

# Why Care About Law – *and Lawyers* – in Public Health Emergencies?

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## Public Health Emergency Law

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# What are Public Health Emergencies?

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- ***Triggered by health event***
  - Epidemic or pandemic: communicable disease
  - Impact on other sectors primarily through impact of illness on schools, business, employment
- ***Caused by non-health 'disaster'***
  - Additional, complicating emergency conditions exist
  - E.g., Hurricane Katrina:
    - loss of power/water/sanitation; floodwaters everywhere
    - Mass evacuation: people cut off from medical/support systems



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WHY DO WE NEED  
**LAWYERS**  
AT DISASTERS?

Don't they just slow down response?



# Principal Keynote Topics

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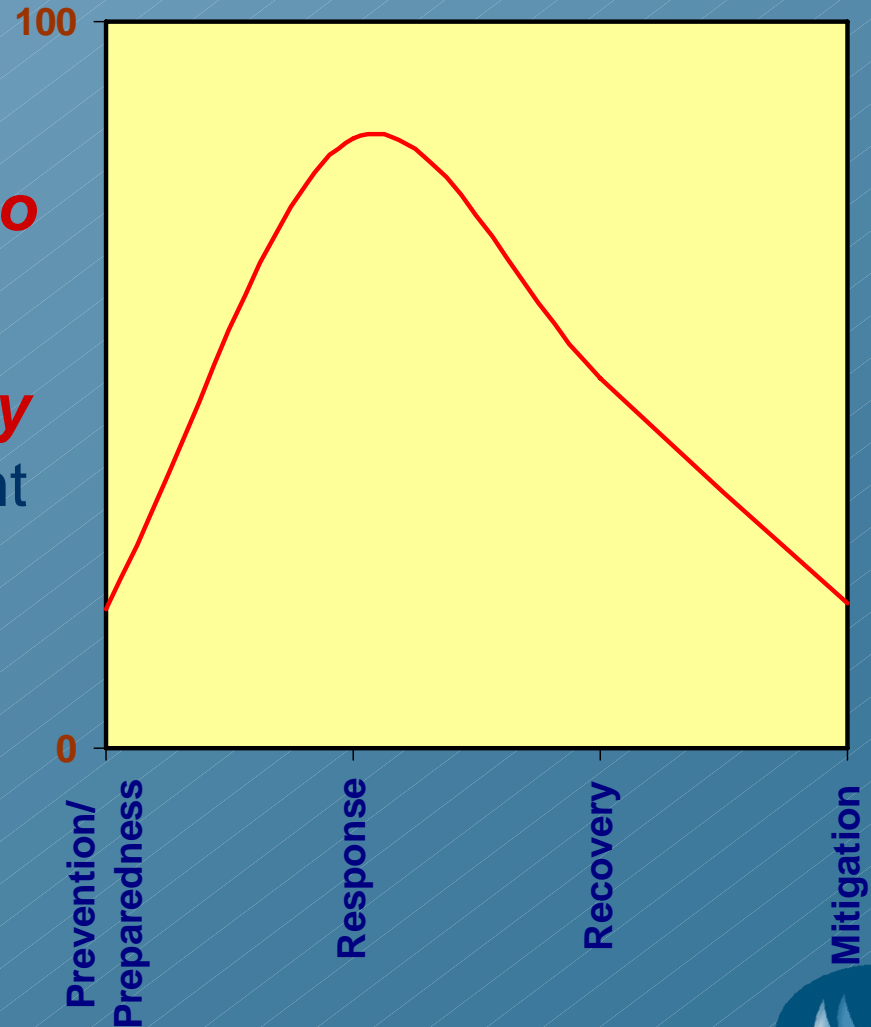
1. Response Authority, Federalism, and “Who’s in Charge?”.
2. Recruiting Response Personnel:
  - Mutual Aid/ Contracts – Volunteers – Liability

**Note on Checklist/ ABA Materials**



# Government Emergency Authority Through the Disaster Cycle

- **Mitigation/Preparedness:** Concern over *what* measures to adopt and *who* should pay
- **Response:** Legal *authority* is at its peak in at the height of an emergency – priority is to save lives, property
- **Recovery:** *Attention then shifts* to responsibility for costs and damages/losses



# Constitutional Framework of Emergency Authorities

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## Historical / Legal Source of federal and state powers

- Sovereign States granted enumerated powers to the Federal Government
  - Interstate Commerce
  - National Defense
  - Power to Tax and Spend for Public Welfare
- Powers not Granted were “Reserved” to States
  - Police Power



# Emergency Management: Simplified

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“First Responders” – are first to respond

*All emergencies start locally*

- As scale/complexity increase, local governments request support from the state
- When situation is beyond capability of State, the Governor requests the President for help
- Catastrophic response: resources from
  - multiple jurisdictions and agencies
  - Multiple levels of government



# Who Is Part of a Catastrophic Response? Who is In Charge?

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Response environment is populated with

- **Local** First responders with their chain of command:
  - Police – Fire - Departments of Transportation- Utilities - Health
- **State** responders with their chain of command:
  - State Police - National Guard - Transportation Departments - Environmental & Health Officials
- **Federal** responders with their chains of command
  - FEMA/DHS - Corps of Engineers – Military - Civilian Agencies (DOT, DOE, GSA, DHS, EPA, CDC, HHS) etc.)
- **Private/non-profit/volunteer sector** – Including hospitals, health professionals and suppliers



# Emergency Management: Simplified

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**Federal and state and local responders *must*:**

- Speak the same language
- Have arrangements in place to help each other
- Know how to communicate with each other
- Set priorities, avoid duplication of response effort

***What about the private sector?***



# Federal Initiatives— Before Katrina

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- National Incident Management System (**NIMS**)
  - Common vocabulary
  - Mutual Aid
  - Common command structure

*Enforcement: Federal preparedness grants only to state and local governments certified for “NIMS compliance”*

- National Response Plan (**NRP**)
  - Structure of federal response to all types of events
  - An agreement of federal agencies

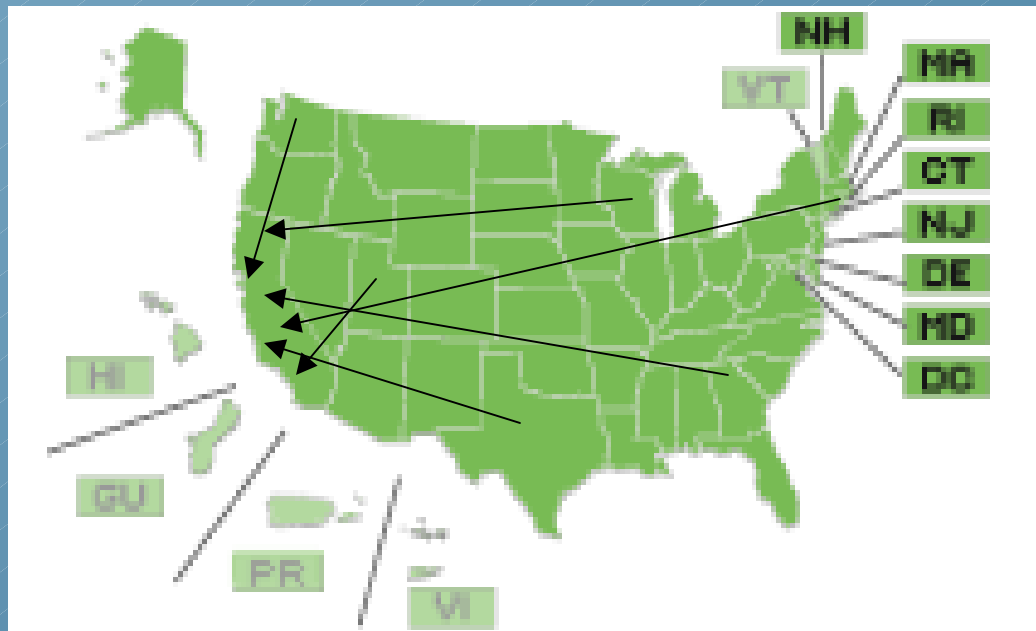


# Sources of Emergency Response Personnel

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## General Model –

Resources from outside disaster area ‘flood’ the disaster area to aid affected communities



- New Employees
- Contractors
- Mutual Aid
- Federal Assistance
- Volunteers



# Sources of Emergency Response Personnel: Special Challenge of Pandemic

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Principle of Normal Emergency Response:

*Response Resources Will Arrive  
From Outside the Disaster Area*

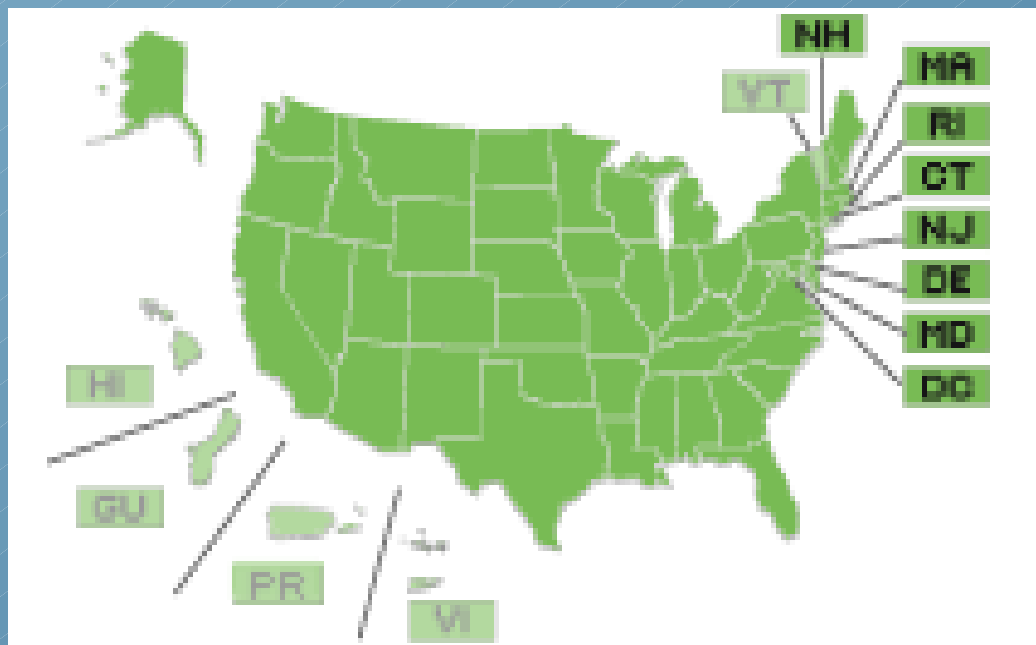
Definition of Pandemic:

*Disaster is (virtually) Everywhere*



# Sources of Emergency Response Personnel

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- New Employees
- Contractors
- Mutual Aid
- Federal Assistance
- Volunteers



# Accessing Emergency Personnel: Mutual Aid

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## What is Mutual Aid?

- Assistance rendered by one government entity to help another government entity respond to emergency conditions
- Tradition – “neighbor helping neighbor”
  - During war of 1812, towns on US–Canada border helped each other put fires out even though they were “at war”



# Mutual Aid: Key Characteristics

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Written Agreements generally cover:

- Activation Procedures (generally voluntary)
- Liability, workman's compensation
- Credentialing and licensing
- Compensation
  - Documentation of Costs
  - Documentation that Work is 'FEMA eligible'



# *Interstate Mutual Aid: The Emergency Management Assistance Compact*

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- Enacted in 50 states
- Compensation
  - *Requesting* state obligated for costs incurred by “responding state”
  - Seeks FEMA reimbursement - “Emergency Measures”
- Liability
  - *Requesting* state liable for damages of state responders
  - *Responding* state pays Workman’s Comp & death benefits
- *Licensing*
  - Licenses in *Responding* state are recognized in *requesting* state



# Accessing Emergency Personnel: Volunteers

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- Types of Volunteers
  - Professional
  - Traditional affiliated
  - Spontaneous from within the affected area
  - Spontaneous from outside the affected area



# Accessing Emergency Personnel: Planning for Volunteers

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- Plan for influx of volunteers from both legal and operational standpoints
- Volunteer Management Plan should cover:
  - How to request volunteers from standard channels
  - How volunteers will be used
  - How to establish staging area/volunteer center
  - How to verify skills, licensing, privileges and credentials, particularly from out of state



# Good Samaritan Law – Connecticut

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A licensed medical physician or nurse . . . who

- “**voluntarily and gratuitously** and
- **other than in the ordinary course** of such person's employment or practice,
- renders emergency medical or professional assistance to a person in need thereof,
- shall not be liable to such person assisted for civil damages . . . which result from acts or omissions by such person in rendering the emergency care, which may constitute ordinary negligence.
- The immunity provided in this subsection does not apply to acts or omissions constituting gross, wilful or wanton negligence.”



Figure 4. Civil Liability for Negligence



## Liability concerns and immunity: *World Trade Center Disaster Litigation*

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- 3000 plaintiffs – respiratory problems after working to remove debris at World Trade Center
- Defendants include:
  - City of New York
  - Contractors, subcontractors performing emergency work" funded by FEMA



## Immunities claimed:

### *World Trade Center Disaster Litigation*

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- **New York State Defense Emergency Act:** “immunity for ‘actions taken in good faith carrying out, complying with, or attempting to comply with any law or order requiring . . . a unified response and relating to civil defense.’”
- **NY Disaster Law, Federal Stafford Act:** “immunity from any discretionary action, or failure to act, under the law.”
- **Common law**
  - immunity for inherently governmental functions.
- **Derivative immunity** of Contractors



## Holdings on Immunity: *World Trade Center Disaster Litigation*

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- No immunity except in true “emergent” situations
  - Not just declared emergency
  - Issue of fact: must develop record
- No derivative immunity for contractors unless gov’t:
  - Approves reasonably precise specifications
  - Supervises and controls the implementation; and
  - Contractor not aware of reasons not known to the government why unsafe or unreasonable.



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