

**EXAMINING THE MILITARY'S SUPPORT OF CIVIL  
AUTHORITIES DURING DISASTERS**

---

**HEARING**

BEFORE THE

**SUBCOMMITTEE ON EMERGENCY  
COMMUNICATIONS, PREPAREDNESS,  
AND RESPONSE**

OF THE

**COMMITTEE ON HOMELAND SECURITY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED TENTH CONGRESS**

FIRST SESSION

APRIL 25, 2007

**Serial No. 110-28**

Printed for the use of the Committee on Homeland Security



Available via the World Wide Web: <http://www.gpoaccess.gov/congress/index.html>

U.S. GOVERNMENT PRINTING OFFICE

43-564 PDF

WASHINGTON : 2009

---

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Internet: [bookstore.gpo.gov](http://bookstore.gpo.gov) Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON HOMELAND SECURITY

BENNIE G. THOMPSON, Mississippi, *Chairman*

LORETTA SANCHEZ, California,	PETER T. KING, New York
EDWARD J. MARKEY, Massachusetts	LAMAR SMITH, Texas
NORMAN D. DICKS, Washington	CHRISTOPHER SHAYS, Connecticut
JANE HARMAN, California	MARK E. SOUDER, Indiana
PETER A. DeFAZIO, Oregon	TOM DAVIS, Virginia
NITA M. LOWEY, New York	DANIEL E. LUNGREN, California
ELEANOR HOLMES NORTON, District of Columbia	MIKE ROGERS, Alabama
ZOE LOFGREN, California	BOBBY JINDAL, Louisiana
SHEILA JACKSON LEE, Texas	DAVID G. REICHERT, Washington
DONNA M. CHRISTENSEN, U.S. Virgin Islands	MICHAEL T. McCAUL, Texas
BOB ETHERIDGE, North Carolina	CHARLES W. DENT, Pennsylvania
JAMES R. LANGEVIN, Rhode Island	GINNY BROWN-WAITE, Florida
HENRY CUELLAR, Texas	MARSHA BLACKBURN, Tennessee
CHRISTOPHER P. CARNEY, Pennsylvania	GUS M. BILIRAKIS, Florida
YVETTE D. CLARKE, New York	DAVID DAVIS, Tennessee
AL GREEN, Texas	
ED PERLMUTTER, Colorado	
VACANCY	

JESSICA HERRERA-FLANIGAN, *Staff Director & General Counsel*

ROSALINE COHEN, *Chief Counsel*

MICHAEL TWINCHEK, *Chief Clerk*

ROBERT O'CONNOR, *Minority Staff Director*

---

SUBCOMMITTEE ON EMERGENCY COMMUNICATIONS, PREPAREDNESS,  
AND RESPONSE

HENRY CUELLAR, Texas, *Chairman*

LORETTA SANCHEZ, California	CHARLES W. DENT, Pennsylvania
NORMAN D. DICKS, Washington	MARK E. SOUDER, Indiana
NITA M. LOWEY, New York	MIKE ROGERS, Alabama
ELEANOR HOLMES NORTON, District of Columbia	BOBBY JINDAL, Louisiana
DONNA M. CHRISTENSEN, U.S. Virgin Islands	DAVID DAVIS, Tennessee
BOB ETHERIDGE, North Carolina	PETER T. KING, New York ( <i>Ex Officio</i> )
BENNIE G. THOMPSON, Mississippi ( <i>Ex Officio</i> )	

CRAIG SHARMAN, *Director*

NICHOLE FRANCIS, *Counsel*

BRIAN TURBYFILL, *Clerk*

HEATHER HOGG, *Minority Senior Professional Staff Member*

(II)

# CONTENTS

	Page
STATEMENTS	
The Honorable Henry Cuellar, a Representative in Congress from the State of Texas, and Chairman, Subcommittee on Emergency Communications, Preparedness, and Response .....	1
The Honorable Charles W. Dent, a Representative in Congress from the State of Pennsylvania, and Ranking Member, Subcommittee on Emergency Communications, Preparedness, and Response .....	2
The Honorable Bob Etheridge, a Representative in Congress from the State of North Carolina .....	35
WITNESSES	
Mr. Glenn Cannon, Assistant Administrator for Disaster Operations, Federal Emergency Management Agency:	
Oral Statement .....	17
Prepared Statement .....	19
Major General Timothy J. Lowenberg, Adjutant General, State of Washington:	
Oral Statement .....	7
Prepared Statement .....	9
Major General Tony Pineda, National Commander, Civil Air Patrol:	
Oral Statement .....	13
Prepared Statement .....	15
Major General Terry L. Scherling, Director of the Joint Staff, National Guard Bureau:	
Oral Statement .....	3
Prepared Statement .....	5
Mr. Mike Womack, Director, Mississippi Emergency Management Agency:	
Oral Statement .....	26
Prepared Statement .....	27



## EXAMINING THE MILITARY'S SUPPORT OF CIVIL AUTHORITIES DURING DISASTERS

Wednesday, April 25, 2007

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
SUBCOMMITTEE ON EMERGENCY COMMUNICATIONS,  
PREPAREDNESS, AND RESPONSE,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:05 a.m., in room 1539, Longworth House Office Building, Hon. Henry Cuellar [chairman of the subcommittee] presiding.

Present: Representatives Cuellar, Christensen, Etheridge and Dent.

Mr. CUELLAR. The subcommittee will come to order.

The hearing will be on Examining the Military's Support of Civil Authorities during Disasters.

I think we are going to be having Mr. Reichert join us in a few minutes, so I will ask for unanimous consent to allow the gentleman from Washington, Mr. Reichert, when he does come in, to sit here and question the witnesses at today's hearing. Without objection, it is so ordered.

Good morning. First of all, on behalf of the members of the subcommittee and our ranking member, Mr. Dent, let me welcome our panel. We are glad that you are here to discuss how the National Guard and other organizations, such as the Civil Air Patrol, can assist and coordinate with State and Federal emergency management officials in the wake of disasters.

We are also going to look at the resources that these organizations can provide to aid in response efforts. During Hurricane Katrina, the work done by the National Guard saved countless lives and can be held up as a real success story in the wake of that enormous tragedy that we had.

However, stretched thin by the wars in Iraq and Afghanistan, the National Guard is less equipped now than it has ever been to respond to a major terrorist attack or a natural disaster. According to the National Guard, 88 percent of the Army National Guard units and 45 percent of the Air National Guard units that are not deployed overseas have severe equipment shortages. In addition, on March 1, 2007, the commission on the National Guard and Reserves issued its second report to Congress. Arnold J. Punaro, the chairman of the commission and a retired Marine Corps major general, said that these shortages have reduced the Guard to its lowest readiness level ever, and this poses an unacceptable risk to Americans. This report also faulted the Department of Homeland

Security for failing to identify the domestic missions the National Guard should be expected to perform. It also criticizes the Defense Department for not equipping the National Guard adequately for those missions. This hearing will allow us to examine how inadequate equipping limits the National Guard's emergency response potential.

I am also look forward to hearing from representatives of the Civil Air Patrol on ways their organization believes it can be better utilized during disaster. I know that Ranking Member Dent has been a big proponent of this effort.

I am interested to see if State emergency managers and FEMA have utilized CAP as an organization to bolster domestic response capabilities and whether or not legislative changes are required to support their involvement or whether they can do it at this time under the existing framework.

I must also note that this is the first in a series of hearings that the Homeland Security Committee will hold looking at the role of military components in our Nation's homeland security and emergency response efforts.

The Border Security Subcommittee, which I also sit on, will soon examine Operation Jump Start and force multiplication for the Border Patrol. This is an extremely important issue for this committee, and we thank you for being here.

I once again thank all of the witnesses for being here with us, and I thank them for their testimony. I look forward to a productive discussion.

At this time, the chair will recognize the ranking member of the subcommittee, the gentleman from Pennsylvania, Mr. Dent, for an opening statement.

Mr. Dent. Thank you, Chairman Cuellar, and I thank you for holding this hearing today. I truly appreciate everybody's attendance.

As we are all aware, a terrorist attack or natural disaster is, first and foremost, a local event. Because both State and local resources may be quickly overwhelmed, Congress has directed the Federal Government to stand ready to provide assistance. This assistance may be in the form of additional manpower, including law enforcement personnel, emergency supplies, food and water, power generators, and backup communications systems. We saw after Hurricane Katrina and, more recently, after the tornadoes and heavy snow that occurred earlier this year, that the military is often called upon to assist in Federal or State emergency response efforts.

Today, we have with us both Federal and State officials to discuss coordination between the military and civilian emergency management officials. I look forward to discussing with General Scherling how the National Guard prepares its personnel and equipment to be deployed after a terrorist attack or natural disaster. Also with us today is Major General Tony Pineda, who is National Commander of the Civil Air Patrol. During a trip to the border last summer in Laredo, Texas, with Chairman Cuellar, I was disturbed and surprised to learn that the Border Patrol does not have access to enough aviation assets to adequately protect the border. Meanwhile, the Civil Air Patrol has a force of approximately 55,000 members across the country, and a fleet of over 500

aircraft ready to help the Border Patrol secure the border. I look forward to discussing with General Pineda how the Civil Air Patrol could assist the Department of Homeland Security in securing the border, as well as in emergency response activities, such as search and rescue, which I know are currently ongoing.

I would also like to thank all of the witnesses again for being with us here today, and again, I thank Chairman Cuellar for holding this very important hearing and for the series of upcoming hearings. Thank you.

Mr. CUELLAR. Thank you, Mr. Dent.

Other members of the subcommittee are reminded that, under the committee rules, opening statements may be submitted for the record. At this time, I would like to welcome the panel of witnesses.

Our first witness will be Major General Terry Scherling. She is the Director of the Joint Staff of the National Guard Bureau. Previously, General Scherling was the Deputy Director for antiterrorists in the homeland defense and the Joint Director for the military support operations of the Bureau Joint Staff.

Our second witness is Major General Timothy Lowenberg, and he has been the adjutant general for the State of Washington since September 1999. As the adjutant general, he guides the appropriations of the Washington Army and Air National Guard, citizen soldiers and airmen and women to respond in times of State or national emergency.

Our third witness is Major General Tony Pineda, who is the National Commander of the Civil Air Patrol. CAP is a volunteer organization that performs search-and-rescue missions as well as aerospace education in-depth programs.

Our fourth witness is Glenn Cannon, who is FEMA's Assistant Administrator for disaster operations. He is responsible for coordinating the development and execution of interagency plans, policies, procedures, and floor response operations during disasters. He is the director of the division of the State fire marshals in Florida.

Our final witness is Mike Womack, who is the Director of the Mississippi Emergency Management Agency. He served for 2 years as the agency's deputy director and led them through response and recovery efforts. Mr. Womack previously served for 29 years in the active and Reserve service. He retired in June 2001 as a lieutenant colonel with the Mississippi Army National Guard.

Mr. CUELLAR. We are pleased to have all of you present, and without objection, members' and the witnesses' full statements will be inserted in the record, and now I ask each witness to summarize their statement in 5 minutes, beginning with General Scherling.

Welcome.

**STATEMENT OF MAJGEN TERRY L. SCHERLING, DIRECTOR OF  
THE JOINT STAFF, NATIONAL GUARD BUREAU**

General SCHERLING. Thank you for the opportunity to speak to you today as you examine the National Guard's military support to civil authorities during disasters.

We meet at a trying time in history when our Army and Air National Guard are partnered with our active component Army and Air Force in combat operations. You can be proud that the citizen soldiers and airmen of your Army and Air National Guard are

ready to answer this Nation's call to arms. The National Guardsmen who are mobilized and deployed overseas are superbly trained and equipped. They serve shoulder to shoulder with active duty counterparts, all of them unquestionably the best trained and best equipped American fighting force in history.

While our combat soldiers and airmen continue to be superbly equipped when they arrive in the combat theater, the equipment we bring there gets used up, blown up or left behind. We have seen the readiness of our units here at home decline over time to the point today where it severely limits our ability to fulfill our homeland security mission, that of the Department of Defense's first responders to a domestic disaster. The good news is that the most challenging part of our country's homeland security military response force is already in place, and that is our personnel. We have the best educated, best trained and most experienced population of guardsmen in history.

Last week, the Army National Guard celebrated reaching an end strength goal of more than 350,000 troops. The real difficult problem, that of attracting quality recruits, seasoning them and keeping them, has been solved. Now we need to turn our attention to giving them the tools to train with and to maintain their readiness to do their jobs both abroad and at home.

I have with me today two of the brightest examples of our Nation's treasure, and that is your National Guard members, Master Sergeant Regina Stoltzfus of the Pennsylvania National Guard and also Sergeant First Class William Edgar of the Mississippi Army National Guard. They have served with distinction in both the Federal and State missions of the National Guard.

Master Sergeant Stoltzfus has been deployed to Balad, Iraq, as a first sergeant of a communications squadron. She served shoulder to shoulder in the combat zone with active Air Force Airmen. We often hear that it is impossible to tell the difference between Guardsmen and active duty troops while serving together in combat, but we know that, occasionally, you can tell the difference, and most often, Guardsmen often perform better.

Sergeant Stoltzfus, for example, was recognized by the wing commander as the top first sergeant in Iraq during her deployment. This past winter when winter storms shut down three major highways in Pennsylvania, Sergeant Stoltzfus answered the emergency call to the Governor with the rest of her guard unit, performing traffic control and rescuing stranded motorists in extreme weather conditions.

Sergeant First Class William Edgar is employed full time by the Mississippi National Guard Counterdrug Program, but he still trained for his Federal mission and has deployed twice to Afghanistan. He was awarded the Army's Bronze Star during his last combat tour in Afghanistan. When back in Mississippi, Sergeant Edgar has supported the local, State and Federal law enforcement community in the United States in their fight against illegal drugs and as an intel analyst detailed to the Mississippi Office of the Federal Drug Enforcement Agency. He is now at the Regional Counterdrug Training Academy as the supply sergeant. This academy is one of four in the United States and provides no-cost training to law en-



forcement officers in military, specialty skills that later can be used to leverage the fight against drugs.

The contributions of Sergeant Stoltzfus and Sergeant Edgar to the security of our Nation both at home and overseas reflect great credit upon our National Guard, and I am proud that they could join me here today as representatives of the 460,000 National Guardsmen who stand ready to respond to America's call both at home and abroad.

The biggest obstacle the National Guard faces in performing our homeland security mission is critical shortages of equipment. As documented in a GAO report, the Army National Guard has on hand approximately 40 percent of its equipment. And the Air National Guard has approximately 55 percent of its equipment on hand, leaving us critically short of equipment to do our combat missions.

Mr. Chairman, as Sergeant Stoltzfus and Sergeant Edgar have proudly demonstrated, your National Guard is fully up to the task of answering the call both at home and abroad.

I am grateful for the opportunity to appear before the committee today, and I welcome your questions.

[The statement of General Scherling follows:]

PREPARED STATEMENT OF MAJGEN TERRY L. SCHERLING

Mr. Chairman and distinguished members of the subcommittee, thank you for the opportunity to speak to you today as you examine the National Guard's military support to civil authorities during disasters. We meet at a trying time in our history, when our Army and Air National Guard are partnered with our active component Army and Air Force in combat operations. You can be proud that the citizen-soldiers and airmen of your Army and Air National Guard are ready to answer the Nation's call to arms. The National Guardsmen who are mobilized and deployed overseas are superbly trained and equipped. They serve shoulder to shoulder with active duty counterparts; all of them unquestionably the best trained and best equipped American fighting force in history. But over the past four years, the pace of these combat operations has been intense and not sustainable. The needs of the war fight have driven us to raid the shelves of our garrison force. While our combat soldiers continue to be superbly equipped when they arrive in the combat theatre, the equipment we bring there gets used up, blown up or left behind. We've seen the readiness of our units here at home declined over time, to the point today were it severely limits our ability to fill our homeland security mission, that of the Department of Defense's first responders to a domestic disaster.

The good news is that the most challenging parts of our country's homeland security military response force are already in place. In your National Guard today we have the best educated, best trained, most experienced population of Guardsmen in history. Last week the Army National Guard celebrated reaching the end strength goal of 350,000 troops. The really difficult problems: that of attracting quality recruits, seasoning them and keeping them, have been solved. Now we need to turn our attention to giving them the tools they need to train and stand ready to do the job we need them to do, at home and abroad.

I have with me today two of the brightest examples of the national treasure that is your National Guard; Master Sergeant Regina Stoltzfus of the Pennsylvania Air National Guard and Sergeant First Class William Edgar of the Mississippi National Guard. They have served with distinction in both the Federal and State missions of the National Guard. Master Sergeant Stoltzfus, while deployed to Balad, Iraq as the first sergeant of a communications squadron, served shoulder to shoulder in the combat zone with active Air Force airmen. We often hear that it is impossible to tell the difference between Guardsmen and active troops serving together in combat but we know that force wide you can tell the difference—Guardsmen often perform better. Sergeant Stoltzfus, for example, was recognized as the top first sergeant in Iraq during her deployment.

Sergeant First Class William Edgar is employed full time by the Mississippi National Guard Counterdrug program. But he still trained for his federal mission and has deployed twice to Afghanistan. During his last tour, he was awarded the Army's

Bronze Star during his last combat tour in Afghanistan. When back in Mississippi, Sergeant Edgar has supported the local, state and federal law enforcement community of the U.S. in their fight against drugs as an intelligence analyst detailed to the Mississippi office of the Federal Drug Enforcement Agency, and now at the Regional Counterdrug Training Academy as the supply sergeant. That school, one of four in the U.S., provides no cost training to law enforcement officers in military specialty skills that they later leverage in the fight against drugs.

The contributions of Sergeant Stoltzfus and Sergeant Edgar to the security of our nation, both at home and overseas, reflect great credit upon our National Guard and I'm am proud that they could join me here today as representatives of the 460,000 National Guardsmen that stand ready to respond to America's call at home and abroad.

#### ***Guard Homeland Security Capabilities***

The National Guard's role as our premier homeland security military responders is the product of a deliberate transformational effort. The Guard has identified ten of our core group military skills that are most applicable to our homeland security mission. I share with you now each of those ten capabilities, which have, like Sergeant Stoltzfus and Sergeant Edgar, a dual application to both the overseas war fight and the homeland security mission.

#### **Joint Force Headquarters—Command and Control**

The Guard has stood up a Joint Force Headquarters command and control element in every state and territory to provide 24/7 connectivity to speed the response to domestic emergencies. The deliberate planning skills of the military are integrated into each state's emergency plans through frequent joint planning sessions and exercises with our civilian emergency management and emergency response officials. The Guard has built a capability to train military and civil first responders for a variety of homeland disaster scenarios.

#### **Civil Support Teams**

Every state and territory also now has a full time 22 man WMD civil support teams trained to detect, identify and assist the civil emergency response to a chemical, biological, radiological, nuclear or high yield explosive event. These teams train and respond every day in communities throughout America. In the event of a more severe incident, the Guard has twelve (soon to be seventeen) more robust CBRNE Enhanced Response Force Packages; prepared to respond with specialized equipment and technical rescue and decontamination skills that will save lives in the aftermath of an attack or natural disaster.

#### **Maintenance**

The manpower intensive requirement to maintain and repair essential emergency equipment is critical to a sustained emergency response. The Border Patrol reports a 10% improvement in the utilization rate of their vehicle fleet since Guard mechanics began to support their operation.

#### **Aviation**

Guard aircraft bring mobility in the vertical dimension over difficult terrain and speed of movement in the fourth dimension of time in emergency response scenarios where time means lives.

#### **Engineer**

Heavy equipment and construction units of the Guard are currently making infrastructure improvements along the Southwest border that will improve the efficiency of the Border agents long after the Guard troops have returned home.

#### **Medical**

The deployable emergency medical capability of the Air National Guard is one of the most intuitive homeland security needs of our nation. The Guard has a quick response, self sustaining medical capability.

#### **Communications**

In addition to the self sufficient military communications capability of our units, we've fielded a civil / military interoperable communications capability in every state and territory that enables civil responders to communicate with their military counterparts.

#### **Transportation**

As we saw in Hurricane Katrina, the military has the capability, unique in the homeland, to move great quantities of people and equipment.

#### **Security**

The National Guard leverages several specialized military skills to the security needs of our nation. We have critical infrastructure protection teams that are analyzing the vulnerabilities our civil, military and cyber high value assets. Every US state and territory has a reaction force trained and ready maintain civil security, in addition to the military police and security forces resident in the Guard. The Air Guard maintains fighter jets ready to respond on a moment's notice to threats in the airspace over America. We present programs to reduce the demand for drugs in our schools and communities and continue our support of domestic law enforcement operations with our counterdrug program. The counterdrug program supports law enforcement with observation and analysis of criminal activity and training of law enforcement officers. In June 2005, that effort became the model for our support to the Border Patrol when we deployed 6000 Guardsmen for Operation Jumpstart to the Southwest border. The Guard State Partnership Program reaches outside America's borders to developing countries and builds personal bridges that improved our security situation at home.

#### **Logistics**

The military has a unique ability to sustain operations in an austere environment. The military specialty of reception, staging, onward movement and integration is employed in every major domestic response scenario and is essential to get resources to the citizens in need.

#### ***The National Guard's equipment needs***

The biggest obstacle the Guard faces to performing the missions described above is a critical shortage of equipment.

As documented in a GAO report, the Army National Guard has on-hand only 40% on average of its equipment requirement across the nation. This will slow our response to disasters and terrorist incidents in the homeland, as equipment may need to be brought into an affected area from further away.

Without this needed equipment, 88 percent of the Army Guard units based in America, available to their Governors for an emergency, report "not combat mission ready" which can roughly be equated to the ability to respond to a domestic emergency.

For the first time, domestic based Air National Guard units are now reporting not combat ready as well. Because of flux in the structure of the Air Guard, many units are in transition between their old and yet to be defined future mission. The period of uncertainty leaves 45% of Air Guard units lacking the gear needed to train for and perform their combat mission.

#### **Conclusion**

Mr. Chairman, as Sergeant Stoltzfus and Sergeant Edgar have so proudly demonstrated, your National Guard is fully up to the task of answering the call to duty, both at home and abroad, if only given the tools to do so.

I am grateful for the opportunity to appear before the committee today and welcome your questions.

Mr. CUELLAR. Thank you very much, and I appreciate your statement.

At this time, I would recognize General Lowenberg to summarize your statement in 5 minutes.

#### **STATEMENT OF MAJGEN TIMOTHY J. LOWENBERG, ADJUTANT GENERAL, STATE OF WASHINGTON**

General LOWENBERG. Thank you, Mr. Chairman, and members of the committee, for the opportunity to testify before you today on behalf of Governor Christine Gregoire of the State of Washington and the Washington State legislature and the Adjutants General Association of the United States.

Although I am a U.S. Senate-confirmed general officer of the Air Force, I want to stress that I am here today in State status at State expense, and so nothing I have said in my formal testimony or in these oral remarks has been previewed or edited by the Department of Defense.

In a majority of the States and territories, the adjutant general is responsible for managing all of the State's emergency management functions in addition to command and control of the National-Guard. We are responsible also for developing and executing our State homeland security strategic plan, so adjutants general have extensive experience in responding to domestic emergencies.

In our State, for example, we have averaged more than one presidential disaster declaration scale event in our State every year for the past 40 years, and the Governor's control of the National-Guard was particularly instrumental in restoring order and assisting civil authorities during the World Trade Organization riots in Seattle in November of 1999, something that also happened on my watch.

So I draw upon these experiences in telling you the passage of H.R. 869 is critical to restoring historic and appropriate State-Federal relationships and in enabling States to carry out their responsibilities under the U.S. Constitution for maintaining civil order and protecting their citizens' property and lives. There are many, many things I could address, given the topic before the committee this morning, but very few of them are more important than repealing the provisions in last year's Defense Authorization Act that substantially expanded the President's unilateral marshal law authority, something that reversed well more than a century of well established and carefully balanced State, Federal and civil military relationships without calling a single witness, without conducting a single hearing and without any public or private acknowledgment of proponency or authorship of that change.

I suggest to you that, when changes are made to the law for the better, there are many, many people who claim some measure of responsibility for the passage of that provision. This is a provision which has no DNA, no fingerprints, no one who is claiming authorship, in fact, no one who will even acknowledge having reviewed or having coordinated on the change before it appeared in conference. And it was voted off the Floor of the House on the same day the conference report was filed.

There were weaker provisions in section 511 of the House's passed version of the Defense Authorization Act that were unanimously opposed by the Nation's Governors. I have submitted with my formal testimony a copy of a letter signed by all 50 Governors. There have only been two times in the history of the National Governors Association in which every Governor has signed on to correspondence to the Congress and to the executive branch. Both occurred in the past 18 months. Both involved National Guard issues. This is one of them. So this is not a partisan issue. It is a State Federal issue of the highest order. These conference amendments give the President sweeping power to unilaterally take control of the National Guard during a domestic incident without any notice, contact or consultation with the Governor. It even permits the President to take control of the National Guard in the middle of a Governor-directed response-and-recovery operation. The U.S. Northern Command has wasted very little time, Mr. Chairman, in acting on these new powers.

Secretary Gates approved a final CONPLAN developed by Northern Command on March 15, 2007. The plan explicitly assumes that the Guard will be Federalized. When the President unilaterally invokes the act, neither adjutants general nor Governors were given any notice of the development of these Federal operational plans nor have we had any opportunity to present our concerns or to synchronize the Governors' approved State plans with the Northern Command plan. To add insult to injury, this plan requires the Joint Forces Headquarters of every State to develop the very plans under which the President would take control of our forces. One key planning assumption is that the President will use this authority if he concludes that local or State authorities lack the will to enforce the laws.

It is a very highly subjective standard, again, developed with no notice or consultation with the Governors of the several States and territories. So the Adjutants General Association of the United States joins the legislature of our State—which passed a joint memorial resolution—the National Governors Association, the National Lieutenant Governors Association, the National Conference of State Legislatures, the Enlisted Association of the National Guard of the United States, the National Emergency Management Association, the National Sheriffs Association, the International Association of Emergency Managers, and many, many other national associations in urging members of this committee, if you have not already done so, to please consider cosponsoring H.R. 869 and to work for its swift passage. It is imperative that we have unity of effort at all levels when responding to domestic emergencies.

Section 1076 of last year's Defense Authorization Act openly invites disharmony, confusion and the fracturing of what should be a united effort at the very time when States and territories need Federal assistance, not a Federal takeover in responding to State and local emergencies.

Thank you very much, Mr. Chairman, and members of the committee, for allowing me on behalf of my State, my State legislature, my Governor, and the adjutants general of the United States to express our concerns. I look forward to your questions.

[The statement of General Lowenberg follows:]

PREPARED STATEMENT OF MAJGEN TIMOTHY LOWENBERG

Thank you for the opportunity to appear before you today. I want to emphasize at the outset that I am testifying on behalf of the State of Washington and the Adjutants General Association of the United States (AGAUS). Although I am a federally recognized and U.S. Senate-confirmed Air Force General Officer, I appear before you today as a state official in pure state status and at state expense. My formal testimony, oral statement and responses to your questions should therefore be understood as independent expressions of states' sovereign interests. Unlike other military panelists who typically appear before you, nothing I am about to say has been previewed, edited or otherwise approved by anyone in the Department of Defense.

**The Role of Adjutants General in Support of Civil Authorities During Disasters**

In a majority of the states and territories, including the State of Washington, the Adjutant General is responsible for all state emergency management functions in addition to command and control of the state's Army and Air National Guard forces. In addition, I am responsible for Washington's statewide Enhanced 911 telecommunications system and for developing and executing our statewide Homeland Security Strategic Plan and administering all of our Homeland Security grant pro-

grams. Washington has averaged more than one Robert T. Relief and Emergency Assistance Act (the Act, 42 U.S.C. sections 5121 Presidential Disaster declaration a year for the past 40 years and our National Guard forces, acting under the command and control of the Governor and the Adjutant General, have been an indispensable response force in nearly every one of these disasters. The Governor's use of the Washington National Guard was especially instrumental in helping civil authorities restore public order in Seattle during the World Trade Organization riots in November 1999.

I speak to you, therefore, as my state's senior official responsible for military support to civil authorities during disasters. I have experience as both a supported state commander (the WTO riots referenced above) and supporting state commander (I deployed more than 1,000 National Guard soldiers and airmen to Gulf Coast states in 2005 in response to Hurricanes Katrina and Rita).

Five and one-half years after the terrorist attacks of September 11, 2001, the federal government has unfortunately not come to grips with how federally controlled military force will be used domestically or how federal military forces will operate with regard to ongoing National Guard response and recovery operations under the control of the governors -the Commanders-in-Chief of the several States and territories. In last year's Defense Authorization conference, language was inserted that amends and substantially expands the President's Martial Law powers notwithstanding the universal opposition of the nation's governors. In doing so, the conference chairs reversed more than 100 years of well-established and carefully balanced state-federal and civil-military relationships. They did so without a single hearing, without calling a single witness and without any public or private acknowledgement of authorship of the change. HR 869 would repeal these ill-advised provisions. Although there are many issues concerning military support to civil authorities that I could address at this hearing, none are more important than those raised by HR 869.

HR 869 (and S.513) is not an esoteric, "academic" or "technical" subject for Governors and Adjutants General. Section 1076 of the 2007 National Defense Authorization Act (Public Law 109-364; hereafter referred to as the 2007 NDAA) has very negative and destructive implications for the state, local and federal unity of effort called for in Homeland Security Presidential Directive 5 (HSPD 5) and in the comprehensive emergency management plans of the several states and territories. Under the U.S. Constitution, states retain the primary responsibility and authority to provide for civil order and protection of their citizens' lives and property. Passage of HR 869 is critical to restoration of historic state-federal relationships and to the states' ability to carry out their constitutional responsibilities.

#### Applicable Federal Statutes

The Posse Comitatus Act (8 U.S.C. 1385) punishes those who, "except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully use any part of the Army or the Air Force as a posse or otherwise to execute the laws. . ." The Posse Comitatus Act does not apply to the National Guard when in state active duty or federal Title 32 service because the Guard is under the command and control of the Governor and the Adjutant General in both statuses. It does apply to the Guard when in Title 10 service, however, because when the Guard is federalized under Title 10 it becomes an indistinguishable part of the federal forces and is under federal as opposed to state control.

The Robert T. Act (cited above) authorizes the President to make a wide range of federal services available to states that are victims of natural or human-caused disasters. The Act authorizes the use of federal military forces for the widest possible range of domestic disaster relief but not for maintaining law and order and not as an exception to the Posse Comitatus Act. Some other independent authority is required if federal military force is to be used to enforce the laws.

The Insurrection Act (enacted in 1807) delegates authority to the President to federalize and deploy the National Guard domestically in response to an insurrection or civil disturbance (10 U.S.C. Sections 331-335). Section 331 authorizes the President to use federal military forces to suppress an insurrection at the request of a state government. Section 332 authorizes the President to use military forces in such manner as he deems necessary to enforce the laws or suppress a rebellion. Section 333 authorizes the President to use federal military forces to protect individuals unlawful actions that obstruct the execution of federal laws or which impede the course of justice under federal laws. Section 333 was enacted to implement the Fourteenth Amendment and does not require the request or consent of the governor of the affected state.

Prior to the 2007 National Defense Authorization Act conference amendments, therefore, there were carefully crafted statutes that delegated authority to the President to federalize the National Guard and to employ the Title 10 National Guard forces and other Title 10 active duty military forces for domestic purposes in response to domestic emergencies (Stafford Act) violence (Insurrection Act). The Insurrection Act's martial law authority has been used sparingly. In fact, it has been invoked only 10 times in the past half-century. In every instance in which it has been used in the past 40 years, the President has acted at the request and with the concurrence of the governor of the state whose National Guard forces were federalized.

#### The 2007 National Defense Authorization Act

##### Expands Federal Martial Law by Amending the Insurrection Act

The House-passed version of the 2007 National Defense Authorization Act (NDAA) proposed to expand the circumstances in which the President could seize control of the National Guard "federalize" the Guard) for domestic purposes. As noted above, the Act already permits the President to use active duty military forces for emergency response operations including debris removal and road clearance; search and rescue; emergency medical care and shelter; provision of food, water and other essential needs; dissemination of public information and assistance regarding health and safety measures; and the provision of technical advice to state and local governments on disaster management and control. (See CRS Report *Federal Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding*). Since the Act authority does not constitute an exception to the Posse Comitatus Act, however, active duty military forces cannot be used for law enforcement purposes unless circumstances permit the President to independently invoke the Insurrection Act. Similarly, the President lacked authority to federalize the National Guard unless he was doing so under the Insurrection Act to suppress an "insurrection, domestic violence, combination, or conspiracy. . ." U.S.C. 333.

Section 511 of the House-passed version of the 2007 NDAA would have delegated authority to the President to involuntarily seize control of the National Guard in the event of any "serious natural or disaster, accident or catastrophe". The effect of Section 511 would have been to authorize the President to involuntarily take control of the Guard for emergency response purposes but not for law enforcement operations unless circumstances independently justified the President's invocation of the Insurrection Act.

As the 2007 NDAA went to conference, the National Governors Association (NGA) sent letters to the ranking majority and minority members of the U.S. Senate and House of Representatives and to the Secretary of Defense (see attached August 6 and 3 1,2006 letters) protesting the provisions of Section 511. The governors noted that Section 511 and similar provisions in the Senate bill would represent "a dramatic expansion of federal authority during natural disasters that could cause confusion in the command-and-control of the National Guard and interfere with states' ability to respond to natural disasters within their borders". They reiterated that any such fundamental change in law should be considered only in consultation and coordination with the governors and "The role of the Guard in the states and to the nation as a whole is too important to have major policy decisions made without full debate and input from the governors throughout the policy process."

In conference, the chairs dropped the House version (Section 511) but substituted an even broader provision that simultaneously amended the federal Insurrection Act and authorized the President to take control of the Guard in response to any "natural disaster, epidemic or other serious public emergency, terrorist attack or incident, or other condition in any State or possession of the United States. . ." Because this was done under an expansion of the President's Insurrection Act powers, military forces operating at the President's direction in such circumstances are not subject to the Posse Comitatus Act and can be used to force compliance with laws by any rules for use of lethal force (RUF) or rules of engagement (ROE) authorized by the President or those acting under his delegated authority.

The conference report was agreed to in the House on the same day as its filing (September 29, 2006) and in the Senate the following day (September 30, 2006).

Without any hearing or consultation with the governors and without any articulation or justification of need, Section 1076 of the 2007 NDAA changed more than 100 years of well-established and carefully balanced state—federal and civil -military relationships. I respectfully suggest that when laws are changed for the better, everyone who supports the change claims credit for its passage. These provisions, however, have no "DNA", and no acknowledged author. In fact, state officials have been

unable to identify anyone who will even acknowledge having reviewed or coordinated on the changes before they were inserted into the conference report.

As written, the Act does not require the President to contact, confer or collaborate in any way with a governor before seizing control of a state's National Guard forces. It requires only notice to Congress that the President has taken the action but no explanation, justification or consent of congress is required.

If these provisions had been in effect during the 2005 Hurricane Katrina response, the President could have unilaterally seized control of the National Guard forces of all 54 states, territories and the District of Columbia as they were engaged in ongoing recovery operations in the Gulf Coast states. He could have done so by a unilateral determination that state authorities were incapable of preventing public violence and maintaining public order. Ironically, the President's unilateral assumption of control over the Guard might well be the very act that would preclude a state from having the resources to maintain or restore public order.

In the event of such a federal take-over, governors of supporting state forces would be unable to withdraw their units or exercise any control or influence over their personnel even if there was an unexpected emergency in their home state.

The Adjutants General Association of the United States (AGAUS) urges Congress to restore the historic balance of state and federal interests by swiftly passing HR 869. AGAUS believes that, with the exception of two circumstances noted below, governors should control any and all domestic use of military force within their state (regardless of whether the domestically employed forces are Active, Reserve or National Guard forces) and should retain control over their own National Guard forces wherever and whenever they are employed within the United States or its territories or the District of Columbia. The two exceptions are: (1) if National Guard lethal force is required under the direction of national command authorities to repel an attack or invasion against the United States or (2) if National Guard units or personnel are being used in state status to resist a order of the judicial, legislative or executive branches of the federal government the school desegregation and civil rights cases of 1957-1965).

#### ***Interference with Essential State Interests***

The National Guard is the only organized, trained and equipped military force a governor can call upon to restore or sustain public safety in the event of a state or local emergency, including enforcement of state declarations of martial law (see, for example, RCW 38.08.030, authorizing the governor's "Proclamation of complete or limited martial With the exception of the two circumstances noted above, the domestic use of military force within any state without the governor's consent, supervision and ultimate control and the imposition of federal control over a state's National Guard units or personnel for domestic purposes without the governor's prior knowledge and consent are of state sovereignty and deprive states of the means of carrying out the core of state government, including protection of a state's citizens under the state's existing laws or as part of a state's imposition and enforcement of its own martial law provisions.

Further, imposing Presidential control over the National Guard for domestic purposes without notice to the governor and without the governor's consent negates the unity of local-state-federal effort needed in times of domestic peril and would undermine the speed and efficiency with which the National Guard responds under the Governor's control to in-state emergencies and in support of other states through state-to-state mutual aid agreements such as the Emergency Management Assistance Compact (EMAC)

#### ***Federal Plans for Implementing Expanded Martial Law Authority***

US Northern Command (USNORTHCOM) has been engaged for some time in deliberative planning for implementation of Section 1076 of the 2007 National Defense Authorization Act (the NDAA was effective October 17,2006). The formal NORTHCOM 2502-05 was approved by Secretary of Defense Gates on March 15,2007. The final approved plan states "This document is classified UNCLASSIFIED to ensure ease of use by both military and interagency organizations and personnel whose official duties require specific knowledge of this plan, including those required to develop supporting plans. Information in USNORTHCOM 2502 may be disseminated to all interagency, National Guard Bureau, federal, tribal, state and local governments."

Although the 2007 NDAA provisions could be used to compel National Guard forces to engage in civil disturbance operations under federal control, states have had no notice of the development of these federal operational plans nor have gov-



ernors or their Adjutants General had any opportunity to present their concerns or to synchronize their state plans during the development and coordination of the USNORTHCOM plan.

The UNCLASSIFIED plan I have seen says National Guard forces conducting civil disturbance operations in the affected [both National Guard forces from the affected or supported state and National Guard forces from other supporting states operating therein] “will likely be federalized upon execution of the plan. Further, the plan requires each state’s National Guard Joint Forces Headquarters to develop the very plans under which the federal government would assume control over the state’s National Guard forces.

One key USNORTHCOM planning assumption is that the President will invoke the new Martial Law powers if he concludes state or local authorities lack the capability *or the will* to maintain order. This highly subjective operational standard has been developed without any notice, consultation or collaboration with the governors of the several states and territories.

**All States and Territories and Numerous National Associations Urge Congress to swiftly enact HR 869**

The Adjutants General Association of the U.S. (AGAUS) joins the following institutions and national organizations in urging Congress to repeal Section 1076 of the 2007 NDAA through swift enactment of HR 869: the Washington State Legislature, the National Governors Association (NGA), the National Lieutenant Governors Association (NLGA), the National Conference of State Legislatures (NCSL), the Enlisted Association of the National Guard of the United States (EANGUS), the National Sheriffs Association (NSA), the National Emergency Management Association (NEMA) and the International Association of Emergency Managers (IAEM).

**Conclusion**

It is imperative that we have unity of effort at all levels—local, state and federal—when responding to domestic emergencies and disasters. Section 1076 of the 2007 National Defense Authorization Act is a hastily conceived and ill-advised step backward. It openly invites disharmony, confusion and the fracturing of what should be a united effort at the very time when states and territories need federal *assistance*—not a federal take over—in responding to state and local emergencies.

Thank you for this opportunity to express the concerns of the State of Washington, the Adjutants General Association of the United States and the other national associations referenced herein.

Mr. CUELLAR. Yes, sir.

Thank you, again, very much for your time.

At this time, I would recognize General Pineda to summarize your statement for 5 minutes.

**STATEMENT OF MAJGEN TONY PINEDA, NATIONAL  
COMMANDER, CIVIL AIR PATROL**

General PINEDA. Good morning, Mr. Chairman, and members of the committee. I am pleased to have this opportunity to testify on behalf of the Civil Air Patrol on the use of the Civil Air Patrol assets for humanitarian assistance, aerial reconnaissance, search and rescue, and emergency services. I would like to assure you that CAP is the perfect fit to support this effort because of the skill, expertise and experience this organization brings to the table.

It is important for you to understand how CAP is different from other volunteer public service organizations. We started, in World War II, flying antisubmarine missions with light aircraft off the Atlantic coast when the military was unable to do that mission. It was a dangerous and essential national mission that we did well. We continued that tradition with service to this very day. We have over 500 light aircraft and professionally trained aircrews on alert and ready to respond. The capability is supported by vast communications of command network ground teams capable of conducting

emergency missions and thousands of trained professional volunteers.

These assets are located in hundreds of communities, towns and cities in every single State. We utilize modern technologies, including satellite-transmitted aerial photos and hyper-spectral imaging, and can quickly take on new technologies. No other volunteer organization in the United States can provide that kind of capability.

Mr. Chairman, the Civil Air Patrol is ready to help now. Emergency services is our niche. Civil Air Patrol conducts 95 percent of all inland search and rescues in the United States as tasked by the Air Force Rescue Coordination Center at Tyndall Air Force Base in Florida and other agencies. All Air Force assigned missions are coordinated to the Civil Air Patrol National Operations Center at Maxwell Air Force Base in Alabama. Civil Air Patrol also provides disaster relief, support to local, State and national disaster relief organizations, which may include transporting time-sensitive medical materials, blood products and body tissues. CAP is also equipped to provide near-realtime damage assessment, light transport, communication support, and low-altitude route surveys for the U.S. Air Force. We also assist agencies in the war on drugs. Finally, we maintain the most extensive emergency communications network in the Nation with over 16,000 radios across the Nation.

The past few years have highlighted the phenomenal bravery, sacrifice and patriotism of the Civil Air Patrol's everyday heroes. Our rapid response to Hurricanes Katrina, Ophelia, Rita and Wilma was the organization's most extensive ever. During the relief efforts, Civil Air Patrol deployed 1,800 members from 17 States who served over 50,000 volunteer hours; flew over 1,000 air missions; and logged over 2,000 flight hours; provided more than 2,000 time-critical aerial images of the affected areas; distributed 30,000 pounds of relief supplies; ground teams visited over 4,000 homes, contacting over 8,500 residents.

CAP aviators and other members continue to support the country by taking part in several vital exercises at the request of the U.S. Air Force. As a result, Major General-Scott Mayes, a former First Air Force commander, stated, "CAP has become an important partner in our homeland defense mission. Because of the cooperation between CAP and NORAD, we are better able to meet our Nation's requirements for rapid response to any threat to our sovereignty."

That same level of CAP commitment and cooperation continued last summer. At the request of the Chief of Staff of the Air Force, CAP commenced increased training in Arizona in the anticipation of follow-on taskings. These mission rehearsals began on the 17th of July and continued for about 21 days, and the exercise was involving the reconnaissance and rescue of citizens on the border in Arizona.

As CAP celebrates 65 years of service, it prepares for challenges yet to come in an increasingly complicated world. Whatever dangers or opportunities lay ahead, CAP's volunteers are poised to heed the call with the same patriotic spirit that has always distinguished CAP's missions for America. CAP is one team with no borders, and the one goal is to serve our country.

Thank you, and I have some fact sheets of paper that I would like to give to your clerk, detailing some information about the Civil Air Patrol.

[The statement of General Pineda follows:]

PREPARED STATEMENT OF MAJGEN ANTONIO J. PINEDA

Good afternoon Chairman and Members of the Committee. I am pleased to have this opportunity to testify on behalf of the Civil Air Patrol (CAP) on the use of CAP assets for humanitarian assistance, aerial reconnaissance, search and rescue, and emergency services. I would like to assure you CAP is the perfect fit to support this effort because of the skill, expertise, and experience this organization brings to the table.

**History**

First, allow me to enlighten the rest of the members on who we are and what we do. Civil Air Patrol was founded in December 1941, during a time of uncertainty and danger one week before the Japanese attack on Pearl Harbor that hurled America into global conflict. In America's time of wartime need, CAP's fledgling organization of 150,000 volunteer citizen aviators halted the deadly, destructive designs of Germany's Nazi U-boats in America's coastal waters. Under the jurisdiction of the Army Air Forces, CAP pilots flew more than one-half million hours, were credited with sinking two enemy submarines and rescued hundreds of crash survivors during World War II. On July 1, 1946, President Harry Truman established CAP as a federally chartered benevolent civilian corporation, and Congress passed Public Law 557 on May 26, 1948, making CAP the auxiliary of the new U.S. Air Force. CAP was and is still today charged with three primary missions—aerospace education, cadet programs and emergency services. I will focus my comments today on the emergency services mission.

It is important for you to understand why CAP is a different from other volunteer public service organizations. We started in World War II flying antisubmarine missions with light aircraft off the Atlantic coast when the military was unable to do that mission. It was a dangerous and essential national mission that we did well. We continue that tradition of service to this very day. We have over 500 light aircraft and professional, trained aircrews, on alert and ready to respond. That capability is supported by a vast communications and command network, ground teams capable of conducting emergency missions and thousands of trained volunteers. These assets are located in hundreds of communities, towns and cities in every state. We utilize modern technologies including satellite transmitted aerial photos and hyper-spectral imaging and can quickly take on new technologies. No other volunteer organization in the United States can provide that kind of capability. Mr. Chairman, we are ready to help now.

CAP operates as an all-volunteer civilian community asset and the auxiliary of the U.S. Air Force with over 55,000 members. It includes eight geographic regions consisting of 52 wings, one in each of the 50 states, Puerto Rico and the District of Columbia for a total number of units that exceeds 1,500. CAP operates one of the largest fleets of single-engine piston aircraft in the world with 530 aircraft and our volunteer members fly nearly 110,000 hours each year. Additionally, CAP maintains a fleet of nearly 1,000 emergency services vehicles for training and mission support.

Emergency Services is our niche. CAP conducts 95 percent of all inland search and rescue in the United States, as tasked by the Air Force Rescue Coordination Center at Langley Air Force Base, Virginia, and other agencies. All Air Force-assigned missions are coordinated through the CAP National Operations Center at Maxwell Air Force Base, Alabama. We are called upon to perform aerial reconnaissance for homeland security. CAP also provides disaster-relief support to local, state, and national disaster relief organizations which may include transporting time-sensitive medical materials, blood products, and body tissues. CAP is also equipped to provide near real time damage assessment, light transport, communications support, and low-altitude route surveys for the U.S. Air Force. We also assist federal agencies in the war on drugs. Finally, we maintain the most extensive emergency communications network in the nation with over 16,000 radios.

As has been a tradition for over 65 years, CAP pilots and aircraft are highly valued for their ability to fly low and slow making them the ideal observation platform. Federal and state agencies have regularly called on CAP pilots and observers to take vital damage assessment photos or search for crash victims. CAP aircrews are an ideal resource throughout the country because of their experience in search and rescue and their ability to provide aerial imagery in a cost-effective manner. Its cus-

tomers, especially the U.S. military, pay a very small fee for the outstanding service CAP provides. When the U.S. Air Force assigns a mission to CAP, it generally costs less than \$120 per flying hour.

The past few years have highlighted the phenomenal bravery, sacrifice and patriotism of CAP's Everyday Heroes. Our rapid response to Hurricanes Katrina, Ophelia, Rita and Wilma was the organization's most extensive ever. During the relief efforts CAP deployed 1,800 members from 17 states who served over 50,000 volunteer hours; flew over 1,000 air missions and logged over 2,000 flight hours; provided more than 2,000 time-critical aerial images of the affected areas; distributed 30,000 pounds of relief supplies; ground teams visited over 4,000 homes, contacting over 8,500 residents. CAP's great work didn't stop with hurricane relief efforts. Additionally, members carried out over 2,500 search and rescue missions and saved 73 lives. In conjunction with many other organizations, CAP helped reduce illegal drug activity by more than \$637 million. Whether searching for a missing hunter in Oregon, seeking missing or overdue helicopters in Louisiana and Arkansas, providing flood relief in Pennsylvania or assessing tornado damage in Kentucky, CAP members were there performing missions for America.

CAP aviators and other members continue to support U.S. homeland security taking part in several vital exercises at the request of the U.S. Air Force. As a result, Maj. Gen. M. Scott Mayes, former 1st Air Force Commander, stated, "CAP has become an important partner in our homeland defense mission. Because of the cooperation between CAP and NORAD, we're better able to meet our nation's requirements for rapid response to any threat to our air sovereignty. This kind of teamwork is vital to our rapid-response capability. Together, when we're called upon, we'll be ready to act, and act fast."

#### ***The Arizona Border Mission***

That same level of CAP commitment and cooperation continued last summer. At the request of the CSAF, CAP commenced increased training in Arizona in the anticipation of follow-on taskings. These mission rehearsals began on 17 July of 2006. CAP is training in Search and Rescue, Aerial Reconnaissance and Radio Relay. In the course of these training missions, if CAP aircrew members observed individuals in distress, appropriate authorities were notified. Concurrently, USAF staff members are actively developing a Concept of Operations so that we can smoothly transition to support of the Border Patrol, should the Department of Defense receive a request for assistance. The bottom line need was to protect lives along the border.

#### **Conclusion**

As CAP celebrates 65 years of service, it prepares for challenges yet to come in an increasingly complicated world. Whatever dangers or opportunities lay ahead, CAP's volunteers are poised to heed the call with the same patriotic spirit that has always distinguished CAP's missions for America. In that light, CAP is the right fit for this mission and remains committed to assisting border security operations if called upon to continue or expand its role. However, several issues that may limit our effectiveness must be addressed. First, as various federal, state, or local agencies come together to work on a mission such as this one the overall effectiveness and results of the total effort may be enhanced by placing one agency in a position of overarching authority. This lead agency could then most efficiently and effectively orchestrate and direct all operational and support activity to accomplish the mission. Secondly, since CAP is a private non-profit corporation and the Air Force Auxiliary, should "Posse Comitatus" apply to operations such as this one? CAP stands ready to address and assist in resolving these and any other issues if you wish to continue utilizing us in this role.

I would like to extend my sincere thanks to the members of this committee for your strong and devoted support of Civil Air Patrol. As National Commander of this outstanding group of citizen volunteers, I encourage you to recognize the fact that CAP continues to provide an irreplaceable, professional and highly cost-effective force multiplier to America. Through the voluntary public service of more than 55,000 members, CAP makes a priceless and positive impact in communities by performing disaster relief and search & rescue missions, and also by providing aerospace education and cadet programs. CAP serves as a guardian of the skies and a skilled resource on the ground, wherever the call and whatever the mission.

Mr. CUELLAR. Yes. Please, go ahead and submit that. Again, thank you for your testimony.

At this time, I recognize Mr. Cannon, and if you could summarize your testimony to 5 minutes, we would appreciate it, and then

we will go to Mr. Womack, and then we will go ahead and open the hearing up for questions. Thank you.

**STATEMENT OF GLENN CANNON, ASSISTANT ADMINISTRATOR  
FOR DISASTER OPERATIONS, FEDERAL EMERGENCY  
MANAGEMENT AGENCY**

Mr. CANNON. Mr. Chairman and distinguished members of the committee, thank you for inviting me to appear before you today. I look forward to working with this subcommittee and the entire Congress to continue the improvements to enhance the capabilities of the Department of Homeland Security and FEMA.

Based on our experiences and lessons learned over the years, we are building a new FEMA and increasing our core capabilities to lead our Nation's all-hazard preparedness, protection, response, recovery and mitigation capabilities. We are implementing recommendations from the post-Katrina reviews and after-action reports and the Post-Katrina Emergency Management Reform Act of 2006.

A recurring recommendation is the need to more fully integrate military capabilities into Federal disaster response activities. As a result, we are coordinating more closely with DOD and its components, the National Guard Bureau and the State National Guards. This morning, I want to highlight some of the joint activities we are talking with our military partners to approve overall disaster response capabilities.

DOD plays a key role supporting FEMA by planning, coordinating and integrating defense support to civil authorities. This is the support provided by DOD in response to requests for disaster assistance. Under the National Response Plan, DOD supports all 15 emergency support functions. Such support can include commodity distributions, search and rescue, communications, evacuation, fuel distribution and power generation. This support is typically provided through the mission assignment process. Within DOD, NORTHCOM is responsible for military operations to support disaster response. DOD command and control elements are collocated at a disaster site with the principal Federal officer and the Federal coordinating officer.

FEMA coordinates with DOD and the assistant secretary of defense for Homeland Defense level and with the Joint Staff through the Joint Director of Military Support. Among the DOD components we coordinate with, they are the following: U.S. Northern Command, Defense Logistics Agency, the U.S. Army Corps of Engineers, the National Geospatial-Intelligence Agency, the U.S. Transportation Command, the U.S. Pacific Command, the U.S. Southern Command, the Marine Corps Assistance Command and the National Guard Bureau.

Some examples of our coordination include assignment of DOD liaison officers over at FEMA headquarters, assignment of Defense coordinating officers and Defense coordinating elements at our FEMA regions, details of DOD personnel to support FEMA's activities and logistics, operations, transportation, and communication. We have permanent FEMA personnel assigned to staff at NORTHCOM and the joint development of 44 prescribed mission assignments with DOD to provide functional disaster response sup-

port such as airlift, transportation, communications, debris removal, damage assessment, fuel distribution, and operational staging area support. Because of the success of this effort, we are developing additional pre-scripted mission assignments with other Federal agencies.

FEMA participates routinely in DOD-sponsored exercises at the State and local and regional levels, such as NORTHCOM's table talk exercise program, the vigilant shield catastrophic disaster response exercises, the Ardent Sentry/Northern Edge 07 exercise, and exercise to test and validate communications capabilities and interoperability. Similarly, DOD participates in the DHS top officials exercise series with FEMA-sponsored national and regional exercises and workshops, leveraging specialized expertise from the Defense Logistics Agency, the U.S. Army Corps of Engineers and the Marine Corps systems command and collaborating in the areas of training and catastrophic planning and cross-border emergency preparedness activities with Mexico and Canada.

The National Guard Bureau and the State National Guard provide critical disaster response assistance to the States and to FEMA. We coordinate closely with them to ensure the synchronization of their capabilities with the disaster response mission. Also, a full-time Joint director or military support liaison officer with a National Guard background is assigned to FEMA to support day-to-day operations and coordination.

Our coordination with the National Guard takes place in the field and at headquarters. FEMA's regional staff works closely with the State National Guard. FEMA headquarters' staff works closely with the National Guard Bureau. State requirements for National Guard support are normally filled through the Emergency Management Assistance Compact process. During the response to Hurricane Katrina, more than 50,000 National Guard troops were deployed through those EMAC requests.

Some examples of our coordination with the National Guard include daily conference calls, the sharing of incident reports, assessments of continuity of operations, and participation in exercises and training. The Guard also supports homeland defense-and-disaster response with a number of their specialized capabilities.

The Coast Guard is another critical DHS component with substantial disaster response capabilities as we saw during Katrina, the Coast Guard is also called upon to support mission assignments under the ten emergency support functions. To help ensure coordination, there are two Coast Guard liaisons assigned to FEMA headquarters who are there everyday.

DHS and FEMA rely on and appreciate the support of the Department of Defense, the National Guard Bureau and the State National Guard. We look forward to our continued close cooperation with and support from our military partners as we lead the effort to build a more effective national emergency management system to help protect the American public.

Thank you for your time today, and I look forward to answering your questions.

[The statement of Mr. Cannon follows:]

PREPARED STATEMENT OF GLENN M. CANNON

**Introduction**

Chairman Thompson, Subcommittee Chairman Cueller, Ranking Members King and Dent, and Members of the Committee, thank you for inviting me to appear before you today.

I am Glenn M. Cannon, Assistant Administrator, Disaster Operations Directorate, FEMA. Let me start by saying that I look forward to working with this Subcommittee and the entire Congress to continue the improvements we are implementing to enhance the capabilities of the Department of Homeland Security (DHS) and the Federal Emergency Management Agency (FEMA). Based on our experiences and lessons learned over the years, we are working hard to reorganize and build a new FEMA to further improve our Nation's all-hazards preparedness, protection, response, recovery and mitigation systems and capabilities. We are taking the first steps in what will be a multi-year effort to significantly increase FEMA's core capabilities and capacity to better serve and protect our Nation and its citizens.

FEMA learned significant lessons from the 2005 Hurricane Season. Following Hurricane Katrina, the White House issued a report entitled, "The Federal Response to Hurricane Katrina Lessons Learned" in which several recommendations were included related to integrating the use of military capabilities in catastrophic disaster response. The report specifically stated that the Department of Defense (DOD) and DHS should jointly plan for the DOD's support of Federal response activities. The report also recommended that DOD and DHS plan and prepare for a significant DOD supporting role during a catastrophic event. It further stated that DOD's joint operational response doctrine is an integral part of the national effort and must be fully integrated into the national response at all levels of government and that DOD should have a contingency role and a requirement to assist DHS with expertise in logistics, planning, and total asset visibility. The White House Report stated that the National Response Plan (NRP) and its Catastrophic Incident Supplement (CIS) should specify the specific requirements for DOD resources based on the magnitude and type of catastrophic incident.

More recently, the "DHS Appropriations Act of 2007/Post-Katrina Emergency Management Reform Act of 2006," (Post-Katrina Act) articulated new expectations for FEMA, established new leadership responsibilities, brought an expanded scope of missions, and called for FEMA to undertake a broad range of activities involving preparedness, protection, response, recovery and mitigation both before and after terrorist events, natural and manmade disasters. The Post-Katrina Act contains provisions that set out new law, amend the Homeland Security Act (HSA), and amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act).

Among the specific responsibilities assigned to FEMA in the Post-Katrina Act are:

- leading the nation's comprehensive emergency management efforts (including protection) for all hazards, including catastrophic incidents;
- partnering with non-Federal entities to build a national emergency management system;
- developing Federal response capabilities;
- integrating FEMA's comprehensive emergency management responsibilities;
- building robust regional offices to address regional priorities;
- using DHS resources under the Secretary's leadership;
- building non-Federal emergency management capabilities, including those involving communications; and
- developing and coordinating the implementation of a risk-based all hazards preparedness strategy that addresses the unique needs of certain incidents.

DOD has a key role supporting FEMA in many of these areas and in overall planning, coordinating, and integrating Defense Support to Civil Authorities (DSCA) with local, State, and Federal agencies. DSCA is DOD's support, provided by its Federal military forces, DOD civilians, contract personnel, and DOD components, in response to requests for assistance. The DOD focus in domestic disaster response is on providing homeland defense, supporting civil operations, and cooperating in theater security activities designed to protect the American people and their way of life. FEMA's partnership with DOD continues to evolve and the disaster response support DOD and its multiple components bring to FEMA is critical to enhancing our comprehensive preparedness, protection, response, recovery, and mitigation capabilities for dealing with all types of natural and man-made hazards.

It is my pleasure to highlight the multiple facets of coordination and cooperation between FEMA and its partners in DOD.

**FEMA and DOD Coordination**

DHS/FEMA coordinates with DOD through the Assistant Secretary of Defense for Homeland Defense (ASD/HD), and specifically coordinates with the Joint Staff through the Joint Director of Military Support (JDOMS). The support from the Secretary of Defense and the DOD in preparing for all types of disasters is critical. Beneficial support is provided by different DOD components including:

- US Northern Command (USNORTHCOM)
- Defense Logistics Agency (DLA)
- U S Army Corps of Engineers (USACE)
- National Guard Bureau (NGB)
- National Geospatial-Intelligence Agency (NGA)
- US Transportation Command (USTRANSCOM)
- US Pacific Command (USPACOM)
- US Southern Command (SOUTHCOM)
- Marine Corps Systems Command

Collectively with DOD and the State National Guards, FEMA and its partners have learned many lessons from the response to Hurricane Katrina and many other disasters and are using these lessons to enhance overall coordination and cooperation to improve future disaster responses. Coordination has and continues to take place among all of these organizations in many different forms and forums such as the following:

DOD assignment of liaison officers to FEMA Headquarters to represent JDOMS, USNORTHCOM, and the NGB. The liaisons help ensure effective coordination of activities, provide advice, prepare reports, and facilitate relationship building for more effective and timely DSCA;

Two FEMA representatives are assigned permanently at USNORTHCOM to facilitate exchange of information and provide advice on FEMA programs and disaster response issues. FEMA and USNORTHCOM have been closely coordinating and cooperating in a number of areas including:

- Routine video-teleconferences to facilitate development of pre-scripted mission assignments and exchange information;
- Direct exchange of operational information and reports between USNORTHCOM's Command Center and FEMA's National Response Coordination Center (NRCC);
- Detail of USNORTHCOM and USTRANSCOM planning personnel to augment FEMA's planning staff and capabilities;
- Coordination of activities of USNORTHCOM, FEMA's Operation Planning Unit, and the DHS Incident Management Planning Team (IMPT) to more fully synchronize and integrate DOD and DHS/FEMA planning and response activities. A DOD staff member is assigned to the DHS IMPT;

FEMA and USNORTHCOM collaboration, with ASD/HD and JDOMS, to develop Pre-Scripted Mission Assignments (PSMAs) to facilitate DSCA for hurricanes and other disaster response. Thus far, 16 PSMAs have been pre-approved and coordinated between DOD and FEMA with an additional 28 between FEMA and USACE. The PSMAs, also to be incorporated into the 15 National Planning Scenarios, include the following general support:

- Rotary Wing Lift Support (Heavy and Medium support)
- Tactical and Strategic Transportation Support
- Communications Support
- First Responder Support
- Emergency Route Clearance Support
- Aerial Damage Assessment Support
- Support in preparation of Temporary Housing Sites
- Mobilization Center Support
- Operational Staging Area Support
- Fuel Distribution Support
- Rotary Wing Medical Evacuation Support
- Temporary Medical Facilities Support
- Support from USNORTHCOM in posting interagency data elements by Emergency Support Functions on the DHS Homeland Security Information Network (HSIN) to enhance the interagency common operating picture. This facilitates preparation of timely and authoritative information for the President and senior officials;
- FEMA and USNORTHCOM co-sponsorship of the annual Federal Coordinating Officer (FCO) / Defense Coordinating Officer (DCO) Conference designed to maintain and enhance civilian-military interaction and support of planning and disaster response activities within each FEMA Regional Office;
- Planning support from the Joint Interagency Coordination Group (JIACG), USNORTHCOM's primary interagency forum. The JIACG consists of approxi-



mately 60 interagency Combatant Command, service component, and staff representatives that support planning efforts at all levels related to such key issues as the Emergency Management Assistance Compact (EMAC), private sector engagement, critical infrastructure protection, pandemic influenza planning, and engagement on interagency coordination of cross border major disaster events response activities. The JIACG interagency representatives also provide "reach-back" capability to provide and receive information from interagency partner organizations;

- Participation by USNORTHCOM and its components in the FEMA led New Madrid Seismic Zone Catastrophic Planning Initiative and other catastrophic planning initiatives to examine preparedness, response, and recovery measures at the local, State and Federal levels;
- Participation by USNORTHCOM in the Department of State and FEMA-led interagency effort to develop an International Assistance System Concept of Operations. This will establish, within the National Response Plan framework, policies and procedures to enhance management of international resources provided to the US by concerned nations during disaster response operations;
- USNORTHCOM coordination with the National Emergency Management Association (NEMA) and the EMAC representatives to share information and gain a better understanding of planning and operational response needs;
- FEMA, EPA and USNORTHCOM coordination to implement an interagency approach to Building Partnership Capacity in emergency preparedness and response between the four US Border States and six Mexican Border States and the Canadian border provinces. These cross border preparedness efforts will strengthen understanding and coordination of border municipal, county and State response capabilities for hazardous materials, natural disasters and potential man made events to protect our citizens and support the trilateral Presidential Security and Prosperity Partnership; and
- Leadership visits, exercise cooperation, and exchange of Operation Officers.
- Close coordination between FEMA and USACE to facilitate USACE support in conducting pre-and post-incident assessments of public works and infrastructure; providing engineering expertise; managing construction; and providing certain response commodities;
  - DOD component participation in FEMA's Senior Emergency Support Function Leaders Group (ESFLG) Meetings, in which lead Emergency Support Function (ESF) managers (and other organizations with equities) convene to discuss roles and responsibilities, update the National Response Plan, and discuss disaster preparedness and response issues;
  - Maintenance of a list of DOD organizations that can support FEMA in disaster response activities;
  - DOD assignment of Regional Defense Coordinating Officers (DCOs) supported by Defense Coordinating Elements (DCE) in FEMA's Regions to ensure military coordination at the Regional level. All 10 FEMA Regions were staffed by Permanent or Acting DCOs and support DCEs by June 1, 2006; and
  - DOD assignment of planners to support the FEMA Headquarters in the areas of logistics, transportation, medical, and communications and support the Gulf Coast Recovery Office in the areas of logistics, transportation, medical, communications, operations, and aviation during the 2006 Hurricane Season.
  - As the 2007 Hurricane Season approaches, FEMA's close coordination of activities with DOD continues. Processes and procedures continue to be reviewed and refined and there is ongoing coordination of training, disaster response planning, and exercise activities as well as ongoing joint coordination with the States and staff exchanges.

***National Guard and National Guard Bureau: Federal and State Military Integration***

The National Guard is the organized militia reserved to the States by the Constitution. In peacetime, the National Guard is commanded by the governor of each respective State or territory. When ordered to Federal active duty for mobilization or for emergencies, units of the National Guard are under the control of the appropriate service secretary. The FY04 National Defense Authorization Act amended Title 32 to make it possible for a National Guard officer to be in command of Federal (Active Duty) and State (National Guard Title 32 and State Active Duty) forces simultaneously.

Generally, there are two levels of coordination between FEMA and the National Guard. FEMA coordination with the National Guard at the State level routinely takes place between FEMA Regional staff and State officials. In fact, 14 of The Adjutant Generals (TAG), the leadership of the National Guard are also State Emer-

gency Management Officials (SEMOs). At the national level, FEMA coordinates with the National Guard Bureau (NGB) which routinely interacts with all States and Territories on DSCA and Homeland Security matters to coordinate providing national level support. FEMA can request the NGB to assess National Guard capabilities but does not generally use the Mission Assignment (MA) process to directly leverage National Guard capabilities. To do so would require that DOD place the National Guard under Title 10 status. State requirements for National Guard support are normally filled under NEMA EMAC processes. Also, the NGB can assist States in identifying National Guard capabilities available to meet EMAC requirements. During Hurricane Katrina, EMAC requests for assistance were executed using National Guardsmen.

FEMA continues to coordinate and cooperate with the various States' TAGs, as well as with the NGB, in a number of disaster response-related areas to include improving situational awareness, communications planning, force package planning, and overall mission and disaster response planning. In addition to a full-time JDOMS Liaison Officer with a National Guard background, being assigned to FEMA's Disaster Operations Directorate for day-to-day operations, during actual disaster response operations, FEMA engages closely with both the State NGs and the NGB to ensure close coordination and synchronization of disaster response activities.

At the State level, there are approximately 14 TAGs who serve as SEMOs or act as the Director of Homeland Security within a given State. Even if the TAGs are not SEMOs, FEMA coordinates routinely at the regional level with the National Guard, under State control, to ensure disaster response efforts are coordinated.

We have taken several actions to improve daily coordination between FEMA and the NGB, including:

- Convening daily conference calls to review current operational activities between NRCC/Watch, NGB/Joint Operations Center (JOC), and USNORTHCOM's Command Center;
- Sharing daily informational reports between the NGB JOC and FEMA's 24/7 Watch Team;
- Routinely sharing Incident Reports and Executive Summaries with the NGB;
- Sharing special event planning information and situational awareness for National Special Security Events (NSSE) and other special events;
- Sharing information on special capabilities like special National Guard WMD capabilities, e.g., Weapons of Mass Destruction Civil Support Teams and Chemical, Biological, Radiological, Nuclear and Explosives (CBRNE) Emergency Response Force Packages;
- Participating with the NGB and TAGs in Hurricane Planning Conferences, exercises, meetings, and other coordination activities;

More specifically, the NG can support homeland defense and disaster response in several different ways:

- **National Guard Reaction Force (NGRF)**

NGRFs are traditional units that are pre-designated for quick response on a rotating basis. The goal is a trained and ready NG force available to each State's governor on short notice, capable of responding in support of local and State governments and, when required, DOD.

- **Critical Infrastructure Program—Mission Assurance Assessment**

Program designed to educate civilian agencies in basic force protection and emergency response; develop relationships between first responders, owners of critical infrastructure, and NG planners in the States.

- **WMD Civil Support Teams (CST)**

Highly skilled, full-time teams, established to provide specialized expertise and technical assistance to an incident commander to assess, assist, advise, and facilitate follow-on forces. State Governors, through their respective TAGs, have operational command and control of the teams. NGB provides logistical support, standardized operational procedures, and operational coordination to facilitate the employment of the teams.

- **CBRNE Enhanced Response Force Package (CERFP)**

Designed to provide a regional capability to locate and extract victims from a contaminated environment, perform medical triage and treatment, and conduct personnel decontamination in response to a WMD event. Each task force works in coordination with USNORTHCOM, USPACOM and other military forces and commands as part of the overall national response of local, State and Federal assets. Each CERFP has a regional responsibility as well as the capability to respond to major CBRNE incidents anywhere within the US or worldwide. This capability aug-

ments the CST and provides a task force-oriented structure that will respond to an incident on short notice.

- **NSSE**

The NGB Joint Intelligence Division, in coordination with the Joint Force Headquarters-State intelligence offices, provides support to each NSSE. Support missions included traffic control-point operations, a civil disturbance reaction force, aviation and medical evacuation, chemical detection and crowd screening.

- **NG Joint Force Headquarters-State (JFHQ-State)**

A JFHQ-State has been established in 54 States and territories to provide command and control links for all NG forces. The JFHQ-State is responsible for fielding one or more Joint Task Forces (JTF) command elements that can assume tactical control of military units that are ordered to respond to a contingency operation within a State and would provide joint reception, staging, onward movement and integration of inbound forces. If ordered to active duty, the JFHQ-State can act as a subordinate command and control headquarters for USNORTHCOM or, in the case of Hawaii or Guam, USPACOM.

- **JTF-State**

A JTF-State may be formed under the JFHQ-State to maintain command and control of NG forces. A JTF-State includes a JTF command element that will work closely with the incident commander to determine if additional NG or active duty DOD resources are required and assists in their safe and effective employment. JTF-State Commanders receive formal training which includes NIMS and Incident Command System concepts.

The NGB is represented on USNORTHCOM's JIACG along with representatives from other DOD components and non-DOD organizations to help coordinate and refine disaster response roles and capabilities. NGB works closely with USNORTHCOM to plan for, exercise, develop, and refine capabilities to respond to a domestic incident. Both organizations, as needed by the affected State, will work closely together to integrate resources. Through mutual aid agreements, National Guard forces can provide critical security work, support civilian law enforcement, food, water, medicine, shelter, transportation, vital communications, and all of the other emergency support functions in support of FEMA.

Another example of the strong working relationship between FEMA and NGB is the Memorandum of Understanding between the two organizations that was signed October 1, 2006. This agreement allows FEMA to leverage NGB capabilities to assist in Continuity of Operations Planning site vulnerability assessments for emergency preparedness, contingency operations planning, and situational awareness.

- **Training and Exercises:**

FEMA and DOD jointly participate in a variety of training and exercise activities with varying scenarios designed to improve disaster response capabilities. Many of these take place at the State, local, and regional levels. USNORTHCOM's Table Top Exercise Program hosts Table Top Exercises (TTX) that FEMA participates in that specifically relate to integration of USNORTHCOM and the NGB with the NRP/ Interagency efforts to facilitate domestic disaster response. A recent TTX objective was to examine and lay the foundation for potential deployment and employment of DOD Unmanned Aerial Systems in a DSCA role.

In another example of joint exercise activity, FEMA and USNORTHCOM exercised catastrophic disaster response during Vigilant Shield 07, an exercise focusing on a nuclear weapons accident and a terrorist event. FEMA is participating in DOD's upcoming Ardent Sentry-Northern Edge 07 Exercise featuring a hurricane and terrorism response scenario. FEMA will also participate in DOD's Vigilant Shield 08 exercise. US Army North (US ARNORTH) will participate in Exercise Ardent Sentry 2007 by deploying their entire Operational Command Post in a hurricane response exercise. The exercises are normally synchronized with local and State responses, involve the interagency community and NG participation, and demonstrate USNORTHCOM's participation and capabilities in overall Federal disaster response. FEMA routinely coordinates with DOD in the Top Officials Exercise series and in communications exercises such as the Defense Interoperability Communications Exercise and Joint User Interoperability Communications Exercises to test and validate communications capabilities and interoperability between the different levels of government and the emergency management community, including DOD.

In the area of training, DOD trains Emergency Preparedness Liaisons Officers (EPLO) in all of the DOD components in the NIMS/Incident Command System. Also, FEMA and the US ARNORTH have refocused the DSCA course to now include FCOs and DCOs to further strengthen the military and civilian understanding of the important disaster response roles and responsibilities. USNORTHCOM is con-

tinuing training to respond to requests for assistance from the NRP Primary Agencies in preparation for the 2007 Hurricane Season.

Another example of DOD education and training related to disaster preparedness and response can be found at The Industrial College of the Armed Forces (ICAF) at the National Defense University (NDU). ICAF provides elective courses in emergency management response operations and managing complex disaster response operations for future DOD leaders.

In addition, the NDU Interagency Transformation, Education and Analysis Program and the School for National Security Senior Executives faculty members are developing domestic disaster management course modules as part of the national security professional development program. FEMA enrolls students in these classes and is often requested to provide briefings and updates. FEMA also participates in disaster response-related activities at the Army and Navy War Colleges.

***Logistics Coordination and Support:***

FEMA is working hard to develop a more highly disciplined, agile, and sophisticated logistics organization and system to better support disaster response operations. The new logistics organization will be one that is more proactive and couples 21st century technology and a professional workforce with strategic public and private partnerships. Achieving total system integrity, visibility, and accountability over select disaster resources will be emphasized. FEMA is coordinating closely with DOD in many aspects of the development of an improved national logistics system.

A key partner in this relationship is the DLA. The relationship between DLA and FEMA is a strong one, founded on close collaboration and a regular dialogue. The mechanisms that DLA has implemented to support FEMA, including the ability to closely track materiel in-transit to a disaster site, have been developed because of that close collaboration and dialogue.

FEMA and DLA signed an Interagency Agreement (IAA) in March 2006. This agreement helped streamline DLA support and increase DLA's close supportive relationship to FEMA's logistics efforts. In the past year, the relationship has evolved from support to disaster response, to proactive logistical and planning support, both before an event occurs and during the response efforts. DLA's efforts are focused primarily on supporting food and bulk fuel requirements. FEMA is using the FEMA-DLA IAA for vendor management/stockage of meals ready to eat (MRE) through the Defense Supply Center in Philadelphia. DLA has also established alternative commercial feeding options that FEMA can utilize in lieu of MREs. Fuel support is being provided through the Defense Energy Support Center (DESC). The DLA IAA can also be used for other DLA-managed commodities if required.

Similarly, FEMA signed an IAA in July 2006 with the Marine Corps Systems Command to support the Pre-positioned Equipment Program (PEP). PEP consists of standardized equipment pods with equipment such as personal protective, decontamination, detection, technical search and rescue, law enforcement, medical, interoperable communications and other emergency response equipment that can be deployed to support State and local governments in responding to a major chemical, biological, radiological, nuclear, explosives or natural hazard event. Logistical support in the IAA includes operational management of PEP, including locations, equipment sets, and personnel.

***DHS/US Coast Guard Role***

The U.S. Coast Guard is one of the five armed services as outlined in 14 U.S.C. § 1 which states: "The Coast Guard as established January 28, 1915, shall be a military service and a branch of the armed forces of the United States at all times." The Coast Guard was placed under the Department of Homeland Security DHS on February 25, 2003 where it executes a variety of missions including search and rescue, maritime law enforcement, and defense readiness. However, the Coast Guard also shoulders substantial disaster response capabilities and an expanded role in the NRP. Coast Guard support is provided directly to DHS and FEMA during an emergency, with Coast Guard response and incident management personnel integrating directly into the DHS/FEMA incident management organization established for a specific incident. Under the old Federal Response Plan, the Coast Guard generally played a role in only two support functions; Emergency Support Function (ESF) 1 and ESF 10. However, with the broader approach under the NRP, and the implementation of Pre-scripted Mission Assignments, the Coast Guard can be called upon to provide support in 9 separate ESFs across 20 possible Mission Assignment areas. To ensure close coordination of Coast Guard and FEMA planning and disaster response operations, two Coast Guard liaisons are assigned to FEMA Headquarters. In addition, the Coast Guard has trained a number of Joint Field Office (JFO) Support Teams to assist FEMA during an incident. These Coast Guard JFO

teams perform the dual responsibilities of representing Coast Guard interests during an incident while providing support to the overall Federal response.

The creation of DHS brought Coast Guard and FEMA together for the first time into the same department. This has led to steadily increasing cooperation between the two agencies across a spectrum of preparedness planning, exercise and training, response issues, in identifying lessons learned, and in tracking and implementing remedial actions at the national level. In this cross-pollination, both agencies have been able to make a number of improvements to their respective contingency plans.

For Hurricanes Katrina and Rita the Coast Guard performed work for FEMA under the authority of the Stafford Act. The Coast Guard conducted operations within the parameters established by FEMA's issued Mission Assignments and Task Orders. In addition, both agencies partnered extensively as key members of DHS's NIMS and NRP writing teams. The combined efforts helped to guide the creation of a consistent nationwide approach for all Federal, State, local and Tribal governments to work effectively and efficiently together to prepare for, prevent, respond to, and recover from domestic incidents, regardless of cause, size or complexity.

The most significant adjustment in the Coast Guard role under the NRP relates to one of their cornerstone traditional missions. Working jointly, the US Coast Guard, NGB, and USNORTHCOM have helped coordinate development of larger scale search and rescue operations and a Joint Search and Rescue Center. ESF 9 is being revised to expand the participation of other Federal entities including DOD and the US Coast Guard.

#### ***NRP and Disaster Response***

The NRP provides the structures and mechanism for national-level policy and operational direction for domestic incident management. The NRP is always in effect; however, the implementation of NRP coordination mechanisms is flexible and scalable. The role of DOD in disaster response is similarly flexible and scalable. FEMA routinely coordinates with military components; however, many of DOD's resources may be needed only in the most severe or catastrophic disasters.

The DOD has significant resources that may be made available to support the Federal response to terrorist attacks, major disasters or other emergencies. DOD is a supporting Agency for all 15 of the NRP's ESFs. DOD's USACE is the coordinating/primary agency for ESF # 3, Public Works and Engineering.

The Secretary of Defense authorizes DSCA for domestic incidents as directed by the President or when consistent with military readiness operations, appropriate under the circumstances and the law. DOD resources are committed upon approval by the Secretary of Defense or upon order of the President. In a major disaster or catastrophic emergency, the coordination can grow to include the authorities of the Defense Production Act. The Secretary of Defense retains command of military forces providing civil support at all times.

Within DOD, USNORTHCOM has responsibility for military operations within the continental United States in the event of a domestic incident. For such a response, DOD is set up to be largely independent in its operations; however, DOD resources still need to be coordinated within the overall Federal response under the NRP. Disaster response support required from DOD could range from commodity distribution to assisting with:

- search and rescue,
- communications,
- evacuation,
- security,
- housing operations,
- fuel distribution,
- debris clearance,
- medical care and medical evacuation,
- power generation,
- air support can be provided for movement of FEMA teams

In most instances, DOD provides DSCA in response to "Requests For Assistance" from a lead or primary NRP Department or Agency. DSCA is typically provided on a reimbursable basis through MAs or PSMAs and is normally provided when local, State, and Federal resources are overwhelmed or need to be augmented and the requested support does not interfere with the Department's military readiness or operations. The supporting DOD combatant commander may deploy a JTF to command Federal (Title 10) military activities in support of the incident. When a JTF is established, consistent with operational requirements, its command and control element will be co-located with the Principal Federal Official (PFO) and FCO at a JFO. The collocation of the JTF command and control element does not replace the requirement for a Defense Coordination Officer and Defense Coordination Element (DCO/

DCE) as part of the JFO Coordination staff. Each FEMA Region now has a DCO/DCE assigned to serve as the primary representative for FEMA to coordinate with DOD at the crisis scene.

DHS and FEMA value the support of the Secretary of Defense and DOD components to facilitate and support Federal, State and local disaster response activities. In addition to direct support for disaster response, DOD possesses specialized testing, evaluation, and education facilities; training and exercise expertise; medical capabilities; and technology programs that provide important support to all levels of government in enhancing the Nation's disaster preparedness and response capabilities.

**Conclusion**

Thank you for your time today, and I look forward to answering your questions.

Mr. CUELLAR. Thank you, Mr. Cannon, for your testimony.

At this time, I will recognize Mr. Womack and ask you to please summarize your testimony to 5 minutes, and after that, we will start off with the questions.

**STATEMENT OF MIKE WOMACK, DIRECTOR, MISSISSIPPI  
EMERGENCY MANAGEMENT AGENCY.**

Mr. WOMACK. Thank you, Mr. Chairman.

There are three key areas I would like to discuss. General Lowenberg very eloquently voiced the one that is of most concern to us today, and that deals with the authority to maintain and control the National Guard and that it should be restored to the Governors for their use during disasters and civil emergencies. He laid out most of the facts. What I would like to describe to you is the process we used for our response in Katrina and how we feel that the National Guard should be integrated in the overall unified command structure of a disaster response.

The Governor, the adjutant general of the National Guard, our commissioner of public safety, our Federal coordinating officer, and my predecessor—the director of emergency management—constituted our unified command structure.

The National Guard is the lead for ESF-3, which is the public works, but they are the primary in support for many of the emergency support functions. In that role, they were working under the direction of public safety, coordinated with local law enforcement when they performed their law enforcement missions. In their mission to provide commodity support and distribution, they were working with the civilian director of finance and administration and other State agencies.

These remarks are not part of the written record. I am deviating from it because of General Lowenberg's remarks. I thought it would be beneficial to understand the way that it worked in Mississippi.

The adjutant general initially commanded approximately 4,000 to 5,000 soldiers and airmen. Then under EMAC, another 15,000 to 20,000 troops and equipment were brought in. The chain of command was purely from the adjutant general down to other general officers through the EMAC forces, but in all cases, General Cross worked with civilian responders in coordinating their efforts, determining what the soldiers and airmen were both best used for and then allowing those missions that his troops could be used for to be performed.

This process of Federalizing National Guard troops would make this extremely problematic. As soon as you Federalize the troops, then it is unclear exactly who they work for. Is the adjutant gen-

eral then going to report to the NORTHCOM commander? Is the NORTHCOM commander going to be part of our unified command structure in the State of Mississippi? It was clear the Federal troops, active duty troops such as the Seabees and the airmen who are stationed down on the Mississippi gulf coast as well as the Coast Guard, were all integrated into this overall unified command structure.

So I will just emphasize what General Lowenberg said on the issue of trying to restore the authority to the Governors. It is absolutely critical because you cannot maintain situational awareness from half a continent away. You have to have people on the ground who are able to be there, who understand how to deal with National Guard troops on a daily basis, who understand how to deal with State and local governments on a daily basis.

The second issue that I would like to discuss has to do with EMAC. In order for us to deploy National Guard forces, we have to absolutely have EMAC authority, and it has to be funded. Right now, there is a shortfall in the fact that the authorization for EMAC funding through FEMA has not been provided. It is my understanding that there is \$2.5 million in the supplemental conference report on mutual aid. It is absolutely critical. We could not have deployed the National Guard forces that we did, not to mention the approximately 50,000 civilian mutual aid forces that were deployed during Katrina, without the coordination of the EMAC responsibilities that rest with NEMA, and that is funded through this \$2.5 million. So it is absolutely critical.

The third thing I just would like to emphasize is the importance of the equipment for the National Guard. The troops cannot do their jobs if they do not have the equipment to do it. You cannot do debris removal if your engineer equipment is still in, you know, another country. So we have absolutely got to restore the funding to the National Guard to purchase and maintain the equipment to make sure they will be able to do their jobs for the next disaster.

Thank you.

[The statement of Mr. Womack follows:]

PREPARED STATEMENT OF MIKE WOMACK

**Introduction**

Thank you Chairman Cuellar, Ranking Member Dent, Full Committee Chairman Thompson, and distinguished members of the Committee for allowing me the opportunity to provide you with a statement for the record on our nation's preparedness. I am Mike Womack, the Director of the Mississippi Emergency Management Agency. In my statement, I am representing the National Emergency Management Association (NEMA), whose members are the state directors of emergency management in the states, territories, and the District of Columbia. I bring more than 29 years of experience in active and reserve military service, retiring in June 2001 as a Lieutenant Colonel from the Mississippi Army National Guard with extensive operations management background. I have served in numerous positions including Administrative Officer, Operations Officer, Intelligence Officer, Civil Affairs Officer and Chief of Staff of a 5,000-soldier armor brigade. My tenure with MEMA began in 2002 and I have served as Director of Response and Recovery and Deputy Director, leading up to my appointment as the Director in December 2006.

I very much appreciate the opportunity to testify before your Committee today. The role of the military in disasters is a critical component of emergency operations planning and execution. Strong relationships and authorities are key ingredients to the success of any disaster. In Mississippi, the key to our ability to respond to Hurricane Katrina was the support role of the National Guard to come and assist in the immediate aftermath of the storm. The Guard brought self-sustaining and

trained units with communications equipment, tools for response, and expertise that helped Mississippi respond faster. Our state is grateful for their assistance and their partnership with emergency management.

There are several key areas that I wish to discuss with you today that need to be resolved in order to secure our preparedness in partnership with the National Guard to address disasters:

1. Authority to maintain and control the National Guard should be restored to the Governors for their use during disasters and other civil emergencies;
2. The National Guard's utilization of the Emergency Management Assistance Compact (EMAC) during Hurricane Katrina worked well and should continue to be a strong component of the nation's mutual aid system; and
3. National Guard equipment should be maintained and updated to ensure that the Guard can fulfill domestic missions.

Before I begin discussing those subjects, I want to highlight the dual mission of the National Guard and the importance of their support during emergencies and disasters to states. The National Guard are citizen soldiers who are often first responders in their daily jobs and know their states and towns. They know what needs to be done in times of disasters and train and prepare alongside their emergency management agencies. These soldiers are also the ones who are called to duty when Governors need assistance with disasters, emergencies, supplemental law enforcement or military support for airports and borders in homeland security missions, and counter drug activities. These citizen soldiers are also called to duty in Iraq and in other international hot spots to assist with the defense mission of our country. The emergency management community appreciates their partnership and strongly supports efforts to restore appropriate authority and assistance to the National Guard to support all of their important missions.

***Restoring Governors' Control of the National Guard During Times of Disaster***

The value of the National Guard during emergencies has never proved itself more than during the response phase of Hurricane Katrina. When local police departments, fire departments and emergency services could not respond because of destroyed equipment and severed communications systems in Mississippi, the National Guard eagerly stepped in to maintain control and assist victims with immediate response assistance. These missions were always under control of the Governor, as the Constitution provides.

Last year, the final conference report for the John Warner National Defense Authorization Act (Public Law 109-364) made changes to limit the Governor's authority over the National Guard during times of domestic emergencies or disasters. Section 1076 of the Act allows for the President to take control of the National Guard during a natural disaster or emergency without the consent of a Governor. This change could cause confusion and complicate the chain of command for the National Guard in response to emergency situations. Previously, the "Insurrection Act" provided for the Governor to maintain the control over the National Guard and to allow the President to take control in rare and exceptional circumstances. At the same time, the Robert T. Stafford Disaster Recovery and Relief Act places special authority with each Governor for responding to and preparing for disasters and accounts for utilization of the National Guard as a key asset to fulfilling the mission. These new changes may place the safety and welfare of citizens in jeopardy because of national missions, versus state missions. Additionally, the change could confuse the Guard's mission in a Title 32 status versus a Title 10 status. *Posse committatus* issues could be an issue as well if the President called the Guard up to fulfill a domestic mission.

The current Defense Authorization language could confuse the issue of who is in charge of commanding the Guard during a domestic emergency. The bill, as signed into law by the President, does not require the President to contact, confer or collaborate with a Governor before taking control of a state's Guard forces. This language was included by Congress and signed into law by the President despite the opposition of Governors, NEMA, and others. The current law could negatively impact the decision-making process and speed with which the National Guard currently acts in consultation with Governors to respond to an emergency either within or outside of the states through mutual aid. Further, the amendment exacerbates the current manpower and equipment shortages in all states because of demands in Iraq and Afghanistan.

Changes to restore the Governor's authority over the National Guard are supported by NEMA, the National Governors' Association, the Adjutants General Association of the United States, the International Association of Emergency Managers, and the National Association of Counties. H.R. 869 and S. 513 have been introduced



by Congress to repeal Section 1076 of the 2006 National Defense Authorization. NEMA supports these bills and a vehicle to open up a dialogue between Congress and the nation's Governors to best address how to enhance the use of the National Guard in responding to domestic disasters and emergencies.

***Strengthening Mutual Aid Through EMAC***

The mutual aid assistance provided during 2005 vividly exposes the interdependencies of the nation's emergency management system. For Hurricanes Katrina and Rita, the Emergency Management Assistance Compact (EMAC) fulfilled over 2,174 missions with 49 states, the District of Columbia, the U.S. Virgin Islands and Puerto Rico providing assistance in the form of 65,919 civilian and military personnel and equipment assets to support the impacted states. The estimated costs of this assistance may exceed \$829 million. The National Guard sent in support of the response mission were sent under Title 32 status, and remained under the Governor's control at all times. EMAC allowed for reimbursement, liability protection, worker's compensation protections, and allowed the home state Governor to call back the units if needed in their home state for another domestic emergency. All of the key Post-Katrina After Action reports cited the nimble ability of EMAC to respond based on the impacted states' requests. The nature of the nation's mutual aid system demonstrates the need for all states to have appropriate capabilities to respond to disasters of all types and sizes. Every state needs to have strong National Guard and emergency management cooperation. The increased reliance on mutual aid due to catastrophic disasters means additional resources are needed to continue to build and enhance the nation's mutual aid system through EMAC.

NEMA is the administrator of the Emergency Management Assistance Compact (EMAC), the state-to-state mutual aid system was referenced as a key achievement and best practice to be built upon in many of the reports on Hurricane Katrina. EMAC is not a perfect system and strives to achieve continuous improvement. NEMA's members are proud of the success of the system and support initiatives to bolster operational response and elevate awareness of how EMAC works. NEMA is working to enhance its online broadcast notification, information, and resource management system, conducting outreach programs to share information on EMAC with state and local government agencies and national organizations representing various emergency response disciplines. NEMA is also working on integrating EMAC into state training exercises; enhancing EMAC's resource tracking system; updating the EMAC protocols and guidelines to implement lessons learned; and developing additional training materials and development of a cadre of trained EMAC personnel to deliver the EMAC field courses aimed at educating both state and local level emergency responders on the EMAC system.

While EMAC is a state-to-state compact, FEMA funded the program in 2003 with \$2.1 million because of the national interests in mutual aid. The EMAC grant will end on May 30, 2007. The Post-Katrina FEMA Reform Act authorizes \$4 million annually for the program; however, no funds have yet been appropriated for FY 2007. We hope we can count on this Committee, that included the initial language authorizing EMAC, to support funding in the next budget cycle.

***Adequate Funding for Maintaining and Restoring Equipment for the National Guard***

As previously mentioned, our citizen soldiers can only be effective with training and adequate equipment to do their jobs in both the domestic and in the international theatre. Currently, National Guard divisions returning from Iraq or other deployed missions are required to leave behind key equipment that has dual use functions for domestic emergencies such as personal protective equipment, fire suppression equipment, and communications equipment. These are left behind to continue the missions by other units, however National Guard units must be re-equipped in order to be ready and prepared to respond to domestic missions when they return home. Equipment shortfalls must be identified and necessary budget authority must be made available to ensure that our National Guard forces are prepared for all disasters and emergencies.

The National Guard is a force multiplier on the international scene and at home for domestic emergencies. The dual-hatted missions must be supported and adequately resourced. National security and homeland security have changed over the last six years, as has the National Guard's mission. Resources must meet the needs of the mission changes.

***CONCLUSION***

We appreciate Congress' increased attention and focus on disaster preparedness, response, recovery, and mitigation efforts. We must ensure that Federal, State and local governments have adequate funding for baseline emergency preparedness so

exercises and training can ensure that plans and systems are effective before a disaster. Preparedness includes ensuring appropriate authority and funding for the National Guard. I thank you for the opportunity to testify on behalf of NEMA.

Mr. CUELLAR. Thank you, Mr. Womack, for your testimony.

I want to thank all of the witnesses for their testimony.

At this point, members now have an opportunity to ask our witnesses questions. I will remind each member that he or she has 5 minutes for each of their questions—or for their questioning—and I will now recognize myself for the first set of questions.

General Scherling, as you know, the full committee received a briefing from General Blum a few months ago. At that briefing, General Blum outlined some of the alarming facts contrasting the Guard's equipment and readiness today compared with the resources that were available on or before September 11, 2001. Can you, please, compare your current equipment level with that of 5 years ago before we began the Global War on Terror?

General SCHERLING. Mr. Chairman, what I can do today is bring two graphic displays for you to demonstrate our equipment situation. First of all, what I would like to do is call up number 5 and bring your attention to the fact that this is a reflection today of the Army National Guard equipment available for Governors' use for homeland defense in ten different mission areas, mission capability areas. Those areas include aviation, command and control, communications, engineering, logistics, maintenance, medical, security, transportation, and our civil support teams in each State, and as you can see, we are at 87 percent in our medical capability along with 77 percent in our security capability. However, the majority of the percentages are much lower than that.

Very quickly, to move to graphic number 4, on equipment readiness and shortfalls overall, sir, today, 80 percent of the Army National Guard and 45 percent of the Air National Guard here in the United States are not ready due to lack of equipment and training. The impact that is felt is very personal by members of our units just as Sergeant Edgar and Sergeant Stoltzfus can experience day to day in their units back home. If you do not have money to turn on lights and you do not have trucks to go out and get into to practice your critical mission essential tasks, it is pretty hard to be able to go out and execute those tasks on a day-to-day basis, in the State, on short notice. They also, as you would know, do not have the equipment available at their fingertips in order to perform those missions.

Thank you, sir.

Mr. CUELLAR. Do you have a copy of those?

General SCHERLING. Yes, we do.

Mr. CUELLAR. Can you provide it to the committee? Thank you. Thank you for your testimony.

At this time, General Pineda, as I understand it, the Civil Air Patrol has had a rich history of being tasked to support critical homeland security operations throughout the country. Between July 1942 and April 1944, the Civil Air Patrol's southern liaison patrol monitored the border between Brownsville, Texas and Douglas, Arizona, and being from Laredo, it is probably in the middle of those two points. Being from Texas, I think we have got about 2,000 miles of U.S. Mexico border. Can you please explain how

CAP has evolved since the days of the southern liaison air patrol and why this operation has ended?

General PINEDA. What happened was that, first, it was a funding issue. When the chief gave us the order to go on working in Arizona, we had to use our own funding for the training and make it into a training mission because there was some funding from the Air Force to take that particular mission. So we did it for 21 days; it was very successful, but we had to stop it. One, the funding for the training ran out, and number 2, there were questions on the posse comitatus.

Now, you have got to keep in mind that the Civil Air Patrol is a civilian organization. We are the Air Force auxiliary when we do missions for the Air Force, but the reason for the posse comitatus was that Congress gives the funding, our funding, through the Air Force—we come under that particular statute—but it all depends on who you ask for an opinion; the opinions are different, but we need to do something to remove that so we can help the local communities and the States to be able to perform their missions, and if we get the funding, we can patrol not only the southern border but also the northern border.

I have met with the chief of staff of the Canadian Air Force at a meeting that we had in Canada, and the chief told me, “whenever you are ready, we will do it together on the northern part,” but we are not even close to that yet, but we can do it. I can have an aircraft 2 hours after we get the call, and I can have one on each border right away while the other ones are pending. As for the mission, we can do it, and we can get it done. Absolutely.

Mr. CUELLAR. Who tasked this? Again, going back in history, who tasked this back in the 1940’s?

General PINEDA. In the 1940’s, we were under the Department of the Army-Air Force, so we were working directly for them—it was easier—but as the years went by, different rules came into play. Now we have to be tasked by the Air Force. So, if Homeland Security wants us to do the homeland security missions, they have to go to the Air Force and put in their request. Sometimes it may happen. Sometimes it may not happen depending on what kind of a mission it is.

Mr. CUELLAR. Who can request CAP’s missions right now, today?

General PINEDA. Right now, today, each one of the State’s emergency managements can request the CAP mission, but they have to go through the Air Force.

Now, some of the States have an MOU which is with us. Not all of the States have that. If it is a State mission, then the emergency managements can go straight to the Civil Air Patrol National Operations Center if they have an MOU, and the State pays for that funding. The problem is that, if we do a State mission like that, our professional volunteers are not covered by Federal insurance at all.

Mr. CUELLAR. Can a nonprofit or a local entity request your mission or would that have to go through a State?

General PINEDA. A nonprofit—well, let us say, for example, that the sheriff’s office requests—

Mr. CUELLAR. Yes. Let us say, with regard to the Southwest Sheriffs’ Association, which Chairman Thompson and myself were

just meeting with a while ago, they are a nonprofit because all of the sheriffs from Texas, Arizona, New Mexico, and California have all gone in together.

Could that nonprofit request your assistance?

General PINEDA. They could in two ways. If we have an MOU with your State, we can do it as a State mission. Remember now, there is no insurance for our volunteers. If you go and want a Federal mission, you have to go through the Air Force, and then it comes back to us.

Mr. CUELLAR. OK.

General PINEDA. But again, it may take hours or it may never happen.

Mr. CUELLAR. It may never happen?

General PINEDA. Absolutely. We have some missions where, if we have a question on the posse comitatus, it gets denied right away, so then we go and argue and argue, and sometimes we can change their minds or restrict the mission to certain activities.

Mr. CUELLAR. OK. I know Charlie is going to ask you<sup>††</sup> I mean Mr. Dent is going to ask you some questions in a few minutes on this because I know he has been a big proponent.

I like the idea, but I want to know what can we do within the framework right now. In other words, have you been in Texas, as an example? Charlie has been there, in Laredo, and the aircraft that is available is not there. I think most of it has been up there in Arizona, and I can understand that, but in Texas, you have got 2,000 miles, and if you have ever been to West Texas where you have got mountains, then in West Texas, you know exactly what I am talking about. Have you done a mission in Texas as an example?

General PINEDA. We are doing missions in Texas right now, and they are being paid by the State.

Mr. CUELLAR. Where?

General PINEDA. I am not familiar with the area, but it is the entire Mexican border, and it is a mission that is being paid by the State. So we are doing about three flights a day in Texas, but it is not funded by the Federal Government at all.

Mr. CUELLAR. OK. Can I follow up? Because I am from the border, and I did not even know you were there.

General PINEDA. Absolutely.

Mr. CUELLAR. I lived there for most of my life.

Let me go ahead and give the other members some opportunities.

At this time, I will recognize the ranking member of the subcommittee, the gentleman from Pennsylvania, Mr. Dent, for questions.

Mr. DENT. Thank you, Mr. Chairman.

General Pineda, I do want to follow up on some of the questions that Chairman Cuellar has asked.

Specifically, how does the State or the Federal Government currently request assistance from you at the CAP? How do they currently do that now<sup>††</sup> through an MOU? Is it always through an MOU from the State?

General PINEDA. If we have an MOU, they can request it directly. If it is a national disaster like with Katrina, it has to come through the Air Force and then back to us.

Mr. DENT. Who makes that request?

General PINEDA. The emergency management or the Governor can make the request.

Mr. DENT. So the State emergency management office?

General PINEDA. Yes. The adjutant general of the National Guard can make that request, too.

Mr. DENT. OK. What was the cost of your operations during Katrina? Do you have any idea what that was?

General PINEDA. Oh, God. I can get you the answer, but one of my—the executive director is sitting here, and I can get you the figures later on. I do not have the figures.

Mr. DENT. Well, we can get that after the fact.

Who paid for the mission? Does that come out of your budget or the Air Force's?

General PINEDA. Well, originally, that one—before the storm hit, Katrina, I put on standby all of the wings around Mississippi and Louisiana. To be exactly—I got a phone call from someone at the Air Force who said, “We are not paying for that. You cannot move anybody.” So my response to that was “these people are going to need help in the morning, and we are moving in.”

It took a few hours to finally get the Federal mission number to pay for the expenses, but we were able to do it. We were there like the next morning after the hurricane, but right after the hurricane, the Civil Air Patrol members in those States went out and helped the victims, waiting for the other 1,700 members who were coming in to help them out. Those missions at the beginning were paid from our budget, and later on, we were reimbursed by FEMA and the Air Force.

Mr. DENT. OK. As you are aware, I have introduced legislation, H.R. 1333—we call it the Civil Air Patrol Homeland Security Support Act—which would encourage greater use of the Civil Air Patrol to support both the border security and emergency response missions of DHS.

Do you believe this legislation would help the CAP in the Department of Homeland Security's missions?

General PINEDA. Absolutely, sir.

What that is going to do for us is—right now, any Federal agency that requests a Civil Air Patrol has to go through the Air Force. By doing that MOU with the Department of Homeland Security, we can work directly for them and with them in a cooperation agreement, and there is no doubt about it that we will expedite the response of what we can do for the country.

Mr. DENT. Just a quick follow-up question on that point.

Currently in my State, for example, we have had floods from the Delaware River. I believe the Coast Guard has arrangements with Civil Air Patrol, and you were providing photo reconnaissance of the disaster areas.

Are you currently doing that now with the Coast Guard?

General PINEDA. We are doing that. Plus, we also participate with the task force in the Philadelphia—

Mr. DENT. Is that with or without an MOU?

General PINEDA. Yes, without an MOU. The Coast Guard requested us, and we are working directly for them in that area, and that is a daily operation.

Mr. DENT. Chairman Cuellar just mentioned to me—I feel we need to formalize this relationship through legislation. Do you think we need legislation to accomplish this task or is this something that can simply be done by some administrative mechanism between DHS and the Air Force?

General PINEDA. No, sir. I think we need to put it in stone, have it written in stone that this is what we can do. Right now, if we leave it in the air, it could work today on a handshake, but it may not work tomorrow or the delay may be there. If we can work directly for the Federal agencies and the State agencies without having to circumvent that, it will make it a lot easier, and our volunteers can be deployed a lot faster and a lot easier.

Mr. DENT. I would like to yield to the chairman.

Mr. CUELLAR. Yes. I am sorry.

We want to work with the ranking member. We want to know exactly—I want to know exactly—why we need this in legislation. I mean you gave me the reason that it worked better. Just convince us as to why we need it in legislation, because it is a good idea, and we want to work with the ranking member, but I am trying to figure out why we need it in legislation. Why is it that the framework that we have right now does not work? Why do we need to formalize it in statute? If you can just answer that.

General PINEDA. It would diminish the red tape and the time, especially when time is required for us to be able to deploy to help the local communities or Homeland Security. The way it works right now, it may take days or it may not happen to get that “OK.”

By doing this legislation, it will put a direct line to us, and it will authorize us to work with the other Federal agencies and the States without having to have the circumvention.

Mr. CUELLAR. I will yield back and give you another minute on your time since I took it.

Mr. DENT. Thank you, Mr. Chairman.

Just quickly, General Pineda. If we were to enter into this relationship between the Air Force and DHS for the utilization of the CAP on the border, would this have any impact, do you think, on your working relationship with the States? You already have one, for example, with Texas, I guess, where you do have an MOU for some limited border security activity.

General PINEDA. No, absolutely not. We still will be able to continue those with no problem.

Mr. DENT. OK. That is good news.

I guess my other question then would be to General Scherling. How do you see this legislation, and how do you see the working relationship between CAP and the Guard or the Air Guard?

General SCHERLING. Sir, I have actually worked with the Civil Air Patrol on two occasions in previous positions—one during the floods in North Dakota where we had a very robust relationship with our Civil Air Patrol and were able to reach out for their support on very short notice. Lastly, in my past job with the joint director of military support, we were able to reach out to Civil Air Patrol through DOD as we received requests for assistance from

various agencies or States, and those requests typically come through the defense coordinating officer at a disaster site directly into DOD, and at that point, a decision is really made as to where the best place or the best capability exists, whether it is with the Civil Air Patrol or with another active component service at that point.

Mr. DENT. Do you have any objections to the legislation I have introduced, H.R. 1333, on behalf of the National Guard? Are there any objections to this?

General SCHERLING. Sir, I do not have any objections.

Mr. DENT. Do you support it then?

General SCHERLING. Sir, I would say that I believe that procedures exist today to do exactly what the Civil Air Patrol desires to do.

Mr. DENT. The Civil Air Patrol seems to think we need to put this in statute, to put this "in stone" so to speak, and I just would be curious to find out why you feel that we have procedures in place that can formalize these relationships, and if that is the case, then why hasn't it happened?

General SCHERLING. Sir, in my estimation, we do have formalized relationships, especially with each of the States, and I think General Lowenberg could probably speak to the relationship within his State. I believe that the procedures also exist within DOD at this time.

Mr. DENT. Thank you, Mr. Chairman.

Mr. CUELLAR. Thank you, Mr. Dent.

The chair will now recognize other members for questions they may wish to ask the witnesses. In accordance with our committee rules and practices, I will recognize members who were present at the start of the hearing, based on seniority on the subcommittee, alternating between majority and minority. Those members coming in later will be recognized in the order of their arrival.

At this time, the chair recognizes for 5 minutes the gentleman from North Carolina, Mr. Etheridge.

Mr. ETHERIDGE. Thank you, Mr. Chairman. I am the only other member here.

Mr. CUELLAR. Yes, sir.

Mr. ETHERIDGE. Thank you. Let me thank you for calling this meeting. I think it is important.

Historically, the National Guard has been one of the pillars of disaster response in this country, and I was dismayed, as I think many of the members of this committee were, when receiving briefings on the shortage of equipment and staffing facing our Guard units under certain conditions. The 2007 hurricane season is only about 36 days away.

With all of the shortages of equipment and personnel and our ability to respond, General Lowenberg and Mr. Womack, we saw with Hurricane Katrina that a wide array of resources—local, State, Federal, and private—were brought to bear, and even with all of these resources, we really were not able to get our act together at the top.

I am from North Carolina, and North Carolina sort of sticks out in the Atlantic, and if one comes up, we tend to get hammered. We are in the danger zone. We are pretty well prepared, I think, as,

I think, Washington State probably is, but you know, if we had a major hurricane, we would be stretched pretty thin, would be my guess, as probably yours would.

If your State's resources were exhausted or stretched thin to the breaking point in a major disaster, who at the Federal level would you turn to to bolster your ability to respond at the State level? second, how confident are you that the resources are there to be able to respond? third, if Federal resources or the National Guard were to be brought in to help out, are you concerned about difficulties that might arise with communications, command and control, and what do you think can be done to overcome these difficulties?

General LOWENBERG. Thank you, Congressman.

To put the earlier testimony of General Scherling in perspective, for my State, which would probably be not unlike North Carolina—and by the way, our 81st brigade deployed to Iraq with the brigade from North Carolina in the 2004–2005 rotation.

We only have about 55 percent of our Army National Guard authorized equipment on hand. The dollar value of the shortfall is \$360 million for our State alone, and when you translate that to the kinds of equipment that had dual use applications for domestic operations, we are short 321 Humvees, 143 large vehicles—the very things that we rely upon in every State for responding to disasters of every magnitude. Frankly, that handicaps every State in the Nation in responding to a catastrophic-level domestic emergency, and I would not turn to Federal officials first or to Federal resources first. I would turn to the adjacent States, and I would turn to every other State in the Nation under the Emergency Management Assistance Compact. We would work hand in hand with the State emergency management directors of all of the other States and the adjutants general of every other State because we are all dealing with the tyranny of time and distance, and there is a very short decision point between the Governor and the adjutant general in launching aircraft and in deploying personnel and equipment in every State, and we saw that performed magnificently, with no notice, in response to Hurricane Katrina.

General LOWENBERG. I would work with FEMA region 10 which we host in Bothell, Washington. And that would be the entry point for our looking for Federal resources. By the way, I think the strides that have been made under Administrator Polison's leadership in filling positions in FEMA based on professional experience are showing big dividends early on, and I applaud them for the quality of the appointments they have made of late.

And that is where we would turn. And there would be confusion. When Federal military resources began showing up in our State it would be a chaotic situation.

Mr. ETHERIDGE. Thank you. Mr. Womack, anything you want to add to that?

Mr. WOMACK. I totally agree with what he said about EMAC. That is the first thing we would turn to. The active duty forces need to come in as a support role as part of that overall unified command concept. But absolutely, go with EMAC resources.

Mr. ETHERIDGE. General Scherling, one of the few positive images most people got out of Hurricane Katrina was out of the National Guard helicopters and the Coast Guard rescuing citizens



from the tops of their houses. Could the Guard repeat that performance today? We in North Carolina have relied on our Guard in times of disasters, especially in Hurricane Floyd when we had to do the same thing in a major flood. Can we meet the domestic needs? What would it take in terms of financial needs? We have heard some of it already. It is the Guard's readiness to aid homeland security in a disastrous situation. I have always believed it is kind of hard to have homeland security until you have hometown security.

General SCHERLING. Right now our aviation assets are in the red. And we have 37 percent of our aviation assets on hand. What I can tell you that we are doing to prepare for the upcoming hurricane season is to look at our essential 10 types of equipment and capabilities that we need. In looking at those by State, we have been able to identify the shortages and to prework EMAC agreements with neighboring states.

Mr. ETHERIDGE. Within regions?

General SCHERLING. Within regions to fill those shortages. I will tell you it is much like the fire department. If you live in a community and you have a fire department and they have to borrow a truck or a ladder from a neighboring community and you have to wait for that to arrive your house might burn down in the meantime. So right now we do have equipment shortages that we could use some help on. And the National Guard has a budget card which we have made available to you that details those budget requirements, sir.

Mr. ETHERIDGE. Thank you. Thank you, Mr. Chairman. I yield back.

Mr. CUELLAR. Thank you. Thank you, Mr. Etheridge.

The purpose of FEMA—this is to Mr. Cannon—the purpose of the FEMA Reform Legislation Act of last fall was to strengthen FEMA's organizational capacity for both preparedness and response. Effective preparation and response requires the affected partnerships with not only among the Federal agencies, but also to include also Federal, other Federal, State and local government's nonprofits, entities such as the Red Cross in the private sector. Has FEMA clearly defined the roles, the responsibilities, expected outcomes for each of its organizational components as well as your partners under this new organizational structure? What have we gotten from a piece of legislation that has become law now?

Mr. CANNON. Probably the most significant change that had to occur was the bringing back of the preparedness director into FEMA along with its planning capabilities and experience and training funding capabilities. And the preparedness that has returned is very different than the preparedness that left a few years ago. So it didn't come back just to be hung on the side of FEMA, but actually totally integrated into our plan operations and coordination.

Every component in FEMA has gone through a reorganization that allows it to be more mission focused. And we strive every day to maintain relationships with all of our partners, both in the inner agency and in the states and local governments. We have done an awful lot of work with strengthening our region so they can strengthen the relationships with the states and the locals. We are

actually involved in an assessment right now with our 11 hurricane prone states where we actually have FEMA folks with state people in the states dealing with major urban areas in large population centers in high risk areas developing planning and contingency plans for that right now.

An example would be the staff we have in New York City. One of the concerns this year is North Atlantic hurricanes coming into part of the country not normally susceptible to hurricanes. We were very fortunate last year, not one touched the United States. We think this year may be a little bit different.

So we work with NEMA very closely and with all the State emergency management agencies. We have a nonprofit sector office now in FEMA that coordinates with the DHS nonprofit sector office. We have an organization dealing with faith-based services now as part of our preparation. So the strengthening and the lessons learned from Katrina have been integrated into FEMA's operational planning elements.

Mr. CUELLAR. Thank you, Mr. Cannon.

Mr. CANNON. You are welcome, sir.

Mr. CUELLAR. General Lowenberg, you talked about the language that got changed last year and the lack of transparency. Someone of us on the inside saw the lack of transparency. Because you saw it the same way some of us did. Are the governors are you all pushing to repeal the language and put it back the way it was or are you saying look at the current language and make some changes to it? Are you just saying repeal it and go back to the previously existing language?

General LOWENBERG. It is the latter. And that is to repeal those provisions which were frankly inserted the conference. And many of the conferees didn't even see the language.

Mr. CUELLAR. Thank you. Mr. Pineda, could you provide us, and I still like what you all were doing, being on the southern border, I like what you all were doing in the 1940's. Could you provide us, if you don't have this information, sort of provide this to the committee, tell us exactly what you are focusing on the southern border. For example, we got the northern border. I understand the northern border is important, I know the southern border is important, I know the coastlines east and west are important. But if you recall the last Congress last year when they talked about putting a fence, for example, they said put a study in the northern part of the border of the United States, but in the southern border put a 700-mile fence, which I disagree. I think we can use taxpayers dollars to efficiently to patrol our borders. Can you tell us exactly what you do in the southern borders, since most of the focus has been on the southern border?

Mr. PINEDA. Right now the air crews that we get, not only in Arizona, but that we presently do in Texas, they—

Mr. CUELLAR. And I do want to know exactly where you are flying in Texas. I came from Texas.

Mr. PINEDA. We will give you that information right after the hearing. They do the patrolling. Probably about 3 flights a day we were doing. If they see people in distress, and we have to emphasize that, we call the border patrol agents on the ground, we will give them the location, we will stay with those people until the bor-

der patrol arrives there. We patrol about a mile inside the United States. We don't cross the border, we stay on our side. We fly all along just watching and observing the activity on the ground and reporting it to the time border patrol on the ground which we have direct communication with.

Mr. CUELLAR. Are you allowed to fly with let's say a local law enforcement entity or individual that might know the ground better than somebody coming in from another country? For example, and I'm using the Southwest Sheriff's Association. What would happen if you fly with local law enforcement? Are they allowed to do that and provide you that information?

Mr. PINEDA. Absolutely. They can fly with us. We can put them in the plane with us. And we have done that in the past so that is not a problem. Not only on the border. Anywhere. A law enforcement official can ride in our aircraft, so they can be the eyes too. And since they know that area better than anybody else, we definitely want to use them even more. But yes, they can fly with us.

Mr. CUELLAR. I would love to, of course, work with Mr. Dent and follow up after the meeting and want to know some specifics on that. At this time, I will recognize Mr. Dent with any follow-up questions.

Mr. DENT. Thank you, Mr. Chairman. And to Mr. Cannon, I am seeking some clarification on something General Scherling just said, where she indicated the National Guard does have an existing relationship and mechanisms in place to utilize the Civil Air Patrol. And that relationship is DOD to DOD.

My concern is that the Civil Air Patrol may have a more difficult time working with non-uniformed entities. So if the Department of Homeland Security wanted to use a Civil Air Patrol asset for some kind of emergency response or surveillance flight, how would you do it? And would DHS provide a similar indemnification provided say by the Air Force?

Mr. CANNON. We would actually, sir, use the—they would be part of the Air Force when we utilized them. We would go to what is called JDOMS, the Joint Director For Military Support. And JDOMS would go to NORTHCOM and they would give it to the Air Force and give them a mission assignment. If it was a FEMA mission in that case, as you heard the General talk about, in Katrina they would be reimbursed under the Stafford Act. They would actually be deployed in our mission as part of their Air Force responsibility. That is the mechanism General Scherling was actually talking about that we have utilized.

Mr. DENT. If I understood General Scherling, I think I understood what you were saying. That relationship is formalized between the Air Force and the CAP. That is all within DOD. And I guess I understand that you have that formal relationship.

General SCHERLING. Typically, when the National Guard uses CAP, it is done at the local level, at the State level. And so those arrangements are handled from the Adjutant General directly to CAP. Putting on my other hat as the former JDOMS, when there is an inter agency partner that wishes to use the Civil Air Patrol like FEMA, they submit a request for assistance which goes into DOD. And that request for assistance is then delegated to the Air Force to respond. And usually there is a vetting process to deter-

mine which capability and which service can best provide a resource. It may be Civil Air Patrol, or it may be a resource from a different service. But that vetting process takes place before the mission assignment is given to the Air Force. And it is really based on what the requirement is at the local level.

Mr. DENT. General Pineda, while the Civil Air Patrol and the National Guard may be able to work together effectively, how do you work directly with DHS? I want to hear from you on your perspective. Is the issue perhaps homeland security missions on a daily basis may require some kind of a direct line of communication between Civil Air Patrol and DHS?

General PINEDA. That definitely would help if we can have that direct communications. As General Scherling stated, we have no problem working with the local National Guard. That is no problem whatsoever. The relationship is great. We can do it at the State level. But when it comes to the Department of Homeland Security, if they request us right now, we probably won't be able to respond for a day or 2 days. By that time, whatever they request for us they don't need us any more because the time has gone by. If we have the direct communication with them then we can respond to their request a lot faster.

Mr. DENT. So you think it would be helpful then for basically CAP to be able to go directly to a State agency in many cases, to DHS?

Mr. PINEDA. Yes, absolutely.

Mr. DENT. No further questions at this time, so thank you for your testimony.

Mr. CUELLAR. For any of the panelists, in your opinion, do you think that the Posse Comitatus Act must be amended in order for the military or National Guard to provide support during a disaster?

General LOWENBERG. None whatsoever. Mr. Chair, first of all, please recognize that when the National Guard is operating in State status at State expense at the governor's direction, Posse Comitatus does not apply. Equally important, when the National Guard is operating in Federal status under Title 32 at Federal expense for a pure Federal purpose or for a joint State Federal purpose, as we are on border security with Operation Jump Start, again Posse Comitatus does not apply. Because ultimately, the National Guard, even when performing a Federal mission for the benefit of the Federal Government, remains under control of the governor of the supporting State.

Mr. CUELLAR. Say that one more time. Because I know when the guards were going down to the border, some of the local folks were complaining about that, that it violated that. So you are saying it doesn't because?

General LOWENBERG. It doesn't because when the National Guard performs even a Federal mission at Federal Government request, as we have done on both the northern and southern borders since 9/11, the Guard members remain under the command and control of the supporting State. Therefore, Posse Comitatus does not apply in any way. Quite frankly, we followed Posse Comitatus testimony before the Senate and House Armed Services Committee very carefully since 9/11 and there has never been a witness to in-

clude former Secretary of Defense Donald Rumsfeld that has ever suggested that Posse Comitatus needs to be changed. It serves very well for all the historic reasons, for which it was enacted in 1807.

Mr. WOMACK. Which is another reason to put the law back the way it was before last year. Is because as I understand it, once you do Federalize these National Guard troops, then you run into this Posse Comitatus issue, correct?

General LOWENBERG. Yes. Mr. Chair, if I may add to that response. The national defense authorization language that the house resolution seeks to rescind simultaneously amended the Posse Comitatus Act, because it is an amendment to the Insurrection Act. They are all interrelated.

Mr. WOMACK. And there is historical precedence where the President 30 years ago, 40 years ago did have to, in fact, invoke the provisions of Federalizing the National Guard. It happened in my State in the civil rights era. There were provisions before last year's amendment to that Act. We just need to put it back the way it was.

Mr. CUELLAR. OK. Good. Mr. Cannon, criticism has been off the levity against FEMA so that there is too much red tape and bureaucracy involved. And in the event of a disaster, local FEMA personnel who are on the ground are in the best position to make the assessments and real time decision. What has FEMA done to empower those local folks to make some of those decisions since they are on the ground?

Mr. CANNON. One of the things we have done is to get those folks on the ground quicker who have the ability to make those decisions. But all of our events start locally some place. And so what we have done is strengthen the roles of our regions to get someone to the scene on the ground as quickly as possible and then make sure they have the proper training and the proper tools to be able to answer those responses from the citizens.

If we looked at the Christmas tornados in Florida, we were there literally the next day when the sun came up. You had some tornados in Texas yesterday. We are already in the Texas State Emergency Operating Center right now as we are sitting here. So FEMA is far more aggressive in getting its resources on the ground and empowering those people to be able to make the right decisions to bring support to people.

I think one of the major issues we have had is red tape. One of the things we are constantly functioning with is to eliminate that, get back directly to what the statute authorizes us to be able to do, and that is get help in the hands of people as soon as possible. And that is what FEMA is about today.

Mr. CUELLAR. So my county next to where I live, in Eagle Pass, for example, run through the procedures that got you all to be there in a timely basis.

Mr. CANNON. Effectively what happens is that there will be †† FEMA is a system of emergency management in our country that starts at the local level and comes on up. So if Mississippi were to have an incident there would be a local management manager. And that person would try to respond and deal with those entities within their capability. If they could not they would go to their next level, a county or a parish. If they could not, they would go to their

State level. If the State can't, they will come to the FEMA region and then the FEMA region will notify FEMA National and we will launch.

There are cases now that when we see an event that is so significant, we know that that chain of occurrences are going to happen, we don't wait, we begin to start to deploy and to move. Now, we are very careful we will not step on the rights and the toes of the States. But we also don't want to be standing by with a life ring and then waiting until the State says, OK, I have drowned enough now, throw it. So we want to be closer and ready to be able to—so we move things and stage them and we start to move people right there.

So essentially, what we would do in that local situation is we would connect with the State Emergency Operation Center, their liaison with a FEMA representative and get the people on the ground together with the State. We are not doing anything, but we are right there beside them, so that if they need something, they turn to us and it is done. We don't have to wait until their governor gets a formal requisition before we get somebody on the ground to help them. And that is a significant change in the way FEMA does business. And there is no doubt it is a change after Katrina.

Mr. CUELLAR. Thank you, Mr. Cannon. Mr. Womack, do you agree with Mr. Cannon?

Mr. WOMACK. I have seen some very positive changes in FEMA in the last 18 months. The process is better as far as getting the people on the ground quicker. It is better as far as the overall situation of local awareness. Region 4 now puts out briefings daily by e-mail to all the States as well as all of their Federal partners that says these are the potential situations, these are the things that have actually happened. So that part of it, I think, is better.

We do have to be very guarded that FEMA does not ride in there and is perceived as trying to take over from the local government or from State government. We have got to be very careful with that.

I think the biggest challenge for FEMA right now is post Katrina and 9/11, there is so much of the senior leadership and response that has left the Agency. FCOs that I worked with, Bill Carlyle and Scott Wells, top notch individuals, they are gone. The people that are being hired are good people. They just don't have the experience level there. And the hiring process, from what I can see of FEMA, because they are through Homeland Security and the security clearances, for senior level positions it takes 6 months to fill positions. So they are having to use interims or they are having to use contractors to try to fill in the gaps.

So I think the processes are better. I am concerned about, quite frankly, the experience level of a lot of these key response individuals.

Mr. CUELLAR. Mr. Cannon, can you respond one more time and we will move on. I think this gives us a good way to kind of hear each other. That way we can digest the information and try to help you do your job better.

Mr. CANNON. There is no question that a lot of extremely talented people have left FEMA, some at the normal end of their career. They have spent 30 years there and they have decided to

move on. Others have positions as State directors. Right next to Mr. Womack in Alabama is a former FEMA employee who is the director.

I think the key is that the Department of Homeland Security is allowing Administrator Polison, to hire senior level staffers with real world emergency management experience. I have 40 years of experience, I hate to say that, 40 years of experience in emergency management law enforcement, fire service and emergency medical services and government at the State, county and city level.

People like myself are what is being brought into FEMA now. And we bring that real world on the street perspective about what the people really need when this happens. We understand that because we have been there and we have done it. And that is what is going to make the difference. And it is making a difference at FEMA. If we looked at the top 4 folks in FEMA in terms of the response area there are over 200 years of experience now in that category, so that is the difference.

Mr. CUELLAR. Thank you, Mr. Cannon and Mr. Womack. Let me just ask one last one and I will pass it on to my colleague here. The purpose of this meeting was to examine the military support of civil authorities during disasters. And I want to thank all the witnesses here. As you can see, part of our job on this side of the table is to digest the information, analyze what you have given us and then from there take some appropriate action. I think some of you are very specific. Repeal specific provisions.

But looking at what we have to look at, I would ask all the witnesses if you have any other, now that you have listened to each of you all, sometimes as you know we have a tendency of just looking at our own world at a particular way, but hopefully with the different witnesses here, you can see that there are other things that we as legislators have to look at and try to digest it and proceed as to what we think is the best course of action to take.

I would ask each of the witnesses to please contact our committee with any specific suggestions you might have, now that you have had an opportunity to listen to each other, because that would help us and our staff to digest and analyze and then decide what course of action we can take together to see how we can improve our roles and our responses.

So I would ask if you all could do that as quickly as possible, because as you know, the process sometimes moves slowly here and sometimes it moves fast. And I would ask you to turn that over to us as soon as you have any specific suggestions on that. At this time, Mr. Dent, any last questions?

Mr. DENT. I will be pretty brief, but thank you again, Mr. Chairman. General Pineda, if the Department of Homeland Security could task you directly, would Posse Comitatus apply?

Mr. PINEDA. That one I will have to let get an opinion from the lawyers. I don't think it would be a problem. But right now, let me say that on the flight that we are doing in Texas OK, for example, if you see a car coming across the border we can only follow the car for about 20 miles, then we have to stop and we have to go on our way. All we can do is notify, follow the vehicle for 20 miles and then we have to leave.

Mr. DENT. You are following by air?

Mr. PINEDA. By aircraft.

Mr. CUELLAR. I am sorry, going northbound, not across the border?

Mr. PINEDA. Going northbound from anywhere on the border. We can follow them for 20 miles, but then we have to stop. Whether the border patrol is there or not, we have to let it go. If we see a group of individuals on our side of the border, just a group sitting there and we fly over, all we can do is report the sighting and we have to keep on going. We cannot go around and wait there until the border patrol arrives. That is the problem.

Mr. DENT. I guess the Posse Comitatus question to follow up if DHS funded the mission, would Posse Comitatus apply, I guess is the question?

Mr. PINEDA. Do you know what? I am not sure if it will or not because it is Federal money. And I have been told that if we use Federal money it applies. But again, we are not a military organization. So there is both sides of the argument. Some say yes and some say no. Personally, I don't think it applies because we are not a DOD military organization, we are civilians.

Mr. DENT. Understood. And finally what can be done now to increase the Civil Air Patrol's involvement in other homeland security activities beyond disasters? I would be curious to hear that you have to say what could be done to increase this involvement in the long term.

Mr. PINEDA. Working with the Department of Homeland Security and sharing the assets that we have throughout the United States, we have over 500 airplanes. 60 of them have very sophisticated equipment inside that can help them when they are not being used. So working with them directly will give them probably about over 5,000 or 6,000 pilots with 500 airplanes. And those are not being used at all. Not only that, but also the ground personnel that we have throughout the United States and the vast communication resources that we have. We have 55,000 eyes and ears in the whole country and they are willing and able and trained to be able to help them out.

Mr. DENT. Thank you. And just finally to General Lowenberg and Mr. Womack, can you just let me know quickly how the Civil Air Patrol has assisted upon request in your respective States?

General LOWENBERG. The Civil Air Patrol does perform missions in support of the Navy in Washington, for example, with surveillance and reconnaissance as subways come into territorial waters and come to the Bangor Homeport. We also request State-funded search-and-rescue mission assistance with the Civil Air Patrol through our State Department of Transportation as part of ESF under the State Comprehensive Emergency Management Plan.

Mr. WOMACK. They are fully integrated. At the local level, they work and train with local emergency management personnel in their search and rescue. A lot of people don't realize they have a ground search and rescue mission as well. We have a great relationship with them at the State level. We call on them frequently for a variety of reasons. We do fund them using State funds at that point. This is the first time I realized that their insurance did not cover them so these volunteers are putting themselves in great



jeopardy because it is entirely possible civilian insurance would not cover them if they had an accident.

Mr. DENT. Which is why we have to formalize these relationships to deal with indemnification issues.

Mr. WOMACK. I really do think if that would be the biggest change in the law, if you could simply say if they are working and directly funded by a State or local government, then the insurance provisions still provide. I think that would fix a lot of it.

General LOWENBERG. If I could add to that. They are covered in the Washington State law because I assigned them a search-and-rescue mission number and that makes the State responsible for that. In fact, I had paid for Civil Air Patrol aircrafts destroyed in the past because of a crash. So that will vary from State to State. As Mr. Womack said, if Congress could make sure the Federal Tort Claims Act covered them while they are performing these missions.

Mr. WOMACK. Washington has got a lot more money than Mississippi. We can't afford it.

Mr. DENT. I thank you all for your answers. And Chairman Cuellar, I thank you for holding this hearing. And I look forward to working with you on the legislation to see if we might be able to refine it based on some of the comments we heard here this morning.

Mr. CUELLAR. Thank you, Mr. Dent. And I want to thank all the witnesses for their valuable testimony and the members for the questions. As you know, for all on the panel, some of the members might have additional questions. And if you have additional questions, I would ask you to submit that as soon as possible to them and to the committee. And also as I mentioned at the very end of the questions, if you all have any ideas now that you listened to each other, we would like to get your specific suggestion. So hearing no further business the hearing stands adjourned. Thank you for being here with us.

[Whereupon, at 11:30 a.m., the subcommittee was adjourned.]

