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## WELCOMING REMARKS

OF

THE HONORABLE JAMES K. STEWART, DIRECTOR

NATIONAL INSTITUTE OF JUSTICE

BEFORE

A NATIONAL CONFERENCE ON AIDS AND THE COURTS

CO-SPONSORED BY THE NATIONAL INSTITUTE OF JUSTICE

AND

THE STATE JUSTICE INSTITUTE

7:00 P.M.

SUNDAY, APRIL 2, 1989

INTERCONTINENTAL HOTEL

MIAMI, FLORIDA

## NOTE:

Because Mr. Stewart often speaks from notes, the speech as delivered, may vary from the text. However, he stands behind this speech as printed.

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Thank you, Bo, for that introduction.

It is customary at meetings like this to say I am pleased to be here. Let me be honest with you. My wish -- and yours, I'm sure -- is that we did not need a conference on the topic, "AIDS and the Courts." But the disease exists. It cannot be wished away. Its effects are being felt throughout our society. And for those who serve in the courts and on the bench, it poses multiple -- and very real -- challenges.

For these reasons, the National Institute of Justice, welcomes the opportunity to co-sponsor this Conference with the State Justice Institute. This is not our first endeavor together. About a year and a half ago, NIJ and SJI co-sponsored a national conference in Phoenix on "Presiding in Criminal Court, The State of the Art in the Judiciary." Among the topics discussed -- in a special pre-conference plenary session -- was AIDS. At that time, the topic of AIDS and its impact on the judicial process did not fall into any of the traditional categories of judicial concerns. Yet it seemed far too important -- even then -- to exclude from the Conference. Little did we recognize then that the issues covered in a single special session would require a full four-day conference just eighteen months later.

AIDS and HIV infection are especially significant for criminal justice because so many people who pass through the system have histories of IV drug use or prostitution -- behaviors

that can put them at high risk for acquiring and transmitting the disease. It is not surprising, then, that the rate of those who are sero-positive, or in some symptomatic stage of the disease, is higher than in the general population. Throughout the country, criminal justice officials are trying to balance this reality with their responsibilities to their own staff, to all arrestees or offenders under their supervision, and also to the larger community to which defendants and offenders will return.

Corrections first felt the impact. AIDS suddenly confronted correctional officials with new medical, management and educational issues. Then concern spread to the police. They, too, faced dilemmas on the job: the risk -- particularly in emergency response situations -- of coming into contact with the blood of HIV-positive victims or arrestees. And the need to respond -- promptly and appropriately -- to calls for service from all citizens. And now, we see the judiciary facing its concerns. What challenges does AIDS present to the judge's multiple responsibilities?

To begin with, you must deal with all of the issues surrounding AIDS in the workplace. The real -- versus the perceived -- risk of transmission. The need for education and training. Questions of health insurance, disability coverage, workmen's compensation.

But beyond that, you face a host of other questions. For example, how, when -- or should -- you take the HIV status of a defendant or offender into account in your decisions? What about pretrial release or detention? What weight should HIV

status have at sentencing? You confront decisions on when, and under what circumstances, antibody testing can be mandated -- and often, also, on who should have access to the results.

Increasingly, you are being asked to rule on the appropriateness of the AIDS-related decisions of others -- in areas ranging from housing and employment, to access to insurance and medical care, to public accommodations and public education. How you as judges respond to these questions will have an impact well beyond individual courtrooms -- not only because of precedents created or legal arguments made, but because as judges and officers of the court you are highly respected and visible members of the community.

As you know, you were specially selected to attend this conference by a conference advisory committee, composed of judges and prominent practitioners, precisely because of your ability to take a leadership role in addressing the AIDS-related issues facing the courts.

Let me tell you why the National Institute of Justice decided to co-sponsor this conference. NIJ pioneered research and development on the implications of AIDS for criminal justice in anticipation of the need for information and guidance by criminal justice professionals.

As Chairman of the AIDS Subcommittee of the Department of Justice's Research and Development Review Board, I continue to believe that updating and continuing our research on AIDS/HIV infection, AIDS-related training, and the policy responses within each branch of the criminal justice system should be a priority.

The Subcommittee has concluded that since there is no cure for AIDS, nor likely to be one in the near future, EDUCATION is our most important weapon in preventing transmission of the disease -- and in developing appropriate responses -- within the criminal justice community, as well as in the population at large.

Criminal justice agencies must address the AIDS issue in a forthright manner before fear and misinformation affect service delivery. As with any other crisis, rumor and misinformation pose a great threat to public safety. AIDS-related training and educational efforts can give criminal justice officials such as yourselves -- as well as public health authorities, legislators, and other decisionmakers -- reliable information for intelligent policy decisions.

Dr. Jane Burnley, head of the Office for Victims of Crime, and I, in testimony before the Presidential Commission on the Human Immunodeficiency Virus Epidemic, stressed the importance of AIDS-related training and education within the criminal justice system. Dr. Burnley also recommended that the Commission review the issues posed by criminalization of knowing HIV transmission. The Commission's final report emphasized the need for continuing HIV training and prevention programs for both inmates and staff within correctional facilities and urged that NIJ continue its research in this area.

Within the criminal justice system as a whole, AIDS-related training and on-going education is taking place. At the state and local levels, correctional and law enforcement agencies are making strides in this important area. All 50 state correctional

systems provide AIDS-related training to correctional staff and to inmates. Increasingly, local jail systems and community supervision agencies have education programs for offenders. It is our hope that those of you who are not yet providing such training in your court systems will leave this conference not only convinced of its importance but also aware of the resources available to help you establish your own training efforts.

Since 1985, the National Institute of Justice has worked closely with the Centers for Disease Control and other Federal agencies to provide accurate information on AIDS to criminal justice professionals. Reports have been published on AIDS for both law enforcement and corrections, with a new report now going to press on AIDS Issues for Probation and Parole. In 1987, the NIJ AIDS Clearinghouse was established as an information and dissemination service for criminal justice professionals. NIJ AIDS-related reports and the AIDS Bulletin series are available to criminal justice agencies for use in training programs.

NIJ also sponsors selected AIDS-related research projects in conjunction with CDC, the National Institute on Drug Abuse, and private foundations. These include studies on the incidence of AIDS in prison and jail systems; on the nexus between criminal justice and public health policy; research on whether there are AIDS education techniques that can be used in booking facilities; and a pilot project on modeling the relationships between AIDS and crime. We hope the findings of these studies will help inform decisions State and local policy officials must make.

I would like to tell you more about the NIJ AIDS

Clearinghouse -- because I hope you will use it as an important resource for your activities following this conference. In addition to working with the Centers for Disease Control's AIDS Program Office, the NIJ AIDS Clearinghouse has expanded its resources to work with non-criminal justice-based groups, including the National AIDS Information Clearinghouse, the American Red Cross, and the National Institute on Drug Abuse. The NIJ AIDS Clearinghouse now collects materials from criminal justice agencies throughout the country -- on their policies, procedures, education, and training programs. The collection includes videotapes and bi-lingual materials.

As the criminal justice community's knowledge about the disease increases, questions to the Clearinghouse have become more complex and specific. Initially, most requesters wanted answers to general questions such as, "Can you get AIDS by being spit on or bitten?" Now, one recent caller -- a prosecutor -- wanted to know how rape suspects who are HIV-positive are being penalized for "knowing exposure," what information or advice he could give the victim, and ideas for strategies for taking such a case to trial.

Once again we come back to the courtroom and to those of you who must balance our deep and genuine concern for victims' rights with the challenge of reducing discrimination against those with AIDS or HIV infection in the courtroom environment. Your task is further complicated by the budget pressures under which your systems operate, and the potential financial burdens the prospect of those with AIDS pose for the criminal justice system.

I do not minimize the seriousness or the complexity of any of the issues you face. Nor do I suggest that this or any other conference will give you "The Answers."

However, I do believe this conference will -- first -- give you the most current medical information about AIDS and HIV infection. Second, it will provide a forum for examining the broad range of issues which the disease is raising in both criminal and civil courts. And third, it will offer the opportunity to share information on how those issues are being addressed in different jurisdictions throughout the country.

We hope that you will return home armed with new insights into the problems the epidemic has posed for the courts. As leaders in your courts and as role models for your communities you have the opportunity to institute fair and innovative procedures for dealing with those challenges. Through research and information-sharing, the National Institute of Justice stands ready to help.

Thank you.