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THE SMART BORDER: FOOD SAFETY AND BIOTERRORISM

Barry Kellman[†]
U.S. Speaker

Good morning. Thank you very much for the introduction. Thank you, Professor King, for inviting me to speak to you this morning. The fact that I have to speak to you about a topic like biological terrorism and the fact that you have come out on a beautiful Saturday morning to talk about a topic of bioterrorism suggests something rather despicable about humanity.

Disease does a perfectly good job of figuring out new and innovative techniques for killing us. We see that most recently in the SARS epidemic.¹ The fact that human beings would use disease for some political end, would inflict disease contagion in order to kill thousands, tens of thousands, perhaps hundreds of thousands of people, suggests in light of our history's speeches, something truly despicable in the human character.² It is a tragedy that we have to be spending our time dealing with this problem. But we do have to deal with this problem at a completely different kind of level, a political level. What is happening with bioterrorism suggests something not as despicable, but something problematic.

Are there meetings going on, not in Cleveland, Ohio, but in the capitals of the world to develop strategies for how to deal with biological terrorism? Is this an agenda item front and center of President Bush and the Prime Ministers of other western countries? Are there international proposals for new and innovative ways to deal with this threat? If there are, I do not know of them. I have been working in this area for a long time. I think that alone

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¹ Jeffrey Kluger, *Killer pneumonia*, TIME (Can. Ed.) Vol. 161, Issue 13, March 31, 2003, available at 2003 WL 11985539.

² Derrick DePledge, *Big question remains: Will Saddam use weapons of mass destruction?*, GANNETT NEWS SERV., March 30, 2003, available at 2003 WL 5600279.

says something rather unfortunate about the political condition at the beginning of the 21st century. What are we talking about? Let me just run through a bit of details, not in any great specificity, but just to get some context.

POSSIBILITY OF TERRORISTS USING DISEASE AGENTS

Anthrax

The disease agent that most people talk about is Anthrax. Anthrax is a spore. For our purposes what that means is that it is not contagious. One inhales it, ingests it, or can get it through the skin. Inhaling is much worse than ingesting it or skin contact with spores. It multiplies within the system and kills within a matter of days. It is a rather horrible death. If I have it, it does not mean you are going to get it at all. It is, however, a remarkably effective mass destruction weapon if used in certain ways.

What happened a year and a half ago with the Anthrax on letters was really kind of an amazing story because the Anthrax that was being used was of a remarkably high grade.³ From a terrorist's perspective it was about the best stuff you can get. Yet the dissemination method that was chosen, putting it on envelopes, was about as pedestrian as you can get. You have to sit back and wonder who could get, who could develop, and who could obtain this remarkably fine Anthrax powder, and then not think about ways to use it far more effectively. Do not get me wrong, I am glad he did not, but there is a quandary here that should be thought about. There are scenarios, almost all involving inside distribution. Outside, Anthrax falls to the ground, which is not very effective as a terrorist device. But when it is distributed through air filtration systems, there are some scenarios, for example, sports stadiums, entertainment venues, etc., where it is possible to think about casualties in the tens of thousands; perhaps hundreds of thousands.

Plague

The other agent that some people talk about quite a bit is plague.⁴ If I were a terrorist, this would probably be my choice. Plague is readily contagious. It is easily treatable if one catches it early and essentially

³ See, *FBI Doesn't Know How Many Labs Are Capable of Making Bacteria*, ASIAN WALL ST. J., Nov. 8, 2001, at 13, available at 2001 WL-WSJA 29656640; *Officials doubt anthrax started at military lab*, CIN. POST, Dec. 17, 2001, at 4A, available at 2001 WL 24536739.

⁴ *Plague*, Fact Sheet, CENTER FOR DISEASE CONTROL, Oct. 3, 2002, available at www.bt.cdc.gov/agent/plague/plaguefaq.pdf

inundates the victim with antidotes. That said, if we are talking about a case or two or five or ten, there is really no question about the medical system's ability to cope with that situation. If, however, we get a deliberate terrorist outbreak, we are talking about 1,000 cases, 5,000 cases, 10,000 cases, we run into the possibility that the medical system will simply be overwhelmed. That it will not be able to contain that. As I said, plague is highly contagious.

Small Pox

The third agent that we talk about, and the one that you know most about, and the one that is by any measure off the spectrum is small pox.⁵ If we drew a spectrum of all the disease agents in terms of what kind of a threat they pose, smallpox would be way over here. It would be way off the spectrum. In one of humanity's greatest accomplishments, we eradicated smallpox from human existence leaving only two samples at the Center for Disease Control in Atlanta and at a laboratory in Moscow.⁶

Smallpox is by far the deadliest killer in human history. It is responsible for 300 million deaths in the 20th Century. Compare that to Hitler and Stalin, who by some estimates were responsible for 20 percent of that. We are talking about a killer of unimaginable proportions. We do not know if smallpox is out there. A lot of people say that they think it is. There is a lot of evidence to indicate that it might be. Strangely, there have been no outbreaks of smallpox. If there smallpox out there, and if we are not properly vaccinated, we are looking at a crisis truly of unparalleled proportions.

Simply stated, somebody can infect themselves, walk through a line at Chicago's O'Hare Airport, walk around in the crowds and it would then spread to the people he or she would come in contact with. Remember the disease is remarkably contagious. Once contaminated these people would get on planes. They would be contagious. We would have a global outbreak in no time.

Flu

Let me talk to you about the flu. Flu sounds almost benign, does it not? Twenty-thousand people die in the United States every year due to flu, but they are mainly people who are either very elderly or sick anyway.⁷ We

⁵ *Small Pox Overview*, Fact Sheet, CENTER FOR DISEASE CONTROL, Dec. 9, 2002, available at www.bt.cdc.gov/agent/smallpox/overview/overview.pdf

⁶ *Small Pox and Bioterrorism*, Fact Sheet, CENTER FOR DISEASE CONTROL, April 6, 2001, available at www.bt.cdc.gov/Agent/Smallpox/FactSheet.pdf

⁷ *Flu bioweapon fears: Flu could be a far more dangerous bioterror weapon than smallpox or anthrax, scientists have warned*, BBC NEWS, July 1, 2003, available at

know how contagious it is, but we tend to not think of it as a mass destruction weapon.⁸ We should say that single the most deadly event of the 20th Century was the 1918 Spanish flu outbreak.⁹

What will it take to recreate the Spanish flu in a laboratory? We cannot do that right now, but we are very, very close. The prospects of bio-engineered flu are within reach, meaning three to ten years. We are not talking a long time. We are talking about something that is remarkably contagious by and large, not remarkably deadly, but which can be adjusted through genetic engineering techniques posing what I think is the worst possible combination of pathogenicity and contagion.

Access to and Distribution of Disease Agents

That leads us to talk about where the vectors are pointing. I have got to tell you that the vectors are all pointing in the wrong direction. If I had to vote, I would say that no single discipline has contributed as much to human welfare as has biological science. Those very capabilities that are creating the kinds of breakthroughs that we all read about on a daily basis, those very capabilities are capabilities that could be used for remarkably destructive consequences. As those capabilities grow, the ability to make deadly biological weapons grows accordingly.

I do not mean to malign the biological profession, the life sciences. We are talking about one in 10,000, one in 100,000, one in a million, some astoundingly low percentage of those who have this capability to direct such knowledge towards wrongful ends. As those capabilities become more powerful, the facility for using them becomes more readily available. Therefore, it forces us to think about how we prevent that kind of action from taking place.

With all due respect to the chair, I think we are doing a rather remarkably poor job in dealing with this threat. What do we have to be talking about? We have to be talking about, first of all, denying capabilities to biological terrorists.¹⁰ The one piece of good news that I have for you this morning is that it is not as easy to carryout biological terrorism as you read in the newspapers. If we talk about biological terrorism in terms of spreading

<http://news.bbc.co.uk/1/hi/health/3031488.stm>

⁸ *The Common Flu -- or Bioterrorism? Institute Of Human Virology Works On A Rapid Diagnostic Tool To Help Answer The Question*, SCIENCE DAILY, Sept. 3, 2002, available at www.sciencedaily.com/releases/2002/09/020903071914.htm

⁹ William Hathaway, *Flu's Clues; Scientists in Meriden Racing to Crack Code of a Killer*, HARTFORD COURANT, Dec. 6, 1998, at A1; Jack Fincher, *America's Deadly Rendezvous with the "Spanish Lady"*, SMITHSONIAN MAG., Jan. 1989, at 130.

¹⁰ See, Lawrence O. Gostin, *The Model State Emergency Health Powers Act: Public Health and Civil Liberties in a Time of Terrorism*, 13 HEALTH MATRIX 3 (2003).

Salmonella in a salad bar or something like that it is pretty easy. When you are speaking in terms of a mass destruction weapon, it is actually pretty hard to carry out. You have to have or secure access to a remarkably good laboratory.¹¹ The person with access has to have real skills, real capabilities, and the materials.

You can scrape Anthrax from a dead animal, but you do not have something that is very usable as a weapon. Plague is available throughout the southwest if you know how to get it. However, it is not very readily usable as a weapon. To weaponize it is hard.¹² Thank goodness, that is true. You have to get access to a pretty sophisticated laboratory to make it worthwhile. That gives us the first indication of how to deal with this. We have to be talking about instituting very rigorous controls over laboratories. We have to be talking about instituting very rigorous controls over the pathogens themselves.

Do you know that until 1995 in the United States, you could order plague through the mail? You could say, "Excuse me, I would like some plague virus." With that simple request, you could get plague sent to you through the mail.¹³ When Larry Wayne Harris, a Neo-Nazi character, ordered plague through the mail it started some people in Congress thinking maybe we ought to tighten this up.¹⁴ In a way, maybe we should thank him, because we did tighten it up.¹⁵ We set up a registration system where you can only get these kinds of pathogens if you are registered and you have legitimate purposes for them. That is excellent.

On the other side you can only provide them if you are similarly registered. So in order to get a legitimate stockpile of these kinds of

¹¹ William Broad and Judith Miller, *Anthrax Inquiry Looks at U.S. Labs*, N.Y. TIMES, Dec. 2, 2001.

¹² Steve Bowman, *Weapons of Mass Destruction: The Terrorist Threat*, CONGRESSIONAL RESEARCH SERVICE REPORT FOR CONGRESS, March 7, 2002, at 5, available at <http://fpc.state.gov/documents/organization/9184.pdf>

¹³ Statement of Cynthia A. Bascetta before the Subcommittee on National Security, Veterans Affairs, and International Relations, Committee on Government Reform, House of Representatives, *Combating Terrorism: Chemical and Biological Medical Supplies Are Poorly Managed*, UNITED STATES GENERAL ACCOUNTING OFFICE, March 8, 2000, available at www.gao.gov/archive/2000/h100059t.pdf

¹⁴ Jonathan B Tucker, *Preventing the misuse of pathogens: The need for global biosecurity standards*, ARMS CONT. TODAY, June 1, 2003, at 310, available at 2003 WL 16228425; Testimony of Stephen Ostroff before the U.S. House of Representatives Committee on Commerce Subcommittee on Oversight and Investigations, CENTER FOR DISEASE CONTROL AND PREVENTION, May 20, 1999, available at www.bt.cdc.gov/press/Ostroff_05201999.asp

¹⁵ Antiterrorism and Effective Death Penalty Act of 1996, PUB. L. NO. 104-132, 110 Stat. 1214 (1996), Sec. 511.

pathogens, the provider has to be registered and the receiver has to be registered. That is excellent.

Assume for a minute that I am a registered facility. I represent a registered facility and I have these kinds of viruses. You represent a registered facility that wants access to these kinds of pathogens. Both of us are completely legitimate enterprises engaged in legitimate research with no terrorist motivation whatsoever. We place this request and we file it with the Center for Disease Control. It is approved and everything is proper. I send you the plague virus in a vial. How does that get to you? Amazingly, it arrives via Fed Ex.

We have still got a problem. The problem is not with me. The problem is not with you. The problem is with the possibility of diversion along the way. The problem is with the lack of security along the way. Multiply this out on the international spectrum to address shipping viruses globally. When shipping globally, the packages usually travel by air. What security measures being taken to make sure that there is not a perfume vial containing pathogens on a ship or on a plane? Do we have that capability to even figure it out?

Let me back that question up a little bit. Say the whole idea here is law enforcement, right? That is what we are talking about, whether we are talking about regulating laboratories or regulating transport. What we are really talking about is figuring out ways to identify who are the bad guys and stop them from gaining access to the pathogens. We want to stop them from moving the pathogens, from developing the pathogens, from having a weapon, and from using a weapon. We need active law enforcement from customs to regulate and to police this. I think everyone accepts that.

Did you know that with the exception of about ten countries including the U.S. and Canada, it is perfectly legal in virtually every country in this world to make a biological weapon? There is no law that prohibits somebody from making a biological weapon. Yes, there is a law that prohibits you from using a biological weapon. It is called homicide. Making a biological weapon is different.

In most parts of the world making a biological weapon is perfectly legal. What does this mean? It means that law enforcement has no authority whatsoever to conduct an investigation to try to prohibit somebody from doing that. Law enforcement in every nation is dedicated to preventing illegal behavior, not to preventing legal behavior. Until we have a law that penalizes the preliminary steps to the preparation of a biological weapon, we cannot engage law enforcement. We cannot engage customs. We cannot engage the regulatory capabilities to try to help prevent this act from taking place.

NEED FOR A INTERNATIONAL APPROACH

That leads to the most important point. If there is a development of a biological weapon in any part of the world, it will soon be in every part of the world. The notion that we can build a wall around the United States, or that together we can build a wall around North America, is patently absurd. Disease does not need a passport. It does not need to get a stamp as it moves across the border. It has absolutely no respect for borders whatsoever. With modern air travel, disease can move literally from anyplace in the world to anyplace in the world at a moment's notice. Certainly, if the disease is a result of deliberate terrorist activity that is precisely what will happen.

If a disease agent is made into a weapon in a place where there is no prohibition against that kind of activity, even the best U.S. laws, even the best Canadian laws will simply be ineffective in stopping that disease from coming on to our shores. If there is any situation that humanity faces in this day and age that forces us to say we share a planet, this is the problem. Tony Blair says we are all internationalists whether we like it or not. I think that line is underlined by the threat of biological terrorism.

When we talk about regulation of biological laboratories, we have to be talking about setting up a global system of regulating biological laboratories. When we talk about regulating pathogens, access to those pathogens, registering those individuals that can legitimately deal with them, we have to be talking about that kind of a system at an international level. When we talk about customs controls to at least begin to counteract the smuggling of pathogens across national boundaries, we have to be talking about the development of an international system. When we talk about identifying anomalous behavior so that Police are authorized to conduct investigations, we have to be talking about developing an international system. When we talk about collecting information into sophisticated databases in order to understand the movement of biology, who is doing what with what pathogens, we have to be talking about information at the international level, processed at the international level, and used at the international level.¹⁶

The international approach is not because of ideology, but simply because of the nature of the problem. That is the real point of talking about this at a Canadian-U.S. Institute meeting this morning. The planet is obviously not represented here, but it is one microcosm. If you will, this is one example of the capabilities for bilateral and hopefully multilateral cooperation. We have to take this discussion to a new level. We have to think about how we regulate this discipline that has had such incredible benefits for humankind, while at the same time preventing that discipline from being misused. We

¹⁶ Michael Crowley, *Combating Biological Weapons*, U.N. CHRONICLE, 2002, available at www.un.org/Pubs/chronicle/2002/issue2/0202p73_combating_biological_weapons.html

have to think about the civil liberty implications. I am talking about international law enforcement. We have to talk about the economic consequences of the distribution of vaccines, pharmaceuticals, and antidotes. We have to do this all on an international level. The bad news is that as of April 11, 2003 that discussion is not even beginning. Thank you very much.