

Remarks by Homeland Security Secretary Michael Chertoff at the Stanford Constitutional Law Center's Germ Warfare, Contagious Disease and the Constitution Conference

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Secretary Chertoff: Thank you very much for inviting me to address you, and I want to thank Dean Sullivan for hosting the conference and for bringing me here. And also, I see a lot of friends in the crowd.

I do have to say, I realized as I walked out here that I hit the trifecta today. I started out speaking at Yale Law School on Monday, I spoke at Georgetown Law School yesterday and today I'm speaking at Stanford Law School. The only law school I'm not speaking at is my own law school.

But I think this is a great opportunity to explore a fascinating and difficult set of issues that arise in the context of bioterror and also natural challenges arising out of the possibility of pandemics or very serious epidemics. Even though we're only eight years into the twenty-first century, I think we've seen a range of challenges in this country that are comparable to what we saw in the preceding century. And because of the interdependent, global nature of our society, particularly in the area of diseases, the ability of communicable diseases to spread rapidly from one continent to another, even as a natural matter, certainly heightens the risk if we should ever have the experience of the type of influenza that, for example, occurred in 1919. And when you add on top of that the increased capability for people to manufacture and weaponize biological threats into actual weapons of mass destruction, this merely compounds the problem.

It's not merely a theoretical issue, although pandemic influenza has not yet reached, as you know, efficient human-to-human transmission, it certainly has occasionally had human-to-human transmission and, certainly, bird to human transmission. We've seen anthrax attacks not very far from where we're sitting. We've seen ricin attacks in other parts of the world. We have also, happily, been able to bring on line countermeasures and detection capabilities which help at least to mitigate some of the risk.

And, perhaps most important, I think for the first time we've begun to think very seriously and in a disciplined fashion about how to plan for dealing with a major natural pandemic or a major biological attack. The essence in this kind of crisis will be to act effectively and decisively in an environment in which there will be imperfect information, the loss of potentially hundreds of thousands or millions of lives, and in which the ability to execute will be critical in terms of making sure that we are able to minimize the amount of damage.

The key to all of that is planning in advance. And one of the reasons I think it's good to see this conference is because one of the elements of planning that always has to be considered is what are the relative authorities that you have in order to make things happen to protect the people.

So let me talk a little bit about what we see as the major biological threats in the twenty-first century, what kinds of capabilities we are building in order to meet and mitigate those threats, and at least a little bit about some of the legal authorities issues that I think will arise in the context of an attack if we have one.

I know you began the day and spent much of the day talking about a hypothetical pandemic flu outbreak. And I assume that you rapidly recognized that this would engage federal, state, local and private sector officials and that there would be a massive need to coordinate across all of these sectors in order to be able to effectively mitigate the damage caused by this kind of an outbreak.

Precisely because we did identify this pandemic flu as one of the most catastrophic scenarios the country could face, at DHS and across the federal government, we began a couple of years ago putting together a national strategy for a pandemic influenza and a series of implementation plans, beginning with the President's cover document, the actual national strategy itself, signed several years ago.

As you put together the plans to address a pandemic, you rapidly realize that there is no one, single plan; there are a number of plans that have to be nested and bound together. Moreover, one of the things you see

is that, contrary to the question that I'm almost always asked by members of the Congress or members of the press when we talk about how to deal with the catastrophe, there is no one person in charge. Our government is constructed in a way so that it's impossible for one person to be in charge. And the key is, can we even reduce the number of people in charge to a group that can sit around in a room, as opposed to having hundreds or thousands.

And that ultimately turns out to be one of the key issues because, when people are -- you know, to be blunt, dropping dead in the street or packing the hospitals with respiratory failure, academic debate about who should do what becomes very unappealing. That's why thinking these things through in advance is very important. It's the preparation. The preparation won't eliminate the problems and the stress, and it is often said that no battle plan has ever survived first contact with the enemy. But I can tell you this, if you don't have a plan, you are definitely going to have the worst case outcome. A plan at least gives you a running start, as does training and exercising to the plan, so that when you begin to adapt, at least you're adapting with a baseline of capability and understanding that makes your response more likely to have a positive outcome.

First, you need to understand of course what the full dimensions are, the scope of a public health emergency, whether natural or manmade, would be. And one of the things that I learned when I came on board very quickly was there was a tendency for every profession to view a catastrophe through the lens of its own particular professional discipline. To medical personnel and public health personnel, it's about public health and medicine. That's -- they want to cure people, they want to vaccinate people, they want to alleviate people's suffering. And that's what they're thinking about, and they should. But that is not the alpha and omega of what you need to deal with in the catastrophe.

For example, if you were to have a pandemic flu or some comparable manmade biological attack, you'd have an impact that goes to every sector of the country and our society, not just the medical and health care communities. Not only, for example, would there be a huge geographic scope and a stress on the infrastructure in the emergency rooms and the medical personnel, there would be issues about distributing whatever medicines were available. But you would have to start dealing with the issue of absenteeism. People either not showing up to work because they're sick, or because they're afraid of getting sick, or because they're afraid that the place they're working doesn't have a plan to make sure they don't get sick, or because the schools are closed and there's nobody to take care of the kids at home, so they're not going to go to work.

And when people don't show up to work, all of a sudden, the power plants aren't running unless you have a plan in place to deal with that on an emergency basis. The food isn't getting delivered to the grocery store. That doesn't matter, though, because no one is around to open the grocery store.

So now the problems begin to cascade and ripple throughout society and potentially can magnify the damage of the underlying attack because of the collateral effects on our ability to eat, turn on the lights, get to work and deal with all the other issues which allow society to function in a well-ordered way.

In addition to the cascading collateral effects of this kind of a medical disaster is the fact that it's not going to come with a bang, it's going to come with a whisper. And, in fact, it may be very challenging to detect when it first begins. It can be hours or days before we realize the full extent of an incident. And, on top of that, depending on whether it is a natural event or a manmade event, our modeling ability with respect to analyzing the course of the epidemic or pandemic will be profoundly effected, because we have built a series of public health models based on the idea that we know how ordinary diseases spread and how they circulate among populations.

But if someone is moving around the country with an aerosol tank, spraying it all over different places, that's going to be a very different model. And therefore, one of the things you learn very quickly is, making some preliminary judgments with some basis in fact about whether you're dealing with a manmade or a natural attack has a critical impact on the subsequent course of how you deal with it.

Finally, because as I just talk about the general challenge of dealing with this issue, because a biological attack would not be an explosion, it wouldn't be a dramatic event, and because we haven't really experienced one other than the anthrax attack, which was quite limited in its scope and could have been a lot worse, I'm not sure the public fully recognizes the urgency of dealing with this issue.

There was a period of time this was very high on the radar screen. And then inevitably, there was the typical fear mongering response. Oh, the public health community and the people in the government are getting overly worried about this, we're spending too much money, let's focus more on this year's flu season.

And what I'm concerned about is that if we push this off, push the planning, training, exercising, stockpiling and everything else off until we actually have efficient human-to-human transmission of pandemic flu, if it should happen, I guarantee you there is not going to be enough time to deal with the issue. If there is one lesson that the last seven years has taught us is, planning well in advance is the only way to deal with a massive threat.

Now, of course, I have talked a lot about this in the context of pandemic flu. But you know, obviously, in a world of terrorism we are focused on those kinds of threats which could be weaponized and circulated. And let me give you some perspective about whether there are people who actually would like to do this to us, whether or not they currently have the capability. And also recognizing that, for many of these illnesses, at least a crude version of the biological weapon can be fashioned from very readily available sources in nature or in your home, if you have the know-how. This is a very know-how based issue. It's not like building, you know, highly enriched uranium. You can make at least a crude form of these weapons if you have know-how and some very basic ingredients.

We know, for example, in the late 1990s, al Qaeda became focused on developing a biological weapons program. After the invasion of Afghanistan, we determined that there was a low-tech facility in Kandahar, which was actually aimed at producing anthrax and the purpose obviously was to create a weapon. It wasn't that they were doing defensive research.

Now, fortunately, we disrupted that laboratory and the ability to drive al Qaeda from safe havens made it much more difficult for them to create chemical or biological weapons that could become weapons of mass destruction. This is one of the reasons why we do fret when we see safe havens developing either in the frontier areas of Pakistan or in other parts of the world, because we are concerned if left untended, these could be locations where, in fact, someone could reconstitute a laboratory and begin once again to experiment with a view to developing a biological weapon.

Do we think there's any constraint, any moral constraint that al Qaeda would feel about using such a weapon if in fact they were able to prepare it? Well, they've told us quite the contrary. In 2002, they stated that they believed they had the right to kill millions of Americans in response to their perception of how the West has mistreated them and the countries of the region. And since then, they have only repeated their willingness to use weapons of mass destruction and their, to my mind, admittedly perverted justification for doing that. So whether one thinks that they are effective in making their rationalizations or not, it's clear they believe that they're licensed to use these weapons and there's no reason to believe they would not use them given the opportunity and given the fully developed capability.

In fact, as we've looked at the kinds of biological weapons that could be realistically fashioned and considered a whole number of different factors including likelihood, capability, our vulnerability and our ability to respond, I think we have concluded that aerosolized anthrax, what we saw here on a very small scale some years back, is our number one bioterrorism concern.

So, having laid out the natural concerns and the manmade concerns, what is our strategy for dealing with this? Well, our strategy is based on Homeland Security Presidential Directive 10, Biodefense for the Twenty-First Century, which essentially identifies four critical areas on which we have to be focused: threat awareness, surveillance and detection, prevention and protection, and response and recovery.

Threat awareness is what you would think it is. We need to be able to identify and, if possible, incapacitate a threat before it occurs. In the case of pandemic flu, that means identifying a problem area where we may be having a mutation that allows human-to-human transmission and making sure that we have rapidly addressed that area to make sure it does not spread. It may be difficult to detect that. The tools to do it include, frankly, some of the intelligence tools we use in other areas, because some countries are presumably reluctant to admit that there is a problem, for fear that there may be a negative impact on their ability to travel and trade around the world.

So one of the challenges we would have in dealing with the issue of even a natural threat would be the ability to detect things going on in a country that was not willing to be fully cooperative with the rest of the world in identifying an emerging pandemic that was beginning to take root. Of course, when you put that next to the issue of manmade threats, you see we have an even greater issue with respect to threat detection so that we can prevent something from taking off.

Obviously, if we knew that there was work being done to fabricate weapons of mass destruction of a biological nature, we would want to take steps with our friends overseas to prevent that from coming about and certainly

to prevent it from becoming launched as a weapon against us. And yet, because as I said the ingredients for many of these biological weapons are widely available, because there is a lot of biological research going on around the world, including much legitimate domestic and foreign research, including research that uses some of the ingredients that could become weaponized, including anthrax and plague and other pathogens, isolating that type of laboratory or that type of effort which is a threat is very difficult, even as it remains very urgent.

And so we have to operate on a number of levels. First, we want to make sure we continue to support those elements of research that would enable us to invent better vaccines and better medicines. At the same time, we want to focus on indications that there are laboratories that are looking to develop experiments with a more negative outcome in order to create weaponized materials. And this means we've got to consider a whole range of intelligence, who people are, where supplies of certain kinds of equipment are going and what we can learn about the activities in some of these locations.

This is why a critical element of public health in the twenty-first century, one that may be a little bit unfamiliar to the public health community, is the same good, old fashioned intelligence that we use in order to determine that there's any other kind of attack in preparation against us or against our friends.

An example, by the way, of the value of this kind of intelligence is vividly demonstrated in the pages of the newspapers over the last week, as you read about what went on in London 18 months ago in the airline plot and the care with which an effort was made to manufacture explosive devices concealed in sports bottles. This is the kind of painstaking effort that is difficult to uncover but critical if we are to prevent something from being launched against us.

But the realities if you don't detect the creation or the planning for this, the idea that our screening ability would be sufficient to prevent people either innocently or deliberately coming in with contagious illnesses, the idea that that would be sufficient, I think, is an illusion. Unlike a nuclear bomb or a radiological device which we can screen based on various kinds of mechanical devices, unlike our ability to detect explosives, it's very hard in many instances to know if a person is sick. We do not medically test every one of the 80 million people who come in by air every single year, or the 400 million people who cross by land.

Obviously, if we have reason to believe there's illness, that does allow us to begin to then test some people. If we had information that there was a pandemic brewing in a particular part of the world, we might then decide to take those flights and those aircraft and redirect them and treat them separately so that we could do a more intensive screening. So it's not that screening is of no value. But again, unless enabled by intelligence, something that allows us to winnow down the people who need to be looked at more intensively, it's almost hopeless to think we could literally screen everybody who comes in against every kind of potentially contagious illness.

So a lot of our effort has got to be to learn as quickly as possible if there is something in the country so we can detect it and begin immediately to discover its dimensions and to prepare a response. A delay of just one day in detection of an anthrax release, for example, would delay the treatment by a day and that would result in thousands of unnecessary deaths.

So how do we propose to deal with this issue of detection if something either comes into the country or is released in the country, naturally or manmade? Well, we need to fuse three types of information. One is traditional clinical data. And that means relying upon our partners in the public health community through HHS to gather information about people who present themselves with symptoms that suggest there may be anthrax or plague or anything of that sort. And I recognize that in that setting, because you're waiting until people present themselves, by definition you're behind the curve. Because they're not going in until they feel sick. So that's not sufficient.

The next element has to be therefore a mechanical capability of detecting in the air itself that there are pathogens that we need to be worried about. Here, fortunately, we have a BioWatch program, where we have pathogen detectors around the country that do allow us to detect and warn of various kinds of pathogens that are in the air. Sometimes, they can well be benign and they can be naturally occurring, but they are certainly a tip off that you could be dealing with something that's an attack. I've been present when we've had circumstances where there's been an alarm from one of these detectors. And depending on the number of detectors in the location and the nature of the pathogen, Dr. Runge and I get on the phone right away with local health officials and our counterparts at CDC and HHS, and we try to analyze whether we're dealing with simply a naturally occurring tularemia or something that could be the sign of something much worse.

And then the third element is not just the clinical and the actual data that we can pull from biological detectors

but it is good, old fashioned intelligence. And I'll give you a great example. We had a case about a year ago, maybe a little bit more, where it looked like there was an anthrax, a case had presented itself at a hospital. And there was an explanation for that which we were rapidly able to determine as coming from someone who had been a part of the world where it occurs naturally on the skin and they had some drums they had brought in, and so we resolved the issue and the patient was treated.

But supposing, simultaneous to getting that clinical information, we had gotten signals intelligence telling us that terrorists were announcing a big sickness was going to be launched against the United States. That would have immediately changed the way we analyzed that clinical situation. We probably would have surged biological detection capability into the area. And our ability then to use other tools to detect what's going on not only in that city but elsewhere would have come into play, so that we could quickly characterize the nature of the incident and determine what kinds of response steps we had to take.

A third element -- and again, and let me say about it, too, to integrate all these elements, we have underway the program to create a national biosurveillance integration center, which is up and running as we speak, and will be fully operational later this year. The idea being that we will have now the ability to fuse the clinical data, the regular intelligence information, and ultimately the BioWatch data, including next generation sensors, so that decisionmakers can have a rapid, early and comprehensive picture of the kind of pathogens that are out there so they can characterize them.

A third element of this strategy is protection. Recognizing that as we respond to a medical threat, we need to work with the private sector and using some of the tools of the government to make sure that our basic fundamental food, water, power supply and other necessities are not disrupted in the course of dealing with what could be not just hours or days but weeks and months of a pandemic or some comparable biological attack.

Part of this is a planning issue, part of it is making sure that we have very close coordination between those who operate the critical infrastructure and those with the medical ground truth about what is appropriate treatment, what is the actual fear of contagion and what are the appropriate countermeasures and protections that need to be in place to ensure a workforce that they can come to work with a minimal risk of coming down with an illness.

And finally, we come to the issue of response and recovery. That's a very complex undertaking. There's obviously the provision of medical care, which lies within the domain of the public health authorities including the Department of Health and Human Services. And, of course, as part of their responsibility, they not only have to develop and stockpile medicines and vaccines, they have to have the capability to distribute them. And in many ways, we and our state partners would be the arms and legs of that distribution.

The Department of Justice would play a critical role in the event that it was a manmade attack, rather than a natural occurrence. And that would become of utmost urgency if we believed that people with the pathogen were moving around the country, so that the ability to limit the damage and limit the need to respond would be a direct result of our ability to intercept them and prevent them from carrying out further attacks.

EPA would have a critical role in making sure that once we stabilized the problem, we understood what would be necessary to clean up and render it safe for reentry. Department of Agriculture, to make sure there were no untoward effects on our food supply. And Department of Defense, which has enormous capabilities, to supplement what we do by having literally boots on the ground to perform a number of critical functions in the area of security and treatment if we need to surge.

I think this gives you some sense of the range of departments that have to be integrated, brought together and coordinated through the HSPD system in the event that we had this kind of attack. The goal would be, first and foremost, prevent further damage, get medical supplies and lifesaving items to people as quickly as possible, within 48 hours, and give clear direction to the public about how to behave so they don't worsen their own situation.

And that brings us to the bottom core of what it is we need to do in order to be prepared. And that is to get people prepared to understand how to evaluate messages if they come, what are the basic steps of preparation they need to have in effect so that if they need to stay home, for example, they are capable of doing so for a period of time, to have a plan in place about necessary medicines and other tools to be able to survive for a period of time without -- if you're not able to go out and mingle in the community, and to have the capability to educate themselves with some basic facts about some of the problems that might be faced, either in advance or with at least an understanding of where to go on the web in order to get the necessary

information.

I will tell you one of the big challenges we face is how would we physically distribute some of the vaccines or some of the medicines among millions of people if we had to do so in an environment where 48 hours was the make-it-or-break-it. It raises a number of questions. Should we, for example, as we're currently considering and experimenting with, actually distribute prophylactic medical kits around the country or allow people to purchase those kits so that they could have them in the medicine cabinet and they need to be able to get the kind of antibiotics or other treatments that are in the kits? What do we do to make sure that if we do that, people don't abuse them?

And then how do we deal with the fact that, in any mass distribution, you're not going to have the typical public health model of a doctor seeing everybody and giving them a checkup before you give them the pill, because there aren't enough doctors to get through 300 million people in 48 hours. And so we'd face a difficult decision: Do we distribute medicines recognizing there is a possibility that there will be some small number that have negative side effects, if the consequence of not doing that would be to have a very large number of people die? And if we believe that taking a risk with a small number of people is justified to avoid the certain hazard to a large number of people, we'll have to ask the legal question, what is the liability for the manufacturer? Is the manufacturer or the distributor going to be willing to take the direction of the government to provide these things if they're not assured that they're not going to be sued? This, of course, harkens back to another issue involving retroactive immunity that those of you who have dealt with the FISA matter are familiar with.

And I am being a little opportunistic, but I do want to make this case. If your message to the private sector is, cooperate with the government at your peril, and then after the disaster is passed we will then change the rules then, I can guarantee you, you will get very little cooperation from the private sector. And when people are crowding the sick room and you don't have the antibiotics distributed that they need because your companies are requiring legal opinions by the ream before they will release the drugs, that liability system may seem a little bit less than convenient.

That, of course, brings me to the brink of the legal element to this, which is why you're all here. And as an attorney and a former judge, that's the area I'm probably most at home with, although it's the area I deal with least now. I'm not going to have a lot of legal proscriptions to give you, but I will lay out what I think are some very challenging legal issues that we ought to talk about up front.

Questions like restrictions on movement, how do you control infection, a lot of these are state authorities. We need to ask ourselves, is there ever a time the federal government should be able to trump the state in these areas? Questions about our ability to manage who comes into the country and who moves between states -- if a governor were to decide, for example, that because of an outbreak in New York that nobody can come from New York into New Jersey, would we accept that? Would we accept that if the consequence of that was that it made it difficult to actually track down the people who were carrying out the biological attack, or make sure that adequate food was getting to the afflicted area?

Should we, for example, have the capability to regulate the bandwidth of our communications during a public health crisis, so employees can telecommute without disrupting the nation's cyber systems? Should we ask broadband providers to restrict access for high-consumption, low-productivity things like video games so we can use the bandwidth for something that's more important?

What are the limits on the ability to quarantine and isolate? What's the ability to prevent people from doing the twenty-first century of shouting fire in a crowded theater, getting on the airwaves and giving deliberate misinformation or even negligent misinformation that could cause the death of thousands of people who were misled about what to do in the face of a medical emergency?

These questions fall outside of my department's purview; they go into the Department of Justice. But more broadly, they really belong to the legal domain. And they're very hard questions. And I can tell you as someone who has lived through a number of very challenging, ongoing emergencies where there is not a lot of time, there's no great answer. All the answers are tough answers. The more thinking we do about it in advance, the better off we are.

And in particular, I'd conclude by saying this. As we think through the issues of these authorities, we need to understand that once we've come to a societal agreement as to what the authorities are to be in some circumstances, we need to live with the consequences of that. So, for example, if we decide that we need to leave public health authorities of quarantine or similar authorities in the hands of states and not allow them to be trumped by the federal government, because we don't want to have the federal government be that

powerful, that's maybe a societal position that people will agree with. But then when the federal government is incapable of enforcing a quarantine where a state chooses not to do so, it will be too late to blame the people who are in the saddle for that because we will have made that decision up front.

Likewise in my liability issue, if we're unwilling to hold people harmless in an emergency for distributing drugs to protect a large number of people, it will be too late after the fact to have a 9/11 Commission and talk about how we should have done it differently. The time to have that conversation is before it happens.

So I think it's great that you all are looking at this issue. I believe that we can deal with this set of threats, as with all threats, consistent with our Constitution and with our laws. But we need to understand sometimes, whether within the Constitution, we need to have some legal adjustments in terms of the necessary authorities and the rights and the powers of those involved in dealing with these issues. It's not going to be something I'm sure you resolve today and I doubt it's going to be resolved even in the next few months.

But for those who dismiss this whole thing as an academic exercise and say, well, you know, fear mongering, it's not going to happen, I just want to ask you to cast your mind back to September of 2001, before September 11th, when everybody was very preoccupied with a terrible story about a young intern who had been murdered. And it would have seemed inconceivable that we could lose 3,000 American lives in a single day. Likewise, the anthrax attack which, for whatever reason, is still an open investigation only resulted in comparatively few lives lost. Imagine if the perpetrator of that attack or perpetrators had the desire and capability to do it on a mass scale.

I wish I could tell you these things are unthinkable. But the one thing I've learned in the last seven years is, there's pretty much nothing that's unthinkable. Some of these things may be a ways off but we don't have a lot of time to waste, and so it's a good thing to start thinking about them now. Thank you. (Applause.)

Moderator: Thank you so much, Mr. Secretary. I understand he is going to take a few questions, so --

Secretary Chertoff: Nothing too medical. If you just raise your hand and tell me who you are and where you're from.

Question: We've met before, and I wanted to thank you for being here and for addressing this important issue. And I certainly agree that your comments regarding liability do have a very significant impact on how the private sector views what its options might be under very difficult circumstances.

But I do want to ask you sir, because you did raise the issue of the FISA, whether it could in fact be said that on September 11th, the obligations were actually fairly well understood in that what that statutory framework which had been adopted in 1978 did was not only to anticipate the exigency when perhaps it was difficult to obtain a warrant, but also the exigency when the United States might actually be at war? And under the '78 act, the President was given 15 days to exercise whatever powers he felt appropriate without any restriction, but then to come back to Congress and to try to find some accommodation that would respect the various roles of the branches of government to revise the law as was necessary during wartime.

Secretary Chertoff: Well, I think that, you know, we could have a long discussion about FISA. I'm probably not the best person to talk about it, because it hasn't really been in my domain. Except to say that I know from reading the court of appeals opinion of the FISA court of review and the Truong case in the Fourth Circuit, I think it's far from clear that FISA addressed all of these issues.

But let me put that to one side, because I do think there's a point you didn't touch on which I want to come back to, and that's why we have immunities for people who cooperate with the government. You know, we have immunities for judges, we have immunities for prosecutors. Those are absolute. We have good faith immunities for all kinds of people who do things.

It is very fair to look forward and say, here are what the rules are and here is what you have to do to meet them. But when duly constituted authorities, not being corrupt or, you know, seeking their own personal enrichment, go to the private sector and ask for cooperation, as happens in any emergency -- it happened in Katrina as well -- and you ask the private sector to do certain things. You know, the initial response is, what can I do to help? If the answer is, do everything you can, but then afterwards, lawyer up because we're going to sue you, I will guarantee you you will get very little cooperation.

So, you know, I don't want to have a whole FISA debate here. But I think we ought to confront up front the idea that if we're going to ask people to help, as long as they don't act in bad faith in the private sector, we ought to

be willing to give them the space to do that.

And I will tell you, when we looked at the question of vaccine manufacture in this country and how much of it was overseas and how little of it was here and how little capacity there was, which was a direct result of fears of liability, I mean, I've got to tell you that does give pause. Now, this probably gets a little beyond -- gets into tort reform. But I think -- we're not going to agree probably here, but I think you'll need to look at that question and ask whether we need to consider how do you encourage people to step forward and help if they are worried they're going to wind up losing their shirts.

Question: I really applaud your challenging us to think about these really hard questions now when we're not in the press of an emergency, but I guess I want to throw that back. Sometimes it seems to me that I don't have a lot of faith in our political system in an environment where we're all sort of comfortable and we have lots of things we need to have and lots of things we like to have and lots of sort of luxuries we can afford to have, really putting ourselves in the situation we may find ourselves in when things are really bad and lots of things that now we would go to court forever on just don't seem very important. So a politician being asked to say, which third of my city am I not going to be delivering drugs to or which of my standards am I going to waive because we just can't afford to protect that right now, do we have the ability in business as usual to anticipate business as very unusual?

Secretary Chertoff: You know, I hope we do. I know prior to 9/11, there were reams of paper generated by the Bremer Commission and the Hart Rudman Commission and the Gilmore Commission talking about terrorism and they were read or not read and filed away. I thought after 9/11, when the 9/11 Commission did its work, that it shook everybody up because the title of their report was Failure of Imagination. I thought the lesson was, you know, you can no longer blithely assume that really bad things aren't going to happen, and you can no longer afford not to look at hard questions because they are hard to answer.

I think that's the challenge to us and I think if we, at this point, fail to look at the hard questions when we have time, the next report is going to be much more blistering. It's going to be failure of responsibility.

It requires you to be able to project forward what things will be like in an emergency, where the public will immediately be concerned about the number one priority for every living being, how do I stay alive and how does my family stay alive. And we may need to talk about what you do in the short run, what you do in the long run, how do you make hard choices, how do you make tradeoffs. There is a lot written about -- about this issue, and there's a lot been written about the responsibility of when public officials who have an obligation to the whole have to make tough choices that might make them uncomfortable morally but, in order to make sure that you've saved the majority, you've got to do those things.

I don't have an answer. We'll see whether our system allows us to do it. But I think your job is to get that debate going.

Question: Good afternoon, Secretary Chertoff. Thank you for coming to our event today.

You focused in terms of legal matters quite a bit on the ability for the federal government to provide immunity to those that would help out and I think that you and Mark are both right, that's a question probably for a -- a much broader question maybe for another day. My question for you then is, to what extent is Department of Homeland Security proactively taking into account legal concerns when you're talking about isolation, when you're talking about detention, when you're talking about forced inoculation? To what extent are legal concerns being concerned right now? Instead of talking about how can we avoid legal implications, to what extent is your department actively taking them on now so we can avoid taking them on later, so we can avoid the immunity question altogether?

Secretary Chertoff: That's a great question. I think as part of our planning process, we are -- we actually do -- it's not just us alone, it's an interagency process. We do look at the existing law and we do prepare as much as we can under the existing law all of the things we need to understand to know what we would be able to do in an emergency. Then the question is, we have to identify those areas where we think existing law is perhaps insufficient. And we need to address that.

That came up after Katrina when there was discussion about changing the circumstances under which the National Guard could be federalized from a couple of limited circumstances to a somewhat broader set of circumstances. And there was actually a bill that was introduced and I think it passed, and then there's been back and forth about this issue.

So I do think that as part of this planning process, what will be generated at the end in addition to a set of plans based on existing legal rules, a list of legal questions that we need to ask in terms of whether they should be changed. You know, what is the authority of the federal government to trump state authority in a circumstance where the governor just fundamentally disagrees with the federal position on quarantine, but where the consequences of that are going to be felt not just within the governor's state but in all the surrounding states?

You know, these are questions that may not be able to be resolved or resolved in a satisfactory way within the existing framework. So once we've finished the planning, I think we've got to figure out are we satisfied with the legal authorities as they are, given our plan? Or do we think the plan falls short because we need to get additional or different authorities? And then we need to go and talk about how Congress can do that.

Question: You mentioned anthrax as the number one bioterrorism threat. I think most people in the biodefense community would deal with that. Today, we have 300 million doses of smallpox vaccine in the national stockpile. We don't have anywhere close to that in anthrax. Why not, if that's the most likely threat?

Secretary Chertoff: Well, putting aside -- as you know, there's work being done on trying to come up with a better and better vaccine for anthrax. The good news if there is about anthrax is, it's treatable if you catch it quickly. So a critical part of the strategy, if we don't have the capability to vaccinate people in advance, and part of that depends on warning, is the ability to make sure people have the medicine that would address the anthrax and they can get it quickly. You know, it's an antibiotic, or Cipro. And that's a distribution problem.

That raises the question, if everybody had a kit in their home, or almost everybody had a kit in their home and it had the remedies that you need and you could give them a direction, okay, take it, and if you knew enough about the way in which the illness was moving to be able to identify areas in the country where people should start to take it maybe prophylactically, you would take some of the hay off the haystack. Some of this is a research problem, some of it is a distribution problem. And, of course, the more precise your intelligence and the better you know what the footprint is that you're dealing with, the easier it is to respond, because you can sculpt your response to what the actual problem is.

Moderator: Mr. Secretary, thank you so much for an enlightening and fitting end to a fascinating discussion. We really appreciate your being here.

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