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THESIS

**APPLYING GOLDWATER-NICHOLS REFORMS TO
FOSTER INTERAGENCY COOPERATION BETWEEN
PUBLIC SAFETY AGENCIES IN NEW YORK CITY**

by

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March 2007

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INTERAGENCY COOPERATION BETWEEN PUBLIC SAFETY AGENCIES IN
NEW YORK CITY**

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ABSTRACT

Interagency conflict between police and fire departments throughout the country has existed for many years and is generally attributable to competition for limited municipal dollars and overlapping areas of responsibility. New York City (NYC) is frequently cited as the most egregious example of this rivalry. The relationship between NYC's emergency response agencies, and the lack of integrated strategic planning which results, has many parallels to the situation that existed within the DoD from the years after WW II until the passage the Goldwater-Nichols Act in 1986. That act is widely credited with changing the culture of the DoD from one of service parochialism to one of jointness and allowing the military to seamlessly coordinate and integrate its war-fighting activities across service lines.

This thesis recommends that NYC adapt several provisions of the Goldwater-Nichols Act to change the underlying attitudes and cultures of its first responder agencies. By encouraging its personnel to focus their planning, training, and operational activities on what benefits the City as a whole, as opposed to the individual agency to which they belong, the City will profit from the improved coordination, communication, and cooperation necessary to effectively prepare for and respond to emergencies of any magnitude.

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I would like to conclude by dedicating this thesis to the 343 members of the FDNY who made the ultimate sacrifice on September 11th. The tragic events of that day underscore the need for all agencies to work together.

I. INTRODUCTION

A. PROBLEM STATEMENT

For there to be an effective response to any emergency situation, from a vehicle accident to a terrorist attack involving WMD, there needs to be coordination, communication, and a clear understanding of the responsibilities and capabilities among responding agencies. In addition, relationships need to be cultivated between members of these agencies so that the trust necessary for interagency cooperation to be successful can develop. Unfortunately, this is often not the case in New York City (NYC) where a “Battle of the Badges” has existed between the New York Police Department (NYPD) and the Fire Department of New York (FDNY) for decades over who should be in charge and how operations should be conducted at the scene of various emergencies.

This rivalry has resulted in morale problems where units have responded to on-going incidents, for which they are properly trained and equipped, only to be told by another agency that their services are not required. There have been jurisdictional “turf wars,” where both agencies claimed to be in charge. Communication and information sharing is essential for successful cooperation; but a lack of respect between these agencies for each others’ roles and responsibilities has even manifested itself, on occasion, with physical altercations between members, and a shouting match between the commissioners of these two agencies in front of reporters at City Hall.¹ Generations of police officers and firefighters have come up through the ranks in this atmosphere which has helped institutionalize this hostility and has created an environment of competition and distrust.

Several protocols and policies have been put in place by different administrations over the years in an effort to establish who is “in charge” at various incidents, but none have attempted to address the underlying cause of why this situation exists: a lack of strategic coordination in planning, training, and equipment purchases at the City level

¹ Sarah Lyall, "Truce Turns into Free-for-all in Police-Fire Feud on Divers," *The New York Times*, sec. A, (May 4, 1988), http://web.lexis-nexis.com.libproxy.nps.navy.mil/universe/document?_m=7def5b3c535013e65f9e45eabcd2b9f3&_docnum=1&wchp=dGLbVzW-zSkVb&_md5=fbaaa3831aa3b04a5acf458ee762d064 (accessed November 28, 2006).

that has allowed both agencies to largely duplicate the capabilities of the other for responses to many different types of emergencies. This duplication, initiated and perpetuated out of competition for resources and influence, has been allowed to continue and worsen for political reasons. It is at the heart of this rivalry and continues to cause animosity and mistrust between these agencies.

As a result, millions of dollars have been and continue to be wasted on inefficient replication of existing resources. The two agencies continue to be wary of one another. Cooperation between them occurs sporadically and information sharing between them is virtually non-existent.

In a post 9-11 world, where communication and teamwork are vital to effective planning and response, this rivalry is dangerous, costly, inefficient, and ultimately puts lives at risk. Much more needs to be done to promote interagency cooperation, encourage mutual understanding of each others' roles and abilities, share information, and to truly work together to ensure the most effective response possible.

B. IMPORTANCE

While NYC is not unique in having its first responder agencies exhibit some level of interagency friction, it is certainly the most egregious example. By carefully examining the underlying causes of the problems here, other cities can determine where they have similar inter-organizational difficulties and can adapt the recommendations made here to their own jurisdictions where applicable.

It is widely understood and accepted that for there to be effective coordination and cooperation between and across jurisdictions and levels of government, organizations must work together, recognize and respect the capabilities and expertise that each agency brings with them, and mutually agree on the strategic goals to be accomplished. This was recognized and incorporated into Homeland Security Presidential Directive (HSPD)-5² when it called on the Secretary of Homeland Security to develop and administer a

² *Homeland Security Presidential Directive 5(HSPD-5)* (Washington, DC: Government Printing Office, 2003), 1, <http://www.whitehouse.gov/news/releases/2003/02/20030228-9.html> (accessed August 19, 2006).

National Incident Management System (NIMS)³ as part of the National Response Plan (NRP).⁴ NIMS “provides a consistent nationwide template to enable federal, State, local, and tribal governments and private-sector and nongovernmental organizations to work together effectively and efficiently to prepare for, prevent, respond to, and recover from domestic incidents, *regardless of cause, size, or complexity, including acts of catastrophic terrorism.*”⁵ [Emphasis added.]

Unfortunately, past rivalries, duplicate abilities, desire for supremacy, and ultimately politics resulted in NYC adopting the Citywide Incident Management System (CIMS).⁶ This document, written with strong influence by the NYPD, has resulted in a system that has been used to largely expand the role of the NYPD and marginalize that of the FDNY, further inflaming tensions between the departments and leading the FDNY’s Chief of Department, Peter Hayden, to openly criticize the plan in a front page article in the New York Times.⁷ Among the most controversial provisions in the plan is the section that mandates that the NYPD be designated as the *single* Incident Commander (IC) at all CBRN / Haz-Mat incidents unless “the NYPD determines there is no *actual or suspected criminal activity or terrorism*”⁸ at which point a Unified Command will be implemented. [emphasis added] Not only does this provision ignore the direction in NIMS that a *Unified* Command be established at multi-agency responses *regardless of cause*, but it actually assumes the cause of every Haz-Mat incident in the City to be related to criminal or terrorist activity until proven otherwise.

This is far more than a power struggle between two agencies with a contentious history. This document governs how command of every emergency response in NYC is

³ *National Incident Management System* (Washington, DC: Government Printing Office: 2004), 139, <http://www.nimsonline.com/docs/NIMS-90-web.pdf> (accessed January 20, 2006).

⁴ *National Response Plan* (Washington, DC: Government Printing Office, 2004), <http://www.fas.org/irp/agency/dhs/nrp.pdf> (accessed February 12, 2006).

⁵ *National Incident Management System*, ix.

⁶ *NYC Citywide Incident Management System (CIMS) Protocol*, (New York, NY: Office of Emergency Management, 2005), 51.

⁷ Michelle O'Donnell and William K. Rashbaum, "New Terrorism Response Plan Angers Fire Dept.," *New York Times*, sec. A, April 22, 2005, <http://www.nytimes.com/2005/04/22/nyregion/22response.html?pagewanted=2&ei=5070&en=38ba3ad4e0670b06&ex=1133326800> (accessed November 25, 2005).

⁸ *NYC Citywide Incident Management System (CIMS) Protocol*, annex A, 3.

handled. CIMS specifies that “the Command Element is responsible for overall incident management and *has the authority to make overall strategic and tactical decisions* regarding the mitigation of the incident, define the Incident Objectives, and *determine what resources are required for incident operations.*”⁹ [emphasis added] Throughout the document it clearly states that life safety operations “are the highest priority Incident Objectives and supersede other objectives during the incident.”¹⁰ It also clearly states that the core competency of life safety belongs to the FDNY.¹¹ However, since the FDNY does not participate fully in the command structure, it is tasked with what everyone agrees is the most important function, but does not have the authority under CIMS to make the necessary strategic decisions or to determine what resources are required. This puts lives at risk.

In addition, the dynamic of “organizational bias” toward members of one’s own group and against members of outside groups is magnified under a single command.¹² The “stovepiping”¹³ of information identified by the 9/11 Commission illustrates the same dynamic as the rivalry between the NYPD and FDNY. In both cases, the failure to share information, or control of emergencies, is ultimately a quest for superiority of one agency over the other.¹⁴ CIMS simply cements that superiority by giving sole command to the NYPD.

Aside from the organizational and safety issues posed by this antagonistic relationship, there are financial consequences to building up and maintaining duplicative abilities in multiple agencies. Even though federal funding grants have given NYC the ability to greatly expand its capabilities, particularly in the area of hazardous materials, it is absolutely essential for the City to make sure that it properly utilizes those resources to

⁹ *NYC Citywide Incident Management System (CIMS) Protocol*, annex A, 9.

¹⁰ *Ibid.*, 17.

¹¹ *Ibid.*, 19.

¹² Joseph Pfeifer, “Understanding how Organizational Bias Influenced First Responders at the World Trade Center,” in *Psychology of Terrorism*, eds. Bruce Bongar, et al. (New York, NY: Oxford University Press, 2007), 207-208.

¹³ *Final Report of the National Commission on Terrorist Attacks upon the United States*, vol. 1 (New York, NY: W.W. Norton & Co., 2004), 403, <http://www.9-11commission.gov/report/911Report.pdf> (accessed August 19, 2006).

¹⁴ Pfeifer, “Understanding how Organizational Bias Influenced First Responders,” 211.

ensure an effective response. It must employ the expertise that each agency brings to the table and break down the barriers that have kept them at odds for decades. It is incumbent upon the City to do this in the most cost effective manner possible so that resources are not wasted on needless duplication and instead are available for the training and equipment needed to manage emergency situations and maintain competency in these skills. In addition, as homeland security funding to the City is inevitably reduced in the coming years, the costly duplication that has resulted will become unsustainable and units in both agencies will suffer the effects of inadequate training and funding. The City's ability to manage these incidents will ultimately suffer.

C. SUMMARY OF RECOMMENDATIONS

Given the pervasiveness of this longstanding rivalry throughout both departments and the importance that a coordinated strategy plays in giving the City the ability to prepare for, prevent, respond to, and recover from terrorist attacks or man-made or natural disasters, it is crucial that all city agencies work together in support of the City's strategic goals instead of their own parochial interests. This is especially true in New York where the City saw first hand on 9/11 the consequences of failing to work together and share information.

What is truly needed to resolve this decades-long struggle for supremacy at the scene of various emergencies is a paradigm shift in the underlying mind-set of officers, particularly the top commanders, in each agency. Any action that stops short of changing these attitudes at their root, such as instituting yet another protocol, is tantamount to treating the symptom and not the disease.

The situation in New York is analogous to the conditions faced by the various branches of the U.S. military beginning after World War II and continuing into the 1980's. Interservice rivalries, competition for limited resources, institutional pride, and parochial interests combined to create an environment in which the services operated largely independently of each other. This lack of coordination manifested itself in a number of military failures in conflicts that included Viet Nam and the Iran-hostage crisis

and in communications problems identified during operations in Grenada.¹⁵ Resolving the situation literally took an act of Congress: The Goldwater-Nichols Department of Defense Reorganization Act of 1986, commonly referred to as the Goldwater-Nichols Act (GNA).¹⁶

This act made a number of significant changes to the structure of the Department of Defense (DoD) and mandated a number of other changes, perhaps most significantly the requirement that officers who wish to ascend to the staff level must first complete a tour in a “joint billet”. This had the immediate effect of making these positions coveted ones. The result was a dramatic change in the culture of the military from one of parochialism to one of “jointness”. While there was initially a great deal of resistance from and some sacrifice required by the individual Services, the overwhelming consensus of the literature on this topic agrees that the GNA was an enormous success and credits it with enabling the armed forces to plan, train, communicate, and operate together seamlessly.

Most of the recommendations contained in this thesis are based largely on provisions contained in the GNA, but adapted locally to NYC where applicable. The others are based on problems unique to NYC and on the success that past protocols have had in resolving them. Other jurisdictions experiencing similar interagency conflict can adapt these recommendations to their needs where appropriate. The recommendations are:

¹⁵ Senate Committee on Armed Services, *Defense Organization: The Need for Change*, 99th Congress, 1st sess., 1985, Committee Print 99-86, 7; Clark A. Murdock, et al., *Beyond Goldwater-Nichols, Phase I Report* (Washington, DC: Center for Strategic and International Studies, 2004), http://www.csis.org/media/isis/pubs/bgn_ph1_report.pdf (accessed February 12, 2006); Peter W. Chiarelli, "Beyond Goldwater-Nichols," *Joint Forces Quarterly* (Autumn, 1993): 71, http://www.dtic.mil/doctrine/jel/jfq_pubs/jfq1102.pdf (accessed February 12, 2006).

¹⁶ *Goldwater Nichols Department of Defense Reorganization Act of 1986*, Public Law 99-433, 99th Cong., 2d sess. (October 1, 1986), <http://www.ndu.edu/library/goldnich/99433pt1.pdf> (accessed November 19, 2005).

1. The Office of Emergency Management (OEM) Should Become the City's Central Agency for Coordinating All Prevention, Preparation, Response and Recovery Efforts

This is not to say that OEM should be the Incident Commander (IC) at large scale or catastrophic events, but rather that they should *coordinate* the activities of all the City agencies prior to, during, and after the event occurs. The advantage is that since OEM does not have any assets of its own to conduct operations, it will not possess the organizational bias that first responders with those capabilities have. In much the same way that the judicial branch of the government can interpret laws, but is dependent on the legislative and executive branches to pass and enforce them, OEM would determine which agency should perform what operations but would depend on the individual agencies to carry them out. OEM's mission would be to ensure that the Incident Commander(s) on the scene have all the resources needed and that all necessary information is being shared across agency lines. To accomplish this several changes need to be made in how OEM is organized and what its mission is:

a. The Position of Commissioner of OEM Needs to Be Enhanced

Much like the role of the Secretary of Defense (SecDef) was strengthened by the GNA; the position of Commissioner for OEM needs to be enhanced. Currently, that position is, at least theoretically, the equivalent of the Fire or Police Commissioner. In order for the Commissioner of OEM to truly determine responsibilities and have the ability to coordinate the various agencies, he needs to have authority OVER them. Therefore, the position of OEM commissioner should be elevated the status of a deputy mayor in charge of public safety who reports directly to the mayor. The police and fire commissioners (as well as all the other agency heads responsible for public safety) should report to him / her. Part of his / her mandate should include ensuring that public safety is provided in the most economical means possible. To avoid any perceived or actual bias on his / her part, this position should be filled, at least initially, by a recognized public safety expert with no ties to either the NYPD or FDNY.

Since this position would carry such a great deal of responsibility for ensuring the safety of the citizens of NYC, the position must be filled with an extremely

qualified person who has the experience and credentials to fill that role. That is currently not the case. In a world where the threat of terrorism is omnipresent, particularly in NYC, the days of awarding commissions in public safety organizations based on political considerations is unacceptable and should not enter into designating this responsibility. Therefore, the mayor should nominate the persons he / she wants to fill the roles of commissioners for OEM, Police, and Fire. The city council would then hold hearing on their qualifications and confirm them if appropriate, just as the Congress does for many of the President's nominees.

b. Senior Management at OEM Should be Modeled after the Joint Chiefs of Staff

The top level of management at OEM should report to the OEM Commissioner, but serve in an advisory capacity to the mayor to offer dissenting opinions and alternative advice on public safety matters, much in the same way the Joint Chiefs of Staff do for the President. To ensure that these personnel are qualified experts in public safety and emergency response and are familiar with local NYC issues, they should be made up senior level members from the NYPD, FDNY, and other city agencies. However, to overcome the inherent conflict between advocating for the positions of one's agency and making recommendations based on the overarching needs of the City, precautions need to be taken in staffing these positions.

To that end, senior OEM management should be made up members who will not be returning to their home agencies either because they have retired from them or because they have chosen a separate career path at OEM. This will not only eliminate their dual-hatted role, it will also remove any unwanted influence that could be exerted by the home agency on an individual who would be returning to it.

c. All Equipment Purchases and Grant Requests Should be Coordinated Through OEM

In order to minimize the duplication of resources that exists, take advantage of economies of scale, and ensure that all money spent conforms to the City's overall strategic plans; OEM should coordinate the purchase of all emergency equipment

and the submission of all grant requests made by emergency response agencies. OEM, in conjunction with the Office of Management and Budget (OMB), would make the final determination on if the grant request should go forward and on whether the equipment should be purchased by that particular agency. All requests would have to conform to the City's overall plans so that individual agencies do not waste money duplicating existing resources and expanding their mission into areas outside their core competencies which are already covered by other agencies. Training programs would also be included in this policy and be coordinated by OEM.

The most obvious advantage to a centralized and coordinated approach to purchases and grant requests is that it will save millions of dollars in unnecessary duplication in training and equipment. Even more important than the financial advantages of this arrangement, however, is the effect it will have on interagency cooperation, coordination, and efficiency. Empowering OEM by giving it some authority over how agencies utilize homeland security funding enables it to ensure that such funding is utilized in a manner consistent with the needs and strategic plans of the City, rather than the parochial desires of an individual agency. Limiting the capabilities of the agencies forces them to work together to accomplish common goals. Controlling the purchase of new equipment would also encourage a clear delineation of roles for the individual agencies. In addition, a centralized procurement process would allow the City to take advantage of its size and purchasing power to negotiate reduced prices for items currently purchased and maintained separately by individual agencies.

d. OEM Should Once Again Become a Response Agency

One of the original missions of OEM when it was established by Mayor Giuliani in 1996 was to act as the “on-scene interagency coordinator” at multi-agency operations.¹⁷ Under the current administration, however, it rarely responds to emergencies and leaves it to the individual agencies to work out who will perform what functions based on the CIMS protocol. Problems arise, however, when the agencies disagree over what the situation requires and which agency should perform what actions

¹⁷ The 9/11 Commission Report, Chapter 9, ff 29.

due to their duplicate capabilities. OEM needs to be *on-scene* to make that determination based on the conditions present when the agencies cannot agree.

e. OEM Should Conduct Far More Interagency Exercises Than are Currently Being Held

The large majority of those interviewed for this thesis identified the need for more interagency drills and training as the best way to foster cooperation and understanding between agencies. Doing so not only improves how the agencies function together at operations, but also helps to develop trust and interpersonal relationships between members of these agencies. This sets the stage for more efficiency and collaboration at future events.

The true benefits of interagency operations are attained when the actions of the groups are synchronized, but this requires a great deal of training and coordination. This is how the present-day military plans and fights and is a direct result of the reforms enacted under the GNA. In order to maintain their capabilities, however, the services continually conduct joint training exercises.

If NYC is to be prepared for future emergencies that will require multi-agency responses and overcome the institutionalized rivalry between its primary response agencies, it, too, must conduct frequent joint training exercises. These do not necessarily need to be large scale, expensive exercises. They can also take the form of local drills conducted at the battalion / precinct level. To coordinate these, OEM could establish localized offices in each of the five boroughs that would organize these drills and bring together the various agencies who would respond to different emergencies in these areas.

In addition to simply conducting more interagency drills, however, these drills need to be more realistic and designed to identify the gaps, overlaps, and seams that will occur at real events. Carefully scripted exercises designed to conceal problems may impress the media, but if they are not brought to light during exercises and addressed, they will develop at actual events.

2. Model NYC's Personnel Provisions and Promotion Policies on Those of the GNA

Studies and hearings conducted by Congress in the years leading up to enactment of the GNA identified the dominant influence of the individual services over organizations responsible for joint military preparation and planning as the greatest hindrance to integrating the branches of the military. Congress further recognized that as long as military officers gave the highest priority to the interests of their service while losing sight of broader, more important national security needs, and believed their actions were correct, this behavior would not change.¹⁸

They felt that something had to be done to instill a joint culture among the officer corps that would lead to an appreciation and understanding of how the services could and should operate together. As a result of these conclusions, Congress incorporated several provisions into the GNA designed to reduce service influence and increase the desirability of joint duty in an effort to change the culture of the services.¹⁹

Given the success of these provisions in achieving a “joint culture” within the DoD and close parallel between the situation identified by Congress and the current situation in NYC between its emergency response organizations, similar measures should be taken. Therefore, the following recommendations, based on provisions in the GNA, should be implemented:

a. A Detail to OEM or Other Joint Duty Assignment (JDA) Should be a Prerequisite for Promotion to the Staff Ranks of an Agency

Just as the GNA mandated a military officer perform a tour in a “joint” billet, NYC should require those who wish to ascend to the top ranks in all agencies with ties to public safety, particularly the NYPD and FDNY, to accept a detail either to OEM or other Joint Duty Assignment (JDA) for a period of at least two years. This requirement would have the effect of making these positions highly coveted ones so as to attract quality applicants. It will also encourage the agencies to send only highly qualified

¹⁸ Senate Committee on Armed Services, *Defense Organization: The Need for Change*, 3-4.

¹⁹ John F. Schank and others, *Who is Joint? Reevaluating the Joint Duty Assignment List*, vol. 574 (Santa Monica, CA: Rand Corporation, 1996), 45-46, http://www.rand.org/pubs/monograph_reports/MR574/MR574.appa.pdf (accessed November 15, 2005).

personnel since only they will be eligible for promotion to the top positions in that agency later on. This provides a number of advantages to the City in its quest to change the current culture of parochialism in its agencies. Among them are:

It Will Build Personal Relationships Between These Members

By getting mid-level managers and officers into these positions and requiring them to work alongside their counterparts from other agencies prior to reaching the top of their professions, they will build personal relationships with each other. This will break down some of the stereotypes and barriers that are built up early in one's career. It will also afford them an opportunity to network with the future leaders of all the other city agencies.

It Will Familiarize These Members with the Priorities, Concerns, and Goals of other Agencies

Oftentimes, disputes between agencies occur as a result of differing priorities and a lack of familiarity with the role each agency has to play. Working side by side with representatives from other disciplines allows a better understanding of the capabilities, concerns, and needs of that group. It also allows those members to gain a better perspective of what each agency is trying to accomplish, making consensus on how to achieve these goals easier.

It Will Place Members from Each Agency in an Environment Where They Can Collaborate Freely

The pressure and influence that can be exerted by an organization on its members can cause them to pursue the interests of that organization even at the expense of the greater good. Likewise, the peer pressure associated with loyalty to one's own organization should not be underestimated. Human nature leads people to identify with the group to which they belong. The subconscious effect of being surrounded by members from that group leads one to pursue the group's interests, and to believe that that is the right thing to do. The City can use this dynamic to its advantage by placing members into a group environment, surrounded by others in a similar situation, where they identify with the overall needs of the City rather than their individual agency.

b. Safeguards Need to be Established to Prevent Retaliation Against Members by Their Sponsoring Agency

There is naturally a concern by members of an agency that if they are seen as not advocating hard enough for that agency or as embracing a city-centric mind-set that works to the detriment of the home agency, that they may face retribution upon return to that agency. It does not matter whether those concerns are real or merely perceived to affect their behavior, it is enough that they exist. Therefore, this type of punitive action must be discouraged and safeguards established to ensure that these members feel protected. This will assist in encouraging these members to adopt a non-parochial attitude. To accomplish this, the following policies should be put in place:

- Agreements between members and their agencies regarding promotions, assignments, etc. which will take effect upon successful completion of a JDA should be approved, in writing, prior to the detail commencing.
- The determination as to whether the member has successfully completed the detail would be based *solely* on personnel evaluations conducted by that member's supervisor(s) at the JDA.
- Good performance evaluations would guarantee the promotions and assignments agreed to whereas poor evaluations would negate them. In addition, poor evaluations would prevent the member from receiving credit for the JDA, thereby ending their chances for promotion to the staff level.
- Officers who demonstrated exceptional commitment to joint concepts during their JDA would be offered the opportunity to pursue a separate career path at OEM including the opportunity for promotions and salary increases within OEM. Members who chose this path would eventually make up the senior management positions at OEM (as described in recommendation 1b, above).

3. The City Should Mandate a Professional Education Program Emphasizing “Joint Doctrine”

The personnel provisions of the GNA also made use of the military education system as a means of emphasizing and institutionalizing “jointness” among the services by focusing military science courses on emerging joint doctrine.²⁰ While NYC does not have a direct parallel to the military education system for its employees, it does help finance the City University of New York (CUNY) system. It also maintains educational requirements for appointment to both the NYPD and FDNY and for each promotional step above that.

NYC should develop a public safety curriculum devoted to promoting interagency cooperation and collaboration based on the military model, and use that curriculum as a means of educating officers in each agency, in the City’s strategic plans, and in joint operations. It should require a set number of credits as a prerequisite for promotion to each rank and customize the courses so that they correspond to the phases of one’s career and the requirements of each position.

Doing this would serve to reinforce the City’s emphasis on the importance of approaching homeland security from a city-centric perspective and better educate its employees on its strategic goals. Where practical, these courses should be taught jointly by current and former members of the NYPD and FDNY to give the curriculum credibility with these groups.

4. Additional Recommendations Not Based on the GNA

Although there are many similarities between the pre-GNA environment within the DoD and the current environment in NYC between the NYPD and FDNY, there are obviously some local issues that do not have a direct correlation. The following recommendations are specific to NYC and are designed to address these local concerns:

²⁰ Howard D. Graves and Don M. Snider, "Emergence of the Joint Officer," *Joint Forces Quarterly* (Autumn 1996): 53-54, http://www.dtic.mil/doctrine/jel/jfq_pubs/1213.pdf (accessed November 15, 2005).

a. Independent Oversight Must be Established

Due to the highly political nature of the circumstances that have led to this rivalry and the intentional duplication of capabilities, independent oversight will be required during the implementation of these recommendations and subsequently to ensure they are not being circumvented or ignored. To that end, the City Council should establish a committee with oversight powers to watch over how these recommendations are implemented, to address non-compliance by any agency, to hold hearings if necessary, and to make public its findings. In addition, outside consultation should be sought to review and comment on implementation and quality of the plan. This process should be as open, inclusive, and transparent as possible to avoid the pitfalls of politics and parochialism that have plagued response protocols for the past few decades.

b. CIMS Needs to Be Revised to be More Logical, to Truly Recognize Core Competencies of Agencies, and to More Closely Follow NIMS

For the most part CIMS does follow the template of NIMS and only relatively minor (although significant) changes need to be made to the document as a whole. It also provides for some very positive features such as After Action Reviews (AAR's) and interagency training. However, the manner in which these provisions are practiced and the areas where CIMS deviates from NIMS are critical failings in this system.

As will be shown, the justifications used for making such controversial decisions as initially placing the NYPD in Single Command of every Haz-Mat / CBRN incident simply do not stand up to scrutiny. The inconsistent applicability of this provision and the confusion and criticism it generates warrant a revision of it. By following the national model and initially establishing a Unified Command at all such incidents, the conditions discovered at the scene, rather than potential causes and parochial interests, will dictate the command structure and the resources required to manage it.

In addition, the evidence strongly suggests that decisions made regarding what constitutes the "core competencies" of the individual agencies were specifically

designed to marginalize the role of the FDNY by failing to recognize its true capabilities. This list must also be revised to more accurately reflect the experience and expertise of the individual agencies.

Creating a system that makes the agencies mutually dependent on each other to accomplish their respective missions fosters interagency cooperation as the need for it is recognized. Simply building up the capabilities of both agencies so that they operate independently of each other has the opposite effect. CIMS has to be revised so that it clearly delineates the roles of agencies based on their true core competencies and eliminates unnecessary duplication of effort and the friction it creates.

c. The 911 System Needs to be Revamped to Include Fire Department Representation and Dispatchers

The 911 system in NYC is currently staffed entirely by civilian employees of the NYPD. All calls to 911 go to these dispatchers who, depending on the nature of the call, may conference in an FDNY dispatcher at another location. Each agency then dispatches units in accordance with its own response matrix. At the very least, this delays FDNY response. Many times FDNY units are not dispatched at all to emergencies at which they could play an integral part.

Despite repeated requests by the fire department to station an officer inside the 911 center to act as a liaison, ensure calls are routed appropriately to FDNY, and provide expert advice to callers trapped in burning buildings, the NYPD has refused to allow this.²¹

The City needs to revamp the 911 system so that both PD and FD dispatchers are working side by side in the same control center. In addition, it needs to institute a response matrix for emergencies that simultaneously dispatches units from multiple agencies including the NYPD, FDNY, and EMS based on the needs of the incident as determined from the information received. The current system not only wastes valuable time, but also leads to mistakes in the information given or simply failing to

²¹ This information was from interviews with three FDNY staff chiefs who do not wish to be identified.

make the required notifications. As an interim measure, however, until the technical issues can be worked out, fire department representatives should be stationed at the 911 center.

D. METHODOLOGY

In arriving at the recommendations advocated in this thesis, a variety of sources and methods were used. The first few chapters analyze the history of this rivalry, its underlying causes and consequences, and the reasons it has been allowed to continue. The next sections look at previous attempts to manage this rivalry, the events that led up to enactment of CIMS, and the strengths and weaknesses of that document. The final two chapters examine the circumstances and conditions leading up to passage of the GNA, their similarity to the current situation in NYC, the successes and failures of that act in achieving its stated goals, and finally, how to apply provisions of that act to resolve the interagency conflicts in NYC by changing the culture of its two largest emergency response agencies.

To determine the underlying causes of and potential solutions to this rivalry, interviews were conducted with 20 current and former mid- and high-ranking officials in the FDNY, NYPD and OEM. Interviews were also conducted with police and fire officials in other large cities to determine if and where similar rivalries exist. In addition, over 25 New York Times and other newspaper articles dating back to the mid-1980's provided a historical context to this rivalry and a record of it.

The National Institute of Standards and Technology (NIST) report entitled *Federal Building and Fire Safety Investigation of the World Trade Center Disaster: The Emergency Response Operations*²² and the *Final Report of the National Commission on Terrorist Attacks upon the United States*²³ (The 9/11 Commission Report) documented how this rivalry affected operations at the World Trade Center (WTC) and also made recommendations on how to improve interagency operations.

²² Randall J. Lawson and Robert L. Vettori, *Federal Building and Fire Safety Investigation of the World Trade Center Disaster: The Emergency Response Operations* (Washington, DC: Government Printing Office, 2005), <http://wtc.nist.gov/NISTNCSTAR1-8.pdf> (accessed January 4, 2007).

²³ 9/11 Commission, *9/11 Commission Report*.

The chapters on CIMS naturally reference that document and compare and contrast it with the national model, NIMS. In assessing the strengths and weaknesses of CIMS, this thesis again relies on interviews with members of the NYPD, FDNY, OEM, and others. However, in an effort to capture the official position of the administration and of the commissioners of these agencies, it also relies heavily on testimony these officials gave to the 9/11 Commission and to the City Council during hearings held on CIMS. It also includes testimony by prior administration officials and recognized public safety experts.

The chapters pertaining to the GNA and applying that model to NYC utilize various government documents and reports which identify the problems that existed within the DoD prior to the GNA and the successes and failures noted in the years since its enactment. Interviews were also conducted with military personnel assigned to USNORTHCOM to gain perspective on their personal experiences with the provisions of this act. In addition, numerous articles specifically dealing with the effects that the GNA had on military culture, planning, education, and operations were found in *Joint Force Quarterly*, a journal dedicated to promoting integrated operations of the armed forces.²⁴

²⁴ *Joint Force Quarterly Homepage*, Institute for National and Strategic Studies, http://www.dtic.mil/doctrine/jel/jfq_pubs/ (accessed 02/28, 2007).

II. THE CAUSES OF AND SOLUTIONS TO INTERAGENCY CONFLICT

A great deal has been written on what is needed for different organizations to successfully collaborate and cooperate with each other. Since 9/11, much of this literature has focused on how these theories can be applied to emergency responders. Entire theses and books have been written on the subject. While the focus of this thesis is establishing first, that there is a problem in NYC that needs to be addressed, and second, offering a solution to it; determining what is required for successful collaboration to occur, and studying the effects when those components are missing, deserves some discussion. Ultimately, the recommendations made here will incorporate the factors that enhance relationship building.

A. FACTORS AFFECTING INTERORGANIZATIONAL COLLABORATION

A study conducted at the Naval Postgraduate School in 2004 surveyed 25 mid- to senior-level homeland security leaders enrolled in a master's degree program in Homeland Security. The respondents represented a diverse group of organizations including USNORTHCOM, U.S. Coast Guard, Center for Disease Control, Directors of Offices of Emergency Management, and city-level police and fire departments, to name a few. Each was asked to identify three factors that created conditions for successful interagency collaboration, based on their personal experiences. They were then asked to identify three factors that inhibited collaboration. The results of the study are shown on the table below. The factors in each category were all identified by at least three (i.e., 12 percent) of the participants. The ones listed in bold font were named by at least six (i.e., 25 percent) of the group.

Table 1. Factors Affecting Interorganizational Collaboration²⁵

<i>Organization Design Component</i>	<i>“Success” Factors</i>	<i>“Barrier” Factors</i>
Purpose and Strategy	<p>“Felt need” to collaborate Common goal or recognized interdependence</p> <p>Adaptable to interests of other organizations</p>	<p>Divergent Goals Focus on local organization over cross-agency (e.g. regional) concerns Lack of goal clarity</p> <p>Not adaptable to interests of other organizations</p>
Structure	<p>Formalized coordination committee or liason roles Sufficient authority of participants</p>	<p>Impeding rules or policies</p> <p>Inadequate authority of participants Inadequate resources Lack of accountability Lack of formal roles or procedures for managing collaboration</p>
Lateral Mechanisms	<p>Social capital (i.e., interpersonal networks) Effective communication and information exchange</p> <p>Technical interoperability</p>	<p>Lack of familiarity with other organizations Inadequate communication and information sharing (distrust)</p>
Incentives	<p>Collaboration as a prerequisite for funding or resources Leadership support and commitment</p> <p>Absence of rivalries Acknowledged benefits of collaboration (e.g. shared resources)</p>	<p>Competition for resources</p> <p>Territoriality</p> <p>Organization-level distrust Lack of mutual respect</p> <p>Apathy</p>
People	<p>Appreciation of others’ perspectives Competencies for collaboration Trust Commitment and motivation</p>	<p>Lack of competency</p> <p>Arrogance, hostility, animosity</p>

²⁵ Susan P. Hocevar, Gail F. Thomas and Erik Jansen, *Building Collaborative Capacity: An Innovative Strategy for Homeland Security Preparedness*, eds. M. M. Beyerlein, S. T. Beyerlein and F. A. Kennedy (New York: Elsevier, 2006), 255-274.

1. Success Factors

It is not surprising to find that most of the factors that were identified as important to successful collaboration seem intuitive. While there may be some disagreement as to the order of importance in which they are ranked, no one would disagree that they would all help to build a foundation for interagency collaboration.

Among the most commonly identified factors (those chosen by at least 25 percent of these Homeland Security professionals) were a “felt need” to collaborate, a common goal or recognized interdependence, social capital (interpersonal relationships), effective communication, funding as an incentive, and leadership support. As will be discussed throughout this thesis, the majority of these success factors are lacking in the relationship between the NYPD and FDNY. In the final chapter, the recommendations made will address these issues.

2. Barrier Factors

Similarly, the types of issues that were identified as a hindrance to collaboration do not require much explanation. They are also quite prevalent in NYC. The most commonly cited barriers were lack of familiarity with other organizations, inadequate communication and information sharing (distrust), competition for resources, “turf battles”, and perceived incompetence. Once again, the solutions recommended will seek to eliminate these obstacles or limit their influence on interagency relationships.

These results mirror the 2002 findings of the U.S. Government Accountability Office (GAO) report looking into the challenges facing the Department of Homeland Security (DHS) as it attempted to unite 22 individual agencies under one umbrella. The report stated that organizations fail at collaboration for several reasons: organizations have their own missions with goals and incentives that often conflict with one another; agencies often have histories of distrust that are hard to alter; leaders may not actively

support collaborative efforts; and coordination systems and structures that might support collaboration are often lacking (United States Government Accountability Office, December 2002).²⁶

B. THE PSYCHOLOGY OF INTERAGENCY RIVALRY AND CONFLICT BETWEEN FIRST RESPONDERS

It has long been recognized that operations at the scene of emergencies can sometimes be hindered by rivalries between agencies, particularly police officers and firefighters. For over a century, competitive and sometimes strained relations between police and fire departments have been common in many U.S. cities. To a certain degree it is an unavoidable result of the competition for the same municipal dollars which sets the stage for this adversarial relationship.²⁷ NYC is oftentimes held up as the quintessential example of this problem.

For the most part, these agencies work through these tensions and NYC is no exception. As the mayor and his commissioners often point out, the agencies respond together to hundreds of calls a day, and almost all responses are without conflict. However, there is a difference between tolerating each other and working cooperatively and collaboratively.

Anytime two or more individuals interact, the potential for conflict arises. When one person wants something that is at odds with what another wishes or holds ideas contrary to another's beliefs, disputes may occur.²⁸ Similarly, differing ideas about how to protect public safety, how to best resolve an emergency situation, and what the priorities of the incident are, are all potential causes of conflict as well. Having more than

²⁶ Hocevar, et al., Building Collaborative Capacity, 255-274; Government Accounting Office, Homeland Security: Management Challenges Facing Federal Leadership, GAO Report 03-260 (Washington, DC: Government Accounting Office, December 2002), <http://www.gao.gov/new.items/d03260.pdf>. (accessed June 26, 2006).

²⁷ John Buntin, "Battle of the Badges," *Governing Magazine* (September 2005), 46, http://www.southampton.liu.edu/homeland/governing_news.html (accessed June 27, 2006).

²⁸ Walter Mischel, "Psychodynamic Theories: Freud's Conceptions," *Introduction to Personality*, 3rd ed. (New York, NY: Holt, Rinehart and Winston, 1981), 38.

one agency capable of performing the same actions increases the likelihood that there will be differing opinions about what should be done, and nowhere is the overlap in capabilities more prevalent than in NYC.

Adding to this dynamic is the fact that emergency scenes are inherently stressful events. The more complex and dangerous the scene, the greater the level of stress will be. The human body responds to stress by releasing adrenaline which increases heart rate, respirations, and blood pressure in a “fight or flight” response. It is in the midst of this environment that personnel from different agencies arrive in separate vehicles, emblazoned with different agency logos, and wearing different uniforms. Nevertheless, they are told have a common mission.²⁹

In addition, the intensive re-socialization that takes place in the police and fire academies produces a strong sense of “in-group” unity and affinity for other members of the agency, and typically a sense of antagonism for those outside the group.³⁰ Social identity, that promotes the power of one organization over another produces two social outcomes, especially during complex or stressful incidents. First, it creates a positive in-group bias toward those who are part of the same group and a negative out-group bias against those who are part of a different group (Deaux, 1996, Zimbardo, 2004).³¹ When providing information across groups or agency lines, people are prone to give more information to those in their own group and less to those outside it. Second, when people are under stress, they feel very little obligation to share important information with those outside the group since the responsibility for doing so is diffused within their group. This dynamic was clearly shown between first responder groups who operated at the WTC on 9/11.³²

²⁹ Mark Bock, "On-Scene Interagency Conflict," *Journal of Emergency Medical Services* 30, no. 5 (May, 2005): 1, www.jems.com/jems/30-5/13232/ (accessed June 27, 2006).

³⁰ Ibid.

³¹ Joseph Pfeifer, "Understanding how Organizational Bias Influenced First Responders," 207-208; K. Deaux, "Social Identification," in eds. E. T. Higgins and A. W. Kruglanski, *Social Psychology: Handbook of Basic Principles* (New York: Guilford Press, 1996), 777-798; and P.G. Zimbardo, "A situationist perspective on the psychology of evil," in ed. A. Miller, *The Social Psychology of Good and Evil* (New York: Guilford Press, 2004), 21-50.

³² Pfeifer, *Understanding how Organizational Bias Influenced First Responders at the World Trade Center*, 207-208

C. THE EFFECTS OF INTERAGENCY RIVALRY ON OPERATIONS AT THE WTC

New York City's long history of rivalry between its police and fire departments over command of operations at the scenes of various emergencies is well known and well established. The question is what, if any effect did the years of interagency rivalry have on operations at the WTC on September 11, 2001?

As was noted by the 9/11 Commission, despite Mayor Giuliani's directive entitled "Direction and Control of Emergencies in the City of New York" which attempted to eliminate "potential conflict among responding agencies which may have areas of overlapping expertise and responsibility", and despite the designation of OEM as the "On-Scene Interagency Coordinator", the "FDNY and NYPD each considered itself operationally autonomous."³³ In addition, the Commission found that command posts set up by the FDNY and NYPD were in different locations. The National Institute of Standards and Technology (NIST) report on Emergency Response Operations at the WTC concluded that "the FDNY and NYPD department chiefs [did not work] together at the same command post, and that they did not formulate unified orders and directions for their departments." The report also found that "there is no record that the ICP [Incident Command Post] had any senior NYPD personnel assigned to it to provide liaison or assist with operations".³⁴

As a result, the 9/11 Commission determined vital information that would have aided in making crucial decisions was not shared among the agencies and that the "FDNY chiefs would have benefited greatly had they been able to communicate with personnel in a helicopter."³⁵ The ultimate consequence of this failure to share information was a far greater sense of comprehensive situational awareness at the NYPD's command post than at the FDNY's. Consequently, although both departments ordered evacuation of their members from the North Tower after the collapse of the South Tower, the sense of urgency exhibited by firefighters was far less than those exhibited by NYPD officers.

³³ 9/11 Commission, *9/11 Commission Report*, 284-285.

³⁴ Lawson and Vettori, *Federal Building and Fire Safety Investigation*, 174.

³⁵ 9/11 Commission, *9/11 Commission Report*, 321.

The NIST investigation concluded “a preponderance of evidence indicates that *emergency responder lives were likely lost at the WTC resulting from the lack of timely information sharing* and inadequate communications capabilities.”³⁶ [emphasis added] The 9/11 Commission determined that “many of these firefighters died, either because they delayed their evacuation to assist civilians, attempted to regroup their units, *lacked urgency*, or some combination of these factors.”³⁷

Despite the contentious history that existed between the NYPD and FDNY, it is unthinkable to believe that information that could save the lives of personnel from another agency would intentionally be withheld. So, why did NYPD commanders urgently give evacuation orders to their own members, but fail to inform the FDNY about the dangers observed by its aviation unit? One reason is the organizational bias that existed between these agencies due to their long standing rivalry. This is an *unconscious* bias that stems from the desire to belong to an omnipotent group that is capable of excluding those who are not part of the group. It is very similar to the turf battles and failure to share information that occurred between the FBI and CIA leading up to 9/11. In both cases the reason for failing to share information is ultimately a quest for the superiority of one agency over the other.³⁸ Information is viewed as power, and that is not something that is readily shared, particularly between agencies that have an uncooperative history.

D. OVERCOMING INTERAGENCY RIVALRY THROUGH THE USE OF A UNIFIED COMMAND STRUCTURE

While noting that the magnitude of the crises at the WTC and at the Pentagon were not comparable, the 9/11 Commission did observe that there are lessons to be learned about integrating multiagency response efforts by studying the response at the Pentagon. The Commission concluded that “while no emergency response is flawless, the response to the 9/11 terrorist attack on the Pentagon was mainly a success for three

³⁶ Lawson and Vettori, *Federal Building and Fire Safety Investigation*, 174.

³⁷ 9/11 Commission, *9/11 Commission Report*, 322.

³⁸ Pfeifer, *Understanding how Organizational Bias Influenced First Responders at the World Trade Center*, 211.

reasons: first, the strong professional relationships and trust established among emergency responders; second, the adoption of the Incident Command System; and third, the pursuit of a regional approach to response.”³⁹

In part, due to the relative success of operations at the Pentagon, and the tragic lack of cooperation and loss of life at the WTC, President Bush issued *Homeland Security Presidential Directive/HSPD-5* in February 2003. This directive mandated that all municipalities become “NIMS-compliant” (an essential component NIMS is the Incident Command System or ICS) in order to qualify for federal homeland security funding. Central to the success of ICS is the use of a Unified Command structure at multiagency events. This point was echoed by the 9/11 Commission when it recommended “Emergency response agencies nationwide should adopt the Incident Command System (ICS). When multiple agencies or multiple jurisdictions are involved, they should adopt a unified command.”⁴⁰

In order to overcome organizational bias, agencies need to end their attempts to control each other and gain superiority over each other and, instead, work together as partners at emergency operations. A unified command structure allows agencies with different functional responsibilities to work effectively together without affecting their individual authority.⁴¹ It allows the Incident Commanders to combine their knowledge and share information as they jointly develop operational objectives.⁴² In addition, it gives the individual members operating at the tactical level the confidence that their leaders have helped develop the strategic plans they are now being tasked with accomplishing.

A Unified Command also fosters an atmosphere where information is shared readily since it makes all participants into members of the same group. Just as the 9/11

³⁹ 9/11 Commission, *9/11 Commission Report*, 314.

⁴⁰ 9/11 Commission, *9/11 Commission Report*, 397.

⁴¹ *National Incident Management System*, 11-12.

⁴² Pfeifer, *Understanding how Organizational Bias Influenced First Responders at the World Trade Center*, 213.

Commission recommended intelligence agencies promote a culture of “need-to-share”⁴³, emergency responders must share information that may be critical to the operations of another agency.

Similarly, a Unified Command helps alleviate blind spots that develop in the command capacity of leaders during times of crisis. Studies have shown that as incidents become more complex and stressful, people tend to narrow their focus on the aspects they feel are most important to them. As a result, information was shared within a group, but not across groups.⁴⁴

A major weakness of placing only one agency in charge at complex incidents is that the Incident Commander is unlikely to have a full understanding of the qualifications and equipment carried by other agencies on the scene. For reasons of institutional pride and familiarity with its own resources, that agency will look to its own personnel to accomplish a mission, even though other resources may be available (and even superior to its own). This is especially true where these agencies have similar or overlapping capabilities.

⁴³ 9/11 Commission, *9/11 Commission Report*, 417.

⁴⁴ Pfeifer, *Understanding How Organizational Bias Influenced First Responders at the World Trade Center*, 212; K. E. Weick, *Sensemaking in Organizations*. (Thousand Oaks, CA: Sage. 1995), 102.

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III. HISTORY AND BACKGROUND

A. “BATTLE OF THE BADGES” – A CHRONOLOGY

“Disputes between members of the [NYPD and FDNY] at rescue scenes have been common for decades. They have been so numerous that the phrase ‘battle of the badges’ was coined to describe them”.⁴⁵ This quote from an article in the New York Times on yet another clash between these agencies at the scene of an emergency illustrates that, despite the contention of mayors, past and present, and their police and fire commissioners, that relations between the departments are generally good, they are in fact strained, and tensions can boil over at any incident.

NYC is alone in its decision to give its police department predominance in emergency responses over its fire department. It is also alone in its national reputation for interagency conflict and documented cases of failing to communicate and cooperate at emergencies, culminating with the tragic loss of over 400 first responders on 9/11. That is not a coincidence. But in order to understand this rivalry as it currently exists, we must first look at how it originated and how it has been allowed to persist and worsen over the years.

The FDNY established the nation’s first heavy rescue unit, Rescue 1, in 1915 and equipped that unit with a wide variety of specialized tools. In 1928, twelve police officers were detached to the fire department to receive specialized training in the use of these tools. Two years later, in 1930, Police Commissioner Whalen established the Emergency Services Division of the NYPD and equipped its vehicles with dozens of tools and ladders so that they closely resembled fire trucks.⁴⁶

The real controversy began in 1948 when Mayor William O’Dwyer officially put the NYPD in charge of all emergencies, except fires, at the urging of his long-time friend

⁴⁵ Michael Brick, "Crime Scene or Rescue? Man in Chimney Causes a Clash," *New York Times*, sec. B, June 28, 2003, http://web.lexis-nexis.com.libproxy.nps.navy.mil/universe/document?_m=332bb4f52f7f2c6f0acc95e1d199be6d&_docnum=1&wchp=dGLbVtb-zSkVb&_md5=202e40cc59718b6e34f6cf0e19afb99a (accessed December 6, 2006).

⁴⁶ Todd S. Purdum, "Race to Rescue: Police-Fire Feud Dates from the 30s," *New York Times*, sec. B, June 9, 1988, 1988, http://web.lexis-nexis.com.libproxy.nps.navy.mil/universe/document?_m=3a0c14fa95bc43c10fab52a3ad4d9108&_docnum=1&wchp=dGLbVlz-zSkVb&_md5=62c08d402763193d0bb8a62242e2c4a8 (accessed December 1, 2006).

and police academy classmate, Police Commissioner Arthur W. Wallander. From that point until the mid-1980's, fire officials occasionally protested the policy, but no changes were ever made. This is attributable largely to the fact that the position of fire commissioner does not have the same political clout as police commissioner. In addition an increasing number of fires (particularly in the 1960's and 1970's), preoccupied fire department officials so that they did not pursue this matter.⁴⁷

Due to a dramatic increase in crime, a decrease in the number of fires, and ever-widening budget gaps in NYC during the early- and mid-1980's, however, the issue was revisited. Early in 1987, Nicholas Mancuso, the firefighter's union president, was facing the prospect of losing pay parity with police officers in addition to firehouse closings. He began a campaign to document conflicts between the two agencies at emergency scenes and the tardy notification to firefighters of these emergencies by police 911 operators. As a result, a series of news stories regarding these issues brought them to the public's attention.⁴⁸ Unable to ignore the situation, Mayor Ed Koch ordered his First Deputy Mayor, Stanley Brezenoff, to officially review the situation and make recommendations.

In August of 1987, a panel of experts assembled to study the situation recommended putting the fire department in charge of rescue efforts at the scene of any incident in which there was a potential for fire, while the police would handle traffic and access to the site. These incidents included vehicle accidents, gas emergencies, hazardous material spills, building collapses, and the like. Police officials were so outraged at the draft of the proposal that they leaked copies of it to selected reporters along with a

⁴⁷ Todd S. Purdum, "Race to Rescue: Police-Fire Feud Dates from the 30s," *New York Times*, sec. B, June 9, 1988, 1988, http://web.lexis-nexis.com.libproxy.nps.navy.mil/universe/document?_m=3a0c14fa95bc43c10fab52a3ad4d9108&_docnum=1&wchp=dGLbVlz-zSkVb&_md5=62c08d402763193d0bb8a62242e2c4a8 (accessed December 1, 2006).

⁴⁸ Todd S. Purdum, "Scuba Feud: Underworked Bravest vs. Proudful Finest," *New York Times*, sec. B, May 5, 1988, http://web.lexis-nexis.com.libproxy.nps.navy.mil/universe/document?_m=fdbbf3a55ee52183d76291b5b4f5b369&_docnum=1&wchp=dGLbVzb-zSkVb&_md5=aa0c34d929eda71383ce28bdf34db28c. (accessed November 28, 2006).

scathing criticism of it authored by Assistant Chief John J. Holmes who oversaw the NYPD's Emergency Service Unit (ESU).⁴⁹

For three more months, the two departments argued back and forth the merits of their case. That November, Mayor Koch sided with the police. "Bowling to police pressure and historical precedent, Mr. Koch overruled his aides last fall, leaving the police in charge of virtually all disasters except fires."⁵⁰ That, however, did not end the dispute. Several more minor incidents kept the story alive until, on May 1, 1988, both agencies responded to an incident "in which police officials barred fire department divers from helping police divers search for a man trapped in a helicopter in the East River."⁵¹ The man died several hours after being removed to an area hospital. That resulted in widespread criticism of the event and in Police Commissioner Benjamin Ward being publicly rebuked in a letter from Mr. Koch that said the police's handling of Sunday's operation "defies common sense".⁵²

Mr. Ward responded that according to the agreement signed in November, the FDNY divers were not called to the scene, were not needed, and should not have even been there. He and Fire Commissioner Joseph Bruno were called to a meeting with the mayor to resolve their differences on May 3 after which they met with reporters. During the questioning tempers flared again "as the two began yelling at each other in City Hall and Mayor Koch yelled back, rebuking them as if they were unruly children."⁵³

Shortly after that, Mr. Brezenoff attempted to test the relative response times of the two agencies to vehicle accidents by giving them simultaneous notification of their occurrence. However, Mr. Ward rejected the idea claiming it would lead to the two agencies recklessly responding to these calls in an effort to beat the other there, a claim

⁴⁹ Todd S. Purdum, "Plan to Widen Fire Dept. Role Angers High Police Officials," *New York Times*, sec. B, August 25, 1987, http://web.lexis-nexis.com.libproxy.nps.navy.mil/universe/document?_m=3cb1883b0779fb04fd277e861b034c2f&_docnum=1&wchp=dGLzVlz-zSkVb&_md5=02f1fac983570534374dc8305de8903e. (accessed November 28, 2006).

⁵⁰ Purdum, "Scuba Feud: Underworked Bravest vs. Proudful Finest," 1.

⁵¹ Lyall, "Truce Turns into Free-for-all in Police-Fire Feud on Divers," 1.

⁵² Ibid.

⁵³ Ibid.

that the deputy mayor rejected.⁵⁴ Ultimately, however, the police commissioner prevailed and the idea was never tested, even to this day.

In September of 1988 the feud ignited again when the fire commissioner, in response to a mayoral request to reduce the fire department's budget by \$9.5 million to help pay for an anti-crack program run by the police department, suggested that 50 fire marshals be reassigned to narcotics enforcement and that firefighters "*be allowed to respond to all non-fire rescues*"⁵⁵ (an idea that anywhere else in the country would be considered long overdue). The result was another series of public exchanges between police officials and fire officials culminating with the fire commissioner reading a letter of apology for "causing distress to the mayor and police commissioner".⁵⁶

Public displays of rivalry between the departments largely subsided after that until a December 1992 incident in which a firefighter was arrested at the scene of a car accident, but released without charges after a scuffle at the scene made the papers. Unlike their predecessors, however, Mayor David Dinkins, Police Commissioner Raymond Kelly, and Fire Commissioner Carlos Rivera refused to discuss the issue and the story went away.⁵⁷ Although tensions between the departments persisted in the early 1990's, *public* disputes between the agencies remained relatively few and far between.

Recognizing the need to better coordinate the City's resources, Mayor Rudolph Giuliani removed the Office of Emergency Management from its status as a unit within the NYPD and established the *Mayor's* Office of Emergency Management in February of 1996.⁵⁸ OEM was given three basic functions: to monitor key communications channels,

⁵⁴ Purdum, "Race to Rescue: Police-Fire Feud Dates from the 30's," 1.

⁵⁵ David E. Pitt, "Fire Officials and Ward Renew Feud," *New York Times*, sec. 1, September 10, 1988, http://web.lexis-nexis.com.libproxy.nps.navy.mil/universe/document?_m=f02214e9474c34474799c174dadd0d15&_docnum=1&wchp=dGLbVzW-zSkVA&_md5=f6d68ba43a2a29c5396ebe5315592cd6 (accessed September 30, 2006).

⁵⁶ Ibid.

⁵⁷ George James, "New Dispute on Response to Accident," *New York Times*, sec. B, December 17, 1992, http://web.lexis-nexis.com.libproxy.nps.navy.mil/universe/document?_m=5647974d1f27c1b4357e53e0e8e4a135&_docnum=1&wchp=dGLbVtb-zSkVb&_md5=d25b81468dc23eedc79be03b105ec9c7 (accessed December 5, 2006).

⁵⁸Jerome Hauer, Mayor Giuliani's first Director of the Mayor's Office of Emergency Management, interview conducted August 22, 2006.

including NYPD and FDNY frequencies; to improve NYC's response to major incidents by planning and conducting drills and exercises involving multiple agencies, particularly the NYPD and FDNY; and to manage the City's overall response to an incident.⁵⁹ This agency was given the full authority of the mayor's office to coordinate the response and determine which agency was to act as the Incident Commander if there was any dispute. And although there was little improvement in the relationship between the police and fire departments during this time, outright fighting at the scene of emergencies was very rare because OEM was acknowledged as having final say in this matter. The 9/11 Commission concluded, however, that "nevertheless, the FDNY and NYPD each considered itself operationally autonomous. As of September 11, they were not prepared to comprehensively coordinate their efforts in responding to a major incident. The OEM had not overcome this problem."⁶⁰

When Michael Bloomberg was elected mayor in November, 2001, the first appointment he announced was that of Ray Kelly to serve as police commissioner, a role he held previously from October 1992 until January 1994 under former Mayor David Dinkins. He had also served as an NYPD ESU commander under Ben Ward during the late 1980's when the public battles between the NYPD and FDNY were at their peak.

Almost immediately upon taking office, Mr. Kelly used his considerable clout with the mayor to begin expanding the NYPD's sphere of influence. "Insiders say Kelly was a key force behind reducing the role of the Department of Emergency Management to a 'planning' agency from what it had once been - the mayor's commander at emergency scenes."⁶¹ With OEM out of the way as the "on-scene" interagency coordinator, relations began to sour further between the NYPD and FDNY as several more publicized fights occurred at incidents.

⁵⁹ 9/11 Commission, *9/11 Commission Report*, 283

⁶⁰ *Ibid.*, 285.

⁶¹ Dan Janison and Sean Gardiner, "A Chief with Clout, Ray Kelly, the City's Top Cop, has Become a Commanding Presence Even Beyond Police Plaza," *Newsday*, sec. News, May 15, 2005, <http://pqasb.pqarchiver.com/newsday/access/839705601.html?dids=839705601:839705601&FMT=ABS&FMTS=ABS:FT&date=May+15%2C+2005&author=DAN+JANISON+AND+SEAN+GARDINER.+STAFF+WRITERS&pub=Newsday&desc=A+chief+with+clout%2C+Ray+Kelly%2C+the+city%27s+top+cop%2C+has+become+a+commanding+presence+even+beyond+Police+Plaza> (accessed November 15, 2005).

In June of 2003 a burglar attempting to break into a restaurant by climbing down a chimney became stuck. The agencies argued over whether this constituted a rescue or crime scene and resulted in the arrest of a firefighter.⁶² Two weeks later, both agencies arrived at the scene of a person missing in the waters near the East River. Despite warnings by the FDNY captain that he had men in the water, police officers in a launch began dropping a grappling hook into the water, striking an FDNY diver and knocking off his mask.⁶³ An investigation was conducted, but no punitive action was ever taken.

In light of these incidents and, to a greater degree, in light of the requirement in HSPD-5 that all municipalities become NIMS-compliant in order to qualify for federal homeland security funding, the following day the police and fire commissioners agreed to adopt a formal protocol to establish rules for operating at incidents involving multiple agencies.⁶⁴ This was a complete reversal from their testimony before the city council on October 8, 2002 in which they stated that such a system was not appropriate for NYC.⁶⁵

They originally predicted that the agreement would be completed and signed by the end of the summer in 2003. However, that estimate proved to be overly optimistic considering the long-standing rivalry between these two agencies. In April of 2004, The New York Times reported:

...documents and interviews show that the dispute over control of such scenes among the City's main emergency response agencies -- the police and fire departments and the Office of Emergency Management -- remains profound. An exchange of letters in January between the police

⁶² Brick, "Crime Scene Or Rescue?," 1.

⁶³ Robert D. McFadden, "Officer Imperiled Rescuer's Life, Fire Union Says," *New York Times*, sec. B, July 11, 2003, http://web.lexis-nexis.com.libproxy.nps.navy.mil/universe/document?_m=e05ab50d375ee3685075007d8142c9f2&_docnum=1&wchp=dGLbVzW-zSkVA&_md5=e8a5ee7c8acc287b555b39ef59e59ad2 (accessed December 6, 2006).

⁶⁴ William K. Rashbaum and Michelle O'Donnell, "City Police and Fire Department Pledge Cooperation in Disasters," *New York Times*, sec. A, July 12, 2003, http://web.lexis-nexis.com.libproxy.nps.navy.mil/universe/document?_m=ccc7f733a55a5081a36df9e31ead6657&_docnum=1&wchp=dGLbVzb-zSkVA&_md5=13490b0075fac2f06a5e43d79eb1ec4b (accessed December 6, 2006).

⁶⁵ Committee on Public Safety (jointly with) Committee on Fire and Criminal Justice Services, *Transcript of the Minutes of the Committee on Public Safety (held jointly with) Committee on Fire and Criminal Justice Service*, (Washington, DC: Government Printing Office, 2002), 1-180.

department and the O.E.M., in fact, shows that the police insist that they should control virtually every major emergency.⁶⁶

The article goes on to explain that the letters were leaked to The Times and were written by then Assistant Chief Phil T. Pulaski (largely seen as the architect behind the NYPD's aggressive power grab). In them he says "O.E.M. should have neither the authority to choose which city agency would take the lead role, nor the authority to resolve interagency disputes...Moreover, it is the position of the NYPD that the coordinating agency should have no operational authority whatsoever."⁶⁷

With the 9/11 Commission scheduled to meet in NYC to discuss the response to the WTC that May, pressure mounted to have the plan, known as the Citywide Incident Management System (CIMS), in place before then. The mayor, despite years of interagency rivalry and all the evidence to the contrary, suggested that "there was little need for an agency to coordinate the work of the police and fire departments"⁶⁸ and ultimately sided with the police. "The truth of the matter is they don't have big coordinating problems," he said on Feb. 20, 2004 during his weekly WABC radio program. 'The City,' he said, 'needs more planning from the OEM, rather than having it simply respond to events.'⁶⁹

Mayor Bloomberg officially announced that a formal agreement had been reached on the first draft of CIMS on May 14, 2004, just four days before the 9/11 Commission began its hearings in NYC. The plan was immediately assailed by Fire Department and fire union officials and by several emergency response experts. A police department official, however, announced "we're very pleased with the outcome".⁷⁰

⁶⁶ William K. Rashbaum and Michelle O'Donnell, "Roles in Disaster Cause Rift in City," *New York Times*, sec. A, April 3, 2004, <http://select.nytimes.com/gst/abstract.html?res=FA0B11FB3B5D0C708CDDAD0894DC404482> (accessed December 6, 2006).

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ William K. Rashbaum and Michelle O'Donnell, "City Agencies Agree on a Coordinated Response to Disasters," *New York Times*, sec. B, May 15, 2004, 2004, http://web.lexis-nexis.com.libproxy.nps.navy.mil/universe/document?_m=c00795a5c6dc03d8face797d0c4c409e&_docnum=1&wchp=dGLbVtb-zSkVA&_md5=0faf4a5a078be395bbe8fbbb0c4cd72c (accessed December 6, 2006).

Less than a year later, in April 2005, Mayor Bloomberg officially signed CIMS after a few minor revisions to it and over strong objections to several aspects of it by the FDNY. This prompted the highest ranking uniformed officer in the FDNY, Chief of Department Peter Hayden, to publicly criticize the document on the front page of the *New York Times* on April 22, 2005, leading the New York City Council to hold public hearings on the protocol.⁷¹

B. WHY THIS STRUCTURE EXISTS

Simply put, this arrangement exists for two reasons: Power and Politics. The prestige that comes with holding the office of NYC Police Commissioner is nothing new. Teddy Roosevelt held this position from 1895-1897 and used it as a stepping stone on his way to governor of New York and eventually to president of the United States.⁷² The power and clout of this position only increased from the 1960's through 1980's as crime and a sense of lawlessness rose dramatically and mayoral re-election bids were increasingly tied to crime statistics. Because police officers are more visible to the public than firefighters, their presence and activities are more politically charged, giving police commissioners a degree of influence not shared by their counterparts in the fire department. (Mayors do not get re-elected based on how many fires their fire department puts out).

In addition, the racial tensions of that period reinforced the perception in minority neighborhoods that the predominantly white police force was more of an occupying army than public servants. Several police officials interviewed noted that the NYPD never referred to their special operations officers as "SWAT teams" specifically for this reason. Police commissioners wanted these members to remember that their primary mission was "to protect and to serve" and did not want them to develop an "Us vs. Them" mentality. They carefully guarded their designation as the agency in charge of all emergencies

⁷¹ O'Donnell and Rashbaum, "New Terrorism Response Plan Angers Fire Department," 1.

⁷² Steve Avery, *Theodore Roosevelt 1858-1919*, <http://www.u-s-history.com/pages/h959.html> (accessed 10/20, 2005).

(except fires) both in an effort to reinforce that message to their members and to improve the image of the NYPD as a whole through the favorable press that such rescue work generates.

The current police commissioner, Ray Kelly, is arguably the most powerful police commissioner the City has ever had. A recent *New York Times* article made the following comments about Mr. Kelly:

...a city official with unparalleled influence in the Bloomberg administration...he wields enormous clout in City Hall...Unlike nearly every other city commissioner, Mr. Kelly literally answers to no one but Mr. Bloomberg. He refuses to take even mundane requests from senior mayoral aides, several officials said, and is equally insistent on imparting information to the mayor directly...his advice to the mayor, unlike that of other commissioners, is almost always accepted without qualification...The police commissioner is also widely seen as the architect of Mr. Bloomberg's recently announced plan to dismantle many of the core functions of the Office of Emergency Management, which many experts believe should be the lead agency in catastrophic incidents involving public safety and health.⁷³

These observations were mirrored in an article by Newsday about Mr. Kelly around the same time:

The mayor has made no secret of the fact that he defers to Kelly in all matters of law enforcement, even as the commissioner's influence widens... One source with political ties to the mayor once described Bloomberg as "in awe of tough guy Kelly." Others have said the mayor takes Kelly's word as "gospel"... Insiders say Kelly was a key force behind reducing the role of the Department of Emergency Management to a "planning" agency from what it had once been - the mayor's commander at emergency scenes.⁷⁴

It is the dependence that NYC mayors have on their police force, not only for their own personal protection, but for their ability to make the citizens of New York feel

⁷³ Jennifer Steinhauer and William K. Rashbaum, "In Age of Terror, Police Leader Gains in Access and Influence," *New York Times*, sec. A, May 24, 2004, http://web.lexis-nexis.com.libproxy.nps.navy.mil/universe/document?_m=8cf4049ad05fbfdf7eb4506e71277b16&_docnum=1&wchp=dGLbVzW-zSkVA&_md5=8752519636c63806ab9cf8eca70e825a (accessed November 23, 2005).

⁷⁴ Janison and Gardiner, "A Chief with Clout, Ray Kelly," A.06.

safe and ultimately generate votes, that has created a situation in which they often defer to the wishes of their police commissioners in matters of jurisdictional turf wars.

It is the desire to remind their members of their duty to serve the public as well as to garner positive media coverage for their organization; expand their sphere of influence; and stave off budget cuts that has led a long line of police commissioners to jealously guard their atypical responsibility of being in charge of most emergencies.

This dynamic might explain why Mayor Koch ignored the recommendations of the committee that he himself empanelled to study the issue of emergency response. It would also explain why the current mayor has chosen to bow to the wishes of his police commissioner by giving command of all Haz-Mat / CBRN responses solely to the police department despite well reasoned arguments from the fire department to the contrary and widespread criticism of the plan from public safety experts around the country.

C. THE UNDERLYING CAUSES OF THE RIVALRY

1. Competition for Resources

As is the case between agencies and departments in any organization, there is always a degree of competition for limited resources. In the private sector scarcity encourages thrift, drives prices up, and seeks other ways to satisfy demand. In government, however, dwindling budgets have usually stimulated battles between agencies that reward the bureaucratically adept and end only when resources once again start to flow.⁷⁵

During “good” times, organizations often seek to expand their roles in order to increase their budgets to give them a cushion against the funding cuts that will eventually come. This creates a natural enmity between agencies, particularly as one expands into “turf” traditionally belonging to another. This is a common source of tension between first responders around the country as they compete for funds to perform their missions. It is also one of the “barrier” factors to interagency collaboration identified by a

⁷⁵ Seth Cropsey, "The Limits of Jointness," *Joint Force Quarterly*, no. 1 (Summer 1993): 73, http://www.dtic.mil/doctrine/jel/jfq_pubs/jfq1001.pdf (accessed June 26, 2006).

significant percentage of the homeland security leaders discussed in Chapter II. But this alone does not explain why that rivalry is so much more intense in NYC than elsewhere.

2. Overlapping Spheres of Responsibility

The fundamental reason for this decades-long conflict can be summed up in one cause: the overlapping spheres of responsibility that these two agencies have. A look at the training that members of the FDNY’s Special Operations Command (SOC) and the NYPD’s Emergency Service Unit (ESU) receive illustrates this duplication and gives some indication of where areas of potential conflict lie:

Table 2. A comparison of FDNY (SOC) and NYPD (ESU) training

FDNY ⁷⁶	NYPD ⁷⁷
Medical (CFR-D)	Medical (EMT)
Haz-Mat (various courses ranging from Technician level – 80 hrs to Specialist level - >500 hrs)	Haz-Mat (minimum 80 hrs)
SCUBA	SCUBA
USAR (Urban Search and Rescue)	USAR (Urban Search and Rescue)
Auto Extrication	Auto Extrication
Trench collapse operations	Trench rescue operations
High angle rope rescue	High angle rope operations
Ice Rescue	Ice Rescue
Confined space rescue	Confined space rescue
Water rescue	Water rescue
“Bomb School” (1 week course) (EMRTC – Univ. of New Mexico)	“Bomb school” (1 week course) (EMRTC – Univ. of New Mexico)
Firefighting (hundreds of hours of initial and review courses for various types of structural and non-structural fires)	Subway firefighting (1 week Port Authority course)

⁷⁶ Information obtained from FDNY course curriculum for state certifications and from Special Operations Command Technical Rescue School and Haz-Mat Operations course offerings. (Note: this is only a partial list for illustrative purposes.)

⁷⁷ Barry Galfano, retired NYPD ESU Captain, interview conducted November 6, 2006. (Note: this is only a partial list for illustrative purposes.)

“Rad School” (1 week course) (Bechtel – UNLV? Nevada test site)	Special weapons and tactics
“Live Agent” (1 week course) Aniston, Alabama	Hostage negotiations (1 week course John Jay College)
Building Collapse Operations	Emotionally disturbed persons (1 week course John Jay College)
Elevator Emergencies	Animal control

(Note: This list is by no means comprehensive and is presented to highlight areas of duplication.)

All of this training is in addition to the standard 13 week academy (soon to be changed to 23 weeks) for firefighters where they learn basic emergencies and firefighting and the 23 week academy for police officers where they learn basic law enforcement procedures.

As can be seen from the list above, both departments invest a tremendous amount of time (and related expenses) in training their members to operate not only at their traditional missions of firefighting and crime fighting, but also at a wide variety of non-conventional emergencies. The problem is that each agency has developed its capabilities independently of the other, based on what it perceives as its role, rather than on a coordinated approach to the needs of the City as a whole. In addition, each feels that it is better qualified to manage these incidents when they occur due to this training. As a result, both agencies maintain a pool of several hundred highly motivated and highly trained individuals who belong to their “Special Operations” divisions. Predictably, this duplication has led to many situations where both agencies compete for control at incidents rather than communicate and work together to resolve them.

It is not surprising to learn that if the individual agencies are given the training and equipment to operate independently of each other that is exactly what they will do. It should also come as no surprise that when they arrive on the scene together each will attempt to perform operations in accordance with how they were trained and that they will view the operations of the other as inferior and as a hindrance to their own. What is

needed to ensure cooperation is the development of a *mutual dependence* on each other to provide the impetus to work together and to foster an atmosphere of respect and appreciation for each others' roles.

In an article for Gotham Gazette entitled "Revisiting 9/11, Reworking 911", Joshua Brustein illustrates this point when he writes:

The reason that the City has not been able to decide how to divide control over large emergencies is that the police department and the fire department are competing to carry out the same tasks, according to many experts. In this regard, New York is unique among large American cities.

Until this is resolved, they say, the City will not be able to accomplish the kind of sensible command system that Mayor Bloomberg had hoped to create with [CIMS].

It's a large problem because when you have two different agencies doing the same things, it is certainly not efficient, and not cost effective," said Glenn Corbett professor of fire science at John Jay College of Criminal Justice. "And more importantly, it's an impediment to a really well-defined incident command structure."⁷⁸

In addition, because the overlap exists in areas that are considered the "marquee missions", the competition is all the greater. Oftentimes media coverage accompanies these rescue operations and serves as a form of recognition for the dedication these members put into training for just these types of incidents. It is human nature to be resentful of those who not only deny one that recognition but take it for themselves.

The irony is that prior to joining either the NYPD or FDNY these members are indistinguishable from each other and possess no bias toward either organization. They come from similar backgrounds and are genuinely motivated by a desire to help people. In fact, traditionally about 10%⁷⁹ of each new fire academy class is made up of police officers who have decided to switch agencies. And, a large percentage of the ESU officers who live in the suburbs are members of volunteer fire departments in their home town. This animosity toward the other organization is an entirely learned phenomenon which has now become institutionalized over several generations.

⁷⁸ Joshua Brustein, "Revisiting 9/11, Reworking 911," *Gotham Gazette*, <http://www.gothamgazette.com/article/20040524/200/989> (accessed 11/20, 2005).

⁷⁹ Source: FDNY Department of Personnel.

The City's attempts at resolving this rivalry over the years has come in the form of a variety of protocols intended to designate which agency should be "in charge" at the scene of various emergencies, but none have attempted to address the underlying issue: that both agencies train their members to do many of the same jobs. This approach is tantamount to treating the symptoms rather than the disease. Predictably, these protocols have been largely ignored as members of both agencies perform their duties in accordance with their training.

It is not realistic to expect cooperation between these agencies when both have developed the same capabilities and arrive on the scene expecting to use them only to be told that their services are not required because another agency is "in charge". The situation is only exacerbated when it is clear that those resources are not being used because of parochial considerations.

D. THE CONSEQUENCES

The consequences of this failure to clearly delineate roles and responsibilities and end this needless duplication are as predictable as they are tragic. The long history of tensions between these agencies is a direct result of the City's failure to address this issue in any meaningful way. As a result, there is a great degree of resentment and distrust between the agencies.

1. Lack of Information Sharing

As was noted by the 9/11 Commission, this relationship manifested itself on 9/11 with the two agencies failing to coordinate their efforts.⁸⁰ As a result, "information that was critical to informed decision making was not shared among agencies."⁸¹

While CIMS does seem to address the lack of information sharing to a degree by mandating that a single command post be established with representatives from all responding agencies, it neglects to mandate that that information is actually shared when it allows a Single Command structure to be established at Haz-Mat / CBRN incidents. In

⁸⁰ 9/11 Commission, *9/11 Commission Report*, 285.

⁸¹ *Ibid.*, 321.

this type of structure, all information flows to the top commanders of the lead agency (the NYPD), however, they are under no obligation to share it and will only do so as they deem necessary. Information that may appear insignificant or unimportant to an NYPD commander in conducting their operations may in fact be critical to an experienced fire chief. For example, reports from police helicopters at the WTC on 9/11 stating “about fifteen floors down from the top, it looks like it’s glowing red”⁸² could possibly have saved lives if the FDNY had been made aware of them.

The 9/11 Commission, in studying the lack of coordination between the NYPD and FDNY on September 11th, stated “The experience of the military suggests that integrated into such a coordinated response should be a unified field intelligence unit, which should receive and combine information from all first responders—including 911 operators. Such a field intelligence unit could be valuable in large and complex incidents.”⁸³ By bringing all the respective agencies into the information loop, the Incident Commander(s) would benefit from the relative expertise of each group.

Unfortunately, the experiences of the last several decades give little indication that information will be shared any more willingly in the future than it has been in the past. The manner in which the 911 system is structured in NYC is indicative of the way that information is not shared. All 911 operators are civilian employees of the NYPD. All calls coming into 911 are taken by these operators. Fire department dispatchers only receive calls that are forwarded by 911 operators. Although guidelines are in place to determine which calls are to be forwarded, numerous anecdotal stories, FDNY unusual occurrence reports, and personal experience demonstrate that this is not always done and not always in a timely manner when it is.

The 911 center has a police captain and platoon commanders on duty around the clock to supervise and give information to operators that they can pass along to callers as

⁸² Jim Dwyer and Kevin Flynn, *102 Minutes: The Untold Story of the Fight to Survive Inside the Twin Towers*, ed. Henry Holt (New York: Times Books, 2005), 223.

⁸³ 9/11 Commission, *9/11 Commission Report*, 322.

necessary.⁸⁴ The FDNY has made repeated requests to station a fire department representative in the 911 center but those requests have been rebuffed.⁸⁵ As a result, the fire department has no means of ensuring it receives timely notification of all emergencies. This is largely the same system that was in place during the late 1980's when the very public battles between the NYPD and FDNY were taking place. Many of these battles centered on claims that fire department units were not being notified about certain emergencies.⁸⁶ When Deputy Mayor Brezenoff attempted to have both agencies receive simultaneous notification of emergencies, those plans were successfully thwarted by Police Commissioner Ward.⁸⁷ Since then, the guidelines have changed somewhat, but the procedure has not.

As recently as last year this failure to share information continued. In the wake of the anthrax attacks in 2001, the FDNY and NYPD set up joint Haz-Mat Response (HMR) or "hammer teams" with members from each agency to respond to calls for suspicious powders. After a few months, when the FBI withdrew its participation, the teams were split and the NYPD ceased to notify the FDNY about these calls. The FDNY's teams took it upon themselves to monitor the NYPD's special operations frequency to attain this information. However, due to the failure to share this information and the implementation of CIMS, the FDNY's hammer teams were eventually disbanded. The practice of monitoring the police frequency in firehouses continues, however, and leads to faster response times to these and other incidents by FDNY units.

Another example of this institutionalized rivalry leading to a lack of information sharing is in the area of intelligence regarding terrorist threats to NYC. The NYPD

⁸⁴ National Commission on Terrorist Attacks Upon the United States, *Eleventh Public Hearing of the National Commission on Terrorist Attacks upon the United States*, Day One sess., May 18, 2004, 136, http://www.9-11commission.gov/archive/hearing11/9-11Commission_Hearing_2004-05-18.pdf (accessed November 18, 2005).

⁸⁵ This information was obtained during interviews with three FDNY staff chiefs who do not wish to be identified.

⁸⁶ Bruce Lambert, "Koch Rules Against Wider Role for Firefighters," *New York Times*, sec. B, November 13, 1987, http://web.lexis-nexis.com.libproxy.nps.navy.mil/universe/document?_m=6cc332c9bd3e2da41d66586f97c0361e&_docnum=1&wchp=dGLbVzb-zSkVb&_md5=94bce64de4b5c64477ef13fe70431053 (accessed November 18, 2005).

⁸⁷ Purdum, "Race to Rescue," 1.

maintains an Intelligence Division that is unparalleled by any other city, and probably most states, in the country. They regularly cite numerous investigations into terrorist activity and claim to have disrupted several planned attacks on NYC since 9/11.

In early October, 2005, the NYPD received intelligence, later found not to be credible, regarding a specific threat to detonate explosives in the NYC subway system on or about October 9th. In response, the mayor and police commissioner decided to hold a press conference to alert the public about the threat on October 6th.⁸⁸ Despite having seven chiefs and fire marshals with Top Secret clearances, the first notification the FDNY received regarding this threat was that press conference. In fact, to date, the FDNY has never received a single classified briefing from the NYPD Intelligence Division, although it has begun to receive some unclassified, open-source briefings.⁸⁹

This type of adversarial relationship and information hoarding does not bode well for the prospect of information sharing at the scene of a large-scale terrorist attack. As discussed earlier, this was plainly evident at operations at the WTC and confirmed by the findings of the 9/11 Commission and the NIST.⁹⁰ One of the theories advanced to account for this is a lack of radio interoperability. Mayor Bloomberg alluded to this when he testified to the Commission “Even the shortcomings that have been identified by the Commission in the City's response to 9/11 were the results of problems in communications, not the result of any battle of the badges.”⁹¹

However, the 9/11 Commission Report refuted that claim when it said “we conclude that the technical failure of FDNY radios, *while a contributing factor, was not*

⁸⁸ William K. Rashbaum and Douglas Jehl, "Terror Officials Work to Assess Subway Threat," *New York Times*, sec. A, October 8, 2005, http://web.lexis-nexis.com.libproxy.nps.navy.mil/universe/document?_m=8e73848ac3789808fe40b6b2e5c47c88&_docnum=1&wchp=dGLbVtb-zSkVb&_md5=1fbbdb7624051c60ccd9d6615da21214 (accessed December 23, 2006).

⁸⁹ This information was confirmed by two FDNY sources, who possess necessary clearance but do not wish to be identified.

⁹⁰ 9/11 Commission, *9/11 Commission Report*, 321; Lawson and Vettori, *Federal Building and Fire Safety Investigation of the World Trade Center Disaster*, 174.

⁹¹ National Commission on Terrorist Attacks Upon the United States, *Eleventh Public Hearing of the National Commission on Terrorist Attacks upon the United States*, Day Two sess., May 19, 2004, 78, http://www.9-11commission.gov/archive/hearing11/9-11Commission_Hearing_2004-05-19.pdf (accessed November 15, 2005).

the primary cause of the many firefighter fatalities in the North Tower.”⁹² [emphasis added] Similarly, the investigation conducted by NIST noted that the NYPD command post was only a short distance from the FDNY command post.⁹³ Communications between the top levels of the agencies were primarily hampered not by a lack of interoperable communications but by the culture of the departments.

To its credit, the City has made an enormous effort to overcome the technical issues with the FDNY portable radios identified after 9/11, and has had considerable success in addressing many of them. While some problems still remain, the general consensus is that the current system is vastly superior to what was in place in 2001. In addition to resolving many of the issues associated with fire ground communications, the new radios are also equipped with several interoperable channels which allow communications between agencies. However, interviews conducted indicate that use of these channels is more the exception than the rule. This is especially true at the tactical level where a dedicated channel known as “Tac-U” has been reserved to allow communications between NYPD and FDNY members making joint entries into an area. To date, this channel has *never* been used at an operation.

The most unfortunate consequence of the relationship between the NYPD and FDNY is that it has resulted in a lack of trust between the agencies. It is this lack of trust that leads to the failure to share information, not the radios. NYC has developed interoperable communications, and that is not to be overlooked. Interoperability is a vital aspect of deepening trust. It is the technical side of trust. Without it, trust evaporates quickly in times of crisis.⁹⁴ “Technical interoperability” is one of the “success” factors identified in Chapter II by at least 12 percent of the group. However, “Inadequate communication and information sharing (distrust)” was identified as a “barrier” by at least twice that number. It is important to understand that the *ability* to communicate on a common frequency does not guarantee that communication will occur, it merely makes it possible.

⁹² 9/11 Commission, *9/11 Commission Report*, 323.

⁹³ Lawson and Vettori, *Federal Building and Fire Safety Investigation of the World Trade Center Disaster*, 162.

⁹⁴ Lawrence B. Wilkerson, "What Exactly is Jointness?" *Joint Force Quarterly*, no. 16 (Summer 1997), 67, http://www.dtic.mil/doctrine/jel/jfq_pubs/1316pgs.pdf (accessed June 26, 2006).

2. Reduction in Competency

Another negative consequence of this intentional duplication is the degree of competency these members are able to maintain in their skills as their missions encompass more and more training that is unrelated to their core profession of firefighting or police work. Most first responders spend their entire careers becoming skilled at firefighting, police work, or as medical care providers. Hazardous materials response can be a career in itself as can bomb technician, SCUBA diving, and a wide variety of other areas in which both departments train their special operations members. The question is, at what cost? A Jack-of-All-Trades is master at none. The more new skills are learned and practiced, the less time is available to practice the old ones. Training one agency to perform certain tasks and another to perform different ones would allow both to become more specialized in those responsibilities.

The City would be better served by designating only one agency to perform each one of these functions. This would eliminate any question of who should be performing that task and allow both agencies to concentrate on the missions that pertain to their organization. It would have the added benefit of creating a need to cooperate as the two agencies to become mutually dependent on each other to accomplish their missions. “Recognized interdependence” is another “success” factor identified by at least one-quarter of the group discussed in the last chapter. The cost savings generated by eliminating duplication could then be used to provide more training and equipment related to the duties that remain.

3. Wasted Resources

This duplication of effort is not only harmful to interagency cooperation, but it is also extremely expensive to maintain. Millions of dollars are spent each year by both agencies to train and equip their members to perform functions that the other agency can also carry out. And despite the comparative size of New York City’s budget to smaller jurisdictions, it is difficult to justify spending money to provide a service that already exists.

The overlap of responsibilities has only worsened since 9/11 as homeland security funding has allowed both agencies to purchase millions of dollars worth of Haz-Mat equipment and training, previously an area where the FDNY had undisputed responsibility. This runs contrary to Secretary Chertoff's statements that jurisdictions should be moving toward a "regional approach"⁹⁵ to Homeland Security. In a speech on January 3, 2006 on UASI grant funding, Secretary Chertoff said "The fact of the matter is the public has a right to expect that even when a city is in a high-risk category, the money it gets under this program has to be spent wisely and effectively."⁹⁶ NYC has instead used some of its funding to duplicate capabilities it already has.

For example, CIMS designates the FDNY as the agency having a core competency in "Mass Decontamination"⁹⁷ (although it does not define what this term means). To meet this responsibility the FDNY has purchased over 30 decon shower tents and five decon shower apparatus. It has also provided 24 hours of training in the use of this equipment and in decontamination procedures to over 1500 of its members.

The NYPD, however, has no competency that mentions decontamination at all. Yet, the NYPD is currently in the process of purchasing three decon shower apparatus from Advanced Containment Systems, Inc. (ACSI) at a cost of approximately \$1.5 million. Experience suggests that this will ultimately result in a dispute over who will perform decontamination of victims at a scene since both agencies will possess the capability and the term "Mass Decontamination" is open for interpretation. The only thing that is certain is that there is \$1.5 million less available for other homeland security initiatives.

This type of action is typical of the interagency rivalry that exists between these agencies. Rather than call FDNY resources to scenes where decontamination is required, the NYPD has decided to purchase its own. Rather than take advantage of an opportunity that requires mutual cooperation as a means to promote teamwork and trust between the

⁹⁵ Michael Chertoff, *Remarks by Homeland Security Secretary Michael Chertoff at a Press Conference on the Fiscal Year 2006 Urban Areas Security Initiative Grants* (2006), http://www.dhs.gov/xnews/releases/press_release_0825.shtm (accessed November 6, 2006).

⁹⁶ Ibid.

⁹⁷ *NYC Citywide Incident Management System (CIMS) Protocol*, 19.

agencies, the NYPD has chosen to operate independently. Rather than utilize \$1.5 million dollars on equipment and training directly related to its core competencies, it has chosen to spend that money duplicating an existing resource and creating another potential area of conflict.

In May of 2004, Mayor Bloomberg testified to the 9/11 Commission while discussing new technologies that “This will make them more efficient, eliminate duplication, and do a better job of protecting the public.”⁹⁸ [emphasis added] On the contrary, the evidence suggests that just the opposite has occurred. Secretary Chertoff also commented “...the fact that you are eligible as a high-risk city doesn't end the analysis, it begins the analysis. And the analysis then has to consider, what are the needs you're going to be addressing with the particular investments you want to make? Only when we get a justified investment is the money going to flow to the cities that are otherwise eligible.”⁹⁹ It can be argued that choices to purchase equipment, such as the one described above, may have contributed the decision to reduce NYC's homeland security funding by some 40 percent in 2006.

As grant funding inevitably decreases from the federal government in coming years, equipment and training will need to be maintained and upgraded. That burden will ultimately fall to the City. Doing so for two agencies will be all the more expensive. It is in the City's interest, not only for reasons of efficiency and improved interagency relations, but also financially, to eliminate this duplication once and for all.

E. REDUNDANCY AND DUPLICATION ARE NOT THE SAME THING

Some officials have argued that New York is fortunate to have more than one agency with these specialized capabilities. They claim that redundancy makes the system more resilient, as if it were a piece of critical infrastructure. In the case of emergency response, having more than one agency capable of performing the same function may, on its face, appear to be beneficial. That is because the term “redundancy” implies some

⁹⁸ Transcripts from *Eleventh Public Hearing of the National Commission on Terrorist Attacks upon the United States* Day Two sess., 79

⁹⁹ Chertoff, *Remarks by Homeland Security Secretary Michael Chertoff at a Press Conference on the Fiscal Year 2006 Urban Areas Security Initiative Grants*.

form of internal safeguard is built into a system in case part of it fails (or is overwhelmed), so that it can still function. Examples would include having a back-up power generator for when electric service is interrupted or having data saved in a separate location in case a computer crashes.

And if these duplicate capabilities were used as a “back-up system”, they might have a point. But they are not. And as has been illustrated in countless anecdotal examples, this arrangement breeds contempt, distrust, and an overall lack of cooperation and communication. The situation in NYC is more analogous to a computer with more than one anti-virus program installed. It would appear that the user has additional protection; however, in practice it results in internal conflicts. It is not the case of the back-up system coming into play when the primary fails; it is a case of the two fighting over primacy. Similarly, a power generator has a transfer switch to ensure that only one source (either the generator or the primary power) can supply the circuits at a time. If both supplied power simultaneously, it would create a power surge that would trip the circuit breakers.

An example of true redundancy is illustrated in the map below that shows the location of FDNY units with Haz-Mat capabilities above the “Operations” level (i.e., the FDNY Haz-Mat Group)

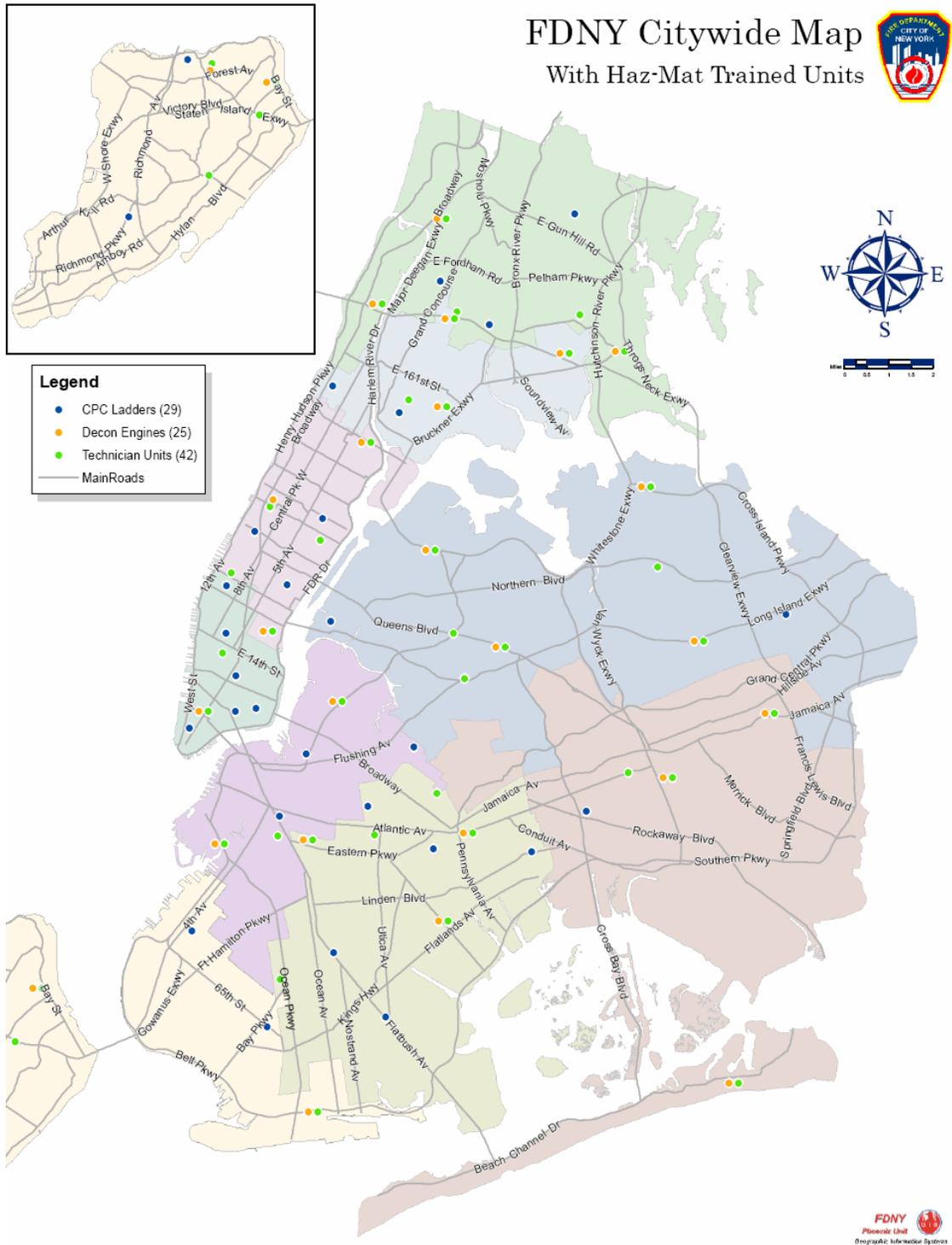


Figure 1. Map of Unit Locations of FDNY Haz-Mat Group

As can be seen, these units are spread throughout the City so that if a catastrophic event (or multiple events) occurs, units can be drawn from other areas to respond. Each

of these units has five to six firefighters working in them at a time. This is true redundancy because all these units have identical training, equipment, and SOP's so that they are virtually interchangeable. A few score of ESU officers who are on duty at a given time do not add real redundancy to this system when responding to a Haz-Mat incident. This is especially true when one considers that those same members will also have responsibilities at the scene that are more closely related to their core missions of site security, investigation, evidence collection, etc. which will limit their availability for assessment, mitigation, and rescue operations.

F. OFFICIAL DENIAL

“[Mayor Giuliani’s] creation of the Office of Emergency Management and the issuance of his Incident Command Directive were attempts to address the long-standing rivalry between the NYPD and the FDNY. *This rivalry has been acknowledged by every witness we have asked about it.*”¹⁰⁰ [Emphasis added] This statement, read into the record on Day 1 of the 9/11 Commission hearings in NYC by the Commission’s staff, clearly indicates that the Commission, after extensive interviews, had confirmed that this rivalry did in fact exist.

There are two reasons that, up to this point, so much time has been devoted to describing the origins of the historical relationship between the NYPD and FDNY, the reasons it still exists, and the regrettable consequences of it: The first is because many of those at the top levels of city government either deny that it exists at all or downplay the significance of it. And while this is done for political reasons, until there is an admission that there is in fact a problem, there will be no impetus to resolve it. The second is because understanding the nature of this institutionalized rivalry is critical to understanding the environment in which CIMS was created and the process used to develop and implement it.

For example, NYPD Commissioner Kelly began his question and answer period before the 9/11 Commission by stating, “I would say that the competition--the whole issue of rivalry is overblown. There is mostly friendly competition. Just last Sunday, we

¹⁰⁰ Transcripts from *Eleventh Public Hearing of the National Commission on Terrorist Attacks upon the United States*, Day One sess., 8

had a football game, for instance, between the police and the fire department.”¹⁰¹ It is as if he is implying that that one event negates decades of rivalry and distrust. Of course he understands that that is not the case, but that type of soundbite serves to distract the public from the problem.

Commissioner Kelly goes on to state:

But I think there have been some incidents. They've been few and far between. They've been overblown. But I think that the system we're adopting now [CIMS] will go a long way to address some of the public's concerns and I guess some of the real issues concerning turf. I don't want to say they don't exist, but I think they are overblown. But this is a management system. It envisions incident commanders for the agencies that respond to a big event, and *it envisions a unified command structure* where the executives of these agencies get together and make collective, collaborative decisions.¹⁰² [emphasis added]

Unfortunately, that statement is misleading. If these major incidents did in fact envision a *Unified* Command, perhaps operations and relationships would improve. However, one of the most controversial aspects of CIMS is that at *any* CBRN or Haz-Mat incident, a *Single* Command is established with the NYPD as the Incident Commander. CIMS clearly states “the Incident Commander is *solely* responsible for establishing incident management objectives and strategies”¹⁰³ [emphasis added] contradicting Commissioner Kelly’s assertion that decisions are made collectively or collaboratively.

Similarly, OEM Commissioner Bruno told the Commission that “What you're hearing about that there are disputes is *lower level* people who are arguing about who should rescue who, who should do what.”¹⁰⁴ [emphasis added] While it may be true that the disputes the public *hears about* usually involve major controversy or physical altercations at the scene involving these members, the arguments over strategic decisions and interpretations of CIMS that go on out of the public arena are far more common and involve the upper levels of these agencies.

¹⁰¹ Transcripts from *Eleventh Public Hearing of the National Commission on Terrorist Attacks upon the United States*, Day One sess, 131.

¹⁰² *Ibid.*, 132.

¹⁰³ *NYC Citywide Incident Management System (CIMS) Protocol*, 11.

¹⁰⁴ Transcripts from *Eleventh Public Hearing of the National Commission on Terrorist Attacks upon the United States*, Day One sess., 139-140.

Mayor Bloomberg, likewise, testified to the 9/11 Commission:

The armchair quarterbacks forget that New York City police officers and firefighters work together hundreds of times a day on such incidents as building collapses, fires, and traffic accidents. And although much has been made of the so-called battle of the badges, these are isolated episodes that are the result of individual, *low-level* breakdowns in discipline. *They are not the problem of systemic problems and don't occur higher up, where it would jeopardize the mission of each agency.*¹⁰⁵ [emphasis added]

On the contrary, the “low-level breakdowns in discipline” (i.e., the incidents that make the newspapers) are merely symptoms of an institutionalized rivalry that permeates all levels of both organizations. The claim that these are not systematic problems or that they do not occur at higher levels is simply untrue. Examples such as the Police and Fire Commissioners yelling at each other at City Hall in front of Mayor Koch or of former FDNY Chief of Department, Peter Hayden, publicly criticizing CIMS on the front page of the *New York Times*¹⁰⁶ belie these claims.

The assertions that the overwhelming majority of the incidents to which the FDNY and NYPD respond together go very smoothly are entirely true. However, that is because the overwhelming majority of incidents are clear cut and do not require any highly specialized training. It is clear who is in charge and the agencies have different responsibilities. Almost all of the problems occur at scenes where ESU is involved because they perform many of the same functions and have many of the same capabilities as FDNY units. And over the past few years, this duplication has only increased with the use of federal funds to purchase Haz-Mat equipment.

The embarrassment caused by public displays of interagency friction explains why mayors go to great lengths stifle public dissent from their commissioners and chiefs. But stifling dissent and eliminating the cause of it are two entirely different things. Until the underlying causes of this rivalry are addressed with meaningful reforms, relations will not improve.

¹⁰⁵ Transcripts from *Eleventh Public Hearing of the National Commission on Terrorist Attacks upon the United States*, Day Two sess., 78.

¹⁰⁶ O'Donnell and Rashbaum, “New Terrorism Response Plan Angers Fire Department,” 1.

On day two of the hearings, after receiving a much more disconcerting assessment of NYPD-FDNY relations from *Report from Ground Zero* author, Dennis Smith, among others, 9/11 Commissioner Jamie Gorelick pointedly observed “So we should not take too much comfort in the fact that they had a football game?”¹⁰⁷

¹⁰⁷ Transcripts from *Eleventh Public Hearing of the National Commission on Terrorist Attacks upon the United States*, Day Two sess., 69.

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IV. CIMS

A. PREVIOUS PROTOCOLS THAT GOVERNED NYC EMERGENCY RESPONSE

1. Koch Protocol

As was discussed in Chapter III, during most of the 1980's, the police department was in charge not only of operations at virtually every emergency in NYC, but also of notifying the fire department that the emergency even existed, by forwarding that information from its 911 center to fire dispatchers. Much of the heated rhetoric of that time centered on the claim that fire units were receiving this information late (to allow ESU time to arrive there first) or not at all. This is a claim that persists today and is evidenced by the NYPD's refusal to notify the FDNY about suspicious powders and packages or to allow a FDNY representative in the 911 center.

Despite the findings of an expert commission assembled specifically to study the issue, Mayor Koch ignored the panel's recommendation and allowed the police department to remain in charge of most emergencies. The only change in that policy was the promise to notify the fire department of more emergencies than they had previously and the assurance that if ESU gave an ETA of more than five minutes to incidents such as vehicle accidents or persons in the water, the FDNY would be notified to respond. Not surprisingly, ETA's of greater than five minutes were never given.

2. Dinkins Protocol

In an effort to clarify the roles of each department further and to avoid the embarrassing public disputes that had plagued the previous administration, Mayor Dinkins issued a response protocol of his own, signed by both departments, which kept the police department in charge of most emergencies and made some minor changes to the notification process. The mayor promised that this protocol would work "because it involved persons of good will"¹⁰⁸

¹⁰⁸ Transcripts from *Eleventh Public Hearing of the National Commission on Terrorist Attacks upon the United States*, Day Two sess., 61.

As can be expected, however, little changed since none of the underlying causes of the conflict were addressed. Each agency continued to operate in accordance with its own objectives and procedures, never attempting to coordinate its efforts with the other.

3. Giuliani Protocol

When Rudy Giuliani became mayor, he took a very strong stance on issues related to public safety and appointed two very competent men to head the police and fire departments: William Bratton and Howard Safir, respectively. He also made it clear that when it came to matters of public safety, *he* was the ultimate authority in the City, as opposed to the police or fire commissioners. The consensus of opinion from interviews conducted with former administration officials is that Mr. Bratton was focused mainly on the NYPD's core mission of reducing crime, which had risen to record levels under the previous administration. Mr. Safir, meanwhile, had convinced the mayor to spend tens of millions of dollars to upgrade firehouses, install computers, increase training, and purchase emergency equipment for firefighters, to make up for years of neglect under prior administrations.

By early 1996, halfway through his first term as mayor, Mr. Giuliani was in the process of merging the NYPD from three separate departments (NYPD, Housing, and Transit) into one, and merging EMS into the FDNY. Yet, despite these sweeping changes in the way the departments were organized and the strong leadership style of the mayor, institutionalized tensions between the two departments continued unabated at the scenes of emergencies. As a result, in February of that year, Mr. Giuliani established the Mayor's Office of Emergency Management under its first director, Jerry Hauer.

Around this time, the mayor also issued a response protocol designed to end the interagency squabbling. (This protocol entitled "Direction and Control of Emergencies in the City of New York" was later updated in July of 2001 just prior to the attack on the WTC.) For the first time, the FDNY was put in charge of certain emergencies other than fires. These included building collapses and Haz-Mat incidents. While it was only a two-page document, it did attempt to address the problem by assigning a single agency, either NYPD or FDNY in most cases, as the Incident Commander.

However, simply creating another protocol that stated which agency was “in charge” did not eliminate the underlying tensions between these departments. Despite this document being a directive from the mayor’s office, frequently ESU officers would tell FDNY chiefs at one of these scenes that “the NYPD did not sign off” on the new protocol, or later, when the NYPD was ordered to sign it, that they “only signed the first page” (the list of emergencies with the agency assigned as the IC was on the second page).¹⁰⁹

What this document did do, however, that had never been done before was to designate another agency, the Office of Emergency Management, as the “on-scene interagency coordinator” for all emergencies.¹¹⁰ This essentially put OEM in the position of “referee”, for lack of a better term, at incidents where there was some dispute as to who the IC should be. The directive stated that when an incident is “so multifaceted that no one agency immediately stands out as the Incident Commander, OEM will assign the role of Incident Commander to an agency as the situation demands”.¹¹¹

Having an empowered OEM on the scene to make this designation was essential because they were recognized as having the authority to determine who was in charge in addition to their ability to bring additional resources to the scene as needed. And since they did not have any resources of their own with which to resolve the situation, they did not possess the organizational bias that either the NYPD or FDNY did. OEM knew it was dependent upon these agencies to accomplish their mission and, as a result, ensured that information was shared among them. It also chose the agency to act as the IC based on which one was best suited to resolve the particular situation, rather than on parochial or political considerations.

However, despite the major progress in coordinating interagency operations that this arrangement led to, the 9/11 Commission rightly noted that OEM had not been able

¹⁰⁹ Both of these comments were heard by the author at the scene of emergencies as well as anecdotally from other firefighters. They were also confirmed during interviews with two former high-ranking OEM officials.

¹¹⁰ 9/11 Commission, *9/11 Commission Report*, New York City memo: “Direction and Control of Emergencies in the City of New York,” July 2001 (signed by Mayor Giuliani), Chapter 9, note 29.

¹¹¹ *Ibid.*

to convince the agencies to work as a team.¹¹² The attack on the WTC was clearly beyond the capabilities of any single agency. Therefore having the FDNY alone designated as the incident commander was a flaw in this protocol. The 9/11 Commission observed “Certainly the FDNY was not ‘responsible for the management of the City’s response to the emergency’ as the mayor’s directive would have required”.¹¹³ In retrospect, former FDNY Chief of Department Peter Hayden stated that he believes that the entire operation should have been handled using a *Unified* Command.¹¹⁴

B. GENESIS, HISTORY, AND EVOLUTION OF CIMS

Incident management systems are a relatively new creation designed to coordinate resources to enable them to operate cooperatively and collaboratively at a variety of incidents. They are especially useful at large-scale events that involve multiple agencies and multiple jurisdictions. In April, 2005, the City of New York formally adopted the Citywide Incident Management System (CIMS) as “an incident management doctrine for managing emergency incidents and planned events in New York City.”¹¹⁵

This system has its origins dating back to the early 1970’s and was developed in response to a need to coordinate multiple agencies across several counties in combating wildland fires in California. At the time, hundreds of thousands of acres of forest were being consumed by fire each year and causing several deaths and hundreds of millions of dollars in property damage. A lack of coordination between responding agencies led to chronic and systemic problems at these fires. The primary reasons for these problems were that each of the dozens of emergency service agencies that responded had its own jurisdictional strategic goals and objectives. Communications remained within each jurisdiction’s vertical chain of command. Planning and resource allocation were handled

¹¹² 9/11 Commission, *9/11 Commission Report*, New York City memo: “Direction and Control of Emergencies in the City of New York,” July 2001 (signed by Mayor Giuliani), Chapter 9, note 29, 285.

¹¹³ *Ibid.*, 321.

¹¹⁴ Source: Interview conducted with former FDNY Chief of Department Hayden on 10/12/2006.

¹¹⁵ *NYC Citywide Incident Management System (CIMS) Protocol*, 6.

independently by each jurisdiction and there was no mechanism to coordinate and manage the vast number of jurisdictions that had a part in the incident.¹¹⁶

As a result of one particularly disastrous blaze, known as the Laguna Fire, which lasted from September 26 to October 3, 1970, a cooperative work group was formed to study how interagency, multi-jurisdictional wildfires could be better managed. The group called itself Firefighting Resources of Southern California Organized for Potential Emergencies (FIRESCOPE). FIRESCOPE was chartered by an act of Congress in 1972 and charged with a national mandate to develop a system for multi-agency coordination of complex emergencies that exceeded the responsibilities of any single jurisdiction. This eventually led to the development of the Incident Command System (ICS).¹¹⁷

By the end of the 1970's, FIRESCOPE ICS had transformed into an efficient organization and decision making process. It was adopted by the National Fire Academy and incorporated into its training curricula in 1980. Also in 1980, the federal government, recognizing the potential of ICS, transitioned it into a nationwide program called the National Interagency Incident Management System (NIIMS) which became the basis for a response management system for all federal agencies involved with wildfire management responsibilities. In 1982, the National Fire Academy incorporated NIIMS into its training curricula. In 1996, the U.S. Coast Guard adopted NIIMS for response to oil and hazardous substance releases and in 1998, adopted it for use throughout the entire Coast Guard.¹¹⁸

All through the 1980's fire service leaders debated the merits of FIRESCOPE ICS and compared it to another system, the Fireground Command System, which had been developed to manage structural fires. Beginning in 1990, a consortium of 23 major fire service organizations worked on merging the two systems into a single command system

¹¹⁶ Robert G. Price, *The Evolution of Incident Management Systems* (New York: Long Island University, 2006), 3-4 (accessed October 15, 2006).

¹¹⁷ *Ibid.*, 3-4.

¹¹⁸ *Ibid.*, 9-10.

to derive the benefits of both. In February of 1993, the consortium completed the merger and called it the Incident Management System (IMS).¹¹⁹

Prompted by the attacks of 9/11 on the WTC and Pentagon, President Bush issued HSPD-5 on February 28, 2003, directing the Secretary of Homeland Security to develop and administer a National Incident Management System (NIMS). Section 20 of that directive states “Beginning in Fiscal Year 2005, federal departments and agencies shall make adoption of the NIMS a requirement, to the extent permitted by law, for providing federal preparedness assistance through grants, contracts, or other activities. The Secretary shall develop standards and guidelines for determining whether a State or local entity has adopted the NIMS.”¹²⁰

In response to this provision in the directive, the city of New York abandoned its long-standing opposition to a formalized Incident Command structure and the following year issued its first draft of the Citywide Incident Management System (CIMS).

C. HOW CIMS WAS DEVELOPED AND WRITTEN

1. The Timing

The long-standing rivalry between the NYPD and FDNY, the disagreements over who should be responsible for various types of emergencies, and the Police Commissioner’s desire to expand the power and influence of the NYPD initially led him to testify against implementation of any form of Incident Management System in NYC. On October 8, 2002, he told the city council:

Incident Command, if by that you mean, or unified command, by that you mean that one agency is telling other agencies what to do in a particular situation, I don’t think it works...I think looking for one incident commander, in this world that we face is difficult to identify. There’s a NIMS (sic) system that keeps coming up. This is...really focused on forest

¹¹⁹ National Fire Incident Management System Consortium, <http://www.ims-consortium.org/backinfo.htm> (accessed 12/20, 2006).

¹²⁰ HSPD-5, 1-24.

fires, focused on municipalities that can't handle an incident by themselves...*I don't think that type of system is appropriate for New York City.*¹²¹ [emphasis added]

However, less than five months later the issuance of HSPD-5 caused the commissioner and the City to rethink their opposition or risk the loss of Homeland Security funding. As was noted earlier, this event, in addition to a series of embarrassing clashes at several emergencies, led the Police and Fire Commissioners to promise to have a protocol in place by the end of the summer, 2003.

In order to accomplish this, OEM was charged with brokering an agreement between these agencies (in addition to others) to determine who would be the lead for various types of emergencies and the command structure that would be used at these incidents. This negotiation brought the duplication of capabilities to a head as both the NYPD and FDNY each believed they should be in charge of most emergencies.

Despite assurances that the protocol would be completed before the fall of 2003, negotiations over it lasted well into 2004 with the most contentious issues remaining unresolved as the OEM Commissioner John Odermatt, left that position in December 2003. Instead of naming a successor during these crucial negotiations, the mayor named OEM's First Deputy Commissioner, Calvin Drayton, as Acting Commissioner for two months. It was not until March 4, 2004 that the mayor appointed civil court judge and former fire commissioner Joseph Bruno to head the Office of Emergency Management.

With the 9/11 Commission scheduled to hold hearings in NYC in mid-May and no protocol yet agreed upon, the pressure mounted to produce a document. On May 14, 2004, just four days before the 9/11 Commission met in New York, the first draft of CIMS was released to the public amid a flurry of criticism both from the fire department and the 9/11 Commission itself.

2. The Process

Perhaps learning from the experience in the 1980's of having an independent group look at how to make the most efficient use of city resources (and then having to put

¹²¹ *Transcript of the Minutes of the Committee on Public Safety (held jointly with) Committee on Fire and Criminal Justice Services, 40-42.*

pressure on the mayor to ignore the findings of that panel), the Police Commissioner used his considerable influence with the mayor in the drafting of CIMS and in making the key determinations as to the wording of the document and what the core competencies of the individual agencies were. And rather than seek any outside expertise or opinion, the City instead chose to develop CIMS internally, minimizing any public review or commentary on it until it was completed and signed by the mayor.

After CIMS became finalized in April, 2005, the city council's Public Safety Committee and Committee on Fire and Criminal Justice Services held joint hearings on it. During the opening remarks, Chairperson Vallone commented:

Let me say this from the outset that, Commissioner Bruno, Chairwoman Clarke and I were very disappointed on the manner in which this protocol was provided to us.

On numerous occasions, through letters and personal requests, we asked for this protocol. Yet upon arriving in our offices on Friday, April 20th, we read in The Times that the mayor signed the protocol on April 11th. We were not informed by you or anyone else that the protocol was signed into existence.

In addition, we requested to review the protocol and did not receive a copy until Tuesday, May 3rd, six days before this hearing, despite amending our hearing date to accommodate your schedule.¹²²

These comments were immediately followed by the remarks of Co-Chairperson Yvette Clarke who observed:

In preparing for this hearing, Council Member Vallone and I reached out to experts in emergency preparedness around the country. There was a consensus among those experts that CIMS has fatal flaws and fundamental ones. In fact, in preparing for this hearing, and I'm trying to arrive at as balanced a viewpoint as possible, I personally asked the mayor's office to put us in contact with any third party experts that they have consulted to approve of CIMS. How many of the mayors's experts do you think we've spoken with? None. *They could not provide us with one single outside expert who supports CIMS.*¹²³ [emphasis added]

¹²² *Transcript of the Minutes of the Committee on Public Safety (held jointly with) Committee on Fire and Criminal Justice Services*, 7-8.

¹²³ *Ibid.*, 13-4.

When the first draft of CIMS was made public just prior to the 9/11 Commission Hearings in NYC, it was met with a great deal of cynicism by the 9/11 Commissioners themselves.

Former Navy secretary and 9/11 Commission member, John F. Lehman, commented:

I'm aware of the history and of the traditions and of the politics that have shaped the public service agencies in this city over many, many years... And I think that the command and control and communications of this city's public service is a scandal... It's not worthy of the Boy Scouts, let alone this great city... It's a scandal that after laboring for eight years, the City comes up with a plan for incident management that simply puts in concrete this clearly dysfunctional system.¹²⁴

Lee H. Hamilton, the vice chairman of the panel, described the portion of CIMS that designates multiple agencies as “primary agencies” as a “prescription for confusion.”¹²⁵

Commissioner Gorelick remarked “I remain troubled by the timing, both how long it took to get the system in place and the timing of its issuance last Friday”¹²⁶

In response to this criticism, the administration tried to reassure the Commission that this was only a first draft and that revisions would be made to it to improve the document. Mayor Bloomberg, while not taking any questions at the hearings, did read a prepared statement into the record. In it he said:

Certainly any system can be improved. CIMS is no exception. We will be constantly evaluating and monitoring CIMS in order to do just that. That’s why I picked Joe Bruno to head that commission. There will be extensive, ongoing training to ensure its success. We will adopt new technologies, match resources to changes in population density and other conditions, and reduce duplicative services.¹²⁷ [emphasis added]

¹²⁴ Transcripts from *Eleventh Public Hearing of the National Commission on Terrorist Attacks upon the United States*, Day One sess., 101-2.

¹²⁵ *Ibid.*, 57.

¹²⁶ *Ibid.*, 141.

¹²⁷ Transcripts from *Eleventh Public Hearing of the National Commission on Terrorist Attacks upon the United States*, Day Two sess., 79.

Yet despite these promises, no substantive changes to the command structure or to the core competencies listed for each agency were made before the final version was released;¹²⁸ and no changes *at all* have been made in the two years since. In addition, no reduction in duplicative services has occurred. In fact, the purchase of additional Haz-Mat equipment by the NYPD, including the three decontamination apparatus mentioned earlier, will only increase the amount of duplication that exists.

When called to testify before the city council after CIMS was officially signed by the mayor, Fire Commissioner Scoppetta told the Council:

...I strongly advocated that the City adopt the Unified Command structure in response to CBRN/Haz-Mat incidents where crime or terrorism was suspected...These proposals were not adopted in the final CIMS protocol...

Although the Department did not prevail on issues of importance to us, we do believe that the final CIMS protocol, *if implemented in good faith by all involved agencies*, can and will protect public safety.

Of course, this will require cooperation, coordination, communication, and common sense and respect for the mutual expertise of all agencies, particularly the fire department and the police department.

*Good faith in this context also means that the fire department's 21 years of accumulated expertise in responding to Haz-Mat incidents and extensive response resources will be properly utilized...I am confident that good faith and common sense will prevail and that the FDNY's and NYPD's expertise will be mutually acknowledged and respected.*¹²⁹

Given the historical rivalry that has existed for decades between these agencies, creating a protocol that relies on the “good faith” of all agencies involved does not bode well for its prospects for success. In fact, if all the involved agencies acted in good faith on a regular basis, there would be no need for this protocol. In much the same way that

¹²⁸ The only change of any significance made to the first draft of CIMS was in the area of command at CBRN/Haz-Mat incidents. Instead of the blanket designation of the NYPD being the Primary Agency (Incident Commander) at all these events, the statement “If NYPD determines there is no actual or suspected criminal activity or terrorism, a Unified Command will be implemented” was added. Essentially, however, that means the NYPD remains in sole command until they decide they want to share command.

¹²⁹ *Transcript of the Minutes of the Committee on Public Safety (held jointly with) Committee on Fire and Criminal Justice Services*, 48.

Mayor Dinkins promised his protocol would work “because it involved persons of good will”,¹³⁰ assurances that “good faith and common sense will prevail” seem overly optimistic.

D. THE 9/11 COMMISSION REPORT ON CIMS

The Final Report of the National Commission on Terrorist Attacks Upon the United States, while attempting to be deferential to New York in light of the losses it suffered in the attacks on the WTC, still explicitly criticized CIMS as it was written in May of 2004 because the document “expressly contemplates two or more agencies jointly being lead agency when responding to a terrorist attack but does not mandate a comprehensive and unified incident command that can deploy and monitor all first responder resources from one overall command post.”¹³¹ Neither of those shortcomings was revised in the final draft of CIMS.

The report continues, “*In our judgment, this falls short of an optimal response plan*, which requires clear command and control, common training, and the trust that such training creates.”¹³² The authors conclude:

...if New York and other major cities are to be prepared for future terrorist attacks, different first responder agencies within each city must be fully coordinated, just as different branches of the U.S. military are. Coordination entails a *Unified Command* that comprehensively deploys all dispatched police, fire, and other first responder resources.¹³³ [emphasis added]

The report also compares the relative success of the response to the Pentagon with the tragic loss of first responders at the WTC. While noting that the magnitude of the two events makes them difficult to compare, the Commission nonetheless concluded that “While no emergency response is flawless, the response to the 9/11 terrorist attack on the Pentagon was mainly a success for three reasons: first, the strong professional

¹³⁰ Transcripts from *Eleventh Public Hearing of the National Commission on Terrorist Attacks upon the United States*, Day Two sess., 61.

¹³¹ 9/11 Commission, *9/11 Commission Report*, 322.

¹³² *Ibid.*, 322.

¹³³ *Ibid.*, 321-2.

relationships and trust established among emergency responders; second *the adoption of the Incident Command System*; and third, the pursuit of a regional approach to response.”¹³⁴ It went further by stating among their list of recommendations that “Emergency response agencies nationwide should adopt the Incident Command System (ICS). *When multiple agencies or multiple jurisdictions are involved, they should adopt a Unified Command.*”¹³⁵ [emphasis added]

If individual groups are to overcome their organizational biases, they need to end their attempts to control each other and gain superiority over each other and work together as partners at emergency operations. A Unified Command structure allows different agencies to work together effectively and allows the Incident Commanders to combine their knowledge and share information as they jointly develop objectives without affecting their individual authority.¹³⁶ In addition, it gives the individual members operating at the tactical level the confidence that their leaders have helped develop the strategic plans that they are now being tasked to carry out.

A Unified Command also fosters an atmosphere where information is shared readily since it makes all participants into members of the same group and holds them equally responsible for all aspects of the operation. Just as the 9/11 Commission recommended intelligence agencies promote a culture of “need-to-share”,¹³⁷ emergency responders must share information that may be critical to the operations of another agency.

NYC’s resistance to adopting ICS, due to turf battles between the NYPD and FDNY, led to an uncoordinated response to the attack on the WTC. That attack ultimately resulted in the deaths of over 400 first responders. This tragic experience was the impetus for the President to mandate the adoption of NIMS through his issuance of HSPD-5, and the 9/11 Commission’s recommendations that all jurisdictions adopt ICS and utilize a Unified Command. It is therefore ironic that NYC would create an Incident Management

¹³⁴ 9/11 Commission, *9/11 Commission Report*, 314.

¹³⁵ *Ibid.*, 397.

¹³⁶ Pfeifer, *Understanding how Organizational Bias Influenced First Responders at the World Trade Center*, 213.

¹³⁷ 9/11 Commission, *9/11 Commission Report*, 417.

System that directly contradicts NIMS and the recommendations of the Commission in these key areas, and perpetuates the rivalry that led to them in the first place.

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V. THE STRENGTHS AND WEAKNESSES OF CIMS

“Good people can overcome bad structures. They should not have to.”¹³⁸

This quote from chapter 13 of the 9/11 Commission Report was specifically referring to the need to reorganize the country’s national security institutions to better deal with the threats now facing the nation. However, it is equally applicable to first responders struggling to deal with those same threats. It is especially pertinent in NYC in light of the recently enacted CIMS. Traditional threats such as criminal activity, Haz-Mat incidents, and medical emergencies that were clearly the province of police, fire, or EMS only a few years ago may now have a nexus to all three. The emergency response systems that were designed to manage these threats need to be adapted to cope with the hazards of the next century.

To that end, NIMS was selected as the national template that all jurisdictions were to follow in order to allow them to work together effectively and efficiently. CIMS, which is largely based on NIMS, does do that to a certain degree, but it also deviates from this template in certain crucial respects. Below is an analysis of how CIMS varies from NIMS both in language and in practice and shows both the advantages and disadvantages of NYC’s decision adapt NIMS to its own design.

A. STRENGTHS

CIMS is largely based on NIMS and therefore provides many of the same benefits of ICS as the national model. These include: conducting operations from a single command post; a common terminology; a modular organization; a chain of command and unity of command; a manageable span of control; a means to manage resources, information and intelligence; and integrated communications. These offer tremendous advantages at interagency operations compared with the lack of coordination and communication that occurred at the WTC on 9/11.

In addition, NYC has made certain modifications to the NIMS model to address concerns specific to NYC. These include:

¹³⁸ 9/11 Commission, *9/11 Commission Report*, 399.

1. The Use of “Core Competencies” to Clarify Roles and Responsibilities

In an effort to address some of the duplication of capabilities that exists and the confusion and disagreements at the scene of operations that resulted from it, CIMS utilizes the concept of “Core Competencies”. Core Competencies are defined as “functional areas of expertise” that various agencies have. CIMS states:

Agencies have the authority to direct operations related to their Core Competencies at incidents. If more than one agency is capable of performing the same tactical operations at an incident, the agency with the Core Competency will give tactical direction, by the ranking officer, to other agencies performing operations within that competency.¹³⁹

While this concept does not eliminate the duplication that exists, particularly between the NYPD and FDNY, it does designate only one agency as having the “Core Competency” for certain tasks. This recognition of duplicate capabilities and the attempt to assign overall responsibility for particular functions to a specific agency are positive steps toward managing multi-agency responses to emergencies.

2. The Introduction of a “Coordinating Agency”

Although no such position exists in NIMS, CIMS has designated OEM as the City’s Coordinating Agency. Among the responsibilities it has at multi-agency incidents are: to ensure that a CIMS command structure is in place; to coordinate resources from response and recovery agencies; to relay situation information to the City’s Emergency Operations Center and to the mayor; to support logistics and communications needs; to obtain subject matter expertise; and to facilitate transition of command and resolution of interagency differences.¹⁴⁰

While OEM is no longer a “response” agency as it was under the Giuliani administration, CIMS states that OEM *may* respond to multi-agency incidents and participate in a Unified Command, if established.¹⁴¹ They are also given authority to identify the Primary Agency(ies) if required. Having an agency on-scene to assist in

¹³⁹ NYC Citywide Incident Management System (CIMS) Protocol, 19.

¹⁴⁰ Ibid., 13.

¹⁴¹ Ibid.

coordinating a large-scale incident is an asset that can allow agencies involved in the response to concentrate on other tasks and improve coordination.

3. The Inclusion of Law Enforcement Specific Concerns

Primarily owing to the fact that NIMS grew out of the fire service's efforts to combat wildfires, its primary focus is managing large-scale events requiring a multi-jurisdictional, multi-agency response. However, since these events were mostly natural disasters occurring in the wilderness, certain aspects that could pertain to a terrorist event in an urban area were not a primary concern in its initial development. Due to the heavy police influence in the development of CIMS and the concern over another terrorist attack, additional elements are added to address these concerns.

For example, the issue Site Access is specifically addressed by CIMS to prevent unauthorized access, provide crowd control, control traffic, provide for the protection of responders, and to delineate crime and investigative scenes. Included in these activities are the establishment of physical perimeters and access points and the credentialing of occupants and workers in a restricted area if long-term operations are required.¹⁴²

Similarly, CIMS devotes an entire section to Investigative Operations which may be responsible for intelligence collection / analysis; processing crime and investigative scenes; electronic communications, surveillance and evidence collection; missing / unidentified persons; and human remains processing. It also explains the different ways in which the "Intelligence" function can be incorporated into the ICS organizational chart.¹⁴³

4. Provisions for an After Action Review

CIMS also allows for an After Action Review (AAR) to take place after large-scale or complex responses if requested by either a participating agency or recommended by OEM. AAR's serve to document response activities; identify issues arising during emergency operations; analyze the effectiveness of CIMS; recommend changes to CIMS

¹⁴² NYC Citywide Incident Management System (CIMS) Protocol, 19, 36-37.

¹⁴³ Ibid., 17-18.

or interagency protocols and internal agency procedures; and identify best practices.¹⁴⁴ It basically serves as an opportunity to evaluate an interagency response, air any grievances that may have come up as a result, and resolve the situation to allow for better responses in the future.

5. Interagency Training

The CIMS protocol also requires joint training to be conducted between agencies to ensure that they can implement an incident management structure and interact effectively within their Core Competencies. This training can take a number of forms including incident management courses, tabletops, drills, functional exercises and field exercises.¹⁴⁵ Again, the purpose is to ensure that all participants can operate together successfully at multi-agency events.

B. WEAKNESSES

Since CIMS is largely based on NIMS, most of the strengths of the protocol stem from where it follows NIMS. It is primarily in the areas where CIMS deviates from NIMS that problems occur. And although certain provisions were included in CIMS that could serve to improve interagency cooperation and coordination, the manner in which they were implemented and practiced has undermined their stated intent.

As was mentioned earlier, NIMS is the national template for coordinating interagency and inter-jurisdictional response to emergencies. Originally developed for directing firefighting efforts at wildfires in California, it has, over the past three decades, incorporated best practices and lessons learned, to refine and adapt these procedures, so that they are equally effective at managing any other incident.

Rather than simply follow this template, however, an approach that was strongly advocated by the FDNY, the City of New York has chosen to incorporate certain aspects of it, but to make some rather serious deviations from it as well. For example, the very first paragraph in the preface of NIMS reads:

¹⁴⁴ *NYC Citywide Incident Management System (CIMS) Protocol*, 19, 36-37, 49.

¹⁴⁵ *Ibid.*, 51.

On February 28, 2003, the President issued HSPD-5, Management of Domestic Incidents, which directs the Secretary of Homeland Security to develop and administer a National Incident Management System (NIMS). This system provides a *consistent nationwide template* to enable federal, state, local, and tribal governments and private-sector and nongovernmental organizations to work together effectively and efficiently to prepare for, prevent, respond and recover from domestic incidents, *regardless of cause, size, or complexity, including acts of catastrophic terrorism.*¹⁴⁶ [emphasis added]

However, despite this intent, CIMS makes a series of highly questionable modifications to NIMS that the evidence strongly suggests are attributable to local politics and the level of influence that the police commissioner has on the mayor. Given Commissioner Kelly's October 2002 statement regarding NIMS, that "I don't think that type of system is appropriate for New York"¹⁴⁷, it is not difficult to understand the motivation for these changes.

1. The Use of a Single Command Structure at Haz-Mat / CBRN Incidents

a. *The NYPD's Rationale for a Single Command at Haz-Mat / CBRN Incidents*

Despite clear guidance in the *National Incident Management System* (NIMS) that a *Unified Command* should be established at multi-jurisdictional and multi-agency operations, CIMS requires that a *Single Command* initially be established at all Haz-Mat / CBRN incidents and that it remain a *Single Command* until the NYPD determines the incident does not involve crime or terrorism. If it is determined to involve crime or terrorism or if that determination cannot be made readily, the operation remains a *Single Command*.

This aspect of CIMS, probably more than any other, has generated the most criticism and controversy. The NYPD and other administration officials have attempted to justify this decision by citing the *possibility* that a Haz-Mat event *may* have

¹⁴⁶ *National Incident Management System*, ix.

¹⁴⁷ *Transcript of the Minutes of the Committee on Public Safety (held jointly with) Committee on Fire and Criminal Justice Services*, 42.

some nexus to terrorism as the rationale for designating the NYPD as the IC at *all* such incidents. During his prepared remarks to the New York City Council in May 2005, Police Commissioner Kelly testified:

We must treat any incident involving [chemical, biological, and radiological weapons] or suspected substances as a criminal or terrorist event, even if it appears first to be an accident. There is no room for error here.

An investigation must begin. The substance must be identified, evaluated, and processed possibly as evidence. If we fail to do that at the outset, the criminal or terrorist may escape detection and apprehension and potentially cause far worse destruction in the future.

This is why the police department has been designated a primary agency for CBRN / Hazardous Materials incident until the Department determines that there is no actual or suspected criminal activity or terrorism.¹⁴⁸

The rationale given by a variety of administration officials defending this decision is that NYC is “different” from every other municipality in the country. Commissioner Kelly’s testimony illustrates this point:

The genius of the National Incident Management System is that it allows New York City, which is really unique from any other municipality in the country, to take the ICS model and adapt it appropriately for our use.

Why don’t other police agencies in the United States have the overall responsibility for CBRN / Haz-Mat incidents? For one thing, their cities have not been the target of repeated and successful terrorist attacks. For another, the New York City Police Department is larger than the next four major cities combined, and all of our uniformed personnel have the necessary training and equipment to undertake this responsibility.¹⁴⁹

When pressed later by Council Speaker Miller as to why the NYPD is designated as IC if Life Safety is the top priority and that is the core competency of the FDNY, Commissioner Kelly responded:

¹⁴⁸ *Transcript of the Minutes of the Committee on Public Safety (held jointly with) Committee on Fire and Criminal Justice Services*, 39-40.

¹⁴⁹ *Ibid.*, 42.

...but the difference, as far as hazardous material and CBRN is concerned, is because the stakes are so high...we want to do an investigation...so, it's the stakes that are involved here that make this different.¹⁵⁰

He later told Councilmember Clarke:

I think Unified Command, as I say, is at the essence of CIMS. In this one instance we've determined that, as I say, the stakes are so high, the cost is so great, that we want to have an investigation before we go to Unified Command.¹⁵¹

While these arguments may seem persuasive on the surface, they do not hold up under closer scrutiny. Even conceding the point that every Haz-Mat scene, no matter how seemingly insignificant, must initially be treated as a potential criminal or terrorist event and must therefore initiate an investigation, there is no reason this cannot be accomplished while utilizing a Unified Command. CIMS specifically addresses this point when it states "Investigative Operations may be initiated concurrently with Life Safety Operations"¹⁵² There is simply no need for a Single Command structure for an investigation to take place.

This point was illustrated in a heated exchange between Commissioner Kelly and Speaker Miller. The Speaker cut directly to the heart of the issue as the Commissioner tried to explain that a Single Command is necessary so that the NYPD can immediately begin an investigation.

SPEAKER MILLER: And wouldn't that all be true at a Unified Command as well?...What's the difference then?...why is it necessary for the police department to be directing the fire department...?

COMMISSIONER KELLY: Again, we're not directing per se. Life safety actions are going forward initially. What we're doing is preserving evidence, doing interviews, checking into it with the databases, doing essentially investigative things, talking to witnesses.

A decision [has been] (sic) made that the police department is going to be the primary agency here. If in fact the determination is made that it's not terrorism, not criminal in nature, it goes right away to a unified command.

¹⁵⁰ *Transcript of the Minutes of the Committee on Public Safety (held jointly with) Committee on Fire and Criminal Justice Services*, 66-68.

¹⁵¹ *Ibid.*, 121.

¹⁵² *NYC Citywide Incident Management System (CIMS) Protocol*, 18.

SPEAKER MILLER: And why is that? If there's no terrorism, and no other criminal activities suspected, why would we need unified command? Why wouldn't the fire department just be in charge?

COMMISSIONER KELLY: CIMS is all about communication, *it's all about unified command*, it's all about being together to communicate. That's a big difference.

SPEAKER MILLER: But if it's all about communication and unified command and all the rest of that, then why is it the police department is in charge in terrorist incidents?

I mean, unified command is such a great structure, then why don't we use it in case of terrorist incidents?

And if you can have all that kind of communication in a case in which is not unified command, then why wouldn't you want the fire department to be the lead agency in incidents in which the New York Police Department is determined that there is no criminal activity whatsoever?

COMMISSIONER KELLY: *Well, because as I say, we can talk in circles here. Unified command is what CIMS is all about.*¹⁵³ [emphasis added]

Not only does the Commissioner not answer the question, the answer he does give seems to bolster the need for a Unified Command.

The argument that NYC is “different” from any other city in the U.S. is also a specious claim. Any city in the U.S. is a potential target for terrorism and the fact that NYC has already been attacked and is a likely target for future attacks has no bearing on the type of command structure that needs to be implemented to effectively manage the consequences. That statement assumes that if other cities were attacked that they would adopt a similar command structure. As illustrated by the Unified Command structure in place in the National Capital Region, both before and after the attack on the Pentagon, that is clearly not the case.

And the fact that the NYPD is larger than the next four major city police departments combined is not relevant. The FDNY is also larger than the next four major cities’ fire departments combined and its Haz-Mat capabilities are nationally recognized as among the best in the country. NYC’s police and fire departments are proportional in

¹⁵³ *Transcript of the Minutes of the Committee on Public Safety (held jointly with) Committee on Fire and Criminal Justice Services, 68-71.*

size to those of any major city. Simply having more members does not provide a justification for wasting valuable resources by duplicating existing capabilities in an effort to provide rationalization for seizing control of Haz-Mat events.

In making its recommendations, the 9/11 Commission concludes that “even the most robust emergency response capabilities can be overwhelmed if an attack is large enough. Teamwork, collaboration, and cooperation at an incident site are critical to a successful response. *Key decision makers who are represented at the incident command level* help to ensure an effective response, the efficient use of resources, and responder safety.”¹⁵⁴ [emphasis added]

Essentially what the police commissioner is arguing, in defending the decision to utilize a Single Command structure at Haz-Mat / CBRN incidents, is that the more catastrophic the event and the more resources and expertise are required to handle it, the *less* participation you would want at the command level because the “stakes are so high”. But, at any other type of catastrophic event, including bombings, hurricanes, major transportation accidents, etc. you would want their participation. There is a reason that no other city in the country performs ICS in this manner and it has nothing to do with the threat level they face or the size of their first responder agencies.

When Assistant Chief Pulaski (the NYPD’s point man on CIMS) testified to the city council, he suggested that, in addition to the reasons cited by Commissioner Kelly, the NYPD needs to be the sole Incident Commander because “[t]he NYPD in an incident like this has numerous incident objectives, some of which are core competencies that reside solely with the NYPD.” He went on to say that a Single Command structure allowed the NYPD to conduct “site management operations” which includes such things as force protection, site access, and crowd control. He then argued that having the NYPD in command allows the FDNY (with regard to life safety operations) “to inform [the NYPD’s] decision-making, but not control their decision-making with regard to site management issues”.¹⁵⁵

¹⁵⁴ 9/11 Commission, *9/11 Commission Report*, 396.

¹⁵⁵ *Transcript of the Minutes of the Committee on Public Safety (held jointly with) Committee on Fire and Criminal Justice Services*, 138-168.

One point he overlooks when he makes this argument is that the purpose of a Unified Command is not to “control” decision-making or to “inform” it. It is to bring the major participants in an emergency together to *jointly* determine what those incident objectives should be. The core competencies do not come into play until the tactical decisions on how to carry out those objectives are made. The other point which he ignores entirely is that at *any* major incident which will involve multiple agencies, these same site management issues will be present. But in every other type of emergency except Haz-Mat / CBRN, a Unified Command will be established.

Once again, the arguments used to justify a Single Command do not hold up when they are applied to other emergencies. The fact that every administration official who testified acknowledged the benefits of a Unified Command structure and emphasized that as soon as crime and terrorism are ruled out, a Unified Command is established, demonstrates that they realize this system works. To illustrate how operations would (or would not) change under these different command structures, Speaker Miller asked the following hypothetical question:

SPEAKER MILLER: I want you to imagine that the mayor just changed his mind and decided that it was going to be a unified command in the case of hazardous materials...how would the management of that incident change?

ASSISTANT CHIEF PULASKI: In terms of tactical direction, it would not change. In terms of the formulation of the incident objectives, the overall strategy...and the management objectives, in terms of making sure that all aspects of this incident are taken into consideration wouldn't change drastically.

A few minutes later, in trying to explain this difference further, Chief Pulaski noted “it’s a very subtle difference”.¹⁵⁶

In practice, the only difference in operations that a Single Command structure has at Haz-Mat / CBRN incidents that a Unified Command does not is that it gives the NYPD authority to prevent the FDNY from operating barring any immediate life safety operation. This has resulted in numerous occasions in which FDNY resources

¹⁵⁶ *Transcript of the Minutes of the Committee on Public Safety (held jointly with) Committee on Fire and Criminal Justice Services*, 138-168, 148-153.

have been tied up at a scene but not allowed to operate, only increasing the level of frustration and animosity that exists between the agencies.

b. The Problem with This Command Structure

The organizational social biases discussed in Chapter II will create a great deal of opposition to accepting a single incident commander who is not “one of their own” when the group believes its right to command is equally important to the outcome of the incident.¹⁵⁷ Placing the FDNY in charge of life safety operations, which everyone agrees is the most important aspect of any operation, but refusing to allow them to participate in the command structure has resulted in exactly that kind of resistance.

NIMS is quite clear in its recognition that at large-scale events involving multiple jurisdictions and / or multiple agencies, that a Unified Command structure is the model to be used to manage the incident. It states:

In incidents involving multiple jurisdictions, a single jurisdiction with multiagency involvement, or multiple jurisdictions with multiagency involvement, *unified command* allows agencies with different legal, geographic, and functional authorities and responsibilities *to work together effectively without affecting individual agency authority, responsibility, or accountability*.¹⁵⁸

Probably the least logical and most contentious aspect of CIMS is the decision to place the NYPD in *single* command of all Haz-Mat / CBRN incidents until they have determined no nexus to criminality or terrorism exists. The rationale provided in earlier drafts of CIMS and in testimony from OEM and NYPD officials for this decision is based on the *potential* for criminal / terrorist involvement in these incidents. In closed-door negotiations during the period between May 2004 when the protocol was first released and April 2005 when it was officially signed by the mayor, the FDNY tried unsuccessfully to have this provision of the protocol changed to allow for a Unified Command from the outset. The final draft, however, only provides for a unified

¹⁵⁷ Pfeifer, *Understanding how Organizational Bias Influenced First Responders at the World Trade Center*, 212.

¹⁵⁸ *National Incident Management System*, 11-12.

command after the possibility of criminality / terrorism is excluded and does not allow for a unified command at all at actual terrorist events involving Haz-Mat / CBRN.

Under the Giuliani protocol, Haz-Mat incidents were one of the few areas where duplication between the NYPD and FDNY was at a minimum, and the FDNY was the lead agency for these incidents. The events of 9/11 and the potential use by terrorists of WMD introduced a possible criminal aspect to some of these events and an opportunity for the NYPD to expand its authority. CIMS not only brought the NYPD into the command structure at these incidents, but removed the FDNY from it, until such time that criminal activity was ruled out by the NYPD.

Taking into account that a reported Haz-Mat incident either does or does not involve criminal / terrorist activity and does or does not involve an actual or potential release of the material, the FDNY recommended a simple, easily understood matrix for determining command at a Haz-Mat / CBRN incident:

Table 3. FDNY’s Proposed Command Matrix for CBRN / Haz-Mat Incidents¹⁵⁹

	Suspected Crime / Terrorism	No Suspected Crime / Terrorism
Actual or Potential Haz-Mat release	Unified Command	FDNY Single Command
No Actual or Potential Haz-Mat release	NYPD Single Command	Command Determined by CIMS Matrix

However, despite the logic and simplicity that this matrix offered, the demands of the NYPD, that they be designated as the sole incident commander, prevailed.

Not only is this section of CIMS illogical and vague in its application, it is also inconsistent with the rest of the protocol. Nowhere else in the document is the *potential* for criminal or terrorist activity substituted for an actual assessment in

¹⁵⁹ Nicholas Scopetta, FDNY Response to Second Draft Citywide Incident Management System (CIMS), February 3, 2005.

determining the command structure. Command designation at every other incident type listed, including many which could involve crime or terrorism such as explosions and aviation and rail incidents, all base this decision on the *actual* incident type, not on whether crime or terrorism *could be* involved.¹⁶⁰

This part of the protocol also ignores its otherwise consistent reliance on core competencies to determine which agencies should direct the response. Throughout the document, CIMS consistently identifies life safety operations as the highest priority at all incidents including Haz-Mat / CBRN. However, despite the FDNY having a core competency in “CBRN / Haz-Mat Life Safety”, unless and until the NYPD declares that there is no criminal intent, the FDNY has no command authority.¹⁶¹ It is tasked with directing all life safety operations, but without the authority to develop or set incident objectives. And since most of the Haz-Mat incidents which occur in the City involve a significant threat of fire due to the presence of flammable or combustible material, having the NYPD designated the single incident commander over all of them requires them to manage operations beyond their CIMS-specified core competencies.¹⁶²

In addition, this designation contradicts best practices in place throughout the country and conflicts with the basic principles of ICS and NIMS. In every other city in the United States fire departments are responsible for incident command due to their training, equipment, and experience in handling these types of incidents. The sole justification for excluding the FDNY from incident command at Haz-Mat / CBRN incidents is the potential for criminal / terrorist involvement. Only in NYC is *possible* criminal intent of those creating the hazard, as opposed to the *actual* nature of the release, the sole factor in making this determination. NIMS clearly establishes that the command structure is determined by the nature of the incident itself, not the mental process of those who caused it.¹⁶³ “The incident command organizational structure develops in a top-

¹⁶⁰ Nicholas Scopetta, FDNY Response to Second Draft Citywide Incident Management System (CIMS), February 3, 2005.

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ Ibid.

down, modular fashion that is based on the size and complexity of the incident, as well as the specifics of the hazard environment created by the incident.”¹⁶⁴ [emphasis added]

Once a release has occurred, dealing with the effects of that release must be accomplished based on conditions found on arrival, regardless of the cause. Therefore determining the command structure should be done in the same way.

Another troubling aspect of having only one agency designated as the incident commander at a large scale event, particularly one in which their commanders have little or no experience in managing such as a Haz-Mat event, is that their view is bound to be more narrowly focused and based on their own priorities and experiences. A Unified Command allows for a more balanced and well-rounded perspective in setting strategies, plans, and priorities.

CIMS itself recognizes that:

Unified Command is an important element in improving multi-jurisdictional or multi-agency incident management. As a combined command and management effort, Unified Command overcomes much of the inefficiency and duplication of effort that can occur when agencies from different functional and geographic jurisdictions, or agencies at different levels of government, operate without a common organizational framework.¹⁶⁵

Yet, despite this acknowledgement, it mandates a Single Command at large-scale terrorist events involving CBRN.

By contrast, NIMS states that “when an incident occurs within a single jurisdiction *and there is no jurisdictional or functional agency overlap*, a single IC should be designated with overall incident management responsibility by the appropriate jurisdictional authority.”¹⁶⁶ [emphasis added] Clearly, CBRN and large-scale Haz-Mat incidents do not fall into this category.

NIMS lists the following advantages to utilizing a Unified Command:

- A single set of objectives is developed for the entire incident

¹⁶⁴ *National Incident Management System*, 10.

¹⁶⁵ *NYC Citywide Incident Management System (CIMS) Protocol*, 10.

¹⁶⁶ *National Incident Management System*, 13.

- A collective approach is used to develop strategies to achieve incident objectives
- Information flow and coordination is improved between all jurisdictions and agencies involved in the incident
- All agencies with responsibility for the incident have an understanding of joint priorities and restrictions
- No agency's legal authorities will be compromised or neglected
- The combined efforts of all agencies are optimized as they perform their respective assignments under a single Incident Action Plan¹⁶⁷

A large part of the problem with utilizing a Single Command at a large-scale CBRN / Haz-Mat event is that a lack of familiarity with other agency's resources and capabilities hampers the IC's ability to properly allocate those resources. In addition, particularly in NYC, the organizational bias of the agencies creates an environment in which a single incident commander from one agency is likely to control as much of an incident as possible using only his own agency's resources. Only when he recognizes that events are beyond that agency's ability to control them will others be utilized.

Similarly, this organizational bias also leads to a lack of information sharing because information is viewed as power. In a Single Command structure, the IC is not mandated to share any information he does not deem necessary. In fact, CIMS specifically states "Investigative Operations may be initiated concurrently with Life Safety Operations; however, life safety concerns will supersede investigative concerns. *Upon completion of Life Safety Operations, the investigating agencies may exclude non-essential personnel from the site.*"¹⁶⁸ This failure to mandate that information is shared and the explicit authorization to exclude virtually anyone the NYPD deems "non-essential" puts their commanders in a position where they will only share information that they believe is necessary for the FDNY to perform immediate life safety operations

¹⁶⁷ *National Incident Management System*, 13, 15.

¹⁶⁸ *NYC Citywide Incident Management System (CIMS) Protocol*, 18.

and hold back all other information. This can ultimately lead to a compromise in safety as fire department commanders will not have the full situational awareness available to their police counterparts.

2. The Manipulation of “Core Competencies” to Marginalize the FDNY’s Role

Although the goal of trying to clarify roles and responsibilities at incidents through the use of “core competencies” is a laudable one, political pressures and considerations corrupted this process and turned it into a means of marginalizing the responsibilities of the FDNY and enhancing those of the NYPD. This was accomplished by manipulating the wording of certain core competencies and refusing to acknowledge others so that the NYPD could exert control over operations involving hazardous materials. These blatantly parochial actions undermine the goal of creating a cooperative environment in which these agencies can operate and undermine the credibility of the document as a whole.

To illustrate this point, the table below lists the Core Competencies of four agencies: the FDNY, the NYPD, the Department of Environmental Protection (DEP), and the Department of Health and Mental Hygiene (DOHMH) as they appear in CIMS.

Table 4. Core Competencies of Several NYC Agencies¹⁶⁹

Agency	Core Competencies
FDNY	<ul style="list-style-type: none"> • Fire Suppression • Pre-hospital Emergency Medical Care • Search and Rescue • Structural Evacuation • CBRN / Haz-Mat Life Safety and Mass Decontamination • Arson Investigation (Cause and Origin)
NYPD	<ul style="list-style-type: none"> • Law Enforcement and Investigation • Intelligence Collection and Analysis • Crime Scene Processing / Evidence Preservation • Site Management <ul style="list-style-type: none"> ○ Perimeter Control ○ Traffic Control ○ Crowd Control

¹⁶⁹ NYC Citywide Incident Management System (CIMS) Protocol, 18, 19-20.

	<ul style="list-style-type: none"> ○ Site Security and Force Protection ○ Evacuation (Area and / or Law Enforcement Related) ● Water Search and Rescue ● CBRN / Haz-Mat Assessment and Investigation (Crime Scene / Terrorism) ● Accident Investigation ● VIP Protection ● Arson Investigation (Major Case)
DEP	<ul style="list-style-type: none"> ● Environmental Monitoring, Sampling, Evaluation, and Analysis ● Environmental Mitigation (Chemical) ● Environmental Law Enforcement ● Water and Wastewater: Infrastructure Assessment, Repair, and Reconstruction
DOHMH	<ul style="list-style-type: none"> ● Disease Surveillance and Epidemiology ● Public Health Orders, Clinical Guidance and Risk Communication ● Mass Prophylaxis / Vaccination ● Laboratory Testing (Biological and Radiological) ● Public Health Assessment ● Environmental Mitigation (Radiological and Biological) ● Animal-Related Surveillance and Vector Control ● Mental Health Needs Assessment and Service Coordination

As can be seen from the list above, each of these four agencies are designated as having a Core Competency pertaining to some type of Haz-Mat / CBRN event. However, they are very carefully worded and narrowly interpreted so that the effect is to minimize the authority of the FDNY at these events. Much of the delay in establishing this protocol centered on the disagreement over the wording of these Core Competencies.

The FDNY argued strenuously that included in its Core Competencies should be “Hazard Assessment” and “Mitigation, Reduction or Elimination of Immediate Threats to Public Safety”¹⁷⁰ This was based on the fact that the FDNY had over 20 years experience performing exactly these types of actions at thousands of Haz-Mat incidents during that time and that its dedicated unit for these types of incidents, Haz-Mat Co. 1, was recognized as one of the premier Haz-Mat units in the country. However, the wording of these Core Competencies was crucial to the NYPD’s strategy to gain control over Haz-Mat incidents.

¹⁷⁰ Scoppetta, *FDNY Response to Second Draft Citywide Incident Management System (CIMS)*, 13.

a. Mitigation

During the city council hearings held in October 2002, Commissioner Kelly was asked specifically about which agency would respond to a Haz-Mat or bioterrorism event. He responded that the NYPD's main concern would be evidence preservation. Regarding the hazards of the incident, however, he stated "*mitigation is clearly the role of the fire department. Their Haz-Mat unit does that...[m]itigation, in other words, taking care of the dangers that are brought about by biochemical attack is clearly the purview of the fire department.*"¹⁷¹

Despite this admission and the FDNY's vast experience in mitigating literally thousands of Haz-Mat scenes over several decades, recognizing that as a Core Competency of the FDNY would have required the NYPD to at least share command over these incidents. Rather than allow this, the NYPD insisted that the DEP, not the FDNY, be given the Core Competency of "Environmental Mitigation (Chemical)". Similarly, DOHMH was given the Core Competency of "Environmental Mitigation (Radiological and Biological)". However, the term "Environmental Mitigation" is vague at best, is not defined in CIMS, and no examples are given. The Fire Commissioner argued:

...the First Draft Protocol avoided the use of the term 'mitigation' altogether. Now, absurdly, this term appears in DEP's list of core competencies, but not FDNY's...DEP does not have a core competency of 'environmental mitigation' in an emergency response scenario. DEP lacks the equipment, training and experience in this area, cannot respond to incidents within five minutes and does not have a true round-the-clock response capability. Historically, DEP is responsible for environmental clean-up, not mitigation...*DEP should be utilized as it always has at such incidents, as a subject matter expert.*¹⁷² [emphasis added]

Similar arguments were made against the decision to give DOHMH the Core Competency of "environmental mitigation (Radiological and Biological). However, when the final version of the document was issued, no changes were made in this area.

¹⁷¹ *Transcript of the Minutes of the Committee on Public Safety (held jointly with) Committee on Fire and Criminal Justice Services*, 60-61.

¹⁷² Scoppetta, *FDNY Response to Second Draft Citywide Incident Management System (CIMS)*, 14-15.

b. Assessment

Because assessment of the hazards involved is a critical element in determining the actions to take during Life Safety Operations, the FDNY argued strongly that “Hazard Assessment” should also be listed as one of its Core Competencies. In addition, it argued that the NYPD’s Core Competency in this area should be changed to read “assessment of scene/hazard/intelligence for criminal/terrorism activity”¹⁷³ so as to clarify the NYPD’s assessment role. However, neither recommendation was incorporated into the final document. No mention of “assessment” appears in the FDNY’s list of Core Competencies and the NYPD’s Core Competency now reads “CBRN / Haz-Mat Assessment and Investigation (Crime Scene / Terrorism)” which is intentionally less explicit.

Despite the way these competencies were written over FDNY objections, OEM Commissioner Bruno testified to the city council three months later that what is meant by immediate life safety hazards to the public is:

[The FDNY] will assess what the hazard is; they will take whatever action they need to reduce or eliminate the hazard...they will set the zones initially for the life safety aspect of the operation.

The police department assesses the scene, the hazard and the intelligence for criminality for terrorist activity...and they will exclude unnecessary personnel...[t]hat does not include the fire department because they are doing the work during life safety.

DEP and DOH are subject matter experts. No one expects them to be first responders...when they arrive, they will be looking to make final assessment...

Assuming...they do take some time...to get there, we will rely on the fire department and the Life Safety phase and the investigator phase for the police department to take care of that job which is what they do today.

What we do here is utilize the expertise of two important agencies in the city to add subject matter expertise.

¹⁷³ Scopetta, *FDNY Response to Second Draft Citywide Incident Management System (CIMS)*, 14-15.

No one expects them to respond like the fire department or the police department. They are subject matter experts.¹⁷⁴ [emphasis added]

The Commissioner's claims that DEP and DOH are subject matter experts and that the FDNY can take "whatever action" it needs to reduce or eliminate the hazard stand in direct contrast to what is written in CIMS. CIMS specifically states that these agencies will "adjust or set 'hot', 'warm' or 'cold' zones and *direct all mitigation efforts.*"¹⁷⁵ When interpreted as written, these efforts may not begin until those agencies arrive, barring an immediate life safety issue.

c. Decontamination

In spite of the FDNY's long experience in performing decontamination of members and civilians at Haz-Mat incidents and the obvious connection this has to Life Safety Operations, this is another area in which the NYPD would not allow the FDNY list this as a Core Competency. The most they would allow was the term "Mass Decontamination", although that term, as well, is completely undefined in CIMS. It also stands to reason that if an agency has a Core Competency that allows them to perform decontamination on *many* people, they are also capable of performing it on individuals. Rather than face this point, CIMS simply ignores the issue and does not give *any agency* a core competency in decontamination. Once again, these arguments were ignored for political purposes. As mentioned earlier, the NYPD's decision to purchase three decontamination apparatus only serves to exploit this loophole, further increase the level of duplication that exists, and will undoubtedly lead to additional interagency discord in the future.

In practice, what this manipulation of Core Competencies has resulted in is numerous situations in which FDNY resources respond to the scene of Haz-Mat incident where they are told to wait while the NYPD conducts an "investigation", during which DEP is notified to respond. Units often wait on scene for up to an hour while this takes place. Once DEP arrives, the investigation is concluded, DEP is put in charge of mitigation, and FDNY units are told that their services are not required.

¹⁷⁴ *Transcript of the Minutes of the Committee on Public Safety (held jointly with) Committee on Fire and Criminal Justice Services*, 35-36.

¹⁷⁵ *NYC Citywide Incident Management System (CIMS) Protocol*, annex, A p.3.

Similarly, when FDNY units respond to “powder runs” (i.e., calls involving potential biological agents such as anthrax) they are told that it is a “crime scene” and that since any persons potentially exposed are not an *immediate* life hazard, they are to stand by. If the NYPD determines that decontamination of the person is appropriate, it is the NYPD (despite the fact they have *no competency* pertaining to decontamination) and not the FDNY (since this is not considered *mass* decontamination) who performs this function. Once again FDNY units are told that their services are not required.

Despite the fact that the FDNY has over 1800 Haz-Mat technicians and over 1500 members trained in technical decontamination procedures *on individuals*, these resources are often intentionally left unutilized at incidents. This has negative consequences on interagency relations at operations as well as on the morale of firefighters and only serves to reinforce the rivalry that exists between the NYPD and FDNY.

3. The Weakening of the Role of OEM

Although CIMS solidifies the role of OEM as the city’s coordinating agency, the list of responsibilities designated for OEM such as coordinating resources, relaying information, supporting operations, and obtaining subject matter expertise are nothing new. These are all responsibilities the agency had since it was first established as an office of the mayor in 1996. The most dramatic change in OEM’s role is that it no longer has the authority it previously had to make a determination as to which agency should perform what operations. That decision was intentional and has severely undermined OEM’s credibility and power.

At first glance it may appear as though OEM still has this power since the wording of its role is left somewhat ambiguous in this regard. CIMS assigns OEM responsibility to “*Facilitate transition of command and resolution of interagency differences*”.¹⁷⁶ [emphasis added] The follow exchange between 9/11 Commissioner John F. Lehman and former Mayor Rudy Giuliani illustrates the confusion on this point:

¹⁷⁶ NYC Citywide Incident Management System (CIMS) Protocol, annex, A p.3, 13.

MR. LEHMAN: ...one of the problems that our staff and we see in the new Incident Command System that has just been promulgated on Friday is that it's really a formula for negotiation between strong and powerful and heroic agencies as to who's going to be in charge at the time... this plan does not provide clear unity of command. It's a negotiating document. And I would like your personal view on whether it's not time...to adopt a more clearly defined and unambiguous command and control system...among the agencies?

MR. GIULIANI: I think that because incidents are complex that's why you need OEM, and that's why I created OEM, to—

MR. LEHMAN: But it doesn't have the authority. That's the problem.

MR. GIULIANI: Yes, it does. It has the—

MR. LEHMAN: It can dictate who's going to be in charge?

MR. GIULIANI: Yes. Yes, it has the authority to decide who's in charge until the mayor gets there...¹⁷⁷

This line of questioning ended with the following observation by Mr. Giuliani:

I mean, the only thing I would recommend--and I think the present mayor is doing this, I think Mayor Bloomberg is doing this -- *you've got to have a very strong OEM*...If they arrived at an emergency and there was any doubt, they had the authority to say, police department in charge, fire department in charge...So I mean I think that is the best way to handle it in New York.¹⁷⁸ [emphasis added]

Similarly, Richard Sheirer, OEM's director at the time of the attack on the WTC, testified to the Commission that "The only way that that is a unified command where agencies have very different functions and there can be this tension of who's in charge, *the only way that works is if you have a very strong and empowered Office of Emergency Management. If you don't, it won't, period.*"¹⁷⁹ [emphasis added]

Likewise, when OEM's first director, Jerome Hauer, was asked by Commissioner Gorelick if his recommendation was for "both *a very strong central command in the form*

¹⁷⁷ Transcripts from *Eleventh Public Hearing of the National Commission on Terrorist Attacks upon the United States*, Day Two sess., 42-44.

¹⁷⁸ *Ibid.*, 45.

¹⁷⁹ *Ibid.*, 110.

of an OEM that can make decisions and a mandating of bringing together of the command centers”, Mr. Hauer replied “Yeah. Absolutely.”¹⁸⁰

However, despite the recommendations of these recognized experts in the area of emergency management in NYC, the current OEM commissioner, Joseph Bruno, told the New York City Council that OEM *does not* have the authority to make these decisions. The following exchange at a council hearing on CIMS illustrates the current commissioner’s understanding of OEM’s role in this regard:

SPEAKER MILLER: ...but why is it that there is no tie breaker?...what happens if there is a disagreement? A fundamental disagreement?

COMMISSIONER BRUNO: ...the agencies will operate under their core competencies. In their area of competency, they direct the operation.

SPEAKER MILLER: ...what happens in a situation in which one agency feels that there’s a life safety matter, and another agency feels that this is a criminal investigation issue...

COMMISSIONER BRUNO: ...we would always refer back to the core competency. If it’s an area where core competencies are in control, then that agency would make that decision...

If there is a point where two agencies disagreed, then the two agencies are going to have to sit there...and they are going to make decisions based upon the best information they have, *there is no tie breaker there.*

In other words, OEM is not going to come in from the street and say to a fire chief with 40 years experience and to a captain or a chief at the police department, we’ll tell you how to do it. *We will do the best we can to encourage a decision to be made.*¹⁸¹ [emphasis added]

After reluctantly acknowledging that this role was a change from how OEM operated under the Giuliani administration, Commissioner Bruno added “*I don’t have authority over either agency*, but what I do have is strong authority out of CIMS that they are going to have to look at what we’re saying. However, there is no tie breaker out there.”¹⁸² [emphasis added]

¹⁸⁰ Transcripts from *Eleventh Public Hearing of the National Commission on Terrorist Attacks upon the United States*, Day Two sess., 42-44, 68.

¹⁸¹ *Transcript of the Minutes of the Committee on Public Safety (held jointly with) Committee on Fire and Criminal Justice Services*, 53-55.

¹⁸² *Ibid.*, 60.

Once again, in bowing to the wishes of the Police Commissioner by removing OEM's power to designate which agency should perform what operations, CIMS eliminates any means of enforcing these designations and sends a clear message that OEM lacks any real authority.

Similarly, the decision to remove OEM from its role of "*on-scene* interagency coordinator" was designed to ensure that the NYPD would not be overruled at emergency scenes. And while CIMS states that OEM "*may* respond to multi-agency incidents and participate in the Unified command, *if established*",¹⁸³ [emphasis added] Commissioner Bruno's stated vision for OEM clearly indicates he has no intention of stepping into the middle of disputes between the NYPD and FDNY at operations. Upon being appointed to the role of OEM Commissioner, he told the *New York Times* that he "envisioned the office as a 'think tank' on preparedness. 'I look to O.E.M. more as a planning agency and preparedness agency, an information agency, an information conduit, more than a response agency,' he said."¹⁸⁴

The decisions to remove OEM from their on-scene presence at operations and to remove their decision-making power regarding which agency should perform what operation has undermined the credibility and authority OEM previously held in serving as an independent arbiter at emergency operations. These actions have removed an effective and rational means of settling interagency disputes, replacing it with an ambiguous political document.

4. AAR's are Ineffective and Rarely Held

While CIMS takes a major step in the right direction in allowing for an After Action Review (AAR) process to resolve interagency conflicts that arise at the scenes of emergencies, the frequency with which they occur and the manner in which they are conducted has rendered them completely ineffective leading several of the FDNY leaders

¹⁸³ NYC Citywide Incident Management System (CIMS) Protocol, 13.

¹⁸⁴ Shaila K. Dewan and David W. Chen, "Bloomberg Appoints Commissioners to Lead Housing and Emergency Management Agencies," *New York Times*, sec. B, March 5, 2004, http://web.lexis-nexis.com.libproxy.nps.navy.mil/universe/document?_m=57d4e6cb97b9b55530f4af4d39f9560e&_docnum=1&wchp=dGLbVzb-zSkVb&_md5=b6a06f59f930d89d2ac88ff497c11175 (accessed November 15, 2006).

interviewed to conclude they are a “waste of time”.¹⁸⁵ During the comment period on the second draft of the CIMS protocol, the FDNY urged that “a standing group be formed to conduct After Action Reviews (AAR), with representatives assigned from each agency. The group’s recommendations should be binding and the group should have enforcement authority.”¹⁸⁶ This recommendation, like most of its others, was ignored.

Despite numerous disagreements that have inevitably occurred at operations during the two years since CIMS was officially instituted, and the subsequent requests made for AAR’s to be conducted, to date, only two (2) AAR’s have taken place. Predictably, the lack of response to these requests has resulted in a wide spread belief that this provision of CIMS is not being enforced. As a result, requests for AAR’s have fallen dramatically.

In addition, those that have been held have been described by FDNY officials who attended as being little more than an opportunity to “check a box” stating that an AAR was held.¹⁸⁷ The most recent AAR is illustrative of why this feeling is prevalent:

a. AAR on Trench Collapse in Brooklyn 06-27-2006

This AAR, conducted in August 2006, centered on a rescue operation involving two persons trapped in a cave-in of a trench at a construction site (a CIMS-specified FDNY core competency). Without going into specifics of the incident, the AAR review was requested because NYPD ESU officers refused the FDNY Incident Commander’s orders for everyone to evacuate the trench until it could be properly shored.

In attendance at the AAR were approximately ten NYPD members including the ESU officers in question and Assistant Chief Philip Pulaski. Chief Pulaski began the meeting by announcing that he would be the *only one* speaking on behalf of the NYPD. He further claimed that he had conducted an investigation and had the “facts”. He argued that because the FDNY Incident Commander had blown a whistle in an attempt to

¹⁸⁵ This information was obtained from two FDNY members who attended the After Action Review described below but do not wish to be identified.

¹⁸⁶ Scoppetta, *FDNY Response to Second Draft Citywide Incident Management System (CIMS)*, 19.

¹⁸⁷ This information was obtained from two FDNY members who attended the After Action Review described below but do not wish to be identified.

get everyone's attention and gain control of the scene, that the ESU members "did not know if he was in his right state of mind" and therefore ignored the order. He refused to allow the members who were present at the scene to testify and further stated that he was not there to discuss tactical issues at the event, only whether CIMS protocols were followed, which he argued were.¹⁸⁸

After the FDNY had presented its arguments, OEM Commissioner Bruno said he had no authority to discipline anyone from either agency, recommended that both agencies review the CIMS document again, and declared the AAR a success. In reality, however, the message sent to the agencies is that OEM is powerless to take any action and that there will be no repercussions for operating outside of the protocols established in CIMS.

This failure to empower OEM with any enforcement authority and the lack of frequency and substance to the meetings that were held reinforces the perception that OEM is little more than a puppet of the police department. And while the concept of holding AAR's to "document response activities; identify issues arising during emergency operations; analyze the effectiveness of CIMS; recommend changes to CIMS or interagency protocols and internal agency procedures; and identify best practices"¹⁸⁹ is commendable, the manner in which it is practiced undermines its stated intent and helps perpetuate the problems that do exist.

5. Ineffective and Unrealistic Drills (showcasing)

Although CIMS specifies that Joint Training will be conducted to ensure that the agencies can operate effectively together, the training that has been conducted to date has been woefully inadequate to fulfill the City's needs in this respect. The majority of the interagency drills that have been conducted have taken the form of tabletop exercises or local drills involving only a handful of participants from each agency. Consequently, only a very small fraction of the NYPD's 36,000 members or the FDNY's 14,000 members ever take part in these exercises and therefore gain nothing from them.

¹⁸⁸ Information was obtained from two FDNY members who attended the After Action Review but do not wish to be identified.

¹⁸⁹ *NYC Citywide Incident Management System (CIMS) Protocol*, 49.

Since the implementation of CIMS two years ago, very few large scale interagency drills have been conducted. The largest one to date, known as “Trifecta”, involved over 1500 response workers from over 20 local, state, and federal agencies.¹⁹⁰ This type of large-scale drill is exactly what is needed to ensure that a sizable number of responders participate in these exercises. It also provides an opportunity for an after action review to be conducted so that lessons learned can be used to allow the City “to test and refine its preparedness plans and emergency response protocols”¹⁹¹ as the OEM press release states. However, an examination of Trifecta illustrates that this drill was little more than a carefully scripted exercise in showcasing capabilities designed for media consumption to make the case that CIMS will work in a large scale emergency.

a. Trifecta (March 26, 2006)

Planning for Trifecta began in August 2005 with the stated intent to “test CIMS to the breaking point”.¹⁹² All agency representatives were told that they were “trusted agents” and were not at liberty to discuss any of the specifics of what the exercise entailed or even the location where it was to be held. Disagreements over the design of the exercise and the incident command structure began almost immediately.

It was decided that the scenario would involve a terrorist detonation of an explosive device next to a tank of a poisonous chemical on a freight train just as it was passing a commuter train in a rail yard. The FDNY argued a Unified Command should be established because it was an explosion. The NYPD argued that it was a Haz-Mat incident and therefore a Single Command should be established. Ultimately, OEM stated it would be a Single Command.

The next point of contention was the incident objectives submitted by each agency. The NYPD, FDNY, and DEP all had issues with the wording of the objectives by the other agencies, feeling that they were exceeding their authority under CIMS. A special meeting had to be held just to agree on how these would be worded.

¹⁹⁰ New York City Office of Emergency Management, "NYC Office of Emergency Management (OEM) hosts 'Trifecta,' a multi-agency field exercise," http://www.nyc.gov/html/oem/html/pr/06_03_26_trifecta.shtml (accessed 11/15, 2006).

¹⁹¹ Ibid.

¹⁹²This quote was attributed to OEM Commissioner Bruno by an FDNY member present at the planning meetings who does not wish to be identified.

Finally, there was a great deal of disagreement over the response sequence. The FDNY wanted its units on the scene within five minutes of the explosion since that is the citywide average response time. NYPD argued it would have a large number of officers on the scene within a few minutes also and therefore their units should be first. DEP even claimed that they would respond within minutes despite the fact that they would not be notified unless specifically called by either the FDNY or NYPD and that they often take up to an hour to arrive when they are called.

Approximately a week before the exercise was to take place, the Metropolitan Transportation Authority (MTA), a New York *state* agency on whose property the exercise was being conducted, stated that they wanted a *Unified Command* to be established. Since CIMS applies only to NYC property, the NYPD had no choice but to agree to a Unified Command.

Despite the supposed secrecy surrounding the details of Trifecta, the NYPD was seen setting up its decontamination equipment *on the exercise site* for several weeks prior to the drill. The FDNY conducted three drills with the Technical Decontamination Task Force assigned to Trifecta the week before the drill. And the DEP made sure its equipment was set up to properly identify the chemical in the scenario.

The drill began realistically with two MTA police officers investigating the explosion. They were told by exercise facilitators that they were experiencing difficulty breathing and a burning sensation (the decision had already been made that no first responders would be “killed” because it did not look good for the media) and that they had to leave the field. At that point, any semblance of realism to an actual event like this ended.

Within minutes, the first arriving agency was not FDNY nor NYPD, but the DEP with no fewer than ten vehicles including its mobile lab. They drove right up to the where the “hot zone” started and began donning Level “A” protection and setting up their environmental metering equipment. Immediately behind them was the NYPD’s decontamination unit who began setting up a decon corridor for emergency responders and donning personal protective equipment exactly where they had been seen practicing.

All of this was done *prior to* the site even being declared a Haz-Mat scene. To the television cameras, however, it all looked very impressive.

As a result of this response sequence, victims had to be dragged through DEP's and NYPD's operational areas, to reach the FDNY decontamination area several hundred yards away. And since the command structure and all objectives had been argued over and agreed upon during the months leading up to the exercise, it greatly facilitated determining the incident objectives at the command post. When the exercise was completed, OEM Commissioner Bruno told the assembled reporters that the exercise demonstrated the effectiveness of the Citywide Incident Management System and said "I'm happy and I'm actually a little surprised that it worked as well as it did".¹⁹³

While the overall intent of Trifecta was good and the exercise did give many agencies an opportunity to practice their operations alongside others with whom they will have to operate at an actual event, the aspects that would have added a sense of realism and demonstrated the flaws with CIMS were carefully orchestrated to avoid having them come to light. Meaningful lessons learned most often come from observing and studying what went wrong at operations. This is most often the catalyst for making changes to tactics, procedures, protocols, and strategies. Conducting unrealistic drill scenarios in which all the players know the specifics prior to participating eliminates these mistakes and makes the exercise meaningless in terms of a learning experience where procedures can be adjusted to correct deficiencies noted, since none occur. But given the political environment and process through which CIMS was developed, that was most likely the intent.

It is also important to note that an AAR of the exercise was performed by Titan, the company contracted to design Trifecta. This document has been known to be in the possession of OEM since at least October 2006. Despite repeated requests to obtain a copy of the document, however, OEM claims to still be reviewing it and has not produced it, even as the one-year anniversary of that exercise approaches.

¹⁹³ Sewell Chan, "A Dry Run for Handling a Disaster in the City Railyards " *New York Times*, sec. B, March 27, 2006, http://web.lexis-nexis.com.libproxy.nps.navy.mil/universe/document?_m=86a2aedcae776485f070fb17759a1073&_docnum=1&wchp=dGLzVzz-zSkVA&_md5=70fceb624174cc19e24de00b2d5ed6a8 (accessed January 5, 2007).

b. Bio Detection System Exercise -- Staten Island Postal Facility

The next largest multi-agency drill conducted by OEM was a joint exercise involving the U.S. Postal Service simulating the City's response to the activation of one of its Bio Detection Systems (BDS) located at the Manor Road Postal Facility on Staten Island. Once again, most of the difficult decisions were worked out at meetings leading up to the actual exercise negating the reality of having to make those decisions on the scene.

In this case, since this simulated a potential release of a *biological* agent, there would be no need for any life-safety operations on the part of the FDNY after conducting a preliminary search of the facility. However, there would be a need for the FDNY to perform its other core competency of "mass decontamination". In addition, it also needed to set up a decontamination area for rescue workers who entered the facility. The NYPD, in addition to performing its various law enforcement functions at this exercise, also set up its own decontamination area separate from the FDNY for the decontamination of law enforcement personnel. It argued that this was necessary because the FDNY was not capable of securing firearms.

An additional disagreement developed when it was decided that one of the postal inspectors would suffer a "heart attack" during the operation requiring him to be removed and decontaminated prior to triage. The FDNY argued this was a life safety operation and therefore should perform this operation. However, it was ultimately decided that the NYPD would perform this function.

This exercise highlighted two weaknesses both with CIMS and the manner in which these exercises are conducted. First is the lack of attention to core competencies illustrated by the NYPD performing life safety and decontamination procedures. CIMS was specifically written in a vague enough manner to allow the NYPD to claim responsibility for these actions. It does not define the term "mass decontamination", leaving it open to interpretation. It also includes a clause that says "Life Safety Operations are the highest priority Incident Objectives and will be initiated by *the first*

arriving resources capable of these operations... [and] will not be disrupted or suspended because of transition of command to other agencies”, leaving open the door for ESU to perform an FDNY core competency.

The second shortcoming it illustrates is that there is a clear and unnecessary overlap in resources that are defended at exercises such as this with deceptive arguments about the need to “secure” weapons. The dubious nature of this claim is illustrated by the fact that when the UN Security Council is in session, the FDNY is pre-staged to perform decontamination in the event of an attack. The Secret Service personnel, who are more heavily armed than NYPD officers, have no such concerns about the FDNY performing decontamination of their members, belying concerns about this need. The fact is the member could simply take the weapon with them through the decontamination process or a single officer can be assigned to the decon area to secure them. This would be a far more efficient use of resources and would foster a greater sense of cooperation between the agencies than having the NYPD devote approximately ten members to perform a function that is already being performed a hundred feet away by the FDNY. The reason this is not done, however, is because it would undermine the justification for the duplication that exists in this area.

This situation closely parallels one described in an article by former Chairman of the Joint Chief of Staff, David C. Jones. In it he notes that the emergence of the airplane during World War I as a major military asset should have alerted the military to the need to adjust its doctrines and organizations, particularly as airpower began to blur the traditional lines between land and naval warfare.¹⁹⁴ (Similarly, the use of chemicals or WMD by terrorists has begun to blur the lines between fire department and law enforcement functions.) General Jones observed that instead, the branches of the military reacted to this phenomenon in a traditionally bureaucratic manner: each service developed its own airpower “*and protected it with artificial barriers to obscure costly duplications.*”¹⁹⁵

¹⁹⁴ David C. Jones, "What's Wrong with our Defense," *New York Times Magazine*, November 7, 1982, 38.

¹⁹⁵ *Ibid.*

The need to conduct medium to large scale exercises on a regular basis is one of the most intuitive and important steps that can be taken to ensure that multi-agency operations run smoothly. Equally important is the need for them to be realistic and for the details of them not to be shared with the agencies ahead of time. Only in this way will weaknesses be discovered and plans adjusted to take advantage of lessons learned. Military doctrine says “train as you fight and you will fight as you train”. Conducting unrealistic, scripted drills designed to showcase capabilities rather than truly test them will ultimately hurt NYC’s preparedness for a large-scale attack.

The 9/11 Commission realized this when they stated “Regular joint training *at all levels* is...essential to ensuring close coordination during an actual incident”. They went on to state that they strongly supported the decision to make homeland security funding contingent on adoption of ICS and Unified Command procedures and that “In the future, the Department of Homeland Security should consider making funding contingent on *aggressive and realistic training* in accordance with ICS and *unified* command procedures”.¹⁹⁶ [emphasis added]

6. Inconsistent Applicability of a Single Command Structure

As was illustrated during the Trifecta exercise, the provision of CIMS that mandates the use of a Single Command structure at Haz-Mat / CBRN events only applies on NYC-owned property. At all facilities owned or controlled by federal or state entities, a Unified Command will be established. It should be noted that the most likely targets of a terrorist attack in NYC are generally agreed to include mass transportation hubs and lines, bridges, tunnels, military installations, and internationally recognized symbols such as the World Trade Center, Empire State Building, Statue of Liberty, etc. All of these are located on property owned or controlled by state or bi-state authorities, or by federal agencies.

Perhaps owing to this fact, Mayor Bloomberg and Commissioner Kelly held a press conference on September 29, 2005 in which they put forth a plan that would have the NYPD take command at all major incidents that take place in New York City at train

¹⁹⁶ 9/11 Commission, *9/11 Commission Report*, 396-397.

stations, seaports, airports, bridges or tunnels run by the Metropolitan Transportation Authority and the Port Authority of New York and New Jersey. This proposal, however, was met with a cool reception from the governors of New York and New Jersey whose approval would be required to make this change and it has therefore never been enacted.¹⁹⁷ Coincidentally, seven days after this press conference was held, the City went on a state of high alert for the threat of a terrorist bombing in the subway system which the Department of Homeland Security (DHS) deemed non-credible minutes after it was announced.¹⁹⁸

In addition, if another major terrorist attack does occur, it will undoubtedly bring in federal and state assets to assist with the mitigation and recovery. Every other jurisdiction in the country and the federal government all subscribe to the *National Incident Management System* which mandates a Unified Command at these incidents. It is extremely unlikely that these resources will abandon a nationally recognized and mandated incident command system and subjugate themselves to the wishes of a city agency. Therefore, once again a Single Command structure will not be used. Contrasting Commissioner Kelly's arguments that it is the "stakes" that make a Single Command necessary with the recognition that a major attack will bring in resources that will mandate a Unified Command, the stated necessity for a Single Command and the likelihood of its use seem unrealistic.

Considering the testimony of the Police Commissioner that "Unified Command is what CIMS is all about";¹⁹⁹ the realization by everyone that this command structure does work; the confusion and animosity surrounding a Single Command structure; and the inconsistent manner in which it can be applied, the argument for placing the NYPD in overall command at these incidents rings hollow.

¹⁹⁷ Dan Janison, "Mayor: NYPD Should Command During Area Emergencies," *New York Newsday*, September 30, 2005, <http://www.nynewsday.com/news/politics/mayor/nyc-mike0930.0.5145266.story?coll=nyc-mayor05-headlines> (accessed November 20, 2005).

¹⁹⁸ Editorial Desk, "About that Subway Alert," *New York Times*, sec. A, October 12, 2005, http://web.lexis-nexis.com.libproxy.nps.edu:8080/universe/document?_m=248c887cfd4c97168ef6e64a43d15077&_docnum=2&wchp=dGLbVlb-zSkVb&_md5=b7a6fcc477eeda10436efc3c445e293e (accessed November 5, 2005).

¹⁹⁹ *Transcript of the Minutes of the Committee on Public Safety (held jointly with) Committee on Fire and Criminal Justice Services*, 71.

The confusion that this provision of CIMS potentially creates can be illustrated by the fact that two identical incidents, one occurring on city property and another on state property within NYC, will be managed using two different command structures. The confusion is further illustrated using an explosion scenario: This would initially be treated as a potential crime scene, but managed using a Unified Command structure. If, however, at some point during the operation a hazardous material was found to be involved, it could be argued that a Single Command should be used. However, if criminal activity was then ruled out, it would once again become a Unified Command.

7. Unified Operations Section

Another area where CIMS deviates from NIMS is in the Operations Section of the command structure. According to NIMS, this section is under the leadership of a single Operations Section Chief who directs all tactical operations. However, CIMS institutes a *Unified Operations* Section at all multiagency incidents, regardless of whether it is a Single or Unified Command.²⁰⁰

This provision is often cited by proponents of CIMS as a means to justify a Single Command structure. In the Unified Operations section, each of the Operations Section Chiefs is responsible for directing the tactical operations of their individual agency's members in the areas of their core competencies. Proponents argue that this allows critical information to be shared and a collaborative operation to be conducted. However, in reality, the Unified Operations section results in parallel operations being conducted since no single person is in charge of this section. Rather, each agency conducts the operations it deems necessary for its agency with little coordination between them.

In his testimony before the New York City Council regarding CIMS, Chief James Schwartz, the Arlington County Fire Chief who commanded the response to the attack on the Pentagon on 9/11, remarked "I know of no other organization anywhere that has constructed a system where there is in effect a Single Command at the top but a Unified

²⁰⁰ NYC Citywide Incident Management System (CIMS) Protocol, 21, and annex A, p. 3.

Operations section. While reading all your materials, I hesitated to use this term, but this morning' testimony got me around to it, to realizing that *it flies in the face of logic.*"²⁰¹ [emphasis added]

C. OUTSIDE EXPERT TESTIMONY ON CIMS

In response to Chief Hayden's criticism of CIMS in the New York Times and the mayor's decision to sign off on CIMS without any review or input by the New York City Council, the Council held hearing on CIMS on May 9, 2005. During the opening remarks, Chairperson Vallone stated:

Now that [an Incident Command System] has been adopted, many concerns have been raised, particularly from the FDNY, including its top uniformed officer, Chief of Department Hayden. Unfortunately it took the issuance of a subpoena to force the Administration to change its initial position articulated directly to me and my staff that no one from the FDNY or NYPD would be permitted to testify. Let me just run through that time sequence again, because there was some confusion about this.

We asked for the fire department and the police department, we were told, myself directly to my face, that no one other than Joe Bruno would be here. We then issued a subpoena. We then were assured of their appearance here. That is the way it occurred. There was apparently some revisionist history after that from the Administration.²⁰²

In addition to the testimony of the Police, Fire, and OEM commissioners and of various NYPD and FDNY officers, the Council also called several noted experts in the field of emergency management and response to testify as to their opinions on CIMS. Among them were Jerry Hauer, OEM's first director under Rudy Giuliani; James Schwartz, Arlington County Fire Chief who served as the IC at the 9/11 attack on the Pentagon; and Glenn Corbett, an associate professor of Fire Science at John Jay College and a top local expert on emergency response. Below are some of their comments regarding CIMS:

²⁰¹ *Transcript of the Minutes of the Committee on Public Safety (held jointly with) Committee on Fire and Criminal Justice Services, 221-222.*

²⁰² *Ibid.* 6-7.

1. James Schwartz

The bulk of his prepared remarks were dedicated to explaining how Unified Command is used routinely at natural and man-made emergencies including the terrorist attack on the Pentagon and at anthrax incidents in the months after. He also testified that CIMS fails to maximize the expertise and resources of the FDNY at Haz-Mat / CBRN incidents.²⁰³ At one point he broke away from his prepared remarks and said:

A comment was made early on about the evolutionary nature of your CIMS and the fact that over time best practices will be included in the CIMS. From my perspective and in my opinion, your CIMS will never be among the best practices. It will not be on anybody's list of best practices unless you can deal with the issues that were discussed at length this morning...

There is no reason whatsoever the Fire Department of New York should not be involved at the Unified Command level at a minimum for the kinds of incidents that you are talking about.

Later, in response to a question regarding what happens in the event that there is a conflict between the NIMS ICS template and the CIMS template, Chief Schwartz added:

I was going to say, if by some stretch it does in fact become recognized as compliant with the National Incident Management Systems, it is not -- it is in word only, not in spirit. Because the 9/11 Commission was very clear, other groups that have reviewed the responses of 9/11 have been very clear that unified command is the only way to go.

2. Jerry Hauer

Mr. Hauer, who had been critical of CIMS in newspaper editorials as it was being developed and before the 9/11 Commission, was less reserved in his criticism. Among his statements to the council were:

...after listening to the testimony this morning, anybody that tries to follow the convoluted logic that you heard this morning, and tries to make heads or tails out of what you heard from the three commissioners this morning is better than me, because it was the most incredible double-speaking I've heard in my life...

²⁰³ *Transcript of the Minutes of the Committee on Public Safety (held jointly with) Committee on Fire and Criminal Justice Services, 211-220.*

The fundamental issue is, and will continue to be the fact that there is a duplication of effort in New York, and the issue has never been resolved. The notion that police officers should be managing hazardous materials emergencies of any type, any type, is simply wrong, and no amount of justification by the Office of Emergency Management is going to put lipstick on this towel...

How can one reasonably justify that the Department with the greatest training and resources dedicated on a 24-hour basis, specifically to do one thing and only one thing, and that's hazardous materials response, is restricted from performing assessments of a hazardous materials incident...

What we are seeing in New York is a greater duplication of effort, which not only cost taxpayers more, but will lead to continued confusion at the scene of hazardous materials incidents and jeopardize the safety of New Yorkers.

For this so-called CIMS document to remove the fire department from the incident command structure and relegate it to the operations level, lacks any basic logic and it's flawed.

It appears to me that OEM simply regurgitated the wishes of the Police Commissioner and lacks any independence in thought or in input, the basic essence of what OEM was created to do...

Furthermore, for the Commissioner of OEM to dismiss what is being done in every other city in the country by saying that New York is going in a different direction, is the type of arrogance that puts this city at greater risk, particularly when there's no logical basis to do so, and the reasoning in the CIMS is flawed and inconsistent with the National Incident Management System.²⁰⁴

3. Glenn Corbett

Professor Corbett raised concerns regarding about how mitigation would be performed at Haz-Mat incidents and whose role that would be. In addition, he pointed out the potential conflict in giving life-safety operations to the FDNY but giving overall site management to the NYPD.²⁰⁵ He, too, identified the duplication of capabilities as the underlying cause of the rivalry between the NYPD and FDNY:

²⁰⁴ *Transcript of the Minutes of the Committee on Public Safety (held jointly with) Committee on Fire and Criminal Justice Services*, 224-231.

²⁰⁵ *Ibid.*, 234-235.

...New York City has a long history of duplication and overlap of responsibilities between the FDNY and NYPD. This is the very heart of the issue we're discussing today. It's in my opinion that there is no reason to have police officers and firefighters both rescuing people from auto accidents, from under collapsed buildings or hanging window washing equipment on the outside of a building.

There's one good reason why virtually no other city in this country does it that way, it makes no logical sense. It wastes limited financial resources, defies every management principal, and is just plain dangerous.

The recent expansion of the NYPD into the field of hazardous materials response makes this wasteful duplication overlap even larger.²⁰⁶

There were no outside experts who testified in defense of CIMS. As mentioned earlier, the council did reach out to numerous experts in emergency preparedness around the country in search of some who could testify in support of CIMS. In addition, the council asked the mayor's office to put them in touch with any third parties that were consulted in its development. There were none.

D. CONCLUSIONS ABOUT CIMS

When looking back at the historic rivalry between the NYPD and FDNY and the underlying cause of it, duplication of effort, it is plain to see that parochial interests and political considerations have unfortunately been placed ahead of sound and cost-effective emergency management practices in NYC for decades. The recent decision to circumvent NIMS and its core guiding principal of a Unified Command structure is indicative of the manner in which politics outweighs common sense and established best practices in the City. The initial resistance to even accepting an incident command system in the first place and then the timing and process used to virtually eliminate any outside objective critique of CIMS both prior to and after its implementation clearly shows its lack of compliance with the *National Incident Management System*, in spirit, if not in word.

The question going forward then is what can be done to transform the mindset of the NYPD and FDNY and end the decades of institutional rivalry that has squandered scarce resources and led to a lack of collaborative capacity as each agency puts its own

²⁰⁶ *Transcript of the Minutes of the Committee on Public Safety (held jointly with) Committee on Fire and Criminal Justice Services, 232-233.*

parochial requirements ahead of the best interests of the City. To answer that question, a review of the GNA and the historical context that led to it is presented. In addition, parallels between conditions that existed within the DoD prior to its enactment and the current situation in NYC are described. Finally, a review of the successes and failures in meeting its objectives are discussed.

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VI. THE GOLDWATER-NICHOLS ACT: AN ANALYSIS

In response to a series of perceived military failures including the Viet Nam War, the failed attempt to rescue the American hostages in Iran, the embassy bombing in Beirut, and the interoperability problems that occurred during the invasion of Grenada, Congress began a series of hearings and investigations over a four-year period to analyze what could be done to improve military coordination, preparedness, and operations.²⁰⁷ Despite intense resistance from the Department of Defense (DoD), this examination resulted in passage of the Goldwater-Nichols Department of Defense Reorganization Act of 1986.²⁰⁸

This legislation was the most comprehensive reorganization of the Department of Defense since the National Security Act of 1947. It is largely credited with transforming the culture of the military from service-specific to “joint” and has created a paradigm shift in the doctrine of the DoD. Many observers attribute the overwhelming military successes in Panama, the first Gulf War, Bosnia, Kosovo, Afghanistan, and early stages of Operation Iraqi Freedom to the changes brought about by the GNA. These campaigns stand in sharp contrast to the failures noted above that provided the impetus for the GNA.²⁰⁹

A. THE NEED FOR CHANGE

As was discussed earlier, understanding the historical context of the rivalry between the NYPD and FDNY and the events, politics, and decisions that have led to the current situation in NYC is essential to understanding the problems inherent in that system and necessity for reform. Similarly, understanding the pre-GNA structure of the DoD and its inherent difficulties is required to appreciate the need for and implications of that act.

²⁰⁷ Senate Committee on Armed Services, *Defense Organization: The Need for Change*, 7; Murdock, et al., *Beyond Goldwater-Nichols, Phase 1 Report*, 12; Chiarelli, *Beyond Goldwater-Nichols*, 71.

²⁰⁸ Goldwater and Nichols, *Goldwater Nichols Department of Defense Reorganization Act of 1986*.

²⁰⁹ Murdock, et al., *Beyond Goldwater-Nichols, Phase 1 Report*, 12-14.

For those unfamiliar with the command structure of the DoD, the diagram in Figure 2 and a brief description of the responsibilities of each position will prove useful to understanding the significance of the changes enacted by the GNA:

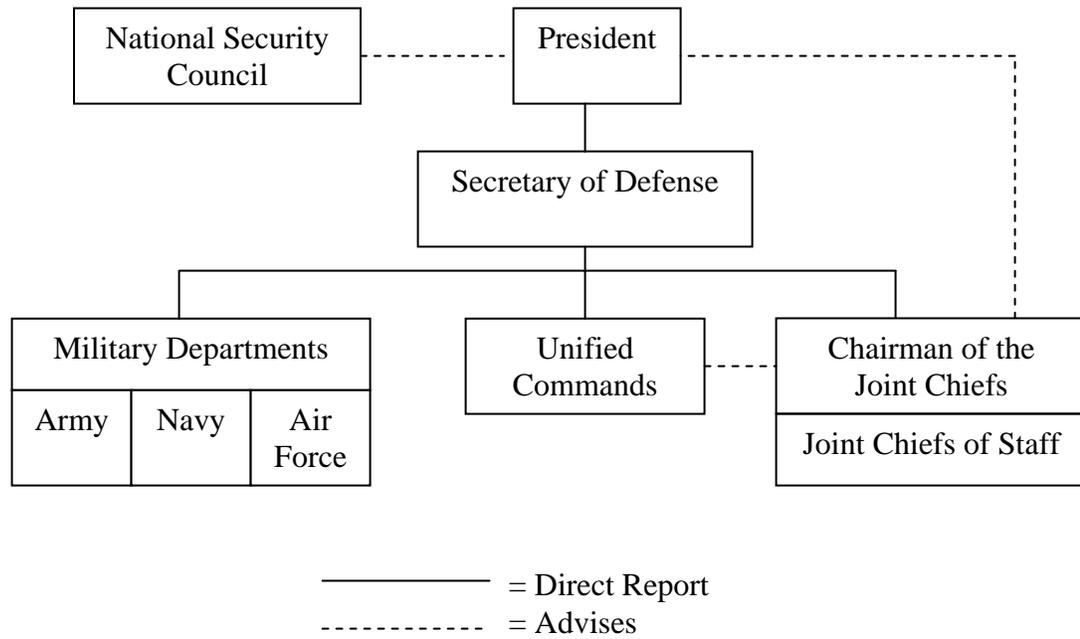


Figure 2. Macro Organizational Chart of the Department of Defense (post GNA)

- **President**—Commander-in-Chief of the Armed Forces
- **Secretary of Defense (SecDef)**—The principal *civilian* advisor to the President with authority and control over the entire DoD.
- **Military Departments**—The individual branches of the military responsible for training and equipping the members of those services. (Note: the United States Marine Corps falls under the Department of the Navy)
- **Unified Commands**—These are the Combatant Commanders who have responsibility for carrying out missions and conducting operations in accordance with their assigned roles. There are currently nine (soon to be ten) Combatant Commands that have either regional (i.e., geographically defined) or functional areas of responsibility throughout the world.

- **Joint Chiefs of Staff (JCS)**—The top uniformed officer in each branch of Service (Army, Marines, Navy, and Air Force) is referred to as a Service Chief. Together, they and their support staff make up the JCS. They are responsible for long-term strategic planning initiatives and coordinating the respective missions of their Service with their counterparts. It is important to note that while they are members of the *Joint Chiefs*, they also act as advocates for the priorities of their respective Services.
- **Chairman of the Joint Chiefs of Staff (CJCS or “Chairman”)**—The principal *military* advisor to the President. Although a member of one of the military services (the position alternates between the services), he does *not* advocate for his branch while in this position. He receives the differing opinions of the members of the JCS and the Combatant Commanders and then advises the SecDef and President based upon that information.
- **National Security Council (NSC)**—The President's principal forum for considering national security and foreign policy matters with his senior advisors and cabinet officials. Its function is to advise and assist the President on national security and foreign policies. The Council also serves as the President's principal arm for coordinating these policies among various government agencies.

1. History

The Joint Chiefs of Staff were informally established by Franklin D. Roosevelt in 1942 during the early days of World War II in an effort to organize the structure of the armed forces for that conflict. It became institutionalized by the National Security Act of 1947 to serve as an advisory committee to the President and Secretary of Defense. At the time Congress insisted that the chiefs, although members of the JCS, retain their responsibilities for organizing, training, and equipping their individual services. This decision set up a dual-hatted role for the service chiefs where, on the one hand, they were responsible for advocating for their service, and on the other, were responsible for

advising the President and SecDef on what was in the best interest of the defense establishment as a whole. This role has been criticized by both civilian and military reformers ever since.²¹⁰

Powerful military forces, fearful that integration of the services would allow another branch to dominate the military, were behind Congress' decision to oppose unifying the services. The result was a loose confederation of large, rigid service bureaucracies, with a Secretary of Defense who was powerless against them. Amendments were added to the act in 1949, 1953, and in 1958 which strengthened the SecDef's authority; however, they did little to alter the relative influence of the JCS and the services. This lack of integration was highlighted during the Viet Nam War as each of the services attempted to carve out a large mission for itself and agreed only to limited measures for a coordinated effort.²¹¹

Motivated by this and other military failures noted above, and by the frustration he felt with the organizational structure of the JCS, General David C. Jones, USAF, the Chairman of the Joint Chiefs of Staff, attempted in 1981 to conduct an internal reorganization of the joint system. After meeting substantial resistance from the Pentagon, he began to speak out publicly. On February 3, 1982, five months *before* he was to retire, he went before a closed session of the House Armed Services Committee and said, essentially, "The system is broken. I have tried to reform it from inside, but I cannot. Congress is going to have to mandate necessary reforms."²¹²

The following month he wrote an article entitled "Why the Joint Chiefs of Staff Must Change"²¹³ for *Armed Forces Journal International* in which he argued for reforms.

²¹⁰ Chiarelli, *Beyond Goldwater-Nichols*, 71-72; David C. Jones, "Past Organizational Problems," *Joint Forces Quarterly*, no. 13 (Autumn, 1996), 27, http://www.dtic.mil/doctrine/jel/jfq_pubs/0713.pdf (accessed June 26, 2006). United States Congress. Senate. Committee on Armed Services, *Defense Organization: The Need for Change*, 6; Locher, James R., III, "Taking Stock of Goldwater-Nichols," *Joint Forces Quarterly* (Autumn 1996), 11.

²¹¹ Jones, *Past Organizational Problems*, 25.

²¹² James R. Locher III, "Has it Worked? The Goldwater-Nichols Reorganization Act," *Naval War College Review* 54, no. 4 (Autumn 2001): 101.

²¹³ David C. Jones, "Why the Joint Chiefs of Staff must Change," *Armed Forces Journal International* (March 1982), 64.

In November of that year, Jones published an article in *New York Times Magazine* entitled “What’s Wrong with Our Defense Establishment”²¹⁴ that outlined problems in the way the DoD was organized.²¹⁵

A month after Jones’ first article, he was joined in calling for reorganization by Army Chief of Staff, General Edward Meyer. Meyer embraced Jones’ recommendations and went a step further by advocating the abolishment of the JCS, replacing it with a National Military Advisory Council (NMAC) made up of distinguished active flag and general officers who were serving on terminal assignments or who had retired. The rationale was that these members would not be dependent on, and would never return to, their respective services. He believed this would eliminate the inherent conflict of interest caused by the dual-hatted role of advocate for one’s branch of the service and member of the *Joint Chiefs of Staff*.²¹⁶ To date, however, the service chiefs still wear both hats.

Due in part to the issues raised by Generals Jones and Meyer, the House of Representatives began to hold hearings on defense reorganization in 1982. This began a process that lasted several years culminating with a staff report published in late 1985 to the U.S. Senate Committee on Armed Services entitled “Defense Organization: The Need for Change”.²¹⁷ This report, commonly referred to as “The Locher Report” for the study director who oversaw this inquiry, James R. Locher III, became the basis for the Goldwater-Nichols Act.

2. The Locher Report

The report began by stating that it was critical of the organization and decision-making procedures of the DoD and of Congress. It blamed the complexity of the DoD, rather than a lack of attention to or examination of the problems identified, for frustrating

²¹⁴ Jones, *What's Wrong with our Defense*, 38.

²¹⁵ Jones, *Past Organizational Problems*, 23; Chiarelli, *Beyond Goldwater-Nichols*, 71.

²¹⁶ *Ibid.*, 71-72.

²¹⁷ Senate Committee on Armed Services, *Defense Organization: The Need for Change*.

previous attempts at reform. It then went on to identify 16 problem areas that were responsible for failing to rectify the gap between the structural arrangements and the organizational needs of the DoD.

The 16 problems identified were: Limited Mission Integration at DoD's Policymaking Level, Imbalance Between Service and Joint Interests, Imbalance Between Modernization and Readiness, Inter-Service Logrolling, Inadequate Joint Advice, Failure to Adequately Implement the Concept of Unified Command, Unnecessary Staff Layers and Duplication of Effort in the Top Management Headquarters of the Military Departments, Predominance of Program Budgeting, Lack of Clarity of Strategic Goals, Insufficient Mechanisms for Change, Inadequate Feedback, Inadequate Quality of Political Appointments and Joint Duty Military Personnel, Failure to Clarify the Desired Division of Work, Excessive Spans of Control, Insufficient Power and Influence of the Secretary of Defense, and Inconsistent and Contradictory Pattern of Congressional Oversight.²¹⁸

In addition, this report made 91 specific recommendations to solve the problems that were identified above.²¹⁹ Where applicable, some of those suggestions have been incorporated into the recommendations, outlined in the next chapter, for resolving NYC's interagency coordination problems.

B. PARALLELS BETWEEN PROBLEMS IDENTIFIED IN THE LOCHER REPORT AND THE CURRENT SITUATION IN NYC

The table below contains a generic restatement of the 16 problems noted above and rates their applicability to NYC's current situation. Where there are parallels, each problem identified in the Locher Report is detailed below, and the parallel situation in NYC is described. Following each problem statement title, applicability to NYC is scored on a scale of one to five with the following significance for each value assigned: 1=Not Applicable; 2=Somewhat Applicable; 3=Applicable; 4=Very Applicable; 5=Extremely Applicable.

²¹⁸ Senate Committee on Armed Services, *Defense Organization: The Need for Change*, 1-11.

²¹⁹ *Ibid.*, 11.

Table 5. Applicability of Problems Noted in the Locher Report to NYC

Problem Number	Problem Description	Applicability to NYC
1	Limited Mission Integration at the Policymaking Level	3
2	Imbalance Between Service and Joint Interests	5
3	Imbalance Between Modernization and Readiness	1
4	Inter-Service Logrolling	2
5	Inadequate Joint Advice	1
6	Failure to Adequately Implement the Concept of Unified Command	2
7	Unnecessary Staff Layers and Duplication of Effort in the Top Management Headquarters of the Military Departments	1
8	Predominance of Program Budgeting	1
9	Lack of Clarity of Strategic Goals	2
10	Insufficient Mechanisms for Change	4
11	Inadequate Feedback	5
12	Inadequate Quality of Political Appointees and Joint Duty Military Personnel	3
13	Failure to Clarify the Desired Division of Work	5
14	Excessive Spans of Control	1
15	Insufficient Power and Influence of the Secretary of Defense	5
16	Inconsistent and Contradictory Pattern of Congressional Oversight ²²⁰	2

Limited Mission Integration at the Policymaking Level – 3

The report criticizes the DoD for excessively focusing on functional areas, inhibiting integration of capabilities along mission lines. It notes that material inputs, rather than mission outputs are emphasized and goes on to say “Service interests rather than strategic needs play the dominant role in shaping program decisions.” It also states that “insufficient mission integration at the policymaking level would lead to critical gaps

²²⁰ Senate Committee on Armed Services, *Defense Organization: The Need for Change*, 3-11.

in warfighting capabilities, wasted resources through unwarranted duplication, interoperability problems, unrealistic plans, inconsistent doctrine, inadequate joint training, and ineffective fighting forces.”²²¹

The parallels to NYC are that the interests of the individual agencies are placed ahead of any grand strategic plan the City may have. Particularly, building up and replicating the capabilities of the individual agencies not only wastes resources, but creates an environment where parallel, rather than integrated, operations are conducted. Due to inadequate joint training and inconsistent doctrine (CIMS), gaps in the City’s ability to effectively coordinate its response to the next major disaster will emerge.

Imbalance between Service and Joint Interests – 5

The Locher Report is very critical of the excessive power and influence that the military departments and services wield. It states:

...the problem of undue service influence arises principally from the weaknesses of the organizations that are responsible for joint military preparation and planning. This overwhelming influence of the military departments works at cross-purposes to efforts to integrate [the military]...Correcting the imbalance between service and joint interests will require the strengthening of the authority, stature, and support of joint organizations....²²²

It also notes, however, that simply strengthening the joint organizations will not be enough to correct this imbalance between these competing interests:

The problem is more deep-seated; it involves the basic attitudes and orientations of the professional officer corps. As long as the vast majority of military officers at all levels gives highest priority to the interests of their service or branch while losing sight of broader and more important national security needs – and believes that their behavior is correct – the predominance of Service influence will remain a problem. Whatever changes are made at the top of the DoD organization, powerful resistance to a more unified outlook will continue to be the basic orientation of military officers deeply immersed in the culture of their services. This dimension of the problem will require changes in the system of military education, training, and assignments to produce officers with a heightened

²²¹ Senate Committee on Armed Services, *Defense Organization: The Need for Change*, 3.

²²² *Ibid.*, 3-4.

awareness and greater commitment to DoD-wide requirements, a genuine multi-service perspective, and an improved understanding of other services.²²³

The problem of Service influence has more of a direct correlation to NYC's current situation than any other. In fact, the word "service" can be substituted with "agency" to see the parallels. The "joint interests" responsible for training and planning could similarly be substituted with "OEM". What has happened over the past few years is that OEM's effectiveness has been eroded as its authority has been largely been usurped by the NYPD. By any standard OEM is currently only a shadow of its former self.

The report also correctly notes that nothing will change as long as the officers' first allegiance is to their respective organization *and* that they believe that this behavior is correct. That is identical to the attitudes of members of both the NYPD and FDNY and has resulted in a lack of attention and commitment to the broader and more important needs of the City as a whole.

Imbalance between Modernization and Readiness – 1

This criticism focused on the emphasis of the DoD to plan for future capabilities at the expense of current needs.²²⁴ It has no direct applicability to NYC.

Inter-Service Logrolling – 2

The term "logrolling" refers to the practice of exchanging political support for someone else's program in order to gain support for one's own. The report was very critical of military leaders who engaged in this practice and avoided central issues of concern to them in order to provide a united front to the Secretary of Defense. This had the effect of politically weakening the SecDef and denied the opportunity for effective decision-making.²²⁵

This practice does not have much of a direct parallel in NYC, however, the continued "united front" of denying that any interagency rivalry exists eliminates the opportunity to discuss options to resolve the situation and improve coordination and cooperation.

²²³ Senate Committee on Armed Services, *Defense Organization: The Need for Change*, 3.

²²⁴ *Ibid.*, 4-5.

²²⁵ *Ibid.*, 5.

Inadequate Joint Advice – 1

This portion of the report dealt with the manner in which the advice of the JCS was often disregarded for a number of reasons, most notably the inherent conflict of interest resulting from the “dual-hatted” role the Service chiefs played. The report notes that the inability of the chiefs to subordinate the interests of their parent Services to the larger interests of national defense resulted in “weak JCS advice that simply reflects what ever level of compromise is necessary to achieve the four Services’ unanimous agreement.”²²⁶

Since there is currently no such organization that parallels the JCS, this problem of weak joint advice does not occur in NYC. However, in formulating recommendations for the City, the issue of dual-hatting will be addressed.

Failure to Adequately Implement the Concept of Unified Command – 2

Unified Command in this case has a different meaning for the military than it does in an incident command structure for first responders. Here the report criticizes the fact that the unified commanders (i.e., the combatant commanders) only had weak authority over the individual service components that made up their command. This resulted in commands that remained “loose confederations of single-service forces” that were unable to provide effective unified action and that the “unification” of the command and the forces were “more cosmetic than substantive.”²²⁷

Because NYC does not have the equivalent of a combatant commander with overall responsibility for an entire regional or functional area, the applicability of this flaw is minimal. However, the comment regarding the loose confederations of single-service forces and the observation that the unification is mostly cosmetic does parallel the current situation in the City.

²²⁶ Senate Committee on Armed Services, *Defense Organization: The Need for Change*, 5-6.

²²⁷ *Ibid.*, 6.

Unnecessary Staff Layers and Duplication of Effort in the Top Management Headquarters of the Military Departments – 1

The report found fault with the fact that the services maintained two (or in the case of the Navy, three) separate headquarters staffs: the Secretariat and the military headquarters staff.²²⁸ The resulting duplication and unnecessary level of supervision led to problems that are not applicable to NYC since no such structure exists there.

Predominance of Program Budgeting – 1

The report also criticized the amount of effort the DoD put into programming and budgeting phases of resource allocation leading to insufficient attention being given to strategic planning and operational matters. NYC does not suffer from a similar problem.

Lack of Clarity of Strategic Goals – 2

The Locher Report concludes that inattention to strategic planning led to many problems in the DoD including a lack of clarity of its strategic goals calling them “vague and ambiguous.” It explains that clarifying these goals can enhance unity and integration and recommends establishing and maintaining a well-designed, highly interactive strategic planning process.²²⁹

In NYC, OEM is officially the city’s “planning agency” with regard to emergencies and as such spends a great deal of time developing plans to deal with them. However, the NYPD and FDNY also develop their own plans and tactics for dealing with what they perceive as their respective missions. Although interagency exercises are held to comply with federal mandates, very few of the over 50,000 members in these two agencies actually participate in them. Therefore, if the City does have clear strategic goals for preparedness, they are not well known to most.

Insufficient Mechanisms for Change – 4

The report identifies four systematic problems that impeded the U.S. Military establishment from making needed changes: First, bureaucratic agreements that had been worked out among the Services were “off-limits” for discussion, even when serious

²²⁸ Senate Committee on Armed Services, *Defense Organization: The Need for Change*, 7.

²²⁹ *Ibid.*, 7-8.

deficiencies were identified. Second was the predominant influence of the services, especially when compared to that of joint organizations. Third was the issue of inter-service logrolling identified earlier. And fourth was the absolute service control over promotions and assignments of all officers, even those in joint billets. It goes on to state that in spite of substantial evidence of poor performance, the DoD expended a lot of its energies defending the status quo.²³⁰

Similarly, NYC spends a good deal of effort defending its decisions regarding homeland security measures. Statements to the media and testimony before the 9/11 Commission, the city council, and congressional committees who are sometimes critical of NYC's plans and expenditures, often focus on how NYC is "different" than the rest of the country and how funding should just be provided to NYC, but without restrictions on how the City uses the money.

In addition, most of the impediments to change identified in the report are also present in New York. CIMS is an example of a bureaucratic agreement that is off-limits for discussion despite the flaws that were identified in the city council hearings. Likewise, the predominant influence of, and loyalty to, the individual agencies, rather than to the City overall, mirrors the influence of the Services as compared to joint organizations. And most importantly, the control the individual agencies have over promotions and assignments of members, even those detailed to other agencies such as OEM, guarantees that their actions and their loyalties are controlled by their home agencies.

Inadequate Feedback – 5

The report also criticizes the DoD for not establishing a tradition of comprehensive, critical evaluations of its performance and for not having a useful mechanism in place to provide feedback on many activities. It states, "Effective management control is not possible without useful and timely feedback on actual operations and implementation of plans." It further notes that this lack of feedback "also precludes learning important lessons from poor organizational performance. Past

²³⁰ Senate Committee on Armed Services, *Defense Organization: The Need for Change*, 8.

mistakes...do not receive the critical review that would prevent them from recurring... [the] lessons go unlearned and the mistakes are repeated.”²³¹

This problem is virtually identical to the AAR process in NYC discussed in Chapter V. Since a critical review that identified shortcomings with CIMS or problems involving interagency operations would provide an impetus for change to the current system, it is likely that the absence of meaningful feedback is intentional. The fact that a copy of the AAR for the Trifecta exercise, as scripted as it was, has still not been made available a full year and counting since the exercise was held is indicative of the administration’s desire to maintain the status quo.

Inadequate Quality of Political Appointees and Joint Duty Military Personnel – 3

In this case the report is referring to political appointees who are problematic because of their relative inexperience and high turnover rates. It also notes that the DoD had not given sufficient attention to developing military officers capable of performing joint duty assignments and that there were substantial disincentives to serving in such assignments.²³²

Other studies at the time had also identified the lack of desirability of joint duty assignments as a major impediment to attracting quality officers to fill them. Some of the deterrents noted were: removing officers from the environment in which they sought to advance, having their fitness reports entrusted to officers of other services, a perception that Joint Staff work was unproductive, and a perception that a joint assignment was the “kiss of death” for continued military advancement. Conversely, assignments in the Service Staffs offered much greater possibilities for an officer to be noticed and for career enhancements.²³³

A RAND Corporation study of the background of Goldwater-Nichols concluded that “the military services had little respect for joint service or for assignments outside their individual service organizations. The Services typically sent second-rate officers to

²³¹ Senate Committee on Armed Services, *Defense Organization: The Need for Change*, 8.

²³² *Ibid.*, 8-9.

²³³ Graves and Snider, *Emergence of the Joint Officer*, 56.

such assignments and removed them as quickly as possible. Joint assignments were not desired by military officers, who viewed them as a hindrance in their career progression.”²³⁴

There is a degree of similarity between the problems noted above and the way in which OEM is currently staffed in NYC. That is not to say that there is a lack of quality personnel at OEM. Many of their employees have been there for years and are very competent and motivated in their jobs. However, in the past few years the diminishing authority of OEM has begun to create the perception, both outside and within OEM, that that agency no longer has the influence to effect change that it once had. At the same time there has recently been a great deal of turnover among the staff. While exact figures are not available, some sources within OEM have put the turnover rate at as high as 50 percent every six months, while others have said that the average tenure is approximately two years.²³⁵ Naturally, this has led to a great deal of inexperience in these positions, closely paralleling the pre-Goldwater-Nichols era conditions in joint duty assignments.

Additionally, taking a position at OEM is not seen as a career-enhancing measure, at least from the FDNY’s perspective. Personal experience and discussions with other FDNY officers interested in being detailed to OEM demonstrate that top level chiefs in the FDNY look unfavorably at OEM as a career path. In some cases there was an outright refusal to permit that officer to go. And while civil service testing for promotions prevents this detail from becoming the “kiss of death” for one’s career, it is certainly not seen as a career-enhancing position.

Failure to Clarify the Desired Division of Work – 5

The Locher Report specifically criticizes the DoD’s inability to objectively examine the roles and missions of the Services and to divide the operations and workload accordingly. It states “One of the basic mechanisms for enhancing organizational efficiency is to rationally divide the work among the various structural components. Within DoD, the desired division of work has not been adequately clarified in many

²³⁴ Schank, et al., *Who is Joint? Reevaluating the Joint Duty Assignment List*, 45.

²³⁵ These figures were provided by a current employee at OEM and by a high ranking former employee with contacts in OEM.

instances; in others, the assigned division of work is ignored in practice...The absence of a rational and enforced division of work leads to greater complexity, friction, delay, duplication, and inefficiency.”²³⁶

As discussed earlier, this situation is identical to the current circumstances in NYC where considerable time, effort, and money are spent on duplicating existing capabilities. This situation results in a lack of clarity in the division of labor, and in cases where assignments are spelled out, they are often ignored in practice. Inevitably, rivalries, friction, inefficiency, and waste result.

Excessive Spans of Control – 1

This section of the report identifies the problem of having key managers in positions that have excessive numbers of subordinates reporting to them due to the relatively flat organizational arrangement of the DoD.²³⁷ It is not applicable to NYC, particularly in the NYPD or FDNY where the use of hierarchical organizational structures eliminate this problem.

Insufficient Power and Influence of the Secretary of Defense – 5

As discussed in the “History” section of the GNA, the influence of the services and the JCS combined to weaken the authority of the SecDef despite several amendments to the National Security Act of 1947 designed to strengthen this position. The report determines that the SecDef’s actual power and influence are insufficient to enable him to manage the DoD. It also states that the reason for this is not from a lack of formal authority, but rather from “powerful organizational forces whose vigorous pursuit of their own agendas has substantially weakened the office of Secretary of Defense.”²³⁸

This situation closely parallels NYC where the authority of the Office of Emergency Management has been steadily eroded in the past few years by individual agencies, particularly the NYPD, pursuing their own agendas. Whereas OEM once had the ability to dictate which agency should perform what mission, the current

²³⁶ Senate Committee on Armed Services, *Defense Organization: The Need for Change*, 9.

²³⁷ Ibid.

²³⁸ Ibid., 10.

commissioner has virtually eliminated OEM's response role to act as on-scene interagency coordinator and relegated its function to that of a "planning agency".²³⁹

Inconsistent and Contradictory Pattern of Congressional Oversight – 2

This section of the report criticizes the Congress for failing to help centralize the DoD under the SecDef because it could wield more influence in directing allocation of resources under a decentralized system. It also condemns the Congress for its review procedures which produce an inconsistent and sometimes conflicting oversight process.²⁴⁰

The problem in NYC is not one of inconsistent oversight; it is one of *lack of* oversight. There is no central agency with authority over long-term strategic planning and procurement across agency lines. Instead, each agency determines for itself what its strategic goals and priorities are and submits its investment justifications based on them. There is little coordination between the agencies and a great deal of duplication as a result. Similarly, the city council is powerless to take any action other than holding hearings as they did after CIMS was finalized. This lack of oversight is a primary cause of the inefficiency, waste, duplication, and the rivalry that exists.

C. OBJECTIVES OF GOLDWATER-NICHOLS

Based largely on the problems identified and suggestions made to correct them listed in the Locher Report, Congress declared eight specific objectives intended to transform the DoD from four individually stove-piped services to one cohesive war-fighting organization. Listed below are those objectives and a brief explanation of what was done to accomplish them:

Strengthen Civilian Authority

Goldwater-Nichols sought to reassert civilian control over the DoD by enhancing the power of the Secretary of Defense (SecDef). The report which accompanied the

²³⁹ Dewan and Chen, "Bloomberg Appoints Commissioners to Lead Housing and Emergency Management Agencies," 3.

²⁴⁰ Senate Committee on Armed Services, *Defense Organization: The Need for Change*, 10-11.

legislation stated “The Secretary of Defense has sole and ultimate power within the Department of Defense on any matter on which the secretary chooses to act.”²⁴¹

Improve Military Advice

This legislation also removed the Chairman of the Joint Chiefs of Staff (CJCS) from the operational chain of command and designated him as “the principal military advisor to the President, the National Security Council, and the Secretary of Defense.” This transferred duties to him that had previously been performed by the JCS who were criticized for providing watered-down advice in order to get unanimous consent. It also created the position of vice chairman to assist and gave the chairman full authority over the Joint Staff.²⁴²

Ensure the Combatant Commanders Had Authorities Commensurate with Their Responsibility

This objective resulted in giving the Combatant Commanders (COCOMs) direct responsibility for implementing and directing a campaign plan. They report directly to the Secretary of Defense although in practice they do coordinate with their superiors on the Joint Chiefs of Staff, as illustrated in Figure 2.

Increase Attention to Strategy Formulation and Contingency Planning

Prior to Goldwater-Nichols, the staffs of the individual services were principally involved in crafting operational plans. Since its passage, that responsibility has been shifted to the chairman and the Joint Chiefs of Staff, the Undersecretary for Policy, and the COCOMs.

Achieve a More Efficient Use of Defense Resources

By enhancing the Chairman of the Joint Chiefs of Staff’s role in assessing the programs and budgets of the various services the GNA has allowed the chairman to provide advice to the president and SecDef based on the need to promote a joint perspective in the requirements and acquisition process.

²⁴¹ Murdock, et al., *Beyond Goldwater-Nichols, Phase 1 Report*, 15; Locher, *Taking Stock of Goldwater-Nichols*, 11.

²⁴² Murdock, et al., *Beyond Goldwater-Nichols, Phase 1 Report*, 15; Locher, James R., III, *Taking Stock of Goldwater-Nichols*, 12.

Improve the Management of Joint Officers

To accomplish this, the GNA created new incentives and requirements for military advancement. Foremost among them was the necessity for an officer to have served in a joint billet as a prerequisite for advancement to the staff level of an organization. In addition, it also made specific reforms improving the Professional Military Education System. Together these steps served to advance “jointness” as an operating concept.

Enhance the Effectiveness of Military Operations

Based on the success of the military campaigns in the two decades since Goldwater-Nichols became law, the overwhelming consensus is that this objective has been accomplished.

Improve the Management and Administration of the Department of Defense

To accomplish this, Goldwater-Nichols reduced the number of officials reporting directly to the SecDef. It also created mechanisms to better supervise the defense agencies.

D. SUCCESSES AND FAILURES OF GOLDWATER-NICHOLS

To determine the success of the Goldwater-Nichols Act in meeting the objectives set out for it by Congress, a critical look must be taken at the results. Two independent and highly qualified sources have done so. The first is James R. Locher III (the director of the Senate Committee on Armed Services that published “Defense Organization: The Need for Change”²⁴³ in 1985) who wrote an article for *Joint Forces Quarterly* on the ten-year anniversary of the act entitled “Taking Stock of Goldwater-Nichols”.²⁴⁴ The second is the Center for Strategic and International Studies (CSIS) who published *Beyond Goldwater-Nichols: Defense Reform for a New Strategic Era: Phase I Report*²⁴⁵ in 2004. Below are the conclusions they reached regarding the success of the act in meeting its objectives.

²⁴³ Senate Committee on Armed Services, *Defense Organization: The Need for Change*.

²⁴⁴ Locher, *Taking Stock of Goldwater-Nichols*, 9-17.

²⁴⁵ Murdock, et al., *Beyond Goldwater-Nichols, Phase I Report*.

Both assessments agree that this legislation has succeeded in strengthening civilian authority. Clearly the SecDef's power and overall control over the DoD has been enhanced. Some have claimed that by giving the chairman a more influential role it has somehow weakened civilian authority, however, there is very little evidence to support this assertion and those who make it are known to favor having a greater degree of service influence.²⁴⁶

There is also widespread agreement that the quality of military advice has greatly improved since Goldwater-Nichols. The act clearly designated the chairman as the principal military advisor, with the service chiefs relegated to roles as "advisors". Former Secretary of Defense Dick Cheney stated that this change resulted in advice that "was a significant improvement" over the "lowest common denominator of whatever the chiefs collectively could agree upon."²⁴⁷ On the negative side, though, there is a case to be made that having only one military voice in the situation room of the White House does not allow room for dissenting perspectives. And although Goldwater-Nichols did not envision that the President and SecDef would no longer seek military advice from the service chiefs, that has been the predominant practice.²⁴⁸

The objective of ensuring that the COCOMs have authority commensurate with their responsibility has also been met. Locher states that "Opinion is universal that this objective of Goldwater-Nichols has been achieved."²⁴⁹ Likewise, the CSIS report explains that in theory, the COCOMs now directly report to the SecDef with little interference from military or civilian supervisors in Washington. In practice, however, they are frequently asked to submit proposed campaign plans, functional plans, and concept plans for review. The report concludes that this balance between discretion and oversight is "probably right."²⁵⁰

There is also agreement that the quality of strategy formulation and contingency planning has greatly improved. Locher concludes that "in every case their value has been

²⁴⁶ Ibid.; Locher, *Taking Stock of Goldwater-Nichols*, 11.

²⁴⁷ Locher, *Taking Stock of Goldwater-Nichols*, 12.

²⁴⁸ Murdock, et al., *Beyond Goldwater-Nichols, Phase 1 Report*, 15-16.

²⁴⁹ Locher, *Taking Stock of Goldwater-Nichols*, 12.

²⁵⁰ Murdock, et al., *Beyond Goldwater-Nichols, Phase 1 Report*, 16.

superior to their pre-Goldwater-Nichols predecessors.”²⁵¹ Likewise, CSIS states that “these new institutional arrangements have proven much superior to the prior system”, although it is somewhat critical of the grand strategy plans produced for not being specific enough to make trade-offs among competing resource demands.²⁵²

Regarding the goal of achieving a more efficient use of defense resources, both assessments agree that while more attention has been given to promoting a joint perspective in the requirements and acquisition process, the act has not lived up to its potential. They conclude that the parochial interests of the individual Services continue to be decisive over joint perspectives when it comes to setting procurement and requirement priorities. The act does give the chairman the power to advise the SecDef on priorities for combatant command requirements and to submit an alternative program and budget recommendations if necessary, but in practice, chairmen have seldom provided definitive resource advice to the SecDef.²⁵³

Both evaluations also agree that the objective of improving the quality and management of joint officers has been accomplished. According to Locher, the “incentives, requirements, and standards prescribed by the act have notably improved the performance of those selected to serve in joint duty assignments.” He goes on to say that “these positive results have occurred despite indifferent implementation of the joint officer provisions by OSD and the Joint Staff.”²⁵⁴ The CSIS report agrees that the steps spelled out in the act serve to advance “jointness” as an operating concept, but that the requirements and assignments continue to have an arbitrary dimension and recommends a review of how billets are selected for joint status.²⁵⁵

Perhaps the most important objective of Goldwater-Nichols was to improve the operational effectiveness of the military overall. All of the other objectives and reforms were ultimately designed to aid in accomplishing this and here the record appears to indicate a decisive success. The operational failures evident in Viet Nam, the seizure of

²⁵¹ Locher, *Taking Stock of Goldwater-Nichols*, 14.

²⁵² Murdock, et al., *Beyond Goldwater-Nichols, Phase I Report*, 16.

²⁵³ Ibid.; Locher, *Taking Stock of Goldwater-Nichols*, 14.

²⁵⁴ Locher, *Taking Stock of Goldwater-Nichols*, 14-15.

²⁵⁵ Murdock, et al., *Beyond Goldwater-Nichols, Phase I Report*, 17.

the Pueblo, the Iranian hostage rescue mission, and the incursion into Grenada which gave rise to the Goldwater-Nichols Act were followed with overwhelmingly successful military campaigns in Panama, the first Gulf War, Bosnia, Kosovo, Afghanistan, and the war in Iraq. And while technological advances and other forces coincided with defense reform to provide the DoD with the decisive victories noted, it is certain that the transformation brought about by the GNA played an integral part in these successes.²⁵⁶

The final explicit objective of the GNA was to improve the management and administration of the DoD. The analyses studied indicate that this objective met with the least success of them all but still managed to make some improvements. Goldwater-Nichols sought to address specific structural problems that were hindering sound management by creating mechanisms to better supervise the defense agencies. It was successful in reducing the number of officials reporting directly to the SecDef and eliminated some of the unnecessary staff layers thereby reducing the headquarters staffs by some 15 percent. However, both examinations found that problems remain. Locher contends that the defense bureaucracy remains too large and that duplication of effort still exists. CSIS found that the OSD is still too involved in managing programs rather than developing and overseeing policy and that the GNA did not adequately clarify the relationships between the service chiefs and the Office of the Secretary of Defense (OSD).²⁵⁷

The overall consensus of both studies is that despite not completely meeting all of its specified objectives, the GNA has succeeded in accomplishing most of them and has made progress in the others. The tremendously successful military campaigns that have taken place since its enactment support the assertion that these reforms were needed and were successfully implemented. As the Locher article concludes, "...a significant body of evidence and numerous public assertions by senior defense officials and military officers argue that the act enormously contributed to the positive outcomes of recent years."²⁵⁸

²⁵⁶ Ibid.; Locher, *Taking Stock of Goldwater-Nichols*, 15.

²⁵⁷ Murdock, et al., *Beyond Goldwater-Nichols, Phase 1 Report*, 17; Locher, *Taking Stock of Goldwater-Nichols*, 16.

²⁵⁸ Locher, *Taking Stock of Goldwater-Nichols*, 16.

E. PERSONNEL PROVISIONS OF GOLDWATER-NICHOLS

For over four decades the organizational problems addressed by Goldwater-Nichols had existed and been studied. But the same powerful military forces that prevented Congress from unifying the services after World War II also prevented any meaningful reforms to the structure of the DoD. In addition, Congress also tried to limit the authority of the SecDef in the past because of its links with the services and the industries that served them. These ties worked to the benefit of members of Congress in local politics. So, it speaks volumes about how intolerable the system had gotten that Congress collectively acknowledged that it would have to give up prerogatives in the defense area and take the steps necessary to finally address these issues.

The number one problem plaguing the DoD prior to Goldwater-Nichols was the imbalance between service and joint interests in which the services absolutely dominated. A special study group of retired officers put together by General Jones wrote that while a “certain amount of service independence is healthy and desirable...the balance now favors the parochial interests of the services too much, and the larger needs of the nation’s defense too little.” In order to strike a balance between the joint and service interests and break the stranglehold the services had on the loyalties of its members, Congress included elaborate provisions to improve the quality of officers assigned to the Joint Staff and the staffs of the Combatant Commanders.²⁵⁹

In an article entitled “Has it Worked? The Goldwater-Nichols Reorganization Act” written in 2001, Locher points out that “the services saw that if they retained absolute control of promotions and assignments, Congress could pass all the laws it wanted—not much was going to change in the Department of Defense.”²⁶⁰ To remedy this; improve the quality of officers in joint-duty positions; and instill a “joint culture” (i.e., attitudes, values, and beliefs about joint service) among the officer corps, Congress took steps to reward officers who accepted and performed well in billets outside of their service.²⁶¹ Title IV, the Joint Officer Personnel Policy, of the GNA is the section that deals with these personnel provisions. This section did three things:

²⁵⁹ Locher, *Has it Worked? The Goldwater-Nichols Reorganization Act*, 103-106.

²⁶⁰ *Ibid.*, 106.

²⁶¹ Schank, et al., *Who is Joint? Reevaluating the Joint Duty Assignment List*, 46.

First, it required the SecDef to define “joint duty assignment” and limit it to assignments where an officer “gains a significant experience in joint matters.” It also specifically excluded assignments within an officer’s own military department. Second, it created a new category of officers known as Joint Specialty Officers (JSO’s). To become a JSO an officer must complete a two-phase program at a Joint Professional Military Education (JPME) school and serve a full tour in a Joint Duty Assignment. The law also stipulated that a certain number of positions had to be filled by JSO’s. Third, and perhaps most importantly, the law specified that a joint duty assignment was a prerequisite for promotion to general or flag officer, although it did allow for waivers initially and a phase-in period.²⁶²

The act also contained certain “protections” to ensure that “quality” officers would be sent to these joint duty assignments and that when they completed these assignments they would not be penalized in any way by their services. To that end the act mandated that officers designated as JSO’s should be promoted at a rate at least as high as the average of comparable officers throughout their Service and at least as high as those who had served on their Service headquarters staff. In addition, it required the SecDef to provide a semi-annual report to Congress on these promotion rates.²⁶³

In addition to creating the category of JSO’s and taking steps to make joint duty positions coveted ones, Title IV also revamped the content of military science as it applies to the education of JSO’s by focusing on emerging joint doctrine. It did this by making the chairman, rather than the JCS, the principal advisor on all military issues including PME; by defining “joint matters” for education as well as other purposes; by mandating that “rigorous standards” at JPME institutions be maintained; and by requiring that all newly promoted flag and general officers attend a Capstone Course designed specifically to prepare them to work with all the services.

By linking assignments, education, and promotion potential to joint duty, the law had dramatic effects on service policies related to professional development. This was especially true regarding the widely held belief that officers did not serve outside their

²⁶² Schank, et al., *Who is Joint? Reevaluating the Joint Duty Assignment List*, 46-48.

²⁶³ *Ibid.*, 48-49.

service for fear of falling behind their contemporaries who remained in the service's mainstream. What Goldwater-Nichols has done through the personnel provisions contained in Title IV, is to change the attitudes of our military leaders regarding the importance and desirability of joint duty assignments. This has given rise to the emergence of a new culture among the leaders of the armed forces, one that is truly "joint".²⁶⁴

F. CRITICISMS OF GOLDWATER-NICHOLS

While it is almost universally accepted that overall, the effects that the GNA had on military operations and the structure of the DoD were positive ones, some criticisms have been raised regarding its unintended consequences. Among them are:

1. Institutional Costs

Assigning promising officers to joint duty assignments that would otherwise be given positions deemed important within their own service in order to comply with the requirements of Goldwater-Nichols is not without costs. While there has been a marked increase in quality of officers serving in joint assignments, there has also been a corresponding decrease in the quality of service headquarters and operational staffs. In addition, issues have arisen over the amount of time these officers spend outside of their services, not only in the joint duty assignment, but also attending JPME. In many cases this can add up to almost 20 percent of an officer's professional career.²⁶⁵

However, these costs must be weighed against the benefits derived from them. Better educated and more well-rounded officers have become the leaders of our military institutions over the past 20 years setting the stage for the joint culture that has emerged. The unparalleled military successes that have resulted from joint warfare leave little doubt that integration of the services has been a decidedly successful endeavor. On balance, the record indicates that the sacrifices that the individual services have had to endure are more than offset by the benefits the nation has realized from these provisions.

²⁶⁴ Graves and Snider, *Emergence of the Joint Officer*, 53-54.

²⁶⁵ *Ibid.*, 54.

2. Interservice Rivalry is not Inherently Bad

There is a theory being advanced by some that deviates from the generally accepted wisdom that interservice rivalry is bad. The logic is that it can be channeled as a motivating force to improve the proficiency and capabilities of the individual services. Mayor Giuliani alluded to this when he testified before the 9/11 Commission regarding the NYPD-FDNY rivalry and how each agency feels they can perform certain emergency operations better than the other, when he said, “You want to retain this tremendous pride [that the agencies have]...At the same time you want to be able to use it correctly.”²⁶⁶

In an article for *Airpower Journal* entitled “The U.S. Military in Transition to Jointness”, Dr. Don M. Snider argues that “...interservice rivalry is not inherently bad. Rather, when seen as the flip side of the post- [GNA] process of increasing jointness, it is a ‘good’ thing.”²⁶⁷

He cites the findings in the final report of DoD’s Commission on Roles and Missions, *Directions for Defense*, to bolster this claim. Snider writes that the commission concludes “it is time to ‘set aside outdated arguments’ about ‘who should do what’ among the U.S. military services and instead, given the joint structure in which America now fights wars, it is time to focus on ‘who needs what’ from the perspective of the unified commander.”²⁶⁸

Snider believes that in identifying the conventional wisdom regarding interservice rivalry as “outdated arguments”, the commission “has taken account of the changed roles” that the services and their commanders now play. He notes that in the 1940’s and 1950’s “roles and missions were bitterly debated”, but now “that is no longer the case”. He goes on to say that “if each service focused...on its unique ‘core competencies’—delivering to the [Combatant Commanders] the best possible set of...capabilities as

²⁶⁶ Transcripts from *Eleventh Public Hearing of the National Commission on Terrorist Attacks upon the United States*, Day Two sess., 45.

²⁶⁷ Don M. Snider, "The U.S. Military in Transition to Jointness," *Airpower Journal* (Fall 1996), 16.

²⁶⁸ *Ibid.*

building blocks for joint forces—the commissioners felt confident in concluding that ‘a conventional criticism of the services, unrestrained parochialism and duplication of programs, is overstated.’”²⁶⁹

This argument, however, is not applicable to the situation in NYC for a number of reasons. The first is that NYC has neither a “joint structure” nor the equivalent of a “unified commander” (i.e., a single person who is responsible for overall strategic and tactical decisions within a geographic or functional area) who will make decisions based on the needs of the incident and the capabilities available, rather than on political or parochial considerations. Another reason is that while the military has resolved its historical disagreements over roles and missions, NYC has not. Most of the public and private disagreements between the NYPD and FDNY center on exactly this issue. Finally, the commission’s confidence that each service would focus on its “core competencies” is a wholly unrealistic expectation in NYC. As was discussed in Chapter V, the list of core competencies is incomplete and has been used as a tool to marginalize the FDNY’s role. In addition, both the NYPD and FDNY regularly train for and operate at incidents outside their CIMS-specified core competencies. While Mr. Giuliani’s comments about maintaining the esprit de corps of the individual agencies as a motivating factor have merit, the context in which they were made was to illustrate the need for a strong OEM to essentially act as a referee.

3. Creates Only One Military Voice

As was discussed in the section on the successes and failures of Goldwater-Nichols, the designation of the Chairman of the Joint Chiefs of Staff as the “principal military advisor” has resulted in the unintended consequence of limiting military advice provided to the President and SecDef. The common practice is for the chairman to listen to the various opinions and assessments of the Joint Chiefs and then provide his

²⁶⁹ Don M. Snider, "The U.S. Military in Transition to Jointness," *Airpower Journal* (Fall 1996), 16-18.

recommendations to the President and SecDef based on them. The argument is that this filtering process does not allow sufficient consideration to be given to dissenting perspectives.²⁷⁰

While this critique may be accurate as it is practiced, it was never the intent of the GNA to limit the advice provided to the President and SecDef. In fact, there is nothing in the law that prevents the President and SecDef from soliciting other opinions. If at any time they felt the advice they were receiving from the chairman was inadequate, they are certainly free to receive advice from the service chiefs as well. In addition, while the JCS have a tendency to build consensus when it comes to long-range strategic planning, the individual combatant commanders have more immediate concerns and provide input as to more urgent needs.

4. Jointness Comes at the Expense of Specialization

Another criticism that has been raised regarding the effects of Goldwater-Nichols is that the expertise the individual services had as they pertained to their core missions has diminished somewhat as additional cross-training and new mission sets were added. The argument is that time which was previously spent training on service-specific roles and missions is now used to focus on joint operations. New procedures and equipment have to be mastered to allow the services to operate together and support each other more effectively. These additional responsibilities inevitably leave less time available to devote to more traditional training.

While there is a case to be made that some reduction in proficiency has resulted due to these reforms, the overall increase in military capabilities that results from the synergistic effects of the Services being able to support each other far outweighs this disadvantage.

G. CONCLUSIONS REGARDING GOLDWATER-NICHOLS

While some unintended consequences have inevitably arisen from the changes brought about by the GNA, the overwhelming consensus is that the act has greatly

²⁷⁰ Murdock, et al., *Beyond Goldwater-Nichols, Phase I Report*, 15-16.

improved the planning and operational capabilities of the U.S. military overall. Although some of the literature takes issue with these consequences and makes recommendations for mitigating their effects, no one advocates returning to the system that was in place prior to its enactment.

A review of the historical circumstances that gave rise to the passage of the GNA demonstrates that there are many significant similarities between the conditions that existed within the DoD prior to Goldwater-Nichols and the current situation that exists in NYC between its first responder agencies, particularly the NYPD and FDNY. With that in mind, the following recommendations, based on the Goldwater-Nichols Department of Defense Reorganization Act of 1986, are made to improve interagency collaboration and cooperation in NYC by creating an environment in which parochial interests are subjugated to the greater needs of the City as a whole and a culture of “jointness” replaces one of rivalry.

VII. A GOLDWATER-NICHOLS SOLUTION FOR NYC

The authors of Goldwater-Nichols realized that service parochialism had become so entrenched in the DoD that substantive structural changes needed to be made if that was to change. The act aimed at reducing the power of the individual services by: 1) Increasing the exposure of officers to a central staff and shifting responsibility for acquisition of major weapons systems to the office of the SecDef; 2) Diminishing control exercised by each service over careers by insisting on specified qualifications for career advancement; and 3) Changing military education by altering service college curricula to emphasize interservice cooperation.²⁷¹ If NYC is to truly put an end to the interagency rivalries that have existed for decades and prevented it from utilizing its capabilities efficiently and to their true potential, similar dramatic changes need to be implemented.

New York City is frequently cited as the most extreme example of interagency rivalry in the nation. Indeed, the phrase “battle of the badges” was coined to describe the very public disputes that arose from this relationship between its police and fire departments. The 9/11 Commission held two days of hearings and conducted hundreds of interviews in an attempt to ascertain the cause of it and the effect it had on operations at the WTC. President Bush even went as far as to mandate adoption of the National Incident Management System as a prerequisite for homeland security funding. His decision to do this was based on the findings of the commission regarding operations at the WTC. NYC’s decision to comply with the letter, but not the spirit, of NIMS has not only ignored the underlying causes of the rivalry, it has inflamed it.

Few would argue that if New York City was to start from scratch in developing an integrated emergency management system that minimized interagency conflict and maximized the effectiveness of its extensive resources, that it would establish the system in place today. As was discussed earlier, this system is a product of decades of interagency rivalry, various protocols and mandates, service parochialism, and political clout that has fostered an atmosphere of resentment and distrust particularly between its first responder agencies. In a post-9/11 world where, in addition to being prepared for

²⁷¹ Cropsey, *The Limits of Jointness*, 73.

everyday emergencies, the City needs to remain vigilant to the constant threat of terrorism in the face of diminishing homeland security funding, it can ill-afford to waste limited resources on unnecessary duplication and inefficiency.

Any proposals put forward to improve the City's ability to manage and coordinate its resources must look beyond the parochial desires of its individual agencies and be based solely on the overarching needs of the City as a whole. Central to maintaining the credibility of such a system is the need for oversight and transparency in the process of how that system is developed and implemented. In addition, it needs to bring about increases in efficiency and foster a collaborative atmosphere where the agencies view each other as mutually dependent partners rather than as independent rivals.

A. RECOMMENDATION 1: OEM SHOULD BECOME THE CITY'S CENTRAL AGENCY FOR PLANNING AND COORDINATING ALL PREVENTION, PREPARATION, RESPONSE AND RECOVERY EFFORTS

Just as the individual services presented the biggest challenge to creating a collaborative environment within the DoD prior to the GNA, the influence of the individual agencies, particularly the NYPD, present the biggest impediment to doing so in NYC. As was noted in the last chapter, this parallel has the strongest correlation to NYC out of all the problems identified in the Locher report. Reiterating what the report says on this issue:

...the problem of undue service influence arises principally from the weaknesses of the organizations that are responsible for joint military preparation and planning. This overwhelming influence of the Military Departments works at cross-purposes to efforts to integrate [the military]...Correcting the imbalance between service and joint interests will require the strengthening of the authority, stature, and support of joint organizations...²⁷²

In the case of NYC, OEM is the agency charged with preparation and planning for emergencies. It is also a "joint organization" in as much as the majority of its staff is made up of members detailed to it from other city agencies. However, individual agencies also develop their own plans and procedures based on their own priorities and

²⁷² Senate Committee on Armed Services, *Defense Organization: The Need for Change*, 3-4.

what they see as their role at various emergencies. This serves to undermine the mission of OEM and their credibility as a coordinating agency. In addition, OEM's lack of authority over any agency (as evidenced by the AAR's that have been held and the commissioner's statements to the city council²⁷³) further weakens its influence.

The reason that the parochialism exhibited by these agencies is such an impediment to interagency cooperation is that there is no system of checks and balances to ensure that resources are used wisely and in the best interest of the mission, rather than the individual agency. When police and fire units arrive on the scene together and both have the capability to manage a particular emergency, both agencies look to their own personnel to accomplish that mission regardless of which agency is better qualified to do so. This is done for reasons of institutional pride and organizational bias as discussed in Chapter II. As a result there is often a great deal of animosity and little coordination between them. The introduction of "core competencies" under CIMS has done little to rectify this situation because of the careful crafting of how they are worded and the failure to address certain situations, such as decontamination of individuals as opposed to groups.

Under Mayor Giuliani's protocol, OEM had the authority to determine which agency would take the lead at various emergencies. In addition to designating OEM as the "on-scene interagency coordinator", the directive stated that when an incident is "so multifaceted that no one agency immediately stands out as the Incident Commander, OEM will assign the role of Incident Commander to an agency as the situation demands".²⁷⁴

Empowering OEM in this manner was a primary reason for its success in being able to coordinate multi-agency responses. However, the comments made by its current commissioner stating that he sees OEM as more of a "planning agency"²⁷⁵; that under

²⁷³ *Transcript of the Minutes of the Committee on Public Safety (held jointly with) Committee on Fire and Criminal Justice Services*, 60, 131.

²⁷⁴ 9/11 Commission, *9/11 Commission Report*, "New York City memo signed by Mayor Giuliani."

²⁷⁵ Dewan and Chen, *Bloomberg Appoints Commissioners to Lead Housing and Emergency Management Agencies*, 3.

CIMS “there is no tie breaker”²⁷⁶; and that he has “no authority over [the police or fire departments]”²⁷⁷ confirm the belief that OEM has been stripped of its role as mediator and that there is no central agency that can act as an honest broker.

In spite of the testimony by the former mayor and both of his former OEM commissioners that a strong and empowered OEM is necessary to effectively coordinate the City’s emergency response agencies,²⁷⁸ the current administration has chosen to bow to the wishes of the NYPD when it argued that OEM should not have the authority to choose which city agency would take the lead role, the authority to resolve interagency disputes, or any operational authority at all.²⁷⁹ This policy has only served to embolden the parochial plans of the NYPD, weaken the Office of Emergency Management, and inflame the rivalry that exists between the NYPD and FDNY.

The primary reason for giving OEM the authority to determine the incident commander, and the most likely reason for the NYPD’s opposition to that policy, is that it allowed the incident to be managed from the perspective of what is the most effective method to resolve the situation at hand, without political or parochial interests entering into the equation. Since OEM does not have any resources of its own with which to handle an emergency, they do not possess the organizational bias that the first responder agencies do. It is dependent on those agencies to accomplish the mission and therefore utilizes them in the most efficient manner possible.

The system of checks and balances is provided by the fact that OEM would coordinate and the individual agencies would perform the assignments with which they were tasked. In much the same way that the framers of the Constitution granted the office of Commander-in-Chief to the President, but not the *function* of commander;²⁸⁰ assigning

²⁷⁶ *Transcript of the Minutes of the Committee on Public Safety (held jointly with) Committee on Fire and Criminal Justice Services*, 60.

²⁷⁷ *Ibid.*, 60, 131.

²⁷⁸ Transcripts from *Eleventh Public Hearing of the National Commission on Terrorist Attacks upon the United States*, Day Two sess., 45, 68.; Day One sess., 110.

²⁷⁹ Rashbaum and O'Donnell, “Roles in Disaster Cause Rift in City,” 1.

²⁸⁰ Christopher M. Bourne, “Unintended Consequences of the Goldwater-Nichols Act,” *Joint Forces Quarterly* (Spring 1998), 100, http://www.dtic.mil/doctrine/jel/jfq_pubs/1818.pdf (accessed June 26, 2006).

OEM as the *coordinator* of the operation, but not assigning it the duties or capabilities to carry out operations, ensures a mutual dependency that fosters interagency collaboration and a sensible division of labor.

Just as the Locher report recommended, and Goldwater-Nichols accomplished, “strengthening the authority, stature, and support of joint organizations” was what was required to correct the imbalance between the Service and joint interests.²⁸¹ In NYC that would entail once again empowering OEM and strengthening its authority to offset the undue influence of the individual agencies, primarily the NYPD. The GNA “shifted power from individual military services to officials responsible for coordinating them.”²⁸² This is exactly what needs to be done in NYC to allow OEM to effectively integrate all of the City’s resources to better serve its needs. In order to accomplish this, several changes need to be made in how OEM is organized and what its mission is:

1. The Position of Commissioner of OEM Needs to be Enhanced

One of the stated objectives of the GNA was to reassert civilian control over the DoD by enhancing the power of the Secretary of Defense.²⁸³ While the issue of having “civilian” control is not really a concern when dealing with first responder agencies as opposed to the military, the matter of having “control” is. The Locher Report states:

The actual power and influence of the Secretary of Defense are not sufficient to enable him to effectively manage the Department of Defense. The problem arises not from his formal statutory authority which provides him a full measure of power. Instead, the problem emanates from powerful organizational forces whose vigorous pursuit of their own agendas has substantially weakened the office of Secretary of Defense.²⁸⁴

This problem noted in the report is also extremely applicable to NYC’s current situation. The “powerful organizational forces” at work here are the NYPD and to a lesser degree, the FDNY, who continue to pursue their own agendas independently of

²⁸¹ Senate Committee on Armed Services, *Defense Organization: The Need for Change*, 4.

²⁸² Malcolm S. Forbes, Jr., "Fact and Comment," *Forbes* 147, no. 6 (March 18, 1991), 23-24.

²⁸³ Murdock, et al., *Beyond Goldwater-Nichols, Phase 1 Report*, 15; Locher, *Taking Stock of Goldwater-Nichols*, 11.

²⁸⁴ Senate Committee on Armed Services, *Defense Organization: The Need for Change*, 10.

each other and of OEM. As discussed earlier, the OEM commissioner’s statements that he sees the agency more as a “think tank” or “planning agency”²⁸⁵ than as a response agency as it had been, underscores the perception that OEM’s authority has been severely weakened. In fact, had OEM not been given the status of a charter agency by a referendum vote two months after the 9/11 attacks, the evidence suggests that the current administration would have designated OEM as an office within the NYPD, just as it was prior to Mr. Giuliani transforming it into the *Mayor’s Office of Emergency Management* in 1996.

Although the position of OEM commissioner is theoretically equivalent to the status of police or fire commissioner, a brief look at the organizations and budgets they control illustrate that in reality that is far from the case.

Table 6. FY ‘06 Budgets and Number of Employees in the NYPD, FDNY, and OEM²⁸⁶

Agency	Annual Budget (\$ Millions)	Number of Employees
NYPD	3,870.1	35,773 (uniformed) 16,212 (civilian)
FDNY	1,438.8	11,643 (uniformed) 4,497 (civilian)
OEM	25.8	59

(Note: Of the 59 OEM employees, approximately 45 are funded by grants. City funds to OEM in FY ‘06 totaled just over \$4.6 million. In addition, there are approximately 69 additional personnel detailed to OEM from the various city agencies. These members, however, remain employees of their sponsoring agency and their salaries, assignments, and promotional opportunities are controlled by those agencies.)

For NYC to effectively integrate all of its agencies and resources, one organization needs to be put in charge of coordinating that effort. As NYC’s

²⁸⁵ Dewan and Chen, “Bloomberg Appoints Commissioners to Lead Housing and Emergency Management Agencies,” 3.

²⁸⁶ Jeffrey A. Kay, *The Mayor’s Management Report Fiscal 2006 City of New York* (New York, NY: Office of the Mayor, 2006), http://www.nyc.gov/html/ops/downloads/pdf/2006_mmr/0906_mmr.pdf (accessed October 19, 2006).

“coordinating agency”,²⁸⁷ that task should fall to OEM. For that to occur, it is not enough for the commissioner of OEM to be the “equal” of the other commissioners. He needs to have authority *over* them. Therefore, the position of OEM commissioner should be elevated to the status of a deputy mayor in charge of public safety who reports directly to the mayor. The police and fire commissioners, as well as all the other agency heads, should report to him / her. The figure below, modeled on the organizational chart of the Department of Defense depicted in Figure 2, illustrates how this system would work in NYC.

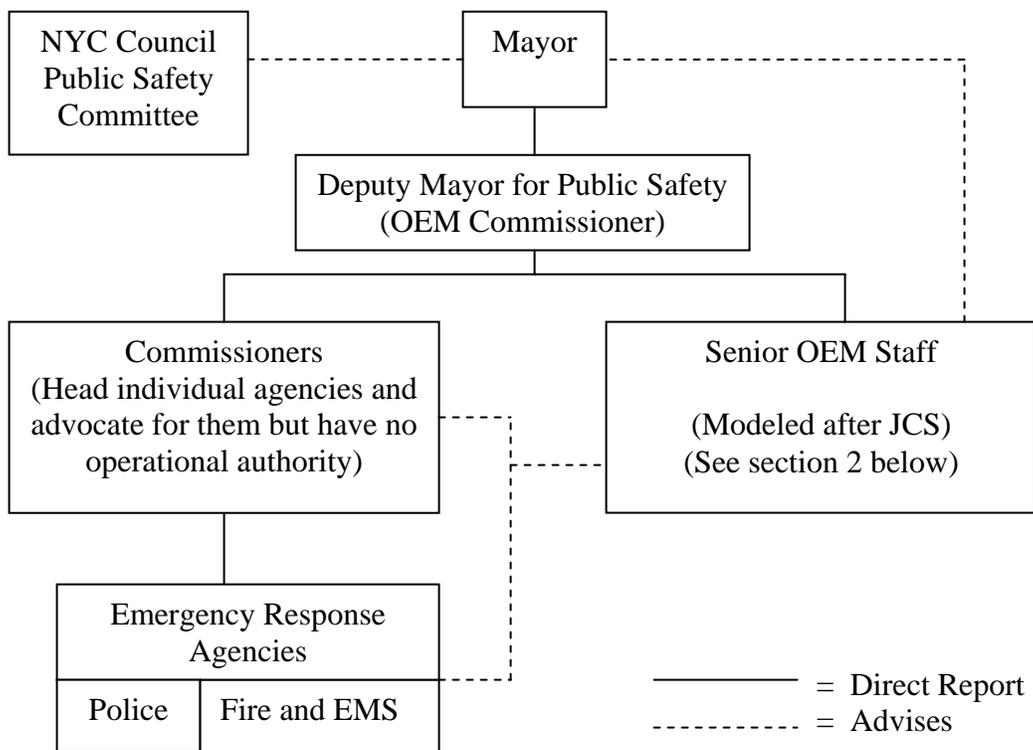


Figure 3. Proposed Organizational Chart for Public Safety Agencies in NYC

As the head of the organization charged with ensuring that the City is as prepared as possible for any emergency, the OEM commissioner would be ultimately responsible for coordinating the City’s resources, including police and fire, to respond to any event.

²⁸⁷ NYC Citywide Incident Management System (CIMS) Protocol, 13.

As the superior to the commissioners of the individual agencies, the OEM commissioner would have authority over them to ensure that their parochial interests do not interfere with a coordinated and unified approach to managing emergencies.

Part of the mandate of the OEM commissioner should also include ensuring that public safety is provided in the most economical means possible. Eliminating costly and unnecessary duplication, and the friction it creates, would be one of prime responsibilities of this office. To avoid any perceived or actual bias on the part of the commissioner, this position, at least initially, should be filled by a recognized public safety expert with no ties to either the NYPD or FDNY.

Since this position would carry such a great deal of responsibility for ensuring the safety of the citizens of NYC, it must be filled with an extremely qualified person who has the experience and credentials to fill that role. That is currently not the case. In a world where the threat of terrorism is omnipresent, particularly in NYC, the days of awarding commissions in public safety organizations based on political considerations is unacceptable and should not enter into designating this responsibility. Therefore, as is the practice in the federal government, a confirmation process should be held when selecting officials to fill these vital roles. The mayor should nominate the persons he/she wants to fill the roles of commissioners for OEM, Police, and Fire. The city council would then hold hearings on their qualifications and confirm them if appropriate.

2. Senior Management at OEM Should be Modeled after the Joint Chiefs of Staff

As indicated in Figure 3, top level management at OEM should report to the OEM commissioner, but serve in an advisory capacity to the mayor to offer dissenting opinions and alternative advice on public safety matters, much in the same way the Joint Chiefs of Staff do for the President. To ensure that these personnel are qualified experts in public safety and emergency response and are familiar with local NYC issues, they should be made up senior level members from the NYPD, FDNY, and other city agencies. However, to guarantee that the problem of “dual-hatting” identified in the Locher

Report²⁸⁸ does not occur, where these members would be directed to provide unbiased advice to the OEM commissioner and mayor and still be advocates for their respective agencies, certain precautions need to be taken.

To overcome this inherent difficulty, staffing the senior positions at OEM should be based on the National Military Advisory Council (NMAC) proposal advocated by General Meyer²⁸⁹ but never implemented. To that end, this group should be made up of *retired* members from these agencies or from members who have chosen a career path at OEM (as described in section B 2 below) who will not be returning to their home agency. Not only will this eliminate their dual-hatted role, it will also remove any unwanted influence that could be exerted by the home agency on an individual who would be returning to it.

3. All Equipment Purchases and Grant Requests Should be Coordinated Through OEM

To minimize the duplication of resources that exists, take advantage of economies of scale, and ensure that all money spent conforms to the City's overall strategic plans; OEM should coordinate the purchase of all emergency equipment and the submission of all grant requests made by individual agencies. OEM, in conjunction with the Office of Management and Budget (OMB), would make the final determination on if the grant request should go forward and on whether the equipment should be purchased by that particular agency. All requests would have to conform to the City's overall plans so that individual agencies do not waste money duplicating existing resources and expanding their mission into areas outside their core competencies which are already covered by other agencies. Training programs would also be included in this policy and be coordinated by OEM.

To accomplish this, a committee should be established consisting of representatives from OMB, OEM, NYPD, FDNY, and other agencies. This committee should come under the jurisdiction of OEM and be loosely based on the Joint Requirements Oversight Council (JROC) which operates under the Chairman of the Joint

²⁸⁸ Senate Committee on Armed Services, *Defense Organization: The Need for Change*, 5-6.

²⁸⁹ Chiarelli, *Beyond Goldwater-Nichols*, 71-72

Chiefs of Staff. Among the functions of the JROC are the responsibilities to support the acquisition review process and determine and evaluate “joint requirements”²⁹⁰ Rather than each military department designing specifications and purchasing equipment and systems independently of each other, as had been done in the past, they are now designed collaboratively by the Services to meet their mutual and individual needs. This has saved enormous amounts of money in research and development, maintenance, and replacement costs. It has also resolved many of the interoperability problems that had plagued joint operations in the past.

The most obvious advantage to a centralized and coordinated approach to purchases and grant requests is that it will save millions of dollars in unnecessary duplication in training and equipment. Regardless of how compelling grant justifications submitted to DHS may be, the political reality is that any jurisdiction will be limited in the amount of homeland security funding it receives. With overall federal funding levels decreasing each year, NYC can expect to receive less financial support in future years. It can ill-afford to waste finite resources procuring equipment to increase the capabilities of one agency when another agency already has those capabilities.

Even more important than the financial advantages of this arrangement, however, is the effect it will have on interagency cooperation, coordination, and efficiency. Empowering OEM by giving it some authority over how agencies utilize homeland security funding enables it to ensure that such funding is utilized in a manner consistent with the needs and strategic plans of the City, rather than the parochial desires of an individual agency. Limiting the capabilities of the agencies forces them to work together to accomplish common goals. This builds trust and interpersonal relationships between members of those agencies, both factors identified in Chapter II as enhancing collaboration. The current system utilizes funding to expand capabilities, encouraging independence and competition between agencies, but with no added value to the City overall.

Controlling the purchase of new equipment would also encourage a clear delineation of roles for the individual agencies. Removing the capabilities of an agency to

²⁹⁰ Chairman of the Joint Chiefs of Staff Instruction, 1-24.
http://www.dtic.mil/doctrine/jel/cjcsd/cjcsi/5123_01a.pdf (accessed February 12, 2007).

perform certain duties eliminates the controversy over who should perform them. Therefore, OEM should also have the authority to reallocate equipment currently in the possession of any agency that does not have a core competency in using it to the agency that does.

The final benefit of a centralized procurement process is that it would allow the City to take advantage of its size and purchasing power to negotiate reduced prices for items currently purchased and maintained separately by individual agencies. Much in the same manner as the military used to operate; city agencies determine their own priorities and create specifications for equipment which they then purchase independently of each other to meet their own needs. Much of this equipment is very similar in nature to what other agencies have purchased. Examples of such items would include Haz-Mat suits, Self-Contained Breathing Apparatus (SCBA's), radiation detectors, power generators, gas meters, etc. By standardizing this equipment across agency lines utilizing a system such as the JROC, the cost per item would decrease due to larger numbers being ordered. In addition, the associated costs of maintenance and replacement would decline as those functions could also be centralized.

Establishing a joint committee such as the JROC within OEM would also create an environment in which several "success" factors identified as enabling collaboration in Chapter II would be present. They include a "formalized coordination committee"; "technical interoperability" (as this equipment would be standardized across agency lines); and collaboration as a prerequisite for funding or resources. This would assist in accomplishing the overall goals of improving interagency cooperation and coordinating the plans of individual agencies to ensure they are in line with the City's strategic plans.

4. OEM Should Once Again Become a Response Agency

In order for OEM to effectively coordinate interagency responses, it must first respond. Although notifications can be made and records can be kept regarding the response from a remote location, truly coordinating it requires a presence at the scene. Restoring the role of *on-scene* interagency coordinator to OEM would go a long way toward restoring the credibility it once had as the City's "coordinating agency". A review

of the number of incidents to which OEM “responded” over the past four years demonstrates how that role has steadily deteriorated.

Table 7. Multi-agency incidents coordinated by OEM since FY03²⁹¹

Performance Statistics	FY03	FY04	FY05	FY06
Total incident responses	896	1,743	2,391	2,619
• On-site coordination	591	457	319	257
• Coordinated from OEM Watch Command	305	1,286	2,072	2,362

As can be seen from the table above, although the total number of incidents in which OEM was involved almost tripled between FY03 and FY06, the number to which it actually responded during that time dropped by more than half. During that same time frame, the number of incidents it “coordinated” without being on the scene increased almost eight-fold. By FY06, less than 10 percent of the multi-agency incidents in which OEM was involved had a representative from that agency present on the scene.

Under the current system not only has OEM been stripped of its authority to determine which agency should take the lead at emergencies, it has largely been stripped of its response duties as well. Subsequently, when a dispute does arise at the scene of an incident over what should be done and by which agency, there is no mechanism to resolve it. While the former system did not address the underlying causes of the rivalry, it did at least establish OEM as a means of controlling it. That authority must be restored to OEM and OEM must once again become a response agency if it is to live up to its role of NYC’s coordinating agency.

5. OEM Should Conduct Far More Interagency Exercises Than are Currently Being Held

During the interviews conducted for this thesis, virtually all of those who were asked the question “What is necessary to improve interagency operations and relations?”

²⁹¹ Kay, *The Mayor’s Management Report Fiscal 2006 City of New York*, 123

responded “more local drills”, “more full scale exercises”, “more tabletop exercises”, or some variation thereof. This was true of respondents from NYPD, FDNY, and OEM. These answers should come as no surprise. It is intuitive that to improve multiagency operations, the organizations need to practice together. Doing so not only improves how the agencies function together at operations, but also helps to develop trust and interpersonal relationships between members of these agencies. This sets the stage for more efficiency and collaboration at future events.

Part of the reason for the military failures noted earlier that led to the GNA was the fact that the armed forces built up their capabilities independently of each other and did not train together. To borrow a phrase from the 9/11 Commission: “Each considered itself operationally autonomous”.²⁹² As a result, the Services had gotten very proficient at their individual operations, but during times of conflict, when they were required to operate together as part of a team, they were not prepared to do so.

There are three areas where problems can arise when differing capabilities are brought together: Gaps, Overlaps, and Seams.

- **Gaps** – This is a lack of capability, often discovered at the scene. It is an area that can be exploited or cause problems in trying to perform other actions. (e.g. a motor vehicle accident at which medical equipment is available but no one has extrication equipment to remove the victims.)
- **Overlaps** – These are areas in which more than one Service or agency has a capability. This causes problems when they are not mutually reinforcing and / or not applied in the same manner. It is inefficient and leads to confliction. (e.g. two agencies performing a rescue of a window washer from collapsed scaffolding equipment, each using its own rescue equipment, procedures, and techniques without coordinating with the other.)
- **Seams** – This is where capabilities meet. There must be coordination in how the operation is handed off or seams can be exploited. (e.g. at a

²⁹² 9/11 Commission, *9/11 Commission Report*, 285.

chemical attack, victims clothing will need to be removed prior to decontamination being performed by the fire department. That clothing, however, will become evidence collected by the police department. If there is no coordination in how that clothing is collected or turned over, that evidence will be lost.)

It is crucial that organizations that will be expected to operate together at the scene of an emergency continually train together to close the gaps, reduce the overlaps, and identify the seams. Failing to do so will inevitably lead to unforeseen difficulties at the scene of operations. There are three ways in which the coordination of multi-agency operations can be expressed: Conflicted, Deconflicted, and Synchronized.

- **Conflicted** – When agencies do not work together and interfere with each other’s operations. (e.g. when the police department is trying to preserve evidence at a suspicious fire but the fire department is throwing material out the window as part of their overhauling procedures.)
- **Deconflicted** – This is when the agencies essentially stay out of each other’s way, but there is no real coordination between them. This can be accomplished by deconflicting:
 - Time – each organization controls the area for a period of time. (e.g. The fire department controls the building until the fire is under control. They leave and the police department takes over).
 - Geographically – each organization controls a certain area. (e.g. The fire department controls the area of a building where the fire occurred and the police department controls the rest of the building.)
 - Mission – each organization is in charge of a different responsibility at the scene. (e.g. The fire department is responsible for rescuing victims at a terrorist event and the police department is responsible for catching the perpetrators.) This is the approach

that has been tried, with limited success, for the past few decades in NYC. The core competencies in CIMS are an attempt to spell out what those missions are.

- **Synchronized** – This is when actions taken by organizations are complementary or mutually reinforcing toward a common goal. (e.g. establishing a triage area in the decontamination area at a Haz-Mat event so that patients can be prioritized prior to being decontaminated.)

The true benefits of interagency operations are attained when the actions of the agencies are synchronized. This is the way in which the present-day military plans and fights and is a direct result of the reforms enacted under the GNA. In order to maintain their capabilities, however, the services continually conduct joint training exercises to overcome the challenges associated with gaps, overlaps, and seams. If NYC is to be prepared for future emergencies that will require a multi-agency response, it, too, must conduct frequent joint training exercises.

The chart below shows the number of drills in which OEM was involved either in conducting the exercise or as a participant in an exercise conducted by another agency.

Table 8. Drills in which OEM participated since FY03²⁹³

Performance Statistics	FY03	FY04	FY05	FY06
Field drills	1	4	6	6
Tabletop drills	1	1	2	3
Participation in drills coordinated by other agencies	8	22	20	12

For the most part, the drills that are coordinated by other agencies are usually single-agency drills designed to test that agency’s capabilities and procedures. OEM generally has a limited role at these events. The field and tabletop exercises are true multi-agency drills designed to not only test capabilities and procedures, but also to give

²⁹³ Kay, *The Mayor's Management Report Fiscal 2006 City of New York*, 124.

the agencies an opportunity to work together and coordinate their efforts. It is at these events that gaps, overlaps, and seams become apparent and where procedures can be established to deal with them.

Unfortunately, the sheer size of NYC in terms of population (over eight million) and numbers of first responders (over 50,000), means that the number of drills held to coordinate their efforts are wholly inadequate. The overwhelming majority of these first responders never take part in these exercises nor do they build the relationships and trust necessary for effective interagency operations. At best, operations conducted by agencies who rarely or never practice together can be deconflicted, but only if they are carefully coordinated. More than likely, some conflict over mission will occur given the duplicate capabilities the agencies have. Given this lack of joint training, however, at no point will they be able to achieve a synchronistic relationship.

To overcome the institutionalized rivalry between its primary response agencies, far more interagency drills need to be conducted by OEM. These do not necessarily need to be large scale, expensive exercises like Trifecta. They can also take the form of local drills conducted at the battalion / precinct level. To coordinate these, OEM could establish localized offices in each of the five boroughs that would conduct these drills and bring together various agencies who would respond to different emergencies in these areas.

In addition to simply conducting *more* interagency drills, however, these drills need to be more realistic and designed to identify the gaps, overlaps, and seams that will occur at real events. Carefully scripted exercises such as Trifecta are designed to conceal these problems; however, if the problems are not brought to light during exercises, they will instead develop at actual events.

B. RECOMMENDATION 2: MODEL NYC'S PERSONNEL PROVISIONS AND PROMOTION POLICIES ON THOSE OF THE GNA

In his article for *New York Times Magazine*, General Jones lamented that officers who perform duty outside their own services generally do less well than those assigned to duty in their services. He attributed this to the control the services had over the careers of

their members regardless of where they were serving. In the article, he wrote “I cannot stress this point too strongly: He who controls the dollars, promotions, and assignments controls the organization—and the services so control, especially with regard to personnel actions.” He went on to say “A service chief has a constituency which, if convinced that he is not fighting hard enough for what the service sees as its fair share of defense missions and resources, can destroy the chief’s effectiveness.”²⁹⁴

Similarly, the Locher Report noted that the predominance of service influence would remain a problem as long as officers gave the highest priority to the interests of their service, while losing sight of more important national security needs. It warned “Whatever changes are made at the top of the DoD organization, powerful resistance to a more unified outlook will continue to be the basic orientation of military officers deeply immersed in the culture of their Services.” To resolve this problem, the report said, “will require changes in the system of military education, training, and assignments to produce officers with a greater commitment to DoD-wide requirements, a genuine multiservice perspective, and an improved understanding of other services.”²⁹⁵

One of the overriding concerns of Congress was that “military officers, especially the general and flag officers, had little understanding or appreciation of the policies, procedures, operations, or capabilities of the other services. As a result, they had little experience in or knowledge of the conduct of joint operations.” They felt that something had to be done to instill a joint culture among the officer corps that would lead to an appreciation and understanding of how the services could and should operate together. As a result of these conclusions, Congress incorporated several provisions into the GNA designed to reduce service influence and increase the desirability of joint duty in an effort to change the culture of the services.²⁹⁶

As noted earlier, the similarities between the parochial nature and influence of the services described by Locher and Jones and the current situation in NYC are striking. Therefore, based on the success of the personnel provisions of the GNA in achieving a

²⁹⁴ Jones, *Past Organizational Problems*, 28.

²⁹⁵ Senate Committee on Armed Services, *Defense Organization: The Need for Change*, 3-4.

²⁹⁶ Schank, et al., *Who is Joint? Reevaluating the Joint Duty Assignment List*, 45-46.

“joint culture” within the DoD, NYC should implement the following recommendations to instill a similar culture within its emergency response organizations.

1. A Detail in a Joint Duty Assignment Should be a Prerequisite for Promotion to the Staff Ranks of an Agency

To improve the quality of officers serving in joint assignments, enhance the stability and experience of those officers, and ensure that top level commanders were well-rounded in joint matters; the GNA required service in a Joint Duty Assignment (JDA) as a prerequisite for promotion to general or flag officer. The law also required the SecDef to define the term “joint duty assignment” and limit the definition to assignments in which an officer “gains a significant experience in joint matters”. It specifically *excluded* assignments within an officer’s own military department from receiving this designation and required the SecDef to publish a list showing the positions that qualify as JDA’s.²⁹⁷

The immediate result of this provision was to make these assignments highly coveted ones. Quality officers began competing over them as this became the most established means of achieving promotions, particularly to the highest levels of each Service. And although the law did initially allow for some waivers to this requirement and for a phase-in period, it did specify that that period would be limited to two years from the date the law was enacted.²⁹⁸

In NYC, the most logical choice for the majority of positions designated as JDA’s would be within the Office of Emergency Management. Currently, over half of its staff is made up of representatives from various city agencies, although most tend to be lower level officers than those on the verge of reaching the staff ranks. Another logical choice for selection as a JDA would be liaison positions in which members of one agency are stationed at another agency’s headquarters working on joint projects. Still another position would be in the City’s 911 center, ensuring that all affected city agencies are

²⁹⁷ Schank, et al., *Who is Joint? Reevaluating the Joint Duty Assignment List*, 46-48.

²⁹⁸ *Ibid.*, 48.

dispatched to the scene of various emergencies as appropriate, and working on a city-wide response matrix based on agency's capabilities and core competencies. (See section D 3 below)

To fulfill the recommendations proposed in this thesis and simultaneously create a sufficient number of positions that qualify as JDA's, OEM needs to be greatly expanded and fully funded by the City rather than by grants which may not be renewed as is currently the practice. In addition, agency lines (or billets) within OEM need to be established for members of other agencies who are detailed there in a JDA. Currently, the sponsoring agency keeps that member on its payroll, creating a disincentive for the agency to detail members there. It also gives that agency a measure of control over that member in much the same way as the services retained control over their members' careers prior to the GNA.

One possible solution to the problems of too few billets, OEM not responding to most emergencies, and too few interagency drills being conducted is to create satellite branches of OEM around the City with at least one in each of the boroughs. Those branches would be staffed as JDA's by members of the NYPD, FDNY, and other agencies who would respond to multi-agency incidents to act as the *on-scene* interagency coordinator. In addition, they would be responsible for organizing and evaluating small-scale drills designed to bring together local responders and build relationships between them as described in the previous section of this chapter. There are three main advantages to the City in having members from various city agencies staff these joint duty positions:

a. It Will Build Personal Relationships Between These Members

During interviews conducted with current and former members of the NYPD, FDNY, and OEM, most said that getting people from different agencies together (be it at drills, at cross-training, or informally) was essential for interagency collaboration to be successful. Similarly, one of the most commonly identified factors chosen by the panel of Homeland Security professionals noted in Chapter II, as a success factor affecting interagency collaboration was "social capital" (i.e., interpersonal relationships).

Also identified as success factors were “effective communication and information exchange”, “formalized coordination committee or liaison roles”, and “trust”.

Mandating that the members who will become the future leaders of their respective agencies first serve in positions that require them to work collaboratively with each other creates a structure that supports the development of all these factors. Stereotypes and barriers regarding other agencies built up early in an individual’s career will be broken down by personal experiences.

In addition to the benefits derived from better collaboration during the course of these assignments, the personal relationships developed between these members will continue long after they return to their home agency. Having leaders of these agencies who know each other personally and who have worked together in the past will go a long way toward fostering better relationships between the agencies in the future. As noted by Alan Brunacini, a fire chief from the Phoenix, Arizona Fire Department who helped develop the Incident Command System, “Unified Command begins at lunch.”²⁹⁹

b. It Will Familiarize These Members with the Priorities, Concerns, and Goals of Other Agencies

Disputes often occur between agencies as a result of differing priorities and a lack of familiarity with the capabilities and roles each agency has to play. The study in Chapter II listed a “lack of familiarity with other organizations” as one of the main barrier factors affecting interagency collaboration. It also identified a “lack of formal roles or procedures for managing collaboration” as another.

Creating just such a formal role by having individuals from each agency work side by side with their counterparts from other agencies allows for a better understanding of the capabilities, concerns, and needs of those groups. It also allows those members to gain a better perspective as to what each agency is trying to accomplish and why, making consensus on how to best achieve these goals easier.

²⁹⁹ Douglas R. Templeton, "Assessing the Utility of Work Team Theory in a Unified Command Environment at Catastrophic Incidents" (masters thesis, Naval Postgraduate School, n.d.), 81, http://www.hsdl.org/homesec/docs/theses/05Mar_Templeton.pdf (accessed June 26, 2006).

c. *It Will Place Members from Each Agency in an Environment Where They Can Collaborate Freely*

The Locher Report noted that the “predominance of service influence” and the “absolute service control over promotions and assignments of all military officers, including those in joint duty billets” were the greatest barriers to integrating the military.³⁰⁰ General Jones observed that a service chief, who was not viewed as fighting hard enough for his service’s parochial needs, could see his effectiveness destroyed.³⁰¹ Similarly, the study cited in Chapter II identified “focus on local organization over cross-agency (e.g. regional) concerns” as another barrier to collaboration.

In addition, the peer pressure associated with loyalty to one’s own organization should not be underestimated. Human nature leads people to identify with the group to which they belong. The subconscious effect of being surrounded by members from that group leads one to pursue the group’s interests, and to believe that that is the right thing to do. The City can use this dynamic to its advantage by placing members into a group environment, surrounded by others in a similar situation, where they identify with the overall needs of the City rather than their individual agency.

2. *Safeguards Need to be Established to Prevent Retaliation against Members by Their Sponsoring Agency*

The primary reason the Services retained so much power despite efforts to strengthen the role of the SecDef prior to the GNA was that they retained complete control over the careers of their members, even those serving in joint duty assignments.³⁰² Consequently, the behavior of those members was heavily influenced by how they thought their superiors would react to them. Naturally, allegiance to one’s service was valued over all else since being seen as “too joint” could effectively end one’s career. To diminish the power of the services over careers and change the culture

³⁰⁰ Senate Committee on Armed Services, *Defense Organization: The Need for Change*.

³⁰¹ Jones, *Past Organizational Problems*, 28.

³⁰² Locher, *Has it Worked? The Goldwater-Nichols Reorganization Act*, 106; Jones, *Past Organizational Problems*, 28; Senate Committee on Armed Services, *Defense Organization: The Need for Change*, 8.

that encouraged parochialism, Goldwater-Nichols took steps to reward officers who accepted and performed well in billets outside of their services.³⁰³

Similar steps need to be taken to ensure that members detailed to OEM or other JDA's are not retaliated against by their sponsoring agency for failing to represent that agency's parochial interests. To that end, the following safeguards should be established:

- Prior to accepting a detail to a JDA, the terms and expectations would be worked out between the member, the sponsoring agency, and OEM. The details would include the duration, location, and responsibilities of the assignment.
- This agreement would clearly spell out what the member's position, rank, and assignment will be upon successful completion of the detail and return to the home agency.
- The determination as to the success of the detail would be based solely on personnel evaluations conducted by that member's supervisor(s) at the JDA.
- Poor performance evaluations would negate any promotions or assignments previously agreed to. In addition, it would prevent the member from receiving credit for the JDA, thereby ending their chances for promotion to the staff level.
- Officers who demonstrated exceptional commitment to joint concepts during their JDA would be offered the opportunity to pursue a separate career path at OEM. This would include the opportunity for promotions and salary increases within OEM. Members who chose this path would eventually make up the senior management positions at OEM (as described in section A 2, above).

Instituting these protections for members serving in JDA's and providing incentives for them to abandon their agencies' parochial interests and deterrents for pursuing them, will limit the influence of the individual agencies and promote a more

³⁰³ Locher, *Has it Worked? The Goldwater-Nichols Reorganization Act*, 106.

centralized approach to homeland security. Requiring members to successfully complete a tour in a JDA prior to being promoted to the staff level will ensure that agencies send quality personnel to these assignments since only they will be eligible for such positions. Assigning OEM the authority to certify that these members have successfully completed these assignments provides a system of checks and balances to ensure the intent of these reforms is followed. OEM will be dependent on the agencies to provide the personnel for these assignments and the agencies will be dependent on OEM to certify their members for promotion, inhibiting them from pressuring their members to pursue a parochial agenda.

C. RECOMMENDATION 3: THE CITY SHOULD MANDATE A PROFESSIONAL EDUCATION PROGRAM EMPHASIZING “JOINT DOCTRINE”

As discussed in Chapter VI, the personnel provisions of the GNA also made use of the military education system as a means of emphasizing and institutionalizing “jointness” among the services. It did this by revamping the content of military science courses by focusing on emerging joint doctrine.³⁰⁴ In an article for *Joint Force Quarterly*, Michael Vitale writes “...synchronized joint military education, which increases cooperation among all officers at the expense of service parochialism, is a key intent and successful result of the Goldwater-Nichols Act. When this is coupled with teaching newly approved joint doctrine at these institutions, jointness is enhanced significantly.”³⁰⁵

Just as the GNA mandated successful completion of a two-phase Joint Professional Military Education (JPME) program through its war colleges as a prerequisite to becoming certified as a Joint Specialty Officer, NYC should mandate a similar program for members of the NYPD and FDNY as a precondition for promotion. A curriculum devoted to promoting interagency cooperation and collaboration should be developed and taught as a means of educating officers in each agency in the City’s strategic plans and in joint operations. This would also serve to reinforce the City’s

³⁰⁴ Graves and Snider, *Emergence of the Joint Officer*, 53-54.

³⁰⁵ Michael C. Vitale, "Jointness by Design, Not Accident," *Joint Forces Quarterly*, no. 9 (Autumn 1995), 27-28, http://www.dtic.mil/doctrine/jel/jfq_pubs/1009.pdf (accessed June 26, 2006).

emphasis on the importance of approaching homeland security from a city-centric perspective. Where practical, these courses should be taught jointly by current and former members of the NYPD and FDNY to give the curriculum credibility.

Since civil service testing is the sole means of attaining promotions up to the rank of captain in the NYPD and to the rank of deputy chief in the FDNY, the City has little discretion over who receives promotions for the vast majority of its officers. It does have the ability, however, to require an officer to receive a certain number of college credits prior to granting that promotion and currently has policies in place in each agency regarding what those standards are. One of the main criticisms of those policies is the argument that these credits can be in courses completely unrelated to public safety and do not improve the quality of the officer. By modifying those policies to mandate that an officer complete a particular number of credits in a curriculum specifically designed for NYC police officers and firefighters negates that criticism. It also gives the City the opportunity to require those officers to take classes designed to instill a joint culture. The number of credits required would then be increased for each successive promotional rank.

The content of each of these courses could also be customized so that it corresponds to the phase of one's career and the requirements of each position. Beginning with the training academies, an introduction to joint doctrine and an overview of how the City expects its first responders to operate together could be taught. At the first line supervisor level the courses would then focus on areas such as Incident Command, CIMS and NIMS and on specific policies and procedures governing interagency operations. At the chief ranks, the courses would concentrate on areas such as improving interagency relations, and at the staff level courses such as strategic planning and budgeting would be taught.

The logical choice of institution to administer these courses would be the City University of New York (CUNY) system since the City helps to finance its operations. In addition, there is already an established relationship between these agencies and the John Jay College of Criminal Justice which specializes in public service fields with courses such as criminal justice and fire science.

In addition to utilizing the City university system to enhance interagency relations, a program should also be instituted where members of each agency are utilized to teach courses in the academies of the other. For example, police officers could be detailed to the Fire Academy to teach courses such as crime scene preservation, evidence collection, chain of custody, etc. Similarly, firefighters could teach courses in the Police Academy to familiarize rookie police officers with the capabilities of the fire department in handling various emergencies. The advantage to such a program is that it would give new recruits some exposure to members from the other agency and familiarize them with the priorities and concerns of that agency and how they can assist the overall operation.

D. ADDITIONAL RECOMMENDATIONS NOT BASED ON THE GNA

1. Independent Oversight Must be Established

While the Locher Report criticizes Congress for inconsistent and sometimes conflicting oversight procedures regarding the DoD,³⁰⁶ NYC has no legislative body or empanelled organization with oversight authority on matters pertaining to public safety. The city council does maintain both a Committee on Public Safety and a Committee on Fire and Criminal Justice Services. However, as was evidenced by testimony given before these committees on May 9, 2005, not only were they not consulted during the drafting of CIMS, they were not even notified that that it had been signed into existence despite repeated requests for an advanced copy.³⁰⁷

To ensure that these recommendations are sound and are not circumvented or ignored during or subsequent to implementation, independent oversight needs to be established over this entire proposal. The logical choice for fulfilling this role would be the Committee for Public Safety (or another committee established by the city council specifically for this purpose) since it already has subpoena power and can hold public hearings. The key to making this plan a success is to make this process as transparent as

³⁰⁶ Senate Committee on Armed Services, *Defense Organization: The Need for Change*, 10-11.

³⁰⁷ *Transcript of the Minutes of the Committee on Public Safety (held jointly with) Committee on Fire and Criminal Justice Services*, 7-8.

possible with all sides being given an opportunity to voice their concerns and outside experts being consulted to review and comment on the implementation and quality of the plan.

As part of this oversight, the committee needs to be given powers to deal with non-compliance by any agency so that it does not resemble the current toothless AAR process provided for in CIMS. The committee should also be required to make its findings public through the use of quarterly reports on the progress and failures of implementation. In addition to its oversight powers, this committee should also act as an advisory panel to the mayor on issues of public safety, much the way the National Security Council does to the president on issues of national security (see Fig. 3).

2. CIMS Needs to be Revised to Be More Logical, to Truly Recognize Core Competencies of Agencies, and to More Closely Follow NIMS

The Citywide Incident Management System, as discussed in Chapter V, has some very positive aspects to it, particularly where it follows the national model (NIMS) and where it provides for AAR's and interagency training. However, the manner in which these provisions are practiced and the areas where CIMS deviates from NIMS are critical failings in this system. As has been shown, the rationale given for making such controversial decisions as placing the NYPD in Single Command of Haz-Mat / CBRN incidents, does not stand up to scrutiny. In addition, the inconsistent manner in which a Single Command can be applied (depending on the location the incident occurs and the resources that respond) suggests that at large-scale events, it will not be used. Ultimately this was little more than a power grab by the NYPD using the threat of terrorism to justify further duplication of existing resources and expansion into non-traditional police roles.

In addition, the evidence strongly suggests that the decisions made regarding what constitutes the "core competencies" of the individual agencies were specifically designed to marginalize the role of the FDNY by failing to recognize its true capabilities. Ignoring "hazard assessment" and "mitigation" at Haz-Mat incidents (which have been performed

successfully for over 20 years by the FDNY) and identifying “mass decontamination” but not “decontamination” of individuals as core competencies stand as three glaring examples of where this was done.

The oft-repeated claim that NYC is somehow “different” than the rest of the country and should therefore be given leeway in how it manages emergencies is beginning to be called into question. The fact that no one outside of NYC government or the NYPD who has seen CIMS has concluded the changes made to NIMS in adapting it to NYC are positive ones, tells a great deal about the quality of the document and the process used and influences involved in developing it. The real “difference” between NYC and the rest of the country is the fact that its first responder agencies have the highest level of duplication and resulting interagency conflict of any municipality in the nation.

As was discussed in the last chapter, the Locher Report identified a “failure to clarify the desired division of work”³⁰⁸ as one of the main problems plaguing the DoD. It states:

One of the basic mechanisms for enhancing organizational efficiency is to rationally divide the work among the various structural components. Within DoD, the desired division of work has not been adequately clarified in many instances; in others, the assigned division of work is ignored in practice...The absence of a rational and enforced division of work leads to greater complexity, friction, delay, duplication, and inefficiency.³⁰⁹

This problem was rated as extremely applicable to NYC’s current situation wherein unnecessary duplication is allowed to persist and there is a notable absence of a rational and enforced division of work. The manipulation of core competencies and ineffective AAR process do nothing to remedy this situation.

To help resolve these issues and create a cooperative environment between these agencies, CIMS needs to be revised. A Unified Command should be established initially at *all* multi-agency incidents and the roles and responsibilities of the individual agencies should be based on their true capabilities and what is *actually* occurring at the scene,

³⁰⁸ Senate Committee on Armed Services, *Defense Organization: The Need for Change*, 9.

³⁰⁹ *Ibid.*

rather than on the *potential* cause. Both agencies need to focus on what their core missions are and allow themselves to become dependent on the other for successful completion of the overall operation.

For example, acknowledging that the FDNY has a core competency in “decontamination” (rather than “mass decontamination”) would require cooperation between the agencies at “powder runs”. The NYPD would be responsible for investigation and evidence collection and preservation. The FDNY would handle medical issues and decontamination of any persons potentially exposed. Both agencies would share command, but each would have a unique role to play that would require them to depend on each other to accomplish their respective missions.

As noted in Chapter II, a large percentage of homeland security leaders who participated in the survey identified both “felt need to collaborate” and “common goal or recognized interdependence” as success factors in affecting interorganizational collaboration.³¹⁰ Clearly and realistically delineating agency roles and keeping them close to their core missions will minimize the level of duplication that exists and enhance collaboration through mutual dependence.

3. The 911 System Needs to be Revamped to Include Fire Department Representation and Dispatchers

In NYC, the entire 911 system is staffed by civilian employees of the NYPD. There is no fire department representation in the 911 center. Any calls that come into 911 go to police dispatchers who, depending on the nature of the call, may conference in an FDNY dispatcher. Each agency then dispatches its own units in accordance with its own response matrix. There is no coordination of resources between the two.

One of the most common complaints cited by NYC firefighters regarding responses is a failure to be notified of emergencies in a timely manner. In fact, of the 71 reports filed in the “FDNY CIMS After Action Review Report”³¹¹ on the FDNY

³¹⁰ Hocevar, Thomas and Jansen, *Building Collaborative Capacity: An Innovative Strategy for Homeland Security Preparedness*, 255-274.

³¹¹ FDNY Intranet, “FDNY CIMS After Action Review Report,” http://www.fdney.org/apps/cims/cims_get_inc_list.jsp (accessed February 14, 2007).

intranet, 45 of them state that there was a delayed notification to the FDNY. In most cases where this has been investigated, “human error” or the caller failing to use certain key words that would prompt notification to the FDNY are identified as the reason for the delay. In the best of circumstances, this system delays FDNY response. Many times the FDNY is not notified at all of emergencies at which they could play an integral part. As mentioned earlier, this happens so frequently that many FDNY units monitor the NYPD’s Special Operations frequency to enable them to receive the runs.

Despite repeated requests by the fire department to station an officer inside the 911 center³¹² to act as a liaison, ensure calls are routed appropriately to FDNY, and provide expert advice to callers trapped in burning buildings, the NYPD has refused to allow this. This behavior is reminiscent of Police Commissioner Ward’s comments to an audience of 911 workers at an awards ceremony in 1988 when he said “If there's a fire and someone makes a call on the phone, you don't call the fire department, you call the police department. Is there anyone in the room that knows the telephone number of the fire department?” The police employees shouted “911” and applauded wildly.³¹³

This is not to suggest that 911 operators and dispatchers intentionally delay notifications of emergencies to the FDNY. To do so would border on criminal behavior. However, those in power who allow a system which has been shown to cause a delay in response to continue to operate while rejecting methods of improving it should be held responsible for the consequences. Refusal to allow FDNY representation as an interim measure to a more comprehensive system is most likely explained by a parochial desire to control information.

The City needs to revamp the 911 system so that both PD and FD dispatchers are working side by side in the same control center. In addition, it needs to institute a response matrix for emergencies that simultaneously dispatches units from multiple agencies including NYPD, FDNY, EMS, and OEM based on the needs of the incident as determined from the information received. The current system of passing along information, having callers repeat information to another operator, and / or monitoring

³¹² This information was confirmed by three FDNY staff chiefs who do not wish to be identified.

³¹³ Pitt, “Fire Officials and Ward Renew Feud,” 29.

another agency's radio frequencies not only wastes valuable time, but also leads to mistakes in the information given or simply failing to make the required notifications.

E. CONCLUSIONS AND IMPLEMENTATION

The conclusions of this thesis are that there are numerous similarities between the current dysfunctional manner in which NYC's emergency response agencies fail to work together synergistically and the rivalries that existed between the branches of the military in the years leading up to the GNA. There are also many of the same causes. Parochial interests of the individual agencies have been allowed to take priority over the greater needs of the City as a whole, just as the interests of the Services dominated the DoD. In both cases, the individual organizations had become extremely proficient in performing their core missions, however, they continued to plan, train, and attempt to operate independently of each other. As a result, dramatic failures occurred when they were required to work together. In the case of the military this was illustrated by events such as the Viet Nam War and the failed mission to rescue the hostages in Iran. In the case of NYC, it has been seen at numerous interagency clashes, and most dramatically on 9/11, when there was a complete lack of coordination between them.

The extraordinary success that the GNA had on changing the very culture of the military from one of service parochialism to one of jointness led to vastly improved communication and coordination between the services and dramatic improvements in their war-fighting capabilities. The benefits of these changes were clearly shown during the first Gulf War only five years after the legislation was signed, and have been seen in many operations since then. Based on the years of unparalleled military successes following its passage and the volume of literature touting the improvements that have resulted, NYC should adopt its own version of the GNA to resolve many of the same problems that exist today between the NYPD and FDNY that existed between the services prior to its enactment.

That is not to say that it will be easy. Achieving this will take sweeping changes in the emergency command structure of the City, the assignment and promotional policies of the individual agencies, and the education requirements of their officers. The same political factors that have prevented previous mayors from taking the steps

necessary to address the underlying causes of the rivalry are still present today. However, accomplishing these goals is not an insurmountable task. Goldwater-Nichols was able to accomplish the even larger mission of transforming the culture and mindset of the entire DoD, the largest bureaucracy in the free world, despite strong resistance from all of the individual services and powerful forces within Congress.

If NYC is to maximize its efficiency and end parochial rivalries, it must end the duplication between these agencies, make them mutually dependent, clearly delineate their roles and responsibilities, foster an atmosphere of “jointness”, and conduct frequent small- and large-scale interagency drills with meaningful and timely AAR’s. To ensure that the process of reorganizing NYC’s emergency management system is credible and not dominated by political considerations and parochial interests, it will have to be as open, public, and transparent as possible. It will also take some sacrifice on the part of the individual agencies and even the mayor as power is shifted and oversight is established. Secretary Rumsfeld noted this when he reminded the 9/11 Commission each of the services had to “give up some of their turf and authorities and prerogatives” to achieve better joint capability under Goldwater-Nichols.³¹⁴

Similarly, Mayor Bloomberg told the 9/11 Commission, “...those in charge in our city on 9/11 showed us what must be done. Following their example and showing the willingness at the local and national levels to *put aside parochial interests in the service of our common good* can and will keep us safe and free.”³¹⁵

Unfortunately, given the power and influence the current police commissioner has with the mayor, and given the amount criticism they have withstood over the wording of key portions of CIMS, it is extremely unlikely that these proposals will be implemented under the current administration. However, it is hoped that the next mayor will see the value, both operationally and financially, of addressing the underlying causes of the rivalry and will take the steps necessary to resolve them, rather than simply stifle the discord they create. With that in mind, the following obstacles to implementation would have to be addressed.

³¹⁴ 9/11 Commission, *9/11 Commission Report*, 403.

³¹⁵ Transcripts from *Eleventh Public Hearing of the National Commission on Terrorist Attacks upon the United States*, Day Two sess., 82

Aside from the aforementioned political pressures, particularly from the NYPD, that would have to be overcome to apply these recommendations, there is a cost factor as well. The centerpiece of the proposal revolves around empowering and expanding a central planning and response agency, namely OEM. To accomplish this and create a sufficient number of JDA positions, that agency would have to be greatly enlarged. Therefore, OEM should have its own budgeted lines (or billets) to fulfill its personnel needs. Members who are detailed to OEM should be removed from their sponsoring agency's payroll and added to OEM's so as not to create a financial burden on the agencies for supplying these members.

Creating hundreds of new positions to fulfill the expanded planning, training, and response duties that OEM would undertake is typically an expensive endeavor. However, some of those costs can be offset. For example, some planning positions that currently reside within each agency could be eliminated and those responsibilities shifted to OEM where they could be synthesized to conform to the City's overall strategic plans. In addition, homeland security funding could probably be used to subsidize many of the interagency training positions that would be created. Typically DHS does not approve of funding for personnel; however, new positions created for training related to new homeland security missions are frequently approved. Being that NYC's experience on 9/11 was the impetus for mandating compliance with NIMS in order to qualify for homeland security funding, it is likely that DHS would approve funding for interagency training teams.

In addition, cost savings would be achieved through the elimination of duplication and by standardizing equipment across agency lines. The increased purchasing power that such standardization would result in and the cost reductions associated with a centralized maintenance and support programs for these items would also provide long-term financial benefits to the City, further reducing the fiscal impact of these proposals.

The dramatic success that the GNA has had in changing the culture of the military, and the successful campaigns that have resulted due in large part to these reforms, demonstrate that it is not only possible to enact such sweeping changes, but that doing so would greatly benefit NYC in its ability to coordinate its efforts to prepare for,

prevent, respond to, and recover from various emergencies. While it will not necessarily take an act of Congress, as it did with the GNA, to make the necessary changes in NYC, it will take the full backing of a mayor who wants to end the destructive rivalry between the NYPD and FDNY and maximize the efficiency of NYC's considerable resources. It will also take meaningful oversight to ensure that the Office of Emergency Management is empowered and the reforms suggested are not circumvented to accommodate parochial interests. And with all due respect to the police commissioner, it will certainly take more than a football game.

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