



# Legal Preparedness Reporter

Volume 1, Issue 3

Fall 2008

Michael Hodges, JD, CPP, Editor

## Legal Right to Arm During Natural Disaster

### Inside this issue:

Legal Rights to Arm During Natural Disaster 1

Pandemic Influenza Vaccination 2

Port Authority Liability for 1993 Trade Center Bombing 2

Protecting Business with Modern Day Anti-Terrorism 3

North Carolina Joins Other States in Liability Protection 4

A secondary concern for many communities that evacuate during emergencies is wondering whether property will be safe from not only the effects of the disaster, but from criminal looting. This was especially noticeable in the wake of Hurricane Katrina.

Following Katrina there was a review of emergency response laws that address the rights of homeowners to protect their property with deadly force.

The laws reviewed included H.R. 5013, titled: "Disaster Recovery Personal Protection Act" in 1996 and its later version that includes an Amendment to Homeland Security Appropriations. The Disaster Recovery Personal Protection Act has been law since 1996 with the belief that when law enforcement is heavily occupied with other duties, during emergencies, citizens should have the legal right to protect and defend their families during civil disorder.

The effects of this legislation were recently felt as Louisiana prepared for a return of Katrina like weather in August 2008. In this instance, looting was not the story displayed on the nightly news; instead it was images of people sitting on their front porch with a shotgun across their lap. Instead of evacuating, some residents chose to avail themselves to H.R. 5013 which legally allows them to arm themselves "in case" looters come calling.



Picture source: [<http://www.//tenpercent..wordpress.com>]

*Legal Preparedness* in the homeland security/emergency management context, speaks to the statutory and regulatory framework necessary to carry out those actions related to prevention, preparation, response, and recovery from terrorist incidents or catastrophic disasters. It precedes, co-exists with, and extends beyond the physical logistics of the preparedness cycle.

## Pandemic Influenza Vaccine Guidance

In another National Legal Preparedness Training Program (NLPTP) newsletter, I spoke of emerging trends involving pandemic influenza preparedness. Since then, the U.S. Department of Health and Human Services (HHS) along with the Department of Homeland Security has released a guideline on the pandemic influenza vaccine.

The much anticipated guideline assists State, Local, and Tribal personnel responsible for emergency preparedness in minimizing the impact of a pandemic outbreak within communities. Based upon the most recent data on pandemic influenza, the guideline seeks to:

- Protect persons critical to the pandemic response and those that provide care for persons with pandemic illness;
- Protect persons who provide essential community services;
- Protect persons who are at high risk of infection because of their occupation; and Protect children.

Additionally, the guidance identifies four distinct groups targeted for vaccination. They include those whom 1) maintain homeland and national security, 2) provide health care and community support services, 3) maintain critical infrastructure, and 4) are in the general population.

More information and the complete guidance are available:

<http://www.pandemicflu.gov/vaccine/allocationguidance.pdf>



Picture Source : [[http://www. Alleghanyhealthdept.com](http://www.Alleghanyhealthdept.com)]

## Port Authority Liability for 1993 Trade Center Bombing

Although the World Trade Center bombing took place more than a decade ago, building owners are now learning that there is potential liability regarding the lack of planning for terrorist activities.

In April of 2008, Presiding Justice Jonathan Lippman found in *Nash v. Port Authority of New York and New Jersey, 2617*, that the Port Authority failed to implement adequate security measures in the first attempted bombing of the World Trade Center in 1993.

Responsibility in part comes from the Port Authority's knowledge or previous notice of warnings that the underground parking garage, where a bomb was placed, was vulnerable to an "event

of potentially catastrophic magnitude". The Appellate Division's, 1st Department decision was unanimous in holding that "terrorism has for decades posed a dire threat to ordered life in free and open societies...its spectre cannot justify the view that performance of the duties we have traditionally relied upon as essential to the preservation of our security may be generally excused as futile."

It is important to note that this was an appellate case. The Justices upheld a jury's findings that the Port Authority of New York and New Jersey was more than two-thirds responsible for the 1993 terrorist attack that murdered six and injured more than 1,000.

### Flu Facts:

**Seasonal (or common) flu:** "is a respiratory illness that can be transmitted person to person. Most people have some immunity, and a vaccine is available."

**Avian (or bird) flu (AI):** "is caused by influenza viruses that occur naturally among wild birds. Low pathogenic AI is common in birds and causes few problems. Highly pathogenic H5N1 is deadly to domestic fowl, can be transmitted from birds to humans, and is deadly to humans."

**Pandemic flu:** "is virulent human flu that causes a global outbreak, or pandemic, of serious illness. The disease can spread easily from person to person."

Source: <http://www.pandemicflu.gov/general/index.html>

## Protecting Business with Modern Day Anti-Terrorism Legislation

It has been almost eight years since the last attack on the World Trade Center in September 11, 2008. Afterwards, the country observed a rush by law enforcement, emergency management personnel, judiciary and other concerned stakeholders in ensuring the Nation's safety.

Currently, we are seeing the fruits of labor of legislation and other resources for Homeland Security. This includes an understanding of the obscure Safety Act. While enacted in 2002, the Safety Act is just receiving much attention from security professionals, legal profession, and building owners.

The Safety Act of 2002 was essentially enacted by Congress to ensure that the threat of potential lawsuits would not discourage the use of technologies and services that would otherwise protect lives. Titled SAFETY, its actual definition is (Support Anti-terrorism by Fostering Effective Technologies). Hence, the Act alludes to safety in the sense of protecting lives, but more so, is designed to support those technologies used to thwart terrorist activities.

In fulfilling its purpose, the Act also creates certain liability limitations for "claims arising out of, relating to, or resulting from an act of terrorism."

Under sec. 864(b) Reciprocal Waiver of Claims, "seller shall enter into a reciprocal waiver of claims with its contractors, sub-contractors, suppliers, vendors and customers, and contractors and subcontractors of the customers, involved in the manufacture, sale, use or operation of qualified anti-terrorism technologies, under which each party to the waiver agrees to be responsible for losses, including business interruption losses, that it sustains, or for losses sustained by its own employees resulting from an activity resulting from an act of terrorism WHEN qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act."

There is an application process for businesses to undergo to receive the DHS designation under the SAFETY Act. In review, it is clear, by the enactment of the SAFETY Act 2002 that DHS seeks to avoid the results found by the jury in *Nash v. Port Authority of New York and New Jersey*.



Picture source:

[<http://www.financialthink.com>]

Businesses are urged to read more about this process and the final rule at [http://www.dhs.gov/xabout/laws/editorial\\_0878.shtm](http://www.dhs.gov/xabout/laws/editorial_0878.shtm).

## North Carolina Joins Other States in Liability Protection

On August 8, 2008, a new law went into effect that makes North Carolina only the Fourth State to implement emergency liability protection.

With the enactment of Liability Protection for Private Entities Act of 2008, North Carolina joins Iowa, Washington, and Georgia in addressing the entity emergency liability protection.

Essentially, the new legislation provides businesses with protection when they assist local governments in carrying out emergency management activities during a declared emergency.

While non-profit businesses and organizations are also covered, the legislation extends beyond declared emergencies, and includes other activities like planning, preparation, and training.



The *Homeland Security/Emergency Management Division-National Legal Preparedness Program* results from a Cooperative Agreement between the Department of Homeland Security, Federal Emergency Management Agency and the University of the District of Columbia to establish a national scope training program for legal issues in preparation, response, and recovery from terrorist incidents and catastrophic events.

The HSEMD-NLPP is a project of the University's Institute for Public Safety & Justice.



**Homeland Security/Emergency Management  
National Legal Preparedness Program**

Institute for Public Safety & Justice

Phone: 202-274-5689

Fax: 202-274-5409

Email: [NLPTP@udc.edu](mailto:NLPTP@udc.edu)

Angelyn Spaulding Flowers, JD, PhD  
National Project Director

Chimere J. Jones  
Project Manager,  
Layout and Graphics

**INSTITUTE FOR PUBLIC SAFETY & JUSTICE**

Translating Research into Policy—Translating Policy into Practice

This program was supported by Cooperative Agreement Number 2007-GT-T7-K018, administered by the U.S. Department of Homeland Security, Training & Exercise Integration Secretariat. Points of view or opinions in this program are those of the author(s) and do not represent the position or policies of the U.S. Department of Homeland Security.