration. HIV rides into the brain inside the white blood cells which it infects. In ways which are still not clear, the presence of the virus damages the nerve cells of the cerebral cortex, a center of intellectual function in human beings. AIDS patients suffer at first subtle and later more profound decreases in their intellectual abilities, suffering loss of memory and other mental functions. *Id.*

⁴³. Note absence from C.F.R. Sec. 1232.3 (1987).

⁴⁴. Note, *Does it qualify as a "Handicap" under the Rehabilitation Act of 1973?*; 61 Notre Dame L. Rev. 584, 584-6 (1986).

⁴⁵. Note, *AIDS and Employment Discrimination: Should AIDS be considered a handicap?*, 33 Wayne L. Rev. 1106-07 (1987).

⁴⁶. *Id.*

⁴⁷. *Supra* note 33.

activity.⁴⁸ The progression of the disease can decrease the ability of the AIDS victim to work from either a physical or mental aspect.⁴⁹ Work is a major life activity as defined in the regulations.⁵⁰ The stigma that AIDS victims encounter also limits their meaningful participation in society (major life activity) in relation to their family, friends, employers, and co-workers.⁵¹

AIDS victims are individuals with a handicap within the meaning of the Act. Determination as to whether or not AIDS is an otherwise qualified handicap for purposes of working must be decided on a case by case basis. Persons who have ARC or are members of groups who are perceived to have AIDS (virus carriers, ARC persons, homosexuals, family and friends of AIDS or ARC victims, etc.) are handicapped in two ways. First, the Act's definition of a person with a handicap indicates that one who "has a record of such an impairment" (history of illness or misclassification) is a handicapped person within the Act.⁵² Regardless of whether the person has the impairment, the person is treated by others as having the impairment and thus as an individual with a handicap.⁵³

Secondly, persons who are treated as having AIDS but do not are protected by the third definition of an individual with a handicap. The Act provides that those persons "regarded as having such an impairment" are individuals with a handicap for purposes of the Act.⁵⁴ This protection encompasses those members

⁴⁸. *Supra* note 44, at 585-86.

⁴⁹. *Supra* notes 13 and 45.

⁵⁰. *Supra* note 33.

⁵¹. *Supra* note 44.

⁵². *Supra* note 34.

⁵³. *Supra* note 45, at 1107.

⁵⁴. 45 C.F.R. Sec. 1232.3(h)(2)(iv) (1987). The legislative history to the Rehabilitation Act Amendments indicates that the definition of a person with a handicap includes:

those persons who are discriminated against on the basis of handicap whether or not they are in fact handicapped,.... This subsection includes within the protection of sections 503 and 504 those persons who do not in fact have the condition which they are perceived as having, as well as those persons whose mental or physical condition does not substantially limit their life activities and who thus are not technically within clause (A) in the new definition. Members of both these groups may be subjected to discrimination on the basis of their being regarded as handicapped.

S. Rep. No. 1297, 93rd Cong., 2d Sess., *reprinted in* 1974 U.S. Code Cong. &

of high risk groups (ie. homosexuals), those persons who test positive for antibodies of AIDS, carriers of the virus, persons with ARC, family and friends of AIDS victims.⁵⁵

PART III

Recent decisions of courts in the United States support the position that victims of AIDS, ARC, or carriers of the virus, or persons perceived as being infected with AIDS, should be handicapped within the meaning of the Act.⁵⁶ In *Thomas v. Atascadero Unified School District*, the district court held that a child who was infected with the AIDS virus and showing signs of ARC was an individual with a handicap and otherwise qualified to attend school for purposes of application of the Act.⁵⁷ The boy, Ryan Thomas, is a child infected with HTLV-III and was eligible at the time of the case to attend kindergarten class at a public school that received federal financial assistance.⁵⁸ The boy suffered from pulmonary and middle ear problems and chronic lymphadenopathy.⁵⁹ These symptoms indicate a person with ARC.⁶⁰

The court concluded based upon the medical problems that the boy suffers from substantial impairment of his major life activities.⁶¹ The court focused on the transmission of the AIDS virus and held that the disease is not transmitted through casual contact with a person infected.⁶² Therefore, the risk of transmission is not present in the school context and the school district cannot

Admin. News 6373, 6389-90.

⁵⁵. *Supra* notes 44, 45.

⁵⁶. This paper presents only three of the cases that address the question and does not intend to cover or speak for all such cases.

⁵⁷. 662 F.Supp. 376 (C.D.Cal. 1987).

⁵⁸. *Id.* at 379.

⁵⁹. *Id.*

⁶⁰. V.Gong, *supra* note 6, at 50-53.

⁶¹. 662 F.Supp. at 379-380.

⁶². *Id.* at 380.

The best available medical evidence shows that the AIDS virus is not spread in the air by infected droplets as are the common cold, influenza and tuberculosis. The virus is fragile and is killed by most household disinfectants. The virus is transmitted from one person to another only by infected blood, semen, or vaginal fluids (and, possibly, mother's milk). Transmission by either semen or blood accounts for virtually all reported cases. *Id.*

use as the basis of its decision to exclude the boy the mere fact that he has the AIDS virus and symptoms of ARC.⁶³

The court in *Thomas* relied upon a decision from New York in finding section 504 of the Act applicable to the facts. *In the Matter of District 27 Community School Board v. City of New York*, a seven-year old child was diagnosed as having AIDS and a review panel cleared his attendance at school.⁶⁴ The review panel concluded that the child should remain in school because he had remained healthy and had attended school in the previous years.⁶⁵ Two local community school boards brought an action seeking an injunction prohibiting the child from attending school.⁶⁶ While the case was at trial, the health commissioner placed the child's case before a second review panel. The panel unanimously concluded that the child did not meet the CDC's definition of a person with AIDS.⁶⁷ The child was classified as being infected with the virus and evidencing some immune suppression.⁶⁸

The court, recognizing that the issues originally before it were now moot, proceeded to rule on those issues given the importance and likely recurrence of such issues and because it was in the public's best interest.⁶⁹ Because HTLV-III attacks and destroys lymphocytes, the court held that children with AIDS suffer from a physical impairment.⁷⁰ The decision further suggests that a person who is regarded as having an impairment but in reality does not possess the impairment is protected by the Act.⁷¹ The court then addressed the misdiagnosis of the boy and ruled that the Act would apply because the boy's history and misclassification of having AIDS unjustifiably served as the basis of the exclusion order.⁷² The school boards feared the risk of transmission of the disease to non-infected

⁶³. *Id.* at 382.

⁶⁴. 130 Misc.2d 398, 502 N.Y.S.2d 325 (1986).

⁶⁵. *Id.* at 401, 502 N.Y.S.2d at 328.

⁶⁶. *Id.*

⁶⁷. *Id.* at 402, 502 N.Y.S.2d at 329.

⁶⁸. *Id.*

⁶⁹. *Id.* at 402-403, 502 N.Y.S.2d at 329-30.

⁷⁰. *Id.* at 414-15, 502 N.Y.S.2d at 336.

⁷¹. *Id.* at 414, 502 N.Y.S.2d at 336. The court also addressed the equal protection problem on two levels: 1) excluding those with AIDS but not those with ARC or carriers of the virus, and 2) excluding those known infected and not excluding those who are infected but not known. *Id.* at 414-17, 502 N.Y.S.2d at 337-8.

⁷². *Id.* at 415, 502 N.Y.S.2d at 336-37.

individuals. The court in recognizing the fear indicated that all of the witnesses for both the school boards and the City of New York concluded that the disease cannot be spread through casual contact with a person infected.⁷³

In *School Board of Nassau County, Florida v. Arline*, the United States Supreme Court was faced with whether a person who had a contagious disease (tuberculosis) was an individual with a handicap and thus protected by the Act.⁷⁴ The Court stated that section 504 was enacted to combat discrimination against the handicapped.⁷⁵ The amendments to the definition of a handicapped person indicate that Congress intended for the Act to apply to persons who were perceived as having a handicap when they in fact did not.⁷⁶ This lends support to the position that those perceived as having AIDS or being infected are handicapped within the Act.

Arline was a teacher who had experienced recurring episodes of acute tuberculosis and was released from employment at the end of the 1978-79 school year because of her potential contagiousness.⁷⁷ She suffered from tuberculosis twice in 1978.⁷⁸ The Court held that Arline suffered from a record of impairment which substantially limited her major life activities.⁷⁹ Arline's tuberculosis affected her respiratory system, thereby creating a physiological disorder which met the criteria of a physical impairment.⁸⁰ Hospitalization to care for the respiratory impairment was a substantial limitation of her major life activities.⁸¹ The Court held that the effect of tuberculosis upon Arline could not be separated from the risk of contagiousness to others because both proceeded from the same condition.⁸²

Section 504 was designed to encompass both the person with the impairment and his impact on other persons affected by the impairment.⁸³ Arline was a

⁷³. *Id.* at 403-408, 502 N.Y.S.2d at 330-332.

⁷⁴. 107 S.Ct. 1123 (1987).

⁷⁵. *Id.* at 1126-27.

⁷⁶. *Id.*

⁷⁷. *Id.* at 1125.

⁷⁸. *Id.*

⁷⁹. *Id.* at 1127.

⁸⁰. *Id.*

⁸¹. *Id.*

⁸². *Id.* at 1128-29.

⁸³. *Id.* at 1128.

person with a record of physical impairment and thus an individual with a handicap within the meaning of section 504. The fear of contagion on its own as the basis of the discriminatory action is still not justified in the light of the Act.⁸⁴ The Court left to the district court the determination of whether Arline was otherwise qualified to be a teacher within the meaning of section 504.⁸⁵ From these cases, the courts will construe victims on the AIDS spectrum as having a handicap within meaning of the Act.

PART IV

Why consider whether the Act applies to persons with AIDS, ARC, or who are carriers of the virus, or who are perceived as being infected with AIDS? Victims of the AIDS epidemic are human beings. Just as discrimination on the basis of age, sex, religion, or ethnicity is not to be tolerated so then discrimination based upon a handicap should not be tolerated.⁸⁶ Persons are justifiably excluded when a substantial risk to others exists and reasonable accommodation cannot be made to prevent exposure of others to the infected person.

In the case of AIDS, casual contact in the workplace does not meet the substantial risk criteria. The nature of the disease and transmission modes argue against being infected via casual contact. Experts overwhelmingly conclude that the AIDS virus cannot be transmitted through casual contact. Additionally, AIDS and ARC victims suffer a physical impairment while those with AIDS, ARC, or the virus or those perceived as having AIDS suffer stigma from people. Misunderstanding and fear of the unknown are the impetus behind the discriminatory motives and attitudes. Without an awareness of the disease and its

⁸⁴. *Id.* at 1129.

Allowing discrimination based on the contagious effects of a physical impairment would be inconsistent with the basic purpose of Sec. 504, which is to ensure that handicapped individuals are not denied jobs or other benefits because of the prejudiced attitudes or the ignorance of others. *Id.*

⁸⁵. *Id.* at 1130-31.

⁸⁶. Washington Post, June 3, 1988, at A1 & A14. Watkins [Chairman of the Presidential Commission of the Human Immunodeficiency Virus Epidemic] emphasized that he regards civil rights protection as essential to curbing the spread of AIDS because "it is the most significant obstacle to progress," a statement he said was expressed by dozens of witnesses who recounted their own experiences of those AIDS patients with whom they worked. *Id.*

modes of transmission, society will isolate and deny AIDS victims the chance for meaningful participation in society.

CONCLUSION

One avenue of protection for persons with AIDS, ARC, HTLV-III or who are perceived as having AIDS is the Rehabilitation Act of 1973. Section 504 prevents discrimination against otherwise qualified handicapped persons in programs receiving federal financial assistance. Statutory analysis and case law suggests that those persons are handicapped within the meaning of the statute. This is just one avenue of protection against discrimination in the workplace. Without avenues of protection for individuals with AIDS, ARC, or the virus or protection for those perceived to have AIDS, discriminatory attitudes fueled by misinformation, myths, and fear will deny those persons employment opportunities and meaningful participation in society.