

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
 )  
Amendment of Part 97 of the Commission's )  
Rules Governing the Amateur Radio Service ) RM-11306  
Concerning Permitted Emissions and )  
Control Requirements )

To: The Chief, Wireless Telecommunications Bureau  
VIA OFFICE OF THE SECRETARY

COMMENTS IN SUPPORT OF  
**ARRL'S PETITION FOR RULE MAKING**

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THE AMATEUR RADIO SERVICE AS A WELL REGULATED MILITIA  
UNDER THE TERMS OF THE U.S. CONSTITUTION AND THE BILL OF RIGHTS

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ADVICE TO LOCAL SKYWARN COORDINATORS

Given by Tom Matheson  
Warning Coordination Meteorologist  
National Weather Service in Wilmington, NC:

*"Think of yourselves as a **militia**...a citizens group with an interest in protecting their neighbors, in this case against the effects of severe weather..."*

Excerpted from an email to area Skywarn net coordinators and posted online by  
The Grand Strand Amateur Radio Club, Myrtle Beach, South Carolina.  
<http://www.w4gs.org/ARES/advice.shtml>

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# THE MILITIA PERSPECTIVE OF THE AMATEUR RADIO SERVICE

## **A. A NEEDED SHIFT OF THE COMMISSION'S REGULATORY PHILOSOPHY**

I, Don Hamrick, hereby file my comments as an interested party in support of the ARRL's Petition for Rulemaking in accordance with Section 1.405 of the Commissions Rules, 47 CFR § 1.405.

The ARRL's "*petition seeks for the Amateur Radio Service the flexibility to experiment with new digital transmission methods and types to be developed in the future, while permitting present operating modes to continue to be used for as long as there are radio amateurs who wish to use them.*"

In Section 1: Introduction and Background of the ARRL's Petition is their declarative suggestion for "*a shift of regulatory philosophy*" from that of a command and control model to one based on facilitating research, development, experimentation and refinement of Amateur Radio digital communications techniques and advanced technologies. The ARRL advocates regulating the amateur radio bands by maximum bandwidth as the FCC's new regulatory philosophy.

As an interested party in amateur radio's advancing technology I support the ARRL's Petition because there are advancing technologies that are already knocking on the door to amateur radio service and all its available modes that the FCC may be hard pressed to keep pace with. However, I implore both the ARRL and the FCC to consider ARRL's Petition for Rulemaking in a much broader perspective than the limited field of view normally given to regulatory matters of a given radio service.

The ARRL's Petition for Rulemaking comes after a time of natural disasters, namely the most recent being Hurricane Katrina which exposed State and Federal Governments vulnerabilities to communications infrastructures and networks and exposed the incompetence of State and Federal Government to rapidly respond in such a natural disaster.

I ask the ARRL and the Commission to indulge in my comments on the broader philosophy that ARRL suggests. My view on their broader philosophy is that the Commission's Rules in Part 97 impacts the social aspect of society. A broader philosophy implies a greater emphasis on the practical applications of present day and future technological. There is no other greater application of this broader philosophy than applying the Commission's Rules and the present day and future technologies to the militia clauses of U.S. Constitution and the of the Second Amendment in the Bill of Rights because, in reality, that amateur radio frequency spectrum is the property of the public domain and the amateur radio service, through the Commission's Part 97 Rules, is none other that a "well regulated militia" under the Second Amendment's right to keep and bear arms.

## **B. THE PURPOSE OF MY COMMENTS**

The purpose for my comments is to persuade the ARRL and the Commission to include in the ARRL's definition of a broader philosophy the militia aspect of the amateur radio service. There can be no denying that the activities of the ARRL and of the amateur radio service are of the militia service under the terms of the U.S. Constitution and under the Bill of Rights. Deny this perspective and you commit a fraud upon the People under the Tenth Amendment. The militia perspective is also a protected activity under the First Amendment freedom of assembly and the freedom to petition the government for redress of grievances. All things being equal under the terms of the Constitution the Commission cannot lawfully ignore one aspect of the Constitution while enforcing another aspect of it.

Once the militia perspective of the amateur radio service becomes familiar and accepted as logical as a normal function of constitutional law and governmental regulation the Commission will then

be faced with the begging question presenting two choices. Should the Commission amend Part 97 of its Rules to regulate the Militia Service? Or should it add a new Part recognition the validity of the Militia Service as a right of the People under the Ninth Amendment and as a power reserved to the People under the Tenth Amendment. If this would be the Commission's choice then I would suggest that the Militia Service be placed in the Commission's Rules as Part 98.

### **C. THE SCOPE OF MY COMMENTS**

As I have already alluded to my comments will cover both the constitutional aspect of the Commission's Rules as well as the political aspect because the Commission cannot ignore the impact its Rules have on the U.S. Constitution, the Bill of Rights, and upon society in general.

The scope of my comments will cover the state of the Tenth Amendment's horizontal separation of power among the three branches of not only the federal government but of the State governments. I will also include my comments on the vertical separation of power between the People, the State governments and the Federal Government under the Tenth Amendment.

It is my intention to make clear that part of the ARRL's reference to a broader philosophy includes the constitutional law aspect that the militia service is part of our guarantee of a Republican form of Government<sup>1</sup> and that this particular guarantee has throughout the history of the United States been ignored and because this neglect presented a self-serving cause for then President Theodore Roosevelt proclaiming the militia as obsolete. (See pages 6-7; See also Exhibit 14 at page 61 for the 2005 law review discussing the 1990 U.S. Supreme Court case, *Perpich v. DoD*; See also Exhibit 15 at page 74, for the U.S. Supreme Court's Opinion in *Perpich*, these are all relevant to ARRL's broader philosophy).

The militia become functionally incompetent and obsolete in the 19<sup>th</sup> Century only because Congress treated the militia so poorly as though it was some dysfunctional ugly stepchild. The Commission stands at risk of continuing this abusive governmental behavior if it fails or refuses to consider the militia perspective of the amateur radio service.

The militia service (not the National Guard service) deserves recognition in the Commission's Rules for Part 97 or its own separate Part in the Commission's Rules. The remainder of my comments serve to persuade the ARRL and the Commission of the constitutional and regulatory validity of the militia service as its own entity and as perspective to ARRL and the amateur radio service.

This broader philosophy's main principle is that the Bill of Rights are the basic elements of essential freedoms to be exercised in either any given sequential order to one's desire or exercised in any combination or all together if a particular situation or set of circumstances such choices. The right to chose which fundamental freedoms under the Bill of Rights to exercise was expressly designed to be unrepachable by any regulatory scheme of the State Government or of the Federal Government. This prohibition from governmental interference is preserved in the legislative Preamble to the Bill of Rights and is in the custody of the National Archives. It is made available online at:

[http://www.archives.gov/national-archives-experience/charters/bill\\_of\\_rights\\_transcript.html](http://www.archives.gov/national-archives-experience/charters/bill_of_rights_transcript.html).

The excerpted prohibition in the Preamble to the Bill of Rights states:

*THE Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution.*

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<sup>1</sup> U.S. Const., Art. IV, Section 4.

**FIRST AMENDMENT**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

**SECOND AMENDMENT**

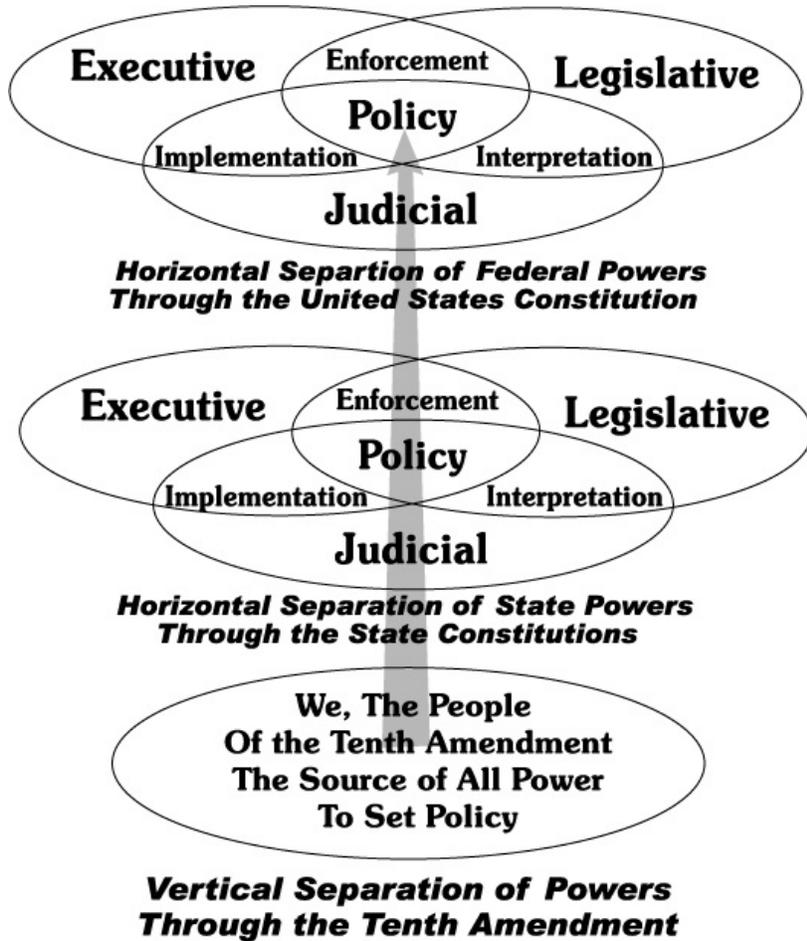
A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

**NINTH AMENDMENT**

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

**TENTH AMENDMENT**

***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***.<sup>2</sup>



<sup>2</sup> ***“The powers not delegated “at all” are reserved to the People!”*** This is the focus of my commentary on the ARRL’s Petition for Rulemaking.

## D. THE NATIONAL MILITIA STANDARD, CHAPTER 8: COMMUNICATIONS <sup>3</sup>

If the ARRL and the Commission are not already aware of this, there is a struggling effort to resurrect the “unorganized militia” to the level of social and constitutional norms. One substantial effort that cannot go unnoticed is an organization best identified by their Website, “A Well Regulated Militia.”<sup>4</sup> has produced a national standard for the unorganized militia. It is a recognized problem that the criminal element of society sought refuge under the militia umbrella. And because of criminal activity under the militia umbrella by this criminal element the lawful and constitutional aspect of the militia service gain a reputation of ill repute.

There is now a resurgence among the people throughout every state to resurrect the militia’s reputation with publication of *THE NATIONAL MILITIA STANDARD*. This standard includes Chapter 8 on communications. This mere fact demands recognition and acknowledgment from the ARRL and from the Commission. I have included Chapter 8 as Exhibit 26.

## E. ARRL’S ARTICLES OF ASSOCIATION AND THE MILITIA PERSPECTIVE

It is necessary that I discuss the ARRL’s Articles of Association and the constitutional aspects of the ARRL’s Petition for Rulemaking as a functioning component of government under the First and Tenth Amendments. Article 2 of ARRL’s Articles of Association states:

### Article 2:

The purposes for which our corporation is formed are the following:

1. the **promotion of interest in Amateur Radio communication** and experimentation;
2. the establishment of Amateur Radio networks to provide electronic communications in the event of **disasters** or other **emergencies**;
3. the furtherance of the **public welfare**;
4. the **advancement of the radio art**;
5. the **fostering and promotion of noncommercial intercommunication by electronic means** throughout the world;
6. the **fostering of education in the field of electronic communication**;
7. the **promotion and conduct of research and development to further the development of electronic communication**;
8. the dissemination of technical, educational and scientific information relating to electronic communication; and
9. the **printing and publishing** of documents, books, magazines, newspapers and pamphlets **necessary or incidental to any of the above purposes**.
10. No part of the assets or income of our corporation shall inure to the benefit of or be distributable to the members, the officers, or any of them, or to other private persons except

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<sup>3</sup> The National Militia Standard lists the segments of the manual as “Section.” However, I object to their use of “Section” by reason of the book publishing standard using “Chapter.” I will use the term “Chapter 8” instead of “Section 8” for obvious reasons.

<sup>4</sup> <http://www.awrm.org/>

that our corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein.

Jim Haynie/W5JBP is the president of ARRL. On June 11, 2003 Jim Hayne testified in a congressional hearing in support of Rep. Michael Bilirakis's (R-FL), HR 713, The Spectrum Protection Act of 2003. Quoting from the ARRL press release, "[t]he ARRL initiative would require the FCC to provide 'equivalent replacement spectrum' to Amateur Radio if the FCC reallocates primary amateur frequencies, reduces any secondary amateur allocations, or makes additional allocations within such bands that would substantially reduce their utility to amateurs."<sup>5</sup>

At some point during that congressional hearing Rep. Bilirakis cited a letter from James B. Massey/N3OHM, of the *LIGHTHOUSE AMATEUR RADIO CLUB* in Palm Harbor, Florida. In that letter James Massey stated: "*The Amateur Radio bands should be considered a national resource **like the militia during the American Revolution**, which was called upon in a time of emergency.*" Rep. Bilirakis asked that the letter be made a part of the official hearing record. What is not clear is whether Jim Haynie subscribes to the militia perspective of the amateur radio service.

Construing the ARRL's Articles of Association from a militia perspective the ARRL is, in fact and law a militia organization as defined by the militia clauses of the U.S. Constitution and of the Second Amendment. Each of the first nine purposes in Article 2 of the Articles of Association for the existence of the ARRL lend themselves to militia purposes.

## **F. THE COMMISSION'S RULES AND THE MILITIA PERSPECTIVE**

Turning my attention now to the Commission's Rule, 47 CFR § 97.1 **BASIS AND PURPOSE FOR THE AMATEUR RADIO SERVICE**, the rule states:

The rules and regulations in this part are designed to provide an amateur radio service having a fundamental purpose as expressed in the following principles: (a) Recognition and enhancement of the value of the amateur service to the public as a voluntary noncommercial communication service, particularly with respect to providing **emergency communications**.

Referring now to Subpart E—Providing Emergency Communications, 47 CFR § 97.403 **SAFETY OF LIFE AND PROTECTION OF PROPERTY**, this rule states:

No provision of these rules prevents the use by an amateur station of any means of radiocommunication at its disposal to provide essential communication needs in connection with the immediate safety of human life and immediate protection of property when normal communication systems are not available.

The above Rules of the Commission not only do not prohibit the militia aspect of the amateur radio service from being adopted by the ARRL the above Rules of the Commission opens the door for such adoption.

If this argument is not sufficient to compel the Commission to amend Part 97 of the Rules to account for the militia aspect of the amateur radio service then I will continue my line of reasoning by addressing fraudulent use of the term, First Responders.

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<sup>5</sup> ARRL Press Release: *PRESIDENT HAYNIE TESTIFIES ON BEHALF OF AMATEUR RADIO SPECTRUM PROTECTION ACT*, June 11, 2003 available online at <http://www.arrl.org/news/stories/2003/06/11/101/>

## **G. WHO ARE THE *FIRST RESPONDERS*? REALLY!**

Since it is understood that deploying the National Guard to enforce civilian laws is not an option as far as the Constitution is concerned we must now explore the alternative under the Tenth Amendment. The alternative is resurrecting the Unorganized Militia as the real *FIRST RESPONDERS* for disasters and emergencies.

I want to clear up this nationalized stupidity of referring to emergency services as *FIRST RESPONDERS*. I am antagonistically opposed to the current definition of "*FIRST RESPONDERS*" as it is used today to the point where, like Pavlov's dog, I bark the word "bullshit!" everything I hear President Bush or any other public official refer to law enforcement agencies, emergency medical services, and fire and rescue units as First Responders.

Let's get *REAL!* Pay attention! They are *NOT* the *FIRST RESPONDERS*. They are and always have been "*SECOND RESPONDERS!*" Our elected and appointed public officials of the State Governments and of the Federal Government are committing a fraud against the Tenth Amendment when they refer to law enforcement agencies, emergency medical services, and fire and rescue units as First Responders. Fraud is a predicate act for racketeering under the RICO Act.

I will explain it another way: "*There are approximately two million defensive gun uses (DGU's) per year by law abiding citizens. That was one of the findings in a national survey conducted by Gary Kleck, a Florida State University criminologist in 1993.*"<sup>6</sup> Defensive gun use is the act of a First Responder.

Okay, some jackass criminal attempts to do whatever to an innocent victim. That victim happens to be carrying a licensed concealed handgun. That victim deploys the gun against the jackass criminal. Most bad guys will run off. However, some will get shot for their criminal persistence by the victim. Now, what we have here is the victim responded to his or her own situation first before the police were even called. For me? Logic and reality tells me that the victim is (and the People under the Tenth Amendment are) the First Responder.

The Unorganized Militia, the Posse, the State Defense Forces, the Naval Militia, and the Privateer are all *THIRD RESPONDERS* in the same category with the National Guard in regard to disasters and emergencies. .

The People themselves are the most effective tools for enforcing local law and order because the People themselves know their own community best. There exist disassociating prejudice inherent in the federal element against the People. Introducing the federal element (National Guard & FEMA) disaster and emergency scenarios brings with it a cavern of hostility against the very People they are missioned to assist and rescue that poses the greatest threat to civil unrest and riots. This federal bigotry towards the People must be addressed and it must end lest we find ourselves recycling history. A change in the culture of government must be effected.

## **H. THE U.S. SUPREME COURT ON THE MILITIA**

Citing a U.S. Supreme Court case, *Perpich (Governor of Minnesota), et al. v. Department of Defense*, 496 U.S. 334 (1990) 496 U.S. 334, 341-343 (June 11, 1990) that goes into the history of the militia I excerpt the following (foot number sequence from original):

Justice Stevens delivered the opinion for a unanimous Court: . . .

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<sup>6</sup> [http://www.guncite.com/gun\\_control\\_gcdguse.html](http://www.guncite.com/gun_control_gcdguse.html)

## I

Two conflicting themes, developed at the Constitutional Convention and repeated in debates over military policy during the next century, led to a compromise in the text of the Constitution and in later statutory enactments. On the one hand, there was a widespread fear that a national standing Army posed an intolerable threat to individual liberty and to the sovereignty of the separate States,<sup>7</sup> while, on the other hand, there was a recognition of the danger of relying on inadequately trained soldiers as the primary means of providing for the common defense.<sup>8</sup> Thus, Congress was authorized both to raise and support a national Army and also to organize “the Militia.” [496 U.S. 334, 341]

In the early years of the Republic, Congress did neither. In 1792, it did pass a statute that purported to establish “an Uniform Militia throughout the United States,” but its detailed command that every able-bodied male citizen between the ages of 18 and 45 be enrolled therein and equip himself with appropriate weaponry<sup>9</sup> was virtually ignored for more than a century, during which time the militia proved to be a decidedly unreliable fighting force.<sup>10</sup> The statute was finally repealed in 1901.<sup>11</sup> It was in that year that President Theodore Roosevelt declared: “Our militia law is obsolete and

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<sup>7</sup> At the Virginia ratification convention, Edmund Randolph stated that “there was not a member in the federal Convention, who did not feel indignation” at the idea of a standing Army. 3 J. Elliot, *Debates on the Federal Constitution* 401 (1863).

<sup>8</sup> As Alexander Hamilton argued in the *Federalist Papers*:

“Here I expect we shall be told that the militia of the country is its natural bulwark, and would be at all times equal to the national defence. This doctrine, in substance, had like to have lost us our independence. It cost millions to the United States that might have been saved. The facts which, from our own experience, forbid a reliance of this kind, are too recent to permit us to be the dupes of such a suggestion. The steady operations of war against a regular and disciplined army can only be successfully conducted by a force of the same kind. Considerations of economy, not less than of stability and vigor, confirm this position. The American militia, in the course of the late war, have, by their valor on numerous occasions, erected eternal monuments to their fame; but the bravest of them feel and know that the liberty of their country could not have been established by their efforts alone, however great and valuable they were. War, like most other things, is a science to be acquired and perfected by diligence, by perseverance, by time, and by practice.” *The Federalist No. 25*, pp. 156-157 (E. Earle ed. 1938).

<sup>9</sup> “That every citizen so enrolled and notified, shall, within six months thereafter, provide himself with a good musket or firelock, a sufficient bayonet and belt, two spare flints, and a knapsack, a pouch with a box therein to contain not less than twenty-four cartridges, suited to the bore of his musket or firelock, each cartridge to contain a proper quantity of powder and ball: or with a good rifle, knapsack, shot-pouch and powder-horn, twenty balls suited to the bore of his rifle, and a quarter of a pound of powder; and shall appear, so armed, accoutred and provided, when called out to exercise, or into service, except, that when called out on company days to exercise only, he may appear without a knapsack.” 1 Stat. 271.

<sup>10</sup> Wiener, *THE MILITIA CLAUSE OF THE CONSTITUTION*, 54 Harv. L. Rev. 181, 187-194 (1940).

<sup>11</sup> See 31 Stat. 748, 758.

worthless.”<sup>12</sup> The process of transforming “the National [496 U.S. 334, 342] Guard of the several States” into an effective fighting force then began.

The Dick Act divided the class of able-bodied male citizens between 18 and 45 years of age into an “organized militia” to be known as the National Guard of the several States, and the remainder of which was then described as the “reserve militia,” and which later statutes have termed the “unorganized militia.” The statute created a table of organization for the National Guard conforming to that of the Regular Army, and provided that federal funds and Regular Army instructors should be used to train its members.<sup>13</sup> It is undisputed that Congress was acting pursuant to the Militia Clauses of the Constitution in passing the Dick Act. Moreover, the legislative history of that Act indicates that Congress contemplated that the services of the organized militia would “be rendered only upon the soil of the United States or of its Territories.” H. R. Rep. No. 1094, 57th Cong., 1st Sess., 22 (1902). In 1908, however, the statute was amended to provide [496 U.S. 334, 343] expressly that the Organized Militia should be available for service “either within or without the territory of the United States.”<sup>14</sup>

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<sup>12</sup> “Action should be taken in reference to the militia and to the raising of volunteer forces. Our militia law is obsolete and worthless. The organization and armament of the National Guard of the several States, which are treated as militia in the appropriations by the Congress, should be made identical with those provided for the regular forces. The obligations and duties of the Guard in time of war should be carefully defined, and a system established by law under which the method of procedure of raising volunteer forces should be prescribed in advance. It is utterly impossible in the excitement and haste of impending war to do this satisfactorily if the arrangements have not been made long beforehand. Provision should be made for utilizing in the first volunteer organizations called out the training of those citizens who have already had experience under arms, and especially for the selection in advance of the officers of any force which may be raised; for careful selection of the kind necessary is impossible after the outbreak of war.” First Annual Message to Congress, Dec. 3, 1901, 14 Messages and Papers of the Presidents 6672.

<sup>13</sup> The Act of January 21, 1903, 32 Stat. 775, provided in part:

“That the militia shall consist of every able-bodied male citizen of the respective States, Territories, and the District of Columbia, and every able-bodied male of foreign birth who has declared his intention to become a citizen, who is more than eighteen and less than forty-five years of age, and shall be divided into two classes - the organized militia, to be known as the National Guard of the State, Territory, or District of Columbia, or by such other designations as may be given them by the laws of the respective States or Territories, and the remainder to be known as the Reserve Militia.”

Section 3 of the 1903 Act provided in part:

“That the regularly enlisted, organized, and uniformed active militia in the several States and Territories and the District of Columbia who have heretofore participated or shall hereafter participate in the apportionment of the annual appropriation provided by section sixteen hundred and sixty-one of the Revised Statutes of the United States, as amended, whether known and designated as National Guard, militia, or otherwise, shall constitute the organized militia.”  
Ibid.

Section 4 of the 1903 Act authorized the President to call forth the militia for a period not exceeding nine months. Id., at 776.

<sup>14</sup> Section 4, 35 Stat. 400.

## I. THE FURTHER DEMISE OF THE MILITIA THROUGH INTERSTATE COMPACTS

Given all that I have seen being just the tip of the iceberg I am still trying to put these events into context on how it affects the militia clauses of the Constitution and of the Second Amendment and its impact upon the Common Defence clause of the Preamble and our Ninth Amendment rights and Tenth Amendment powers as individual citizens and as a People.

The question still not asked by mainstream media is what role does the Unorganized Militia have in this war on terrorism or what role does the Unorganized Militia have in disasters and emergencies as a function of the Tenth Amendment as viewed through the Common Defence clause of the Preamble to the Constitution?

I set out to find this answer. I first compiled the militia laws of all the states online to produce the *2006 TABLE OF SELECTED STATE MILITIA LAWS*<sup>15</sup> emphasizing State powers of call out and hot pursuit statutes. I discovered that nearly all State Defense Forces (or State Guards) after they have been called out into State service by the Governor, or when the Governor is not immediately available the sheriff of the county, a judge, or the mayor may call out the National Guard when things get out of control, have the authority to continue pursuit of various types to suspects into another state. All this is coordinated through “interstate compacts.” But when has there ever been a call out of the militia or the State Defense Forces for such purposes?

However, from what I have learned about these interstate compacts none of them have provisions for the State Defense Forces/Guards or the unorganized militia to participate in emergencies or disasters. This became clearly evident after Hurricane Katrina. (See Exhibits 1 through 3). After the incompetence of the federal government, the Louisiana state government, the city government of New Orleans became evident on national television causing multi-state mutual assistance by a record number of States, California became the 48<sup>th</sup> state to join the Emergency Mutual Assistance Compact (EMAC). (See Exhibits 7, 8, and 21.).

The U.S. Supreme Court recited the legal history of the militia in *Perpich v. DoD* (See Exhibit 17). The Supreme Court referred to the *unorganized militia* only once in that opinion as the case directed the Court’s attention on the legality of the President calling out the National Guard outside the United States.

John F. Romano’s *STATE MILITIAS AND THE UNITED STATES: CHANGED RESPONSIBILITIES FOR A NEW ERA*, Air Force Law Review, Vol. 56 (2005) is the latest law review to discuss the militia. Here again, the *unorganized militia* is referenced only once in this law review.

Why this tendency to ignore the Unorganized Militia? States do not just ignore the Unorganized Militia a significant percentage of the States have passed laws prohibiting para-military activities from training exercises to parading in arms. It may very well be that these laws were directed at criminal gangs taking cover under the militia umbrella. However, in this day and age or criminal background checks in every aspect of life the State has the duty to amend or repeal this anti-militia laws and regulate the Unorganized Militia under a FEMA training program that is already in place. This FEMA program is called the National Incident Management System. More on this later in this article. What is questionable here is the constitutionality of State laws prohibiting anti-militia activities en mass against the Unorganized Militia.

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<sup>15</sup> See Item #18 at: [http://www.constitution.org/mil/cs\\_milit.htm](http://www.constitution.org/mil/cs_milit.htm)

Citing the conclusion from Thomas B. McAfee *CONSTITUTIONAL LIMITS ON REGULATING PRIVATE MILITIA GROUPS*, 58 Montana Law Review 45 (1997); Symposium. The Militia: Constitutional and Legal Perspectives:

Keeping the balance between freedom and order is one of constitutional democracy's most delicate chores. As dangerous as subversive speech and advocacy may seem to many, it is a paradox of democracy that the measure of our commitment to freedom is our willingness to risk that freedom, while having faith that democracy's fundamental values will win out in the contest of ideas that results from a robust First Amendment. We have wisely measured the risks of controversial free speech against the dangers posed by government censorship and concluded that free speech should prevail over the temptation to silence those who would undermine our institutions. However, when advocates of subversion organize themselves to pose an immediate threat to peace and order, the community as a whole is entitled to act in defense of the very rights for which civil government was created to preserve. And when groups of people act in concert to flout the very laws that protect their own rights, society is permitted to draw a line in favor of the rights of all against the license of a few.

The same sort of balance is struck again and again, with both the right to arms guaranteed by the Second Amendment and the free speech values secured by the First Amendment. While today many see the right to arms as anachronistic, the framers perceived this right as fundamentally related to the preservation of the other rights civil society is designed to secure. Until the Constitution is amended, this right should be respected as to every individual, regardless of party or political creed. Again, however, there are limits to the claims that can be made on behalf of any right. The Second Amendment was not drafted to grant broad rights to armed factions inclined to oppose the very structures created by our democratic freedoms. The First Amendment's freedom of expression loses its force when the line is crossed to violence or threat of violence. So too, the Second Amendment's right to arms is limited by its purpose to facilitate the personal right to self-defense and the community's right to defend itself against outside aggression or tyranny; the Second Amendment gives no protection to private armies waiting for an opportunity to confront the larger community with force. In short, we keep the balance true by first acknowledging the force of the rights guaranteed by the Constitution, even when they give protection to those with whom we strongly disagree and may consider dangerous, and second by carefully judging the limits of individual rights when lines are crossed that threaten [Page 78] the community at large.

Citing from Nathan Canestaro, *HOMELAND DEFENSE: ANOTHER NAIL IN THE COFFIN FOR POSSE COMITATUS*, 12 Journal of Law & Policy 99, 140-144 (2003):

Considerable differences exist between a soldier and peace officer. Soldiers are trained to fight and kill, without concern for the rights of the individual or for constitutional protections against illegal searches, seizures, or arrests. The military's rules of engagement carry no due process, no consideration of civil

right, and smack of an underlying presumption of guilt.<sup>296</sup> The Eighth Circuit Court of Appeals, in *Bissonette v. Haig*,<sup>297</sup> expounded on the inherent risks of employing the military in law enforcement:

Civilian rule is basic to our system of government. The use of military forces to seize civilians can expose civilian government to the threat of military rule and the suspension of constitutional liberties. On a lesser scale, military enforcement of the civil law leaves the protection of vital fourth and Fifth Amendment rights in the hands of persons who are not trained to uphold these rights. It may also chill the exercise of fundamental rights, such as the rights to speak freely and to vote, and create the atmosphere of fear and hostility which exists in territories occupied by enemy forces.<sup>298</sup>

No matter how well the loosening of military restrictions are received by the public, the abuse of civil liberties seems to always follow. In 1863, the Army quelled draft riots in New York, while a violent military suppression of the 1877 railroad strike resulted in 100 killed, and several hundred wounded.<sup>299</sup> In the 1894 Pullman strike, the President ordered in federal troops over the opposition of the Governor of Illinois,<sup>300</sup> while the Army detained some of the demonstrators in the 1899 miner's strike at Couer d'Alene, Idaho, without charging them with a crime.<sup>301</sup> During World War I, the military broke up labor protests and spied on Union leaders, "substantially slow[ing] unionization for a decade."<sup>302</sup>

These incidents—only a select few out of scores in American history—demonstrate how badly civilian authority can abuse the military to the detriment of the citizens' rights. A string of incidents in recent years is indicative that the military—no matter how respected in the eyes of the public—still holds potential for abuse. The shooting death of Esequiel Hernandez, a Mexican goat-herder, at the hands of inadequately trained Marine Corps,<sup>303</sup> demonstrates the risks of employing infantry in law enforcement roles.

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<sup>296</sup> John P. Coffey, *THE NAVY'S ROLE IN INTERDICTING NARCOTICS TRAFFIC: WAR ON DRUGS OR AMBUSH ON THE CONSTITUTION?*, 75 GEO. L.J. 1947, 1959 (1987).

<sup>297</sup> *Bissonette v. Haig*, 776 F.2d 1384 (8th Cir. 1985).

<sup>298</sup> *Id.* at 1387.

<sup>299</sup> Christopher J. Whelan, *Military Intervention in Democratic Societies: The Role of Law*, in *MILITARY INTERVENTION IN DEMOCRATIC SOCIETIES* 264, 275 (Peter J. Rowe & Christopher J Whelan eds., 1985).

<sup>300</sup> *AMERICAN MILITARY HISTORY*, supra note 38, at 286.

<sup>301</sup> David B. Kopel & Paul M. Blackman, *CAN SOLDIERS BE PEACE OFFICERS? THE WACO DISASTER AND THE MILITARIZATION OF LAW ENFORCEMENT*, 30 AKRON L. REV 619, 622 (1997).

<sup>302</sup> *Id.*

<sup>303</sup> John Flock, *THE LEGALITY OF UNITED STATES MILITARY OPERATIONS ALONG THE UNITED STATES-MEXICO BORDER*, 5 S.W. J. OF L. & TRADE AM. 453, 454 (1998).

An analysis of the national strategy for Homeland Defense's definition of terrorism reveals an equal potential for abuse: "Any premeditated, unlawful act dangerous to human life or public welfare that is intended to intimidate or coerce civilian populations or governments."<sup>304</sup> Furthermore, it is frightening to imply that any domestic crime with an underlying political motive, "intended to coerce governments," will equate with an act of terrorism and thus be subject to military intervention. Such involvement is only one step removed from Justice Douglas's dire warning in *Laird v. Tatum*: "Whenever you conclude that it is right to use the Army to execute civil process . . . it is no longer a government founded upon the consent of the people; it has become a government of force."<sup>305</sup>

## V. CONCLUSION

Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety.<sup>306</sup>

Posse comitatus, as a bar against the military's enforcement of civil law, stretches back to the roots of American jurisprudence in English common law. After suffering decades of abuse and injustice at the hands of the Tudor and Stuart monarchs, the English knew very well of the consequences resulting from an unrestrained military presence in domestic affairs. Although this knowledge was impressed upon the psyche of our own nation as a result of similar tactics employed by British occupation forces, the principle has undergone a steady decline. The United States has slowly shifted away from showing restraint in the domestic use of the military's forces, and is now moving towards a more pragmatic approach that relies on the military's vast resources as a means of law enforcement.

Posse comitatus found legislative expression in response to military rule over the South during Reconstruction. Since then, however, legislative exceptions, a lack of judicial enforcement, blurring of the distinction between militia and regular military forces, and increased public confidence in the military have all taken their toll on the strength of the PCA. In recent years, this decline has become much more rapid. Congress responded to the increasing variety and sophistication of threats to national security by legislating—over the military's

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<sup>304</sup> Office of Homeland Security, *NATIONAL STRATEGY FOR HOMELAND SECURITY 2* (July 2002), available at <http://www.whitehouse.gov/homeland/book/> [(Noted by Don Hamrick: Still available as of January 4, 2006 in piecemeal sections in PDF format. The full version is available at: [http://www.whitehouse.gov/homeland/book/nat\\_strat\\_hls.pdf](http://www.whitehouse.gov/homeland/book/nat_strat_hls.pdf) ).]

<sup>305</sup> Flock, *supra* note 303, at 469 (quoting *Laird v. Tatum*, 408 U.S. 1, 16-40 (1972) (Douglas, J., dissenting)).

<sup>306</sup> Domestic Law Enforcement is Not a Job for the Military, *ATLANTA JOURNAL AND CONSTITUTION*, July 19, 2002 (quoting Benjamin Franklin), available at <http://www.accessatlanta.com/ajc/opinion/0702/19homeland.html> (last visited Feb. 17, 2003 - [Noted by Don Hamrick: No longer available online when checked January 3, 2006] ).

objections—a quickly expanding role for them in emergency response, in WMD management, and in the War on Drugs.

The PCA now contains substantial exceptions to allow military action. Narrowly-drafted restrictions on the forces and services included in the scope of the PCA allow some arms of the military a significant degree of freedom. The PCA permits indirect support measures—such as training, advising, and the loaning and operation of equipment—for all of the armed services. The judiciary, demonstrating their traditional deference to military activity, has undermined efforts to broaden the prohibitions of the PCA by including an exclusionary power.

It now seems apparent that the federal government believes that it needs a wide degree of military intervention in order to protect the United States from continuing terrorist attacks. Taking to heart Alexander Hamilton’s warning about “fettering the government with restrictions that cannot be observed,”<sup>307</sup> the military seems ready to take on a vast role in counter-terrorism. Congress is considering amending the law yet again to allow the Department of Defense even more freedom to intervene. With the tremendous support for military action and the overwhelming public demand for better homeland security, continued modification—either by legislation or by practice—will erode the PCA to the point where the exceptions swallow the rule.

Whether these changes are even needed—or effective—to prevent terrorism is a subject of debate. One thing is certain, however. If posse comitatus becomes a victim of the war against terrorism, civil liberties will suffer as a result. History has demonstrated time and again that the military is no substitute for law enforcement. Military personnel are not trained to protect constitutional rights in their pursuit of justice, nor do they practice the proper criminal procedure required by our courts. As Justice Douglas stated, “[T]he civil administration is the product of political processes rooted in the traditions of civil liberties and the rights of man. The military regime has a different expertise—that of war and combat. The civil administration brings to its task all of the great traditions embodied in the Bill of Rights. The military knows only short-cuts and substitutes.”<sup>308</sup>

It seems our nation long ago began descending the slippery slope of domestic military intervention. Recent events have presented us with a final opportunity to stay our decline. Whether our government will chose to do so is not yet clear. The costs of continuing onward certainly are.

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<sup>307</sup> THE FEDERALIST NO. 25 (Alexander Hamilton).

<sup>308</sup> William O. Douglas, *THE RIGHT OF THE PEOPLE* 42 (1972)

**J. LIST OF INTERSTATE COMPACTS DIRECTLY AFFECTING THE TENTH AMENDMENT AND THE MILITIA CLAUSES OF THE CONSTITUTION AND OF THE SECOND AMENDMENT**

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Exhibit 18	Southern Regional Homeland Security and Emergency Preparedness Management Assistance Compact
Exhibit 19	Emergency Management Assistance Compact (EMAC)
Exhibit 20	Interstate Civil Defense and Disaster Compact (ICDDC)
Exhibit 21	National Guard Mutual Assistance Compact of 1952 (NGMAC)
Exhibit 22	National Guard Mutual Assistance Counter-drug Activities Compact (NGMACDAC)
Exhibit 23	National Crime Prevention and Privacy Compact (NCPPC)

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Exhibit 19 discusses interstate compacts in greater detail and by its content it directly refutes the need to enroll emergency services into the militia which is a ridiculous idea to begin with. However, I am at the mercy of the reader's opinion on my idea of resurrecting the Unorganized Militia through training and education as an opposing alternative to President Bush's drive to install his culture of surveillance of the Unorganized Militia.

My proposal to resurrect the State Defense Forces/State Guards, the posse, the privateer, and the Unorganized Militia to have a greater, more significant role in the Common Defence is a reasonable and a constitutional alternative to what we are suffering now under President Bush's culture of surveillance. I, for one, am fed up being made to feel like some scumbag criminal suspect.

I have done extensive research to compile the exhibits and to write my commentary on the exhibits. If you believe my proposal is a viable and proper alternative to President Bush's culture of surveillance that I encourage you to contact as many agencies listed in Exhibits 26 and 27, perhaps even forward this PDF file to them.

**K. THE UNORGANIZED MILITIA AND FEMA'S NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS)**

The Department of Homeland Security's *NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS)*,<sup>16</sup> dated March 1, 2004,

PREFACE

On February 28, 2003, the President issued *HOMELAND SECURITY PRESIDENTIAL DIRECTIVE (HSPD)-5, MANAGEMENT OF DOMESTIC INCIDENTS*, which directs the Secretary of Homeland Security to develop and administer a *NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS)*.

This system provides a consistent nationwide template to enable Federal, State, local, and tribal governments and **private-sector and nongovernmental organizations** to work together effectively and efficiently to prepare for, prevent, respond to, and recover from domestic incidents, regardless of cause, size, or complexity, including

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<sup>16</sup> [http://www.fema.gov/pdf/nims/nims\\_doc\\_full.pdf](http://www.fema.gov/pdf/nims/nims_doc_full.pdf)

acts of catastrophic terrorism. This document establishes the basic elements of the NIMS and provides mechanisms for the further development and refinement of supporting national standards, guidelines, protocols, systems, and technologies.

Building on the foundation provided by existing incident management and emergency response systems used by jurisdictions and functional disciplines at all levels, this document integrates best practices that have proven effective over the years into a comprehensive framework for use by incident management organizations in an all hazards context (terrorist attacks, natural disasters, and other emergencies) nationwide. It also sets in motion the mechanisms necessary to leverage new technologies and adopt new approaches that will enable continuous refinement of the NIMS over time. This document was developed through a collaborative, intergovernmental partnership with significant input from the incident management functional disciplines, the private sector, and nongovernmental organizations.

The NIMS represents a core set of doctrine, concepts, principles, terminology, and organizational processes to enable effective, efficient, and collaborative incident management at all levels. It is not an operational incident management or resource allocation plan. To this end, HSPD-5 requires the Secretary of Homeland Security to develop a *NATIONAL RESPONSE PLAN* (NRP) that integrates Federal government domestic prevention, preparedness, response, and recovery plans into a single, all-disciplines, all hazards plan. The NRP, using the comprehensive framework provided by the NIMS, will provide the structure and mechanisms for national-level policy and operational direction for Federal support to State, local, and tribal incident managers and for exercising direct Federal authorities and responsibilities as appropriate under the law.

HSPD-5 requires all Federal departments and agencies to adopt the NIMS and to use it in their individual domestic incident management and emergency prevention, preparedness, response, recovery, and mitigation programs and activities, as well as in support of all actions taken to assist State, local, or tribal entities. **The directive also requires Federal departments and agencies to make adoption of the NIMS by State and local organizations a condition for Federal preparedness assistance (through grants, contracts, and other activities) beginning in FY 2005.** Jurisdictional compliance with certain aspects of the NIMS will be possible in the short term, such as adopting the basic tenets of the Incident Command System (ICS) identified in this document. Other aspects of the NIMS, however, will require additional development and refinement to enable compliance at a future date (e.g., data and communications systems interoperability). The Secretary of Homeland Security, through the NIMS Integration Center discussed in Chapter VII, will publish separately the standards, guidelines, and compliance protocols for determining whether a Federal, State, local, or tribal entity has adopted the aspects of the NIMS that are in place by October 1, 2004. **The Secretary, through the NIMS Integration Center, will also publish, on an ongoing basis, additional standards, guidelines, and compliance protocols for the aspects of the NIMS not yet fully developed.**

#### **L. THE DANGERS OF A DEPENDENCY ON A CENTRALIZED GOVERNMENT**

President Bush is urgently changing the culture of government to an information sharing environment. But it is the method of information collection that is problematic to our right to privacy

and other rights and freedoms. Rather than treat the American populace as targets for information collection and surveillance I propose the original methodology of the Common Defence by enveloping the People as participants instead of targets. To this end I have the following line of reasoning to resurrect the Unorganized Militia to assist in the Common Defence.

The first principal that must be understood and adopted is that the Unorganized Militia is a member of the Private Sector as well as being a Non-Governmental Organization in the strict legal sense of definitions. Once this understanding becomes the standard then all else falls into place with government instructions, policies, doctrines, and guidelines.

The NIMS manual refers to private sector and nongovernmental organizations throughout its 63 pages.

Word or Phrase	Number of times used
nongovernmental	1
nongovernmental resources	1
nongovernmental entities	11
nongovernmental organizations	28
private sector outreach	1
private sector entities	1
private sector	29

The United States was and continues to be in a state of war against terrorists during the Katrina disaster. As with any disaster there are varying degrees in the breakdown of civil law and order compelling the governor of any state to call in the National Guard to suppress such insurrections. But there is a fine line between the proper execution of military authority to restore civil law and order and the unlawful use of armed military aggression against clearly innocent citizens located in disaster refugee centers commonly referred to as concentration camps such as the Causeway Concentration Camp in New Orleans in Katrina's aftermath.

At what point does the use of National Guard to restore civil law and order become an unlawful armed aggression against an innocent people? Is it when a National Guard soldier terroristically threatens a child by aiming his laser-pointed M-16 at the child or when he pulls the trigger. (See Exhibits 1 through 3). When is it proper for an innocent people to take up arms in self defense against their own military under the Law of Internal Armed Conflict.<sup>17</sup>

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<sup>17</sup> <http://www.cambridge.org/uk/catalogue/catalogue.asp?isbn=0521772168>

Laws regulating armed conflict have existed for centuries, but the bulk of these provisions have been concerned with wars between states. Relatively little attention has been paid to the enormously important area of internal armed conflict. At a time when international armed conflicts are vastly outnumbered by domestic disputes, this book seeks to redress the balance through a comprehensive analysis of those rules which exist in international law to protect civilians during internal armed conflict. From regulations in the nineteenth and early twentieth centuries according to the doctrine of recognition of belligerency, this book traces the subsequent development of international law by the Geneva Conventions and their additional Protocols, as well as through the more recent jurisprudence of the Yugoslav and Rwandan tribunals. The book also considers the application of human rights law during internal armed conflict, before assessing how effectively the applicable law is, and can be, enforced.

- **“Jus in bello”**(law in war) is the law of armed conflict governs many different aspects of armed conflicts, but it mainly consists of those rules traditionally referred to as *jus in bello*, “law in war,” which relate to the manner in which armed conflict may proceed. *Jus in bello* consists of rules relating to proper and improper kinds of weapons and military tactics, rules relating to the treatment of prisoners of war and civilians, and so on.
- **“Jus ad bellum”** are laws relating to when it is proper to resort to armed conflict,” a question now governed by the UN Charter. Some commentators consider applicable UN Charter provisions part of the law of armed conflict, broadly conceived, while others regard this as outside of the laws of armed conflict).

See also as related subject matter: David B. Kopel,<sup>18</sup> *MILITARIZED LAW ENFORCEMENT: THE DRUG WAR’S DEADLY FRUIT* [This is a draft chapter from the forthcoming book *After Prohibition: Adult Alternatives to the Drug War*, to be published by the Cato Institute.]<sup>19</sup>

## **M. THE CULTURE OF SURVEILLANCE V THE CULTURE OF MUTUAL ASSISTANCE**

The NIMS manual sets forth a “*culture of mutual assistance*” between the People, the local and State Governments, and the Federal Government as though it had used the Tenth Amendment’s balance of power as its fundamental guidance.

I look now to the U.S. Code, Title 6 - Domestic Security for my next line of reasoning to argue that the Department of Homeland Security is bound by its own law to include the Unorganized Militia in its role for the Common Defence..

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### TITLE 6—DOMESTIC SECURITY CHAPTER 1—HOMELAND SECURITY ORGANIZATION

#### **6 U.S.C. § 112. Secretary; functions**

(c) Coordination with non-Federal entities

With respect to homeland security, the Secretary shall coordinate through the Office of State and Local Coordination [1] (established under section 361 of this title) (including the provision of training and equipment) with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, including by—

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<sup>18</sup> Associate Policy Analyst, Cato Institute. Research Director, Independence Institute; Golden, Colorado, <http://i2i.org>. Some of the material in this chapter is taken from David B. Kopel & Paul H. Blackman, *No More Wacos: What’s Wrong with Federal Law Enforcement and How to Fix It* (Buffalo: Prometheus, 1997); and David B. Kopel & Paul H. Blackman, “Can Soldiers Be Peace Officers?” 30 *Akron Law Review* 619 (1997), . These documents contain citations for many of the statements for which citations have been omitted (in the interest of brevity) in this chapter. I would like to thank Brannon Denning and Nick McCall for their helpful comments.

<sup>19</sup> <http://www.davekopel.com/CJ/chap/AfterProhibition.htm>

(1) coordinating with State and local government personnel, agencies, and authorities, and with the **private sector**, to ensure adequate planning, equipment, training, and exercise activities;

(2) coordinating and, as appropriate, consolidating, the Federal Government's communications and systems of communications relating to homeland security with State and local government personnel, agencies, and authorities, **the private sector, other entities, and the public**; and

(3) distributing or, as appropriate, coordinating the distribution of, warnings and information to State and local government personnel, agencies, and authorities and to **the public**.

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## SUBCHAPTER V—EMERGENCY PREPAREDNESS AND RESPONSE

### **6 U.S.C. § 318. Use of national private sector networks in emergency response**

To the maximum extent practicable, the Secretary shall use national private sector networks and infrastructure for emergency response to chemical, biological, radiological, nuclear, or explosive disasters, and other major disasters.

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## SUBCHAPTER VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

### ***Part I—Information Sharing***

### **6 U.S.C. § 482. Facilitating Homeland Security Information Sharing Procedures**

(3)

(A) The Secretary shall establish a program to provide appropriate training to officials described in subparagraph (B) in order to assist such officials in—

(i) identifying sources of potential terrorist threats through such methods as the Secretary determines appropriate;

(ii) reporting information relating to such potential terrorist threats to the appropriate Federal agencies in the appropriate form and manner;

(iii) assuring that all reported information is systematically submitted to and passed on by the Department for use by appropriate Federal agencies; and

(iv) understanding the mission and roles of the intelligence community to promote more effective information sharing among Federal, State, and local officials and representatives of the private sector to prevent terrorist attacks against the United States.

(B) The officials referred to in subparagraph (A) are officials of State and local government agencies and **representatives of private sector entities** with responsibilities relating to the

oversight and management of first responders, counterterrorism activities, or critical infrastructure.

(C) The Secretary shall consult with the Attorney General to ensure that the training program established in subparagraph (A) does not duplicate the training program established in section 908 of the USA PATRIOT Act (Public Law 107-56; 28 U.S.C. 509 note ).

(D) The Secretary shall carry out this paragraph in consultation with the Director of Central Intelligence and the Attorney General.

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The idea behind “Information Sharing” and the Unorganized Militia is that Unorganized Militia units will function in a similar manner to neighborhood watch programs. The Department of Homeland Security under this scenario would disseminate information to Unorganized Militia leader through local local offices of emergency managers or the Sheriff’s Office of the county. The Unorganized Militia would also service as the Posse. This would be the most problematic cultural conversion from the present day militarized law enforcement.

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## **N. TRAINING THE UNORGANIZED MILITIA**

The State and Federal Government’s performance, or the lack of it, in Katrina’s aftermath is prima facie evidence that the federalization of emergency services in a centralized command and control hierarchical structure in the form of FEMA is not what was guaranteed in our Republican form of Government. FEMA may have a role under the Common Defence clause of the Preamble to the Constitution but it is not and cannot be the dominant role under the Tenth Amendment to the point that the People have no duty or responsibility for their own safety and security but to be dependent upon the State and Federal Government which then becomes indistinguishable from a Socialist for of Government. The People under the Tenth Amendment have the power of self-governance and self-determination in matters of their transitive and immediate safety and security. With this right and power of autonomy as an unorganized militia under the Second, Ninth and Tenth Amendments comes the duty and responsibility for education and training under the First Amendment.

Training the Unorganized militia is necessary to achieve a respectable level of competence and proficiency before a working relationship with local law enforcement and emergency services can be obtain. One area of training that intrinsically belongs to the Unorganized Militia is training in 4th Generation Warfare that categorizes this war on terrorism. But, in order for this training to be legal under state law the legislatures of States with anti-paramilitary activity laws would have to be repealed or amended.

Train would easily be provided by the DoD. If the U.S. Army’s School of the Americas, now known as the Western Hemisphere Institute for Security cooperation in Fort Benning, can train Mexico’s Special Air Mobile Force Group, an elite paratroop and intelligence battalion where were assigned to the Mexican state of Tamaulipas, which borders southern Texas to fight drug traffickers and of which an estimated 31 members form battalion members are believed to lead the Zetas as they now protect the Mexican drug cartel’s smuggling operations into the United States and collaterally assisting the

invasion of illegal aliens then the U.S. Army can train the U.S. Unorganized Militia to counter this invasion.<sup>20</sup>

Citing from the Chairman of the Joint Chiefs of Staff Instruction (CJCSI), *JOINT TRAINING POLICY FOR THE ARMED FORCES OF THE UNITED STATES*,<sup>21</sup> CJCSI 3500.01B 31 December 1999 (Directive current as of 5 December 2001); Washington, D.C. 20318-9999. This instruction establishes Chairman of the Joint Chiefs of Staff (CJCS) policy for planning and conducting joint training. Excerpt from Enclosure B: *JOINT TRAINING POLICY*:

5. Interagency, **Nongovernmental Organizations** (NGO), and **Private Voluntary Organizations** (PVO). Inherent to military operations is the need to work with other US Government (USG) agencies or other nations' governments, as well as with NGOs or PVOs. Joint training and exercise programs should maximize interaction with the organizations and people likely to be involved in assigned mission(s) across the range of military operations. **Commanders should emphasize and develop individual as well as collective skills.**

Brian C. Brook, *FEDERALIZING THE FIRST RESPONDERS TO ACTS OF TERRORISM VIA THE MILITIA CLAUSES*, 54 Duke Law Journal 999 (2005) argues in favor of allowing the federal government commandeering "first responders" for militia service:

Because of the Court's interpretation of the Tenth Amendment, the federal government cannot directly prepare or coordinate the [\*pg 1029] activities of first responders under its commerce power. This Note argues that the federal government can exercise significant control over first responders by enrolling them as members of the militia. Congress has the broad and exclusive power to incorporate citizens into the militia. Although first responders would be in noncombat roles, history illustrates that army and militia alike may undertake noncombat goals and pursue them zealously, especially when the noncombat activities contribute to national security, as in the case of a terrorist attack. Once the first responders are members of the militia, Congress has the power to organize, equip, and discipline them into a well-trained team capable of providing immediate and effective responses to such attacks. The president would have the exclusive authority to call forth the first-responder militia, needing only to first determine whether the attack constituted an insurrection or invasion.

In the fight against terrorism, the battle is won at two stages: prevention and damage control. Once a terrorist strikes, the only way to fight back is by saving as many lives as possible. This means having well-equipped first responders on the scene immediately and ensuring that they respond effectively and in coordination with other efforts that may be taking place around the country. The federal government can help achieve this goal, while remaining faithful to the Constitution, by incorporating first responders into the militia. Only through the heroism of first responders can the United States return quickly to its feet after a powerful blow and stand ready to fight.

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<sup>20</sup> See Jerry Seper, Washington Times, *MEXICO: Former Members of An Elite Force of Anti-Drug Commandos Aiding Drug Traffickers*, February 24, 2005 available online at:

<http://www.corpwatch.org/article.php?id=11903>

<sup>21</sup> [http://www.dtic.mil/cjcs\\_directives/cdata/unlimit/3500\\_01.pdf](http://www.dtic.mil/cjcs_directives/cdata/unlimit/3500_01.pdf)

Brian C. Brook misses the mark with his law review suggesting that emergency services erroneously called First Responders out to be enrolled in the militia for call out for extra-jurisdictional service. This need of out-of-jurisdiction backup for emergency services is already taken care of with interstate compacts to the neglect of the militia. If this neglect continues with the Commission in this Petition for Rulemaking the fire of public resentment will be stoked to greater proportions in the arena of public opinion. I remind the Commission that what the ARRL petitions for essential freedoms that this nation was founded upon. Deny these freedoms you leave the People to agitate under restrictive and oppressive regulations. Frederick Douglass views on freedom in 1857 are still relevant today:

Quoting Frederick Douglass (1857):

“Let me give you a word of the philosophy of reform. The whole history of the progress of human liberty shows that all concessions yet made to her august claims, have been born of earnest struggle. The conflict has been exciting, agitating, all-absorbing, and for the time being, putting all other tumults to silence. It must do this or it does nothing. If there is no struggle there is no progress. Those who profess to favor freedom and yet depreciate agitation, are men who want crops without plowing up the ground, they want rain without thunder and lightening. They want the ocean without the awful roar of its many waters.”

“This struggle may be a moral one, or it may be a physical one, and it may be both moral and physical, but it must be a struggle. Power concedes nothing without a demand. It never did and it never will. Find out just what any people will quietly submit to and you have found out the exact measure of injustice and wrong which will be imposed upon them, and these will continue till they are resisted with either words or blows, or with both. The limits of tyrants are prescribed by the endurance of those whom they oppress. In the light of these ideas, Negroes will be hunted at the North, and held and flogged at the South so long as they submit to those devilish outrages, and make no resistance, either moral or physical. Men may not get all they pay for in this world; but they must certainly pay for all they get. If we ever get free from the oppressions and wrongs heaped upon us, we must pay for their removal. We must do this by labor, by suffering, by sacrifice, and if needs be, by our lives and the lives of others.”

SOURCE: Frederick Douglass. [1857] (1985). “The Significance of Emancipation in the West Indies.” Speech, Canandaigua, New York, August 3, 1857; collected in pamphlet by author. In *The Frederick Douglass Papers. Series One: Speeches, Debates, and Interviews. Volume 3: 1855-63.* Edited by John W. Blassingame. New Haven: Yale University Press, p. 204.

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End of Comments

# EXHIBIT 1 - House Select Committee on Katrina



## HOUSE SELECT BIPARTISAN COMMITTEE TO INVESTIGATE THE PREPARATION FOR AND RESPONSE TO HURRICANE KATRINA

***“Hurricane Katrina: Voices  
from Inside the Storm.”***

**Titled**

WITNESS LIST

Tuesday, December 6, 2005

PANEL ONE

Tom Davis, Chairman  
2154 Rayburn House Office Building  
Washington, DC

Gulf coast evacuees testified about their experiences. They discussed the challenges facing the residents of New Orleans including uncertainties regarding jobs and housing.

 <p><b>Dyan French, (Mamma D)</b> <b>Community Leader</b> <b>New Orleans, LA</b></p>
 <p><b>Leah Hodges,</b> <b>Resident,</b> <b>New Orleans, LA</b></p>
 <p><b>Patricia Thompson,</b> <b>Katrina Evacuee,</b> <b>New Orleans, LA</b></p>
 <p><b>Doreen Keeler,</b> <b>Katrina Evacuee,</b> <b>New Orleans, LA</b></p>

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## EXCERPT OF TRANSCRIPT

[Text between brackets] document non-verbal communications to assist the reader with a clearer understanding of the “emotions” behind the written words in this transcript. These bracketed comments are subjective opinions based on my own observations of facial expressions, body language, tone of voice, and reactions of the participants and attendees at the hearing and from my own personal reactions in view the recorded video. My commentaries may not represent the true thoughts and feelings of the subject individuals. Mr. Shays wasted 12 minutes of the Committee’s time.

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**CHAIRMAN:** Mr. Shays.

**SHAYS:** Thank you. I’m struck [*Shays, with arms folded across chest, chuckling in subdued manner revealing a skepticism in the testimonies*] by many emotions right now. One of them is ... I’m in [*Shays had been looking down, avoiding eye contact with the Panel now looks up at the panel.*] awe of what people in New Orleans have had to [*Shays unfolds his arms and now begins picking at or scratching his right palm with his left hand indicative of some uneasiness perhaps deception.*] do to deal with the fact they don’t have a home and a place to live. And uhm, you know just, having to face that, uhm, makes me, [*a subdued breathing chuckle (not Shays, but maybe Katrina evacuee Mr. Terrol Williams) indicating disbelief.*] uhm, try to put myself in your shoes and I can’t do that. There’s another part that wants to be careful because I don’t want to be ... to be offensive when you’ve gone through such incredible challenges.<sup>22</sup> But there’s another part in me that feels that I would be derelict in my duty to listen to some comments and not respond to them because you’re all under oath. Everyone of you.<sup>23</sup> You’re before a hearing of Congress. This a big deal.<sup>24</sup> And when I hear that a bead,<sup>25</sup> uhh, the impression is of a laser bead on your 5-year-old daughter’s forehead.

**THOMPSON:** Granddaughter.

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<sup>22</sup> This is the classic technique of setting someone at ease when you intend to be offensive with them by claiming at the outset that you don’t want to be offensive with them. It is psychological manipulation. It is abusive in its nature.

<sup>23</sup>Mr. Shays is displaying a prejudice in the manner in which he addresses the panel of Katrina victims. The simple act of advising the panel that they are under oath implies that they have not given truthful testimony.

<sup>24</sup>Here, Mr. Shays emphasizes the obvious as if the panel are like children who fail to comprehend the gravity of their situation or what they are doing. Mr. Shays is very condescending here. Mr. Shays has his right elbow on the desk with his hand up gestering for agreement and caution. All the while Mr. Shays would look down at his desk his forward and eye brow expressions would clear and smooth out representing a state of mind clear of conflict or confrontation. But when Mr. Shays would look at the panel the lines on his upper forehead and the scrunching wrinkles just above his eye brows are clearly in evidence implying serious concern or skepticism.

<sup>25</sup> When Mr. Shays said the word “bead” he tapped the middle finger of his right hand to his forehead squarely between his eyes.

**SHAYS:** I frankly just don't believe it.<sup>26</sup> But I'm just being honest with you.

**THOMPSON:** You believe what you want. I was there sir.

**HODGES(?):** We saw the guns. We experienced them.

**SHAYS:** We'll have to . . .

**MOMMA D:** You should go home with me now.

**SHAYS:** Wait, Wait, Wait a second. . . .

**MOMMA D:** You can still see some of it.

**SHAYS:** Mam, I listened. But I just; I'm be; You were honest. I'll be honest. And we won't have, won't get anywhere . . .

**MOMMA D:** I appreciate that

**SHAYS:** . . . if we're both not honest. When I hear that you are on your porch . . .

**MOMMA D:** What did that mean?<sup>27</sup>

**SHAYS:** . . . and you saw, uh, that the levee was blown up, uhm, and bombed, I, I can't let that pass. uh, I don't know what this . . .

**MOMMA D:** Don't let that pass. Come go home with me.

**SHAYS:** I don't know if that's theater or the truth.

**MOMMA D:** Come go home with me.

**SHAYS:** Okay. No. This is what I want to ask you. Lets start with you then.

**MOMMA D:** Uhhh humm.

**SHAYS:** Uhm, Is your home right next door to where the levee broke?

**MOMMA D:** The London Street Canal. I'm in the 7<sup>th</sup> Ward.

**SHAYS:** How far away was the breach?

**MOMMA D:** 7<sup>TH</sup> Street Canal is a little further distance. But you half to understand New Orleans is called the crescent city.

**SHAYS:** I don't neet lines of position. How many . . .

**MOMMA D:** Mister, I don't know what you're talkin' about . . .

**SHAYS:** How many feet . . .

**MOMMA D:** . . . but I'm going to tell you.

**SHAYS:** How many feet . . .

**MOMMA D:** . . . I'm 62 and I have to talk the way I talk.

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<sup>26</sup> This is the ultimate insult ever to be volleyed in a Congressional hearing. To impugn the credibility of swon testimony by Katrina victims with a confession of disbelief is extremely insulting.

<sup>27</sup> Referring to Mr. Shays "if we're both not honest" remark.

**SHAYS:** How many feet was the levee from your porch?

**MOMMA D:** I'm Phi Beta Kapa too but I have to talk they way I talk. I'm trying to answer your question.

**SHAYS:** How may feet? A half a mile? A mile? Across the street? . . .

**MOMMA D:** No. Let me go a little further than that. There was a military person in my house. Somebody who served their country well. When we started looking at what was this too loud BA-BOOM! *MISTER!* I'll never forget it.

**SHAYS:** Let me ask you this, Mam.

**MOMMA D:** He said, "Momma D, that was a bomb!"

**SHAYS:** Were you going to answer my question or not?

**MOMMA D:** Yeah.

**SHAYS:** How far away is your porch . . .

**MOMMA D:** From the London Street Canal it's half way to my post office box that I walk everyday.

**SHAYS:** So, the levee is just across the street from you?

**MOMMA D:** I will shay, how far is St. Aug<sup>28</sup> from me? Broad and St. Bernard. Broad and A. P. Tureaud.

**SHAYS:** Can you see the levee breach from your house?

**MOMMA D:** I haven't looked for it. I'm still looking for dead people.

**SHAYS:** From your house do you see the levee where it's breached.

**MOMMA D:** I haven't looked for it, Mister. I'm tryin' to tell you.

**SHAYS:** No. But you're not answering the question.

**MOMMA D:** I have not gone. One of the reporters came and I sent him to look at it which is right down from my house. He can verify that for you.

**SHAYS:** Can you see the levee from your house where it was breached?

**MOMMA D:** Are you familiar with New Orleans?

**SHAYS:** I'm asking you a question.

**MOMMA D:** You can't see from one street to the other if you got two-story houses and trees. I live on a tree lined street. That's what I'm saying. You need to come see my city.

**SHAYS:** So far, I've asked you two questions and you've been very unresponsive. The first question . . .

**MOMMA D:** I don't know you call unresponsive.

**SHAYS:** Well, the first question was how far . . .

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<sup>28</sup> St. Augustine High School located at 2600 A.P. Tureaud Avenue which is about 5 blocks from Momma D's residence and is slightly out of her way going to the Post Office.

**MOMMA D:** Can I see? No. I can't see you. I wear glasses and I can't afford to buy any. *I HEARD!*

**SHAYS:** **Mam. We don't need to speak in tongues. We just need to speak in honest answers.**

**MOMMA D:** That is honest. I have no reason to lie to you. Who are you Mister Shays?

**THOMPSON:** I'm serious.

**MOMMA D:** But wha-what have you done for me? I'm sittin' up here now I don't know where I am going to do, be tomorrow. I don't know what I'm going to be able to do from this morrow. Why would I have to sit here and lie to you first of all?

**CHAIRMAN:** [*One tap of the gavel is heard*]

**MOMMA D:** Let's get honest about that, baby.

**CHAIRMAN:** Momma D. Can I just ask . . .

**MOMMA D:** I want to be on the same page with you.

**CHAIRMAN:** Can I understand it is that you didn't see it but you heard it. Is that fare to say.

**MOMMA D:** Anybody who saw it ain't livin' to tell about it.

**CHAIRMAN:** So you didn't see it. But you heard it.

**MOMMA D:** Okay. The water, within the minutes that the water came in my neighborhood looked like somebody put the Atlantic Ocean. It was over 10 feet of water rolling. You could surf on it. I have the tree marked in front of my door with 6 feet. That's where it settled. I don't know what kind of answer you want Mister. That's why we have problems witchyaw comin' tellin' us what to do in Norlins. You don't even understand us when we talk.

**THOMPSON:** You don't even understand the situation.

**SHAYS:** No. I'm trying to understand the situation.

**THOMPSON:** No you're not!

**SHAYS:** I've asked two questions.

**MOMMA D:** And I've answered them.

**CHAIRMAN:** [*One tap of the gavel is heard*]

**SHAYS:** No. . .

**MOMMA D:** See! What do you mean see?<sup>29</sup>

**SHAYS:** No. Don't, Don't, Don't interrupt me now. I, I listened to your presentation. I didn't interrupt you. I asked two questions. I asked . . .

**MOMMA D:** You did not ask me the question?

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<sup>29</sup> Mr. Shays did not utter the word, "See." However, Mr. Shays has insulted Momma D's truthfulness and credibility in her testimony. Momma D has every right to react emotionally with bandy words refuting Mr. Shays' abusive line of question.

**CHAIRMAN:** Let, Let him finish, finish his question.

**SHAYS:** I ask two questions. I first asked how far your house was . . .

**[Whispered]** Jesus.<sup>30</sup>

**SHAYS:** . . . from where the levee broke. The sec . . . and did not get an answer. And the second question I asked is, is your house close enough so that you can see it. I think I've gotten the answer indirectly by your failing to answer the question.<sup>31</sup>  
*[Momma D begins talking over Mr. Shays.]* Uh I would just like . . .

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<sup>30</sup> The C-SPAN camera turned away from Momma D returning to Mr. Shays before the whispered "Jesus" was heard. It is indeterminate as to who whispered "Jesus."

<sup>31</sup> Mr. Shays sure stepped in it now. Those are fighting words to a Southern woman of New Orleans upbringing. Momma D takes Mr. Shays to task for his abusive tactic.

**To answer Mr. Shays question, the distance from Momma D's residence to the breached 7th Street (Avenue) Canal Levee is about 5 miles and Momma D cannot see the breached levee from her residence.**

**Locations where 17th Street Canal were breached. Witnesses reported explosions at around the time the breach occurred.**

**The Post Post is 1.37 miles from Momma D's residence.**

**Post Office**

**Inland part of 17th Street Canal is half-way to Post Office from Momma D's location.**



Map graphic by Don Hamrick

**MOMMA D:** And you can't sit there and do that, Mister! I'm 60. And if I wasn't in America I wouldn't let you sit there and do that. I answered you. And my answers are still the same. I live at 1733 North Dorgenois [Street]. You got all the powers in your hand I had to take a bath when I got to Washington unless it had been in cold water. You get somebody. Call. Get on the phone. Ask somebody how far it is from 1733 North Dorenois [Street] to the London Street Canal. It's very close. I walk to Dillard University. And I walk to my P.O. Box which is just beyond that. A mile? Or less. I can't give you secifics.

**CHAIRMAN:** So the answer is a mile a mile or less. And she didn't . . .

**MOMMA D:** Yes.

**CHAIRMAN:** . . . see anything. But she heard . . .

**MOMMA D:** I saw the water immediately after.

**CHAIRMAN:** Okay.

**SHAYS:** Mr. Chairman, my time has run out.

**CHAIRMAN:** Mr. Jefferson, any questions?

**MOMMA D:** Damn! Now we're going to play with people's intelligence?

**HODGES:** I resent being told that I'm lying about people having [*Chairman begins talking over Leah Hodges*] machine guns on us and thousands of people . . .

**CHAIRMAN:** Mr. Jefferson. Your time. Your time.

**HODGES:** . . . were held at gun point.

**CHAIRMAN:** [*A firm repercussion from one tap of the gavel is heard.*] Let just ask you please. You've had plenty of opportunity to speak. And nobody's [*Leah Hodges begins speaking over the Chairman.*] impugning anything. You're all under . . .

**HODGES:** Calling people a liar. That's offensive.

**CHAIRMAN:** No. I don't think anybody [*Leah Hodges continues talking over the Chairman.*] called you that.

**HODGES:** Thousands of people and we left body bags behind. [*Chairman continues talking over Leah Hodges.*] People died.

**CHAIRMAN:** Mr. Jefferson, you're recognized for 5 minutes.

**JEFFERSON:** On the time that I have I want to permit you to continue with your answer. You started on an answer. I'd like to ask you to continue.

**MOMMA D:** Yes. Because you know Mister, let me say something to you. New York Finest asked me what my 60 year-old grey haired self how may tricks I turned. I got that on film. You want me to go get that television station? You know, police passed my house this Sunday. I didn't even know for sure if I was going to be hear and said, "Ahhh we hear you're going before Congress. Don't go up there acting stupid and embarrassing us. That's the one who dog kicked, with his feet and put his feet on a brother's face that I can bring in here and tell you it happened to him. And I got to white witnesses that they were coming from an elderly white person's house, topping to keep the rain out of these old people's houses. We got a lot of stories. Dis

isn't puttin' nothing in our pocket. Dis is not going to feed me. I've survived the worst part of this. Contrary to the sickness that a few want to keep perpetratin' out here. African-Americans, even in enslavement times, were 90 percent of the *SKILLED* labor. [Mr. Jefferson begins talking over Momma D.] Go check it out. It's in books. We didn't write the books.

**JEFFERSON:** Ms. Hodges. Ms. Hodges.

**MOMMA D:** My apology for say my grandchildren to be able to see that you think we're lying?

**JEFFERSON:** Ms Hodges?

**HODGES:** I'm appalled that he would suggest that my mother was lying. My mother was detained under the Causeway with the same M-16s and was tortured the same threat of skin cancer. Was tortured with the same germ warfare and sleep depravation. We were within one sunrise of being consumed by maggots and flies. And I repeat! For one whole day and one whole night special needs people with life threatening illnesses, diabetics, and amputee pregnant women. They were denied food and water. They could not get up and fend for themselves. The military refused to give us food and water. And they used their guns to push us away from food lines.

**CHAIRMAN:** Can I just ask whose guns? Were they National Guard's?

**HODGES:** There were National Guard. There were United States Coast Guard people out there. There were State Police. But it was the military. The National Guard. When we asked for food and water for these old people who could not get up and fend for themselves. We told them those people had not had food and water since the day before. They took those guns and barricaded us and pushed us away.

**JEFFERSON:** And where did this take place [*mumbling*.]?

**HODGES:** That took place at the Interstate 10 at the Causeway. All I could see everyday, I would wake up in this horrible, horrible concentration camp. And every time I circulated to try to help people all I see is this sign that says Causeway, Causeway. I wanted to mark that spot.

**JEFFERSON:** Now how long was this after the storm?

**HODGES:** That was within two days after the storm. When we arrived there were people already there who said they had already been there. And yes I did interview people who live in the lower 9<sup>th</sup> Ward. I have been over there. And I have footage I didn't bring with me but I'd be certainly glad to see that you have it because it is undeveloped. I have interviewed people who live in the area. That area looks like a bomb has been dropped on it. And people say they heard an explosion that sounded like a bomb.

**MOMMA D:** I was there.

**JEFFERSON:** Ms. Thompson?

**THOMPSON:** Mr. Shays, I want you to know that not only did they aim the gun at the 5-year-old grandson they aimed it at a 2-year-old grandson. The only reason I used the "5-year-old granddaughter," is because of her response. But, I don't mean any insult, but when you walk a mile in my shoes tell me what you believe then.

**MOMMA D:** Yeah. Then you can talk to us.

**HODGES:** The military bragged on CNN. The State Police bragged on CNN about how many people they had killed, they had murdered in the streets of New Orleans. It wasn't even 3 O'clock in the afternoon they were happy, they were braggin', they were smilin'. They said, Yeah! We killed five of them today. [*brief pause*] Were were you when CCN was showing that part of what really happened?

**MOMMA D:** We had to hide, Jeff. I didn't leave. We had to hide to save people.

**THOMPSON:** Sure enough.

**MOMMA D:** If we start a police; I'm talking about them dogs that we used; N.O.P.D. And no disrepect to those who was sincere and honest. That's why we maintain the residency law. Our police department, if you see our police cars up here in Washington, please send them home. They went AWOL. They took the cars with them. Our police department went into Sewell's<sup>32</sup> and stole Cadillacs and Corvettes. This is provable. Our police. I'm going to talk about N.O.P.D. Our police went and looted WalMart. Its on film. We have no reason to lie about this. You know its just unfortunate that other ethnics continue to come to America and get respect. And I'm at least seven generations on the African side. And I would waste my time to come before you all?

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<sup>32</sup> Sewell's Cadillac Chevrolet of New Orleans at 701 Baronne Street at Girod Street.



## EXHIBIT 2

### **Katrina Victims Testify About Ethnic Cleansing, Levee Bomb!**

VIDEO UPDATE

by Sherlock Google

Wednesday December 7, 2005

Mama D gives Chris Shays Holy Hell for Accusing Katrina Victims of Lying About Racism, Levee Bomb and Ethnic Cleansing

Update [2005-12-7 16:31:9 by Sherlock Google]: Video Up at <http://www.c-span.org> There's Part 1 and 2. Part 1, the first panelist is not so hot, but the next 4 are powerful and Mama D is the fifth and final panelist of Part 1.

Part 1 is the one to watch, but skip the first panelist and speeches if you can.

This was the most amazing hearing. If you didn't see it yesterday look for it to repeat. The Congressmen tried to get Mama D to not go overtime and she scolded them, saying she came up from N'awlins with a list of complaints from fellow victims and she is going to read ALL of them.



Then she accused Chris Shays of accusing the victims of lying about police pointing M-16s at 5 year olds, of perfectly fine housing projects that Bush had steel-plated and closed, of a LEVEE BOMB (and she went "BA-BOOOOOM! right in the hearing room), of concentration camp tactics on the I-10 Causeway, of outright Ethnic Cleansing.

Sherlock Google's diary :: ::

<http://sherlock-google.dailykos.com/>

One chagrinned Repuke said "Could you please refrain from calling it a Concentration Camp", to which eveacuee Leah Hodges exclaimed "No I will not! They separated children from families, did not feed us or give us water, they let people die, a woman lost her baby. And all the while trucks are going past--with no supplies--just full of soldiers with M-16s. It was like Hitler."

(There is no transcript up yet so I'm trying to remember)

IT WAS FANTASTIC AND CYNTHIA MCKINNEY AND WILLIAM JEFFERSON WERE THERE. THE REPUBS TRIED TO DEFEND THE RACISM AND ETHNIC CLEANSING CHARGE BY SCOFFING AT THEM.

WASHINGTON --Black survivors of Hurricane Katrina said Tuesday that racism contributed to the slow disaster response, at times likening themselves in emotional congressional testimony to victims of genocide and the Holocaust.

The comparison is inappropriate, according to Rep. Jeff Miller, R-Fla.

“Not a single person was marched into a gas chamber and killed,” Miller told the survivors.

“They died from abject neglect,” retorted community activist Leah Hodges. “We left body bags behind.”

Angry evacuees described being trapped in temporary shelters where one New Orleans resident said she was “one sunrise from being consumed by maggots and flies.” Another woman said military troops focused machine gun laser targets on her granddaughter’s forehead. Others said their families were called racial epithets by police.

“No one is going to tell me it wasn’t a race issue,” said New Orleans evacuee Patricia Thompson, 53, who is now living in College Station, Texas. “Yes, it was an issue of race. Because of one thing: when the city had pretty much been evacuated, the people that were left there mostly was black.”

Not all lawmakers seemed persuaded.

“I don’t want to be offensive when you’ve gone through such incredible challenges,” said Rep. Christopher Shays, R-Conn. But **referring to some of the victims’ charges, like the gun pointed at the girl, Shays said: “I just don’t frankly believe it.”**

**“You believe what you want,” Thompson said.**

The hearing was held by a special House committee, chaired by Rep. Tom Davis, R-Va., investigating the government’s preparations and response to Katrina. It was requested by Rep. Cynthia McKinney, D-Ga., a member of the Congressional Black Caucus.

“Racism is something we don’t like to talk about, but we have to acknowledge it,” McKinney said. “And the world saw the effects of American-style racism in the drama as it was outplayed by the Katrina survivors.”

The five white and two black lawmakers who attended the hearing mostly sat quietly during two and a half hours of testimony. But tempers flared when evacuees were asked by Rep. Jeff Miller, R-Fla., to not compare shelter conditions to a concentration camp.

“I’m going to call it what it is,” said Hodges. “That is the only thing I could compare what we went through to.”

Of five black evacuees who testified, only one said he believed the sluggish response was the product of bad government planning for poor residents -- not racism.

<http://www.boston.com/...>

There are numerous witnesses to the explosion sound and divers have found a 30-foot crater at the bottom of the 17th St. Levee that flooded the 9th Ward, said the panel. In addition, they said historically, towns have blown levees upstream to prevent their own town from flooding, so blowing up levees was nothing new for Louisiana.

Don’t know if the Levee Bomb is true or not, but they all swore to God it was the truth. All the rest of the Ethnic Cleansing charges certainly appear to be true to me, especially the shuttering of the housing projects that NEVER GOT FLOODED.

Anyone else see it yesterday or last night on C-Span 2?

**Update [2005-12-7 14:26:47 by Sherlock Google]:** Otis704 found this. Good Catch O!

When the rains broke records in April 1927, the Gulf of Mexico was full and worked as a stopper to the Mississippi. The Mississippi was full, too, pushing its own waters up tributaries, breaking levees and causing flooding as far as Ohio and Texas. All that water had to go somewhere.

It couldn't go to New Orleans, panicky city fathers told the Army Corps of Engineers; it would devastate the regional economy.

To save New Orleans, the leaders proposed a radical plan. South of the city, the population was mostly rural and poor. The leaders appealed to the federal government to essentially sacrifice those parishes by blowing up an earthen levee and diverting the water to marshland. They promised restitution to people who would lose their homes. Government officials, including Commerce Secretary Herbert Hoover, signed off.

On April 29, the levee at Caernarvon, 13 miles south of New Orleans, succumbed to 39 tons of dynamite. The river rushed through at 250,000 cubic feet per second. New Orleans was saved, but the misery of the flooded parishes had only started. The city fathers took years to make good on their promises, and very few residents ever saw any compensation at all.

The water, which had started rising on Good Friday, would not recede until July. Many victims would never return to their homes. Hoover, who won support for leading relief efforts, went on to win the presidential election. And the Corps of Engineers, who had said the levees would hold, was humbled. Says Daniel: "People complained about the corps . . . but they never blamed the river. They understood: 'That's the river. That's nature. That's what it's supposed to be doing.'" -Judd Slivka

1927: Hoover, 39 tons of Dynamite, Blow Levee and Flood Poor Parishes

## EXHIBIT 3

# IN KATRINA'S WAKE, HAM RADIO TRIUMPHS

By David Maliniak, AD2A (Electronic Design Online ID #11136)

[Web Exclusive]September 19, 2005

<http://www.elecdesign.com/Articles/Index.cfm?AD=1&AD=1&AD=1&ArticleID=11136>

A few months ago, NBC's Tonight Show staged a race between a pair of ham-radio operators with Morse-code keys and a couple of kids with text-messaging cellphones to see who could communicate faster. The hams won hands down, proving, in the minds of some, that old technology could hold its own against new. In recent days, ham radio was put to the test again by Hurricane Katrina. This time, however, lives were at stake.

In the world of design engineers and electronics in general, change is essential. Designers work diligently to make the fruits of their labors obsolete almost before they see daylight. The turnover in technology is sometimes like a flood, with old being washed away by new over and over. Often, the new beats the heck out of the old. But there are times when old isn't necessarily bad; in fact, sometimes old works when new doesn't. And then we're glad that old is still around, or at least we should be.

Wireless technology, while relatively new to many consumers, is of course not new at all. A few (very) old-timers remember the original "wireless" of radio. The revolution wrought by the pioneers of wireless changed the world then, and the technology behind that revolution has been re-invented and re-applied time and again. Its pre-eminent incarnation today is our near-ubiquitous wireless communications infrastructure, which has freed us from the shackles of landlines and made our mobile lifestyles possible. Technology truly is great stuff.

Until, of course, a monster hurricane comes along to render it nearly useless. Here we see a scenario in which a flood literally swept away the new. As Hurricane Katrina's fury hammered the Gulf states on August 29, the communications infrastructure took a devastating hit. Telephone service, including wireless, became at first intermittent and then unusable in many localities. Where there was phone service, 911 switchboards were often unreachable due to the massive volume of calls. The response of local authorities, now termed "confused" by deposed FEMA chief Michael Brown, wasn't helping much. The Gulf Coast was about to descend into darkness, chaos, and, worst of all for many, silence.

But proponents of the old were at the ready. The "old," in this case, is ham radio. In the eyes of the "man on the street," ham radio has a pretty stodgy reputation. Aren't hams still using Morse code? Don't some of them use radios with tubes, for goodness sake? What the "man in the street" probably doesn't know is that it was amateurs who advanced the radio arts early in the 20th century. Down through the decades, amateurs have embraced (and often driven) all of the innovations in wireless technology, up to and including all digital modes and the Internet. But many have stayed in touch with their roots, which is good old-fashioned analog HF operation. And while amateurs have a longstanding tradition as innovators and experimenters, they also have a mandate that comes with their licenses: to be ready, willing, and able to provide emergency communications whenever and wherever they're needed.

As Katrina bore down on the Gulf region, amateur radio operators, under the aegis of the American Radio Relay League's (ARRL's) Amateur Radio Emergency Service (ARES), prepared to swing into action with emergency networks that would run health-and-welfare traffic into and out of the disaster zone. As early as the Monday following the storm, hams throughout the hurricane zone were putting emergency stations on the air. In one instance, hams were instrumental in the rescue of 15 people clinging for life to a New Orleans rooftop. Meanwhile, in Alabama, amateur SKYWARN weather nets kept the National Weather Service apprised of conditions throughout the state. In hard-hit sections of Mississippi, hams running off generators and with makeshift antennas were the only means of communication, getting word to out-of-state friends and relatives concerning their loved ones.

There were numerous other instances of hams helping those who were not simply inconvenienced by the storm, but whose lives were in imminent danger. Now that things have calmed down in the Gulf region, many of the emergency nets have stood down. But hams continue to serve the public in the many areas that are still without power or phone service.

As our nation collects itself in the aftermath of the Katrina disaster, President Bush has promised federal reviews of what went right and what went wrong. One of the findings of those inquiries should be that the federally-instituted Amateur Radio Service, which functions under the licensing authority of the FCC, stood tall when the country needed it.

Amateur radio currently faces various threats to its existence. Chief among those is the advent of broadband-over-powerline (BPL) technology, which, if broadly adopted, has the potential to cause widespread interference to HF communications, not just for amateurs but for other services that use the HF spectrum.

Amateurs and the ARRL have made a lot of noise about BPL, asserting that it could seriously hamper their efforts and those of relief agencies such as the Red Cross and Salvation Army, in the event of a disaster such as Katrina. It's rumored, though, that the same FCC commissioners who have given their blessing to BPL field trials will now take a much harder look at the technical issues concerning BPL and its interference potential in the HF spectrum. **Let's face it: The federal government didn't handle the emergency in the Gulf very well; it'd be prudent for it not to sanction a technology that could impede one of the few things that actually worked.**<sup>33</sup>

Many readers of this newsletter are amateur radio enthusiasts. If you are, and if you haven't already done so, consider writing your congressman to express your concern about the future of the Amateur Radio Service, especially in light of its outstanding efforts in recent days. Remind your elected representatives that a vibrant and unimpeded Amateur service can and will be a lifesaver when disaster strikes. Also, consider how you yourself might help. What if a hurricane, tornado, or earthquake ravages your area? Are you prepared to get on the air without relying on the mains to handle emergency traffic? Get in touch with your local amateur-radio club and find out how you can pitch in.

Your cell phones and wireless routers are indeed great stuff, but so is a good old HF transceiver. We shouldn't always be in such a hurry to let the flood of new technology wash away the old. The geek down the block with all the antennas on his property could turn out to be your best friend someday. Because sometimes, old trumps new.

You can e-mail David Maliniak at [dmaliniak@penton.com](mailto:dmaliniak@penton.com).

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<sup>33</sup> My emphasis for the purpose of my comments on ARRL's Petition for Rulemaking.

# EXHIBIT 4

## The Civil Defense Legacy

By William R. Cumming<sup>34</sup>  
The Vacation Lane Group<sup>35</sup>

With completion of the first fifteen months since the signing of the Homeland Security Act of 2002, Public Law 107-296 (November 25, 2002) it becomes timely to assess whether the legacy of the civil defense programs, functions, and activities stimulated by the enactment of the Federal Civil Defense Act, Public Law 81-920, in the early 1950's has continued to impact current homeland security thinking. It is also important to understand the legacy in order to be able to capture what is and is not useful in the long-term struggle against terrorism and prevention and threats of employment of weapons of mass destruction.

It must be remembered that the perceived greatest threat during the life of the FCDA was strategic nuclear attack as opposed to WMD threats or employment by terrorists. It is argued, however, that some of the programs, functions, and activities of the civil defense structure and its research have value in the new milieu. It might even make for greater clarity of both administration and public perceptions if the current organizational title of the Federal Emergency Management Agency (FEMA) as it exists in the Department of Homeland Security (DHS) namely the Emergency Preparedness and Response Directorate be renamed the Civil Defense Directorate.

First, from the standpoint of personnel and organization, no current leadership either in DHS or elsewhere exists that served in an appointive or civil service capacity in those programs, functions, or activities authorized and appropriated pursuant to Public Law 81-920. Why? The Civil Defense programs, functions and activities were housed in the Department of the Army until 1972 when the

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<sup>34</sup> Mr. William R. Cumming is an attorney and expert in national security law. He retired as a member of the General Counsel's Office at FEMA, after more than 30 years of service. Mr. Cumming has been an advisor for both [disaster & terrorist] time line charts. (See <http://www.disaster-timeline.com/index.html>). His long involvement in the emergency management field and understanding of legislative and regulatory history are major assets to the projects. Currently he heads the non-profit organization, Vacation Lane Group.

*DISASTER TIME LINE: MAJOR FOCUSING EVENTS AND U.S. OUTCOMES (1969-2004)*. Version 2, February 2004. This one contains info on natural, industrial/ technological, and biological events.

*THE TERRORISM TIME LINE CHART*, version 4, May 2005. This colorful graphic rendering of recent terrorism history measures 13 x 40 inches. It shows major focusing events and the influences each event had on major outcomes -- reports and analyses; federal statutes, regulations and executive orders; federal response plans; and major federal organizational changes. The chart includes events and outcomes from 1993 through 2004.

*THE HOMELAND SECURITY TIMELINE* (2003).

<sup>35</sup> The Vacation Lane Group is a nonprofit corporation organized to expand knowledge in Emergency Management and Homeland Security in the context of a democratic society. VLG is not exempt from federal or state taxes. This article was published in the February 2004 issue of the *JOURNAL OF CIVIL DEFENSE*, Volume 37, Issue #2, pp. 3-6. The Journal is published by *THE AMERICAN CIVIL DEFENSE ASSOCIATION* (TACDA), P.O. Box 1057, 118 Court Street, Starke Florida 32091, Toll-free (800) 425-5397 or Direct (904) 964-5397, Online at [www.tacda.org](http://www.tacda.org)

Defense Civil Preparedness Agency became an independent civil agency within the Pentagon reporting to the Secretary of Defense as opposed to the Secretary of the Army. Rather than strengthening the advocacy of civil defense, this represented the abandonment by the Secretary of the Army (pre-Goldwater-Nichols 1986) of the civil defense advocacy role. Left to advocacy by a relatively junior executive level appointee, John Davis (former governor of North Dakota), the civil defense programs, functions and activities were about to be impacted by the fallout from Watergate. As will be discussed, one of the most important civil-military links was now left to the civilian side of government to nurture and protect. Perhaps this breach could even be analyzed in having fallout for current military operations in Iraq. A subject for discussion elsewhere.

As of 1972, DCPA had approximately 1400 personnel down from its peak strength of about 1700 in the late 1960's. In 1974, lack of support from the Ford administration resulted in a significant collapse in the effort to defend civil defense in the budget wars. The result a significant RIF (Reduction in Force) for DCPA in 1974 and 1977.

Significantly, several titles of the Civil Defense Act were allowed to lapse. Including the title cross-referencing the Defense Production Act of 1950. Later these lapsed titles would be incorporated into standby emergency legislation along with lapsed titles of the Defense Production Act of 1950, as a standby legislative package called the "Defense Resources Act." Although briefed to Congressional staff in the early 1980's, this package was never formally submitted to Congress although it was played in major REX-ALPHA and BRAVO exercises from 1981-88. These were major Pentagon mobilization exercises designed to test civil-military interface and for other purposes.

By the time FEMA was augmented by civil defense assets (July 15, 1979) in Executive Order 12148, civil defense personnel transferred by OMB determination order numbered less than 1000 (still the largest transfer of personnel into the new agency). Funding which had never exceeded \$250M had diminished to just over \$100M.

Primarily through egotism and ignorance in the White House, the transferred civil defense personnel, even though they dominated the higher civil service positions in FEMA, were regarded as a budgetary problem because of the prejudice of the defense budget examiners in OMB, particularly those managing the 050 accounts and this prejudice was also reflected in the President's reorganization project team that worked the FEMA reorganization (Reorganization Plan No. 3 of 1978). Additionally, in the fall of 1981, with the formation of the State and Local Programs Directorate (which lasted until November 1993) the civil defense program was largely considered as a preparedness grant program that could be used to assist state and local governments. To the extent that policy drivers existed in the FCDA as amended, various Presidential Decision Directives or National Security Directives were issued in an attempt to vitiate the civil defense agenda. The amendment of Public Law 81-920 in 1981 had authorized so-called "dual use" of civil defense assets for both nuclear attack planning and natural disaster preparedness. It also specifically authorized program assets to be utilized in enhancing offsite safety in privately operated nuclear power stations. The Armed Services Committees of the Congress had given DCPA administrative discretion to adopt "dual use" as early as 1975 but the administration had chosen not to pursue this concept aggressively. Even now, "dual use" transformed into a debate over whether DHS should be "all-hazards" absorbs much intellectual capital in DHS. In 1993, one year before repeal of Public Law 81-920, the statute was amended to mandate "all-hazards" the transformed term from "Dual use".

No standby Executive Orders (PEAD's) or other emergency actions except the standby legislation mentioned above were predicated on Public Law 81-920 after FEMA began operations. Various National Security Directives were issued by President's Carter, Regan, and Bush (41) in an effort to correlate civil defense with strategic doctrine, but these essentially were watered down versions of the civil defense statute as it existed prior to the loss of the earlier titles. Since only OMB and congressionally

funded programs, functions, and activities (not unfunded actions by the National Security Council and its staff), had significance the potential of the civil defense programs, functions, and activities diminished.

Perhaps, the fact that the civil defense budget was made part of the VA-HUD appropriations bill in 1980 and no longer part of the DOD appropriation was additional reason for DOD to have diminished interest in civil defense. Also, up until repeal of the act, at least one Associate Director of FEMA was confirmed by the Senate Armed Services Committee. After repeal, no Associate Director had their nomination review by Senate Armed Services. Additionally, repeal led to lapse of any direct oversight by the Armed Services Committees of oversight of FEMA.

It also ended the annual rite of a senior DOD official testifying on behalf of civil defense authorizations in the Senate and House Armed Services Committees. Also, a Congressionally mandated report asking that the Executive Branch thoroughly analyze and provide any needed modifications to the civil defense program resulted in a March 1992 report entitled "Disaster Preparedness" that led to the statutory enactment of all-hazard use of the FCDA in public law 103-160 and the repeal a year later in public law 103-337. It should be noted that some would argue that the FCDA was not repealed since significant portions were retained as a new Title VI of the Robert T. Stafford Emergency Assistance and Disaster Relief Act. The Clinton Administration used the change in oversight to redirect the primary energies of FEMA to natural disasters. This redirection seems to have not prevented the end of FEMA's role as an independent agency post 9/11 by its incorporation into the Department of Homeland Security by Public Law 107-296 November 25, 2002.

[ The Vacation Lane Group (VLG) is a nonprofit Virginia corporation dedicated to operating in a democratic society to assist in organizing and expanding knowledge of Emergency Management and Homeland Security. Emergency Management is the organization of the governmental and non-governmental organizational response on the national level (federal, state, and local) to unexpected events that threaten public health and safety and property, and the civil sector preparedness, mitigation, response and recovery to and from those events. Homeland Security is the prevention of terrorist acts, the reduction in the consequences of those events on people and property, and the response and recovery from those terrorist events.

The VLG is not directly involved, however, with assisting in the prevention of terrorist acts or criminal law enforcement. The VLG is concerned, however, with the effective and efficient integration of technical advice (scientific, engineering, Legal) for decision-makers during the crisis management and consequence management phases of terrorist events and assisting in the effective coordination of the response of organizations to unexpected events. In addition, civil-military relationships that occur during large scale unexpected events are also the subject of VLG analysis and reports and assistance.

Mail may be addressed to:

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## EXHIBIT 5: Question About USA Digital Communications:

### Packet BBS set-up?

by KA7CJH on April 5, 2002

<http://www.eham.net/forums/Digital/661>



I want to start a Packet BBS in my area and need your help. We used to have a system here in the past but it isn't there any longer. My plan is to get another one up and going for all Amateurs to use. I need to know what is needed to set a good system up and how to go about forwarding to other PBBS's.. I'm open to any and all input..

73's de.. KA7CJH Chris (Reno,Nv)

### ANSWER:

RE: Packet BBS set-up?

by N5PVL on May 13, 2002

For general packet info, [www.packetradio.com](http://www.packetradio.com) is pretty good.

My web-site, <http://pages.sbcglobal.net/kb5iwt/> has info specific to packet BBS operation.

**Steer clear of TAPR.** The U.S. packet net went down on thier watch, under the effects of thier policies. To this day, they still have not figured out that thier agenda was (and is) a failure. Hang with them, and you can be sure that you won't go anywhere. 90% of TAPR is a P.R. machine. Inside, there's nothing. They are not really into packet, anymore. A lot of thier effort goes into going through the motions, if you know what I mean.

This group of Hams though, in the northeastern U.S. – <http://www.northeastflexnet.org> – have upgraded and installed over 80 new nodes in the last few years, utilizing a new (to us) AX25 system from Germany that offers significantly better performance than the NetRom style AX25 networking we used in the original U.S. packet network. These people obviously are doing something right... Nobody else in the U.S. is growing and advancing as these guys are.

TAPR's policies did not affect Europe, and during the last decade, while our packet network has died away, thiers has continued to grow, develop, and advance. 9.6kb is the standard home-station speed there, with nodes talking to each other typically at 19.2kb, full duplex. There are packet nodes in Europe that pass 10 megabytes of traffic a day. You can have a good keyboard QSO with a ham 600 km. away, all over Ham Radio, not Internet links. **The network software they use (FlexNet) is also far in advance of what we have ever developed, here in the U.S.**



FlexNet June 2003

It's no wonder... We are about 15 years behind them in both development and implementation. - Thanks to policies originating from and promoted by TAPR.

Many, many moons ago, TAPR helped get packet in the U.S. started by standardizing the TNC2 and offering it as a kit. - Then they did nothing else significant for packet for over a decade, resting on their TNC2 laurels while involving themselves in a series highly technical projects that never returned any particular utility of note.

Then TAPR, having been instrumental in the rise of Packet Radio in the U.S., became instrumental in its demise by promoting Packet/Internet gateways as an alternative to Ham Radio - For "Ham Radio" networking??? I know it sounds like an obvious foot-shooting exercise now to encourage Hams to use the Internet as a pretend substitute for Radio communication, but at the time, TAPR was actually able to convince large numbers of Hams that using radio to communicate was old fashioned, out of date.

"Radio Purists" were characterized by the TAPR folks as luddites, old-fogeys, technophobes, and rednecks... Be that as it may, it turned out they were also right.

The U.S. packet net's degradation and collapse directly correlates to the implementation of Packet/Internet gateways into key areas of the network. It took them two or three years to destroy ten years' work by thousands of Hams around the world.

The weird part of all this is that TAPR's interest and ability with P.R. grew as their interest in packet radio networking waned. They got so good at it, in fact, that they have insinuated themselves into the ARRL's business, as the official "digital gurus".

The fact that the U.S. packet net died on their watch, under their policies, and the fact that they haven't produced anything PRODUCTIVE in over twenty five years is forgiven, because they put on such a great show at Dayton.

The fact is that the failed U.S. TNC manufacturers can thank TAPR for taking their business away. The thousands of Hams who used to enjoy the packet net every day can thank TAPR, too, when they turn on their equipment and can't find anybody.

So if you have been curious as to why packet died over here, and kept right on growing in Europe, well now you know. You also know what killed the network over here, but I forgot one detail...

Remember the European packet net, that kept right on growing, and the N.E. FlexNet group, the only ones with a growing network here in the U.S.? Neither of these networks allow Packet/Internet gateways.

Every significant packet network that DID use them is history now, including, sadly, the global digital HF messaging network that we once had.

Steer clear of TAPR, and don't let anybody talk you into getting involved with "Amateur Telephone", as it is the kiss of death for digital Ham Radio. Forget Amateur TCPIP, it's a bust. Check out APRS, you might like it, and if there are no AX25 packet nodes in your area, you might want to set one up, yourself. Lots of Hams in the U.S. miss the packet net.

It's kind of hard to imagine our country going on with no digital network, while the rest of the world leaves us behind. I don't really expect to see this situation stand.

It's also hard to imagine any leadership for this process coming from TAPR, who still pushes Packet/Internet gateways to this day.

They call that a “leadership vacuume” ... It’s pretty much up to individual Hams to fill that gap now. There is no other national packet radio organization, and the ARRL still thinks the TAPR guys really know what they are doing, so we can’t look for any help from there.

Individual Hams will have to provide leadership in this area, at least for now. We need more Hams like yourself.

Give me a holler, I have operated packet BBS’s, DX Clusters, and nodes for over ten years, and know a lot of hints ‘n kinks.

Charles, N5PVL

**EXHIBIT 6**  
**CALIFORNIA JOINS**  
**EMERGENCY MANAGEMENT ASSISTANCE COMPACT (EMAC)**

Government Technology's News Staff

*Solutions for state and local governments in the information age.*

**Sep 20, 2005**

[http://www.govtech.net/magazine/channel\\_story.php/96695](http://www.govtech.net/magazine/channel_story.php/96695)

Last week, Governor Arnold Schwarzenegger announced he signed legislation that makes California party to the Emergency Management Assistance Compact (EMAC), already in place in the 47 other contiguous states. AB 823 by Assembly members Pedro Nava (D-Santa Barbara) and Sharon Runner (R-Lancaster) allows states to share emergency response resources immediately during a disaster without having to use valuable time reaching aid agreements.

“When my administration sponsored the Emergency Management Assistance Compact bill earlier this year, it was so that California could join its fellow states in an agreement that facilitates mutual aid in times of disaster. In the wake of Hurricane Katrina, I renewed my call for swift passage of this legislation and today I am pleased to sign it into law. This mutual aid compact will allow California to receive help from other states more quickly during a disaster,” said Governor Schwarzenegger. “EMAC will also allow us to send aid to Gulf Coast states with greater efficiency as they recover from Hurricane Katrina.”

EMAC is the primary legal tool that states use to immediately send and receive emergency personnel and equipment during a major disaster. Prior to adopting EMAC, the Governor's Office of Emergency Services (OES) negotiated governor-to-governor agreements with other states, often lengthening response time.

Also signed by Governor Schwarzenegger was **SB 546** by Senator Bob Dutton (R-Rancho Cucamonga), legislation that authorizes OES to promote collaboration between the private and public sectors to better prepare for, respond to and recover from disasters. This legislation allows the state to enter into emergency management agreements with private sector organizations with the goal of reducing the impact of future disasters and speeding recovery efforts.

**EXHIBIT 7**

CALIFORNIA BILL NUMBER: SB 546 CHAPTERED  
BILL TEXT

CHAPTER 232

FILED WITH SECRETARY OF STATE SEPTEMBER 13, 2005

**APPROVED BY GOVERNOR SEPTEMBER 13, 2005**

PASSED THE ASSEMBLY AUGUST 25, 2005

PASSED THE SENATE JUNE 1, 2005

AMENDED IN SENATE MAY 27, 2005

INTRODUCED BY Senator Dutton  
FEBRUARY 18, 2005

An act to add Section 8588.1 to the Government Code, relating to emergency services.

LEGISLATIVE COUNSEL'S DIGEST

SB 546, Dutton Office of Emergency Services: public-private partnerships.

The California Emergency Services Act sets forth the duties of the Office of Emergency Services in overseeing and coordinating various emergency response programs in the state.

This bill would authorize the office to share facilities and systems that would, among other things, include private businesses and nonprofit organizations in a voluntary program that would integrate private sector emergency preparedness measures into governmental disaster planning programs to the extent that the cost of the program is reimbursed by the private sector.

The bill would create the Disaster Resistant Communities Account in the General Fund and would require that any new activity undertaken by the office under these provisions is contingent upon the receipt of private donations to the account.

THE PEOPLE OF THE STATE OF CALIFORNIA  
DO ENACT AS FOLLOWS:

SECTION 1. Section 8588.1 is added to the Government Code, to read:

8588.1. (a) The Legislature finds and declares that this state can only truly be prepared for the next disaster **if the public and private sector collaborate.**

(b) The Office of Emergency Services may, as appropriate, include private businesses and nonprofit organizations within its responsibilities to prepare the state for disasters under this chapter. All participation by businesses and nonprofit associations in this program shall be voluntary.

(c) The office may do any of the following:

(1) Provide guidance to business and nonprofit organizations representing business interests on how to integrate private sector emergency preparedness measures into governmental disaster planning programs.

(2) Conduct outreach programs to encourage business to work with governments and community associations to better prepare the community and their employees to survive and recover from disasters.

(3) Develop systems so that government, businesses, and employees can exchange information during disasters to protect themselves and their families.

(4) Develop programs so that businesses and government can work cooperatively to advance technology that will protect the public during disasters.

(d) The office may share facilities and systems for the purposes of subdivision (b) with the private sector to the extent the cost for their use are reimbursed by the private sector.

(e) Proprietary information or information protected by state or federal privacy laws, shall not be disclosed under this program.

(f) Notwithstanding Section 11005, donations and private grants may be accepted by the office and shall not be subject to Section 11005.

(g) The Disaster Resistant Communities Account is hereby created in the General Fund. Upon appropriation by the Legislature, the Director of the Office of Emergency Services may expend the money in the account for the costs associated within this section. (h) Any new activity undertaken by the office under this section shall be contingent upon the receipt of donations to the Disaster Resistant Communities Account.

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EXHIBIT 8

# CONSTITUTIONAL LIMITS ON REGULATING PRIVATE MILITIA GROUPS

by Thomas B. McAfee

Montana Law Review vol 58, no. 1, 1997: 45.

(Symposium. The Militia: Constitutional and Legal Perspectives)

Professor of Law, Southern Illinois University School of Law.

<http://www.saf.org/LawReviews/McAfee1.htm>

-Excerpt-

Some might question whether the rights of individuals to arms might, in general terms, be diminished somewhat in a group context, especially where the group is a political organization that is ideologically charged and advocates extremist views that many involve the threat of violence. [34] However, if political groups, including the private militias, were singled out for unique regulatory restrictions or were completely prohibited from gun possession in connection with group activities based purely on their political or ideological context, such laws would almost certainly be viewed as unconstitutional conditions on the exercise of First Amendment freedoms of speech and association. This would be unconstitutional quite apart from any Second Amendment question. [35] Moreover, even if legislation extended to all political parties and all organizations, a general prohibition on possession of firearms in connection with the activities of such groups would still be invasive of rights to associate and bear firearms secured by the First and Second Amendments. [36]

The more significant question concerns whether there is a point at which the activities of private militia organizations, beyond their facilitation of personal small firearms training, would pose the sort of threat to public safety that would justify regulations limiting a group's activities relating to firearms notwithstanding the Second Amendment rights of their members. At least thirty-eight states have answered this question in the affirmative and thus have laws that prohibit the formation of private military units or, in other cases, various activities associated with them. [37] To the extent that these restrictions have [Page 56] been defended on the grounds that the Second Amendment secures a right only to the states or to state militiamen, or that the Second Amendment does not apply to the states, we have already discovered that those arguments stand on dubious footing. [38]

At the other end of the spectrum, it has been contended that the Second Amendment should be read not only as securing "an individual right to keep and bear arms," but also, given its "underlying purpose . . . to provide citizens with the ability to defend against government oppression," as establishing "a collateral right of the people to form citizen militias." [39] Because the Second Amendment is designed to facilitate a hypothetically necessary insurrection against tyranny, the people's right to arms should, according to this argument, extend to any organized use of weapons that does not itself constitute a valid crime against the state (apart from the state defining firearms possession as a crime). On this view, short of unlawful use of firearms and criminal conspiracies, there would be no valid limits on the use of firearms by political groups. Thus the argument goes too far. While it is true that one purpose of providing for the right to arms is to facilitate mass insurrection if it proves necessary, this purpose does not define the scope of the Second Amendment guarantee. For example, the legal right does not extend all the way to conducting such an insurrection. [40] Such a move is necessarily [Page 57] an extra-legal act, not to mention a step of last resort. Similarly, the logic of the text read in historical context establishes that the right to "bear" arms necessarily is limited to weapons that an individual can carry, thus precluding use of heavy

military weapons, even if essential to a modern armed revolt. [41] The right to arms does not translate into a right of revolution, or to a right to everything that might be essential to successfully launching one.

Moreover, there is a tradition that suggests a group right to bear arms which dates back to John Adams, who drafted the Massachusetts State Constitution's guarantee of a right to keep and bear arms. This tradition recognizes that a private group's use of firearms at some point presents a different question from the personal use of firearms in self-defense. The provision drafted by Adams stated that "(t)he people have a right to keep and bear arms for the common defense." [42] While some objected that the focus on "common defense" failed to clarify that the right was also intended for self-defense, [43] the historical evidence suggests that Adams drafted the provision to foreclose the invocation of a right to employ arms by factional groups within society and yet provide for the right to keep private arms for self-defense. [44] In one of his most important constitutional works, Adams stated the view that firearms should not be used according to "individual discretion, except in private self-defense," because it would [Page 58] "demolish every constitution, and lay the laws prostrate, so that liberty can be enjoyed by no man." [45] Adams apparently feared the potential for illicit collective employment of arms by private armies, which presented the dangers of unlawful mob actions and illegitimate insurrections. [46]

Instead, a more plausible and logical argument for recognizing a right of groups to "keep and bear" arms would be that the right of self-defense belongs to groups as much as it does to individuals. Arguably, if an advocacy group has a constitutionally protected right to exist under the First Amendment, such a group ought to be able to have and use arms for the same legitimate, defensive purpose for which individuals possess a right to arms. [47] It is difficult to be certain that Adams' views in opposition to a private group's rights to use firearms were necessarily predominant at the time of the adoption of the Second Amendment. While the differences in language can easily be overstated, the text of the Second Amendment, unlike that of the Massachusetts Constitution defended by Adams, does not limit the purpose of the right to arms to that of "collective defense" (of the people as a whole or of the state). [48] The omission of this [Page 59] qualifying language could merely reflect the preference to avoid any inference against a right to private arms for self-defense. However, it is at least possible that this absence reflects support for the broadest sort of right to keep and bear arms provided to individuals and groups, subject only to the customary limits on those who were unfit to have arms and other regulations essential to prevent the abuse of firearms.[49]

EXHIBIT 9

2005 Montana Legislature

HOUSE BILL NO. 284

INTRODUCED BY R. HAWK

A bill for an act entitled: "an act regulating arrests, searches, and seizures by federal employees; providing that federal employees must obtain the county sheriff's permission to arrest, search, and seize; providing exceptions; providing for prosecution of federal employees violating this act; rejecting federal laws purporting to give federal employees the authority of a county sheriff in this state; and providing an immediate effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Purpose.** It is the intent of the legislature to ensure maximum cooperation between federal employees and local law enforcement authorities; to ensure that federal employees who carry out arrests, searches, and seizures in this state receive the best local knowledge and expertise available; and to prevent misadventure affecting Montana citizens and their rights that results from lack of cooperation or communication between federal employees operating in Montana and local law enforcement authorities.

NEW SECTION. **Section 2. County sheriff's permission for federal arrests, searches, and seizures -- exceptions.** (1) A federal employee who is not designated by Montana law as a Montana peace officer may not make an arrest, search, or seizure in this state without the written permission of the sheriff or designee of the sheriff of the county in which the arrest, search, or seizure will occur unless:

(a) the arrest, search, or seizure will take place on a federal enclave for which jurisdiction has been actively ceded to the United States of America by a Montana statute;

(b) the federal employee witnesses the commission of a crime the nature of which requires an immediate arrest;

(c) the arrest, search, or seizure is under the provisions of 46-6-411 or 46-6-412;

(d) the intended subject of the arrest, search, or seizure is an employee of the sheriff's office or is an elected county or state officer; or

(e) the federal employee has probable cause to believe that the subject of the arrest, search, or seizure has close connections with the sheriff, which connections are likely to result in the subject being informed of the impending arrest, search, or seizure.

(2) The county sheriff or designee of the sheriff may refuse permission for any reason that the sheriff or designee considers sufficient.

(3) A federal employee who desires to exercise an exception under subsection (1)(d) shall obtain the written permission of the Montana attorney general for the arrest, search, or seizure unless the resulting delay in obtaining the permission would probably cause serious harm to one or more individuals or to a community or would probably allow time for flight of the subject of the arrest, search, or seizure in order to avoid prosecution. The attorney general may refuse the permission for any reason that the attorney general considers sufficient.

(4) A federal employee who desires to exercise an exception under subsection (1)(e) shall obtain the written permission of the Montana attorney general. The request for permission must include a written statement, under oath, describing the federal employee's probable cause. The attorney general may refuse the request for any reason that the attorney general considers sufficient.

(5) (a) A permission request to the county sheriff or Montana attorney general must contain:

(i) the name of the subject of the arrest, search, or seizure;

(ii) a clear statement of probable cause for the arrest, search, or seizure or a federal arrest, search, or seizure warrant that contains a clear statement of probable cause;

(iii) a description of the specific things to be searched for or seized;

(iv) a statement of the date and time that the arrest, search, or seizure is to occur; and

(v) the address or location where the intended arrest, search, or seizure will be attempted.

(b) The request may be in letter form, either typed or handwritten, but must be countersigned with the original signature of the county sheriff or designee of the sheriff or by the Montana attorney general to constitute valid permission. The permission is valid for 48 hours after it is signed. The sheriff or attorney general shall keep a copy of the permission request on file.

NEW SECTION. **Section 3. Remedies.** (1) An arrest, search, or seizure or attempted arrest, search, or seizure in violation of [section 2] is unlawful, and the persons involved must be prosecuted by the county attorney for kidnapping if an arrest or attempted arrest occurred, for trespass if a search or attempted search occurred, for theft if a seizure or attempted seizure occurred, and for any applicable homicide offense if loss of life occurred. The persons involved must also be charged with any other applicable criminal offense in Title 45.

(2) To the extent possible, the victims' rights provisions of Title 46 must be extended to the victim or victims by the justice system persons and entities involved in a prosecution.

(3) The county attorney shall prosecute once a

claim of violation of [section 2] has been made by the county sheriff or designee of the sheriff, and failure to prosecute subjects the county attorney to recall by the voters and to prosecution by the attorney general for official misconduct.

NEW SECTION. **Section 4. Invalid federal laws.** Pursuant to the 10th amendment to the United States constitution and this state's compact with the other states, the legislature declares that any federal law purporting to give federal employees the authority of a county sheriff in this state is not recognized by and is specifically rejected by this state and is declared to be invalid in this state.

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

- END -

**Bill Actions - Current Bill Progress: Probably Dead**

Action - Most Recent First	Date	Vote Yes	Vote No	Committee
<b>(H) Missed Deadline for General Bill Transmittal</b>	<b>03/01/2005</b>			
(H) Tabled in Committee	02/08/2005			(H) Judiciary
(H) Hearing	01/28/2005			(H) Judiciary
(C) Introduced Bill Text Available Electronically	01/13/2005			
(H) Referred to Committee	01/13/2005			(H) Judiciary
(H) First Reading	01/13/2005			
(H) Introduced	01/13/2005			
(C) Draft Delivered to Requester	01/11/2005			
(C) Draft Ready for Delivery	12/29/2004			
(C) Pre-Introduction Letter Sent	12/07/2004			
(C) Draft in Assembly/Executive Director Review	12/07/2004			
(C) Draft in Final Drafter Review	12/06/2004			
(C) Draft in Input/Proofing	12/06/2004			
(C) Draft to Drafter - Edit Review [CMD]	12/06/2004			
(C) Draft in Edit	12/06/2004			
(C) Draft in Legal Review	12/03/2004			
(C) Draft Back for Redo	12/03/2004			
(C) Draft in Final Drafter Review	12/02/2004			
(C) Bill Draft Text Available Electronically	11/24/2004			
(C) Draft in Input/Proofing	11/24/2004			
(C) Draft to Drafter - Edit Review [CMD]	11/24/2004			
(C) Draft in Edit	11/24/2004			
(C) Draft in Legal Review	11/24/2004			
(C) Draft to Requester for Review	11/09/2004			
(C) Draft Request Received	10/27/2004			

EXHIBIT 10

# SUPPORT YOUR LOCAL SHERIFF

By Devvy Kidd\*

NewsWithViews.com, December 12, 2002

<http://www.newswithviews.com/Devy/kidd1.htm>

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\*Founder and Director of the Project on Winning Economic Reform.<sup>36</sup>

POWER is a First Amendment grassroots effort to educate and motivate Americans to the mechanisms bringing America to ruin. Devvy's project distributed two booklets she authored: Why A Bankrupt America (1,525,000 copies sold) and Blind Loyalty (550,000 copies sold). Both booklets were retired from publication in 2004.

Devyv has made guest appearances more than 1,600 times on talk radio shows plus countless personal speaking appearances. Devvy ran for Congress in 1994 & 1996. Devvy Kidd is also the author of four other published books dealing with construction financing and government systems. She is also the author of a children's book titled, Keeley & Mrs. Kidd: A Lost and Found Story; seeking a publisher of this wonderful story.

Devyv spent 19 years in construction and banking before going on to various civilian positions with the Department of Defense. During her tenure as an Administrative Officer for the Department of the Army, Devvy was responsible for contracts and budget management oversight in excess of \$8,000,000.00.

Following this assignment and due to Devvy's husband's transfer, she became a Contract Administrator for the Department of Air Force, Air Force Space Command at Peterson AFB, Colorado. Despite being the only person in her division to be awarded outstanding performance certificates and awards, her appointment was not renewed. Devvy is a federal whistle blower. While at Peterson AFB, she filed a fraud, waste & abuse against her own job. The three-ring circus that followed is sadly all too typical of what happens to those who step forward with the truth.

Devyv was Executive Director for We the People Congress, Inc., an affiliate of We the People Foundation for Constitutional Education, Inc. Devvy relocated to Annapolis, MD in June 2003, resigned her position on February 24, 2004 and moved back to Sacramento, California.

Devyv is married. Her husband John, is a retired United States Army Colonel and has continued his career in the private sector as a construction management engineer. Devvy has one daughter who graduated from college in May 2001, Magna Cum Laude in the field of science and is currently a working actress in Hollywood.

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<sup>36</sup> <http://www.devyv.com/devvybio.html>

Columns: regular contributor to: [www.newswithviews.com](http://www.newswithviews.com)

Weekly column: [www.worldnetdaily.com](http://www.worldnetdaily.com)

Membership affiliations: Commander's Club, Disabled Veteran's of America.

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Yes, I said that. Support your local sheriff, but only if they support the U.S. Constitution and your rights. As the federal machine in Washington, DC continues to steam roll over our individual rights and strip this Republic of it's sovereignty, Americans need to remember the power of their duly elected sheriff.

The sheriff of your county is the highest elected official and has more power than most people realize. Your local sheriff has the power to tell dragoons from various federal alphabet soup agencies that they will not come into his/her county and attempt to enforce unconstitutional "laws." Your local sheriff is there to protect your rights, not the actions of an out of control government whether it be state or federal.

In May, 1999, a local sheriff north of Sacramento wrote to California Governor Gray Davis, twice, informing the governor that he was in complete opposition to two anti-Second Amendment junk gun bills sitting in the legislature: one dealing with "Saturday night specials" and the other dealing with the so-called "assault weapons." In his letter to Davis on official letterhead, Sheriff Scott A. Mackenzie said:

*"I am writing this letter in opposition to SB 23...This bill is an absolute infringement on our Second Amendment Rights and ultimately will make criminals out of law abiding citizens. SB 23 penalizes the good citizens of Butte County and of this State and will do nothing toward crime prevention.."*

*"A famous quote of an individual that disarmed society is as follows: 'This year will go down in history. For the first time a civilized nation has full gun registration. Our frees will be safer, our police more efficient, and the world will follow our lead into the future.' Adolph Hitler, 1935."*

Pretty strong words from a county sheriff to a sitting governor. Sheriff Mackenzie isn't alone. Back on February 27, 1994, Lt. Harry Thomas, a member of the Cincinnati Police Division made the following comments during a public speaking appearance:

*"...And that is why I become furiously angry when I see our Constitution, the most remarkable document ever written in the course of human existence, being used as toilet paper at every level of government."*

*"The Brady Bill is now a reality. For the first time in the history of our country, American citizens must request the government's permission to exercise a constitutional right. And if the government sees its way clear to grant permission, we must wait 5 days to exercise that right."*

*"But even this is not enough to please our keepers in Sodom-by-the-Potomac. Gun laws are not being passed quickly enough to suit our federal law enforcement agencies, so they have formulated their own plan to discourage gun ownership."*

*"The time has come for us to openly discuss something that up to this time we have mainly whispered about. The purpose of the 2nd Amendment is to threaten the government. The framers of our Constitution knew that government is a necessary evil, which, as in the case of the British government, could easily become more evil than necessary. The Founding Fathers wanted to ensure that should that situation again come to pass, the American people would have the capability to reclaim their country by force of arms."*

*"Pass your gun laws. I will not beg the government for a license to continue to be a handgun owner. I will not submit to being fingerprinted or photographed or interrogated like a criminal for claiming my birthright as a free American. I will not register a single gun that I own. I will not surrender a single gun that I own. I will not apply for an "arsenal" license because I own more than 20 guns or more than a thousand rounds of ammunition. I will not attend mandatory safety training, nor will I submit to a test to prove that I'm fit to be a gun owner. And Miss Reno, I have this to say to you: If you send your jack-booted, baby-burning bushwhackers to confiscate my*

*guns, pack them a lunch; it will be a damned long day. The Branch Davidians were amateurs; I'm a professional."*

Out in Wyoming, Sheriff Dave Mattis set new policy regarding federal law enforcement operations in Big Horn County. This move was effective April 15, 1997. Some of the bullet points of this new policy are:

- Federal law enforcement personnel need to notify Big Horn County Sheriff's Office in advance of any federal law enforcement operation in Big Horn County, Wyoming.
- Sheriff's Office requests the following information before the Sheriff determines whether the Sheriff's Office will be involved.
- Identification of the individuals or residences to be searched or arrested if known.
- An identification of the agencies and personnel to be involved in the overall operation contemplated by the federal law enforcement agency.
- The Sheriff's Office will inquire of federal law enforcement personnel in charge to confirm that the federal law enforcement agency in good faith has probable cause for any potential searches and arrests prior to any such search or arrest of which the Sheriff's Office gains knowledge.

What caused this policy to be implemented by Sheriff Mattis? A case titled *Castaneda v USA*,<sup>37</sup> which resulted from a June 2, 1993, Immigration and Naturalization Service (INS) raid by federal agents on the home of Ramon and Elvia Castaneda. The sheriff was made to "see the light" because two courageous Americans stood up for their rights.

#### **Your local sheriff and 'mandatory' small pox vaccinations**

Right now people are in a dither about threats of mandatory smallpox vaccinations. One of our Founding Fathers had something to say about this:

*"Under the law of nature, all men are born free, every one comes into the world with a right to his own person, which includes the liberty of moving and using it at his own will. This is what is called personal liberty, and is given him by the Author of nature, because necessary for his own sustenance."*

--Thomas Jefferson: Legal Argument, 1770. FE 1:376

We are born free. Our bodies belong to us, not to the government. Mr. Bush and his henchman, John Ashcroft, would like all of us to believe that Bush can simply issue an Executive Order because he's President and we should all fall on the needle. This is where your local sheriff is going to be very important.

If this criminal syndicate out in Washington, DC issues any "mandatory" vaccination program, I will refuse, even if it means jail. Let me repeat myself: I will just say no. I would direct your attention to the opinion of Stephen K. Huber, Professor of Law at the University of Houston:

*"The highest law of the land is the Constitution of the United States." The general misconception is that any statute passed by legislators bearing the appearance of law constitutes the law of the land. The United States Constitution is the supreme law of the land, and any statute must be in agreement with it to be valid. It is impossible for both the Constitution and a law violating it to be valid; one must prevail over another."*

Is it constitutional to force Americans to be vaccinated against their will under any circumstances? I say no and I'm willing to say no to any level of government that thinks they can shoot me up with one of their "life saving" cocktails just because some politician wants it. The question is: *Will the sheriffs of this country back up the people they're sworn to protect and stand with a free people?*

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<sup>37</sup> *Castaneda, et al, v. United States*, U.S. District Court of Wyoming (Cheyenne), Case No. 99-CV-99

Back in 1993, a county sheriff in Waco allowed the FBI and ATF to wrestle away his authority in his own county using lies and deception. In 1995, I watched then Waco Sheriff Jack Harwell testify to a House committee on the massacre at Waco. It saddened me to see Sheriff Harwell sit there knowing that he should have stood up to the feds and didn't. However, in his closing remarks, he did finally lambaste members of Congress for their actions. Too little, too late. 84 Americans, which included 17 children, had already been gassed and burned by the Clinton Administration.

### **Educating your local sheriff**

Today, too many sheriffs in the big "inner cities" are nothing more than political machines. However, it's now up to the citizenry of this country, county by county, to begin the process of meeting with your elected sheriff and have a little heart to heart chat about things like "Homeland Security" and jurisdiction.

There are more than 28,000 citizens groups in this country all fighting one issue or another. The next time your group or organization meets, elect a committee to make an appointment with your sheriff and begin the dialogue of finding out where your sheriff stands on his authority and will he/she stand up for your God-given rights or cave when the feds come a-knockin'?

I submit to you that unless the citizens in counties throughout this country begin this process of making their concerns known to their sheriff's, we will continue to see even more tragedy. We will continue to see more and more dragoons from federal alphabet soup agencies come into our counties, crushing our rights and murdering innocent people with no-knock warrants on the wrong house or some obscure provision of the mis-named 'Patriot' Act.

Be polite, but firm, and let your sheriff know that if he/she will not stand up for your rights and stave off unconstitutional actions by any law enforcement coming into the county, they're not going to get reelected. Citizen action works and now is the time to support your local sheriff after you determine they will support you.

EXHIBIT 11

# SHERIFF SUPREMACY

by Richard I. Mack\*

Director of Public Affairs

Gun Owners of America

<http://www.gunowners.org/op0021.htm>

May 2000

\**Printz v. United States*, 521 U.S. 898 (1997)(Together with No. 95-1503, *Mack v. United States*, also on certiorari to the same court.) struck the Brady law.

\*Richard Mack has been in law enforcement for over 20 years. He worked his way up the ladder from parking cadet for the Provo Police Department while in college, to Detective. In 1988, Mack moved to Arizona and was elected Sheriff of Graham County, twice. Other honors include: Graduate of the FBI National Academy; Elected Official of the Year (1994) by New Mexico/Arizona Coalition of Counties; Received the Firearms Industry's "Cicero" award (1995); Law Enforcement Officer of the Year (1995) by the NRA; Defender of the 2nd Amendment Award by Gun Owners of America; In 1994, Mack was the first Sheriff in the country to file a lawsuit against the Brady bill and ultimately won a landmark U.S. Supreme Court decision in defense of the 10th Amendment and State Sovereignty. This magnificent ruling, which reinforces the fact that the Federal Government can not force their programs on the States, has been virtually hidden from the public by the media. Publications authored by Mack include, *THE PROPER ROLE OF LAW ENFORCEMENT* and *PROTECT AND SERVE: TIME FOR SHERIFFS TO WALK TALL*. Books co-authored by Mack include, the best seller, *FROM MY COLD, DEAD FINGERS* now in its second printing, and *GOVERNMENT, GOD, AND FREEDOM*. Source: <http://www.umedia.com/Mack/>

On June 2, 1993, Immigration and Naturalization Service (INS) federal agents along with two Big Horn County, Wyoming deputies raided the home of Ramon and Elvia Castaneda.

The deputies were there only to assist INS agents and basically got caught in the "crossfire" of federal in competency and arrogance. The *Castaneda v USA* case does something for all Americans that has never been done before; it answers the question; who is the ultimate law enforcement authority in this country?

Big Horn County and its officers were sued in this case because they trusted INS agents to be acting within proper parameters of the law. However, INS agents failed to do their homework and did not even have a warrant.

So the INS asked for assistance from the Big Horn County Sheriff's office to raid the home (late at night) of the Castaneda family to capture some illegal aliens. The Sheriff's office cooperated with the INS and in doing so got them in trouble. However, there was one other problem with the federal agents' homework. The Castanedas were American citizens.

A minor dispute still remains unsettled as to how the armed officers entered the Castaneda home. The Castanedas claimed the agents simply barged in

without knocking or appropriately announcing their intentions. The government claims their courteous announcements and knocks were ignored so they entered the home anyway. Regardless, the Castanedas claimed to be asleep at the time of the raid, which would seem to be reasonable thing to be doing late at night.

The Castanedas filed a lawsuit with a host of defendants including Big Horn County and Federal officials. The case was cut and dry. The feds were wrong and their actions were untenable, The Castanedas could have sat back and waited greedily for their attorneys to fill in the amount of their checks, but they wanted to do something else. As part of the settlement the Castanedas wanted some insurance that this type of governmental abuse would not recur or ever happen to others.

To their everlasting credit, the Castanedas took a rather nominal amount of cash in exchange for a policy, which seemed to them, the best "check and balance" systems that would essentially stop the federal government from anymore potential abuses.

Amazingly and quite simply, the Castanedas demanded, as part of their federal lawsuit settlement, that the Big Horn County Sheriff's office devise a policy that required all federal agencies to check with

the Sheriff before they could take any action in Big Horn County.

Coincidentally, this policy fell on the lap of Sheriff Dave Mattis who was not even Sheriff at the time of the raid. However, Sheriff Mattis agreed with the policy and helped develop this most novel and unique agreement that the lawyers of the United States Justice Department also signed. However, the Justice Department took steps to keep this agreement secret and undisclosed. Imagine a small town sheriff in a county of only 12,000 people being the overseer of federal agencies within his county!

Is this policy an unusual novelty or a procedure whose time has finally come as an essential and vital part of protecting and serving our citizens? Why would this policy only be beneficial in Big Horn County and not in every in our nations?

Ironically, U.S. Congressman Helen Chenoweth (R-Idaho) considered proposing legislation that would have established a similar policy for the entire nation at just about the same exact time this settlement was being reached. The Justice Department, FBI and other federal agencies fought and lobbied tooth and nail to stop Chenoweth's proposal.

Specifically, the policy to be enforced requires all "federal law enforcement personnel to notify the Sheriff's Office in advance of any federal law enforcement operation in Big Horn County, Wyoming." Several other guidelines must be followed in regards to showing proper paperwork and the establishments of probable cause to be justify federal law enforcement presence.

What would it hurt (and who would it benefit) if the FBI, IRS, BATF, etc. were doing this in every county? Why would the federal government oppose such common sense practices that they should already be doing anyways? The end result is added safety and protection to the citizens. The only thing preventing this policy from bring realized nationwide is the Sheriff

himself failing to take a strong stand and the arrogance and pride of federal agencies.

Two and a half years ago congress conducted hearings regarding the abuse of the IRS. Citizens and IRS employees alike testified about IRS criminality. After any Sheriff has been made aware of the abusive history of the IRS, the crimes committed by the AFT and FBI at WACO and Ruby Ridge, how could he comply with protecting and serving his constituents if he allowed these federal agencies unbridled authority in his county?

The United States Constitution (Article 1 Section 8) grants 4 law enforcement categories to the federal government: felonies committed on the high seas, counterfeiting, postal issues and treason. Protecting our nation's borders would also be an appropriate constitutional federal obligation. But many of these federal agencies have become powers unto themselves and are the tails wagging the dog.

Many of these federal agencies have lost sight of their true missions and have gotten for whom they work and who they are suppose to serve and protect. Now we are coming to the point of being forced to turn to our Sheriffs and local authorities to protect and serve us from federal "protectors".

In fact, what does a Sheriff who knows and understands the significance of the Second Amendment and his oath of office do when agents come in his jurisdiction to confiscate guns of law abiding citizens? *Castaneda v USA* proves the Sheriff is the answer, Sheriff Mattis has proven it works and common sense proves all Sheriffs should be doing it.

Why is the Sheriff the ultimate and leading law enforcement authority in America? Because he is elected by the ultimate power source, the people, and the answers directly to them. He is not an appointed bureaucrat and lives in the community he serves. He is in all matters, the people's defender.

**EXHIBIT 12 - UTAH SHERIFF'S ASSOCIATION RESOLUTION AGAINST INCREASED FEDERALIZATION OF LAW ENFORCEMENT AND CRIMINAL LAW BY UNITED STATES CONGRESS**

**UTAH SHERIFFS' ASSOCIATION**

- Frank E. Hodge  
President  
Liberty County
- Sheriff Mike Lacy  
Past Vice-President  
San Juan County
- Sheriff Brad Steier  
Second Vice-President  
Wasatch County
- Sheriff Frank Schenck  
Secretary  
Wasatch County
- Sheriff Aaron Kaneard  
Past President  
Salt Lake County
- Sheriff Kenneth Yardley  
Beaver County
- Sheriff Lynn Jensen  
Wasatch County
- Sheriff G. Lynn Nelson  
Cannonville County
- Sheriff James Carlisle  
Cannonville County
- Sheriff Gaylen Janda  
Daguerre County
- Sheriff Earl Orr  
Wasatch County
- Sheriff Ralph Steadfield  
Daguerre County
- Sheriff Larry Chapman  
Emery County
- Sheriff Thom Cooper  
Garfield County
- Sheriff James Hyland  
Garfield County
- Sheriff Dale Sampson  
Wasatch County
- Sheriff David Carter  
Wasatch County
- Sheriff Leonard Smith  
Wasatch County
- Sheriff Gene Eckelbrecht  
Wasatch County
- Sheriff Harry Olson  
Piute County
- Sheriff Dale Searcy  
Piute County
- Sheriff Claude Piccoli  
Wasatch County
- Sheriff Phil Betney  
Wasatch County
- Sheriff Fred Ely  
Wasatch County
- Sheriff Alvin Tschopp  
Wasatch County
- Sheriff David Bowman  
Wasatch County
- Sheriff Bill Spitzer  
Wasatch County
- Sheriff Eric Smith  
Wasatch County
- Sheriff Leon Torgerson  
Wasatch County

Gary W. Linton  
Executive Director  
P.O. Box 420  
Cannonville, Utah 84705  
(435) 674-6034  
Fax (435) 674-6040  
e-mail: gwl@utahsheriffs.org

James H. Robinson  
Assistant Executive Director  
P.O. Box 767  
East Carbon City, Utah 84703  
(435) 688-4026

**UTAH SHERIFFS' ASSOCIATION**  
**Resolution Against Increased**  
**Federalization of Law Enforcement**  
**and Criminal Law**  
**by the United States Congress**

USA Resolution 994

- WHEREAS,** the United States Congress on a continuing and increasing basis passed laws which federalize criminal violations and enhance the jurisdiction and authority of federal law enforcement and the federal government in investigating, enforcing, and prosecuting criminal acts; and
- WHEREAS,** there is no credible evidence to support a conclusion that federalization of criminal law has achieved the goals of reducing crime and victimization, nor that federal law enforcement has been more effective, or even, equally effective, when compared to state and local law enforcement; and
- WHEREAS,** the Tenth Amendment to the United States Constitution demands that, "The powers not delegated to the United States by the Constitution, nor prohibited to the States, are reserved to the States respectively, or to the people"; and
- WHEREAS,** the enactment and enforcement of criminal law and the prosecution and punishment of those who violate the law are matters which in most circumstances should be left to the jurisdiction of state and local criminal justice systems; and
- WHEREAS;** the Utah Sheriffs' Association believes that federal law enforcement should be limited to international, interstate, national security, and other areas necessary to protect and enforce provisions of the United States Constitution; and
- WHEREAS;** accountability of federal law enforcement and prosecution agencies are so far removed from the citizens they are supposed to serve that

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there is virtually no way for individual citizens to connect with, influence, or participate with those involved in the criminal justice process; and

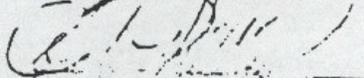
WHEREAS, the Utah Sheriffs' Association believes that the most effective and efficient form of government and criminal justice are those which are closest to the people they serve, and that the tax dollars ~~tax dollars~~ currently being taken by the federal government should be retained by state and local officials for that purpose; and

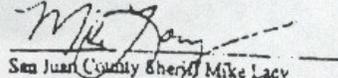
WHEREAS, Sheriffs and other local and State officials recognize, understand, and execute their constitutional responsibilities and obligations to further effective public safety and criminal justice; and

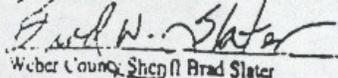
THEREFORE BE IT RESOLVED this 21st day of May, 1999, that the Utah Sheriffs' Association strongly opposes expansion of the authority, jurisdiction, and scope of federal powers and law enforcement; and

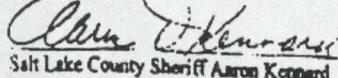
FURTHER BE IT RESOLVED that United States Congress immediately refrain from enacting further federal laws that expand federal criminal justice authority, that duplicate or supplant the jurisdiction, authority, and functions of local and state criminal justice agencies and officials, and/or violate the letter or spirit of the Tenth Amendment; and

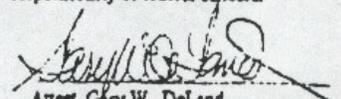
FURTHER BE IT RESOLVED that a commission be established comprised of state, local, and federal officials to evaluate and determine the roles of federal law enforcement agencies and the federal law, for which enforcement should be the responsibility of federal officers.

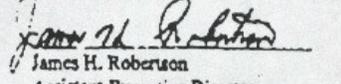
  
Millard County Sheriff Ed Phillips  
President

  
San Juan County Sheriff Mike Lacy  
1st Vice President

  
Weber County Sheriff Brad Slater  
2nd Vice President

  
Salt Lake County Sheriff Aaron Kennard  
Immediate Past President

  
Arrest, Gary W. DeLand  
Executive Director

  
James H. Robertson  
Assistant Executive Director

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UTAH SHERIFF'S ASSOCIATION (USA)

[www.utahsheriffs.org]

Resolution Against Increased  
Federalization of Law Enforcement  
and Criminal Law  
by the United States Government

USA Resolution 99-1

WHEREAS: the United States Congress has on a continuing and increasing basis passed laws which federalize criminal violations and enhance the jurisdiction and authority of federal law enforcement and the federal courts in investigating, enforcing, and prosecuting criminal acts; and

WHEREAS: there is no credible evidence to support a conclusion that federalization of criminal law has achieved the goals of reducing crime and victimization, nor that federal law enforcement has been more effective when compared to state and local law enforcement; and

WHEREAS: the Tenth Amendment to the United States Constitution demands that, "The powers not delegated to the United States by the Constitution, nor prohibited to the States, are reserved to the States respectively, or to the people"; and

WHEREAS: the enactment and enforcement of criminal law and the prosecution and punishment of those who violate are matters which in most circumstances should be left to the jurisdiction of state and local criminal justice systems; and

WHEREAS: the Utah Sheriffs' Association believes that federal law enforcement should be limited to international, interstate, national security, and other areas necessary to protect and enforce provisions of the United States Constitution; and

WHEREAS: accountability of federal law enforcement and prosecution agencies are so far removed from the citizens they are supposed to serve that there is virtually no way for individual citizens to connect with, influence, or participate with those involved in the criminal justice process; and

WHEREAS: the Utah Sheriffs' Association believes that the most effective and efficient form of government and criminal justice are those which are closest to the people they serve, and that tax dollars currently being taken by the federal government should be retained by state and local officials for that purpose; and

WHEREAS: Sheriffs and other local and State officials recognize, understand, and execute their constitutional responsibilities and obligations to further effective public safety and criminal justice; and

THEREFORE, BE IT RESOLVED this 21st day of May, 1999, that the Utah Sheriffs' Association strongly opposes expansion of the authority, jurisdiction, and scope of federal powers and law enforcement; and

THEREFORE, BE IT RESOLVED that United States Congress immediately refrain from enacting further federal laws that expand federal criminal justice authority, that duplicate or supplant the jurisdiction, authority, and functions of local and state criminal justice agencies and officials, and/or violate the letter or spirit of the Tenth Amendment; and

FURTHER, BE IT RESOLVED that a commission be established comprised of state, local, and federal officials to evaluate and determine the roles of federal law enforcement agencies and the federal laws for which enforcement should be the responsibility of federal officers.

**EXHIBIT 13**

**Big Horn County, Wyoming, Sheriff's Department Policy**

**FEDERAL LAW ENFORCEMENT PERSONNEL**

Effective Date: April 15, 1997

<http://www.uhuh.com/action/sheriff/mattispol.htm>

Federal law enforcement personnel need to notify Big Horn County Sheriff's Office in advance of any federal law enforcement operation in Big Horn County, Wyoming.

Sheriff's Office requests the following information before the Sheriff determines whether the Sheriff's Office will be involved:

- An identification of the individuals or residences to be searched or arrested if known.
- An identification of the agencies and personnel to be involved in the overall operation contemplated by the federal law enforcement agency.
- An identification of the chain of command for the operation or planned activity.
- An identification of the translator if those to be arrested or subject to search are not expected to be fluent in English.
- Determine the time of day of proposed arrest or search.

The Sheriff's Office will inquire of federal law enforcement personnel in charge to confirm that the federal law enforcement agency in good faith has probable cause for any potential searches and arrests prior to any such search or arrest of which the Sheriffs Office gains knowledge.

The Sheriff's Office will discourage federal law enforcement arrests or searches after 10:00 P.M. unless exigent circumstances exist.

If assistance is provided, the Big Horn County Sheriff's Office will:

- Have direct radio communication capability with the Sheriff's Dispatch during all searches and arrests.
- Report any observed violation of civil rights to the Sheriff's Dispatch contemporaneously.
- Keep dispatcher logs.
- Prepare after action reports within 48 hours.
- Conduct thorough investigation of any alleged civil rights violations.

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BIG HORN COUNTY SHERIFF

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Basin, Wyoming 82410-0069

# STATE MILITIAS AND THE UNITED STATES: CHANGED RESPONSIBILITIES FOR A NEW ERA

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## I. INTRODUCTION

The Constitution of the United States was established, in part, to “insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.”<sup>1</sup> Written over two hundred years ago, the Constitution seeks to achieve these goals in ways that frequently reflect the times of a bygone era. Perhaps no other aspect of this document and the plan of government it established is more indicative of the unique time period in which it was drafted than those provisions that concern themselves with state militias and the presence of a standing army.<sup>2</sup> Although these provisions generated a great deal of debate at the time,<sup>3</sup> the rationale behind them is largely meaningless to modern Americans.<sup>4</sup> In fact, as will be discussed in this article, the present-day organization and responsibilities of the National Guard, the modern equivalent of a state militia, directly contravene the principles and rationales of the framers.<sup>5</sup>

Part I of this article will discuss the various provisions in the Constitution and other documents of the United States dealing with state militias. It will also discuss the arguments made by the framers espousing the constitutional theory behind these provisions, as well as the history and contemporaneous thoughts regarding these institutions.

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<sup>1</sup> U.S. CONST. pmb.

<sup>2</sup> As discussed *infra*, the Militia Clauses of the Constitution are found in Article I, section 8. The provisions relating to the armed forces are similarly located in that section. It could be argued that slavery is an issue which more accurately reflects the unique time period in which the Constitution was drafted. Although this argument has merits, it is hard to disregard the plethora of scholarly writings at the time which dealt in large part with the ideals of representative government in contradistinction to absolutism and military rule. *See, e.g.*, JOHN LOCKE, SECOND TREATISE OF GOVERNMENT (C.B. Macpherson ed., Hackett 1980) (1690); JEAN-JACQUES ROUSSEAU, *On the Social Contract*, in THE BASIC POLITICAL WRITINGS (Donald A. Cress trans., Hackett 1987) (1754); ADAM SMITH, THE WEALTH OF NATIONS (Edwin Cannan 2004 .ed., Bantam 2003) (1776).

<sup>3</sup> As discussed *infra* in Part I.B., the writers of “The Federalist Papers” deal extensively with the subject, often advancing arguments and rebutting criticisms that many modern readers would find unthinkable. *See, e.g.*, THE FEDERALIST NO. 46 (James Madison) (engaging in mathematical calculations to show that a standing army created by the federal government could not possibly succeed at oppressing the people of the various states).

<sup>4</sup> *See* Robert J. Spitzer, *The Second Amendment “Right to Bear Arms” and United States v. Emerson*, 77 ST. JOHN’S L. REV. 1, 15 (2003) (arguing that the Second and Third Amendments, which deal with militias and standing armies, respectively, have become obsolete due to changes in society); Frederick Bernays Wiener, *The Militia Clause of the Constitution*, 54 HARV. L. REV. 181, 186 (1940) (stating that “the fears of the ratifiers were not well-founded” given that the Third Amendment has never been invoked, yet noting that this shows “the prevalence of views then entertained”).

<sup>5</sup> *See, e.g.*, Spitzer, *supra* note 4, at 15 (remarking that the National Guard is primarily under the control of the federal government).

Part II will explore the evolution of the militia in American history and analyze this evolution in light of the constitutional underpinnings of its existence. This article will conclude that state militias, while serving an integral purpose in modern American society, no longer fulfill their purpose as originally planned in the Constitution.

## II. STATE MILITIAS AND THE CONSTITUTION

### A. Militias, Armies, and the Texts of United States Documents

The Constitution makes mention of militias in two separate provisions—one relating to the powers of Congress and the other to the powers of the President. In the former, in what are known as the militia clauses,<sup>6</sup> the Constitution details the specific powers of Congress and the limitations on that power as regards state militias. Article I, section 8, clause 15 states that Congress shall have the power “[t]o provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.”<sup>7</sup> Article I, section 8, clause 16 provides that Congress shall have the power of “organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.”<sup>8</sup> In order to better understand these limitations, they must be contrasted with Congress’s power as regards the Army, which is stated in Article I, section 8, clause 12. That provision simply states, “To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years.”<sup>9</sup> **While the latter limitation does serve to limit Congress’s ability to fund a large standing army, unlike as in the militia clauses there is no limitation on Congress’s ability to use that army.**<sup>10</sup>

The second mention of the militia occurs in Article II, which details the powers of the President. Section 2 states that “[t]he President shall be Commander in chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual Service of the United States.”<sup>11</sup>

Militias are also explicitly mentioned in the Second Amendment to the Constitution. That amendment states, “A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear

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<sup>6</sup> See Wiener, *supra* note 4, at 181 n.1 (discussing the term that should be used for these provisions).

<sup>7</sup> U.S. CONST. art. I, § 8, cl. 15. In addition to these three reasons for calling forth the militia, courts have stated that Article IV, section 4 also states a valid reason for calling forth the militia. See *Laird v. Tatum*, 408 U.S. 1, 3 n.2 (1972) (indicating that 10 U.S.C. § 331, which allows calling forth the militia upon the request of a state legislature or executive, is based on the guarantee provided for in Article IV, section 4 of the Constitution).

<sup>8</sup> U.S. CONST. art. I, § 8, cl. 16.

<sup>9</sup> U.S. CONST. art. I, § 8, cl. 12.

<sup>10</sup> **See *Perpich v. Dep’t of Defense*, 496 U.S. 334, 348–50 (1990) (pointing out that the limitations of the militia clause do not apply to armies and similarly do not apply to militias when federalized).**

<sup>11</sup> U.S. CONST. art II, § 2. The original provision recommended by the Committee of Detail at the constitutional convention left off the clause “when called into the actual service of the United States.” This addition was recommended by Roger Sherman and approved by the convention. See SIDNEY M. MILKIS & MICHAEL NELSON, *THE AMERICAN PRESIDENCY: ORIGINS AND DEVELOPMENT* 42 (3d ed. 1999).

Note that this was an important check on military power, since it would at all times be under the administration of civilians. See Strom Thurmond, *The Military Officer and the Constitution*, 1988 *ARMY LAW* 4, 6 (crediting civilian control of the military for the lack of military problems in this country); see also SMITH, *supra* note 2, at 898–99 (stating that standing armies should not be feared when they are placed in the hands of those with the greatest interest in preserving civil authority).

Arms, shall not be infringed.”<sup>12</sup> Integral to understanding the constitutional role of state militias is a comprehension of how other military issues are treated in the Constitution and other state papers. For example, although the Constitution allows Congress to raise an army, the earlier Articles of Confederation relied on the states to provide all land forces.<sup>13</sup> Similarly, the Declaration of Independence lists several military issues as grievances against the King. It states that he “has kept among us, in time of peace, standing armies, without the consent of our legislatures,” and that he has “affected to render the military independent of, and superior to, the civil power.”<sup>14</sup> These criticisms of military use and power can also be seen in the Bill of Rights. The Third Amendment prohibits the quartering of soldiers<sup>15</sup> and the Fifth Amendment explicitly places the rule of civil law above military might.<sup>16</sup> Although these provisions quite clearly indicate the mindset of the framers, a look at the arguments in the Federalist Papers further elucidates the theories at work.

## **B. The Constitutional Theory—“The Federalist Papers”**

**The authors of the Federalist Papers discuss militias and standing armies in several of the papers. These papers espouse two main arguments regarding these institutions and the requirement that both be present in the Constitution.**<sup>17</sup> The first argument is that standing armies pose a threat to liberty, and that militias will serve as a bulwark to this threat. The second, somewhat contradictory argument,<sup>18</sup> is that militias are ineffectual and cannot be relied upon to furnish for the common defense.

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<sup>12</sup> U.S. CONST. amend. II. The right to bear arms is an issue unto itself, and thus outside the scope of this article. Needless to say, much debate has taken place over whether that right inheres in “the people” or whether it is inextricably linked to service in the militia. The Supreme Court has expended little ink on this subject. In *Presser v. Illinois*, 116 U.S. 252 (1886), the Court determined that the amendment applies only against actions of Congress, and not the states. *Id.* at 265. The Court thus held that an Illinois statute forbidding unauthorized men to parade with arms did not violate the Second Amendment. *Id.* at 264–65. In *United States v. Miller*, 307 U.S. 174 (1939), the Court held that the National Firearms Act did not violate the Second Amendment because the prohibited weapons, sawed-off shotguns, had no relationship to the preservation of a well-regulated militia. *Id.* at 178. Although these cases are far from clear, one commentator has stated, “All of the Court’s decisions make clear that the Second Amendment is invoked only in connection with citizen service in a government organized and regulated militia.” Spitzer, *supra* note 4, at 13. Recently, however, a 5th Circuit panel questioned this “collective rights” model of the Amendment and espoused an “individualist” model, which would protect the right to bear arms independent of service in the militia. See *United States v. Emerson*, 270 F.3d 203 (5th Cir. 2001). See generally Michael Busch, Comment, *Is the Second Amendment an Individual or a Collective Right: United States v. Emerson’s Revolutionary Interpretation of the Right to Bear Arms*, 77 ST. JOHN’S L. REV. 345 (2003).

<sup>13</sup> ARTICLES OF CONFEDERATION art. IX. That article provided that each state would supply forces “in proportion to the number of white inhabitants” in that state. In addition, Article VI required each state to “always keep up a well-regulated and disciplined militia, sufficiently armed and accoutred.” ARTICLES OF CONFEDERATION art. VI.

<sup>14</sup> THE DECLARATION OF INDEPENDENCE paras. 13–14 (U.S. 1776).

<sup>15</sup> The Third Amendment states, “No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law . . . .” U.S. CONST. amend. III.

<sup>16</sup> In relevant part, the Fifth Amendment provides, “[N]or shall any person . . . be deprived of life, liberty, or property, without due process of law.” U.S. CONST. amend. V.

<sup>17</sup> See *Perpich v. Dep’t of Defense*, 496 U.S. 334, 340 (1990) (discussing the two arguments); Wiener, *supra* note 4, at 184–85.

<sup>18</sup> See Wiener, *supra* note 4, at 184 (stating that the meshing of these institutions was a compromise).

### 1. *The Militia is Necessary to Curb the Need for, and the Power of, the Standing Army*

Those papers that espouse the first argument above generally begin by pointing out that some sort of military will be required to defend the nation. For example, in Federalist 8, Alexander Hamilton states that “[s]afety from external danger is the most powerful director of national conduct.”<sup>19</sup> In Federalist 24, Hamilton argues that “savage tribes” as well as the British and Spanish pose threats that must be protected against.<sup>20</sup> It is even conceded that force will sometimes be needed simply to govern. Likely referring to Shays’ Rebellion,<sup>21</sup> Hamilton writes in Federalist 28 that “the idea of governing at all times by the simple force of law . . . has no place but in the reveries of those political doctors, whose sagacity disdains the admonitions of experimental instruction.”<sup>22</sup>

After establishing this, these papers argue that it would be unwise to create a large standing army. In Federalist 8, Hamilton describes standing armies as having “a tendency to destroy [a nation’s] civil and political rights.”<sup>23</sup> The authors of the Federalist Papers conclude, however, that this is not a legitimate fear under the Constitution.<sup>24</sup> Because the Constitution provides for state militias, they argue, there will never be a need for a large standing army. In Federalist 26, Hamilton writes that a large army will not be needed because of “the aid to be derived from the militia, which ought always to be counted upon, as a valuable and powerful auxiliary.”<sup>25</sup>

In Federalist 29 and 46, Hamilton and James Madison, respectively, also argue that a standing army need not be feared because the militia itself could be used to defend the people from any oppression that the army might inflict. Hamilton writes, “[I]f circumstances should at any time oblige the government to form an army of any magnitude, that army can never be formidable to the liberties of the people, while there is a large body of citizens little if at all inferior to them in discipline and the use of arms, who stand ready to defend their own rights and those of their fellow citizens.”<sup>26</sup> Madison is even more forceful in his comments. In Federalist 46, he argues that any standing army created by the federal government would be opposed by a “half a million [ ] citizens with arms in their hands” which would “form[ ] a barrier against the enterprises of ambition more insurmountable than any which a simple government of any form can admit of.”<sup>27</sup>

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<sup>19</sup> THE FEDERALIST NO. 8, at 45 (Alexander Hamilton) (Jacob E. Cooke ed., 1961).

<sup>20</sup> THE FEDERALIST NO. 19, at 156–57 (Alexander Hamilton).

<sup>21</sup> Shays’ Rebellion was led by a former Continental Army officer who was dissatisfied with debts, taxes, and the threat of land seizures. Shays led a group of farmers in a revolt against the government of Massachusetts in September 1786. The rebellion was not quashed until January 1787. See MICHAEL D. DOUBLER, *I AM THE GUARD: A HISTORY OF THE ARMY NATIONAL GUARD, 1636-2000*, at 65 (2001), [http://www.army.mil/guard\\_docs/presentations/guardhistorybook.pdf](http://www.army.mil/guard_docs/presentations/guardhistorybook.pdf).

<sup>22</sup> THE FEDERALIST NO. 28, at 176 (Alexander Hamilton).

<sup>23</sup> THE FEDERALIST NO. 8, at 45 (Alexander Hamilton).

<sup>24</sup> See THE FEDERALIST NO. 26, at 170 (Alexander Hamilton).

<sup>25</sup> *Id.* at 170–71; see also THE FEDERALIST NO. 29, at 182 (Alexander Hamilton) (noting that the militia will curb the need for a standing army). *But see* THE FEDERALIST NO. 25, at 162 (Alexander Hamilton) (stating that the militia is ineffectual).

<sup>26</sup> THE FEDERALIST NO. 29, at 184 (Alexander Hamilton). *But see* THE FEDERALIST NO. 25 (Alexander Hamilton) (stating that the militia is ineffectual); SMITH, *supra* note 2, at 890 (“A militia, however, in whatever manner it may be either disciplined or exercised, must always be much inferior to a well-disciplined and well-exercised standing army.”).

<sup>27</sup> THE FEDERALIST NO. 46, at 321–22 (James Madison).

Although the prospect of state militias protecting the freedom of the people from the standing army of the United States might sound incredible and completely unnecessary to the modern reader, a look at the history and prevailing notions at the time of the framing reveal this to be a major concern.<sup>28</sup> Fear of standing armies can be traced to ancient times. Julius Caesar, upon crossing the river Rubicon with his army, broke an ancient law which forbade armies from crossing that barrier and entering Italy.<sup>29</sup> After the Roman Empire was established, standing armies which protected the borders from invasions became anathema to the rule of the emperor, and thus these armies were separated into small groups so as to disperse their power.<sup>30</sup> In more modern times, all Englishmen would be aware of the English Civil War that had occurred in the mid-1600's. After King Charles I raised an army and unsuccessfully stormed Parliament, war broke out. Eventually Oliver Cromwell seized the military power, purged Parliament of dissenters, and named himself "Lord Protector."<sup>31</sup> After Cromwell's death, an army simply marched on London and installed Charles II as King of England.<sup>32</sup> The problem of standing armies in England would not be resolved until 1689, when William and Mary peacefully gained control of England and agreed not to raise a standing army without the consent of Parliament.<sup>33</sup>

This concern also found itself into the political philosophy of the time. In his *Second Treatise of Government*, John Locke writes extensively about the need for a government that relies on the "consent of the governed" and which has declared laws and rules that are known by, and applicable to, all persons.<sup>34</sup> This form of government is contrasted with tyranny, which Locke defines as "*the exercise of power beyond right*, which no body can have a right to."<sup>35</sup> Thus Locke argues that a government which exceeds its bounds may be rightly opposed by the

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<sup>28</sup> See *Ex Parte Milligan*, 71 U.S. 2, 120 (1866) ("The history of the world had taught [the framers] that what was done in the past might be attempted in the future.").

<sup>29</sup> See SMITH, *supra* note 2, at 898 (remarking that Caesar and his army destroyed the Roman Republic by their actions); Suetonius, *THE TWELVE CAESARS* 23–24 (Robert Graves trans., Penguin Books 1957). Caesar is said to have reached the Rubicon and declared to his troops, "We may still draw back but, once across that little bridge, we shall have to fight it out." *Id.* at 23. After seeing an apparition cross the river, Caesar exclaimed, "Let us accept this as a sign from the Gods, and follow where they beckon, in vengeance on our double-dealing enemies. The die is cast." *Id.* at 23–24.

<sup>30</sup> See SMITH, *supra* note 2, at 895–96 (explaining that either Diocletian or Constantine dispersed these armies so as to avoid further trouble). Interestingly enough, Smith goes on to declare that this action, in effect, made these troops into militias because they formed small enclaves and became citizens. The result was that they later proved too ineffective to repel invasions. See *id.*

<sup>31</sup> See LYNN HUNT ET AL., *THE CHALLENGE OF THE WEST* 578–81 (1995); Nathan Canestaro, *Homeland Defense: Another Nail in the Coffin for Posse Comitatus*, 12 WASH. U. J.L. & POL'Y 99, 103 (2003) (giving a brief history of the English Civil War and noting that Cromwell instituted a "military tyranny" which caused enhanced fear of standing armies by the people); see also THE FEDERALIST NO. 21, at 131 (Alexander Hamilton) (posing the question of what Shays' Rebellion could have resulted in had it been led by Caesar or Cromwell); SMITH, *supra* note 2, at 898.

<sup>32</sup> HUNT ET AL., *supra* note 31, at 581.

<sup>33</sup> See *id.* at 600; see also Anthony Gallia, Comment, "*Your Weapons, You Will Not Need Them*," 33 AKRON L. REV. 131, 146–47 (1999) (stating that the English Bill of Rights of 1689 also contained the right to bear arms, in order for the people to protect themselves from oppression).

<sup>34</sup> LOCKE, *supra* note 2, at 70–76.

<sup>35</sup> *Id.* at 101.

people.<sup>36</sup> Similarly, in his *On the Social Contract*, Jean-Jacques Rousseau identifies the same problem with a government that exceeds its powers. For Rousseau, the people form a social contract which advances the “general will.”<sup>37</sup> When the government no longer administers the state in accordance with this will, then the state is deemed dissolved and the government nothing more than an unlawful tyrant.<sup>38</sup> Given this prevailing political philosophy and the history of might exercised by standing armies, it is not surprising that the framers as well as all “[m]en of republican principles [were] jealous of a standing army as dangerous to liberty.”<sup>39</sup>

## 2. *The Militia is an Ineffective Body and Thus a Standing Army is Required*

Although the framers feared a standing army, they did think it was necessary to provide for one in the Constitution. The reason for this is evident from Federalist 25. In that paper, Alexander Hamilton makes clear that state militias alone would not be sufficient to provide for the common defense of the nation.<sup>40</sup> Hamilton writes of the suggestion that the militia would be sufficient for such a purpose, that “[t]his doctrine in substance had like to have lost us our independence. It cost millions to the United States, that might have been saved. The facts, which from our own experience forbid a reliance of this kind, are too recent to permit us to be dupes of such a suggestion.”<sup>41</sup> Hamilton concludes that a “regular and disciplined army” can only be successfully opposed “by a force of the same kind.”<sup>42</sup>

Just as their fear of standing armies, the framers’ lack of confidence in state militias was grounded in history and theory. Although the militia “by their valour on numerous occasions, erected eternal monuments to their fame”<sup>43</sup> during the American Revolution, it was generally realized afterwards that it was not a force that could

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<sup>36</sup> *Id.* at 103 (“[W]hosoever in authority exceeds the power given him by the law, and makes use of the force he has under his command . . . and, acting without authority, may be opposed, as any other man, who by force invades the right of another.”).

<sup>37</sup> ROUSSEAU, *supra* note 2, at 154–55.

<sup>38</sup> *Id.* at 193.

<sup>39</sup> SMITH, *supra* note 2, at 898; *see also Ex Parte Milligan*, 71 U.S. 2, 125 (1866) (declaring that the framers knew that “unlimited power, wherever lodged at such a time, was especially hazardous to freemen”).

<sup>40</sup> THE FEDERALIST NO. 25 (Alexander Hamilton).

<sup>41</sup> *Id.* at 161–62 (Alexander Hamilton) (Jacob E. Cooke ed., 1961).

<sup>42</sup> *Id.* at 162.

<sup>43</sup> *Id.* There are numerous tributes to the efforts of the militiamen during the early years of war. An obelisk erected in the memory of those killed in the Battle of Lexington proclaims, “On the morning of the ever memorable/ Nineteenth of April, An. Dom. 1775. The Die was cast!!!! The Blood of these Martyrs, In the cause of God & their Country/ Was the Cement of the Union of these States, then/ Colonies; & gave the spring to the spirit, Firmness and resolution of their Fellow Citizens.” ALLEN FRENCH, *HISTORIC CONCORD & THE LEXINGTON FIGHT 7* (2d ed. 1992) (1942). Perhaps one of the most famous explications of the courage and bravery of the militiamen is found in Henry Wadsworth Longfellow’s poem, “Paul Revere’s Ride.” The penultimate verse states:

You know the rest. In the books you have read,  
How the British Regulars fired and fled,—  
How the farmers gave them ball for ball,  
From behind each fence and farmyard wall,  
Chasing the redcoats down the lane,

compete with the regular British army.<sup>44</sup> In fact, early in the war effort, George Washington informed Congress that “ [t]o place any dependence upon Militia, is, assuredly, resting upon a broken staff.”<sup>45</sup> Thus, the Continental Congress created the Continental Army in 1775, and this force handled most of the war effort.<sup>46</sup>

In his *Wealth of Nations*, Adam Smith emphasized the inferiority of militias as compared to trained standing armies.<sup>47</sup> Smith studied the history of military encounters and concluded that it bears testimony to the “irresistible superiority which a well-regulated standing army has over a militia.”<sup>48</sup> He noted that the Roman army routed those nations that depended upon militias, and that in the later years of the Empire, when militias took hold, it could not defend itself from the barbarous nations surrounding it.<sup>49</sup> Thus, Smith believed that the only proper way to provide for the common defense would be to have a standing army which was placed under the control of civilian authority.<sup>50</sup>

Thus, these two prevailing opinions, that standing armies are dangerous, but also that they are necessary, shaped the Constitution and resulted in the creation of both a standing army and state militias.

### III. THE EVOLUTION OF STATE MILITIAS IN THE UNITED STATES

An understanding of the evolution of state militias, and military power generally, in the United States is best undertaken by examining how the above two arguments regarding state militias played out after the ratification of the Constitution.

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Then crossing the fields to emerge again  
Under the trees at the turn of the road,  
And only pausing to fire and load.

HENRY WADSWORTH LONGFELLOW, *Paul Revere's Ride*, in *SELECTED POEMS* 60 (1992).

<sup>44</sup> See DOUBLER, *supra* note 21, at 46 (“[T]he militia proved incapable of prevailing in battle alone against British Regulars and usually failed to provide sustained combat power during independent, extended operations.”).

<sup>45</sup> Wiener, *supra* note 4, at 183 (quoting Letter, Washington to the President of Congress, Sept. 24, 1776, in 6 *THE WRITINGS OF GEORGE WASHINGTON* 106, 110 (1932)). Washington went on to state, “ ‘If I was called upon to declare upon oath . . . whether the Militia have been most serviceable or hurtful upon the whole; I should subscribe to the latter.’ ” *Id.* (quoting Letter, Washington to the President of Congress, Sept. 24, 1776, in 6 *THE WRITINGS OF GEORGE WASHINGTON* 106, 112 (1932)). It does appear, however, that Washington later became supportive of state militias as a meaningful force for the defense of the nation. *See id.*; *see also* John W. Vessey, *Foreword* to DOUBLER, *supra* note 21, at 6–7 (indicating that after the war Washington proposed a five-point plan for the national defense which included a wellorganized militia).

<sup>46</sup> See DOUBLER, *supra* note 21, at 50.

<sup>47</sup> Using his economic theory of division of labor, Smith predicted that as society became more advanced, militias would become increasingly obsolete. As will be discussed *infra*, his prediction and rationale are highly applicable to the evolution of the military in the United States.

<sup>48</sup> SMITH, *supra* note 2, at 892.

<sup>49</sup> *See id.* at 895–96.

<sup>50</sup> *See id.* at 898–99.

### A. The Prescience of Federalist 25—Militias Prove Ineffectual

The very first action relating to militias was the Militia Act of 1792.<sup>51</sup> The act formed the militia, which was essentially all men between the ages of eighteen and forty-five.<sup>52</sup> In accordance with its constitutional powers and its fear of military use domestically, Congress also passed laws authorizing presidential use of the state militias to execute federal laws, suppress insurrections, and repel invasions.<sup>53</sup> This power was soon exercised by President Washington. After western Pennsylvanian farmers ejected the federal marshal and threatened to disturb all federal authority in the region, President Washington called forth the militia and personally led them to the site of the insurrection. Upon their arrival the rebels dispersed and the Whiskey Rebellion was quashed.<sup>54</sup>

Following this success, however, the militia, as an institution, displayed its limitations and weaknesses. When called upon to assist with the War of 1812, the militia proved a spectacular failure.<sup>55</sup> In some states, the governor steadfastly refused to provide the militia that the president had requested.<sup>56</sup> In those instances where it did report, the militia frequently performed poorly. New York militiamen refused to battle the British in Canada, arguing that such behavior could not possibly be required to “repel invasions.”<sup>57</sup> In those battles which it did join, the militia distinguished itself as excelling in speedy retreats.<sup>58</sup> All-in-all, the War of 1812 seemed to confirm Hamilton’s belief that the militia could not possibly stand as the nation’s sole line of defense.

Following the war, the constitutional limitations placed on the militia continued to limit its use. The Mexican War, being fought on foreign soil, had no constitutional place for state militias.<sup>59</sup> The Civil War witnessed militia contributions, but the overall impact of state militias was small, due primarily to eighteenth-century congressional

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<sup>51</sup> 1 Stat. 264 (1792).

<sup>52</sup> See Wiener, *supra* note 4, at 187.

<sup>53</sup> See *id.* These laws still exist and are codified at 10 U.S.C. §§ 331–334. The distaste for military use domestically and the concurrent preference for the use of militias, or *posse comitatus*, seems to have been derived from English history. The “Mansfield Doctrine” stated that uniformed soldiers acting as civilians in a posse could do what the actual military should not do—enforce the laws. See Canestaro, *supra* note 31, at 104–05. In fact, one of the colonists’ biggest complaints was the use of the British military, instead of a posse, to put down the insurrection that became the Boston Massacre in 1770. See *id.* at 106–07.

<sup>54</sup> See MILKIS & NELSON, *supra* note 11, at 79–81 (describing the Whiskey Rebellion, which took place in 1794); Wiener, *supra* note 4, at 188 (noting that the president used his powers under the recently-enacted statutes to quash the rebellion).

<sup>55</sup> See DOUBLER, *supra* note 21, at 79 (“The War of 1812 revealed glaring inadequacies in the militia system and raised serious questions regarding the responsibilities the federal government and the States shared for the common defense.”); see also Selective Draft Law Cases, 245 U.S. 366, 384–85 (1918) (explaining that Congress turned to its army powers when the militia failed to fulfill its war needs).

<sup>56</sup> See DOUBLER, *supra* note 21, at 79 (noting that the governors of the New England states did not support the war effort and thus questioned the constitutionality of calling forth the militia in this situation); Wiener, *supra* note 4, at 188.

<sup>57</sup> Wiener, *supra* note 4, at 189; see also DOUBLER, *supra* note 21, at 80 (“On as many as half a dozen occasions, Ohio and New York militia units refused to cross into Canada to attack British positions.”).

<sup>58</sup> DOUBLER, *supra* note 21, at 80–81 (detailing what became known as the “Bladensburg Races,” which led to the burning of Washington D.C. by the British).

<sup>59</sup> See Wiener, *supra* note 4, at 190. *But see* DOUBLER, *supra* note 21, at 92–93 (pointing out that many militiamen joined volunteer corps that were formed for the war).

legislation limiting service to just three months.<sup>60</sup> **The result was that the state militias became neglected and in a matter of years had become close to obsolete. It was not until the twentieth century, when President Theodore Roosevelt asked for an overhaul, that anything was done to improve the militia system.**<sup>61</sup>

## **B. The Evolution of Militias and the Erosion of the State/Federal Distinction**

With the ineffectiveness of the militia becoming readily apparent, the federal government moved to strengthen the militia so as to provide for a useful force for the common defense of the nation. In 1903, Congress passed the Dick Act.<sup>62</sup> **The Dick Act provided for an organized militia, the National Guard, which would be equipped and trained with the use of federal funds.**<sup>63</sup> By 1908, this increased support and funding had transformed an unorganized militia into a supported, organized state militia system of 105,000 militiamen.<sup>64</sup>

**The National Defense Act of 1916 followed shortly thereafter. This act allowed for the “federalization” of the National Guard.**<sup>65</sup> In effect, the act provided that the National Guard could be called into federal service, at which point guardsmen would be part of the army, and not the state militia.<sup>66</sup> **This change in characterization had tremendous implications. As noted earlier in Part I.A., the militia clause of the Constitution limits the uses of the militia by the federal government. The use of the army, under the army clause, is not so limited. Thus, when federalized, the National Guard is no longer subject to the restrictions of the militia clause and may be used in the same way as the standing army.**<sup>67</sup>

Federalization also impacts the standing of the militia under an 1878 act of Congress—the Posse Comitatus Act.<sup>68</sup> That act, as amended, makes it a crime to authorize the use of the “Army or the Air Force as a posse comitatus or otherwise to execute the laws.”<sup>69</sup> When federalized, the militia is deemed a part of the Army, and

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<sup>60</sup> See Wiener, *supra* note 4, at 190–91.

<sup>61</sup> **See *Perpich v. Dep’t of Defense*, 496 U.S. 334, 341 (1990). Before President Roosevelt’s entreaty, the militia was still governed by eighteenth-century laws and requirements. A male between the ages of 18 and 45 in the year 1901 was expected, under the law, to furnish himself with “a good musket,” and “a sufficient bayonet.” See Wiener, *supra* note 4, at 194.**

<sup>62</sup> 32 Stat. 775 (1903).

<sup>63</sup> **See *Perpich*, 496 U.S. at 343; *United States ex rel. Gillett v. Dern*, 74 F.2d 485, 486 (D.C. Cir. 1934); Wiener, *supra* note 4, at 193–97.**

<sup>64</sup> See Wiener, *supra* note 4, at 197.

<sup>65</sup> **See *Perpich*, 496 U.S. at 343.**

<sup>66</sup> See *id.*; see also 10 U.S.C. § 12406 (giving the power to the president to call Guard members into federal service).

<sup>67</sup> **See *Perpich*, 496 U.S. at 348–50 (explaining that since the army clause does not limit the federal government, the federalization of the National Guard subjects it to duty on the same terms as the Army); Wiener, *supra* note 4, at 200 (indicating that federalization thus means that guardsmen can serve abroad).**

<sup>68</sup> 18 U.S.C. § 1385.

<sup>69</sup> *Id.*; see also *Gilbert v. United States*, 165 F.3d 470, 472 (6th Cir. 1999) (“The Act reflects a concern, which antedates the Revolution, about the dangers to individual freedom and liberty posed by use of a standing army to keep civil peace.”).

thus the act would apply to prohibit its use in enforcing the laws.<sup>70</sup> The act, however, under its own terms, does not apply “in cases and under circumstances expressly authorized by the Constitution or Act of Congress.”<sup>71</sup> Thus, the act has been deemed not to be violated when the army, including the federalized national guard, have been used to put down insurrections and to enforce federal laws in times of rebellion.<sup>72</sup> In fact, these bases were used to authorize the use of federal troops and the national guard in desegregating the schools of Little Rock, Arkansas in 1957.<sup>73</sup>

**1933 amendments to the National Defense Act established two distinct organizations—the National Guard of the various States, and the National Guard of the United States.<sup>74</sup> Upon enlisting, guardsmen are members of both, and pledge allegiance to both the state and the federal government. Later amendments and cases have established that the National Guard may be federalized at any time and that guardsmen may be sent anywhere in the world.<sup>75</sup>**

### **C. Federal Power versus State Power—The Proper Role of Militias**

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<sup>70</sup> See Canestaro, *supra* note 31, at 126. When not under federal control, the members of the National Guard are not covered by the act. See *Gilbert*, 165 F.3d at 472–73 (concluding that guardsman was under state control and thus his use in this arrest did not violate the act); *United States v. Hutchings*, 127 F.3d 1255, 1257–58 (10th Cir. 1997) (determining that guardsmen were not under federal control and thus did not violate the act).

<sup>71</sup> 18 U.S.C. § 1385. There are numerous examples of such laws. See 10 U.S.C. §§ 331–334 (allowing the use of the National Guard and the military to put down rebellions, enforce federal laws, and guarantee application of constitutional rights); 10 U.S.C. §§ 371–382 (allowing military involvement in certain aspects of the war on drugs and the war on terror).

<sup>72</sup> See, e.g., 41 Op. Att’y Gen. 313, 329–30 (1957) (stating that the act does not apply because 10 U.S.C. §§ 332–333 allow for the use of military forces to put down rebellions which interfere with the enforcement of United States laws); 16 Op. Att’y Gen. 162, 163–64 (1878) (explaining the steps that the president would have to take to use troops to quash resistance to internal revenue collection in Arkansas).

<sup>73</sup> See Exec. Order No. 10,730, 22 Fed. Reg. 7628 (Sept. 24, 1957) (calling for use of troops in Arkansas because persons there have “wilfully obstructed the enforcement of orders of the United States District Court for the Eastern District of Arkansas”); 41 Op. Att’y Gen. 313, 327–30 (1957); see also 28 Fed. Reg. 5707 (June 11, 1963) (ordering the obstruction of justice in Alabama to end, and relying on 10 U.S.C. §§ 332–334 for this power). See generally DOUBLER, *supra* note 21, at 213–14 (discussing the National Guard’s role in desegregation).

<sup>74</sup> See *Perpich v. Dep’t of Defense*, 496 U.S. 334, 345 (1990). The Court explained that the creation of two organizations was necessitated by the aftermath of World War I. After having been federalized, guardsmen were not restored to state service, thus destroying the membership of state militias. The 1933 amendments rectified this problem by creating simultaneous enlistment and membership in two organizations. See *id.* at 345–46.

<sup>75</sup> See *id.* at 346–54. *Perpich* dealt with the Montgomery Amendment to the National Defense Authorization Act. The amendment eliminated gubernatorial consent as a prerequisite for federalization of the National Guard. The consent requirement was originally added in 1952 when the state of national emergency requirement was eliminated. The unanimous Court held that in the sphere of military affairs there is “supremacy of federal power.” *Id.* at 351. The militia clause in no way restrains the power of Congress over armies and the national defense, and thus the federal government may federalize the National Guard when it desires and use it how and where it desires. *Id.* at 348–50.

As discussed above in Part I.B.1., the theory behind the necessity for state militias was that they could provide a necessary bulwark against the power of a standing army. With the increasing federalization of the National Guard, however, one must question what the proper role of the Guard is in a changing society.

A starting point to this analysis must be an examination of the state's power over its militia. It is long-settled law that the governor of each state has almost unbridled power over its militia.<sup>76</sup> In *Martin v. Mott*, the Court dealt with the question of who decides when the militia is required for service.<sup>77</sup> Since in this case the President had called out the militia, the Court determined that he was the "sole and exclusive judge" of the necessity for their services.<sup>78</sup> Later courts have applied this principle to governors in their decisions to use the militia.<sup>79</sup> If governors have this power, and the original theory behind state militias was that they would curb excessive federal power, then the inevitable question is whether states can use their militias against what they view as intrusive and unauthorized federal power.

The Court dealt with this issue in *Sterling v. Constantin*.<sup>80</sup> In that case, the governor of Texas called out the National Guard to enforce a regulation limiting oil production from specific oil fields. This action was undertaken despite a federal court injunction that prohibited the governor from enforcing the regulation.<sup>81</sup> The Court held that the governor's actions were improper. While recognizing that the governor's decision about when to use the militia is "conclusive,"<sup>82</sup> the Court found that such use would only be proper if done to *uphold* the rule of law, rather than to "nullify it."<sup>83</sup> Thus, the distinction made by the Court is that the governor's decision to use the militia is beyond

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<sup>76</sup> *Sterling v. Constantin*, 287 U.S. 378, 399–400 (1932); *Moyer v. Peabody*, 212 U.S. 78, 83 (1908); *Luther v. Borden*, 48 U.S. 1, 45–46 (7 How.) (1849); *cf. Martin v. Mott*, 25 U.S. 19, 29–30 (1827).

<sup>77</sup> 25 U.S. 19, 29–30 (1827).

<sup>78</sup> *Id.* at 32. The Court stated, "[I]n many instances, the evidence upon which the President might decide that there is imminent danger of invasion . . . might reveal important secrets of state, which the public interest, and even safety, might imperiously demand to be kept in concealment." *Id.* at 31.

<sup>79</sup> *See Sterling*, 287 U.S. at 399 (stating that governor's decision as to need for National Guard "is conclusive"); *Morgan v. Rhodes*, 456 F.2d 608, 610–11 (6th Cir. 1972) (refusing to second-guess the decision of the governor to use the militia at Kent State), *rev'd on other grounds sub nom.*, *Gilligan v. Morgan*, 413 U.S. 1 (1973); *cf. United States ex rel. Gillett v. Dern*, 74 F.2d 485, 487 (D.C. Cir. 1934) (explaining that when not in federal service, the Guard is within the exclusive province of the state); *People ex rel. Leo v. Hill*, 126 N.Y. 497, 503–04 (1891) (finding that the governor's power to disband portions of the militia is plenary).

This question seems dependent on what political actor is in charge of the militia at the time. A somewhat related issue was raised and dealt with following the death of four students at Kent State University in 1970. The Court in that case determined that the training of the National Guard had been vested in Congress, and thus it would be inappropriate for the judiciary to become involved. *Gilligan v. Morgan*, 413 U.S. 1, 6–10 (1973) (deeming the issue a nonjusticiable political question).

<sup>80</sup> 287 U.S. 378 (1932).

<sup>81</sup> *Id.* at 387–88.

<sup>82</sup> *Id.* at 399 ("His decision to that effect is conclusive.").

<sup>83</sup> *Id.* at 402–04. The Court stated that if the governor could simply disregard federal court rulings, then "fiat of a state Governor, and not the Constitution of the United States, would be the supreme law of the land." *Id.* at 397.

review, but only when used in furtherance of the rule of law. It cannot be used to undermine legitimate federal action.<sup>84</sup>

The most striking examples of the above occurred during the school desegregation battles in the South. In 1957, Arkansas governor Orville Faubus stationed the state National Guard at high schools in Little Rock to prevent the integration of the schools that was ordered by the United States District Court for the Eastern District of Arkansas.<sup>85</sup> Relying on Attorney General Brownell's advice that the federal government could step in to enforce the federal court ruling,<sup>86</sup> President Eisenhower federalized the Arkansas National Guard and used federal troops to enforce the ruling and to implement integration.<sup>87</sup> Similarly, in 1963, the National Guard was caught between opposing forces. Alabama governor George Wallace used his state's National Guard to turn away black students from the University of Alabama at Tuscaloosa, despite a federal court-ordered integration plan.<sup>88</sup> In response, President Kennedy ordered the federalization of the Alabama National Guard.<sup>89</sup> Several days later, federal officials, supported by the National Guard, confronted Governor Wallace at the door of the University of Alabama and enforced the federal court's order of integration.<sup>90</sup>

The situation that the above examples illustrate, while revealing a supremacy of the federal government as against the states, was considered by the framers and wholeheartedly endorsed. In Federalist 16, Hamilton writes about just such a problem and concludes that the people and the federal government would be authorized to stop

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<sup>84</sup> Cf. U.S. CONST. art. VI ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.").

<sup>85</sup> See 41 Op. Att'y Gen. 313, 315–17 (1957); DOUBLER, *supra* note 21, at 213.

<sup>86</sup> 41 Op. Att'y Gen. 313, 324–27 (relying on 10 U.S.C. §§ 332–333, which authorized the president to use the military to enforce federal laws where the states are unable or unwilling to do so).

<sup>87</sup> Exec. Order No. 10,730, 22 Fed. Reg. 7628 (Sept. 24, 1957); 41 Op. Att'y Gen. 313, 329; DOUBLER, *supra* note 21, at 214 ("Presented with orders straight from the federal commander in chief, the Arkansas National Guard responded by disregarding further directions from Governor Faubus. Angered by Eisenhower's move, Faubus referred to his own Arkansas National Guard as 'occupation troops.'").

The President acted under the powers granted in 10 U.S.C. §§ 332–333. The former authorizes action when "rebellion against the authority of the United States make[s] it impracticable to enforce the laws of the United States in any State by the ordinary course of judicial proceedings." 41 Op. Att'y Gen. 313, 327. The latter is to be used when insurrection causes a situation where a class of people are "deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law . . ." *Id.*; see also *In re Debs*, 158 U.S. 564, 582 (1895) ("If the emergency arises, the army of the Nation, and all its militia, are at the service of the Nation to compel obedience to its laws."); 41 Op. Att'y Gen. 313, 332 ("When a local and State Government is unable or unwilling to meet [the threat of mob rule], the Federal Government is not impotent.").

<sup>88</sup> See DOUBLER, *supra* note 21, at 214 (stating that the students, who were escorted by Department of Justice officials, were turned away personally by Governor Wallace).

<sup>89</sup> See *id.*

<sup>90</sup> See *id.* at 215 (indicating that the governor made a short statement vowing to continue to work against integration, and then stepped aside and allowed the students to enter); see also *Alabama v. United States*, 373 U.S. 545, 545 (1963) (refusing to find any basis for damages by the state for the actions of the federal government in stationing troops in preparation of action under 10 U.S.C. § 333).

“illegal usurpation[s] of authority.”<sup>91</sup> This, it seems, is the distinction. Illegal usurpations of power will not be tolerated by either the states or the federal government—and the militia will be available to ensure this.<sup>92</sup>

#### IV. CONCLUSION

The militia of today is far different than that envisioned by the framers of the Constitution.<sup>93</sup> Although it is at least nominally a state body, the National Guard is more properly viewed as an extension of the Army. Capable of being federalized at any time, and of serving anywhere, the National Guard plays an integral role in the country’s national defense needs, both domestically and abroad.<sup>94</sup> Because of this relationship with the federal government, the National Guard no longer seems like the bulwark against that government which it was originally designed to play. In fact, the recent history of the Guard has seen its use in the hands of the federal government against the lawlessness of state governments. Thus, for now, the constitutional underpinnings of the state militias seem obsolete—the worries of the framers seem unimportant. In an age of increasing security measures and fears about government intrusion, however, it remains to be seen whether the framers were more prescient than we now believe.<sup>95</sup>

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<sup>91</sup> THE FEDERALIST NO. 16, at 104 (Alexander Hamilton) (Jacob E. Cooke ed., 1961).

<sup>92</sup> See *supra* notes 34–39.

<sup>93</sup> For a wonderful discussion of the natural progression from a militia-based force to a professional military force, see book five, chapter one of the *Wealth of Nations*. Smith gives two reasons for this development. The first is that advances in society make war more about skill than strength. The second is that as society grows, the goods and services offered by citizens become more essential, and thus citizens cannot simply leave their professions when militia service calls. He writes, “[I]t is necessary that [military service] should become the sole or principal occupation of a particular class of citizens, and the division of labour is as necessary for the improvement of this, as of every other art.” SMITH, *supra* note 2, at 886–87. It is hard to argue that this is not what happened in the United States.

<sup>94</sup> See generally *The Army National Guard: At Home . . . Overseas . . . America’s 911* (indicating that the Army National Guard composes 34% of the Army force structure and that guardsmen are currently deployed around the globe), <http://www.arng.army.mil>.

<sup>95</sup> See generally Canestaro, *supra* note 31 (discussing homeland security and the increasing presence of the military in the United States).

EXHIBIT 15

United States Supreme Court

**PERPICH, GOVERNOR OF MINNESOTA, et al.**

**v.**

**DEPARTMENT OF DEFENSE et al.**

496 U.S. 334 (1990)

Certiorari to the United States Court of Appeals for the Eighth Circuit  
No. 89-542.

Argued March 27, 1990

Decided June 11, 1990

Since 1933, federal law has provided that persons enlisting in a State National Guard unit simultaneously enlist in the National Guard of the United States, a part of the Army. The enlistees retain their status as State Guard members unless and until ordered to active federal duty and revert to state status upon being relieved from federal service. The authority to order the Guard to federal duty was limited to periods of national emergency until 1952, when Congress broadly authorized orders “to active duty or active duty for training” without any emergency requirement, but provided that such orders could not be issued without the consent of the governor of the State concerned. After two State Governors refused to consent to federal training missions abroad for their Guard units, the gubernatorial consent requirement was partially repealed in 1986 by the “Montgomery Amendment,” which provides that a governor cannot withhold consent with regard to active duty outside the United States because of any objection to the location, purpose, type, or schedule of such duty. The Governor of Minnesota and the State of Minnesota (hereinafter collectively referred to as the Governor) filed a complaint for injunctive relief, alleging, inter alia, that the Montgomery Amendment had prevented him from withholding his consent to a 1987 federal training mission in Central America for certain members of the State Guard, and that the Amendment violates the Militia Clauses of Article I, 8, of the Constitution, which authorize Congress to provide for (1) calling forth the militia to execute federal law, suppress insurrections, and repel invasions, and (2) organizing, arming, disciplining, and governing such part of the militia as may be employed in the federal service, reserving to the States the appointment of officers and the power to train the militia according to the discipline prescribed by Congress. The District Court rejected the Governor’s challenge, holding that the Federal Guard was created pursuant to Congress’ Article I, 8, power to raise and support armies; that the fact that Guard units also have an identity as part of the state militia does not limit Congress’ plenary authority to train the units as it sees fit when the Guard is called to active federal service; and that, accordingly, the Constitution neither required the gubernatorial veto nor prohibited its withdrawal. The Court of Appeals affirmed. [[496 U.S. 334, 335](#)]

*Held:*

Article I’s plain language, read as a whole, establishes that Congress may authorize members of the National Guard of the United States to be ordered to active federal duty for purposes of training outside the United States without either the consent of a State Governor or the declaration of a national emergency. Pp. 347-355.

(a) The unchallenged validity of the dual enlistment system means that Guard members lose their state status when called to active federal duty, and, if that duty is a training mission, the training is performed by the Army. During such periods, the second Militia Clause is no longer applicable. Pp. 347-349.

(b) This view of the constitutional issue was presupposed by the Selective Draft Law Cases, [245 U.S. 366, 375](#), 377, 381-384, which held that the Militia Clauses do not constrain Congress’ Article I, 8, powers to provide for the common defense, raise and support armies, make rules for the governance of the Armed Forces, and enact necessary and proper laws for such purposes, but in fact provide additional grants of power to Congress. Pp. 349-351.

(c) This interpretation merely recognizes the supremacy of federal power in the military affairs area and does not significantly affect either the State’s basic training responsibility or its ability to rely on its own Guard in state emergency situations. Pp. 351-352.

(d) In light of the exclusivity of federal power over many aspects of military affairs, see *Tarble's Case*, 13 Wall. 397, the powers allowed to the States by existing statutes are significant. Pp. 353-354.

(e) Thus, the Montgomery Amendment is not inconsistent with the Militia Clauses. Since the original gubernatorial veto was not constitutionally compelled, its partial repeal by the Amendment is constitutionally valid. Pp. 354-355.

880 F.2d 11, affirmed.

STEVENS, J., delivered the opinion for a unanimous Court.

John R. Tunheim, Chief Deputy Attorney General of Minnesota, argued the cause for petitioners. With him on the briefs were Hubert H. Humphrey III, Attorney General, and Peter M. Ackberg, Special Assistant Attorney General.

Solicitor General Starr argued the cause for respondents. With him on the brief were Assistant Attorney General Gerson, Deputy Solicitor General Merrill, James A. Feldman, and Anthony J. Steinmeyer. \*

\* James M. Shannon, Attorney General of Massachusetts, and Douglas H. Wilkins and Eric Mogilnicki, Assistant Attorneys General, Thomas J. Miller, Attorney General of Iowa, James E. Tierney, Attorney General of [496 U.S. 334, 336] Maine, Anthony J. Celebrezze, Jr., Attorney General of Ohio, and Jeffrey Amestoy, Attorney General of Vermont, filed a brief for the State of Iowa et al. as amici curiae urging reversal.

Briefs of amici curiae urging affirmance were filed for the National Guard Association of the United States et al. by Stephen M. Shapiro and Michael K. Kellogg, and by the Attorneys General for their respective States as follows: Don Siegelman of Alabama, Douglas B. Baily of Alaska, Charles M. Oberly III of Delaware, Robert A. Butterworth of Florida, Michael J. Bowers of Georgia, Jim Jones of Idaho, Linley E. Pearson of Indiana, Robert T. Stephan of Kansas, William J. Guste, Jr., of Louisiana, J. Joseph Curran, Jr., of Maryland, Mike Moore of Mississippi, William L. Webster of Missouri, Brian McKay of Nevada, Hal Stratton of New Mexico, Lacy H. Thornburg of North Carolina, Robert H. Henry of Oklahoma, T. Travis Medlock of South Carolina, Roger A. Tellinghuisen of South Dakota, Charles W. Burson of Tennessee, R. Paul Van Dam of Utah, Mary Sue Terry of Virginia, Donald J. Hanaway of Wisconsin, and Joseph B. Meyer of Wyoming; for the Firearms Civil Rights Legal Defense Fund by Stephen P. Halbbrook and Robert Dowlut; and for the Washington Legal Foundation et al. by Daniel J. Popeo, Paul D. Kamenar, and John C. Scully. [496 U.S. 334, 336]

JUSTICE STEVENS delivered the opinion of the Court.

The question presented is whether the Congress may authorize the President to order members of the National Guard to active duty for purposes of training outside the United States during peacetime without either the consent of a State Governor or the declaration of a national emergency.

A gubernatorial consent requirement that had been enacted in 1952<sup>1</sup> was partially repealed in 1986 by the “Montgomery Amendment,” which provides: [496 U.S. 334, 337]

“The consent of a Governor described in subsections (b) and (d) may not be withheld (in whole or in part) with regard to active duty outside the United States, its territories, and its possessions, because of any objection to the location, purpose, type, or schedule of such active duty.”<sup>2</sup>

In this litigation the Governor of Minnesota and the State of Minnesota (hereinafter collectively referred to as the Governor), challenge the constitutionality of that amendment. The Governor contends that it violates the Militia Clauses of the Constitution.<sup>3</sup> [496 U.S. 334, 338]

In his complaint the Governor alleged that pursuant to a state statute the Minnesota National Guard is the organized militia of the State of Minnesota and that pursuant to a federal statute members of that militia “are also members of either the Minnesota unit of the Air National Guard of the United States or the Minnesota unit of the Army National Guard of the United States (hereinafter collectively referred to as the ‘National Guard of the United States’).” App. 5. The complaint further alleged that the Montgomery Amendment had prevented the Governor from withholding his consent to a training mission in Central America for certain members of the Minnesota

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<sup>1</sup> The Armed Forces Reserve Act of 1952, provided in part:

“Sec. 101. When used in this Act -

. . . . .

“(c) ‘Active duty for training’ means full-time duty in the active military service of the United States for training purposes.” 66 Stat. 481.

“[Section 233] (c) At any time, any unit and the members thereof, or any member not assigned to a unit organized for the purpose of serving as such, in an active status in any reserve component may, by competent authority, be ordered to and required to perform active duty or active duty for training, without his consent, for not to exceed fifteen days annually: Provided, That units and members of the National Guard of the United States or the [496 U.S. 334, 337] Air National Guard of the United States shall not be ordered to or required to serve on active duty in the service of the United States pursuant to this subsection without the consent of the Governor of the State or Territory concerned, or the Commanding General of the District of Columbia National Guard.

“(d) A member of a reserve component may, by competent authority, be ordered to active duty or active duty for training at any time with his consent: Provided, That no member of the National Guard of the United States or Air National Guard of the United States shall be so ordered without the consent of the Governor or other appropriate authority of the State, Territory, or District of Columbia concerned.” Id., at 490.

These provisions, as amended, are now codified at 10 U.S.C. 672(b) and 672(d).

<sup>2</sup> The Montgomery Amendment was enacted as 522 of the National Defense Authorization Act for Fiscal Year 1987, Pub. L. 99-661, 522, 100 Stat. 3871.

<sup>3</sup> Two clauses of Article I - clauses 15 and 16 of 8 - are commonly described as “the Militia Clause” or “the Militia Clauses.” They provide:

“The Congress shall have Power . . .

. . . . .

“To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

“To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.”

National Guard in January 1987, and prayed for an injunction against the implementation of any similar orders without his consent.

The District Judge rejected the Governor’s challenge. He explained that the National Guard consists of “two overlapping, but legally distinct, organizations. Congress, under its constitutional authority to ‘raise and support armies’ has created the National Guard of the United States, a federal organization comprised of state national guard units and their members.” 666 F. Supp. 1319, 1320 (Minn. 1987).<sup>4</sup> The fact that these units also maintain an identity as [496 U.S. 334, 339] State National Guards, part of the militia described in Art. I, 8, of the Constitution, does not limit Congress’ plenary authority to train the Guard “as it sees fit when the Guard is called to active federal service.” *Id.*, at 1324. He therefore concluded that “the gubernatorial veto found in 672(b) and 672(d) is not constitutionally required. Having created the gubernatorial veto as an accommodation to the states, rather than pursuant to a constitutional mandate, the Congress may withdraw the veto without violating the Constitution.” *Ibid.*

A divided panel of the Court of Appeals for the Eighth Circuit reached a contrary conclusion. It read the Militia Clauses as preserving state authority over the training of the National Guard and its membership unless and until Congress “determined that there was some sort of exigency or extraordinary need to exert federal power.” *App. to Pet. for Cert. A92*. Only in that event could the army power dissipate the authority reserved to the States under the Militia Clauses.

In response to a petition for rehearing en banc, the Court of Appeals vacated the panel decision and affirmed the judgment of the District Court. Over the dissent of two judges, the en banc court agreed with the District Court’s conclusion that “Congress’ army power is plenary and exclusive” and that the State’s authority to train the militia did not conflict with congressional power to raise armies for the common defense and to control the training of federal reserve forces. 880 F.2d 11, 17-18 (1989).

Because of the manifest importance of the issue, we granted the Governor’s petition for certiorari. [493 U.S. 1017](#) (1990). In the end, we conclude that the plain language [496 U.S. 334, 340] of Article I of the Constitution, read as whole, requires affirmance of the Court of Appeals’ judgment. We believe, however, that a brief description of the evolution of the present statutory scheme will help to explain that holding.

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<sup>4</sup> In addition to the powers granted by the Militia Clauses, n. 3, *supra*, Congress possesses the following powers conferred by Art. I, 8:

“The Congress shall have Power . . . to pay the Debts and provide for the common Defence and general Welfare of the United States; . . .

. . . . .

“To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

“To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

“To provide and maintain a Navy;

“To make Rules for the Government and Regulation of the land and naval Forces;

. . . . .

“To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this [496 U.S. 334, 339] Constitution in the Government of the United States, or in any Department or Officer thereof.”

Moreover, Art. IV, 4, provides:

“The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.”

## I

Two conflicting themes, developed at the Constitutional Convention and repeated in debates over military policy during the next century, led to a compromise in the text of the Constitution and in later statutory enactments. On the one hand, there was a widespread fear that a national standing Army posed an intolerable threat to individual liberty and to the sovereignty of the separate States,<sup>5</sup> while, on the other hand, there was a recognition of the danger of relying on inadequately trained soldiers as the primary means of providing for the common defense.<sup>6</sup> Thus, Congress was authorized both to raise and support a national Army and also to organize “the Militia.” [496 U.S. 334, 341]

In the early years of the Republic, Congress did neither. In 1792, it did pass a statute that purported to establish “an Uniform Militia throughout the United States,” but its detailed command that every able-bodied male citizen between the ages of 18 and 45 be enrolled therein and equip himself with appropriate weaponry<sup>7</sup> was virtually ignored for more than a century, during which time the militia proved to be a decidedly unreliable fighting force.<sup>8</sup> The statute was finally repealed in 1901.<sup>9</sup> It was in that year that President Theodore Roosevelt declared:

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<sup>5</sup> At the Virginia ratification convention, Edmund Randolph stated that “there was not a member in the federal Convention, who did not feel indignation” at the idea of a standing Army. 3 J. Elliot, *Debates on the Federal Constitution* 401 (1863).

<sup>6</sup> As Alexander Hamilton argued in the *Federalist Papers*:

“Here I expect we shall be told that the militia of the country is its natural bulwark, and would be at all times equal to the national defence. This doctrine, in substance, had like to have lost us our independence. It cost millions to the United States that might have been saved. The facts which, from our own experience, forbid a reliance of this kind, are too recent to permit us to be the dupes of such a suggestion. The steady operations of war against a regular and disciplined army can only be successfully conducted by a force of the same kind. Considerations of economy, not less than of stability and vigor, confirm this position. The American militia, in the course of the late war, have, by their valor on numerous occasions, erected eternal monuments to their fame; but the bravest of them feel and know that the liberty of their country could not have been established by their efforts alone, however great and valuable they were. War, like most other things, is a science to be acquired and perfected by diligence, by perseverance, by time, and by practice.” *The Federalist No. 25*, pp. 156-157 (E. Earle ed. 1938).

<sup>7</sup> “That every citizen so enrolled and notified, shall, within six months thereafter, provide himself with a good musket or firelock, a sufficient bayonet and belt, two spare flints, and a knapsack, a pouch with a box therein to contain not less than twenty-four cartridges, suited to the bore of his musket or firelock, each cartridge to contain a proper quantity of powder and ball: or with a good rifle, knapsack, shot-pouch and powder-horn, twenty balls suited to the bore of his rifle, and a quarter of a pound of powder; and shall appear, so armed, accoutred and provided, when called out to exercise, or into service, except, that when called out on company days to exercise only, he may appear without a knapsack.” 1 Stat. 271.

<sup>8</sup> Wiener, *The Militia Clause of the Constitution*, 54 *Harv. L. Rev.* 181, 187-194 (1940).

<sup>9</sup> See 31 Stat. 748, 758.

“Our militia law is obsolete and worthless.”<sup>10</sup> The process of transforming “the National [496 U.S. 334, 342] Guard of the several States” into an effective fighting force then began.

The Dick Act divided the class of able-bodied male citizens between 18 and 45 years of age into an “organized militia” to be known as the National Guard of the several States, and the remainder of which was then described as the “reserve militia,” and which later statutes have termed the “unorganized militia.” The statute created a table of organization for the National Guard conforming to that of the Regular Army, and provided that federal funds and Regular Army instructors should be used to train its members.<sup>11</sup> It is undisputed that Congress was acting pursuant to the Militia Clauses of the Constitution in passing the Dick Act. Moreover, the legislative history of that Act indicates that Congress contemplated that the services of the organized militia would “be rendered only upon the soil of the United States or of its Territories.” H. R. Rep. No. 1094, 57th Cong., 1st Sess., 22 (1902). In 1908, however, the statute was amended to provide [496 U.S. 334, 343] expressly that the Organized Militia should be available for service “either within or without the territory of the United States.”<sup>12</sup>

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<sup>10</sup> “Action should be taken in reference to the militia and to the raising of volunteer forces. Our militia law is obsolete and worthless. The organization and armament of the National Guard of the several States, which are treated as militia in the appropriations by the Congress, should be made identical with those provided for the regular forces. The obligations and duties of the Guard in time of war should be carefully defined, and a system established by law under which the method of procedure of raising volunteer forces should be prescribed in advance. It is utterly impossible in the excitement and haste of impending war to do this satisfactorily if the arrangements have not been made long beforehand. Provision should be made for utilizing in the first volunteer organizations called out the training of those citizens who have already had experience under arms, and especially for the selection in advance of the officers of any force which may be raised; for careful selection of the kind necessary is impossible after the outbreak of war.” First Annual Message to Congress, Dec. 3, 1901, 14 Messages and Papers of the Presidents 6672.

<sup>11</sup> The Act of January 21, 1903, 32 Stat. 775, provided in part:

“That the militia shall consist of every able-bodied male citizen of the respective States, Territories, and the District of Columbia, and every able-bodied male of foreign birth who has declared his intention to become a citizen, who is more than eighteen and less than forty-five years of age, and shall be divided into two classes - the organized militia, to be known as the National Guard of the State, Territory, or District of Columbia, or by such other designations as may be given them by the laws of the respective States or Territories, and the remainder to be known as the Reserve Militia.”

Section 3 of the 1903 Act provided in part:

“That the regularly enlisted, organized, and uniformed active militia in the several States and Territories and the District of Columbia who have heretofore participated or shall hereafter participate in the apportionment of the annual appropriation provided by section sixteen hundred and sixty-one of the Revised Statutes of the United States, as amended, whether known and designated as National Guard, militia, or otherwise, shall constitute the organized militia.” Ibid.

Section 4 of the 1903 Act authorized the President to call forth the militia for a period not exceeding nine months. Id., at 776.

<sup>12</sup> Section 4, 35 Stat. 400.

When the Army made plans to invoke that authority by using National Guard units south of the Mexican border, Attorney General Wickersham expressed the opinion that the Militia Clauses precluded such use outside the Nation's borders.<sup>13</sup> In response to that opinion and to the widening conflict in Europe, in 1916 Congress decided to "federalize" the National Guard.<sup>14</sup> In addition to providing for greater federal control and federal funding of the Guard, the statute required every guardsman to take a dual oath - to support the Nation as well as the States and to obey the President as well as the Governor - and authorized the President to draft members of the Guard into federal service. The statute expressly provided that the Army of the United States should include not only "the Regular Army," but also "the National [496 U.S. 334, 344] Guard while in the service of the United States,"<sup>15</sup> and that when drafted into federal service by the President, members of the Guard so drafted should "from the date of their draft, stand discharged from the militia, and shall from said date be subject to" the rules and regulations governing the Regular Army. 111, 39 Stat. 211.

During World War I, the President exercised the power to draft members of the National Guard into the Regular Army. That power, as well as the power to compel civilians to render military service, was upheld in the Selective Draft Law Cases, [245 U.S. 366](#) (1918).<sup>16</sup> Specifically, in those cases, and in *Cox v. Wood*, [247 U.S. 3](#) (1918), the Court held that the plenary power to raise armies was "not qualified or restricted by the provisions of the militia clause."<sup>17</sup> [496 U.S. 334, 345]

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<sup>13</sup> "It is certain that it is only upon one or more of these three occasions - when it is necessary to suppress insurrections, repel invasions, or to execute the laws of the United States - that even Congress can call this militia into the service of the United States, or authorize it to be done." 29 Op. Atty. Gen. 322, 323-324 (1912).

"The plain and certain meaning and effect of this constitutional provision is to confer upon Congress the power to call out the militia `to execute the laws of the Union' within our own borders where, and where only, they exist, have any force, or can be executed by any one. This confers no power to send the militia into a foreign country to execute our laws which have no existence or force there and can not be there executed." *Id.*, at 327.

Under Attorney General Wickersham's analysis, it would apparently be unconstitutional to call forth the militia for training duty outside the United States, even with the consent of the appropriate Governor. Of course, his opinion assumed that the militia units so called forth would retain their separate status in the state militia during their period of federal service.

<sup>14</sup> See Wiener, 54 Harv. L. Rev., at 199-203.

<sup>15</sup> The National Defense Act of June 3, 1916, 39 Stat. 166, provided in part:

"That the Army of the United States shall consist of the Regular Army, the Volunteer Army, the Officers' Reserve Corps, the Enlisted Reserve Corps, the National Guard while in the service of the United States, and such other land forces as are now or may hereafter be authorized by law."

<sup>16</sup> "The possession of authority to enact the statute must be found in the clauses of the Constitution giving Congress power `to declare war; . . . to raise and support armies, but no appropriation of money to that use shall be for a longer term than two years; . . . to make rules for the government and regulation of the land and naval forces.' Article I, 8. And of course the powers conferred by these provisions like all other powers given carry with them as provided by the Constitution the authority `to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.' Article I, 8." 245 U.S., at 377 .

<sup>17</sup> "This result is apparent since on the face of the opinion delivered in those cases the constitutional power of Congress to compel the military service which the assailed law commanded was based on the following propositions: (a) That the power of Congress to compel military service and the duty of the citizen to render it when called for were derived from the authority given to Congress by the Constitution to declare war and to raise armies. (b) That those powers were not qualified or restricted by the provisions of the militia clause, and hence the authority in the exercise of the war power to raise armies and use them when raised was not subject to limitations as to use of the militia, if any, deduced from the militia [496 U.S. 334, 345] clause. And (c) that from

The draft of the individual members of the National Guard into the Army during World War I virtually destroyed the Guard as an effective organization. The draft terminated the members' status as militiamen, and the statute did not provide for a restoration of their prewar status as members of the Guard when they were mustered out of the Army. This problem was ultimately remedied by the 1933 amendments to the 1916 Act. Those amendments created the "two overlapping but distinct organizations" described by the District Court - the National Guard of the various States and the National Guard of the United States.

Since 1933 all persons who have enlisted in a State National Guard unit have simultaneously enlisted in the National Guard of the United States. In the latter capacity they became a part of the Enlisted Reserve Corps of the Army, but unless and until ordered to active duty in the Army, they retained their status as members of a separate State Guard unit. Under the 1933 Act, they could be ordered into active service whenever Congress declared a national emergency and authorized the use of troops in excess of those in the Regular Army. The statute plainly described the effect of such an order:

"All persons so ordered into the active military service of the United States shall from the date of such order stand relieved from duty in the National Guard of their respective States, Territories, and the District of Columbia so long as they shall remain in the active military service of the United States, and during such time shall be subject [496 U.S. 334, 346] to such laws and regulations for the government of the Army of the United States as may be applicable to members of the Army whose permanent retention in active military service is not contemplated by law. The organization of said units existing at the date of the order into active Federal service shall be maintained intact insofar as practicable." 18, 48 Stat. 160-161.

"Upon being relieved from active duty in the military service of the United States all individuals and units shall thereupon revert to their National Guard status." *Id.*, at 161.

Thus, under the "dual enlistment" provisions of the statute that have been in effect since 1933, a member of the Guard who is ordered to active duty in the federal service is thereby relieved of his or her status in the State Guard for the entire period of federal service.

Until 1952 the statutory authority to order National Guard units to active duty was limited to periods of national emergency. In that year, Congress broadly authorized orders to "active duty or active duty for training" without any emergency requirement, but provided that such orders could not be issued without gubernatorial consent. The National Guard units have under this plan become a sizable portion of the Nation's military forces; for example, "the Army National Guard provides 46 percent of the combat units and 28 percent of the support forces of the Total Army."<sup>18</sup> Apparently gubernatorial consents to training missions were routinely obtained until 1985, when the Governor of California refused to consent to a training mission for 450 members of the California National Guard in Honduras, and the Governor of Maine shortly thereafter refused to consent to a similar mission. Those incidents led to the enactment of the Montgomery Amendment and this litigation ensued. [496 U.S. 334, 347]

## II

The Governor's attack on the Montgomery Amendment relies in part on the traditional understanding that "the Militia" can only be called forth for three limited purposes that do not encompass either foreign service or nonemergency conditions, and in part on the express language in the second Militia Clause reserving to the States "the Authority of training the Militia." The Governor does not, however, challenge the authority of Congress to

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these principles it also follows that the power to call for military duty under the authority to declare war and raise armies and the duty of the citizen to serve when called were coterminous with the constitutional grant from which the authority was derived and knew no limit deduced from a separate, and for the purpose of the war power, wholly incidental, if not irrelevant and subordinate, provision concerning the militia, found in the Constitution. Our duty to affirm is therefore made clear." 247 U.S., at 6 .

<sup>18</sup> App. 12 (testimony of James H. Webb, Assistant Secretary of Defense for Reserve Affairs, before a subcommittee of the Senate Armed Services Committee on July 15, 1986).

create a dual enlistment program.<sup>19</sup> Nor does the Governor claim that membership in a State Guard unit - or any type of state militia - creates any sort of constitutional immunity from being drafted into the Federal Armed Forces. Indeed, it would be ironic to claim such immunity when every member of the Minnesota National Guard has voluntarily enlisted, or accepted a commission as an officer, in the National Guard of the United States and thereby become a member of the Reserve Corps of the Army.

The unchallenged validity of the dual enlistment system means that the members of the National Guard of Minnesota who are ordered into federal service with the National Guard of the United States lose their status as members of the state militia during their period of active duty. If that duty is a training mission, the training is performed by the Army in which the trainee is serving, not by the militia from which the member has been temporarily disassociated. “Each member of the Army National Guard of the United States or the Air National Guard of the United States who is ordered to active duty is relieved from duty in the National Guard of his State or Territory, or of Puerto Rico or the District of Columbia, as [496 U.S. 334, 348] the case may be, from the effective date of his order to active duty until he is relieved from that duty.” 32 U.S.C. 325(a).

This change in status is unremarkable in light of the traditional understanding of the militia as a part-time, nonprofessional fighting force. In *Dunne v. People*, 94 Ill. 120 (1879), the Illinois Supreme Court expressed its understanding of the term “militia” as follows:

“Lexicographers and others define militia, and so the common understanding is, to be ‘a body of armed citizens trained to military duty, who may be called out in certain cases, but may not be kept on service like standing armies, in time of peace.’ That is the case as to the active militia of this State. The men comprising it come from the body of the militia, and when not engaged at stated periods in drilling and other exercises, they return to their usual avocations, as is usual with militia, and are subject to call when the public exigencies demand it.” *Id.*, at 138.

Notwithstanding the brief periods of federal service, the members of the State Guard unit continue to satisfy this description of a militia. In a sense, all of them now must keep three hats in their closets - a civilian hat, a state militia hat, and an army hat - only one of which is worn at any particular time. When the state militia hat is being worn, the “drilling and other exercises” referred to by the Illinois Supreme Court are performed pursuant to “the Authority of training the Militia according to the discipline prescribed by Congress,” but when that hat is replaced by the federal hat, the second Militia Clause is no longer applicable.

This conclusion is unaffected by the fact that prior to 1952 Guard members were traditionally not ordered into active service in peacetime or for duty abroad. That tradition is at least partially the product of political debate and political [496 U.S. 334, 349] compromise, but even if the tradition were compelled by the text of the Constitution, its constitutional aspect is related only to service by State Guard personnel who retain their state affiliation during their periods of service. There now exists a wholly different situation, in which the state affiliation is suspended in favor of an entirely federal affiliation during the period of active duty.

This view of the constitutional issue was presupposed by our decision in the Selective Draft Law Cases, [245 U.S. 366](#) (1918). Although the Governor is correct in pointing out that those cases were decided in the context of an actual war, the reasoning in our opinion was not so limited. After expressly noting that the 1916 Act had incorporated members of the National Guard into the National Army, the Court held that the Militia Clauses do not constrain the powers of Congress “to provide for the common Defence,” to “raise and support Armies,” to “make Rules for the Government and Regulation of the land and naval Forces,” or to enact such laws as “shall be necessary and proper” for executing those powers. *Id.*, at 375, 377, 381-384. The Court instead held that, far from being a limitation on those powers, the Militia Clauses are - as the constitutional text plainly indicates - additional grants of power to Congress.

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<sup>19</sup> “The dual enlistment system requires state National Guard members to simultaneously enroll in the National Guard of the United States (NGUS), a reserve component of the national armed forces. 10 U.S.C. 101(11) and (13), 591(a), 3261, 8261; 32 U.S.C. 101(5) and (7). It is an essential aspect of traditional military policy of the United States. 32 U.S.C. 102. The State of Minnesota fully supports dual enlistment and has not challenged the concept in any respect.” Reply Brief for Petitioners 9 (footnote omitted).

The first empowers Congress to call forth the militia “to execute the Laws of the Union, suppress Insurrections and repel Invasions.” We may assume that Attorney General Wickersham was entirely correct in reasoning that when a National Guard unit retains its status as a state militia, Congress could not “impress” the entire unit for any other purpose. Congress did, however, authorize the President to call forth the entire membership of the Guard into federal service during World War I, even though the soldiers who fought in France were not engaged in any of the three specified purposes. Membership in the militia did not exempt [496 U.S. 334, 350] them from a valid order to perform federal service, whether that service took the form of combat duty or training for such duty.<sup>20</sup> The congressional power to call forth the militia may in appropriate cases supplement its broader power to raise armies and provide for the common defense and general welfare, but it does not limit those powers.<sup>21</sup>

The second Militia Clause enhances federal power in three additional ways. First, it authorizes Congress to provide for “organizing, arming and disciplining the Militia.” It is by congressional choice that the available pool of citizens has been formed into organized units. Over the years, Congress has exercised this power in various ways, but its current choice of a dual enlistment system is just as permissible as the 1792 choice to have the members of the militia arm themselves. Second, the Clause authorizes Congress to provide for governing such part of the militia as may be employed in the service of the United States. Surely this authority encompasses continued training while on active duty. Finally, although the appointment of officers “and the Authority of training the Militia” is reserved to the States respectively, that limitation is, in turn, limited by the words “according to the discipline prescribed by Congress.” If the discipline required for effective service in the Armed Forces of a global power requires training in distant lands, or distant skies, Congress has the authority to provide it. The subordinate [496 U.S. 334, 351] authority to perform the actual training prior to active duty in the federal service does not include the right to edit the discipline that Congress may prescribe for Guard members after they are ordered into federal service.

The Governor argues that this interpretation of the Militia Clauses has the practical effect of nullifying an important state power that is expressly reserved in the Constitution. We disagree. It merely recognizes the supremacy of federal power in the area of military affairs.<sup>22</sup> The Federal Government provides virtually all of the funding, the material, and the leadership for the State Guard units. The Minnesota unit, which includes about 13,000 members, is affected only slightly when a few dozen, or at most a few hundred, soldiers are ordered into active service for brief periods of time.<sup>23</sup> Neither the State’s basic training responsibility, nor its ability to rely on its own Guard in state emergency situations, is significantly affected. Indeed, if the federal training mission were to interfere with the State Guard’s capacity to respond to local emergencies, the Montgomery Amendment would

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<sup>20</sup> See *Selective Draft Law Cases*, 245 U.S. 366, 382 -389 (1918); *Cox v. Wood*, 247 U.S. 3, 6 (1918).

<sup>21</sup> Congress has by distinct statutes provided for activating the National Guard of the United States and for calling forth the militia, including the National Guards of the various States. See 10 U.S.C. 672-675 (authorizing executive officials to order reserve forces, including the National Guard of the United States and the Air National Guard of the United States, to active duty); 10 U.S.C. 331-333 (authorizing executive officials to call forth the militia of the States); 10 U.S.C. 3500, 8500 (authorizing executive officials to call forth the National Guards of the various States). When the National Guard units of the States are called forth, the orders “shall be issued through the governors of the States.” 3500.

<sup>22</sup> This supremacy is evidenced by several constitutional provisions, especially the prohibition in Art. I, 10, of the Constitution, which states:

“No State shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.”

<sup>23</sup> According to the Governor, at most “only several hundred” of Minnesota’s National Guard members “will be in federal training at any one time.” Brief for Petitioners 41.

permit the Governor to veto the proposed mission.<sup>24</sup> Moreover, [496 U.S. 334, 352] Congress has provided by statute that in addition to its National Guard, a State may provide and maintain at its own expense a defense force that is exempt from being drafted into the Armed Forces of the United States. See 32 U.S.C. 109(c). As long as that provision remains in effect, there is no basis for an argument that the federal statutory scheme deprives Minnesota of any constitutional entitlement to a separate militia of its own.<sup>25</sup> [496 U.S. 334, 353]

In light of the Constitution's more general plan for providing for the common defense, the powers allowed to the States by existing statutes are significant. As has already been mentioned, several constitutional provisions commit matters of foreign policy and military affairs to the exclusive control of the National Government.<sup>26</sup> This Court in *Tarble's Case*, 13 Wall. 397 (1872), had occasion to observe that the constitutional allocation of powers

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<sup>24</sup> The Montgomery Amendment deprives the Governors of the power to veto participation in a National Guard of the United States training mission on the basis of any objection to "the location, purpose, type, or schedule of such active duty." 10 U.S.C. 672(f). Governors may withhold their consent on other grounds. The Governor and the United States agree that if the federalization of the Guard would interfere with the State Guard's ability to address a local emergency, that circumstance would be a [496 U.S. 334, 352] valid basis for a gubernatorial veto. Brief for Petitioners 41; Brief for Respondents 9.

The Governor contends that the residual veto power is of little use. He predicates this argument, however, on a claim that the federal training program has so minimal an impact upon the State Guard that the veto is never necessary:

"Minnesota has approximately 13,000 members of the National Guard. At most, only several hundred will be in federal training at any one time. To suggest that a governor will ever be able to withhold consent under the Montgomery Amendment assumes (1) local emergencies can be adequately predicted in advance, and (2) a governor can persuade federal authorities that National Guard members designated for training are needed for state purposes when the overwhelming majority of the National Guard remains at home." Brief for Petitioners 41.

Under the interpretation of the Montgomery Amendment advanced by the federal parties, it seems that a governor might also properly withhold consent to an active duty order if the order were so intrusive that it deprived the State of the power to train its forces effectively for local service:

"Under the current statutory scheme, the States are assured of the use of their National Guard units for any legitimate state purpose. They are simply forbidden to use their control over the state National Guard to thwart federal use of the NGUS for national security and foreign policy objectives with which they disagree." Brief for Respondents 13.

<sup>25</sup> The Governor contends that the state defense forces are irrelevant to this case because they are not subject to being called forth by the National Government and therefore cannot be militia within the meaning of the Constitution. We are not, however, satisfied that this argument is persuasive. First, the immunity of those forces from impressment into the national service appears - if indeed they have any such immunity - to be the consequence of a purely statutory choice, and it is not obvious why that choice should alter the constitutional status of the forces allowed the States. Second, although we do not believe it necessary to resolve the [496 U.S. 334, 353] issue, the Governor's construction of the relevant statute is subject to question. It is true that the state defense forces "may not be called, ordered, or drafted into the armed forces." 32 U.S.C. 109(c). It is nonetheless possible that they are subject to call under 10 U.S.C. 331-333, which distinguish the "militia" from the "armed forces," and which appear to subject all portions of the "militia" - organized or not - to call if needed for the purposes specified in the Militia Clauses. See n. 21, *supra*.

<sup>26</sup> See, e. g., Art. I, 8, cl. 11 (Congress' power to declare war); Art. I, 10, cl. 1 (States forbidden to enter into treaties); Art. I, 10, cl. 3 (States forbidden to keep troops in time of peace, enter into agreements with foreign powers, or engage in war absent imminent invasion); Art. II, 3 (President shall receive ambassadors).

in this realm gave rise to a presumption that federal control over the Armed Forces was exclusive.<sup>27</sup> Were it not for the Militia Clauses, it might be [496 U.S. 334, 354] possible to argue on like grounds that the constitutional allocation of powers precluded the formation of organized state militia.<sup>28</sup> The Militia Clauses, however, subordinate any such structural inferences to an express permission while also subjecting state militia to express federal limitations.<sup>29</sup>

We thus conclude that the Montgomery Amendment is not inconsistent with the Militia Clauses. In so doing, we of course do not pass upon the relative virtues of the various political choices that have frequently altered the relationship between the Federal Government and the States in the field of military affairs. This case does not raise any question concerning the wisdom of the gubernatorial veto established [496 U.S. 334, 355] in 1952 or of its partial repeal in 1986. We merely hold that because the former was not constitutionally compelled, the Montgomery Amendment is constitutionally valid.

The judgment of the Court of Appeals is affirmed.

It is so ordered.

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<sup>27</sup> In the course of holding that a Wisconsin court had no jurisdiction to issue a writ of habeas corpus to inquire into the validity of a soldier's enlistment in the United States Army, we observed:

"Now, among the powers assigned to the National government, is the power `to raise and support armies,' and the power `to provide for the government and regulation of the land and naval forces.' The execution of these powers falls within the line of its duties; and its control over the subject is plenary and exclusive. It can determine, without question from any State authority, how the armies shall be raised, whether by voluntary enlistment or forced draft, the age at which the soldier shall be received, and the period for which he shall be taken, the compensation he shall be allowed, and the service to which he shall be assigned. And it can provide the rules for the government and regulation of the forces after they are raised, define what shall constitute military offences, and prescribe their punishment. No interference with the execution of this power of the National government in the formation, organization, and government of its armies by any State officials could be permitted without greatly impairing [496 U.S. 334, 354] the efficiency, if it did not utterly destroy, this branch of the public service." 13 Wall., at 408.

<sup>28</sup> See *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 318 (1936) ("The powers to declare and wage war, to conclude peace, to make treaties, to maintain diplomatic relations with other sovereignties, if they had never been mentioned in the Constitution, would have vested in the federal government as necessary concomitants of nationality"); *The Federalist* No. 23, p. 143 (E. Earle ed. 1938) ("[I]t must be admitted . . . that there can be no limitation of that authority which is to provide for the defense and protection of the community, in any matter essential to its efficacy - that is, in any matter essential to the formation, direction, or support of the NATIONAL FORCES"); L. Henkin, *Foreign Affairs and the Constitution* 234-244 (1972) (discussing implied constitutional restrictions upon state policies related to foreign affairs); Comment, *The Legality of Nuclear Free Zones*, 55 U. Chi. L. Rev. 965, 991-997 (1988) (discussing implied constitutional restrictions upon state policies related to foreign affairs or the military).

<sup>29</sup> The powers allowed by statute to the States make it unnecessary for us to examine that portion of the *Selective Draft Law Cases*, 245 U.S. 366 (1918), in which we stated:

"[The Constitution left] under the sway of the States undelegated the control of the militia to the extent that such control was not taken away by the exercise by Congress of its power to raise armies. This did not diminish the military power or curb the full potentiality of the right to exert it but left an area of authority requiring to be provided for (the militia area) unless and until by the exertion of the military power of Congress that area had been circumscribed or totally disappeared." *Id.*, at 383. [496 U.S. 334, 356]

## EXHIBIT 16

# NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS)

Department of Homeland Security, March 1, 2004  
<http://www.nimsonline.com/docs/NIMS-90-web.pdf>

## PREFACE

On February 28, 2003, the President issued Homeland Security Presidential Directive (HSPD)-5, Management of Domestic Incidents, which directs the Secretary of Homeland Security to develop and administer a National Incident Management System (NIMS). This system provides a consistent nationwide template to enable Federal, State, local, and tribal governments and private-sector and nongovernmental organizations to work together effectively and efficiently to prepare for, prevent, respond to, and recover from domestic incidents, regardless of cause, size, or complexity, including acts of catastrophic terrorism. This document establishes the basic elements of the NIMS and provides mechanisms for the further development and refinement of supporting national standards, guidelines, protocols, systems, and technologies.

Building on the foundation provided by existing incident management and emergency response systems used by jurisdictions and functional disciplines at all levels, this document integrates best practices that have proven effective over the years into a comprehensive framework for use by incident management organizations in an allhazards context (terrorist attacks, natural disasters, and other emergencies) nationwide. It also sets in motion the mechanisms necessary to leverage new technologies and adopt new approaches that will enable continuous refinement of the NIMS over time. This document was developed through a collaborative, intergovernmental partnership with significant input from the incident management functional disciplines, the private sector, and nongovernmental organizations.

The NIMS represents a core set of doctrine, concepts, principles, terminology, and organizational processes to enable effective, efficient, and collaborative incident management at all levels. It is not an operational incident management or resource allocation plan. To this end, HSPD-5 requires the Secretary of Homeland Security to develop a National Response Plan (NRP) that integrates Federal government domestic prevention, preparedness, response, and recovery plans into a single, all-disciplines, allhazards plan. The NRP, using the comprehensive framework provided by the NIMS, will provide the structure and mechanisms for national-level policy and operational direction for Federal support to State, local, and tribal incident managers and for exercising direct Federal authorities and responsibilities as appropriate under the law.

HSPD-5 requires all Federal departments and agencies to adopt the NIMS and to use it in their individual domestic incident management and emergency prevention, preparedness, response, recovery, and mitigation programs and activities, as well as in support of all actions taken to assist State, local, or tribal entities. The directive also requires Federal departments and agencies to make adoption of the NIMS by State and local organizations a condition for Federal preparedness assistance (through grants, contracts, and other activities) beginning in FY 2005. Jurisdictional compliance with certain aspects of the NIMS will be possible in the short term, such as adopting the basic tenets of the Incident Command System (ICS) identified in this document. Other aspects of the NIMS, however, will require additional development and refinement to enable compliance at a future date (e.g., data and communications systems interoperability). The Secretary of Homeland Security, through the NIMS Integration Center discussed in Chapter VII, will publish separately the standards, guidelines, and compliance protocols for determining whether a Federal, State, local, or tribal entity has adopted the aspects of the NIMS that are in place by October 1, 2004. The Secretary, through the NIMS Integration Center, will also publish, on an ongoing basis, additional standards, guidelines, and compliance protocols for the aspects of the NIMS not yet fully developed.

# REGULATION OF PROFESSIONS BY INTERSTATE COMPACT

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The regulation of various professions by the individual states has resulted in nonharmonious licensing standards, impeding individuals licensed by one state from practicing in sister states. This problem has become more serious in the practice of public accountancy because of the increased need for accountants to travel to many states to serve clients with multistate locations. More recently, however, federal legislation has raised issues regarding professional standards rather than licensing issues. When Congress enacted the Sarbanes-Oxley Act of 2002, it created the Public Company Accounting Oversight Board, granting it federal authority to establish auditing standards for public companies. Questions subsequently have arisen about commensurate authority for auditing standards for private entities.

Harmonious state regulatory standards for the accounting profession may be established on a regional or national basis by five nonjudicial methods. Each state legislature may enact (1) a reciprocity statute providing that a professional licensed by a sister state with identical standards automatically will be licensed; (2) the Uniform Accountancy Act drafted by the National Conference of Commissioners on Uniform State Laws; (3) a statute authorizing the head of a concerned state regulatory body to sign an interstate administrative reciprocity agreement with counterparts in other states; (4) an interstate compact; or (5) a federal-state compact. Congress, of course, may enact a complete or partial preemption statute based upon its constitutional power to regulate commerce among the several states. These same methods could also achieve uniform auditing standards, but the first two would be at a disadvantage because they would require such standards to be separately legislated, whereas the other methods could create a nonlegislative mechanism (in the form of a commission with the authority to promulgate regulations) to make them. This article focuses on interstate compacts and federal-state compacts because they offer advantages in dealing with both the

licensing and the standards problem.

## **Interstate Compacts**

Article I, section 10 of the United States Constitution grants states the authority to enter into an "agreement or compact with another state" with the consent of Congress. The constitution contains no restrictions on the subject matter of a compact and is silent about the process by which states may enter into compacts, with the exception of the required consent of Congress. The United States Supreme Court (359 U.S. 275 at 285) opined in 1959 that an interstate compact is a "contract" protected by the Constitution's contract clause forbidding a state legislature to enact a "law impairing the obligation of contracts." A compact may involve parts or all of two states or all 50 states, as well as the Commonwealth of Puerto Rico, the District of Columbia, United States territories, and Canadian provinces. As examples, the Interstate Compact on Juveniles has been enacted by all 50 state legislatures, and the Interstate Compact on Education has been enacted by 48 state legislatures, the District of Columbia City Council, and the legislatures in three territories. Many other compacts have been enacted by a smaller number of states, and a significant number of compacts have been enacted by only a single state legislature.

## **The Negotiation and Ratification Process**

The process of enacting a compact involves three steps: negotiators reaching an agreement on a tentative compact; enactment of the compact by concerned state legislatures; and congressional grant of consent if the compact is political in nature (see below). Political obstacles typically arise during each step, even for relatively simple compacts established or proposed in the past, and may become an insurmountable obstacle.

Compact negotiations. Gubernatorially appointed members representing their state on joint commissions negotiated and drafted all interstate compacts until 1930. The advantages of this method include the

prestige of the commission, staff assistance, and the ability to continue negotiations over a substantial period of time. This method has been supplemented with other approaches, as illustrated by the proposed Interstate Insurance Product Regulation Compact, which was drafted by the National Association of Insurance Commissioners (NAIC), and the Nurse Licensure Compact, which was drafted by the National Council of State Boards of Nursing.

Commissioners critically examine each draft compact provision and seek to include only provisions perceived to be acceptable to their respective state legislatures. Individual negotiators may raise major administrative, financial, substantive, and technical issues that must be resolved. Unanimity must be reached on each issue, often an extremely difficult task, before the compact can be submitted to each concerned state legislature.

A negotiated compact proposing creation of only a study commission charged with developing recommendations to solve a specific problem or of a commission financed entirely by user fees generally involves a limited financial commitment by each compacting state and may not encounter serious legislative opposition. One or more legislative leaders in each state, however, may inform negotiators that the compact will not be enacted unless it is amended to authorize specified forms of gubernatorial or legislative oversight. Fears that political checks on the activities of the proposed compact commission could impair its functioning provide additional impetus for prolonged negotiations. In addition, governors may instruct negotiators to ensure that their states' political interests are safeguarded.

Not surprisingly, state legislators may redebate many of the issues addressed by compact negotiators. If the latter fail to keep in close contact with legislative leaders or the governor, the legislature may reject the compact bill or the governor may veto it. Negotiators also may be instructed to renegotiate certain contentious compact provisions.

The establishment of a compact also may be delayed or complicated by political concerns. The process of obtaining the approval of each state legislature can be lengthy because each statute must be identical to statutes enacted by the other states. There are many examples of prolonged delays prior to the enactment of an interstate compact by all concerned state legislatures. Five years were required to secure the necessary enactments for the Atlantic States Marine Fisheries Compact, which became effective in 1942. The Illinois, Indiana, Michigan, Minnesota, and Wisconsin state legislatures enacted

the Great Lakes Basin Compact in 1955, but enactment was delayed in Pennsylvania (1956), New York (1960), and Ohio (1963).

Compact implementation also may be delayed or prevented if one or more of the concerned states make participation contingent upon specified other states enacting the compact, as illustrated by the Ohio River Valley Sanitation Compact. The party state legislatures or the compact also can make its execution conditional upon Congress initiating specific actions. Furthermore, a compact may not be self-executing and a governor may decide not to execute it. The 1936 New York State Legislature enacted a non-self-executing compact—the Interstate Compact for the Supervision of Parolees—and it was not executed for eight years because of the refusal of Governor Herbert H. Lehman to execute it.

### **Congressional Consent**

Congressional consent is not required for all compacts. In 1845, the New Hampshire Supreme Court (17 N.H. 200) rejected the argument that an 1819 New Hampshire statute and an 1821 Maine statute authorizing construction of a bridge over navigable waters (the Piscataqua River) without congressional consent violated the compact clause of the U.S. Constitution. The court opined that no constitutional provision precluded each of the two states from authorizing the erection of a bridge to the middle of the river.

In 1893, the U.S. Supreme Court, in *Virginia v. Tennessee* (148 U.S. 503 at 520), specifically held such consent is required only for a compact tending to increase “the political power or influence” of the party states and to encroach “upon the full and free exercise of federal authority.” An interstate compact regulating accounting clearly would not be a political compact requiring the consent of Congress for execution.

The United States Steel Corporation challenged the constitutionality of the Multistate Tax Compact on the ground that it lacked congressional consent. In 1978, the Supreme Court (434 U.S. 452 at 473) upheld the compact's constitutionality by declaring it did not “authorize the member states to exercise any powers they could not exercise in its absence.”

Consent types. Most compacts are submitted to Congress for its grant of consent, but a small number of compacts have been executed without such submittal and grant of consent. Congress can grant its consent prior to (permissive) and subsequent to (ratifying) enactment of a compact by the concerned state legislatures. In addition, Congress is free to grant

consent-in-advance for each compact entered into by states or blanket approval in advance for all compacts relating to a specific subject.

The Supreme Court, in 1823's *Green v. Biddle* (21 U.S. 1), noted the U.S. Constitution places no limitations on the duration of consent, and consent statutes typically do not contain a sunset clause. Chief Justice Charles Evans Hughes opined in 1937 (302 U.S. 134 at 148) that Congress may impose conditions in granting its consent. In granting consent, Congress typically reserves the right to "alter, amend, or repeal" its consent to a compact and always reserves its authority over navigable waters.

President Franklin D. Roosevelt in 1939 vetoed a bill granting consent-in-advance to states to enter into compacts relating to Atlantic Ocean fishing on the ground that their provisions were too general. Two years later, he disallowed the Republican River Compact, but in 1943 he signed a bill granting the consent of Congress to a modified compact (57 Stat. 86).

Congressional consent effects. Does congressional consent convert an interstate compact into federal law? The Supreme Court has changed its answer to this question. The Court opined in 1938 (304 U.S. 92) that such consent does not make a compact the equivalent of a U.S. treaty or statute. In 1940, however, the Court (310 U.S. 92) held that an interstate compact approved by Congress involving a federal question is subject to the Court's review.

In 1981, the Court (449 U.S. 433) issued a momentous decision opining that congressional consent makes a compact federal law in addition to state law. U.S. courts since 1874 (87 U.S. 590) had been required to apply the interpretation of a concerned state law by the highest court in the state. The reversal of this precedent allowed the court to interpret the concerned Pennsylvania statute and disregard its interpretation by the Pennsylvania Supreme Court. The U.S. Court of Appeals for the District of Columbia Circuit in 1997 opined: "While the Compact [Washington Area Metropolitan Transit Compact] may be treated as a federal law, it does not follow that the Commission is a federal agency government by the Administrative Procedure Act." (129 F.3d 201 at 204)

Is a public authority created by an interstate compact with congressional consent cloaked with immunity from suit in federal court by the Eleventh Amendment to the U.S. Constitution? The Supreme Court (513 U.S. 30) in 1994 answered this question in the negative, explaining that the Port Authority

Trans-Hudson Corporation is a self-financing entity and that subjecting it to suit in the U.S. District Court does not place a burden upon either the New Jersey or the New York treasury.

The proposed Interstate Insurance Product Regulation Compact would establish a commission funded entirely by fees paid by insurance companies when filing products and apparently would not be cloaked with Eleventh Amendment immunity from suit. Nevertheless, it is improbable the commission would be sued, because its functions would be limited to the establishment of regulatory standards and the acceptance of filings by insurance companies.

Are federal statutes containing inconsistent provisions invalidated by the grant of congressional consent to an interstate compact? Courts would probably hold that such consent repeals conflicting federal statutes. What effect would a new congressional statute with conflicting provisions have on an interstate compact previously granted consent by Congress? The conflicting provisions in the consent would be repealed, with the exception of any vested rights protected by the Fifth Amendment to the U.S. Constitution.

The grant of consent suggests that Congress may enforce compact provisions, but enforcement in practice usually is left to courts. The validity of a compact may be challenged in state or U.S. court. Similarly, an individual or a state may bring suit to enforce the provisions of a compact. The Eleventh Amendment forbids a U.S. court to consider a suit in law or equity against a state brought by a citizen of a sister state or a foreign nation. A citizen, however, can challenge a compact or its execution in a state or U.S. court against an individual or in a proceeding to prevent a public officer from enforcing a compact. A suit brought in a state court could be removed to the U.S. District Court under provisions of the Removal of Causes Act of 1920 (41 Stat. 554) on the ground that the state court "might conceivably be interested in the outcome of the case."

States party to an interstate compact have occasionally filed an original suit in the Supreme Court seeking an interpretation of one or more compact provisions. For example, Kansas filed a suit against Colorado in an attempt to resolve disputes pertaining to the Arkansas River Compact. In 1955, the Court (514 U.S. 669) ruled unanimously in favor of Colorado. Kansas continued its disagreement with Colorado by filing another original suit against Colorado. The Supreme Court (533 U.S. 1) in 2001 rejected Colorado's contention that a special master's recommendation of a damages award for Colorado's

violation of the compact was barred by the Eleventh Amendment on the grounds that the damages were losses suffered by individual Kansas farmers.

### **Amendment and Termination**

Proposed compact amendments are subject to all the procedural requirements required for the original enactment of the compact, including enactment by each state legislature, approval of each governor, and consent of Congress and approval of the president if the original compact received such approvals.

The U.S. Constitution (Article I, section 10) delegates authority to Congress to revise state statutes levying import and export duties, but does not delegate similar authority to Congress to revise interstate compacts. Congress, nevertheless, withdrew its consent to a Kentucky-Pennsylvania Interstate Compact stipulating the Ohio River would be kept free of obstructions. The Supreme Court in *Pennsylvania v. Wheeling and Belmont Bridge Company* (50 U.S. 647) opined in 1855 that the statute was constitutional under the supremacy of the laws clause of Article VI and that approval of a compact by Congress does not restrict its power to regulate the compact. A similar opinion was rendered by the court in 1917 in *Louisville Bridge Company v. United States* (242 U.S. 409). It held that Congress may amend a compact in the absence of a compact provision specifically reserving to Congress authority to alter, amend, or repeal the compact. It is apparent that a congressional statute terminating a compact is not subject to the U.S. Constitution's Fifth Amendment's due process of law guarantee, because this protection is extended only to persons.

Can an interstate compact be terminated? Yes, with the exception of interstate boundary compacts. Other types of compacts typically contain a termination provision. The Colorado River Compact, for example, allows termination only by unanimous agreement of the member states. Several compacts stipulate that a state desiring to terminate the compact must provide advance notice, typically 60 days, before the effective date of its withdrawal.

The Florida State Legislature on several occasions withdrew from and subsequently rejoined the Atlantic States Marine Fisheries Compact; in 1995, the Virginia General Assembly enacted a statute withdrawing from the compact on the ground that fishing quotas for Virginia were too low. The Maryland General Assembly withdrew from the Interstate Bus Motor Fuel Tax Compact in 1967 and the National Guard Mutual Assistance Compact in 1981.

There is no provision in international law for citizens of a nation signatory to a treaty to be involved in its termination. The U.S. Supreme Court in 1838 applied this principle in *Georgetown v. Alexander Canal Company* (37 U.S. 91 at 95–96) by opining that citizens whose rights would be affected adversely by a compact are not parties to a compact and hence are not involved directly in terminating a compact.

### **Types of Compacts**

Interstate compacts can be classified as bilateral, multilateral, sectional, and national. Twenty-five specific types of compacts, administered by a compact-established commission or by departments and agencies of member states, have been enacted, each dealing with a different issue (see the Exhibit).

Economic interest groups seeking to discourage congressional exercise of its preemption powers are primarily responsible for the establishment of regulatory compacts. These groups argue that a compact obviates the need for national government regulation since formal interstate action has solved a major problem.

The number of new regulatory interstate compacts has declined since 1965, attributable to Congress exercising more frequently its powers of preemption to remove regulatory authority completely or partially from the states. New York Governor Nelson A. Rockefeller promoted the Mid-Atlantic States Air Pollution Control Compact, which was entered into by Connecticut, New Jersey, and New York in the mid-1960s. Congress did not grant its consent to the compact and followed President Lyndon B. Johnson's advice to enact the Air Quality Act of 1967 (81 Stat. 485) preempting state responsibility for air pollution abatement. In 2001, Congress failed to act upon a bill extending congressional consent for the Northeast Dairy Compact.

### **Regulatory Compact Experience**

Regulatory compacts may be administered by a commission or by departments and agencies of party states.

Compact commissions. Each interstate compact declares that its commission is a body corporate and politic, and an instrumentality of the compacting states. The Potomac River Fisheries Compact is regulatory, traceable in origin to a 1785 compact between Maryland and Virginia which created a commission to regulate "all species of finfish, crabs, oysters, clams, and other shellfish," issue licenses, and impose fees. This compact appears to be successful.

A unusual 1953 bistate compact, consented to by Congress (67 Stat. 541), established the two-member Waterfront Commission of New York Harbor, which achieved its goals of eliminating organized crime and corruption within a short period of time. This compact is the only one granting a commission the power of taxation; its budget requests submitted to each governor became effective unless either the New Jersey or the New York governor vetoed or reduced an item within 30 days.

Six state legislatures enacted the Ohio River Valley Water Sanitation Compact, which received congressional consent (54 Stat. 752) in 1940 but did not become effective until 1948 because of delays in its enactment by other concerned state legislatures. The compact's drafters assumed the commission would appeal to the courts to enforce its regulations, but there has been no need for judicial enforcement. This compact is credited with converting one of the most polluted rivers in the country into one of the cleanest.

The Interstate Environmental Compact (formerly the Interstate Sanitation Compact) was enacted by the New Jersey State Legislature and the New York State Legislature, granted congressional consent (49 Stat. 932) in 1935, and enacted by the Connecticut General Assembly in 1941. The unique feature of this regulatory compact is its inclusion of specific water-quality standards for two classes of water. The compact commission during its early decades concentrated on the construction and improvement of wastewater treatment facilities, and achieved major successes.

Compacts without commissions. Member state departments and agencies administer 34 interstate compacts, including many service provision ones. Two motor vehicle compacts are in effect regulatory. The Driver License Compact requires each of 45 party states to report each conviction of a driver from another party state for a motor vehicle violation to the home state licensing authority. The compact directs the home state to treat the reported violation as if it occurred in that state. The licensing authorities of party states are required to determine whether an applicant for a driver's license has held or currently holds a driver's license issued by another party state. A savings clause authorizes a party state to apply any of its other statutes relating to a driver's license and stipulates that the compact does not affect any driver's license cooperative agreement between a party state and a nonparty state.

Forty-four state legislatures enacted the Nonresident Violator Compact, which seeks to ensure

that nonresident drivers answer appearance tickets or summons for moving violations. The New York State Legislature did not enact the compact, but did authorize the Commissioner of Motor Vehicles to execute the compact. The Nonresident Violator Compact, like the Driver License Compact, requires each member state to report each conviction for a motor vehicle violation to the home state licensing authority. The purpose of this compact is to ensure that nonresident motorists are treated in the same manner as resident motorists and that their due-process-of-law rights are protected. Drivers failing to respond to an appearance ticket or summons will have their license suspended by the issuing state. Both compacts have been successful.

### **Federal-State Compacts**

A new type of compact—the federal-interstate compact—became effective in 1961 when four state legislatures—Delaware, New Jersey, New York, and Pennsylvania—and Congress enacted the Delaware River Basin Compact, establishing a commission with broad water allocation powers subject to a provision that the commission may not alter a 1954 U.S. Supreme Court water allocation decree without the consent of the party states. An identically worded Susquehanna River Basin Compact became effective in 1971 upon enactment by Congress. Both compacts are considered to be successful in achieving their respective goals. Congress subsequently enacted the Alabama-Coosa-Tallapoosa River Basin Compact and the Apalachicola-Chattahoochee-Flint River Basin Compact.

### **Analysis**

With one exception, compacts entered into under the U.S. Constitution until 1900 dealt with the establishment of boundary lines. The 1921 Port of New York Authority Compact was the first to create a commission, and within a relatively short period of time it universally was recognized as a successful compact. Subsequent experience with compacts reveals that they possess great potential as a mechanism for facilitating regional and national cooperation by states seeking to achieve a wide variety of goals.

A regulatory compact can be national in scope, but the prospects of persuading every state legislature to enact a draft compact are not good, based upon experience to date. Greater success might be achieved by the enactment of several regional interstate regulatory compacts on a given subject tailored to the particular needs of each region, with the possibility that future negotiations might lead to a merger of two

or more regional compacts.

Should the promoters of a regulatory compact seek to persuade all state legislatures to enact the compact, an opt-out procedure, such as found in Article VII, section 4 of the Insurance Product Regulation Compact (drafted by the NAIC), will facilitate its enactment. The cost of such an opt-out procedure, however, may be considerably less regulatory uniformity, thereby increasing the threat of congressional enactment of a statute preempting state authority over part or all of the regulatory field, including the authority of an interstate compact commission.

The flexibility of a regulatory compact will be enhanced if it grants the administering commission relatively broad discretionary authority to adopt and revise bylaws, thereby avoiding the need to amend the compact and the attendant need to obtain all

necessary approvals, legislative and gubernatorial, for each amendment.

Unnecessary controversies can be avoided by including in a regulatory compact sunshine provisions and a requirement that the commission, in promulgating rules and regulations, must follow the procedures contained in the Model State Administrative Procedures Act, drafted by the National Conference of Commissioners on Uniform State Laws, or by directing the commission to include in its bylaws similar administrative procedures.

In conclusion, the process of negotiating compacts to resolve complex issues is typically very time-consuming and on a number of occasions has not been successful. Prospects for enactment of a regulatory compact also will decrease should a statewide elected official, particularly the attorney general, object to a draft compact.

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EXHIBIT 18

**SOUTHERN REGIONAL HOMELAND SECURITY AND EMERGENCY  
PREPAREDNESS MANAGEMENT ASSISTANCE COMPACT<sup>1</sup>**

**ARTICLE I**

**Purpose and Authorities**

A. This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this agreement, the term “states” is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions.

B. The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state or states, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resource shortages, community disorders, insurgency, enemy attack, terrorist events, a civil disturbance, or in order to detect, prevent, prepare for, investigate, respond to, or recover from any of the foregoing emergencies or disasters. As used in this Chapter, “disaster” shall have the same meaning as provided in R.S. 29:723(1) and “emergency” shall have the same meaning as provided in R.S. 29:723(2).

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

**ARTICLE II**

**General Implementation**

A. Each party state entering into this compact recognizes many disasters or emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of disasters or emergencies or the capability of delivering resources to areas where disasters or emergencies exist.

B. The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential for the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

C. On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for homeland security and emergency preparedness management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

**ARTICLE III**

**Party State Responsibilities**

A. It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this Article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

- (1) Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological

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<sup>1</sup> Also given to other titles: *SOUTHERN REGIONAL EMERGENCY MANAGEMENT COMPACT*.

hazard, man-made disaster, emergency aspects or resource shortages, civil disorders, insurgency, enemy attack, or terrorist event, and to detect, prevent, prepare for, investigate, respond to, or recover from any of the foregoing emergencies or disasters.

(2) Review party states' individual homeland security and emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential disaster or emergency.

(3) Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

(4) Assist in warning communities adjacent to or crossing the state boundaries.

(5) Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.

(6) Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

(7) Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

B. The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty days of the verbal request. Requests shall provide the following information:

(1) A description of the homeland security and emergency preparedness service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

(2) The amount and type of personnel, equipment, materials, and supplies needed, and a reasonable estimate of the length of the time they will be needed.

(3) The specific place and time for staging of the assisting party's response and a point of contact at that location.

C. There shall be frequent consultation between state officials who have assigned homeland security and emergency preparedness management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States Government, with free exchange of information, plans, and resource records relating to emergency capabilities.

#### **ARTICLE IV Limitations**

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; however, it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state. Each party state shall afford to the homeland security and emergency preparedness forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Homeland security and emergency preparedness forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the homeland security and emergency preparedness services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect or loaned resources remain in the receiving state or states, whichever is longer.

**ARTICLE V**  
**Licenses and Permits**

Whenever any person holds a license, certificate or other permit issued by any party state to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

**ARTICLE VI**  
**Liability**

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes, and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this Article shall not include willful misconduct, gross negligence, or recklessness.

**ARTICLE VII**  
**Supplementary Agreements**

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend but shall not be limited to provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

**ARTICLE VIII**  
**Compensation**

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

**ARTICLE IX**  
**Reimbursement**

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provisions of any service in answering a request for aid and for the costs incurred in connection with such requests; however, any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost. In addition any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

**ARTICLE X**  
**Evacuation**

Plans for the orderly evacuation and interstate reception of portions of the civilian population, as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the homeland security and emergency preparedness management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials

or supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

**ARTICLE XI**  
**Implementation**

A. This compact shall become operative immediately upon its enactment into law by any two states. Thereafter, this compact shall become effective as to any other state upon its enactment by such state.

B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until thirty days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

C. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall be deposited, at the time of their approval, with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

**ARTICLE XII**  
**Validity**

This Act shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

**ARTICLE XIII**  
**Additional Provisions**

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under Section 1385 of Title 18, United States Code.

# EMERGENCY MANAGEMENT ASSISTANCE COMPACT (EMAC)



<http://www.emacweb.org/>

## **Article I. Purpose and Authorities**

This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this compact, the term “states” is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the Governor of the affected state, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

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

## **Article II. General Implementation**

Each party state entering into this compact recognizes that many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the Governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

## **Article III. Party State Responsibilities**

**A.** It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

1. Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resources shortages, civil disorders, insurgency, or enemy attack;
2. Review party states’ individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency;

3. Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans;
4. Assist in warning communities adjacent to or crossing the state boundaries;
5. Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material;
6. Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness; and
7. Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

**B.** The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this compact shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty days of the verbal request. Requests shall provide the following information:

1. A description of the emergency service function for which assistance is needed, including, but not limited to, fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue;
2. The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed; and
3. The specific place and time for staging of the assisting party's response and a point of contact at that location.

**C.** There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States Government, with free exchange of information, plans, and resource records relating to emergency capabilities.

#### **Article IV. Limitations**

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers, except that of arrest unless specifically authorized by the receiving state, duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state emergency or disaster by the governor of the party state that is to receive assistance or upon commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state, whichever is longer.

#### **Article V. Licenses and Permits**

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the Governor of the requesting state may prescribe by executive order or otherwise.

#### **Article VI. Liability**

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes. No party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

#### **Article VII. Supplementary Agreements**

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this compact contains elements of a broad base common to all states, and nothing herein shall preclude any state entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

#### **Article VIII. Compensation**

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

#### **Article IX. Reimbursement**

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this article.

#### **Article X. Evacuation**

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

#### **Article XI. Implementation**

**A.** This compact shall become effective immediately upon its enactment into law by any two states. Thereafter, this compact shall become effective as to any other state upon enactment by such state.

**B.** Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until thirty days after the Governor of the withdrawing state has given notice in writing of such withdrawal to the Governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

C. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

**Article XII. Validity**

This compact shall be construed to effectuate the purposes stated in Article I. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected.

**Article XIII. Additional Provisions**

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under § 1385 of Title 18 of the United States Code.

EXHIBIT 20

# INTERSTATE CIVIL DEFENSE AND DISASTER COMPACT (ICDDC)

The contracting states solemnly agree:

## Article 1

### Purpose of Compact | Utilization of Resources

#### Directors Act as Committee

The purpose of this compact is to provide mutual aid among the States in meeting any emergency or disaster from enemy attack or other cause, natural or otherwise, including sabotage and subversive acts and direct attacks by bombs, shellfire, and atomic, radiological, chemical, bacteriological means, and other weapons. The prompt, full, and effective utilization of the resources of the respective States, including resources available from the United States Government or any other source, are essential to the safety, care, and welfare of the people in the event of an emergency, and any other resources, including personnel, equipment, or supplies, shall be incorporated into a plan or plans of mutual aid to be developed among the Civil Defense agencies or similar bodies of the States that are parties to this compact. The Directors of Civil Defense of all party States shall constitute a committee to formulate plans and take all necessary steps for the implementation of this compact.

## Article 2

### Civil Defense Plans | Consultations | Uniformity of Action

It is the duty of each party State to formulate civil defense plans and programs for application within each State. There shall be frequent consultation between the representatives of the States and with the United States Government and the free exchange of information and plans, including inventories of any materials and equipment available for civil defense. In carrying out these civil defense plans and programs, the party States shall, if possible, provide and follow uniform standards, practices, and rules and regulations including:

- (1) insignia, arm bands, and other distinctive articles to designate and distinguish the different civil defense services;
- (2) blackouts and practice blackouts, air raid drills, mobilization of civil defense forces, and other tests and exercises;
- (3) warnings and signals for drills or attacks and the mechanical devices to be used in connection with them;
- (4) the effective screening or extinguishing of all lights, lighting devices, and appliances;
- (5) shutting off water mains, gas mains, electric power connections, and the suspension of all other utility services;
- (6) all materials or equipment used or to be used for civil defense purposes in order to assure that the materials and equipment will be easily and freely interchangeable when used in or by any other party State;
- (7) the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic, prior, during, and subsequent to drills or attacks;
- (8) the safety of public meetings or gatherings; and
- (9) mobile support units.

## Article 3

### Duties of Member States

Any party State requested to render mutual aid shall take any action necessary to provide and make available the resources covered by this compact in accordance with its terms; provided that it is understood that the State rendering aid may withhold resources to the extent necessary to provide reasonable protection for itself. Each party State shall extend to the civil defense forces of any other party State, while operating within its State limits under the terms and conditions of this compact, the same powers, except that of arrest unless specifically authorized by

the receiving State, duties, rights, privileges, and immunities as if they were performing their duties in the State in which normally employed or rendering services. Civil defense forces will continue under the command and control of their regular leaders but the organizational units will come under the operational control of the civil defense authorities of the State receiving assistance.

#### **Article 4**

##### **Effect of State Occupational License, Certificate or Permit in Other States**

Any person holding a license, certificate, or other permit issued by any State evidencing the meeting of qualifications for professional, mechanical, or other skills, may render aid involving the skill in any party State to meet an emergency or disaster and that State shall recognize the license, certificate, or other permit as if issued in the State in which aid is rendered.

#### **Article 5**

##### **Restriction on Liability**

No party State or its officers or employees rendering aid in another State pursuant to this compact shall be liable on account of any act or omission in good faith on the part of its forces while engaged, or on account of the maintenance or use of any equipment or supplies in connection with giving aid.

#### **Article 6**

##### **Mutual Aid and Supplementary Agreements**

(1) Since it is probable that the pattern and detail of the machinery for mutual aid among two or more States may differ from that appropriate among other States party to this compact, this instrument contains elements of a broad base common to all States, and nothing contained in it shall preclude any State from entering into supplementary agreements with another State or States. Any supplementary agreements may comprehend, but shall not be limited to provisions for evacuation and reception of injured and other persons, and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, equipment, and supplies.

(2) Any supplementary agreement made to implement this Article may not be construed to abridge, impair, or supersede any other provision of this compact or any obligation undertaken by a State pursuant to the terms of this compact. A supplementary agreement implementing this Article may modify, expand, or add to any obligation among the parties to the supplementary agreement.

#### **Article 7**

##### **Compensation and Death Benefits to Members of Civil Defense Forces**

Each party State shall provide for the payment of compensation and death benefits to injured members of the civil defense forces of that State and the representatives of deceased members of the forces of that State in case the members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within that State.

#### **Article 8**

##### **Reimbursements for Aid Rendered in Another State**

Any party State rendering aid in another State pursuant to this compact shall be reimbursed by the party State receiving aid for any loss or damage to or expense incurred in the operation of any equipment answering a request for aid, and for the cost incurred in connection with the requests; provided that any aiding party State may assume in whole or in part any loss, damage, expense, or other cost, or may loan any equipment or donate any services to the receiving party State without charge or cost; and provided further that any two or more party States may enter into supplementary agreements establishing a different allocation of costs as among those States. The United States Government may relieve the party States receiving aid from any liability and reimburse the party State

supplying civil defense forces for the compensation paid to and the transportation, subsistence, and maintenance expenses of its forces during the time of the rendition of aid or assistance outside the State and may also pay fair and reasonable compensation for the use or utilization of the supplies, materials, equipment, or facilities so utilized or consumed.

## **Article 9**

### **Evacuation and Reception of Civilian Population**

Plans for the orderly evacuation and reception of the civilian population as the result of an emergency or disaster shall be worked out from time to time between representatives of the party States and the various local civil defense areas. Any plans shall include the manner of transporting evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends and the forwarding of evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Any plans shall provide that the party State receiving evacuees shall be reimbursed generally for the out-of-pocket expenses incurred in receiving and caring for the evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Any expenditures shall be reimbursed by the party State of which the evacuees are residents, or by the United States Government under plans approved by it. After the termination of the emergency or disaster, the party State of which the evacuees are residents shall assume the responsibility for the ultimate support or repatriation of the evacuees.

## **ARTICLE 10**

### **Availability of Compact to Member States**

This compact shall be available to any state of the United States and the District of Columbia.

## **ARTICLE 11**

### **Requests to Civil Defense Agency of the United States**

The committee established pursuant to Article 1 of this compact may request the Civil Defense Agency of the United States Government to act as an informational and coordinating body under this compact, and representatives of that agency of the United States Government may attend meetings of the committee.

## **ARTICLE 12**

### **Compact Effective Upon Ratification**

This compact shall become operative immediately upon its ratification by any state as between it and any other state or states so ratifying and shall be subject to approval by Congress unless prior congressional approval has been given. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the civil defense agency and other appropriate agencies of the United States government

## **ARTICLE 13**

### **Compact Continues in Force Until Withdrawn**

This compact shall continue in force and remain binding on each party State until the Legislature or the Governor of the party State takes action to withdraw from it. Any action to withdraw shall not be effective until 30 days after notice of the action has been sent by the Governor of the party State desiring to withdraw to the Governors of all other party States.

## **ARTICLE 14**

### **Effectiveness and Constitutionality**

This compact shall be construed to effectuate the purposes stated in Article 1. If any provision of this compact is declared unconstitutional, or the applicability to any person or circumstance is held invalid, the constitutionality of the remainder of this compact and the applicability to other persons and circumstances shall not be affected.

## **ARTICLE 15**

### **Scope of Compact**

(1) In addition to the situations in Article 1, this compact shall apply to:

(a) searches for and rescue of persons who are lost, marooned, or otherwise in danger;

(b) actions useful in coping with any disasters or designed to increase the capability to cope with any disasters;

(c) incidents, or the threat of incidents, which endanger the health or safety of the public and which require the use of special equipment, trained personnel, or personnel in larger numbers than are locally available in order to reduce, counteract, or remove the danger;

(d) giving and receiving aid between political subdivisions of party States; and

(e) exercises, drills, or other training or practice activities designed to aid personnel to prepare for, cope with, or prevent any disaster or other emergency to which this compact applies.

(2) Except as expressly limited by this compact or a supplementary agreement, any aid authorized by this compact or a supplementary agreement may be furnished by any agency of a party State, a political subdivision of the State, or by a joint agency of any two or more party States or of their subdivisions. Any joint agency providing aid shall be entitled to reimbursement to the same extent and in the same manner as a state. The personnel of a joint agency, when rendering aid under this compact shall have the same rights, authority, and immunity as personnel of party States.

(3) Nothing in this Article shall be construed to exclude from coverage under Articles 1 through 14 of this compact any matter which, in the absence of this Article, could reasonably be construed to be covered.

**EXHIBIT 21**

**NATIONAL GUARD MUTUAL ASSISTANCE COMPACT OF 1952  
(NGMAC)**

**ARTICLE I**

**Purposes**

The purposes of this compact are to:

1. Provide for mutual aid among the party states in the utilization of the national guard to cope with emergencies.
2. Permit and encourage a high degree of flexibility in the deployment of national guard forces in the interest of efficiency.
3. Maximize the effectiveness of the national guard in those situations which call for its utilization under this compact.
4. Provide protection for the rights of national guard personnel when serving in other states on emergency duty.

**ARTICLE II**

**Entry into Force and Withdrawal.**

(a) This compact shall enter into force when enacted into law by any two states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states.

**ARTICLE III**

**Mutual Aid.**

(a) As used in this article:

1. "Emergency" means an occurrence or condition, temporary in nature, in which police and other public safety officials and locally available national guard forces are, or may reasonably be expected to be, unable to cope with substantial and imminent danger to the public safety.
2. "Requesting state" means the state whose governor requests assistance in coping with an emergency.
3. "Responding state" means the state furnishing aid, or requested to furnish aid.

(b) Upon request of the governor of a party state for assistance in an emergency, the governor of a responding state shall have authority under this compact to send without the borders of his state and place under the temporary command of the appropriate national guard or other military authorities of the requesting state all or any part of the national guard forces of his state as he may deem necessary, and the exercise of his discretion in this regard shall be conclusive.

(c) The governor of a party state may withhold the national guard forces of his state from such use and recall any forces or part or member thereof previously deployed in a requesting state.

(d) Whenever national guard forces of any party state are engaged in another state in carrying out the purposes of this compact, the members thereof so engaged shall have the same powers, duties, rights, privileges and immunities as members of national guard forces in such other state. The requesting state shall save members of the national guard forces of responding states harmless from civil liability for acts or omissions in good faith which occur in the performance of their duty while engaged in carrying out the purposes of this compact, whether the responding forces are serving the requesting state within its borders or are in transit to or from such service.

(e) Subject to the provisions of paragraphs (f), (g) and (h) of this article, all liability that may arise under the laws of the requesting state, the responding state, or a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

(f) Any responding state rendering aid pursuant to this compact shall be reimbursed by the requesting state for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of the materials, transportation and maintenance of national guard personnel and equipment incurred in connection with such request: Provided, that nothing herein contained shall prevent any responding state from assuming such loss, damage, expense or other cost.

(g) Each party state shall provide, in the same amounts and manner as if they were on duty within their state, for the pay and allowances of the personnel of its national guard units while engaged without the state pursuant to this compact and while going to and returning from such duty pursuant to this compact. Such pay and allowances shall be deemed items of expense reimbursable under paragraph (f) by the requesting state.

(h) Each party state providing for the payment of compensation and death benefits to injured members and the representatives of deceased members of its national guard forces in case such members sustain injuries or are killed within their own state, shall provide for the payment of compensation and death benefits in the same manner and on the same terms in case such members sustain injury or are killed while rendering aid pursuant to this compact. Such compensation and death benefits shall be deemed items of expense reimbursable pursuant to paragraph (f) of this article. Article IV. Delegation.

Nothing in this compact shall be construed to prevent the governor of a party state from delegating any of his responsibilities or authority respecting the national guard, provided that such delegation is otherwise in accordance with law. For purposes of this compact, however, the governor shall not delegate the power to request assistance from another state. Article V. Limitations.

Nothing in this compact shall:

1. Expand or add to the functions of the national guard, except with respect to the jurisdictions within which such functions may be performed.
2. Authorize or permit national guard units to be placed under the field command of any person not having the military or national guard rank or status required by law for the field command position in question.

#### **ARTICLE VI.**

##### **Construction and Severability.**

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

EXHIBIT 22

**NATIONAL GUARD MUTUAL ASSISTANCE  
COUNTER-DRUG ACTIVITIES COMPACT  
(NGMACDAC)**

**ARTICLE I**

**Purpose**

The purposes of this compact are to:

(a) Provide for mutual assistance and support among the party states in the utilization of the national guard in drug interdiction, counter-drug, and demand reduction activities.

(b) Permit the national guard of this state to enter into mutual assistance and support agreements, on the basis of need, with one or more law enforcement agencies operating within this state, for activities within this state, or with a national guard of one or more other states, whether said activities are within or without this state in order to facilitate and coordinate efficient, cooperative enforcement efforts directed toward drug interdiction, counter-drug activities, and demand reduction.

(c) Permit the national guard of this state to act as a receiving and a responding state as defined within this compact and to ensure the prompt and effective delivery of national guard personnel, assets, and services to agencies or areas that are in need of increased support and presence.

(d) Permit and encourage a high degree of flexibility in the deployment of national guard forces in the interest of efficiency.

(e) Maximize the effectiveness of the national guard in those situations that call for its utilization under this compact.

(f) Provide protection for the rights of national guard personnel when performing duty in other states in counter-drug activities.

(g) Ensure uniformity of state laws in the area of national guard involvement in interstate counter-drug activities by incorporating said uniform laws within the compact.

**Article II**

**Entry into Force and Withdrawal**

(a) This compact shall enter into force when enacted into law by any two states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states.

**Article III**

**Mutual Assistance and Support**

(a) As used in this article:

(1) "Drug interdiction and counter-drug activities" means the use of national guard personnel, while not in federal service, in any law enforcement support activities that are intended to reduce the supply or use of illegal drugs in the United States. These activities include, but are not limited to:

(i) Providing information obtained during either the normal course of military training or operations or during counter-drug activities, to federal, state, or local law enforcement officials that may be relevant to a violation of any federal or state law within the jurisdiction of such officials;

(ii) Making available any equipment, including associated supplies or spare parts, base facilities, or research facilities of the national guard to any federal, state, or local civilian law enforcement official for law enforcement purposes, in accordance with other applicable law or regulation;

(iii) Providing available national guard personnel to train federal, state, or local civilian law enforcement in the operation and maintenance of equipment, including equipment made available above, in accordance with other applicable law;

(iv) Providing available national guard personnel to operate and maintain equipment provided to federal, state, or local law enforcement officials pursuant to activities defined and referred to in this compact;

(v) Operation and maintenance of equipment and facilities of the national guard or law enforcement agencies used for the purposes of drug interdiction and counter-drug activities;

(vi) Providing available national guard personnel to operate equipment for the detection, monitoring, and communication of the movement of air, land, and sea traffic, to facilitate communications in connection with law enforcement programs, to provide transportation for civilian law enforcement personnel, and to operate bases of operations for civilian law enforcement personnel;

(vii) Providing available national guard personnel, equipment, and support for administrative, interpretive, analytic, or other purposes;

(viii) Providing available national guard personnel and equipment to aid federal, state, and local officials and agencies otherwise involved in the prosecution or incarceration of individuals processed within the criminal justice system who have been arrested for criminal acts involving the use, distribution, or transportation of controlled substances as defined in 21 U.S.C. Sec. 801 et seq., or otherwise by law, in accordance with other applicable law.

(2) "Demand reduction" means providing available national guard personnel, equipment, support, and coordination to federal, state, local, and civic organizations, institutions and agencies for the purposes of the prevention of drug abuse and the reduction in the demand for illegal drugs.

(3) "Requesting state" means the state whose governor requested assistance in the area of counter-drug activities.

(4) "Responding state" means the state furnishing assistance, or requested to furnish assistance, in the area of counter-drug activities.

(5) "Law enforcement agency" means a lawfully established federal, state, or local public agency that is responsible for the prevention and detection of crime and the enforcement of penal, traffic, regulatory, game, immigration, postal, customs, or controlled substances laws.

(6) "Official" means the appointed, elected, designated, or otherwise duly selected representative of an agency, institution, or organization authorized to conduct those activities for which support is requested.

(7) "Mutual assistance and support agreement" or "agreement" means an agreement between the national guard of this state and one or more law enforcement agencies or between the national guard of this state and the national guard of one or more other states, consistent with the purposes of this compact.

(8) "Party state" refers to a state that has lawfully enacted this compact.

(9) "State" means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

(b) Upon the request of a governor of a party state for assistance in the area of interdiction and counter-drug, and demand reduction activities, the governor of a responding state shall have authority under this compact to send without the borders of his or her state and place under the temporary operational control of the appropriate national guard or other military authorities of the requesting state, for the purposes of providing such requested assistance, all or any part of the national guard forces of his or her state as he or she may deem necessary, and the exercise of his or her discretion in this regard shall be conclusive.

(c) The governor of a party state may, within his or her discretion, withhold the national guard forces of his or her state from such use and recall any forces or part or member thereof previously deployed in a requesting state.

(d) The national guard of this state is hereby authorized to engage in interdiction and counter-drug activities and demand reduction.

(e) The adjutant general of this state, in order to further the purposes of this compact, may enter into a mutual assistance and support agreement with one or more law enforcement agencies of this state, including federal law enforcement agencies operating within this state, or with the national guard of one or more other party states to provide personnel, assets, and services in the area of interdiction and counter-drug activities and demand reduction. However, no such agreement may be entered into with a party that is specifically prohibited by law from performing activities that are the subject of the agreement.

(f) The agreement must set forth the powers, rights, and obligations of the parties to the agreement, where applicable, as follows:

- (1) Its duration;
- (2) The organization, composition, and nature of any separate legal entity created thereby;
- (3) The purpose of the agreement;
- (4) The manner of financing the agreement and establishing and maintaining its budget;
- (5) The method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;
- (6) Provision for administering the agreement, which may include creation of a joint board responsible for such administration;
- (7) The manner of acquiring, holding, and disposing of real and personal property used in this agreement, if necessary;
- (8) The minimum standards for national guard personnel implementing the provisions of this agreement;
- (9) The minimum insurance required of each party to the agreement, if necessary;
- (10) The chain of command or delegation of authority to be followed by national guard personnel acting under the provisions of the agreement;
- (11) The duties and authority that the national guard personnel of each party state may exercise; and
- (12) Any other necessary and proper matters.

Agreements prepared under the provisions of this section are exempt from any general law pertaining to intergovernmental agreements.

(g) As a condition precedent to an agreement becoming effective under this part, the agreement must be submitted to and receive the approval of the office of the attorney general of Washington. The attorney general of the state of Washington may delegate his or her approval authority to the appropriate attorney for the Washington national guard subject to those conditions which he or she decides are appropriate. The delegation must be in writing and is subject to the following:

(1) The attorney general, or his or her agent as stated above, shall approve an agreement submitted to him or her under this part unless he or she finds that it is not in proper form, does not meet the requirements set forth in this part, or otherwise does not conform to the laws of Washington. If the attorney general disapproves an agreement, he or she shall provide a written explanation to the adjutant general of the Washington national guard; and

(2) If the attorney general, or his or her authorized agent as stated above, does not disapprove an agreement within thirty days after its submission to him or her, it is considered approved by him or her.

(h) Whenever national guard forces of any party state are engaged in the performance of duties, in the area of drug interdiction, counter-drug, and demand reduction activities, pursuant to orders, they shall not be held personally liable for any acts or omissions which occur during the performance of their duty.

#### **ARTICLE IV**

##### **Responsibilities**

(a) Nothing in this compact shall be construed as a waiver of any benefits, privileges, immunities, or rights otherwise provided for national guard personnel performing duty pursuant to Title 32 of the United States Code nor shall anything in this compact be construed as a waiver of coverage provided for under the Federal Tort Claims Act. In the event that national guard personnel performing counter-drug activities do not receive rights, benefits, privileges, and immunities otherwise provided for national guard personnel as stated above, the following provisions shall apply:

(1) Whenever national guard forces of any responding state are engaged in another state in carrying out the purposes of this compact, the members thereof so engaged shall have the same powers, duties, rights, privileges, and immunities as members of national guard forces of the requesting state. The requesting state shall save and hold members of the national guard forces of responding states harmless from civil liability, except as otherwise provided herein, for acts or omissions that occur in the performance of their duty while engaged in carrying out the purposes of this compact, whether responding forces are serving the requesting state within the borders of the responding state or are attached to the requesting state for purposes of operational control.

(2) Subject to the provisions of paragraphs (3), (4), and (5) of this Article, all liability that may arise under the laws of the requesting state or the responding states, on account of or in connection with a request for assistance or support, shall be assumed and borne by the requesting state.

(3) Any responding state rendering aid or assistance pursuant to this compact shall be reimbursed by the requesting state for any loss or damage to, or expense incurred in the operation of, any equipment answering a request for aid, and for the cost of the materials, transportation, and maintenance of national guard personnel and equipment incurred in connection with such request, provided that nothing herein contained shall prevent any responding state from assuming such loss, damage, expense, or other cost.

(4) Unless there is a written agreement to the contrary, each party state shall provide, in the same amounts and manner as if they were on duty within their state, for pay and allowances of the personnel of its national guard units while engaged without the state pursuant to this compact and while going to and returning from such duty pursuant to this compact.

(5) Each party state providing for the payment of compensation and death benefits to injured members and the representatives of deceased members of its national guard forces in case such members sustain injuries or are killed within their own state shall provide for the payment of compensation and death benefits in the same manner and on the same terms in the event such members sustain injury or are killed while rendering assistance or support pursuant to this compact. Such benefits and compensation shall be deemed items of expense reimbursable pursuant to paragraph (3) of this Article.

(b) Officers and enlisted personnel of the national guard performing duties subject to proper orders pursuant to this compact shall be subject to and governed by the provisions of their home state code of military justice whether they are performing duties within or without their home state. In the event that any national guard member commits, or is suspected of committing, a criminal offense while performing duties pursuant to this compact without his or her home state, he or she may be returned immediately to his or her home state and said home state shall be responsible for any disciplinary action to be taken. However, nothing in this section shall abrogate the general criminal jurisdiction of the state in which the offense occurred.

#### **ARTICLE V**

##### **Delegation**

Nothing in this compact shall be construed to prevent the governor of a party state from delegating any of his or her responsibilities or authority respecting the national guard, provided that such delegation is otherwise in

accordance with law. For purposes of this compact, however, the governor shall not delegate the power to request assistance from another state.

## **ARTICLE VI**

### **Limitations**

Nothing in this compact shall:

(a) Authorize or permit national guard units or personnel to be placed under the operational control of any person not having the national guard rank or status required by law for the command in question.

(b) Deprive a properly convened court of jurisdiction over an offense or a defendant merely because of the fact that the national guard, while performing duties pursuant to this compact, was utilized in achieving an arrest or indictment.

## **ARTICLE VII**

### **Construction and Severability**

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the Constitution of the United States or of any state or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

EXHIBIT 23

**NATIONAL CRIME PREVENTION  
AND PRIVACY COMPACT  
(NCPPC)**

The contracting parties solemnly agree that:

1. This compact organizes an electronic information sharing system among the states and the federal government to exchange criminal history records for a variety of legally authorized noncriminal justice purposes, including background checks for governmental licensing and employment.

2. Under the compact, the FBI and the states agree to maintain detailed databases of their respective criminal history records, including arrests and dispositions, and to make them available to party states for authorized purposes. The FBI shall also manage the federal data facilities that provide a significant part of the infrastructure for the system.

**ARTICLE I  
Definitions**

As used in this compact:

1. "Administration of criminal justice" includes criminal identification activities and the collection, storage and dissemination of criminal history records.

2. "Compact officer" means, for the United States government, an official who is designated by the Director of the FBI and, for a party state, the chief administrator of the state's criminal history record repository or a designee who is a regular full-time employee of that repository.

3. "Criminal history record repository" means the state agency that is designated by the governor or other appropriate executive official or the legislature to perform centralized recordkeeping functions for criminal history records and services in the state.

4. "Criminal history records" means information that is collected by criminal justice agencies on individuals and that consists of identifiable descriptions and notations of arrests, detentions, indictments or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision or release. Criminal history records does not include identification information such as fingerprint records if the information does not indicate involvement of the individual with the criminal justice system.

5. "Criminal justice" includes detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders.

6. "Criminal justice agency" means the courts, any governmental agency or any subunit of any governmental agency that performs the administration of criminal justice pursuant to a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice. Criminal justice agency includes state and federal inspector general offices.

7. "Criminal justice services" means services that are provided by the FBI to criminal justice agencies in response to a request for information about a particular individual or as an update to information that was previously provided for criminal justice purposes.

8. "Criterion offense" means any felony or misdemeanor offense that is not included on the list of nonserious offenses published periodically by the FBI.

9. "Direct access" means access to the national identification index by computer terminal or other automated means not requiring the assistance of or intervention by any other party or agency.

10. "Executive order" means an order of the president of the United States or the chief executive official of a state that has the force of law and that is adopted in accordance with applicable law.

11. "FBI" means the federal bureau of investigation.

12. "Interstate Identification Index System" or "III system" means the cooperative federal-state system for the exchange of criminal history records and includes the national identification index, the national fingerprint file and, to the extent of their participation in the system, the criminal history record repositories of the states and the FBI.

13. "National fingerprint file" means a database of fingerprints or other uniquely personal identifying information about an arrested or charged individual that is maintained by the FBI to provide positive identification of record subjects indexed in the III system.

14. "National identification index" means an index that is maintained by the FBI and that consists of names, identifying numbers and other descriptive information relating to record subjects about whom there are criminal history records in the III system.

15. "National indices" means the national identification index and the national fingerprint file.

16. "Non-compact or nonparty state" means a state that has not ratified the compact.

17. "Noncriminal justice purposes" means the use of criminal history records for crime prevention and other legitimate law enforcement purposes authorized by federal or state law including, but not limited to, employment suitability or licensing determinations, immigration and naturalization matters and national security clearances.

18. "Party state" or "compact state" means a state that has ratified the compact.

19. "Positive identification" means a determination, based on a comparison of fingerprints or other equally reliable biometric identification techniques, that the subject of a record search is the same person as the subject of a criminal history record or records indexed in the III system.

20. "Sealed record information" means:

(a) For adults, that portion of a record that is not available for criminal justice uses, not supported by fingerprints or other accepted means of positive identification or not subject to restrictions on dissemination for noncriminal justice purposes pursuant to a court order that is related to a particular subject or pursuant to a state or federal statute that requires action on a sealing petition filed by a particular record subject.

(b) For juveniles, whatever each state determines is a sealed record under its own law and procedure.

21. "State" means any state, territory or possession of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

## **ARTICLE II**

### **Purposes**

The purposes of this compact are to:

1. Provide a legal framework for the establishment of a cooperative federal-state system for the interstate and federal-state exchange of criminal history records for noncriminal justice uses.

2. Require the FBI to permit use of the national identification index and the national fingerprint file by parties to this compact and to provide, in a timely fashion, federal and state criminal history records to requesting states, in accordance with the terms of this compact and with rules, procedures and standards that are established by the compact council under article VI of this compact.

3. Require party states to provide information and records for the national identification index and the national fingerprint file and to provide criminal history records, in a timely fashion, to criminal history record repositories of other states and the federal government for noncriminal justice purposes, in accordance with the terms of this compact and with rules, procedures and standards that are established by the compact council under article VI of this compact.

4. Provide for the establishment of a compact council to monitor III system operations and to promulgate system rules and procedures for the effective and proper operation of the III system for noncriminal justice purposes.

5. Require compact states to adhere to system standards concerning record dissemination and use, response times, system security, data quality and other duly established standards.

**ARTICLE III**  
**Responsibilities of Compact parties**

A. The FBI has the following responsibilities:

1. The FBI director shall appoint an FBI compact officer who shall:

(a) Have responsibility for administering the provisions of this compact within the department of justice and the federal user community.

(b) Ensure that compact provisions and rules, procedures and standards that are established by the compact council under article VI of this compact are complied with in the federal user community.

(c) Regulate the use of records that are received by means of the III system from party states when such records are supplied by the FBI directly to other federal agencies.

2. The FBI shall:

(a) Provide to federal agencies and to state criminal history record repositories criminal history records that are maintained in its database for any noncriminal justice purposes described in article IV. These responses shall include information from non-compact states and from compact states relating to records for which such states have not assumed responsibility, to the extent that such data is maintained in FBI records.

(b) Provide a telecommunications network and maintain centralized facilities for the exchange of criminal history records for both criminal justice and noncriminal justice purposes described in article IV. The FBI shall ensure that the exchange of these records for criminal justice purposes has priority over the exchange of these records for noncriminal justice purposes.

(c) Modify or enter into user agreements with non-compact state criminal history record repositories to require them to establish record request procedures that conform to procedures prescribed in article V of this compact.

B. The states have the following responsibilities:

1. Each party state shall appoint a compact officer who shall:

(a) Have responsibility for administering the provisions of this compact within that state.

(b) Ensure that compact provisions and rules, procedures and standards that are established by the compact council under article VI are complied with in the state.

(c) Regulate the in-state use of records that are received by means of the III system from the FBI or from other party states.

2. Each party state's criminal history record repository shall:

(a) Provide information and records for the national identification index and the national fingerprint file.

(b) Provide the state's III system-indexed criminal history records for noncriminal justice purposes described in article IV.

3. Each party state shall:

(a) Participate in the national fingerprint file.

(b) Provide and maintain telecommunications links and related equipment that is necessary to support the services set forth in this compact.

C. In carrying out their responsibilities under the compact, party states and the FBI shall comply with system rules, procedures and standards that are established by the compact council concerning record dissemination and use, response times, data quality, system security and other aspects of system operation.

D. For the purposes of the maintenance of record services:

1. The use of the III system for noncriminal justice purposes authorized in this compact shall be managed so as not to diminish the level of services provided in support of criminal justice purposes.

2. The administration of compact provisions shall not reduce the level of services available to authorized noncriminal justice users on the effective date of this compact.

#### **ARTICLE IV Authorized Record Disclosures**

A. To the extent authorized by the privacy act:

1. On request of a state criminal history record repository, the FBI shall provide criminal history records, including all unsealed federal criminal history records relating to criterion offenses for record subjects indexed in the III systems, for any noncriminal justice purpose that is allowed by federal statute or federal executive order or a state statute that has been approved by the United States attorney general and that authorizes national indices checks.

2. The FBI and state record repositories shall provide criminal history records, including all unsealed state criminal history record information relating to criterion offenses for record subjects indexed in the III system, to criminal justice agencies and other governmental or nongovernmental agencies for any noncriminal justice purposes that are allowed by federal statute or federal executive order or a state statute that has been approved by the United States attorney general and that authorizes national indices checks.

B. Records obtained under this compact may be used only for the official purposes for which they were requested. Compact officers shall establish procedures and measures, consistent with the provisions of this compact and with rules, procedures and standards that are established by the compact council under article VI, to ensure that records are used only by authorized officials for authorized purposes and to require that subsequent record checks are requested to obtain current information whenever a new need arises. These procedures must ensure that record entries that may not legally be used for a particular noncriminal justice purpose will be deleted from the response and, if no information authorized for release remains, an appropriate “no record” response will be communicated to the requesting official.

#### **ARTICLE V Record Request Procedures**

A. Applicant fingerprints or other approved forms of positive identification shall be submitted with all requests for criminal history record checks for noncriminal justice purposes.

B. Requests for criminal history record checks that use the national indices and that are made under any approved state statute shall be submitted through that state’s criminal history record repository. A state criminal history record repository shall process interstate requests for noncriminal justice purposes through the national indices only if the requests are transmitted through another state criminal history record repository or the FBI.

C. Requests for criminal history record checks that use the national indices and that are made under federal authority shall be submitted through the FBI or, if the repository consents to process fingerprint submissions, through the repository in the state in which the requests originated. Direct access to the national identification index by entities other than the FBI and state criminal history record repositories shall not be permitted for noncriminal justice purposes.

D. State criminal history record repositories and the FBI may charge fees for handling requests that involve fingerprint processing for noncriminal justice purposes, except that no fees shall be charged for providing criminal history records in response to an electronic request for a record that does not involve a request to process fingerprints.

E. If a state criminal history record repository cannot positively identify the subject of a record request made for noncriminal justice purposes, the request, together with fingerprints or other approved identifying information, shall be forwarded to the FBI for a search of the national indices. If the FBI positively identifies the subject as having a III system-indexed record or records, the FBI shall advise the state repository that submitted the request. The state repository shall then be entitled to obtain the additional criminal history record information from the FBI or other state repositories.

**ARTICLE VI**  
**Establishment of Compact Council**

A. A compact council is established. The council shall promulgate rules and procedures governing the use of the III system for noncriminal justice purposes. The rules and procedures shall not conflict with FBI administration of the III system for criminal justice purposes. The council shall continue in existence so long as the compact remains in effect. For administrative purposes, the council shall be located within the FBI. The council shall be organized and its first meeting held as soon as practicable after the effective date of this compact.

B. The council consists of fifteen members who are appointed by the United States attorney general as follows:

1. Nine members who serve two year terms and who are selected from the duly designated compact officers of party states based on the recommendation of the compact officers of all party states. In the absence of the requisite number of compact officers available to serve, the chief administrators of the criminal history record repositories of non-compact states shall be eligible to serve on an interim basis.

2. Two at-large members who serve three year terms, one of whom represents federal criminal justice agencies and one of whom represents federal noncriminal justice agencies, and who are nominated by the director of the FBI.

3. Two at-large members who serve three year terms, one of whom represents state or local criminal justice agencies and one of whom represents state or local noncriminal justice agencies, and who are nominated by the compact council chairman.

4. One member who serves a three year term, who is simultaneously a member of the FBI's advisory policy board on criminal justice information services and who is nominated by the membership of this board.

5. One member who serves a three year term, who is simultaneously an employee of the FBI and who is nominated by the director of the FBI.

C. The chairman of the council shall be a member of and elected by the members of the council. The chairman shall be a compact officer unless there is no compact officer on the council who is willing to serve, in which case the chairman may be an at-large member. The chairman shall serve a two-year term and may be reelected to only one additional two-year term.

D. The council shall meet at least once each year. Meetings shall be open to the public. Appropriate prior public notices shall be provided.

E. The council shall have authority to request from the FBI any reports, studies, statistics or other information or materials as it finds necessary to enable it to perform its duties under this compact. The FBI, to the extent authorized by law, may provide such assistance or information.

F. The chairman may establish technical or other committees as necessary and may prescribe their membership, responsibilities and duration.

**ARTICLE VII**  
**Ratification of Compact**

This compact becomes effective immediately on its execution by two or more states as between those states and the United States. On subsequent ratification of the compact by additional states, it shall become effective among these states and party states that have previously ratified the compact. When ratified, the compact has the full force and effect of law within the ratifying jurisdictions. The form of ratification shall be in accordance with the laws of the executing state.

**ARTICLE VIII**  
**Miscellaneous Provisions**

A. Administration of the compact shall not interfere with the management and control of the director of the FBI over the FBI's collection and dissemination of criminal history records and the advisory function of the FBI's advisory policy board chartered under the federal advisory committee act for all purposes other than noncriminal justice.

B. Nothing in this compact requires the FBI to obligate or expend funds beyond its appropriations.

C. Nothing in this compact diminishes or lessens the obligations, responsibilities and authorities of any state, whether a compact state or a non-compact state, or of any criminal history record repository or other subdivision or component of any criminal history record repository under Public Law 92-544 or regulations and guidelines promulgated thereunder, including the III system standards that are referred to in article III(c) regarding the use and dissemination of criminal history records and information.

#### **ARTICLE IX Renunciation**

This compact binds each party state until renounced by it. Renunciation of this compact shall be effected in the same manner by which a state ratified the compact. Renunciation shall become effective six months after written notice of renunciation is provided to all other parties.

#### **ARTICLE X Severability**

The provisions of this compact are severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or if the applicability of any phrase, clause, sentence or provisions of this compact to any government, agency, person or circumstance is held to be invalid, the validity of the remainder of this compact and the applicability of the remainder of this compact to any government, agency, person or circumstance shall not be affected. If a portion of this compact is declared to be contrary to the constitution of any party state, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the affected party state as to all other provisions.

#### **ARTICLE XI Adjudication of Disputes**

The compact council has original jurisdiction concerning this compact regarding interpretations of the compact or rules or standards established by the compact council pursuant to article V and disputes or controversies between parties to this compact. The council shall hold a hearing concerning the above at any regularly scheduled meeting and shall only render a decision based on a majority vote of its members. The FBI shall exercise immediate and necessary action to preserve the integrity of the III system, to maintain system policy and standards and to prevent abuses until the council holds a hearing on such matters. Parties may appeal the decisions of the compact council to the United States attorney general and finally to the appropriate United States district court, which shall have original jurisdiction of all cases or controversies arising under this compact. Any appeal so arising that is initiated in a state court shall be removed to the appropriate United States district court in the manner provided by 28 United States Code section 1446 or other statutory authority.

EXHIBIT 24

# STATE EMERGENCY MANAGEMENT AGENCIES

(Updated December 26, 2005)

(Some emblems/logos were intentionally not made available online.)



## ALABAMA

Alabama Emergency Management Agency  
5898 County Road 41  
P.O. Drawer 2160  
Clanton, Alabama 35046-2160  
(205) 280-2200  
(205) 280-2495 FAX  
Email: Not Available Online  
Website: <http://ema.alabama.gov>



## ALASKA

Alaska Division of Homeland Security Emergency Management  
P.O. Box 5750  
Fort Richardson, Alaska 99505-5750  
(907) 428-7000  
(907) 428-7009 FAX  
Email: [dhs&em\\_emergency\\_mgmt@ak-prepared.com](mailto:dhs&em_emergency_mgmt@ak-prepared.com)  
Website: [www.ak-prepared.com](http://www.ak-prepared.com)



## ARIZONA

Arizona Division of Emergency Management  
(National Guard Facility)  
5636 E. McDowell Rd  
Phoenix, Arizona 85008  
(602) 244-0504  
Toll Free: 1-800-411-2336  
Contact Louis Trammell, Deputy Director  
Email: [lou.trammell@azdema.gov](mailto:lou.trammell@azdema.gov)  
Website: [www.dem.state.az.us](http://www.dem.state.az.us)



## ARKANSAS

Arkansas Department of Emergency Management  
P.O. Box 758  
Conway, Arkansas 72033  
(501) 730-9750  
(501) 730-9754 FAX  
Email: [web\\_Masters@adem.state.ar.us](mailto:web_Masters@adem.state.ar.us)  
Website: [www.adem.state.ar.us/](http://www.adem.state.ar.us/)



## CALIFORNIA

California Governor's Office of Emergency Services  
3650 Schriever Ave  
Mather, CA 95655  
(916) 845-8510  
(916) 845-8511 FAX  
Email: Not Available Online  
Website: [www.oes.ca.gov](http://www.oes.ca.gov)



#### COLORADO

Tommy F. Grier, Director  
Colorado Office of Emergency Management  
Division of Local Government  
Department of Local Affairs  
9195 East Mineral Avenue, Suite 200  
Centennial, Colorado 80112  
(720) 852-6600  
(720) 852-6750 FAX  
Email: [tom.grier@state.co.us](mailto:tom.grier@state.co.us)  
Website: [www.dola.state.co.us/oem](http://www.dola.state.co.us/oem)



#### CONNECTICUT

Dept. Office of Emergency Management and Homeland Security  
25 Sigourney St., 6<sup>th</sup> Floor  
Hartford, CT 06106-5042  
(860) 566-3180  
(860) 247-0664 FAX  
Email: [thomas.thomas@po.state.ct.us](mailto:thomas.thomas@po.state.ct.us)  
Email List Available Through "Contact Us" Link  
Website: [www.ct.gov/demhs](http://www.ct.gov/demhs)



#### DELAWARE

Delaware Emergency Management Agency  
165 Brick Store Landing Road  
Smyrna, Delaware 19977  
(302) 659-3362  
(302) 659-6855 FAX  
Email: [webcontact.dema@state.de.us](mailto:webcontact.dema@state.de.us)  
Website: [www.state.de.us/dema](http://www.state.de.us/dema)



#### DISTRICT OF COLUMBIA

District of Columbia Emergency Management Agency  
2000 14th Street, NW, 8th Floor  
Washington, D.C. 20009  
(202) 727-6161  
(202) 673-2290 FAX  
Website: <http://dcema.dc.gov/dcema>

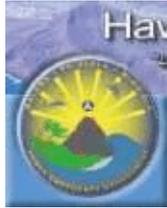


#### FLORIDA

Florida Division of Emergency Management  
2555 Shumard Oak Blvd.  
Tallahassee, Florida 32399-2100  
(850) 413-9969  
(850) 488-1016 FAX  
Email: [FLORIDA.DISASTER@dca.state.fl.us](mailto:FLORIDA.DISASTER@dca.state.fl.us)  
<http://www.floridadisaster.org/>



GEORGIA  
Georgia Emergency Management Agency  
P.O. Box 18055  
Atlanta, Georgia 30316-0055  
(404) 635-7000  
(404) 635-7205 FAX  
[www.state.ga.us/gema](http://www.state.ga.us/gema)



HAWAII  
Hawaii State Civil Defense  
3949 Diamond Head Road  
Honolulu, Hawaii 96816-4495  
(808) 733-4300  
(808) 733-4287 FAX  
[www.scd.hawaii.gov](http://www.scd.hawaii.gov)

Idaho Bureau of Disaster Services  
4040 Guard Street, Bldg. 600  
Boise, Idaho 83705-5004  
(208) 422-3040  
(208) 422-3044 FAX  
[www2.state.id.us/bds/](http://www2.state.id.us/bds/)



Illinois Emergency Management Agency  
110 East Adams Street  
Springfield, Illinois 62701  
(217) 782-2700  
(217) 524-7967 FAX  
[www.state.il.us/iema](http://www.state.il.us/iema)

Indiana Department of Homeland Security  
Indiana Emergency Response Commission (IERC)  
302 West Washington St., Room E-208 A  
Indianapolis, Indiana 46204-2767  
(317) 232-3986  
(317) 232-3895 FAX  
<http://www.in.gov/dhs/ierc/>  
[http://www.in.gov/dhs/ierc/ierc\\_members.html](http://www.in.gov/dhs/ierc/ierc_members.html)

Iowa Homeland Security & Emergency Management Division  
Department of Public Defense  
Hoover Office Building  
1305 E. Walnut, Level A  
Des Moines, Iowa 50319  
(515) 281-3231  
(515) 281-7539 FAX  
Email: [webmaster@hlsem.state.ia.us](mailto:webmaster@hlsem.state.ia.us)  
[www.iowahomelandsecurity.org](http://www.iowahomelandsecurity.org)

Kansas Division of Emergency Management  
2800 S.W. Topeka Boulevard  
Topeka, Kansas 66611-1287  
(785) 274-1409  
(785) 274-1426 FAX  
[www.ink.org/public/kdem/](http://www.ink.org/public/kdem/)



Kentucky Emergency Management  
EOC Building  
100 Minuteman Parkway Bldg. 100  
Frankfort, Kentucky 40601-6168  
(502) 607-1611 (Public Information Officer)  
(502) 607-1614 FAX  
<http://kyem.ky.gov/>

Louisiana Office of Emergency Preparedness  
7667 Independence Blvd.  
Baton Rouge, Louisiana 70806  
(225) 925-7500  
(225) 925-7501 FAX  
[www.ohsep.louisiana.gov](http://www.ohsep.louisiana.gov)

Maine Emergency Management Agency  
72 State House Station  
45 Commerce Drive, Suite 2  
Augusta, Maine 04333-0072  
(207) 624-4400  
(207) 287-3178 FAX  
E-mail: [art.w.cleaves@maine.gov](mailto:art.w.cleaves@maine.gov) (Director)  
[www.state.me.us/mema/memahome.htm](http://www.state.me.us/mema/memahome.htm)

Maryland Emergency Management Agency  
Camp Fretterd Military Reservation  
5401 Rue Saint Lo Drive  
Reistertown, Maryland 21136  
(410) 517-3600  
(877) 636-2872 Toll-Free  
(410) 517-3610 FAX  
Email: [help@mema.state.md.us](mailto:help@mema.state.md.us)  
[www.mema.state.md.us/](http://www.mema.state.md.us/)

Massachusetts Emergency Management Agency  
400 Worcester Road  
Framingham, Massachusetts 01702-5399  
(508) 820-2000  
(508) 820-2030 FAX  
Email: [cris.mccombs@state.ma.us](mailto:cris.mccombs@state.ma.us)  
Web Portal: [www.mass.gov](http://www.mass.gov) (URL of excessive length.)

Michigan Division of Emergency Management  
4000 Collins Road  
P.O. Box 30636  
Lansing, Michigan 48909-8136  
(517) 333-5042  
(517) 333-4987 FAX  
[www.michigan.gov/msp/1,1607,7-123-1593\\_3507---,00.html](http://www.michigan.gov/msp/1,1607,7-123-1593_3507---,00.html)

Minnesota Division of Emergency Management  
Department of Public Safety  
Suite 223  
444 Cedar Street  
St. Paul, Minnesota 55101-6223  
(651) 296-2233  
(651) 296-0459 FAX  
<http://www.hsem.state.mn.us/>

Mississippi Emergency Management Agency  
P.O. Box 4501 - Fondren Station  
Jackson, Mississippi 39296-4501  
(601) 352-9100  
(800) 442-6362 Toll Free  
(601) 352-8314 FAX  
[www.msema.org](http://www.msema.org)

Missouri Emergency Management Agency  
P.O. Box 16  
2302 Militia Drive  
Jefferson City, Missouri 65102  
(573) 526-9100  
(573) 634-7966 FAX  
<http://www.sema.state.mo.us/semapage.htm> [Offline]

Montana Division of Disaster & Emergency Services  
1100 North Main  
P.O. Box 4789  
Helena, Montana 59604-4789  
(406) 841-3911  
(406) 444-3965 FAX  
<http://mt.gov/dma/des/default.asp>



Nebraska Emergency Management Agency  
1300 Military Road  
Lincoln, Nebraska 68508-1090  
(402) 471-7410  
(402) 471-7433 FAX  
Email: [brent.curtis@nema.ne.gov](mailto:brent.curtis@nema.ne.gov)  
<http://www.nebema.org/>



Nevada Division of Emergency Management  
2525 South Carson Street  
Carson City, Nevada 89711  
(775) 687-4240  
(775) 687-6788 FAX  
<http://dem.state.nv.us/>

Governor's Office of Emergency Management  
State Office Park South  
107 Pleasant Street  
Concord, New Hampshire 03301  
(603) 271-2231  
(603) 225-7341 FAX  
Email: [bcheney@nhoem.state.nh.us](mailto:bcheney@nhoem.state.nh.us)  
[/www.nh.gov/safety/divisions/emergservices/bem/index.html](http://www.nh.gov/safety/divisions/emergservices/bem/index.html)



New Jersey Office of Emergency Management  
Emergency Management Bureau  
P.O. Box 7058  
West Trenton, New Jersey 08628-0068  
(609) 538-6050 Monday-Friday  
(609) 882-2000 ext 6311 (24/7)  
(609) 538-0345 FAX  
<http://www.state.nj.us/njoem/index.html>

New Mexico Department of Public Safety  
Office of Emergency Management  
P.O. Box 1628  
13 Bataan Boulevard  
Santa Fe, New Mexico 87505  
(505) 476-9640  
(505) 476-9695 FAX  
<http://www.dps.nm.org/emergency/index.htm>



New York State Emergency Management Office  
1220 Washington Avenue  
Building 22, Suite 101  
Albany, New York 12226-2251  
(518) 457-2222  
(518) 457-9995 FAX  
Email: [postmaster@semo.state.ny.us](mailto:postmaster@semo.state.ny.us)  
<http://www.nysemo.state.ny.us/>



North Carolina Division of Emergency Management  
116 West Jones Street  
Raleigh, North Carolina 27603  
(919) 733-3867  
(919) 733-5406 FAX  
<http://www.dem.dcc.state.nc.us/index.htm>

North Dakota Division of Emergency Management  
P.O. Box 5511  
Bismarck, North Dakota 58506-5511  
(701) 328-8100  
(701) 328-8181 FAX  
<http://www.nd.gov/des/>



Ohio Emergency Management Agency  
 2855 W. Dublin Granville Road  
 Columbus, Ohio 43235-2206  
 (614) 889-7150  
 (614) 889-7183 FAX  
<http://ema.ohio.gov/ema.asp>



Office of Civil Emergency Management  
 Will Rogers Sequoia Tunnel  
 2401 N. Lincoln Blvd., Suite C51  
 Oklahoma City, Oklahoma 73152  
 (405) 521-2481  
 (405) 521-4053 FAX  
<http://www.ok.gov/oem/index.php>



Oregon Emergency Management  
 Department of State Police  
 PO Box 14370  
 Salem, Oregon 97309-5062  
 (503) 378-2911  
 (503) 373-7833 FAX  
 Email: [kmurphy@oem.state.or.us](mailto:kmurphy@oem.state.or.us)  
<http://egov.oregon.gov/OOHS/OEM/>



Pennsylvania Emergency Management Agency  
 2605 Interstate Drive  
 Harrisburg PA 17110-9463  
 (717) 651-2001 (PEIRS Reporting)  
 (717) 651-2007 (General Number)  
 (717) 651-2040 FAX  
<http://www.pema.state.pa.us/>



Rhode Island Emergency Management Agency  
 645 New London Ave  
 Cranston, Rhode Island 02920-3003  
 (401) 946-9996  
 (401) 944-1891 FAX  
 Email: [robert.j.warren@ri.ngb.army.mil](mailto:robert.j.warren@ri.ngb.army.mil)  
[www.riema.ri.gov](http://www.riema.ri.gov)



South Carolina Emergency Management Division  
 2279 Fish Hatchery Road  
 West Columbia South Carolina 29172  
 (803) 737-8500  
 (803) 737-8570 FAX  
<http://www.scemd.org/>



South Dakota Division of Emergency Management  
 118 West Capitol  
 Pierre, South Dakota 57501  
 (605) 773-3231  
 (605) 773-3580 FAX  
 Email: [rath@state.sd.us](mailto:rath@state.sd.us)  
<http://oem.sd.gov/>



Tennessee Emergency Management Agency  
3041 Sidco Drive  
Nashville, Tennessee 37204-1502  
(615) 741-0001  
(615) 242-9635 FAX  
Email  
<http://www.tnema.org/>



Texas Division of Emergency Management  
5805 North Lamar Blvd.  
Austin, Texas 78752  
(512) 424-2138  
(512) 424-2444 FAX  
<http://www.txdps.state.tx.us/dem/>



Utah Division of Emergency Services and Homeland Security  
State Office Building, Room 1110  
Salt Lake City, Utah 84114-1710  
(801) 538-3400  
(801) 538-3770 FAX  
<http://www.des.utah.gov/>



Vermont Emergency Management Agency  
Department of Public Safety  
Waterbury State Complex  
103 South Main Street  
Waterbury, Vermont 05671-2101  
(802) 244-8721  
(802) 244-8655 FAX  
Email: [dhiggins@dps.state.vt.us](mailto:dhiggins@dps.state.vt.us),  
<http://170.222.24.9/vem/index.html>



Virginia Department of Emergency Management  
10501 Trade Court  
Richmond, VA 23236-3713  
(804) 897-6506  
Email: [pio@vdem.virginia.gov](mailto:pio@vdem.virginia.gov)  
<http://www.vdem.state.va.us/>

State of Washington Emergency Management Division  
Building 20, M/S: TA-20  
Camp Murray, Washington 98430-5122  
(253) 512-7000  
(253) 512-7200 FAX (Division Administration)  
(253) 512-7201 FAX (Public Information Officer)  
<http://www.emd.wa.gov/>



West Virginia Office of Emergency Services  
Building 1, Room EB-80  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0360  
(304) 558-5380  
(304) 344-4538 FAX  
Email: [ccarney@wvoes.state.wv.us](mailto:ccarney@wvoes.state.wv.us)  
<http://www.wvdhsem.gov/>



Wisconsin Emergency Management  
2400 Wright Street  
Madison, Wisconsin 53707-7865  
(608) 242-3232  
(608) 242-3247 FAX  
Email: [lori.getter@dma.state.wi.us](mailto:lori.getter@dma.state.wi.us) (Public Information Officer)  
<http://emergencymanagement.wi.gov/>

Wyoming Office of Homeland Security  
Herschler Bldg, 1st Floor East  
122 W. 25th Street  
Cheyenne, Wyoming 82002  
(307) 777-4900 or 4663  
(307) 635-6017 FAX  
<http://wyohomelandsecurity.state.wy.us/>

# EMERGENCY MANAGEMENT ORGANIZATIONS

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**EMERGENCY MANAGEMENT  
ACCREDITATION PROGRAM (EMAP)**

P.O. Box 11910  
Lexington, KY 40578  
or  
2760 Research Park Drive  
Lexington, KY 40511  
Phone: 859/244-8242  
Fax: 859/244-8239  
Website: [www.emaponline.org](http://www.emaponline.org)

The Emergency Management Accreditation Program (EMAP) is the voluntary assessment and accreditation process for state and local government programs responsible for coordinating prevention, mitigation, preparedness, response, and recovery activities for disasters, whether natural or human-caused. Accreditation is based on compliance with collaboratively developed national standards for emergency preparedness, the EMAP Standard. (The EMAP Standard is based on the NFPA 1600 Standard on Disaster/Emergency Management and Business Continuity Programs, 2004).

**NATIONAL EMERGENCY MANAGEMENT  
ASSOCIATION**

PO Box 11910  
Lexington, KY 40578  
Phone: (859) 244-8000  
Fax: (859) 244-8239  
Website: [www.nemaweb.org](http://www.nemaweb.org)

NEMA is the professional association of and for state\* emergency management directors. NEMA's mission is to: Provide national leadership and expertise in comprehensive emergency management. Serve as a vital emergency management information and assistance resource. Advance continuous improvement in emergency management through strategic partnerships, innovative programs, and collaborative policy positions

**THE COUNCIL OF STATE GOVERNMENTS**

2760 Research Park Drive  
P.O. Box 11910  
Lexington, KY 40578-1910  
(859) 244-8000  
Fax: (859) 244-8001  
Website: [www.csg.org](http://www.csg.org)

CSG helps states increase efficiency by identifying the best new and creative approaches to significant state problems in our Innovations Awards. Our information products are full of useful and practical policy solutions. In addition, CSG draws upon experts in the states, and marshals them as consultants to help sister states in need of services. And CSG's leadership training helps state officials enhance their skills in managing strategic change.

**CENTER FOR STATE HOMELAND SECURITY**

3150 Fairview Park Drive South  
Falls Church, VA 22042-4519  
Phone 703-610-1623  
Fax 703-610-1821  
E-mail [info@cshs-us.org](mailto:info@cshs-us.org)  
Website: [www.cshs-us.org](http://www.cshs-us.org)

The Center for State Homeland Security is a unique national resource dedicated to supporting state and local governments carry out their crucial role in homeland security while supporting the evolution of a national strategy across all levels of government and the private sector. The Center is structured as a nonprofit collaboration among homeland security practitioners to jointly address state homeland security issues where scientific, technical and analytical expertise is required.

Federal Emergency Management Agency  
(FEMA).

FEMA is an independent agency tasked with responding to, planning for, recovering from, and mitigating disaster. Their site includes many customer service links and directories of state offices and agencies. Links to hundreds of FEMA publications, many with a community and consumer focus, are provided.

Access: <http://www.fema.gov>.

International Association of Emergency Managers (IAEM).

IAEM is the professional association of city and county emergency management officials. In addition to information about the association, this site provides full-text of association publications, including selected issues of their monthly newsletter. Access to a bulletin board and discussion list is also provided. Access: <http://www.iaem.com>.

National Emergency Management Association (NEMA).

NEMA is a professional association for state-level emergency management officials. The NEMA online library provides full-text access to more than 300 committee reports, position papers, training manuals, and implementation plans. A directory of emergency management contacts by state is also available. Access: <http://www.nemaweb.org>.

National Response Team (NRT).

NRT is part of the National Response System for emergency response to discharges of oil and releases of chemicals. This site includes full-text access to more than 50 fact sheets and planning guides from NRT committees as well as more than 100 links to preparedness and response sites. Access: <http://www.nrt.org/>.

Anser Institute for Homeland Security.

The Anser Institute is dedicated to enhancing public safety. Their site includes news items, commentary and analysis, full-text articles from Journal of Homeland Security and "Homeland Security Newsletter," links to related full-text documents, and a weekly e-mail bulletin. Access: <http://www.homelandsecurity.org/>.

Brookings Institution.

This well-known think tank provides access to numerous reports on economics, foreign policy, and governance. Featured documents include "Protecting the American Homeland" and "Assessing the Department of Homeland Security." Many publications are available online at no cost, others are available for purchase. Access: <http://www.brook.edu/>.

Department of Homeland Security.

This official White House site provides background information on the proposed department, including legislation, transcripts of speeches and online chats, and details on organizational structure. Links to other sites on homeland security policies and news are also included. Access: [www.dhs.gov](http://www.dhs.gov)

National Homeland Security Knowledge Base.

This site provides an extensive set of links to U.S. and other government agencies as well as international and research organizations. Focus is on various threats to homeland security, including nuclear/radiological, biological, chemical, and explosives, as well as natural disasters. Access: <http://www.twotigersonline.com/resources.html>.

Website: [www.NIMSONline.com](http://www.NIMSONline.com)

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[www.NIMSForum.com](http://www.NIMSForum.com)

Posting guidelines and policies.

Disaster Central.

Maintained by emergency management researcher, consultant, and educator Claire B. Rubin, this site provides an extensive set of links to recent research reports and other documents on emergency management, terrorism, homeland security, state and local government, critical infrastructure, health and medicine, policy analysis, and risk management. This site is an excellent source for full-text documents online. Access:  
<http://www.disaster-central.com/>.

Natural Hazards Center.

From the University of Colorado-Boulder, this site provides links to a number of valuable research sources. These include full-text articles from newsletters, journals, working papers, and conference papers published by the center. The site also provides access to the "HazLit Database," an online catalog of more than 22,000 items in the Center's library. Access: <http://www.colorado.edu/hazards>.

## EXHIBIT 26 National Militia Standards, Section 8: Communications

The following evaluation of the grassroots militia movement behind the National Militia Standards is by an anonymous member of a Web based discussion board dated July 1, 2004 at <http://forums.gunbroker.com>:

There are some things going on at AWRM (*A Well Regulated Militia*) about which you do not know, so I'll try to explain the relevant developments.

Militia leaders on AWRM have written the National Militia Standards (NMS). Increasingly, militia units all over the country are using the NMS as their standard for training and for measuring skills. This is important as it puts units around the country on the same sheet of music. It means that units will be able to function together more easily.

The idea of a large militia--even nation-wide--versus small militias has been discussed at length on AWRM. Most recently, Rick Stanley tried the large approach and it was found to be so unworkable as to be useless. That effort fell apart, but there is now someone trying to pick up the pieces. That effort is now called the C.R.E.S.T., for which there exists a Yahoo! group. They and we have not exactly seen eye-to-eye, and it sounds like that may be of interest to you. That site is at <http://groups.yahoo.com/group/TheCrest/>.

The large militia approach has a number of distinct disadvantages compared with the multiple small militia units. Large makes it easier to monitor, easier to infiltrate, easier to take down, and tends toward inflated titles such as general, colonel, and major. Such titles tend to bloat the egos of some and leads to dissention, splits, and hard feelings. This won't help when it's time to work together.

The latest effort at AWRM is to hold Joint Field Training Exercises (JFTXs) with units from neighboring states. These have been very effective in building cohesion among different units and increases the potential for lessons learned. It gets different units together face-to-face, which is invaluable in itself. It reduces the potential for hotdog units made up of generals and colonels and majors who have not trained to the common standards.

The one thing still left to do is to reestablish the Committees of Correspondence from colonial times among the different states.

What all of this does is allow units to train autonomously yet maintain parity with each other. It also helps to prevent any one unit from stepping out into harm's way without state-wide or even multiple-state support. It promotes better intel gathering and communication nation-wide. It means that the militia as a whole will be better organized and prepared to respond to a situation rather than hearing about it afterward on the evening news.

In addition to all this, there is an effort to produce a professional quality television advertisement for recruiting and improving the image of the militia.

## **NATIONAL MILITIA STANDARDS**

[www.awrm.org](http://www.awrm.org)

### **8.0 COMMUNICATIONS S.O.I.**

#### **8.1 Training Standards**

Mission success depends on the unit commanders ability to concentrate superior fire power at critical times and places. The key to this success is superiority in command and control via communications. Effective comms is essential to both the survival and the combat readiness of all units.

To be competent in the field under adverse operating conditions, all Signal Corps personnel must meet the following MilComm training standards.

#### **Team Radio Operator (TRO) Profile**

The TRO will carry, operate and maintain the teams radio equipment. He must have a thorough understanding of it's potential as well as it's limitations and how to overcome them. He will aid the Team Leader by maintaining contact with the other teams in the field and / or the Base Command Structure. The TRO will train and become proficient in:

1. Basic Operating Procedures
2. COMSEC
3. Basic Signal Intelligence gathering
4. Digital Encryption System
5. SitRep / SALUTE S.O.P
6. Alert S.O.P.
7. Unit CEOI
8. Construction of covert, field expedient antennas

#### **Communications Officer Profile**

Is responsible to his unit's Command Staff for the creation and implementation of communications systems and protocols within his respective Area of Operations. The CommO will create, implement, and oversee the Rapid Alert System. He will see to it that a secure system of communications is implemented and will be in charge of all communications protocols, codes etc. He will coordinate his efforts with his respective Intelligence Officer and his Commander. He will create and oversee the SigInt network. The CommO will be the Net Control Operator (NCO) for his A/O and will be an integral part of the Regional (Batn) and State Comm Network.

The Communications Officer must be trained to the following Militia Signal Corps standards in addition to those of the TRO:

1. Must have a thorough knowledge of Signal Corps organization on both the Tactical and Strategic level.
2. Must be proficient in Net Control Station (NCS) operating procedures; And, meet the minimum equipment requirements to fulfill his assigned mission.
3. Must be proficient in PSK-31 ops
4. Must be able to send and receive morse code
5. Must have a thorough working knowledge of all MilComm coding systems and protocols.
6. Must be able to develop and implement a battalion level (regional) Rapid Alert

- System for integrating communications with local units and teams in the field.
7. Must be trained and equipped to maintain contact with Regional, State and national comm networks.
  8. Must be proficient in and equipped to gather Signal Intelligence (SigInt) and to coordinate those activities with the his units Intell Officer and C/O.

## **8.2 SIGNAL CORPS ORGANIZATION**

### **Purpose And Overview**

Presently, it appears to many people that there exists an immediate necessity to set up a system of national communications which encompasses support for local and regional communications sub-systems. The objective is to be able to readily disseminate communications deemed to be of emergency nature.

### **Obstacles**

Although there are logistical and economic concerns, security is the main obstacle to overcome in establishing a national and regional communications system for use by the established local units.

### **Definitions**

For purposes of defining terms used herein, the following words, terms, or phrases shall have the following meanings:

Division - as used herein the term Division is synonymous with region.

Region - as used herein the term region means the pre-determined extent of the area of operations of any local unit or Division. Regions/Divisions are established by state Militias.

AO - means Area of Operations.

Equipment - means radio communications devices.

Comm Section - means radio stations established for relay of sit-reps between Militias.

### **Proposed System: Integrated networks**

1. Local Units - If organized by Militia Divisions within a state, all participating Local Units would have the capability to initiate sit-reps to their respective Division Comm section, by means of the equipment available in those Local Units, otherwise, Local Units would communicate directly with established state Comm sections for in their respective AO.

2. Division Comm - If organized by Militia Divisions within a state, Division Comm sections would subsequently make sit-reps based on sit-rep information received from Local Units to established state-wide Comm stations by the means of the equipment in their respective Division Comm sections, otherwise the state comm sections would receive local sit-reps.

- a. As Division Comm sections receive and relay sit-reps from Local Units to state Comm sections, Division Comm sections would of necessity be required to have a broad range of equipment . A system of standardization would narrow the range of equipment required by both Local Units and Division Comm sections, thus enhancing economic concerns by reducing the broad range of different types of equipment necessary to meet the needs of receiving Local Unit sit-reps while shifting the emphasis upon use of codes and/or encryption means.

3. State Comm - Within each state there should be a minimum of 3, maximum of 24,

relay stations operating on a 24/7 basis, capable of receiving sit-reps from all Divisions within state geographical area and subsequently passing sit-rep to ERPN at regularly scheduled time of transmission, or, during emergency to a designated national Comm section.

- a. State Comm relay stations operating on a 24/7 basis are necessary for purposes of handling emergency traffic from Division and Local Units, passing that traffic along to a national communications section for processing and re-distribution. (NOTE: A working example of how such a system could be applied can be observed by monitoring what is called "MidCARS" on 7.258 MHz. "MidCARS" is a mid-America regional Amateur Radio Service which passes traffic along to any stations checking into that net. Numerous stations act as Net Control operators and pass along and periodically transfer Net Control operations along to another station to assume Net Control operations, usually hourly. If a full compliment of 24 state control operators were established in each state, each operator would serve as Net Control for 1 hour.)
- b. It should only be necessary for one state relay station to pass traffic to ERPN during regularly scheduled Net operations. The then current operating state Net Control station would pass sit-rep traffic to ERPN. Dependent upon the number state relay stations acting as Net Control a rotational schedule could be assigned to the participating state Net Control Comm. section.
- c. State Comm stations would be required to have available at that station a broad range of communications equipment for passing traffic between Local Units, Division Comm. sections, and ERPN.

The foregoing would require several means of communications hardware and software, (i.e. voice, analog, digital) be available for receiving and sending traffic within the various Division and state levels. This would provide to local units the means to monitor traffic between Division, state, and national communications stations dependent upon individual local units equipment availability.

Participating Local Units can issue sit-reps other Local Units, Division and/or state Comm sections, dependent upon state Militia structure, using designated "public" sit-rep frequencies and/or alternate sit-rep frequencies which are monitored 24/7. Normal sit-reps or emergency sit-reps will be relayed according to established SOP's which control use of net operations, and which shall, in case of emergency situation, allocate sit-rep frequencies, tac-frequencies and callsign designation, and any other pertinent tactical information.

### **8.3 TACTICAL COMMO 101**

Communications is equally as important to your survival as planning and organization. During a disaster all forms of communications in current use may fail or be shut down by the government. Every group must set up a reliable means of comms in advance that is totally independent of outside control or power sources. Commanders who fail to implement tactical networks and comm plans will be unable to command, control or coordinate their forces. They will be deaf, dumb and blind during a crisis.

#### **Tactical Comm. Defined**

Tactical communications are short range, ground-wave (line of sight) comms used in your Area of Operations between team members, teams, squads and their firebase or command center. Tac Com also includes the Local and Regional networks. Local is for the Rapid Alert System within your county. Regional is the counties surrounding your A/O.

## **Range of Operations**

Normal range may be considered .5-5 miles for team to team commo, 5-15 miles for team to base communications and up to 50+ miles for base to base commo.

## **Purpose**

Area Commanders use Tactical Communication to direct fire and movement, call for resupply, reinforcement, medevac etc., operate the local Rapid Alert System and to maintain contact with other units in surrounding counties.

## **Tactical Networks**

Consist of 3 base radio stations per county, equipped for SSB/Encrypted PSK-31 operation; plus mobile radios in EVERY vehicle. These base stations provide commo between the base of operations and the teams deployed in the field. They will also act as relay stations between the different A/Os within the region. They will remain operational on a 24 hour basis during a crisis or when the teams are deployed. They will monitor all unit freqs and gather SigInt from enemy communications. They must be able to receive and transmit over long distance using self contained power sources.

## **C.E.O.I.**

Communications Equipment Operating Instructions- C.E.O.I-are contained in a small laminated notebook and are to be carried by all comm personnel. Every tactical network and team must have this to avoid confusion and to maintain OPSEC.

The CEOI contains: 7 split-frequency pairs to be used on a rotational basis, net/tac callsigns with an authenticator keyset, codes in use for the net and units during an activity, operation or period of time, and other instructions as needed. Codes are randomly chosen letter number groups of varying length (may resemble the 10-code) Different codes are used for the same thing. All codes and frequencies must be changed often, even daily.

\*NOTE\* For detailed information about Communication Security procedures study: CommSec [hXXp://155.217.58.58/cgi-bin/atdl.dll/fm/24-12/Ch7.htm](http://155.217.58.58/cgi-bin/atdl.dll/fm/24-12/Ch7.htm)

## **Equipment**

Tactical comm equipment must be lightweight, portable and have sufficient range to maintain contact with all team members and the base of operations. It must also be compatible with the base station equipment in use.

## **Band and Equipment Overview**

Several bands and modes are available that will meet the above criteria. UHF-High Band / VHF-Low Band and the Freeband.

### **UHF-High Band**

UHF is strictly limited range, line of sight communications better suited for the urban environment. UHF signals penetrate buildings and metal clutter well, but the signal is attenuated or absorbed by dense foliage and heavy terrain.

FRS: Most groups are familiar with or use Family Radio Service equipment. FRS has 14 UHF channels, a maximum output of .5 watt, a fixed (non-removeable antenna) and a very limited real world range of about 1.5 miles.

FRS radios only use is for clear, simple to use communications within a team. They

have very limited range, No privacy and being FM are very easily DF-ed. The so called "privacy codes" aren't. All they do is limit YOUR ability to hear others on the same freq. near you. Also, don't waste your money on encrypted units. Most use simple speech inversion circuitry which will confuse the basic moron; but won't slow down a smart 12 year old with access to common gear laying around the house. If "da man" is within range...encryption ain't gonna help you anyway.

GMRS: A better UHF solution for urban ops is the General Mobile Radio Service. GMRS has 23 FM channels (7 of which are compatible with FRS). The first 8 channels are for base/mobile/HT simplex use: 462.550, .575, .600, .625, .650, .675 (Emergency Channel), .700, and .725. There are 8 freqs. in the 467.000 mhz band that are for repeater input use only. Next, there are 7 interstitial channels located between the regular GMRS freqs. that are compatible with the first 7 FRS freqs. These are: 462.5625, .5875, 6125, .6375, .6625, .6875 and .7125.

Equipment is available with up to 50 watts output for up to 25 mile range. Most HT's have 15 channels with a 2 watt output. Range is approximately 5 miles. Midland currently offers a mil. spec. HT with all 23 channels and 2 watts erp. Other companies are offering HTs with up to 5 watts erp, 15 channels plus NOAA weather scan. Prices are around \$150.

For increased range, All of these HT's can be upgraded with 1/2 wave 2.5 db gain whip antennas. For mobile operation, mag mount antennas are available with up to 5 db gain.

To set up a GMRS network for your AO that has approx. 6-15 mile coverage; take a 5 watt HT with a speaker mike and connect it to an outdoor antenna mounted 20-30 feet high. Use the best low loss 50 ohm coax you can find such as LMR-400. Keep the cable run 50 feet or less. For general coverage in all directions use a omnidirectional vertical such as a J-pole or one of the readily available commercial antennas. To increase your range further, and for a little more comsec, take a 10db gain 440mhz 4-element beam, cut it down for 1.1 swr on the GMRS band and turn it with a tv rotor. You could also build this antenna out of rigid copper pipe for almost nothing.

#### **\*NOTE\***

The FCC demands that you pay a \$75 tax (license) to operate on GMRS. They readily admit that the purpose of the tax is to "catch scofflaws" who owe child support or the IRS. Due to the short range nature of GMRS, enforcement of the rules has been rather lax. Anyone can buy a GMRS rig and most are tossing the paperwork in the trash. No one will check to see if you have a license unless you interfere with another licensed operator. So, NEVER interfere with a frequency when it is in use or another operator.

Also, the FCC issues a callsign with each new license. It is a 3 by 4 call that should be very familiar to the old Class D CB operators. A GMRS call will look like this: KFW-1234. So, if you don't have a call...make one up.

BE aware that the FRS/GMRS frequencies are in the same band used by local, State and Federal law enforcement agencies and that they can monitor your comms in split second.

#### **VHF-Low Band**

Here's where it starts to get interesting. VHF Low Band is preferred in rugged terrain because LB signals are much less affected by hills or dense foliage than VHF (2-meter) or UHF. This is probably the reason why the military uses tac comm radios that operate from 30.000-87.975mhz.

6-Meter Low Band (50.-54.000mhz) is well suited for tac com operations at the local and regional level. In most areas of the country this band sees little use and has been all but forgotten by the Tech class hams who think that 2 meters is the only band. There is little interference or overcrowding. Typical mobile range is 40-50 miles. During years of high sun spot activity, occasional band openings allow base stations running beam antennas and power to reach out several hundred miles.

HT's for this band operate in the FM mode with an output of 5 watts. This is plenty of power for 5-15 mile range. Field expedient antennas for 6 meters are small, easily made and will increase the range even further. Mobile rigs such as the Ranger 5054 will operate CW, SSB or FM with 25 watts output. Most of the 6 meter HT's and mobile rigs can be broadbanded to cover the military frequencies which has many advantages. Quarter wave mobile whip antennas are approx. 4.5 feet tall and cost about \$25.

ARRL 6-Meter (50-54mhz) Bandplan:

50.000-50.100 CW, beacons  
50.100-50.300 SSB, CW  
...50.100-50.125 DX subband  
...50.125 Old DX SSB Call  
...50.200 New DX SSB Call  
50.300-50.600 All Modes  
...50.400 AM Call  
50.600-50.800 Digital  
...50.620 Packet Call  
51.000-51.100 West Coast DX

**\*NOTE\***

All freq.s above 51.10 are spaced 20 kHz apart on "even" channels.

51.500-51.600 Simplex (6 channels)  
51.120-51.480 Repeater Input (19 channels)  
51.620-51.980 Repeater Output (19 channels)  
52.000-52.480 Repeater Input (23 channels except...)  
..52.0-52.04 FM SIMPLEX  
52.500-52.980 Repeater Output (23 channels except)  
..52.525 PRIMARY FM SIMPLEX  
..52.540 SECONDARY FM SIMPLEX  
53.000-53.480 Repeater Input (19 channels)  
..53.000 BASE FM SIMPLEX  
..53.020 Simplex  
53.520-53.980 FM Simplex

**Upper HF 12-11-10 Meters**

Being at the upper end of the High Freq. scale; these bands offer long range nationwide comms during daytime band openings and have excellent propagation in hilly, forested terrain. Groundwave signals will cover 60+ miles base to base, 24

hours a day. During band opening ranges of thousands of miles are possible. First Europe and the North will come in then as the day advances, Latin America, the Pacific West and Australia. These bands usually open about 1 hour after sunrise and stay up until around 9 pm local at night. A 25 watt, broadbanded mobile rig, such as the Ranger 2950DX or the old Uniden HR-2510 coupled to a 102 inch steel whip will have a range of approx. 35-40 miles. The mobile rig will work well for a 40-60 mile coverage base station with a power supply, set of meters/tuner and a vertical 5/8's wave antenna mounted 36' high. For a little more stealth and increased range, use a 3 element horizontal beam, a tv rotor and 40' mast. Most hams operate in USB mode on these bands while the freebanders tend to use LSB.

**ARRL 10-Meter Bandplan:**

28.000-28.070-CW  
28.070-28.150-CW/Data  
28.120-28.189-Packett/Data/CW  
28.190-28.300-CW/Beacons  
28.300-28.500-Most SSB activity  
28.500-29.699-SSB and FM  
28.590-ARRL Emergency Net  
28.680-SSTV  
29.300-29.510-Satellites  
29.510-29.590-Repeater Inputs  
29.600-National FM Simplex Freq.  
29.610-29.690-Repeater Output (Base)

Freeband-27.405-27.995 (Upper Band)  
27.500 National MilComm Monitor  
27.555 National DX Call Freq.

11-Meter-26.965-27.405 (CB)  
27.385LSB-Ch.38-National Contact Freq.

Freeband-25.000-26.960 (Low Band)

12 Meter-24.890-24.990  
24.890-24.930-CW/Data  
24.930-24.990-USB

**Militia Signal Corps Tactical Bandplan**

The following simplex frequencies are for Initial Contact only. Use them to contact friendly forces when you are out of your area of operations. Do not use these freq's for any mission critical information. When calling for a militia contact on these freqs: Call "CQ for the MSC DX group". All groups nationwide are urged to monitor these freq.s 24/7.

Tac1 27.325 AM/LSB-Alternate Call (Channel 32)  
Tac2 27.385LSB-Primary Local Call (Channel 38)  
Tac3 27.555LSB Primary DX Call  
Tac4 29.600FM Simplex Call  
Tac5 52.525FM Simplex Primary Call  
Tac6 52.040FM Simplex Alternate Call  
Tac7 146.485FM Simplex Call

Tac8 146.520FM Simplex Call  
Tac9 462.6125FM (channel 3 FRS)

**MINIMUM EQUIPMENT REQUIREMENTS:**

1 FRS/GMRS radio and spare batteries per team member.

Team Radio Operators Field Gear:

- \*1 Gear bag
- \*1 GMRS Radio with hi-gain whip antenna per team, 2 per squad
- \*1 200 channel scanner;
- \*NOTE-Option\* The Yaesu VX-5r HT can replace all squad radios as well as do double duty as a scanner. It will give you the ability to TRX on 6 & 2 meter, 70cm (440) FRS/GMRS, MURS and many other freq's. It can also monitor HF shortwave as well as military, aircraft and all local, State and Federal agency freq.s
- \*1 Headset w/boom mike for radios
- \*2 Red light sticks and/or mag-lite with red filter
- \*1 C.E.O.I on laminated 3"X5" cards
- \*1 Notepad w/pencil
- \*1 Topo map of teams Area of Operation
- \*1 Mini-binoculars 12X25
- \*1 Manpack rechargeable battery system (7ah with various connectors to adopt to all squad equipment)

For further information study:

Tactical Single Channel Radio Comm Techniques study:  
[hXXp://155.217.58.58/cgi-bin/atdl.dll/fm/24-18.htm](http://hXXp://155.217.58.58/cgi-bin/atdl.dll/fm/24-18.htm)

Also, study the Milcomm Organization, and Rapid Alert System threads in the comm forum.

For those who know nothing about tactical communications read:

**Basic Tac-Comm**

[hXXp://www.netside.com/~lcoble/dir9/commo.htm](http://hXXp://www.netside.com/~lcoble/dir9/commo.htm)

**8.4 RAPID ALERT SYSTEM**

**Purpose**

All local, state and national units need to implement, maintain and regularly test a Rapid Alert System so that all members may be notified about any emergency situation.

The R.A.S. consists of five elements:

1. An Emergency Deployment Plan; which will consist of rendezvous/rally points, persons you are to report to and specific member assignments during the emergency.
2. Telephone Tree: Each member must have a contact list of other members to call or page. This contact list should include all members of your Local Unit, as well as your State Commander, XO and Communications Officer. The phone tree will be used to notify all members, of the activation of the Communications Network and their

units mobilization. (see SOP)

3. E-Mail: For issuing SITREPS, SALUTE reports, announcements etc. All sensitive or mission critical information should be encrypted by the most secure means available. At the present time use: the Communications forum at awrm.org for information that is for dissemination to the "public" and the Comm. Officers forum for more critical comm.

4. Radio Networks: Are radio stations grouped together for the purpose of message handling, relaying SitReps, and for the Command Staffs use in coordination and focus of effort. (see Organizational Overview by 1371)

Local Nets should consist of at least 3 radio stations per county that are capable of contact with each other as well as with the teams in the field. At least 1 of these stations must be capable of contact with all surrounding countys and the nearest Regional Net Control Station.

Regional Nets are comprised of several countys grouped together for mutual support. These Regional Nets will form the State Network. At least 3 regional stations must be capable of maintaing contact throughout their respective state as well as being able to contact the National (ERPN) Network. The most capable station in this state network will be designated the State Net Control Station. It must be capable of maintainng Local, Statewide and Nationwide contact at all times.

5. Neighborhood Alerts: Members will be designated to ride through the local neighborhood alerting the people in their Area of Operations. A siren, bell, and or p.a. system may also be used.

#### **Activization of the R.A.S.**

The Local RAS may be activated by any member of the particular unit involved. But, every effort must be made to follow the chain of command, especially at the Regional and State level.

Any time the State RAS is activated it should be called by the C/O, X/O, or Comm. O. and only after confirmation of the local sitreps with the Local C/O. If the crisis is of a Statewide nature it should then be passed on to the national level by the State Net Control Station.

#### **Telephone Tree S.O.P.**

Summary:

1. C/O notifies Team Leaders
2. Team Leaders notify team members
3. Team Leaders report status back to C/O

Detailed Procedure:

1. Notify Team Leaders: The decision to activate the telephone tree is made by the C/O, X/O or other Command Staff. They will contact the TEAM Leaders and advise them of:
  - a. THE NATURE OF THE EMERGENCY
  - b. Any special instructions
  - c. The telephone number and or frequency where TL's can report back the status of their teams to the C/O. If any TL's can't be reached backups will be called.

## 2. Notify Team Members:

- a. Each Team Leader will then notify all the individual members of his team; advising them of:
  - a. The nature of the emergency
  - b. Any special instructions
  - c. Requestes them to monitor the ERP, their State Net and the Local Emergency Frequency for further instructions and SitReps.

## **Alert Levels**

Over the years we've saw every kind of alert imaginable. Most of them false or someone jumping the gun. These "alerts" usually come with no confirmation or follow up; meanwhile everyone runs around for 2 days trying to find out what is going on.

Only State Commanding Officers or State Communications Officers should issue an alert. Local groups should maintain contact with these officers and issue sitreps as necessary up the chain of command to them. Only upon double-confirmation and a decision by the State C/O, should local sitreps be passed on or an alert issued. A standardized SOP or Protocol for Sitreps and Alert Levels should be adopted.

### ALERT LEVELS:

Level 1 "RED" Highest alert rating. Incident In Progress: Nationwide Comm. Network in operation and monitored 24/7. Local and State Nets activated. Emergency Deployment Plan activated and All units mobilized.

Level 2 "YELLOW" Credible Threat: Rapid Alert System activated and all Local, State and Nationwide nets in "open mode" operation 24/7. All units at preassigned locations and awaiting further orders.

Level 3 Potential Threat: All equipment packed and ready to go. All members stay in daily contact with Team Leaders via the Local Radio Network. Local Nets make weekly contact with the State Net. Monitor ERP on schedule.

Level 4 Minimal Threat: All equipment available. Members maintain standard contact with Team Leaders through the weekly Local Radio Net.

Level 5 Standby...All members monitor shortwave, ERP and local freqs. for developing situations.

## **Message Format**

CALL...Give callsign of the station you are attempting to contact. Then, your callsign. After the Net Control Station acknowledges you may proceed with your message.

Transmit information in the following order:

PRECEDANCE---Routine, Priority or Emergency

TIME---Followed by date-time group IE: 012302-1830

FROM---Followed by callsign of person sending message if different from that of the sender.

TO...The person or unit the message is for

..."BREAK"

Text of message---Encode and limit to 25 words if possible. Use the D.E.S., Brevity Code, SitRep and Salute format per MilComm SOP.

#### **8.4 SRATCOMM And TACOMM S.O.I.**

##### **National Communications S.O.I.**

###### **PURPOSE:**

The National Network's mission is to provide emergency communications for the various states by acting as points of contact and relay stations. OPSEC and COMSEC apply at all times.

The Eastern Regional Patriots Net is a directed net for SITREPS, SALUTE's, message handing/relay and announcements. We need reports and updates on natural or man made disasters, civil distress / unrest, police militarization, Posse Comitatus Act violations, military activities in civilian areas, FEMA actions against citizens, FBI/ATF action in local jurisdictions, LE/Military roadblocks and checkpoints, martial law declarations, weapons confiscations etc.

###### **TIME:**

All times given are in UTC. Monitor the appropriate frequencies per SOI, on the hour, from five minutes before until five minutes after.

###### **COMSEC:**

These frequencys are "public" knowledge, therefore no Mission Critical traffic should be passed. Use all COMSEC measures including the Milita Brevity Code. Be prepared to hit and bounce at ALL times.

###### **FREQUENCIES:**

Don't give out frequencys over the air Use the "F" or "A" code.

###### **National Emergency Net:**

F-1\_\_3.860-LSB-Nighttime Monitor / Eastern Regional Patriot Net Meets Every night @ 0100 hour

F-2\_\_7.275-LSB-Net-Primary Daytime Monitor

F-3\_10.145-LSB Digital Net 11:00/13:00/14:00/ and 17:00 hours..Call for KC2AXU-15NPS(National Patriot System) Use mailbox if NCS is not online...leave your id and a brief message...use the Brevity Code

F-4\_14.345-USB-Alternate Daytime Monitor

F-5\_18.140-USB-Alternate Daytime Monitor

F-6\_27.555-Daytime Monitor/DX Initial Contact

F-7\_28.333-USB-ConSigCor

###### **"Tac Call" Initial Contact Bandplan:**

The following simplex frequencies are for initial contact only. Do not use them to pass any mission critical information. Use them to contact friendly forces when you are out of your area of operations. When attempting to make contact with the militia; Call "CQ for MSC DX group". All units should monitor these freqs. 24/7.

Tac1 27.325 AM/SSB Alternate

Tac2 27.385 LSB Primary Local Contact Freq.

Tac3 27.555 LSB Primary Nationwide DX Daytime Call Freq.

Tac4 29.600 FM

Tac5 52.025 FM Primary  
Tac6 52.040 FM Alternate  
Tac7 146.485 FM Primary  
Tac8 146.520 FM Alternate  
Tac9 462.6125 FM (channel 3 FRS)

\*6.900\* Emergency Broadcast System: Monitor on the hour during emergency for news and announcements.

**\*NOTE:**

Complete details on the above subjects can be found in the Signal Corps Operations Manual, which is a separate publication.

For more information, have your CO, XO, or Comms Officer check the Communications section of [www.awrm.org](http://www.awrm.org).