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Preparing For, Responding To And Recovering From A Terrorist Activity

The Editor interviews Mariellen Dugan, First Assistant Attorney General, Office of the Attorney General, State of New Jersey.

Editor: Please tell us about your background and a few of your current responsibilities.

Dugan: After graduation from law school, I clerked for the Honorable Dickinson R. Debevoise of the U.S. District Court for the District of New Jersey. After my clerkship I joined the law firm of Gibbons, Del Deo, Dolan, Griffinger & Vecchione, P.C., where I worked principally with Lawrence S. Lustberg, a prominent and successful white collar criminal defense attorney.

I was then hired by the U.S. Attorney for the District of New Jersey, the Honorable Faith S. Hochberg. While serving as an Assistant U.S. Attorney, I tried cases involving the crimes of mail fraud, narcotics trafficking and public corruption. I then joined the law firm of Marino & Associates, which is a boutique white collar criminal defense and complex litigation firm. When Peter Harvey was appointed the Acting Attorney General in February 2003, I accepted his invitation to become his Chief of Staff. Soon thereafter I became the First Assistant Attorney General.

The Attorney General is responsible for supervising and managing the Department of Law and Public Safety comprising approximately 9,600 employees (including more than 800 attorneys) and consisting of ten divisions and various offices including the Divisions of Consumer Affairs, Gaming Enforcement (which regulates the casino industry in Atlantic City), Criminal Justice, Elections, Civil Rights and the New Jersey State Police. Law and Public Safety is also home to the Division of Law. With more than 600 attorneys and 100 staff members, the Division of Law represents all state departments, agencies and authorities.

On any given day, I may be handling issues relating to casinos in Atlantic City, homeland security, emergency management, labor relations, health care fraud and abuse, and environmental enforcement. We also draft legislation and play a substantial role in the legislative process.

Editor: How are lawyers inside and outside the government collaborating on homeland security issues?

Dugan: The legislation creating New Jersey Domestic Security Preparedness



Mariellen Dugan

Task Force was enacted on October 4, 2001. The Task Force's activities reinforce and expand existing antiterrorism efforts by enhancing and integrating security planning and preparedness measures throughout the state. Through cooperative efforts among agencies at all levels of local, state and federal government and the private sector, we help the state prepare for, respond to and recover from terrorist attacks and technological or biological disasters.

Editor: What New Jersey industries may be vulnerable to terrorist attack?

Dugan: One of the most developed areas of the globe, New Jersey is home to myriad industries. Unfortunately, all of these industries are vulnerable to attack by terrorists. Some however, including gas, water, electric utilities, nuclear, telecommunications, transportation, health care, chemical and pharmaceutical industries are more obvious. Contributing to their vulnerability is our proximity to neighboring metropolitan centers (such as New York and Philadelphia).

Editor: How are communications

between the government and the state's industries being coordinated?

Dugan: One of the Task Force's most active and important functioning bodies is the Infrastructure Advisory Committee, which is the liaison to private industry throughout the state. A variety of industries are represented in the 20 sectors that make up the IAC. Each sector has a liaison to an appropriate state department. For example, the state department liaison to the chemical sector is the Department of Environmental Protection.

Not surprisingly, highly regulated industries in our state already have sophisticated strategies for securing their facilities. The Task Force and the IAC improved upon these strategies and created Best Practices for security that apply to each sector. We also worked with industries that had not looked at security as comprehensively as those in highly regulated spheres. Once developed and adopted by the Task Force, Best Practices were endorsed by Governor McGreevey. Many New Jersey industries have imple-

Mariellen Dugan

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mented Best Practices or are in the process of implementing them.

For example, healthcare facilities are implementing security measures to protect labs, medicines and biological agents from infiltration by terrorists. Working with the Department of Health and Senior Services, we have created statewide training programs for healthcare employees. Our goal is to educate New Jersey's citizenry and its workforce so that we can all be well prepared to prevent and respond to a large-scale terrorist attack or disaster.

Editor: What are some of the homeland security issues currently being debated by lawyers inside and outside the government?

Dugan: Employee background checks raise a number of thorny issues. Stringent background checks make sense for certain employees with essential functions that may be vulnerable to terrorist infiltration. For example, a chemical manufacturer needs to know whether an employee working in a sensitive position at a chemical facility is on the FBI's terrorist watch list. Employees, however, may resent having to disclose private information to government authorities or their employer because they view it as an inappropriate invasion of privacy. We are working with federal and state government agencies, businesses, labor representatives and state legislators to reach a compromise that appropriately balances a government agency/company's need for an employee's personal information and the employee's privacy interests.

Also, the federal law known as the Patriot Act is under a microscope right now as Congress considers whether the Act should sunset or whether it should be enacted permanently. Because the nation has not suffered a major terror attack since September 11, 2001, many people in the U.S. have become complacent: this is dangerous. The challenge for federal, state and local governments is to be vigilant in our efforts to protect our country while also allowing people to live in a free society that promotes the ideals and principles that are the bedrock of this nation: life, liberty and the pursuit of happiness.

Editor: What has been the most comprehensive terrorism response drill ever conducted in the U.S.?

Dugan: Known as "TOPOFF 3," which stands for top officials, New Jersey's drill this past April was the third top officials drill sponsored by the federal government. TOPOFF 1 and TOPOFF 2 were conducted by the state and federal governments in Washington, DC and Seattle, WA. Designed to strengthen our capacity to prevent and respond to terrorist activities, the drill tested our practices, procedures and resources to their limits. The purpose of the drill was not to show how good we are, but rather, to identify those areas where our practices and procedures break down when pushed to the limit.

Of the terrorism scenarios we tested, one of the most difficult was the biological terrorism scenario. We received information on a rolling basis about patients walking into emergency rooms in several New Jersey counties with certain symptoms. Although the scenario was fictitious, the players were not. Emergency room doctors communicated those symptoms to the state epidemiologist who then, based upon those symptoms as well as additional information gathered by the New Jersey State Police and local law enforcement authorities about biological

agents discovered in an abandoned truck at Kean University, rendered a possible diagnosis: pneumonic plague. Thereafter, the state began the task of dispensing prophylactic antibiotics on a massive scale.

By the end of the exercise, approximately 40,000 New Jersey residents evidenced symptoms of the plague with about 8,700 residents dying. As a result of the mass casualties, we were faced with the overwhelming task of receiving thousands of contagious cadavers in a very short window of time. The drill reinforced what we have known for quite some time: our state's medical examiner system is woefully inadequate and antiquated. The Attorney General is working with state legislators to pass a law creating a statewide medical examiner system that will bring our state into the 21st century by building better facilities, creating uniform standards for training of medical examiners and appointing regional medical examiners with state of the art equipment.

Planned and executed over a two-year period, TOPOFF 3 cost approximately \$16 million with the State of New Jersey contributing about \$1 million and the federal government paying the remainder.

Editor: What private sectors were involved in the drill?

Dugan: The need for involving the health sector was obvious. The Department of Health and Senior Services spearheaded the effort to diagnose and treat (as well as prevent the spread of) the plague. HSS worked closely with hospitals, including Robert Wood Johnson, doctors, pharmacies and county medical examiners to coordinate our response.

The food sector was also involved. We learned that New Jersey has a limited supply of fresh food and water. When travel restrictions are placed upon our roadways, we need to bear in mind that we may be shutting off our food supply as well as that of New York and other neighboring states. We are working closely with the food industry to find ways to address this potential problem in the event that a real terrorist attack may require us to impose travel restrictions.

The sectors involved with TOPOFF 3 have provided a preliminary report to the Attorney General and the Task Force describing the issues they encountered and how they responded. The sectors will give a more comprehensive set of recommendations in the future.

TOPOFF 3 was a wonderful learning experience for New Jersey. We are still reviewing the event to identify where our weaknesses are so that we can improve our emergency response systems. Those decisions will, of course, be made in collaboration with the private sector.

Editor: What can corporate counsel do to help ensure the state is prepared adequately to combat terrorism?

Dugan: In 2004 we received \$92,524,630 in funding from the Department of Homeland Security, which was slashed in 2005 to \$63,311,154. Our estimated funding for 2006 has been slashed even further to \$53,662,000. This drastic reduction in funding is confounding, given our proximity to Manhattan and that the 1993 World Trade Center bombing and 9/11 attacks were planned in New Jersey. All of us who live or work in New Jersey are aware of the devastating effects of the 9/11 events on our state. Moreover, the nuclear power plants and large chemical facilities here make New Jersey a prime target for terrorists.

Protection of New Jersey's critical infrastructure, which encompasses many private properties, requires not only best security practices within the facility but also a buffer zone protection plan for the perimeter of the facility. If state and local governments cannot protect those buffer zones, the private

industry must fill that void. To avoid that increased burden, we need the corporate legal community's help in lobbying the federal legislature to restore our funding to at least its 2004 level.

I urge corporate counsel to reach out to federal legislators and tell them that New Jersey needs more funding to combat terrorism.

Editor: How can our readers learn more about the state's efforts to combat terrorism?

The Hon. Tom Murphy

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Editor: What contributions do lawyers and law firms in Pittsburgh make to the city?

Murphy: Legal professionals are essential to the health and vitality of any city. I rely on the professional advice, direction and interpretations of the men and woman of the city's legal department to guide my decision making, inform our policy debates and provide a framework for discussion of nearly every issue that comes before the city. In addition, Pittsburgh is home to a number of

Dugan: They can visit our website at www.state.newjersey.us/lps/dsptf. The site describes TOPOFF 3 and other initiatives to foster collaboration between government and private industry on homeland security issues. I also encourage in-house counsel and law firms representing companies to participate in the IAC. The more players we have at the table, the better our practices will be. I would be happy to hear from any of your readers and can be reached at Mariellen.Dugan@lps.state.newjersey.us.

small and large law firms that have made tremendous contributions to our community through their participation in the public process and their desire to be good corporate citizens.

Editor: When you hand over the mayoralty to someone else, what guiding principles would you give to him or her?

Murphy: Creating a vibrant, thriving city is a job that is never finished. Circumstances and situations constantly change and new challenges and opportunities must constantly be addressed. You must be willing to meet those challenges head on, and be ready take advantage of opportunities in order to enable your city to thrive and grow.

Partners Notes

Robert Half Survey: Few Attorneys Eager For Own Firms

An overwhelming majority of attorneys have no ambition of starting their own practice, a new survey shows. Ninety-three percent of lawyers polled said they would not establish a law firm even if they had the necessary capital. This is a steady increase from similar surveys conducted in 2002 and 1997, when 84 percent and 78 percent of lawyers, respectively, reported no interest in flying solo.

The survey was developed by Robert Half Legal, a staffing service specializing in attorneys, paralegals and other highly skilled

legal professionals. It was conducted by an independent research firm and includes responses from 200 attorneys among the 1,000 largest law firms and corporations in the United States and Canada. All respondents have at least three years of experience in the legal field.

"While it may be exciting for many attorneys, the allure of starting their own law firm was overshadowed by the many administrative aspects entailed . . ." said Robert Volkert, executive director of Robert Half Legal.

Matthew Bender Offering Pair Of Analyses

A pair of analytical treatises, one focusing on homeland security and one on employee benefits issues, are currently available from LexisNexis Matthew Bender.

Matthew Bender rates the *Homeland Security Deskbook* as THE analytical book on homeland security. This comprehensive guide discusses and analyzes real problems that arise in the post-9/11 world and provides the historical context and structure of federal homeland security work and reference materials – federal and state. Among the issues discussed are:

- Protecting critical infrastructure, including computer systems;
- Ensuring communications work in an emergency and local governments know what to do;
- Securing government contracts and grants without exposing the recipient to catastrophic liability or the loss of intellectual property rights;
- Coping with new regulations about advance notice of imports and new procedures for bringing in noncitizen workers or students;
- Handling environmental risk management;
- Responding to government requests for information;
- Gaining government approval for new anti-terrorism technology and drugs.

The *Deskbook* covers the new world of

the USA PATRIOT Act, Maritime Transportation and Security Act, Bioterrorism Act, Homeland Security Act, Terrorism Risk Insurance Act, Enhanced Border Security and Visa Entry Reform Act, and countless Executive Orders, Presidential Decision Directives, Homeland Security Presidential Directives, National Strategies, and guidance documents.

The *Employee Benefits Guide* provides two volumes of expert analysis in the field of employee benefits, providing detailed discussions of the relevant statutes, regulations, case law, and opinion letters.

Volume 1: *ERISA, COBRA, Other Laws* focuses on: ERISA Coverage; ERISA Reporting and Disclosure; Qualified Employee Pension Plans; Nonqualified Employee Pension Plans and Deferred Compensation Arrangements; Protecting Pension Plan Benefits; ERISA Administration and Enforcement; Continuation Coverage Under Group Health Plans (COBRA); Other Federal Laws Affecting Employee Welfare Benefit Plans; Alternative Health Care Delivery Systems; and Cafeteria Plans.

Volume 2: *Fiduciary Responsibility Under ERISA* explores: Who Has Fiduciary Responsibility; The Duty of Prudence; Diversification and Non-Delegation; The Duty of Loyalty; Prohibited Transactions; Prohibited Transaction Exemptions; Remedies and Sanctions; Procedural Matters; and The Fiduciary Life.

SPECIAL SECTION

Pennsylvania/New Jersey

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Transforming Pittsburgh Into A Thriving, Vibrant New City

The Editor interviews the Honorable Tom Murphy, Mayor of Pittsburgh.

Editor: What factors went into your decision to run for mayor in 1993?

Murphy: The City of Pittsburgh was in need of a new direction. Although my predecessors had done a remarkable job of keeping Pittsburgh moving through very difficult times following the collapse of the steel industry, Pittsburgh was still thought of as a “smoky steel city” in 1993. It was my goal and mission to change that reputation. Pittsburgh needed to evolve and grow as a city, to create the quality of life of a 21st century city, and to transform itself into a destination city. I am proud of the investments we have made in our community, and to say that we have accomplished our goals. Residents and visitors alike are astounded by the environmental, cultural and professional changes that have transformed Pittsburgh into a thriving, vibrant new city.

Editor: How have your position and responsibilities evolved over the past decade or so?

Murphy: Many people, including the local press and sometimes other elected officials, are wary of change, and overcoming that inertia has proven to be a daunting challenge throughout my tenure as mayor of Pittsburgh. Whether it is building two new world-class sports stadiums and a world-class convention center, rebuilding and revitalizing former public housing communities and transforming them into vibrant mixed-income neighborhoods or creating miles of new riverfront trails, a mayor must be willing to set a vision and goal for the future and not allow the forces of the status quo to derail the city's progress. As we have succeeded in transforming Pittsburgh into a thriving, vibrant new city, we have seen Pittsburgh evolve into a city that embraces its new image.

Editor: How did your Peace Corps experience help to shape your leadership style?

Murphy: I learned early in my time in the Peace Corps that the most powerful person in the village was the one that was able to speak the language of all the surrounding villages. As mayor, you need to be able to effectively communicate with all of the stakeholders and constituents in your community, whether it is another elected official, a community activist, a corporate CEO, neighborhood residents, or out of town visitors.

Editor: When you were first elected mayor, Pittsburgh's finances were in a sorry state, with a \$32 million deficit.



The Honorable Tom Murphy

The city now enjoys a budget surplus. Please tell us about the steps you took to ensure the city's financial integrity.

Murphy: After several years of managing our way through Pittsburgh's financial problems, we made a fundamental decision that we could no longer survive with a 50-year-old tax structure, where nearly half of all users of city services paid little or nothing for those services. While we sought to reform Pittsburgh's antiquated tax structure at the state level, we also took the necessary steps to right size Pittsburgh government. We reduced our workforce by nearly 40 percent, brought in private management for non-core services like our vehicle fleet maintenance, and made deep cuts into our annual spending. All of these efforts, combined with the successful modernization of Pittsburgh's tax structure has restored our bond rating, given us a projected budget surplus and put Pittsburgh on the path to long term fiscal stability.

Editor: What are a few of the visions for the city's economic revitalization that you put into action?

Murphy: When I took office as mayor in 1994, I made a decision that Pittsburgh could no longer afford to wait for the private market to revitalize our polluted former industrial sites. My administration

created an \$85 million local economic development fund by diverting a portion of our local tax revenue, and used this fund to purchase more than 1,200 acres of blighted, abandoned industrial property. We took the risk of cleaning up these brownfields and preparing them for development. We then identified a private development partner to revitalize these sites. Today, these sites house some of Pittsburgh's most desired residential neighborhoods, new high-tech companies, miles of riverfront trails and new entertainment and recreation facilities.

Editor: What quality of life initiatives contribute to attracting cutting-edge companies and talented professionals to Pittsburgh?

Murphy: In order to attain and retain the best and brightest you have to offer residents and families a very high quality of life. Ensuring that we have beautiful, accessible parks and miles of riverfront and park trails is a key component to ensuring that high quality of life. In addition, we are the only city in America that has rebuilt and re-designed all our neighborhood playgrounds to meet the highest safety standards. All of these efforts represent an investment in the quality of life we offer to our residents here in Pittsburgh.