



PUBLIC HEALTH COMMUNITY PREPAREDNESS for SARS

May 20, 2003

LEGAL ASPECTS

Gene W. Matthews, J.D.

Legal Advisor to CDC

1600 Clifton Road, Atlanta, GA 30333

(404) 639-7200

“GMatthews@cdc.gov”



Quarantine

A collective action for the common good

Public good

Individual liberties



*Paramount to meet needs of individuals
infected and exposed*



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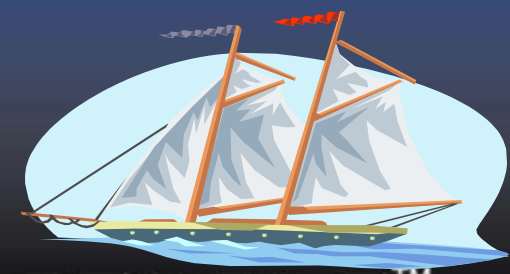
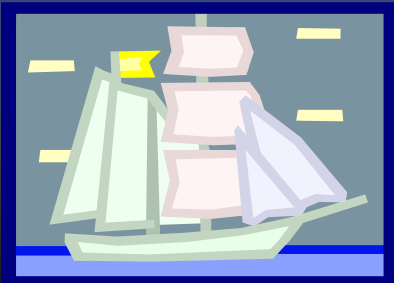
1954: Two Ships Passed in the Night!

Salk Polio Vaccine – 1954

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

Brown v. Board of Education 1954

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



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HISTORICAL CONTEXT



PUBLIC HEALTH → POLICE POWER

10TH AMENDMENT → STATE RESERVED!

Federal Functions

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



FEDERAL, STATE, & LOCAL “LEGAL PREPAREDNESS”



	PUBLIC HEALTH ↓	LAW ENFORCEMENT ↓	EMER. MGMT. ↓	MED. CARE SERVICES ↓
FEDERAL →	P.H.	L.E.	EMA	MED CARE
STATE →	P.H.	L.E.	EMA	MED CARE
LOCAL →	P.H.	L.E.	EMA	MED CARE



STATE AND LOCAL LAWS



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

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

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



FEDERAL LAW



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



FEDERAL LAW



- Executive Order 13295 of April 4, 2003 added SARS to this list, as a prudent public health preparedness measure.
- Other 7 diseases: **Cholera, Diphtheria, Infectious T.B., Plague, Smallpox, Yellow Fever, & Viral Hemorrhagic Fevers** (like Ebola).
- By law, U.S. Customs and Coast Guard assist in the enforcement of federal quarantine regulations.
- Violation → Criminal Misdemeanor



INTERPLAY OF FEDERAL AND STATE/LOCAL LAWS



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



INTERPLAY OF FEDERAL AND STATE/LOCAL LAWS



FEDERAL CONTROL & SARS

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

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

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



INTERPLAY OF FEDERAL AND STATE/LOCAL LAWS



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



DUE PROCESS for QUARANTINE AND ISOLATION



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

REMEMBER THE BALANCING TEST!



DUE PROCESS for MANDATORY QUARANTINE AND ISOLATION



COMMON ELEMENTS OF DUE PROCESS:

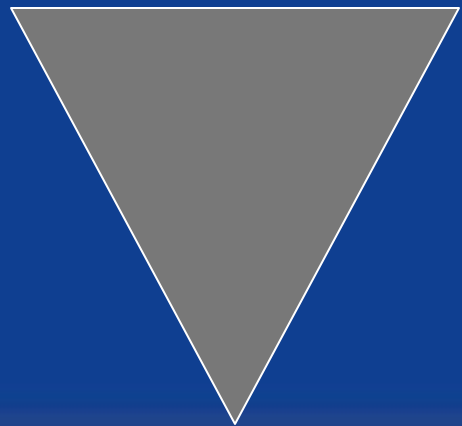
- Adequate Notice (a written order).
- A Right to Be Heard
 - to present evidence and witnesses
 - to confront the evidence of the government
- Access to Legal Counsel
- A Final Decision that a Court Can Review.



Legal Preparedness Vision



Health
Officers



Public Health
Lawyers

Law Enforcement

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RESOURCES



3 KEY CASES

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

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

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

URL RESOURCES

Public Health Law Conference: June 16-18, 2003

<http://www.phppo.cdc.gov/od/phlp/conference03/>

Federal SARS Executive Order Q&As:

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

Fact Sheet on Legal Authorities for Isolation /Quarantine

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

Forensic Epidemiology For Law Enforcement & P.H.

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