

UNITY OF COMMAND FOR HOMELAND SECURITY:
TITLE 32, TITLE 10, OR A COMBINATION

A thesis presented to the Faculty of the U.S. Army
Command and General Staff College in partial
fulfillment of the requirements for the
degree

MASTER OF MILITARY ART AND SCIENCE
General Studies

by

John H. Ebbighausen, MAJ, ARNG-FA
B.S., University of Vermont, 1992

Fort Leavenworth, Kansas
2006

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Report Documentation Page				Form Approved OMB No. 0704-0188	
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1. REPORT DATE 16 JUN 2006		2. REPORT TYPE		3. DATES COVERED	
4. TITLE AND SUBTITLE Unity of command for homeland security: Title 32, Title 10, or a combination.				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S) John Ebbighausen				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) US Army Command and General Staff College,1 Reynolds Ave.,Fort Leavenworth,KS,66027-1352				8. PERFORMING ORGANIZATION REPORT NUMBER ATZL-SWD-GD	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited.					
13. SUPPLEMENTARY NOTES The original document contains color images.					
14. ABSTRACT Unit of command becomes a major issue when both federal and state militaries simultaneously provide Defense Support to Civil Authorities (DSCA) within the same area of operations as seen during Hurricane Katrina. Both federal and state militaries look alike and have similar equipment, but may respond to different authorities. Federal and state laws and policies regulate the missions each may perform based on the activated status (Title 10, Title 32, or State Active Duty) of the unit. This study examines laws and policies, such as the Posse Comitatus Act, the Stafford Act, the Insurrection Act, the National Response Plan, the National Defense Authorization Act of 2004, and the Emergency Management Assistance Compact that govern the permissive or restrictive measures of each status. It applies these as well as additional measures in examining the Los Angeles Riots and Hurricane Katrina to determine the feasibility of using National Guard versus federal military assets to establish unity of command. The study finds that the National Guard is truly the Army's first responder for DSCA missions, is well integrated with local and state emergency management authorities, and should command and control all military assets allocated to its area of responsibility.					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT 1	18. NUMBER OF PAGES 111	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			

MASTER OF MILITARY ART AND SCIENCE

THESIS APPROVAL PAGE

Name of Candidate: MAJ John H. Ebbighausen

Thesis Title: Unity of Command for Homeland Security: Title 32, Title 10, or a Combination

Approved by:

_____, Thesis Committee Chair
LTC Mark W. Holzer, J.D.

_____, Member
COL J. Marc Williams, M.S.S.

_____, Member
Mr. Richard E. Berkebille, M.S.

Accepted this 16th day of June 2006 by:

_____, Director, Graduate Degree Programs
Robert F. Baumann, Ph.D.

The opinions and conclusions expressed herein are those of the student author and do not necessarily represent the views of the U.S. Army Command and General Staff College or any other governmental agency. (References to this study should include the foregoing statement.)

ABSTRACT

UNITY OF COMMAND FOR HOMELAND SECURITY: TITLE 32, TITLE 10, OR A COMBINATION, by MAJ John H. Ebbighausen, 111 pages

Unit of command becomes a major issue when both federal and state militaries simultaneously provide Defense Support to Civil Authorities (DSCA) within the same area of operations as seen during Hurricane Katrina. Both federal and state militaries look alike and have similar equipment, but may respond to different authorities. Federal and state laws and policies regulate the missions each may perform based on the activated status (Title 10, Title 32, or State Active Duty) of the unit. This study examines laws and policies, such as the Posse Comitatus Act, the Stafford Act, the Insurrection Act, the National Response Plan, the National Defense Authorization Act of 2004, and the Emergency Management Assistance Compact that govern the permissive or restrictive measures of each status. It applies these as well as additional measures in examining the Los Angeles Riots and Hurricane Katrina to determine the feasibility of using National Guard versus federal military assets to establish unity of command. The study finds that the National Guard is truly the Army's first responder for DSCA missions, is well integrated with local and state emergency management authorities, and should command and control all military assets allocated to its area of responsibility.

ACKNOWLEDGMENTS

I would like to take the time to thank my wife Jane for supporting this effort as she took care of me, our children Daniel and Ethan, and the home while I spent additional Sundays and evenings in the library completing this thesis. I would also like to thank my committee members who guided me in the proper direction and prevented procrastination through continuous enforcement of a well planned timeline. Lastly, I would like to thank Helen Davis whose attention to detail and expertise in thesis formatting made this project successful.

I must also extend a thank you to COL Todd Boyd, Chief of Staff for the North Carolina Army National Guard, and those who gave me the opportunity to attend the Command and General Staff College.

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ACRONYMS

AO	Administrative Officer
AOR	Area of Responsibility
AT	Annual Training
CAP	Crisis Action Planning
CONUS	Continental United States
DHS	US Department of Homeland Security
DOD	Department of Defense
EMAC	Emergency Management Assistance Compact
FEMA	Federal Emergency Management Agency
HF	High Frequency
IDT	Inactive Duty for Training
JFHQs	Joint Forces Headquarters
JFHQ-State	Joint Forces Headquarters - -State
JOC	Joint Operations Center
JTF	Joint Task Force
MACOM	Major Command
M-Day	Mobilization Day
NEMA	National Emergency Management Association
NIPR	Nonsecure Internet Protocol Router
NORTHCOM	US Northern Command
NRP	National Response Plan
NSSE	National Special Security Events

STARC	State Area Commands
PACOM	US Pacific Command
PCA	Posse Comitatus Act
POTUS	President of the United States
PSRC	Presidential Selected Reserve Call-up
ROE	Rules of Engagement
RUF	Rules for use of Force
SAD	State Active Duty
SINCGARS	Single Channel Ground and Airborne Radio System
SIPR	Secure Internet Protocol Router
SOI	Signal Operating Instructions
TAG	The Adjutant General
Title 10	Federal Military Forces
Title 32	State National Guard Forces
US	United States

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CHAPTER 1

INTRODUCTION

Many of the men and women of the Coast Guard, the Federal Emergency Management Agency, the United States military, the National Guard, Homeland Security, and state and local governments performed skillfully under the worst conditions. Yet the system, at every level of government, was not well coordinated and was overwhelmed in the first few days.

President George W. Bush

This is a quotation from POTUS George W. Bush in a press conference on 16 September 2005 following Hurricane Katrina. The POTUS recognizes the chaos and confusion when agencies fail to establish unity of command. This thesis will attempt to answer whether the Department of Defense (DOD) should use the National Guard to establish unity of command for missions involving Defense Support to Civil Authorities (DSCA) and if so make a recommendation on a chain of command.

The purpose of this study is to determine if the DOD should use National Guard assets to establish unity of command for missions involving DSCA. It will define unity of command, examine federal laws and policies that govern the use of military forces, and examine several different case studies where DOD established or failed to establish unity of command.

The issues with establishing unity of command center on response plans for homeland security missions. The National Response Plan requires city, county, and tribal governments to respond to disasters within their locality using organic assets. When city and county governments become overwhelmed with disaster response, they request state assets. The largest single asset at the state governor's disposal is the state's military asset

known as the National Guard. As mission requirements increase and the state's military assets become overwhelmed, the governor has two options, request additional assets from other cooperating states or request federal military or active duty assets. Once state and federal military assets work together, the issue of unity of command arises. Since the Governor is the Commander in Chief (CINC) for state military assets and the President of the United States (POTUS) is the CINC for federal assets, employment priorities may vary. Both are military assets of the One Army concept and the question of which component will command and control all military efforts in the area of operations surfaces.

Historically states have followed the guidance and procedures of Federal Response Plan (FRP) primarily seeking federal funds, but rarely requested the aid of federal soldiers. States generally employed organic National Guard assets in response to internal disasters until 11 September 2001. State governors employed the state's National Guard as state employees in response to manmade and natural disasters. States requested volunteers for service, placed them on the state's payroll, incorporated them under command of the Governor, and delegated control to the Adjutant General. If the disaster were of sufficient size, the Governor would declare the area a state disaster and request federal assistance and resources. Occasionally, the federal government has employed Active Duty (Title 10) soldiers to aid in its relief mission. These were standing operational procedures prior to 11 September 2001.

The terror act of 11 September 2001 focused the country on defending the homeland and President Bush requested a Presidential Selected Reserve Call-up (PSRC) of the National Guard for conducting airport security. States sought out volunteers for

this operation and employed its soldiers with federal funds in a Title 32 status titled Operation Noble Eagle. The soldiers performing this mission worked for independent state Governors in support of the Federal Aviation Administration (FAA). The Adjutant General and his staff, known as the State Area Command (STARC) were responsible for command, control, and training. This headquarters is now referred to as the State's Joint Forces Headquarters (JFHQ-State).

Post 11 September 2001, the POTUS directed the formation of a new Department of Homeland Security and the active military formed the U.S Northern Command (NORTHCOM) hereafter referred to as NORTHCOM. NORTHCOM is a military command that focuses on operations within the United States. When events such as natural and manmade disasters occur within the United States, NORTHCOM forms a Joint Task Force (JTF) and assigns troops as necessary to address the event. NORTHCOM may form several JTFs if there are disasters located in multiple regions of the country.

The latest disaster, Hurricane Katrina brought assistance from several government agencies to the Gulf Coast area. The US Coast Guard (Title 14) is now part of the Department of Homeland Security (DHS) and worked with FEMA conducting search and rescue operations, opening channels, and securing ports. The Coast Guard is a unique asset as neither the active component military nor National Guard possesses the resources or training to accomplish port security or channel maintenance operations. The active component military (Title 10) established JTF-Katrina and employed about seven thousand soldiers who performed search, rescue, and humanitarian aid operations. The National Guard (Title 32) under the direction of the governors of Mississippi and

Louisiana employed their JFHQ-State and almost six thousand soldiers prior to the disaster. Following the storm, both state governors requested assistance and the Mississippi and Louisiana JFHQ-State soon employed two division headquarters and almost fifty thousand soldiers. They conducted a wide range of missions including command and control, search and rescue, law enforcement, and humanitarian aid.

History has shown that a major problem with disaster response is that unity of command becomes complicated when several government agencies respond to the same disaster without coordination. Each agency has its own command structure and no one agency is in charge of coordinating efforts. Vital pieces of information important to all tend to remain within each different agency. The information becomes stove-piped within a single agency and is not shared with others. President Bush stood up the Department of Homeland Security to combat this problem. A disaster may require all the agencies discussed above to protect and save lives, but there tends to be duplication of effort, loss of efficiency, and hoarding of critical information. All agencies need to unite under one command to alleviate these problems.

There are laws in effect that allow for unity of command when state and federal military agencies respond to a homeland security mission. These laws allow a Title 32 or Title 10 commander to command and control both state and federal military forces simultaneously, but they must request and report their actions to both the POTUS and the appropriate governor. This gives the appearance of unity of command for subordinate forces executing missions, but leaves command divided at senior levels where bureaucracy and politics are an integral part of operations.

The basis of this thesis is the primary research question which asks: Should the Department of Defense use National Guard assets to establish unity of command for missions involving DSCA? This question has a simple yes or no answer, but its analysis is far more complex, generating several secondary and tertiary questions.

Answering this basic question requires addressing several secondary questions. Secondary questions are: What is unity of command? What is meant by Title 10, Title 32, and State Active Duty (SAD) status? What laws and policies govern how state and federal military forces respond to homeland security missions? What is a JFHQ-State? Are there successful or unsuccessful examples of operations that achieved unity of command? Finally, to remain unbiased, are there other options?

To answer the primary question, it is important to assume that the federal government will employ both active component and National Guard forces in future DSCA missions. If the federal government employs only National Guard or active component assets individually, there is not an issue with unity of command. If National Guard units from neighboring states respond, they are under the tactical control of the assisted state governor and JFHQ-State. This relationship implies that a JFHQ-State provides command and control and unity of command is not an issue.

The thesis also assumes that the military will employ joint doctrine to facilitate relationships. Since federal and state military forces are under control of two different CINCs, they are really two separate components. Joint doctrine stresses the terms supporting commands and supported commands to demonstrate command relationships between different military components such as Army, Air Force, and Navy. When Governor employs the National Guard either in a full-time federally paid (Title 32) or

full-time state paid (SAD) duty status, it acts as a different component since it is a state rather than federal agency. The relationship is not necessarily rank structured, but mission dependant. An example of this is NORTHCOM, a four star active component command may support the JFHQ-State which is a two star command working for the governor. The JFHQ-State becomes the supported command and receives assistance through equipment, personnel, and information from NORTHCOM, but is still under the state governor's command. NORTHCOM becomes the supporting command by providing all assets available to support the JFHQ-State.

In answering the main thesis question it is also essential to assume that state governors will always employ their National Guard resources for homeland security missions within their states. Just as the large availability of manpower and equipment make the US Army the action arm of the POTUS, the National Guard is the action arm of the governor. The thesis must assume for both practical and political reasons, the governor will elect to employ his or her National Guard resources as the primary response force, even if active component resources are available or better equipped to perform the mission.

Understanding the thesis topic requires defining some basic terms. Title 32 refers to *United States Code*, Title 32 National Guard, which was enacted 10 August 1956 and outlines the organization, personnel, training, service, supply, and procurement for the United States Army and Air National Guard.¹ State governors employ Title 32 soldiers but the federal government, through the Department of Defense, provides the funding. The thesis refers to Title 32 assets as National Guard and state military forces or assets.

State Active Duty (SAD) refers to a duty status for soldiers in the National Guard who have been ordered to state duty by a governor. This duty status is funded by the state and National Guard soldiers are paid based on state law or policy. The state governor provides command and control.

Title 10 refers to the *United States Code*, Title 10 Armed Forces, enacted 10 August 1956, which outlines General Military Law and organizations for the Army, Navy, and Air Force.² The thesis will later address the Marine Corps, which is a component of the US Navy. Congress amended Title 10 in 1994 to add the Reserve Component which includes the Army, Navy, Air Force, and Marine Reserve. The POTUS employs Title 10 assets and the thesis refers to these as Active Component or federal military forces or assets.

JFHQs-State is a joint operations capable command and control entity in each state. Up until around the year 2004 these headquarters were known as the State Area Commands or STARCs. Since most states maintain, command, and control both an Air National Guard, a component of the Air Force, and an Army National Guard, these headquarters draw upon both components for manning. This makes the headquarters a joint headquarters as Army soldiers and Air Force airmen work side by side for the good of each state.

JP 3.0, *Operations*,³ defines unity of command as a single commander who directs and coordinates the actions of all forces toward a common objective. This structure prevents duplications of effort and aids in promoting efficiency. During joint and multi-agency operations, commanders will coordinate to achieve unity of effort, but never achieve unity of command. At the state level and with permission from congress,

the Adjutant General with the JFHQ-State has the ability to achieve unity of command by combining active component and National Guard forces under one commander.

The Department of Defense separates homeland security into two sub categories, Homeland Defense and Civil Support. The military's role in Homeland Defense focuses the United States military against direct military and terrorist attacks from outside the nation's borders. It also may focus on attacks that originate outside of the nation, but are executed within the nation's borders. The military role in Civil Support, known as DSCA is simply military activities in support of local, state, and federal agencies. Lately, many operations have been conducted under the title "homeland security" which is actually DSCA missions.

Delimitations are areas that this thesis will not address. There are several factors which vary and make answering the primary question impossible. The delimitations fix these factors by preventing their discussion. This thesis examines the feasibility of using Title 32 forces to command and control of homeland security missions. It will look at federal laws and policies that permit or restrict this model and several case studies which depict success or failure in this endeavor.

The thesis will not examine which force (Title 10 or Title 32) is best trained, equipped, or available to perform DSCA missions, but hold to the assumption that the missions require both. There are several studies available online by the General Accounting Office (GAO) and Rand Corporation that discuss the training or equipping issues.⁴ The focus of this study is on command relationships between the Title 10 and Title 32 forces and the ability or desirability to establish Unity of Command.

The thesis will not discuss military equipment readiness and availability, soldier readiness and availability, or mobilization impact issues for either component. As stated above, the thesis assumes that the state governor will employ their National Guard assets for emergencies within their states. If there are insufficient soldiers or equipment, agreements such as the Emergency Management Assistance Compact (EMAC) allow the states to lend and borrow soldiers and equipment from other states. If there is still insufficient personnel or equipment, the state governor has the ability to request federal assets.

The importance of this topic is evident, as the lawmakers will soon debate changes to current laws and policies that limit or promote the DOD's role in homeland security missions. Previous missions, such as Hurricane Katrina, demonstrate NORTHCOM's desire to establish and fund a Joint Task Force including an integrated response force. The DOD already funds a resource to accomplish this mission through the state Joint Forces Headquarters and National Guard. Policies, procedures, and laws need to be in place that allow for integration of the active component and National Guard forces under one command. This will result in both time and cost savings with a quicker response and less duplication of effort.

There will always be DSCA missions in this country that require various levels of responses. The National Guard will remain a first responder at the local and state level executing the response plans developed by the state Joint Forces Headquarters and Emergency Management personnel. Various missions will often require the use of small and large contingents of federal forces to augment state forces. These missions require standardized state and national response plans to establish rapid integrations of forces,

unity of effort, and unity of command. To expedite response times and preserve life, these response plans need to be complete and rehearsed prior to a mission, not created during the mission. Disasters requiring a military presence are usually emergencies where time is a critical resource. Making response plans during or after the disaster may cost civilian lives.

This thesis is organized into five sections. Section one is the introduction and presents the topic of the research: Should the Department of Defense use National Guard assets to establish unity of command for DSCA missions. A yes answer introduces section two which reviews literature suggesting that future DSCA missions will require responses from both federal and state military forces. It also presents two historical homeland security missions involving both state and federal forces. Section three presents key aspects of both federal and state command and control abilities that section four examines. Section four analyzes the command and control capabilities and limitations, and guiding laws and policies for establishing unity of command between National Guard and active duty forces. Section five summarizes the thesis, but more importantly provides a course of action to the DOD which can begin the development of a response doctrine.

¹*United States Code Annotated* (St. Louis, MO: West Publishing Co., 2005), Title 32, USC, secs. 101-716.

United States Code Annotated (St. Louis, MO: West Publishing Co., 2005), Title 10, USC, secs. 101-106.

³Department of the Army, Joint Publication 3.0, *Operations* (Washington: Headquarters, Department of the Army, September 2004), 1-138.

⁴Lynn E. Davis et al., *Army Forces for Homeland Security*, 1st ed. (Pittsburgh, PA: Rand Arroyo Center, 2004), 1-77; General Accounting Office, *Reserve Forces, Plans Needed to Improve Army National Guard Equipment Readiness and Better*

Integrate Guard into Army force Transformation Initiatives (Washington, DC: General Accounting Office, 2005), 1-33.

CHAPTER 2

LITERATURE REVIEW

Introduction

The purpose of this study is to determine if the DOD should use National Guard assets to establish unity of command for DSCA missions. It will define unity of command, examine federal laws and policies that govern the use of Federal and State forces, and examine several different case studies where DOD established or failed to establish unity of command.

The organization of chapter 2 focuses on secondary questions. Initially, it will examine military and civilian literature defining unity of command, unity of effort, and unified command. The chapter then examines literature which describes federal laws and various interpretations of those laws that prescribe or restrict the use of either state or federal military forces within the United States. It examines multiple civilian books and military references for several scenarios where military forces succeeded or failed to establish unity of command. Finally, it examines some references that offer additional opinions on how the federal government should accomplish unity of command.

Review

There are several Army manuals that provide definitions for and give examples of unity of command and unity of effort. FM 3.0, *Operations* (2001),¹ and FM 6.0, *Mission Command: Command and Control of Army Forces* (2003),² articulate these well. These references refer to unity of command within army organizations. The JP 3-0, *Doctrine for Joint Operations* (2001),³ defines unity of command in a joint environment that involves

other Department of Defense organizations, other governmental agencies, and nongovernmental agencies. This study reflects the establishment of unity of command between two or more military departments or federal (Title 10) and state (Title 32 or SAD) forces. These manuals articulate this definition as a unified command. Since DSCA missions require the effort of multiple agencies or are inherently joint, further research may change the terminology used in the basic research question from unity of command to unified command.

The three primary status for employment of military forces in DSCA missions are state active duty, Title 32, and Title 10. *Title 10⁴ and Title 32⁵ of the United States Code* provide definitions, permissions, and limitations for employment of federal and state military forces. The National Guard Bureau White Paper⁶ provides similar descriptions for State Active Duty forces.

There are three major permissive or restrictive laws (The Posse Comitatus Act, The Stafford Act, and the Insurrection Act) that can be found in the Codes of Federal Regulations and one policy (The National Response Plan) that govern the employment of state and federal military forces.⁷ The Department of Homeland Security's *National Response Plan*⁸ is an all encompassing federal plan that describes how tribes, towns, cities, states, and the federal government will conduct homeland security missions. This plan prescribes the use of military forces after a detailed examination of Posse Comitatus, the Stafford Act, and the Insurrection Act. Although mentioned and obviously examined, the response plan does not give detailed descriptions of each of the laws listed above, but it provides examples of when federal and state governments may employ military forces.

Since the National Response Plan governs the use of federal agencies, it is invaluable to this study.

The RAND Corporation published a monograph in June of 2004 titled “Army Forces for Homeland Security.”⁹ This is a leading reference which interprets the National Response Plan, examines laws permitting or restricting the use of military forces for homeland security missions, and makes recommendations on a force capable of accomplishing these missions. The study is significant as it was prepared for the United States Army and suggests employing a combination of federal and state military forces in response to future homeland security missions. There are several papers generated by US Army officers at the US Army War College that have similar conclusions.¹⁰ As major studies suggest combining federal and state military forces, it becomes more important to address the unity of command issue.

The thesis first examines the Los Angeles Riots. There are three prominent figures that wrote books or reports about the incident. The first is Lieutenant General (ret) Harrison, who wrote a report to the Honorable Pete Wilson in 1992 titled “The Harrison Report.”¹¹ General Harrison was an active duty officer and his report demonstrates a bias in favor of the use of federal forces. The report focused more on the perceived failures of the California Army National Guard and how these failures led local and state officials to push for federal military assets and federalization of the National Guard Assets. The federalization of mobilized National Guard assets under the command of federal leadership quickly established unity of command. Harrison believed this federalization was necessary to provide adequate leadership to the quality and disciplined California National Guard soldiers, who were ill prepared due to the incompetence of the state’s

National Guard leadership. His report loses some relevance for this thesis, as it appeared biased and did not discuss the value of the federalization process to achieve unity of command.

The second figure is General James Delk, who was the Deputy Adjutant General of the California Army National Guard (CANG) during the riots. He produced an in-depth accounting of the Los Angeles Riots in 1995 titled *Fires and Furies: The L.A. Riots*.¹² His writings are largely defending the National Guard and demonstrating the failure of other agencies. At the same time, he accepts responsibility for National Guard failures which adds significant credibility to his writings. He provides a detailed background of the riots and military actions during the riots and discusses the federalization of National Guard forces. His writings are significant as he discusses the need for unity of command to increase efficiency of operations, discusses the architecture federal forces used to establish unity of command, and stresses the loss of efficiency due to the centralization of the decision process at the highest command level.

The third figure is Lieutenant Colonel Christopher M. Schnaubelt, who published an article in *Parameters*, summer 1997, titled the “1992 Los Angeles Riots; Lessons in Command and Control from the Los Angeles Riots”¹³ that supports General Delk’s findings. Schnaubelt also discusses the need for unity of command to eliminate redundancy and improve efficiency while demonstrating the benefits of decentralization command in DSCA missions. Lieutenant Colonel Schnaubelt is a member of the California Army National Guard, but his article does not appear biased to his unit or state.

The next major homeland security response mission the thesis examines is Hurricane Katrina, August 2005. Like the LOS ANGELES Riots and most other events where the government did not perform its best, authors waste large amounts of paper blaming others for mistakes and praising their agency for all it did well. Fortunately, the Center for Army Lessons Learned (CALL) compiled in-depth After-Action Reviews (AAR) from many of the divisions involved in the response.¹⁴

The CALL report with all attachments and after action reviews (AARs) provide a detailed breakdown of the command structure and soldier accounts of the confusion of having multiple Army and National Guard headquarters operating in a single area. Soldiers and commanders had sufficient difficulties conducting Defense Support to Civil Authority (DSCA) missions, working with nongovernmental agencies, and dealing with the environmental aspects of the hurricane. This was further complicated and confused by the lack of unity of command.

The significance of the report is that it demonstrates the issues that arose due to a lack of unity of command. The media reported and hence most people believed that a federal Joint Task Force was in command of the incident. In reality, the federal task force commanded about 6,000 active duty and the state task force commanded about 27,000 National Guard soldiers. The confusion or distractions caused by separate state and federal task forces slowed response times as civil authorities were unclear about where to send requests and which military agency or component was in command.

Two major DSCA missions, the LOS ANGELES Riots and Hurricane Katrina demonstrate the need for unity of command to prevent redundant efforts and increase the efficiency of operations. Current literature suggests that both federal and state forces will

continue to respond to homeland security missions. With this understanding for the future, it is imperative that the DOD develop a standard response procedure for employment of federal and state military forces. The following chapters analyze the advantages of using the state's National Guard Joint Forces Headquarters to accomplish this mission.

¹Department of the Army, Field Manual 3.0, *Operations* (Washington, DC: Headquarters, Department of the Army, September 2004), 1-104.

²Department of the Army, Field Manual 6.0, *Mission Command: Command and Control of the Army Forces* (Washington, DC: Headquarters, Department of the Army, September 2004), 1-333.

³Joint Chiefs of Staff, Joint Publication 3.0, *Joint Operations* (Washington, DC: Headquarters, Department of the Army, September 2004), 1-182.

⁴*United States Code Annotated* (St. Louis, MO: West Publishing Co., 2005), Title 10, USC, sections 101-104.

⁵*Ibid.*, USC Title 32, secs. 101-716.

⁶COL John D. Renaud, *National Guard Homeland Defense White Paper: September 11, 2001, Hurricane Katrina, and Beyond* (Alexandria, VA: Army National Guard, G5, Chief, Strategic Plans and Policy, September 2005), 1-17.

⁷*United States Code Annotated* (St. Louis, MO: West Publishing Co., 2005), Title 10, USC, sections 330-335; Title 18, USC, section 1385; and Title 42, USC, section 5121

⁸The Department of Homeland Security, *National Response Plan, 2004* [document on-line]; available from the Department of Homeland Security at <http://www.dhs.gov/interweb/assetlibrary/NRP-FullText.pdf>; Internet; accessed 27 October 2005, 1-12.

⁹Lynn E. Davis et al., *Army Forces for Homeland Security*, 1st ed. (Pittsburgh, PA: Rand Arroyo Center, 2004), 1-77; General Accounting Office, *Reserve Forces, Plans Needed to Improve Army National Guard Equipment Readiness and Better Integrate Guard into Army force Transformation Initiatives* (Washington, DC: General Accounting Office, 2005), 1-33.

¹⁰Colonel Dick Dillon, James Kievit, and Lieutenant Colonel Thomas Murray, Portraying *The Army Reserve Components in Army War Games and Exercises*, November 2002, paper number 11-02 (Carlisle, PA: Center for Strategic Leadership,

United States Army War College, 2002), [Issue Paper 11-02 on-line]; available from http://www.ausa.org/PDFdocs/LWPapers/LPE_03-3.pdf; Internet; accessed 20 October 2005; and Professor Michael Pasquarett, *Wargaming Homeland Security and Army Reserve Component Issues*, May 2003, volume 04-03(Carlisle, PA: Center for Strategic Leadership, United States Army War College, 2003), [Issue Paper on-line]; available from CSL Publications at <http://www.carlisle.army.mil/usacs/indes.asp>; Internet; accessed 20 October 2005.

¹¹LTG (retired) William H Harrison, Report to the Honorable Pete Wilson, Governor, State of California: Assessment of the Performance of the California National Guard During the Civil Disturbance in Los Angeles, April and May 1992 “The Harrison Report” (Sacramento, CA: 2 October 1992), 1-30.

¹²James D. Delk, *Fires and Furies: The L.A. Riots* (Palm Springs, CA: ETC Publications, 1995), 1-367.

¹³Christopher M. Schnaubelt, “1992 Los Angeles Riots: Lessons in Command and Control from the Los Angeles Riots,” *Parameters* (summer 1997): 88-109 [journal on-line]; available from http://www.au.af.mil/au/awc/awcgate/army-usawc/param_schnau97sum.htm; Internet; accessed 24 October 2005

¹⁴Headquarters, 35th Infantry Division, After Action Report of HHC, 35th Infantry Division (JTF Santa Fe for Operations Santa Fe) (Ft. Leavenworth, KS: Center for Army Lessons Learned, 2005), [review on-line] available from <http://call.army.mil/>; Internet; accessed 12 December 2005; Headquarters, 38th Infantry Division, Operation Vigilant Relief After Action Review, for SGS HQ 38th Infantry Division (Ft. Leavenworth, KS: Center for Army Lessons Learned, 2005) [review on-line] available from <http://call.army.mil/>; Internet; accessed 12 December 2005; Headquarters, 82nd Airborne Division, After Action Brief (Ft. Leavenworth, KS: Center for Army Lessons Learned, 2005) [review on-line] available from <http://call.army.mil/>; Internet; accessed 12 December 2005; and Headquarters, 1st Cavalry Division, After Action Brief (Ft. Leavenworth, KS: Center for Army Lessons Learned, 2005) [review on-line] available from <http://call.army.mil/>; Internet; accessed 12 December 2005.

CHAPTER 3

RESEARCH METHODOLOGY

Introduction

The purpose of this study is to determine if the Department of Defense (DOD) should use National Guard Assets to establish unity of command for missions involving DSCA. It defines unity of command, examines federal laws and policies that govern the use of Federal and State forces, and examines two different case studies where DOD established or failed to establish unity of command.

The organization of chapter 3 presents the methodology the thesis follows to answer the research question discussed above. The chapter reviews the purpose of this thesis and discusses the methodology used to present research and analysis in chapter 4.

Methodology

The analysis of the research question builds upon definitions presented in chapter 1. It begins with some additional definitions, such as State Active Duty (SAD) and Joint Forces Headquarters State (JFHQ-State) and addresses some earlier definitions with more depth. The analysis is then divided into two sections, a review of law and policy that permit or restrict the use of military assets in DSCA missions and the application of this law and policy through three historical case studies. This design provides answers to the secondary questions and formulates the answer to the primary research question.

The policy and law review first examines the National Response Plan (NRP), which is a federal policy prescribing the government's response to hazards. The NRP is the corner stone of the federal response plan that describes the levels of response from

local, state, and federal governments. It directs federal agencies when to employ assets and assigns responsibilities for lead and support agency roles. The NRP directs how the federal government responds to homeland security missions within the United States. Since the NRP is the leading document that provides criteria and dictates levels of responses from local to national, it will also lead the analysis in chapter 4.

In order to understand the different duty status of military forces outlined throughout the NRP, the thesis defines and prescribes the use of Title 10, Title 32, and State Active Duty military forces. It also presents a description of the standing State Joint Forces Headquarters. The thesis describes how the National Defense Authorization Act of 2004 altered Title 32 of the USC. to allow both active duty and National Guard commanders to command and control soldiers performing in any of the duty statuses mentioned above.

The thesis then examines five primary laws, policies, or agreements that govern the employment of federal and state military forces. Each either permits or restricts actions by either federal or state military forces. The thesis examines the Posse Comitatus Act, Stafford Act, Insurrection Act, The National Defense Authorization Act, and Emergency Management Assistance Compact (EMAC) in detail.

The Posse Comitatus Act prohibits or governs the use or employment of federal and state forces within the United States. The thesis examines the Posse Comitatus Act, its application on federal and state military forces, and enforcement. The thesis examines its restrictions and how, when, and to whom they apply.

The Stafford Act, Insurrection Act, and Emergency Management Assistance Compact (EMAC) permit the use of federal and state forces within the United States. The

Stafford Act allows the federal government to employ federal military assets at the state governor's request. The Insurrection Act allows the federal government to employ active duty military forces to enforce federal law. The previous acts permit the use of federal forces during specific hazards, but have no bearing on the governor's use of the National Guard. EMAC permits the use of state military forces and equipment from other states in response to hazards.

The final law the thesis examines is a subsection of Title 32 that deals with Joint Task Force (JTF) command authority. The authority was made public law with the passing of the National Defense Authorization Act of 2004. It allows either state or federal leadership to command a joint task force consisting of both Title 10 and Title 32 military forces. The thesis examines these provisions, their applications, and restrictions by both federal and state authorities. This ends the review section and answers the secondary question dealing with laws and policies that permit or restrict the use of federal and state military forces. This should provide sufficient knowledge and understanding to objectively examine the case studies.

The case study section examines two specific homeland security missions. Both Hurricane Katrina and the LOS ANGELES Riots are missions where DOD employed both federal and state military assets. The thesis examines each case study and the success or failure to achieve unity of command in each. It also examines the benefits for establishing and ramifications for failing to achieve unity of command.

Topics chosen for the case studies were not random, but limited to two of the three major employments of both federal and state military forces for DSCA missions over the last fourteen years. Normally, state's react to homeland security missions

employing only its own assets and do not require federal assistance. The case studies were the leading events which required both. Examining the case studies answers the last secondary question presenting operations which were successful or unsuccessful in achieving unity of command. After presenting the case studies, the thesis will examine commonalities between them.

It is difficult to compare the case studies since there are few similarities, yet a host of differences for each. The major similarity for each is the ability to either achieve or fail to achieve unity of command. In examining the reasons for the successes or failures, the thesis also examines several commonalities between the two cases studies. The thesis examines response times, levels of response, interagency functionality, standard operational procedures, communications, and preparedness. There may also be more criteria found in each case study that will emerge upon deeper analysis.

Summary

Chapter 3 presents the methodology the thesis follows to answer the primary research question, Should the DOD use National Guard Assets to establish unity of command for missions involving DSCA? It lays out the methodology which chapter 4 follows to analyze the research. The chapter also outlines how the thesis answers the secondary research questions and identifies commonalities to compare the case studies and make recommendations for future homeland security missions addressed in chapter 5, “Conclusions and Recommendations.”

CHAPTER 4

ANALYSIS

National Response Plan

Pursuant to HSPD-5¹, as the principal Federal official for domestic incident management, the Secretary of Homeland Security declares Incidents of National Significance...and provides coordination for Federal operations and / or resources, establishes reporting requirements, and conducts ongoing communications with Federal, State, local, tribal, private-sector, and nongovernmental organizations to maintain situational awareness, analyze threats, assess national implications of threat and operational response activities, and coordinate threat or incident response activities.²

National Response Plan, December 2004

The National Response Plan (NRP) implemented in December 2004 incorporates the former Federal Response Plan (FRP), U.S. Government Domestic Terrorism Concept of Operations Plan (CONPLAN), and the Federal Radiological Emergency Response Plan (FREERP). It is a one-source document that details responses to natural and man-made hazards. The term hazard covers true national hazards and disasters. Hazards include forest and urban fires, floods, oil spills, hazardous materials releases, transportation accidents, earthquakes, hurricanes, tornadoes, pandemics, and disruptions to the Nation's energy and information technology infrastructure.

The NRP does not alleviate the need for local and state response plans. Local and state resources, such as police, fire, medical, and public works, are generally titled first responders, as they are the first to arrive and last to leave an incident site. State response plans allow governors to commit resources at the request of local officials when local response resources become exhausted. The federal response plan allows it to render

assistance upon request from a governor when it becomes clear that state capabilities will be insufficient or have been exceeded or exhausted.³

For most states, the largest response asset available to the governor is the state's National Guard, which often becomes part of the pool of first responders. The NRP recognizes that the governor is the Commander-in-Chief (CINC) for state National Guard assets in a Title 32 or SAD status. Governors of states, such as North Carolina, South Carolina, Georgia, and Florida, frequently employ National Guard assets for incidents, such as snow or ice storms and hurricanes. There are many incidents every year where states employ the National Guard and other available assets without requesting federal assistance. If needed, the Governor may mobilize National Guard soldiers who normally serve one weekend a month and two weeks a year in response to a hazard. This part-time force is generally the only such force that can be ordered to full-time SAD by the governor.

Regularly occurring hazards in many states cause Governors to employ the National Guard on a frequent basis, exercising unit Standard Operating Procedures (SOPs) and building interagency relationships. Counter drug operations frequent responses to ice storms and hurricanes form habitual interagency relationships, standardize communications, and exercise state response plans on an annual basis. National Guard assets conduct missions frequently enough to refine and update their plans based on lessons learned or when states make changes to their response procedures. On the contrary, the active component does not routinely exercise its portion of the National Response plan. Some of the past active component responses were the LOS ANGELES Riots in 1992, Hurricane Andrew 1992, Hurricane Floyd in 1999, and

Hurricane Katrina in 2005. In each case the infrequency of response caused the active component to actually exercise its plan only every six or seven years with different units and headquarters elements responded to each hazard. This seldom employment causes a lack of continuity that makes SOP development and forming interagency relationships extremely difficult.

Title 10 - Active Duty

Federal military forces (Army, Navy, Air Force, and Marine Corps) serve based on Title 10 USC, and the President of the United States (POTUS) is the CINC. Since Title 10 of the USC authorizes and regulates active military forces, the thesis refers to those forces as Title 10 or active duty forces.

The President of the United States (POTUS) may also mobilize the National Guard in a federal or Title 10 status. There are six primary subsections of Title 10 USC that allow the POTUS to order National Guard soldiers or units to active duty. Three of these subsections are subject to Posse Comitatus and will be examined in this section while the remaining three fall under the Insurrection Act umbrella which the thesis discusses later.

Title 10 USC subsections 12301(d), 12302, and 12304 authorities allow the POTUS to order the National Guard to an active duty status. This is a federal status as mentioned above, and makes National Guard soldiers subject to Posse Comitatus, restricting their ability to conduct law enforcement. The first section, Title 10, USC, subsection 12301(d) is a Voluntary Order to Active Duty. This allows members of the National Guard to be ordered to active duty voluntarily with their consent and the

consent of the governor. Current examples of this authority are soldiers who volunteered for duty in Operations Iraqi Freedom or Enduring Freedom. The second two authorities are POTUS directed and mandatory calls to active duty. Governors and National Guard soldiers cannot refuse this call.

Title 10, USC, subsection 12302 (Partial Mobilization), and 12304 (Presidential Reserve Call Up) give the POTUS or the secretary concerned the authority to order the National Guard units and soldiers to active duty without the consent of the individual or governor. The Partial Mobilization authority states that in the time of a national emergency declared by the POTUS, the secretary concerned may order any unit and any member to active duty for not more than 24 consecutive months. This authority limits the call up to one million soldiers at any given time, but with the National Guard authorized strength of three hundred and fifty thousand, this should not be an issue. The Presidential Reserve Call Up authority states that when the POTUS determines it necessary to augment the active forces for any operational mission, he may authorize the Secretary of Defense to order any unit and any member to active duty for not more than two hundred and seventy days. This authority limits the call up to two hundred thousand soldiers at any given time.

Title 32 – National Guard

I (state your name) do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and Constitution of the State of North Carolina against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the President of the United States and the Governor of the state of North Carolina, and that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of second lieutenant, in the Army National

Guard of the State of North Carolina upon which I am about to enter, So help me God.⁴

National Guard Oath of Office

The US Constitution authorizes a militia, now known as the National Guard (Army and Air) to serve based on Title 32 USC. The state governor is the primary CINC, but soldiers also swear an allegiance to the POTUS as seen above in an oath of office from the North Carolina Army National Guard. The “State of North Carolina” may be substituted for any state in the union.

National Guard soldiers may perform duty in a number of different pay status. Inactive Duty for Training (IDT) refers to a training status funded by the federal government that units use for individual and collective training. This is commonly known as the “one weekend a month” and a soldier receives a day of pay for each Unit Training Assembly (UTA) or four-hour block of training, not to exceed two UTAs per day. Regulations limit this duty status to training only, thus prohibiting the performance of either state or federal missions. Soldiers who are on Active Duty for Training (ADT), Active Duty for Special Work (ADSW), or are full-time employees of the National Guard are said to be in a Title 32 status where the soldier receives one day of pay for each calendar day employed. The ADT pay status is often referred to as “Annual Training,” but also includes most schools, such as Initial Entry Training (IET), Advanced Individual Training (AIT), or the Officer Basic Course (OBC). A soldier may also perform duty in a State Active Duty (SAD) status that will be discussed below or the Title 10 status already discussed.

The National Guard is the only United States military force that operates across both state and federal responses, leveraging SAD, Full Time National Guard Duty (Title

32), and Active Duty (Title 10).⁵ Again, National Guard soldiers are prohibited from performing duty other than training in an IDT status. The status soldiers may serve in are nearly as diverse as the roles they may perform.

State governors may activate National Guard personnel to a SAD status for homeland security missions. Those personnel activated become state employees while in this status, are governed by state statute and policy, and are paid using state funds. Each state has its own means of determining the soldier's pay while in a SAD status and the financial incentives vary widely. Most states adopt policy similar to the Uniform Code of Military Justice (UCMJ) to govern soldier actions while in this status. Additionally states, such as North Carolina, South Carolina and Georgia have adopted state statutes similar to the Soldiers and Sailors Civil Relief Act and the Uniformed Services Employment and Reemployment Rights Act. These acts protect the soldier's rights for reemployment as well as many other civil and financial protections offered by the federal statutes.

The most important aspect of SAD is the exemption from the Posse Comitatus Act described in detail later. Since SAD is state and not federal status the Posse Comitatus Act does not apply and soldiers are able to perform law enforcement duties. Soldiers may be sworn as deputy sheriffs or state troopers, rendered the ability to enforce law, and have the power to arrest criminals. In North Carolina, most soldiers are not sufficiently trained in law enforcement to perform arrests, but have instructions to detain criminals until local law enforcement can execute the process properly. Some National Guard units contain soldiers who work for other city, county, or state law enforcement agencies. These soldiers enhance the unit's ability to perform law enforcement missions.

SAD may be an excellent status for states to respond to internal homeland security missions, but appears to be a poor status for providing mutual aid to neighboring states. As mentioned above, each state determines its own pay scale for soldiers performing SAD. Some states may have a fixed rate of pay, such as eighty dollars a day where other states may pay soldiers based on the federal pay charts. Under the Emergency Management Assistance Compact (EMAC), described later in this chapter, when State A provides mutual support to State B, State A's soldiers are paid based on State A's policies. State B then reimburses State A for its expenses.⁶ Soldiers of equal rank and time in grade may be working side by side performing the same task for different levels of compensation. Some may interpret this or this may create the perception that one soldier or one state's soldiers are better or more valuable than another which may lead to animosity between individuals or states. State A may only seek mutual support from states that pay the least as a cost-savings initiative. Likewise, the state that pays the least may be reluctant to ask for assistance, as it may not be affordable.

State governors may activate National Guard personnel to a Full-Time National Guard Duty status for homeland security missions under the authority of Title 32, USC, subsection 502(f). One important aspect of this authority is that federal law provides the governor with the ability to place a soldier in a full time duty status under the command and control of the state, but the federal government provides the soldier's pay and allowances. Full-Time National Guard Duty means training or other duty, other than inactive duty for training or annual training, performed by a member of the National Guard with consent from the POTUS or Secretary of Defense.⁷ Specifically Title 32, USC, subsection 502(f), states: "A member of the National Guard may...without his

consent, but with the pay and allowances provided by law...be ordered to perform training or other duty in addition to [inactive duty for training or annual training].”⁸ Some of the other duties this clause refers to include those operations that encompass homeland defense or homeland security.

Another important aspect of this authority is its exemption from the Posse Comitatus Act. As mentioned above, this authority is a federal law, the duty status is federally funded, and the Secretary of Defense may direct action; however, the National Guard forces remain under state, not federal, command and control. This is further described later under the Posse Comitatus Act.

Provisions of Title 32 authority allow the Secretary of Defense to direct homeland security actions. Title 32, USC, subsections 901 and 902 allow the Secretary of Defense to determine critical infrastructure or other assets important to national security. They then authorize the Secretary of Defense to provide funds to state governors to employ the National Guard to protect these assets. This gives the federal government a means to employ the military within the United States for the purposes of carrying out federal directives, but bypass the restrictions of Posse Comitatus Act. The Secretary of Defense used this authority after 11 September 2001 for airport security and for response to Hurricanes Katrina and Rita in August and September 2005.

Analysis of the Title 32 authority demonstrates its effectiveness as a method of mobilizing National Guard units. The advantages to using this authority over SAD is that soldiers from all states are paid based on the federal military pay tables. Since this is a universal pay chart for all active duty and Title 32 soldiers, the discrepancies in pay rates based on state law or statute no longer apply. This duty status also provides maximum

federal protections for the soldiers involved under the Soldiers and Sailors Civil Relief Act and the Uniformed Services Employment and Reemployment Rights Act.⁹ Of course the greatest advantage is to the state budget office as the federal government provides pay, allowances, and death benefits for all National Guard soldiers while in a Title 32 status. (See the table 1 for more details).

State Joint Forces Headquarters

National Guard forces in each state maintain a standing Joint Forces Headquarters (JFHQs). JFHQs-State is a joint operations capable command and control entity in each state. Up until around the year 2004 these headquarters were known as the State Area Command or STARCs. Since most states maintain, command, and control both an Air National Guard, a component of the Air Force and an Army National Guard, these headquarters draw upon both components for manning. This makes the headquarters a joint headquarters as Army soldiers and Air Force airmen work side by side for the good of each state. The senior military official who commands the JFHQs all National Guard forces in a state is the Adjutant General or TAG for short. The TAG can be either an Army National Guard or Air National Guard Major General and is either appointed by the Governor or elected by the people based on each state's law.

The JFHQs are integrated into national consequence management and contingency planning structures.¹⁰ At a state level, they are a supporting headquarters to key state emergency or consequence management authorities and provide a bulk of the manpower and equipment for state level incidents. For national emergencies or natural disasters, the headquarters may provide command and control as a subordinate

Table 1. National Guard Duty Status Matrix			
	State Active Duty	FTNGD (Title 32)	Active Duty (Title 10)
Command and Control	State Governor	State Governor ⁱ	Federal President ⁱⁱ
Who performs duty	The Militia	The Federally-recognized militia (i.e., the National Guard) ⁱⁱⁱ	AC ⁴ , RC and National Guard of US ^{iv}
Where duty performed	CONUS IAW state law	CONUS	Worldwide
Who pays	IAW state law	Federal pay & allowances	Federal pay & allowances
Federal Reimbursement	IAW Stafford Act ^v or Cooperative Agreement ^{vi}	N/A personnel costs paid by Federal funds	N/A personnel costs paid by Federal funds
Tort immunity	IAW state law	FTCA ^{vii}	FTCA ^{vii}
PCA^{viii} Application	No	No	Yes
USERRA^{ix}	No, IAW state law	Yes	Yes
SSCRA^x	No, IAW state law	No	Yes

ⁱ32 USC subsection 502(f)(1)

ⁱⁱUnder Presidential Reserve Call-up (10 USC subsection 12304), partial mobilization (10 USC subsection 12302), or full mobilization (10 USC subsection 12301 (a))

ⁱⁱⁱ10 USC subsections 3062(c) and 8062(c)

^{iv}Active Component

^vStafford Act (42 USC subsection 5121) for disaster-related activities

^{vi}Cooperative agreement if to perform an authorized National Guard function

^{vii}Federal Tort Claims Act (28 USC subsections 2671-2680) [US represents and pays judgments if any]

^{viii}Posse Comitatus Act (18 USC subsection 1385) [SAD & Title 32 not considered part of active military]

^{ix}Uniformed Services Employment and Reemployment Rights Act (38 USC subsections 4301-4333)

^xSoldiers and Sailors Civil Relief Act (50 USC App. subsections 500-548, 560-591)

Source: Col John C. Renaud, *National Guard Homeland Defense White Paper: September 11, 2001, Hurricane Katrina, and Beyond* (Alexandria, VA: National Guard Bureau, 2005), 14-15.

headquarters to a federal organization such as US Northern Command (NORTHCOM). In this event, the JFHQs provides situational awareness information to a national level headquarters before and during any contingency operation and Joint Reception, Staging, and Onward Movement / Integration (JRSOI) for all inbound military forces.¹¹

The National Guard Bureau, states, territories, and the District of Columbia JFHQs maintain Joint Operations Centers (JOCs). The JOC is a standing operations center performing continuous operations twenty-four hours a day and three hundred and sixty-five days a year. The JOC serves as the primary entity for coordinating, facilitating, and synchronizing efforts in support of its state, and information requirements of National Guard Bureau (NGB) and customers at the federal level for natural disasters, National Special Security Events (NSSE), exercises, and domestic activities. Additionally, it may operate as a crisis action planning cell (CAP) at night and on weekends in conjunction with the state staff. It provides early warning and initial command and control through phone and e-mail alert rosters for all National Guard company and higher chains of command, battalion and higher full time administrative officers, and JFHQ-State primary staff.

Emergency Management Assistance Compact

The Emergency Management Assistance Compact (EMAC) became Public Law 104-321 on 19 October 1996 and is administered by The National Emergency Management Association (NEMA). Article 1 is the purpose and authorities of the Emergency Management Assistance Compact (EMAC). The stated purpose:

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency disaster that is duly declared by the Governor of the affected state, whether arising from natural

disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.¹²

Three key principles in the purpose of the EMAC are that it provides for mutual assistance between states in managing any Governor declared emergencies or disasters; it provides for mutual cooperation in emergency exercises, testing, and training; and it provides for use of the National Guard for humanitarian purposes. The requesting state's Governor must declare a state of emergency to initiate the compact.

Of the eight key players in EMAC operations, this thesis focuses on the requesting and responding states.¹³ The requesting state is defined as any EMAC member state that is asking for interstate assistance under the compact.¹⁴ Forty-nine states and the territories of Washington DC, Puerto Rico, and the US Virgin islands are all EMAC members. Their governors must declare a state of emergency to begin the process. A responding or assisting state is any EMAC member state providing personnel or equipment resources to another EMAC member state through the compact.¹⁵ In basic terms, the EMAC process works as shown in figure 1.

There are several benefits and limitations of the EMAC. The greatest benefit of EMAC is it allows for speed of action. The act was signed into law in 1996 and since Hurricane Katrina all fifty-four states and territories are participants. Once a Governor declares the emergency, EMAC allows for a rapid flow of National Guard forces and equipment into an affected state in response. This covers most soldiers who provide

labor, transportation, or command and control, but also accounts for specialized skill sets such as combat lifesavers, doctors, and nurses. Article V of the EMAC stipulates that licenses, certifications, and permits recognized by the Assisting State will be recognized by the receiving State, subject to limitations and conditions prescribed by the governor's executive order.¹⁶ It also has provisions such that those rendering aid are considered agents of the Requesting state for tort liability and immunity purposes. Specifically it states, "No Assisting State or its officers or employees rendering aid are liable on account of any act or omission in good faith."¹⁷ This allows medical professionals to provide attention and treatment to soldiers and civilians without fear of personal liability when acting reasonably and in good faith.

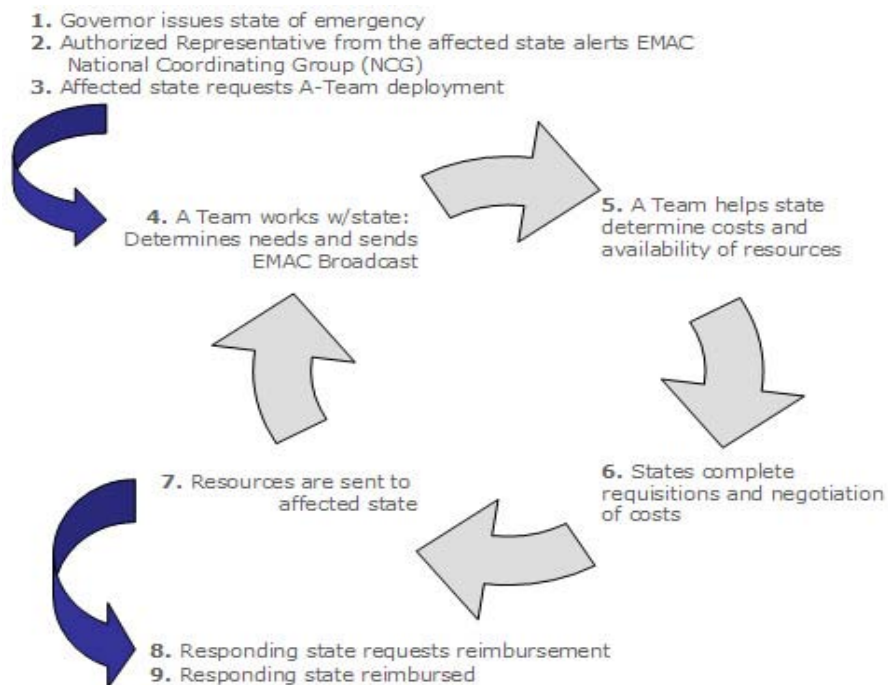


Figure 1. How EMAC works

Source: EMAC, NEMA, How Does EMAC Work [EMAC web page]; available from <http://www.emacweb.org>; Internet; accessed on 27 January 2006.

Soldier pay and benefits can be seen as both a benefit and a limitation. Article VIII, compensation, stipulates that each member state is responsible for the payment of compensation and death benefits of their own members as if they were employed in their own state.¹⁸ The soldier's state (responding state) remains responsible for pay and benefits and for processing paperwork. The state has a vested interest in taking care of the soldier and his family and the soldier or his unit has the comfort of knowing his state's compensation and benefit procedures. It also allows injured soldiers to file unemployment insurance claims and attend medical treatment programs close to home. This article can be seen as a limitation as it relates to fairness of compensation if states respond in a SAD status. As previously discussed under SAD, state laws and policies regarding soldier compensation are not all the same. Two soldiers of the same pay grade and time in service may be performing the same mission, but one may be better compensated. This may create animosity and between soldiers, units, and states that could cause a breakdown in individual or unit moral and possibly in the command structure itself. Soldiers who feel they are unfairly treated have the ability to call their state headquarters and complain. That headquarters, providing it is a responding state has the ability to recall its deployed units at its discretion without consent from the requesting state as mentioned below.

There are several more limitations of the EMAC which may preclude its employment. One such limitation is Article IX reimbursement, which provides reimbursement for expenses related to equipment, but fails to provide reimbursement for compensation outlined in Article VIII.¹⁹ States must either donate the labor to the receiving state or work out an additional agreement unless the POTUS or Secretary of

Defense authorizes a Title 32 status. Ultimately, signing additional, labor related, agreements will slow response times and states without surplus budgets may be reluctant or unable to provide aid without reimbursement.

Articles VIII and IX of the EMAC coupled with its Article IV limitations, may also inadvertently affect command and control of the operation.²⁰ Article IV specifies that assisting emergency forces are under the command and control of their regular leaders and only under the operational control of the receiving state.²¹ Operational control provides full authority to organize commands and forces and to employ those forces as the commander in operational control considers necessary to accomplish its assigned missions; it does not include authoritative direction for logistics or matters of administration, discipline, internal organization, or unit training.²² Under this command relationship, the assisting state has the authority to withdraw or bring home its National Guard forces without consent of the receiving state even if the mission is incomplete. Since the assisting state is compensating its soldiers, it may recall its soldiers due to budgetary constraints or failure to sign supplementary agreements for reimbursement. Either way, this hurts operations in the receiving state when a battalion or even company size element is pulled from the operation.

Article IV also limits the ability to conduct law enforcement. This article authorizes responding soldiers and airmen participating in the compact all the rights, protections, and privileges afforded them while conducting state duty in their home states. The only exception to this is the law enforcement ability of arrest which is the only specified prohibition. The article provides a clause so that a requesting state can authorize this arrest ability through supplemental agreements. These supplemental agreements have

to be signed with each participating state independently. This process does not inhibit response times as the introduction of FAX, scanners, and e-mail allow the documentation to move more quickly than deploying soldiers. An example of this was seen during Hurricane Katrina when Louisiana incorporated a supplemental agreement granting all responding National Guard soldiers the ability to arrest.

National Defense Authorization Act (2004)

The National Defense Authorization Act of 2004 provided for a National Guard officer, a commander in the National Guard, to be dual-hatted for Title 32 [state] and Title 10 [federal] troops, so it works out as a very convenient command and control option for commander of NORTHCOM to use.²³

COL Jay Marts
NORTHCOM's Senior National Guard Advisor

Federal legislative changes in 2004 provided Governors the ability to field a Joint Task Force – State (JTF - State) that can assume tactical control of all military forces (SAD, Title 32, and Title 10) ordered to respond to a contingency operation or disaster. This does not include the US Coast Guard which is currently a federal asset under the Department of Homeland Security.

Prior to the National Defense Authorization Act of 2004 (NDAA-04),²⁴ all Army and Air National Guard personnel ordered to active military service were automatically relieved from duty in the National Guard of their state.²⁵ This relief of duty caused a command and control problem because it prevented the now federalized officer from commanding units or soldiers in a SAD or Title 32 status. Congress recognized this shortcoming and created an exception under section 5-16 of the NDAA-04.²⁶ This exception allows officers of the Army or Air National Guard, called to active duty for the

purpose of commanding a unit composed of both active duty and reserve component personnel, to retain and exercise their Army or Air National Guard state commissions if authorized by the President and the Governor.²⁷ Title 32, USC, subsection 325 (a.2) was further amended to read:

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 such service in both duty statuses.

This authority allows a National Guard Officer to command federal and state assets, and implies that the commander report the status of state assets to the Governor and federal assets to the commander NORTHCOM. This exception was first employed for the G-8 Summit in Georgia in 2004. It was later used for the Democratic and Republican national conventions, and last used for patrolling the Canadian border in operation Winter Freeze from November 2004 to January 2005. The last operation being the most complicated as it employed one National Guard Commander for operations taking place in Vermont, New Hampshire, and New York. The POTUS delegated the authority to conduct these and future military events to the Secretary of Defense as seen in a memorandum titled *National Guard Support for 2004 Democratic and Republican National Conventions and other Appropriate Events*:

Memorandum for the Secretary of Defense: By authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate you the functions and authority of the President contained in subsection 325 of Title 32, United States Code, with respect to activities related to the 2004 Democratic and Republican

National Conventions, and other appropriate events as you determine from time to time in consultation with the Assistant to the President for Homeland Security. You are further authorized and directed to make necessary arrangements to fund this activity from the proper appropriations and to publish this memorandum in the Federal Register. Signed George W. Bush²⁸

Title 32, USC, subsection 315 dated 10 August 1956 already opened the door for an active duty commander to assume tactical control of all military forces (SAD, Title 32, and Title 10) ordered to respond to a contingency operation or disaster. This door was really only partially opened as the sections states: “The Secretary of the Army shall detail commissioned officers of the Regular Army to duty with the Army National Guard of each State...with the permission of the President, an officer so detailed may accept a commission in the Army National Guard...terminable in the President’s discretion.”²⁹ It would appear that this is a reciprocation of subsection 325, and authorized to POTUS to place an active duty commander in charge. Subsection 315 only leaves out one important individual, the State Governor. This subsection grants the Secretary of the Army the ability to detail an active duty officer to the National Guard, but merely detailing an active duty officer to the National Guard is ineffective without cooperation by the receiving State Governor. If the State Governor does not grant the officer a commission in the National Guard, subsection 315 is rendered meaningless. A recent example of this effective veto was when the Governor of Louisiana refused to grant Lieutenant General Honore a commission in the Louisiana Army National Guard so he could command Joint Task Force (JTF) Katrina.

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 not more than \$10,000 or imprisoned not more than two years, or both.³⁰

Posse Comitatus Act, Title 18, USC, Subsection 1385

The current Posse Comitatus Act has changed little since the original act in 1878. The most significant change was the addition of the Air Force in 1956 as it became a separate branch of service within the Department of Defense (DOD) in 1947 and was no longer tied to the Army as the Army Air Corps.

The Posse Comitatus Act appears simple and straightforward, but is extremely controversial. One must first understand the definition of posse comitatus. The Latin phrase means power or force of the county and gives a sheriff the authority to form a group or posse to assist in law enforcement.³¹ The act pertains to all who employ the Army or Air Force in law enforcement and appears to protect the individual soldier, but hold the leadership liable in criminal and civil courts.³² The act itself does not delineate the difference between Army and Army National Guard and the Air Force and Air National Guard. The creation of the Posse Comitatus Act did not include the Navy, Marine Corps, or Coast Guard and therefore the act itself does not apply to those branches of service. DOD Regulation (32 C.F.R. Subsection 213.2, 1992); however, imposes limitations similar to the Posse Comitatus Act on the Navy and Marine Corps.³³

There are a variety of interpretations of the history, meaning and intent of Posse Comitatus. The most common theme appears to be the American citizen's distrust for a large standing army on its soil and a concern that any such army should be under civil control. This theme of distrust began in early England, transferred to the New World, and was found in early documents such as the Articles of Confederation.³⁴ This theme continued in the Constitution that mandated a civilian, the POTUS, act as the commander

and chief of the armed forces. It also granted states a right to form and maintain a Militia, the early name for the current National Guard.

This apex of this distrust theme appeared shortly after the Civil War when President Grant used federal troops from the Union army for law enforcement in states of the former Confederacy. Specifically, the use of federal troops for law enforcement purposes was thought to have impacted election results in several states. As in Iraq and Afghanistan today, the army provided a large presence at political events and polling places to maintain order.³⁵ This was a deviation from the original mission of national defense and Congress responded by passing the Posse Comitatus Act of 1878 that removed the federal army from domestic law enforcement. This freed the army to focus on its primary mission of national defense.

Exceptions to the Posse Comitatus Act have surfaced over its one-hundred and twenty seven year history. The Act does not apply to National Guard soldiers while under the authority of a state governor in a SAD or Title 32 status.³⁶ The Act specifies that Congress has the ability to create statutes or exceptions. The Insurrection Act is a statutory exception to the Posse Comitatus Act which will be examined under its own heading later. A chart listing the exceptions to the Posse Comitatus Act can be found in Appendix B.

Like all laws and policies, the legal system has made official interpretations of the law or policy and its intent, developing precedence. Courts have found that the Posse Comitatus Act does not apply in the following circumstances; extraterritorial conduct of a military force; indirect involvement in civil law enforcement; enforcement of civil law for civilians on a military installation; and commanders; when exercising their inherent

authority to protect their installations from attack or take immediate steps to save lives, prevent human suffering, or mitigate great property damage.³⁷

The Posse Comitatus Act allows the State National Guard to perform law enforcement missions while under the control of the Governor, but prevents the active component executing this type of mission. The Act has stood the test of time, but now some argue that its time has past.³⁸ An argument from some active component scholars focuses on the age of the Act and the populations changing attitude towards a standing army. The National Guard argues that it is already the appropriate size, has been empowered by governors, and is state or federally funded to conduct the law enforcement missions at the direction of the State Governors when required. Both arguments favor one component's position on who should perform the lead role or establish unity of command for missions involving DSCA.

The Insurrection Act

Whenever the President considers the unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, makes it impracticable to enforce the laws of the United States in any state or territory by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any state, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion.³⁹

Title 10, USC Subsection 332

There are several statutory exceptions to the Posse Comitatus Act that allow active duty Title 10 and National Guard Title 32 forces to conduct law enforcement. The most notable exceptions are combined under an umbrella known as the Insurrection Act, Title 10, USC Subsections 331-334. Subsection 331, *Federal Aid for State governments*,

authorizes the POTUS to use federal troops to quell or suppress an insurrection upon receipt of a proper request for assistance from a state legislature or its governor if the legislature cannot be convened.⁴⁰ The decision whether to use Federal or National Guard soldiers remains the President's decision. An insurrection is defined as a rising against civil or political authority, the open and active opposition of a number of persons to the execution of law in a city or state.⁴¹ The authority also stipulates that the Militia (National Guard) may enforce laws, but when a military (federal) force is called into the field for that purpose, its operations must be purely defensive and subordinated to a civil authority. This allows federal forces to participate in law enforcement, but may raise questions about its ability to arrest. The Los Angeles Riots of 1992 were the latest example of this subsection's employment, and as the thesis examines later, there were issues understanding the code and how it applied to the military.

Once a governor requests federal assistance, the POTUS must follow subsection 334, *Proclamation to disperse*.⁴² This mandates that whenever the POTUS considers it necessary to use the National Guard or Federal forces, he shall issue a proclamation identifying that a breakdown in public order has occurred, and orders individuals to disperse in a timely manner.⁴³ The authority does not address or suggest a specific time period from issuance to action, but briefly mentions that the crowd will be granted a reasonable duration. The issuing authority must then determine the reasonable duration. Once it is clear that the order to disperse is not being followed, the POTUS then orders the Secretary of Defense, in consultation with the Attorney General, to quell the insurrection and restore public order. This grants the POTUS the authority to use federal

troops and fulfills the federal government's responsibility to protect states against domestic violence or insurrection.

Subsection 332, *Use of Militia and Armed Forces to Enforce Federal Authority*, delegates Congress' power to the POTUS authorizing him to determine that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States make it impracticable to enforce the laws of the United States and to use federal forces to suppress the rebellion or enforce federal law.⁴⁴ This allows the POTUS to take control of National Guard assets without a Governor's consent and use those or Federal forces to enforce Federal laws or to suppress the rebellion upon issuing a proclamation as per subsection 334.

Subsection 333, *Interference with State and Federal Law*, permits the POTUS to use the armed forces to suppress any insurrection, domestic violence, unlawful combination, or conspiracy, if state or federal law enforcement is hindered within a state.⁴⁵ This subsection authorizes the POTUS to use military forces to enforce state or federal laws even without a request from a State Legislature or Governor. Again, the POTUS has the authority to take control of the state's National Guard and use federal military forces to conduct law enforcement with the issuance of a proclamation as per subsection 334.

Subsection 335 falls under the umbrella of the Insurrection Act and includes Guam and the Virgin Islands as states. For the purposes of this thesis, subsection 335 does not apply as the thesis is only focused on the fifty states and the territory of Washington DC.

The Stafford Act

The Congress hereby finds and declares that (1) because disasters often cause loss of life, human suffering, loss of income, and property loss and damage; and (2) because disasters often disrupt the normal functioning of governments and communities, and adversely affect individuals and families with great severity; special measures, designed to assist the efforts of the affected States in expending the rendering of aid, assistance, and emergency services, and the reconstruction and rehabilitation of devastated areas are necessary.⁴⁶

Title 42, USC Subsection 5121

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (The Stafford Act, Title 42, USC subsection 5121) authorize the POTUS to issue several disaster declarations authorizing federal agencies to provide assistance to states overcome by emergencies or disasters. As the DOD is a federal agency, the Stafford Act provides statutory authority for employing federal military forces for domestic disaster relief. Under the Stafford Act there are three actions the POTUS may take which affect DOD.

The POTUS may issue a major disaster declaration upon the request from a state governor. This is commonly referred to as a “national disaster area.” The governor must first declare a state disaster, execute the state’s emergency response plan, and make a determination that state capabilities are insufficient to respond to the situation without federal assistance. The state’s response plan may be activation of its National Guard or concentrating law enforcement and public works efforts to the affected area. If the disaster is greater than what these assets can manage, the governor makes a general request for support to the federal government. He must include information regarding the resources that the state has committed and certify that the state will comply with the cost

sharing provisions of the Stafford Act.⁴⁷ As stated above, there is not a provision for the declaration of a major disaster without a gubernatorial request.

The POTUS may issue an emergency declaration and the process is similar to that of a major disaster except that the POTUS may make this declaration without a gubernatorial request if primary response responsibility rests with the federal government.⁴⁸ This exception is for a Presidential declaration is based on Title 42, USC subsection 5191.⁴⁹ The POTUS may also choose to use this authority at the governor's request. The process is similar to declaration of a major disaster except that the governor must submit a detailed definition of the type and amount of federal assistance required.

The POTUS may issue an essential or defense emergency declaration at the request of a governor that allows the DOD to perform emergency work for ten days prior to the declaration of a major disaster. The POTUS may use this when he determines it is essential for the preservation of life and property in the immediate aftermath of a disaster that may eventually qualify for a major disaster declaration. This would be necessary in a disaster where immediate response is necessary while states and other federal agencies are gathering the proper paperwork.

The Stafford Act does not exempt military forces from the Posse Comitatus Act. It allows the military to perform operations, such as debris removal and road clearance, search and rescue, emergency medical care and shelter, provisions of food, water and other essential needs. It also allows the military to act as traffic controllers and provide security for facilities used in the relief efforts provided such activities serve a valid military purpose.⁵⁰ The Stafford Act does not authorize the use of active duty military forces to maintain law and order.

In the case of a large hazard that is declared an incident national interest, it is possible for National Guard (Title 32 and SAD) and active duty forces to work side by side where one component has law enforcement authority and the other does not. This does not inhibit the missions as commanders can combine forces where soldiers from the National Guard accompany those from active duty to integrate assets for a limited law enforcement capability and protection. The National Guard soldier remains subordinate to state authorities, but accompanies the active duty soldiers on their mission. The active duty soldier remains subordinate to federal authorities. National Guard units working alongside the 82d Airborne Division exercised this integration concept during Hurricane Katrina. A squad from the active component 82d Airborne Division incorporated a single armed member of the National Guard for protection and to respond to law enforcement requirements.

The primary issue with a joint National Guard and active duty relationship is which component will be responsible for command and control. An active duty commander who has accepted a National Guard commission under Title 32, USC, subsection 315 is able to command and control both active duty and National Guard forces. This creates an exception to the Posse Comitatus Act for that individual as he gives guidance to National Guard forces that conduct law enforcement. This exemption only applies to an active duty individual who has accepted a National Guard commission and does not extend down to brigade, battalion, or company commanders who may be the individuals actually tasking attached National Guard units. While it may be possible to grant National Guard commissions to active component commanders at all levels, it has yet to be attempted. Until then, the subordinate commanders who issue orders to National

Guard soldiers for the purposes of conducting law enforcement are in violation of Posse Comitatus. The active duty commander who has accepted a National Guard commission under Title 32 USC subsection 315 may task an overall National Guard commander with law enforcement missions, but he would have to do so personally or by signed order, it could not be from members of his Joint Task Force staff acting on his behalf. Again, the Posse Comitatus Act would apply to those Joint Task Force staff officers issuing law enforcement missions. This limitation does not apply to National Guard commanders and staff with attached active duty forces as they still have the authority to task state forces for law enforcement and federal forces with other missions which do not violate the Posse Comitatus Act. This factor favors using the National Guard as opposed to active component military assets to achieve unity of command.

Los Angeles Riots

The first night the Guard deployed, I would turn to the battalion commander and say, 'I need you to take troops to this location, we need to seal this, we need a barricade on this road, we need so and so,' and they did it...by the time it was federalized, I couldn't do that any longer because the missions were lost.⁵¹

Brian Lewis, *Flawed Emergency Response to the 1992 Los Angeles Riots*, 2000

The Los Angeles riots began at about 1630 on 29 April 1992 after a disputed court verdict and negative media coverage. A detailed timeline of events is at Appendix A. Understanding the reasons for people rioting is immaterial to the analysis of the military's response, but one must note the press's involvement in shaping national will and response options. Even though the riots began soon after the press announced the Rodney King verdict, the nation viewed the riots beginning at 1850 hours as the national

news media broadcast live footage of an innocent truck driver being taken from his truck and beaten by rioters. The media also reported negative comments made by the mayor and others that insulted and exasperated the rioters' cause and provided the spark that ignited the fire. City and county officials and the state governor then took almost five hours (2100, 29 April 1992) to make the call to the Adjutant General to order the mobilization of two thousand California Army National Guard (CANG) soldiers.⁵²

Almost two thousand National Guard soldiers reported to ten armories located around the city at 0400 hours on 30 April 1992, within seven hours of receiving the telephone call for assistance. CANG soldiers watching the news coverage of the riots were expecting the telephone call for mobilizations and had already prepared uniforms and equipment. This expedited the mobilization process. There were logistical issues with communications, ammunition, and helicopter availability that slowed the mobilization process, but units began to deploy to support local police by 1435 hours. The total time from receipt of mission to boots on the ground was about seventeen hours.⁵³ By 2000 hours, there were about one thousand CANG soldiers deployed on the streets with over one thousand more in reserve ready to deploy. Troops were mobilizing and responding faster than city and county police officials could employ them.

The governor believed the National Guard mobilization process was proceeding too slowly and requested federal or active duty troops. The National Guard met with the city police chief, county sheriff, and county Emergency Operations Center (EOC) officials to determine a time for National Guard deployment. City officials agreed that a deployment time of 1600 hours on 30 April was sufficient as the city and county police officials did not believe they could quell the riots without the use of National Guard

assets. Sheriff's Lieutenant Beene, an EOC team leader stated, "There were about 20,000 police officers and deputies in this county, looking at the LAPD, the deputies, and the other 46 city agencies. Had we managed those resources properly, we would not have needed anybody from the outside to deal with what we had."⁵⁴ The National Guard was about two hours ahead of schedule, but the riots were escalating more quickly than imagined and city officials now decided that reporting at 1600 hours was not soon enough. The National Guard deployment was ahead of the agreed upon schedule, but city officials panicked as riots escalated and the governor requested federal troops at 0100 hours on 1 May 1992.⁵⁵

The POTUS agreed to deploy 4,000 active duty soldiers to LOS ANGELES by 0515 hours. The Presidential Executive Order of 1 May followed the provisions of the Insurrection Act and provided the authority for the active duty (Title 10) forces to restore law and order, which includes law enforcement activities.⁵⁶ By 1630 hours that day, almost twenty-four hours later, Joint Task Force-Los Angeles (JTF-LA) arrived in the greater LOS ANGELES area. By this time there were over 1,200 CANG soldiers deployed in support of the LOS ANGELES police department, 1,600 in support of the LOS ANGELES County Sheriff department, and 2,700 in reserve awaiting missions. CANG soldiers were reporting faster and in greater numbers than city and county officials could employ them.

The first active duty forces began their deployment to the streets of LOS ANGELES at 1900 hours on 2 May 1992, almost forty-three hours after notification. This was a limited deployment with only a battalion of 600 Marines replacing CANG soldiers. By midnight on 2 May 1992, seventy-two hours after riots began, 6,900 CANG soldiers

were patrolling the streets with 2,700 more in reserve. About 600 Marines were patrolling the streets, but most active component Army and Marine Corps personnel remained in staging areas preparing for missions. The LOS ANGELES police chief, Darrell Gates and Governor Wilson chastised the National Guard for not deploying quick enough with rioting escalating and requested federal soldiers to fill the void. They would later regret this decision as it took the National Guard only seventeen hours to initially deploy over 1,000 soldiers to patrol the streets, but it took the active component over forty-three hours to deploy just 600 marines. The active duty contingent patrolling the streets comprised only one-tenth of the total military forces. The CANG provided a preponderance or nine-tenths of the forces.

Police reports suggest the riots fizzled out after the first 36 hours, or 36 hours prior to arrival of active duty forces. Elements contributing to quelling the riots were the presence of almost 3,000 National Guard soldiers with an additional 2,700 in reserve, an increased police presence from California Highway Patrol, and tired looters. MG James Delk was the deputy adjutant general and field commander for all CANG National Guard soldiers. Delk states, “The mission had been accomplished before [active component forces] arrived.”⁵⁷

The National Guard was truly a first responder and its presence on the streets of L.A forced the culmination of the riots. These rapid response times are attributed to the initiative of its soldiers, leadership, and an ownership in the local community. It took only seven hours to assemble almost 2,000 National Guard soldiers in local L.A armories. Schnaubelt states, “At least several hundred more troops whose units had not yet been mobilized, such as those of the division’s 2d Brigade (located 100 miles south), reported

to their armories on their own initiative after viewing news reports of the riots.”⁵⁸ Many National Guard soldiers belong to the unit that occupies the armories closest to their homes. Through television and radio, they know when these communities are in trouble and are generally calling or stopping by the armory to volunteer their assistance.⁵⁹ Many soldiers maintain grab bags containing uniforms and equipment for emergencies and can mobilize quickly. According to Delk, CANG soldiers were showing up at the armories prior to being called and officers canceled business and flew back from New York and Canada based on the news reports.⁶⁰ These soldiers have a vested interest in their communities where active duty soldiers generally have no ties to the community. The speed of deployment can be linked to this vested interest.

Despite the initial controversy over the speed of the National Guard deployment, police and local communities were grateful for its presence. Delk states, “By the fourth day after troops had deployed, the crime rate had dropped below its usual level by more than half.”⁶¹ Others citizens thanked the National Guard as they felt the city was safer than it had ever been. Store and restaurant owners would not let soldiers in uniform pay for food or drink they tried to buy while on duty.

The California National Guard understood the need for unity of command and once mobilized, the field commander, MG James Delk, commanded all CANG soldiers. Unfortunately for Delk, law enforcement agencies did not yet understand the nature or importance of unity of command. There was not any one single law enforcement agency or individual in charge for coordinating support missions. This lack of centralized organization actually worked to Delk’s advantage as this forced the National Guard to operate in a decentralized manner supporting individual police precincts. Soldiers

received support from and reported their status to their parent units that reported to the state headquarters, but once assigned to precinct, took direction or received missions from local law enforcement authorities. Schnaubelt states, “During the night of 1 May, for example, Colonel Richard Metcalf, the 2d Brigade commander, personally visited the three police stations in his area of operations to look for business for his soldiers. Other brigade and battalion commanders coordinated directly with their law enforcement counterparts to explain military capabilities and identify support requirements.”⁶² This decentralized execution decreased the overall response times, but still allowed the National Guard to command and control its soldiers. By its definition, emergency generally implies a requirement for a rapid response. Commanders maintained contact with their soldiers and received reports using telephones and radios. All commanders took direction from and reported status daily to MG Delk who in turn reported to the California Adjutant General.

CANG forces were federalized to establish and maintain unity of command. Once federalized, active duty, National Guard, and civilian leadership understood the need for unity of command. Governor Wilson stated, “If there were going to be federal troops involved, it simply made sense from the standpoint of command and control that there be a single command.”⁶³ Once CANG forces were federalized, Governor Wilson realized he would lose control of the State’s National Guard, but made this decision after discussing the issue with Chairman of the Joint Chiefs of Staff, General Colin Powell. Once JTF-LA was mobilized, it also followed the same logic in developing unity of command. A Marine battalion, the only active duty forces deployed to the streets, was placed under the control of a National Guard Brigade. This showed good faith in Guard leadership, but

also alleviated redundancy of effort in establishing another brigade headquarters manage this battalion and coordinate its area of responsibility.

Even though military and civilian leadership understood and recognized the need for unity of command, it appears that National Guard commanders understood mission requirements, constraints, and interagency operations better than the active duty commanders. There were three major flaws with the active duty commander's approach. First, the commander failed to understand his orders and federal law. Posse Comitatus normally prevents active duty soldiers from conducting law enforcement missions, but the active duty soldiers deployed and National Guard soldiers were federalized under the provisions of the Insurrection Act. Simply stated, this act nullifies Posse Comitatus as its primary purpose is to restore law and order. Additionally, the active duty commander received an order from the POTUS to restore law and order, but felt constrained by the Posse Comitatus Act. This misunderstanding prevented the National Guard from conducting many of the same missions they had been performing for almost two days. An After Action Review (AAR) from the CANG stated, "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% were approved."⁶⁴ This diminished approval rate was not just due to a lack of understanding applicable federal laws, but also due to a very bureaucratic and centralized chain of command which was the second flaw in the active duty military approach to the problem at hand.

Due to either a lack of situational understanding or fear of breaking federal law, active duty commanders took a very centralized approach to decision making and subordinate unit control. The military refers to this leadership style as micromanagement.

The lack of understanding the applicability of the Posse Comitatus Act was the primary issue, but it was the second and third order affects that prevented mission accomplishment. The Posse Comitatus Act holds commanders responsible for infractions. Its inappropriate application and fear of its repercussions was the primary reason the JTF-LA commander and his staff personally approved all missions. For the law enforcement community, this was a new and inefficient way to conduct operations since the National Guard had performed the same mission in a decentralized fashion for the previous two days. National Guard commanders trusted subordinate commanders, battalion and brigade, to make key decisions, employ, and commit their units. National Guard leadership realized that there were too many missions and requirements to be micromanaged at the field commander level and to facilitate a rapid response, delegated decisions to subordinates. Centralized processing slowed the decision process and many requests were denied or lost. Delk states,

It [JTF-LA] required each request for assistance to be subjected to a nebulous test to determine whether the request assignment constituted a law enforcement or a military function. As a result, after the federalization on May 1, 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.⁶⁵

The third and final flaw in interagency operations was the lack of understanding the law enforcement areas of responsibility (AORs). Local first responders have AORs or police precincts to divide a city into a grid system where some type of law enforcement agency is responsible for every square mile of ground. The National Guard leadership understood the first responder system and their role as a supporting agency and met with law enforcement officials in order to assign AORs based on existing police precincts.

This method allowed one precinct commander to interface with one member of the military. Once JTF-LA took command of all military forces, it redrew the military AORs to correspond to major highways or interstates. This new system caused confusion, as the precinct commander had to learn the new military boundaries and sometimes had to deal with two or three military commanders. This system of operations makes one question if the military was supporting the police or the police were supporting the military. Either way, the failure to overlay the military operational control measures over existing control measures slowed and confused operations. While this failure did negatively effect operations, its negative impact was diminished by the fact that JTF-LA was denying most mission requests and by the fact that the rioting had ended almost two days earlier.

Unity of command allowed all military forces to employ the same Rules of Engagement (ROE). ROE were broken down into five levels ranging from soldiers slinging their weapons without magazines and mandating an officer presence for all patrols or missions to carrying loaded weapons at the ready position without an officer present. There appears to have been some issues with the appropriate ROE level as National Guard commanders were worried about soldier protection and were more willing to risk an accidental misfire rather than the loss of a soldier, a decentralized approach. Two days later, the active duty commanders took a much more conservative approach, requiring weapons to be carried at sling arms, and requiring the presence of an officer on every patrol. The command appeared to be more concerned about an accidental discharge or a civilian causality than soldier protection. It is unimportant that each component took different approaches in ROE levels of protection. The important point is that both state and federal commanders understood the ROE well enough to argue about

which ROE posture level to apply, and once a decision was made by the senior commander, both components attempted to follow them.

The last issue to address is the return to independent law enforcement operations after the incident subsides. Immediately after a major incident the National Guard first responders have boots on the ground conducting operations. If there are insufficient state assets, governors may request active duty forces. When active duty forces are involved, it may bring a task force headquarters that tries to take over operations. For local first responder agencies, this means that there is a new military leader, standards, and methods of operations. This only adds to the confusion of a large-scale incident. By the time civilian first responder agencies learn these new procedures or in the case of the LOS ANGELES Riots, get fed up with them, the incident begins to subside and active duty forces depart. During the LOS ANGELES Riots, local first responders became fed up with the active component command structure as it denied most of the missions previously approved by National Guard commanders. The active duty commander failed to understand the federal laws which governed his actions. He believed he was restricted by Posse Comitatus and may not have understood that the President invoked the Insurrection Act. The military became less responsive with active duty forces present. Active duty forces were on the streets of L.A for less than six days before they began to depart and the CANG forces reverted to state control. First responders had to regain contact with the CANG chain of command and revert to previous operational methods. Normal day-to-day city law enforcement operations had not been re-established as the CANG spent almost eighteen more days assisting law enforcement agencies ensuring the riots were truly over and there would not be a flare up. So again, the state and local

agencies the federal government was supposed to be supporting had to learn another system and deal with another set of military leaders. The CANG departed once local law enforcement agencies were able to operate independently.

Military leadership successfully established and enforced a unity of command for all military forces during the LOS ANGELES Riots. There was no argument from state or federal civilian or military officials that successful military operations require unity of command. Military operations during the riots maintained constant unity of command either fully National Guard in a state status for the first two and last eighteen days or in a federal status for middle six days. The argument above supports unity of command, but more importantly it demonstrates that the National Guard response was more successful than the active duty response. This may be due to several contributing factors such as the fact that the National Guard frequently performs state missions, works with law enforcement regularly through counter-drug operations, or because many of the soldiers are from the community in trouble. All of these reasons contribute to an understanding that the National Guard is a supporting agency during state missions and allows it to provide aid, not try to direct operations.

Hurricane Katrina

The would be first responders at the state and local level were themselves victims in very large numbers, we had a situation that was distinctly different than in past events of this type.⁶⁶

Donald Rumsfeld, Some Urge Greater Use
of Troops in Major Disasters

Hurricane Katrina was a category three storm when it made landfall on 29 August 2005, but its destruction for the Gulf Coast and a city with an elevation lower than sea

level created a disaster that local officials could not manage. Experienced Louisiana and Mississippi State officials responded to predictions that Katrina would make landfall in their states and overwhelm local first responders. Louisiana declared a state of emergency on 26 August and made plans to activate over four thousand National Guard first responders twenty-four hours prior to landfall. Mississippi did the same on 27 August, but with plans of activating only two thousand and five hundred.⁶⁷ Both governors requested federal assistance through provisions of the Stafford Act. President Bush declared Louisiana a federal disaster area on 27 August and Northern Command (NORTHCOM) began to deploy forward elements of what was to become Joint Task Force-Katrina (JTF-Katrina). Like the LOS ANGELES Riots, this was an explosive situation that took officials by surprise dictating mostly a reactionary response.

After 11 September 2001, the Department of Defense (DOD) created a new military Combatant Command (COCOM) titled Northern Command (NORTHCOM). Prior to the creation of NORTHCOM, the US military did not have any one unified command focused on the continental United States. This command's area of responsibility comprises the continental United States and Alaska as well as the air, land, and sea approaches within 500 miles of its borders. It also has responsibility for Canada, Cuba, Mexico, Puerto Rico, and the Virgin Islands.⁶⁸ Hawaii and portions of Alaska belong to the Pacific Command's (PACOM) area of responsibility. NORTHCOM's mission is to: 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 POTUS or Secretary of Defense, provide military assistance to civil authorities including incidence management operations.⁶⁹ The

command does not have authority over the United States Coast Guard (USCG) or National Guard forces in a State Active Duty or Title 32 status. If the POTUS or Secretary of Defense federalizes the National Guard (Title 10 status), then NORTHCOM becomes the senior combatant command and as discussed earlier, Posse Comitatus applies to all soldiers involved.

The federal military's response to Hurricane Katrina began at NORTHCOM one week prior to landfall on 29 August 2005 with warning orders to appropriate emergency response personnel in the states that lay in the storm's predicted path. On this list of personnel was the Senior Army Advisor (Guard) who was the active duty liaison officer to the State Adjutant General. These warning orders were simply verbal warnings to begin the planning process, as physical actions were limited prior to the declaration of an Incident of National Significance.⁷⁰ On Monday 29 August 2005 the POTUS issued a federal declaration of catastrophic emergency and JTF-Katrina was officially activated.⁷¹ On Tuesday 30 August 2005, Secretary of Homeland Security Chertoff declared Hurricane Katrina an Incident of National Significance in response to the levee breaches and the flooding of New Orleans.

Both federal and state military forces began planning based on Hurricane Katrina's predicted path, but only state forces were on the ground prior to landfall. The State's Joint Forces Headquarters (JFHQs), emergency operations centers, and over six thousand and five hundred National Guard soldiers were activated twenty-four hours prior to the anticipated landfall to begin preparations. The priority of effort was placed on life saving operations such as search and rescue. Other local and state agencies were responsible for law enforcement and shelter evacuation requirements. This decision

turned out to be an oversight by state and National Guard officials as the lack of law enforcement and humanitarian assistance in storm shelters at the New Orleans convention center and super dome received national media coverage. State officials used EMAC and began requesting assets from other states while on 1 September, NORTHCOM sent out alerts for active duty units to begin the mobilization process. The Governor had not requested active duty military forces. Despite the fact that JTF-Katrina was operational and may have had situational awareness, it had limited assets to command or employ.

By 30 August, the day after landfall, Louisiana and Mississippi had 5,982 and 3,838 National Guard Soldiers, respectively, on the ground. By 1 September when NORTHCOM alerted federal units, that number rose to 8,359 and 6,684 National Guard soldiers. By 2 September with EMAC fully operational, the number of out of state National Guard Soldiers outnumbered those from within Louisiana and Mississippi. Table 2 contains detailed numbers on in versus out of state and totals of National Guard personnel by state. By the second of September there were limited federal military assets on the ground that performed critical search and rescue missions. The numbers of mobilized National Guard soldiers demonstrated its first response abilities.

About 5,200 Federal soldiers arrived on 5 September, eight days after Hurricane Katrina made landfall. At this time there were almost 38,000 National Guard soldiers on the ground between both states. The nationally broadcast issues that took place at the New Orleans convention center and super dome had been repaired prior to arrival of active duty forces.⁷² Since active duty forces could not perform law enforcement, they were limited to search and rescue operations. Upon their arrival eight days after landfall, their primary mission consisted mostly of locating and processing remains.

Table 2. Activated National Guard Personnel Serving in Louisiana and Mississippi

Date	Number Serving in Louisiana			Number Serving in Mississippi		
	Louisiana National Guard Personnel	National Guard Personnel from Other States	Total	Mississippi National Guard Personnel	National Guard Personnel from Other States	Total
Aug. 30	5,804	178	5,982	3,822	16	3,838
Aug. 31	5,804	663	6,467	3,822	1,149	4,971
Sept. 1	5,804	2,555	8,359	3,823	2,861	6,684
Sept. 2	6,779	5,445	12,224	3,823	3,719	7,542
Sept. 3	6,779	10,635	17,432	3,823	6,314	10,137
Sept. 4	6,779	12,404	19,183	4,017	9,399	13,416
Sept. 5	6,779	16,162	22,941	4,017	10,999	15,016
Sept. 6	6,779	20,510	27,289	4,023	11,095	15,118
Sept. 7	6,779	22,589	29,368	4,023	11,388	15,411
Sept. 8	6,779	23,476	30,255	4,023	11,506	15,529

Source: Steve Bowman and others, “Hurricane Katrina DoD Disaster Response.” RL33095 (Washington, D.C.: Congressional Research Service Report for Congress, October 2005), 6.

The Department of Defense’s most rapid response force is currently the National Guard, which the National Response Plan has characterized as a first responder. Response times and numbers of personnel deployed during Hurricane Katrina demonstrate that the National Guard lived up to this title. The response also demonstrated the effectiveness of the EMAC. National Guard Bureau and EMAC officials were able to deploy over 26,000 National Guard soldiers and equipment from across the country to the effected area in the same time it took federal officials to deploy 5,200.⁷³

The National Guard is not just a first responder, but also the last to leave. The Joint Forces Headquarters (JFHQs) begins preparations and command and control operations at the first sign of a hazard. With proper notification, this headquarters may employ soldiers to preempt or get a lead on the disaster. As explained earlier, under the provisions of the Stafford Act, the POTUS may authorize DOD to perform emergency work essential for the preservation of life and property for no longer than ten days. Following this logic, the active duty forces remain for ten days and then leave. MAJ General Bill Caldwell, the commander of the 82d Airborne division understood this constraint when he stated, “It appeared the search for city residents who still want assistance could be completed with 10 days.”⁷⁴ For the deployment timeline, this means operations would end by 15 September 2005 for active duty units. Its counterpart, the 35th Infantry Division, Kansas Army National Guard, ended operations on 8 October 2005. The active component will establish a headquarters, take over operations, and depart before most understand the new procedures. This will only create confusion and slow the recovery effort. The Stafford Act does not constrain National Guard units and the JFHQs who will remain on duty until released by the state governor.

Changing command, control, and liaison headquarters creates confusion for all soldiers and agencies involved. The JFHQs integrated with federal response agencies, nongovernmental agencies (NGO)s, state, and local agencies. The JFHQs achieved this with liaison officers (LNOs) at local and state levels. As active duty units arrived at the disaster site and purposely or inadvertently attempted to take control, it created confusion for all first responders and slowed the disaster relief process. Many relief agencies were not sure which military component they should communicate with, state or federal. Most

civilian agencies associate soldiers and the military by the uniform they wear. Since the National Guard and active component both wear the same uniform, it was easy to assume they were one unit. Since LTG Honore appeared on CNN as the active duty military official in charge, first responders assumed he was in charge of all military forces. In reality, the actual chain of command is depicted in figure 2, which leaves the governor and adjutant general in charge of the National Guard and LTG Honore was only in charge of active duty (Title 10) personnel. This lack of unity of command slowed the recovery process as missions were being sent to active duty forces that should have gone to National Guard forces. First responders assumed JTF Katrina was in charge of all military operations, not merely search and rescue operations in two parishes. This confusion was noted in an 82d Airborne After Action Review (AAR) which states “TF AA [All American] was frequently tasked to accomplish missions that should have been tasked to Title 32 forces.”⁷⁵ Again, the confusion was multiplied with the departure of the active duty headquarters and reverting command and control back to National Guard authorities. This did not appear to be the case in Mississippi where the JFHQ-State was in charge of all military operations and unlike Louisiana; it did not have to compete for perceived control.

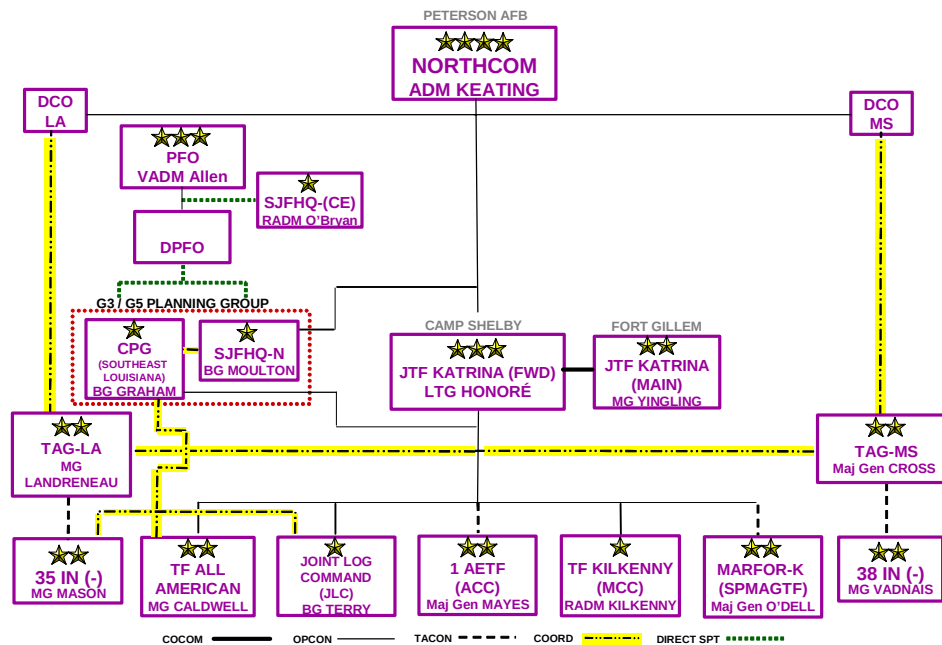


Figure 2. JTF Katrina Command and Control Relationships

Source: LTG Russel Honore and Barney Barnhill, "Joint Task Force Katrina: See First – Understand First – Act First" (White paper, 1st Army, Ft. Gordon, GA, March 2006), 6.

When military forces fail to delineate unique AORs, command and control challenges become more confusing. It is imperative to establish unity of command when multiple military units are assigned the same AORs. The Louisiana National Guard maintained command and control of its soldiers in New Orleans throughout the operation. With EMAC in place, more soldiers were entering Louisiana than the command structure could handle. This prompted the National Guard Bureau to send a division headquarters to aid in the command and control mission. The 35th Infantry Division, named Task Force Santa Fe, was assigned responsibility for New Orleans and its eleven parishes. It was to manage all military operations in Orleans, St. Bernard, Terrabone, Plaquemines, St. Charles, LaFourche, St. John, Jefferson, St. Tammany, Washington, and Tangipahoa

parishes. Military operations consist of all actions that Department of Defense assets may take in the area. This includes missions such as search and rescue, law enforcement, and humanitarian assistance. The Adjutant General assigned the 35th Division responsibility for all of New Orleans, but JTF-Katrina and the 82d Airborne Division occupied and conducted operations in the widely televised Orleans and St. Tammany parishes.⁷⁶

Additionally, the Louisiana National Guard would not relinquish control of its forces operating in these parishes. There were three separate command elements with ground forces operating in these two parishes. They attempted to coordinate at the lowest levels, but the lack of unity of command created confusion. The confusion was greater for the interagency operators who did not understand the fact that no single military commander was in charge. As mentioned earlier, this confusion only slows down the time sensitive search and rescue operations and also creates animosity where other agencies do not want to ask the military for assistance.

There appear to have been issues with active duty commanders as well as other federal agencies failing to understand DOD's supporting role in disaster response missions. The 82d Airborne Division After Action Review (AAR) demonstrates this lack of understanding with two specific examples. Each example has unseen secondary and tertiary effects. According to the National Response Plan, the Department of Defense is a supporting agency in all homeland security missions. For both active duty and in the National Guard military officers, it is sometime hard to accept the fact that the military with all its great leadership is not always the lead agency in charge of all operations. For this disaster, FEMA was the lead agency and DOD was a supporting effort. Confusion about lead agency responsibilities surfaced once JTF Katrina began directing operations.

The first example comes from the Division Artillery (DIVARTY) AAR. The DIVARTY is a major command and an active duty first responder within the 82d Airborne Division. It quotes unnamed FEMA representatives as saying, “DOD is in charge now, FEMA doesn’t have a dog in this fight.”⁷⁷ This misunderstanding within federal agencies creates animosity and slows the response effort for all involved. This quibbling and delayed action could have cost lives. Similar interagency issues did not appear in AARs from National Guard units.

The second example is also seen in the DIVARTY AAR where some key leaders within the division believed they were the lead agency and in charge of all operations in their assigned parishes or AORs within New Orleans. The DIVARTY established a Joint Interagency Operations Center (JIOC) to command and control all operations within their AOR. Active component military forces commonly employ this procedure in Iraq where they are the lead agency for security and rebuilding within their respective AOR. The AAR states, “Based on the fact that FEMA has a large part in all facets of this operation, a FEMA representative should be wherever the JIOC function is established.”⁷⁸ The AAR implies that FEMA should send a liaison officer to the division, the supporting agency, not that the division should send a liaison the lead agency. These misperceptions led to interagency animosity.

The DIVARTY AAR also discussed its need for State representation within the JIOC. It states, “Ensure that Operations Centers of this magnitude have permanent representatives from the State government. This will expedite the facilitation of requests for action and the flow of information.”⁷⁹ Again, the command recommended that other agencies such as FEMA and the State should send representatives to the active duty run

headquarters or JIOC, implying a lead role. Similar issues did not appear in AARs from National Guard units as the JFHQs command and controlled all National Guard Units in Louisiana and had representatives in the State's Emergency Operations Center (EOC). Different states use different names, but the EOC generally consists of representatives from all state, federal, and NGOs involved in the response. The structure and function is similar to the JIOC, but the National Guard is one of the many supporting agencies in the operations center which the Emergency Management office operates. It is not a lead agency. The DIVARTY could have sent representatives to the county or state EOCs as a supporting agency rather than attempt to establish their own JIOC as a lead agency with an expectation that joint and interagency officials should support their operations.

It is difficult to command and control military forces when the ability to communicate becomes hampered. Both the active component and reserve component AARs mention the inability to communicate with other state and federal agencies and even their own units. The extended distances, buildings, and multiple radios types hampered communications. Radios work line of sight so concrete and steel buildings disrupt connectivity. This appears to have been more of an issue for the active component than the National Guard as the latter worked with state emergency management officials to develop SOPs and purchase compatible equipment with repeaters in an attempt to mitigate these issues.

The FM radio is the primary tactical communications platform for both active component and state military forces. As the National Guard is one of the few organizations within a state that use this type of radio, it must develop and manage a list of available frequencies. In North Carolina the frequency manager works in the office

that oversees military support to civil authorities. This allows the frequency manager to de-conflict frequencies within a state and develop a SOI assigning frequencies to subordinate units. As the DIVARTY began operations it found that its Ft Bragg SOI was not functional in New Orleans. Other units and agencies were already using the same frequencies. This could have been alleviated if JTF-Katrina had contacted Louisiana's JFHQs for available frequencies, or if all DOD assets in the state reported to the JFHQs establishing a unity of command.

Satellite telephones proved to be an ineffective means of communications. Both military organizations attempted to use satellite telephones, which were an extremely effective means of communication in Iraq. Unfortunately the weather and cloud cover that generally accompanies a hurricane prevent effective use, which was noted in both organizations AARs. Most state first responder agencies already have communications systems such as cellular telephones or radio networks established that preclude the need for satellite telephones. Additionally the expense of satellite telephones makes this cost prohibitive as disasters may only require occasional use.

COBRA radios and cellular telephones were the primary long-range or regional communications tools. The COBRA radio is a type of 800 or 900 megahertz radio system that first responders including the National Guard used in both Louisiana and Mississippi, but in limited numbers. The 35th Division AAR states, "During the initial phase the only communication capabilities were the 800/900 megahertz radios, and FM at the tactical level."⁸⁰ These radios were supplied by organizations within the state of Louisiana. The 82d Airborne Division AARs noted the need to have more of this type of radio for

homeland security missions so they can interface with local authorities. The flaw with this logic is that all first responder agencies do not employ the same radios.

First responder organizations such as fire, police, and rescue maintain communications systems to perform their mission. Unfortunately, these communications systems are sometimes only effective locally and different localities use different systems. Even different states may use different systems i.e. the North Carolina Highway Patrol uses the COBRA radios system with repeaters throughout the state which is not compatible with Virginia's system. This meant that even the COBRA radio had a limited use. The cellular telephone was the only universal communications system for conducting operations.

Both military organizations relied on cellular telephones for communications. Use of the cellular telephone communications system appears to have favored the National Guard as telephone rosters containing key individuals were developed prior to the hurricane. Part of Louisiana's SOP entailed organizing a telephone book for all state owned National Guard land line and cellular telephones. This phone book also included other state agencies, the state EOC, and regional EOCs. Since JTF-Katrina or the 82d Airborne Division did not immediately interface with the JFHQs, they were forced to send Liaison Officers to all the local agencies within their AOR to generate their own telephone book. This took additional time, personnel assets, and delayed their responsiveness. This communications problem could have been easily rectified if the active duty forces went to the 35th Division, the JFHQs, or the EOC rather than expecting every agency to come to them. Again, this highlights the issue of

understanding a lead versus supporting role and could have been eliminated by using the JFHQs to establish unity of command.

The last major issue to examine is the legality of the Rules of Engagement (ROE). Both Louisiana and Mississippi National Guard JFHQs had SOPs for a response to natural or manmade disaster including cards or pamphlets explaining the Rules of Engagement for use of force. These ROEs had been screened by attorneys for legitimacy, approved by the Adjutant Generals, and signed by the Governors. JTF-Katrina generated their own ROE as active duty forces were deploying to New Orleans.⁸¹ There was no evidence demonstrating that JTF-KATRINA coordinated these ROE with state officials or that they were approved by the state's governor who by the National Response Plan is the senior official responsible for managing a disaster within his or her state. The active duty forces operated within the borders of the state, generated their own ROE, and did not allow the senior civilian official in the state to approve their actions. This violation of state sovereignty demonstrated the desire to be the lead agency. Similar circumstances almost 150 years ago generated a need for state protection resulting in the Posse Comitatus Act.

Many of the issues mentioned in the previous paragraphs stem from issues with command and control authority and the supported versus lead agency roles. The issues mentioned in the active duty AARs demonstrate a lack of understanding of homeland security missions and its role in these missions. These same issues were not found in National Guard AARs. The issues also seemed to be unique to New Orleans where the JTF-Katrina HQs, the 82d Airborne Division HQs, and 1st Cavalry HQs were based. It appears that bureaucracy and the desire to be the lead agency were the root causes of

many of the interagency and unity of command issues. Similar issues were not found in AARs from Mississippi where smaller Active duty units participated in rescue operations. These units did not seem to care who was in charge or who received credit, but were only interested in using their skills and equipment to help save American lives. Mississippi maintained unity of command employing a subordinate National Guard division to command all military forces within its state.

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

Conclusion

The L.A riots demonstrated the understanding and need for unity of command during military operations. Top military and state leaders agreed to federalize the California Army National Guard in order to create one unified command to battle the riots. It was also demonstrated that this process of federalization or turning the National Guard into active duty soldiers was less responsive than maintaining state military leadership.

Hurricane Katrina demonstrated the failures in establishing unity of command during military operations. Top military and civilian leaders in Louisiana disagreed as to which military component should be in command of operations and therefore, there was no military commander in charge. Approximately twenty-eight thousand National Guard soldiers were employed by the Governor and led by Louisiana Adjutant General while about four thousand active duty soldiers were employed by the POTUS and led by an active duty general. Since both components maintained areas of responsibility in identical parishes within New Orleans there was confusion, competition, duplication of effort, and a delayed response in military and civilian law enforcement channels. Since Congress is still reviewing Hurricane Katrina and final reports have not been released, there is insufficient evidence available to state with certainty that these issues may have resulted in a greater loss of life; however, it is not unreasonable to surmise that they could have grave results if not corrected for future operations.

This thesis began with the question, Should the Department of Defense use National Guard assets to establish unity of command for missions involving DSCA? After careful examination of law, policy, and several homeland security missions, the thesis finds that Department of Defense should use National Guard assets to establish unity of command. The thesis demonstrates that the National Guard is a true first responder and has provided a preponderance of military forces for CONUS based homeland security missions over the last fifteen years. It has also demonstrated that new policies and procedures, such as EMAC, have provided for interstate cooperation and a more responsive National Guard for future missions.

Homeland security missions within the United States involve Military Assistance to Civil Authorities (MACA) or Military Support to Civil Authorities (MSCA). These missions whether proactive or reactive, generally entail some degree of law enforcement. Since current federal laws, minus the Insurrection Act, prevent active duty involvement in these types of operations, it makes sense to utilize the National Guard.

Planned homeland security missions to date have all involved law enforcement with federal funds. These missions began with critical infrastructure security under Operation Noble Eagle following the terrorist attacks on 11 September 2001 and progressed to the latest border security missions in Vermont, New Hampshire, and New York. Posse Comitatus prevents direct involvement by active duty forces, but does not hinder the National Guard. An active duty Task Force Headquarters could command and control these missions, but that would involve commanding National Guard soldiers conducting law enforcement. This also violates Posse Comitatus. Since this law does not pertain to the National Guard in a SAD or Title 32 status, the National Guard may

conduct law enforcement while commanding and controlling active duty forces who indirectly support these efforts through medical augmentation or other operations not directly involved in law enforcement. Proactive homeland security missions such as this favor if not dictate the use of National Guard assets to achieve unity of command.

The NRP governs response levels for reactive homeland security missions. Response begins with first responders at the local level, followed by the state level, and finally the federal level. Governors employ the National Guard with state funds in a State Active Duty (SAD) status as first responders for the state. They become the first military organization to respond and will generally be the last military organization to depart. Hurricane Katrina and the L.A Riots demonstrated that changing procedures and command and control one to two times during an already confusing situation is detrimental to mission accomplishment. It is sometimes difficult for military personnel to know how different units operate. It becomes even more difficult for other agencies to understand. It is often said, "That it is easier to spray for termites than tear down the entire home and build a new one on its foundation." By analogy, it seems more practical for DOD to leave the National Guard JFHQ-State in command and augment it with a liaison officer from the active component than to replace the existing command structure.

Emergency response missions generally require the request of a state governor and a federal response under the Stafford Act. The Stafford Act does not exempt active duty forces from Posse Comitatus. This again questions the authority of an active duty headquarters to command and control a task force containing SAD, Title 32, and Title 10 soldiers who may need to perform law enforcement missions. By placing an active duty commander in charge of all operations, that commander risks either violating the Posse

Comitatus Act or simply not providing direct assistance to law enforcement agencies. Again, this situation may be alleviated if DOD uses National Guard assets to establish unity of command.

EMAC allows the National Guard to provide rapid assistance to participating states if overwhelmed by a homeland security mission. Hurricane Katrina demonstrated the ability of EMAC and the National Guard to mass military forces in an affected area rapidly. National Guard forces including two division headquarters deployed to the Gulf Coast quicker than JTF-Katrina and its subordinate units. Even with the current world events and deployments for both components, the National Guard has the ability to mobilize and deploy forces quicker than the active component. Hurricane Katrina and the LOS ANGELES riots demonstrated that in homeland security missions, the National Guard from one or multiple states made up a preponderance of the military forces. The active component contributed about ten percent of the ground forces in both operations. Since the National Guard makes up a majority of the military forces responding, it makes sense for DOD to use it to establish unity of command.

Recommendations

DOD should use National Guard JFHQs and Adjutant Generals to establish unity of command within state borders. This maintains state sovereignty, allows for a stable command and control system, and provides the same points of contact for interagency operations. When active duty units are committed, DOD should use Title 32, USC subsection 325 (a.2) to allow the Adjutant General to command both components while reporting to NORTHCOM and the Governor.

State and federal agencies must devise a system other than federalization to resolve conflicts in directives from NORTHCOM and the state governor. There may be struggles for authority and establishing priorities between the state and federal military leaders. Either a National Guard or active component JTF commander may become a ping-pong ball bouncing between state and federal personalities. The National Response plan directs that DOD is always a supporting agency in missions involving DSCA and therefore the state governor becomes the supported agency. This elected official's guidance should be followed and the Department of Homeland Security should resolve resulting conflicts behind closed doors.

The Department of Homeland Security or designated supporting agency should develop a national first responder communications system. This will allow all responders to use the same communications systems and develop something similar to a telephone book facilitating unity of command as one commander is able to communicate with all subordinate commanders with one system. Hurricane Katrina demonstrated the inability of the active component and National Guard to communicate with each other, but more importantly, with local first responder agencies whom the armed services are supposed to be supporting. Cities, counties, and states all utilize different types of radio communications systems. This creates communications problems when active duty or other state National Guard soldiers respond to an incident such as Katrina. Since the army has a vast array of communications systems, works with civilian developers and contractors, and maintains a professional Signal Corps; the Department of Homeland Security should task DOD to develop this system. Since the United States is NORTHCOM's AOR, this task would naturally be delegated to it.

The Department of Homeland Security should designate NORTHCOM to be the national frequency manager for a national communications system. Combatant commands employ signal or communications experts who act as frequency managers for their AORs. Since this mission does not involve direct law enforcement and the United States is NORTHCOM's AOR, it should perform the mission. The communications architecture may employ a new system of first responder radios or the FM system currently used by the army and National Guard. State JFHQs should work with NORTHCOM and become the frequency managers within a state's borders. This could allow for a single communications system with national and state frequency managers. National Guard soldiers could travel from state to state and the active component could maintain a contingency at each installation for homeland security missions. This would allow the military to enter its supporting role and communicate with supported agencies. It would also allow the military to reserve frequencies, if available, to conduct command and control operations for National Guard units who do not possess the SINCGARS radio.

The DOD should conduct a robust public relations campaign to promote the One Army concept. DOD needs to remind the American public that the National Guard is a federally funded, equipped, trained, and then attached to state governors for command and control when not at war. During Hurricane Katrina, National Guard personnel transitioned from SAD to a Title 32 status on order from the Secretary of Defense. DOD assumed financial responsibility for the National Guard while allowing the states to manage a DOD asset. A National Guard response to Hurricane Katrina was a DOD response that employed over 50,000 soldiers and airmen. DOD's financial contribution in placing National Guard soldiers in a Title 32 status was far greater than its limited

manpower contribution, but remained a little known fact. The public relations campaign should have explained this in terms the American public could have understood and then continued to promote DOD's contribution.

NGB should develop a task force that can work with JFHQ-State to standardize National Guard responses to all missions involving DSCA. JTF-States have various experience levels in conducting DSCA missions. This task force could take well-developed plans that are frequently rehearsed and provide this knowledge to other states to assist in their planning process. This task force would be a coordination agency only and have no command and control authority during a mission as NGB is a Title 10 organization and does not work for a state governor. This task force would also need to ensure that the JFHQ-State works with all other state agencies to ensure incorporation into their planning. The Department of Homeland Security currently uses financial incentives to force cities and states to comply with its standards and regulations. Similar to the Department of Homeland Security, NGB could use financial incentives to reward success or penalize failure respectively. JFHQs would ensure compliance down to the local level wherever there is a National Guard armory. It would also have to delineate responsibilities for localities without armories. Forcing interagency cooperation at the local, state, and federal level may take congressional intervention.

Congress must create a policy that forces interagency cooperation rather than competition. This would allow agencies to share information and resources while capitalizing on each other's strengths. DOD is a supporting agency in all functions related to CONUS based homeland security missions, but is one of the only agencies that provide a professional education in leadership and planning. Congress should capitalize

on this organization and allow it to become a facilitator in interagency contingency planning for homeland security missions. NORTHCOM would participate with all federal agencies to aid in development and standardization of response plans throughout the country and with the NGB task force to ensure incorporation at the state level. This would give DOD visibility of plans and procedures and increase their confidence in the National Guard's ability to establish unity of command within a state. NORTHCOM and its regional taskforces would be made available for regional coordination, contingency planning, and rehearsal exercises.

These recommendations taken together provide the foundation for improving National Response efforts by enabling and promoting Unity of Command within DOD. Taken separately, any of these recommendations will help improve local, state and federal responses efforts in the future.

¹President George Bush, *Homeland Security Presidential Directive/HSPD-5* [directive on-line]; available from <http://www.deq.state.mi.us/documents/deq-wb-www-HSPD-5.pdf>; Internet: accessed 6 May 2006.

²The Department of Homeland Security, *National Response Plan, 2004* [document on-line]; available from the Department of Homeland Security at <http://www.dhs.gov/interweb/assetlibrary/NRP-FullText.pdf>; Internet: accessed 27 October 2005, 4.

³*Ibid.*, 8.

⁴FindLaw for Legal Professionals, *National Guard Enlisted Oath, Title 32 U.S.C.*, sec. 304 [USC on-line]; available from <http://caselaw.lp.findlaw.com/cascode/uscodes/32/chapters/3/sections/section%5F304.html>; Internet: accessed on 6 may 2005.

⁵Col John D. Renaud, *National Guard Homeland Defense White Paper: September 11, 2001, Hurricane Katrina, and Beyond* (Alexandria, VA: Army National Guard, G5, Chief, Strategic Plans and Policy, September 2005) 12.

⁶Public Law 104-321, Emergency Management Assistance Compact, Article IX, Reimbursement (Library of Congress, October 1996), 1-2. (hereafter cited as PL 104-321).

⁷Renaud, 12.

⁸*United States Code Annotated* (St. Louis, MO: West Publishing Co., 2005), Title 32, USC, secs. 502(f). (hereafter referred to as WestLaw).

⁹Bowman, Steve and The Congressional Research Service, *Hurricane Katrina: DOD Disaster Response*, Order Number RL33095 (Washington, DC: Congressional Research Service, Library of Congress, 2005) [report on-line]; available from <http://fpc.state.gov/document/organization/54247.pdf>; Internet; accessed 18 October 2005, 1-2.

¹⁰Renaud, 8.

¹¹*Ibid.*

¹²PL 104-321, 1.

¹³For more information on the remaining six key players, see the EMAC web site at <http://www.emacweb.org>.

¹⁴Emergency Management Assistance Compact, National Emergency Management Association, "How Does EMAC Work" [Compact on-line]; available from <http://www.emacweb.org>; Internet; accessed on 27 January 2006, 1-2.

¹⁵*Ibid.*

¹⁶*Ibid.*

¹⁷PL 104-321, 3-4.

¹⁸*Ibid.*, Article VIII, Compensation: Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

¹⁹*Ibid.*, Articles VIII, Compensation, and Article IX, Reimbursement: Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the cost incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost or

may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this article.

²⁰*Ibid.*

²¹*Ibid.*

²²Department of the Army, Field Manual 1-02, *Operational Terms and Graphics* (Washington: Headquarters, Department of the Army, 2004), 1-506.

²³Christopher Prawdzik, "Homeland Complexity," [paper on-line]; available from the National Guard Association of the United States (NGAUS) web site <http://www.ngaus.org/ngaus/files/ccLibraryFiles/Filename/0000000000614/homelandcomplexity0205.pdf>; Internet, accessed on 28 December 2005.

²⁴Public Law 108-136, National Defense Authorization Act of 2004 [law on-line] available from Thomas, The Library of Congress at <http://thomas.loc.gov/cgi-bin/query/F?c108:1:/temp/~c108D5O1yV:e235864>; Internet; accessed on 6 May 2005. House Resolution 1538 sec. 516 was incorporated into PL 108-136 in 2004 and amended Title 32, USC, by adding section 516.

²⁵*United States Code Annotated*, Title 32, USC, sec. 325.

²⁶*Ibid.*

²⁷House Report 108-354, *National Defense Authorization Act for Fiscal Year 2004*, Conference report to Accompany HR 1588 (Washington, DC: 7 November 2003), 688.

²⁸*United States Code Annotated*, Title 32, USC, sec. 325.

²⁹Detail of regular members of Army and Air Force to duty with National Guard, *United States Code Title 32*, vol. 32, secs. 315 (St Louis, MO: West Publishing Co., 2005).

³⁰*United States Code Annotated*, Title 18, USC, sec.1385.

³¹"LawyerIntel Law Dictionary" [dictionary on-line]; available from <http://lawyerintel.com/modules/dictionary/search.php>; Internet; accessed on 17 January 2006. The definition states that the entire population of a county above the age of fifteen, which a sheriff may summon to his assistance in certain cases as to aid him in keeping the peace, in pursuing and arresting felons and maintain the law.

³²Ibid. Section 6 of the definition states, although the sheriff is acting without authority, yet it would seem that any person who obeys his command, unless aware of that fact, will be protected.

³³Thomas R. Lujan, *Legal Aspects of Domestic Employment of the Army*, AD-A309 vol.100 (Carlisle Barracks, PA: US Army War College, 1997), 11.

³⁴Jennifer Elsea. "The Posse Comitatus Act and Related Matters: A Sketch." CRS Order Number RS20590 (Washington, DC: Congressional Research Service, Library of Congress, 2005), 1, [report on-line] from CRS Web at <http://www.fas.org/sgp/crs/natsec/RS20590.pdf>; Internet; accessed 27 October 2005. The Articles of Confederation addressed the threat of military intrusion into civilian affairs by demanding that armed forces assembled during peacetime be no more numerous than absolutely necessary for the common defense, and be entrusting control to civil authorities within the states.

³⁵After the removal of the Taliban government of Afghanistan and the Bathist party in Iraq, the United States Army was responsible for providing security for national elections to form a new government. Soldiers with weapons and body armor occupied and patrolled polling places as well as aiding in securing ballot boxes after completion of voting.

³⁶While the official name is the Army National Guard today, this force was known as the State Militia when the Posse Comitatus Act was signed in 1878. The constitution did not allow States to maintain standing armies, but granted them the right to employ their Militias to suppress insurrections or quell civil disturbances. These missions fall under the umbrella of law enforcement.

³⁷Department of Defense, Directive 3025.1, "Military Support to Civil Authorities (MSCA)" (Washington, DC: Department of Defense, 15 January 1993), 7-9.

³⁸Donald J. Currier, "The Posse Comitatus Act: A Harmless Relic from the Post-Reconstruction ERA or a Legal Impediment to Transformation" (Carlisle, PA: US Army War College, Strategic Studies Institute September 2003), [journal on-line]; available from <http://www.strategicstudiesinstitute.army.mil/pdf/PUB249.pdf>; Internet; accessed on 16 October 2005, 1-16. Some argue that the Posse Comitatus Act needs to be abolished as it prevents the active component military from aiding in homeland security missions that exceed the resources of local or state officials.

³⁹*United States Code Annotated*, Title 10, USC, sec. 332.

⁴⁰Ibid.

⁴¹Ibid., sec. 331.

⁴²Ibid.

⁴³Ibid., sec. 334.

⁴⁴Ibid.

⁴⁵Ibid.

⁴⁶Ibid., sec. 5121.

⁴⁷Jennifer Elsea, “The use of Federal Troops for Disaster Assistance: Legal Issues,” CRS Order Number RS22266 (Washington, D.C.: Congressional Research Service, Library of Congress, 2005), 4-5, [report on-line] available from CRS Web at <http://www.fas.org/sgp/crs/natsec/RS22266.pdf>; Internet; accessed 14 November 2005.

⁴⁸Keith Bea, “Federal Stafford Act Disaster Assistance Presidential Declarations, Eligible Activities, and Funding.” RL33053 ed. (Washington, DC: Congressional Research Service, Library of Congress, 2005), 1-2.

⁴⁹“The President may exercise any authority vested in him by...this title with respect to and emergency when he determines that the emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority. In determining whether or not such an emergency exists, the President shall consult the Governor of any affected state, if practicable. The President’s determination may be made without regard to subsections (a) of this section. (a) refers to gubernatorial request as such for a Major Disaster.” WestLaw, Title 42 USC Subsection 5191 (b).

⁵⁰Elsea, *Federal Troops*, 4-5.

⁵¹Susan Rosegrant and John F. Kennedy School of Government Case Program. “The Flawed Emergency Response to the 1992 Los Angeles Riots.” C16-00-1586.0--Pt. A; C16-00-1587.0--Pt. B; C16-00-1588.0--Pt. C ed. (Cambridge, MA: John F. Kennedy School of Government, 2000), [case study on-line] available from Kennedy School of Government at http://www.ksg.harvard.edu/research/publications/cases/1586_0.pdf; Internet; accessed 21 January 2006, 2.

⁵²Christopher M. Schnaubelt, “1992 Los Angeles Riots: Lessons in Command and Control from the Los Angeles Riots,” *Parameters*, 27 (summer 1997): 88-109 [journal on-line]; available from http://www.au.af.mil/au/awc/awcgate/army-usawc/param_schnau97sum.htm; Internet; accessed 24 October 2005, 89.

⁵³Boots on the ground refers to soldiers who are on the ground performing their assigned missions. Soldiers in Reserve refer to soldiers who are ready to receive and perform a mission at a moment’s notice, but have yet to be assigned a mission. Soldier and police assets poured into the city faster than local authorities could employ them.

⁵⁴Rosegrant, 4.

⁵⁵James D Delk, *Fires & Furies: The L.A. Riots, what really Happened* (Palm Springs, CA: ETC Publications, 1995), 57-58.

⁵⁶Schnaubelt,, 96

⁵⁷Delk, 320.

⁵⁸Schnaubelt, 97.

⁵⁹The author is an Active Guard Reserve Officer who has participated in multiple hurricanes and ice storms in North Carolina. For every mission State Active Duty mission, the units have had soldiers call and ask what they can do to help prior to ordering mobilizations. The more destructive and wide spread the event results in higher numbers of soldiers calling to volunteer.

⁶⁰Delk, 41.

⁶¹ Delk, 222.

⁶²Schnaubelt, 9.

⁶³Rosegrant, 15.

⁶⁴Schnaubelt, 10.

⁶⁵Delk, 305.

⁶⁶Brandon Graham, "Some Urge Greater Use of Troops in Major Disasters," *Washington Post*, 9 September 2005, 15A.

⁶⁷Steve Bowman, Lawrence Kapp, and Amy Belasco, "Hurricane Katrina DoD Disaster Response" (Washington, DC: Congressional Research Service, The Library of Congress, 6 October 2005), CRS Order Number RL33095.

⁶⁸Steve Bowman, "Homeland Security: The Department of Defense's Role" (Washington, DC: Congressional Research Service, The Library of Congress, 14 May 2003), CRS Order Number RL31615.

⁶⁹Steve Bowman, "Hurricane Katrina: DOD Disaster Response," 6.

⁷⁰The President of the United States or the Secretary for the Department of Homeland Security determines whether an incident qualifies to be labeled an Incident of National Significance.

⁷¹Steve Bowman, "Hurricane Katrina: DOD Disaster Response," 6-7.

⁷²Descriptions and news media initially focused on the destruction caused by Hurricane Katrina and search and rescue operations. Several days after landfall, the

media focused on the superdome and downtown convention center which housed roughly 25,000 and 12,000, respectively, displaced personnel. These facilities were designated as city storm shelters, but were under equipped, under staffed, and under supplied. The media depicted the situation as life threatening with a lack of medical attention, mass starvation, dehydration, and gang violence. For several days these reports led CNN and FOX headlines and the reports placed blame on the federal government for not responding fast enough. Federal and state agencies used busses and airplanes to evacuate personnel to hospitals and out of state shelters prior to the arrival of active duty forces. National Guard soldiers and medical personnel were on the ground at the superdome prior to landfall, but were not equipped to the large number of displaced personnel.

⁷³Steve Bowman, "Hurricane Katrina: DOD Disaster Response," 6-13.

⁷⁴Military.com, *Today in the Military* [article on-line]; available from Military.com at <http://www.military.com/NewsContent/0,13319,77053.00.html?ESCR=eb.nl>; Internet; accessed on 14 September 2005, 1.

⁷⁵Headquarters, 82nd Airborne Division, "After Action Brief" (Ft. Leavenworth, KS: Center for Army Lessons Learned, 2005) [review on-line]; available from <http://call.army.mil/>; Internet; accessed 12 December 2005.

⁷⁶*Ibid.*, 3-5.

⁷⁷*Ibid.*, 7-9.

⁷⁸*Ibid.*, 17.

⁷⁹*Ibid.*, 18.

⁸⁰Headquarters, 35th Infantry Division, "After Action Report of HHC, 35th Infantry Division (JTF Santa Fe for Operations Santa Fe)" (Ft. Leavenworth, KS: Center for Army Lessons Learned, 2005) [review on-line]; available from <http://call.army.mil/>; Internet; accessed 12 December 2005, 5-6.

⁸¹Headquarters, 82nd Airborne Division, 18-20.

APPENDIX A

CHRONOLOGY OF THE 1992 LOS ANGELES RIOTS

29 April	1515	Acquittal verdicts announced in the trial of police officers accused of beating Rodney King.
	1850	Rioters beat and nearly kill truck driver Reginald Denny as a television crew captures both the horror of the incident and the absence of Los Angeles Police Department (LAPD) officers. Hundreds of arson and looting incidents begin.
	2100	The California governor's office informs the adjutant general that the governor has decided to mobilize (call to state active duty) 2000 California National Guard (CANG) troops at the request of the LA mayor.
30 April	-	A dusk-to-dawn curfew is imposed in large portions of the city of LA and the surrounding county.
	0400	Approximately 2000 CANG soldiers have reported to armories.
	1100	Los Angeles County requests 2000 more CANG personnel; the governor approves the request.
	1350	Ammunition from Camp Roberts (in central California) arrives in LA area via CH-47 helicopter.
	1435	The first CANG elements (two military police companies) deploy in support of the LAPD and the LA Sheriff's Department (LASD).
	2000	About 1000 CANG troops are currently deployed "on the street," with more than 1000 more prepared to deploy and awaiting mission requests from law enforcement agencies.
	2356	LAPD and LASD request 2000 additional CANG troops, for a total of 6000.
1 May	0100	Perceiving the CANG deployment to be too slow, the governor requests federal troops.
	0515	The President agrees to deploy 4000 federal troops to LA.
	0630	Approximately 1220 CANG soldiers are deployed in support of LAPD; 1600 are deployed in support of LASD; and 2700 are in reserve awaiting missions.
	1430	Active component Marines from Camp Pendleton, California, begin arriving in the LA area via convoy.
	1630	Commander, Joint Task Force-Los Angeles (JTF-LA) arrives in LA area.
	1730	Active component soldiers from Ft. Ord, California, begin arriving in the LA area via C-141 aircraft.
	1800	The President announces that the CANG will be federalized.
2 May	0400	Final plane with active component soldiers arrives.
	1100	Approximately 6150 CANG troops are deployed on the street, with 1000 more in reserve; 1850 soldiers from the 7th Infantry Division are in staging areas; Marines prepare for deployment.
	1900	First active component troops deploy on the street; a battalion of Marines replaces 600 CANG soldiers.

	2359	More than 6900 CANG soldiers are deployed, with 2700 more in reserve. Approximately 600 Marines are deployed, but most active component Army and Marine Corps personnel remain in staging areas.
9 May	1200	CANG reverts to state status, ending federalization; active component forces begin redeploying home.
13-27 May	-	CANG releases troops from state active duty, returning them to “part-time” status.

Source: Christopher M. Schnaubelt, “1992 Los Angeles Riots: Lessons in Command and Control from the Los Angeles Riots,” *Parameters* volume # 27 (summer 1997): 88-109 [journal on-line]; available from http://www.au.af.mil/au/awc/awcgate/army-usawc/param_schnau97sum.htm; Internet: accessed 24 October 2005, 89.

APPENDIX B

EXCEPTIONS TO THE POSSE COMITATUS ACT

Exception	Conduct	Regulation	Statute	Case
Extraterritorial conduct of a military force	When military authorities enforce U.S. law outside the United States, whether or not the suspect is a U.S. citizen, or when they assist foreign officials enforce their own laws. Arrest of foreign nationals overseas.	DoD 5525.5, Sec 8.1 requires Sec Def or Deputy Sec Def Approval	But see <i>U.S. v. KluN</i> , ¹⁰⁹ holding that 10 U.S.C 372 applies extraterritorially.	<i>Chandler v. U.S.</i> ¹¹⁰
Indirect involvement	Incidental or conduct supporting law enforcement activities, such as providing equipment, training, maintenance, and non-binding advice.	DoD 5525.5	10 U.S.C 372-377	<i>U.S. v. Yunis</i> ¹¹¹
Military law enforcement on military installations	Law enforcement conduct directed against service members and civilians on military installations.	DoD 5525.5 E4.2.1.3	18 U.S.C 1382	<i>U.S. v. Banks</i> ¹¹²
Commanders' inherent authority to repel attacks, or protect immediate loss of life	When commanders exercise their inherent authority to protect their installation from attack or take immediate steps to protect the loss of life.	DoD 5525.5 E4.1.2.3. & E4.1.2.3.2 DoD 3025.12	10 U.S.C 809(e)	<i>Cafeteria Workers v. McElroy</i> ¹¹³
National Guard	The National Guard, when used in a "state status."	DoD 5525.5		<i>Gilbert v. U.S.</i> ¹¹⁴
Military purpose doctrine	The PCA does not apply to actions performed primarily for a military purpose, such as Investigating crimes against the military.	DoD 5525.5 E4.1.2.1		<i>Cafeteria Workers v. McElroy</i> ¹¹⁵

Riot, Insurrection, or lawlessness	Extraordinary cases where the President employs his Constitutional authority to maintain order.	DoD 5525.5 E4.1.2.4 DoD 3025.12	10 U.S.C 331-334, & 12406 U.S. Const., Art II	
Other Congressional Exceptions:				
Dignitary protection	Protection of members of Congress, executive cabinet members, Supreme Court justices, diplomats, President, VP & White House staff.	DoD 5525.5	18 U.S.C 351 (g), 1201(f), 1751/ 112 & 116	
Disaster relief	Troops providing relief during times of national disaster.	DoD 5525.5 DoD 3025.1 DoD 3025.15	Robert T. Stafford Disaster Relief and Emergency Assistance Act 42 U.S.C. 5121 et seq.	
Quarantine	If an individual has a specifically identified communicable disease, health authorities may detain them. The President may use the military to assist the Surgeon General execute his duties.	DoD 5525.5 DoD 6000.12	42 U.S.C 97 & 264 (d)	
Drug interdiction	Sharing of information and intelligence.	DoD 5525.5	10 U.S.C 371	
Customs & immigration	Sharing of information and intelligence.	DoD 5525.5 E4.1.2.5.14	50 U.S.C 220	
Customs & immigration	Sharing of equipment and facilities.	DoD 5525.5	10 U.S.C 372	
WMD/E & protection of nuclear materials	Provide assistance to Dept. of Justice where a biological or chemical weapon of mass destruction poses a serious threat and civilian authorities require DoD assistance.	DoD 5525.5 E4	10 U.S.C 382 & 831 50 U.S.C 2301&2(1) 18 U.S.C 831	
Protecting U.S. forests & fisheries	Removing enclosures from public lands.	DoD 5525.5 E4.1.2.5.1/ 5.2	42 U.S.C 1065 16 U.S.C 23 & 593 16 U.S.C 1861(a)	
Indirect cooperation	Loan of equipment to other agencies.		31 U.S.C 1535	<i>U.S. V. Jarmillo</i>

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Source: Donald J. Currier, "The Posse Comitatus Act: A Harmless Relic from the Post-Reconstruction ERA or a Legal Impediment to Transformation" [U.S. Army War College Strategic Studies Institute database online] Carlisle, PA: September 2003; available from <http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB249.pdf>; accessed on 27 October 2005.

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