Legal Aspects of Crisis Management

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Table of Contents

I. Homeland Security- The whys, whats, where, and hows of Homeland Security and Crisis Management.

II. Emergency Management Process

1. Guide for Preventing and Responding to School Violence – a report done by the Private Sector Liaison Committee of the International Association of Chiefs of Police

A. **Crisis Planning and Preparation**- Section 4 of the report discusses the importance of a detailed plan in the event of an emergency. Staff, students, law enforcement, emergency personnel, and the media should all b involved in the preparation of the plan in order for an effective response to a crisis.

2. Security Industry and Crisis Management – Crisis Management relates to the Security Industry through the technologies used to detect, control, monitor and warn of an emergency. This chapter from *The Appropriate and Effective Use of Security Technologies in U.S. Schools* distributed by the National Institute of Justice explains one specific technology through Duress Alarm Devices used in the detection, response, and warning of an emergency. Technologies within Access Control, Fire Protection, Systems Integration, CCTV, Wireless Systems and Monitoring are all an example of products that could be used in the planning and emergency management protocols for crisis management. These technologies should be included in the crisis plans. This article describes several different options of Duress Alarm Devices and the pros/cons for each.

III. Legal Considerations

1. **Guide for Preventing and Responding to School Violence** - Section 7 of this guide relates legal considerations and school violence and the liability that exists. Previous plans and regulations must be examined and accepted along with all regulations set forth by the local, state, and federal governments. Each situation would have different personnel involved and the legalities of protocols must be set forth as well.

2. **Challenges to Prevention and Preparedness: Intelligence, Legal, Organizational, and Budgetary** – This document on the Anser-Institute for Homeland Security website (http://www.homelandsecurity.org/bulleting/Primer_ChallengestoPreventionandPresparedness.htm) is a reference guide of legal authority in emergency situations. It contains references to Acts that define the roles and proper authorities in specific situations.

Summary for Homeland Security / Introduction

(Our nation is entering into a time period when the security of our families, homes, businesses, and the nation as a whole has become the lead in the news stories on a nightly basis, the only topic of conversation in coffee shops across the country, and the reason why we wait for hours at an airport to get on a plane. The idea that our country is untouchable has been challenged, and not only the federal government, but our state and local governments face a new challenge ahead- how do we ready ourselves for the next time?

Crisis management is a subject that has been mentioned before, dealing with natural disasters, and dealing with shootings in schools, but now it must be dealt with on a much bigger scale and incorporated into every handbook ever made for almost any organization. Since September 11, Homeland Security has become another regular phrase we hear in our everyday conversations. How do Homeland Security and Crisis Management work together? How does this apply to the Security Industry, and how does it apply to our educational institutions?

In order for Homeland Security to be understood at all levels of government and policy making, it should be explained, practiced and applied. These are the same three strategies that should be used when dealing with crisis management. A plan should be explained, practiced, and applied. Included in this process are the legal implications that need to be considered. A plan will be put into place and each team member working this plan has its own agenda and purpose and in order to keep the purpose from not becoming clouded, the legalities must also be noticed and accepted.)

Homeland Security

The idea of Homeland Security is new to many Americans, and does not always roll easily off the lips. Many have asked about its origins and meaning.

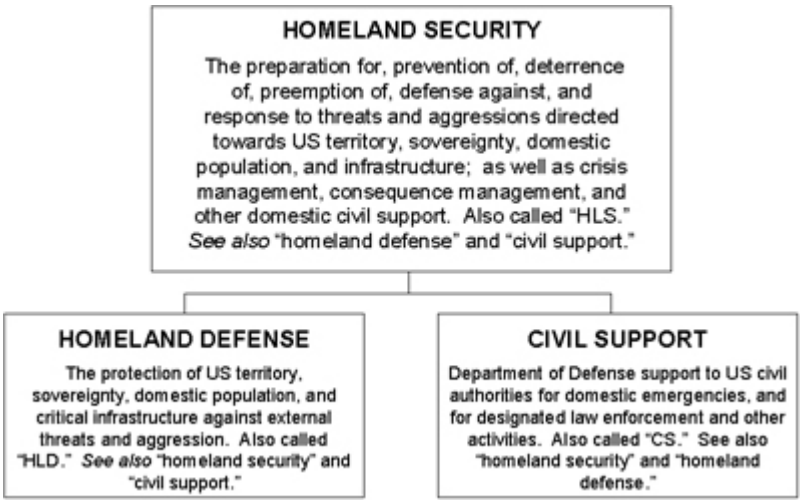
While the idea of looking to friends and then local, state and government agencies for protection takes us back to the earliest days of our nation's history, the idea that we might need defense at home was first raised in its modern context in 1949. A panel of experts completed a review of potential biological weapons and reported to the Secretary of Defense the need for "home defense, involving collaborate efforts of federal, state and private agencies."[i][1]

The term was next mentioned prominently in 1997. Concerned that the Department of Defense might not be moving fast enough to redesign itself after the Cold War, Congress mandated an internal "Quadrennial Defense Review" of military strategy, forces and priorities, with the first of these to be followed by an independent "National Defense Panel." In 1997 this NDP reported its conclusions, to include a concern that terrorist and other threats to the United States were becoming increasingly likely and potentially more damaging. They recommended more attention to the defense of the homeland - soon to be called "homeland defense."

Over the next several years, additional reviews and commissions came to similar conclusions, and discussion of the issue increased.[ii][2] It soon became clear that the term "Homeland Defense" - conceived initially as actions by the Department

of Defense -- was not broad enough to capture all the actions required by a variety of government and private actors at multiple levels. Gradually, Homeland Security came to define that boarder set of actions and initiatives. And the whole preexisting set of actions already planned and coordinated to provide support by DOD within the United States in time of natural disasters and law enforcement crises was identified as a separate sub-set of the larger concept of Homeland Security.

Now that the public debate over the organization and bounds of Homeland Security has been joined, we must be accurate and consistent in our use of language. The technical terms as their definitions have evolved over the past several years, are described below:



Perhaps the best way to remember the important distinctions, is to recall that:

- **Homeland Security** is the overarching concept, consisting of all actions taken at every level (federal, state, local, private, and individual citizen) to deter, defend against, or mitigate attacks within the United States, or to respond to other major domestic emergencies.

- **Homeland Defense** is a *subset* of Homeland Security, and refers only to actions taken to deter or defend against attack. It does not include dealing with the consequences of attack, or the attribution and response required to restore deterrence. It may include non-Federal and non-DOD actions.

- On occasion, the Department of Defense may be called upon to provide support within the United States for emergency and law enforcement purposes that have nothing to do with foreign attack. These operations, called **Civil Support**, are also a subset of **Homeland Security**.

However, even these distinctions may still be a bit complex for those looking at the concept for the first time, and so in its simplest form we offer the following definition:

> *"Homeland Security consists of those private and public actions at every level that ensure the ability of Americans to live their lives the way they wish, free from fear of organized attack."*

If this idea seems very broad, well . . . it is. And it will no doubt change again as its concepts are translated into practice.

-Dave McIntyre, a retired military officer and former Dean of the National War College, is the Deputy Director for Research of the ANSER Institute for Homeland Security.

(http://www.homelandsecurity.org/bulletin/ActionPlan_WhatIsHLS.htm, January 31, 2002)

Never in the Nation's history has it faced a challenge as serious and complex as establishing effective Homeland Security in the face of a well-funded modern terrorist threat. Many threats have been serious - British invasions, the Civil War, and the threat of global thermonuclear war comes to mind. But these conflicts were waged in relatively straightforward, unambiguous ways, and for the most part it was national rather than local authorities making the key decisions, and national rather than local forces on the front lines. The Great Depression was a different kind of complex challenge - issues of taxing, spending, national confidence and economic vitality cut across government agencies and across the line between government and private institutions. But neither the day-to-day safety of individual Americans, nor the viability of our form of government was at stake.

Homeland Security, on the other hand, involves virtually every federal, state, and local government agency, along with many private institutions, and it concerns both the survival of the nation and the survival of its people. Just identifying all the players, much less giving them central direction and funding, is an astonishingly complex task.

The Significance of the Threat

The single most important fact to be remembered about Homeland Security is that its most difficult challenges must be met in the face of a living, thinking and determined enemy, *who is actively seeking to counteract what ever plans and defenses we put in place*.

For many years, government agencies charged with protecting citizens within the country have focused their efforts on mitigating and responding to natural disasters or man-made accidents. These activities do comprise one element of Homeland Security -- the Department of Defense calls its response to such events "Support to Civil Authorities." And until recently, many experts in the area of emergency action preparedness and response have argued that terrorism is a low probability and guarding against it should take a backseat to protecting against the more certain effects of storms, earthquakes, industrial accidents and the like. While such arguments were made in good faith, the single terrorist attack on September 11, 2001, took more lives and damaged the American economy more severely than several decades of natural disasters.

In fact, terrorists empowered by the information age pose a uniquely dangerous set of threats:

- Threats to individual Americans: The means and timing of the 11 September attack demonstrate that its perpetrators were interested not in political statement, but in wounding and killing the maximum number of victims.

Given the effectiveness of modern weapons (especially biological and nuclear weapons), terrorists without conscience and dedicated to hurting others could produces casualties numbering in the millions . . . or more.

- Threats to the nation as a whole: The attack disrupted business nationally and internationally, and the danger remains that losses could push both the national and the international economies into recession, or worse - quite literally threatening our way of life. Sustained attacks upon our financial system, or transportation system, or communications system, or even our leading institutions in private industry and academia could slow the exchange of goods, money, and ideas to a crawl - not only harming our people, but destroying our means of rebuilding our systems.

- Threats to America's position in the world: In matters between nations, perceived power is frequently as important as actual power; small embarrassments can gain an importance out of all proportion to their actual effect, and the success of a small strike can embolden others to take more spectacular measures. By extension, major strikes and dramatic images like those from the Pentagon and World Trade Center can have a major impact upon our voice, our influence and our desirability as an ally or a coalition partner worldwide. And with every successful attack, deterrence against subsequence attacks diminishes.

- Threats to the viability of the US institutions of government: At their core, our institutions consist of people - and modern terror weapons of mass destruction can kill in such numbers that entire agencies - and maybe entire branches of government - can be placed at risk. If the bombers of 11 September had struck Congress or the Supreme Court in session, we might have seen our entire system for making and adjudicating laws upended and imperiled or years to come. The same effect might result from massive attacks on institutions where technical expertise is required: at the Federal Reserve, the IRS, the Department of State, and other locations where many years of experience could be destroyed in an instant.

- Threats against the freedoms guaranteed by the Constitution: One of the purposes of terrorist attacks is to paralyze the target and sow internal dissention by encouraging security measures that increase oppression and decrease efficiency. Domestic paranoia and suspicion are easily stoked, especially when the government is shown to be unable to protect from random acts of terror. The unprecedented scale of destruction made possible by modern weapons could result in an unprecedented restriction of civil liberties.

The unfortunate fact is that the information age has provided modern terrorists with weapons that can inflict death and damage on such a scale that our people, our national power, and our national identity are at risk. This is a new and sobering development.
(http://www.homelandsecurity.org/bulletin/ActionPlan_WhatbeDone.htm, January 31, 2002)

The Emergency Management Process (Summary)

(Defining what a crisis is and how to manage it will be somewhat difficult, as each person will define it differently. A strategy must be put in place. In the case of the World Trade Center attacks on September 11, many have said that if Mayor Guiliani had not had a strategic plan put in place in case of emergency, and practiced and updated the plan accordingly every year, more lives would have been lost. This is one very important proof that having a plan is vital to human life and the success that will come from it.

Below are two types of plans. One is set on a much larger scale with the team players being different federal agencies. The second plan, taken from the *Guide for Preventing and Responding to School Violence* distributed by the International Association of Chiefs of Police, applies to a more local plan, that would involve teachers, administrators, students, law enforcement agents, emergency personnel and the media.

There should be one person who oversees the plan and how it is implemented. This also entails including all the team members involved and including them in decisions made, but one person is responsible for the whole plan and how it is enforced.)

Strategic Considerations for Homeland Security

One of the advantages of working with allies to defend against attacks overseas is that we do not have to be strong everywhere all the time. Because they have the primary responsibility for defending their own countries, we can commit minimum forces to promote deterrence, and rush reinforcements overseas as required if the battle is joined.

But we cannot pass off the responsibility for security of any part of our own nation, nor can we rely upon rapid reinforcement as a solution. We do have to defend everywhere all the time - even a small success in a distant part of the nation will be perceived as a win for the terrorists and a loss for us. Only complete deterrence evidenced by the lack of attacks constitutes fully successful Homeland Security.

As explained in the ANSER publication *A Primer for Homeland Security*, deterrence against attacks at home is the product of a **strategic cycle** that also includes **Prevention, Preemption, Crisis Management, Consequence Management, Attribution,** and **Retaliation**. Not only must we be ready to meet every type of threat in each one of these functional areas, but also that readiness must be evident to others. Only when an enemy believes that we can and will perform in every one of these areas - *that he will fail in his goal* of inflicting major damage *and suffer terribly for the attempt* - will he be deterred from attack.

And if we do fail to convince him and an attack does take place, only by an excellent response in each of these areas can we *demonstrate that he has failed and also inflict a memorable punishment, thereby restoring deterrence* against his future actions, as well as potential attacks from others. There is no short cut through this strategic cycle.

Unfortunately, this strategic cycle requires different actions and involves different players when dealing with different threats. For example:

- The Department of **State** is probably going to be the lead agency for **Prevention** actions overseas (threat reduction, treaties and regimes, etc.).

- The Department of **Defense** will probably have lead for **Preemption** overseas, although this might be the **CIA or other agencies** in special cases.

- The **FBI** is generally designated as the lead for **Crisis Management** while **FEMA** generally has the federal lead for **Consequence Management**.
- Similarly, some agencies will play a major role in some functional areas, and a minor role (or not at all) in others.

And these roles will differ not only according to the functional areas but according to the threats as well.

- The Department of **Energy** will play a major role in **Crisis Management** and **Consequence Management** for any radiological attack - but no role at all for a chemical or biological attack.

- Similarly, the **Centers for Disease Control** will play a major role in the strategic cycle for a biological attack - and not at all in the strategic cycle for a cyber attack.

This is a complex issue that considers several strategic functions involving all members of the team that have been included in the plan. These functions, beginning with planning, budgeting, practicing and executing the plan all become essential to securing the safety of the nation as a whole. The team members will have different perspectives, different experiences, and different opinions as to what will work and what will not. And if the strategy succeeds and the threat seems to recede, emphasis and authority may erode - making us vulnerable to terrorist attack again.

Involvement of Other Levels

And this is just at the federal level. In 50 states (and several territories) many bureaucracies will participate, along with thousands of local, and an untold number of private institutions that are already directly involved in Homeland Security - and in some mission areas, these organizations have the lead.

- Some governors have broad authority over intrastate commerce, law enforcement, and public facilities. State health and perhaps educational personnel will be the first to encounter the results of some attacks, and have the first chance to identify patterns and sound the alarm.

- Local government institutions will provide first responders to virtually all attacks except perhaps for cyber events. Local personnel will act as our first line of defense in guarding potential targets.

- Much of the capability for prevention, crisis response and crisis management lies in private hands. Many scholars who provide the nation's core expertise in the progress of bio, chemical, and radiological events reside in state and

> private schools, or in clinics or think tanks. Treatment for casualties would be primarily in hospitals that must turn a profit and therefore maintain little in the way of excess capacity. And many of the targets of terrorist attack may be privately owned - banks, businesses, suppliers of transportation and communications infrastructure, shopping malls, and major buildings . . . like the World Trade Center in NYC. The first person to discover an actual attack against the homeland is likely to be a private security guard.

Gaining visibility of these assets, setting some sort of uniform standards for training and reporting, and funding this coordination is complex beyond anything previously attempted by the US federal government.

(http://www.homelandsecurity.org/bulletin/ActionPlan_WhatIsHLS.htm, January 31, 2002)

Authority Over Preparation Involves

- **Setting standards**, for everything from organization, equipment, and response times, to training, education and personnel advancement - and then inspecting to enforce those standards.
- **Establishing doctrine** - how agencies think about and approach their duties.
- **Exercising** doctrine, plans and procedures.
- **Controlling personnel and personnel policies.**
- **Providing for education and training institutions.**
- **Reporting** up, down, and laterally-to the President, Congress, department and agency heads, state and local elected leaders, etc.
- **Setting** priorities for funding.

(http://www.homelandsecurity.org/bulletin/ActionPlan_HowtoStartAuthorityforHLSA.htm, January 31, 2002)

Responses for different types of crises should be planned in advance and reviewed, updated, and practiced periodically. The chaos and panic created by these situations cannot be effectively handled without a pre-established specific plan of action.

Summary for School Emergency Mgmt. Protocol

(The following section is the School Emergency Mgmt. Protocol plan. There are several steps, including: planning, training, and a definition of roles for certain team members. Throughout the guidelines they lay out in these three areas, a plan is formulated which is explained and practiced.)

Planning

> a. Establish a Crisis Planning Team that includes representation from faculty and staff, as well as safety, security, and emergency response providers who are knowledgeable about crisis planning and/or would help intervene in a school safety crisis. The primary duty of these teams is to develop and periodically refine crisis management plans.

b. Establish School Crisis Management Teams at district and site levels utilizing the nationally recognized Incident Command System (ICS). The ICS provides a comprehensive organizational structure, role assignment, and decision-making process to prepare for and respond to all types of crises. Have a working knowledge of all available and needed resources for handling and responding to a crisis situation. During planning, utilize school personnel to determine resources available within the building and the district. Utilize emergency response personnel from the community to help determine availability of resources within the community.

d. Include off-site school activities such as stadium events, field trips, etc. in crisis planning.

e. Assign all faculty and staff to clearly defined roles under the ICS system. Critical assignments must be staffed three deep to assure coverage at all times.

f. Identify and make pre-incident arrangements with the counselors who would provide the Critical Incident Stress Debriefing immediately following a crisis.

g. Identify and train on-site building maintenance staff (primary and backup) and off-site personnel who will take responsibility for dealing with fire alarms, sprinkler systems, gas, etc. These personnel should immediately be available at the command post.

h. Identify personnel who will have master keys, codes, and access to secured areas at the site.

i. Establish and publicize the chain of command so that if the appointed crisis director as specific in the ICS is unavailable, the next designated Crisis Management Team member will take charge.

j. Establish and practice how to protect students with physical or developmental disabilities.

k. Prepare a dismissal plan in the event students need to be sent home early. Establish procedures for notifying parents/guardians and media. Make arrangements for transportation of special needs students.

l. Establish and practice lockdown and evacuation procedures, including where students should go during different types of crises. Consider various/adverse weather conditions and ways to transport evacuees. In the event of evacuation, predetermine specific locations of safe havens for students to gather a safe distance away from the school. Publicize locations to students, parents, school teachers and staff, crisis team members, and emergency response personnel.

m. Develop an emergency traffic plan capable of protecting emergency response routes and accommodating the likely traffic and parking needs of parents/guardians and media.

n. Pre-designate places, depending on the nature of the crisis, for personnel to perform their roles. Places include:

- A designated media contact location.
- A designated place for parents/guardians to congregate.
- A designated place for clergy.
- Staging areas for transportation, etc.

o. Establish a "Calling Tree" or "Phone Tree" which allows the Crisis Management Team to be notified immediately. Post Calling Tree lists in strategic locations, such as superintendents', principals', assistant principals', nursing, counseling, custodians', crisis team representatives', and school department offices; as well as at local police department, school district, and other designated off-site locations.

p. Make alternative response plans known to key personnel who would communicate the nature of the crisis and the appropriate level of response. Information about some aspects of response plans may need to be restricted as a security measure.

q. Create crisis and evacuation kits and place them at strategic locations inside and outside of schools.

r. Consider utilizing digital technology and computer databases to store photographs and demographic information that would enable easy and accurate identification of students, teachers, and staff. Always have hardcopy versions in the event computers are inaccessible.

s. Provide copies of all emergency and evacuation plans to local law enforcement, fire, and other emergency response agencies. t. Provide law enforcement, fire, and other emergency response personnel with blueprints, layouts and floor plans of school buildings and grounds, including information about main leads for water, gas, electricity, cable, telephone, HVAC, alarm and sprinkler systems, and locations of hazardous materials, elevators, and entrances. These should be reviewed annually and include both officials' and students' names for each location on the property. Schedule walkthroughs by emergency responders, including city public works personnel. Consider color coding interiors of buildings and numbering doors to assist responders.

u. Consider creating a system of "knox boxes" outside school buildings. Knoxboxes are storage devices that provide staff and emergency response personnel with access to keys at any time of the day or night.

(http://www.theiacp.org/pubinfo/pubs/pslc/svplan.htm, January 30, 2002)

The Role of Law Enforcement and Emergency Response Personnel

1. Conduct meetings with representatives from the school community and from all local law enforcement, fire, and other emergency response agencies to obtain, develop, and coordinate school site safety plans.

2. Maintain information in vehicles of first responders about school sites' layouts, building floor plans, and aerial maps. Update as needed.

3. Create systems by which students, teachers, and/or staff hearing commands (e.g., "Open the door") may be better able to identify that they came from official law enforcement or school personnel, instead of from offenders. Consider the possibility that the offenders could be students, faculty, or staff when designing and communicating details about those systems to school personnel.

4. Work toward integrating disparate law enforcement and emergency response communication technologies to enable more effective communication between agencies during crises.

5. Develop and provide training on the Incident Command System, which coordinates supervision and direction of different school authorities, law enforcement personnel, and emergency responders from a central command post.

Training

After setting up a plan, the team members must be trained for their specific duties and goals. This training should be conducted at least annually so changes that occur can be accrued for.

a. Test crisis management plans with faculty and staff, and if appropriate with selected students, at the beginning of each school year and/or during in-service days throughout the year. Law enforcement and emergency service agencies in the community should be included.

b. Coordinate and regularly hold scenario-based training sessions that bring together law enforcement, other emergency response personnel, school teachers, and other school staff.

c. Train teachers and staff on the types of information that emergency response personnel will need to respond to different types of crises, such as when the event occurred, where it happened, how many are involved, whether lockdown or evacuation has occurred, etc.

d. Consider using local emergency response personnel or district-wide crisis teams to provide training.

e. To the extent possible, provide cross training to members of the Crisis Management Team and to other school personnel.

f. Review the crisis response plan with teachers, principals, staff, volunteers, campus supervisors, and school resource officers.

g. Review the crisis response plan with students.

h. Provide training to teachers and school staff on their assigned, and if applicable, back-up roles during crisis situations.

i. Supplement verbal training with a written pamphlet to remind students, as well as full-time, part-time, intern, and substitute teachers of their specified roles.

j. On an on-going basis, provide training to staff; volunteers; full-time, part-time, intern, and substitute teachers; and other persons who are regularly on campus regarding how to respond to different types of crisis scenarios.

k. Develop written summaries of crisis response instructions to be disseminated to new substitutes along with their specific classroom materials.

l. Provide information to parents/ guardians on their roles during crisis situations. Also inform them where they should go to meet with the designated spokespersons, where to retrieve their children and get information about the status of the crisis, and what they can do to help during and after the crisis.

m. Decide on an appropriate balance of crisis response information and crisis response drills for students that leave them feeling safe without causing undue fear.

n. Provide training in media relations for appointed media spokespersons during the planning phase. Invite media representatives to those training sessions to strengthen relationships and enhance understanding of their respective needs.

o. Provide information to local media representatives on how to receive and communicate information about crises to the community.

p. Teach students, teachers, and staff to recognize the physiological cues experienced in crisis situations. Rehearse constructive skills and behaviors instead of relying on impulsive actions during crisis situations.

q. Provide emergency first-aid training to teachers, staff, and students.

r. Provide staff, teachers, and students with instructions on personal safety awareness and survival skills, on how to report and respond to persons making threats or displaying weapons, and about locating and not giving up safe positions.

s. Incorporate crisis preparation training and requirements into teacher education programs at colleges and universities.

(http://www.theiacp.org/pubinfo/pubs/pslc/svplan.htm, January 30, 2002

Summary to Legal Considerations

(The legal implications go so deep that it would be enough to throw the plan out the window and act by the seat of your pants, but in the end these guidelines will allow for the success of the plan put in place. The first section defines legal implications more on the federal level and who is involved. The second half of this section defines specific implications that need to be considered when dealing with an school/ university.)

Legal Considerations

And finally, no one has yet begun to sketch the scope of legal considerations, domestic and international, civil and criminal. Properly designed and expressed, legal machinery can be extremely helpful in denying terrorists access to their targets, in managing the aftermath of an attack, and in the retribution that is so essential to further deterrence. But without central vision and direction, the welter of international, national, state and local laws, regulations, ordinances and jurisdictions can make life much harder for the defenders of the homeland than for the attackers. Already our experience with trying to distribute the names and descriptions of dangerous suspects and known offenders down to the people most likely to encounter them - from ticket agents to airport security guards to the owners of crop dusters and truck driving schools - has indicated how hard it is to transfer critical information in a timely manner.
(http://www.homelandsecurity.org/bulletin/ActionPlan_WhatbeDone.htm, January 31, 2002)

Emergency Legal Authorities

Federal Role in Disaster Relief: *The Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121 et seq., called the "Stafford Act")*

- If the State requests Federal assistance, the President may declare a national emergency for mobilization of Federal resources in support of State efforts.
- Aid may not be distributed in a discriminatory manner.

Use of Federal Troops for Law Enforcement Purposes: *The Posse Comitatus Act (18 U.S.C. § 1385)*

- Army and Air Force may not be used for law enforcement. DoD policy extends the prohibition to Navy and Marines.
- National Guard in State-status are not covered by the Posse Comitatus Act.
- Federal troops (incl. Federalized National Guard) may be used for law enforcement if the President invokes the Insurrection Act to quell civil disturbances.
- Other exception includes preventing the loss of life or property during serious disturbances or calamities, and protecting Federal property and governmental functions.

Reserve Mobilization: *(10 U.S.C. § 12304(b))*

- The President may order reserve units to active duty in response to a WMD incident.

Civil Liberties: *(42 U.S.C. § 264, called the "Federal Quarantine Law")*

- Public health law is primarily a State concern.
- Judicial decisions indicate that forcible inoculation and quarantine of infected patients may be constitutional.
- SecHHS has the authority to issue regulations that authorize Federal agencies to respond to the spread of a communicable disease across State lines, likely including quarantine of patients, forcible blood draws and inoculations, disposal of bodies in ways contrary to personal beliefs, and related restrictions on liberty.
- SecHHS has not promulgated any regulations under this authority.
- DirCDC may take measures, likely including the list set forth above, to prevent the spread of a communicable disease upon determining that a State is not acting sufficiently to prevent the spread of that disease (42 C.F.R. § 70.2).
- A person who has a communicable disease "in the communicable period" shall not travel from one State or possession to another without a permit from the health officer of the State if such a permit is required under the law of the destination State (42 C.F.R. § 70.3).

Quelling Civil Disturbances: The Insurrection Act (10 U.S.C. § 331 et seq.)

- State and local governments have primary responsibility for quelling rebellions (32 C.F.R. § 215.4(a).
- The President may use the military (including the Federalized National Guard) to quell (1) civil disturbances in a State (upon the Governor's request), (2) rebellions that make it difficult to enforce Federal law, or (3) any insurrection that impedes a State's ability to protect citizens' constitutional rights and that State is unable to unwilling to protect these rights.
- Before committing U.S. troops, the President must issue a proclamation for rebellious citizens to disperse, cease, and desist.
- Some government attorneys believe that the Insurrection Act is subject to a very liberal interpretation.

Martial Rule

- The Constitution charges the President to "take Care that the Laws be faithfully executed" and the Congress to "call forth the Militia to execute the Laws of the Union."
- 32 C.F.R. § 501.4: "Martial law depends for its justification upon public necessity. Necessity gives rise to its creation; necessity justifies its exercise; and necessity limits its duration. The extent of the military force used and the actual measures taken, consequently, will depend upon the actual threat to order and public safety which exists at the time." The President normally announces his decision by a proclamation, which should detail the substance of the martial rule.
- There are judicial decisions and scholarly articles indicating that the President has some meta-Constitutional authority to act in times of national emergency.
- The preconditions for martial rule are unclear, but it is likely that the preconditions for imposing martial rule are satisfied if a crisis threatens to undermine the stability of the U.S. Government.
- The parameters for martial rule are unclear, such as whether martial rule could be imposed over entire swaths of the U.S. or whether martial rule must be confined only to areas in which the crisis is occurring.
- Options for martial rule include, but are not limited to, prohibition of free assembly, national travel ban, quarantine of certain areas, suspension of the writ of habeas corpus [i.e., arrest without due process], and/or military trials in the event that the court system becomes dysfunctional.

(http://www.homelandsecurity.org/bulleting/Primer_ChallengestoPreventionandPreparedness.htm, January 31, 2002)

Legal Consideration and Schools

A variety of local, state, and federal statutes, regulations, constitutional requirements, and judicial decisions affect the liability, rights and responsibilities of school personnel in maintaining a safe school environment. School policies also may play a key role in establishing liability and affecting the responsibilities of school personnel. Schools seeking to avoid liability for acts related to school violence, including the steps taken to prevent it should become familiar with the legal requirements. The following pages offer a foundation to begin a legal audit of schools' current policies and practices for reducing school violence.

The following list of legal considerations is not comprehensive. Before acting on any of these issues, consult with legal counsel.
(http://www.theiacp.org/pubinfo/pubs/pslc/svplan.htm, January 30, 2002)

Liability of Schools When Students Are Harmed

Failure to Adhere to Law or Policy

In some instances, liability may be premised on failure to adhere to current local, state, and federal school safety laws and regulations or school district safety policy. School officials should:

a. Ensure compliance with all current applicable local, state, and/or federal statutes addressing safety and harassment issues.

b. Ensure school districts' safety and harassment policies are fully implemented.

c. Develop and ensure compliance with their own respective school's safety and harassment policy.

d. Evaluate any existing school campus access policy to determine its adequacy and ensure it is being followed.

e. Provide adequate training on the issues listed above to school personnel.

Failure to Use Reasonable Care in Selecting Personnel

In some instances, liability may be premised on failing to use reasonable care in screening, hiring, training, supervising, and retaining personnel who are regularly on-site and who commit acts of violence. School officials should:

a. Implement appropriate screening and hiring standards to minimize likelihood of hiring personnel with propensities toward violence, consistent with applicable law.

b. Ensure proper training of teachers and school staff in the recognition of warning signs for violent behavior, on steps to take to minimize violence, and on appropriate responses if violence occurs.

Negligent Responses to Threats and Acts of Violence

In some instances, liability may be premised on negligent responses to threats and acts of violence falling within the school's jurisdiction and sphere of duty. School officials should:

a. Provide reasonable supervision for students, especially in specific areas where prior threats or instances of violence have occurred.

b. Take swift and consistent action when addressing personnel or students who threaten or engage in violent actions.

c. Exercise due caution when placing potentially or known violent individuals in school populations, consistent with applicable law.

d. Determine when they have a duty to warn students, faculty, or other personnel about a potential danger, including providing any (and only) legally authorized and appropriate information about the violent propensities of individuals to the appropriate personnel.

e. Determine the applicable mandatory reporting requirements concerning a threat or legal action.

Liability of Schools for Wrongful Accusations and Discharge

School personnel must respond to threats of violence in a way that protects suspected individuals from defamation of character and other tortuous liability if suspicions about them are mistaken. Liability can be minimized by conducting prompt investigations of all allegations and by notifying only those individuals with a need to know about them. Such actions, however, must be balanced by the need to protect students and staff whenever there are threats of serious violence. School officials should:

a. Conduct thorough investigations of complaints prior to removing suspected individuals from the school, if there is sufficient time. Removal of employees or students must be consistent with applicable laws. It may be appropriate to remove individuals from school without expulsion or termination pending their investigations. If students or employees are wrongfully terminated or expelled, school officials may be subjected to wrongful termination or expulsion suits.

b. Respect the privacy rights and confidentiality rights of all individuals during investigations.

Liability of Schools For Violating Students' Rights

Reasonable Searches and Seizures

Develop and apply policies for conducting searches and seizures of student property consistent with the Fourth Amendment to the Constitution, as well as all applicable state and local statutes.

a. Seek the advice of an attorney before implementing any policy on search and/or seizure of students' property.

b. While a warrant may not be required, school officials must justify any search and/or seizure based on the following:

- Reasonable suspicion that the law or a school rule has been violated
- Information, facts, or circumstances that would lead a reasonable person to conclude that evidence of a crime or rule violation would be found in the search
- The relationship between the extensiveness of the search and the evidence being sought

- The relationship between the severity of the threat and the degree of intrusiveness in conducting the search
- The presence of any special legal considerations, such as whether the student did not have a reasonable expectation of privacy; the object(s) seized fell within the plain view of an official who had a right to be at that location; the person who seized the object was not affiliated with, or directed to do so by, the government; or the student voluntarily consented to the search

c. Take into consideration the legal liability related to any type of non-consensual search of students or students' property, including but not limited to:

- Locker searches
- Vehicle searches
- Use of metal detectors
- Use of drug- or weapon-sniffing dogs
- Drug testing
- Body searches
- Use of cameras
- Police-assisted searches
- Searches of abandoned articles
- Book bag, purse, and backpack searches
- Searches of outer clothing
- Strip searches

Student Suspension and Expulsion for Violent Actions and Threats

Students are entitled to due process before being suspended or expelled. Usually, more due process rights are required for expulsion than suspension.

a. Ensure the process established by schools and the standards utilized for suspending or expelling students are consistent with applicable local, state, and federal laws, and applied consistently.

b. Ensure the nature and adequacy of public education alternatives for those either suspended or expelled from their usual public school programs are consistent with applicable laws.

c. Before suspending or expelling a student, school officials should provide the student due process rights as required by state and federal law. These rights may include, but are not limited to, the following:

- Provision of a written and specific statement of the charges that justify suspension or expulsion
- Opportunity for a full hearing after adequate notification.
- Use of impartial adjudicators
- Opportunity for students and parents/guardians to examine evidence against the student
- Opportunity for students and parents/guardians to present evidence favorable to the student
- Opportunity to be represented by counsel
- Opportunity to confront and examine adverse witnesses

d. Ensure expulsion hearings are fully and formally recorded.

e. Ensure adjudicators' decisions in hearings are based on a full and fair review of the evidence.

Use of Dress Codes and Uniforms

As required by law, accommodate students whose religious beliefs would be compromised by their compliance with school dress code provisions.

Rights to Privacy in Matters of Record Keeping and Information Sharing between Agencies

The Family Educational Rights and Privacy Act protects the confidentiality of all student records information. Ensure compliance also with applicable laws pertaining to divulging information about peer court or formal juvenile court proceedings with the school and community or service providers. Issues may include the following:

- Whether or not peer or juvenile court hearings should be open to the public
- Release or publication of juveniles' names
- Release or publication of juveniles' pictures
- Confidentiality of peer or juvenile court records
- Admissibility of student records
- Prohibition of sealing or expunging records
- Parental access to children's records
- Parental consent for release of information in children's records

Liability of Parents/Guardians

Parents/Guardians may also be held criminally or civilly liable for foreseeable youth violence they should have acted to prevent.

In some instances, parents/guardians may be held criminally or civilly liable for negligent storage of a firearm or for negligently providing their children with a firearm. Currently, sixteen states have Child Access Prevention (CAP) laws requiring gun owners keep their guns locked out of reach of children.

In some instances, parents/guardians may be held criminally or civilly liable for failure to do the following:

- Adequately supervise their children
- Take corrective action with problematic behavior displayed by their children
- Notify others about a foreseeable threat to the safety of others that their own children pose

The list of legal considerations addressed in this section is not comprehensive. Before acting on any of these issues, consult with legal counsel. (http://www.theiacp.org/pubinfo/pubs/pslc/svplan.htm, January 30, 2002)

Security Industry and Crisis Management (Summary paragraph)

(Crisis Management relates to the Security Industry through the technologies used to detect, control, monitor and warn of an emergency. This chapter from *The Appropriate and Effective Use of Security Technologies in U.S. Schools* distributed by the National Institute of Justice explains one specific technology through Duress Alarm Devices used in the detection, responding, and warning of an emergency. Technologies within Access Control, Fire Protection, Systems Integration, CCTV, Wireless Systems and Monitoring are all an example of products that could be used in the planning and emergency management protocols for crisis management. These technologies should be included in the crisis plans. This article describes several different options of Duress Alarm Devices and the pros/cons for each.)

It would be very unusual for a school to never experience a crisis situation. A crisis can be any incident whereby the health or well being of one or more students or one or more employees is in imminent danger, or part or all of the school facility will potentially be destroyed or made unavailable. A list of crises could include:

- A threatening or drunk student or employee
- A trespasser on campus
- A fight
- The breakout of a contagious disease
- An irate and threatening parent on campus
- Sudden unavailability of a teacher or a bus driver
- A weapon known to be on campus
- Massive vandalism
- A utility outage (no water, electricity, heating, cooling, or telephone service)
- Bad weather (weather too bad to allow students to return home via normal methods or at normal times)
- A vehicular accident with injuries, either in or near the school parking lot or during a school-sponsored event
- An extremely ill student or employee
- A gas main leak or toxic spill on or near campus
- A bomb threat
- A gang confrontation on or near school property
- A suicide
- A hostage situation
- A shooting, stabbing, murder, or rape
- A bomb detonation inside the school facility or adjacent to school facilities (a car bomb)
- A local or National emergency that sends community residents to seek temporary shelter at the school

For a school, a crisis that requires immediate response can be as harmless (but inconvenient) as the lack of a key to open the gym for an evening sporting event. Unfortunately, recent tragedies in the United States have demonstrated the need for schools to be prepared to respond to emergencies as serious as shootings or bombs.

How a school responds to this wide range of incidents is in itself an entire discipline-that of crisis management and planning. Every school needs a well-thought-out, annually updated crisis plan, with regular training for all those who might be involved. Not all schools have a plan, and many plans in existence were issued by the school district such that, by virtue of their generic nature, they may be inadequate for a true emergency. This plan needs to make assignments of who is in charge during different types of emergencies; who is the alternate in charge; who is called first, by whom, from where, and using what; whether students are relocated and how; how students are provided food, water, or shelter in the interim; what type of statement is made to the press and by whom; and who is in charge when emergency teams (fire, police, and so forth) arrive on the scene. These are only a few of the specifications called for. In the best of all possible situations, a predetermined team of school employees will immediately muster upon occurrence of a serious situation. Team members would know who to look to for decisions and then proceed automatically in their roles for the particular plan chosen to be implemented.

For the sake of this discussion, it will be assumed that a school has a current crisis plan in place. The issue that will be of concern here is how an employee (or student) can notify security, school personnel, and/or local emergency services that a crisis is occurring or is imminent. Types of communication that may be viable are yelling/screaming, sending someone else for help, using the public address (PA) system, using a telephone, or calling on a two-way radio. (Two-way radios will be a selected technology topic in a subsequent manual.)

Now consider that the person who needs to summon help is in a situation where these options are not viable. This situation may be constrained by the need for extreme urgency or discretion (because of an intimidating situation) or because of the vulnerable location of the person summoning help. The provision that allows a person to summon help under one or more of these constraints is defined as a "duress alarm."

Modern duress alarms are generally electronic devices that vary widely in capabilities and price. There are three general overlapping categories of duress alarms that can send one or more levels of distress signals to a particular location:

- A panic-button alarm—a pushbutton mounted in a fixed location
- An identification alarm—a portable device that identifies the owner of the device
- An identification/location alarm—a portable device that identifies, locates, and tracks the person who activated the duress alarm

(One additional category could possibly be the cellular telephone. While this approach is neither as discrete nor as automatic as the other three categories of alarm devices, a cellular telephone is highly recommended equipment for every principal and the primary security person. Land lines for telephone service are occasionally unavailable, whether due to inclement weather, accidents, or through malicious actions.)

The panic button is by far the most common type of duress alarm presently found in schools. The simplest application would be a strategically located button that, when initiated, would engage a dedicated phone line. A prerecorded message

specifying the school, its location, and the urgency is sent to several locations, such as the police department, the district security office, and so forth. Such a system could be pulled together for a few hundred dollars by the local handyman, plus the ongoing cost of the phone line.

Commercially available duress panic button systems provide a pushbutton mounted on classroom walls or under teachers' desks. In a duress situation, a teacher or other employee depresses the panic button, which transmits a signal, via wiring, to a location where a visible and/or audio alarm would be activated at a console. This console would provide information that would identify the classroom where the panic button was activated, but not who activated it. A more advanced system may incorporate the PA system, which allows the teacher and the administrative personnel to hold a two-way conversation by using the existing room PA speakers and installed internal wiring. The cost of this system for an average school would be approximately $10,000.

There are several weaknesses to a panic-button system. In a classroom situation, it is possible that the panic button would not be readily available in a duress situation. It may be across the room from the teacher's desk or even accidentally blocked by furniture or posters. Also, this configuration lends itself to nuisance alarms triggered by mischievous students. This problem can be offset by hiding the pushbutton or requiring a teacher to enter a PIN on a keypad before use. (The latter is not recommended for schools because of the potential liability of a student attempting, unsuccessfully, to summon help in a threatening situation.) Such a system does not actually identify the person using it, only the owner of the device, but does locate the alarm to a particular classroom or wherever the pushbutton is physically mounted. A panic-button system is cost-effective when installed during the school's initial construction, rather than as a retrofit, and can be a simple and effective system for many types of emergencies.

A second type of system incorporates a pager like device that has a panic button built in and is either worn by school personnel or may be installed within a foot switch located under a desk. When the panic button is pushed, a wireless alarm signal is sent to the closest installed wireless sensing unit (a type of repeater), which would then send the signal on to the alarm console. The personnel at the console would receive a coded number and this number would correspond to a teacher. This system does not usually give specific locations other than to the general preprogrammed zone of the repeater. Increasing the number of zones requires more wireless sensing units to be installed, which increases the cost and complexity of the system. A major limiting factor for this system is that the pager like device must have a clear line of sight to the nearest sensing unit for an accurate transmission. In other words, walls, glass, roofs, floors, and so forth will degenerate the transmitted signal, which decreases the precision of identifying an individual under duress.

This type of system may also incorporate a two-way radio built into the pager that would allow communication between the console operator and person under duress, but this larger pager is more awkward to wear. Also, if a school has an existing PA system, a duress system could utilize the existing PA system wiring to send the signal from the sensing unit to the alarm console. This hybrid system would use both wireless and preexisting wires to reduce the hardware and installation costs. An estimated cost for this type of system would be about $50,000.

A third system, a smarter version of the previous system, can identify, locate, and track the person who activated the duress alarm of his or her pager. Again, school personnel would push the panic button in a duress situation, and this action would send a wireless alarm signal to a more sophisticated wireless sensing unit. The sensing unit would forward the signal to the alarm console. An extensive wireless infrastructure identifies, locates, and tracks the pager device (and hence the person under duress) within school property. The electronics and software of such a system produces a positioning symbol on a console panel or map like display. (Telephone calls to several vendors during the summer of 1998 revealed that these systems generally cost approximately $100,000 for a 40-acre school area.)

Advanced and promising technologies. The Global Positioning Satellite (GPS) technology that is currently identifying, locating, and tracking everything from military soldiers to car rental vehicles has not been shown to be as successful when used inside buildings or around large or tall buildings. GPS requires an unobstructed signal from the ground transmitter unit to an Earth-orbiting satellite. Some advanced duress systems use a hybrid design that tracks outside personnel with GPS technology and RF or infrared systems for tracking personnel inside facilities. The cellular phone system infrastructure is improving greatly in capabilities and coverage, which in the future may be a great asset to duress alarm signals. Advances in low earth-orbiting satellite technology that transmits data may also prove to be beneficial in making duress alarm systems more intelligent in the future.

Duress alarm system technologies are improving at a very fast pace but will likely have to come down substantially in cost before they will be affordable to most schools. Before going out on bid for the purchase of such a system, it is recommended that school administrators communicate with current users or request to participate in a demonstration of the proposed system. (http://www.ncjrs.org/school/ch5.html, January 30, 2002)

The good news is that technology can be an enormous help, from establishing communications between levels, to building data bases, to sophisticated security checks like facial recognition, to advanced training with inter-active computer simulations. The bad news is that purchase of the technology is moving slowly, and there is no central authority to set standards for functionality and interoperability.

(http://www.homelandsecurity.org/bulletin/ActionPlan_WhatIsHLS.htm, January 31, 2002)

Conclusion (Summary)

(The importance of having a detailed emergency management protocol designed to fit the team members, the legal considerations and then to specific technologies that will be used in the plan will lead to a plan that is successful.)