

***JOINT FORCES STAFF COLLEGE  
JOINT ADVANCED WARFIGHTING SCHOOL***

**DOD'S ROLE IN HOMELAND DEFENSE AND HOMELAND SECURITY**

**By**

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**The contents of this paper reflect my own personal views and are not necessarily endorsed by the Joint Forces Staff College or the Department of Defense.**

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## CHAPTER I - INTRODUCTION

SEPTEMBER 11, 2001

On the clear morning of September 11, 2001 the political and national security landscape of America, and perhaps the world, changed over the course of a few hours. At approximately 8:45 AM American Airlines Flight 11, a Boeing 767 commercial airliner loaded with passengers and jet fuel, crashed into the north tower of the World Trade Center in New York City. Initial reaction pleaded for a terrible accident. Approximately 18 minutes later all thoughts and hopes of an accident vanished as United Airlines Flight 175 (a similarly loaded Boeing 767) slammed into the south tower. Both towers crumbled within a couple of hours burying approximately 3,000 men, women and children, including many first responders such as Firemen, Police Officers and Emergency Medical System (EMS) personnel. At approximately 9:40 AM American Airlines Flight (a Boeing 757) sliced through the concentric rings of the Pentagon killing 126, causing some 10-15 thousand military and civilian workers to flee the burning building. Finally, onboard United Airlines Flight 93 in the skies above Pennsylvania, a struggle between passengers and a group of high-jackers ended with a fiery crash in a farmer's field killing all 45 onboard. The American homeland was under attack and the American security landscape had changed on 9-11, perhaps forever.

The terrorist attacks in the late summer of 2001 introduced America to the terms Homeland Defense (HLD) and Homeland Security (HLS). The two terms are often used synonymously, and most Americans have no idea if there are differences, what those differences are, or who is responsible for providing each. Prior to the terrorist attacks Americans felt secure in their borders and took defense of the homeland for granted.

Until 9-11 the American military fought America's wars on foreign soil. The idea of fighting battles in the homeland did not register with the American people. There had not been a large scale attack on American soil since the Japanese attacked Pearl Harbor in December 1941, and before that one had to look all the way back to the American Civil War. America had gotten very comfortable relying on its natural buffers of the Atlantic and Pacific Oceans, and its friendly neighbors of Canada and Mexico to the north and south as protection for its homeland. Looking at these security blankets it isn't any wonder why Americans rarely, if ever, uttered the terms Homeland Defense or Homeland Security. Now of course, things have changed. HLD and HLS have become everyday words in America, and Americans are now trying to come to grips with what these two terms actually mean and represent. Americans generally understand what the Department of Defense (DOD) encompasses. They generally understand the DOD mission of serving as America's warriors and protecting America from its enemies. They are not as comfortable with the terms and concepts of HLD and HLS.

What is Homeland defense? What is Homeland Security? Are they the same? Are they DOD missions, or law enforcement terms? Defining the terms has not been easy as evidenced by the attempts in the various strategic documents published since 9-11. These documents will be discussed in their nested order rather than their chronological publishing dates. It is important to point out that each of these documents is intended to stand for years between revisions, as they are mainly strategic guidelines not subject to frequent change. The principal document, *The National Security Strategy Of The United States* (2002 NSS), serves as the strategic foundation for the others to build from.

President George W. Bush introduced America to the new organizations of the Department of Homeland Security and United States Northern Command in the 2002 NSS. Although published twelve months after the September 2001 terrorist attacks the 2002 NSS does not use, or define, the terms Homeland Defense and Homeland Security. Nor is it clear from this document where the responsibilities lie for HLD and HLS. On page 29 of the 2002 NSS the President states: “The major institutions of American national security were designed in a different era to meet different requirements. All of them must be transformed. It is time to reaffirm the essential role of American military strength. We must build our defenses beyond challenge. Our military’s highest priority is to defend the United States.”<sup>1</sup> How does this “essential role of the American Military” translate in its role in Homeland Defense, or Homeland Security?

*The National Defense Strategy of The United States of America* (NDS) published in March of 2005 also doesn’t contain the terms Homeland Defense, or Homeland Security. In fact, although the primary strategic objective stated in the NDS is to “Secure the United States from direct attack,” the subject of Homeland Defense doesn’t come up until page 8: “Protecting the Homeland...The Defense Department contributes to protecting the U.S. homeland by sustaining the offensive against terrorist organizations by:

- Conducting military missions overseas
- Sharing intelligence
- Conducting air and maritime defense operations
- Ensuring continuity of government”<sup>2</sup>

Later, in a discussion regarding “Active, layered defense,” the physical defense of America is discussed: “At the direction of the President, the Department will undertake

military missions at home to defend the United States, its population, and its critical infrastructure from external attack. Our missile defense program aims to dissuade adversaries...In emergencies, we will act quickly to provide unique capabilities to other federal agencies when the need surpasses the capacities of civilian responders...”<sup>3</sup>

Which portion of the above is directed at Homeland Defense, or Homeland Security?

In *The National Military Strategy of the United States of America* published in 2004 the term Homeland Security is mentioned once, but it is neither defined nor elaborated on. The term Homeland Defense is absent altogether. Rather, in a section titled “Defensive Actions at Home” the Chairman of the Joint Chiefs of Staff states “At home the Armed Forces must defend the United States against air and missile attacks, terrorism and other direct attacks. As necessary, the Armed Forces will protect critical infrastructure that supports our ability to project military power. When directed, the Armed Forces will temporarily employ military capabilities to support law enforcement agencies during special events. During emergencies the Armed Forces may provide military support to civil authorities in mitigating consequences of an attack or other catastrophic event when civilian responders are overwhelmed.”<sup>4</sup> Again, which portion of the above is directed at Homeland Defense, or Homeland Security?

Homeland Defense and Homeland Security are important terms and concepts which require specific definitions and clearly delineated responsibilities for who, what, where, when and how they will be delivered to the American people. As Clausewitz said almost two centuries ago: “The primary purpose of any theory is to clarify the concepts and ideas that have become, as it were, confused and entangled. Not until terms and concepts have been defined can one hope to make any progress in examining the question

clearly and simply and expect the reader to share one's views."<sup>5</sup> Bringing this thought forward to today's discussion provides historical perspective on the imperative for the military to understand its role in both Homeland Defense and Homeland Security. The definitions of both terms require refinement and clarity in order to facilitate a better understanding of the two by the American public, as well as the American Military leadership in order to appropriately utilize the capabilities available. Misunderstandings regarding the Department of Defense's roles, responsibilities and capabilities reduce overall effectiveness and utility of the military, as well as introduce inefficiency and confusion in the utilization of all elements of national power.

#### HOMELAND DEFENSE

Although the term "Homeland Defense" is relatively new, the concept of "defending the homeland" has been accepted and understood since the first days of America. Defining "Homeland Defense" is a bit more difficult. Article I, Section 8, of the Constitution of the United States gives the Congress the power "To raise and support Armies...To provide and maintain a Navy...To provide for calling forth Militia to execute the laws of the Union, suppress Insurrections and repel invasions..."<sup>6</sup> The intent of this Article is to provide Congress with the power to raise an Army and Navy in order to protect the nation against internal and external threats; in other words, to provide for the defense of the homeland. Article II, Section 2 states: "The President shall be the Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States."<sup>7</sup> The intent of this Article is to establish the President as the authoritative leader of the Armed Forces of

the United States, as well as grant him the power to call up the State militias (our Forefather's version of the National Guard) into federal service when required. In his capacity as Commander in Chief of the Armed Forces the President can use those forces, in consultation with Congress, in order to provide for the defense of America. Yet, none of the above provides a clear understanding, or definition for "Homeland Defense." We know from the above that the drafters of the Constitution understood there would be challenges to America's sovereignty, and therefore America would require an armed force controlled by duly elected civilian officials in order to protect the homeland, but even with all of the forethought and progressiveness built into the document, the Constitution does not provide a definition for Homeland Defense.

In February 2001, six months prior to the terrorist attacks, The U. S. Commission on National Security/21<sup>st</sup> Century produced its Phase III Report titled *Roadmap for National Security: Imperative for Change*. In the report the Commission cites "Homeland Security" as the most important challenge for America in the coming century. The report never mentions the term Homeland Defense, but talks about defending the homeland in various passages. The main theme centers around prevention: "We believe that homeland security can best be assured through a strategy of *layered defense* that focuses first on prevention, second on protection, and third on response. **Prevention:** Preventing a potential attack comes first. Since the occurrence of even one event that causes catastrophic loss of life would represent an unacceptable failure of policy, U.S. strategy should therefore act as far forward as possible to prevent attacks on the homeland."<sup>8</sup> This passage suggests the military provides homeland defense by fighting our enemies in the enemy's homeland, or just outside of our own, in order to protect the

nation. This is the “away game” theory of homeland defense. A later section of this paper will discuss President Bush’s Preemption Doctrine from his National Security Strategy of 2002, including the principal shortcoming of the away game concept, which is the underutilization of one of the largest entities of the United States Government within the borders of the United States, The Department of Defense.

The most recent attempt at defining Homeland Defense comes from the Department of Defense’s *Strategy for Homeland Defense and Civil Support* released in June 2005.

**“HOMELAND DEFENSE:** the protection of US sovereignty, territory, domestic population, and critical infrastructure against external threats and aggression, or other threats as directed by the President. The Department of Defense is responsible for homeland defense.”<sup>9</sup>

Although this passage is footnoted to explain that the term “external threat” does not necessarily mean the threat will materialize externally, the language leans toward the away game concept of homeland defense. However, this definition still requires additional specificity and clarity. What about threats and aggression that do in fact manifest within America’s borders? Can DOD actually then take the lead for “protection of... the domestic population and critical infrastructure against external threats and aggression?” Perhaps the National Guard under State control can based on Title 32 authority, but not the Federal, or Title 10 forces (Active and Reserve Military), within DOD. Due to legal constraints (Posse Comitatus Act and DOD Directives), Title 10 forces will have great difficulty protecting or defending anything within the actual

confines of the physical borders of the United States of America, or within our territorial waters (12 miles seaward). The Posse Comitatus Act (PCA) will be discussed at length later in this paper, but for now understand that the DOD sees the PCA as a major impediment to Title 10 force utilization in any capacity that includes any form of law enforcement activity within the borders of the United States. This highlights one major conflict within the definition of Homeland Defense.

## HOMELAND SECURITY

The *National Strategy for Homeland Security* provides the following definition for Homeland Security:

**“HOMELAND SECURITY:** a concerted effort to prevent terrorist attacks within the United States, reduce America’s vulnerability to terrorism, and minimize the damage and recover from attacks that do occur.”<sup>10</sup>

The document goes on to describe what a “concerted effort” entails: “*Concerted national effort.* The federal government has a critical role to play in homeland security. Yet the nature of American society and the structure of American governance make it impossible to achieve the goal of a secure homeland through federal executive branch action alone. The Administration’s approach to homeland security is based on the principles of shared responsibility and partnership with the Congress, state and local governments, the private sector, and the American people.”<sup>11</sup> In other words, Homeland Security must be achieved with an all for one, and one for all approach. The three buzz words from the definition above are “Prevent,” “Reduce” and “Minimize.” It is interesting, and

consistent with the National Security Strategy, to see prevention emphasized. Once again, the away game approach is implied: we need to detect the terrorists' plots, and hit the terrorists in their own homelands, or wherever they are operating from, before they can hit us here in our homeland. There will be more on prevention in a later section. *The National Strategy for Homeland Security* provides guidance for where, when and in what areas DOD may be asked to provide services for Homeland Security:

The Department of Defense contributes to homeland security through its military missions overseas, homeland defense, and support to civil authorities. Ongoing military operations abroad have reduced the terrorist threat against the United States. There are three circumstances under which the Department would be involved in improving security at home. In extraordinary circumstances, the Department would conduct military missions such as combat air patrols or maritime defense operations. The Department would take the lead in defending the people and the territory of our country, supported by other agencies. Plans for such contingencies will continue to be coordinated, as appropriate, with the National Security Council, Homeland Security Council, and other federal departments and agencies. Second, the Department of Defense would be involved during emergencies such as responding to an attack or to forest fires, floods, tornadoes, or other catastrophes. In these circumstances, the Department may be asked to act quickly to provide capabilities that other agencies do not have. Finally, the Department of Defense would also take part in "limited scope" missions where other agencies have the lead—for example, security at a special event like the recent Olympics.<sup>12</sup>

Once again the away game approach is emphasized for DOD as it would take "extraordinary circumstances" for DOD to conduct operations within American borders. The citation referring to "floods, tornadoes, or other catastrophes" implies a plan to

utilize DOD internally supporting civil authorities in response to a natural disaster such as a hurricane. The response to hurricane Katrina reveals, perhaps, something else. Katrina, and the DOD response, will be discussed later.

The concepts of Homeland Defense and Homeland Security share a pervasive theme regarding the Department of Defense, namely, “prevention” and operations abroad in order to ensure the homeland is secure and defended. In *The National Security Strategy of the United States of America* President Bush cites the principle of preemption (the away game) as a pillar of America’s security strategy: “defending the United States, the American people, and our interests at home and abroad by identifying and destroying the threat before it reaches our borders. While the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone, if necessary, to exercise our right of self-defense by acting preemptively against such terrorists, to prevent them from doing harm against our people and our country”<sup>13</sup> In other words, The United States will not hesitate to strike at terrorists abroad, without waiting for either a permission slip from the United Nations or a coalition of like minded nations, should the USA believe it is in her best interest to do so.

#### DEPARTMENT OF HOMELAND SECURITY AND U. S. NORTHERN COMMAND

In the weeks following the terrorist attacks President Bush established the Office of Homeland Security, and on October 8, 2001 appointed Pennsylvania Governor Tom Ridge as the HLS Advisor. The President’s staff and the Congress then began working to create what would become the new Department of Homeland Security (DHS). Creating a new Department and Cabinet Secretary position is a difficult and challenging undertaking

during the best of circumstances. Trying to complete the task while engaged in combat operations abroad and attempting to grasp the new requirements involved in securing the homeland is that much more difficult. Nevertheless, on June 6, 2002, the President proposed creating a new cabinet-level department with the primary mission of protecting the American people and our homeland. The Congress responded, and on November 25, 2002, the President signed into law the Homeland Security Act of 2002 creating the new department.<sup>14</sup> The President nominated Pennsylvania Governor Tom Ridge as the new Secretary for the DHS and the Senate quickly confirmed him as the newest member of the President's Cabinet.

The new Department of Homeland Security immediately became one of the more robust departments within the United States Government. The legislation provided for the transfer of 22 entities such as the Federal Emergency Management Agency and the United States Coast Guard (USCG) to DHS. Placing the USCG under the DHS umbrella gave the new Secretary a ready force with which to conduct this new mission. The USCG, although aligned outside of the Department of Defense except during war time, has traditionally been thought of as the fifth member of the DOD team. The greatest advantage the Coast Guard holds over DOD branches is the law enforcement capacity resident within the charter of the Coast Guard, which allows them to conduct law enforcement missions and activities within the borders of the United States. The Coast Guard's law enforcement powers have traditionally been employed in the areas of counter-drug missions, maritime rules of the road enforcement and other harbor patrol like duties. Now DHS can leverage this law enforcement capacity in conducting its HLS and anti-terrorism missions as well.

While the Administration and the Congress grappled with developing the DHS, the DOD initiated a review of the Unified Command Plan (UCP) in order to continue Secretary Rumsfeld's transformation initiatives, align Areas of Responsibility (AOR) and to come to terms with the new security and defense realities in the aftermath of the 9-11 terrorist attacks. At this time the terms Homeland Defense and Homeland Security were being used interchangeably by the United States Government, the media and the general public. The Department of Homeland Security took care of one of the missions, and perhaps the Yang to the Homeland Security Ying, would, or should, be a DOD organization. In the summer of 2002, DOD announced the creation of United States Northern Command (NORTHCOM), and on October 1, 2002 Airforce General Ralph Eberhart became the first Commander, as well as America's premiere defender of the homeland. The *Strategy for Homeland Defense and Civil Support* states that NORTHCOM "is responsible for planning, organizing, and executing homeland defense and civil support within the continental United States, Alaska, and territorial waters."<sup>15</sup>

The newly commissioned NORTHCOM and the newly formed DHS each created mission statements to help focus their efforts on their respective missions in the context of the new terms of HLD and HLS. Neither term had a very good definition at the time, requiring both NORTHCOM and the Department of Homeland Security to construct mission statements with embedded definitions for HLD and HLS.

**NORTHCOM's Mission Statement:**

"The command's mission is homeland defense and civil support, specifically:

- Conduct operations to deter, prevent, and defeat threats and aggression aimed at the United States, its territories, and interests within the assigned area of responsibility; and
- As directed by the President or Secretary of Defense, provide defense support of civil authorities including consequence management operations.

U.S. Northern Command plans, organizes, and executes homeland defense and civil support missions, but has few permanently assigned forces. The command will be assigned forces whenever necessary to execute missions as ordered by the President.”<sup>16</sup> The few assigned forces, both uniformed and civilian Staff, as well as other civilian employees make up the people portion of NORTHCOM. These personnel plan for the specific operations listed in the mission statement. Unlike the Department of Homeland Security, which can rely on its embedded forces of the United States Coast Guard, FEMA personnel, etc. to execute its mission activities, NORTHCOM will have to look elsewhere for the personnel charged with executing its operational plans. In other words, upon operational plan implementation, NORTHCOM will have to make a request for forces for the required Soldiers, Airmen, Sailors and Marines to execute an activated plan. This is not a small issue considering the likely speed required to respond to a rapidly developing or imminent threat to America. By not having assigned forces, or standing forces, NORTHCOM’s response to emergent incidents will undoubtedly suffer a delay in deploying forces to the scene.

**Department of Homeland Security’s Mission Statement:**

“The Primary Mission of the Department is to:

- prevent terrorist attacks within the United States;

- reduce the vulnerability of the United States to terrorism;
- minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States;
- carry out all functions of entities transferred to the Department, including acting as a focal point regarding natural and manmade crises and emergency planning;
- ensure that the function of the agencies and subdivisions within the Department that are not related directly to securing the homeland are not diminished or neglected except by a specific explicit Act of Congress; and
- monitor connection between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and otherwise contribute to efforts to interdict illegal drug trafficking.”<sup>17</sup>

Although the mission statements from NORTHCOM and DHS use different words, there is significant overlap. Both endeavor to protect America’s homeland as well as cooperate and work with civil authority organizations to minimize the impacts of an attack should one occur. This overlap either provides for cooperation and teamwork opportunities, or duplication of effort and competition. Due to the developing nature of both organizations this remains to be seen. Nevertheless, the response to Hurricane Katrina provides important insight to actual and potential problems and conflicts, in the area of disaster response by both.

#### THE POSSE COMITATUS ACT

“Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a

posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.”<sup>18</sup> The previous is all there is to the Posse Comitatus Act (PCA). Although the PCA itself is directed at the Army and the Air Force, DOD Directive 5525.5 expands the limitations of the Posse Comitatus Act (PCA) to the Navy and Marine Corps by citing the PCA as the limiting authority in the use of the military in law enforcement activities.<sup>19</sup> The relatively few words of the PCA, coupled with DOD Directive 5525.5, are often cited as the legislative action which prohibits the Military from performing law enforcement operations, or activities. “The mere utterance of the term Posse Comitatus is often sufficient to alert the nerve endings of civil libertarians and military purists. Many civil libertarians fear that the use of the armed forces for missions that relate in any way to law enforcement or non-war-fighting activities will undermine civilian control of the military and perhaps infringe upon individual freedoms. Military purists fear a dilution of combat readiness.”<sup>20</sup>

NORTHCOM cites the PCA as the limiting legislation in regard to law enforcement operations as follows: “The PCA generally prohibits U.S. military personnel from direct participation in law enforcement activities. Some of those law enforcement activities would include interdicting vehicles, vessels, and aircraft; conducting surveillance, searches, pursuit and seizures; or making arrests on behalf of civilian law enforcement authorities. Prohibiting direct military involvement in law enforcement is in keeping with long-standing U.S. law and policy limiting the military’s role in domestic affairs.”<sup>21</sup>

In truth, on numerous occasions since enactment of the PCA in 1878 the military has indeed played a role in “domestic affairs,” and has indeed acted in a law enforcement capacity. The PCA, in reality does not limit the military’s role; rather, politics and

Presidential inclination either restrict, or broaden the military's role in domestic disturbances and affairs. When we review President Bush's military response to Katrina the question of politics will be dealt with in a little more detail. For now, consider the political implications of a Republican President sending active duty military troops into a traditionally Democratic state led by a Democratic Governor who has yet to ask for those troops. Although every indicator on the ground demonstrated that the first responders had been overwhelmed, and the National Guard, for whatever reason, seemed insufficient, the President deferred to the Governor and waited. Politics alone kept the President from sending troops to Louisiana prior to Governor Blanco's official request.

What does Posse Comitatus actually mean? A standard collegiate dictionary, similar to one used by most in the general public, doesn't define the two terms together, but rather provides separate definitions, that once put together, provide an understanding of the term.

**Posse:** "1: a large group often with a common interest; 2: a body of persons summoned by a sheriff to assist in preserving the public peace; 3: a group of people temporarily organized to make a search."<sup>22</sup>

**Comitatus:** "a body of companions, esp. a military retinue with its leader."<sup>23</sup>

The more succinct definition, and the one targeted in the Act comes from the more scholarly version of Webster's International Dictionary: "Power of a county."<sup>24</sup> Putting Posse Comitatus in layman's terms, Posse Comitatus describes a Posse (perhaps a military unit) led by a leader (perhaps a military leader, or commander), conducting law enforcement activities such as search, arrest and detention at the bequest, and direction, of a local authority (sheriff, marshal, etc.). The United States Congress enacted the PCA

following the end of the reconstruction era after the Civil War. The history, and intent of the act, has been written about often. The act, as quoted above, is quite short, and therefore leaves much for interpretation. Colonel John R. Brinkerhoff, US Army, Retired, in his article *The Posse Comitatus Act and Homeland Security* discusses what precipitated the act and how it has been misinterpreted since its inception. The short of COL Brinkerhoff's story is conveyed by this quote from his article:

Congress passed the Posse Comitatus Act in 1878 in a dispute over the use of federal troops by U.S. marshals in the South. Based on precedent, Attorney General Charles Devens took the position that the U.S. Judiciary Act of 1789 authorized U.S. Marshals to raise a posse comitatus comprising every person in a district above 15 years of age, "including the military of all denominations, militia, soldiers, marines, all of whom are alike bound to obey the commands of a Sheriff or Marshal." However, Congress had become disenchanted with the habit of U.S. marshals and sheriffs to press Army troops into their service without the approval of the commander in chief. The Southerners in particular questioned this policy... On 27 May 1878, Representative J. Proctor Knott of Kentucky introduced an amendment to the Army appropriations bill; the amendment eventually became the Posse Comitatus Act. In passing the act, the Congress voted to restrict the ability of U.S. Marshals and local sheriffs to conscript military personnel into their posses. They did not vote to preclude the use of troops if authorized by the president or Congress.<sup>25</sup>

Taking COL Brinkerhoff's view into account, one can see the difference between enacting law to limit the ability of local law enforcement agencies to reach out and take control of military troops for their use, and the ability for the President to utilize military

troops acting in a law enforcement capacity as long as he follows certain legal procedures.

There is also the issue of the public's wariness of the Army acting in a law enforcement capacity. This concern is unwarranted as there is no history of military abuse against the American public. The motivation for the Act in the 1870s was simply to withdraw the federal troops from the South as a final signal to the end of Reconstruction. Nevertheless, perhaps documents such as GEN George S. Patton's paper, "*Federal troops in Domestic Disturbances*," feed into this sentiment. In his paper from 1932, General Patton offered detailed procedures for federal troops to use when confronting crowds and mobs. The explicit nature of his guidance is chilling when one takes into account that the General is talking about controlling crowds and mobs of Americans here in the American homeland. In fairness, Patton was a Major at the time he authored the paper, and probably not too concerned with the public's perception of his directions to his men. Patton offers the following on the conservative nature of the use of federal troops: "Due to the usual conservatism of the Federal Government, Federal Troops are seldom, if ever, called into action until conditions have gotten very seriously out of hand. Hence, when we arrive, force is the only alternative. This being so, the study of CROWD TACTICS is superfluous. However, should we arrive before real violence has started, it is well to remember that if we can prevent the formations of CROWDS, then MOBS cannot be born."<sup>26</sup> Patton followed with explicit tactical directions:

"The use of gas is paramount. It may be used by hand grenades with a range of 25 yards, rifle grenades with a range of 250 yards, or bombs and stokes mortars. While

tear gas is effective, it should be backed up with vomiting gas. Although white phosphorus is incendiary, it is useful in forming a screen for the attack of barricades and defended houses. Next in order of importance come the saber, the bayonet, and the club. In the case of dismounted troops, do not close in on a mob with the bayonet or club if you are largely outnumbered. If the mob refuses to disperse, give them a fixed time, perhaps five minutes. Call the minutes so they can hear. If they are unheeding, lob some gas into the rear of the crowd at exactly the end of the period. If this fails to move them, open fire with one man per squad for a frontal attack while at the same time have men in houses shoot into the rear ranks selecting apparent leaders. Always fire for effect. Due to over shooting of the battle sight at short range, caution the men to fire at the knees of the crowd. If it is necessary to use machine guns, aim at their feet. If you must fire, DO A GOOD JOB. A few casualties become martyrs; a large number becomes an object lesson.<sup>27</sup>

With such language, it is no wonder the American public is less than enthusiastic regarding the notion of using federal troops in law enforcement capacity here in the American homeland.

In reality, the Posse Comitatus Act has not been much of an impediment for the President's use of Federal Troops in a law enforcement capacity. In fact, since the Act's passage in 1878, Federal Troops have been used in over 150 instances to suppress domestic disorder and to enforce the laws of the land. These instances range from President Hays's use of Federal Troops in the New Mexico Territories within months of the Act's passage, to President George H. W. Bush's troop deployment during the Los Angeles riots of 1992, to President W. Bush's troop deployment in response to the disaster in the aftermath of Hurricane Katrina in the summer of 2005. As will be discussed below, the troop deployment in response to the Los Angeles riots and the

deployment during the aftermath of hurricane Katrina provide great case studies in the political issues involved as well as the misunderstanding and misapplication of the limitations imposed by the PCA. Both cases also show the vast differences in domestic response capabilities between the National Guard and active duty troops. As far as the PCA goes: “In the end, the law becomes in some military eyes a ‘procedural formality,’ used to ward off undesired and potentially resource-depleting missions while not imposing any real controls.”<sup>28</sup> Said in another way, the PCA can protect the military from misuse, or over use, in domestic affairs through the President’s ability to pick and choose when he wants to utilize troops. The President, and his military leaders, can cite the PCA as a piece of limiting legislation, and use it as a shield to ward off undesirable requests, and attempts to use the military in domestic affairs. Nevertheless, the myth remains, Patton’s paper notwithstanding, that the PCA protects the American public from potential abuses of military power during periods of domestic disturbances, or strife.

Although the PCA has not been much of an impediment for the President’s use of federal troops during periods of domestic disturbance, the new strategic framework America finds itself in renders the Posse Comitatus Act outdated and detrimental to the effective accomplishment of Homeland Defense. President Bush, in his preface to the 2002 NSS, writes: “Defending the Nation against its enemies is the first and fundamental commitment of the Federal Government. Today, that task has changed dramatically. Enemies in the past needed great armies and great industrial capabilities to endanger America. Now, shadowy networks of individuals can bring great chaos and suffering to our shores for less than it costs to purchase a single tank. Terrorists are organized to penetrate open societies and to turn the power of modern technologies against us.”<sup>29</sup> As

the threats to America change, it is imperative for the nation's Government, law enforcement agencies and the military to adapt as well. In its current interpretation, the PCA's time has come and gone. New challenges require new approaches. The American military has been engaged in the process of revising its tactics, techniques and procedures since Secretary Rumsfeld made "transformation" a foundational pillar of his Defense Department's concept of organization and operations. It is natural, and right, for policies and laws governing the actions of the military to transform as well. If America has the potential to become a battle ground at times, and the enemy has a strong vote in this, then the military must be able to operate in any battlespace without being encumbered by obsolete legislation. In order to illustrate this point, a review of recent military operations in the homeland is useful, paying close attention to whether or not the PCA had a positive, negative or neutral effect on military activities, as well as looking at the differences in preparation and efficiency between the National Guard and Active Duty forces.

Two recent examples of large scale military operations within the homeland, other than the 9-11 terrorist attack, provide the backdrop for this discussion. One is the military involvement in the response to the riots in Los Angeles following the trial of the Police Officers accused of beating Rodney King during a roadside traffic stop in 1992, and the other is the military response to Hurricane Katrina in the summer of 2005. These two events occurred for very different reasons, yet both contained the common elements of chaos, domestic violence, looting and general lawlessness. Both incidents had a lead up time; a period of time for planning, staging of equipment and forces. In the Los Angeles riots the authorities had time to consider what they thought might be the

public's reaction to an acquittal of the Police Officers in what was an obviously racially charged trial, and to plan a response should protestors of the judicial ruling become violent and take to the streets. During the days prior to hurricane Katrina making landfall upon the shores of Mississippi and New Orleans, Louisiana, the Governors of both states had a number of days warning to try and ready their populations for the coming storm, as well as prepare for their response in the immediate aftermath of the storm. In both case the Federal Government, including the Department of Defense, had time to plan for its contribution to the situation.

The response to the Los Angeles riots and the response to Katrina were chosen for a number of reasons. First, the LA riots occurred prior to the 9-11 terrorist attacks, allowing for a review of the effectiveness of the military response of both National Guard and Active Duty, prior to the creation of either NORTHCOM or DHS. Also, because the Los Angeles riots was a case of civil unrest between the civilian population and the civil authorities, it might be useful to extrapolate some lessons should the military, at the behest of proper civilian authorities, be called upon to enforce unpopular rulings in the future - such as quarantine, or some other form of restricted movement. Katrina, on the other hand, provides essential information and data regarding America's first large scale military operation within the homeland since the 9-11 attacks. Katrina also required the first large scale cooperation effort between NORTHCOM and the Department of Homeland Security. In both of these cases, unlike 9-11, the authorities had some time to prepare a response, and yet in both cases, as far as the PCA and the National Guard and Active Duty Military is concerned, misunderstanding and confusion reigned.

## CHAPTER II – AMERICAN MILITARY IN THE HOMELAND

### 1992 LOS ANGELES RIOTS

On March 3, 1991, the California Highway Patrol attempted to pull over Rodney King, an unemployed African-American male, for driving erratically. This routine traffic stop turned into a high speed chase ending with King being pulled over in Lake View Terrace, CA, by a number of patrol cars. “There, George Holliday, a resident of Lake View Terrace, videotaped Police Officers beating King about 175 feet from his apartment. The tape was over 80 seconds in length. It showed King lunging at a Police Officer after being hit with two Taser darts when he refused to be handcuffed, and then repeatedly beaten with Police batons. *In the shortened version repeatedly shown on television*, an Officer was seen stepping on King’s head or neck, as well as repeated blows by Police batons. Tests taken several hours after the incident showed King with a blood alcohol content well over California’s legal limit.”<sup>30</sup> This incident became the catalyst for what would become the single most destructive and costly domestic disturbance in United States history, causing the deaths of at least 54 people and more than \$800 million in property damage throughout LA County in the spring of 1992.

The year following the traffic stop and the trial was full of legal maneuvering and increasing racial tensions creating a poisonous atmosphere surrounding the trial of the four white Police Officers. Mr. Holiday’s video, the shortened version, showing the beating of Mr. King played in the national media for weeks following the traffic stop, and again for weeks leading up to the rendering of the verdict. “As the trial progressed, law enforcement officials began to express concern over the consequences should the four

Police Officers not be found guilty. The public had been inflamed by the repeated showings of the videotape in which the Police Officers beat Rodney King... [However] The shortened version didn't show King lunging at the Police Officers."<sup>31</sup> The predominant feeling amongst the public and media was that the officers would be convicted and sent to jail. This didn't happen. Instead, according to the timeline in Christopher Schnaubelt's article on the 92 riots, at approximately 1515 on the 29th the jury acquitted the Officers and the trial was over.<sup>32</sup> It didn't take long after the acquittal for the word to hit the streets, and in the afternoon of April 29, 1992, the city of Los Angeles erupted in riots, chaos and lawlessness.

To say the LAPD was not prepared for the magnitude of the rioting and civil unrest is true. To say that they hadn't planned for possible problems in case the Officers were acquitted is not true. In fact, "The Headquarters of the California National Guard (also known as 'The Military Department') in Sacramento received a call from the California Highway Patrol on April 6, 1992. The California Highway Patrol indicated there was some potential for civil disturbances depending on the trial outcome...On April 13<sup>th</sup>, the Military Department was asked for body armor and other equipment to be used by the Los Angeles Police Department."<sup>33</sup> The LAPD clearly had anticipated civil unrest, but it is just as clear they underestimated the magnitude of that unrest, and mistakenly believed they would be able to handle all problems using the Police forces available. They simply miscalculated the enormity of the problem they would face. In fact, the initial rioting took place around 1630-1645 at the intersection of Florence and Normandie. "Police from the department's 77<sup>th</sup> Street Division responded. Rocks, bricks, pieces of concrete and bottles were being thrown at cars, people and through shop windows, as the situation

rapidly deteriorated. In a highly controversial decision, the Police retreated from the scene rather than being reinforced.”<sup>34</sup> The thinking was that since the Police were the target of so much anger, removing them from the forefront would calm the situation. This was an obvious miscalculation and set the stage for the Mayor to ask the Governor to call the National Guard into the city.

By the early evening hours the situation in the city was out of control and although “Mayor Bradley and [LAPD] Chief Gates had not talked for many months...both were involved in a conference call with Governor Pete Wilson...Mayor Bradley requested 2000 National Guardsmen.”<sup>35</sup> The Governor complied and 2000 members of the California National Guard (CANG) were called to State active duty, followed by subsequent requests of 4000 additional troops. Governor Wilson and Los Angeles Mayor Tom Bradley, believing the CANG deployment to be too slow, asked President Bush for federal troop assistance in putting down the riots.<sup>36</sup> Joint Task Force Los Angeles (JTF-LA) formed, and active duty Army and Marine personnel deployed from Camp Pendleton and Fort Ord to the city of Los Angeles. At Approximately 1800 on 1 MAY, President Bush announced the CANG troops would be federalized. National Guard troops working under Title-32 status are not beholden to the restrictions of the Posse Comitatus Act. However, once federalized, they are brought under the umbrella of Title-10, and the provisions of the PCA fully apply to them. The chart below, taken out of Robert A Preiss’s article in Joint Force Quarterly magazine, shows the various National Guard statuses as well as who their chain-of-command runs through, and what type missions they can accomplish:

<b>Multi-Levels of Command and Missions</b>			
	<b>State Active Duty</b>	<b>Title 32</b>	<b>Title 10</b>
Command and Control	Governor	Governor	President
Where	IAW state law	Inside the U.S.	Worldwide
Pay	State	Federal	Federal
Mission Types	IAW state law (riot control, emergency response, etc.)	Training and other federally authorized	Overseas duty; domestic WMD; insurrection, invasion, etc.
Discipline	State military codes	State military codes	UCMJ
Support Law Enforcement	Yes	Yes	Restricted

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As the chart above shows, National Guardsmen deployed under either State Active Duty or Title 32, answer to the Governor as their Commander in Chief, and are specifically enabled to support and conduct law enforcement duties. In fact, support and participation in law enforcement duties is a core competency of the Guard. Prior to the arrival of the Army and Marines, the CANG units on the scene had been working directly with, and with the same authorities as, the Los Angeles Police Department (LAPD), and the effort between the two displayed unison. By the time the active duty Army Soldiers and Marines arrived the riots had mostly been squelched by the CANG and LAPD, and federalizing the CANG actually reduced their effectiveness due to a change in the procedures used to source mission requests, as well as, a lack of understanding of the PCA. In his article on the lessons learned from the 92 LA experience Christopher M. Schnaubelt offers the following points:

1. The mission of Joint Task Force-Los Angeles, formed as a consequence of the decision to deploy 4000 federal troops to Los Angeles, was “to restore law and order.” But as subsequently pointed out by Major General James Delk, the

CANG's deputy adjutant general, that mission 'had been accomplished before [active component forces] arrived.'

2. The curfew, combined with the presence of more than 4000 CANG troops, 5000 LAPD officers, and about 4000 additional police officers from agencies across the state, helped to discourage most rioters after the first 36 hours of rampage...The CANG's procedure for approving law enforcement requests had been rapid and gave maximum discretion to subordinate commanders to coordinate directly with the supported law enforcement entities. Before the establishment of JTF-LA and the federalization of the CANG, virtually 100 percent of law enforcement support requests had been approved. Following federalization, only about 20 percent were approved. The substantial reduction in military support following federalization is frequently attributed to legal restrictions imposed by the *Posse Comitatus Act of 1878* (United States Code, Title 18, Section 1385), commonly referred to as Posse Comitatus. This belief, however, is erroneous. The Presidential Executive Order of 1 May provided JTF-LA the authority to "restore law and order," which included the performance of law enforcement activities; Posse Comitatus therefore could not limit the military's options in this circumstance.<sup>38</sup>

As stated in the quote above, the PCA should not have intruded on the JTF's ability to conduct law enforcement activities. Whether the Commander on the ground believed that it did is debatable. The reality is that the Commander acted as if the PCA limited the missions to less than law enforcement activities for the federalized National Guard and the active duty troops. "Law enforcement officers...were even more frustrated. Particularly baffling was the increasing arbitrariness in approving and disapproving missions. This was especially frustrating after several days of having National Guardsmen willing to perform any mission that the law enforcement officers gave them. After federal troops were brought in, and the National Guard was federalized, only about

ten percent of the missions were approved.”<sup>39</sup> The bottom line is that once federalization took place, the mission effectiveness of the force declined sharply. The federalization of all military forces changed everything, for the worse in this case: “The deployment schemes were changed, requiring no stationing of any force anywhere smaller than a platoon with a Commissioned Officer in charge...However, the change that had the greatest impact on law enforcement was the refusal to perform most law enforcement functions...As a result, after federalization on May 2<sup>nd</sup>, not only were the federal troops rendered largely unavailable for most assignments requested by the LAPD, but the National Guard, under federal command, was made subject to the same restrictions, and therefore had to refuse many post-federalization requests for help.”<sup>40</sup> So, the relationship between the National Guard and the Los Angeles Police Department that proved to be very successful prior to federalization, changed to the point of insignificance. Although Major General James D. Delk, the author heavily cited in this section, doesn’t believe the JTF Commander was inhibited by the PCA, the record of actions, or more appropriately – inactions, shows differently. The above example of refusing law enforcement missions points to either a misunderstanding of the President’s orders, the Posse Comitatus Act, or both. The change in the deploying posture from small numbers of Guardsmen accompanying LAPD units, to the requirement for Platoon-size strength, shows the vast difference between typical National Guard tactics, techniques and procedures, and that of the Active Duty Military. Another example illustrating that the Commander lacked an understanding of the PCA is demonstrated through the issuance of Arming Orders (AO). The chart below shows the various AOs and their corresponding weapons configuration:

### Arming orders

AO	Rifle	Bayonet	Pistol	Baton	Mag/Chamber	Control
AO-1	Sling	Scabbard	Holstered	Belt	In Pouch/Empty	OIC/NCO
AO-2	Port	Scabbard	Holstered	Belt	In Pouch/Empty	OIC/NCO
AO-3	Sling	Fixed	Holstered	Hand	In Pouch/Empty	OIC/NCO
AO-4	Port	Fixed	Holstered	Hand	In Pouch/Empty	OIC/NCO
AO-5	Port	Fixed	Holstered	Hand	In Weap/Empty	OIC/NCO
AO-6	Port	Fixed	Holstered	Belt	In Weap/Locked	OIC

During the period prior to federalization, the National Guard accompanied law enforcement officials on patrol in the city with their weapons in accordance with Arming Order 5. This AO make sense if one is configured to make arrests, protect property and restore law and order. The CANG Commander gave latitude to his subordinate commanders regarding the AO status of their weapons, and recommended that the Guardsmen mimic the law enforcement officials they accompanied.<sup>41</sup> Once the President federalized the National Guard “The order out of Joint Task Force-Los Angeles was very specific. It read ‘The mission Arming Order is AO-1 for all assigned elements. Upgrading of unit’s AO requires JTF-LA Commander’s approval.’”<sup>42</sup> This AO is in sharp contrast with the previous AO, and is not the proper/typical configuration for law enforcement personnel. The discussion in Major General Delk’s book centers around a force protection issue, i.e. sending troops into the streets loaded with armed gang members without the appropriate weapon configuration. In the context of whether or not the JTF-LA Commander felt constrained by the PCA or not, one can draw one’s own conclusion from a statement made by Major General Covault concerning his mission regarding law enforcement: “It was not the military’s mission to solve the City and

County of Los Angeles' crime problem, nor were we trained to do so. [In addressing whether or not he felt limited by the PCA Major General Covault responded] the JTF-LA Commander was free to use his force in any capacity, including typical law enforcement functions."<sup>43</sup> If he did not feel constrained by the PCA, then why the restrictive Arming Order? Why the drastic reduction in compliance with law enforcement mission requests? The President's orders were for the JTF to "Restore Law and Order," but it doesn't appear that this was understood.

The lessons learned from the military response to the Los Angeles riots are many:

1. The Posse Comitatus Act creates seams in authorities for active duty and National Guard troops working the same issue. Although two soldiers may look alike, the patch on their sleeve identifying them as either active duty or National Guard determines what they can and can not do. This divide in capabilities, real or perceived, reduces both unity of command, as well as unity of effort when cooperating with local law enforcement officials.
2. Once the National Guard is federalized, their ability to work in like capacity with local law enforcement officials vanishes. As shown above, their effectiveness in a federal status dropped to between 80-90%.
3. Unity of effort and unity of command requires a single Commander. The laws in 1992 did not allow for a "Dual-Hatted" Officer to command both Guard and active duty troops, so in order to provide for that unity of command the Guardsmen had to be federalized. Again, due to the restrictions of the PCA the JTF's effectiveness was marginalized. Today, due to a change in the law regarding National Guard Officers commanding both Guardsmen and active duty

troops, some of the C2 issues can be solved. Nevertheless, by retaining the restrictions on the active duty troops imposed by the PCA, there remains a divide in authorities, and therefore capabilities, among soldiers serving side by side when dealing with domestic incidents of disturbance and unrest.

#### HURRICANE KATRINA

Hurricane Katrina provides a case study in both Homeland Security and Homeland Defense. Although the enemy in this case was a natural disaster, the broad area of destruction resembled that of a nuclear bomb, less the radioactive contamination. The storm's enormous nature and destructive power required both a National Guard and Active Duty Military response in large numbers in order to provide search and rescue capabilities, restore law and order and to provide some sort of structure to an extremely chaotic situation. In order to provide context and scale, The Heritage Foundation's James Jay Carafano, Ph.D., provided the following in his testimony to Congress concerning the Government's response to hurricane Katrina: "Hurricane Katrina is the largest physical disaster this nation has suffered in modern history. There is no other event which could be used as a standard for measuring the efficacy of response. For example, the 9/11 terrorist attack on the World Trade Center was narrow in the geographic scope and centered on a single jurisdiction. Damage to infrastructure was localized and the immediately affected population ranged in the tens-of-thousands. In contrast, Katrina affected an area over 90,000 square miles, disrupted the lives of millions and destroyed or degraded most of the region's infrastructure."<sup>44</sup> The magnitude of the devastation immediately overwhelmed the local and state governments. Those designated and relied

upon to immediately respond to a natural disaster, i.e. Police, Emergency Medical System personnel, Fire and Rescue, etc., were themselves overwhelmed and devastated leaving precious few at the local level to deal with the destruction, wreckage and pain and suffering of those citizens unable to evacuate New Orleans.

The local and state Governments were completely overwhelmed just as they would be in a large scale terrorist attack involving either a nuclear device, or some other means to cause widespread destruction, contamination and evacuation. Unfortunately, for political and legal reasons, the response was slow and uneven. Due to the devastation of Katrina, and the slow and restrained preparedness measures taken by the New Orleans Mayor, and the Louisiana Governor (namely evacuation orders, or lack thereof), the “push” mechanisms in the National Response Plan (NRP) needed to be implemented, but were not. The “push” mechanism enables the Secretary for Homeland Security to designate an event as an Incident of National Significance (INS) thereby allowing the Federal Government to respond proactively to the situation, vice waiting for the sequence of requests for help from the local and state governments.

The NRP establishes policies, procedures, and mechanisms for proactive Federal response to catastrophic events. A catastrophic event is any natural or manmade incident, including terrorism, that results in extraordinary levels of mass casualties, damage, or disruption severely affecting the population, infrastructure, environment, economy, national morale, and/or government functions. A catastrophic event could result in sustained national impacts over a prolonged period of time; almost immediately exceeds resources normally available to State, local, tribal, and private-sector authorities in the impacted area; and significantly interrupts governmental operations and emergency services to such an extent that national security could be threatened. All catastrophic events are Incidents of National Significance...

- Standard procedures regarding requests for assistance may be expedited or, *under extreme circumstances, suspended* [italics mine] in the immediate aftermath of an event of catastrophic magnitude.<sup>45</sup>

The above action requires declaring an event as an Incident of National Significance, however “Secretary of Homeland Security Chertoff did not declare Hurricane Katrina an Incident of National Significance until August 30, the evening after the hurricane made landfall, making a proactive federal response under the NRP moot.”<sup>46</sup> By delaying the INS declaration the DHS Secretary delayed the potential immediate response by the DOD. In most instances, and certainly during incidents where significant time for response planning occurs, the Secretary of Defense must wait for a request from a lead federal agency, or an order from the President, prior to responding to a domestic situation: “DOD provides [Defense Support to Civil Authorities] DSCA in response to *requests for assistance during domestic incidents* [italics mine] to include terrorist attacks, major disasters, and other emergencies. DSCA refers to DOD support provided by Federal military forces, DOD civilians and contract personnel, and DOD agencies and components, in response to requests for assistance. Continuous coordination with Federal, State, local, and tribal elements before, during, and after an event is essential for efficient and effective utilization of DOD’s DSCA efforts.”<sup>47</sup> Although there is a provision for DOD to act proactively in response to a catastrophic event, this provision is intended for immediate action in response to an emergent situation such as what happened on 9/11 where the time to act is measured in minutes and seconds vice days or weeks: “Imminently serious conditions resulting from any civil emergency may require immediate action to save lives, prevent human suffering, or mitigate property damage.

When such conditions exist and time does not permit approval from higher headquarters, local military commanders and responsible officials from DOD components and agencies are authorized by DOD directive and pre-approval by the Secretary of Defense, subject to any supplemental direction that may be provided by their DOD component, to take necessary action to respond to requests of civil authorities consistent with the Posse Comitatus Act. All such necessary action is referred to as Immediate Response.”<sup>48</sup>

Although imminent, Hurricane Katrina gave planners several days to plan for her landfall.

The above passage, explaining the DOD’s ability to respond proactively, does not cover a hurricane days away from reaching the shore, so DOD could not “officially” move active duty troops to the area until requested through the normal channels of the NRP. Nevertheless, NORTHCOM began detailed planning for what would eventually become a large scale relief and DSCA mission involving thousands of active duty military personnel under the command of Joint Task Force-Katrina (JTF-Katrina):

It appears that DOD, through NORTHCOM, began planning and actually deploying ships and personnel prior to receiving specific requests from the Department of Homeland Security or its subordinate, FEMA. NORTHCOM’s first responses to Katrina’s approach began the week prior to its August 29 landfall. On Wednesday, August 24, NORTHCOM issued its first warning orders to Regional Emergency Preparedness Officers, State Emergency Preparedness Officers, and the Senior Army Advisors (Guard) in the states expected to be affected. The governors of Louisiana and Mississippi declared states of emergency on August 26 and 27, respectively. President Bush declared a state of emergency for Louisiana on August 27 and NORTHCOM began to deploy the forward elements of what was to become Joint Task Force-Katrina (JTF- Katrina). On Monday, August 29, after Katrina made landfall, President Bush issued a

federal declaration of emergency, and on Tuesday, August 30, JTF-Katrina was officially activated...By September 7, DOD assets in the affected area included 42,990 National Guard personnel, 17,417 active duty personnel, 20 U.S. ships, 360 helicopters, and 93 fixed wing aircraft.<sup>49</sup>

This planning and pre-staging of assets on the part of NORTHCOM was in keeping with the second bullet of its Mission Statement requiring “support of civil authorities including consequence management operations.” One could argue that through its preparedness and early planning, NORTHCOM was also fulfilling much of the requirements covered by the fourth bullet of DHS’s Mission Statement which: “... acting as a focal point regarding natural and manmade crises and emergency planning.”<sup>50</sup> It appears NORTHCOM was more of a “focal point” for the emergency planning on the federal level during Katrina than anticipated by the NRP, or the mission statements of either NORTHCOM or DHS. In fact, during his testimony to the House Select Committee investigating the response to Katrina, Under Secretary of Defense for Homeland Defense, Mr. Paul McHale, testified: “During Katrina, the federal military remained under FEMA’s control. It meant that the Defense Department, which had the resources to appraise the situation and prioritize missions more quickly than could FEMA, actually drafted its own requests for assistance and sent them to FEMA, which copied them and sent them back to the Department of Defense for action.”<sup>51</sup> The implications of the above statement are huge. If the DOD needs to tell FEMA what to request from the DOD so that DOD can then take action on FEMA’s request, why have FEMA in the mix at all? It appears that FEMA has lost its focus since being swallowed up by the consolidation of agencies when the Department of Homeland Security stood up in 2002. Prior to the

creation of DHS, an independent FEMA was responsible for its own budget and disaster preparation. Following the creation of DHS, FEMA now relies on DHS for budgetary requirements as well as direction on how and where to focus as far as disaster preparation is concerned. Clearly, FEMA's and DHS's response to Katrina has shown a lack of focus. There have been calls for the military to lead the way in major disaster response such as in Katrina's case. The de-facto leadership role exercised by the military by conducting FEMA's business provides plenty of food for thought regarding this initiative.

In regards to the Posse Comitatus Act, the active duty military troops deployed to the Gulf Coast fell under the Command of JTF-Katrina, LTG Russ Honore, and were restricted in their activities by the provisions of the PCA. The various National Guard troops deployed to New Orleans from within the state of Louisiana and surrounding states remained out of JTF-Katrina's control and chain of command. This point was made during a news conference on 3 September 2005 by the Deputy Director for Anti-Terrorism, Homeland Defense, Joint Staff, General Terry Scherling: "The joint task force commander, General Honore, will also serve as the commander for assigned forces that come into the region. The military forces in the form of the active duty forces that come in. And like I mentioned, he will have a coordinating role, but not a command role, for the National Guard forces."<sup>52</sup> In other words, the forces deployed to New Orleans, National Guard and active duty troops, would not fall under the same chain of command or the same Commander. A disjointed chain of command by definition reduces the "unity of command," and in so doing jeopardizes the "unity of effort." For example: the Select Committee's report cites an instance where "elements of the 82<sup>nd</sup> Airborne Division moved into a sector already being patrolled by the National Guard."<sup>53</sup>

Unfortunately this level of poor coordination and duplication of effort occurred time and time again at the expense of scarce and stretched resources. This lack of control and coordination resulted in a disjointed response and hurt those who the National Guard and active duty military were sent to help.

The National Defense Authorization Act for FY2004 provides a solution to the Unity of Effort and Unity of Command issue: “An Officer of the Army National Guard of the United States or the Air National Guard of the United States is not relieved from duty in the National Guard of his State or Territory, or of Puerto Rico or the District of Columbia, under paragraph (1) while serving on active duty in Command of a National Guard unit if (A) the President authorizes such service in both duty statuses; and (B) the Governor of his State or Territory or Puerto Rico, or the Commanding General of the District of Columbia National Guard, as the case may be, consents to service in both duty statuses.”<sup>54</sup> There were two attempts to rectify the chain of command issue, but both were rejected by the Louisiana Governor for reasons unknown. A proposal for an “active duty Officer [to be] sworn into the Louisiana Guard, rather than a Louisiana National Guard Officer being called to active duty – was advanced by the Administration in its discussions with the Governor of Louisiana but she rejected it...the Governor also rejected a more modest proposal for a hybrid command structure in which both the Guard and active duty troops would be under the command of an active duty three-star general – but only after he had been sworn into the Louisiana National Guard.”<sup>55</sup> The situation resulted in multiple commanders: Commander JTF-Katrina, the Louisiana Governor, the Mississippi Governor, the Alabama Governor, etc. Not the best situation by any means.

Like the lessons learned from the L.A. riots of 1992, the lessons from Katrina are many and varied:

1. The “Push” mechanism in the National Response Plan (designation of an event as an Incident of National Significance) is a tool worth using. Had Secretary Chertoff acted proactively as the NRP allows, perhaps there would have been a much more robust evacuation plan as well as a more detailed shelter plan than simply opening the Super Dome and the Convention Center to those left behind. By pushing resources and military enablers to the New Orleans area proactively, more citizens could have been evacuated prior to hurricane landfall. In this case “state’s rights” won out over federal control/direction, at the expense of American citizens. The lesson of Katrina, as far as Homeland Defense and Homeland Security is concerned, is for the Federal Government to use the power it possesses as detailed in the National Response Plan in responding to disasters. By acting proactively, as the NRP allows, the federal government will ensure a more timely response by both National Guard and active duty military forces.
2. The National Response Plan needs to be reworked to include “trip wires” that will move the Secretary of Homeland Security to declare a situation as an INS prior to a disaster, vice waiting until after the initial damage is done and the first responders are overwhelmed. As it stands now, INS designation is a judgment call. The Louisiana Governor and New Orleans Mayor had between three and four days to begin mandatory evacuations of low lying areas, and to request assistance. They chose to wait. Clearly, poor judgment. Waiting for the storm to pass inland before declaring Katrina an Incident of National Significance

compounded the state and local poor judgment with federal poor judgment. The NRP needs to have objective decision points embedded in order to provide the DHS Secretary with an apolitical mechanism with which to take control of an emerging situation and push resources and manpower to an area in imminent danger. In Katrina's case, "the National Weather Service predicted New Orleans would be hit by a Category 4 or 5 hurricane" two days prior to landfall.<sup>56</sup> Such a strong prediction by the National Weather Service should trigger proactive action by DHS. If nothing else, designation of the hurricane itself as an INS will allow the other agencies of the Federal Government to move into action.

3. A single chain of command, under either an active duty or National Guard Flag Officer, is required in disaster response. Had the destruction of New Orleans been the work of terrorists instead of a hurricane, the resulting chaos would have required a more robust military response as well as unity of both effort and command. Having separate chains of command (the number depends on how many states are involved and whether the National Guard is federalized or not) simply will not do. In many respects, Katrina has provided America with a live-fire exercise in large scale terrorist attack response. Unfortunately, many of the difficulties in command, control and communications were predicted during exercises over the past few years:

The Department of Defense participates in several command and control exercises involving responses to domestic emergencies, ranging from the combatant command level to the national level. In the past these have included Northern Command exercises UNIFIED DEFENSE (2003,2004), ARDENT SENTRY (2005), DETERMINED PROMISE (2003, 2004), VIGILANT SHIELD (2005),

DILIGENT ENDEAVOR (2003), DILIGENT WARRIOR (2004), NORTHERN EDGE (2003), SCARLET SHIELD (2004), DARK PORTAL (2004) and TOPOFF (2003, 2005). Many of these exercise scenarios were designed to overwhelm local and state assets to evoke a response under the National Response Plan, including the employment of DOD assets. Hurricane Katrina was a test of the recently established (post - 9/11) United States Northern Command, and its ability to oversee and coordinate the largest use of active duty and Guard military in a domestic action in recent history. Although Northern Command has conducted numerous exercises with the National Guard in state and local exercises, the lessons learned during these events were not consistently applied to the military response to Katrina.<sup>57</sup>

Between 9-11-01 and Katrina, both DOD, and in particular NORTHCOM, and DHS have engaged in numerous exercises to better coordinate and enhance their unity of effort. It is quite remarkable that although the exercises cited above highlighted deficiencies and weaknesses in After Action Reports, the same problems of command and control, and communications, did in fact become reality in the response to Katrina. It boils down to an unfortunate example of lessons “noted” vice lessons “learned.”

Does the above analysis matter? Yes. Had the Department of Homeland Security, and its subordinate organization, the Federal Emergency Management Agency (FEMA) been as out in front of the storm as NORTHCOM was, perhaps the response would have been better coordinated and timelier. Was there detailed and in-depth coordination between NORTHCOM and DHS? Perhaps, but the record does not reflect it. The timeline as depicted above shows action on NORTHCOM/DOD’s part, but not much movement on the part of DHS. Again, had Secretary Chertoff declared Katrina an INS prior to landfall, the DOD’s response could have been more timely. This is important

when one remembers the second clause in the definition of Homeland Security cited on page 8 of this paper: “minimize the damage and recover from attacks that do occur.” If the response to Katrina, as far as HLS is concerned, is the response Americans can look forward to following a large scale terrorist attack, then much work is needed to better prepare and respond in a more timely and coordinated fashion. DOD, in exercising its DSCA role in the HLS mission, requires initiative from the Department of Homeland Security in order to be as effective as it can be in this critical mission.

The national impact of this storm, and the disjointed response to it, provides a unique opportunity to retroactively “war game” DOD’s and DHS’s reaction as if the destruction resulted from a terrorist attack, vice a hurricane. Although there will be numerous political reviews of the reaction to Katrina, the most important review, as far as HLS and HLD is concerned, is the review that, hopefully, DOD in concert with DHS will conduct. Both DHS and DOD have a responsibility to get this right. DHS, through legislation, is the lead agency for preventing attacks, and should an attack occur, it must exercise its responsibilities for coordinating the efforts of all federal agencies to minimize the impact to America’s citizens.

### **CHAPTER III - AMERICA’S NATIONAL SECURITY STRATEGY**

#### **PREEMPTION**

The year 2002 saw three important national security developments: the Department of Homeland Security emerged as the lead for “Homeland Security”, NORTHCOM became the lead for “Homeland Defense” and the President published his National Security Strategy. As briefly discussed in a previous section of this paper

America's National Security Strategy (2002 NSS) of 2002 lays out the latest game plan to protect America from its enemies. The 2002 NSS cites preemption as a central theme to its overall strategy: "defending the United States, the American people, and our interests at home and abroad by identifying and destroying the threat before it reaches our borders. While the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone, if necessary, to exercise our right of self-defense by acting *preemptively* against such terrorists, to prevent them from doing harm against our people and our country."<sup>58</sup> While this strategy may seem new, it is not. Preemption and going it alone is as American as baseball and apple pie, and almost as old as America herself.

Historian John Lewis Gaddis explains how John Quincy Adams, Secretary of State under President James Monroe, developed and defended, the idea of preemption as a product of the Monroe Doctrine. The territorial boundaries of The United States were much different than they are today with Spain holding Mexico (which included Texas and California) and Florida, and the West unsettled. Although the territories were "owned" by Spain, saying they were under "Spanish control" would be a stretch. Across the border skirmishes on American soil with actors from the Spanish side of the border occurred frequently and needed to be addressed. Adams convinced his fellow Cabinet members to accept the efficacy of preemption when he supported Andrew Jackson's exploits against various Indian Tribes in Spanish owned Florida in 1818: "Acting with questionable authorization from the Monroe administration, Jackson had invaded that territory in 1818 after a series of attacks across the border by Creeks, Seminoles, and escaped slaves. He also executed two Englishmen whom he suspected of having

organized the raids, thereby creating a potentially dangerous diplomatic incident, not just with Spain but also Great Britain.”<sup>59</sup> In other words, it was well within the rights of America to protect herself against “non state actors” if the nation in which these actors reside do nothing to stop behavior threatening to our national security. Gaddis further writes: “Adams was keenly aware of the fact that the United States had vast borders to defend, but only limited means with which to defend them. It would never be able to anticipate all of the possible places, times, and ways by which another attack might come...”<sup>60</sup> The concept of preemption in Adams’s time provided justification to act against actors in another nation-state’s territory, namely Spain in Florida and Mexico out west. America’s national expansion west continued during the following decades as the nation grew into its current borders under the concept of Manifest Destiny powered by the underlying principle of preemption.

The idea of preemption suggests action, and meshes comfortably in a strategy of selective engagement as a means of defending the nation. Prior to America’s involvement against the Germans in World Wars I and II, the American national strategic posture was one of isolationism with selective engagement. Prior to both WWI and WWII America had not been attacked, directly or indirectly, by Germany and many Americans saw no need for American troops to travel to Europe to fight the Germans on behalf of the French, English or any other Europeans. Of course, following the attack on Pearl Harbor on December 7, 1941, America had no choice but to wage war on Japan, but why add Germany and the war in Europe to the agenda? In both cases America clearly saw Germany as a threat to its freedoms and way of life, and made a strategic decision to take preemptive action against the Germans lest they continue to gain strength and power.

Both Woodrow Wilson and Franklin D. Roosevelt concluded the benefits of a bloody war with Germany would outweigh the costs. Roosevelt felt so strongly about the danger of German domination of Europe and beyond, that he adopted the principle of “Germany First” even though the Japanese had actually attacked Hawaii and Germany was still a gathering threat to America.

One can argue that America’s historical battle against Communism centered on the principle of preemption. Communism’s authoritarian premise, lack of individual and political freedoms and its aversion to free trade threatened America, and the rest of the free world, and therefore qualified for preemptive engagement. Almost immediately following the end of WWII, America adopted a strategy of containment in response to the growth and expansion of communism. America preemptively fought in Viet-Nam in an attempt to thwart communism’s domino like expansion and encroachment on American interests.

While America clearly embraced the principle of preemption throughout its history, the policy remained implied rather than stated in national policy instruments. Presidents, from Washington to Bush, have proclaimed America’s right to use force in self-defense and in defense of her interests. Nevertheless, the idea of preemption has not been written into our official national strategy documents. President Bush changed this, and provided a precursor to his 2002 NSS preemption principle during his speech to the graduating class from West Point in June, 2002, when he said: “But new threats also require new thinking. Deterrence -- the promise of massive retaliation against nations -- means nothing against shadowy terrorist networks with no nation or citizens to defend. Containment is not possible when unbalanced dictators with weapons of mass destruction

can deliver those weapons on missiles or secretly provide them to terrorist allies. We cannot defend America and our friends by hoping for the best. We cannot put our faith in the word of tyrants, who solemnly sign non-proliferation treaties, and then systemically break them. If we wait for threats to fully materialize, we will have waited too long.”<sup>61</sup> The president used this speech to float the preemption principle, and the “away game” approach to Homeland Defense, in advance of the 2002 NSS.

Debate on the legality of this principle began immediately with legal scholars lining up on both sides of the issue. Most salient arguments center on an interpretation of Article 51 of the United Nations’ Charter which reads: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”<sup>62</sup> In the age of prolific weapons of mass destruction and the agile nature of international terrorist threats, President Bush has interpreted Article 51’s right of self-defense to include preemption as a self-defense strategy and principle. In the case of America’s invasion of Iraq, the President fulfilled the requirement to report to the Security Council by having Secretary Colin Powell brief the world on what America believed constituted a clear and menacing threat to America’s national security. The President left no doubt that America intended to use this principle of preemption in removing Saddam Hussein from Power in Iraq.

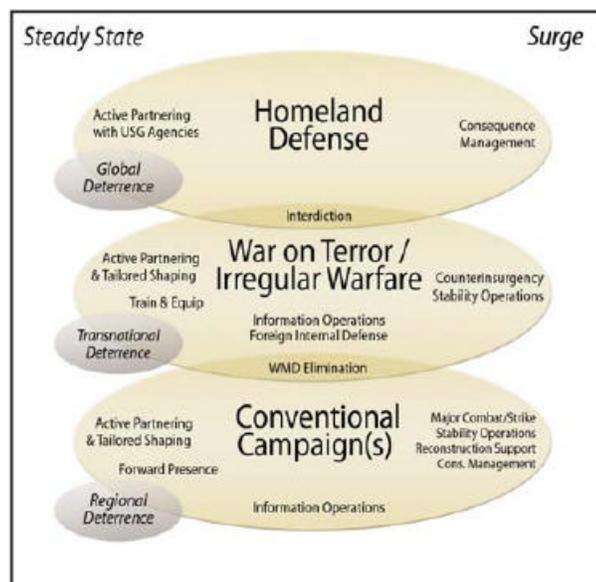
In the years since the introduction of the 2002 NSS, America has continued its military campaign in Afghanistan, and invaded Iraq. The case for Afghanistan stood on solid ground coming on the heels of a direct attack perpetrated by terrorist living, training and supported by the Taliban regime. America's actions against Al Qaeda and the Taliban clearly fell into the self-defense category by anyone's definition. The case for Iraq did not have the same clarity. Although the intelligence gathered to support the case against Iraq seemed convincing, it has subsequently been proven questionable. Nevertheless, America invaded Iraq based on the principle of preemption, not out of character for the United States. Picking and choosing when and where America should intervene based on the circumstances of the day, fits inside of the American historical model when it comes to preemption. The president's assertion that "If we wait for a threat to materialize, we've waited too long," certainly has great impact when one considers the possible consequences of an attack using weapons of mass destruction. Yet, the idea of making preemption a principle of the 2002 NSS is short sighted and dangerous. America stands as the world's sole super power. She has no peer as far as military power and prowess go. Along with her super power status, America stands for freedom, democracy and the rule of law. Arrogantly populating the 2002 NSS with the preemption principle, and claiming that it resides within the boundaries of Article 51, requires legal gymnastics and may prove costly if copied by other nations; particularly should the United States desire to restrain, or rebuke another nation for taking their own preemptive actions.

In June, 1981, Israeli war planes destroyed Iraq's Osirak nuclear reactor in a preemptive strike to ensure Iraq did not obtain the ability to produce nuclear weapons. In this instance America lined up on the side against preemption. "The Israeli's claimed the

right of preemptive self-defense, but the United States joined in a Security Council resolution condemning the raid as illegal. British Prime Minister Margret Thatcher was characteristically blunt: 'Armed attack in such circumstances cannot be justified. It represents a grave breach of international law.'<sup>63</sup> Should the Israeli's contemplate similar action against the Iranian nuclear facilities, particularly in light of the threatening comments made by Iranian President Mahmoud Ahmadinejad, would the United States retain the option to preach restraint, or moral high ground to rebuke the Israelis in the aftermath of such a preemptive strike? By including preemption in America's 2002 NSS the moral high ground is lost, as is the strength of any argument preaching restraint.

America can maintain its right to self defense, including preemption or anticipatory self-defense, without stating it in its National Security Strategy. History has provided many examples of this principle in action, and if necessary, the rights articulated and implied in Article 51 provide plenty of cover for appropriate preemptive action. America's 2002 NSS should provide a clear picture of what America deems important to her security, but it should not include operational principles such as preemption, or anticipatory self-defense. The drafters of the 2002 NSS carefully choose specific language in order to clearly articulate America's game plan. The words are extremely important, not only to America, but also to all nations, both friend and foe. Words such as preemption are unneeded, and unnecessarily muddy the waters further when discussing Homeland Defense and Homeland Security. The principle of preemption goes hand in glove with the away game approach to Homeland Defense and Homeland Security, but not so well with the idea of a NORTHCOM and a Department of Homeland Security. The inward focus of both NORTHCOM and DHS seems a bit out of

line with a National Security Strategy which gives top billing to a “hit them over there before they can hit us over here” approach. In fact, inclusion of the preemption principle in the 2002 NSS places too much emphasis on the “away game” approach to Homeland Defense. A preemption mentality leaves military leaders with a readiness at all cost approach to training and military preparedness with little room for specified, and focused, homeland defense resource allocation. The February 6, 2006, Quadrennial Defense Review (QDR) illustrates this point. In the QDR, Homeland Defense is listed as one of three specific missions the U.S. Military must be structured for. The graphic depicting these three missions leads one to believe equal resources and focus are stressed on all three, with the main emphasis on Homeland Defense since it is the top bubble.



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In fact, the overwhelming portion of the DOD budget is allocated for waging the War on Terror/Irregular Warfare and Conventional Campaign missions. The QDR states: “To

strengthen homeland defense and homeland security, the Department will fund a \$1.5 billion initiative over the next five years to develop broad-spectrum medical countermeasures against the threat of genetically engineered bio-terror agents.”<sup>65</sup> Although \$1.5B (spread over five years) is certainly a lot of money, it seems relatively small compared to a yearly budget surpassing \$500B. Couple the above point with the following, and the Homeland Defense bubble in the above graphic seems to shrink:

- NORTHCOM has no standing forces and has a reactive modus operandi
- According to the QDR Special Operations Forces (SOF) are due to grow by 15%<sup>66</sup>
- SOF baseline budget has increased by 81% since 2001 as well as \$5.5B in supplemental appropriations between FY02-06.<sup>67</sup>

In actuality, the \$1.5B bio-terror defense is really going to Homeland Security efforts, and all of the rest, under the away game/preemption concept of Homeland Defense, is going towards Homeland Defense.

#### NATIONAL GUARD AND HOMELAND DEFENSE

Article I, Section 8 of the United States Constitution directs the Congress “To provide for organizing, arming, and disciplining, the Militia, and for governing such part of them as may be employed in the Service of the United States, reserving to the States respectively, the appointment of Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.”<sup>68</sup> Today, The United States National Guard represents the Militia discussed in the Constitution. This passage in the Constitution is the foundation for the concept of Homeland Security. The National Guard

is the force designated by this passage as the force intended to perform that vital function. There are 54 National Guard units ready to protect the 50 states, territories and the District of Columbia. Part of their core mission is to train in law enforcement, and work with Law Enforcement agencies. As we've seen, National Guardsmen, while either on state active duty or in Title 32 status, answer to the Governor of their state and retain law enforcement authority unencumbered by the Posse Comitatus Act. This makes them the perfect force for Homeland Security, or the "home game." An earlier section of this paper put forth the notion that the USCG was the "military force" the Department of Homeland Security could leverage and use for Homeland Security. The National Guard is the logical and most capable military force for Homeland Security. In fact, the United States should identify the National Guard as the Homeland Security force designated to operate within the physical boundaries of America. In February, 2001, the Phase III Report from the US Commission on National Security/21<sup>st</sup> Century, headed by former United States Senators Gary Hart and Warren B. Rudman stated:

This Commission recommends that the National Guard be directed to fulfill its historic and Constitutional mission of homeland security. It should provide a mobilization base with strong local ties and support. It is already "forward deployed" to achieve this mission and should:

- ? Participate in and initiate, where necessary, state, local, and regional planning for responding to a WMD incident;
- ? Train and help organize local first responders;
- ? Maintain up-to-date inventories of military resources and equipment available in the area on short notice;
- ? Plan for rapid inter-state support and reinforcement; and
- ? Develop an overseas capability for international humanitarian assistance and disaster relief.

In this way, the National Guard will become a critical asset for homeland security.<sup>69</sup>

The Hart-Rudman Commission was right in February, 2001, and the idea is still correct today.

### **CHAPTER III – CONCLUSION**

#### **CONCLUSIONS AND RECOMMENDATIONS**

The terms Homeland Defense and Homeland Security are now a part of America's everyday lexicon. What these two terms mean, and how their ideas are turned into actions, has great impact on the nation. Furthermore, clear identification of who has responsibility for providing what, in relation to HLD and HLS, is central to clearly defining roles, authorities and tasks, and if required, where current law needs changing. The following paragraphs offer suggestions for definition clarification, legislative change and role designation.

1.) Although the idea of protecting the physical homeland of America from external threats is not new, the concepts of Homeland Defense and Homeland Security are. The definitions of each may be codified by various government documents and strategy papers, but they should be viewed as evolving terms open for further development and refinement. The current definition for Homeland Defense is in conflict with the PCA in that active duty and reserve military forces (Title 10 forces) will have a difficult time protecting the "domestic population and critical infrastructure" unless they have some type of law enforcement authority. Also, The National Security Strategy, the National Defense Strategy and the National Military Strategy all emphasize the "away game" concept of defending America. The reality is that the concept of Homeland

Defense involves addressing the threat as far away from America's shores and land as possible. The definition of Homeland Defense ought to reflect this.

**RECOMMENDATION** – Change the definition for Homeland Defense as follows:

*Old* - **“HOMELAND DEFENSE:** the protection of US sovereignty, territory, domestic population, and critical infrastructure against external threats and aggression, or other threats as directed by the President. The Department of Defense is responsible for homeland defense.”

*New* - **“HOMELAND DEFENSE:** the protection of US sovereignty, territory and domestic population through forward deployment of military forces in order to eliminate threats and enemies of the United States before they can reach the homeland. The Department of Defense is responsible for homeland defense.”

2.) The definition of Homeland Security focuses solely on the terrorist threat.

Although the emphasis is valid, the concept of Homeland Security, especially given the scope of the Department of Homeland Security, needs broader development. As we saw during Hurricane Katrina, the DHS has huge responsibilities during crisis of any kind such as that of a natural disaster, not just a terrorist attack. We also saw that the U.S. military, both active duty and National Guard, will play a large role in the response to a crises or disaster. Therefore, the definition of HLS needs to expand.

**RECOMMENDATION** – Change the definition for Homeland Security as follows:

*Old* - **“HOMELAND SECURITY:** a concerted effort to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage and recovery from attacks that do occur.”

*New* - **“HOMELAND SECURITY:** 1) A concerted effort to prevent terrorist attacks within the United States, reduce America’s vulnerability to terrorism, and minimize the damage and recover from attacks that do occur; and to provide assistance to State and local authorities in order to maintain law and order following a terrorist attack, or in the aftermath of either anon-terrorist or natural disaster.”

3.) The second bullet in the mission statement of United States Northern Command states “As directed by the President or Secretary of Defense, provide defense support of civil authorities including consequence management operations.” In other words, it appears NORTHCOM has the DOD lead in Defense Support to Civil Authorities/Homeland Security. This makes perfect sense. In order to provide this support NORTHCOM needs ready and available forces in order to provide that support in hours, not days. As previously stated, a Rapid Reaction Unit of National Guard Soldiers should provide these forces. Theses forces would support The Department of Homeland Security in conducting Homeland Security missions. The National Defense Authorization Act for FY2004 authorizes a National Guard Commander to serve in a “Dual Hatted” capacity allowing that Commander to command both National Guard troops as well as active duty forces assigned to the Homeland Security mission. NORTHCOM in conjunction with the National Guard Bureau should maintain a list of possible National Guard General Officers who could be tapped to lead a JTF on the scale of JTF-Katrina. The issue of dual chains of command (COC) will remain unless the Governors accept these General Officers into the State COC by deputizing them into their State Guard. This option was offered to the Louisiana Governor, but she declined.

Unless a procedure like the one just described is put in place, the Unity of Command issue will remain, and inefficiency will arise as a result of it.

**RECOMMENDATION:** - A National Guard Rapid Response Unit should be ready and available for NORTHCOM to use in a DSCA capacity. The main effort of any Homeland Security/DSCA mission should be conducted by National Guard troops led by a National Guard Commander. The State Governors should deputize the JTF Commander in order to streamline the COC in an effort to create unity of command and unity of effort.

4.) A. The Posse Comitatus Act, in its current form is outdated, and a hindrance to active duty military forces participating in either Homeland Security or DSCA missions. As long as the National Guard has the lead in a response effort, active duty forces augmenting that response force need to be able to conduct missions side by side with their NG partners, and therefore require the ability to conduct law enforcement activities. This requires a rewording of the PCA.

B. The PCA should also be changed to allow a National Guard unit to work in a “federalized” status within a JTF while retaining its law enforcement authority as long as the Governor (or Governors) agrees to that provision prior to the President giving the order for federalization. This would shift that National Guard unit’s COC to the President through the JTF Commander and NORTHCOM. Depending on the severity of the situation, federalization may not be the desired status.

**RECOMMENDATION:** Amend the Posse Comitatus Act to allow active duty forces to conduct law enforcement missions under the direction and command of a NG Joint Task

Force Commander when deployed within the homeland. Furthermore, amend the PCA to allow for federal troops to maintain law enforcement authority as long as the Governor agrees prior to federalization.

5.) Due to a lack of apparent coordination prior to Katrina, the DHS, particularly FEMA, and NORTHCOM had a difficult time getting together and operating as an efficient organization. As stated earlier, “the Defense Department actually drafted its own requests for assistance and sent them to FEMA, which copied them and sent them back to the Department of Defense for action.” Despite numerous exercises over the past few years, FEMA was unable to operate effectively in a very demanding environment. A review of the mission statements of both NORTHCOM and the DHS highlights area for either cooperation, or competition:

**NORTHCOM** - As directed by the President or Secretary of Defense, *provide defense support of civil authorities including consequence management operations.*

**Department of Homeland Security** - *Minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States.*

FEMA needs to be the bridge between NORTHCOM and the DHS in conducting the missions as stated above. In order for FEMA to better coordinate the efforts of responding forces, it needs more independence from the DHS.

**RECOMMENDATION** – Return FEMA to its prior status as an independent agency led by a career emergency management professional. In the response to a disaster, natural or otherwise, FEMA should be assigned the task of coordinating the efforts of NORTHCOM and the Department of Homeland Security in providing relief services.

The United States of America must be ready for any event that threatens the homeland. The military must be structured with the agility required to respond to a threat, attack, or other event requiring a military response force, or participation in a Homeland Security mission within hours, not days. The laws of the land ought to facilitate the military's participation in the actual defense and security of the homeland, especially within the borders of the homeland as necessary. It is disingenuous to create a Four Star Combatant Command charged with the defense of the homeland, and then assign him no forces, and restrain his actions with a 128 year old law (PCA), instead of empowering him with the ability to actually operate within the geographic borders of his Area of Responsibility - The United States. The National Guard is designated by the Constitution as the force to provide security to the homeland within the borders of the nation. This force has been focused on augmenting the Regular Army in Homeland Defense (Away Game) at the expense of the Homeland Security responsibilities inherent in the Guard. In order to provide for the "active, layered defense" called for in the National Defense Strategy, both the Away Game and the Home Game require appropriate attention. The unnecessary public proclamation of the "Preemption" strategy as outlined in the National Security Strategy sets the table for the Away Game approach for Homeland Defense. The social contract between the American citizens and their leaders calls for the same emphasis in dealing with the protection and security within the American borders. The bottom line is this: Homeland Defense is all about the Away Game; Homeland Security is all about the Home Game. In order to be a champion, a team must emphasize winning both on the road and at home. Ensuring the proper

emphasis is placed on each, as well as devising appropriate game plans is up to the coach. The American Military Team needs clear guidance coupled with tidy game plans in order to ensure it remains the champion in protecting America by winning in both Homeland Security and Homeland Defense; winning at home and on the road.

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**ENDNOTES**

- <sup>1</sup> George W. Bush, The National Security Strategy of the United States of America, (Washington, D.C.: The White House, September 2002) p 29
- <sup>2</sup> Donald H. Rumsfeld, The National Defense Strategy of The United States of America, (Washington, D.C.: Department of Defense, March 2005) pp. iv and 8
- <sup>3</sup> Donald H. Rumsfeld, The National Defense Strategy of The United States of America, (Washington, D.C.: Department of Defense, March 2005) p10
- <sup>4</sup> Richard B Meyers, The National Military Strategy of the United States of America, (Washington, D.C.: Department of defense, 2004) p 10
- <sup>5</sup> Carl Von Clausewitz, On War, (New York, New York; Alfred A. Knopf, 1993) p152.
- <sup>6</sup> The Constitution of the United States, Article I, Section 8.
- <sup>7</sup> The Constitution of the United States, Article II, Section 2.
- <sup>8</sup> Gary Hart & Warren B. Rudman. Road Map for National Security: Imperative for Change, Phase III Report of the U.S. Commission on National Security/21<sup>st</sup> Century, February 15, 2001, p 12
- <sup>9</sup> Gordon England. Strategy for Homeland Defense and Civil Support, (Washington, D.C.: Department of Defense, June 2005) p 5.
- <sup>10</sup> George W. Bush, National Strategy for Homeland Security, (Washington, D.C.: The White House, July 2002) p 2.
- <sup>11</sup> George W. Bush, National Strategy for Homeland Security, (Washington, D.C.: The White House, July 2002) p 2.
- <sup>12</sup> George W. Bush, National Strategy for Homeland Security, (Washington, D.C.: The White House, July 2002) p 13.
- <sup>13</sup> George W. Bush, The National Security Strategy of the United States of America, (Washington, D.C.: The White House, September 2002) p 6.
- <sup>14</sup> <http://www.whitehouse.gov/omb/budget/fy2004/homeland.html> 31 December 2005. Office of Management and Budget, Washington, D.C., *Department of Homeland Security Overview*, third paragraph of Overview.
- <sup>15</sup> Gordon England. Strategy for Homeland Defense and Civil Support, (Washington, D.C.: Department of Defense, June 2005) p 8.
- <sup>16</sup> NORTHCOM Mission Statement of October 2004.
- <sup>17</sup> DHS Mission Statement, Section 101(b) of the Homeland Security Act of 2002.
- <sup>18</sup> 18 U.S.C. 1385.
- <sup>19</sup> <http://www.dtic.mil/whs/directives/corres/html2/d55255x.htm> 20 December 2005. Paragraph 2 of this directive provides guidance on the use of the military in civil affairs and defines the military as the US Army, Air Force Navy and Marine Corps. E4.1.1 is the PCA.
- <sup>20</sup> Stephen M. Duncan, A War of a Different Kind, (Annapolis, MD; Naval Institute Press, 2004) p 117
- <sup>21</sup> <http://www.northcom.mil/index.cfm?fuseaction=news.factsheets&factsheet=5> 20 December 2005
- <sup>22</sup> Merriam-Webster, Incorporated. Merriam-Webster's Collegiate Dictionary, Eleventh edition (Springfield, MA, 2003) p 968.
- <sup>23</sup> <http://dictionary.reference.com/search?q=comitatus> 20 December 2005.
- <sup>24</sup> Merriam-Webster, Incorporated. Webster's Third New International Dictionary. (Springfield, MA, 2003) p 1770
- <sup>25</sup> <http://www.homelandsecurity.org/newjournal/articles/brinkerhoffpossecomitatus.htm> 20 December 2005.
- <sup>26</sup> George S Patton. "Federal Troops in Domestic Disturbances" November 1932. <http://www.pattonhq.com/textfiles/federal.html> 22 December 2005
- <sup>27</sup> George S Patton. "Federal Troops in Domestic Disturbances" November 1932. <http://www.pattonhq.com/textfiles/federal.html> 22 December 2005
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CDR Doris is a 20 year Naval Officer who has spent the predominate portion of his career in the Maritime Patrol and Reconnaissance Community flying P-3Cs. He holds a Bachelor of Arts degree from the University of Colorado in Boulder CO, and a Masters Degree in the Science of Management from Troy State University.

In April 2003 CDR Doris reported to VP-26 as Executive Officer, and in March 04 became the 59<sup>th</sup> Commanding Officer of the Tridents. During this tour he deployed to Sigonella, Sicily in support of 6<sup>th</sup> Fleet and Operations ENDURING FREEDOM and IRAQI FREEDOM.

CDR Doris has earned the Meritorious Service Medal (two awards), the Navy Commendation Medal (three awards) and the Navy Achievement Medal along with various other service and campaign medals and ribbons. He is married to the former Stephanie Schmidt of Chicago, IL and has one beautiful daughter, Heather. He is a devoted Colorado Buffaloes fan bleeding Buff "Black and Gold." GO BUFFS!!!