

***WMD INCIDENT MANAGEMENT  
LEGAL SEMINAR IV***

**DRAFT SEMINAR REPORT**



**Defense Threat Reduction Agency  
Advanced Systems and Concepts Office**

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SAIC **strategies** GROUP  
CREATING KNOWLEDGE. INTEGRATING SOLUTIONS

**1710 SAIC Drive  
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## Executive Summary

On 23 October 2003 Threat Reduction Agency (DTRA) – Advanced Systems and Concepts Office (ASCO) sponsored and the Office of General Counsel hosted the *Weapons of Mass Destruction Incident Response Legal Seminar IV*, the event was held at the SAIC Conference Facilities, in McLean, VA from 8:00 AM to 4:00 PM on Thursday. The event was the last in a series of seminars, scheduled over the past two and a half years, supporting the development of the Federal WMD Incident Response Legal Reference Deskbook.

During the first Seminar (2-3 May 2002), the Participants evaluated a Consequence Management (CM) Scenario based on the detonation of a radiological dispersal device in a metropolis in the United States. The Seminar resulted in the identification of three topics for inter-sessional exploration and presentation by Working Groups at the second Seminar: *The Military's Role in WMD Consequence Management*; *Quarantine and Medical Responders*; and *Issues of Communication in WMD Consequence Management*.

During the second Seminar (19-20 November 2002), the Working Groups explored and presented the three topics and associated legal issues: they identified and prioritized the legal references applicable to each topic; identified shortfalls, if any, with the existing authorities; and identified relevant issues lacking interagency consensus.

On June 24, 2003, the Working Groups gathered to develop and deliver presentations focused on WMD CM given a particular type of event: chemical/high-yield explosive, biological, or radiological/nuclear. The Working Groups identified the roles and responsibilities of their respective organizations for domestic CM and identified changes in their Agencies' roles and responsibilities that have occurred since the first WMD CM Legal Seminar in May 2002. In doing so, the participants identified the changes in and additions to the legal authorities applicable to WMD CM. The efforts of the Working Groups during the Seminar, to include the Working Group reports, contributed to the development of the Federal Legal Reference Deskbook, the ultimate product of this DTRA undertaking, which was distributed in draft at this final Seminar.

In addition to the featured speakers, the final seminar involved the distribution of the draft Deskbook in CD-ROM format for review and comments prior to publication in December 2003. The Deskbook will be approximately 550 pages in length pages. The draft Deskbook is over 600 pages and contains both analysis and the complete text of relevant legal authorities. It also provides a comprehensive list of federal statutes, regulations, executive orders and other legal authorities relative to a WMD event, as well as an extensive bibliography of relevant State authorities. DTRA distributed the draft Deskbook to the participants for comment. The participants discussed the need to continue interagency gatherings to discuss related issues, to keep the Deskbook current, and to be more inclusive of State and local authorities.

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Table 1 below lists the participants of the Seminar.

Ms. Patricia Allen	DTRA, OGC
LTC Ken Arnold	DoDGC
Ms. Patricia Becker	DTRA
Mr. Robert Brittigan	GC, DTRA
Dr. George Buck	University of South Florida
Ms. Alexis Collins	DOJ
Ms. Carolyn Comerford	AFDO
Capt Bryan Comerford	DTRA
Mr. John Cuellar	DTRA
Maj John Dehn	HQ, FORSCOM
Mr. Giuseppe Donadio	SAIC
Dr. Gerald Epstein	DTRA
SSA Robert Foley	FBI
Mr. G.R. Gillette	DTRA, OGC
Mr. Robert Gonzales	HQ, Fifth U.S. Army
Ms. Jean Hardin	USAF
Mr. Raymond Heddings	DTRA, OGC
LCDR Thomas Herold	OJAG Navy
Mr. Chris Lee	DTRA
Mr. Steve Maleson	USAMRMC
Mr. Tom Matthews	Joint Staff J3
COL Robert Minor	U.S. Army Reserve Command
Mr. James Misrahi	CDC
Mr. Rick Neal	DHS
Dep. Inspector Michael O'Neill	NYPD
Mr. B. Don Perritt	OJAG Army
Mr. Paul Raimondi	FBI
LTC Jim Randazzo	DTRA
Mr. Anthony Russell	DHS (FEMA)
Mr. Larry Sanders	DTRA, ASCO
CDR Bryan Schroder	NORTHCOM
LCDR Michael Shaw	JTF-CS
Mr. Michael Sheehan	NYPD
Ms. Susan Sherman	NIH

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Mr. Philip Sheuerman	DoDGC
Mr. James Smyser	DoDGC
Dr. Richard Soll	SAIC
LTC Debra Thedford	Joint Staff J3
MAJ Donald Twyman	DTRA
Ms. Lee Tyner	EPA
Mr. Tony Wagner	USAF/OGC
LCDR Jonathan Wagshul	JAGC, USN
Ms. Jo Ann Williams	DOE

**Table 1: Seminar Participants and Respective Agencies**

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**Weapons of Mass Destruction  
Consequence Management Legal Seminar IV**

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**Opening Remarks**

**Mr. Robert Brittigan**, General Counsel of the Defense Threat Reduction Agency (DTRA) opened the final conference by thanking the participants for their hard work over the past 2 ½ years. He noted that about 120 attorneys, representing approximately 11 cabinet level departments and agencies, have contributed to this effort. Mr. Brittigan stated that there was great value in the meetings themselves, as there was no substitute for getting to know one's colleagues and working with them before an actual crisis occurs. He also reminded the participants that DTRA does not establish federal legal policy for WMD consequence management; rather, DTRA merely serves as the catalyst for the good work that all of the participants have accomplished during these conferences.

The Federal WMD Incident Response Legal Deskbook that has been produced from this process explores some of the issues raised by the participants over two years. Mr. Brittigan stated that the participants would be justifiably proud of the draft Deskbook, a Working Group product that DTRA hopes will prove useful to those working issues related to WMD incident response. He made clear that the afternoon of this final seminar would be dedicated to discussing the way ahead as well as how the participants could contribute to finalizing the Deskbook. Mr. Brittigan asked the participants to not only focus on the process for reviewing the draft for a December production, but also to explore future options and possibilities for updating the document and continuing to meet as an interagency group. He thanked the DTRA Advanced Systems Concepts Office for its support of the project, especially focusing on the support provided by Larry Sanders of that office.

Mr. Brittigan then introduced the keynote speaker, the Honorable Paul McHale. The Senate confirmed Secretary McHale as Assistant Secretary of Defense for Homeland Defense on February 4, 2003. His responsibilities include supervision of all homeland defense activities of the Department of Defense (DoD).

Following his graduation from Lehigh University in 1972, Secretary McHale volunteered for duty with the Marine Corps. After release from active duty, Secretary McHale entered Georgetown Law Center and received his Juris Doctor degree in 1977. Secretary McHale was elected to the Pennsylvania House of Representatives in 1982 where he served five consecutive terms. He resigned in 1991 following Iraq's invasion of Kuwait to volunteer for active duty as an infantry officer with the Marine Corps during Operations Desert Shield and Desert Storm. In January of 1993, Secretary McHale was elected to represent the 15th Congressional district of Pennsylvania in the United States House of Representatives, where he served for three terms. He was an active member of the House Armed Services Committee, which has oversight responsibility for all U.S. military operations and training. On January 3, 1999, then-Congressman McHale retired from the U.S. House of Representatives and became a shareholder in the Allentown law firm of Tallman, Hudders & Sorrentino, P.C. He assumed his current position as the Assistant Secretary of Defense for Homeland Defense on February 7, 2003.

## ***Operational Overview of DoD WMD Incident Management***

Secretary McHale opened his remarks by stating that, after 9-11, there was a belated but widespread recognition that the nature of the threat to the United States and the nature of war had changed. Secretary McHale spoke from experience, describing for the participants his own training for a conventional war with the former Soviet Union and Warsaw Pact. With the end of the cold war, the threat environment had changed. Previously, only nation-states could credibly threaten the United States. In the new environment, however, evolving technology has empowered small groups and even individuals with the kind of destructive capacity that, in the past, had only been held by countries. Because of the miniaturization of technology, bands of terrorists or individual actors could employ weapons of mass destruction in a way that would fundamentally threaten our lives, our property, and, potentially, our freedoms. With the recognition that the threat had changed, the Department of Defense, and particularly the Secretary of Defense, realized that they had to reorganize the Department in order to adjust to the changing threat environment. While the United States must be concerned about the very real threat that nation-states continue to pose, it must also take care to deter and defeat terrorists who would act asymmetrically, possibly employing weapons of mass destruction. The force structure, end strength and internal organization of the Department of Defense had to be modified to deal with this new threat.

### **DoD Reorganization for Homeland Security**

In order to respond to these new challenges, the United States government and the Department of Defense have reorganized for homeland security and incident response. First, the Secretary of Defense, with the approval of the President, modified the Unified Command Plan (UCP) to assign, for the first time since the era of General George Washington, a single general officer who would have the responsibility to physically defend the United States of America. United States Northern Command (NORTHCOM) was embedded in the revised structure of the UCP. In command of NORTHCOM is General Ed Eberhart, with his headquarters at Peterson Air Force Base, in Colorado Springs. His area of responsibility includes the continental United States, the maritime approaches (500 nautical miles (NM) into the Pacific Ocean and approximately 1700 NM into the Atlantic Ocean), and airspace, as well as employing land forces to respond to threats and crises. Once NORTHCOM was created, there needed to be an office within DoD to ensure adequate civilian oversight for homeland security. Congress, under the National Defense Authorization Act of 2003, created the new position, by statute, of the Assistant Secretary of Defense for Homeland Defense, and assigned to the Assistant Secretary's office the mission supervising all homeland defense activities of the Department of Defense.

### **NORTHCOM Mission**

After discussing the role of the Department of Defense in the homeland security mission, Secretary McHale proceeded to discuss NORTHCOM and its mission. Secretary McHale first emphasized that there are two distinct parts to the mission statement of NORTHCOM, and incident response is the second part of the statement, or "after the semicolon." Most people tend to think of NORTHCOM as an organization primarily oriented toward consequence management and civil support. While that is an important part of the mission statement, General Eberhart and his successors first and foremost must provide a military defense for the United States of

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America. The goal of NORTHCOM is not to get better at “cleaning up the mess” after a successful enemy attack, but rather to ensure that such attacks do not occur. General Eberhart is tasked with the responsibility to deter, identify, and defeat enemy threats. The Department of Defense is currently considering changing the language of the mission statement to clarify that it is the responsibility of NORTHCOM to defend against national security threats and foreign aggression to make clear that there is no domestic counterterrorism role for NORTHCOM, except in accordance with statute and in support of law enforcement efforts.

*NORTHCOM Mission Statement:*

- *Conduct operations to deter, prevent, and defeat threats and aggression aimed at the United States, its territories, and interests within the assigned area of responsibility; and*
- *As directed by the President or Secretary of Defense, provide military assistance to civil authorities including consequence management operations.*

After its warfighting mission, NORTHCOM performs traditional civil support missions. When directed by the President or the Secretary of Defense, NORTHCOM must be prepared, in

conformity with applicable law, such as the Stafford Act, to provide support to a lead federal agency—more often than not, Federal Emergency Management Agency (FEMA), in accordance with the National Response Plan—in order to incorporate DoD capabilities into a national response to a previously occurring event. That event has traditionally been an event involving a natural disaster, but now also includes the possibility of weapons of mass destruction.

### **DoD Incident Response**

Having described the new organizations for homeland security and incident response, the Assistant Secretary discussed the process of incident response. Once the Stafford Act is triggered, the President makes a declaration of disaster, and thereafter FEMA, now a part of the Department of Homeland Security (DHS), is lawfully empowered to request DoD support. That request for assistance comes into the Department of Defense, and, as part of the change implemented in May, goes to the Assistant Secretary for Homeland Defense. The Assistant Secretary has a number of responsibilities. He has oversight with regard to all of the homeland defense activities; he is the domestic crisis manager for the Department of Defense; and he is the executive agent for the Secretary of Defense with regard to civil support missions. This latter role represents a significant change, since the Director of Military Support (DOMS) historically has been a responsibility assigned to the Department of the Army, and the Secretary of the Army historically has had a staff to deal with civil support requests for assistance. Beginning in May 2003, the executive agency passed from the Secretary of the Army to the Assistant Secretary. The function performed by the Special Assistant to the Secretary of the Army has now migrated to an official in the office of the Assistant Secretary, and finally the DOMS function has migrated up to the Joint Staff level. The DOMS function has become the JDOMS function within the J3 of the Joint Staff. Now, when it is necessary to draft an execute order (EXORD), pursuant to the guidance given by the Executive Agent, that function is performed not within the Department of the Army but at the level of the Joint Staff.

The net effect of these changes has been to move the civil support functions to the level of the Secretary of Defense and the Joint Staff. The reason for this is that the United States, in an age of terrorism, now anticipates that it no longer must be prepared only for natural disasters, but



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also to deal with terrorist activity, potentially and probably involving weapons of mass destruction. In light of the greater significance of the nature of the threat, it is appropriate that the DOMS function should no longer reside at the level of the Services. Such issues should be dealt with at the level of the Secretary of Defense, the Joint Chiefs of Staff and the Joint Staff.

### **DoD's Role in Critical Infrastructure Protection**

Secretary McHale next focused on the specific mission assignments that the Department of Defense anticipates its forces will receive in the execution of these various functions. The Department of Defense has the primary responsibility to defend critical infrastructure located on DoD bases and installations. Most critical infrastructure, however, is located outside DoD bases and installations and is civilian-owned. Under the President's National Strategy for Physical Protection of Critical Infrastructure and Key Assets, the Department of Defense was assigned the sector lead for the protection of the defense-industrial base. Pursuant to a draft Homeland Security Presidential Directive (HSPD) that the Assistant Secretary believes will be approved largely in its current form, DoD will be assigned the lead to coordinate the protection of the defense industrial base, to include incorporating local and state civilian capabilities, National Guard capabilities, civilian law enforcement capabilities and DoD capabilities to ensure that critical nodes within the defense-industrial base will be properly protected.

DoD is examining its role in protecting civilian-owned infrastructure that is critical to the nation or a region, but is not mission critical to the Department of Defense, e.g., a nuclear power plant that is not mission critical for DoD. It is the position of the Department of Defense that civilian law enforcement will take the lead in protecting civilian infrastructure. If law enforcement capabilities are not adequate for that task, DoD expects that civilian law enforcement would be reinforced first by the National Guard, either in State status or Title 32 status. That means the National Guard, exempt from posse comitatus restrictions, could work closely with local law enforcement to ensure that the military capabilities of the National Guard would reinforce local capabilities brought to bear. Secretary McHale reminded the participants that posse comitatus forbids the employment of Title 10 forces in domestic law enforcement roles, unless the Constitution or subsequent statute expressly authorizes such missions. Historically, there have been numerous exceptions to posse comitatus statutorily adopted, (e.g., WMD activity of Title 10 forces is exempt by statute). In the end, local authorities will provide the first layer of response, supported first by the National Guard under State control. In extraordinary circumstances, the President may direct Title 10 military forces to provide an ultimate layer of defensive capability to ensure that critical infrastructure is not destroyed by a domestic terrorist attack. The Department of Defense has quick reaction forces on alert at diverse locations throughout the United States. Those forces, within a matter of hours, could deploy to the site of a potential or actual terrorist attack.

### **DoD Response to a CBRNE Event**

The Joint Task Force Civil Support (JTF-CS) has been transferred to NORTHCOM, and will be deployed for chemical, biological, radiological, nuclear and high explosive (CBRNE) response. JTF-CS existed before NORTHCOM as part of Joint Forces Command, but it migrated to NORTHCOM. JTF-CS is the biggest, most robust (when measured by capabilities) subordinate element of NORTHCOM. Located at Fort Monroe in Virginia, the size of JTF-CS is classified. Generally, the organization incorporates several thousand highly-trained military personnel, who

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will be available to augment and reinforce the capabilities of a lead federal, civilian, agency if the nation suffers a domestic terrorist attack. First responders will most likely be local and State authorities who will be able to assess the initial damage and, while perhaps not able to ascertain immediately the exact contaminant, to determine the requirements for remediation. It should become clear quickly if those requirements go beyond the capabilities available at the local and State level. At that point, State hazardous material (HAZMAT) personnel, State Emergency Management personnel, and the Adjutant General in the State who, in a third of States, is also the Emergency Manager for that State, will become engaged. In the case of a weapon of mass destruction it will be clear to the Federal government, especially the Department of Homeland Security, that there may be a requirement to engage Federal assets. The Federal Coordinating Officer (FCO) under DHS will be deployed to the scene, and the FCO's counterpart, the Defense Coordinating Officer (DCO) also will be deployed to the scene. The deployment of a DCO will most likely require an EXORD that would come through the Assistant Secretary's Office, working with JDOMS, and be signed by the Secretary of Defense. Once the order has been given, a Colonel will deploy to the site quickly to work with his or her counterpart, the FCO, to begin to assess what kind of DoD capabilities will be required to respond. Most likely, that support will be JTF-CS.

If it becomes clear that local and State authorities will be overwhelmed and need to be augmented by DoD capabilities, then, upon a declaration by the President under the Stafford Act that a disaster has occurred, the Secretary of Defense will respond to a request for assistance coming from the lead federal agency (probably FEMA) by ordering the deployment of DoD capabilities. NORTHCOM will then examine the situation and the tasks at hand; the DCO will report to General Eberhart who will then task his subordinate command and order the deployment of all or part of JTF-CS. JTF-CS will then deploy to the site of the attack and work in support of, but not under the command of, the lead federal civilian agency. The Department of Defense must achieve unity of effort without unity of command because, pursuant to the Goldwater-Nichols Act of 1986, only the Secretary of Defense and the President can command and control U.S. military forces. The senior DoD officer on the scene, who may be the DCO, is in command of military assets.

*No foreign power or combination of foreign powers could by force take a drink from the Ohio or make a track on the Blue Ridge in a trial of a thousand years. At what point then is the approach of danger to be expected? I answer, if it ever reach us it must spring up from among us, it cannot come from abroad. If destruction be our lot, we must ourselves be its author and finisher. As a nation of freemen we must live through all time or die of suicide.*

*Abraham Lincoln*

Secretary McHale concluded his remarks by reiterating that for homeland defense the Department of Defense physically defends the nation, the maritime approaches, and the airspace, and intends to defeat enemy threats, not within the United States, but as they approach. Defense-in-depth is undergoing a dramatic change in its ability to identify an enemy threat further from U.S. shores and defeat that threat externally to the United States. In addition, the Department prepares for consequence management in the event that an attack is successful. Secretary McHale quoted Abraham Lincoln to remind the participants that, while DoD is changing to meet new threats, it must not ignore old ones nor forget the importance of power projection, overseas presence, and the ability to defeat nation-states. In addition to its traditional warfighting capabilities, the

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Department of Defense must reorient itself to ensure that the United States can deter and defeat threats from both hostile nations and terrorist groups, and also respond to attacks if they are tactically successful. Secretary McHale then opened the floor to questions.

One participant asked what is the status of Posse Comitatus. Secretary McHale stated that DoD has done an internal review and the professional judgment of the lawyers was that the Posse Comitatus Act did not need to be revised. Congress, however, has raised the issue of possible revision and is not yet convinced that *posse comitatus* is written to fully support combating the terrorist threat.

Another participant queried whether the Department of Defense has sufficient statutory authority to operate for consequence management. Secretary McHale answered in the affirmative. The legal framework for consequence management is well established and is the same framework used for decades and is simply now being applied to situations involving weapons of mass destruction. There are more challenging issues, he continued, related to the use of Title 10 forces for a domestic critical infrastructure protection mission. Such missions would take place prior to an attack. DoD would deploy Title 10 forces to an area of responsibility already occupied by civilian law enforcement and the National Guard in State or Title 32 status, and the function of those Title 10 forces would be to prevent an attack. This action involves a less well-established legal framework and requires unprecedented consideration of Constitutional and statutory constraints to include among other things an appropriate draft of rules on the use of force. What should be the rules on the use force for Title 10 forces used in domestic critical infrastructure protection missions?

In one incident involving military use of force to protect the U.S. border, another participant noted, it did not seem that posse comitatus provided enough protection to soldiers. He asked Secretary McHale if posse comitatus offered enough protection for soldiers when carrying out homeland defense missions? What protection from liability does posse comitatus really provide? Secretary McHale answered these questions in two parts. First, the Department of Defense has made it policy that it will not militarize its borders, and border protection is now a job for civilian law enforcement. The Department will, however, provide support to agencies that do perform border security as well as to DoD drug interdiction operations. For example, military helicopters may search for drug trafficking, but military personnel will only identify the activity and provide that information to the civilian forces—the military will not take action. Second, Secretary McHale stated that, more broadly, the question is how will Title 10 forces and civilians interact? This has not been addressed extensively. Should more protection be offered to military forces to avoid local and State legal entanglements? Secretary McHale highlighted the issue of hot-zone protection and quarantines. How does one deal with civilians attempting to enter a hot-zone, when doing so could be a danger to both themselves and the greater population? How can soldiers be protected legally if they have to use force to keep people out of the hot-zone or to enforce quarantine?

In closing, Secretary McHale called the attention of the participants to the DOPLAW Handbook for Judge Advocates published by the Center for Law and Military Operations, and stated that the Handbook in conjunction with the Legal Reference Deskbook provides a good reference set for consideration of domestic incident management issues.

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### ***New York: The Evolution of Al-Qaeda and Its Effect on New York City: NY WMD Preparedness***

Mr. Brittigan introduced Mr. Michael Sheehan, Deputy Commissioner for Counter-Terrorism, New York City Police Department. Mr. Sheehan attended the United States Academy at West Point and was commissioned as a 2<sup>nd</sup> Lieutenant in the Infantry. He completed Airborne, Ranger, Jungle Warfare, and Special Forces training. In addition, he earned a master's degree with distinction from the Georgetown University School of Foreign Service and the U.S. Army Command and General Staff College at Fort Leavenworth, Kansas.

He served as Special Forces Detachment Commander in Panama, with his units' primary responsibilities being hostage rescue operations and providing training for national counter terrorism units in Latin America. He also served at the White House under three different National Security Advisors and two Presidents. Mr. Sheehan retired from the Army in 1997 and was appointed a Deputy Assistant Secretary of State in the Bureau of International Organizations. In 1998, when the American Embassies were attacked in Kenya and Tanzania, he was selected as the Department of State's Coordinator for Counter Terrorism. He served as Ambassador-at-Large and then as the Department of State's representative on the White House Interagency Counter Terrorism Sub-Group and had direct control over the Foreign Emergency Support Team (FEST). In January 2001, Secretary-General Kofi Annan appointed Mr. Sheehan Assistant Secretary-General in the Department of Peacekeeping Operations. He has seen service in Korea, El Salvador, Haiti, and Somalia

**Mr. Sheehan** discussed the evolution of Al-Qaeda and its effects on New York City and then addressed how the city is prepared for terrorism and the challenges it faces. He emphasized WMD preparedness, as well as provided a focus on chemical, biological, radiological and nuclear weapons.

#### **Tracing Al-Qaeda**

Mr. Sheehan described phase one of Al-Qaeda, from the early 1980s until 1996, as the formative years. This phase is marked by the assassination of Anwar Sadat in 1981 and the growing radicalization of Islam in such groups as the Egyptian Islamic Jihad (EIJ) and Gamaa al-Islamiya. As these organizations developed, Al-Qaeda was pushed out of Egypt and ended up in, among other places, Afghanistan and the United States, with a manifestation in New York City. This phase included a number of plots by these organizations, some successful and some disrupted. Individuals linked to EIJ and Gamat, and later Al-Qaeda, murdered the head of the Jewish Defense League and helped mastermind the 1993 World Trade Center bombing. The same individuals were involved in the 1994 Landmark plot, which planned attacks on the Holland Tunnel, the Lincoln Tunnel, the United Nations, 26 Federal Plaza and other targets, and a 1995 plot to blow up 12 U.S. airliners, both of which were disrupted.

In 1996, Osama Bin Laden left Sudan, joined up with Ayman al-Zawahiri and entered Afghanistan, marking the beginning of the Afghan years and what Mr. Sheehan refers to as

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Strategic Al-Qaeda. During this phase, Al-Qaeda “raised the bar”; they developed a partnership with the Taliban and enjoyed a “sanctuary of impunity” which gave rise to more successful actions. Such events include the nearly simultaneous attacks on U.S. Embassies in Kenya and Tanzania in 1998 and the attack on the U.S.S. Cole in 2000, which was originally planned against the U.S.S. Sullivan but failed. Significantly, just a few months later, during an election period in the United States, these events had “dropped off the radar.” Al-Qaeda and their attacks on America had disappeared as an issue in this country for both political parties, the American people, and the media.

On September 11, 2001, Phase Three began as Al-Qaeda came to the forefront of American consciousness with the attacks on the World Trade Center and the Pentagon. As a result of September 11, Al-Qaeda loses its sanctuary in Afghanistan, though they are still present there, but they began a metamorphosis. They are now working through association with other organizations that provide them protection. These “subsidiaries” include Gamaa al-Islamiyah in Indonesia, Abu Sayyaf in the Philippines, as well as others in Iraq, Yemen, and Saudi Arabia. They have all been very successful in their attacks since September 11, however, there has yet to be a manifestation in New York City. Their success can be seen in the attack in Bali, Indonesia, the attack in Riyadh, Saudi Arabia, as well as attacks against U.S. forces in Morocco, Tunisia and Kuwait before the war with Iraq. These attacks and others were all the work of Al-Qaeda and the “family” of Al-Qaeda associates.

The continued success of Al-Qaeda in the third phase presents the question of how they will manifest themselves in New York City. Mr. Sheehan emphasized that the evolving nature of Al-Qaeda and the host of other organizations involved with Al-Qaeda must be taken into consideration. The Federal Bureau of Investigation (FBI) and the New York Police Department (NYPD) are watching all known Al-Qaeda-related organizations in the city as they appear. NYPD is also concerned that Al-Qaeda will attempt to up the stakes by using a WMD or CBRN weapons, if not to increase the destructive nature of the attack, then to reap increased psychological effects.

### **New York WMD Preparedness**

The strategy of NYPD in dealing with WMD involves attempting to detect it before it enters the city using intelligence and other technologies. The NYPD also aims to respond quickly in the event of an attack in order to mitigate it and to investigate thoroughly in order to prevent any subsequent attacks. The infrastructure in place to prevent and deal with any terrorist event in New York City is particularly vast. Besides NYPD, the other organizations include the Fire Department, the Department of Environmental Protection in New York City, the Department of Health, as well as others. Within the NYPD there are numerous specialized units: 350 police officers can be outfitted in Level A suits to operate in a hazardous environment; there is a crime scene investigation team as well as other units that can operate in contaminated environments; and each borough has a task force trained to Level A that provides a local response. General police officers also have special escape hoods that allow them to operate in hazardous environments, and another 10,000 are being trained as part of a more advanced “millennial unit.” In addition, numerous exercises are conducted to train leaders what to do in the event of an attack. Thus far, exercises have taken place involving a radiological device and a biological device; there are also plans for a chemical attack exercise.

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New York City has learned a number of things from the exercises that have been conducted thus far. As far as CBRN attacks are concerned, Mr. Sheehan stated that the biological threat has been determined as the most difficult to manage. The difficulties include the ability to detect the event and the legal issues involved after detection has occurred. While an advanced system of surveillance is in place that involves daily reports from hospitals and pharmacies on symptoms and other medical points of interest, once a release of a biological agent is detected, numerous other issues arise. In the event the Department of Health determines a quarantine or isolation order is necessary, the NYPD then gets involved and the issue of use of force in order to protect the public safety comes to bear. Questions on the level of use of force also arise if, for instance, a contaminated person is trying to get out of the quarantined area or if an uncontaminated person is trying to get into the area. Jurisdictional questions could include the closing of interstate highways and the three international airports in the New York City area and who has authority to do so.

Mr. Sheehan stated that New York City officials have found that the radiological dispersal device (RDD), or “dirty nuke,” attack is one of the most difficult attacks to execute successfully unless there is access to nuclear waste. If an attacker used more accessible radiological materials from hospitals or other sources, the physical effects would be minimal. The psychological effects, however, could be much greater. The NYPD’s goal in a scenario involving a radiological device is to communicate with the public in order to deter panic over inaccurate assumptions. The public’s lack of confidence in Federal, State, and local authorities remains an issue that needs to be overcome.

In the event of a chemical attack, NYPD must deal with the aggressiveness of police officers who have been trained to respond quickly and go towards the problem. When a chemical device is involved, however, this training could ultimately lead to their death. In these cases, Mr. Sheehan explains, the NYPD is training officers to recognize the signs of a chemical attack such as choking or gagging, and to understand that staying out of the hot zone, backing off, and securing the perimeter is the best course of action. The officer can then effectively communicate what is going on so that the right people can get in and handle the scene and work to keep people away from the hot zone.

According to Mr. Sheehan, New York City’s biggest nightmare is a biological attack. New York City has faced an anthrax attack. In the current form in which anthrax has been found in the United States, the consequences are fairly manageable in terms of casualties. The very contagious biological weapons, such as the plague, are much harder to weaponize and sustain. For example, strong sunlight can kill the plague. However, if there were a successful attack, the issues discussed above would come into play.

In summation, Mr. Sheehan stated, for the biggest terrorism challenges facing New York City, the city had previous infrastructure and plans in place. Since September 11, these plans have been streamlined and all involved have been better trained. There are, however, still many issues that must be addressed: command and control; partnerships with Federal and State agencies; isolation and quarantine; use of force; and evacuation. All of these issues are currently being considered.

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### **Sharing Intelligence**

One participant stated that New York City has a unique relationship with the Federal Government when it comes to intelligence sharing and security clearances. The participant asked Mr. Sheehan if he believed the issues that exist in this area are being resolved successfully. Mr. Sheehan answered that New York City currently has 140 detectives in the Joint Terrorism Task Force with Top Secret clearances; individuals at the division level are less likely to have clearances.

Mr. Sheehan's department has access to threat information from the Central Intelligence Agency (CIA), FBI, and Department of Homeland Security, through emails and other avenues. The information moves fairly well. The problem is with "case information," which does not move well. This is not an issue of technology; it is an issue of culture within the CIA and FBI. Mr. Sheehan stated that members of these organizations need to increase the sharing of case data, including phone numbers, addresses, names, associations, and flow of funds. These "small dots" need to be connected so that the "bigger dots" can be connected. Both domestically and internationally, sharing of such information is not as good as it should be. NYPD is presently all over the world working on New York cases. Whenever the issue of information sharing arises, the response is that the issue is technology. However, Mr. Sheehan stated, this is not enough. Investigators need to sit together and share the information about the different cases they have; "dots" will be missed due to both human and technical error.

### **Communicating with the Public**

Another participant asked Mr. Sheehan how he proposes to increase public confidence in the information given to them by the government. Mr. Sheehan stated that he is currently inviting the press into table-top exercises in order to educate them. When people hear information from the press, who are supposed to be the watchdogs, and the government they are more likely to believe it. For instance, in the event of certain RDD attacks, it is safer to simply stay in your house, but many see the best option as fleeing, which causes more problems. It is an issue of credibility and communication: The government needs to coordinate the same message from Federal, State, and local authorities, as well as the press, so that hard decisions about quarantine, isolation and the like can be made.

President Bush was criticized for not asking for help from the public after September 11, stated a participant. In addition to preventative health measures, she asked, what is the NYPD asking the people to do? Mr. Sheehan stated that the NYPD is encouraging outreach to the communities, as well as internet connectivity with true first-responders: individuals in the community and the private security guards. They are the eyes and ears and the NYPD is working to help them to understand what are items and activities of interest. Communication takes place through meetings, the internet, and other channels.

Working with the community, however, presents political problems. The Mayor must ensure the people feel that they are safe to work and live, so he therefore cannot always talk about terrorism. In addition, New York City is currently trying to rebuild its economy after September 11, and does not want to scare business and workers away from the city.

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### **Legal Basis for Quarantines**

One participant opined that it seems there used to be little doubt about establishing and enforcing quarantines. He asked if the laws have changed or if it is a question about using the laws. Mr. Sheehan stated that as with many issues, if you get the right lawyer, you can get the response you want. More specifically, the Commissioner for the Department of Health advises the Mayor, who makes the final decision on instituting a quarantine. Other agencies have some input, but the decision mainly lies with the Mayor and the Department of Health.

### **The Role of the National Guard and the Military for New York City**

Mr. Sheehan was asked what New York City expects of the National Guard and the Military and what he expects the city will need from them in the future. Mr. Sheehan responded that both the National Guard and the reserves played an important role after September 11 by providing more personnel for the search and rescue process as well as expertise and experience. As for a future role, New York City currently has direct liaisons with most of the Federal agencies, most of which will work with New York City officials directly in the event of an emergency with little or no delay. This is due to the large number of targets located within the city. It is the home of international finance, western culture, the headquarters for the American media, as well as having the largest Jewish population outside of Israel.

### **Learning from the Experience of New York City**

One participant asked, with New York City being the center for emergency preparedness and planning, how many visitors want to learn from it? Mr. Sheehan affirmed that New York City receives many visitors hoping to gain insight as to how they can improve their own security. He stated that he works to determine whom the NYPD can and cannot assist. He also emphasized that the NYPD does not have all the answers and is working to get more of its people working with the FBI and DHS, and to increase their level of technology. The NYPD also wants to implement a best practices sharing program. They have also recognized the value of working closely with DTRA due to the organization's extensive knowledge base regarding WMD.

## ***Home-Grown Terrorism***

Mr. Brittigan introduced the third guest speaker, Dr. George Buck. Dr. Buck is a retired fire operations specialist who later earned his doctorate and M.S. in Public Administration at LaSalle University. He has served as director and professor of the Institute of Emergency Administration and Fire Science at St. Petersburg Junior College and was the founder of the National Terrorism Preparedness Institute. He is currently Director of Training and Education/Associate Professor at the Global Center for Disaster Management and Humanitarian Action at the University of South Florida. He has served as a Fire Management Specialist with the United States Fire Administration in Emmetsburg, Maryland. Dr. Buck has served as a Principal Member of the Technical Committee for "Emergency Management, NFPA<sup>1</sup> 1600" and served on the committee from 1992-2000. This committee set the national standards for emergency management in the United States. He has developed a number of emergency administration curriculum packages,

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<sup>1</sup> NFPA, National Fire Protection Association



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many of which are available on the Internet. His books include *Preparing for Terrorism, an Emergency Services Guide* and *Fundamentals of Emergency Management*. Dr. Buck has consulted extensively in the field of counter-terrorism and emergency preparedness, in the United States and abroad.

### **The Meaning of Terrorism**

Initially, Dr. Buck focused on the problem of defining the word “terrorism.” He has found over 109 definitions of the word and none sheds any light on the issue. Dr. Buck pointed out that one problem with defining terrorism is the fact that media drive the definition and the perception of terrorism, and sensationalism drives the media. To highlight that the media drive the public perception of terrorism, Dr. Buck pointed out that, ultimately, emergency services did a good job dealing with the destruction of September 11<sup>th</sup> and the problems caused by the anthrax attack, but the media did not focus on this positive angle. The media chose instead to focus on the amorphous dangers of smallpox and the possibility of planes flying into nuclear power plants, thus choosing to focus on possible, future dangers and not on present success. Given that the media drive the definition of terrorism and that definition changes almost daily, Dr. Buck provided his key factors of terrorism: 1) violence is a tool; 2) fear is the agent of change; 3) victims are not necessarily the intended audience; and 4) those who observe the act are the intended audience. He made clear that he studies or examines not terrorist groups but their ideology. Just like a definition of terrorism is constantly changing, so are terrorist groups changing because of splinter groups and internal struggles.

### **Terrorists in Our Backyard**

While international terrorism currently has the attention of the media, the United States, and much of the world, one must remember that the United States currently has a large number of domestic terrorist groups. After the first World Trade Center bombing in 1993, the United States believed that international terrorists, and more specifically, Islamic fundamentalists, were the biggest threat. Then, in 1995, Timothy McVeigh tried to destroy the Murrow building in Oklahoma City, killing a large number of people. Domestic terrorism, while perhaps not attracting the same attention that international groups have, is still growing rapidly in the United States. While the Northeast has not experienced the rapid growth prevalent in the South and Northwest, e.g., the large number of hate groups in Florida, there is general growth, as evidenced in the increased numbers in the Boston area, among others. Even in the Northeast, the League of the South, a neo-Confederate group, is currently active, calling for Southern secession. In the South, the Ku Klux Klan is still very active, and Dr. Buck gave the participants a quick history of that group from its post bellum beginnings to its position today.

While many dismiss these groups, citing their lack of cohesive organization, Dr. Buck made clear that they quickly could become dangerous. He pointed out that, for emergency preparedness and response, it is important to understand these groups so that preparations can be made. Dr. Buck put the question to the participants: If a new sect is formed and six of the ten members have degrees in chemistry, or have just left the military, what would one expect from that sect? He reminded the audience that not every community would be as prepared for an attack as New York City was, and most communities are too small for major attention, but large enough to be a target for a terrorist attack.

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This brought Dr. Buck to another main point: the importance of ideology across different groups. A key element to remember about domestic terrorism is that the ideology is not unlike that of international terrorists. Just like Al-Qaeda or Hizbollah believes that they are doing the work of God, so do many hate groups in the United States. While religiously they may differ from more active terrorist groups (those that receive more media attention), U.S. groups hate many of the same things as their international counterparts and many groups feel that violence and terror are their only option. As an example, Dr. Buck told of his own experience studying domestic terrorist groups and his discovery that God plays a key role in their ideology. Many domestic terrorist groups, for example, believe that men did not write the Constitution, but rather that men were merely the tools of God, who wrote the document.

According to Dr. Buck, many militia groups believe it is their responsibility to defend the borders of the United States when the central government can no longer do so, and to protect themselves from the United States government. The rise of the militia began in the late 1970s with the fall of Saigon, the taking over of the United States Embassy in Iran in 1979, and the cancellation of the B-1 bomber. Militias felt that the central government could no longer defend the citizens of the United States, and the groups had to defend themselves. In the 1980s and early 1990s, however, as the government increased defense spending and defeated the fourth-largest army in the world, these militias became social organizations, sensing a diminished threat to both United States borders and the Constitution. After Ruby Ridge and Waco, and the passing of the Brady bill, many of these militia believed that the United States government was encroaching on the freedoms that God and the Constitution had bestowed on them as citizens of the United States and they became more active and more militant.

Dr. Buck informed the participants that, while the United States must be prepared for the effects of terrorist attacks involving weapons of mass destruction, it must also keep in mind the physical and psychological damage that can be done by an individual. He gave examples of coordinated suicide bombings in malls across the United States the day after Thanksgiving, or an individual with an ice pick on a crowded street.

Dr. Buck closed his remarks with the recognition that terrorism is changing. As an example, he pointed to the website of Hizbollah. Prior to 2001, Hizbollah appeared as victims on their homepage; today they appear on their homepage as victors. Where terrorists were once armed with inexpensive AK-47s, they are now armed with more expensive M-16s, outfitted with more lethal technology. Terrorists cannot survive without a support network and their more sophisticated technology signals that such support is growing, at least financially. With this increased support comes the increased danger of their using weapons of mass destruction, and standoff weapons such as rocket-propelled grenades or MANPADS. Dr. Buck left the audience with the important message that, just like the military, emergency management and first responders must train to respond, and respond as they have trained.

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### Plenary Session

**Mr. Raymond Heddings**, DTRA Associate General Counsel, opened the Plenary Session by reviewing the two and a half year history of the Legal Seminars and gave accolades to those involved in developing the Deskbook, including people within the government and SAIC.

The purpose of the Seminars and the resulting Deskbook was to flesh out legal issues relating to Federal consequence management in the event of a domestic WMD event, including the role of both State and Federal authorities. The Seminars were largely successful in identifying shortfalls and ambiguities in the current and developing systems, though some still exist, as pointed out by Mr. Sheehan.

The Departments and Agencies involved in the Seminars include: DTRA; the Departments of Agriculture, Homeland Security, Defense, Energy, Justice, Commerce, Health and Human Services, Transportation; the National Guard Bureau; the White House Office of Homeland Security; and the Environmental Protection Agency. Some personnel of these organizations participated through email because they were not able to attend the Seminars. The USDA, in particular, despite their inability to attend, contributed a plethora of information and resources. Mr. Heddings also reviewed the array of speakers from previous seminars, including:

- Dr. Robert Kadlec, MD, Health and Bioterrorism Director for the White House Homeland Security Council;
- Mr. Peter Verga, Deputy Assistant Secretary of Defense for Homeland Defense;
- Mr. Stephen King, Esq., Director of Investigations and Law Enforcement, White House Office of Homeland Security;
- Mr. M. E. (Spike) Bowman, Esq., Deputy General Counsel, National Security Law, Federal Bureau of Investigation; and
- Mr. J. R. Reddig, Deputy Assistant Secretary for Emergency Preparedness, Department of Health and Human Services.

He stressed the importance of the professional relationships developed through the seminars and suggested that similar meetings continue, not just to maintain and develop new relationships, but also to discuss issues relating to WMD CM as they arise. Those in attendance agreed and a meeting was informally scheduled for the spring.

Mr. Heddings then reviewed the format and content of the draft Deskbook, the product of the Seminar Working Groups. The CD-ROM contains the text of the book which includes over 100 pages of analysis; excerpts from the documents cited; appendices of Incident Management Resources; acronyms; State authorities; and the full text of the documents referenced in the text. Tables at the beginning of each section of the Deskbook contain a list of the authorities cited within that section. The citations are linked to their referenced excerpts, which are located at the end of each section, for easy navigation.

The sections of the Deskbook are: Introduction and Overview; the Federal Response in the Absence of a Stafford Act Declaration; the Federal Response to a Declared Emergency; Medial

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and Liability Issues; and Communication Issues. When published, the Deskbook will be approximately 400 pages in length and published in dimensions similar to the DOPLAW handbook. It will include all the information on the CD-ROM, minus the full text documents and state authorities appendices. There will be a place for the CD-ROM in the back jacket of the book. By the middle of December 250 copies will be printed, each with its own CD-ROM, and the electronic version will also be posted on a government website.

Mr. Heddings stated that, at the end of the seminar, attendees would receive copies of the CD. Substantive comments must be returned by 14 November. The document itself would be a working group product, not a formally coordinated government document. Comments will be compiled and the final product will be distributed on approximately 15 December.

Comments should be returned according to the following table:

Section	Comments to:
Medical (Section 5)	Jim Misrahi, CDC
Communications (Section 4)	Jean Hardin, USAF
Sections 1, 2, and 3	Ray Heddings and Rocky Gillette, DTRA

The document will be bound, but no decision was made on how to handle updates. Nor was decision reached on how the document should be distributed after its initial distribution. Wide distribution without restrictions was encouraged by the seminar participants.

Participants agreed that the meetings were informative and the group should continue to meet, possibly every six months. Also, future editions of the Deskbook could include more State and local involvement and a section on foreign consequence management.

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# Weapons of Mass Destruction Incident Management Legal Seminar

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## APPENDIX A: Agenda

**October 24, 2003**

*Registration and Refreshments*

*Welcome and Opening Remarks by Conference Host*

**Mr. Robert Brittigan**, General Counsel of the Defense Threat Reduction Agency

*Keynote Address: Operational Overview of Domestic WMD Incident Management*

**Mr. Paul McHale**, Assistant Secretary for Homeland Defense, Department of Defense

*Overview of Federal Organization for CM; Working Group Goals and Objectives*

**Mr. Michael Sheehan**, Deputy Police Commissioner for Counter-Terrorism, New York City Police Department

*Home-Grown Terrorism*

**Dr. George Buck**, Director of Training and Education/Associate Professor, Global Center for Disaster Management and Humanitarian Action, University of South Florida

*Lunch*

*Review Format and Content of the Deskbook; Discussion of the Final Review Process for the Federal WMD Incident Response Legal Deskbook*

**Mr. Ray Heddings**, Associate General Counsel, Defense Threat Reduction Agency

*Distribution and Review of the Draft Deskbook; Summary and Closing Remarks*

**Mr. Robert Brittigan**, DTRA/GC