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The SSA now sees obesity more as a "risk factor that increases an individual's chances of developing impairments in most body systems." Ethel Zelenske, spokeswoman for the National Organization of Social Security Claimants' Representatives, says that although there "no longer is an obesity listing, [obesity] is a medically determinable impairment and must be considered."

While coverage of obesity has become a major issue, many groups remain focused on preventing obesity in the first place, especially among children. A March 17, 2005, *New York Times* article by Pam Belluck reported that for the first time in two centuries, children may have shorter life expectancies than their parents because of childhood obesity and obesity-related medical disorders. The California Center for Public Health Advocacy stated that 26.5 percent of all children in California are overweight and 39.6 percent of all children are unfit. In response, California launched a childhood obesity prevention campaign, and went as far as banning soft drink sales to elementary and junior high school students. On March 17, 2005, the California Endowment gave $11 million for an initiative to improve the food and physical activity environments for school-age children in six low-income communities, and to create momentum for widespread changes in the policies and practices that contribute to the rising rates of childhood obesity.

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HIV "Super-Strain" Scare Prompts Discussion of New Approaches

By Zachary Ziliak

News of a fast-acting, drug-resistant strain of HIV in New York City has journalists and activists in the gay community debating new methods of discouraging risky contact. Some call the plans necessary; others condemn them as assaults on privacy or institutionalized homophobia.

On average, it takes an untreated carrier of HIV seven to 10 years to develop full-blown AIDS. By contrast, the individual at the heart of the current scare appears to have developed AIDS within one year - and possibly within just two months - of initial contact with the virus. Moreover, his HIV strain exhibited resistance to three of the four classes of AIDS drugs currently available.

Genetic variation among patients causes about 45 in 10,000 to develop AIDS within one year of infection, and those who fail to stick to an antiretroviral regimen can develop resistance to AIDS drugs. Nearly 30 percent of new HIV cases now exhibit some degree of drug resistance. However, until recently researchers had never seen accelerated development and drug resistance present in the same individual.

With the release of protease inhibitors, however, HIV lost its aura of doom, and risky habits that had declined in the 1980s came back into vogue.

Thus far it remains unclear whether the patient's virus was more hardy and virulent than other known strains, or whether the rapid manifestation of the disease resulted from the patient's own poor health. Either way, scientists emphasize that unsafe sexual practices and other behaviors that facilitate rapid transmission of the virus create evolutionary pressure in favor of just such a virulent strain.

Among populations that diligently avoid

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transmission after manifestation of AIDS, those strains that quickly produce symptoms will naturally die off, thus favoring the spread of slower-acting variants. Similarly, if asymptomatic individuals take precautions to reduce the transmission rate, then those strains that keep the host alive for the longest are most likely to see their genes passed on. Conversely, if a group engages in activities that ensure transmission with a high probability, those viruses that reproduce most quickly will win the evolutionary battle.

During the height of the "safe sex" movement, when AIDS still represented a death sentence, researchers observed just such a bifurcation in the epidemic, with slower strains more prevalent in the homosexual community than among intravenous drug users. Increased use of condoms and other preventive measures encouraged the spread of slower-acting strains.

With the release of protease inhibitors, however, HIV lost its aura of doom, and risky habits that had declined in the 1980s came back into vogue. Tokes Osubu, executive director of Gay Men of African Descent, decried this development in a recent speech. "We have lost that sense of outrage," he said. "Many of our friends and lovers are dead, but we are not afraid any more."

Researchers worry that such behavior not only bolsters the rate of new infections (roughly stable at 40,000 per year despite the availability of antiretrovirals) but favors the development of strains that more rapidly develop into full-blown AIDS. Gabriel Rotello, author of *Sexual Ecology: AIDS and the Destiny of Gay Men*, agrees, arguing in a recent *New York Times* interview that "you can't have a core group of people having sex with large numbers of people without amplifying any sexually transmitted disease that enters the system. I don't have any doubt that a resurgent HIV epidemic will hit the gay population in the near future."

It is at least possible that the New York case revealed in February involves such a "super-strain." According to reports, the patient had unprotected anal sex with hundreds of male partners, often while using crystal methamphetamine. While his activities could be as atypical as his virus, the case has refocused attention on HIV transmission in the homosexual community.

Syndicated columnist Dan Savage recently proposed forcing those who spread HIV through unprotected sex while aware of their infection to pay 50 percent of the medical costs of those they infect.

Activists both within and outside the gay community are using the publicity of the case to attack long-standing sacred cows. Some doctors, for instance, have called for increased regulation or even prohibition of bathhouses and other locales popular with those seeking casual, and often unprotected, sex. Others have suggested watering down the confidentiality currently enjoyed by those seeking HIV tests, treatment, and counseling.

Those who oppose the gay lifestyle for religious reasons have also joined this chorus. William Donohue of the Catholic League asserted on MSNBC that the theorized emergence of enhanced HIV strains is "because of gay men. They're endangering the lives of everybody." In the *National Review*, William F. Buckley pointed to an even simpler explanation for his support of crackdowns: "Murderers need to be stopped."

Many in the gay community have opposed innovative approaches to reducing transmission rates. However, some prominent figures in gay society have spoken up in favor of laws that would punish reckless or negligent transmission while not otherwise altering the status quo. For instance, syndicated columnist Dan Savage recently proposed forcing those who spread HIV through unprotected sex while aware of their infection to pay 50 percent of the medical costs of those they infect. "One surefire way to curb unsafe sex would be to put the

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cost of AIDS meds into the equation," wrote Savage.

While some states currently criminalize conscious transmission of HIV or even charge those who infect others with murder, such laws are rarely enforced in practice. The harsh penalty for conviction and the lack of incentive for those infected to reveal who gave them the virus combine to keep indictment rates low. Savage says the availability of such an extreme remedy also opens the door to discriminatory enforcement. Anecdotal evidence, he says, suggests that criminal charges for HIV transmission disproportionately target African-American men who infect white women.

On its face, the system Savage proposes addresses these shortcomings. Implementation of a fine, as opposed to jail time, for negligent transmission increases the probability that states will enforce the law even in situations less likely to incite the ire of a stereotypical jury. Moreover, if all or part of the fine were to go to the victims themselves, those who contract HIV would have incentive to report the source of their infection to the authorities.

This possibility threatens to destabilize the coalition dedicated to fighting AIDS. One side views such incentives as necessary to deter dangerous activities without unduly taxing police departments or permitting prying official eyes into private bedrooms. The other side opposes categorically any system that blames the victim, worrying that fines for "negligent" transmission could start the law down a slippery slope.

In particular, authorities wishing to prove that defendants knew or had reason to know they were HIV-positive could press to have the results of currently confidential HIV tests made public. Opponents condemn this as an attack on privacy. Commenting on plans to expand AIDS testing, Tracy Welsh of the HIV Law Project in New York expressed fear that "pretty soon we're looking at universal . . . mandatory testing. And then what? Restrict their civil liberties? Criminalize their behavior?"

Moreover, opponents argue, liability based on knowing transmission will encourage people to maintain willful ignorance by avoiding HIV tests, thereby increasing the transmission rate yet again. An alternative "reason to know" standard, which would punish negligent failure to obtain an HIV test, presents equal difficulties. Such a rule would empower juries to determine which people should and should not have known they should be tested for HIV, with anti-gay prejudices possibly playing a part in their deliberations, thus yielding discriminatory enforcement.

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Tracy Welsh
HIV Law Project

However, the genie may already be out of the bottle. Several states declare the knowing exposure of others to sexually transmitted diseases a misdemeanor. Furthermore, infected individuals can already bring claims under a common-law negligence theory, including negligence *per se* where applicable.

Thus, Savage's proposal would mainly affect contributory and comparative negligence defenses. At present, if A infects B, and B sues, A can assert that B was negligent in not insisting upon greater precautions. The suggested system would set B's contribution at 50 percent in all cases and permit recovery even in states in which contributory negligence is ordinarily a complete defense.

So far, no consensus has emerged regarding this or any other means to deter unsafe conduct. Appealing economic methods may prove counterproductive based on the privacy infringements they entail. More debate is likely needed before a viable solution can be formulated. But February's tragic case in New York has at least drawn attention to a long-simmering problem that could boil over at any time.