

THE NATIONAL GUARD AND HOMELAND SECURITY:
WHAT ROLE(S) SHOULD THE GUARD HAVE?

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General Studies

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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

THE NATIONAL GUARD AND HOMELAND SECURITY: WHAT ROLE(S) SHOULD THE GUARD HAVE? by MAJ Leland Blanchard, 120 pages.

After 9/11 the Department of Homeland Security (DHS) was established and has responsibility for natural disasters and first response to acts on domestic soil. A primary tool available to both DHS and the Department of Defense is the National Guard (NG). The future challenges that face the nation will potentially overwhelm the current structure and relationships between the DoD and the DHS. A likely issue will be the authority to use the NG as well as the command structure relating to the use of the NG as it relates to the State and Federal authorities. This thesis examines the relationship between the NG, DoD, and the DHS and attempts to answer the question of what is the appropriate role for the NG. This thesis makes the recommendation that the current relationship, while flawed, is the most practical for the future. This study does conclude that significant changes need to occur in the DoD with regard to the NG and its structure in order to prepare for the next significant event that will eventually occur within the United States.

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ACRONYMS

AC	Active Component
ACS	Army Chief of Staff
ANG	Air National Guard
ARADCOM	Army Air Defense Command
ARFORGEN	Army Force Generation
ARNG	Army National Guard
CCMRF	Consequence Management Response Force
DHS	Department of Homeland Security
DoD	Department of Defense
FEMA	Federal Emergency Management Agency
GWOT	Global War On Terror
HD	Homeland Defense
HS	Homeland Security
HSPD	Homeland Security Presidential Directive
ICE	Immigration and Customs Enforcement
JTF	Joint Task Force
NDA	National Defense Act
NIMS	National Incident Management System
NGO	Non-Governmental Organization
NRF	National Response Framework
NGB	National Guard Bureau
NORTHCOM	Northern Command

OEF	Operation Enduring Freedom
OHS	Office of Homeland Security
OIF	Operation Iraqi Freedom
QDR	Quadrennial Defense Review
RC	Reserve Component
UCP	Unified Campaign Plan
U.S.	United States
USCG	United States Coast Guard
WMDCST	Weapons of Mass Destruction Civil Support Team
WWI	World War I
WWII	World War II

CHAPTER 1

INTRODUCTION

With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations.

— Abraham Lincoln, 1865 Inaugural Address

The 11th of September 2001 served as a “wake-up” call for the Nation as citizens were roused to the dawn of a new reality. In fact this “new” reality was simply shaking away the collective ignorant bliss that resulted when no significant attack had found its way to the Nation’s borders in over fifty years.¹ Immediately after the attacks the United States (U.S.) Government began to reexamine the priorities and fundamental beliefs regarding National Security. While some had warned over the years that it was simply a matter of time,² the terrorist attacks revealed significant fault lines in the readiness of the U.S. Government to prevent such attacks, and certainly the lack of preparedness to quickly respond to the consequences of such attacks in a coordinated manner.

Since the birth of the U.S. there has been a reactive mindset when it comes to changing government and how it operates. Examining U.S. reforms and developments, in particular the defense of the Country, anticipating future conditions and evolving to meet the future threats has always been a stated priority. This priority has been clearly stated and the rhetoric regarding the adaptability of the government to meet challenges has always been loud, however in practical terms, the conduct of adaptation and proactive change has not always been conducted well. The nature of the U.S. Government is such that it is often difficult to allocate the proper resources and completely reform as

necessary without some event to provide the stimulus for change. While there have always been leaders who were visionary and were able to identify emerging threats and the impact of changing conditions, the recognition of their ability to look beyond today generally only comes as hindsight of their attempts to change government. The events of 11 September 2001 and the monumental changes that occurred in the months after within the government highlight the fact that changes, which perhaps should have been made previously, were either ignored or half-heartedly undertaken for years.³

Following the attacks of 9/11, the U.S. Government began to reassess policies, procedures, and roles regarding national security. President George W. Bush established the Office of Homeland Security (OHS) in October of 2001⁴ to coordinate efforts and provide security to the Nation. Clearly the efforts and level of priority on reviewing the policies was long overdue and much effort was going to be required to realign agencies and ensure that future threats would be countered by a coordinated effort by the U.S. Government.

Soon after the terrorist actions, the U.S. went to war against those who were deemed responsible. The Global War on Terror (GWOT), which is the overarching name for the actions against threats to the U.S., resulted in Operation Enduring Freedom (OEF), as the first in a series of actions against Al Qaeda and other belligerents. Thousands of Soldiers, Sailors, Marines, and Airmen were deployed to Afghanistan and the surrounding region to take action against those who had planned the violence that had been brought to the U.S. In short order, the U.S. determined that Iraq would also be a theater of operations for the U.S. Military. It did not take long for the Department of Defense (DoD) to realize that it would require the mobilization of the National Guard at

levels not seen since the end of the Korean War⁵ in order to conduct operations in both theaters of war. Thousands of National Guardsmen were called to serve overseas in Iraq, Afghanistan, among other places in the world,⁶ leaving behind their families, their jobs, and their respective states.

There were the issues that one may expect from a large scale mobilization of the Reserve Component (RC), as well as many issues that were unexpected. Some important questions were being raised, although not necessarily answered including the following: Who was going to respond to contingencies as they may occur in the U.S.? What was the role of the active military in responding to natural disasters? These questions were valid then and remain so today. It is incumbent upon the leaders of not only the military, but other government agencies to ask and attempt to answer these questions from their perspective. It is at that point that the senior leaders of the national government collate these ideas into one coherent strategy that is feasible and as complete as possible. This strategy is to provide the most basic service the government should provide to the people of the Nation--defense.

The military is but one key component of national security. Police, firemen, screeners at airports, customs agents, and many others all contribute mightily to the overall security of the Nation. In this regard, a comprehensive and effective strategy must include all agencies in order to be complete. This is where the importance of the National Guard comes into play. It is a unique organization that can be a federal force under the command of the President of the United States and is subject to the same rules and laws of any other federal force, or it can be mobilized and fall under the authority of the governor of its state and is subject to those particular state laws and regulations.

It is then the study and understanding of the National Guard and its role in the overall strategy for the defense and the security of the Nation that is vital to an integrated and coordinated national defense. As has been mentioned previously, historically the U.S. Government has been reluctant to make proactive changes. In this case, however, it is imperative that the roles and responsibilities are clearly defined prior to the next crisis that will face the Nation.

The Quadrennial Defense Review (QDR) of 1997 focused on the threats the U.S. could potentially face through 2015. The fourth threat listed was a threat to the Homeland itself.⁷ Interestingly, one of the significant recommendations was to reduce the Reserve Component of the Army by 45,000 troops.⁸ This was fully endorsed by the Chairman of the Joint Chiefs of Staff:

The strategy-based force assessment fully validates the specific recommendations to reduce selected National Guard units. The Army must restructure and downsize Guard units better to reflect requirements for federal and state missions and shed force structure retained from Cold War requirements for a strategic hedge. Given today's regional threats, the strategic hedge can be reduced and transitioned into capabilities that have greater utility across the entire spectrum, and fill a long-standing void in the support structure for sustained combat operations. The QDR adjusts National Guard end strength to improve its relevance in support of the defense strategy.⁹

Clearly the QDR of 1997 was based on the past successes instead of the future threats the nation may face. The attitude at this point in U.S. history was one of relief. Relief that the Soviet Union had dissolved, the Cold War was over, and the only “legitimate” threats appeared to be regional conflicts, much like the events in Bosnia or even Cuba’s stance against the US. None of the threats seemed credible to bring violence to the shores of the U.S. and threaten the safety of individual citizens. Some have suggested that it is easy to look back and that the benefit of hindsight is seeing events that

have occurred, rather than understanding the context of the events as they actually occurred.

However, even as the very basis for future force posture and composition from the 1997 QDR took shape, there were other reports that offer a different view of the future. In early 1998, the White House released a report titled “A National Security Strategy for a New Century” which identified terrorism as a significant threat that the U.S. would face in the future.¹⁰ Unfortunately, the report focused on historical events as a blueprint for future events, instead of assessing the potential future threat model as one that would evolve to include the intentions and needs of various subversive or terrorist groups around the world. The “imminent threat of further terrorist attacks against U.S. personnel and facilities”¹¹ was assessed by the report as likely to be directed against targets overseas, not on U.S. soil.

As the national leadership looked forward, they failed to seek and then embrace change directed to combat future terrorist threats, even as they identified these threats. Instead, small and mostly cosmetic changes were implemented, and then it appears for many of those changes, they were designed to cause little to no discussion or debate on their effectiveness or relevance. In fact, it cannot be said that future threats were not identified, quite the opposite, instead the mindset remained as it historically had been—muddled in the past, not the future.

This mindset is essential in order to understand the context of the events that occurred on what is now known simply as 9/11. Osama bin Laden, airport security, interagency cooperation, and border protection are but a few of the issues raised in the report *A National Security Strategy for a New Century*, released by the White House in

1998, a full three years before 9/11. It is important to note the fact that it appears that the U.S. nuclear capability is a major part of deterrence.¹² How U.S. nuclear capability would impact a non-state actor is not addressed in the report, but it does appear to placate those who might be concerned with the question of “are we doing enough”?

This question of “are we doing enough” is one that had historically been answered with an unabashed “yes” with regard to homeland security. Since the Japanese attacked Pearl Harbor, no successful major attack had been launched against the mainland of the U.S. There were some minor attempts by the Japanese and Germans¹³ during World War II (WWII) which have been relegated to few books and fewer history classes. Politicians and military leaders had not had to face a serious threat to our borders in literally decades, long before even the most senior military leaders had even been born. It could be argued that the last serious threat to the homeland was the Cuban Missile Crisis in 1962. The immigration and illegal drug trafficking issues have plagued the U.S. and its leaders for decades, however, this political hot button issue has generally been seen as either a police problem or a social issue. The leaders of the nation, including senior military leaders, have generally been content to keep the military out of these issues, with the notable exception of leveraging some surveillance technology. Regarding military threats to the homeland, history was on the side of those who argued that resources and efforts for defense of the nation were both effective and sufficient.

The focus of the nation was clearly not on defending the homeland and for many, discussion of national defense amounted to how and what programs could be reduced or cut from the military budget. The long term focus was on how to provide flexibility for future regional conflicts facing small regimes likely to use violence as a means to gain

recognition from the largest nations in the world. It was not focused on defending against those who had neither borders to defend nor a desire to simply be recognized.

The U.S. simply accepted the status quo with regard to the military and even National Security. No changes were made to secure the borders, to seek out those who may try to inflict significant damage against us, nor to reexamine the very role and purpose of every agency in the government. This would include the DoD and the National Guard.

When President Bush made the determination to establish the OHS, he opened the door to governmental reform and realignment. While many changes have occurred and anecdotal evidence would support claims of improved National Security due to those changes, it is important that the leaders of the Nation continue to seek a “better” way to provide for the common defense of the nation.

Research Questions

This study will examine the effectiveness of the reforms that have occurred since the events of 11 September 2001. In particular, the role of the National Guard will be the focus for the thesis with an examination of its role, current and potential, with regard to homeland security. The primary research question is “what is the proper role for the National Guard in Homeland Security” to meet the challenges that face the Nation today and in the future? In order to better arrive at an answer, there are two secondary questions that must be answered.

The first secondary question to be answered is “what is National Defense and what is the strategy for defending the Homeland”? Defining National Security and National Defense is a precondition to preparation and execution of an effective strategy.

To answer these issues, pertinent documents will be examined in order to begin to understand the concept of what constitutes defense and what the strategy is for its defense.

The second secondary question to be answered is “what role does the National Guard currently have in Homeland Security”? To answer this, the historical role of the National Guard will be explored and the major acts and laws that have been enacted over the last 100 years will be assessed. It is necessary to understand the historical context as well as the actual laws that may restrict or prohibit particular options for use of the National Guard. After understanding the limitations that are placed by law, and looking at the relevant history¹⁴ a determination of the National Guard’s proper role in the future of the Nations defense must be made. This is subjective; however it is this subjective view of the proper role which will facilitate future debate and potentially lead to further improvements to American Strategy.

Significance

There have always been those who would seek to do harm to the U.S. Ideology, economics, jealousy, and perceived or real slights by the government or the people of the U.S. have served as the friction that has lit many fires of anger. However, the fall of the Soviet Union, combined with the rise of non-state actors and their ability to take action against the U.S., has resulted in an increased threat to the safety of the Country. The events of 9/11 and the perceived success of the Al Qaeda attacks have led to an increase in the courage of many maligned groups. The enemies of our Nation continue to search for ways to exploit weakness and points of friction that may enable them to significantly and negatively impact the security of our citizens. Thus we must also seek to act swiftly

to prevent those potential attacks and provide for the common defense of the Nation and its people. This thesis will help identify a significant gap between capabilities and the ability to use those resources and capabilities for the benefit of the Nation.

Assumptions

Some assumptions underlying this thesis should be recognized. As the U.S. continues to modify and adapt to the ever changing conditions in the world, the most significant assumption will be that the senior leadership at the National level would be willing to consider fundamental changes in the defense structure. It is also assumed that many potential changes to the National Guard would likely be opposed by the senior leadership in the DoD as they may perceive this to be a loss of influence and immediate access to what is now a resource of significance to their efforts both abroad and at home.

At the onset of the research for this thesis, it is also assumed that any restrictions on modifying the National Guard or the way they operate could be overcome through legislation and that Congress would be willing to implement changes in the law.

Definitions

There are some terms that will be used in this thesis that many readers may not be familiar with or possess a common understanding, including many within the military itself. In an attempt to provide a framework that will facilitate discussion and understanding, it is important to define how these terms will be used and what their meanings are when used in this thesis.

Active Component: The Active Component (AC) is organized and operates under Title 10 of the U.S. code and therefore is subject to restrictions when conducting domestic operations. The AC consists of the Army, Navy, Air Force, and Marines.

Homeland Defense: “The protection of United States sovereignty, territory, domestic population, and critical defense infrastructure against external threats and aggression or other threats as directed by the President.”¹⁵ Homeland Defense is primarily a function of the military and intelligence agencies and is not limited to efforts within the borders of the nation.

Homeland Security: “A concerted national effort to prevent terrorist attacks within the United States; reduce America's vulnerability to terrorism, major disasters, and other emergencies; and minimize the damage and recover from attacks, major disasters, and other emergencies that occur.”¹⁶ The essence of Homeland Security is that it is a coordinated effort across multiple agencies and is focused within the borders of the nation.

National Guard: When the term National Guard is used in this thesis, it will include both the Army National Guard (ARNG) and the Air National Guard (ANG), unless one is specifically mentioned.

Operational Reserve: The RC will be resourced, conduct recruiting, and train to deploy on a fairly consistent and regular basis, likely every fifth or sixth year. The RC will operate at the strategic and operational levels during peacetime, wartime, contingency, domestic emergencies, and homeland defense operations. The members of the RC must be prepared to conduct full spectrum operations and will deploy on a

predictable and constant basis into the future.¹⁷ In this role, the RC exists on par with the AC and fills a capability gap as well as a capacity gap.

Reserve Component: The Reserve Component (RC) includes forces from the Army National Guard, the Air National Guard, Army Reserve, Air Force Reserve, Naval Reserve, and Marine Reserve. This differs in the fact that the National Guard can be mobilized under the authority of the governor and thus would fall under a different set of laws than it would if mobilized by Executive Order of the President of the United States. The “reserves” of the services remain under the same constraints as the active component services as they do not have the ability to operate under the auspice of a state governor.

State Active Duty: Under this authority, which varies from state to state, the National Guard is under the command and control of the governor and performs in accordance with all applicable state laws. The National Guard acts under this authority and has no interaction with the DoD perhaps except in a coordination effort. The members of the National Guard are paid by the state, at pay levels established by the state, are not eligible for federal benefits during this time, and have no protection under federal laws regarding all aspects from disability to liability.

Strategic Reserve: The RC is resourced as a framework for rapid expansion of the AC during times of National emergency. This requires only partial resourcing and training and can be operated by fewer Soldiers as the DoD would have a long period of time to build up the RC to meet the needs of the Nation. Essentially the RC in this role exists primarily to aid the AC on an occasional basis and only to fill temporary gaps in capacity, not capabilities.

Title 10: The portion of the United States Code that covers federal military forces. In essence while operating in this status the National Guard is not different from the Active Component. All the same restrictions and regulations apply to units and Soldiers as would apply to those in the AC.

Title 32: The section of United States Code that provides for the National Guard to conduct training in a federal status but under the control of the governor. This ensures that the National Guard is prepared and trained to respond when needed and also provides for federal protection and benefits for the Soldiers while in this status. The Soldiers are not subject to the Uniformed Code of Military Justice, but rather applicable state code for disciplinary actions.

Limitations

This thesis will be limited by focusing on the past 100 years with few exceptions where legislation or case law remains applicable today. Regarding the use of the National Guard, the focus will be on post WWII activities and in particular the past ten years as the role and level of importance of the National Guard to the success of the military strategy has increased significantly. Research will only be conducted through unclassified documents as the intent of this thesis is to ultimately stir discussion and debate on the best use and most appropriate role for the National Guard going into the future.

Summary and Conclusion

National Security is a complex and dynamic issue. Often deficiencies are identified through events instead of predictive analysis. In a world where the number of potential adversaries is unlimited, it is difficult to foresee every potential danger that

lurks. It is the responsibility of our elected officials as well as those who work in government to attempt to create a workable and flexible solution that will deter some threats, actively seek out others, and mitigate the severity of those who are successful. This thesis seeks to add to a dynamic to the discussion.

While the research question may not provide the ultimate answer to a seemingly endless question, it does provide for a point of departure for debate on national security. The thesis will offer original thought to add to a discussion that is often stymied by politics and a desire to build power and influence in government instead of building security.

¹Multiple attacks against the mainland of the U.S. were attempted during World War II by the Axis powers with limited success. In fact, the two most “successful” attacks by the Japanese, Pearl Harbor on 7 December 1941 and the attack on Dutch Harbor, Alaska in June 1942 were attacks against territories of the United States, not states (although this distinction is technical and made little difference at the time). Alaska would become the 49th state in January of 1959 and Hawaii the 50th in August of 1959. The previous attack against the World Trade Center, while causing damage, was generally not considered successful. In hindsight, the attack on the Center was a clear indicator that conditions had changed and non-state actors were able to take action against the U.S.

²Gary Hart and Warren B. Rudman, Co-Chairs, Commission on National Security for the 21st Century: *Roadmap for National Security: Imperative for Change* (Washington, DC, February 2001), viii.

³In February of 2001 the Commission on National Security for the 21st Century, a bi-partisan commission, recommended the creation of a new department referred to as the National Homeland Security Agency. This is not the only occasion that a call had been made for the creation of an organization such as this; however, this commission was composed of individuals who understood the political and military ramifications that would result from such a suggestion.

⁴Wikipedia, “United States Department of Homeland Security,” http://en.wikipedia.org/wiki/United_States_Department_of_Homeland_Security (accessed 5 August 2009).

⁵U.S. Department of Defense, United States of America Korean War Commemoration “Factsheet,” <http://korea50.army.mil/history/factsheets/armygrd.shtml> (accessed 10 August 2009). Approximately 138,000 National Guardsmen were mobilized and sent to Korea. The majority of these Soldiers were sent as individual augmentees, and not as part of complete units.

⁶The National Guard has deployed to Iraq and Afghanistan to conduct operations in every aspect of the wars. The Guard has also played a significant role in Guantanamo Bay and in the Horn of Africa operations at every level of the military and in every aspect from planning to prosecution of operations. The Guard has increased its presence in places such as the Sinai and Kosovo as the active component has tied up more resources and personnel to conduct operations in Iraq and Afghanistan. It is likely that without the large numbers of Guardsmen mobilized the DoD would have to radically change the method of conducting operations.

⁷U.S. Department of Defense, *Quadrennial Defense Review*, 1997. <http://www.comw.org/qdr/97qdr.html> (accessed 2 August 2009).

⁸Ibid.

⁹John M. Shalikashvili, “Comments by the Chairman, Joints Chiefs of Staff, *Quadrennial Defense Review*, 1997,” <http://www.fas.org/man/docs/qdr/sec10.html> (accessed 2 August 2009).

¹⁰White House, *A National Security Strategy for a New Century*” (Washington, DC: Government Printing Office, 1998).

¹¹Ibid., 16.

¹²Ibid., 15.

¹³There were several well documented attacks by both the Japanese and Germans directed against the U.S. mainland during WWII. The attacks were not successful, although a few lives were lost. The difficulty involved in moving forces and equipment across the ocean to the U.S. while fully engaged against combat forces was very high.

¹⁴The focus of the historical examination will be limited mostly to the past 75 to 100 years. Clearly the National Guard, or Militias, played a very different role when the Country was in its infancy and then during expansion to the west. It would be difficult to use most examples when dealing with Indian insurrections, Mexican Bandits, and many other problems that simply may not translate to today. The examination of the full history of the National Guard could be a full length thesis in and of itself, and as the purpose of this thesis is to look forward, history will provide context, not be the focus.

¹⁵U.S. Department of Defense, *DOD Dictionary of Military and Associated Terms*, <http://www.dtic.mil/doctrine/jel/doddict/data/h/11678.html> (accessed 1 August 2009).

¹⁶Ibid.

¹⁷Joseph Whitlock, "What is an Operational Reserve?," *Ameriforce.net*
http://www.ameriforce.net/PDF/rng_dec07/RNG_Dec07_006-008.pdf (accessed 6
August 2009).

CHAPTER 2

LITERATURE REVIEW

For a people who are free and who mean to remain so, a well-organized and armed militia is their best security. It is, therefore, incumbent on us at every meeting [of Congress] to revise the condition of the militia and to ask ourselves if it is prepared to repel a powerful enemy at every point of our territories exposed to invasion. . . .

— Thomas Jefferson
8th Annual Message to Congress

Since 11 September 2001, there has been a tremendous amount of material written regarding homeland security, the (DoD), Department of Homeland Security (DHS), and the National Guard. It is unfortunate that there is a void with regard to research into a possible relationship between the National Guard and the DHS, particularly among those who work for DoD, the National Guard, and surprisingly the DHS itself. The research and writing that has been done since 2001 has primarily focused on two issues with respect to the National Guard: overseas operations in Iraq and Afghanistan, and the use of the National Guard in domestic operations. The study of domestic operations often finds itself rooted in either federal use during situations such as Hurricane Katrina, or the fact that states lose significant response capabilities when a unit is mobilized for overseas operations. While there have been some writers who addressed border security and the National Guard, their focus is often in the capabilities of the National Guard and then specifically to the question of protecting the border focused against illegal immigration between the United States and Mexico.

Though the DHS is responsible for immigration and ultimately securing the United States, the DHS lacks many of the capabilities inherent within the military. There have been writings which have noted that the DHS lacks the capabilities but then

generally focus on the potential for changing the existing laws to allow the National Guard or even the active forces to operate within the borders without some of the current restrictions placed by law. There has been nothing of significance when it comes to examining the potential of transferring responsibility for coordination with the National Guard to the DHS. While some may view it as an unlikely course of action, or even untenable, it would have been considered ludicrous to believe that a small group of men armed with little more than small pocket knives could have brought down the World Trade Center and caused the United States to pursue more than eight years of war. It is only through a complete analysis that one could make a claim that the correct manner of defense is being pursued. This thesis will review the existing literature and pertinent documents in an attempt to determine what the proper role is for the National Guard and what relationship it should have, if any with the DHS.

The United States Congress has enacted many legislative acts over the years that are significant to the National Guard and must be examined to fully understand the legal limitations of any change, real or conceptual. Through the history of the United States the legislature has constantly reacted to events and modified the legal authority regarding the use of force by the military. There have also been several significant studies or commissions that have attempted to look at the role of the National Guard, and they are also important, but those documents often focus on changes related to Homeland Defense instead of Homeland Security. These commissions have also largely ignored the fact that the senior leadership of the DoD is reluctant to change in its approach to the National Guard and many of the recommendations have been rejected by, or implemented in spite of the senior leadership within the DoD, not because of their embrace of change. Perhaps

it is because of the reluctance of many senior leaders to embrace change that many authors, including the Congress with legislation, are reluctant to examine and propose what may be considered radical changes to the defense structure. It is clear that the Congress historically takes action to impose significant change only when attempts to encourage the DoD to change on its own fail and legislators take action to force functional change.

While the United States is still a relatively young country compared to European countries, much of what occurs legislatively is done so based on historical context. The United States Congress often focuses their debates on new legislation, not only to the events that are or have occurred, but also to frame problems historically. This is often done through references to the likes of George Washington, Alexander Hamilton, Thomas Jefferson, and how they or other significant leaders from the past would perceive the legislation. It is through the lens interpretation of previous documents and writings that this historical context is often achieved. The difficulty is that the writers of the documents that serve as the foundation of the United States were smart enough to understand that they could not write so narrowly as to limit their works to relevance for a generation or two. The end result is that attempting to understand the intent of the Founding Fathers of the United States is something that requires years of study and a willingness to accept the context of the times that the writers found themselves in. Lacking the years of study, the result is often the achievement of a rudimentary understanding, but rarely lends itself to an in-depth understanding that can be articulated clearly to others. Therefore while there is tremendous value in achieving an understanding of the historical writings that span back before the Declaration of

Independence itself, this thesis will largely take the legislation and contemporary writings at face value. Attempting to delve into the history that is relevant to each work or law passed by the Congress is beyond the scope of this paper. Clearly there will be some legislative acts and some events that may need to be examined a bit further in order to understand why the legislation was enacted; however this author acknowledges that each of the laws that are reviewed in this paper are worthy of in-depth examination and their own research. The laws that limit or place requirements on the military have all been exhaustively researched and therefore the author will simply accept that the Congress understood the problems as they attempted to design legislation that would impact the U.S. and its security.

The very creation of the U.S. was not without its skeptics and detractors. In fact there was much debate and dialogue over what the role of government should be. Part of the response to the debate was the writing of what would become known as the Federalist Papers. The Federalist Papers were written as a way to explain the proposed Constitution and to encourage its ratification. Written by John Jay, James Madison, and Alexander Hamilton, these letters are perhaps the most important writings about the Constitution, and also perhaps the least read among non-scholars or those who are not legal experts. The Federalist Papers essentially serve as an explanation of what the Founding Fathers intended when they build the framework for the Nation. These papers laid out the arguments for the citizens to better understand why the ratification of the Constitution of the United States was important and what it meant. These papers survive today as a framework for understanding the broad terms and sometimes vague wording of the document that serves as the foundation for the U.S. As previously mentioned, this thesis

will not examine the Federalist Papers in depth, however, they do serve as a framework for contextual understanding for this author. The Federalist Papers do examine the national defense and the militia and its importance to the nation. Events that have occurred over the last fifty years and especially the events over the past eight years have required a significant change in how state and national governments interact and where authority and power lies with regard to many issues, especially security.

Since the beginning of the U.S. there has always been debate over the role of government in every aspect of life. Essential to this debate is the role of state versus federal government. What is the role of state government in defense of the nation? What is the role of the federal government during natural disasters that impact only a single state, such as a tornado or hurricane? This is of course where we begin to examine the laws and significant legislation in order to better understand the roles and responsibilities of the state and local governments. As events have occurred the average citizen has changed his view of state and federal roles and responsibilities. The expectation of the average person one hundred years ago is much different than it is today. While a person may have expected his national government to provide security at the macro level, it is unlikely that many would have considered it a national issue if foreign citizens crossed the Mexico border into the U.S. This certainly does not mean that the average person would not have taken an interest in this, it simply means that short of a group that would commit crimes on a large scale, it would have been a local issue. Today it is a national level discussion. This is important to bear in mind as the use of the National Guard historically as well as legislative acts is examined. Expectations change as time moves forward and events shape the world.

The National Guard has been an important resource for the federal government since the creation of the Nation. In fact, the National Guard predates the U.S. by over 100 years.¹ As previously mentioned a debate that has raged since the first settler arrived, where does the authority of one part of government end and another begin? After the ratification of the Constitution of the United States, the great debate has been where does the authority of the state government stop and the authority of the federal government begin? Perhaps the first such example of this debate where it involves the militia is the Whiskey Rebellion. The Rebellion began as a response to the federal government imposing a tax on the production of whiskey. This tax was assessed at a different rate for large producers and the citizens responded to the tax by taking violent action to protest the taxation by the federal government. President George Washington ordered the militia to mobilize during the Whiskey Rebellion and to ensure that the citizens were compliant with federal laws. This was certainly a question of state and federal authority as the federal government was using various state militias to enforce federal laws, more importantly, they were enforcing these federal laws on their own state citizens and territory.

The Constitution of the U.S. makes it clear that the states have the right to state militias.² As the nation grew and matured, the roles would be more clearly defined through the creation of legislation and significant case law over the years. Disasters, wars, and in some cases petty bickering between rival lawmakers would serve as reason for legislation to further refine and provide guidelines for use of the National Guard.

Constitution

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.³

The Constitution has been the center for debate since the day it was written. Ask 100 people a question about the Constitution and it is likely that you will receive 100 varying interpretations of the document. This is also true in the literature that has been written about the document and the proper interpretation of the Constitution. While this author uses the Federalist Papers as a starting basis for understanding the document, it is important to remember that there were many who participated in the writing of the document and played a key role in its ratification who did not agree. Thomas Jefferson, considered the primary author of the Constitution, was an advocate of states' rights. He would likely argue that the National Guard today should only have a role within the borders. Alexander Hamilton, however, would argue that the federal government supersedes the state governments and could order the National Guard to serve the federal interests. Clearly two great men who were both present at the birth of the nation, influential, and yet did not agree on the powers of the federal government and could not be more different on their interpretation of the document that they literally wrote and implemented.

This disparity has not improved over time as events have contributed to new uses and roles of the militia as well as technological advances that many would argue that the writers of the founding documents could never have foretold. Therefore it could be argued that the Constitution itself provides the basis for the argument of defining the role

that the National Guard should play in Homeland Security. One of the great debates regarding the Constitution is the debate regarding interpretation and implementation of the document. There are several schools of thought and each views the Constitution as different in that they disagree on how the document should be interpreted and applied. Should the words be taken literally, and if so, how does one account for the change in language over time? If interpretation is favored, whose interpretation and why? How can one interpret intent of a group of people who did not agree in the first place? Is the Constitution a living document that changes or as written? This thesis does not attempt to answer that debate, however, it is important to acknowledge that there is debate and this debate clouds legislation and even the manner in which laws are followed and put into action. While there is great debate about the Constitution, there are a few indisputable facts regarding the document.

The Constitution clearly provides the states with the right to have a militia and denotes that the federal government will provide for the common defense of the nation. Section 10 of Article I specifically prohibits the buildup of forces in peacetime. The Constitution also gives Congress the right to fund the militias and provide for regulation of the troops.⁴ A system of checks and balances is put into place to prevent the federal government from having too much power and to prevent the individual states from attempting to throw off the balance of power by building their own army. The Constitution however does not get into specifics about the rights and responsibilities. The questions that it leads to are not insignificant and will lead to several significant battles between the states and the federal government that continues today in some cases.

The Constitution remains today at the center of all arguments presented by those who write about the conduct of our national defense and national security as it is the basis for what can and cannot be done and whose role it is to provide. Maintaining the balance put into place and ensuring that legislation and potential changes to the existing structure are paramount to opinions that have been written. While this thesis will not delve into the innumerable writings about the Constitution itself, it is a vital document that must be read and understood before attempting to process opinion or legislation that has been enacted over the history of the U.S. It is also paramount that the recommendations that may be made in this thesis comply with the restrictions and intent of the Constitution in order to be viable and able to be put into action.

Militia Acts of 1792

The Militia Acts of 1792 originally were written to affirm the authority of the President to federalize the state militias. These acts included the provision that the President could call into action troops to respond to crisis within states that essentially went above the capability of the state to respond.⁵ These Acts provide a fairly good understanding of what the framers of the Constitution had in mind when they wrote the document. The legislature realized that there were events that were occurring that would need to have the response of the federal government and the primary instrument of the federal government to apply force to the policies and laws was the militia. In the Acts of 1792, the Congress codified the legal authority of the President to use the militia. This included the right to use the militia to respond to acts by individual states that might go against the federal authorities. This is a defining of the authority as well as appointing responsibility for responding to acts and threats from within and outside the borders of

the nation. It is specifically mentioned that the authority of the President to call the militia goes to respond to those threats that may come from afar. This is something that is often taken for granted, however the reality is that this is very significant for the history of the nation and for the National Guard and the DoD today. There are those today who question the use of National Guard Soldiers, and yet the very people who created the nation established this authority during the infancy of the nation.

Today these Acts are long forgotten for many, however, the reality is that those who were in power and wrote these Acts were the Founding Fathers of the U.S. President Washington, often referred to as the “Father” of the nation exercised his authority provided under these Acts to call into action the militias in response to the Whiskey Rebellion.⁶ While the Militia Acts of 1792 are perhaps viewed as less significant today, they do provide a contextual understanding of what the Constitution meant with regard to both defense and security of the nation. The Militia Act of 1792 would eventually be overhauled by the Militia Act of 1903, but it does demonstrate historical context for what the founders of the nation believed to be the appropriate role of the militia. The Founding Fathers, while prolific writers, did not capture everything in a document or in writing designed to explain everything for future generations. Instead some of their beliefs and understanding of government is best understood by the actions they took. It is reasonable to assume that they acted in a manner (for the most part) that was consistent with their vision for the nation and its defense.

Insurrection Act

The Insurrection Act is significant to the use of federal troops within the individual states. This Act, enacted into law in 1807,⁷ places limits on the use of troops,

and spells it out very clearly to prevent the federal government from mobilizing the military to conduct actions in states and thus infringe on state rights. This law has been used in the past to respond to situations where the situation either outweighs the ability of the state to respond, or where the state may be complicit in the illegal actions occurring. The Act, often misunderstood by those who seek to demonstrate the limitations of the federal government, can be considered permissive. The Insurrection Act, while requiring a cause for the federal government, usually at the direction of the President, does not necessarily create a standard for determining cause for use of federal troops. While traditionally the President may wait until conditions absolutely require federal involvement, the Insurrection Act simply established that conditions must exist, not what those conditions might be. One such example of using the Insurrection Act would be President Dwight Eisenhower exerting his authority to use federal troops to enforce a judicial decision that the Governor of Arkansas disagreed with,⁸ in this case the integration of the Little Rock public schools.

In 1957 as a result of the 1954 U.S. Supreme Court ruling in the case of *Brown vs. Topeka Board of Education*, nine black children enrolled in a Little Rock, Arkansas school system. When Arkansas Governor Orval Faubus used the National Guard to block the children, he violated federal law by not abiding by the court decision. In order to enforce the ruling and to exert federal authority in this case, President Eisenhower used the 101st Airborne Division to ensure the children attended class. His ability to use federal troops was derived directly from the Insurrection Act as the President determined that the actions taken by the governor amounted to a problem that was outside the scope of capabilities of the state government to handle. This use of force is intriguing as it was

in essence the state itself that caused the problem, not a band of rebels that created a problem beyond the capabilities of the state. Of particular note is in this case, President Eisenhower also federalized the Arkansas National Guard in order to remove Governor Faubus from the chain of command and prevent the potential use of the National Guard by a governor who preferred to defy a judicial ruling.⁹ This last action by the President demonstrates his ability to use the Insurrection Act in conjunction with his powers granted under the Constitution and further empowered by the Militia Acts previously discussed.

Posse Comitatus Act

In 2005 many Americans were introduced to the Posse Comitatus Act of 1878 when Hurricane Katrina made landfall in the U.S. and caused a wide swath of destruction. When issues related to the storm¹⁰ caused significant damage and loss of life, there were a large number of troops sent to Louisiana to provide assistance in one form or another. Due to the tremendous challenge, portions of the military began to perform law enforcement-like duties. During this time and immediately thereafter many of the “experts” presenting their arguments on the use of the military would refer to the Posse Comitatus Act.

The Act itself is quite simple as it precludes the military from acting as law enforcement agents without legislative authorization. Often misunderstood, it does not replace the Insurrection Act, instead, the Insurrection Act grants the very authority required under the Posse Comitatus Act. The Posse-Comitatus Act prevents the federal government from using the Army or Air Force to enforce federal law in lieu of or as augmentation to duly appointed law enforcement agents. The Act was a response to a

federal court that determined that the military could be used to enforce rulings and thus offered a potential pool of agents. Essentially this meant that the federal court system could use the military as an extension of the U.S. Marshall's Service to enforce rulings.

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.¹¹

This thesis will reference the Posse Comitatus Act, and as a matter of fact it is a significant piece of legislation. What will not be discussed in depth are the racial beliefs that were a primary driver of getting this legislation passed into law.¹² That is a topic for another discussion, however the Act prevents federal troops from enforcing laws except in particular situations that is significant to the thesis. The Act only prevents casual use of the military for law enforcement as the Insurrection Act gives the President the authority to use the military when he determines a need to do so, with the consent of the Congress. This means that through either legislative act which could limit the scope of duties related to particular forces and situations, or on a case by case basis the Posse Comitatus Act can be suspended to enable federal troops to enforce laws.

Often misunderstood by many is that the restriction of the Posse-Comitatus Act applies only to federal troops. This does not apply to those forces that are under state authority. Essentially this means that the National Guard is not under the same restriction if they are under state authority. This is significant in how the Guard responds to a problem within the state is often defined by which status they are operating under. As in Hurricane Katrina, one of the questions that was posed was "what to do with the 256th Brigade"? The unit, which is a Louisiana National Guard organization, was in Iraq and preparing to return to the state of Louisiana when the hurricane made landfall. The

immediate response was to simply send the unit home early and allow them to assist in the state. The problem of course was that at the time of landfall they were under federal authority which would subject them to the same legal restrictions as any other federal force. The argument would eventually be forgotten by many as the unit did not return early enough to have a significant impact, but it did serve to demonstrate the difference of legal authorities that a Guard unit may have under state or federal control.¹³

Militia Act of 1903

The Militia Act of 1903, and its subsequent amendment in 1908, as with so many other pieces of legislation, attempted to fix historical shortcomings in a governmental organization. In this case, the organization was the militia. The Militia Acts, also known as the Dick Acts, were a response to events that occurred during the Spanish-American War. It was clear that the militia was not prepared to answer the call to duty if required to do so and in fact had not acquitted themselves well in attempts to utilize the militia during mobilization. Since the beginning of the militias, each state was responsible for the funding, training, and equipping of their own soldiers. This led to a disparity from state to state and even within the individual states, funding might be tied to relationships and friendships. The soldiers who were placed under federal authority were often recruited directly off the street. This meant that integration into, and operations with, the regular army was near to impossible without great effort and lost time. In order to increase the readiness and to address the shortcomings of the militias, the Congress passed the Militia Act of 1903 which brought all of the militias under the same standards and rules as the Regular Army. This allowed the state militias to organize and train to a

common standard and officers within the militia were subject to the same requirements as their counterparts within the regular army.

The federal government authorized an initial grant of \$2 million in order to modernize and align the capabilities of the militia with those of the regular army. These funds along with the fact that the federal government would now fund the training and pay for militia members ensured that the state militias would now be held to the same basic standards as the regular army. The initial act restricted mobilization to nine months and then only for domestic deployments; however the amendment to the Act would remove both of those restrictions, and thus formalized the authority of the federal government to mobilize and deploy the militia for reasons that might not directly impact the respective state from which forces were mobilized.¹⁴ The Act also identified that the militia, known formally as the nations Organized Militia, would have to be mobilized before the federal government attempted to bring volunteers into federal service to respond to particular events. Regarding the nation, although not particularly significant to the militia, was the fact that the federal government pooled those men who were between eighteen and forty-five and identified them as the Reserve Militia. This essentially continues the concept of the citizen-soldier that the National Guard is founded upon. It would also lead to events such as the draft later in the nation's history.

Perhaps the most significant and the lasting effect this Act would have is the creation of an office that would be the predecessor of the National Guard Bureau. Up to this point in history, the militias were a state function and there was little in the way of standardization or coordination with a central agency. The Militia Act of 1903 established a division with the Adjutant General's Office of the War Department¹⁵ that

would eventually, through future legislation, become the National Guard Bureau. The Act of 1903 also demonstrated the legislative attempt to strengthen the ties between the militia and the regular army as the Act established an element within the regular army whose role was to oversee the training and act as a liaison with the respective militias. It also established the authority of the War Department to withdraw financial support if the militia did not comply with the regulations or failed to meet basic standards. The militia for the first time was subject to the same rules and regulations as the regular army for the first time. If a member of the militia was ordered to duty and did not report, he was subject to court martial for the first time in history. The essence of the Act was to tie the regular army and the militia and to standardize the militia. The by-product of shifting funding was to create a new reliance on the federal government for the state militias. Since all funding, including the training funds was through the War Department, there was no longer the financial nor the legal ability of the states to simply ignore the federal government when it came to their militias.

National Defense Act of 1916

Yet another important legislative act, if not the most important act that would have the most impact on the National Guard, the National Defense Act (NDA) of 1916 established the National Guard Bureau. The NDA of 1916 was partially a response to the raids conducted by Pancho Villa across the U.S.-Mexican Border and an attempt to further codify the relationship and authority of the President of the U.S. and the respective state militias.¹⁶ The NDA established a separate bureau, which became the National Guard Bureau, and gave it authority to coordinate with the respective states.¹⁷ It also signified that the federal government recognized the significance of the National

Guard to the nation and its defense, particularly to the defense within the borders. In fact there was great debate over who should be the primary reserve force¹⁸ and with the signing of the NDA of 1916 the debate was ended.

The NDA of 1916 was a significant overhaul of the National Guard. It was also a significant change to the authority of the President of the United States. The NDA codified Presidential authority to call up the National Guard and then to use them in any manner in which he determined. This would be an important part of the legislation as the role of the National Guard in World War I (WWI) would be to bring regular army units up to full strength, rather than fighting as complete units.¹⁹ This would be over the objections of the respective governors, soldiers, and others; however, the law was clear that the President, and thus the War Department could utilize the National Guard in any manner they deemed necessary. Also of significance is the granting of authority to the President to call up the National Guard for an indeterminate amount of time in response to national emergencies.²⁰ While it may be something that is taken for granted today, Presidential authority to conduct these call ups was not a given in 1916.²¹ Ultimately the NDA of 1916 required that the Soldiers of the National Guard should be held to the same standards as the men of the Regular Army and that the federal government would provide for resources to ensure that those standards could be met. The NDA of 1916 was generally considered a victory and acknowledgement for the National Guard; however, it is certainly true that nothing comes without a cost. In this case, the NDA of 1916 had far reaching impacts that could not been anticipated by those who were seeking the approval of the bill. The federal government was able to include in the legislation requirements that the officers and soldiers of the National Guard would take the same oath to the

United States that regular army soldiers were required to take. The NDA of 1916 also resulted in tripling the amount of annual training required and perhaps most significant over the long term was the fact that the federal government through the War Department now had the legal authority to mandate which types of units each state had to fill. Until this legislation, most states maintained infantry units which were essentially the least expensive for the states to field. The passage of the NDA resulted in much less autonomy for the National Guard and much more control over the activities and direction of the National Guard for the federal authorities.²²

National Defense Act of 1920

The United States to include the political leadership was weary in 1920 from the events that had dominated the nation over the previous few years and it reflected in the NDA of 1920 as only a few significant issues were addressed in the legislation. The NDA of 1920 identified the “Regular Army and the National Guard as first line defenses”²³ for the nation and laid out the components of the United States Army as they remain today, a Regular Army, the National Guard, and the Army Reserve. It is clear that the legislators were war weary when they addressed the NDA and it was during this time that they would provide for the post-war reconstruction of the military. The NDA of 1920 established statutory caps for the size of the respective forces, much to the chagrin of the senior military leadership. The AC was to be capped at 280,000 men, and the National Guard capped at 430,000.²⁴ This indicates that the thought process of the leaders within the nation at the time was that a qualified force of veterans from WWI existed and should be able to answer the call to duty and quickly mobilize and act as a trained force if needed. This was to ignore the potential for another rapid buildup required by world

events, and while it is easy to look back today and point out that the United States was less than twenty-five years away from another war, the popular opinion was that the role of the military was changing. The NDA of 1920 reflected the mindset of the civilian leadership which saw the AC as a response force for small contingencies and if required to act as the framework for another buildup if ever required. It is through this legislation that the National Guard is seen not only as an integral part of the defense of the nation inside the borders, but would be an important aspect of any deployment based on nothing more than the sheer size of the National Guard in relation to the AC.

Mobilization Act of 1933

The Mobilization Act of 1933 provided one change that is significant and worth understanding as it pertains to the legal aspect of the National Guard. Previously the National Guard and its dual role answering to both the governor and the President of the United States was at times confusing. The Mobilization Act put an end to the confusion as it codified that there was no distinction between the Army and the National Guard in as much as the Act determined that soldiers in the National Guard were in effect soldiers in the Army.²⁵ This Act defined the difference between federal and state service which gave legal authority to the President to deploy the National Guard outside the borders of the United States. This also led to the first training that would be conducted between the active forces and the National Guard overseas. The Act established a clear relationship and at its core gave the Army sole responsibility for coordination and establishing standards, and prevented confusion as to which branch of service the National Guard might work with in the future.

National Defense Act of 1947

The NDA of 1947 is certainly one of the better known NDAs as it replaced the War Department and created the Department of Defense (DoD). The DoD was composed of the Department of the Army, Department of the Navy, and the Department of the Air Force. Although this may seem to have little impact on the National Guard, in fact it is significant in that with the creation of the Department of the Air Force, there was also a creation of the Air National Guard (ANG) which was aligned with the Air Force,²⁶ much as the ARNG was now aligned with the Department of the Army. The NDA of 1947 is also significant as it again formalized a process for communication from the DoD to the respective state National Guards. This communication link was through the National Guard Bureau (NGB) which allowed the states to communicate their concerns through a common link and the DoD to work through a single point to ensure common understanding of directives and programs. This was fairly significant as the NDA began to give some power and authority to the National Guard senior leaders as they began to determine who receives resources and funding.

United States Commission on National Security/21st Century

In January of 2001, the United States Commission on National Security, better known as the Hartman-Rudman Commission, was very clear in its report to the newly elected President and the DoD. “A direct attack against American citizens *on American soil* is likely over the next quarter century. The risk is not only death and destruction but also a demoralization that could undermine U.S. global leadership. In the face of this threat, our nation has no coherent or integrated governmental structures.”²⁷ Of course the

commission was horribly wrong in one aspect of this statement, it would not be years, but rather months before an attack would find its way to the United States.

The Commission, which conducted the most in-depth review of U.S. security strategy perhaps since the end of WWII ultimately made many recommendations regarding national security and changes that should be made in order to ensure the United States was safe and secure in the future. The Commission indicated that the primary mission of the National Guard should be homeland security.²⁸ In fact the Commission stated: “We urge, in particular, that the National Guard be given homeland security as a primary mission, as the U.S. Constitution itself ordains. The National Guard should be reorganized, trained, and equipped to undertake that mission.”²⁹ This statement, as is the entire report, is interesting in its approach to the National Guard and the defense of the country. Eschewing the traditional approach of using the National Guard as an augmentation to the AC, instead the report indicates that the lead agent in many ways should be the National Guard. The Commission also calls on the federal government to create a new agency, one that takes responsibility for homeland security and coordinates the various agencies and efforts under one umbrella. The recommendations would be the basis for the creation of the DHS, but would not be considered until after the tragic events of 9/11.

Department of Homeland Security

The most significant change since 1947 in the structure of the government of the United States occurred in November 2002, with the signing of the legislation that created the Department of Homeland Security (DHS). The bill established the agency and then promptly assigned responsibility for national security within the borders of the United

States. The law also moved many agencies under the DHS in order to ensure unity of effort and to ensure a safe and secure nation. Prevention of everything from direct attack to border incursions and even attacks conducted by electronic means fall under the purview of the DHS. However, there is not a single mention within the legislation to the National Guard. Not a direct relationship, nor a coordination effort with the one organization that will be called to action by the governor in response to disaster, natural or otherwise.

Stafford Act

The Stafford Act was added as an amendment to the Department of Homeland Security appropriations bill of 2007.³⁰ Formally known as the Robert T. Stafford Disaster Relief and Emergency Assistance Act, it authorizes the President to declare a disaster area or an emergency situation exist which then allows the federal government to get involved. The Stafford Act provides for the release of federal monies to the various agencies who might be involved with disaster response. This includes Federal Emergency Management Agency (FEMA) and other agencies within the DHS (Coast Guard for example). These funds also can be used to provide direct assistance to individuals through programs administered by the various agencies. This Act is important because it significantly impacts the financial ability of organizations to conduct operations during times of crisis. The National Guard is subject to the same budgetary process as all DoD organizations, thus there is little room for conducting unplanned operations. The Stafford Act gives the President various organizations including the National Guard, access to money to respond to disasters and/or emergencies that require unforecasted expenditures. Of course this also continues the theme of state and federal rights and responsibilities.

There are many factors that go into the Presidential decision making; however the significance of the Stafford Act for this thesis is that the funding is approved at the federal level for operations conducted within individual states. It continues to be a delicate balance between state and federal responsibilities and no organization is more involved in attempting to balance the dual authorities than the National Guard.

National Defense Act of 2008

Recognizing that conditions have changed is the first step in the process of significant change within the government. Considering the pace of government, however, it sometimes takes a significant amount of time to move from recognition to change, and the NDA of 2008 is just such an example. The events of 11 September 2001 caught every American by surprise, and politicians were no different. Considering the chain of events that would occur in a short period of time, Congress could be forgiven for taking some time before implementing changes in the National Guard and the relationship within the DoD. However, also considering that the DHS was created in months, it is difficult to understand why it took several years to acknowledge what everybody already knew--the National Guard is a vital and important part of the U.S military, particularly today.

The NDA of 2008 with regard to the National Guard can be described as the change that had long been overdue. The NDA elevated the National Guard Bureau to a joint activity within the DoD, rather than an activity under the respective Departments of the Army or Air Force. The Act also directs that the NGB is the primary advisor to the Secretary of Defense on certain issues. This allows for a more direct relationship and less opportunity for the service chiefs to minimize the impact of the NGB. Coupled with this change is the elevation of the Chief of the NGB to a General Officer four star billet. For

the first time, the senior leader of the NGB, essentially the person who is responsible for coordination of over 470,000³¹ men and women in the ARNG and ANG was eligible for the highest rank and could be considered an equal (in rank) to his peers. The NDA also mandated that either the commander or the deputy commander of Northern Command (NORTHCOM) would have to be a National Guard Officer, which considering the nature of NORTHCOM seemed a natural fit. Ultimately the NDA started a change that seems to have stalled since, but provides an outstanding point of departure for this thesis.

Total Force Policy

Over the years many pieces of legislation have been written, debated, and passed that impact the way the DoD and the National Guard do business. Sometimes, however, it is not a piece of legislation, but a philosophy or a way of thinking that can have significant impact. The Total Force Concept is one such idea. In the late 1960's the Vietnam War was ongoing, the Army was a conscript Army, and politicians understood that an unpopular war combined with the draft was a losing situation long term (politically speaking). President Nixon decided that the draft could be ended and he appointed a committee to examine how this could be done. Ultimately one of the outcomes of this decision was the Total Force Policy, alternately known as the Abrams Doctrine, after the Army Chief of Staff, General Creighton Abrams.³²

It was easy to see that with the drawdown in forces, and the requirements being placed upon the military, there simply was no easy or good way to ensure that the Army could reduce its size and have all the units and people that it needed. The force was restructured to distribute necessary units ranging from combat forces to support forces from the AC to the RC. This movement would effectively ensure that no significant

action could be sustained over a period of time that would be AC only. Beginning with the implementation of this policy, the AC would be reliant upon the RC for sustained operations. This also was a measure taken to ensure that the military would not be isolated from the general population when it came to future actions. In order for the President to order the AC to war, he would in essence have to mobilize at least some part of the RC.

The significance of this policy has been debated through various articles, and while there is no consensus on right or wrong, there is a consensus that this policy has had the effect of ensuring that the RC, including the National Guard, must be mobilized in order to deploy and conduct operations outside the border. The debate continues to occur through the literature as this policy is not a product of legislation, nor a Presidential action. It is in essence a policy created by the military that today drives national policy and even strategy.

¹The National Guard celebrates its beginning as 13 December 1636, when the first militia held its first muster to provide for the defense of the settlements.

²The term militia as used in early American history would become more commonly known as the National Guard. The term National Guard would not be used until the 1820s.

³U.S. Constitution, Preamble.

⁴U.S. Constitution, art. 1, sec. 8.

⁵*Militia Act of 1792, Statutes at Large of the United States of America 1789-1873* (2 May 1792): 246.

⁶George Washington, *The Diaries of George Washington*, The Papers of George Washington, The Whiskey Insurrection, <http://gwpapers.virginia.edu/documents/whiskey/index.html> (accessed 17 September, 2009).

⁷*Employment of Land and Naval Forces in Cases of Insurrections, Statutes at Large of the United States of America 1789-1873* (3 March 1807): 443.

⁸Dwight D. Eisenhower, Providing Assistance for the Removal of an Obstruction of Justice Within the State of Arkansas, Executive Order no. 10730, http://www.eisenhower.archives.gov/Research/Digital_Documents/LittleRock/New%20PDFs/Press_release_EO_10730_92457.pdf (accessed 15 August 2009).

⁹Ibid.

¹⁰Hurricane Katrina, while causing significant damage, was not the primary cause of death in the New Orleans area. Most of the flooding and subsequent loss of life was caused when the levees failed and water flooded into the city, much of which lies below sea level.

¹¹U.S. Code, tit 18, sec 1385.

¹²The Posse Comitatus Act was put into place as a response to the growing concern that the federal government was using troops to enforce laws related to the end of slavery and reconstruction in the south. Many of the southern lawmakers who pushed for the enactment of the law were simply looking for a way to block enforcement of the laws since they realized that many local law enforcement officials were not likely to enforce policies that were contrary to their own beliefs.

¹³This author was in Iraq at the time of Hurricane Katrina and was working with several leaders from the 256th BCT and was privy to the argument that was ongoing as to the potential role they might play if they returned immediately. This was the first time the author had a real world experience with the difference between federal and state authority with regard to Posse-Comitatus. To that point, for the author, as for many within the National Guard, the concept had been purely theoretical.

¹⁴National Guard Bureau, *Records of the National Guard, 1822-1974*, <http://www.archives.gov/research/guide-fed-records/groups/168.html> (accessed 17 August 2009).

¹⁵Ibid.

¹⁶Richard W. Stewart, ed., *American Military History Volume I, The United States Army and the Forging of a Nation, 1775-1917* (Washington, DC: US Army, 2005), 382.

¹⁷In reality, the authority to conduct coordination with the individual states was technically authorized in 1917 with War Department General Order 119. However, in practice the National Guard Bureau was conducting the coordination based on the sweeping changes in the NDA of 1916.

¹⁸Michael D. Doubler, "A Militia Nation Comes of Age," *National Guard Magazine* 53 (September 1999), 82.

¹⁹Richard W. Stewart, ed., *American Military History Volume I, The United States Army and the Forging of a Nation, 1775-1917* (Washington, DC: US Army, 2005), 382.

²⁰*Ibid.*

²¹Presidential authority to conduct a call up of the National Guard is a debate that continues today. Some governors have stated publicly that the National Guard does not have to respond to a Presidential Order in certain cases. Today, the debate continues with Operation Iraqi Freedom and Operation Enduring Freedom as some states have attempted to contest the authority of the President in this matter. In 1990 Minnesota Governor Rudy Perpich filed a case which would go before the U.S. Supreme Court based on his assertion that the President did not have the authority to call the National Guard to service without his consent. The U.S. Supreme Court ruled unanimously against him, upholding the laws. This demonstrates that the debate continues, however both legally and practically speaking, it is the author's belief that of the 54 states and territories with National Guard units, few, if any, could afford to forego the money from the federal government to support the Soldiers.

²²*Ibid.*

²³*National Defense Act of 1920* (Washington, DC: U.S. Government Printing Office).

²⁴*Ibid.*

²⁵US Code, tit 32, chp 1, 101.

²⁶*National Security Act of 1947* (Washington, DC: U.S. Government Printing Office).

²⁷USCNS/21, *Road Map for National Security: Imperative for Change* (Washington, DC: US Government Printing Office, February 2001), viii. Emphasis in original text.

²⁸*Ibid.*, ix.

²⁹*Ibid.*

³⁰*Robert T. Stafford Disaster Relief and Emergency Assistance Act*, Public Law 93-288, June 2007.

³¹National Guard Bureau, *National Guard 2010 Posture Statement* (Arlington, VA: US Government Printing Office, 2009).

³²James J. Carafano, "The Army Reserves and the Abrams Doctrine: Unfulfilled Promise, Uncertain Future," *Heritage Lectures* 869 (April, 2005).

CHAPTER 3

RESEARCH METHODOLOGY

He who asks is a fool for five minutes, but he who does not ask remains a fool forever.

— Chinese Proverb

This thesis will examine the role of the National Guard in homeland defense and provide recommendations to improve the effective use of the National Guard in this role. This is an attempt to look at the historical role of the National Guard, review pertinent laws, and examine the DHS to determine if a new relationship is in order to benefit national security. As the role of the National Guard transitions from a strategic reserve to an operational reserve the overall military strategy has evolved as well. There still remains many gaps and potential vulnerabilities that have been either unaddressed or fallen by the wayside due to the increased operational tempo of both the National Guard and the Active Army forces.

It is not the intent of this thesis to suggest that the recommendations presented are the only way to improve the National Guard or to improve security. Instead this thesis is a way to start the process of looking honestly and holistically at the problem of National Security and the best way to maximize the effectiveness of the National Guard in the defense of the U.S. It is this author's belief that change rarely occurs as a matter of unprompted introspection. It is however the hope of this author that debate will occur which will eventually lead to legislation that will ensure the security of the U.S.

In the aftermath of 9/11, the U.S. made many dramatic changes, including the creation of the DHS. This agency was given the lead for oversight of National Security and coordinating efforts across multiple agencies and jurisdictions, including local, state,

and federal. The creation of the DHS was in addition to the DoD, it did not replace the DoD rather DHS took on a role within government where there were previous fault lines. Therefore it is logical to begin by examining what the DHS is, how it came to be, and what its role is in the national security spectrum. The research must also examine the DoD, and then compare their respective roles in National Defense and National Security. This will enable the questions of what was the role of the National Guard before 9/11 and what is it today? In order to answer these questions a qualitative review of published works and an examination of recent history itself will be required to determine the roles, and in fact the effectiveness of the respective organizations outlined.

Qualitative review will also be the methodology used to examine the laws and regulations that govern the National Guard, DHS, and the DoD. These laws, as they pertain to National Security and the National Guard, must be reviewed in order to better understand the current limitations of the respective organizations. Reviewing the statutes and laws that have been put into place, there must be some review of the context of the times, in other words, why did lawmakers enact those laws when they did. As this author has suggested, in fact made as a fundamental reason for this thesis, government rarely changes in anticipation. Therefore, understanding the environment and times in which these laws were enacted allows for a determination of whether conditions have changed and thus a legislative rewrite is appropriate based on new conditions. As the laws are reviewed then, a determination must be made as to whether those laws are still appropriate and applicable today.

As the research shifts from the limitations placed by law, the next area to be researched will be the organizations and missions that exist today with respect to

Homeland Security and National Defense. These missions and organizations are again researched using primary sources and documents that outline their purpose and fundamental organizational mission statements. This research is done to match up the roles to the agencies and then to the National Guard to determine the most appropriate channels to command and control and achieve the desired endstate for the overarching national strategy.

This thesis will link the potential gaps and points of failure through the works reviewed in chapter two to the analysis in chapter four to arrive at a recommendation in chapter five to answer the question “what is the role of the National Guard in Homeland Security and where would it best accomplish this mission”? The most significant issue with this thesis will be the reality that the author’s experiences and personal beliefs are likely to influence the manner in which the laws and organizations are perceived. In particular the effectiveness of the organizations is likely to be viewed with a skew developed over years of interaction with the agencies. It is not the claim of the author that there is no bias, this author in fact acknowledges the potential and will endeavor to present an honest look at the facts and work to present his recommendations based on the overall record, not isolated events that may or may not be the standard.

CHAPTER 4

ANALYSIS

In reviewing the past several decades of intense use of the reserve components, most notably as an integral part of operations in Iraq, Afghanistan, and the homeland, the Commission has found indisputable and overwhelming evidence of the need for policymakers and the military to break with outdated policies and processes and implement fundamental, thorough reforms in these areas. The members of this Commission share this view unanimously. We note that these recommendations will require the nation to reorder the priorities of the Department of Defense, thereby necessitating a major restructuring of laws and DOD's budget. There are some costs associated with these recommendations, but the problems are serious, the need to address them is urgent, and the benefits of the reforms we identify more than exceed the expense of implementing them.

— Commission on the National Guard and Reserves

It has often been said that government is slow and unresponsive, and it is generally accepted that the government is often reluctant to take proactive measures to address issues or threats that are not clearly defined or readily visible to the general population. The consequences of failing to address potential threats became clear on the morning of 11 September 2001 when approximately 3,000 Americans¹ died during the terrorist attacks planned and conducted by Al Qaida. While many may assume that these events were unpredictable, that assumption would be both dangerous and ignorant as clearly conditions had changed in the world, particularly with respect to terrorist attacks conducted on American soil. Worse perhaps than not understanding that the conditions were changing, is the outright ignoring of events and conditions that were identified prior to the attacks of 9/11 by various government officials and agencies. While it may be politically expedient and easier to continue to structure forces and agencies to face current and past threats, it is the foresight and long term vision of our senior leaders regarding future threats that determines the long-term viability and safety of the U.S.

There are many dangers that face the U.S. and its citizens both in the short term and over the long term. An inherent difficulty is that those threats and the potential timeline for facing those threats changes constantly. One example is the current economic crisis throughout the world, especially the financial crisis the U.S. finds itself in currently. In 2006 there would have been little call from the populace to focus efforts on economic reform and face the potential economic threats from abroad that could challenge the supremacy of the U.S. as the world's superpower. The events of 2008 and 2009 have led both the people and the leadership of the nation to refocus their priorities and address their efforts to the economic dangers facing the nation. Economic threats are so great that the President now receives an update daily during his security briefing on these threats and the proper response.² While a very simple example of the shift, this serves to illustrate some very hard and fast truths. Priorities shift, new threats continue to emerge, and leadership and the corresponding beliefs on how to address the threats changes constantly, thus contributing to the challenge of anticipating and implementing dynamic changes to the defense of the homeland. The challenges while tremendous are not insurmountable, and rather than simply waiting to act, it is the responsibility of a nation's senior leaders to attempt to aggressively identify and address dangers that may come to face the people. During the months following the attacks of 9/11 there was much reaction and many changes occurred, not the least of which was the creation of the DHS. There seems to have been a gradual slowdown of changes and in many ways the U.S. has returned to the prevailing attitudes of pre-9/11. In order to understand the way forward, it is important to address the past, the present, and of course the future, not only of threats, but also the way that the U.S. has been and is poised to address those threats.

Historical Role(s) of the National Guard

When the very first settlers arrived in the New World there was no standing army stationed in garrison ready to respond and meet challenges. Instead the common defense was left to the collective within the colonies established. This essentially meant that every man who was capable of responding to threats to the collective was responsible for doing so. While limited in their duties, even the women had a role to play, from preparing food for the defenders to assisting medically. Every person had a role in the defense plan and failure to participate not only would result in being ostracized but offered the potential for total destruction of the settlement. While this threat is often thought of as the respective Native American population, the reality is that this collective defense of the homeland went well beyond battles with the Indian tribes. Disease, storms, drought, poor crops, and many other challenges existed and were met head-on by the collective, for the greater good and to ensure that the collective would survive and thrive. This is truly the roots of what is now known as the National Guard.

This manner of defense was the primary means of defense for years, including the eventual liberation of the colonies from British rule. George Washington, commonly known as the General of the Continental Armies was actually a Colonel in the Virginia Militia³ well before his selection by the Second Continental Congress to lead the Continental Army. Service in the militia was common, and offers great insight into the thinking and contextual understanding when attempting to discern what the writers of the Constitution of the U.S. intended and how they viewed the common defense. While the world is much different, and the U.S. is no longer isolated from the rest of the world,⁴ there remains a great value in understanding that those who created the U.S. came from a

time where a standing army might have been distasteful to many, and that it was understood that the citizens of a nation had responsibilities. It helps to put the role of the National Guard into perspective, as the Founding Fathers may have envisioned it.

The National Guard, referred to as the Militia until the early 1900's was seen as the foundation of the defense of the people of the U.S. The role however was a defense within the individual states of the U.S., not as a responsive force that was used to project power, nor generally considered immediately responsive for use by the federal government. This is not to suggest that the federal government did not use the Militia, in fact the government relied on the Militia to respond on multiple occasions. The reality however, was that funding resourced by the states and no common standard was in place across the individual militias, therefore the reserve force was not prepared to mobilize and fight as an army against another army in a traditional fight. This was evidenced by the performance of the Militia in the Spanish-American War where they simply were untrained and unprepared for the challenges that traditional war presented. Clearly the lack of standardization across the board contributed to the poor effectiveness of the Militia, however continuing in the vein of what the role had developed into, the Militia was better prepared for the role of responding to the needs of their own communities in times of disaster. The fact that the Militia is composed of the very citizens of the communities lends itself to understanding the underlying issues and being able to quickly move to garner the proper resources when needed.

WWI signaled a significant change for the National Guard and the Regular Army. Mobilization of the Regular Army of the U.S. simply did not provide enough troops to meet the pressing needs of full scale war. While President Woodrow Wilson had

mobilized thousands of National Guardsmen to serve the U.S. along the Mexican border in 1916 and 1917 as a response to raids against American citizens, there had been little to no federal funding for many of the equipment and training needs. The need to quickly build large numbers of soldiers was not made easier by the lack of attention paid to the National Guard by the federal authorities. This may appear to be a small bump in the road considering that the Regular Army was not a robust and well funded organization either, however, this is indicative of the attitude prevalent amongst the senior leaders of the federal government. Essentially dismissive of the National Guard until the government needed them, and then under-resourcing the units, the federal government took a short term approach to the integration of the National Guard into the overall defense strategy for the U.S. This short term approach may not have been intentional in many ways, it is simply the reality; address the immediate needs and give short shrift to the organizations that are not part of the front page issues.

Upon conclusion of WWI the beginning of a very significant change which would have long term implications, including some that linger today. During the demobilization process, the decision was made to issue full discharges to the National Guardsmen returning from war. This seemingly simple act caused quite a bit of problems for the National Guard and the respective states. The meaning of a full discharge was to end the term of service for those Guardsmen and strip away much of the National Guard as there was no obligation to return to the state and continue to serve. Regardless of the motivation, this act was the beginning of a sometimes contemptuous relationship between the Regular Army and the National Guard in the Twentieth Century.

After the war, the War Department proposed a plan to move forward with a military composed of a force of equal parts active and reserve, at 500,000 soldiers in each. The War Department made a decision to leave out the National Guard as the leaders of the Regular Army did not view the National Guard favorably.⁵ This led to the NDA of 1920, wherein Congress had to impose on the War Department the proper structure by clearly delineating and describing the components of the U.S. Army, the Regular Army, the Reserve, and the National Guard. The legislation went farther in what amounted as a direct rebuke of the military leadership. The legislation stated that the National Guard was the primary reserve for the nation in times of crisis.⁶

The years following WWI found the National Guard, along with the nation, struggling mightily. Under-resourced by the federal government, state governments struggling in the dismal economy, and general misery spreading across the nation in the form of the Great Depression, the National Guard continued to struggle. Simply put, there was no new equipment to be had, training was curtailed, and relations between many government entities, including the National Guard and the Regular Army, was often a competition for scarce resources. WWII would change many things in the U.S.

The nation was at a crossroads in 1940 and the National Guard was no different. Years of neglect and a lack of funding and resources had a detrimental impact on the overall level of readiness of the National Guard. However, the National Guard was ordered by the President to mobilize and serve in the western hemisphere.⁷ This mobilization offered an opportunity for the National Guard to train and work together as they (unknowingly) began to prepare for service in Europe and the Pacific. While this mobilization offered a chance to train and prepare, it also highlighted the lack of

equipment and continued to stir some negative feelings between the Regular Army and the National Guard. When the Japanese attacked the U.S. it left no doubt that the nation was going to war and on a scale it had never seen before.

WWII required every resource the U.S. had to offer, nothing was left. The Regular Army did not have enough soldiers to ensure victory, and it was clear that it would take some time to move to full mobilization for the war. The President took the approach of total war, which is to say that the entire nation was mobilized in some form or fashion. Millions of men were drafted or volunteered to serve in the military, industries were revamped to provide for the war efforts, rationing of certain materials, and with the overseas deployment of so many men, women were encouraged to work in industries where it had previously been male dominated. These changes would have long term impacts on the nation, and the full mobilization of the National Guard would have an impact as well.

Requiring every available soldier, airman, marine, and sailor, there were few National Guardsmen left behind to serve stateside. This large-scale mobilization meant that the National Guard Bureau came to be placed for the duration of the war under the Adjutant General of the Army.⁸ This move effectively reduced the National Guard Bureau's ability to influence within the various states. While having little impact during the war, this would have consequences after, the most visible was to emphasize the positional power of the Active Army and provide opportunities for the respective individual states to coordinate and lobby directly the U.S. Army instead of coordinating actions through the National Guard Bureau.

There were many positives that would benefit the National Guard through the decisions that would be made as a result of the war. As WWII ended and demobilization began many questions had to be answered, the primary was what to do with the millions of men who were returning to the U.S. As it became clear that the conditions were much different in the world than those that existed after WWI, it was decided that the National Guard should continue to play a large part in the defense of the nation. With so many men who had served overseas in combat and who were returning to their communities, the National Guard was able to draw upon a large pool of men as the Regular Army began to drawdown in size. The decision and legislative action by Congress to exempt National Guard members from the draft⁹ resulted in a National Guard that could be more selective of its members and had few problems sustaining overall endstrength.

In spite of the overall numbers of the National Guard, the development of the Air Force necessitated the creation of the ANG and its split from the ARNG. This caused many problems internally for the National Guard as the National Guard Bureau struggled to integrate the ANG and balance the requirements with the states and the two different services. This should not have been surprising, as the newly formed Air Force was still developing and attempting to grow rapidly into its own independent service branch. This friction continued to cause some issues for all the parties; however the Korean War would soon offer much more significant issues for the National Guard Bureau.

The fundamental strength of the National Guard is the fact that soldiers within a unit have worked, trained, and known each other for years. The Regular Army made a decision that caused great concern for the leaders of the National Guard and added to the mistrust between the National Guard and the Regular Army for years. During the Korean

War the Army made the decision to mobilize individual soldiers from the National Guard in order to fill Regular Army units to full strength. This move was seen by many within the National Guard as a return to the policies of the Army immediately following WWI, where attempts to marginalize the National Guard were common. This mobilization of individuals and/or equipment would result in “hollow” units where the most experienced and talented individuals had been stripped out of the units, and units would be underequipped. The senior leaders of the National Guard appealed to their commanders, the governors, and to their legislators to prevent this. Once again, over the objections of the Regular Army, Congress passed legislation to force the senior leadership of the Army to use the National Guard in a manner consistent with stated policy. The Armed Forces Reserve Act of 1952 restated that the National Guard was to be the primary reserve force for the U.S. and that it was to be mobilized as units rather than as individuals.¹⁰

The 1950s and 1960s presented many challenges for the nation, and as such, for the National Guard as well. The growing threat from the Soviet Union began to place a tremendous strain on the AC as the focus was on Europe and protection of the Western European Nations. As the focus continued to be forward in Europe for the AC, there was a resulting capabilities gap in the U.S. to answer the emerging Soviet long range bomber threat. The U.S. created a new command which was the Army Air Defense Command (ARADCOM) which was responsible for air defense along the northeastern and western coast line of the U.S. This mission would continue into the 1970’s and during that time over 100 National Guard units would be called to serve the nation as a vital part of the homeland defense.¹¹ This mission provided a new concept in terms of use of the National Guard. The units were mobilized under Title 32 authority, which meant that they

answered to the governor of their respective state. However, immediately upon receiving information of a threat, the unit would transition to Title 10 authority to answer to the federal government and ensure a coordinated response in the event of war.¹² This manner of use allowed the DoD to maximize homeland defense while minimizing the strain on the AC and also ensuring that units maintained a level of proficiency that would be required in the event of another large mobilization.

This period of time also found the U.S. Federal Government relying more and more on the National Guard in their support to civil authorities' role as the nation struggled to deal with civil rights issues. During this time, the National Guard began to focus their efforts on some skills not necessarily required in the AC during training. Race related issues such as those found in school desegregation forced the National Guard to adopt training to handle riot control. These events were key as the respective governors lobbied for the creation and retention of units such as transportation, medical support elements, and military police to respond and handle the emerging threat associated with civil disobedience. As the National Guard was removed further and further from WWII and the Korean War by time, there was a clear shift in priorities and use of the National Guard.

As conditions changed, the Secretary of Defense, Robert McNamara made the decision to restructure the National Guard and the Army Reserve in order to reduce the manning requirements if large scale mobilization was required. Secretary McNamara's restructure attempts would ultimately contribute to the feelings of some within the National Guard that the AC was attempting to minimize the efforts and worth of the Guard. McNamara eliminated several divisions and instead replaced them with brigades.

While this would significantly reduce the manning requirements for the National Guard, it also eliminated many positions at the higher ranks. This was received by some as a message that the National Guard was only capable of serving to a certain level, and if mobilized, the National Guard would report to an Active Component (AC) General. It is not unreasonable for many to have felt this way, considering that during the Korean War, many National Guard officers above the rank of Major were relieved of their duties based on the argument that they were not competent to lead at a higher level.

The decision was made during the Vietnam War to increase the size of the Army through the draft instead of mobilizing the National Guard for wartime service. Instead of being mobilized and sent to Vietnam in their respective units, the Army decided to mobilize some National Guard units and send them to Europe to augment the forces stationed there. This may have been well-intentioned; however, the result was not as positive as it could have been. When National Guard units were identified for mobilization and deployment to Europe, they had to fill the personnel and equipment shortages by pulling from other Guard units within their state. This had a detrimental effect on the readiness of those units left behind to serve their state.¹³ The program was short-lived and while the numbers were relatively small, the National Guard was again called upon to mobilize and prepare for war, this time in Vietnam.

Over 13,000 National Guardsmen were called to duty and of those almost 3,000 would go on to serve in Vietnam.¹⁴ The National Guard was fully engaged in the 1960s and 1970s, providing forces overseas to assist in the war effort, augmenting active forces in Europe, and continuing to support their respective states in civil operations. This demonstrated the ability of the National Guard to operate across the spectrum and

provide forces at the local, state, and national level. There would be some drastic changes that would be imposed as a result of the schism between the military and the civilian populace.

A lesson learned by the nation's leaders during the Vietnam conflict was that a populace that is disengaged from the military can result in a lack of popular support. This realization led to the Total Force Policy which was a shift in the philosophy of the military. Whereas the Army had focused on breaking ties for some time from the National Guard, the Total Force Policy was a means to tie the AC, the Army Reserve, and the National Guard together and ensure that the AC would not be able to conduct sustained operations without the support of the RC.¹⁵ The draft had become a political albatross and untenable for many Americans. Budget reductions resulted in less manpower available for the AC and in order to continue to reduce expenditures, reliance on the National Guard was increased.

This reliance on the National Guard also had another impact on potential use of the military for future operations. No longer could the AC be sent overseas into combat without mobilization of the National Guard. This meant that any decision that political leaders might make concerning the military was tied to the average citizen, or a member of the National Guard. If politicians made the choice to commit forces, they were not going to be disconnected from main street U.S.A. There were fewer walls between the military and the average citizen, and the senior military leaders wanted to ensure that the lack of support they suffered through during the Vietnam War would not be repeated in the future. This reliance on the National Guard had other consequences as well.

The Total Force Concept meant that National Guard units would be identified to fill out AC units in time of need. This meant that habitual relationships were to be established and training and equipping would be tied to the unit the National Guard was associated with. This never quite came to fruition, and in fact the true impact was to continue to cause a divide between the National Guard and the AC. Some of the problems were simple such as the frustration that was felt by the training timelines and communication between units. As most National Guard unit commanders had other jobs to worry about, they were not readily available to plan and prepare for joint training exercises. The National Guard was also limited to one weekend per month and two weeks in the summer months for training, hardly conducive to creating a cohesive effort between elements. Other issues were much more difficult and much more contentious.

As National Guard brigades were assigned to round out AC divisions, there was often the effect of the National Guard units being seen as the inferior of the brigades and thus a serious and deep divide at the individual level began to take hold. As soldiers realized that they were not receiving the same equipment as the AC, and derisive comments were made about the abilities of Guardsmen, the divide grew.

As the National Guard took on additional responsibilities and an expanded role under Total Force, the operational tempo began to increase. The National Guard began to increase their participation in overseas training and large scale exercises. The National Guard also began to take on more of a role in operations in Central and South America as the war on drugs took on added importance. These missions often tested the National Guard as the states would have to focus efforts and resources to prepare the units and

ensure that they were able to deploy with the equipment and personnel required for the missions.

The increase in operations coupled with a low priority in equipping and resourcing from the federal government put a significant strain on the National Guard and often the leaders within the National Guard found themselves caught in a difficult situation as they had to balance state and federal agendas. The states began to object more often and with more vigor until finally the Supreme Court had to intervene. The Court ruled that the President did have the legal authority to mobilize and deploy the National Guard for overseas operations. While the federal government might have seen this as a victory, it meant that the contentious relationship between federal and state authorities would be played out through the National Guard in many cases.

Good intentions and poor outcomes continued as the U.S. responded to the invasion of Kuwait by Iraq in 1990. The response was known as Desert Shield and Desert Storm during which the President directed the DoD to mobilize the National Guard and the Army Reserve. The Total Force Concept had National Guard Brigades rounding out the AC divisions and yet the Army chose to rely upon separate brigades instead of operating according to stated policy and in the manner in which both the Guard and the Army had trained. The perception was that the Army had only paid lip service to the Total Force Concept and when it came time to actually fight, the Army was only too glad to leave behind the National Guard. The same Guard that had felt for years as though they were being treated as the less capable step-brother.

The DoD also decided to mobilize slowly and deliberately which contributed to the sense of frustration, as again, in the midst of the first major combat operations, the

National Guard was being marginalized. It was exasperated by the fact that units began to receive their mission, and many were assigned to stay in the U.S. and backfill the AC in their duties. This perception of being less capable was not only in the minds of many senior leaders, it was also the example that junior officers had for treatment of the National Guard during crisis. This served as the baseline experience for officers who would later on be senior leaders and rely on the perceptions when they had much more responsibility and had to make decisions on how to use the National Guard.

The years between Desert Storm and 11 September 2001 would see the National Guard continue to fight perceptions and they would struggle with severe equipment shortages and resource issues. The equipment that the National Guard received was almost always equipment that had been used by the AC and been replaced by better equipment. Training budgets were cut drastically, and many shortened courses were created for National Guardsmen to attend which had an impact on the overall readiness of the Guard compared to the AC. The overall readiness suffered and perceptions of the capabilities of the Guard was less than favorable. The Guard continued to respond to disasters such as floods and hurricane relief efforts, however these missions were generally ad hoc and the AC saw these generally as a state mission, not a federal mission, which meant a lack of resourcing for training for these types of events.

The National Guard was conceived as the foundation for defense of the nation. There was no large standing army at the start of the nation. In fact, until the 1900s, the militia played a significant role in defense and was considered by many as the primary means of defense for the nation. As the twentieth century dawned, a shift occurred and the AC attempted to reduce the importance of the National Guard, if not eliminate the

Guard completely. WWI and WWII set in motion many changes, not only in the military, but in the nation as a whole. A world full of dangers and threats to the very beliefs that the U.S. had been created upon were out there and a larger military was required to counter these threats. As the AC grew, the need for a large robust National Guard was no longer considered essential and the manner in which the National Guard was viewed changed.

The National Guard has served the nation well, responding in times of need often in spite of a lack of proper training and equipment for the tasks assigned. There have been ebbs and flows in the National Guard, however the men and women have proven time and again that they were ready to step up to answer their nations call to duty, no matter the task. This would serve the nation well once again as the U.S. would suffer a dark moment in its history in 2001.

Post 9/11

The events that occurred on the morning of 11 September 2001 impacted and an entire generation, and by simply saying 9/11, nearly every American citizen over eighteen years of age knows exactly what the topic is. Much as a generation had Pearl Harbor, and the next generation had the assassination of President John F. Kennedy, the events that transpired on that morning will forever be burned into the minds of millions. It was also a day that the U.S. fundamentally changed, and with it, the National Guard would change as well.

Almost immediately the National Guard responded to the events of 9/11 as men and women streamed into their armories or drove to New York City to assist. It was clear to the American populace that military action would be taken, people were uncertain

about the safety of public transportation, and there was a general sense of unease. In response to the events, the federal government and individual state governments ordered National Guard units to duty in order to protect critical infrastructure and provide security for citizens across the nation. As reality dawned on many and individuals understood the situation, more units were tasked to provide security on a variety of locations, everything from nuclear sites to bridges, border crossing points to military training sites. The Guard offered a unique capability that the AC could not-the experience and ability to work with local and state law enforcement agencies. Aside from the potential legal issues that accompany federal troops, the National Guard could tap into the soldiers themselves, many of whom were policemen, or engineers, or worked in the agencies that they were now supporting. These relationships are essential in a domestic crisis as there is invariably a soldier who understands the background and history of the issues that they are facing. Soldiers in the AC may live in an area, however, they are stationed there and often lack the ties to the community that the Guard has, and in a time constrained environment there is simply no substitute for those relationships.

As the federal government began to develop a better understanding of the events that had occurred, it became clear that the military would begin to conduct operations in Afghanistan. It was also clear that because of the Total Force Policy, and the reality of conducting sustained operations overseas, the National Guard would be a vital part of the war effort. Some of the very first troops in Afghanistan were members of the ANG, delivering troops and supplies. It became clearer as time passed that the ARNG would be needed to fill certain capability gaps and assist in the efforts. In most cases, the National Guard was initially seen as a strategic reserve, much the same as they had been over the

previous years and much as they had been used during Desert Storm. Initially National Guard units were deployed to fill the role of deploying AC forces. It did not take long however, to understand that OEF as the war in Afghanistan was known, was not going to be resolved quickly.

Soon the U.S. began to look at Iraq and demand changes within the Middle East or the use of force would be an option. Upon commencement of Operation Iraqi Freedom (OIF), the possibility of using the National Guard solely as a strategic reserve was no longer given serious consideration by most. It was clear that combat forces from the Guard were required, sustainment and security forces were needed, and the reliance on the ANG continued to increase as the wars continued to grow in intensity. The notion of strategic reserve as the primary role for the National Guard dissolved, however another question began to germinate; what was the proper role for the National Guard, operational reserve or domestic security?

This question is not a minor one as the answer determines mission assignment, deployment schedules, funding, equipping, and so many other issues that significantly impact the ability of the U.S. to continue operations in OIF and OEF. It is also on the list of significant issues for each of the states and territories as they must take into consideration future federal missions as they seek to balance their internal needs with regard to the use of the National Guard. The answer appears to be quite clear, the National Guard will be the operational reserve and it will continue its role of responding to domestic crisis. The federal government has been fairly clear in its approach, and it is clear that the military cannot accomplish its mission overseas without the National

Guard. As of 3 November 2009, there were over 83,000 members of the National Guard mobilized under Title 10 authority.¹⁶

These numbers alone demonstrate the level of importance that the National Guard plays in the success of current operations. If the National Guard were to be pulled suddenly from the missions overseas to focus on domestic operations, it is very unlikely that the AC could sustain operations for more than a year without serious consequences. A gradual removal of the Guard would require the AC to grow by several hundred thousand soldiers in a short period of time, and even then, the lack of seasoned leaders would quickly cause issues as the Army would struggle to fill all the senior leader positions.

Domestic operations continue to be a focus for the National Guard when the soldiers are not deployed overseas, as demonstrated by the fact that in 2008 over 23,000 National Guard soldiers were mobilized for floods, hurricane relief, and wildfires only.¹⁷ This does not include the numerous missions internal to the states that did not garner attention and 2008 was a relatively mild year for natural disasters and mobilization of the Guard in response. There is a balance that is dangerously close to creating a demand on individual soldiers in the Guard that they cannot maintain long term. States have been able to overcome absences of their units through cooperation with neighboring states, however that is also precarious in that their neighboring states have not suffered catastrophes of their own at the same time. If a disaster occurred that impacted multiple states, natural or manmade, the ability to provide forces across state lines would quickly evaporate and state and federal governments would once again be in a position of figuring out solutions under the worst conditions.

Department of Homeland Security

The DHS was created in the wake of the events of 9/11 and was given seven primary missions; prevent terrorist attacks within the U.S., reduce vulnerability to terrorism, minimize damage and assist in the recovery of terrorist attacks that occur in the U.S., continue to execute the missions of the agencies transferred to the DHS as well as act as the focal point for emergency planning, do not allow the agencies assigned to DHS to fail to conduct missions not directly related to homeland security, ensure the economic security of the U.S. is not undermined by efforts to secure the nation, and examine the links between drugs and terrorism.¹⁸ The creation of the DHS represented another significant change within the U.S. Government as the DHS immediately became the third largest government agency upon the signing of the legislation.¹⁹ While Congress consolidated twenty-two agencies under one umbrella it was left to the DHS to figure out how best to consolidate and coordinate the actions of the agencies to achieve the objectives of the DHS. Also created at the same time was the Homeland Security Council which was established to assess the objectives and risks of homeland security, oversee homeland security policies of the federal government, and make recommendations to the President of the U.S. based on the findings of the Council.²⁰

Coming so close to the events of 9/11 the various federal agencies were all trying to figure out how best to protect the U.S. Had they been asked immediately before the terrorist attacks of 9/11 it is likely that most federal agencies would have publicly stated they were doing an excellent job of providing for homeland security, or at the very least, the best they could do with the resources available. In the months after 9/11, few senior leaders were willing to make bold statements that might come back to haunt either their

agency or themselves if another attack were to occur. After the DHS was created and as the nation struggled to put together a coherent strategy for homeland security, many documents and studies were completed to better define how security could be accomplished. Key to DHS was the Homeland Security Presidential Directives (HSPD) as these documents provided for more detail on how the President desired the DHS and the overall homeland security to be conducted.

HSPD-5 is significant to the DHS and the manner in which the agency conducts operations as it identifies the Secretary of Homeland Security as the “principle Federal official for domestic incident management.”²¹ HSPD-5 also directs all federal agencies to cooperate and provide support and resources to the DHS, with a notable exception, the DoD. HSPD-5 addresses the DoD and DHS as such:

Nothing in this directive impairs or otherwise affects the authority of the Secretary of Defense over the Department of Defense, including the chain of command for military forces from the President as Commander in Chief, to the Secretary of Defense, to the commander of military forces, or military command and control procedures. The Secretary of Defense shall provide military support to civil authorities for domestic incidents as directed by the President or when consistent with military readiness and appropriate under the circumstances and the law. The Secretary of Defense shall retain command of military forces providing civil support. The Secretary of Defense and the Secretary shall establish appropriate relationships and mechanisms for cooperation and coordination between their two departments.²²

This limitation on the DHS is very important when it is placed into context. Restated it may sound more like this: DHS will be responsible for responding to incidents within the U.S. but will not have the manpower to effectively manage large scale disasters without asking the DoD for assistance, as long as the DoD is not otherwise engaged. Currently the only military service that the DHS has direct control over in an emergency is the U.S. Coast Guard (USCG), which has just over 42,000 full time

members and a reserve force of approximately 8,100.²³ A valid assumption is that the USCG could never mass more than a few thousand members to respond to a single incident for a sustained period of time. With eleven missions mandated by federal law, the USCG is stretched by the fact that they are responsible for shoreline in excess of 95,000 miles and over approximately 3.4 million square miles of the Exclusive Economic Zones.²⁴ The USCG with a budget of less than \$8.5 billion²⁵ simply does not offer a sizeable land based force that can deploy quickly and with the proper training and equipment to respond to many disasters, natural or otherwise.

While it may seem that the answer lies in expanding the USCG and increasing the number of personnel, first examine the mandated missions and it is clear that (1) the Coast Guard requires additional forces and equipment to handle the missions currently assigned and (2) the Coast Guard is neither structured nor trained to respond to many incidents that might occur, particularly those inland. There is no doubt that the USCG would approach any mission assigned to it with the same vigor and determination that it historically has. There is also little doubt that the men and women of the USCG would find ways to overcome the many challenges that responding to missions outside their skillset would offer. DHS must first decide if they are prepared to respond to a significant incident with USCG men and women who are neither trained nor equipped to handle certain challenges and ask them to work through those issues during the response.

The DHS then does not have the military type units required to respond to many incidents. Perhaps they would prefer to focus the efforts of their other agencies such as the U.S. Secret Service or the U.S. Border Patrol to respond to national emergencies. Again the nature of the missions assigned to the various agencies and the constraints of

personnel and equipment prevents a large scale response to significant events involving either large populations or large areas. While the agencies mentioned are dedicated and offer the finest men and women to the nation for service, the reality is that each agency under the DHS has multiple missions that are essential to the U.S. and those missions will not stop during a major national crisis, in fact those missions will generally generate more requirements and be even more vital to the nation during a time of crisis.

The argument has been made that the DHS is in charge of coordination of a federal response and therefore does not require direct control of forces and or resources to prevent or respond to terrorist activities. This is true, provided that in the midst of a crisis there are no individuals or agencies that cause roadblocks in the response process. It is also true if in fact the DoD is able to respond with forces as required and coordination between two agencies that are at times competitive.²⁶ The reality is that DHS is expected to coordinate with the DoD, particularly with NORTHCOM the combatant command that is responsible for military response in the U.S. Interestingly, NORTHCOM has a few challenges that they face with regard to being able to project forces quickly to respond to national level incidents.

HSPD-5, which is perhaps the most significant HSPD issued to date, directed the DHS to establish the National Incident Management System (NIMS) and the National Response Plan. While the National Response Plan has since been replaced by the National Response Framework (NRF), NIMS still offers a methodology for responding to crisis at any level. “NIMS provides a consistent nationwide template to enable Federal, State, tribal, and local governments, nongovernmental organizations (NGOs), and the private sector to work together to prevent, protect against, respond to, recover from, and

mitigate the effects of incidents, regardless of cause, size, location, or complexity.”²⁷

While NIMS provides a framework for incident response and operations, it is not an operational plan or contingency plan, nor does it offer resource allocation.

NIMS is designed to facilitate a unified approach to managing incidents that occur in order to ensure a coordinated and capable response to meet the needs and provide appropriate support to all levels, from federal to local governments. Interoperability was certainly a lesson learned during the tragic events of 9/11 as first responders within the same jurisdiction did not have compatible communications and it hindered coordination between the agencies. The problems were exasperated as more agencies at various levels of government became involved. NIMS addresses these issues and more by making suggestions on how to ensure these problems do not occur again. DHS does not have the authority to mandate changes to agencies outside their responsibility, and certainly not to state and local governments. In order to drive results, the DHS has used grants extensively to update systems and bring about changes.

In January 2008, the NRF replaced the National Response Plan and presents the principles that guide response to disasters at every level. The NRF outlines responsibilities at the various levels and who the principle agencies are to ensure a unified approach to incident response. A comprehensive approach is the objective of the NRF and seeks to strengthen the ties between the various levels of government and ensure smooth transition from one level to the next as additional resources are required. The NRF expresses the position of the federal government that disasters and emergencies should be handled at the lowest level possible in order to maintain efficiency and responsiveness.²⁸ The NRF establishes the policy that in addition to contingencies being

handled at the lowest level, responses must be flexible and adaptable to the situation so there is on cookie-cutter response but rather a response that is tailored to provide the capabilities and the requirements to meet the needs for each situation.²⁹

DHS is built upon the foundation of the HSPDs as this organization is so large and covers so many federal issues that the DHS and the whole of government continues to work through the best way to ensure the organization is properly used. The DHS is unique in this regard since it literally went from non-existence to such a large agency literally overnight. There was no gradual build-up or extended period of time to adjust and adapt to changing conditions. This has been an agency born out of necessity and as such, growing pains are to be expected. If the HSPDs are the foundation, then HSPD-5 is the corner stone of the DHS. The final and perhaps the most significant item to come out of HSPD-5 is the role of local and state governments in homeland security, specifically response to domestic incidents.

The Federal Government recognizes the roles and responsibilities of State and local authorities in domestic incident management. Initial responsibility for managing domestic incidents generally falls on State and local authorities. The Federal Government will assist State and local authorities when their resources are overwhelmed, or when Federal interests are involved. The Secretary will coordinate with State and local governments to ensure adequate planning, equipment, training, and exercise activities. The Secretary will also provide assistance to State and local governments to develop all-hazards plans and capabilities, including those of greatest importance to the security of the United States, and will ensure that State, local, and Federal plans are compatible.³⁰

The role of the federal government is to augment the capabilities and coordinate with the respective states to fill the gaps where the state and local government cannot meet the needs of their residents. Considering the fact that the primary capability that a state has to respond to a major incident is their National Guard, there is understandable consternation on the part of the state governors when the President mobilizes and deploys

a unit from that state's National Guard. It is far too easy to assume that incidents will be relegated to the occasional hurricane, or a spring storm that brings tornadoes, or even an earthquake where the primary tasks may be search and rescue and relief efforts with some minimal law enforcement type duties. In these events, state police departments can provide forces for a temporary surge to a specific area and neighboring states can assist with National Guard units to augment the impacted state.

In the event that the situation requires a military capability and a state does not have the resources available, does the federal government then have an interest? Consider the possibility that the President has mobilized the National Guard and this is the reason for a lack of resources. The role of the DHS and its relations to the respective states is important as this is the coordination point for contingencies that may occur in the future, and yet the DHS, responsible for assessing the threat to the homeland, and responsible for the coordination with the states for response, has no input in the process of mobilizing National Guard units.

There are clearly many challenges that remain for the DHS as it continues to develop and work through challenging times and an uncertain future. Much of what the DHS does is coordinate and facilitate relationships so that when an incident occurs, transition in response is smooth and the actions taken by various agencies are complementary in the face of challenging conditions. However, the fact remains that the single agency given legislative responsibility for homeland security and coordinating and ensuring appropriate actions are taken lacks the resources to do much more than provide money and oversight. In the event of a major emergency, it is conceivable that the presence of the DHS might be considered counter-productive if they are unable to

provide what is always needed most at the time of a crisis-people to carry out operations. Money and assistance in the form of managing and coordinating is essential, however in the midst of a crisis more than a few people are going to be needed, and that is the one thing that the DHS does not have to spare.

NORTHCOM

In light of the events of 9/11, President George Bush approved the Unified Command Plan (UCP) in October of 2002 which established the NORTHCOM. NORTHCOM's mission is to "provide command and control of the DoD's homeland defense efforts and to coordinate military support to civil authorities."³¹ NORTHCOM has responsibility for the continental U.S., Alaska, Canada, and Mexico including air, land, and sea out to 500 nautical miles.³² NORTHCOM is unique in the fact that its responsibility covers the U.S. which the Congress has purposefully limited military authority with regard to operations conducted within the nation.

There are many laws which prevent or limit action by the military on domestic soil with the intent of preventing the military from overstepping its bounds, and to prevent the federal government from overstepping its Constitutional authority. While it is often glossed over, the Tenth Amendment to the U.S. Constitution specifically mandates that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."³³ NORTHCOM therefore has many unique challenges with regard to the manner in which they operate that does not apply to another command. It is this unique challenge that also presents a lack of experience operating in this manner. Based on the fact that NORTHCOM is small

in size and that the challenges are unique, there are a few AC soldiers who arrive fully prepared and aware of the legal limits placed on their actions.

NORTHCOM is also unique within the military in that it has few resources that it controls. With a force of approximately 1,200 including civilians and service members, NORTHCOM has the additional challenge of having no significant force to utilize in a crisis. While this has been addressed recently through the assignment of the Consequence Management Response Force (CCMRF) brigade, this still amounts to one brigade that rotates and is limited in its training and mission to focus on chemical, nuclear, or biological attacks, resulting in a continued lack of significant manpower to respond to significant acts. As events occur the NORTHCOM will request forces and rely upon those that are tasked to support the request.

The difficulty lies in the fact that the event will have occurred to drive the request, thus a resulting delay in response to the crisis. It would appear on the surface that NORTHCOM would have an advantage in the fact that the forces needed would likely come from within the U.S. and transit time would be decreased. This may in fact be true to some degree, however there are additional challenges, again mostly based on the fact that NORTHCOM is small and lacks internal capabilities, including some that may impact the ability of NORTHCOM to receive the forces and to maximize the use immediately upon arrival.

NORTHCOM does not have command and control in most events that would require a response from the command. The role of NORTHCOM would be in a support role, usually supporting the governor's actions through support to the federal agencies that may be responding. Therefore, in the event that a disaster occurs, the state will take

the lead, DHS will coordinate and assist through their agencies and in support of the federal agencies will be NORTHCOM. The organization most capable of commanding and controlling a vast array of agencies and forces (military and civilian) will, by definition, be in a support role for another supporting agency. This may be the plan, however experience leads to another conclusion.

Hurricane Katrina which made landfall in the New Orleans area in August 2005 was NORTHCOM's first significant opportunity to respond to a domestic event. Joint Task Force (JTF) Katrina were the military forces assigned to support FEMA and the result was that FEMA simply was unable to handle the large scale challenges and JTF-Katrina eventually stepped in to take over the coordination, in spite of the fact that this is outside the mission set. Clearly the military is the best prepared, trained, and equipped to handle these situations, however the time and energy lost while the military attempts to abide by the letter of the law and regulations can result in unnecessary damage and loss of life.

This civil support mission is the primary mission, or at a minimum the mission conducted most often and most likely over time. In this role however, NORTHCOM must be mindful of the legal constraints and ultimately what it can and cannot do to accomplish its mission. This may actually be easier for the staff member at the highest levels, as he likely will have a legal advisor to assist and guide his actions. The soldier on the ground however, will be faced with decisions that must be made immediately or life or property may be lost.

NORTHCOM has a second purpose of course and that is to respond in the event of conflict within the homeland that would require combat forces to respond to a direct

threat. In this role, there are significantly fewer issues for NORTHCOM as it would be likely, in fact essential, to suspend many of the legal limitations, either through Presidential order or legislation. In the event combat forces are required to use force against an enemy on U.S. soil, National Guard forces would be mobilized under federal authority and NORTHCOM would be used in a homeland defense role rather than a homeland security role.

Homeland Security

Homeland Security is the “national effort to prevent terrorist attacks within the United States; reduce America's vulnerability to terrorism, major disasters, and other emergencies; and minimize the damage and recover from attacks, major disasters, and other emergencies that occur.”³⁴ Under the umbrella of homeland security there are many threats that the U.S. faces. The federal government has five objectives with regard to Homeland Security; protection from people who seek to harm the U.S., protection from goods that might bring harm to the U.S., protection of key infrastructure, increasing the level of preparedness and response capabilities, and unifying and strengthening the ability of DHS to respond and manage during times of crisis.³⁵ Since the events of 9/11 the focus for many has been the potential threat of so-called “dirty bombs” or other weapons of mass destruction that have captured the attention of the media and citizens alike. It would, however, be both dangerous and counter-productive for the long term security of the nation to ignore the many aspects of homeland security.

The first aspect of the strategy, protection against people who would bring harm against the U.S. is the foundation of the National Guards approach to national security. It is perhaps the easiest mission to prepare for since the training soldiers receive from the

first day in the military is to take action against the enemies of the nation. Within this there are a couple of areas that require more attention. First is the mission to protect the nation's borders.

In November of 2004, Operation Winter Freeze was an interagency operation between the National Guard, under NORTHCOM's oversight, and Immigration and Customs Enforcement (ICE)³⁶ to identify and keep terrorists and weapons out of the U.S. This operation was a classic example of using the capabilities and legal flexibility of the National Guard to maximize the effectiveness while minimizing the legal issues of using federal forces to conduct law enforcement. To avoid the issue, the National Guard was kept in a Title 32 status, meaning they performed the mission under the control and authority of the governor, while NORTHCOM managed the coordination and command and control of the operation. Since the DHS had operational control of ICE this was a true interagency effort to address border security.

Based on the success of the operation, and the growing need for more personnel on the border with Mexico, the President once again called upon the National Guard. In May 2006, authorization for 6,000 soldiers from the Guard was given and again the soldiers conducted the mission in a Title 32 status to support the federal government without the issues of violating federal laws. Border security is a primary function of the DHS and the National Guard has demonstrated its value in this mission, although some have questioned the morality if not the legality of using Title 32 forces if the funding and mission comes from a federal agency directly.

Addressing the defense against goods that might bring harm to the U.S. is the potential for the use of weapons of mass destruction. The prospect of a no-warning or

short warning attack by use of chemical, nuclear, or biological weapons is terrifying to the average citizen. It may be even more frightening for those who understand the chaos that will ensue if those weapons are ever used within the U.S. With nuclear proliferation and the fall of the Soviet Union, it seems that it is only a matter of time before a terrorist organization is able to gain possession of the materials and move to use such a weapon against the U.S.

The National Guard continues to take a significant role in the preparation for response to such an incident. The National Guard has organized Weapon of Mass Destruction Civil Support Teams (WMDCST) which operate in a Title 32 status and respond to potential threats involving chemical, nuclear, or biological weapons. These teams are certified by the Secretary of Defense however, oversight and management of the WMDCSTs is handled by NGB. These WMDCSTs operate throughout the United States and are prepared to support preparedness programs or respond themselves to an attack. These teams are funded by the federal government, oversight is conducted by the NGB, and commanded through their respective states. Again a prime example of the level of cooperation and the importance of the National Guard not only to DoD, but to DHS.

Within the U.S. there are literally thousands of critical infrastructure sites that are vulnerable to attack. There are clearly too many for the DoD to effectively provide security for with the number of personnel, if in fact it fell within their legal mandate to do so. This again is where the DHS relies heavily on the National Guard to assist in times of need. After the events of 9/11 within hours thousands of National Guardsmen answered the call to help protect the nation's infrastructure. In only a few days, over 5,000 soldiers from the National

Guard were on site providing security at nuclear power plants, bridges, water plants, and various other sites, to include providing security at military bases.³⁷ As travelers returned to the nation's airports after 9/11 they invariably saw National Guard soldiers providing security. If they were aware that the soldiers were National Guardsmen, it is unlikely that they realized that most were in a Title 32 status and under the command of the governor but coordination was through the federal government.

The ability of the National Guard to secure key infrastructure goes well beyond simply sending a platoon of men to secure a fixed site. The NDAA of 2005 included language to modify some aspects of the U.S. Code, specifically Title 32 to allow for an enhanced role in the assessment and protection of critical infrastructure.³⁸ The changes enabled the creation of the Critical Infrastructure Protection-Mission Assurance Assessment teams. These small teams conduct all-hazard assessments on critical defense infrastructure and enable the hardening of these crucial sites to minimize the vulnerability of the U.S.³⁹

The flexibility and the responsiveness of the National Guard have had an impact on the ability of the DHS to respond in times of crisis. As has been demonstrated time and again, from the border security missions to disaster relief missions, homeland security has been a task given to the National Guard repeatedly over the recent years, in addition to the national defense tasks that it has continued to handle. As the U.S. has continued to conduct operations around the world, some terrorist organizations have been forced to use proceeds from the sale of narcotics to fund their activities. This has become a concern for all levels of government and DHS has targeted narco-terrorism for elimination. Once again, the DHS and the Nation have had to turn to the National Guard to provide resources and capabilities to respond to a growing crisis within the U.S.

Future Challenges

The U.S. stands at a crossroad and many tough decisions must be made, and often those decisions will be made without all of the information that one might like to have. The challenges facing the Nation outweigh the resources available and therefore it is more important than ever to honestly assess the issues, both current and future, and to make the best decisions possible and acknowledge the risks that are being assumed.⁴⁰ As the DoD, DHS, and the National Guard look forward, they must use the past to place events into their proper context. Many of the challenges that the National Guard has faced remain, and new challenges are emerging. While the National Guard finds strength in its diversity, it is also one of the challenges that face the Guard looking into the future.

The National Guard takes great pride in its “Citizen Soldiers” and rightfully so. However as the threats to the U.S. continue to multiply both internally and externally, the first challenge facing the Guard is finding a balance. This balance stretches across many different areas including; balance of mission requirements, training balance to ensure the proper tasks are prepared for, balance of civilian and military careers, and the balance of federal and state missions. These issues require a great deal of effort and a willingness to seek and accept creative alternatives.

While the AC trains constantly, and is not nearly as constrained by training time as the Guard, they cannot possibly train for all contingencies and situations. The AC does not have the competing demands of the dual mission of federal and state response, add on top of that the time, energy, and resources that go into a mobilization and deployment overseas and it is easy to see how quickly the Guard can get out of balance in one area. While those men and women who choose to serve in the National Guard are willing to

sacrifice, there are only so many times that he is willing to sacrifice his civilian career for additional schooling or training required by the Guard.

While the DoD and the NGB are working hard to create that balance in the force, both for the AC and the National Guard, the reality is that personnel, considered to be the most valuable resource in an organization, are struggling to find that balance. Army Force Generation (ARFORGEN) is a tremendous step in the right direction; however, there is no way to predict the state mobilizations that may impact the model as disasters and crisis occur. This is not to discourage deployment or use of the Guard, it simply means that the senior leaders must be willing to take into account the fact that a National Guard unit has more than one mission and at more than one level of government. To ignore this is to create an unrealistic and untenable plan over the long term.

The next challenge facing the National Guard is equipping and replacement of equipment that serves a dual use. As units have deployed to Iraq and Afghanistan they have taken much of their equipment and simply used that equipment in harsh conditions over long periods of time. Then at the back end of the deployment, many units are told to leave some equipment behind in order to fill shortages in the theater of operations. This is a legitimate order and one that is required to ensure that the men and women who serve are given the equipment they need to fight and win. Unfortunately, history has shown that the National Guard is often left to fight for second hand equipment and is often left short of what it requires to deploy, fight, and win.

This informal policy of equipping the National Guard at less than its authorized strength, often times less than fifty percent of authorization, worked in the past based on the fact that deployments were not common and it was easy to shift equipment between

units when needed. Since 9/11 however, the conditions have changed and the National Guard is an integral part of operations overseas, and bears the brunt of domestic operations. With the current policy of an operational reserve, equipment is much more important as the amount of time to prepare for deployment, overseas or domestic, is much less than it once was. Considering the possibility for shrinking budgets, and competing needs between the AC and the National Guard, it is likely that it will once again take an act of Congress to ensure a return to the old policy of inequity is not the policy of the future.

The concept of balance must serve as a principle that guides the overall strategy for employment of the National Guard. What is the right mixture of state and federal requirements, what is the right mixture of mission types to ensure maximum efficiency and level of readiness, and the DoD and DHS must determine what the proper role is for the National Guard in homeland security and national defense.

Conclusion

As has been made clear there are more questions than answers regarding the use of the National Guard and its appropriate role in National Security. The U.S. remains vulnerable to external and internal threats, challenges caused by both man and nature, and those who determine the direction of the Nation must find ways to balance the needs and the resources to enhance and ensure security. If the decision is made to shift the focus of the National Guard to homeland security it would require significant resources and changes to the way the military conducts operations. If the determination is to keep things the way they currently are, then risks must be determined, acknowledged and mitigated where possible.

The ability of the Nations enemies to wait and find weaknesses to exploit and the vast amount of territory within the U.S. gives the enemy a significant advantage. This advantage must be countered through a proactive measures designed to address emerging threats while continuing to reduce the current threats. This can only be accomplished through a coordinated and concerted effort from the local to the federal levels. As the National Guard continues to assume responsibility for more of the responsibility for homeland security many questions remain that must be answered. Is the force structure appropriate to conduct homeland security, and is there enough personnel and equipment in the Guard to conduct both homeland security as well as it overseas missions. The most important question may ultimately be; what price is the U.S. prepared to pay for national security?

¹While precise numbers are not available, between the known losses at the various sites, the casualty count is generally accepted in the range of 2,900 and 3,000. Due to unconfirmed missing persons reports and the lack of forensic evidence in some cases, there continues to be several figures bandied about.

²Mark Hosenball, "The Butterfly Brief," *Newsweek*, <http://www.newsweek.com/id/186569> (accessed 12 October 2009).

³William Gardner Bell, *Commanding Generals and Chiefs of Staff: 1775-2005: Portraits and Biographical Sketches of the United States Army's Senior Officer* (Washington, DC: US Army, 2005), 52.

⁴Often it is easy to forget that travel today is much easier and much quicker from continent to continent. While it may be less than a day to travel from Europe and be relatively affordable, this has not been the case until the last forty years. The distance and amount of time, effort, and money to move forces to the shores of the U.S. has historically been a significant part of the national security strategy. Reliance upon this distance may not have always been stated as such, however, it was a key component.

⁵Michael D. Doubler, *Civilian in Peace, Soldier in War: The Army National Guard, 1636-2000* (Lawrence, KS: University Press of Kansas, 2003).

⁶*National Defense Act of 1920* (Washington, DC: U.S. Government Printing Office).

⁷Doubler, *Civilian in Peace, Soldier in War*.

⁸*Ibid.*

⁹The draft was extended in response to a growing belief that conditions in the world might require another rapid build-up of forces in the near future. The result of exempting those who were members of a National Guard unit was to divert many young men into the Guard to ensure they would not serve in the Regular Army.

¹⁰John K. Mahon, *History of the Militia and the National Guard* (London: Collier Macmillan, 1983).

¹¹Doubler, *Civilian in Peace, Soldier in War*.

¹²*Ibid.*, 234.

¹³*Ibid.*

¹⁴*Ibid.*

¹⁵Bennie J. Wilson, *The Guard and Reserve in the Total Force: The First Decade, 1973-1983* (Washington, DC: National Defense University Press, 1985).

¹⁶U.S. Department of Defense, “Reserve Components of Noble Eagle, Enduring Freedom, and Iraqi Freedom,” <http://www.defenselink.mil/news/Nov2009/d20091104ngr.pdf> (accessed 5 November 2009).

¹⁷National Guard Bureau, *National Guard 2010 Posture Statement* (Arlington, VA: US Government Printing Office, 2009).

¹⁸107th Congress, Public Law 107-296, *Homeland Security Act of 2002* (25 November 2002).

¹⁹Homeland Security Advisory Council, *Report of the Administration Transition Task Force* (Washington, DC: Homeland Security Advisory Council, 2008), 1.

²⁰107th Congress, Public Law 107-296.

²¹President, “Homeland Security Presidential Directive 5: Management of Domestic Incidents,” http://www.dhs.gov/xabout/laws/gc_1214592333605.shtm (accessed 27 October 2009).

²²President, “Homeland Security Presidential Directive 5: Management of Domestic Incidents,” http://www.dhs.gov/xabout/laws/gc_1214592333605.shtm (accessed 27 October 2009).

²³United States Coast Guard, *Coast Guard 2009 Posture Statement* (Washington, DC: U.S. Government Printing Office, 2008), 10.

²⁴United States Coast Guard, *Coast Guard Publication 1* (Washington, DC: U.S. Government Printing Office, 2008), 3.

²⁵U.S. Congressional Budget Office, *Congressional Budget Office Cost Estimate: HR 3619 Coast Guard Authorization Act of 2010* (Washington, DC: US Congressional Budget Office, 2009), 3.

²⁶President Barack Obama issued Presidential Study Directive 1 shortly after taking office and moved the Homeland Security Council under the National Security Council. Reflecting on the significance of this action, the National Security Advisor, retired Marine General James Jones was given the job and authority to settle disputes between the various members. The President rescinded HSPD-8 and moved to place much of the influence and authority under the Assistant to the President for Homeland Security, a position that does not answer to the Senate, unlike the Secretaries of the DHS and DoD.

²⁷U.S. Department of Homeland Security, *National Incident Managements System* (Washington, DC: U.S. Government Printing Office, 2008), i.

²⁸U.S. Department of Homeland Security, *Overview: ESF and Support Annexes Coordinating Federal Assistance In Support of the National Response Framework* (Washington, DC: U.S. Government Printing Office, 2008).

²⁹*Ibid.*

³⁰President, “Homeland Security Presidential Directive 5: Management of Domestic Incidents,” http://www.dhs.gov/xabout/laws/gc_1214592333605.shtm (accessed 27 October 2009).

³¹William Knight. CRS Report to Congress RL 34342, *Homeland Security: Roles and Missions for United States Northern Command* (Washington, DC: Congressional Research Service, 2008), i.

³²U.S. Northern Command, “About NORTHCOM,” <http://www.northcom.mil/About/index.html> (accessed 27 October 2009).

³³U.S. Constitution, amend. 10.

³⁴U.S. Department of Defense, *DOD Dictionary of Military and Associated Terms*, <http://www.dtic.mil/doctrine/jel/doddict/data/h/11679.html> (accessed 1 August 2009).

³⁵U.S. Department of Homeland Security, *One Team, One Mission, Securing our Homeland: U.S. Department of Homeland Security Strategic Plan--Fiscal Years 2008-2013* (Washington, DC: U.S. Government Printing Office, 2008).

³⁶At the time of Operation Winter Freeze, Immigration and Customs Enforcement was then known as the U.S. Customs Agency.

³⁷National Guard Bureau, "About the Army National Guard," www.ngb.army.mil/about/arng.aspx (accessed 28 October 2009).

³⁸*National Defense Act of 2005* (Washington, DC: U.S. Government Printing Office).

³⁹National Guard Bureau, "The National Guards Role in Homeland Defense," <http://www.ngb.army.mil/features/HomelandDefense/cip-maa/factsheet.html>, (accessed 2 November 2009).

⁴⁰Acknowledging the risks that are being taken is not to assume that nothing is being done to address those risks. As conditions change and resources are either made available or priorities change, those risks are reexamined and addressed again. It is also imperative that the risks are not public knowledge. It is a by-product of the 24/7 media coverage and ignorance of the general public regarding issues of national security that senior leaders are often reluctant to acknowledge risks and accept those risks. The fear of one's name coming out in a future investigation often drives leaders to seek ways to simply ignore risks in order to use the "never saw it coming" defense.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

The U.S. Government in many ways appears to continue to struggle with the most important lesson of 9/11; in particular many senior leaders within the DoD have maintained a mindset that may hamper preparedness for future challenges to the Nation. The lesson that seems to have escaped many is simple, and one that most executives in successful businesses understand; success in the future requires a flexible and proactive organization that is rooted in the lessons of the past but evolves to meet and overcome the challenges of the future. While there is clearly not a singular method to prepare for future challenges, there are some specific issues which should be addressed in order to ensure that the U.S. is prepared to respond to the inevitable future challenges, both those caused by man, and those that occur through acts of nature.

Domestic operations have historically been ignored by the DoD, and it is easy to understand why this has occurred. With the exception of Pearl Harbor and several small scale attempts to take direct action against the U.S. inside its borders, the reality has been that the U.S. military is an expeditionary force that travels to the problem spots of the world. That reality changed when the Soviet Union collapsed and in the years that followed, many of the signs and symptoms of the new reality were simply ignored or analysis not fully completed to understand what it all meant to the nation.

The genesis of this research project was to examine the historical role of the National Guard in homeland security and national defense and determine what the appropriate role for the Guard would be going into the future. In an attempt to look

objectively at the future, the issue was broken down into defining national security and examining the current strategy as well as looking at the current role of the National Guard related to national security.

It is the belief of this author that the U.S. has a strategy for securing the homeland, and while there may be some work to develop a more complete and effective strategy, a framework does exist from which to work. The challenge is not necessarily the strategy but rather the lack of resources and a lack of commitment to making hard choices that continues to hinder homeland security. There is simply not enough money within the federal budget to provide for every contingency, therefore detailed analysis must be conducted and decisions made to determine where risk is acceptable and how to mitigate those risks.

It is in the risk mitigation and the decisions to place resources against challenges where the security strategy becomes a more viable tool to provide a more secure nation. However, it is essential to remember that some risk will always be inherent in a society that values freedoms. Once senior leaders accept the fact that not every threat can be eliminated, and focus on the threats that can be negated or reduced, then the DoD, and the DHS will be able to properly resource the agencies within their respective departments to handle the assigned missions. This is the true challenge for the National Guard in the future.

While the men and women of the National Guard are capable, dedicated, and caring soldiers, they are being asked to do too much without the proper tools. The tools required are not necessarily equipment, although that is a challenge that has been identified and not fully addressed as the future is mortgaged to save on the present.

Instead the tools required to ensure success are things such as more personnel, more training on the tasks assigned, and legislative support to remove barriers. This is assuming that the current role of asking the National Guard to conduct both overseas missions and domestic operations, at both the state and federal levels is going to continue into the future.

It is this author's belief that after examining the issue and taking into account the external factors such as the economy and the fact that the AC is not likely to increase significantly in size, that the appropriate place for the National Guard is to remain in the DoD and continue to conduct both homeland security missions and national defense. There are some changes that must occur in order to ensure the long term viability and ability of the National Guard to continue to operate in the manner that it does today.

Recommendations

While NORTHCOM has responsibility for military response within the U.S., there is a significant capabilities gap, particularly in the ability to provide a force on short notice. Currently there are several small elements and one larger unit organized under NORTHCOM; however, these elements are generally specialized such as a response team for a chemical attack. NORTHCOM requires a force that can respond immediately and has a standing chain of command in place to facilitate communications and resourcing during the chaos that would result from a future attack within the borders.

Mobilization of a National Guard Brigade for twelve months and assignment to NORTHCOM for the duration of the mobilization would allow the unit to focus their training on the skills required for homeland defense and response to disasters. The National Guard has recently focused on the skills required for overseas contingency

operations and not those skills for which the states and local communities rely upon them for when called to respond at home. The Army mantra of “train as you fight” appears to apply only to major combat operations like those in Iraq and Afghanistan. It is essential that the same training philosophy that pertains to combat operations is applied to the internal mission requirements that face not only the National Guard, but NORTHCOM as well. Mobilization for a year would allow NORTHCOM to focus efforts on the tasks that will be required during mobilization. It would also enable the brigade to conduct robust training over the course of a year in which they could develop individual and collective skills that would serve the Nation well over time.

Having a brigade mobilized and working for NORTHCOM would give tremendous flexibility for not only the DoD, but also DHS as it would allow NORTHCOM to quickly send men and women who are trained and equipped and then could act as the foundation for the federal response. A brigade would be able to provide a force in excess of 3,000 with all the equipment and transportation needed to move and sustain themselves in the worst conditions.

In addition to the mobilization of a National Guard brigade, it is the recommendation that Congress mandate the NORTHCOM Commander be a National Guard Officer with a Deputy Commander from the AC. This would continue to strengthen the ties between the AC and the National Guard as well as provide a combatant commander who is likely to be much more familiar with the unique nature of the NORTHCOM. A National Guardsman would have years of operating under both Title 10 and Title 32 authorities, which it is very unlikely an AC Officer would have. He

would also have the background of relationships forged through years of working closely with the agencies that he would be charged with coordinating with on a constant basis.

Selecting a National Guard Officer to lead a Combatant Command would also have a significant impact on both the AC and the Guard. It would send a signal to both that the services and abilities of Guardsmen everywhere are valued and equal to those within the AC. It would be appropriate, given the direction of the military and the realities of today that a National Guard Officer be placed at the lead of the military command charged with the responsibility for the security of the Nation. There should be a caveat to the requirement that would allow an AC Officer to lead NORTHCOM.

In the event that a National Guard Officer were put into command of another combatant command, European Command for example, then it would be appropriate to select an AC Officer to command NORTHCOM, with the requirement that the Deputy Commander be a National Guard Officer. This again would continue to strengthen the ties between the Guard and the AC and strengthen the security of the U.S.

The ties between DoD and DHS are tenuous at best in the opinion of this author. It is simply the nature of government that departments are competitive for resources and unless mandated by law, coordination and the effectiveness of those interagency relationships is often dependent upon the personality of the respective Secretaries. Further the unique nature of NORTHCOM and the recent history of military operations within the U.S. leads to a relationship that is not as functional as it should be to optimize national security. A prospective solution however is the appointment of a National Guard General Officer, preferably a Major General, to be the primary advisor to the Secretary of DHS with a focus on the National Guard. Currently, the military advisor is an Admiral in

the USCG. This is an odd choice as the USCG falls under the DHS, so in theory the Commandant of the USCG would already be acting in this capacity for his service.

While the USCG is essential to the DHS in the course of homeland security, the National Guard also plays a significant role and it would be appropriate to place a senior leader with a small staff in the DHS to provide advice and act as a conduit back to the NGB. If in fact the previous recommendation of placing a National Guard Officer in command of NORTHCOM was enacted, this would then create a link between the DHS, NORTHCOM, DoD, NGB, and the states and territories to add to the overall coordination and communication. As many states have aligned their state level homeland security departments with the National Guard, it would then provide a positive impact that would go far beyond the small cost of a staff.

Operationally, there is a capabilities and abilities gap within the AC with regard to homeland security. This should also be addressed in order to alleviate some of the pressure on the National Guard and the various agencies involved in homeland security. Training should be incorporated to ensure that the soldiers within the AC are prepared to respond and act in accordance with the laws when the time comes to deploy inside the U.S. This deployment is not likely to be in response to a full scale attack by a large force in the near future, however one small nuclear detonation will certainly require AC units to deploy in response and support the National Guard during operations.

This concept of the AC supporting the National Guard is very different and would not be received well in theory or practice by the senior leaders of the AC. While the AC is the best trained military in the world, and there is no doubt about their capabilities, they are not prepared to respond appropriately inside the borders of the U.S. Therefore,

exercises and training should occur to begin the necessary paradigm shift in thinking to enable a smooth and seamless transition to domestic operations while under National Guard direction, either federal or state.

In addition to the recommendations already relayed, there are several legislative changes that are recommended to ensure homeland security is flexible and adaptive to the situation during a crisis. The first change recommended is to increase the authorized endstrength of the National Guard. This increase would require Congressional approval through the funding process. This increase is recommended to be an additional 50,000 soldiers throughout the nation. This would alleviate some of the issues involved with conducting both state and federal missions and would also offer more flexibility to the AC for use overseas. While this represents an increase in the budget, it is much less than the cost of increasing the size of the AC.

The Congress should also reexamine the Posse Comitatus Act and work through the challenges inherent in previous legislation. There was a historical reason for the enactment of such restrictive laws, and it would be absurd to ignore those reasons, however there should some room to modify the existing laws in order to ensure that National Guard soldiers mobilized for homeland security are not forced to mobilize under Title 32. Title 32, while effective has several flaws for those soldiers who are in essence placed in a state status while conducting federal missions.

Those soldiers who are mobilized under Title 32 authority are not getting the complete benefits that a soldier in a Title 10 status receives. He does not receive veteran status for his time, and the time spent in a Title 32 role do not necessarily prevent a soldier from being mobilized in a Title 10 role. The NGB is doing a much better job of

managing this with the ARFORGEN model, however, the current laws and the manner in which the federal government circumvents the laws suggests that there is a legitimate reason to modify those rules.

The final recommendation is for Congress to reexamine the potential for the National Guard to be assigned to the DHS in a role similar to the USCG under Title 14. This may be a shift to DHS with mobilization and assignment to DoD as needed for overseas operations, much like the USCG can be assigned to the U.S. Navy, or it may be that the DoD retains overall responsibility and as needed the National Guard is assigned to support the DHS. Perhaps it would look similar to the USCG, but in reverse. This author believes that a relationship of this nature may alleviate some of the issues and again result in a more closely aligned DoD, DHS, and NGB, which is beneficial for the Nation.

This author acknowledges that the recommendations included in this thesis are not the only way to improve homeland security, DoD, DHS, and the National Guard. It is the belief of this author however, that there are changes that must be made in order to maintain the position of the U.S. internationally and provide for the safety and security of the citizens of the Nation. While the recommendations may not go far enough for some, or may be considered radical by others, the objective is to stimulate debate and continue to spur conversation and change in a system that is often slow to recognize the need to change.

Future Studies

While this thesis has addressed the primary and secondary research questions posed, there remains tremendous opportunity for future research. A significant area of

research that remains is an in-depth examination of the potential for strengthening the ties between the National Guard and the DHS. In particular, a lengthy and thorough analysis of the potential for moving the National Guard to the DHS for oversight and the National Guard being used in a Title 14 status and then being mobilized and assigned to the DoD as needed would be a bountiful area of research. The National Guard operating in a similar capacity as the USCG currently operates, could potentially provide the framework for the future operations of the National Guard.

Another area of research that is not addressed in this thesis is the impact of adding more personnel to the authorized endstrength of the National Guard. While this author has recommended an increase, the impact to the force structure to both the Guard and the AC needs to be examined in order to provide the best recommendation for increase and the impacts to unit types and budget requirements for the National Guard and the respective states.

While this author believes that the mobilization of a brigade from the National Guard is essential to the future of National Security, there would be unanticipated consequences and impacts to the ability of the federal and state governments to utilize those brigades while mobilized. In order to ensure the potential impacts are better defined and understood, and to provide mitigation for some risks, further examination should be undertaken to provide insight. There are likely some adjustments that NORTHCOM would have to make to ensure command and control of a mobilized brigade, and those issues and command and reporting structure should be laid out in detail.

This thesis has detailed the current practice of using National Guard units mobilized under Title 32 authority while being funded by federal funds and conducting

federal missions. This author believes that there are significant unforeseen long term implications that need to be identified and examined to determine what those long term impacts will be, and what future issues lie ahead.

Summary

This study has briefly touched upon a topic that should be at the forefront of every American's mind. The admitted failings prior to 9/11 resulted in significant loss of life, and had it not been for a few brave men and women on United Airlines Flight 93, the loss of life and property could have been much greater. In the time immediately after 9/11, the American people were united and willing to take those actions deemed necessary to secure the Nation and protect the people. No options were taken out of consideration, and input from agencies and individuals was welcome and sought after. After a couple of years, everyday life overtook those tragic events and led to a slowdown in the introspection of National Security and National Defense by the leaders of the U.S.

The resulting lack of change within the U.S. security infrastructure and force structure has left holes in the readiness of the Nation, particularly the military, to respond and coordinate actions during significant events that overwhelm local and state capacity. The challenges facing the U.S. are great, and this thesis has made several recommendations, most of which are admittedly responsive to events that may occur in the future. The soldiers within the National Guard and the AC are the world's finest and best trained men and women. Willingness to tackle great challenges and risk their lives for their Nation is clearly not the issue. Rather the primary issue is the willingness to take proactive measures to ensure that a flexible and responsive National Guard is available

and prepared to defeat the enemies of the Nation, and to take decisive and coordinated action when called upon.

GLOSSARY

- Active Component (AC). Full-time Duty in the active Military Service of the United States. A general term applied to all active Military Service, but not including full-time National Guard duty.
- Active Guard Reserve (AGR). Reserve Component members of the Selected Reserve ordered to AD or full-time National Guard duty with their consent, and consent of the Governor in the case of the National Guard, for the purpose of organizing, administering, recruiting, instructing, or training RC units or performing duties as prescribed in 10 U.S.C. 12310.
- Active Status. Status of all Reserves, except those on an inactive status list or in the Retired Reserve. Reservists in an active status may train with or without pay, earn retirement points, and may earn credit for and be considered for promotion.
- Defense Critical Infrastructure. Department of Defense and non-Department of Defense networked assets essential to project, support, and sustain military forces and operations worldwide. Also called DCI. (JP 3-26)
- Homeland. The physical region that includes the continental United States, Alaska, Hawaii, United States territories and possessions, and surrounding territorial waters and airspace. (JP 1-02)
- Homeland defense. The protection of United States sovereignty, territory, domestic population, and critical defense infrastructure against external threats and aggression or other threats as directed by the President. (JP 1-02)
- Homeland security. As defined in the National Strategy for Homeland Security, a concerted national effort to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage and recover from attacks that do occur. The Department of Defense contributes to homeland security through its military missions overseas, homeland defense, and support to civil authorities. (JP 1-02)
- National Critical Infrastructure and Key Assets. The infrastructure and assets vital to a nation's security, governance, public health and safety, economy, and public confidence. They include telecommunications, electrical power systems, gas and oil distribution and storage, water supply systems, banking and finance, transportation, emergency services, industrial assets, information systems, and continuity of government operations. (JP 3-26)

APPENDIX A

ESSENTIAL HOMELAND SECURITY DOCUMENTS

Homeland Security Presidential Directive/HSPD-1. *Organization and Operation of the Homeland Security Council* (October 29, 2001) established the HSC to ensure coordination of all HS-related activities among the executive departments and agencies and promote the effective development and implementation of all HS policies. (JP 3-26)

Homeland Security Presidential Directive/HSPD-2. *Combating Terrorism Through Immigration Policies* (29 October 2001). HSPD-2 established policies and procedures to prevent aliens who engage in or support terrorist activity from entering the US and to detain, prosecute, or deport any such aliens who are within the US. (JP 3-26)

Homeland Security Presidential Directive/HSPD-3. *The Homeland Security Advisory System* (11 March 2002). HSPD-3 provides the guidelines for a comprehensive and effective means to disseminate information regarding the risk of terrorist acts to federal, state and local authorities and the American people. This document establishes the five threat conditions and their respective protective measures. (JP 3-26)

Homeland Security Presidential Directive/HSPD-4. *National Strategy to Combat Weapons of Mass Destruction* (December 2002). HSPD-4 describes three pillars for our national strategy to combat WMD: counterproliferation to combat WMD use, strengthen nonproliferation to combat WMD proliferation, and consequence management to respond to WMD use. (JP 3-26)

Homeland Security Presidential Directive/HSPD-5. *Management of Domestic Incidents* (28 February 2003). Assigns the Secretary of the Department of Homeland Security as the principal Federal official for domestic incident management to coordinate the Federal Government's resources utilized in response to, or recovery from terrorist attacks, major disasters, or other emergencies. The Federal Government assists state and local authorities when their resources are overwhelmed, or when Federal interests are involved. Nothing in the directive impairs or otherwise affects the authority of SecDef over DOD, including the chain of command for military forces. SecDef provides military support to civil authorities for domestic incidents as directed by the President. SecDef retains command of military forces providing civil support. Additionally, HSPD-5 established NIMS to provide a consistent nationwide approach for Federal, state, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents. It directs the development of the NRP and includes classified annexes if required. The NRP, using NIMS, with regard to response to domestic incidents, provides the structure and mechanisms for national level policy and operational direction for Federal support to state and local incident managers. (JP 3-26)

Homeland Security Presidential Directive/HSPD-7. *Critical Infrastructure Identification, Prioritization, and Protection* (17 December 2003). HSPD-7 established a

national policy for federal departments and agencies to identify and prioritize US critical infrastructure and key resources and to protect them from terrorist attacks. This directive identifies roles and responsibilities of the Secretary of Homeland Security, and other departments and recognizes DOD as the sector-specific agency for the Defense Industrial Base. (JP 3-26)

Homeland Security Presidential Directive/HSPD-8. *National Preparedness* (17 December 2003). HSPD-8 established policies to strengthen the preparedness of the United States to prevent and respond to threats and actual domestic terrorist attacks, major disasters, and other emergencies by requiring a national domestic all-hazards preparedness goal, establishing mechanisms for improved delivery of federal preparedness assistance to state and local governments, and outlining actions to strengthen preparedness capabilities of federal, state, and local entities. (JP 3-26)

Homeland Security Presidential Directive/HSPD-11. *Comprehensive Terrorist-Related Screening Procedures* (27 August 2004). HSPD-11 establishes procedures to enhance terrorist-related screening through comprehensive, coordinated procedures that detect, identify, track, and interdict people, cargo, conveyances, and other entities and objects that pose a threat to homeland security. (JP 3-26)

The National Strategy for Homeland Security. Prepared for the President by the Office of Homeland Security, this document lays out the strategic objectives, organization and critical areas for HS. The strategy identifies critical areas that focus on preventing terrorist attacks, reducing the nation's vulnerabilities, minimizing the damage and recovering from attacks that do occur. These critical areas are compatible with the DOD framework for HS that is discussed in this publication. (JP 3-26)

The Homeland Security Act of 2002. Established the Department of Homeland Security to coordinate all federal HS activities to protect the Nation against threats to the homeland. To better facilitate the overarching HS mission area, Congress established DHS by merging numerous agencies into a single department. (JP 3-26)

The Robert T. Stafford Disaster Relief and Emergency Assistance Act sets the policy of the Federal government to provide an orderly and continuing means of supplemental assistance to state and local governments in their responsibilities to alleviate the suffering and damage that result from major disasters or emergencies. It is the primary legal authority for federal participation in domestic disaster relief. Under the Stafford Act, the President may direct federal agencies, including DOD, to support disaster relief. DOD may be directed to provide assistance in one of three different scenarios: a Presidential declaration of a major disaster, a Presidential order to perform emergency work for the preservation of life and property, or a Presidential declaration of emergency (JP 3-26).

The Economy Act (Title 31 USC 1535). The Economy Act permits one federal agency to request the support of another provided that the requested services cannot be

obtained more cheaply or conveniently by contract. Under this act, an LFA may request the support of DOD without a Presidential declaration of an emergency as required by the Stafford Act. (JP 3-26)

National Strategy to Combat Weapons of Mass Destruction states that nuclear, biological, and chemical weapons in the possession of hostile states and terrorists represent one of the greatest security challenges facing the United States and that we must pursue a comprehensive strategy to counter this threat in all of its dimensions. Three principal pillars are: counterproliferation to combat its use, nonproliferation to combat proliferation, and consequence management to respond to its use. (JP 3-26)

National Strategy for Combating Terrorism. Expands on the National Strategy for Homeland Security and the National Security Strategy by expounding on the need to destroy terrorist organizations, win the war of ideas, and strengthen America's security at home and abroad. While the national strategy focuses on preventing terrorist attacks within the US, this strategy is more proactive and focuses on identifying and defusing threats before they reach our borders. The direct and continuous action against terrorist groups will disrupt, and over time, degrade and ultimately destroy their capability to attack the US. (JP 3-26)

National Strategy for the Physical Protection of Critical Infrastructure and Key Assets. Defines the road ahead for a core mission area identified in the President's NSHS. It identifies a clear set of national goals and objectives to achieve our protection goals. The strategy identifies thirteen critical infrastructure sectors. Key asset protection represents a broad array of unique facilities, sites, and structures whose disruption or destruction could have significant consequences across multiple dimensions. Examples include, but are not limited to nuclear power plants, national monuments, and commercial centers where large numbers of people congregate. (JP 3-26)

Posse Comitatus Act (Title 18 USC, Section 1385). This federal statute places strict limits on the use of federal military personnel for law enforcement. Enacted in 1878, the PCA prohibits the willful use of the US Army (and later, the US Air Force) to execute the laws, except as authorized by the Congress or the US Constitution. Although the PCA, by its terms, refers only to the Army and Air Force, DOD policy extends the prohibitions of the Act to US Navy and Marine Corps forces, as well. Specifically prohibited activities include: interdiction of a vehicle, vessel, aircraft, or similar activity; search and/or seizure; arrest, apprehension, "stop-and-frisk" detentions, and similar activities; and use of military personnel for surveillance or pursuit of individuals, or as undercover agents, informants, investigators, or interrogators. Additionally, federal courts have recognized exceptions to the PCA. These common law exceptions are known as the "military purpose doctrine" and the "indirect assistance" exceptions. Exceptions and/or circumstances not falling under PCA include:

- (1) Actions that are taken for the primary purpose of furthering a military or foreign affairs function of the United States.

(2) Federal troops acting pursuant to the President's Constitutional and statutory authority to respond to civil disorder.

(3) Federal troops acting pursuant to the presidential power to quell insurrection.

(4) Actions taken under express statutory authority to assist officials in executing the laws, subject to applicable limitations.

(5) CD operations authorized by statute.

The PCA does not apply to NG forces operating in state active duty or Title 32 USC status, nor to the USCG, which operates under Title 14 USC authority. (JP 3-26, JP 3-28)

Title 10 USC (Armed Forces). Title 10 provides guidance on the US Armed Forces. Guidance is divided into 5 subtitles. One on general military law and one each for the US Army, US Navy and US Marine Corps, the US Air Force and the Reserve Components. Chapter 18 (sections 371-382) of Title 10 is entitled and governs Military Support for Civilian Law Enforcement Agencies. Title 10 USC 375 directs SecDef to promulgate regulations that prohibit "direct participation by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law." (JP 3-26)

Title 14, USC, sections 2, 19, 89, 141, and 143 define the statutory authority of the USCG during HS missions. (JP 3-26)

Title 32 USC, National Guard. Specifically, statutes in Title 32 USC authorize the use of federal funds to train NG members while they remain under the command and control of their respective state governors. In certain limited instances, specific statutory or Presidential authority allows for those forces to perform operational missions funded by the Federal government, while they remain under the control of the governor. Examples of those exceptions include the employment of WMDCSTs, civil defense missions, and the President of the United States-directed airport security mission. (JP 3-26)

The National Security Strategy and the National Military Strategy. The NSS establishes broad strategic guidance for advancing US interests in the global environment through the instruments of national power. The NMS, derived from the NSS, focuses on how the Armed Forces of the United States will be employed to accomplish national strategic objective. The NSS and the NMS continue to reflect the first and fundamental commitment to defend the Nation against its adversaries. (JP 3-26)

APPENDIX B

ACTIVE DUTY STATUS TYPES

A. State Active Duty (SAD). The Governor can activate National Guard personnel to “State Active Duty” in response to natural or man-made disasters or Homeland Defense missions. State Active Duty is based on State statute and policy as well as State funds, and the Soldiers and Airmen remain under the command and control of the Governor. A key aspect of this duty status is that the Posse Comitatus Act (PCA) does not apply.

B. Title 32 Full-Time National Guard Duty. “Full-time National Guard duty” means training or other duty, other than inactive duty, performed by a member of the National Guard. Title 32 allows the Governor, with the approval of the President or the Secretary of Defense, to order a member to duty for operational HLD activities IAW the following sections of United States Code (USC):

- (1) **32 USC 502(f)**. This statute allows members of the National Guard to be ordered to full-time National Guard duty to perform operational activities. It was used for the Airport Security mission after 9/11 as described in page 3 of this white paper and also for Hurricane Katrina and Rita response efforts.
- (2) **32 USC § 901**. (1) The term ‘Homeland Defense activity’ means an activity undertaken for the military protection of the territory or domestic population of the United States, or of infrastructure or other assets of the United States determined by the Secretary of Defense as being critical to national security, from a threat or aggression against the United States.
- (3) **32 USC § 902**. Homeland Defense activities: funds. (a) The Secretary of Defense may provide funds to a Governor to employ National Guard units or members to conduct homeland defense activities that the Secretary determines to be necessary and appropriate for participation by the National Guard units or members.

The key in this instance 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 directly funded with Federal dollars. Even though this duty status is authorized by Federal statute, this section is a statutory exception to the Posse Comitatus Act; the Governor may use the Guard in a law enforcement capacity; and the chain of command rests within the State.

C. Title 10 Active Duty. “Active duty” means full-time duty in the active military service of the United States. Title 10 allows the President to “federalize” National Guard forces

by ordering them to active duty in their reserve component status or by calling them into Federal service in their militia status IAW the following USC sections:

- (1) **10 USC § 12301(d)** – Voluntary Order to Active Duty. At any time, a member of the National Guard may be ordered to active duty voluntarily with his or her consent and the consent of the Governor.
- (2) **10 USC § 12302 – Partial Mobilization.** In time of national emergency declared by the President, the Secretary concerned may order any unit and any member to active duty for not more than 24 consecutive months.
- (3) **10 USC § 12304 – Presidential Reserve Call Up.** When the President determines that it is 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 270 days.
- (4) **10 USC § 331 – Federal Aid for State Governments.** Whenever an insurrection occurs in any State against its government, the President may, upon the request of its legislature or of its governor, if the legislature cannot be convened, call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the armed forces, as he considers necessary to suppress the insurrection. This section is a statutory exception to the Posse Comitatus Act.
- (5) **10 USC § 332 – Use of Militia and Armed Forces to Enforce Federal Authority.** Whenever the President considers 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 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. This section is a statutory exception to the Posse Comitatus Act.
- (6) **10 USC § 333 – Interference with State and Federal law.** The President, by using the militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it –
 - (a) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of

- its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or
- (b) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws. In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.

This section is a statutory exception to the Posse Comitatus Act.

- (7) **10 USC §12406 – Air and Army National Guard.** Air and Army National Guard call into Federal service in case of invasion, rebellion or inability to execute Federal law with active forces.

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