BJA Bureau of Justice Assistance

Justice and Public Health Systems Planning:

Confronting a Pandemic Outbreak

May 24–25, 2006

Chicago, Illinois

Westin O'Hare

U.S. Department of Justice

Office of Justice Programs

Bureau of Justice Assistance

Letter of Invitation

Dear Colleague:

As the Assistant Attorney General for the Office of Justice Programs (OJP), I would like to extend an invitation to you or your designee to attend an OJP and Bureau of Justice Assistance (BJA) event, "Justice and Public Health Systems Planning: Confronting a Pandemic Outbreak." The Symposium will be held May 24-25, 2006 in Chicago, Illinois, at the Westin O'Hare Airport Hotel.

The President, in the release of his National Strategy for Pandemic Influenza, communicated that "A new strain of influenza virus has been found in birds in Asia, and has shown that it can infect humans. If this virus undergoes further change, it could very well result in the next human pandemic." Among the key aspects of the President's strategy is preparing for a multi-level response by federal, state, and local governments. This preparation will help ensure that the rule of law is upheld and maintained throughout any crisis, whether natural or manmade. A pandemic, with elements of continued crisis and contagion, would present critical challenges to America's law enforcement, courts, and corrections systems.

This Symposium will not only provide justice system leaders with an overview on the pandemic threat, but also offer an update on promising planning and response approaches, and a forum for strategic cross-discipline discussions.

We look forward to seeing you in Chicago and to the meaningful exchange of ideas that will lead to a safer, more secure nation.

Sincerely,

Regina B. Schofield
Assistant Attorney General

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Purpose

The symposium was organized in response to the President's *National Strategy for Pandemic Influenza* (www.whitehouse.gov/homeland/nspi.pdf), which calls for a multilevel response by federal, state, and local governments to the potential, or impending, threat of the next human pandemic, which could be caused by an outbreak of the "avian flu." The purpose of the symposium was threefold:

1) To give justice systems—law enforcement, courts, and corrections—an overview of the history of influenza, the nature of pandemics, and the particular threat of avian flu, with a special focus on how the rule of law could be threatened in such an event.
2) To identify key issues that could affect public health and safety.
3) To provide a forum for strategic cross-discipline discussions on preparation, planning, and response, paying special attention to lessons learned from past crises such as September 11 and Hurricane Katrina.

This document summarizes the proceedings of the symposium and captures the issues that were flagged and discussed. It also presents ideas that were communicated and generated at the symposium to allow the U.S. Department of Justice (DOJ) to formulate, publish, and disseminate best practices and model protocols for state, local, tribal, and private sector entities, which would act as the first line of response during a pandemic. DOJ will coordinate its efforts to do this with the U.S. Departments of Health and Human Services (HHS), Labor (DOL), and Homeland Security (DHS).

Symposium Proceedings

Opening Ceremony

Presentation of Colors by the Illinois State Police Honor Guard

Recitation of the Pledge of Allegiance and Singing of the Star-Spangled Banner

Welcoming Remarks

The Honorable Domingo S. Herraiz
Director, Bureau of Justice Assistance (BJA)
Office of Justice Programs, U.S. Department of Justice

Herraiz reflected on the Pledge of Allegiance and expounded on the purpose of the symposium: to "get outside the Beltway" and hear about pandemic-related issues from experts and other attendees and generate ideas that will allow BJA to better serve state and local officials (i.e., "customers"). He told the attendees to think about the impact a pandemic flu would have on local justice systems and the best ways to maintain the rule of law—on which the idea of "liberty and justice for all" is predicated—during such an event.

Recent examples have shown that each policy area must think through problems, share information, partner, coordinate, and communicate, said Herraiz. He said the symposium's goal was to help BJA create and provide needed resources and complete critical tasks in the President's *National Strategy for Pandemic Influenza.*

David Hagy
Deputy Assistant Attorney General
Office of Justice Programs, U.S. Department of Justice

Hagy spoke about firsthand experiences during Hurricane Katrina. He referenced a recent news story about the first trial to happen in New Orleans since the disaster, making the point that thousands of

people had still not received legal representation or been tried. He spoke about society's dependence on civilization and the impossibility of planning for every situation.

Pandemics last from 6 to 8 weeks, move quickly, and happen in various communities simultaneously. A pandemic would disrupt the economic infrastructure, Hagy said. Fewer people would come to work because many would need to take care of family members, and many would simply be afraid to venture out. When people become irrational, controlling panic, as well as looting and crime, becomes paramount. Extenuating circumstances call for quick decisions and sound judgment.

During Katrina, volunteers, policemen, and other people wanted to help, but there was no command structure, no coordination. This leads to other questions . . . How do people report crimes in a situation like the Houston Astrodome, and follow up on them? If the roads are cut off, how do people get food? Do you take guns away from innocent people who are simply trying to defend their families? Sex offenders slipped out of New Orleans. Missing persons are still a problem.

The purpose of the symposium, he said, was to prepare for these scenarios (the loss of civilization) and to respond to the President's call for coordination between federal, state, and local governments, a goal which defines the "post-9/11 mentality." Leadership and impromptu decisionmaking is critical, but so is structure. By thinking through problems ahead of time, government can be more effective during a crisis.

BJA's role, he said, was to (1) provide a forum where people can come together, plan, and prepare; (2) frame the discussion with scenarios; (3) issue a report and disseminate it throughout the country; and (4) create a resourceful web portal for best practices and protocols.

Overview of Symposium

Domingo S. Herraiz
Director, Bureau of Justice Assistance
Office of Justice Programs, U.S. Department of Justice

Herraiz gave an overview of the symposium and urged participants to use this opportunity to network as much as possible, both within and across disciplines.

Overview of the *Implementation Plan for the National Strategy for Pandemic Influenza*

Francis D. Schmitz, J.D.
National Crisis Management Coordinator
Office of the Deputy Attorney General, U.S. Department of Justice

Schmitz told participants that he had worked on the *Implementation Plan for the National Strategy for Pandemic Influenza* (www.whitehouse.gov/homeland/nspi_implementation.pdf) specifically chapter 8, which deals with the justice system. He had been asked to provide a common sense perspective and to make sure the plan was understandable. The plan is not a definitive guide, but rather an attempt to estimate the potential situation and set forth key issues. It was written in response to the *National Strategy for Pandemic Influenza*, which came out in November 2005 and included (1) an emergency budget request of $1.7 billion for pandemic preparedness, (2) liability protection for pandemic vaccine manufacturers, and (3) the launch of the web site www.pandemicflu.gov.

Schmitz explained the basic principles of the strategy and objectives of the plan and briefly reviewed each chapter, touching on the responsibilities of the federal government; the plan for monitoring the threat or spread of the virus; the various international considerations with regard to prevention, containment, transportation, and borders; and the means of protecting human and animal health and maintaining continuity of operations.

Referring specifically to chapter 8, Schmitz emphasized that the state, local, tribal, and private sectors will have the primary responsibility in the event of a pandemic, with help from the National Guard if necessary. As first responders, states should ensure that (1) plans adequately address emergency response by law enforcement, emergency management services (EMS), fire, and public works; (2) laws are reviewed, gaps are identified, and legal action is pursued; and (3) all levels of law enforcement communicate, plan, and train with medical and countermeasure distribution facilities and public health officials.

In the event of a pandemic, federal resources *may* provide support to address civil disturbances beyond local or state control or to enforce quarantines, *but only upon state request*. Schmitz summarized the immediate action currently being taken by the federal government, which includes outreach, assessment, and planning. He also stated DOJ's four primary goals to be the following: to protect employees' health, to maintain continuity of essential functions and services, to support the federal response, and to communicate with stakeholders. DOJ would need to prepare and engage the nation, he said, to provide guidance about prevention and protection and to sustain infrastructure to support the private sector.

Schmitz named the Public Health Emergency Law course developed by the Centers for Disease Control and Prevention (CDC) as a trusted resource that can be found online at www2.cdc.gov/phlp/phel.asp.

Pandemic Influenza: Medical Update

Bruce Gellin, M.D., Master of Public Health
Director
National Vaccine Program Office
U.S. Department of Health and Human Services

Gellin began by describing the makeup of the influenza A virus, relaying how it is the nature of influenza viruses to rapidly mutate. "Drift" is the term used for minor mutations. "Shift" is used for major changes and can occur through direct infection, reassortment in humans, or reassortment in an intermediate host. Gellin then described the differences between annual influenza, which mutates through drift, and pandemic influenza, which emerges through shift.

Because people have not yet built an immunity to it, pandemic influenza spreads rapidly. Gellin presented a timeline of pandemic and seasonal influenza events that have occurred since 1918 to illustrate the evolutionary history of influenza and its many strains, focusing on the pandemic of 1918–1919. During the 1918 pandemic, approximately 500 million people throughout the world (25–30 percent) fell

ill, 40 million of who died. Of people ages 20–45 who fell ill, 60 percent died. The United States lost 500,000 people to the flu, 196,000 in October 1918 alone.

The avian nature of the H5N1 virus makes it of special concern, because migrating birds help transmit the disease. To help illustrate his point, Gellin presented a chart showing intersecting migratory bird flyways, which meet up at common points throughout the world. The World Health Organization (WHO) uses a 6-point scale for the phases of a pandemic, which ranges from low risk of human cases (1) to efficient and sustained human-to-human transmission (6). The world is currently at "3," the pandemic alert stage which signifies no or very limited human-to-human transmission. This number is not higher because the virus does not yet transmit *efficiently* to or between humans.

The H5N1 avian flu occurs mostly in rural areas, is rapidly progressive, and has a high fatality rate. Of the 218 confirmed cases as of May 23, 2006, 124 people have died (more than 50 percent). It is difficult to screen for because it is hard to differentiate it from other diseases. Most cases are seen in children and previously healthy adults. An infected person first has a fever or flu-like illness, which progresses to pneumonia and respiratory failure. Accompanying multi-organ system failure is common, and death (if it occurs) follows 7–10 days after the first signs of illness. There has been no shift yet, and some uncertainty exists about what puts people at risk, though handling or transporting birds seems to be a factor, as does exposure to live animal markets and cock fighting events.

It is uncertain whether this virus will cause the next pandemic. Other avian influenza subtypes (H7N3, H7N7, H9N2) have also caused human infections. However, the current spread of H5N1 infections increases risk, and recent evolutionary changes in the virus make control among birds more difficult and continued spread likely.

In discussing pandemic planning, Gellin provided caveats that planning assumptions are based on 20th century pandemics and that extrapolations may be incorrect because of changes in medical care and society. Planners should base their work on the worst case scenario, in which everyone is susceptible to the virus, the illness rate is 30 percent, the virus is spread through aerosol transmission, it has a 2-day incubation period, and its contagiousness increases with time. The pandemic wave would be between 6

and 8 weeks, and work and school absenteeism could be as high as 40 percent. There may be little the federal government can do in any local community because the introduction of the disease into the country will be at major travel hubs, many communities could be affected simultaneously, and in 1–2 months, the entire country will be affected.

Vaccines are currently made in eggs, so supply is limited—eggs go bad. Last year's supply would only vaccinate 4 million people for the H5N1 virus. (Whether this vaccine would even be effective in the future is unknown.) Production is limited because seasonal vaccines, which are separate, are still being produced 9 months out of the year. Even if the entire production capacity switched to a pandemic virus vaccine, there may only be enough for 15 to 20 million people in 1 year's time, but 300 million people would need it. Some challenges to overcome include expanding production of egg-based vaccines, evaluating dose-sparing technology, accelerating development of modern, non-egg vaccines, and targeting new antigens.

Information about Tamiflu® (a medicine for treating adults, adolescents, and pediatric patients 1 year of age and older with the flu whose symptoms started within 2 days of treatment) is anecdotal—it is not data. We don't know if it would work and, again, its supply is limited. The goal is to procure 81 million courses of antivirals: 6 million to contain an initial U.S. outbreak and the remaining 75 million to treat 25 percent of the U.S. population. The Strategic National Stockpile currently has 5+ million courses of Tamiflu with 16.5 million courses on order. The stockpile also has 84,000 courses of Relenza (with 3.9 million on order) and 3.6 million courses of Rimantidine.

The HHS pandemic influenza plan includes the following elements: influenza vaccine; antiviral drugs; diagnostics; surveillance, investigation, and response; healthcare surge capacity; infection control; risk communications; and state and local planning. The key to preparedness is state and local planning and having a source of clear up-to-date information. Gellin urged participants to make sure their concerns are represented at the state and local levels and to go through the scenarios presented at the symposium and ask the hard questions. He ended by stating that this is not just a public health concern; there is a

network of shared responsibility. There *will* be a pandemic. The only questions are "When will it happen?" and "How bad will it be?" We need a national effort.

Question and Answer Session

Q: What's the shelf life of vaccines?

A: Time is the enemy. Vaccines decay in potency and, because the virus mutates, the vaccine from last year's strain may not work next year. Vaccines for seasonal flu only last 2 years. The shelf life of Tamiflu is 5 years, maybe longer.

Q: At what point does an infected person become sick?

A: We don't know, after roughly a day, but people are contagious before they are sick.

Q: How long would a cycle take if we did a total shut down?

A: Shutting down is not realistic. It's better to slow down than to shut down, because there are social and economic concerns. Closing schools, keeping kids out of the mall, and other measures will help. You can't slow down to wait for vaccines though, that could take from 5 to 6 months.

Q: What is the capacity of the health system?

A: If it was a 1918-level pandemic, it would be overwhelmed. Again, it's best to slow down transmission so everyone doesn't need help during the same week.

Q: What are the priorities for vaccine distribution?

A: There will be federal guidance on what priorities would be. The HHS plan has begun to map that out, but it will play out differently in different states, because of differences in critical infrastructure, etc.

Q: What are you doing with the vaccines the government has stockpiled?

A: There are two viruses now. The vaccine we've made now wouldn't provide much protection against the second strain. We need better science.

Q: What is the recovery time?

A: It depends on how sick the person was.

Q: Will there be someone from the World Health Organization to monitor the airline industry?

A: The Department of Transportation is working on it. We have no answers yet, but active conversations are occurring.

Q: Are there adverse reactions to the vaccine?

A: There are limited side effects but limited vaccinations. We need liability protection for manufacturers. As we go from egg culture to cell culture, the Food and Drug Administration (FDA) will have to become more comfortable with vaccines being made on an industrial scale.

Q: What should your diet consist of if you're sick?

A: Keep well hydrated. Control fever. Look for signs of secondary infection.

Q: How do we tell people what to do about personal protective equipment (PPE)?

A: The science is not good, and supplies are limited. Masks have different pore sizes, but the ones that filter better need to fit. DOL and the Occupational Safety & Health Administration (OSHA) are trying to understand the risk base and factor that in with things like intensity of exposure in order to make recommendations. There has been no formal recommendation yet.

The Toronto Experience

Jane Speakman
Solicitor
Municipal Law Group
City of Toronto

Speakman presented from the perspective of someone with a legal background and firsthand experience in dealing with a local crisis—the Severe Acute Respiratory Syndrome (SARS) incident in Toronto, Ontario, Canada, which taught city officials what they were and were not ready for and pointed to the gaps in their plans and capabilities.

This is how SARS came to Toronto:

> *A resident went to Hong Kong for a wedding and stood in an elevator with an infected individual. She returned to Toronto and infected her son, who went to the hospital emergency room, where the virus began to spread. The tourist and convention industries were negatively affected, resulting in huge financial costs to the city. There were two outbreaks.*

Speakman continued by presenting statistics on mortality rates, infection, and isolation.

The emergency hotline in Ontario was swamped with calls. Speakman spoke of orders (sections 22 and 35) that allowed officials to isolate 27 individuals, legally. One person used a provision that allowed for an appeal; however, this person withdrew the appeal once the situation was properly and fully explained. Speakman said that in a time of crisis, time is in short supply.

Speakman outlined Ontario's public health and legal framework. Policy is set by the province of Ontario and implemented by 36 health units. Ontario also categorizes diseases and specifies which diseases pertain to sections 22 and 35. Because SARS was not on the list, officials initially had no legal authority to write orders, although individuals voluntarily agreed to isolate themselves. Although mandatory reporting statutes helped with followup, surveillance, and containment, officials did not get information from hospitals at first because of privacy and patient confidentiality concerns. A change to the Public Hospitals Act regulations remedied this difficulty.

Speakman offered the following guidance:

- **Be familiar with legislation.** When you have an outbreak, you have to know who can do what, when, and how. The power to detain, by court order, is typically used only several times a year, for serious tuberculosis (TB) cases. Medical officers need to know that they have the authority to seek a court detention order, as do judges. Moreover, law enforcement officials must know that they have the authority to enforce those orders if they are named in a court order. The court has the authority to direct police officers to assist medical officers, and medical officers must communicate with police when an order needs to be enforced. All of this requires protocols to facilitate legal detainment, medical orders, and law enforcement.

  Other things to think about: In Toronto, the authority to enforce a court detention order if the person is in his or her house is questionable because the right of entry is questionable. Also, no one has the authority to detain someone when a person breaches an order of a medical officer of health prior to obtaining a court detention order, which is a gap in the legislation. (However, other provinces have the power to detain someone for 72 hours.)
- **Think about practical problems.** What if legislation requires documents to be served personally? During a pandemic, no one will want to serve orders to sick people. Prices for delivery could skyrocket. Also, what if someone under quarantine is found in a shopping mall? Orders could be drafted in advance to prepare for this problem.
- **Remember rights to privacy and ethical issues.** With SARS, information was made available to the public without naming the individuals. Employers were <u>not</u> informed if employees were on a quarantine list.
- **Create contact lists of key players.** Carry these lists with you always. Establish partnerships with people who are willing to be available at all times.

- **Know the detainee's rights.** Individuals named in a court application for detention should have access to legal representation. If a court application is initiated, does the person need to be informed of the application? Know the rules about *ex parte* proceedings.
- **Take measures to protect health.** Officers need to know how to use PPE. All health care workers cannot be quarantined. Speakman indicated that in Toronto, if workers don't show symptoms, they should go to work, taking proper precautions: eating by themselves, washing their hands, traveling alone in their cars, and self-quarantining at the end of their shift. (Also, quarantine is isolating. Mental health factors come into play if someone is alone, cut off from family and friends, for too long.)
- **Remember, voluntary compliance is the cornerstone of emergency response.** This requires compensation for workers who are quarantined under order of the medical officer of health or by court order or are caring for someone subject to such an order. Ontario and Canada amended existing legislation to ensure job security for individuals subject to these orders and in some cases legislated compensation packages for those subject to orders and unable to work.
- **Develop a clear communication strategy.** This is essential for leadership and keeping the community informed.
- **Consider protocols for funeral homes.** Eliminate the risk of exposure for people who work with corpses. Quarantined people should not be allowed to attend funerals.
- **Update information technology systems.** They need to be flexible and robust.
- **Eliminate bureaucracy.** In Toronto, they recruited people from other jurisdictions, and there were professional licensing issues. Make sure outside physicians can practice immediately.
- **Think about isolation facilities.** Large numbers of infected individuals could result in provincial officials exercising their statutory authority to order that a premises be used as a temporary isolation facility.

Working Lunch

Judge Linda L. Chezem (Ret.)
Mooresville, Indiana

"What is in this for me? (WIIT-FM)" What can I take home from the symposium that is going to help me plan my agency's response to a pandemic flu outbreak? These are the questions Judge Chezem wanted attendees to ask themselves. The answer is communication and cooperation among the components of the public health and justice systems.

Silence is not golden when it comes to pandemic response planning. She stressed the need for communication *within* systems and the need to recognize differences in vocabulary when communicating *between* systems. For example, the words "isolation," "surveillance," and "outbreak" mean different things to the medical and law enforcement communities.

In addition to understanding the language of the different systems, planners must take into account the specific rules and laws that will apply to the operations of health and justice agencies during the time of the pandemic flu. Judge Chezem urged participants to read their state constitution and state laws, not just public health laws but other laws that affect court rules and procedures. A legal inventory is needed to assure that plans can be carried out within the law as it exists in each jurisdiction and that no component will be overwhelmed. For example, if many people file for *habeas corpus* with regard to quarantine, the court system could be overwhelmed. Questions to ask include "What does the law provide?" "What are the requirements?" "How is each component going to react (e.g., prosecutors, sheriffs)?" and "How will we coordinate our actions?" The most important knowledge to take home from this symposium is who your potential partners are in constructing and executing plans that will protect our families in the event of a pandemic outbreak.

Judiciary Panel

Moderator:

Kim Ball Norris, J.D., *Senior Policy Advisor for Adjudication, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice*

Panelists:

Senator Brent Steele, *Indiana State Senate;* ***Eric W. Carlson,*** *Ph.D., Director of Administrative Services, Arizona Supreme Court, Administrative Office of the Courts;* ***Matthew Penn, J.D.****, Staff Attorney, Public Health Preparedness and Emergency Response, Office of General Counsel, South Carolina Department of Health and Environmental Control*

Norris introduced the panelists and urged attendees to use the information presented when developing plans back home.

Senator Brent Steele
Indiana State Senate

Steele talked about an isolation and quarantine (I/Q) statute recently enacted in Indiana and the issues he encountered while the drafting the legislation. The law, which takes effect in July 2006, establishes procedures that a public health authority must follow to obtain or issue an order that will restrict the movement of an individual, when evidence exists that he or she has been exposed to a communicable disease.

The law was drafted to address inadequacies in the existing laws. The new law provides more details on defined terms, evidentiary standards, venue, representation, and other procedures related to I/Q. The law also clarifies immunity protections for persons providing health care services during a pandemic or emergency.

Legislators included public health advocacy and practitioner communities, the judiciary, and other parties in the legislation process, all trying to strike a balance between the interests of state health and justice departments, private groups, and citizens.

During the drafting process, lawmakers referred to the *Public Health Law Bench Book for Indiana Courts* for guidance. The bench book is a legal reference tool for judges on public health law and is often used in the courtroom.

For citizens to obey laws, they have to feel the law is fair. With that in mind, the Indiana lawmakers wrote the legislation to be easy to understand and afforded citizens their due process rights as much as possible. Provisions include the following:

- The legislation clearly states that isolation means physical isolation from the general public. Out-of-home quarantines must be as close to home as possible. Family members have a right to be with a quarantined person.
- The public health authority can petition the circuit court or superior court for an order of quarantine.
- The individual is entitled to notice of a petition, a hearing, and counsel. (Court-appointed attorneys will be provided for indigent individuals.)
- A petition for quarantine must be sworn, and the facts that confirm the presence of a public health nuisance must be set forth in detail.
- The court has a right to restrict the infected individual's appearance in court, conducting all court proceedings through any form of electronic media.
- The court sets the conditions of isolation and shall impose the least restrictive conditions possible under the circumstances.
- Public health officers have the right to seek emergency I/Q orders without a hearing if the person is likely to expose others to the disease before he or she has a chance for a hearing. An immediate I/Q order expires after 72 hours.

- Public health officers do not have to go door to door to quarantine an area. The public can be notified through the media or through signs posted in public places.
- When providing health care services during a declared disaster emergency, people and locations (i.e., health care facilities) that meet certain criteria are immune from civil liability resulting from an act or omission.
- It is a Class A misdemeanor to violate the conditions of quarantine or isolation. Violation carries up to a year in jail and a fine.
- The individual must be compensated for any property confiscated or destroyed.
- Any I/Q did not authorize the confiscation of firearms from the homes of the citizenry subject to said order, but the order could require people being quarantined to a public area do so unarmed.
- Adults have the right to go into an isolation situation to be with their minor children and/or adult dependents.

Similar legislation should be in place around the country. Steele said: "Impress upon your legislators that this should be number one on their agenda."

Eric W. Carlson, Ph.D.
Director of Administrative Services
Arizona Supreme Court
Administrative Office of the Courts

In the fire season of 2002, in a relatively short time, 500,000 acres of north central Arizona caught on fire, threatening 50,000 people and causing areas to be evacuated. Officials established an interdisciplinary committee to develop a simple plan that could be rapidly implemented in courts to assure justice during such an emergency.

The plan had to be flexible, apply to all courts, address the roles and responsibilities of the people involved, and establish guidelines rather than mandates because guidelines work better within the

administrative process. Presiding judges and chief judges took the lead. The initial discussion resulted in the following recommendations for minimum preparations:

- Establish a predetermined chain-of-command.
- Develop an emergency team.
- Develop protocols for communication within a court, between different courts, and between courts and the administrative office.
- Identify alternate facilities in case one is destroyed or otherwise unusable.
- Plan to manage and keep track of persons under court supervision.
- Identify critical court functions.
- Educate people about the plan. Train them in procedures. Test occasionally.

Most Arizona counties responded well. (Small communities did not produce written plans but could articulate them.) Lessons learned from the first round of planning included the following:

- Keeping it simple is best, but discussing details builds working relationships.
- Long-term interest is difficult to sustain.
- Someone needs to drive the process.
- Different counties will plan differently depending on the size of their court system.
- Value comes from inclusion and discussion.

In 2005, Arizona began holding administrative conferences for the court system that included judges, court administrators, clerks, and probation personnel to discuss the possibility of an avian flu outbreak. Court functions and legal issues to consider include hearings, legal representation, juries, statutes of limitations, speedy trial rules, basic due process, and a public health law bench book. Policy issues to consider include human resources, procurement (How will jurisdictions obtain supplies in an emergency if their usual suppliers are unavailable?), security and safety, compensation, administrative structure, and technology.

A simulated influenza pandemic, conducted by the World Economic Forum and Booz Allen Hamilton in 2006, found that the telecommunications infrastructure would likely be overwhelmed. Some experts speculated that the Internet could shut down within 2 to 4 days. Government and businesses must coordinate and plan for the use of alternative communications channels—telecommuting probably will not be a viable option because even in a nonemergency environment, sufficient technology, policies and procedures, and remote management skills have to be in place.

Matthew Penn, J.D.
Staff Attorney, Public Health Preparedness and Emergency Response
Office of General Counsel
South Carolina Department of Health and Environmental Control

Penn currently works under a CDC grant, advising the Office of Public Health Preparedness on legal issues concerning public health emergencies and I/Q. During a public health emergency, lawyers like Penn will seek judicial review of I/Q orders and other orders issued by governors and public health officers. One of the responsibilities under the CDC grant is educating the judiciary and law enforcement about these issues. In deciding the best ways to do that, Penn and his colleagues learned about a movement throughout the United States to create bench books for judges tailored around the public health law within a state's jurisdiction.

Penn and his colleagues are in the early stages of developing a public health law bench book for the state of South Carolina. Funds were allocated from the CDC grant to hire three law clerks to help write it. For guidance on content and structure, they read the *Public Health Law Bench Book for Indiana Courts,* and chose a structural foundation for the South Carolina book consisting of two sections: (1) a treatise-type section with a law school textbook type of organization and coverage, and (2) an application section with an outline and bullet format with cross-references back to the treatise section.

The initial subject matter groupings for the book are listed below:

- Jurisdiction (courts, board of health, states of emergency, governor).

- Search and seizure. This subject area can be problematic for this type of law because it can produce criminal-like outcomes (bodily searches, restrictions on movement, detentions for fixed periods of time, etc.), but in a civil procedure context (public health orders, civil burden of proof, etc.). By nature, the cases are neither traditional criminal cases nor traditional civil cases.
- Proceedings. Researchers must determine what is currently in the law.

Letters were recently sent to South Carolina judges, lawyers, court administrators, and a representative of the state attorney general's office asking them to participate in an editorial review board.

Judge Linda L. Chezem (Ret.) of Mooresville, Indiana, sat in on the panel and responded to a question on whether any plans exist for dealing with civil disorder. She said the court management committee in Indiana is discussing it, but a plan has not been written. Law enforcement plans may have focused on that scenario, however. The pandemic plans posted by the state departments of health in all 50 states contain little reference to law enforcement, courts, police, or other elements of the justice system.

Law Enforcement Panel: Practical Sharing, Developing Strategies and Protocols

Moderator:

Steven M. Edwards, Ph.D., *Senior Policy Advisor for Law Enforcement, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice*

Panelists:

William S. Smock, M.D., *Professor,University of Louisville School of Medicine;* ***Capt. Nancy C. Demme,*** *Director, Major Crimes Division, Montgomery County (Maryland) Police Department;* ***Capt. Glen Neimeyer,*** *Charlotte-Mechlenburg (North Carolina) Police Department*

William S. Smock, M.D.
Professor
University of Louisville School of Medicine

Smock gave a brief overview of the avian flu—mortality rates, migration patterns, and methods of transmission—emphasizing how important it is to ensure the safety of law enforcement officers. Given that marshals are *not* top priority for vaccination on the CDC scale (health care workers come first), Smock affirmed that *preventive* measures are crucial.

Recommendations for personal protective equipment (PPE) include:

- N95 masks for respiratory protection.
    - Must be worn within 6 feet of a potentially infectious person.
    - Must be worn by prisoners or potentially infectious people when they are being interviewed or transported.
    - Must be properly fitted. (Whether this will be required, legally, during a pandemic is unclear.)
    - Are not effective once crushed, deformed, or saturated with moisture.
- Eye protection. Wrap-around goggles or glasses are best.
- Gloves. To be used for any physical contact.
- Alcohol-based gel.
    - Sixty to 90 percent alcohol is best. Antimicrobial soap is less effective. Plain soap is least effective, but better than nothing.
    - Should be available for personal use in vehicles and in stations.

More recommendations can be found on CDC's web site.

Officers should be trained to recognize the symptoms of H5N1 influenza: fever, chills, muscle aches, cough, progressive shortness of breath. Officers should always try to stay *at least 6 feet away* from potentially infected people and should be trained to take precautions and use PPE when the following signs are noticed: fever with rash, fever with cough, fever with cough and travel history. Marshals must

be taught how to use PPE to safely serve court orders to people who are sick. Any law enforcement officer who is sick or showing symptoms should stay home.

Captain Glen Neimeyer
Charlotte-Mecklenburg (North Carolina) Police Department

Neimeyer advocated a planning approach that starts in the field. "You can make plans," he said, "but who do you think is going to implement them?" Of utmost importance is interagency preparedness. He spoke about the benefits of the Catastrophic Incident Response Annex (CIRA) project, which required his jurisdiction to figure out what they would need to manage for 5 days with no aid or assistance. Make sure your emergency mobilization plan aligns with the public health plan and the National Management System. Like Demme, he emphasized that law enforcement must read the plans of other agencies to know what is expected of them.

Emergency management planners in Charlotte are developing a Comprehensive Hospital Protection Plan, because a typical hospital campus has only 8 to 10 security guards. If people panic and descend on a hospital, how many officers would you need to protect doors and windows? Everyone wants law enforcement during a disaster. Neimeyer can load his protection plan into the computer at the command center and see how many officers are needed ideally and at minimum for each location. They have also developed a Continuity of Government Plan with a personnel alternate location matrix to tell elected officials where to go to work in a disaster.

The Center City Evacuation Plan was developed alongside key private sector partners with Department of Homeland Security funding, and was distributed in pamphlets and posted on the city/county web site. It probably underestimates the panic factor, however. An All Hazards Advisory Committee was set up for first responders, which included nongovernmental organizations (NGOs), utility companies, and private sector companies. The All Hazards Plan lays out responses to various scenarios and events; private sector participation is key in making these plans.

More than 1,500 officers took the mandatory 160 Awareness Course and the Pandemic Flu Training on the online system. Officers logged on, the system registered them, kept track of their log time, and made sure they completed the training. Neimeyer said awareness training and education is very important, especially for dispelling urban myths and teaching people how to use PPE. Proper education will greatly increase the number of officers who report during a pandemic. He likened the training to the training that took place on blood-borne pathogens.

All sworn officers completed online training for issued PPE. All command staff and civilian managers were run through mandatory IS-700 National Incident Management System (NIMS) training. Laminated quick-reference cards were made for sworn officers; the cards can be carried on a clipboard and are easy to flip through. His agency has also helped the North Carolina Center for Public Health Forensic Epidemiology Conference for 2 years, rounding up criminal intelligence bureau and felony investigators to be facilitators. He has continued training special response teams (e.g., Special Weapons and Tactics (SWAT), bomb squads) and a special Advanced Local Emergency Response Team (ALERT), which is an interdisciplinary team comprised of employees from all of the major first responder agencies in their jurisdiction and also including personnel from the Transportation Security Administration (TSA), public health, and SWAT members who are trained in mass triage.

His agency has purchased equipment through a Law Enforcement Terrorism Prevention Grant: PPE for all sworn and civilian officers in the county, respirators and level C ensembles, and equipment for the Communications Interoperability Project.

Operation Summer Breeze was a real-time biological event in 2004 and a huge learning experience. Quarterly exercises for all alert elements also are practiced.

Question and Answer Session

Q: What is the shelf-life for masks?

A: If you keep them out of the sunlight and don't crush them: forever (in reference to the N-95 rated mask).

Q: Would you recommend a type of mask that kills the virus?

A: I'm not sure that's necessary.

Q: How do you plan for panic?

A: Make it a planning assumption. If 145,000 people commute downtown every day, what if everyone tries to get on the freeway at the same time? Plan for the worst.

Q: What platform are you using to maintain contact with the private sector?

A: Have face-to-face meetings instead of using e-mail.

Q: How long can the virus live?

A: Minutes to hours, it depends on the temperature. It can live in feces for 30 days, but any sort of disinfectant on a surface will kill it, such as bleach or alcohol.

Q: How long would a pandemic event last?

A: Probably months. The 1918 pandemic lasted 18 months, with three peaks.

Q: Is the Department of Homeland Security asking OSHA to waive the fit-testing requirement?

A: Yes. A request has been made. There has been no ruling yet. From a medical standpoint, fit-testing is a good idea because a surgical mask isn't as effective, but fit-testing requires a lot of money to get 100 percent compliance.

One attendee mentioned that his jurisdiction is calling the masks "voluntary" to skirt this compliance issue. He said his jurisdiction has 30,000 under lock and key and has ordered 400,000 more. Delivery could be as late as December. He encouraged everyone to order now.

Nancy Demme
Director, Major Crimes Division
Montgomery County Police

Demme spoke about the pandemic and I/Q planning that began in her county last year. She said they recruited a district judge, someone who commanded respect and could get things done, plus a decisionmaker from every agency. The first meeting was to educate attendees about pandemics and raise some of the issues that would need to be discussed. Then, the group split into subcommittees by discipline; each one being designated a subject-matter expert (SME) and legal representative and asked to return with questions for other subcommittees.

Issues to consider dealt mainly with laws and the use of force regarding arrests and citizens' rights. The group decided that voluntary compliance and citations were preferable to physical arrest and that closed-circuit TV would eliminate the need to process violators at the courthouse. The group also identified potential union issues…What about special compensation? What if the contract says that all possible means must be used to protect union workers, but CDC doesn't list them as top priority for vaccines? Also, the public health plans seemed to assume there would be unlimited resources in law enforcement, handling everything from I/Q security to vaccine security to investigations.

Demme reviewed the steps that would be taken in the event of a pandemic, from surveillance and outbreak to monitoring and followup, charting each option along the way (verbal order/written order, compliance/no compliance). To prepare now, she suggested educating the public about pandemic plans, self-protection, and family self-care. Giving them responsibilities, she said, would ensure they become "part of the solution, not part of the problem." Finally, law enforcement must remind agencies that resources are not unlimited; in fact, they will most likely be depleted during a pandemic.

Question and Answer Session

Q: In Florida, we don't want to overestimate or underestimate the threat. Let's keep in mind there is still a significant leap that must happen before this thing hits. I've been asked if we're ready to corral people for

quarantine purposes? My answer was twofold: (1) We have no tanks or trucks to do so, and (2) If people get the flu, they're going to be sick, home in bed. Can't we just tell people to stay in bed and stay home?

A. Yes, you're right. We can't stop the spread. We can only slow it down. We won't be quarantining masses. We will rely on self-quarantine. There should be few that we'll have to force into quarantine.

Q: Not everyone who has been quarantined is sick, right?

A. Right. Quarantine means removing people who have possibly been exposed from the population. Isolation means removing people who are sick from the population.

Q: Given that people can spread the virus *and* be asymptomatic, shouldn't you tell officers to wear masks whenever they are in public?

A. Not at this time. Masks are in short supply. You want yours to last as long as possible.

Q. Is there a particular kind of glove or eye protection recommended?

A. No. Latex for gloves. Wraparound protection is best for eyes, but regular sunglasses help too. (It is more difficult to become infected through the eyes than the respiratory system.)

Corrections Panel

Moderator:

Andrew Molloy, *Senior Policy Advisor for Corrections, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice*

Panelists:

Carl A. Wicklund*, Executive Director, American Probation and Parole Association;*

Timothy T. Schuetzle, *Director, Prisons Division, North Dakota Department of Corrections and Rehabilitation;* ***Scott A. Haas, M.D.,*** *Medical Director, Kentucky Department of Corrections*

Molloy introduced the panel, stating that not much pandemic planning in the field of corrections has taken place but, "We think it's important that we begin work in this area, and this corrections panel will help do this." Molloy urged participants to search the National Institute of Corrections web site at www.nicic.org for pandemic information that is currently available. He mentioned that the Association of State Correctional Administrators (ASCA) (www.asca.net) is also compiling useful information.

North Dakota's Plan
Timothy T. Schuetzle
Director, Prisons Division
North Dakota Department of Corrections and Rehabilitation

Schuetzle described North Dakota's State Penitentiary Pandemic Outbreak Emergency Plan. North Dakota, with only three facilities in the state, has the smallest prison population in the country. State penitentiary planners met to discuss how to prepare for a pandemic and developed North Dakota's pandemic plan. Planners came up with a list of assumptions:

- Expect no outside assistance.
- Defend in place. One advantage: Inmates can be isolated easily, e.g., lockdowns.
- Initiate an emergency operations center (EOC). Have a command structure, plan to give different roles to different people as they arrive on the scene, and practice operations at least twice a year. If 40 percent of the workforce is not available, the state has a plan in place to which it can refer (e.g., policies on work stoppages, lockdowns).
- Assume that vaccinations will not be available to inmates and most staff. Some Tamiflu will be available, but only for key staff. Many ethical issues enter this decision; inmates will know the policy and planners have to know how to handle that.

- Plan for 25 to 40 percent of the population to become ill and 1 to 5 percent to die.
- Prepare to operate at a 40 to 50 percent staffing level.

Using these assumptions, between 145 and 214 of the inmates will become ill and between 5 and 26 will die. Of the 135 security staff, 65 to 70 will be available for work; of the 80 support staff, 40 will be at work; and of the 8 nurses, 4 will be at work. The physician may or may not be available.

State planners planned for a stockpile to last 14 days (which may need to be increased). The state bought 14,000 masks, 60 body bags, hydration supplies (e.g., sugar, salt, clean water, cups, straws), latex gloves, eye goggles, hair and shoe covers, isolation gowns for caregivers, large plastic bags, small sickness bags, incontinence pads, and cleaning supplies (e.g., sanitizers, mops, garbage bags, towels).

In North Dakota, when an inmate dies, it is standard to contact highway patrol, which may not be available during a pandemic, so planners established a memorandum of understanding (MOU) and came up with alternative policies for moving corpses. Planners also prepared the facility for an outbreak, checking air-handling units and filters and adding bunks and mattresses to allow all inmates to go to one area so that staff will not have to man the entire facility. The state is always ready for 3 weeks of lockdown (e.g., food, plastic ware). The state began training staff in April 2006 on the pandemic plan so that they know what to expect.

A key issue for managers is when to implement the plan. North Dakota decided to implement the pandemic plan when there is *a confirmed death in the county*, starting with lockdown procedures and initiating the EOC. The facilities would stop all inmate movement, and inmates would be left in their cells except for occasional showers. The state originally decided to stop all intakes, but the presenter alluded that such a policy might have to be revised. No congregate meetings, visitors, religious groups and services, or deliveries inside the walls of the facility would be allowed. The goal is to isolate the prison as much as possible, stopping the spread of the disease; this includes telling staff not to come in if they feel ill.

If a case is diagnosed in the facility, staff would be issued masks and protective gear. Inmates would be isolated in one area. A self-contained facility, with its own kitchen and showers, would be

opened to house all inmates. Inmates will have masks and cleaning supplies to keep themselves and their cells clean. The 6-foot separation policy will be adhered to; the cells are big enough. If inmates perish and they cannot be brought to the morgue, corpses will be moved to the dairy farm, which is unheated during the long North Dakota winter. Inmates may have to be allowed out of their cells to perform some auxiliary activities, such as laundry. The state penitentiary will have to determine what to do with discharges and quarantines. (Discharged inmates cannot be held legally, but what if a discharged inmate is sick?)

Mr. Schuetzle ended his presentation by saying that the North Dakota penitentiary system would make some changes to its plan based on what was learned at the conference.

Kentucky's Plan

Scott A. Haas, M.D.
Medical Director
Kentucky Department of Corrections

Haas began his presentation by mentioning that he would be discussing an outline of issues and steps, emphasizing that the copy of the Kentucky Department of Corrections plan he handed out to participants was a draft, not a comprehensive guide to all the answers, or even questions, that are raised. Plans must address preparation, activation, and deactivation.

Preparation

Determine who the key players are and who you need input from to develop appropriate policies (e.g., medical, security, and classification staff; legal counsel; outside agencies; public health; ethicists). Collect information, including in-house statistics (e.g., high-risk categories, number and types of staff and inmates). Kentucky did not begin with all of the information required at hand. A number of resources are available (e.g., local public health offices). Consider having the same person collect and compile all of the needed information and clearly document what information is being used from meeting to meeting.

Activation

Kentucky worked the pandemic protocol into its current emergency plan, adding a chapter on the influenza pandemic and including information related to security in the emergency plan, while putting a separate medical staff plan in the Medical Protocols binder for medical staff. The state will implement a split command center: a normal command center for routine operations, and a crisis command center for pandemic-specific issues. The state plans to have isolation and quarantine areas at each facility.

Haas stressed the importance of several issues:

- Have a detailed medical response plan ready, including details on PPE orders and who will be using the equipment.
- Have a clear communications plan. Know who is going to be designated to monitor routine and crisis operations, and to keep track of information.
- Put the policy in the language and format that key players are accustomed to.
- Develop training modules and educational tools. Staff should be educated and trained, in that order. To control a pandemic, you will need to educate inmates and to do so early. For example, create a televised educational module to run on a loop in the facilities (which is part of Kentucky's plan).

Deactivation

Share the newly drafted policy with public health officials and others as necessary. Train staff and inmates. Realize you are never finished with the training process. Read everything possible on pandemics and check the CDC and WHO web sites regularly, as new information constantly appears. Tweak plans as necessary. Policies should be revised continually to include new developments.

Troubling Issues

Correctional facilities will be operating alone in dealing with mortuary services and morgue operations. Help from outside services will be sparse. Realize that pandemics come in waves and that

planning for just 6 weeks is not enough. Acquire many masks; if each staff member goes through two masks a day for 42 days, that's a lot of masks for just one wave of activity.

Review ethical considerations: What should be done with people who do not come in for treatment within 72 hours of influenza contact? Are they turned away? Are they offered placebos? Are they put in quarantine or isolated?

Community Corrections Perspective

Carl A. Wicklund
Executive Director
American Probation and Parole Association

Wicklund provided the community corrections perspective, mentioning that his presentation would likely leave participants with more questions than the presentations of the previous two panelists.

Looking across state lines, no two systems are the same. In a number of states, probation is part of the state executive branch; in others, it is part of the judicial branch. Some probation departments are under local rather than state control, and there is also federal probation and parole. There are jails to think about, urban areas with a staff in the hundreds, and rural areas that may have only one or two staff members. In addition, the offenders are all in the community, and staff caseloads are large.

Planning Questions

- Who do you coordinate with? Unless the probation department is large, you will need to reach out and coordinate with many different agencies and organizations. Determine who will take the lead, externally and internally within the agency. Coordinating on a large scale is complex.
- To whom do you report information? Some areas have city and county health departments. Do you report to the courts?
- Some areas have integrated information sharing systems; some areas still use index cards. If your area has an automated case management system, does it have a field for health-related

information? If it does, can information in that field be shared, at least with staff in the probation department? What about infected staff?

- What kind of PPE is recommended and available to community corrections personnel? Many departments have limited budgets.
- Who will get the equipment? Everyone in the office?
- Are office hours going to be continued?
- If there is a drop in the workforce, who is going to get the attention? The highest risk individuals? How are we going to keep track of these people? Who will supervise?
- Will there be quarantine areas? What if an offender is quarantined? Will we visit the offender to make sure he or she is there? Will we be required to?
- What about parole violators? Corrections may deny them. How will court occur?
- What about the economic issues involved? A major part of many probation department budgets depends on the collection of offender fees. What if offenders are no longer paying their fees? What about victim restitution?
- Will pretrial assessments and supervision still occur? Will presentence investigations occur or will the court shut them down?
- Should all high-risk parolees be electronically monitored? Who will hook them up? Who will handle alerts?
- Will mental health services be available? Will offenders get the medications and services that they need?
- How will families of officers be assisted?
- What happens if quarantined staff fail to remain in quarantine? What if the whole office is quarantined? What about warrant-less searches?

Important Reminders

- Get assistance and buy-in from others when developing plans.

- Remember that community corrections is often overlooked by the rest of the system.
- Develop protective measures now, and work with everyone on procedures and policy.
- Develop a continuity plan for essential services; define what those services will be; and involve other stakeholders in that definition.
- Remember that you'll need a lot of help with resources.
- Be aware that no one is legally essential.
- Sustain infrastructure.
- Determine how to communicate with stakeholders (e.g., victims, district attorney, jails, offenders, the community).

Followup Comments

- Open-air segregation units could be used for mentally ill prisoners and pandemic cases could be moved into their cells for isolation.
- The National Institute of Corrections (NIC) (www.nicic.org) has started consolidating information and putting it online for the corrections field. ASCA is putting together a survey showing what states are doing.
- A CDC participant said that, although CDC worked with different organizations to encourage the inclusion of correctional staff and first-line responders, CDC does not have a set policy, or guidelines, on the use of vaccines in correctional facilities. The issue of whether juvenile delinquents should get vaccinations was raised.
- Lockdowns keep inmate-to-inmate contact down. Even though locking down is more staff intensive, it is also safer. Another person commented on meals, and the desire to get a government initiative to produce more meals ready to eat (MREs) for inmates.
- A participant commented that the biggest fear at the local level is that 100 to 125 offenders a week are sent to the state system. What if the state does not accept those inmates? Somehow,

collectively as a system, all need to plan for continuity of operations. If only one piece of the system shuts down, it all shuts down.

Tabletop Discussions

Symposium participants were assigned to a discussion group—comprised of representatives from the judiciary, law enforcement, corrections, and the public health community—and given a hypothetical scenario and discussion questions. The purpose of these discussions was to get participants thinking about possible situations and to see the benefits of working in advance with other sectors, such as public health. Each group reported out on its discussion to the entire symposium audience, which is summarized below. The discussions represent practical and policy issues, as well as legal concerns. The summaries represent the reported discussions only; BJA and the Department are not implying these should be the actions taken in the event of a pandemic.

The headings used to identify the discussions (e.g., O'Hare #1) refer to the conference room in which the discussions were held.

Scenario 1: Isolated/Quarantined Neighborhood

A natural outbreak of a highly infectious disease is taking place. The health department has issued isolation orders to 58 people and quarantine orders to 312 people who live in a small neighborhood. The quarantine orders are being ignored. (The complete scenario can be found in the Appendix.)

O'HARE #1 Group Discussion

It would be necessary to restore order and eliminate gunfire by getting information into the surrounding and affected neighborhoods. Educate people and obtain their buy-in and cooperation. Recruit local leaders. Enlist the broadcast media. Perhaps use reverse 9-1-1 calls to call residents at home. Increase police presence on the street. Switch officers to a 12-hours-on/12-hours-off schedule. Use

civilian help to staff communications systems. A comprehensive communication plan should be developed in advance, so that plans will not be merely reactive.

Ingress and egress issues would need to be addressed. Take care of food, water, and medical attention for those in the affected area. Your dialogue with affected residents should follow the hostage negotiator model: understand the perceived needs of the affected population, provide assurance that the residents' needs will be met, and eliminate the perceived need to unlawfully enter or leave the affected area.

Arrest as few people as possible. (Would violation of orders be a Class B misdemeanor or contempt of court for violating court orders?) Sheriffs should admit violators into custody. If the arrestee was possibly infected, he or she would be sent to a segregated medical holding facility for a 72-hour medical assessment before going to prison.

The prosecutors and judiciary must make a clear statement about how to handle arrests in this type of scenario, before any arrests are made. Adjudication of the violation will take place long after the quarantine orders have expired, if at all. While the group ran out of time, there was some comment on question #7: Union and labor rule issues complicate the question. The New York State Department of Corrections is currently meeting with its unions about this issue.

O'HARE #2 Group Discussion

Law enforcement response depends on which infectious disease is involved; whether the disease is airborne (more serious) or waterborne; whether it is bacterial, viral, or communicable; how deadly it is; and what the overall risk is for the general public. Law enforcement should set priorities, disregarding lower level misdemeanors to focus on major offenses or life-threatening situations. Prosecutor response should be similar to law enforcement response; both should set priorities and use resources efficiently.

The court would need to be very flexible with processes and procedures during such an emergency. For example, courts may need to use a short-term hold or alternative mechanisms for the hearing process, such as video hearings. In many states, union agreements would make it difficult to terminate an employee who violated an order.

The health department should be prepared to seek criminal prosecution of those who violate orders. However, in some states, an order has to be approved by the courts within a certain period of time. Interagency planning and communication, among justice, law enforcement, and public health agencies, *before such an emergency takes place* is critical for a successful community response. Agency leaders must develop, agree upon, and communicate policy before I/Q is used. Also, each state must do a legal inventory.

Unified command structures and mutual aid plans are already in place and, when followed, will be very helpful in dealing with outbreaks. The federal National Incident Management System (NIMS) and the local and state versions, such as the California Incident Management System (CIMS), are well-developed responses to civil emergencies. They identify a lead agency which, if necessary, will initiate a quarantine order and define and identify supply lines.

Quarantine orders must include detailed instructions and consequences. Preventive measures and good communication, rather than arrests and threats of arrest, are the best ways to handle I/Q and other forms of social control. Any measures of social control should be followed by judicial review. Also, CDC's web site has a case study, "Measles Outbreak in Iowa," that is a good example of an order that changes with the situation.

Courts would need to be flexible in ensuring due process. For example, during the Hurricane Katrina disaster, officials in Jefferson County, Louisiana, set up a secure outdoor facility where nonviolent cases were handled expeditiously and violent offences were given more time and offenders were held if necessary.

Scenario 2: Airport Worker with Sick Child Receives Quarantine Orders

Mary tells her supervisor that she is not feeling well and that her older child's school called to say she must pick her older child up because the child is ill. When Mary picks her child up at school, she learns that the school nurse has reported Mary's child as a possible pandemic flu case. That evening, a Big City

health department nurse calls Mary and tells her that Mary and her children must be quarantined. Mary calls her supervisor, who in turn calls the Big City health department to confirm. (The complete scenario can be found in the Appendix.)

SCHILLER Group Discussion

The group discussed the differences between quarantine and isolation. The representative from Illinois spoke about the need for the government to be able to supersede medical privacy issues to contain a possible outbreak. The majority of participants were not familiar enough with the specifics of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to say if this would be legal.

It was agreed that there would be a need for employment protection, but no one knew how that could be done. A judicial representative made the point that a person under I/Q as ordered by the state is the responsibility of the state, and this brought up the issue of financing and staffing large-scale I/Q. Because each state has different statutes, we could not devise a comprehensive plan without the federal government playing a large role.

If the patient does not follow the order of quarantine, it should be resolved as peacefully as possible while exposing the fewest people. A representative from the Los Angeles Police Department said he would privately remind the patient of the quarantine order, and then calmly and politely (so as not to cause panic) escort the patient home—*not* to jail. If this failed, he would follow normal arrest procedures, not becoming unnecessarily violent or aggressive. Consensual quarantine would alleviate many issues.

Regardless of violations, in the case of isolation, the public information officer would have a duty to inform the public of the situation, but it would be best to announce the possibility of a pandemic outbreak and publicize symptoms to look out for without disclosing personal information. In addition, because the person under quarantine is the state's responsibility, the health department is responsible for contacting the patient's employer to curtail the outbreak and protect the patient's job.

In certain jurisdictions only a judge could order a quarantine and that order could only be carried out by executives of the court (police). In other jurisdictions, such as Illinois, the Public Health Organization (PHO) can be empowered to do so by the Governor.

It was estimated by the medical representative from Delaware that at least 3,600 people could have contracted the virus in this scenario. One could contact and inform people using flight manifests and passenger records. Private hotels might also be able to help, as most have plans in place for dealing with outbreaks. Other airports could be informed. But, by the time the diagnosis was confirmed and the procedures put in place, containment of the 1,200 people who passed through the airport and all the people they may have come in contact with would be virtually impossible. The best system would be a variation on CDC's Anthrax Exposure Implementation Plan. Giving information about symptoms, transmission, and treatment would help assuage panic.

This would be a federal issue; especially with regard to contacting international airports and other countries. However, no system is in place for a widespread federal quarantine, and more than one federal agency could claim that the outbreak as falls under their jurisdiction. The Federal Emergency Management Agency would need to play a role as well as CDC, the Federal Aviation Administration, and potentially others. (If people had been deliberately infected, then the Federal Bureau of Investigation would handle it.) Competing agencies means conflicting decisions.

States vary widely on rules for holding people without trial. The federal limit is 72 hours, and many states adhere to that, but in some it's 48 hours. After that, a person must be released or placed in front of a judge. This policy itself presents an issue. If people are quarantined, how can they be present for the hearing? How much evidence is required to maintain quarantine, and what civil liberties may be restricted by the courts?

A judicial representative addressed the legal ramifications of a mass quarantine and how petitioners would be able to redress their current status. Another problem arose: If people are quarantined on the state level, and each state has different statutes to maintain those quarantines, will everyone be treated equally in the event of an outbreak? Also if such an action were federalized, how would one court

hear all the cases for quarantine, and subsequently any arising appeals? Group quarantine orders, while effective, could infringe on the rights of citizens.

The state of New Jersey has drafted a procedural action to effectively respond to a pandemic, complementing an already-present State Emergency Operations Plan. The representative from New Jersey briefly mentioned the Emergency Health Powers Act, passed in September 2005, which provides legal structure for a rapid and effective response to a public health threat. New Jersey assumes that the primary responsibility falls to federal government. The primary agency to contact would be the New Jersey Department of Health and Senior Services (NJDHSS): www.state.nj.us/health/flu/documents/pandemic_draft_022006.pdf.

The state of Illinois drafted its final version of the Illinois Pandemic Influenza Preparedness and Response plan (www.idph.state.il.us/pandemic_flu/Illinois%20Pandemic%20Flu%20Plan%20101006%20Final.pdf) in March 2006. Primary decisionmaking authority in an emergency lies with the Office of the Governor followed by the director of Illinois Department of Public Health (IDPH). Preparation, as well as response to such an event, is the shared responsibility of IDPH and the Governor, although risk communication is done only by the Governor.

The police representatives in the group did not advocate the use of force because it could be an overreaction and could increase their risk of exposure.

STATE Group Discussion

With regard to privacy, according to the police surgeon, this situation will not present a conflict with HIPAA, because under 45 CFR 164.512(b), HIPAA provisions will be suspended in a public health emergency. But any information disclosed must be medical information related only to the flu. A public health official pointed out that under Florida's law, the health department can disclose medical information to the general public, as long as it concerns public health. HIPAA may not cover quarantine information anyway.

The first course of action should be to review the plane manifests, identify who is there and who is not, and contain the airport. International treaty provisions may come into play. Under 45 CFR 4545.72, CDC should be notified so it can contact the countries that may become involved. Foreign embassies and airlines should be contacted. The department responsible for quarantine orders will vary depending on the state.

In Florida, local law enforcement is responsible and the public generally cooperates with the health department. An Arizona court administrator noted that Arizona allows judicial review of local orders. In this case, officials cannot know who was actually exposed at the airport but can determine only who was on the planes from the flight manifests. Children are "superspreaders" and should be a special consideration.

A trained spokesperson from public health should make announcements, because law enforcement is may be deemed too threatening; law enforcement should focus on those who refuse to comply and the particular locations where infection has spread (e.g., school systems, airports). State police will be spread too thin. Health care workers should stay away from others, even at home. Law enforcement may need to do the same thing.

First responders should stay home if they feel sick. In Toronto, if someone calls in sick, they are not docked sick time. Agencies cannot discipline no-shows during the emergency—maybe after the emergency subsides. Agencies may need to set up emergency compensation plans. Jurisdictions should perhaps design a family support group, like the model used by the military. New Hampshire police have this already.

Scenario 3: Sick College Student

John is a college student who lives with friends in an apartment near the edge of campus. His parents live on a small farm about 60 miles away, where they raise poultry and other animals. John and a buddy went duck hunting near his parents' home last weekend. On Wednesday morning, John starts feeling really ill

but still goes to class. By Friday, he tells his friends he cannot go to a party with them. His friend Jim is subsequently arrested for a DUI, and because he is unable to make bail, he is taken to court. At his initial hearing, Jim tells the judge he has the flu, and she orders a doctor's examination because she does not want the county to incur any medical expenses if Jim is sick. (The complete scenario can be found in the Appendix.)

STREETER Group Discussion

Whoever orders a physical exam will pay for it (e.g., the county). Some local jails and court systems have isolation rooms; others do not. Facilities vary throughout the country. Most likely, it would be a medical care facility or hospital. Campuses are places with large concentrations of people living in close contact, and may not be ideal for quarantine. Campus quarantine also presents logistical problems and financial implications for a college. Officials need to be sure the situation is very serious before locking down a campus.

Students should be confined as closely as possible to the geographic area where they got sick. Public health officials would not allow sick people to be in the corrections system. Sick people would be placed in a hospital setting in isolation.

Some departments with a medical facility might accept the prisoner. It is hoped that the sheriff would inform the intake unit that the person had been exposed. The larger issue is the authority of a court-ordered incarceration versus the authority of a public health official to impose quarantine. The overriding authority would probably be the public health department, but it may vary from state to state. In a pandemic, it probably would be governed by state and federal declarations of emergency or disaster.

With a serious communicable illness, do officials quarantine the whole jail and not release inmates who are up for release? The corrections system must have a working relationship with the health department to determine this. Judges may not have the authority to order a jail not to accept more prisoners without a petition from the health department or executive branch. The group agreed that no

sheriff would release prisoners on his or her authority. However, in Minnesota a sheriff does have the authority to release prisoners if they have not been before a judge within 48 hours.

DIRECTORS' SUITE PARLOR Group Discussion

It is the county's responsibility to pay for a prisoner's exam, but some jurisdictions would first check to see if the individual had private insurance. If a doctor ordered the person to be isolated, some correctional facilities would be able to accommodate this, because they have their own isolation units; others would not. If the inmate is infectious but not sick enough to go to the hospital, the public health department should be contacted. The medical personnel who make the diagnosis, not the correctional staff, are responsible for reporting the situation to public health authorities.

No definite conclusion was reached about quarantining the campus, but there would be a need to quarantine anyone who was in the holding cell with Jim and to monitor the prisoners and correctional officials who had contact with him. Defense attorneys would also need protection. No conclusion was reached on the release of prisoners with a quarantine order.

The state correctional agency might not accept the prisoner if its staff knew he was infectious, but he would probably be transported before the medical results were known. Jim could be quarantined at home. It would be the county health department's responsibility to inform the state of Jim's condition.

If the state refused to accept one prisoner, it might become a precedent. This could cause bottlenecks in the system and overcrowding in the county jail. The state could use an alternate facility or accept responsibility for the prisoner while leaving him in the hospital. If a regular hospital was used, however, resources would have to be prioritized as more and more people were admitted for care.

A judge could triage the jail population in the event of overcrowding, releasing the less dangerous offenders on their own recognizance or put them on house arrest with ankle bracelets. Jails already have procedures for washing and sterilizing cells and most likely, if a jail was down 40 percent in staffing, there would be a prisoner lockdown.

Scenario 4: Media Reporting on Poultry Farm Outbreak

The 5 o'clock news reports that authorities suspect an outbreak of avian flu has stricken at least 75 of the 1,500 workers who work at the Universal Chicken and Turkey Farm's local poultry plants. These plants are the largest single employer in Mississippi County and supply poultry to 39 of the 50 states. Many of the plants' employees have little or no English skills and only the top echelon of management have health insurance. The 11 o'clock update reports that the hospital has been closed to visitors and family members. (The complete scenario can be found in the Appendix.)

FRANKLIN Group Discussion

The representative communicating with the public needs to hold a qualified position. The non-English speaking population must be considered. Information given to the media should be validated by a medical professional. The authority to order the hospital to close will be contested. Uninsured individuals will be neglected. An extreme lack of medical supplies will result in a crisis. Individual rights will be compromised. Police will be needed. Overlap of law enforcement and public health responsibilities could cause confusion; roles and responsibilities need to be determined. Law enforcement must establish control before proper communication can ensue.

An emergency operations center (EOC) should be activated. Typically, the mayor's office is in charge. The incident commander needs to make the calls; specialists can be relied on for crucial information. For instance, communication on September 11 was successful when then-Mayor Giuliani headed all press conferences.

The highest priority should be protecting patient privacy. No information should be released to the media. Information should be communicated to the public but only in terms of numbers and symptoms and appropriate actions that need to be taken.

The commissioner should designate a qualified and convincing individual from the public health department to speak to the media, possibly a hospital administrator, supported by hospital physicians. An interpreter would be helpful, perhaps a volunteer from the crowd. Speak out approximately every hour, until the situation stabilizes. Providing sound bites to be shared between channels would be helpful.

SHEFFIELD Group Discussion

Effective communication is critical. A program in San Diego has a hotline for people to call for information. People should be trained to answer questions. Jurisdictions will need to provide information in multiple languages, which is expensive.

Find the right spokesperson. Be careful about who talks to the media. One person should speak collectively on behalf of all groups involved. In Toronto, different groups responded to different people. Religious leaders provided support and leadership, and the public looked up to a medical officer and someone who knew the law. Police should not be front and center. The responsibility of the spokesperson will shift over time.

The first responder should establish a perimeter, separate the media, and clear an entrance to the hospital. The first priority of law enforcement is to establish order. What authority was used to close the hospital? Would this authority come from the county or the hospital executive? It is not the job of the police to shut down the hospital. It is law enforcement's duty to try and mediate the situation and bring order. The county is responsible for the inside of the hospital, but the police are responsible for the grounds.

Collaboration is key. The following groups and individuals should be involved and should collaborate in the field: Hazardous materials (because they could have proper PPE), social services, fire, CDC, law enforcement, public health, environmental agencies, and the director of the hospital.

Remember privacy issues. With SARS, Toronto rarely released names, but every day they released facts and updates to a morbidity and a mortality chart. People really wanted this information so they could figure it out for themselves.

Some areas the group struggled with were (1) unclear guidelines, (2) intra-agency communications, and (3) lack of staff.

Scenario 5: Virus Spread by Tour Group

On a state holiday, local media report that local members of a martial arts tour group who returned from Asia 3 days ago were taken to the local hospital at 2 a.m. They were admitted and listed in critical condition, with a suspected virulent influenza. A local public health disease investigation follows; as a result, at 5 p.m., the local health officer issues a large number of isolation orders to those who came into contact with the tour group and are exhibiting symptoms. In addition, the local health officer has issued quarantine orders to a Catholic parish, an entire apartment complex, and the entire staff of the local hospital. In addition, the police department begins to experience a decline in available staff. (The complete scenario can be found in the Appendix.)

DIVISION Group Discussion

It would be difficult for people to work from home because of firewalls and lack of access. A participant from Frederick County, Maryland, has developed some strategies for dealing with a scenario like this, such as sealing out the hospital, creating a tent, stopping school attendance, and securing supply channels. Evacuating the jail might be the last thing you'd want to do, as that population could be densely contaminated and dangerous.

There could be one centralized dispatch for fire, police, and other responders. A decisionmaking authority would need to be in the call center to make judgment calls. A triage would be needed; you would respond to the felonies first. Nonemergency calls could be referred to a hotline. Officers would not have to go out and do reports for every call.

It would be necessary to make people feel safe going to work by offering sufficient PPE. Simple things like washing hands also can help. People's families need to be taken care of just like the military

cares for the families of its enlisted personnel. After Hurricane Katrina, officers from Florida took care of day-to-day operations so local officers could concentrate on larger matters.

Everyone agreed that prosecutors were greatly underrepresented in planning efforts, even though many have civil responsibilities such as acting as legal counsel to sheriffs or health agencies. Shortages may arise at times when demand for services (arrests, arraignments, bail) is up. Triage would be needed for this as well, but someone pointed out after September 11, the crime rate in New York dropped dramatically. Someone said it was the same with a few hurricanes. The public can be surprisingly calm and resourceful, it was said.

Most information technology (IT) systems are not compatible with other parts of the justice system. However, Delaware's IT systems are. There, corrections, police, courts, and state agencies are integrated and video technology is used. This is a major priority in New York, but it is far from being realized. Orange County, Florida, is integrated by video and was hailed as a leader in the use of advanced technology, including Extensible Markup Language (XML) technology. Video visitation was suggested for a pandemic situation.

In some states, the defendant must appear before a judge in a courtroom, by law and by constitution. It is important to assess now what laws and statutes should be changed to allow the optimal use of technology during a pandemic. A judicial participant from Seattle said that video adherence (VIPER) is being used in Washington after the reconstruction of a mental health court. Now, patients can appear without being moved to another location. In 9th-circuit states (counties near King County), they are allowing TVs for first appearances and saving money on transportation.

A law enforcement participant mentioned www.leitsc.org, the web site of the Law Enforcement Information Technology Standards Council, as a resource for purchasers. It was written "by law enforcement, for law enforcement" (and courts). People need to know about XML and the global data dictionary.

One would need to go to HIPAA or the web page of the state's health department to see what the state rules are on sharing medical information. One would need to have an understanding of public health

law. Regarding the protection of the medical information of those who have been issued orders, the judicial participant from Seattle said, “It’s up to the judge.” Each state is different. Judges usually favor disclosure, but the public interest needs to be weighed against the right to privacy, and this needs to be done on record. One needs to know the rules and to fix them if needed. If no rules exist, rules need to be made.

To deal with sex offenders in a building, you could see if any law enforcement officers are already at the complex and are available to help. If reports of child abuse and neglect come in, you can’t waive a crime of violence in a time of emergency.

There was concern that courts, prosecutors, and other parties had been left out of national plans because funding had come through CDC, which is mostly concerned with the medical side of an event. The National Governors Association is trying to take national plans as a starting point and build from there. This was generally recognized as a sound approach.

During introductions, the judicial participant from Seattle mentioned a past experience with a TB patient who was violating orders. The only place they had available for quarantine was a jail. The judge had to consider the risk of infecting the whole courthouse. She called the health department, and they created a courtroom in a TB clinic, where the air ventilation pushes TB molecules to the floor. Everyone wore masks. Still, the bailiff refused to go. The clerk, however, came. They brought a tape recording device, with a stipulation from defense. They were setting precedent.

The same judge pointed to the aging baby-boom generation and the fact that schools are closing down. She recommended designating some of these buildings for emergency use and getting the authority now to take them over in the event of a pandemic. It was mentioned that Seminole County, Florida, has many abandoned shopping malls and courthouses.

The moderator mentioned Jackson County, Mississippi, in the wake of Hurricane Katrina, as a good example of foresight. The county had lost power for miles and could not pump gas into its vehicles, but the county had stored fuel for just such an emergency. Emergency medical leadership was also in place. The National Guard distributed water and ice. Meetings were held every day. The mayor reported

back to the community daily via local radio, telling residents where to go for food and services. There was great collaboration and leadership.

DEARBORN Group Discussion

Open a department operations center (emergency operations center) to manage distribution of personnel. Enlist the help of the retired state police response group. This group knows police policies and procedures, but its members would be unarmed. However, they could handle administrative functions to free up active troops. State legislation covers them under troopers' pay and other policies.

Farm out deputies to those who need personnel. Put everyone on a 12/12 schedule: no vacation or off-time allowed. Ask for assistance through mutual aid agreements with entities such as the county sheriff's office and the state. Look at local and county assistance, but also look at all state law enforcement (e.g., park police, gaming). Corrections staff should not help out other disciplines; however, they should focus on corrections.

Every law enforcement agency (e.g., probation, corrections, courts) in Delaware uses the same IT system. All criminal matters in the state are prosecuted by one office. In Florida, agencies cannot access each other's information directly through an IT system, but they can ask other agencies for the information they need. If orders are in the civil court system, cross- reference civil and criminal orders. In other systems, the entire court system is on the same system. Users can access civil, criminal, and traffic court records in one database. Everyone has access to it.

Medical information may be shared—it depends on why it is needed. Law enforcement can obtain generic information for their protection. Access to staff records is limited: You have access related to active duty issues but not private issues. HIPAA regulations require a signed waiver before personal information can be released. It is not possible to get a blanket release in a time of emergency.

The union is going to demand that it be told what the police department is going to do about people with whom officers have come into contact. Involve counsel thoroughly in planning so everyone

knows up front what information can be obtained and shared, so that the state is not in a position of sharing information illegally.

The records of individuals who have been exposed should still be confidential. Health services will reveal how many people have different illnesses; they do not give names. If law enforcement has to serve something to an apartment resident, assume the worst, especially if the building is under quarantine. Campus health will not be able release specific medical information regarding particular students.

Establish a curfew for sex offenders, and check by phone to make sure they are where they are supposed to be. Send a surveillance officer out with binoculars to monitor the offender from a distance. If shots are fired, officers have to respond. If some other life-threatening situation occurs (e.g., a fire), officers have to suit up and respond.

Los Angeles County, California, and Rikers Island, New York, have isolation procedures in place. Florida has regional and state emergency response plans and an all-hazards plan that includes pandemic flu issues. When the vaccination cache arrives, first responders would be vaccinated before the vaccine would be distributed to the general population. Delaware also has a specific pandemic plan. It is working on pre-vaccination plans now; law enforcement is at the top of the state's list of those to receive the vaccine, as are health care professionals and some judges. Vaccination is not wholly effective. Will staff still be willing to deal with infected people after being vaccinated if they are not yet sure the vaccine is effective?

Summary of Day One

Domingo S. Herraiz
Director, Bureau of Justice Assistance
Office of Justice Programs, U.S. Department of Justice

Herraiz summarized some of the main points that participants should remember from the first day's presentations and discussions, paying special attention to the need for planning. He also emphasized

that the threat of a pandemic is not just a health issue, and that during a disaster, voluntary compliance is absolutely necessary to maintain the rule of law.

Practitioner Response: What States Are Thinking

Avian and Pandemic Flu: The Delaware Experience
Secretary David B. Mitchell, J.D.
Delaware Department of Safety and Homeland Security

Mitchell noted that Delaware produces more than 240 million chickens every year. In 2004, two outbreaks of the H5 and H7 strains of avian flu occurred on poultry farms. The Poultry Disease Task Force, which is headed by the Delaware Department of Agriculture and supported by the Department of Safety and Homeland Security and the Delaware State Police, had been meeting regularly *before* the outbreaks took place, and used the partnerships they had formed to resolve the crises successfully.

Outbreak Response

At the first outbreak, the task force established a media team, created a web site, and held a press conference. They quarantined the farm and administered testing within a 2-mile radius to see if the virus had spread. The farm was ordered to "depopulate" the flock, 30,000 to 65,000 chickens. To do so, they wrapped the chicken coop in plastic, released poison gas, and turned up the heat to kill the virus. In 30 days, the chickens turned to compost.

The second outbreak happened in a megahouse. Instead of poison gas, which can be dangerous for humans and the environment, they used a foam gun. It asphyxiated the birds in 20 minutes. The heat was again turned up to 140 degrees. Thirty days later, they disinfected the house.

Law and Public Policy

Public policy in Delaware says that the state will buy the birds of any infected flock from a chicken grower. Buying the birds is less expensive in the long run, encourages reporting, indemnifies the growers, and gets cooperation. Also, by law, Delaware cannot disclose the name of the farm, which helps protect the industry.

Lessons Learned

The incident command system must be clearly delineated. Lines of communication must be open and clear; transparency helps eliminate fear. It is helpful to put a face on the issue. Proclamations and orders *with penalties* are necessary to enforce bans and restrictions. Real partnerships, cooperation, and coordination are necessary for a rapid and efficient response. You must reach out to growers and the public and educate them. Several depopulation techniques are reliable, such as foam, heat, and a waiting period.

Delaware Emergency Operations Plan

At the Governor's behest, the state's Departments of Safety and Homeland Security, Agriculture, and Health and Social Services established a cabinet-level working group to plan for and monitor the threat of a pandemic in Delaware. The first responder is the Department of Health. In an emergency, Homeland Security would step in. The goal would be to save lives by slowing the spread of the disease and buying time.

Key systems include an incident command system (ICS) and multi-agency coordination and public information systems. Mitchell listed various support systems and federal, state, and local government representatives and agencies that would be part of the plan, saying that many partnerships are with volunteers. Funeral homes are of special concern; if law enforcement arrives on the scene of an unattended death, they could be exposed (as could someone doing an autopsy) because the virus can live on the body for a couple of weeks. Funeral homes might not accept or pick up the body. Delaware has partnered with the morgue at the U.S. Air Force base as part of its plan.

Resources

Mitchell mentioned resources that had been created and secured, such as the Emergency Management Assistance Compact, to help with transportation, and the Delaware Information Analysis Center (DIAC), which makes sure the bird flu is on the state's radar screen every day. The Joint Information Center (JIC) ensures that the state can "speak with one voice" if an outbreak occurs.

All law enforcement agencies have access to the country's Regional Information Sharing Systems (RISS) and its Automated Trusted Information Exchange (ATIX), which aids in communication with private sector partners. By sending messages to devices such as pagers, BlackBerries, or 800 MHz radios or e-mail accounts, RISS ATIX can notify individuals that an important message is on the system.

Mitchell mentioned that air and helicopter transport will be needed. CDC does not pick up blood samples for testing, but the Air National Guard can transport them to Atlanta.

Legal Considerations

In Delaware, if a physician can say there is "clear and convincing" evidence that someone is infected, you do not need a warrant for arrest and detainment, as long as you try the person within 72 hours. Trials can be done by video. Medical officers can petition the court for I/Q orders. Delaware has identified several judges and a district attorney who will develop expertise on the law. However, when individuals are in custody, the state has to pay for their treatment, which raises budget concerns.

Pandemic Emergency Planning in Pennsylvania

The Honorable John Cleland
Chair
Pennsylvania Supreme Court Committee on Pandemic Emergency Planning

Cleland began by telling the story of the Spanish flu in Philadelphia in 1918 when more than 675,000 people died.

Cleland reminded everyone that plans are always implemented at the community and neighborhood level and that effective plans always take into account how communities and neighborhoods function. Planning should always be pushed down to the lowest possible level, he said.

He then explained that, as a member of the judiciary, he began to meet with an emergency pandemic planning team in 2004. At that time, they mostly discussed different scenarios, but after two "white powder" incidents in 2005, each of which was handled differently, they met to discuss which

response was best and ended up producing the document *Courthouse Preparedness for Public Health Emergencies*.

Cleland's advice on how to plan effectively was to keep planning groups small and maintain a balance between people with technical expertise and people with hands-on experience. He urged participants to work hard to identify issues, research the law, analyze actual incidents, and reach out to interest groups and listen to them. He suggested focusing first on issues that are likely to arise in the "chaos phase."

He said the emergency planning team is currently working on two more documents:

Disaster Planning for Dummies

Key advice to come out of this work follows:

- Make sure the person with the responsibility also has the authority.
- Make sure decisionmakers get good information in and send good information out, especially technical advice.

COOPs (Continuity of Operation Plans) Are Us

Cleland referenced this document when giving participants key questions to ask themselves: What are the most important things that I do? What do I need to have to do those things? Where can I do them? Who do I need to help me do them?

One cannot assume an institution will do the work—*people* do the work, he said. Complex processes must be reduced to basic tasks and performed at discreet organizational levels; otherwise problems become so overwhelming that nothing gets done.

Cleland concluded by saying that the community that survives a plague or crisis is not the one with the highest degree of scientific knowledge but the one that maintains the responsiveness and stability of its legal system. We must be prepared and informed to ensure that everyone is treated alike. The existence of a sense of community ensures that communities will survive. Finally, communities cannot be created or maintained by force or coercion. The rule of law and a sense of fair play are what keep them together.

Confronting a Public Health Emergency in South Carolina

Cheryl Harris Bullard, J.D.
Chief Counsel for Health Services
South Carolina Department of Health and Environmental Control

Bullard spoke of a 2003 Monkey Pox incident in South Carolina, during which the state health commissioner ordered that animals specified by the CDC as potential carriers of the disease be destroyed. Despite the issuance of a public order, local law enforcement was not willing to enforce this order without an additional order from a judge. Although the animals were eventually captured and euthanized, the incident highlighted a lack of understanding on the part of law enforcement about public health law and their role in enforcing orders. As a result, public health partnered with various law enforcement and public safety agencies to identify legal roles and responsibilities, discuss statewide education and training needs, and begin development of a training curriculum.

Together, they determined specific deliverables to include in the request for CDC funding for public health preparedness activities. Limited funding was approved for training and associated activities. To assist with curriculum development, law clerks were hired to research existing statutes, regulations, and case law. Plans for training include classroom instruction, tabletop discussions, tabletop discussions, and training videos.

The three statutes that applied to all three disciplines—public health, law enforcement, and the judiciary—dealt mostly with quarantine-related issues. Bullard reviewed these statutes and the specific role of law enforcement in implementing the Emergency Health Powers Act (EHPA), which concentrated on implementing South Carolina Department of Health and Environmental Control (DHEC) public health orders as well as enforcing "any and all restrictive measures and quarantine regulations that may be prescribed." In an emergency, the National Guard, in addition to state and local law enforcement, may be enlisted to help carry out orders.

Bullard quoted from specific South Carolina laws and statutes in outlining the following ways law enforcement can assist with a public health emergency:

- Serving public health orders—Law enforcement must deliver orders to individuals or groups or post orders publicly on the premises.
- Enforcing public health orders—Exiting the quarantine premises constitutes a misdemeanor. Entering a quarantined area when not authorized to do so is a misdemeanor and may lead to isolation or quarantine of the individual.
- Destroying contaminated property—Law enforcement must work with DHEC and follow appropriate civil proceedings.
- Ensuring security for the distribution of medicine—A short supply of vaccine often creates security concerns regarding transporting and distributing it.

Important issues to consider are availability of appropriate PPE, medicine or vaccine, and personnel. Also, Bullard stressed the "counsel into compliance" approach when dealing with the public.

South Carolina has encountered obstacles in development of a bench book for public health law, primarily due to a lack of personnel resources. The law clerks who were hired with money from the CDC grant are helping with research and writing. The Indiana bench book has been invaluable in providing guidance on content and structure. Initial categories identified for research are jurisdiction, search and seizure, and proceedings. A letter has also been drafted to invite key judges, lawyers, attorneys general, and court administrators to serve on an editorial review board, with hopes of inspiring participation as well.

Bullard said that HIPAA is of limited concern in public health emergencies because it does provides exceptions for both public health activities and emergency situations. Many state laws address privacy concerns in the event of a declared public health emergency. In South Carolina, access to protected health information is limited to persons with a legitimate need to (1) provide treatment, (2) conduct epidemiological research, and (3) investigate the causes of transmission of disease.

Bullard outlined lessons learned:

- Law enforcement and the judiciary must be involved in planning and also be aware of existing statutory and regulatory requirements.
- Emergency contact lists must be developed and maintained and must include both internal and external key players, such as licensing agencies and the Red Cross.
- Plans must designate an incident commander and spokesperson, with backups, but also must keep in mind that the individuals who hold these positions might change, depending on the nature of the incident.
- Volunteers must be recruited and trained in advance. There must be mechanisms to contact them. Out-of-state commissioned officers can be volunteers.
- The weakest link should be identified and its weakness minimized.
- Continual training and exercises are necessary to sharpen skills, keep up with turnover, and identify areas that need improvement.
- Consider that vaccines might not be readily available, but if they are, states should have plans for stockpiling, storing, and allocating them.
- Grassroots education such as old-fashioned “civil defense” drills helps citizens help themselves.
- Identify facilities for isolation, mass care, and vaccine distribution in advance.
- Tailor communication strategies for different communities.

Town Hall Discussion

The Town Hall session was facilitated by the Honorable Judge Robert Eckles of Houston and was designed to highlight for the full conference some of the issues raised during the discussions and to allow the participants to offer their thoughts and concerns regarding justice system preparedness. A panel of

experts who had participated in earlier panel discussions during the conference complemented audience participation.

Personal Protection Device (PPD): There is a national debate regarding what the appropriate PPD is for a pandemic. Law enforcement officers will not enforce quarantines or orders if they are concerned with getting sick themselves.

Law enforcement: Law enforcement should write a citation, do full-custody arrest, and rely on the state attorney general for legal authority and guidance. Cleland suggested "coordinated cajole, not command and control" as the best approach in a pandemic situation.

National Response Plan: One is being written in preparation for hurricane season, taking into account lessons learned from Hurricane Katrina. It is expected to be completed July 1. Not every community would have a federal official, but every community would have regional federal representation.

National Guard: What is their role? This is a complex issue. It depends on each state. A military participant provided the following comments: the National Guard belongs to the state; it is a state-commanded patrol in most circumstances, called up by the Governor; the Department of Defense (DOD) does not get called first, in part because they are expensive. The officer explained that there is pressure to make DOD the lead on catastrophic disasters, but this raises other questions—Does that mean you change the statutes? Would other federal agencies then work for DOD? Guard personnel who are on active duty are prohibited from doing direct law enforcement tasks unless the President authorizes it. Legislators are trying to widen the use of the military to include law enforcement during disasters, but using the military in this way can be controversial.

The National Guard and other military resources are not unlimited. What if 40 percent of the military is out of commission, ill? How much information do we disclose?

Conflicting responsibilities: How do you deal with displaced people? They have had a huge impact on the City of Houston. There is a cost to dealing with displaced persons. Who pays? If a power plant or refinery is affected, who takes over—local or national authorities?

Privacy: Should FEMA release information about who is in the shelters?

Communication: In New Orleans, a big problem was rumor control. Stories floated around about rape and murder in the Astrodome, and the distribution of debit cards, which were for the most part untrue. Clear signs about the debit cards told people what was true and dispelled myths. Good communication also helped contain a diarrhea outbreak in the Astrodome, by instructing people to use hand cleaner. With proper distribution of the hand cleaner, it worked. Informational responses should come from trusted community leaders, not only law enforcement. (Ministers helped during Hurricane Katrina.)

Community resources: Pandemics are community-based issues with national implications. The Office of Community Oriented Policing Services (COPS Office) and Regional Community Policing Institutes (RCPIs) have vast networks that could help jurisdictions plan for pandemics. Fire and rescue personnel, medical reserve staff, and volunteers also need to be engaged. In a pandemic, however, volunteers will probably not come in from elsewhere, as they did with Hurricane Katrina. How will people know where to go? Will you use GPS to dispatch? Do you have auto vehicle locators (AVLs)?

Citizen preparation: Large parts of the country are rural areas without resources. Teaching people how to care for their own sick family members, which people do not know how to do anymore, should be a priority, in terms of precautions and equipment. Health care professionals will be spread very thin.

Security: The American Red Cross ran operations in the Astrodome; these volunteers may not be able or willing to help during a pandemic. How will you know if people are who they say they are? Proof of credentials or certification will be needed. (During Katrina, workers had stickers that designated them as essential personnel, but the police did not know about the stickers because the chief did not tell them about them.) How will you make quarantine areas safe?

Vaccines: National stockpiles will be guarded by marshals. Transportation will be handled federally. Security at distribution centers will be handled by the states. There will not be enough vaccine. The state, territory, or tribe will decide who gets it.

Utilities: Utility companies must continue running safely, especially nuclear power plants. Who do you call?

Mass casualties: How will bodies be identified, transported, stored, and buried? What would be the psychological effect of mass graves? There are no answers right now. State law addresses these issues, but in a crisis, these laws are often not followed. It is necessary to reach out to the National Association of Funeral Directors. There was discussion of the Emergency Health Powers Act.

Bioterrorism: If a person who has died of the flu is a victim of bioterrorism, the body is a crime scene. How should that be handled?

Ethical issues: One panelist offered that enforcement might not be a problem. It might be the people who are *sick* that need protection.

Economic effects: Economic protection is an issue. Who will stock the ATM machines? During 9/11, two buildings went down, and the effect was felt nationally. This is potentially a much larger problem.

Appendix: Tabletop Scenarios

Scenario 1

A natural outbreak of a highly infectious disease is taking place. The health department has issued isolation orders to 58 people and quarantine orders to 312 people who live in a small neighborhood. The quarantine orders are being ignored. People are entering and exiting the neighborhood to stockpile food and water and to obtain medicine and medical supplies for their relatives who are ill. Several members of the adjacent neighborhood have noticed this activity. Calls to law enforcement about the situation have overwhelmed the system. In addition, there have been five instances of shots having been fired at people attempting to leave the affected neighborhood within the last two days.

Discussion

- How will law enforcement respond to this emerging civil unrest?
- As a law enforcement officer, do you arrest each violator for a class B misdemeanor?
- As a sheriff or corrections official, do you accept the violator into your custody?
- As the prosecutor, do you prosecute? How many violations will you prosecute? What is the cutoff?
- As the judge, how do you administer the hearing and trial process?
- As a probation officer, how do you supervise or, if requested, prepare a presentence report?
- As the state prison's warden, would you terminate the employment of a correctional officer who was exposed to the disease and came to work in violation of a health department order?
- Is the health department prepared to seek the criminal prosecution of those who violate its orders?
- How can we plan, with two systems (justice and public health) one operationally coordinated response to a pandemic flu outbreak?

Scenario 2

Mary works as a ladies' room custodian on Concourse B at the Big City airport. She is a single mother of two children. One child is in daycare and the other is in the 2nd grade. Today, while she was at work, both national and international flights took off and landed at Concourse B. Approximately 500 passengers departed, and another 700 arrived.

Later in the day, Mary tells her supervisor that she is not feeling well and that her older child's school called to say she must pick her older child up because the child is ill. She leaves work early. When Mary picks her child up at school, she learns that the school nurse has reported Mary's child as a possible

pandemic flu case. That evening, a Big City health department nurse calls Mary and tells her that Mary and her children must be quarantined. Mary calls her supervisor, who in turn calls the Big City health department to confirm.

Discussion A

- Will the health department give any information about Mary's medical status to the supervisor?
- How will quarantine orders be served and enforced to people exposed at the airport during Mary's shift?
- How many county sheriff departments will be asked to serve these orders, and what instructions should they be given?
- How will return of service be made? To which entity, a court or the health department? Where would you find the written plan that outlines the procedural requirements for this jurisdiction?

Discussion B

The airport and security workers on Concourse B are quarantined for exposure. One of the security officers is married to a law enforcement officer.

- Will the law enforcement officer be required to report his or her family's health condition to his superiors?
- Will the health department release isolation or quarantine information to criminal justice authorities without consent from the patient?
- How will law enforcement agencies monitor employee exposure?
- Will law enforcement agencies accept isolation and quarantine of law enforcement officers?

Discussion C

Because Mary's oldest child is very ill, she goes to the store to get Children's Tylenol. A law enforcement officer sees Mary at the drug store.

- Should the law enforcement officer arrest her?
- What procedures should the officer follow?

Discussion D

The health department issues an isolation order to Mary for her child and a quarantine order to the households of all children in her older child's classroom. A classmate of Mary's older child is the child of a probation officer.

- What is the probation department's plan for dealing with quarantined staff?

Scenario 3

John is a 20-something who lives with a couple of friends in an apartment near the edge of campus. His parents live on a small farm about 60 miles away, where they raise the usual assortment of poultry and

animals found on a Midwest farm. John and a buddy went duck hunting near his parents' home last weekend. Afterwards, to make his mother happy, John went with his parents to an 11:00 a.m. service at his family's church before returning to his apartment.

On Wednesday morning, John starts feeling really ill but still goes to class. By Friday, he tells his friends he cannot go to a party with them. Good thing, as his roommate, Jim, gets drunk and is picked up for a DUI. On Saturday morning, Jim tells the correctional officer that he is really sick—not just hung over—but the correctional officer tells Jim to sober up.

On Monday morning, because Jim is unable to make bail, he is taken to court. The bailiff tells the deputy to take the prisoners to the holding cell momentarily because the judge is in the middle of sentencing someone to the Department of Corrections. At his initial hearing, Jim tells the judge he has the flu. She orders a doctor's examination because she does not want the county to incur any medical expenses if Jim is sick.

Discussion

- Who pays for the court-ordered initial exam?
- If Jim has a condition that requires isolation, where will he be placed?
- Is the whole campus Jim lives near placed under quarantine?
- If it is Spring Break on campus, how will quarantine be enforced?
- Should the prisoner who was sentenced to the Department of Corrections that morning be delivered to the jail, as he was exposed to Jim?
- Will the Department of Corrections accept the prisoner?
- Will the sheriff even inform the jail's intake unit that exposure may have occurred?
- What are the appropriate responses for the defendants remaining in the local jail where Jim spent the weekend?
- Should the judge order that the jail accept no more prisoners?
- If the sheriff releases prisoners on his authority, will the county incur liability for crimes committed as a result of their early release without a court order?

Scenario 4

The 5 o'clock news is reporting a live story from the local hospital:

> This is Mary Smith broadcasting live from the Mississippi County Hospital Emergency Room. The big news tonight is that authorities suspect an outbreak of avian flu has stricken at least 75 of the 1,500 workers who work at the Universal Chicken and Turkey Farm's local poultry plants. These huge poultry

> plants are the largest single employer in Mississippi County and supply poultry to 39 of the 50 states. Many of the plants' employees have little or no English skills and only the top echelon of management have health insurance.
>
> Wait; there goes the county health officer, Dr. Mike Moore. He has refused to give any information other than to inform us that representatives of the state health department are on their way to investigate this outbreak. This must be really serious if the state has to be called in.
>
> There goes Mr. John Johnson, president of the county council. He informed us a few minutes ago that he may order the hospital to close because the county cannot afford to have the hospital taken over by a bunch of uninsured sick people. He is wondering if the council should order the sheriff to take over the hospital and clear it out. The county attorney advised him that the closing of the hospital is the county council's decision. Mr. Johnson says that the county council is calling a special meeting to decide what to do. However, Mr. Johnson thinks that they may not be able to get a quorum if the members are quarantined.

At 11 o'clock, Mary Smith gives a live update:

> The hospital has been closed to visitors and family members. Several parents are yelling at a hospital security guard that their children are in the hospital and the parents have a legal right to be with their children. Legislation recently signed by the Governor says that parents are not to be separated from their children when ill. Neighborhood residents are blocking the entrance to the hospital to enforce the no visiting policy since they do not want the disease spread by the hospital visitors when they return to the neighborhood. It appears a fight will break out at any moment.

Discussion A

- What steps will law enforcement take to maintain order? How will they coordinate their response with the public health and hospital authorities?

Mary Smith further reports:

> Oh my, that woman is really unhappy. Let me see if I can get closer to her. "Ma'am, what is the problem? You are a plant worker and have a fever? You want medicine and they would not let you in? Here, come with me; I want to film them turning you away."
>
> Here comes the deputy sheriff. He is telling us that we are being served with quarantine orders. We are all being ordered to go to our homes and stay there, as the state health officer is issuing quarantine orders to anyone who has been in contact with the plant employees. I just interviewed two workers and that sick lady. They cannot order me quarantined. I am a news reporter. You cannot arrest a reporter for violating a quarantine order. What about the sheriff's deputy? Isn't he in contact with exposed people? Shouldn't he be quarantined?

Discussion B

- Should an emergency operations center be activated and who should be in charge?

- What are the issues raised in this scenario regarding client and patient privacy and the press?

- Who would be authorized to speak on behalf of the hospital, the Sheriff's Office, the Health Department, the City Council, and when?

- How should the legal process be explained to the media and the community?

Scenario 5

Today is a state holiday. Local television and radio stations are reporting that local members of a martial arts tour group who returned from Asia 3 days ago were taken to the local hospital at 2 o'clock this morning. They were admitted and listed in critical condition with a suspected virulent influenza. Laboratory confirmation is pending.

A local public health disease investigation follows; as a result, at 5 p.m., the local health officer issues a large number of isolation orders to those who came into contact with the tour group and are exhibiting symptoms.

In addition, the local health officer has been compelled to issue quarantine orders to the following: the entire active membership of a Catholic parish because their priest became infected and was isolated following a Mass in which he administered Holy Communion; an entire apartment complex because multiple and recent cases of pneumonia have been reported and isolated there; and the entire staff of the local hospital because multiple staff members have been exposed.

In the interim, the tour group members have now been dispersed to eight counties within your state and two counties in an adjoining state. As the day progresses, your police department begins to experience a decline in available staff. By the start of the third shift, your department is 30 percent down in staffing due to concern about exposure to infected individuals or because their family members are ill. The department is also in a "social distancing" mode of operation because staff or family members went to Mass or work in the local hospital. In addition, two officers who provide off-duty security to the quarantined apartment complex are now quarantined to a "vacant" apartment.

Discussion A

- How will your law enforcement department continue operations with a limited supply of manpower for mission critical functions? Does your department have telecommuting policies?

- Is your IT system compatible with other parts of the justice system in order to continue operations?

- Can the medical information of the general population be shared with law enforcement? As a public agency, can you have access to your staff's medical records?

- How can the medical information and identifying information of those against whom orders are being sought be protected from media disclosure?

Discussion B

- Within the apartment complex there is registered sex offender requiring monitoring. As a probation officer, do you do a home visit?

- There have also been several reports of child abuse and neglect in the apartment complex. Will Child Protective Services investigate?