INTRODUCTION

Hon. Abner J. Mikva (Ret.)
Former Chief Judge
U.S. Court of Appeals for the District of Columbia Circuit

I remember hearing about a deadly new disease during the summer of 1981. I didn't know much about it though, and no one else seemed to know much either. The disease destroyed the immune systems of gay men. When that happened, long-forgotten illnesses were given new life. Suddenly unopposed, they became "opportunistic infections." Those infections then led inexorably to a helpless, wasting death.

At first it was called "GRID"—Gay-Related Immune Disorder. Then it became known as "AIDS"—acquired immune deficiency syndrome. In time, we learned that the cause was a particular viral infection—the "human immunodeficiency virus" (HIV)—and infection was the result of an exchange of bodily fluids, such as blood or semen. Needle-sharing and unprotected sexual intercourse with an infected person were the normal routes of transmission. In those early days, some people also contracted it from a transfusion of donated blood that was unknowingly tainted with HIV.

Fear, loathing, and moral disapproval were additional consequences of HIV infection. The pain of social ostracism was every bit as real as the physical and emotional pain, and, seemingly, just as inescapable. Whatever their profession or prior social standing, people with HIV or AIDS (or those perceived as having HIV or AIDS) were deemed by many to pose a grave threat to the health and safety of others, regardless of the nature of the contacts one had with them; they were also frequently considered morally blameworthy and somehow deserving of their plight. And even if they got HIV through no perceived "fault" of their own—as teenager Ryan White did from a tainted blood transfusion—no matter: they were to be kept apart to die, safely away from others. This fear and loathing extended as well to the families of people with HIV, their close friends, and caregivers. Meanwhile, the number of AIDS cases climbed from hundreds to thousands to tens and hundreds of thousands.

Much of the social dislocation caused by HIV/AIDS was due to popular ignorance about the disease and the possible routes of transmission. Many people believed, for example, that HIV/AIDS could be transmitted through casual contact. Thus, even some court personnel donned spacesuit-like apparel when criminal defendants were believed to be HIV-positive. In such circumstances, it was not surprising that ignorance and fear should translate into invidious discrimination, the denial of rights, and simply inhumane treatment.

There was a serious need for the law to come to grips with the problems of people affected by HIV/AIDS, and eventually it did, thanks to the smart, courageous,

and determined advocacy of people living with HIV or AIDS and their champions. Among those champions, I'm pleased to say, was the ABA AIDS Coordinating Committee. Established in 1987, the Committee published *AIDS: The Legal Issues* in 1988, one of the first efforts to catalogue all of the legal issues raised by the AIDS epidemic. That book became a key resource for all concerned with formulating public policy in this area based on sound science and legal principle. In 1989, the ABA House of Delegates adopted a series of policy recommendations crafted by the AIDS Coordinating Committee as to what sound legal policy was required in areas of the law affected by HIV/AIDS. That, too, served as a roadmap for those who sought to put AIDS law and policy on a sound scientific and legal basis. Soon thereafter, the AIDS Coordinating Committee published a directory of legal resources for people with HIV, a training video and manual encouraging lawyers to represent people with HIV pro bono public, and, importantly, a benchbook for judges—the forerunner to the current volume.

AIDS was at that time considered a death sentence, but the community of those living with and affected by HIV pushed their governments to recognize that the silence of law and public policy sanctioned—and indeed fueled—both the epidemic and its dispiriting social consequences. In the major cities most affected by AIDS, including Los Angeles, San Francisco, and New York, municipal governments responded by prohibiting discrimination against people living with HIV or AIDS in places of employment and public service and accommodation. State and federal law eventually followed suit, in particular following the enactment of the Americans with Disabilities Act and the landmark 1998 Supreme Court case *Bragdon v. Abbott*, which held that a person living with HIV, even if asymptomatic, is entitled to the protections of the Act. While helping restore dignity to people living with HIV or AIDS, these measures and public education initiatives also helped slow the spread of HIV by replacing outright panic with a measure of compassion. In the mid-1990s, the advent of life-extending antiretroviral drugs brought new hope and further quelled the condemnation.

Yet even today ignorance persists and, with it, wariness. Too many people still wonder whether they could "get HIV" from shaking hands with people who have it or sharing dinnerware with them. Worse, some still consider people living with HIV a threat, which is reflected in recent demands for the enactment of HIV-specific criminal laws, despite the voluminous evidence counseling against them.

I therefore commend the American Bar Association AIDS Coordinating Committee for reprising this benchbook to give judges the latest science and policy informing wise adjudication of cases involving people living with HIV or AIDS. The Committee has examined and addressed these issues since 1987, combining the best minds and data in the field with rigorous legal analysis to produce this *HIV & AIDS Benchbook*.

I urge my colleagues to use it.