

## **Bioterrorism: Legal Initiatives for Prevention/Deterrence**

**Barry Kellman**  
DePaul University

**Suzanne Spaulding**  
National Commission on Terrorism

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The threat of a bioterrorist attack opens up many difficult legal questions; the nature of the issue, itself, is set in a unique legal environment. Bioterrorism cross-permeates into the realms of public health, criminal law, national security, the environment and the rules of war, among others. And since it cannot be pigeon-holed neatly into any single category, there is a need, at the domestic level, for the effective coordination of resources, personnel, training and equipment among all relevant authorities at the federal, state and local levels.

The problem is that the applicability of such resources and its entailing consequences has not been thought through thoroughly. Drawing from the National Commission on Terrorism (otherwise known as the Bremer Commission), there are four components of the legal aspect of bioterrorism: (1) foreign intelligence, (2) law enforcement, (3) military, and (4) public health.

With foreign intelligence, it is unclear whether the FBI, the primary agency in this field, can task information such as satellite imagery for law enforcement purposes. Traditionally, it is not uncommon for foreign intelligence to be applied to the prevention or response of natural disasters but there is no precedent for use of information in the event of an intentional mass casualty catastrophe. The tasking of intelligence information also raises serious civil liberties issues — the acquisition of such information, aside from the uncertainty as to whether it can be tasked for foreign citizens in the U.S., much less U.S. citizens in the U.S., brings into play Fourth Amendment protestations from unreasonable search and seizure. A further complication is the laborious and time-consuming type of coordination between intelligence and law enforcement.

Constitutional rights come into larger focus in law enforcement. The profiling of individuals has already triggered a national debate but can this be legitimately justified in the face of a bioterrorist threat? And in the event of an imminent attack, how broad may a sweep search of person and property be? What would be the standard of suspicion? "Reasonable belief?" "Probable cause to believe?" There is no clear answer. If a quarantine becomes necessary, at what point would personal liberty be severely restricted? And how may interstate commerce be preserved if roads, airports and waterways have to be closed?

The Posse Comitatus Act prohibits the military from intervening in civilian affairs. However, there are numerous exceptions. It is unclear what level of force may be used by the military in the event of a bioterrorist threat or attack. Army Brigadier General. Bruce M. Lawlor, Commander of Joint Task Force-Civilian Support has listed a number of other ambiguities regarding the role of the military in this context. These include balancing priorities when resources are low, sources of funding, and the fact that the Task Force does not enjoy jurisdiction in all 54 U.S. states and territories. There is also little guidance as to how it may be resolved if, for example, an individual refuses decontamination for whatever valid reason, or how respect for social or religious beliefs or practices may be maintained in the face of a mass contamination of bodies due to a bioterrorist attack.

The greatest need for public health review stems from its antiquity. The laws date back to 50 to 70 years ago, and thus, do not adequately contemplate modern scenarios of probable significant contagious outbreaks. They also vary tremendously from state to state. There is a general consensus that a review and update have to be made, even to the extent of harmonizing

the laws in some way, at least in relation to the threat of bioterrorism, to clarify the issue. Other issues have to do with the tort liability of states — what would the standard of care be in a threat or occurrence of a bioterrorist attack? What level of liability would be incurred in the breach of any duty of care? The Centers for Disease Control have acknowledged the deficiencies within public health law and will be reviewing the regulations next week at a conference.