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CENTER FOR INFRASTRUCTURE PROTECTION

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**NATIONAL MONUMENTS
AND ICONS**

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In this issue of *The CIP Report*, we focus on National Monuments and Icons. This is an area defined as one of the 18 critical infrastructure and key resources. However, monuments and icons also symbolize our nation's pride in our history and traditions.

First, we provide an overview of the National Monuments and Icons (NMI) Sector. The article describes the administration of the sector as well as the criteria used to identify an asset as a monument or icon. Next, we feature an interview with the Secret Service that details the role they play in National Security Special Events. The School of Recreation, Health, and Tourism at George Mason University discusses their research on the National Mall Plan. The National Park Service is creating this plan as a long term vision for the National Mall and George Mason has been working as part of the evaluation team. Finally, an article about the Statue of Liberty provides the background of this significant and beloved monument.

This month's *Legal Insights* reviews an ongoing case that relates to how the law defines terrorist acts and the potential for this law to change. *Cyber Conflict Perspectives* discusses why the private sector is best equipped for responding to cyber security issues. Lastly, we include information on the Cyber Conflict Legal and Policy Conference taking place September 9-11, 2009 in Talin, Estonia.

We hope you enjoy this issue of The CIP Report as well as find it useful and informative. Thank you for your support and feedback.



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The National Monuments and Icons Sector

Since the birth of this young country, enduring symbols such as the Liberty Bell, the Statue of Liberty, the Lincoln Memorial, and Mount Rushmore have visually narrated the history of the United States of America. This past 4th of July and throughout the remaining summer, tourists and residents alike will experience the very essence of the National Monuments and Icons (NMI) Sector.

This sector is one of the 18 critical infrastructure and key resources sectors. The United States Department of the Interior (DOI), which was established in 1849 to manage public lands, is the NMI Sector-Specific Agency (SSA).¹ However, the DOI closely collaborates with the Department of Homeland Security (DHS) and other Sector-Specific Agencies (SSAs) with regards to establishing and accomplishing the goals of the sector. The first goal set forth by DOI, DHS, and the SSAs was the development of specific criteria that would be used to identify and define an asset as a monument or icon and subsequently be included in the sector. Since the inception of the NMI Sector, the defining criteria have been carefully refined. According to the NMI Sector Lead, all of the assets in the sector share the following characteristics:

array of assets, systems, networks, and functions located throughout the United States.

NMI Sector assets share the following three common characteristics:

- 1) Are a monument, physical structure, or object;*
- 2) Are recognized both nationally and internationally as representing the Nation's heritage, traditions, and/or values or for their national, cultural, religious, historic, or political significance; and*
- 3) Serve the primary purpose of memorializing or representing significant aspects of the Nation's heritage, traditions, or values and as points of interest for visitors and educational activities. They generally do not have a purpose or function that fits under the responsibility of another sector.*

NMI Sector assets are essentially physical structures and include the operational staff and visitors who may be affected by an all-hazard incident. They do not include public figures or technology applications, and there are negligible cyber risks. The sector has no infrastructure located outside the United States. There are no critical foreign dependencies associated with the sector because of the nature of the assets.

Following the refinement of the defining criteria, a list of potential candidates for the NMI Sector was compiled. The list was compiled from existing records such as the National Register of Historic Places, the List of National Historic Landmarks, and input from Federal, State, local and tribal offices. Once the candidate list was compiled, each asset was analyzed. First, it was determined if the asset belonged in another sector. Many physical structures that some might consider appropriate for inclusion in the NMI Sector, such as the Golden Gate Bridge and the Sears Tower, are actually delegated to sectors such as Transportation Systems and Commercial Facilities.² Second, the characteristics of the asset were carefully compared to the defining criteria required for inclusion in the NMI Sector. Finally, if an asset met the above requirements, the process of conducting sector risk assessments commenced.

The risk assessment allows asset operators to evaluate the psychological impacts to the public morale should a national monument or icon be destroyed by a natural disaster, man-made disaster, or a terrorist attack. As is evident in the 2007 Sector-Specific Plan (SSP), asset operators are most concerned with “the impact to the

The NMI Sector encompasses a diverse

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¹ National Monuments and Icons Sector Specific Plan (2007): <http://www.dhs.gov/xlibrary/assets/nipp-ssp-national-monuments-icons.pdf>.

² Ibid.

The Secret Service and National Security Special Events

The following is based on an interview with Secret Service Spokesman Malcolm Wiley as well as news coverage of the Washington Independence Day celebrations.

The Secret Service is renowned for its mission to protect. Its agents are highly visible and often surround very high-profile public figures. This responsibility and dedication has earned the Secret Service and its agents a certain respect in popular culture. It is perhaps less known that the Secret Service plays a key role in managing security for a special category of public events labeled “National Security Special Events” (NSSEs). These NSSEs comprise of a particular variety of infrastructure that need to be protected, albeit in an impermanent form, given that these events assemble and dissolve over the course of a few days. As Malcolm Wiley explains, this lesser known responsibility meshes very well with the Secret Service’s other missions. There is a distinct continuum between protecting one individual and protecting a mass of individuals attending a special event. In fact, even before this responsibility was granted to the Secret Service, many of the individuals it was protecting were attendees of these types of events, ensuring that the Secret Service assure the event’s safety.

The Secret Service acquired this responsibility in 1998 through Presidential Decision Directive – 62: Protection Against

Unconventional Threats to the Homeland and Americans Overseas. This was codified into statute by the Presidential Threat Protection Act of 2000 and later superseded within the executive branch by Homeland Security Presidential Directive – 15: U.S. Strategy and Policy in the War on Terror.

An event is designated as a NSSE by the Secretary of DHS. The Secret Service has no input into what events qualify for the designation. In most circumstances, the Secret Service does not need to inform DHS about an event; all levels of the Federal government will most likely be aware of an event large enough to qualify as a NSSE. Events such as the Democratic and Republican Conventions, which are organized far in advance, allow the Secret Service to begin the planning process months beforehand, often well before the official designation is released. On the other hand, Wiley recalls an event with a less advantageous time frame, like the November 2008 Washington D.C. G-20 summit, which allowed for less than a month of preparation.

Which events qualify for the NSSE designation? Factors considered include the size of the event, the likelihood of attendance by U.S. officials or foreign dignitaries, and the national significance of the event. These events are important national events; icons of a sort. An attack or catastrophe could potentially harm national morale,

even if the event itself, like the Super Bowl, may not be considered a centerpiece of national security.

Once an event is designated as a NSSE, the Secret Service forms an executive steering committee for planning. This steering committee includes representatives from every agency which will be contributing resources or has a jurisdiction touching the NSSE. Then, subcommittees are created for every issue which will require some attention during the planning process, such as explosives, transportation, critical infrastructure protection, emergency services, etc. There are dozens of subcommittees, all featuring the involved experts from that area, all chaired or co-chaired by a member of the Secret Service, and all reporting to the steering committee. Over time, these disparate elements are hammered out into one complete plan that accounts for everything related to security and crisis management for the NSSE. Wiley states that these plans are extraordinarily detail-oriented and reflect hours upon hours of effort.

There are distinct roles for the many players involved with securing a special event. If an incident occurs at a NSSE, the Federal Bureau of Investigation manages responses to crisis situations and the Federal Emergency Management Agency takes the lead in consequence

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Protecting Icons and Individuals: The National Mall Plan

by Maggie Daniels, Laurie Harmon, Min Park and Russ Brayley
School of Recreation, Health and Tourism, George Mason University

Introduction

The National Mall & Memorial Parks (National Mall) is a unit of the National Park Service (NPS) and home to icons such as the Washington Monument, Lincoln Memorial, Jefferson Memorial, Franklin Delano Roosevelt Memorial, Constitution Gardens, Korean War Veterans Memorial, Vietnam Veterans Memorial, and World War II Memorial. The National Mall also contains some of the oldest protected park lands in the United States that provide relaxation and recreation

opportunities for tourists and residents (NPS, 2009). In addition, the park includes significant cultural resources and downtown visitor destinations such as Ford's Theatre National Historic Site, the African American Civil War Memorial and Pennsylvania Avenue from the U.S. Capitol to the White House. Museums on or near the National Mall, such as those operated by the Smithsonian Institution as well as the National Gallery of Art, National Archives, and the U.S. Holocaust Memorial Museum, are separate entities from the National Mall.

Taken together, the monuments, memorials, and natural resources of the National Mall comprise an enduring symbol that provide an inspiring setting and backdrop for the legislative and executive branches of the U.S. government. Enjoyed by over 25 million national and international visitors every year, the National Mall is a primary location for public gatherings such as demonstrations, rallies, and festivals. Annually, the park receives over 3,000 applications for public gatherings resulting in more than 14,000 event-days (NPS 2007).

Because the National Mall is many things to many people, addressing competing goals and priorities can be challenging. A particularly complex management task involves

finding a balance between public access and protection of both visitors and park resources. The NPS is in the process of creating a 50-year vision plan for the National Mall, entitled the National Mall Plan. The purpose of this research summary is to outline the aspects of the plan that are specific to safety and security and detail how the NPS has systematically involved the public in the planning process. Researchers in the School of Recreation, Health and Tourism at George Mason University have been part of the evaluation team for close to three years, specifically involved in the analysis of public comment as related to select plan stages. The first two of four stages are complete: 1) Public Scoping Comments; and 2) Public Comments on National Mall Plan Alternatives. These stages will be discussed, with an emphasis on public reaction to safety and security issues.

Stage 1: Public Scoping Comments

When devising a 50-year vision plan for the National Mall, NPS management felt that it was essential to receive substantive feedback from the public regarding what they want to see and experience when they visit this center of heritage and national identity. Accordingly, open-ended questions were posted on the

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The Washington Monument, as seen from the World War Two Memorial.

Photo courtesy of Liz Hale-Salice.

Mall Plan *(Cont. from 4)*

National Mall Plan website, and directed publicity was used to garner interest in answering the questions or providing comment through the National Mall Plan website, by e-mail, surface mail, fax, or at one of the many associated public meetings.

Respondents did not provide answers in any defined pattern. Some individuals systematically addressed each of the items, while most simply shared their thoughts and feelings about the National Mall and changes they would like to see made. Close to 1,000 pieces of unique correspondence were received, which were thematically segmented by comment type, resulting in nearly 3,000 independent comments. Of these, approximately 100 comments were specific to safety and security.

Public comments that highlighted safety and security issues fell into two categories: facility protection and personal safety. The first category, facilities, was infrastructure based and pertained to public thoughts on how safety and security are handled at monuments, memorials, and other buildings. Public feedback towards observed facility protective measures illustrated a range of emotions, primarily negative, including resignation, disappointment, sadness, and anger. There was general agreement that measures such as jersey barriers and snow fences are unsightly, ineffective, and annoying. The sample quotes illustrate the spectrum of thoughts and emotions:

- Sadly, public gatherings and government buildings are attractive terrorist targets, and issues of access, egress, security, and emergency response must be addressed.

- I was disappointed in the way that the new security measures around the monuments have distracted from the overall look. I found myself buying photos from photographers that were able to take pictures before all the barricades went up.

- I was upset by the mish-mash of “security” fences surrounding our public buildings. I do sincerely understand the need for safety but, this looks tacky and make-do. I was visiting the same area in 1986 and everything was lovely and accessible. It seems a shame that, in the interest of security, we have a nation’s capitol that looks like a yard sale.

- We took the boys for a walk around the White House. I had not been here with them since 2000, so I was surprised that the side gardens were closed. I understand the need for security, but this is the people’s house. I’m sad that my children, and any others, will not get to experience that beautiful pathway alongside the White House.

- We look like a third class city war

The World War Two Memorial.

Photo courtesy of Liz Hale-Salice.



zone with all the fencing and cement.

- The National Park Service should look into developing more attractive protective barriers to surround our national monuments and memorials on the Mall.

- Security barricades must be discreet and porous to pedestrians, but capable of stopping vehicles. Easier said than done.

While public sentiment suggested that, by and large, there is enough or too much facility protection, views changed when personal safety was addressed. Personal safety entailed the desire for a police/patrol presence to enhance feelings of individual security. In general, those who commented expressed a desire for more police presence and increased visibility, as illustrated in the sample quotes below:

- Currently, there is not enough police/security presence on the

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The Statue of Liberty: Liberty Enlightening the World

Introduction

The Statue of Liberty, officially titled *Liberty Enlightening the World*, was proclaimed a national monument in 1924 through Presidential Proclamation 1713. This monument, which represents freedom and is recognized throughout the world, is administered by the National Park Service, a bureau within the Department of Interior (DOI). The Statue depicts a woman escaping the chains of tyranny, which lie at her feet. In her right hand, she holds a burning torch that represents liberty and her left hand holds a tablet inscribed with the date “July 4, 1776” (in Roman numerals), the date the United States declared its independence from England. Lady Liberty is wearing flowing robes and the seven rays of her spiked crown symbolize the seven seas and continents.

The Statue of Liberty's History

At the end of the Civil War, Édouard René de Laboulaye, a French jurist, proposed the idea of bestowing a gift to the United States: a statue representing liberty. In 1876, sculptor Frederic Auguste Bartholdi, a friend of Laboulaye, was commissioned by the Franco-

American Union to design a sculpture to commemorate the centennial of the American Declaration of Independence. The construction of the monument was a joint effort; the United States built the pedestal and the French were responsible for the Statue and its assembly. This unified effort represented the friendship established between the United States and France during the American Revolution.



The Statue of Liberty on Liberty Island.

Both countries were creative in their fund raising efforts due to lack of government financing. In France, public fees, various forms of entertainment, and a lottery were used to raise funds. In 1879, Bartholdi was awarded a design patent, U.S. Patent Design No. 11,023, for the Statue of Liberty.¹ This patent covered the sale of small

copies of the statue. Proceeds from the sale of the statues helped raise money to build the full statue. The United States contributed funds through benefit theatrical events, art exhibitions, auctions, and prize fights. Joseph Pulitzer (noted for the Pulitzer Prize) wrote editorials in his newspaper, *The World*, to support the cause to bring the Statue of Liberty to America. Pulitzer's criticism of both the upper and middle classes was successful in motivating the people of America to donate.² The construction of the pedestal was complete in April 1886. Bartholdi then commissioned Alexandre Gustave Eiffel, designer of the Eiffel Tower, to design the massive iron pylon and secondary skeletal framework.

The Statue was completed in France in July, 1884. The future Lady Liberty then boarded the French frigate *Iser* and was transported to New York.

While en route, the Statue was disassembled into 350 individual pieces and packed in 214 crates. In June 1885, the Statue arrived in New York Harbor and was then re-assembled on her new pedestal. On October 28th 1886, the dedication of the Statue of Liberty took place in front of thousands of spectators.³

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¹ <http://www.google.com/patents?vid=D11023>.

² Statue of Liberty History, U.S. Department of the Interior, National Park Service: <http://www.nps.gov/archive/stli/prod02.htm#Statue%20of>.

³ Ibid.

Liberty (Cont. from 6)

The National Park Service commemorates the anniversary of the Statue of Liberty annually on October 28th.

Since the dedication, the Statue of Liberty has cultivated a rich history. Initially, the United States Lighthouse Board held responsibility for the care and operation of the Statue of Liberty; jurisdiction then transferred to the War Department in 1901. During World War I, the Statue of Liberty was permanently altered. Following the infamous “Black Tom” explosion in 1916, visitor access to the torch officially closed. To this day, the torch remains restricted to visitors.⁴ Eight years later, on October 15, 1924, a Presidential Proclamation declared Fort Wood (and the Statue of Liberty within it) a National Monument. In 1933, the care and administration of the National Monument was transferred to the National Park Service.

Almost fifty years later, in May 1982, President Ronald Reagan called for an effort to refurbish the Statue of Liberty for its centennial celebration. The National Park Service and The Statue of Liberty-Ellis Island Foundation, Inc. began fundraising for the multi-million dollar restoration project under a public/private partnership. Shortly thereafter, in 1984, the United Nations designated the Statue of Liberty as a World Heritage Site. Following the successful restoration

venture, the Statue re-opened to the public during Liberty’s centennial celebration on July 5, 1986.

Recent Development

Following the terrorist attacks on September 11th, 2001 the Statue of Liberty was closed for security concerns. On August 3, 2004, the beloved Statue, with the exception of the crown, was reopened to the public. The same year, the National Park Service released a protection plan for the Statue of Liberty detailing some of the safety and security improvements made since 2001. Some of these improvements include:

- Overhaul of fire detection and alarm systems;
- Installation of emergency lighting and upgrading lighting throughout the structure;
- Enhancement of security screening for all visitors prior to boarding ferries;
- Increase explosive detection K-9 capability, to include U.S. Park Police sweeping all visitor ferries and delivery trucks;
- Initiate 24-hour marine law enforcement patrol for Liberty and



Lady Liberty and her crown.

Ellis Island with thermal imaging and night vision capability. Obtain more effective boats and install barge dock; and

- Assign U.S. Park Police detectives permanently to FBI Joint Terrorism Task Forces in New York and New Jersey to enhance information on potential threats.⁵

The plan indicates that while several security improvements were made, there are several measures that still need to be increased to allow visitors to safely access the monument.

On July 4, 2009, after eight years of restricted access, the Statue of Liberty’s crown is once-again accessible to the public. Rep. Anthony Weiner, D-NY, was a huge proponent of reopening Lady Liberty’s crown, calling the decision to close it “a partial victory for the terrorists.”⁶

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⁴ <http://www.nps.gov/stli/planyourvisit/get-the-facts.htm>.

⁵ *Statue of Liberty Visitor Use and Protection Plan*, U.S. Department of the Interior, National Park Service (2004): http://www.doi.gov/news/04_News_Releases/libertyiii.pdf.

⁶ Dobnik, Verena. “Statue of Liberty Crown to Reopen For First Time Since 9/11.” *The Huffington Post* (2009): http://www.huffingtonpost.com/2009/05/08/statue-of-liberty-crown-t_n_199791.html.

LEGAL INSIGHTS

Criminal Justice & National Monuments/Icons Intersect

by Joe Maltby, JD, Research Associate

Our national monuments and icons are key targets for potential terrorist attacks, attacks that could claim hundreds, if not thousands, of lives. Given this threat, it is no surprise that law enforcement keeps a close eye on our national monuments and icons to prevent such events. This heightened awareness has led, in part, to a broadening of the definition of what it means to provide material support to terrorists. The case of Syed Haris Ahmed revolves around the National Monuments and Icons Sector and its relationship to the legal framework of homeland security.

Ahmed is a former Georgia Tech student who, in March 2005, traveled to Toronto to meet with several other targets of FBI investigations, most of whom were allegedly part of a terror cell in Canada. While there, Ahmed and other co-conspirators discussed strategic infrastructure targets to attack within the United States. During this meeting, the co-conspirators also discussed traveling to Pakistan to attend a paramilitary training camp. In April, following the meeting in Canada, Ahmed and fellow co-conspirator, Ehansul Islam Sadequee, traveled to Washington, D.C. and filmed landmarks such as the Capitol, the

World Bank Headquarters, a fuel depot, and the Masonic temple in Northern Virginia. After returning to Atlanta, Sadequee sent the “casing” videos to Younis Tsouli, a resident of the United Kingdom, who has since been convicted of terrorism offenses in the United Kingdom. A few months later, in July, Ahmed traveled from Atlanta to Pakistan. There, Ahmed attempted to obtain paramilitary training with the hopes of eventually joining a terror group associated with attacks in Kashmir; however, he was unsuccessful in both endeavors. In August, Ahmed returned to Atlanta to prepare for school while Sadequee traveled to Bangladesh to marry his fiancée. Despite their separation, both men continued to communicate with their co-conspirators. In March 2006, Ahmed was approached by FBI agents; he consented to voluntary interviews regarding his past activities. After it was discovered that Ahmed was covertly communicating with Sadequee to warn him about the investigation, Ahmed was arrested on March 23, 2006 in Atlanta. He was subsequently charged with conspiracy to provide material support to terrorists. In June 2009, Ahmed was found guilty in open court; however, the sentencing will be delayed and the written findings

that supported the verdict will be sealed until the completion of Sadequee’s trial. Sadequee’s trial, following his arrest in Bangladesh on April 20, 2006, is scheduled to commence in August 2009.

Prosecutors claimed that the casing videos of monuments and icons were reconnaissance for future terrorist activities and an attempt for Ahmed to gain prestige with overseas terrorist leaders. They claimed that Tsouli was a propaganda channel for Al Qaeda and other terror networks and that his videos inspired terrorist cells around the world to take action, calling them one step removed from carrying out terrorism. They drew attention to the fact that when Ahmed was eventually arrested, law enforcement seized computer files which the FBI has yet to decode. At the same time, prosecutors emphasized that Ahmed did not present an imminent threat to the United States; nevertheless, they called for his conviction since waiting was an unnecessary risk. The defense countered that the videos were essentially useless for any purpose and merely represented an unfortunate bout of immature bravado from a student with no real knowledge of terrorism or what a terror plot entails. Prosecutors then

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Legal Insights (Cont. from 8)

pointed to secret compartments in Sadequee's luggage carrying the videos and to phone conversations discussing a need to prepare for a final Islamic war. They also cited Ahmed's attempt to simulate paramilitary training in Georgia. The defense called the defendants "childish" and argued that this evidence did not show that they ever posed any real threat to the United States. They argued that posting a video of a Washington monument or icon is essentially an innocent act, even if that photo is later posted on a jihadist website. They also noted that the defendants training consisted of paintball games.

This case represents an attempt by prosecutors and law enforcement to identify and shut down terror plots while they are still in the planning stages, before they become operational. However, this policy runs the risk of sweeping in defendants who had no intention of acting, whose plots had no chance of causing damage, or who merely acted suspiciously without any real criminal intent. It is generally more acceptable to charge defendants for actions that have already taken place, rather than trying to abort prospective crimes in their preliminary stages, such as conspiracy. This leads to a public policy debate about the role of preemptive law enforcement. Legal experts commenting on this case have noted that the line where consideration becomes criminal is moving forward. Prosecutors are attempting to indict new varieties of behavior for the first time, often

under laws that were amended in the wake of 9/11. Ahmed's acts were largely innocuous on their own. It is only in combination with other events that they rise to the level of a punishable offense. This runs the risk of law enforcement officers seeing patterns that are not actually there. At the same time, most evidence in any criminal indictment is circumstantial. Defendants who have the foresight to commit crimes in front of a video camera or a DNA sequencing machine are relatively rare. Prosecutors routinely rely on juries to be able to put together a story from dozens, or even hundreds, of pieces of evidence.

Knowingly providing material support or resources to a foreign terrorist organization is a crime carrying up to 15 years in prison and/or a fine. If the death of any individual results from the support, then the accused faces up to a life sentence. The key element here is knowledge of the organization's terrorist activities or knowledge that the organization has been officially designated for terrorist activities. The accused cannot be convicted just because they provided support; the prosecution needs to show that they knew they were supporting terrorism (U.S.C. Title 18, 2339B). Material support is defined broadly. It includes providing property, even just allowing someone the use of a piece of land for training or as a hideout; money; services; supplies; training; transportation; or expert assistance. Even providing oneself as personnel qualifies as assistance. However, providing medicine or

religious services are specifically exempted from this definition (U.S.C. Title 18, 2339A). The actual legal definition of "terrorism" is fairly broad and covers any violent acts dangerous to human life which are both intended to influence governmental policy or civilian attitudes and are also already illegal (U.S.C. 2331). The statute only requires that the act "appear" to be an attempt to influence policy or behavior, which significantly lessens the burden of proof for prosecutors. In the case at hand, Ahmed's behavior can be construed as part of a pattern of material support, despite the fact that no actual terrorist attack took place or was even imminent.

This case not only illustrates an evolving legal standard, but it also applies to an important sector of critical infrastructure. National monuments and icons represent key targets for terrorist attacks. Top Al Qaeda leaders have repeatedly stated their interest in the psychological effects of terrorist attacks and in striking serious propaganda blows to the United States. A national monument does not offer much of a target in terms of long-term strategic potential. There are no ammunition stores at the Washington Monument. These attacks are planned for the shock value. Monuments also present ready targets because by their very nature they are open to large numbers of people. Terrorists can easily penetrate them, observe them, even, as in the Ahmed case, film them without much effort. There is

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CYBER CONFLICT PERSPECTIVES

Statutes vs. Service Level Agreements: Who Has the Best Legal Responses to Cyber Issues?

by Eneken Tikk, M.Jur.

I recently attended a lecture by Dr. Daniel J. Ryan, a professor for the Information Operations and Assurance Department at the National Defense University, and was particularly impressed with his comments regarding the legal consequences that followed the emergence of ARPANET in 1969. He remarked that the law has yet to recover from the development of this network. I believe that this is an important point. No matter which cyber issues we try to solve and how many times we attempt to do so, we continue to apply a number of analogies to the cyber security legal framework.

Cyber incidents still occur with a number of security gaps. Obviously, the gaps in the cyber security legal framework require structured and meaningful regulatory responses on a national and potentially international level. During the response drafting process, it is difficult for governments to determine how to test the regulation of a global community that does not adhere to particular legal traditions or jurisdictions, but instead, unites different groups of different people, who for different reasons have chosen to share a worldwide domain as a dimension of their everyday life.

In responding to cyber security threats, the private sector is more flexible, especially when it comes to sector or organization specific risk assessment and mitigation. A perfect tool for managing a portion of (inter) national cyber security is the contract. It is difficult for governments to create a model regulation for user behavior, threat data transfers between entities, and/or an early warning mechanism. Therefore, the private sector can build a framework to fit them and their clients' interests — by drafting user agreements that balance the ease of access and use with elements of monitoring, reporting, and enforcing Service Level Agreements that provide for more support to critical business processes when legal requirements are not sufficient.

There are a number of potential benefits for a private sector initiative in this field; in addition, the private sector has the motivation and resources to elaborate best practices. Indeed, governmental interests related to cyber security can only be achieved with the help of the private sector as most government and military information systems are run by the private sector. Solutions can be provided quickly through the private sector, whereas

government-level regulations and cross-border agreements would take time.

If these solutions become successful for the private sector, governments may introduce more efficient legislation in the field and thereby implement best solutions into national legal frameworks. On the other hand, perhaps the private sector initiatives will be enough to fill in the current gaps and therefore government action will be unnecessary. Even so, the private sector will benefit from a cyber security agenda that takes into account their unique concerns and defenses in combination with governmental ones, where applicable. ❖

NMI (Cont. from 2)

national morale and public confidence caused by damage or destruction of a significant monument or icon". The Homeland Security Institute devoted an entire report to this subject matter. This report, *Pilot Study: Psychosocial Impacts of a Terrorist Attack on a National Icon, Final Report*, was published last year. According to the *National Monuments and Icons Snapshot*, a more comprehensive study is desirable.

The risk assessment calculates the following considerations: 1) the psychological impact to public morale following an all-hazards event; 2) the consequences of loss of life and/or casualties, the economy, the disruption to normal life, the impact to other sectors, and the environmental impact; 3) the vulnerabilities to terrorist events, which includes the assessment of security systems and the likelihood of a successful attack, to determine the overall risk value; and 4) the assessment of a threat/attack scenario.³

Once a risk assessment has been conducted for the monuments and icons qualified to be included in the sector, protective programs are developed and implemented. These programs embody the uniqueness of the NMI Sector. It differs from the other sectors in that it is accessible to the public and in fact, encourages people to visit these symbolic monuments and icons. These monuments and icons

represent American history and therefore must be openly accessible. However, this also presents a security challenge in ensuring the protection of both the asset and visitor. As the 2007 SSP states, "Although the assets are by nature static and defined, the environment surrounding the asset is dynamic."⁴ In addition, the assets in this sector "attract large numbers of visitors and present attractive target for adversaries. Protective measures must ensure the security of the site itself and plan for the safety of visitors in an emergency situation."⁵

Essentially, while visitors explore the wonders of our nation's history, leaders in the sector are diligently working to protect both the history and the observer of history. As the sector evolves, leaders within the sector will measure its progress and reevaluate the goals, definitions, and strategies that were initially developed. Evidence of the sector's progression and subsequent modifications will be available at the end of this year when the updated SSP is released.

Perhaps this is the smallest sector and as the field of critical infrastructure protection matures, this sector may eventually merge with other relevant sectors. Regardless, the significance of the history and cultural traditions that these monuments and icons represent is irrefutable. The psychological impact to the public, should one or more of these assets be destroyed, has the potential to be

momentous. It is therefore imperative that these assets be accessible and be protected. Without these tangible monuments and icons, our nation's past is remembered only as vague recollections in our textbooks and in our memories. ❖

³ Ibid.

⁴ Ibid.

⁵ Ibid.

Secret Service (Cont. from 3)

management. As previously discussed, the Secret Service oversees the entire planning process, which includes partnering with all participating agencies and organizations. Depending upon the location and scale of the NSSE, dozens of Federal, state, and local law enforcement, response, and recovery entities may be involved. Wiley recalls working on events where some 58 entities were participating in the planning process. However, the time commitment and allocated resources will vary as not every event involves large groups of people.

Local law enforcement and Federal law enforcement train together in preparation. Different Federal law enforcement entities work together on their division of responsibilities. Some of this training takes place after the plan is drafted, but the execution of responsibilities this complex requires training in advance, even before the plan is finalized. Wiley admits that it sometimes makes a difference when a NSSE takes place outside the Beltway, particularly in areas which do not often host such events. Many of the regularly occurring NSSEs take place in Washington, D.C., which means local authorities are well-versed in their responsibilities. When an event takes place in a new area, the Secret Service must take special care to ensure everyone is trained in their responsibilities and the general concept of operations. Wiley stresses that this is less a matter of will than of knowledge. After all, no one stands to benefit more from

a well-executed event than the locality hosting it. Therefore, this message is quickly disseminated from the top on down wherever the Secret Service goes.

Given the complex and ever-changing nature of these events, the plan is often modified as new facts are revealed. This can be a headache, but Wiley considers the Secret Service and its planning process to be quite flexible. The concerns that they deal with have evolved over the years to include matters such as cybersecurity and critical infrastructure protection. For example, during the political conventions last year, the Secret Service planned for dealing with the consequences of hackers finding some way to electronically disrupt the power supply. Not surprisingly, this was not a major concern in 1998. In addition, there are special concerns when an event involves a national monument or icon; in this situation the Secret Service turns to partners like the National Park Service for guidance.

Since these NSSEs involve an incredible amount of coordination between agencies at every level of government, it stands to reason that they might offer lessons about how to encourage coordination within homeland security. Wiley points out that everyone involved genuinely hopes the event will go well so the effort focuses on ensuring that everyone understands their role. When everything goes according to plan, the leadership is important, because the leaders' attitudes are reflected all the way down the chain of command.

Wiley stresses the importance of creating an institutional memory, which is why the Secret Service places special emphasis on after-action reports. Regardless of the event's level of success, the focus is on learning what went right and what went wrong so that the next event can go even better. Wiley points to the problems concerning crowd control during the Inauguration this year as an excellent example of a problem that can hopefully be avoided next time. At the same time, he points to the amazing behavior of everyone involved, both law enforcement and citizens, as the reason for an incredibly smooth event, all things considered. Wiley noted that there were two million extra people in the D.C. area and no additional arrests; out of that two million, only ten thousand were affected by the crowd control problems. News coverage of the Washington, D.C. Independence Day celebrations remarked upon other lessons learned from the Inauguration, leading to a smoother event. The Smithsonian metro stop was re-opened and police relied less on baggage-checking stations and more on random spot-checking, which shortened lines.

Thus, the role of the Secret Service during NSSEs will remain quiet, for the most part, simply because when things go well, no one pays attention to them. As Wiley himself puts it, security should never be the story. ❖

Liberty (Cont. from 7)

Many viewed the closing of Lady Liberty as part of anti-terrorism security. However, according to the National Monuments and Icons Sector Lead, an official within the DOI, the closure of the crown was more of a life safety issue. According to a 2005 GAO report, *Homeland Security: Actions Needed to Better Protect National Icons and Federal Office Buildings from Terrorism*, the Statue of Liberty did not meet building codes for fire safety; in particular, the Statue did not meet standards for exits or fire suppression capability.⁷ If a fire were to occur, there would not be proper ventilation and evacuation in a timely manner would be extremely difficult due to the narrow double-helix staircase within the Statue. In order to remedy this problem new guidelines have been put in place for visitors. They include:

- Limiting the number of visitors to the crown to groups of no more than 10 visitors at a time;
- All visitors must be able to climb and descend the stairs without assistance; and
- All visitors should be aware that the statue is cramped and can often be much hotter than the outside temperature.⁸

The new restrictions that have been implemented, specifically related to the number of visitors accessing the crown at onetime, assist in controlling these concerns. Whether there is a terrorist-attack or a fire breaks out while people are visiting a monument, visitors need to evacuate in a timely manner while minimizing the risk of injury. This requires proper emergency preparedness.

Conclusion

In two years, Lady Liberty will close again for additional security improvements. When the Statue once again reopens, she will be able to accommodate double the current capacity that is allowed to access the crown.⁹

As is evident, the National Monuments and Icons Sector faces an enormous challenge. Those individuals charged with the protection of our national monuments and icons must not only cater to physical security concerns, but must also protect the people who visit. These leaders must also ensure that the Statue is publicly accessible. If the Statue of Liberty is unable to welcome visitors, it would be exceedingly difficult for the nostalgic public to fully appreciate the history that Lady Liberty has survived for over a hundred years. ❖

The double helix staircase inside the Statue of Liberty.



⁷ GAO report, *Homeland Security: Actions Needed to Better Protect National Icons and Federal Office Buildings from Terrorism* (2005): <http://www.gao.gov/new.items/d05790.pdf>.

⁸ *Salazar Welcomes First Visitors to Tour Re-Opened Crown of Statue of Liberty*, U.S. Department of the Interior, National Park Service (2009): http://www.doi.gov/news/09_News_Releases/070409.html.

⁹ *Statue of Liberty Facts: July 4th Reopening and More*, *National Geographic News* (2009): <http://news.nationalgeographic.com/news/2009/07/090702-statue-of-liberty-facts.html>.

Mall Plan (Cont. from 5)

The statue of Abraham Lincoln from inside the Lincoln Memorial.

Photo courtesy of Liz Hale-Salice.



National Mall to ensure the protection of the great number of visitors. It is possible to walk from one end of the National Mall to the other and back and not see one uniformed officer. There should be thought given to hiring seasonal/part-time officers, provide sufficient training and have them augment and support the Park Police, etc.

- Park police are not visible enough.

- Please keep the National Mall SAFE. So far, it is a safe place to visit, but recent muggings prove that it could easily tip in the other direction. A person should be able to go walking or running on the National Mall at any hour of the day or night, and feel safe. This probably means mostly increased police presence...bike patrols, foot

patrols, dog patrols, horse patrols, undercover officers, etc. Police cars that patrol the National Mall should be high-profile four-wheel-drives that can easily jump the curb and pursue overland. Volunteer neighborhood watch patrols equipped with cell phones could increase the number of eyes on the National Mall. And a couple of ultra-light police aircraft that could patrol from the air and swoop down on a trouble spot in seconds would be a nice touch.

- I was violently beaten by four young men between the ages of 14 and 20 who stole my brief case and broke the orbital socket of my eye in the Southwest quadrant of the District. Until you are a victim of a violent crime, it is difficult to imagine what goes through your head when you are lying on the ground gasping for air and wondering whether or not you're going to make it. Architects, landscape architects, engineers and urban planners must make public safety priority one and everything else follows.

- Forget the ninja outfits and assault rifles. Visitors want to see Park Police in uniform, on foot and on horseback.

Stage 2: Comments on National Mall Plan Alternatives

Having completed Stage 1, NPS

personnel were able to directly consider the public perspective as they crafted a series of alternatives for the National Mall Plan. Four alternative plans were proposed to get a consensus on the development of a preferred alternative: No-action alternative, Alternative A, Alternative B, and Alternative C. Among them, the No-action alternative served as the baseline against which to measure the action alternatives because it outlined existing conditions. All alternatives were designed to include main missions of the National Mall: preserving historic resources; providing space for constitutionally based civic activities, national celebrations, and public enjoyment; and exemplifying the best of sustainable urban ecological practices. These alternatives are outlined in depth in the NPS Newsletter 3 document. The No-action alternative focuses on continuing current management and identifying plans and actions already moving forward; Alternative A focuses on the historic landscape with its memorials and planned views and education; Alternative B focuses on a welcoming national civic space for public gatherings, events, and high-use levels; and Alternative C focuses on urban open space, urban ecology, recreation, and healthy lifestyles.

Public comment regarding the National Mall Plan alternatives went in an unexpected direction when a Washington Post article suggested that the alternatives

(Continued on Page 15)

Mall Plan (*Cont. from 14*)

under consideration might limit First Amendment freedom of speech rights. Public reaction was swift and strong, with 93% of the close to 18,000 comments received pertaining specifically to First Amendment issues. Because the alternatives did not directly address First Amendment rights, the broad concern was that somehow these civil liberties would not be taken into consideration with the long-term management plans under consideration. The NPS immediately stressed, in a variety of forums, that First Amendment activities are fundamental to the overall purpose of the National Mall, as based on the Constitution and reaffirmed in legal decisions over the years. Many of the public comments regarding the alternatives directly or indirectly reflected safety and security issues, as there was fear that First Amendment restrictions would be put in place for security purposes:

- There should be NO restrictions, and NO permissions required, and NO limits on gatherings of people on the Mall.
- It is essential that we maintain the National Mall as a civic space, and not allow a plan to be implemented which could be interpreted as leaving the door open to restricting protests. Please don't shut down the National Mall for mass protests! It's one of the few large, centrally located and richly symbolic spaces that Americans still have to express themselves as mass movements.
- The protection of First

Amendment rights is and must be paramount in the final plan. There needs to be more specific language in each alternative to explain how demonstrations/protests will be protected, and how such activity will be accommodated in terms of the overall scheme.

Additional public comments to the alternatives that were specific to safety and security issues largely mimicked the feedback given during Stage 1, where citizens were concerned with protective measures that would not compromise a welcoming environment. Illustrative comments include:

- Increase nighttime security, not by installing powerful lights or new fences but by increasing the police presence. Have the horses and officers out at night. I didn't read about this in the alternatives, but increase funding for the mounted police and have them out there every day and night, patrolling and meeting and greeting, they are another aspect that makes D.C. unique, kids love them, the horses are impressive.
- Plan for the Identification and Operation of Safe Havens: In the event of severe weather conditions or a terrorist incident, the general public must be permitted access to safe havens in proximity to the Park. However, to date, there has not been a satisfactory plan to implement emergency ingress to federal facilities. Generally, weeks before an event, the law enforcement community asks agencies to "volunteer space" to

receive and care for the general public. Little or no guidance is provided relative to the many scenarios that could evolve from taking in the public. A plan should be developed that fully incorporates the many factors that must be considered prior to permitting public access to federal facilities during an emergency, such as, impact on security and government operations, medical assistance, food and comfort, length of stay, supporting logistics, law enforcement support, etc.

- I would recommend that any upgrades to the National Mall should include an increase in Federal Law Enforcement Officer presence through the inclusion of facilities to allow these individuals to better serve the public. These recommendations could include facilities for blast-resistant fixed posts, dedicated, marked parking spaces for LE vehicles, highly-visible base stations, emergency phones, etc.
- Consideration should be given to improving the lighting in the Park. In the past two years, criminal incidents have occurred after dark in the early evening when the tourist population is still active. Low level security lighting could be installed and lighted pathways could be established that provide for the safer movement of pedestrians about the Park.

Conclusion

(Continued on Page 18)

Welcome to Cyber Conflict Legal and Policy Conference 2009!



This Legal and Policy Conference, organised jointly by the Cooperative Cyber Defence Centre of Excellence (CCD COE) and the George Mason University Center for Infrastructure Protection, will bring together an international community of experts in government, private sector, and academia to discuss a multidisciplinary approach to cyber conflict management, as well as to share current initiatives and best practices. The conference will take place in Tallinn, Estonia on September 9 to 11, 2009.

The aim of the conference is to develop tools and recommendations for some of the numerous legal and policy challenges in the field as well as promote closer collaboration among the international stakeholders of both the public and private sectors. The conference will address complications resulting from the different priorities and multiple lexicons of cyber incident management (technology, law enforcement, government policy/leadership, military, business, etc.), and will survey the different imperatives of various nations as well as international organisations regarding cyber security and cyber defence.

We look forward to seeing you in Tallinn,

LtCol Ilmar Tamm
Cooperative Cyber Defence
Centre of Excellence

LTG(R) Claude M. "Mick" Kicklighter
George Mason University
Center for Infrastructure Protection

Cyber Conflict Legal and Policy Conference

Tallinn, Estonia

9-11 September 2009



The preliminary agenda is available at <http://www.ccdcoe.org/legalconference/5.html>. On September 8th, the day before the conference, you are welcome to participate in a one-day training seminar on the legal aspects of cyber defense. The conference registration includes an option to enroll in the seminar.

The conference includes roundtables for all attendees to critique the presentations and conference discussions, resulting in documented identification of solutions, recommendations, and the way forward.

In order to ensure focused and substantial discussions among all participants during the event and especially at the roundtables, we are limiting attendance. We have opened general registration, and we encourage you to register soon, so as to guarantee a spot in the limited space available. Registration may be accomplished at <https://www.ccdcoe.org/reg/643172579>. For more information, contact Maeve Dion at mdion@gmu.edu.

Highlights from the agenda include:

- Keynote address from **H.E. Toomas Hendrik Ilves**, the President of the Republic of Estonia
- Estonian Cyber Security Strategy after Lessons from 2007, by **Ms. Heli Tiirmaa-Klaar**, Estonia, Ministry of Defense
- Lawyer's Look at a Cyber Incident, by **Prof. Daniel Ryan**, U.S. National Defense University, Information Resources Management Center
- Cyber Conflict in Bits and Bytes, by **Dr. Bret Michael**, Naval Postgraduate School Industrial Control Systems Perspective, by **Joe Weiss**, U.S.
- International Organizations' Legal and Policy Approaches to Cyber Incident, by **Eneken Tikk**, Estonia, CCD COE
- ICANN's Developments in the Field of International Cyber Security, by **Yurie Ito**, Director of Global Security Programs, ICANN
- Public-Private Partnerships and National Input to International Cyber Security, by **Maeve Dion**, U.S., GMU CIP
- Law of Armed Conflict / Military Perspective, by **COL. Jody Evans**, U.S. (TBC)
- National Defence Law / Government's Perspective, by **Mr. Lauri Almann**, Estonia, former Undersecretary of Defense
- Information Society Law / User Perspective, by **Prof. Lillian Edwards**, U.K., Sheffield University School of Law

Legal Insights (Cont. from 9)

no easy method to distinguish between the terror recruit performing surveillance and the tourist making memories. Icons and monuments are unusually vulnerable, which makes them likely sites for future expansion of the legal tools for fighting terrorism. Many argue that these are high-value soft targets and that most require expansion of the legal and policy tools available to combat terrorism. The debate over how to use these tools will rage on, but this sector, the intersection of criminal law and national icons, represents a key battleground in antiterrorism legal policy. ❖

This article is based, in part, on ongoing news coverage of the Ahmed case.

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Mall Plan (Cont. from 15)

Providing adequate yet unobtrusive facility and personal protection measures is, as one astute respondent noted, "easier said than done." The overarching sentiment derived from the comments is one of unrestricted access to these public park lands while ensuring personal safety. The National Mall Plan has two more stages of public comment before its completion. Stage 3 presents a Preliminary Preferred Alternative. Comments pertaining to this alternative are currently being analyzed. Stage 4 will involve the release of the National Mall Plan/Draft Environmental Impact Statement which will be available for public comment beginning in the fall of 2009. Citizens are invited and encouraged to provide input regarding the future of this national treasure. ❖

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