



## Case Western Reserve Journal of International Law

---

Volume 38  
Issue 3 2006-2007

---

2007

# Simulation: From Three Days after Diagnosis Onward

Amos Guiora

Carl Adrianopoli

Charles J. Couch

Leah C. Dorman

*false*

Follow this and additional works at: <https://scholarlycommons.law.case.edu/jil>

 Part of the [International Law Commons](#)

---

### Recommended Citation

Amos Guiora, Carl Adrianopoli, Charles J. Couch, and Leah C. Dorman, *Simulation: From Three Days after Diagnosis Onward*, 38 Case W. Res. J. Int'l L. 539 (2007)

Available at: <https://scholarlycommons.law.case.edu/jil/vol38/iss3/5>

This Transcript is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Journal of International Law by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

**SYMPOSIUM:  
“THE FIFTH PLAGUE” BIOTERRORISM CONFERENCE\***

**SIMULATION:  
FROM THREE DAYS AFTER DIAGNOSIS ONWARD**

*On March 31, 2006, the Case Western Reserve Journal of International Law held a public symposium on the response mechanisms to threats of bioterrorism in the United States and Canada. Participants in this simulation, who included local, state, federal, and international officials, were asked to “role-play” their response to a hypothetical agricultural-based attack. This portion of the discussion focuses on the role of the media in the early days of a bioterrorist threat. The speakers’ remarks have been edited for length.*

**MODERATOR:**

**Amos Guiora, J.D.**, Professor of Law, Case Western Reserve University School of Law; Director, Institute for Global Security Law and Policy.

**PANELISTS:**

**Carl Adrianopoli**, Emergency Coordinator for Region V, National Disaster Medical System, Department of Homeland Security

**Charles J. Couch**, Chief of Public Affairs, Ohio Emergency Management Agency.

**Leah C. Dorman, D.V.M.**, Veterinary Medical Officer, Ohio Department of Agriculture, Division of Animal Industry.

**William A. Hopper, Jr., J.D.**, Chief Legal Counsel to the Director of the Ohio Department of Agriculture.

**Josh Meyer**, Newspaper Journalist, *Los Angeles Times*.

**Tom O’Hara**, Managing Editor, *Cleveland Plain Dealer*.

**Daniel A. Polster**, United States District Court Judge, Northern District of Ohio

**Theodore R. Wasky**, Special Agent, Federal Bureau of Investigation

**Melanie Wilt**, Public Information Officer, Ohio Department of Agriculture.

**John Yarish, Jr.**, Farm Owner and Operator, Grafton, Ohio.

**TRANSCRIPT:**

---

\* Sponsored by the Frederick K. Cox International Law Center, co-sponsored by the Institute for Global Security Law and Policy and the Law-Medicine Center.

PROF. GUIORA: [Continuing the hypothetical foot-and-mouth contamination exercise] Media reports locally and nationally indicate that this may be a new strain of foot-and-mouth disease, one that actually does infect humans. Let us begin with the quarantine. . . . How large of an area are we going to quarantine? How are we going to enforce it? And then, back to the legal questions, how do we enforce it legally? How do we enforce it practically? Dr. Dorman, [do] you want to begin?

DR. DORMAN: So what you have just told me is that we now have a new strain of foot-and-mouth disease that affects humans?

PROF. GUIORA: May affect.

DR. DORMAN: Oh, may affect. Because I am [with the] Department of Agriculture that does not change what I do. But it certainly may change [the players involved]

\* \* \* \*

DR. DORMAN: The Ohio Department of Health [and the] CDC . . . would have a larger involvement if this was a potential zoonotic, or animal to human, disease.

PROF. GUIORA: All right. Given that Mr. O'Hara, of the *Cleveland Plain Dealer*, how are you go to report all this?

MR. O'HARA: Well, we have already had several days' worth of extraordinarily accurate and insightful reporting in the newspapers, right?

PROF. GUIORA: We see a Pulitzer Prize on its way.

MR. O'HARA: We are not TV, and we are dealing with a large daily newspaper. So, from here, if they are saying that this is a strain that might be more dangerous than originally thought. . . . I would have had a team of [approximately] eight reporters on this story since it is a national, international, and local story all wrapped in one. We would try to determine the science of it at this point and make sure that anything we put in the newspaper would be accurate. That is what we would be striving for through this whole thing—[making] sure that we are just as absolutely precise as possible.

PROF. GUIORA: . . . Josh Meyer, *Los Angeles Times* reporter, where are we?

MR. MEYER: Well, my favorite part of this is when you say that this *may* affect humans.

PROF. GUIORA: I was looking right at you.

MR. MEYER: Yes, having covered the anthrax story, a lot of words like “may” change reporting. What I would try to do is call a broad spectrum of agencies and try to “deconflict” all of the conflicting statements that they are going to [make]. Law enforcement people will not be able to say anything, medical people will not be able to say anything, and the little bit of information they can provide will probably be conflicting. So we will just try to sort all of that out. It is almost impossible to figure out what is accurate at this stage. I know that is not very comforting.

PROF. GUIORA: In terms of trying to put together this jigsaw puzzle, what kind of federal agencies would you work with?

MR. MEYER: Well, I work in Washington. I would call the FBI; I would call Homeland Security, obviously.

PROF. GUIORA: Wait a minute. Stop right there. To your left is Agent Ted Wasky, of the FBI, conveniently here.

AGENT WASKY: We would probably not be involved at all in this thing until it actually is connected to a law enforcement issue. Although we would be working with the fusion center out of the State of Ohio [to evaluate] this potential outbreak. . . . Our concern, of course, is preventing a terrorist attack. But with the facts that we have right now, it is a health issue.

PROF. GUIORA: Mr. O’Hara, Mr. Meyer, there are two PIOs (Public Information Officers), Ms. Wilt and Mr. Couch, how would you approach them? What kind of information would you want as you are putting together [this] . . . jigsaw puzzle?

MR. O’HARA: Well, . . . I love PIOs, [but] there are good ones and there are bad ones.

PROF. GUIORA: We have two great ones here.

MR. O’HARA: Okay. Because really good ones understand that, if you have a complex scientific story and you are dealing with the newspaper,

as opposed to TV, a blogger, or some lunatic, that they [ought to] . . . get you in touch with the person who actually has the information you are seeking.

A good PIO will eventually realize that if it is complex and he does not know the answer but he knows who does, he will put the newspaper in touch with that person. That is what I am assuming these people will do for the *Plain Dealer* in this instance.

MR. MEYER: That is because he is an editor. He might be able to get them to do that. I have never been able to get PIOs to put me in touch with the people that know more. I usually talk to the PIOs—and he is right, there are some that are very good and some that are not—but then I immediately circumvent them and go to the people that I think are going to know the information.

PROF. GUIORA: Ms. Wilt?

MS. WILT: I think it is going to depend. I have to consider reporters and editors my friends because they are the ones who [disseminate] the information that I need to get out. They have the ink—I am not going to pick a fight with somebody who buys ink by the barrel. . . . I consider them my partners in getting this information out.

At this point, it depends on whether we are in crisis mode, or emergency response mode, or if we are in day-to-day operations mode. If we are in day-to-day operations mode and one of these men wants to talk to Dr. Dorman about foot-and-mouth disease that is typically not a problem. But when we are in emergency response mode, then they have many responsibilities and their primary job is to respond to that incident. My primary job is to work with reporters. So, [although] Mr. Meyer would rather talk to a technical person, I have to make it my job to get the information to them if the technical people are too busy doing the jobs that the Department of Agriculture has hired them to do.

PROF. GUIORA: Judge Polster, let us say the quarantine is not intrastate but becomes an interstate question. What would be the relevant law and how would you respond if some kind of an action came before you as a Federal District Court Judge?

JUDGE POLSTER: Well, I have never had one like this, but I assume it would come up if some government authority demanded that a farmer destroy a large portion of his herd. The farmer can say “I do not want to do it” or “I will only do it if you pay for it.” . . . I [think] I would have to treat it as a public taking, an eminent domain [issue], and

determine what the equities are and how they should balance.

PROF. GUIORA: What would be the criteria . . . standards that you . . . would look at?

JUDGE POLSTER: Well, it seems to me that already infected livestock is the responsibility of the farmer. Obviously, those animals have to be destroyed and there is not a public taking. Those animals got sick—they have to be destroyed. The issue would be if the government authorities say it is essential to destroy healthy livestock showing no signs of lesions whatsoever, because of the fear that they are infected and if we do not destroy them, they are going to go out and graze here and there and soon we will have a pandemic. That is where I think the farmer might have some equities and there may be a basis for compensation for those animals. But, as I said, I have never had a case like this.

PROF. GUIORA: Mr. Adrianopoli, where would FEMA be in all of this once we have gone national?

MR. ADRIANOPOLI: I think at this stage FEMA would be moving a number of assets. . . . The first team that was on rotation would probably be coming out here and then, shortly thereafter, [other teams], in fives, would probably come and support that team. Those are the veterinary medical assistance teams, and the level of what they would be doing would be set by the State Department of Agriculture, by the vets here, and the Emergency Vet Association, [depending on] what they needed. We would not come and freelance; we would come and help meet the goals and objectives that the state had formed, and was forming, in response to the action.

FEMA would also certainly, at that point, open up ESF-11, which is the Department of Agriculture, and those folks would be [taking a similar course of action]. The rest of the federal family that would be involved, of course, are ESF-10, the EPA would be here for hazardous materials—primarily for waste removal—Department of Transportation, ESF-1—that we mentioned earlier—would support you with transportation. . . , and ESF-8, which is health and medical. The veterinary medical assistance teams would come under that piece.

But, if there were a [possibility] that this was going to affect people, then it would all depend. [If it was], we would alert the teams [that are] on-call. In other words, the medical assistance teams for humans, and gauged on the level of the threat—the strength of it—we would certainly err in the direction of sending

teams out immediately. We have no reason to hold the assets back. In Katrina we were down there three days ahead of time—I am not bragging, because we were apparently the only ones that were there. We would try to get people here. What would they do? Our teams would come and help [meet] the state and the local needs. Probably rotating in hospital shifts at ERs, doing things like that if there was a human threat involved. It would be a shock to us all, but . . . everything that is new is a shock.

We would work through the county operations center. That is a critical piece for FEMA. FEMA would get somebody out there very quickly. It always does because that is where the ground truth is; where you find out what is happening. If there were a health operation center or an EOC (Emergency Operations Center) for the Health Department we would drop into that. We would probably drop into the Health Department anyway to make sure that we had all the pieces of information. We would send people to the state EOC to coordinate with all the other federal and state agencies that would be flocking there. Then there is a big federal piece . . . I do not think all the fifteen pieces of the federal family would be there, but for something like this . . . [most] of them would probably be there—maybe all fifteen.

PROF. GUIORA: Let us stop there . . . for just a second, I will come back to this . . . Judge Polster, I want to go back to you for a different question—Interstate Commerce. If it goes from Ohio to Pennsylvania, for instance, how do you foresee, [for example], legally . . . closing interstate highways? Let us go in the other direction also, if we were to go to Indiana. It starts with Mr. Yarish in the morning. We went from his farm to a local, then a state, and now we are at a national level. We are going to start addressing issues, such as Interstate Commerce. How do we start closing turnpikes, or start closing the way from Ohio to Pennsylvania? What would be the role of the federal judiciary in this?

JUDGE POLSTER: I am not sure there is one. I do not think I have any jurisdiction over the Ohio Turnpike or I-90 or I-80. I think the Ohio Turnpike Authority has [authority] over the Turnpike, and . . . Public Transportation [probably has authority] over I-90. So if safety authorities shut down a highway and say “Hey, folks in Ohio have to stay in Ohio,” I think that is it.

Now, if some aggrieved citizen challenges . . . I do not think you have this automatic right to travel. Above and apart from anything else if there is a safety threat, you have to stay where you are.

PROF. GUIORA: Ms. Little, what would be the take of the State of Ohio on this in terms of The Office of the Attorney General?

MS. LITTLE: That would be . . . [what] the Governor's executive order mandated, in coordination, as best we could, with all of the supporting agencies.

MS. WILT: Are we talking about people or animals at this point?

MS. LITTLE: We can be talking about either right now.

PROF. GUIORA: Talking about either. I do not know if animals use the Turnpike.

MS. WILT: I mean transportation.

PROF. GUIORA: Transportation. Let us begin with people. Ms. Little is saying that the directive from the Office of the Governor would [order] that people cannot now travel on the Turnpike, correct?

MS. LITTLE: [Only] if we have the goods, the scientific back-up for that. Nobody does this stuff in a vacuum. We would be working with all of the folks in the Department of Agriculture, all the folks in the Department of Health, and then, hopefully, the folks in Transportation and all of law enforcement. You can, as we all know, write anything you want on a piece of paper, but it is only as good as the first person who goes to Pennsylvania.

MS. WILT: . . . The second that a human contracts a disease we are no longer the lead agency. The Department of Health under their emergency support function becomes the lead. So we are still conducting the business that we do, but we have become a support agency.

PROF. GUIORA: Mr. Hopper?

MR. HOPPER: I was just going to say, I agree with the judge with respect to the lines of authority. I think he is right on. There is a line of cases, *Chemical Waste Management v. Hunt*,<sup>1</sup> and it generally held that states maintain, through their general police powers, the authority to

---

<sup>1</sup> 504 U.S. 334 (1992).



regulate matters of legitimate local concern even though interstate commerce may be affected. I think that line of cases would buttress the position of the judge that, in those situations, the state can control certain aspects of interstate commerce within the rule of law.

PROF. GUIORA: Mr. Couch, from a PIO perspective what would your take be in all this? How would you go about addressing whomever it be, Mr. Meyer, Mr. O'Hara, other reporters . . . ?

MR. COUCH: Well, I think Melanie [Wilt] answered that question. The only thing I would add is that we would need to [schedule] press conferences so that the experts could be available. . . . That way we would meet the needs of the reporters while . . . allowing the experts to continue doing their work. So we would have press conferences, however many are needed, twice a day, once a day, whatever the situation dictates. Then, in between those times, [we would] certainly continue to put out information and talk directly with the reporters.

PROF. GUIORA: Proactively?

MR. COUCH: Proactively.

PROF. GUIORA: Mr. Meyer?

MR. MEYER: Hopefully you guys will [not] do what they did in New Orleans after Katrina, which is have dueling command posts for the state and federal officials, [it] really confuse[s] things.

In my experience, . . . if you tell people they can not travel, and that there is a potential epidemic out there, nobody is going to listen to you. When you tell people that they can not do something, they are immediately going to think that that is what they should do and they are all going to hit the highway . . . and you would have to bring in the National Guard to stop them. In fact, [I think] that is what happened in Dark Winter, the tabletop exercise with smallpox. I think that it got so bad that the other states around the state where they had the epidemic . . . closed their borders so that nobody could get into their state. So it will not be as orderly as people hope it would be.

MS. WILT: May I add something? An animal disease incident is quite a bit different than a human disease incident because we have the ability to quarantine animals. They are not going anywhere. We can depopulate. We can euthanize.

\* \* \* \*

MS. WILT: We cannot do this with people.

MR. MEYER: Yes, but they said on the news that it may affect humans, so you are off to the races.

MS. WILT: So that is the truth?

MR. MEYER: Well, people will believe it.

PROF. GUIORA: Mr. Yarish, back to you. . . . Here they are talking about your animals, your livelihood. How are you going to proceed? Judge Polster suggested maybe there is a way for you to have some form of compensation. What would satisfy you?

MR. YARISH: Well, it is like anything else in life. It is going to be a loss, and you are just going to have to deal with it on a daily basis. [As] I said before, I have had drought problems . . . if it is bad enough, the government, yes, will help us out. If not, you are basically on your own.

I had an incident, [many] years [ago], with a [bovine] disease . . . called Johne's. . . . [The cow's] intestine gets much thicker than normal, it gets like leather. They can eat but they do not gain anything from it. They get sick and die. So I called my veterinarian and he said that he only heard of this disease . . . when he went to school. So, . . . we took samples down to Reynoldsburg, Ohio, they ran all kinds of tests on them, came back and checked all the cows. I had to get rid of most of my cows [and] . . . borrow money [to] start over again. It was just something that I had to do to exist. It is a completely different disease, but it still [nearly] wiped me out. There is a lot of [Johne's Disease] around now, but since I was one of the [first to deal] . . . with it, they have found it and are working on it, and they are slowly catching up. So, farmers can at least survive with it [now].

PROF. GUIORA: Judge Polster, we hear from Mr. Yarish that . . . he may be compensated, but I would say perhaps not adequately compensated. Is there some kind of a remedy for these kinds of situations where people are literally being wiped out because of a disease?

JUDGE POLSTER: Well, I assume that some farmers have insurance or there may be a government farm subsidy program.

\* \* \* \*

MS. WILT: Some do.

MR. YARISH: The only thing would be if they declared a disaster and go that route. But just to insure cows, you might as well forget it.

JUDGE POLSTER: I am just saying if it [got] to the point that a government authority would order Mr. Yarish or another farmer to destroy apparently healthy animals as a preventive [measure] that might be a government taking of private property for public purpose and compensation could be ordered. As opposed to . . . sick animals [that] have to be destroyed and there is nothing anyone can do about it. [As] I said, I have never had a case like that, but looking at the equities, it sounds to me like taking private property for public purpose, and normally when that is done the government compensates the private property owner.

PROF. GUIORA: Doctor, is there anything you want to add?

DR. DORMAN: Yes, the USDA plays a large role in that. Unfortunately, the USDA is not sitting at this table today. That is something that we do on a routine basis. Part of my job, is to remove animals—potentially diseased animals—from flocks. They are federally indemnified, meaning those owners are paid for those animals.

I cannot speak for USDA and say, “Oh, yes, definitely the USDA is going to pay for every one of your animals.” I cannot say that, because the USDA is not sitting at this table, but I need you to understand that USDA plays a very large role in that.

PROF. GUIORA: Mr. O’Hara, how would you go about framing this issue from the journalistic perspective? . . .

\* \* \* \*

PROF. GUIORA: How do you phrase or frame the issue? What does the reader who buys tomorrow morning’s *Plain Dealer* [read]?

MR. O’HARA: Just the latest development that the disease may affect . .

PROF. GUIORA: And what Judge Polster is telling you, that Mr. Yarish may not be adequately compensated?

MR. O'HARA: The compensation to the farmers?

PROF. GUIORA: Right.

MR. O'HARA: Well, once again, we would just try to [contact] people who know the answers to the questions. And it sounds like you (Judge Polster) are one of them. There are people who it would seem would be experts in the field. . . . You [assign] reporters . . . : "You do the story on the cattle compensation."

I would probably have a team of reporters on the question of [whether] this thing is going to injure the citizens of Ohio? You simply gather as much information as you can before 8:00 P.M. and write a main story, have the little Q & A. We would have a Q & A box for the people who do not like to read. Put it out front and just do our best to make it as clear and digestible to even the simplest reader that they better start paying attention, that there is something serious going on here.

MR. MEYER: Lots of graphics.

MR. O'HARA: A lot of graphics, exactly.

AGENT WASKY: I have been asked to interject the following: The FBI office downtown received information that a terrorist organization is claiming credit for the foot-and-mouth disease outbreak. The group demands U.S. troops leave Iraq and claims that until that demand is met foot-and-mouth disease will be introduced at different locations across the nation.

PROF. GUIORA: How do you respond, Agent Wasky?

AGENT WASKY: Well, it does change our role in this dramatically. It is pursuant to Presidential Directive 39 that the FBI is the lead—and I want to say this is a very important word—investigative agency in a terrorism attack.<sup>2</sup> We would, of course, based on the threat of other outbreaks across the country, immediately coordinate with our headquarters in Washington D.C. through our National Joint Terrorism Task Force and tag the USDA on and all the federal agencies on it. We would develop both a national and international response to this, based on the threat from Iraq and existing terrorist organiza-

---

<sup>2</sup> Presidential Directive #39 has not been published in the Code of Federal Rules, but is available at <http://www.fas.org/irp/offdocs/pdd39.htm>.

tions, to find out what organization is claiming responsibility, what their contact is here in the United States, and what their threat is throughout the country. Locally, we would immediately contact the Department of Agriculture and the State to begin the operation of setting up investigative and consequence management responses to this.

PROF. GUIORA: How quickly do you go about doing this?

AGENT WASKY: [We would start] immediately. We have basic infrastructure within the office to initiate a command post. Through that, the bureaucratic process of declaring this within our terrorist national response plan would go into effect . . . [the] joint field office would be established . . . . A primary federal official [would be appointed] to coordinate the federal response to this incident, not just the investigative interest.

The FBI would set up a joint operations center to handle the investigative component of this. We would ask that the participant parties come into . . . the command structure. We would ask the CDC, the Department of Agriculture, state and local agencies to come in and begin the process of establishing a command and control structure from a joint operations center. [We would not] exclude any agencies. [Instead we would be] getting the command structures together and sending people forward to the counties and begin the process of [determining] exactly how this happened and where it happened . . . .

From the public information standpoint, our goal would be to become extremely proactive as far as what to [tell] the public, but not necessarily the investigative component of [the] terrorist attack. . . . The most important part here is to tell the public what to do and how to prevent further outbreaks, and ask them for their cooperation . . . through the media . . . . Our goal is, number one, protect life and property. Life first, and then conduct the investigation after that.

PROF. GUIORA: And would you also work closely with Dr. Dorman in trying to better understand the scientific perspective of all this?

AGENT WASKY: Absolutely. I am a midget against giants here as far as the science [is concerned] . . . . It is critical. That is [how] the “joint operation center” came into vogue—getting the people with that expertise in-house to make the right decisions. [The joint operation center allows us to see] how these decisions impact all the other components and to make sure we are . . . [speaking] in a unified voice where we avoid those competing interests.

\* \* \* \*

PROF. GUIORA: Dr. Dorman, . . . the moment you hear that it is potentially [a terrorist attack] . . . , how does that change your perspective . . . ?

DR. DORMAN: It really does not change what I do. Again, it changes the players that are involved and we would move to what we call a unified command system. What that means is that we would have three people—basically three incident commanders—we would have someone from the investigative side, the FBI, we would have someone with the Department of Agriculture, and then if we are talking about a disease that affects humans, . . . we would have the Department of Health. Every time one of us takes a step the other two are right there beside him so that we are communicating each of our respective duties. Nobody abdicates any jurisdiction or any duties. We all still have our duties as assigned, but we need to work in conjunction with [each other].

PROF. GUIORA: Mr. Hopper, from a legal perspective, who is the boss? We have three different agencies, FBI, public health, and the State of Ohio Department of Agriculture. Who is in charge? Who takes the lead?

MR. HOPPER: I am not sure I have an absolute answer to that. I think at that point, as Dr. Dorman pointed out, it is really a team effort. Everyone has their designated areas, and those are the areas where they have authority to [perform] and they need to [do that]. I would hope that with as much work as we have done trying to coordinate these situations that we would not have that kind of situation where one agency is attempting to get into the jurisdiction of the other.

PROF. GUIORA: What is the role of FEMA in trying to integrate . . . three different agencies in order to protect Mr. Yarish and other citizens? How is FEMA going to take it upon itself to integrate all the agencies that Agent Wasky has been referring to?

MR. ADRIANOPOLI: That is [both] an unkind and a good question. A couple weeks ago there was an institute that—I believe it is out of Harvard—presented a direction report that Congress requested through one of its subcommittees. They had mentioned that the most difficult aspect of Katrina was, in fact, the integration of the political elements at the state, local and federal levels. I think we would hope for an effective unified command, but one of the difficulties with a

unified command is the unified command makes an assumption that not just authority but competence is dispersed amongst the players. So when competence is not uniformly dispersed among the players, then issues would come up regarding a quality response. Are you reading that? I think that, in this instance, things would probably work very well, because—not to flatter the state—the state has spent a lot of money [in preparation for something like this]. This is the only state that I am aware of that has metro medical response system grants that the state has given, based on a federal grant, to each of the major cities to coordinate these same kinds of issues. That is another level of complexity, a level of coordination that the state has that most other states do not.

So I think unified command would work here, but it would be hard for us to say who is in charge. I think it would have to be a unified common sense approach. Also, the FBI would have a strong presence in that unified command because of the criminal aspects.

PROF. GUIORA: Ms. Little, [from the perspective of] the Attorney General of the State of Ohio, having three different agencies involved, is that something that is practical? Is that something that is going to enable the government . . . to best address the issue? Is there some other way to go about doing this?

MS. LITTLE: No, I think everyone has described it exactly the way it would work. The emergency operation plans at the state, county, and federal level would all have the full force and effect of law. The Attorney General is a partner. The issue that you have with the Attorney General's Office is that, largely, we are on the back end, once a lawsuit is filed, [the] judiciary would be as well. In-house legal counsels at the agencies are going to be the players on the ground actually advising the folks who are in the unified command. I do not think it would present as many problems as you might perceive if everyone understands what their role is and plays along pursuant to the plans that are drawn up and adopted.

PROF. GUIORA: Mr. Yarish, as the immediate victim of terrorism—for whatever reasons the bad guys decided to come to your farm. How did you view that? Would you begin asking yourself, "Why me?"

MR. YARISH: Probably. You would be the pick of the deck. They are going to hit a farm probably most convenient to them or maybe on their beaten path. I would imagine that would be the way that I would be picked.

AGENT WASKY: . . . This was not a naturally occurring thing. I think the judge, his view on this is that this is a terrorist attack. It is a crime. Then we have victim's rights. The farmer is now a crime victim. We have a victim-witness program, the Department of Justice and the state has . . . things to [contribute] now that . . . it is not a natural event that happened.

You saw it in the World Trade Center, how many billions of dollars went to New York City in recovery efforts. Once these things are declared, it affects the legal process [and triggers a] support process. [The threat] is extortion. It is a global extortion. . . .

PROF. GUIORA: Mr. Meyer, how do you view the issue again from a national level? The moment you know that this was an act of terrorism what are you going to be looking for?

MR. MEYER: Well, I would be preparing for pandemonium—as in the case of Katrina. I was on the ground there. After two days all the best laid plans go out the window when you are dealing with something like that, especially when you have a population that is probably, with good reason, . . . [panicking] right now.

What I would be doing is trying to gauge the threat to see how close to the scene I should be getting myself. I have been in situations like that. Where if you do not know [the magnitude of the danger] and you end up being in places where there was a serious public health threat, you would be dead and you would not be able to write your story. . . .

PROF. GUIORA: Would your editor complain if you were dead and you did not file?

MR. MEYER: He would want you to file first. But, no, seriously. I would also be trying to contact the Joint Terrorism Task Force. They are excellent and have people from a . . . [number] of agencies on board. They are also very good at not talking to reporters, but I would still be trying to find out the answers to all the questions that the government would not want me to be publicizing. For instance, whether they have any suspects, whether there is a legitimate terrorist group—the details of exactly what is going on.

AGENT WASKY: Conversely, it is very important and we have learned the lessons from Katrina . . . [about] not feeding . . . [the press]. From a law enforcement side, when you do not feed the beast they are going to go out and get fed somewhere else.



PROF. GUIORA: The beast being these two reporters?

AGENT WASKY: That is right. From our perspective it would be very important to tell the media where our media center is. . . . [we must] keep them occupied and keep feeding them information that is necessary for public safety and public health.

If we are able to answer their questions satisfactorily, they are not going to go out and answer their own questions in a [way] that raises more questions to the public. And it is very important at this point [that] you become partners with the media . . . [because] pandemonium can occur. We would set up our own anchor desk for our media and it would not be near the job, [to prevent it] getting in the way of the investigation. Media needs to be your ally in this particular instance, not questioning everything you do.

PROF. GUIORA: Ms. Wilt?

MS. WILT: Well, one of the things that we would be working with the reporters on is [panic control]. As Mr. Meyer mentioned, people might be [panicking] at this point. They should only be [panicking] if there is a reason to be [panicking]. There is a responsibility that we have to work together to make sure that if there are assurances that we can give people, they are getting out there. So, one of [our] roles is to make sure that [every]body's fears are [addressed].

People respond very well when they are scared. People act responsibly when their fears have been elevated. There is a model that we use in public relations that if you elevate people's fears, they will act in order to protect themselves. So if you are just in normal mode, . . . people are not thinking well. [They are thinking]: "I need to protect myself from foot and mouth disease." But if you raise people's fears to a reasonable level, they will . . . get themselves prepared to deal with something. [Nevertheless], there is a fine line between fear and terror; and that next step to being terrified throws [everything] out the window.

PROF. GUIORA: Mr. Meyer, you wanted to add something?

MR. MEYER: Yes, I just wanted to say that what Agent Wasky said made a lot of sense; I agree with that. I just wanted to give the impression that there are many times when the media is asked to withhold information and that we do withhold information about things like that for many reasons. If they are about to arrest a group of suspects in a case like this, I would never [release] that information. So there is a collaborative relationship there, and I would be trying to do

whatever I could to keep that going and nurture that, as opposed to the other way around.

The best thing that the FBI or other agencies can do in a situation like this is also tell the print reporters all of the things that the TV reporters are reporting that is not true so that we can [sort everything out]. I notice that Ohio has a public information and rumor control group. I wish there was one of those in Washington.

PROF. GUIORA: Suppose that Agent Wasky says “Please do not print this?”

MR. MEYER: Right.

PROF. GUIORA: How are you going to be competing against bloggers [and] the Internet? Mr. O’Hara and I were talking about this last night. Without being disrespectful to the print media, but maybe today you are one step—at least one step—behind modern technology, how do you go about [dealing with] that?

MR. MEYER: One step? It is maybe five or six. No, it is hard. I know that we are probably not supposed to deal with previous incidents here, but during the anthrax scare or terrorist attacks, that is a major problem. You just have to weigh each episode. I have to deal with these people [during] the next terrorist threat that goes on. So, they respect and remember when you are acting responsibly even if you take a hit in the immediate and do not get a scoop on something. But you have to—and I hate to use this expression—but you have to do it on a case-by-case basis.

MS. WILT: . . . I have just met these gentlemen . . . They work hard and we work hard to make sure that the first time that we run into each other it is not in the middle of a crisis, so that we have a relationship built, [so that] there is a [level of] trust . . . there.

[There are] some issues you go into with a “Hey, we realize this is a high-risk, low-trust situation,” but other times you have developed a relationship with that reporter . . . That [way] you are not thrown into a crisis where you have to be perfect all the time. They can take what you said and run with it, even if it may not be something that should be shared widely.

PROF. GUIORA: Mr. O’Hara?

MR. O’HARA: On this issue of withholding information, newspapers once again are different. We are the gold standard of information in America. So we will agree not to release information about a kid-

napped person. That happens all the time. We know that somebody has been kidnapped, [but do not report it]. . . . At least once or twice a year somebody in law enforcement is going to be asking you to withhold information. Then we just hold our breath. If TV blurts it out it is not like we are going to lose money or subscribers because we got scooped by Channel 10. Nobody remembers that sort of thing. So we have done the right thing and the FBI or the police [will hopefully] remember it the next time. Sometimes you do get burned, and if you get burned a couple times then you do not do it anymore. That is the other thing that the police will figure out.

PROF. GUIORA: Judge Polster, you wanted to jump in?

JUDGE POLSTER: I want to just add something. It is not in my bailiwick but it is extremely important for the professionals who are trying to manage this to . . . brief the public officials who are involved—state, federal and local—[in a timely manner], because those folks, one, have a responsibility; and, two, are likely to start making public comments quickly and maybe inaccurately and may exacerbate the problem if they are not informed.

So it is important that the professionals make it their business to—and maybe even do it in a coordinated way—accurately and timely brief and update the public officials so that they know what is going on. [They should be telling them] what to say, and what not to say so that they do not do anything to exacerbate a difficult situation.

PROF. GUIORA: Mr. Adrianopoli, you had your hand up?

MR. ADRIANOPOLI: Oh, thank you. One of the issues with the PIOs is that it is very helpful if the PIOs are extremely proactive with the press for a lot of reasons, but one in particular. I do not think we can expect the press to do all the good things that happen out there. I think the press is more concerned with potential conflicts, with health and safety issues. I think those are big stories. But the other aspect of public morale, I do not think that is going to come out—those kinds of stories—unless the PIOs push them. . . . It is not fair to expect the press to do that when they have wider, harder-hitting stories. So I think those “feel good” things that are also important have to come from the PIO’s.

PROF. GUIORA: Judge Polster, let us say for instance that Mr. O’Hara were to publish something that Agent Wasky asked him not to publish that potentially endangered American national security. How would

you see that unfolding from a legal perspective?

JUDGE POLSTER: Well, at that point it would be in the hands of the Department of Justice as to whether they chose to open a criminal investigation into someone. It would only then come to me if and when there was a prosecution.

PROF. GUIORA: And if it were to come in front of you?

JUDGE POLSTER: Right. The more interesting question is what if someone sought a prior restraint of some information that was already in the hands of the media and the media had not or would not agree not to release it? Then someone, the FBI, could conceivably come before me through the Department of Justice and ask me to issue, essentially, a prior restraint. It would probably have to be *ex parte*; we obviously would not be disclosing this in public. So again, I have never had one of those, but that is how it could come about. The Department of Justice seeking to restrain the *Plain Dealer*, the *Los Angeles Times*, whatever, from releasing some information—it is very difficult to do that. It is very difficult to get a prior restraint in our system.

PROF. GUIORA: What would your criteria be, hypothetically speaking?

JUDGE POLSTER: Hypothetically, I would want to know if release of that information would endanger people. Would it endanger lives, or would it compromise a very important criminal investigation, and balance that [with] the public right to know [the information]. [That is a] critical [right] in our country, and we guard that zealously. Generally once the media has something, they are free to print it. It is very difficult to get a prior restraint, but there are situations where they are imposed.

PROF. GUIORA: Ms. Wilt, you wanted to add something?

MS. WILT: Yes, as a general rule even when I am speaking to a reporter off the record I do not say anything that I cannot live with being printed the next day.

PROF. GUIORA: That means you do not trust reporters?

MR. MEYER: If you say it is off the record you should assume that [it is off the record].

\* \* \* \*

MR. MEYER: I zealously protect my sources. When somebody says something is off the record, I do not use it. But if somebody divulges information, even if it is off the record, they should assume that at some point it is going to end up in the information stream. The thing about national security is that the flipside of it is what if the information is a national security matter on the other side . . . . What if you have information that this foot-and-mouth disease has transmuted into a virus or a disease that can spread from human to human? All the public health agencies here, are you going to go out and tell that to the public? . . . Because if you do [announce] that you are going to create pandemonium and people are going to get in their cars and try to leave the state. So, a lot of it is how forthcoming the public health agencies are. So I guess my question to you guys while we are all at the table here is: If you found out that this had transmuted into something that is spread easily from human to human would you announce that or would you try to keep it as quite as possible just to stop pandemonium?

PROF. GUIORA: Mr. Couch, Ms. Wilt?

MS. WILT: If there were a public health threat, it would be announced.

MR. COUCH: We have a responsibility, if there is a public health threat, to say something for public safety.

JUDGE POLSTER: And presumably you [would] announce a plan for what people should do, you would not just say: "We have got rampant foot-and-mouth disease, we can not do anything."

MR. COUCH: You are all going to die.

MR. MEYER: Stay in your house.

MS. WILT: With this off the record thing, I might say something off the record to Mr. Meyer, which may lead him in a direction to go ask somebody else a question. He can get confirmation of that. That is what I am saying. So if I cannot live with it being in the paper [I will not say anything]. I may not have been the one quoted on it, but he may find another source to confirm the information.

PROF. GUIORA: Agent Wasky, [what is] your perspective in terms of the investigation?

AGENT WASKY: As I said before, protection of life is paramount. We will damage a crime scene if it means saving somebody's life. If we can prevent disease from spreading by telling the public what this can do, we are definitely going to—we will live with the consequences from that. Those priorities are very important. And yes, . . . it is more important than anything else. It is not just giving them the information, it is what they do about it—give them that guidance. That is real news and the media is always willing to help us with that. That is what we are there for. In the end, if we protect someone's life, that might be a potential witness. We do not know. Why get him in danger? . . .

PROF. GUIORA: Hypothetically speaking, could you foresee coming in front of Judge Polster and asking for prior restraint?

AGENT WASKY: In this case, no. The only way I could see [grounds for prior] restraint is if the information they would print would endanger someone's life. As he said, if we had information from a singular source, that would identify the source and this terrorist group would kill that person. Not knowing the facts, [prior restraint] would be the only way of us coming and preventing someone from giving them someone's life. [We would also have grounds for prior restraint if] that information was obtained through classified means, and that classification is of significant interest to national security. When I say national security, that means other people's lives are at risk or the technique of getting it has saved other lives and that technique [needs to remain confidential to continue to be effective]. It is not necessarily the information that . . . is classified, and that understanding is very important.

Protecting sources of information protects how we get the information . . . . We can sanitize the information in a general fashion to get it out to the public, as long as we can be assured that how we get it remains confidential, because that might save someone's life tomorrow. Osama Bin Laden, someone divulged that he was using a certain type of telephone. Classified information. Sources and methods. Not that we were able to find him, but it was how that was done that compromised a significant national security interest . . . we can not ever capture it that way anymore because it is out there. . . . [This is] why we might go to ask for a restraining order.

You saw [the role of the media] in the Valerie Plame case . . . . [It was an issue] of who gave you that information, not that the media had the information. They were stuck in the middle, not the party. . . . In this particular instance there would not be a reason not

to ask for a restraining order.

PROF. GUIORA: [There] would not be?

AGENT WASKY: Right.

MR. O'HARA: I have been dealing with attorneys keeping reporters off the stand and out of jail more in the last two or three years than I had been in the twenty-seven years before that. You know about the Valerie Plame controversy, but in Cleveland, we reported a large story about the former mayor who was probably getting bribes from a buddy of his who was imprisoned recently, Nate Gray. . . . Did you see that, Judge Polster?

JUDGE POLSTER: Yes.

MR. O'HARA: We got a whole affidavit that was under seal. Long story short, we put the whole story in the newspaper. Now there are people that are annoyed that we put it in the newspaper and [they are asking] "Where did you get it?" and "Who gave it to you?" There has been two incidents of that in the last year. There was another, a psychological evaluation of some crazy cop that we . . . obtained, and we put two paragraphs at the end of the story and now poor Mike Tobin (*Plain Dealer* reporter) may be spending time in jail. He is not going to reveal where it came from.

Then there is Judith Miller, but there are more efforts to restrict our getting information, it seems to me, than any time in my thirty years in the business.

PROF. GUIORA: More effort to restrict?

MR. O'HARA: Restrict.

MR. MEYER: It is working too. If there is another anthrax attack nobody is going to talk to reporters about it because we were all subpoenaed in the Steven Hatfield case, and we can all end up in prison.

\* \* \* \*

PROF. GUIORA: Before we open it up to questions, Mr. Yarish, coming back to you as a reader of the *Plain Dealer*. You have been a victim of terrorism, what is it that you would like to read in terms of what the FBI has investigated and in terms of the science of all this? It is ultimately you, sir, who has been the most affected person.

MR. YARISH: Well, I guess I would be the bogeyman any way you look at it because . . . [it all started on my farm]. But I would like . . . put in that I am really a nice guy. Other than that I do not know what else to say. [*applause*]

PROF. GUIORA: One last question, . . . if this is really becoming huge, would you also employ the local sheriff on a different level? How would you go about conducting your investigation?

AGENT WASKY: The local sheriff would already be involved. The police department would already be involved. . . . Our Joint Terrorism Task Force has all of those agencies involved on a daily basis . . . So all the federal agencies, the Secret Service, the Marshals, they are all going to be coming and willing to help in the end.

PROF. GUIORA: Questions? Yes, ma'am?

DR. INCH: I am Carolyn Inch, and I am with the Canadian Food Inspection Agency. . . . On the point of the joint command, one of the things I have always wondered is how do we get animals underground as fast as we can? We want to do this to control a disease because they are pumping out virus all the time. At the same time, [though], we have an agency telling us you have to preserve evidence. I have not been at a bioterrorist event to ask somebody who would have the supremacy in this decision. How would you reconcile this?

AGENT WASKY: I know . . . [what I would do], as far as evidence collection and preservation [is concerned]. Our hazardous materials response unit out of Washington D.C. would travel here to coordinate those aspects with the CDC and the Department of Agriculture. The last thing I want . . . [is for] someone to open a bag and they get sick after the consultation with the experts. That is where we come back to [the importance of a] joint operation center; it provides a unified command of those issues of safety and gets the people together. Yes, you want to get them underground, but work with the lawyers . . . [We want to be] as safe as possible; and if it is impossible [to preserve the physical evidence], we will take a photograph of it, bury it, and . . . present it in the best way we can. That blood vial will never come into the courtroom, but [we can] get a photograph in. We will litigate it later. . . . We are not going to put anybody in danger. But the most important thing is to have this unified command . . . [and] getting the experts to make the right decisions on a timely basis.



PROF. GUIORA: Professor Scharf . . . ?

PROF. SCHARF: The students that work with Prof. Guiora and I here do work for five international tribunals and also the military commission that is prosecuting al Qaeda, and a lot of the cases involve the obedience to orders defense. The general rule is that a soldier has a duty to disobey a manifestly unlawful order. . . . [L]et us assume that your superior tells you not to tell the press or to lie to the press in order to avoid hysteria, and you believe, on the other hand, that it really is necessary to get the actual story out for the public good, to protect lives and safety. What do you do? And as a follow-up, if you decide to release the info[rmation], would someone in that position be protected under the federal or state whistleblowers act?

MS. WILT: Well, I would like to answer the beginning of your question at least. We have a responsibility and one of the things I learned earlier with media relations is not to become part of the story. I do not want that story tomorrow to be about me, I do not want it to be about my director, and I do not want it to be about how my department has failed.

So part of my job, and this is not the public part of my job but internally part of my job, is if my director or my superiors are sitting around a table making policy decisions—and fortunately my director is very understanding of what the communication challenges are—if I see that they are making a terrible mistake in a policy decision, I am going to say that.

It is my responsibility to bring [the fact that they are making a mistake] to their attention. If I [think] it is an egregious mistake, and I brought that to their attention, and they still failed to listen to any warnings . . . I have the ability to quit my job.

PROF. GUIORA: Mr. Couch, do you want to add something to that?

MR. COUCH: No, I think it is absolutely true. If we, as PIOs, are within the right to put the information out, we have an ethical responsibility to put it out. We will put it out or we will find new jobs. That is just the posture we are going to take. We have a responsibility and we are going to follow through with that responsibility.

And Ms. Wilt is absolutely correct. We are not going to be part of the story. We do not want to be part of the story.

\* \* \* \*

MR. MEYER: What would you do if a reporter got to you between the time you left the meeting where they said we need to cover this up and you quit your job, what would you tell the reporter? Because you are still under your official capacity, would you go with what they told you to do, or would you . . .

MR. COUCH: No, it is a case where as soon as we realize that what we are being told to do is not ethically correct, we are out the door.

MS. WILT: It is a case of personal, individual ethics.

PROF. SCHARF: But if you quit, do you then tell the press?

MS. WILT: I guess it depends on the circumstances and what I felt the public needed to know.

PROF. SCHARF: But do not you have statutes that say you cannot release information without approval even after you have left the government?

MR. COUCH: Well, are we talking national security issues or are we talking health and safety issues?

PROF. SCHARF: I mean, let us assume again it is a health and safety issue and you have quit, but you feel very strongly that this information needs to get out. But I believe there are statutes that say if you are told not to share certain information that was given to you confidentially in your position that you cannot, once you have quit, release that information. So what do you do in that situation?

MS. WILT: Talk to the legal counsel. Hire an attorney.

MR. COUCH: Hire our own attorney.

PROF. SCHARF: That is going to take a lot of time. The clock is ticking. What do you do if you believe every second counts?

MS. WILT: I guess you would have to ask me that when I was faced with that decision. I think that is something that you would personally struggle with. At some point you either make a decision that could potentially put you in jail, about what you released, or you decide to keep it to yourself. I could not make that decision unless I was forced to.

PROF. GUIORA: Prof. Hoffman, go ahead.

PROF. HOFFMAN: This is a conference about bioterrorism preparedness and I just wanted to ask the panelists, based on everything we have done so far today, what do you think are our strengths and weaknesses in terms of bioterrorism preparedness right now?

AGENT WASKY: To me, the . . . number one [strength] is the silver-lining that has occurred since September 11th. The increased level of coordination between the medical people and law enforcement. We are talking about these things. We are here talking about the potential of this happening. You plan, you practice, and you say "what if" and . . . at least we are going to do our best to say "what if" and plan. The weaknesses I see are these competing interests. The difficulty—and I think Professor Gostin said this best—of that public and government conflict of preparation, of the health system that is owned by Corporate America, of that planning piece of if you ask somebody if you have foot-and-mouth disease how many people you can handle in a hospital, it is probably under ten. You are closing off a hospital and life goes on. How do you deal with those issues? Those thought processes are difficult for a corporation that is running a for-profit business. . . . I think they are doing the best they can, but they have significant political and corporate interests there. And the ability to get stuff very quickly—two vaccines that have to be brought in and the cost of explaining to the American public that there will be loss of life until it gets here.

MR. COUCH: One of the weaknesses is apathy or ignorance—I should not say ignorance—but a choice or decision being made to ignore what is being told to somebody. . . . For example, tornados and severe weather. How many times do we tell people if you see the lightning it is time to come off the ball field, yet they are still standing out there when the thunder . . . and the lightning is coming, and they are holding that aluminum bat in their hand playing softball for that one last inning? We can only do so much working together in partnership, putting information out, trying to educate . . . , but there is a certain responsibility on the part of the individual to take what we are saying and actually put it into practice. There are ninety-nine percent of the farmers who are doing what they should do. Unfortunately, there is the one percent that chooses to ignore what we are saying.

PROF. HILL: Yes, one thing I thought was interesting about this part of the simulation was that when Agent Wasky was given the information

that a terrorist group had claimed responsibility, everybody immediately leapt into action and there was not a lot of talk about whether or not it would be investigated—whether, in fact, a terrorist group was behind this. Maybe that is because this is called a bioterrorism simulation and you assumed you were to take it at face-value. But I am wondering how often those kinds of assumptions of responsibility turn out to be false? What do you do to investigate that? What is the judgment? . . .

AGENT WASKY: You initially have to take it seriously because that failure to act is time lost both to public safety and to the investigation. We would . . . [ask]: “Okay, who is it?” That whole investigative process would [include] the FBI along with the state and foreign partners and the military. . . . So trying to incorporate what each of the agencies would do. If we found it to be noncredible, the United States Attorney’s Office, post-September Eleventh has been much more aggressive in holding people accountable for the information that they provide. I think that is a very important piece. If people are wasting our limited resources for preventing another terrorist attack with chasing bad leads for revenge, or other motives, [then it is] very important that we hold those people as accountable as the terrorist within the framework of the law. [With] that said . . . I am very thankful that we get threat information every day. We run every single one down and when we find someone who purposely calls to mislead us—such as to use law enforcement for revenge in a divorce proceeding by saying this Arab American is a terrorist—we seek charges against that person much more aggressively than we would prior to September 11th.

MR. MEYER: Well, I think Agent Wasky just mentioned the military. I think that is one thing that we have not discussed here. Dr. Gostin, in his speech, said that [he believes] there are going to be a lot of similarities . . . , if there is a national bioterrorism outbreak, [to what happened] after Katrina; in the sense that a lot of different federal agencies, when the rubber hits the road and they actually respond, are not going to know how to interact. You can make as many plans as you want on paper, but until you have actually been there it is hard to see how confusing it is. The role of the military in a bioterrorism event I think is something . . . that you could spend a couple more days having people like this talk about. But I think that the lines of authority, who is in control of a command post, and whether there is interoperability between the agencies [are important questions]. In New Orleans after Hurricane Katrina, the police, the fire, and the State National Guard—none of them could com-

municate with each other because all their radios were on different frequencies. So there are a lot of issues in terms of how the different agencies interact with each other that I still think need [to be resolved]. This conference is a good start though.