

Bioterrorism, Public Health, and the Law

November 7, 2011

U.S. Bioweapons Program

- **Began in 1942 - War Research Service (WRS)**
- **Testing sites: Maryland, Utah, Mississippi, & Indiana**
- **Cities used as test subjects:**
 - San Francisco, 1950 – *Bacillus globigii* and *Serratia marcescens*
 - Minneapolis and St. Louis, 1952-1953 – zinc cadmium sulfide
 - NYC subway system, 1966 – *Bacillus subtilis*
- **Nixon reviews BW program:**
 - November 1969 - unconditional, unilateral renouncement of biological weapons
 - February 1970 - extended to include toxin agents

Laws Apply to People or Entities

- **When asking for a legal analysis of a situation**
 - **must ask regarding the legal effect on whom**
 - **Who gains or loses legal rights, or incurs liabilities?**
 - **Who has specific exemptions or authorities?**
- **Slight differences in facts can make major differences in legal result**

Legal Framework

- **U.S. Constitution**
- **International agreements**
 - **Protocols**
 - **Treaties**
 - **Conventions**
- **State Law**

Legal Aspects

- **Non-proliferation**
 - Geneva Protocol of 1925
 - Biological Weapons Convention
 - Biological Weapons Anti-Terrorism Act - 1989
 - Anti-Terrorism and Effective Death Penalty Act of 1996
- **Public Health**
 - Emergency Health Powers Act

Other Laws

- **Bio-terrorism Enforcement Act of 2001**
- **Public Health Security and Bio-terrorism Preparedness Act (2002)**
- **USA PATRIOT Act 2002 = Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism**
- **Possession, Use, and Transfer of Select Agents and Toxins Final Rule (2005)**

Geneva Protocol

- **Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare**
 - Signed 1925
 - Ratified 1928
 - Prohibits USE of biological weapons by nation-states

Biological Weapons Convention

- **Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction**
 - Signed 1972
 - Ratified 1975
 - Prohibits the development, production, and stockpiling of biological and toxin weapons by nation-states

Biological Weapons Convention

- **Article I**
 - Each State Party to this Convention undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or retain:
 1. **Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;**
 2. **Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.**

International Treaties

- **U.S. Constitution – Article II, Section 2**
 - The President makes treaties with the advice and consent of the Senate
 - Executive Branch negotiates terms of treaty
 - Senate must ratify
- **U.S. Constitution – Article VI**
 - All Treaties made, or which shall be made, under the authority of the United States, shall be the Supreme Law of the Land
- **Geneva Protocol of 1925**
- **Biological Weapons Convention**

Relationship of Public Health to Medical Care

- **Medical care treats individuals and contributes to the overall health of the community**
- **Public health protects the whole community and focuses on prevention:**
 - **Protects air, water, and food quality**
 - **Controls disease outbreaks**
 - **Collects information on health needs**
 - **Provides accurate information to the community**

Emergency Health Powers

- **Police power to protect public health and safety**
- **Statutes generally provide powers for mandatory immunization, testing, treatment, isolation and/or quarantine**
- **Subject to constitutional and statutory procedural protections**

Emergency Health Powers

- **Investigate Disease**
 - Gather information
 - Interview people
 - Take samples
- **Facilities and Buildings**
 - Close, evacuate, cause to be decontaminated
 - Use health care facilities
- **Ration medication**

Emergency Health Powers

- **Health care personnel**
 - Order to work
 - Waive licensing requirements
- **Biological Agent Registry**
 - Supplements requirements under federal laws and regulations

Influenza-Like Illness (ILI)

- **Symptoms with a variety of causes**
 - Infectious disease
 - Other medical problem
 - Chemical
 - Allergen
- **Respiratory (cough, runny nose, etc.)**
- **Fever**
- **Aches, malaise, fatigue**
- **Chills**
- **Differential diagnosis**

Emergency Health Powers

- **Isolation**
 - Physical separation and confinement of an individual or groups of individuals who are infected or reasonably believed to be infected, on the basis of signs, symptoms or laboratory analysis, with a contagious or possibly contagious disease
- **Quarantine**
 - Physical separation and confinement of an individual or groups of individuals, who are or may have been exposed to a contagious or possibly contagious disease and who do not show signs or symptoms of a contagious disease

Information Sharing Restrictions

- **Confidentiality of medical information identifying individuals is protected by federal, state, and local laws, whether in the hands of:**
 - Private medical providers, laboratories, transaction processors
 - Federal government agencies such as CDC, NIH, or
 - State or local government health agencies
- **Privacy rules apply before, DURING, and after a public health emergency**

Privacy Basics

- **Much information can be shared if stripped of personal identifiers - but also consider indirect identifiers (combination of variables)**
- **When individual patients/providers can be identified, info must be treated in a confidential manner**
- **Privacy is guided by many laws, including the federal Health Insurance Portability and Accountability Act (HIPAA), Privacy Act, Freedom of Information Act (FOIA) & Public Health Service Act, along with corresponding state/local privacy laws**