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The role of the Department of Defense and that of the United States Joint Forces Command in Homeland Security should be one of leadership and not of support. USJFCOM and that of any Commander of a Joint Task Force in charge of Homeland Security provides a better trained force equipped for dealing with this national crisis. Legal and traditional obstacles can be overcome to give the American people the security and safety they need and deserve by allowing USJFCOM to take a leadership role during this national crisis of fighting and countering acts of terrorism against the United States.

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HOMELAND SECURITY: TAKING THE LEAD-ISSUES AND CONCERNS FOR THE OPERATIONAL COMMANDER

By

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A paper submitted to the faculty of the Naval War College in partial satisfaction of the requirements of the Department of Joint Military Operations.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.

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4 February 2002

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ABSTRACT

HOMELAND SECURITY: TAKING THE LEAD-ISSUES AND CONCERNS FOR THE OPERATIONAL COMMANDER

In response to the horrific terrorist events of September 11, 2001, America needs to reexamine what organization it charges to be the Lead Federal Agency (LFA) in Homeland Security. Currently, the Federal Bureau of Investigation and the Federal Emergency Management Agency are the lead agencies in dealing with terrorism. The Office of Homeland Security is the coordination element established by Executive Order. The United States Military, specifically the United States Joint Forces Command, is only allowed to play a supporting role, not one of leadership. The reason most often given for not allowing the Military Operational Commander to take the lead is the *Posse Comitatus Act* which in general prohibits the active military forces from conducting civilian law enforcement activities.

The role of the Department of Defense and that of the United States Joint Forces Command in Homeland Security should be one of leadership and not of support. USJFCOM and that of any Commander of a Joint Task Force in charge of Homeland Security provides a better trained force equipped for dealing with this national crisis. Legal and traditional obstacles can be overcome to give the American people the security and safety they need and deserve by allowing USJFCOM to take a leadership role during this national crisis of fighting and countering acts of terrorism against the United States.

HOMELAND SECURITY: TAKING THE LEAD-ISSUES AND CONCERNS FOR THE OPERATIONAL COMMANDER

THESIS:

The role of the Department of Defense and that of the United States Joint Forces Command in Homeland Security should be one of leadership and not of support. USJFCOM and that of any Commander of a Joint Task Force in charge of Homeland Security provides a better-trained force that is equipped for dealing with this national crisis. Legal and traditional obstacles such as the *Posse Comitatus Act* and perceived negative use of active duty forces can be overcome to give the American people the security and safety they need and deserve. The best policy is to allow USJFCOM or a newly created Unified Command to take a leadership role during this national crisis of fighting and countering acts of terrorism against the United States.

INTRODUCTION:

The role of the Department of Defense and that of the United States Joint Forces Command (USJFCOM) in Homeland Security is one of support, not leadership. JFCOM, or an assigned Operational Commander of a Joint Task Force (CJTF), plays the role of a support agency and not as the lead agency in dealing with security of the homeland. This brings many to ask why the military is not playing a lead role for the federal government in the defense of the Homeland. The two issues that immediately rise to the forefront for discussion are the legal limitations on military support to Homeland Defense and what the command and control structure should be for Homeland Security. These issues and their associated problems can be overcome to give the American people the best agency most capable of conducting operations in the defense of the Homeland.

Especially since the terrorist incidents of September 11th 2001, there has been a great deal of attention focused on Homeland Security and deterring and responding to terrorist attacks. Deterrence is best accomplished with a combination of preemptive activities and a robust consequence management capability. Executive directives and congressional legislation have focused on using domestic civil response capabilities as the primary tool while assigning the military a supporting role. This methodology supports the American tradition of keeping the military removed from domestic activities. However, the magnitude of the impact a terrorist event has on American society dictates military involvement to effectively deter and, if necessary, respond in the aftermath of such an attack as the lead agency.[1]

RESEARCH and ANALYSIS:

One would ask how did the JTF become a support agency to other federal agencies, despite the fact that DOD is arguably the best equipped to handle Homeland Defense? The United States policy for combating terrorism against the homeland is derived from a variety of different directives: Presidential Decision directives 39 and 62, the Defense Against Weapons of Mass Destruction Act of 1996, the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1984 (as amended in 1995)[2] and Executive order 13228 establishing the Office of Homeland Security and the Homeland Security Council.

Drafted in 1995, PDD - 39 formally recognizes terrorism as a serious threat to our national security and states that the policy of the United States is "to deter, defeat, and respond vigorously to all terrorist attacks on our territory and against our citizens, or

facilities, whether they occur domestically, in international waters or airspace or on foreign territory." [3]

The most important part of PDD-39 deals with assigning responsibilities to federal agencies for countering the terrorist threat. Most significant among these assignments are the choices for Lead Federal Agencies (LFA) to oversee the Crisis Management and Consequence Management missions. PDD-39 directs that the Department of Justice, acting through the Federal Bureau of Investigation, act as the LFA for Crisis Management. The Federal Emergency Management Agency is assigned LFA for Consequence Management. In regard to the Department of Defense, PDD-39 limits their participation to that of a supporting agency for both management missions.[4]

Presidential Decision Directive 62 builds upon the components of PDD-39. It reinforces the missions of the agencies charged with countering the terrorist threat and, at the same time, attempts to create a more integrated approach to defending the homeland.[5] To do this, PDD-62 established an Office of the National Coordinator for Security, Infrastructure Protection and Counter-Terrorism.[6] PDD-62 assigns this office the responsibility of overseeing the relevant policies and programs associated with both the Crisis and Consequence Management aspect of the homeland terrorist threat. However, it does not give this office any oversight with respect to Crisis and Consequence Management Response. With respect to the Department of Defense, this directive does not broaden the military's scope of responsibility.[7]

The Defense against Weapons of Mass Destruction Act, also known as the Nunn-Lugar-Domenici Act, principally focuses on domestic preparedness with respect to a terrorist attack on the United States' homeland involving Weapons of Mass Destruction.[8]

Passed in 1996, the Act questions our nation's ability to respond to a terrorist incident within U.S. borders. With respect to the military, the Act cites that the Department of Defense is the agency most capable of responding to the WMD threat, however, it only assigns DOD the mission of "enhancing the capability of federal, state, and local emergency responders" under a program that is now referred to as the Domestic Preparedness Program.[9] The purpose of this program is to utilize Department of Defense assets to train state and local responders to manage the consequences of a catastrophic terrorist act.[10]

The amended Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1995 also addressed the nation's ability to respond to terrorism. The most significant aspect of this Act was to require that the Federal Response Plan (FRP) be updated to address government response during a domestic terrorist incident. The purpose of the FRP is to designate Emergency Support Functions during federal response to major domestic emergencies.[11] With respect to military involvement, this Act put in motion the legislation that led to the creation of the Department of Defense's Weapons of Mass Destruction - Civil Support Teams. These teams, originally called Rapid Assessment and Initial Detection (RAID) Teams, are composed of Army National Guard personnel and serve as a ready response force.[12] They can "deploy rapidly and assist local first responders in determining the precise nature of an attack, provide expert medical and technical advice, and help pave the way for identification and arrival of follow-on military assets."[13]

Executive Order 13228 dated October 8, 2001, issued in direct response to the events of September 11th 2001, established the Office of Homeland Security (OHS) and the

Homeland Security Council. The mission of the Office of Homeland Security shall be to develop and coordinate the implementation of a comprehensive national strategy to secure the United States from terrorist threats or attacks.[14]

The OHS is also charged with working with executive departments and agencies, state and local governments, and private entities. The office must ensure the adequacy of the national strategy for detecting, preparing for, preventing, protecting against, responding to, and recovering from terrorist threats or attacks within the United States. The OHS will also periodically review and coordinate revisions to that strategy as necessary.[15]

The order also established the Homeland Security Council. The council's charter is to be responsible for advising and assisting the President with respect to all aspects of homeland security. The Council serves as the mechanism for ensuring coordination of homeland security-related activities of executive departments and agencies and effective development and implementation of homeland security policies.[16] The Secretary of Defense serves as a member on the council. Specifically, his role and as well as that of DOD's is still in support of the Lead Federal Agency as discussed earlier. In fact all policies have put DOD and that of USJFCOM or any CJTF in a support role. Such a policy, although created in light of *Posse Comitatus Act*, unnecessarily limits our ability to defend the Homeland. Why then is the military relegated to a support role when arguably they are best suited to be the lead agency in Homeland Defense? Quite simply, it is the law, or is it?

As a general rule, federal military forces may not be used in domestic law enforcement. This restriction stems from federal law, specifically 18 USC 1385, commonly known as the *Posse Comitatus Act*. The Act prohibits military members in an

official capacity from participating directly in law enforcement activities such as: arrest, search and seizure, stop and frisk, or interdiction of vessels, aircraft, and vehicles. The Act also prohibits members from conducting surveillance or pursuit; acting as informants, undercover agents, or investigators in civilian legal cases or any other civilian law enforcement activity.[17] With the above impediments in place, how then does the Military support Homeland Security? The Homeland Defense mission is currently delegated to one of the Unified Commands established in the Unified Command Plan.

The Unified Command Plan of the United States Department of Defense established the missions, responsibilities, and force structure for commanders of unified combatant commands. The plan tasks the United States Joint Forces Command (USJFCOM) with providing military assistance to civil authorities in the event of a terrorist incident within the United States. USJFCOM is also required to provide military support to US civil authorities (MSCA) and military assistance for civil disturbances (MACDIS), subject to SECDEF approval.[18] The plan further recognizes the demanding scale of operations associated with consequence management of a terrorist event and dictates that USJFCOM efforts "must be integral to wider strategic, operational, and total force planning."[19] To facilitate the concentration of effort and maintain the degree of Department of Defense readiness deemed necessary, the plan directs establishment of a Joint Task Force for Civil Support subordinate to USJFCOM. The plan stipulates that, regardless of organization, the Department of Defense must ensure that "all missions are effectively accomplished, the strategy of forward engagements remains intact, and the primacy of civil authority in domestic response is maintained."[20]

The United States must broaden the way in which it deals with Homeland Defense to take advantage of all of the available tools. The current approach to improving Homeland Defense exclude DOD's and USJFCOM's offensive and deterrent capabilities, in identifying and striking at hostile foreign governments and terrorists[21] as well as taking a proactive role within the United States, before, during and after an incident. Legal considerations are often mentioned as a roadblock to allowing USJFCOM from utilizing all its' resources.

Many senior government and military officials, legal and public scholars and average citizens alike, all cite *Posse Comitatus* as the reason why the military is not able to or should not take the lead in Homeland Defense. In order to understand the extent to which the Act has relevance today, it is important to understand to whom the Act applies and under what circumstances. The statutory language of the Act does not apply to all U.S. military forces.[22] While the Act has applicability to the Army, Air Force, Navy and Marines, including their reserve components, it does not have any applicability to the Coast Guard, nor to the huge military manpower resources of the National Guard. The Coast Guard as well as the National Guard, when it is operating in its state status pursuant to Title 13 of the U.S. Code is not subject to the prohibitions on civilian law enforcement.[23] While the Act appears to prohibit active participation in law enforcement by the military, the reality in application has become quite different. The Act is a statutory creation, not a constitutional prohibition. Accordingly, the Act can and has been repeatedly circumvented by subsequent legislation. Since 1980, the Congress and President have significantly eroded the prohibitions of the Act in order to meet a variety of law enforcement challenges.[24] Examples of this is the use of the military in the drug

war; and even though at the request of the State and Local politicians, the use of an active duty infantry division to quell the riots in Los Angeles; and most recently giving the authority for active duty forces to shoot down commercial airliners if these airliners appear to pose a threat to U.S. interests. These examples are just a few of the many that have occurred over time.

An infrequently cited constitutional power of the President provides an even broader basis for the president to use military forces in the context of homeland defense. This is the President's inherent right and duty to preserve federal functions. In the past this has been used by the President to preserve the freedom of navigable waterways and to put down armed insurrection. However, with the expansion of federal government authority during this century into many areas formerly reserved to the States (transportation, commerce, education, civil rights) there is likewise an argument that the President's power to preserve these federal functions has expanded as well. The use of federal troops in the south during the 1960's to preserve access to educational institutions for blacks was an exercise of this constitutional Presidential authority.[25] Additionally, the President has allowed the criminal investigative departments of each military service to conduct criminal investigations, even on civilians, if there is a military nexus. The President has also designated certain events as National Security Events, which allows active duty military to conduct certain law enforcement activities. One such event in which this author was involved in was the NATO 50th Anniversary Summit held in Washington D.C. As Commander of a 500 person Joint Task Force for Security, this author and his soldiers were allowed to conduct all aspects of law enforcement activities barred by the *Posse Comitatus Act*. The above specific examples are just a few of the many that have

occurred using this broad and sweeping Presidential authority. Other examples have occurred during the Olympics, (Los Angeles, Atlanta and Salt Lake City), the Papal visit in 1999 and this years (2002) Super Bowl and even during last years Academy Awards.

The *Posse Comitatus Act* was passed in an era when the threat to national security came primarily from the standing armies and navies of foreign powers. Today, the context for national defense and security has changed significantly. What legal bar does the *Posse Comitatus Act* present today for using the military to prevent and/or respond to a terrorist event upon the soil of the United States? In view of the erosion of the *Posse Comitatus Act* in the past twenty years, the answer is "not much."[26]

The erosion of the original intent of the *Posse Comitatus Act* through Congressional legislation and Executive policy was to ensure the safety and rights of all citizens. The plethora of constitutional and statutory exceptions to the Act provides the executive branch with a menu of options under which the use of military forces to combat domestic terrorism can be justified. Whether an act of terrorism is classified as a civil disturbance under 10 USC 331-334, or whether the President relies upon his constitutional power to preserve federal functions, it is difficult to think of a domestic terrorism scenario of sizeable scale under which the use of the military could not be justified lawfully in view of the Act's erosion. The Act is no longer a realistic bar to direct military involvement in counter-terrorism planning and operations. It is a low legal hurdle that can be easily cleared through invocation of the appropriate legal jurisdiction, either before or after the fact.[27]

The limitations that the *Posse Comitatus Act* supposedly placed on the military in Crisis and Consequence Management appear then not to have any basis. Crisis

Management is primarily addressed in two documents: DoDD 3025.15, Military Assistance to Civil Authorities (MACA) and DoDD Military Assistance for Civil Disturbances (MACDIS). MACA policy specifically authorizes the use of military forces in counter-terrorism operations when approved by the President. Consequence management policies are covered in DoDD 3025.1, Military Support to Civil Authorities (MSCA). National Guard forces under state control are the primary means of support for civil authorities, but federal military forces can be employed when the situation goes beyond the abilities of civilian agencies. With this in mind, the Act then should be modified, as it has been in the past, to allow USJFCOM to play a greater role in protecting the United States against terrorism, which would significantly improve the national strategy for dealing with this threat.

USJFCOM is the agency best equipped to handle all aspects of taking the lead in Homeland Security, Homeland Defense and Civil Support. Homeland Security is the preparation for, prevention of, deterrence of, preemption of, defense against, and response to threats and aggressions directed towards US territory, sovereignty, domestic population, and infrastructure; as well as crisis management, consequence management, and other domestic civil support. Homeland Defense is the protection of US territory sovereignty, domestic population, and critical infrastructure against external threats and aggression.

Civil Support by the Department of Defense to Civil Authority provides support for domestic emergencies, and for designated law enforcement and other activities. Crisis Management are those measures that identify, acquire, and plan the use of resources needed to anticipate, prevent, and /or resolve a threat or act of terrorism. The laws of the

United States assign primary authority to the Federal Government to prevent and respond to acts of terrorism; State and local governments provide assistance as required. Crisis Management is predominantly a law enforcement response. Consequence Management are those measures to protect public health and safety, restore essential government services, and provide emergency relief to governments, businesses and individuals affected by the consequences of terrorism. The laws of the United States assign primary authority for Consequence Management to the States to respond to the consequences of terrorism; the Federal Government provides assistance as required,[28] these response teams are usually called "First Responders."

Today, America's strategy to defeat terrorism is contingent on the participation and coordination of state, local and more that 45 departments and agencies of the Federal Government (see appendix A). The organizational structure for the Office of Homeland Security (OHS) is equally as cumbersome and military dependent. (See appendix B). Currently, as of 7 January 2002, the OHS has 196 authorized positions of which 91 are military. Of these positions, OHS is filled at or near 50%, with the bulk of the filled positions and those that are unfilled belonging to the military.[29] The creation of OHS adds yet another bureaucratic agency in the fight to protect our homeland. This structure significantly impairs our efforts for effective Homeland Security. The time has come to establish a Commander in Chief for Homeland Security. This organization as do other Unified Commands will report directly to the President. The President, using his discretionary powers could allow military members assigned to this and only this organization, sweeping authority in the defense of the Homeland. The current

organizational structure in Homeland Security appears confused and is unclear on who is responsible for what and where needed resources will come from.

The Unified Command Plan establishes nine unified combatant commands, led by Commanders-in-Chief (CINCs), as America's "warrior chiefs." A unified combatant command "has broad, continuing missions and is composed of forces from two or more military departments."[30] Five of these commands are geographic CINC's; responsible for being the primary military representative and conducting operations in their specified geographic area of responsibility. By establishing a Homeland Security CINC, one would achieve unity of effort and synergy in countering the terrorist threat. Additionally, a new CINC might facilitate coordination with the Inter-Agency and provide the NCA with "one stop shopping" for Homeland Security issues.[31]

It is in the best interest of the United States to amend the *Posse Comitatus Act* to allow USJFCOM to play a greater role in both the Crisis and Consequence Management missions.[32] Former CIA Director John Deutch stated that the U.S. Joint Forces Command, not the FBI or FEMA, was uniquely qualified to handle the "broad range of activities that affect prevention, containment, and management of the consequences of a catastrophic terrorist attack."[33] The President should direct the Secretary of Defense to have USJFCOM take the lead in Homeland Security and restructure itself to be able to provide more forces that, if called upon, could support the Crisis and Consequence Management missions. These forces should be permanently assigned and include both Command and Control and Ready Response elements.[34]

Why is USJFCOM the best federal agency suited to lead all others in the defense of the homeland? Military units, like USJFCOM, are well led, equipped, disciplined and

trained for conducting operations and establishing operational plans for countering threats. Additionally, USJFCOM already has an established organizational structure for Homeland Security embedded within its organization. USJFCOM understands, through experience, that Terrorism is a threat to national security and must be countered through a well-planned coherent strategy that is able to address all security concerns.

Unlike other Federal agencies, the military is prepared intellectually and organizationally to take the mission. The military's planning process and ability to understand the situation and plan for an executable solution is unparalleled. The Operational Commander through Operational Art, and utilizing the Deliberate and Crisis Action Planning process embedded in the Joint Operation Planning and Execution System (JOPES) is the most qualified to conduct Homeland Security.

> The Joint Staff Officer's Guide, JFSC Pub 1, defines Operational Art as,"… the employment of military forces to attain strategic and or operational objectives through the design, organization, integration, and conduct of strategies, campaigns, major operations, and battles. Operational art translates the joint force commander's strategy into operational design, and ultimately, tactical action, by integrating key activities at all levels of war."[35]

There is no other Federal Agency that has the experiences in planning and executing missions of this magnitude than the United States Military.

> JFSC Pub 1 defines JOPES as, "… the foundation for conventional command and control by national and theater-level commanders and their staffs. It is designed to satisfy their information needs in the conduct of joint planning and operations. JOPES includes joint operation planning policies, procedures, and reporting structures supported by communications and automated data processing systems. JOPES is used to monitor, plan, and execute mobilization, deployment, employment, and sustainment activities associated with joint operations."[36]

Utilizing JOPES, USJFCOM will be able to employ and deploy the right force structure in detecting, preventing and countering terrorist threats.

Operational Command and Control, one of the many functions of Operational Art has two overarching tenets: Unity of Effort and Unity of Command. *Unity of effort* is one of the main prerequisites of successful performance by a command or other organizational entity in charge of a mission. At the operational level and higher, success is difficult to achieve without having unity of effort through unity of command. *Unity of command* means having a single commander control all the forces assigned to a particular mission. It is achieved principally by establishing clear-cut division of responsibility, inter- and intra-service/agency integration, cooperation, and interoperability. Unity of command is usually applied in command and control of national forces operating on a permanent or semi-permanent basis in a relatively large part of the theater, with service-based forces and functionally organized multiservice or joint forces.[37]

Unity of command for Homeland Security can be achieved by designating USJFCOM the Lead Federal Agency (LFA) over all others. The military is the best able to prevent or respond effectively to a terrorist event. They have the best equipment, training and personnel who understand planning processes (both deliberate and crisis action). They know how to take charge, are self-supporting; and have experience operating in austere environments. Perhaps more importantly, the military has the confidence of the citizens they serve and would provide a reassuring response to a tragic violation of the country's security.[38]

As one observer argues,

> The United States has traditionally resisted any threat to civil freedom, particularly from excessive domestic military power. At the same time, Americans have always looked to their military to protect their vital interests. Today, those vital interests are threatened by attacks on the homeland and defense may require a temporary compromise be struck between military action and military restraint.[39]

The discussions on the preceding pages clearly articulate reasons why USJFCOM should take the lead role in combating terrorism rather than being just a support player. Even as a support player, DOD supplies most of the assets to counter these threats. With a change in legislation, as it relates to *Posse Comitatus* and the creation of a Homeland Security CINC, the American people will have the best, most able organization to protect and defend the Homeland. The roles and missions of the military have changed over the years and so have the attitudes of the American public. The terrorist incidents over recent years leading up to September 11, 2001, clearly show that the current command and control structure and the limitations placed on the military have been an impediment to protecting the American people. We must, in order to protect the Homeland, reorganize how we operate and who is in charge. In fact, the call for change has started: since September 11, 2001 we have seen an apparent revision of some of our civil liberties based on past beliefs with more stringent searches at airport terminals, terrorist profiling, and a loud call for National Identity Cards. Although some would argue that this is an infringement on our Constitutional rights, others would say that it is more important to be able to protect the American people from terrorism than it is to have the government collecting and storing information about US citizens and visitors alike. The reader should not feel as if this paper is advocating a police state. The point is that the key to Homeland Security and the use of the military should be one of balance. We must ensure the legacy of our civil liberties with that of prudent security measures to protect us. The American people need and deserve a common sense approach that allows for both to occur, while keeping us safe.

COUNTER-ARGUMENT:

There is strong opposition however to allowing the Military to play a greater role in Homeland Security, at least with respect to being the lead agency. The American Civil Liberties Union and steadfast defenders of the Posse Comitatus Act lead this opposition. They fully support and defend to the letter the *Posse Comitatus Act* as it was initially passed. When the President or Congress diluted the Act's limitations for the Military to act, the ACLU cried foul. Currently, during the War on Terrorism they have even challenged the recent sweeping changes given to the Department of Justice in which DOJ was given greater control in detaining illegal immigrants and that of giving the Military the option of using Military Tribunals. In fact, the ACLU feels that the administration has failed to show that a jury trial does not meet the needs of prosecuting terrorists. They believe that the Military would authorize secret trials without a jury and without the requirement of a unanimous verdict. They would limit a defendant's opportunities to confront the evidence against him and to choose his own lawyer. The ACLU believes it is unnecessary for the government to eavesdrop on any conversation at anytime between a detained suspect and his attorney. The ACLU is trying to muster up enough support in Congress and that of the American people. Although much discussion has taken place, there is no real wide spread support. It can be argued that the ACLU is right when they state that all Americans Constitutional rights will be watered down if the United States Government continues down this most treacherous path. This is especially true if the military was given a greater role in law enforcement functions.

One could even argue that the Department of Justice as well as state and local law enforcement cannot even protect American citizens from the general category of crime.

Why then would anyone believe that they truly could protect him or her from terrorism? I believe this is an important question in that the answer may lie somewhere in the middle. If our rights are continually eroded to counter terrorism in the defense of the United States, what really is the greater threat? Even though terrorist events are shocking and painful, they do not kill, maim, or ruin as many lives as ordinary crime does.[40] Our legal system and way of life, maintains that your are innocent until proven guilty, why should we change that for a lesser problem. Even though terrorism has a greater shock and impact on the American people it does not come close to the problems caused by ordinary crime. Giving the military a greater hand in domestic law enforcement even under the cover of counter-terrorism goes against the grain for many people. It is a question that has to be resolved sooner that later.

RECOMMENDATIONS:

Taking most arguments into consideration, it is still the opinion of this author that the role of the Department of Defense and that of the United States Joint Forces Command in Homeland Security should be one of leadership and not of support. USJFCOM and that of any Commander of a Joint Task Force in charge of Homeland Security provides a better trained force equipped for dealing with this national crisis. Yes, some things need to change. The *Posse Comitatus Act* must be revised to allow the active force to play a greater role and to remove the limitations placed on them in relation to Homeland Security. Unity of command must be established under USJFCOM to allow them to lead efforts in the accomplishment of the mission of Homeland Security. There is no substitute for the confidence that the Federal government and that of the American people has in its military force. Assigning this mission and lead agency status to USJFCOM and

that of the Operational Commander in Homeland Security is not only a priority, it may well be the only way in which the American people can truly be protected.

CONCLUSION:

Regardless of what organization, civilian or military, is given the responsibility for Homeland Security, all Americans would agree that the goal is the safety and security of all of us. We want piece of mind that whenever we travel or whatever we do, we are all protected from terrorists and their acts of terrorism. The current structure for Homeland Security, for a myriad of reasons, failed to protect the sovereign territory of the United States and her great people from the horrific acts of terrorism witnessed on September 11, 2001. Change must come and must come quickly. This nation, any nation, should not have to live in fear every day that an incident may occur at a major sporting event, during travel or even while learning at the Naval War College or other institution. It is the inherent duty of the government to protect its people. Some may say that the recommendations in this paper go to far, others not far enough, but one thing is clear, something must be done.

RESEARCH UPDATE (AS OF 31 JANUARY 2002):

The Pentagon has decided to ask the White House for approval to set up a new four-star command to coordinate federal troops used to defend North America[41]

> " Before September, military leaders had resisted the idea of a homeland CINC, reflecting a traditional aversion to--and legal limits on--the use of federal armed forces for domestic law enforcement.
> … Earlier opposition from such groups as the American Civil Liberties union has also waned, although concerns persist about possible "mission creep" and the risk that any military forces deployed around the country could end up threatening individual rights.
> …Legal barriers to sending the armed forces into U.S. streets have existed for more than a century under the *Posse Comitatus Act* of 1878. Since September 11,

> several prominent lawmakers--including Sen. John W. Warner and Sen. Max Cleland, have called for revising the act."[42]

Defense Secretary Donald Rumsfeld has decided to name the military's new command responsible for homeland security the U.S. Northern Command. The moniker aims to reflect the 10th unified command's full area of operations, which will include not only the continental United States but also Canada and Mexico.[43]

It appears, at least to this author, that change is occurring within the United States on how we will defend our great nation and ourselves. Reasonable accommodations need to come from both sides of this issue in order to balance the use of the military and our civil rights. One thing is clear, events like September 11th 2002 can never happen again.

NOTES

[1] John M. Faulkner, "The Weapons of Mass Destruction Threat, Homeland Defense, and JFCOM." Naval War College, May 2000, pg.ii.
[2] John S. Coffey, "Terrorism: The United States Is Not Ready to Respond to the Threat Against the Homeland," Naval War College, February 2000, pg. 9.
[3] The White House, Fact Sheet: U.S. Policy on Counter terrorism: Presidential Decision Directive 39, 1995
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[4] John S. Coffey, "Terrorism: The United States Is Not Ready to Respond to the Threat Against the Homeland," Naval War College, February 200, pg.10.
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[27] Ibid., 4.
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[29] Information from a class briefing given by LTC Burns after a meeting at the Office of Homeland Security. Elective class was at the Naval War College entitled, Homeland Security, Domestic and International Disaster Relief, January 2002.
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