



# **PUBLIC HEALTH COMMUNITY PREPAREDNESS for SARS**

**October 2, 2003**

## **LEGAL ASPECTS**

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# PUBLIC HEALTH LAW



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



U.S. Department of Health  
and Human Services



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# Quarantine

*A collective action for the common good*

Public good

Individual liberties



*Paramount to meet needs of individuals  
infected and exposed*



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# 1954: Two Ships Passed in the Night

1954: *Brown v. Board of Education* marked rise of procedural protections of individual liberties

1954: Salk polio vaccine marked end of community-wide public health control measures





# HISTORICAL CONTEXT



**PUBLIC HEALTH → POLICE POWER**

**10<sup>TH</sup> AMENDMENT → RESERVED TO STATES**

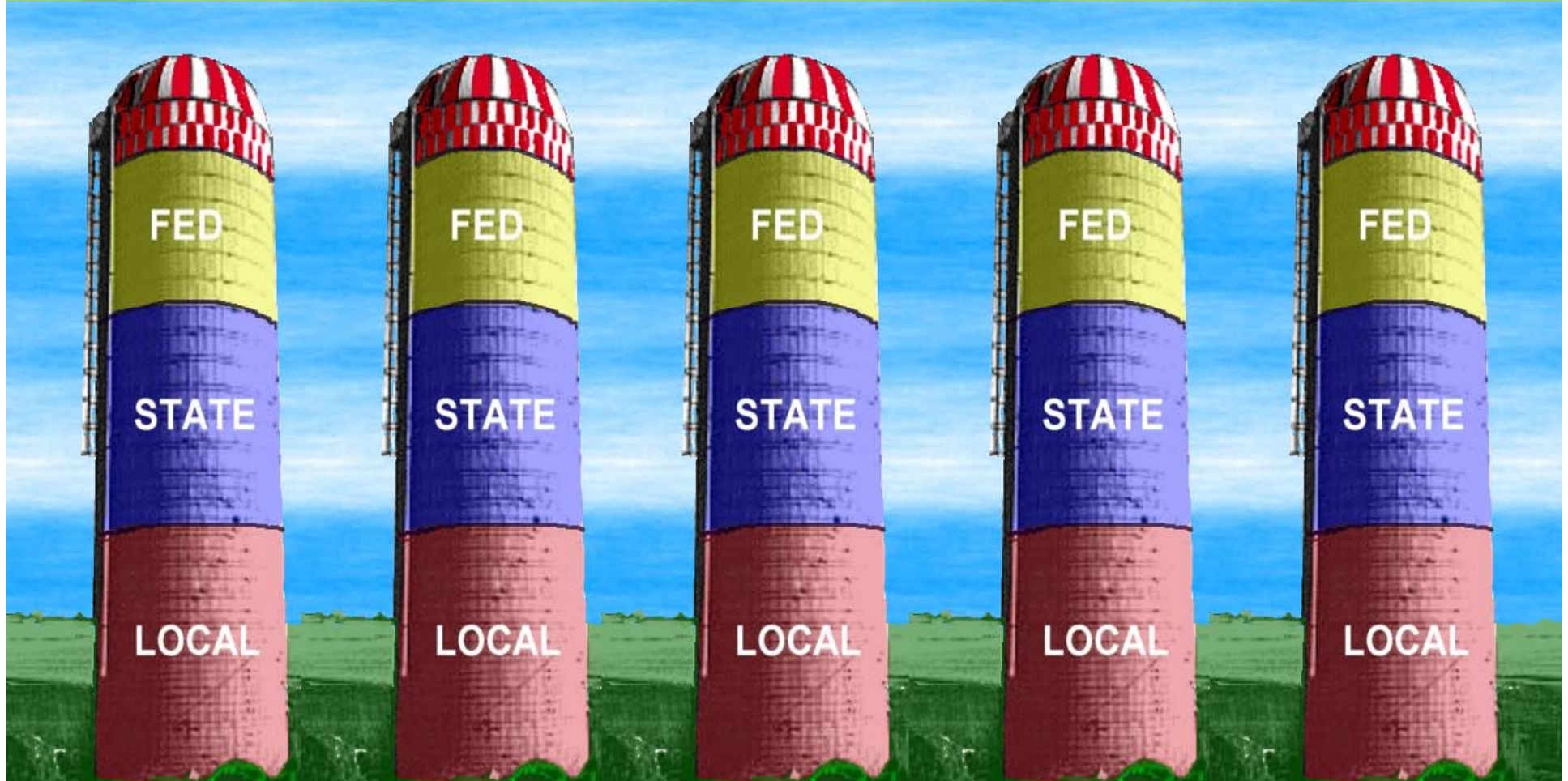
## Federal Functions

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

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# Federal, State, and Local “Legal Preparedness” The Silos



**Public  
Health**

**Law  
Enforcement**

**Emergency  
Management**

**Medical  
Services**

**Courts**

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# CURRENT SITUATION STATE AND LOCAL LAWS



- Intrastate control measure come under state laws and regulations
- State laws may vary
- Sometimes local laws may be useful

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# CURRENT SITUATION FEDERAL LAW



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

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# CURRENT SITUATION FEDERAL LAW



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

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# INTERPLAY OF FEDERAL AND STATE/LOCAL LAWS



- State & local have primary responsibility for Quarantine and Isolation.
- Federal has authority to prevent interstate spread + international importation of disease.
- HHS may accept state & local assistance in enforcement of federal Q regulations
- HHS may assist state & local officials in their control of communicable diseases.

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# INTERPLAY OF FEDERAL AND STATE/LOCAL LAWS



## FEDERAL CONTROL & SARS

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

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

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

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# INTERPLAY OF FEDERAL AND STATE/LOCAL LAWS



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

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# 2003 SARS Lessons



## CANADIAN EXPERIENCE WITH SARS

--OVER 13,000 PERSONS QUARANTINED  
IN TORONTO

--27 FORMAL QUARANTINE  
ORDERS NEEDED TO BE SERVED

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

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# 2003 SARS Lessons



PRACTICAL EXPERIENCE IN TORONTO

= “DEMYSTIFIED” QUARANTINE

Experienced “Social Cohesion” in PH Emergency

RESPONSIBILITY  
COOPERATION



DIVISIVENESS  
PANIC

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

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# 2003 SARS Lessons



## LEVELS OF QUARANTINE HAVE EVOLVED

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

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# 2003 SARS Lessons



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

**Dr. Julie L. Gerberding**

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# **PRACTICAL STEPS FOR SARS “LEGAL PREPAREDNESS”**



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

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# SARS Legal Preparedness



## 1. KNOW YOUR LEGISLATION

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

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# SARS LEGAL PREPAREDNESS



## 2. PLAN “DUE PROCESS”

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

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# SARS Legal Preparedness



## 2. PLAN FOR “DUE PROCESS” (cont.)

### COMMON ELEMENTS OF DUE PROCESS:

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

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# SARS Legal Preparedness



## 3. DRAFT DOCUMENTS IN ADVANCE

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

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# SARS Legal Preparedness



## 4. CONTACT OTHER JURISDICTIONS

### --Vertical Legal Connections

(Local + State + Federal)

### --Horizontal Legal Connections

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

### --Geographical "Clusters"

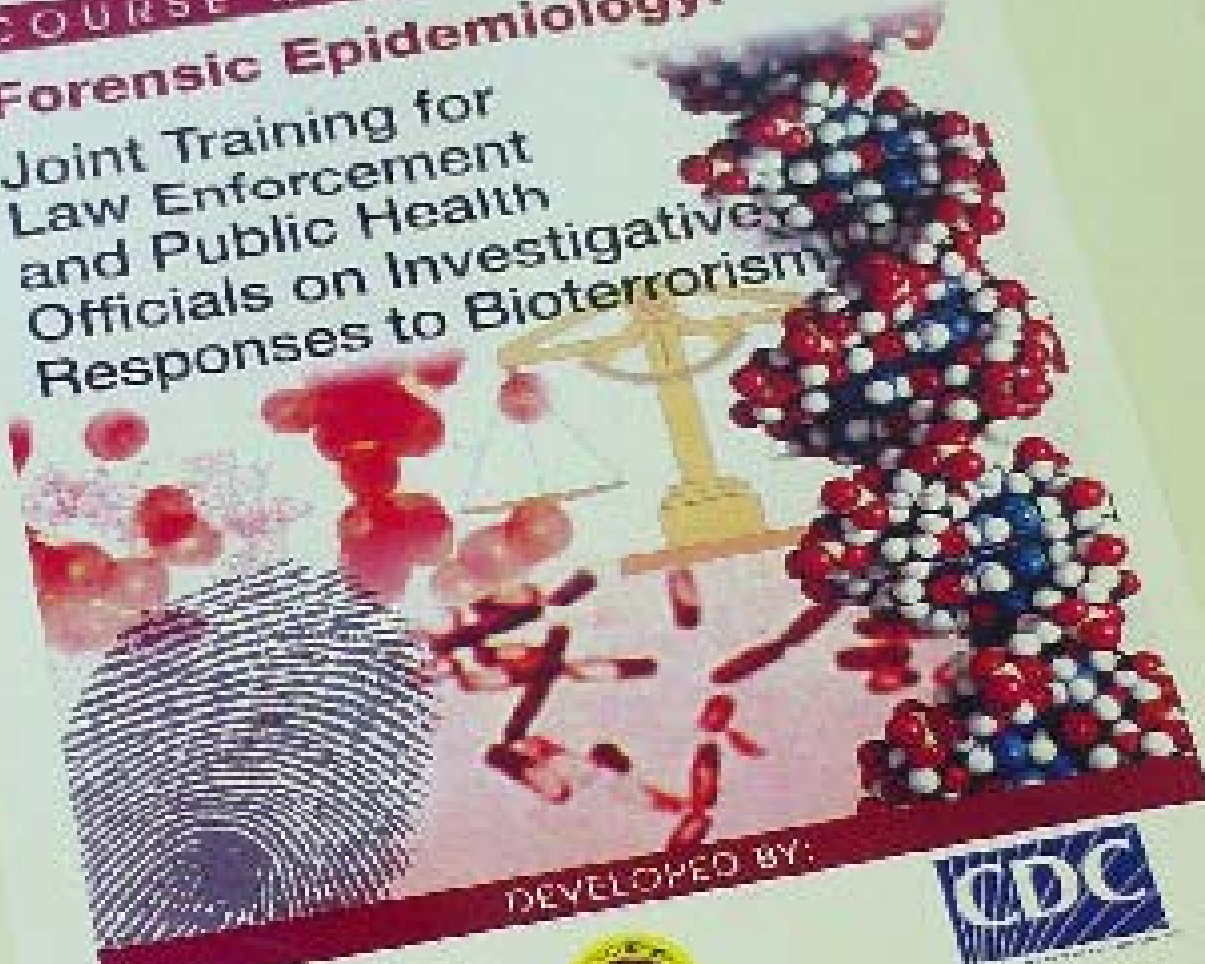
(Overlapping State/Local Neighbors)

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**COURSE MANAGER'S GUIDE**

# Forensic Epidemiology:

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



DEVELOPED BY:





# SARS Legal Preparedness



## 5. ENGAGE THE COURTS IN ADVANCE

--MANY JUDGES ARE UNAWARE OF 50+ YEAR-OLD PUBLIC HEALTH EMERGENCY POWERS.

--In Toronto, judges were surprised at health officers broad ex parte authority under rarely used laws.

--Important for due process review.

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# SARS Legal Preparedness



## 6. ANTICIPATE PRACTICAL PROBLEMS

**--ARRANGE FOR ELECTRONIC APPEARANCES / REPRESENTATION**

**--SERVICE OF PROCESS**

**(Likely by Law Enforcement Officers)**

**--ISOLATION ARRANGEMENTS FOR TRANSIENTS AND HOMELESS**

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# SARS Legal Preparedness



## 7. COMMUNICATION PLNG. IS VITAL

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

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# **PRACTICAL STEPS FOR SARS “LEGAL PREPAREDNESS”**



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...COMMUNICATION**

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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

**Federal SARS Executive Order Q&As:**

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

**Fact Sheet on Legal Authorities for Isolation /Quarantine**

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

**Forensic Epidemiology For Law Enforcement & P.H.**

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

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# **CDC Public Health Law Program Website**

**[www.phppo.cdc.gov/od/phlp](http://www.phppo.cdc.gov/od/phlp)**

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