

**AMERICAN BAR ASSOCIATION**

**HEALTH LAW SECTION**

**SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES**

**SECTION OF STATE AND LOCAL GOVERNMENT LAW**

**STANDING COMMITTEE ON LAW AND NATIONAL SECURITY**

**SECTION OF SCIENCE & TECHNOLOGY LAW**

**SPECIAL COMMITTEE ON BIOETHICS AND THE LAW**

**SECTION ON ADMINISTRATIVE LAW AND PRACTICE**

**REPORT TO THE HOUSE OF DELEGATES**

**RECOMMENDATION**

1 RESOLVED, That the American Bar Association urges its members and lawyers throughout the  
2 United States to improve their knowledge of public health law in order to better serve their  
3 clients and the public, who will be affected by new public health threats such as bioterrorism and  
4 infectious disease outbreaks.

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6 FURTHER RESOLVED, That the American Bar Association encourages state, territorial and  
7 local bar associations to work with public health authorities to develop programs that train  
8 lawyers to provide pro bono legal assistance to public health authorities confronting biological  
9 and other public health emergencies.

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11 FURTHER RESOLVED, That the American Bar Association encourages its members and  
12 lawyers throughout the United States to become involved in assessing and improving the public  
13 health legal preparedness of the communities in which they live and work and ensuring that  
14 public health measures are protective of civil and constitutional rights.

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**REPORT**  
**Public Health Law Awareness Among American Bar Association Members**

**Background**

Public health and the law have long been intertwined.<sup>1</sup> Most fundamentally, laws establish the authority of public health agencies and officers. Perhaps more importantly, “public health protection often requires the positive intervention of law”.<sup>2</sup> Laws may proscribe activities thought to threaten public health (*e.g.*, operation of unsanitary restaurant establishments, public smoking) and encourage those believed to benefit public health (*e.g.*, marine quarantines, automobile seat belt use).<sup>3</sup> Public health crises, such as the HIV/AIDS epidemic in the 1980s and 1990s, can demonstrate the inability of existing statutory authority to address emerging public health threats,<sup>4</sup> while simultaneously forcing legal decision makers to adapt existing inadequate laws to protect the public, as was done in New York City by closing the public bathhouses to contain the spread of HIV/AIDS.<sup>5</sup> Litigation has been used as a tool to resolve public health problems, such as tobacco marketing and handgun distribution.<sup>6</sup> Notably, public health practices, including quarantine and isolation, mandatory vaccination, and reporting of confidential medical information, illustrate two of the most debated issues in American jurisprudence – federalism and individual rights – at work<sup>7</sup>

Despite this interrelationship and repeated calls for the use of professional education to integrate law and public health,<sup>8</sup> few lawyers, judges, public health agents, and public health advisors have any training in public health law. Public health law is absent as a distinct course from the typical law school curriculum and is rarely a topic of continuing legal education programs.<sup>9</sup> There is very little public health law education for judges, even as issues of public health science and public health law are increasingly represented on court docketscan’t prove the negative.

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<sup>1</sup> See Wendy E. Parmet, *Introduction: The Interdependency of Law and Public Health to First Edition of* RICHARD A. GOODMAN ET AL., *LAW IN PUBLIC HEALTH PRACTICE*, at xxv-xxxiii (2003).

<sup>2</sup> *Id.*, at xxvii.

<sup>3</sup> *See id.*

<sup>4</sup> See Lawrence O. Gostin, *The Future of Communicable Disease Control*, 64 (SUPP. 1) MILBANK Q. 79 (1986).

<sup>5</sup> *New York v. St. Mark’s Baths*, 497 N.Y.S.2d 979 (N.Y. Sup. Ct. 1986), *aff’d* 122 A.D.2d 747 (N.Y. App. Div. 1986).

<sup>6</sup> See Parmet, *supra* note 2, at xxix. Litigation has also historically been used to hinder controversial public health legislation, such as workplace regulations. See, *e.g.*, *Lochner v. New York*, 198 U.S. 45 (1905) (holding New York statute regulating working hours of bakers unconstitutional interference with freedom of contract).

<sup>7</sup> See Parmet, *supra* note 2, at xxx. See also Wendy E. Parmet & Anthony Robbins, *Public Health Literacy for Lawyers*, 31 J. L. MED. & ETHICS 701, 702-03 (2003) (“To understand not only public health, but the law, students should grasp the public health context in which key legal doctrines have developed. Students will then recognize public health issues when they arise, placing them in a fuller and familiar context of similar issues they have studied. They will appreciate more fully the reasons for and implications of the particular doctrines they are mastering.”).

<sup>8</sup> INSTITUTE OF MEDICINE, *WHO WILL KEEP THE PUBLIC HEALTHY? EDUCATING PUBLIC HEALTH PROFESSIONALS FOR THE 21<sup>ST</sup> CENTURY* (2003).

<sup>9</sup> Richard A. Goodman *et al.*, *Other Branches of Science are Necessary to Form a Lawyer: Teaching Public Health Law in Law Schools*, 30 J. L. MED. & ETHICS 298 (2002) (noting that only 51 of 183 law schools accredited by the Association of American Law Schools (AALS) list one or more courses relevant to public health in their catalogs).

Recent events have highlighted the need to address as an important issue in the national agenda. The attacks of September 11, 2001, and subsequent anthrax mailings revealed not only the vulnerability of the American public health infrastructure, but the plethora of unanswered legal questions surrounding the use of various national security and community protection measures in the event of terrorism or acts of war. The 2003 outbreak of Severe Acute Respiratory Syndrome (SARS) further underscored the need to update or legislate new public health laws to manage disease outbreak or epidemics.

The federal government responded with dramatic increases in federal funding to improve public health preparedness. For example, the CDC terrorism preparedness grant program received \$918 million in fiscal year 2002 and \$870 million in fiscal year 2003 for disbursement to state grantees.<sup>10</sup> Public health law programs received modest federal funding. For example, two CDC Collaborating Centers for Public Health Law were funded in fiscal year 2003: the Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities and the Center for Public Health Law Partnerships at the Institute for Bioethics, Health Policy and Law in the University of Louisville School of Medicine.<sup>11</sup>

These public health law programs are specifically intended to improve public health legal preparedness, which is defined as "attainment by a public health system of legal benchmarks essential to preparedness of the public health system."<sup>12</sup> In order for a system to qualify as "prepared," it must meet predetermined benchmarks, or standards, in each of four core areas: (1) laws and legal authorities relevant to public health; (2) competency of public health and other professionals in accessing, understanding, and applying the relevant laws; (3) information available to apply the relevant laws; and (4) cross-jurisdictional and cross-sectoral coordination of public health agents.<sup>13</sup>

Compliance with the above benchmarks necessitates members of a given public health system to review and assess relevant "law and legal authorities," including treaties, statutes, ordinances, judicial rulings, executive orders, agency policies, memoranda of understanding, and mutual aid agreements.<sup>14</sup> Thus, in view of the ongoing threats of bioterrorism and emerging infectious diseases, judges, prosecutors, public health lawyers, and public health agents must consider issues of isolation, quarantine, medical surveillance, due process, privacy, individual rights, and federalism.

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<sup>10</sup> See Anthony D. Moulton *et al.*, *What is Public Health Legal Preparedness?*, 31 J. L. MED. & ETHICS 672, 680 (2003); Press Release, United States Dept. of Health & Human Services, HHS Announces Bioterrorism Aid for States, Including Special Opportunity for Advance Funding (March 20, 2003) (on file with author) (noting HHS received federal funds in the amount of \$3.5 billion for bioterrorism preparedness in fiscal year 2003, including \$870 million to enhance state public health agencies through the cited CDC terrorism preparedness program and \$498 million to support hospital preparedness for mass casualty events).

<sup>11</sup> See Press Release, University of Louisville, CDC Designates U of L Center for Public Health Law (October 6, 2003) (on file with author).

<sup>12</sup> Moulton *et al.*, *supra* note 11, at 674. A "public health system" may be a community, state, region, or nation. See *id.*

<sup>13</sup> See *id.*

<sup>14</sup> See *id.*

Although the current discourse on public health law centers upon legal issues implicated by acts of terrorism, infectious disease outbreaks, and natural disasters (*i.e.*, public health emergencies), many of the statutes enacted and judicial decisions rendered will likely have much broader precedential effect. In the future, these laws may be relied upon to formulate decisions and policies for a host of public health issues, such as tobacco use, HIV/AIDS, domestic violence, motor vehicle-related injuries, obesity, product liability, and genetic privacy.<sup>15</sup> These broader applications should be considered during current public health legal preparedness efforts and, furthermore, are best considered by persons of various disciplines, including a cross-section of the legal profession.

### **Public Health Law and the Private Practitioner**

While the public health legal preparedness standards discussed above are clearly drafted to apply to public health entities and the lawyers representing them, they also provide lawyers in the private sector a means of assessing whether their practices are equipped to best serve their clients with respect to issues relating to and affected by public health law. In fact, current public health legal preparedness efforts will impact many individuals and entities that currently consider themselves entirely unrelated to the field of public health. Given these far-reaching effects, private sector lawyers should also increase their knowledge of public health law in order to best serve their clients.<sup>16</sup>

The following examples demonstrate the relevance of current public health legal preparedness efforts to private sector lawyers engaged in various fields of practice:

- *Counsel to hospitals:* In the event of a specific public health emergency, hospitals may find it necessary to operate exclusively as a designated facility for the treatment of injured or infectious persons. Such conditions would force designated hospitals to divert patients presenting with non-designated illnesses and impose tremendous burdens on the hospital system. How will hospital designations during a public health emergency affect hospitals' obligations pursuant to the Emergency Medical Treatment and Labor Act (EMTALA)<sup>17</sup>, which entitles all patients requesting treatment in a hospital emergency department to an appropriate medical screening examination and, upon determination that an emergency medical condition exists, appropriate stabilization treatment or a medically appropriate transfer? Will public health emergencies justify modification of hospitals' EMTALA duties?<sup>18</sup> In the event a hospital is designated as an isolation and/or quarantine facility for infectious

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<sup>15</sup> *Cf. id.*, at 672 (noting that strengthening public health legal preparedness for acute threats such as infectious disease outbreaks, natural disasters, and terrorism, "if approached correctly, will have valuable benefits for public health legal preparedness across the full spectrum of public health issues.").

<sup>16</sup> See Moulton *et al.*, *supra* note 11, at 677 (Table 1).

<sup>17</sup> 42 U.S.C. §1395dd (2003).

<sup>18</sup> See Sara Rosenbaum & Brian Kamoie, *National Challenges in Population Health: Finding a Way Through the Hospital Door: The Role of EMTALA in Public Health Emergencies*, 31 J. L. MED. & ETHICS 590 (2003).

diseases, will the hospital be compensated for the costs associated with treatment of infected persons and lost revenue from forced diversions?<sup>19</sup> If so, by whom?

- *Counsel to managed care organizations:* A public health emergency, such as a global influenza pandemic or bioterrorism event, may necessitate treatment of millions of Americans, in addition to military and medical personnel. Will managed care contracts cover treatment for contractees necessitated by public health emergencies?<sup>20</sup> Will managed care organizations be obligated to reimburse in-patient costs associated with isolation and quarantine orders? Will treatment at a government-designated facility be considered out-of-network care and financed accordingly?<sup>21</sup> Will managed care contracts cover government-mandated immunizations for contractees, as may become necessary for smallpox?<sup>22</sup> Who will make decisions regarding “medically necessary” treatment?<sup>23</sup> Will managed care organizations be able to recover the financial losses caused by the enormous surge of healthcare services?
- *Corporate insurers, corporate counsel, and employment law practitioners:* In the event of a bioterrorism event or an infectious disease outbreak, isolation and quarantine orders may necessitate employee absences. Are employees subject to quarantine and isolation orders entitled to workers’ compensation?<sup>24</sup> Are employers entitled to discharge employees for absences attributable to isolation and quarantine orders?<sup>25</sup> Are employees eligible for leave without pay pursuant to the Family and Medical Leave Act (FMLA)<sup>26</sup> when complying with isolation and quarantine orders?<sup>27</sup> Does the general duty clause of the Occupational Safety and Health (OSH) Act<sup>28</sup> obligate employers to respect an employee’s refusal to accept work assignments based on reasonable fears of hazardous work conditions, such as SARS exposure?<sup>29</sup>
  - *Counsel to corporations manufacturing, distributing, and selling products that may be used in terrorist acts:* Corporations that manufacture, distribute, and sell products used in terrorist attacks, such as chemicals and fertilizers, may face potential liability in the event of terrorist attacks utilizing their products.<sup>30</sup> Following the 1993 World Trade Center and Oklahoma City bombings, victims sued the manufacturers, distributors,

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<sup>19</sup> See INSTITUTE FOR BIOETHICS, HEALTH POLICY & LAW, UNIVERSITY OF LOUISVILLE, QUARANTINE AND ISOLATION: LESSONS LEARNED FROM SARS – A REPORT TO THE CENTERS FOR DISEASE CONTROL AND PREVENTION 134-35 (2003).

<sup>20</sup> See Sara Rosenbaum *et al.* *New Models for Prevention Systems: Public Health Emergencies and the Public Health/Managed Care Challenge*, 30 J. L. MED. & ETHICS 63, 64-66 (2002).

<sup>21</sup> See *id.*, at 66.

<sup>22</sup> See *id.*, at 65.

<sup>23</sup> See *id.*, at 66.

<sup>24</sup> See INSTITUTE FOR BIOETHICS, HEALTH POLICY AND LAW, *supra* note 20, at 124-25.

<sup>25</sup> See *id.*, at 122-23.

<sup>26</sup> 29 U.S.C. §§ 2601-2654 (2003).

<sup>27</sup> See INSTITUTE FOR BIOETHICS, HEALTH POLICY AND LAW, *supra* note 20, at 123.

<sup>28</sup> 29 U.S.C. §§ 651-678 (2003).

<sup>29</sup> See INSTITUTE FOR BIOETHICS, HEALTH POLICY AND LAW, *supra* note 20, at 121-22.

<sup>30</sup> See Randolph C. Visser *et al.*, *Volatile Combinations: The Events of September 11 May Have Increased the Exposure of Chemical Companies to Lawsuits Based on the Use of Their Products in Terrorist Acts*, 25 L.A. LAWYER 37 (2002).

and sellers of the fertilizer and chemical, respectively, used by the perpetrators.<sup>31</sup> Although the court in each of these lawsuits held that the criminal acts of the perpetrators constituted a supervening cause that relieved the defendants of potential liability, lawsuits filed post-September 11, 2001 may yield different outcomes. Arguably, the events of September 11, 2001, the subsequent anthrax mailings, heightened United States military activity in the Middle East, recent terrorist attacks in Bali, Iraq, and Spain, and the flurry of domestic public health preparedness activities increase the foreseeability of future, “intervening” terrorist acts.<sup>32</sup> Further, the post-September 11, 2001 promulgation of industry guidelines recommending extensive chemical site security may alter both the foreseeability and reasonableness analyses in civil lawsuits involving products stolen from manufacturing facilities and subsequently used in terrorist acts.<sup>33</sup> In view of this potential liability, counsel for corporations selling certain products may desire to inquire into the liability exposure given unintended but foreseeable uses of their products and develop legally appropriate defense mechanisms which don’t violate civil rights of purchasers

- *Counsel to units and entities involved in emergency response:* In the event of a public health emergency, public and private emergency response entities may be called upon to undertake actions exposing them to legal liability, such as restraining individual liberty and exercising the government’s power of eminent domain.<sup>34</sup> Given this risk, emergency response entities must work closely with their counsel to prepare and analyze plans for public health emergencies.<sup>35</sup> Additionally, counsel to emergency response entities may be asked to draft and analyze mutual aid agreements (MAAs) and memoranda of understanding (MOUs) between various government and private entities, addressing issues such as command hierarchies, legal liability for the actions of responders, and financial responsibility for equipment damage, medical expenses, and compensation for injured responders.<sup>36</sup>
- *Intellectual property counsel to corporations and individuals owning patents for therapeutic substances required in a bioterrorism or national emergency event:* Pursuant to the World Trade Organization’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), member states may invoke compulsory licenses

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<sup>31</sup> See *Port Authority of New York & New Jersey v. Arcadia Corp.*, 189 F.3d 305 (3d Cir. 1999) (alleging negligence, victims of the 1993 World Trade Center bombing brought suit against the manufacturers, distributors, and sellers of the fertilizer used in the attack); *Gaines-Tabb v. ICI Explosives, USA, Inc.*, 160 F.3d 613 (10th Cir. 1998) (class action suit brought by victims of the Oklahoma City bombing against the manufacturer of the ammonium nitrate allegedly used in the attack).

<sup>32</sup> See *Visser et al.*, *supra* note 31, at 41.

<sup>33</sup> See *id.*, at 39-41.

<sup>34</sup> See William C. Nicholson, *Combating Terrorism in the Environmental Trenches: Preparing for Terrorism: Legal Issues in Emergency Response to Terrorism Incidents Involving Hazardous Materials: The Hazardous Waste Operations and Emergency Response (“HAZWOPER”) Standard, Standard Operating Procedures, Mutual Aid and the Incident Management System*, 9 WID. L. SYMP. J. 295, 299 (2003).

<sup>35</sup> See *id.*

<sup>36</sup> See *id.*, at 315-17.

accompanied by royalty payments to patent holders in a national emergency and when the market fails to override patents on necessary therapeutic products and produce generic versions.<sup>37</sup> For example, following the anthrax mailings in October 2001, Canada licensed generic production of the antibiotic most frequently used to treat anthrax, ciproflaxin (Cipro), despite Bayer's ownership of the patent rights for Cipro, and the United States threatened to do the same.<sup>38</sup> Moreover, the TRIPs "public health emergency" provisions may have tremendous ramifications for the entire pharmaceutical industry, as owners of patents for other therapeutic substances may find their patent rights eroded by an expansive definition of "public health emergency." For example, in view of the American response to the anthrax mailings, it could be argued that many believe the global HIV/AIDS crisis also qualifies as a public health emergency; "the scale of the public health emergency in the United States caused by anthrax (twenty-two cases with five deaths) pales in comparison to the millions of HIV/AIDS-related deaths developing countries are suffering annually."<sup>39</sup> Intellectual property attorneys may, therefore, need to familiarize themselves with the implications of compulsory use in public health law emergencies with public health law in order to assess and protect the intellectual property assets of their pharmaceutical clients.

- *Foreign policy advisors and international law attorneys:* Following the October 2001 anthrax mailings in Florida, Russia banned the importation of livestock and meat from Florida as a protective measure.<sup>40</sup> Meetings between United States and Russian agriculture officials to discuss the scientific justification for the ban eventually led to a resumption of normal trade relations. However, this brief conflict illustrates the relevance of science, public health, and bioterrorism to international trade and foreign relations.<sup>41</sup> Further, the increasing influence of public health in the national security sphere will certainly impact foreign policy, as states struggle to achieve security in a global economy.<sup>42</sup>
- *Litigators:* Litigation has been used sometimes controversially, to protect the public's health: product liability actions remove unsafe products from the marketplace, tort actions compel abatement of public nuisances, civil actions reduce environmental hazards,<sup>43</sup> actions to enforce compulsory vaccination laws prevent infectious disease outbreaks,<sup>44</sup> RICO actions against the tobacco industry encourage truth in marketing, and, more recently, municipal litigation against the handgun

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<sup>37</sup> See GATT Uruguay Round Agreement on Trade Related Aspects of Intellectual Property Rights, April 15, 1994, art. 31.

<sup>38</sup> David P. Fidler, *Public Health and International Law: Bioterrorism, Public Health, and International Law*, 3 CHI. J. INT'L L. 7, 21-22 (2002).

<sup>39</sup> See *id.*, at 22.

<sup>40</sup> See *id.*, at 19-20.

<sup>41</sup> See *id.*

<sup>42</sup> See David P. Fidler, *Public Health and National Security in the Global Age: Infectious Diseases, Bioterrorism, and Realpolitik*, 35 GEO. WASH. INT'L L. REV. 787 (2003).

<sup>43</sup> See, e.g., Diana Bonta, Sandra Praeger, and Jan Schlichtmann, *New Perspectives on Litigation and the Public's Health*, 30 J. L. MED. & ETHICS 33 (2002).

<sup>44</sup> See, e.g., *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).

industry seek to reduce illegal gun sales.<sup>45</sup> It is not hard to imagine the use of litigation to address current public health threats.<sup>46</sup> Developments in public health law will also have an indirect impact on a broad range of litigation-related issues. For example, increasing regulation of biological specimens and dangerous chemicals may affect applicable standards of care in tort litigation.<sup>47</sup> The use of scientific evidence in public health litigation will further delineate the *Daubert* standards for admission of expert testimony and underscore the relevance of basic scientific principles to tort law.<sup>48</sup> Thus, as public health law issues move to the forefront of societal and political debates, private litigators should be aware of the relevance and potential utility of developments in public health law to their practices.

- *Individual rights activists and attorneys:* As suggested at the outset of this report, public health law is intimately connected with issues of individual rights. At the heart of public health law lies the tension between the power and duty of states to protect the public and the constitutionally-protected rights of individuals.<sup>49</sup>

“Public health ... historically has constrained the rights of individuals and organizations to protect community interests in health. Whether through the use of reporting requirements that affect privacy, mandatory testing or screening that affects autonomy, environmental standards that affect property, industrial regulation that affects economic freedom, or isolation and quarantine that affect liberty, public health has not shied from controlling individuals and organizations for the aggregate good.”<sup>50</sup>

In the current political environment, this debate has become particularly inescapable.<sup>51</sup> Following September 11, 2001, federal and state governments enacted an abundance of legislation with the purpose of advancing national security and public health, much of which has the potential to significantly alter the balance between government power and individual rights.<sup>52</sup> Moreover, governments and scholars are currently engaged in rigorous consideration of measures to be adopted in the event of a public

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<sup>45</sup> See generally Parmet & Robbins, *supra* note 8 (discussing the public health context of law).

<sup>46</sup> See, e.g., Visser *et al.*, *supra* note 31.

<sup>47</sup> See *id.*

<sup>48</sup> See Parmet & Robbins, *supra* note 8, at 705.

<sup>49</sup> See, e.g., GOSTIN, *supra* note 1, at 18-21 (discussing the role of state coercion and individual rights in public health law).

<sup>50</sup> *Id.*, at 20.

<sup>51</sup> For an example of this debate and its philosophical underpinnings, compare Lawrence O. Gostin, *Dunwoody Distinguished Lecture in Law, When Terrorism Threatens Health: How Far are Limitations on Personal and Economic Liberties Justified?*, 55 FLA. L. REV. 1105 (2003) with George J. Annas, *Puppy Love: Bioterrorism, Civil Rights, and Public Health*, 55 FLA. L. REV. 1171 (2003), James F. Childress & Ruth Gaare Bernheim, *Beyond the Liberal and Communitarian Impasse: A Framework and Vision for Public Health*, 55 FLA. L. REV. 1191 (2003), Bruce Jennings, *On Authority and Justification in Public Health*, 55 FLA. L. REV. 1241 (2003), and Wendy E. Parmet, *Liberalism, Communitarianism, and Public Health: Comments on Lawrence O. Gostin's Lecture*, 55 FLA. L. REV. 1221 (2003).

<sup>52</sup> See, e.g., Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, 107 P.L. 56, 115 Stat. 272 (2001).

health emergency (e.g., the use of quarantine and isolation,<sup>53</sup> implementation of controversial immunization plans,<sup>54</sup> and the distribution of private medical information<sup>55</sup>) and the impact of such decisions on the fundamental individual rights of liberty, autonomy, and property. The extent, pitch, and intricacies of these debates suggest that public health law will be the backdrop against which much constitutional law evolves in the future.

## Conclusions

Public health preparedness, including public health law, has moved to the forefront of both federal and state agendas. The breadth of issues encompassed by public health law and the centrality of many of these issues to commonly-held and hotly-debated notions of American freedoms means that both public and private sector lawyers will find their practices impacted by public health law developments. Yet, the American public, including the vast majority of lawyers, remains woefully uninformed about the scope and content of public health law.<sup>56</sup>

The American Bar Association (ABA) is uniquely situated to alter this state of affairs for several reasons. First, among the ABA's stated goals are commitments to "provid[ing] ongoing leadership in improving the law to serve the changing needs of society" and "increas[ing] public understanding of and respect for the law, the legal process and the role of the legal profession."<sup>57</sup> As American government and society struggle to achieve public health preparedness, amendments to laws and policies will be necessary. The ABA's members, with their wealth of experience and education, will certainly be called upon to assist in, comment on, and offer advice with respect to these efforts. To do so, the ABA's members must be knowledgeable about public health law and its relationship to the areas in which they practice. By sharing their acquired public health law knowledge – through private practice, public service, and education – ABA members will, in turn, increase societal understanding of public health law and its practical applications. Second, the ABA is dedicated to improving the competence and promoting the professional growth of its members through publications, educational programs, regular conferences, and personal relationships.<sup>58</sup> The ABA's established communication networks could easily be employed to disseminate educational public health law information rapidly to a significant numbers of lawyers – as of 2003, ABA membership totaled more than 410,000. Third, and finally, the ABA's Section on Legal Education and Admissions to the Bar influences

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<sup>53</sup> See INSTITUTE FOR BIOETHICS, HEALTH POLICY AND LAW, *supra* note 20; George J. Annas, *Blinded by Bioterrorism: Public Health and Liberty in the 21<sup>st</sup> Century*, 13 HEALTH MATRIX 33 (2003); Wendy E. Parmet, *Quarantine Redux: Bioterrorism, AIDS and the Curtailment of Individual Liberty in the Name of Public Health*, 13 HEALTH MATRIX 85 (2003).

<sup>54</sup> See, e.g., Annas, *supra* note 54, at 1176-77.

<sup>55</sup> See Rosenbaum *et al.*, *supra* note 21, at 66; Peter P. Swire & Lauren B. Steinfeld, *Modern Studies in Privacy Law: National Health Information Privacy Regulations Under HIPAA: Security and Privacy After September 11: The Health Care Example*, 86 MINN. L. REV. 1515 (2002).

<sup>56</sup> See Goodman *et al.*, *supra* note 10; Barry S. Levy, *Creating the Future of Public Health: Values, Vision, and Leadership*, 88 AM. J. PUB. HEALTH 188, 189 (1998) (noting 97 percent of poll respondents did not know what "public health" means and that a substantial number of respondents suggested "public health" is health care for the indigent); Parmet & Robbins, *supra* note 8.

<sup>57</sup> Profile of the American Bar Association (August 2003), *available at* <http://www.abanet.org/media/profile.html> (last visited March 20, 2004).

<sup>58</sup> See *id.*

law school curricula by delineating the educational requirements for taking state bar examinations and recommending accreditation of law schools.<sup>59</sup>

Respectfully submitted,

*Bonnie S. Brier*

Chair, Health Law Section

August 2004

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<sup>59</sup> See Section of Legal Education and Admissions to the Bar, About the Section, *available at* <http://www.abanet.org/legaled/section/about.html> (last visited March 20, 2004).

## GENERAL INFORMATION FORM

Submitting Entity: Health Law Section

Submitted By: Bonnie S. Brier, Section Chair

1. Summary of Recommendation

The recommendation encourages lawyers to gain a better understanding of public health law issues and to improve the legal preparedness of their communities to address public health threats, such as bioterrorism or infectious disease outbreaks.

2. Approval by Submitting Entity

The Health Law Section Council unanimously approved the filing of this Report and Recommendation at its meeting on April 5, 2004.

3. Has this or a similar recommendation been previously submitted to the House of Delegates or Board of Governors?

No.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its application?

There are not ABA policies addressing this issue.

5. What urgency exists which requires action at this meeting of the House?

The heightened threat of bioterrorism and infectious disease outbreaks in the United States is such that lawyers must understand the basic principles of public health law in order to best serve their clients and communities.

6. Status of legislation

There is no current legislation pending which addresses this issue.

7. Cost to the Association (Both direct and indirect costs)

No significant costs would be incurred as a result of adoption of this resolution.

8. Potential Conflicts of Interest

None anticipated

9. Referrals

The Report with Recommendation is being referred to all Sections and Divisions, and the Special Committee on Bioethics and the Law.

10. Contact Person (Prior to the meeting)

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11. Contact Person (Who will present the Report to the House)

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