I. Medical, Legal and Political Background

A. Current evidence that when a person living with HIV has a sustained undetectable viral load, the possibility of transmitting the virus to another person through sexual or other exposure is close to zero – too small to measure

B. History of HIV prevention fear-based messaging that has created outsized fears about HIV and had ancillary stigmatizing effects

C. The U=U movement and its role in efforts to de-stigmatize persons living with HIV

D. The public health and medical establishments’ slow acceptance of the evidence; reasons for their caution

E. Why perception and portrayals of risk matter from a legal standpoint.

II. Medical and public health challenges

A. The treatment cascade and racial, gender and income-related disparities in access to treatment, success in adhering to treatment, and achievement of an undetectable viral load

B. Clinician messaging to the patient: the need for an individualized, nuanced approach

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1 Swiss National AIDS Commission Statement from 2008, PARTNER Study, HPTN 052 Study
2 U=U Consensus Statement
3 CDC web site summary of risks, CDC statement on Gay and Bisexual Men’s HIV/AIDS Awareness Day
4 Amicus brief of Lambda Legal to the Board of Immigration Appeals, In the Matter of Ramirez (In Removal Proceedings) (re extremely low risk via oral sex)
C. Growing recognition of the importance of shared decision-making in HIV treatment

III. Implications for Criminal Liability for HIV Exposure

A. Should viral load be used in defending against a specific prosecution?
B. What role should viral load play in bills reforming criminal statutes addressing exposure without disclosure (or public health regulation)?
C. Should it play a role in state constitutional challenges?

IV. Implications for Discrimination Law: Who Poses a “Direct Threat” That Could Justify Refusal to Hire, Adverse Employment Action, or Refusal to Treat?

A. HIV+ health care workers
B. HIV+ public safety officers and first responders (e.g., police, EMT personnel)
C. HIV+ people needing surgery, dental care, and other health care

V. Implications for Discrimination Law:

A. The Military
B. Foreign Service Officers
C. Individuals in Safety-Sensitive Positions

VI. Tensions Between Public Health Goals and Individual Autonomy and Privacy

7Rhoades v. Iowa, 848 N.W.2d 22 (Iowa 2014).
8Consensus Statement on HIV “Treatment as Prevention” in Criminal Law Reform
9Discussion of the ADA “direct threat” defense
102015 Society for Healthcare Epidemiology of America (SHEA) Guidelines, Statement of the American College of Surgeons; Mauro v. Borgess Medical Center, 137 F.3d 398 (6th Cir. 1998)
11Holiday v. City of Chattanooga, 206 F.3d. 637 (6th Cir. 2000) (HIV+ man seeking position as police officer)
12Lesley v. Hee Man Chie, 250 F.3d 47 (1st Cir. 2001) (HIV+ woman seeking reproductive healthcare); Bragdon v. Abbott, 163 F.3d 87 (1st Cir. 1998)
13Military policy regarding enlistment and retention of people living with HIV