



PUBLIC HEALTH COMMUNITY PREPAREDNESS for SARS

September 23, 2003

LEGAL ASPECTS

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PUBLIC HEALTH LAW

- I. HISTORICAL CONTEXT
- II. CURRENT SITUATION
- III. PRACTICAL STEPS FOR SARS
“LEGAL PREPAREDNESS”



U.S. Department of Health
and Human Services



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Quarantine

A collective action for the common good

Public good

Individual liberties



*Paramount to meet needs of individuals
infected and exposed*



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HISTORICAL CONTEXT

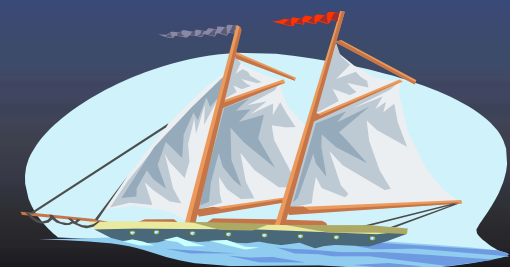
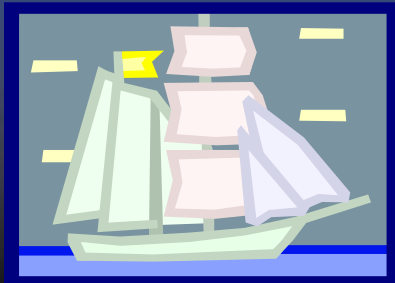
1954: Two Ships Passed in the Night!

Salk Polio Vaccine – 1954

(END IN U.S. OF COMMUNITY-WIDE PUBLIC HEALTH CONTROL MEASURES—300 years!)

Brown v. Board of Education 1954

(BEGINNING OF MODERN EVOLUTION OF PROCEDURAL PROTECTIONS OF INDIVIDUAL LIBERTIES AGAINST GOVERNMENT ACTION)



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HISTORICAL CONTEXT



PUBLIC HEALTH → POLICE POWER

10TH AMENDMENT → RESERVED TO STATES

Federal Functions

- ◆ International
- ◆ Interstate
- ◆ Federal Funding & Assistance



FEDERAL, STATE, & LOCAL "LEGAL PREPAREDNESS" THE SILOS



	PUBLIC HEALTH ↓	LAW ENFORCEMENT ↓	EMER. MGMT. ↓	MED. CARE SERVICE ↓	COURTS ↓
FEDERAL →	P.H.	L.E.	EMA	MED CARE	FED. CTS.
STATE →	P.H.	L.E.	EMA	MED CARE	STATE CTS.
LOCAL →	P.H.	L.E.	EMA	MED CARE	LOCAL CTS.



CURRENT SITUATION STATE AND LOCAL LAWS



IN GENERAL: Individual states are responsible for intrastate public health control measures using their laws.

- Significant variation among state laws.
- Some local jurisdictions may have p. h. control provisions that are easier to use.

State/local p.h. officers have experiences with individual control measures → T.B.; School Immunizations; Mental Commitments; etc



CURRENT SITUATION FEDERAL LAW



- Federal Government also has concurrent power to apprehend, detain, or conditionally release individuals to prevent the interstate spread or international importation of certain diseases. (42 U.S.C. 264)
- Such federally “quarantinable” diseases must first be listed in an Executive Order signed by the President.



CURRENT SITUATION FEDERAL LAW



- Executive Order 13295 of April 4, 2003 added SARS to this list, as a prudent public health preparedness measure.
- **Other 7 diseases:** Cholera, Diphtheria, Infectious T.B., Plague, Smallpox, Yellow Fever, & Viral Hemorrhagic Fevers (like Ebola).
- **Violation → Criminal Misdemeanor**



INTERPLAY OF FEDERAL AND STATE/LOCAL LAWS



- State & Local have primary responsibility for Q/I.
- Federal has authority to prevent interstate spread of disease, plus int'l importation.
- HHS Secretary may accept state & local assistance in enforcement of federal Q regulations
- HHS may assist state & local officials in their control of communicable diseases.
- HHS provides BT Infrastructure Grant \$
 - ◆ Includes funds for state “legal preparedness” assessments

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INTERPLAY OF FEDERAL AND STATE/LOCAL LAWS



FEDERAL CONTROL & SARS

Due to the potential for a case of SARS to spread interstate, it is clear that the Federal quarantine authority could be applied to a single SARS case inside a state or local jurisdiction, if necessary.

--CDC would not have to wait for an interstate SARS spread to actually take place before acting.

--BUT any such CDC action on SARS would be carefully coordinated with the appropriate state or local officials.



INTERPLAY OF FEDERAL AND STATE/LOCAL LAWS



- It is possible for federal, state, AND local laws to ALL come into play in a particular situation. (EXAMPLE: An arriving aircraft at a large city airport. Hence coordination is crucial.)
- **ENFORCEMENT ISSUE:**
Each level of P.H. Officials must effectively connect with their respective Law Enforcement counterparts to assist as necessary in carrying out a mandatory public health order.



2003 SARS Lessons



CANADIAN EXPERIENCE WITH SARS

--OVER 13,000 PERSONS QUARANTINED
IN TORONTO

--27 FORMAL QUARANTINE
ORDERS NEEDED TO BE SERVED

--1 FORMAL APPEAL
(LATER WITHDRAWN AFTER
EXPOSURE WAS EXPLAINED)



2003 SARS Lessons



PRACTICAL EXPERIENCE IN TORONTO

= “DEMYSTIFIED” QUARANTINE

Experienced “Social Cohesion” in PH Emergency

RESPONSIBILITY <-----> DIVISIVENESS

COOPERATION

PANIC

**Lesson => “When Presented With Clear
Communication & Guidance, Public Behavior
Can Be Very Responsible in a Public Health
Emergency”**

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2003 SARS Lessons



LEVELS OF QUARANTINE HAVE EVOLVED

- USE OF MASKS, GLOVES, ETC.
- “SNOW DAY” and “SHELTER-IN-PLACE”
- VOLUNTARY ISOLATION / QUARANTINE
- TELEPHONE MONITORING IN THE HOME
- GOV'T ORDERED ISOLATION / QUARANTINE
- INVENTED CONCEPT OF “WORK QUARANTINE”
- ACTIVE USE OF LAW ENFORCEMENT OFFICERS
TO SERVE PROCESS AND MONITOR

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2003 SARS Lessons



**“Public Health Must Be Prepared to Act
BOLDLY AND SWIFTLY
And To Treat Individuals With
DIGNITY AND FAIRNESS.”**

Dr. Julie L. Gerberding

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PRACTICAL STEPS FOR SARS



“LEGAL PREPAREDNESS”

1. KNOW YOUR LEGISLATION
2. PLAN “DUE PROCESS”
3. DRAFT DOCUMENTS IN ADVANCE
4. CONTACT OTHER JURISDICTIONS
5. ENGAGE THE COURTS IN ADVANCE
6. ANTICIPATE PRACTICAL PROBLEMS
7. COMMUNICATION,...COMMUNICATION,
...COMMUNICATION



SARS Legal Preparedness



1. KNOW YOUR LEGISLATION

- Does your Q authority currently cover SARS?
- Identify Decision-makers



SARS LEGAL PREPAREDNESS



2. PLAN “DUE PROCESS”

- STATE PROCEDURES WILL VARY, OR MAY NOT DIRECTLY ADDRESS DUE PROCESS ISSUES FOR QUARANTINE AND ISOLATION ORDERS.
- COURTS MAY ULTIMATELY REVIEW QUARANTINE / ISOLATION ORDERS
- DUE PROCESS IS A FLEXIBLE CONCEPT

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SARS Legal Preparedness



2. PLAN FOR “DUE PROCESS” (cont.)

COMMON ELEMENTS OF DUE PROCESS:

- Adequate Notice (a written order).
- A Right to Be Heard
 - to present evidence and witnesses
 - to confront the evidence of the agency
- Access to Legal Counsel
- A Final Decision that a Court Can Review.



SARS Legal Preparedness



3. DRAFT DOCUMENTS IN ADVANCE

- Quarantine Order
- Supporting Affidavits
- Explanation of Due Process Procedures



SARS Legal Preparedness



4. CONTACT OTHER JURISDICTIONS

--Vertical Legal Connections

(Local + State + Federal)

--Horizontal Legal Connections

(P.H. + Law Enf. + EMA's + H. Care)

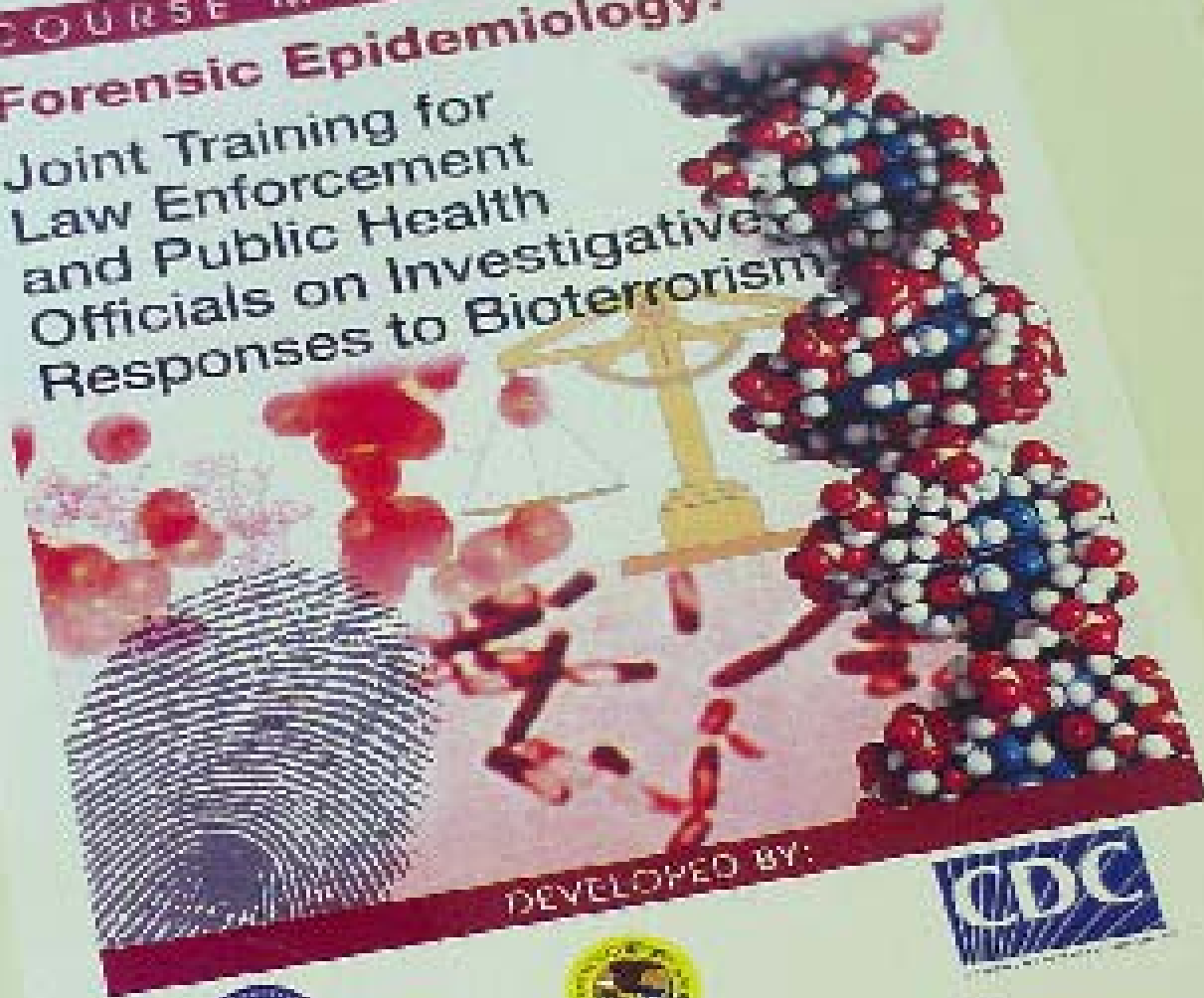
--Geographical "Clusters"

(Overlapping State/Local Neighbors)

COURSE MANAGER'S GUIDE

Forensic Epidemiology:

Joint Training for
Law Enforcement
and Public Health
Officials on Investigative
Responses to Bioterrorism



DEVELOPED BY:





SARS Legal Preparedness



5. ENGAGE THE COURTS IN ADVANCE

- MANY JUDGES ARE UNAWARE OF 50+ YEAR-OLD PUBLIC HEALTH EMERGENCY POWERS.
- In Toronto, judges were surprised at health officers broad ex parte authority under rarely used laws.
- Important for due process review.



SARS Legal Preparedness



6. ANTICIPATE PRACTICAL PROBLEMS

--ARRANGE FOR ELECTRONIC APPEARANCES / REPRESENTATION

--SERVICE OF PROCESS

(Likely by Law Enforcement Officers)

--ISOLATION ARRANGEMENTS FOR TRANSIENTS AND HOMELESS



SARS Legal Preparedness



7. COMMUNICATION PLNG. IS VITAL

- Public Health Agency Attorneys Need to Be Aware of Media Training
- PHLP Is Establishing Health Agency Attny. “Real Time” Communication Linkages since SARS & Monkeypox
- Plans Underway for Outreach to Local Bar Groups on Emergency P.H. Issues



PRACTICAL STEPS FOR SARS



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7. COMMUNICATION,...COMMUNICATION,
...COMMUNICATION



RESOURCES



3 KEY CASES

Jacobson v. Massachusetts, 197 U.S. 11 (1905)

United States ex rel. Siegal v. Shinnick, 219 F.Supp. 789
(E.D.N.Y. 1963)

Souvannarath v. Hadden, 95 Cal.App.4th 1115 (Cal. Ct.
App. 2002)

URL RESOURCES

Federal SARS Executive Order Q&As:

<http://www.cdc.gov/ncidod/sars/quarantineqa.htm>

Fact Sheet on Legal Authorities for Isolation /Quarantine

<http://www.cdc.gov/ncidod/sars/factsheetlegal.htm>

Forensic Epidemiology For Law Enforcement & P.H.

<http://www.phppo.cdc.gov/od/phlp>

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CDC Public Health Law Program Website

www.phppo.gov/od/phlp

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