



The Federal Judiciary's Emergency Preparedness Program



PURPOSE

Overview of the Judiciary's
Emergency
Preparedness
Program





WHY WE NEED A PLAN

Emergencies Happen

- 34 emergency events in past 17 years





WHY WE NEED A PLAN

Natural Disasters

- Floods, fires, hurricanes, earthquakes, tornadoes





WHY WE NEED A PLAN

Terrorist Activities

- 9/11 attack
- Oklahoma City bombing
- Courthouse shootings
- Threats





THINK 'PREPAREDNESS'

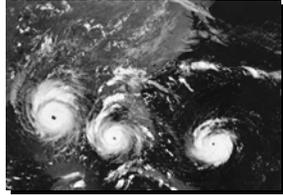
Comprehensive response to full spectrum of hazards and threats





MAJOR ELEMENTS OF AN EMERGENCY RESPONSE PLAN

- Safe evacuation of buildings (**OEP**)
- Continuity of operations (**COOP**)





SOURCES OF AUTHORITY

- **Executive Order 12656** – ‘Assignment of Emergency Preparedness Responsibility’
- **Federal Preparedness Circular 65** – ‘Federal Executive Branch Continuity of Operations’
- **AO Director Mecham’s Memoranda** – ‘Emergency Preparedness in the Judiciary’ ‘Pandemic Influenza Guidance’



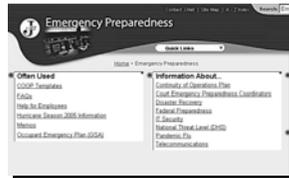
SOURCES OF AUTHORITY

- **FEMA** – Continuity of Operations Plan (COOP)
- **GSA** – Occupant Emergency Program (OEP)
- **AO Director Mecham** – Judiciary’s Emergency Preparedness Office (JEPO)



JUDICIARY'S EMERGENCY PREPAREDNESS OFFICE

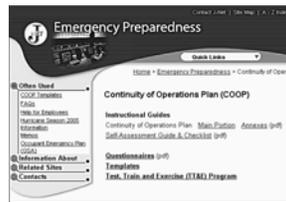
- JEPO provides overall program guidance
- J-Net web site





JUDICIARY'S EMERGENCY PREPAREDNESS OFFICE

- Instructional Guidelines
- TT&E – Test, Train and Exercise Program





OCCUPANT EMERGENCY PROGRAM (OEP)

- Culminates in testing, training and exercise of facility's emergency evacuation plan





OEP IN ACTION

- Evacuation exercise with simulated emergency and multi-agency response





OEP - Clarksburg, WV





CONTINUITY OF OPERATIONS PLAN (COOP)

- Effort within individual organizations to assure continuance of their minimum essential functions across wide range of potential emergencies





CONTINUITY OF OPERATIONS PLAN (COOP)

Provides Functional Continuity

- Maintains rule of law by keeping courts fully functional from alternate locations





CONTINUITY OF OPERATIONS PLAN (COOP)

Provides Business Continuity

- Remain able to provide essential services even if unable to use your primary facility





VIABLE COOP CAPABILITY

- Alternate facility operable within 12 hours of activation
- Sustainable for up to 30 days or longer





COOP PLAN ELEMENTS

1. Plans and procedures
2. Essential functions
3. Delegations of authority
4. Orders of succession
5. Alternate facilities
6. Interoperable communications



COOP PLAN ELEMENTS

7. Vital records and databases
8. Human capital
9. Test, training and exercises
10. Devolution of control and direction
11. Reconstitution



Pandemic Influenza Planning (PIP)

Authorities

- Dept of Health & Human Services
 - *HHS Pandemic Influenza Plan*, November, 2005
- AO Director's Memorandum
 - *Pandemic Influenza Guideline*, December, 2005
- Homeland Security Council
 - *National Strategy for Pandemic Influenza Implementation Plan*, May 2006





PIP Legal Considerations

Executive Order

In April 2005 Executive Order, President Bush added to list of quarantinable communicable diseases

“(c) Influenza caused by novel or re-emergent influenza viruses that are causing, or have the potential to cause a pandemic.”





PIP Legal Considerations

U.S. Constitution (Art. I, § 8)

- Preamble’s stated purpose of promoting “general Welfare”
- Federal quarantine authority from Commerce Clause giving Congress power “[t]o regulate Commerce with foreign nations, and among the several States. . .”





PIP Legal Considerations

Federal Quarantine/Other Movement Restrictions

- Borders
 - Secretary of Health and Human Services
 - Secretary of Homeland Security
- Air
 - Federal Aviation Administration
 - Transportation Security Administration
- Rail
 - Surface Transportation Board
 - Federal Railroad Administration



PIP Legal Considerations

Federal Quarantine/Other Movement Restrictions

- Persons Arriving From Foreign Countries and/or Traveling Between States
 - Centers for Disease Control and Prevention



PIP Legal Considerations

U.S. Constitution

- “This Constitution and the Laws of the United States which shall be made in Pursuance thereof ; . . . shall be the Supreme Law of the Land: . . .” (Art. VI)
- Powers not expressly vested in the federal Government are retained by the States or the people (Art. X)





PIP Legal Considerations

State Powers

- Public health has historically been the responsibility of state & local gov't
- State power to protect the public's health derives from two sources of authority – the police power and the *parens patriae* power





PIP Legal Considerations

State Powers

- The “police power” is the power to promote the public safety, health and morals by restraining and regulating the use of liberty and property
- The *parens patriae* power is the power of the state to serve as guardian of persons under legal disability, such as juveniles and the insane





PIP Legal Considerations

Court Cases

- *Gibbons v. Ogden*: Court alludes to a State’s authority to enact quarantine laws (1824)
- *Jacobson v. Massachusetts*: Court upholds State law giving Cambridge board of health authority to determine what ought to be done, in furtherance of public health and safety in an emergency, as proper exercise of State’s police power (1905)





PIP Legal Considerations

Federal Judiciary

- Assumptions
 1. Courts must maintain rule of law, continue functions of criminal justice systems, and maintain civil order
 2. In a flu pandemic, Attorney General will be principal actor to initiate criminal causes of action in courts, including federal public health protections





PIP Legal Considerations

Federal Judiciary

- Assumptions
 3. Courts must be engaged in community and emergency planning because courts have
 - a. the authority to issue orders & make decisions in the best interests of the public
 - b. the need to protect their employees & consumers in order to continue operations





PIP Legal Considerations

Operation of U.S. Courts in a Public Health Emergency

1. Judicial proceedings related to limiting individual liberties in interest of public safety
 - a. What proceedings may be required to effect isolation, quarantine, detention and civil commitment orders?
 - b. What state & federal court decisions apply to potential need to disclose medical information?





PIP Legal Considerations

Operation of U.S. Courts in a Public Health Emergency

2. Searches, seizures, and other government actions to protect the public's health
 - a. What circumstances may require bodily or property searches, access to public health info, quarantine or isolation, & other "social distancing" restrictions on people & communities?





PIP Legal Considerations

Pandemic Protocols

1. District Court

Remote proceedings to maintain the criminal justice system, including magistrate judge proceedings, and to effect Commerce Clause civil causes of actions



2. Bankruptcy Court

Electronic petitions & motions seeking stays for protection from creditors



PIP Legal Considerations

Pandemic Protocols

3. Courts of Appeals

Remote emergency appellate actions challenging decisions in district and bankruptcy courts



LESSONS LEARNED HURRICANE SEASON 2005

- Human Resources
- Essential Functions
- Communications
- Information Technology
- Alternate Sites





**FEDERAL JUDICIARY
EMERGENCY RESPONSE**

For more information, please contact:
**Bill Lehman, Chief
AO Judiciary Emergency
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202-502-1200**

The Federal Judiciary After Katrina





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