

# Defense Support of Civil Authorities: A Primer On Intelligence Collection During Civil Disturbance and Disaster Relief Operations

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*The U.S. Armed Forces have a historic precedent and enduring role in supporting civil authorities during times of emergency, and this role is codified in national defense strategy as a primary mission of the Department of Defense.*<sup>1</sup>

## I. Introduction

You have just recently taken over as the Deputy Staff Judge Advocate in the 2d Marine Division Office of the Staff Judge Advocate (OSJA). You are trying to wade through the mountain of administrative separation boards and investigations on your desk that never seems to get smaller, hoping that today will be the day you actually get home before your family goes to bed. As you flip open the next file, the Staff Judge Advocate walks in and asks if you have heard about the hurricane that is heading toward the coast. You confirm that you heard about it on the news during your morning commute and someone from the G-2 mentioned it during his brief earlier in the week at a meeting you were covering. He explains that the 24th Marine Expeditionary Unit (MEU) is going to deploy after the hurricane makes landfall to assist civil authorities in disaster relief and quell any civil disturbances that pop up. He further explains that the MEU Staff Judge Advocate (SJA) is on leave and unable to get back in time and you are being tapped to fill the gap. He tells you, "Congratulations, embark is in twenty-four hours. You need to be checked-in and ready to go in twelve." After thanking him, he says, "Oh yeah, I expect the MEU Commander will have some questions on what authority he will have and why. I also think he will be interested in the use of intelligence collection assets and things like that, so make sure you're good to go on that stuff."

After calling home to explain the "situation," you make sure your gear is ready and start reading everything you can find on domestic operations. You find that there is plenty of information on the subject. You find handbooks, instructions, and other publications.<sup>2</sup> You just wish there

was one document that you could read in the small amount of time that is available that will answer the basic questions you know your new commander will have and help you get off on the right foot.

This article provides judge advocates with a background in domestic operations, gives an overview and summary of a commander's authority and limitations when conducting Defense Support of Civil Authorities (DSCA) operations, and focuses on the authority to use intelligence collection assets domestically. Centering on federal (Title 10) response to domestic Disaster Relief and Civil Disturbance Operations, this article provides practitioners with a tool in planning and conducting these types of missions. Areas of discussion include a brief history of domestic operations—including the authorizations and limitations of the Stafford Act—the Posse Comitatus Act, the Insurrection Act, and the commander's use of intelligence collection assets in DSCA operations, along with some examples.<sup>3</sup>

## II. History

The U.S. Military has a long history of assisting civil authorities at all levels during times of national emergency and civil disturbance. When western Pennsylvania farmers refused to pay their liquor taxes and were attacking the federal tax collectors during the Whisky Rebellion, President George Washington ordered 15,000 troops to assist in

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<sup>1</sup> JOINT CHIEFS OF STAFF, JOINT PUB. 3-28, DEFENSE SUPPORT OF CIVIL AUTHORITIES, at vii (31 Jul. 2013) [hereinafter JP 3-28].

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<sup>2</sup> CTR. FOR LAW & MILITARY OPERATIONS, THE JUDGE ADVOCATE GEN.'S LEGAL CTR. & SCH., U.S. ARMY, DOMESTIC OPERATIONAL LAW HANDBOOK FOR JUDGE ADVOCATES (2013) [hereinafter DOPLAW HANDBOOK]; INT'L & OPERATIONAL LAW DEP'T, THE JUDGE ADVOCATE GEN.'S LEGAL CTR. & SCH., U.S. ARMY, JA 422, OPERATIONAL LAW HANDBOOK (2014).

<sup>3</sup> A review of contract and fiscal law and the use of force in Defense Support of Civil Authorities (DSCA) operations is beyond the scope of this article, although such reviews are available through other sources. See Major Christopher B. Walters, *Responding to Natural Disasters and Emergencies: A Contract and Fiscal Law Primer*, ARMY LAW., Jan. 2007, at 35. A patch work of "U.S. domestic law, Presidential Decision Directives (PDDs), National Security Presidential Directives (NSPDs), and Homeland Security Presidential Directives (HSPDs), Presidential Policy Directives (PPDs), Executive Orders (EOs), and DoD regulations provide the framework for, and set limits on, the use of military forces to assist civil authorities." DOPLAW HANDBOOK, *supra* note 2, at 3-4. While these directives, orders, and regulations are integral to how the federal government responds to domestic incidents, most are outside the scope of this article. Only documents that will assist the judge advocate and that are directly applicable to the commander's authority are reviewed.

quelling the disturbance.<sup>4</sup> Presidents Eisenhower and Kennedy ordered Federal troops during the 1950s and 1960s to quell riots and enforce federal desegregation laws.<sup>5</sup> In 1992, President George H. W. Bush ordered Marines and Soldiers to assist local law enforcement in restoring order during the Los Angeles Riots.<sup>6</sup> Servicemembers from all branches have been ordered to assist civilian firefighting efforts when forest and wildfires have destroyed thousands of acres across the country.<sup>7</sup> In recent years, responding to the aftermath left in the wake of Hurricanes like Katrina, Irene, and Sandy are just a few of the contingency operations that Federal troops have been ordered to assist civil authorities.<sup>8</sup>

These examples provide judge advocates and commanders with a good deal of historical context regarding the scope of DSCA missions and lessons learned when conducting training for future incidents. However, the law regarding DSCA has not remained stagnant. Understanding each mission and how it fits within the current structure will inform the judge advocate as to how a commander's authority is derived and how it may be limited.

### III. Background

#### A. Federal Response Structure

Federal and State Civil authorities have the primary responsibility in domestic operations.<sup>9</sup> As the term "Defense Support of Civil Authorities" suggests, the role of the Department of Defense (DoD), and ultimately of the commander of the unit on the ground during domestic operations, is one of support.<sup>10</sup> The primary authority for all DoD personnel in DSCA operations is DoD Directive 3025.18.<sup>11</sup> Directive 3025.18 defines DSCA as

[s]upport provided by U.S. Federal military forces, DoD civilians, DoD contract personnel, DoD Component assets, and National Guard forces (when the Secretary of Defense, in coordination with the Governors of the affected States, elects and requests to use those forces in title 32, U.S.C., status) in response to requests for assistance from civil authorities for domestic emergencies, law enforcement support, and other domestic activities, or from qualifying entities for special events. [Defense Support of Civil Authorities is] also known as civil support.<sup>12</sup>

Under DoDD 3025.18, in all but a few limited exceptions, civil authorities must request DSCA in writing or it must be independently "authorized by the President or Secretary of Defense."<sup>13</sup> This directive provides the following criteria that should be considered when evaluating the request: cost, appropriateness, risk, readiness, legality, and lethality.<sup>14</sup> These are often referred to as CARRLL factors.<sup>15</sup> As a practical matter, when a unit such as the MEU has been ordered to a DSCA operation, the request and approval will have already occurred. The judge advocate should request copies of any existing requests and ensure the commander is familiar with their content. The commander needs to understand what went into the request and be prepared to forward recommendations up the chain of command if further requests are received.<sup>16</sup>

Department of Defense Directive 3025.18 is part of the overall structure within the National Response Framework (NRF).<sup>17</sup> "The NRF is a guide to how the Nation responds to all types of disasters and emergencies" and "sets the doctrine for how the Nation builds, sustains, and delivers the response. . . ." <sup>18</sup> While the NRF is the product of the Department of Homeland Security (DHS), which is the lead federal agency in such operations, the commander must understand that the NRF applies to all federal departments and agencies that have jurisdiction for, or responsibility to

<sup>4</sup> William C. Banks, *Providing "Supplemental Security": The Insurrection Act and the Military Role in Responding to Domestic Crises*, 3 J. NAT'L SECURITY L. & POL'Y 39, 58 (2009).

<sup>5</sup> Dan DeRight, *Lawful Military Support to Civil Authorities in Times of Crisis*, JURIST (May 2, 2013, 12:30 PM), <http://jurist.org/forum/2013/05/kevin-govern-posses-comitatus.php>.

<sup>6</sup> *Id.*

<sup>7</sup> See Captain Francis A. Delzompo, *Warriors on the Fire Line: The Deployment of Service Members to Fight Fires in the United States*, ARMY LAW., Apr. 1995, at 51–52. (Discussing military assistance to civilian firefighters, the statutory authority for such assistance, and the regulatory framework that allows servicemembers to assist in suppressing forest fires.)

<sup>8</sup> DeRight, *supra* note 5; see also DOPLAW HANDBOOK, *supra* note 2, at 1.

<sup>9</sup> See U.S. DEP'T OF DEFENSE, STRATEGY FOR HOMELAND DEFENSE AND DEFENSE SUPPORT OF CIVIL AUTHORITIES at 14–15, (Feb. 2013) [hereinafter STRATEGY FOR HOMELAND DEFENSE AND DSCA].

<sup>10</sup> U.S. DEP'T OF DEFENSE, DIR. 3025.18, DEFENSE SUPPORT OF CIVIL AUTHORITIES, at 16 (21 Sept. 2012) [hereinafter DoDD 3025.18].

<sup>11</sup> See *id.*

<sup>12</sup> *Id.* at 16.

<sup>13</sup> *Id.* para.4.c.

<sup>14</sup> *Id.* para. 4.e.

<sup>15</sup> *Id.*

<sup>16</sup> DOPLAW HANDBOOK, *supra* note 2, at 4.

<sup>17</sup> DoDD 3025.18, *supra* note 10, para. 4.f; see also Exec. Order No. 12,656, 3 C.F.R. 585 (1988). In 1988, President George H. W. Bush signed Executive Order 12656, which provided the foundation for what is now the National Response Framework (NRF) under the National Preparedness System (NPS). *Id.*

<sup>18</sup> U.S. DEP'T OF HOMELAND SEC., NATIONAL RESPONSE FRAMEWORK 19 (2nd ed. 2013) [hereinafter NRF].

support, any response or recovery effort.”<sup>19</sup> Within the NRF, roles and responsibilities are delegated and a hierarchy of command and control is created. The most important takeaway for the commander is that regardless of this structure and his mission to support, “[w]hen DoD resources are authorized to support civil authorities, command of those forces remains with the Secretary of Defense.”<sup>20</sup> The most common avenue through which the DoD provides support is the Stafford Act.

## B. The Stafford Act

The primary statutory authority used in DSCA operations is the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act).<sup>21</sup> The president, in his capacity as Commander-in-Chief, has certain constitutional and inherent authorities that allow him to order federal forces to act domestically for certain purposes.<sup>22</sup> Examples would include expelling foreign invaders or responding to incidents that threaten federal property or personnel. However, statutory authority is the principal way the president acts to provide federal support to the state or local authorities during domestic emergencies.

The Stafford Act originally came into law in 1988, renaming and amending the Disaster Relief Act of 1974.<sup>23</sup> The declared intent of Congress in passing the Stafford Act was “to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters.”<sup>24</sup> The Stafford Act gives the president authority

to declare that a particular disaster is a “major disaster” or “emergency,” authorizing federal assistance.<sup>25</sup>

The major practical difference between emergency and major disaster is that “[e]mergency assistance is more limited in scope and in time.”<sup>26</sup> Prior to a declaration of emergency or major disaster under the Stafford Act, either the governor must request assistance or the situation must be “beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary.”<sup>27</sup> The important take away for the judge advocate is that the commander’s authority to provide assistance in most circumstances is derived from a declaration of emergency or major disaster.<sup>28</sup> Such a declaration may exist even before a “hurricane that is heading toward the coast” makes its landfall.<sup>29</sup> It is more likely, however, that the declaration will be made once the damage has actually occurred.<sup>30</sup> In either case it will not be until a declaration is made that the authority will vest and the commander can assist.<sup>31</sup>

There is also a statutory authorization that allows commanders to act on their own in urgent situations called the Immediate Response Authority (IRA).<sup>32</sup> The IRA permits commanders to authorize assistance if civil

<sup>19</sup> DOPLAW HANDBOOK, *supra* note 2, at 106; *see also* NRF, *supra* note 19.

<sup>20</sup> NRF, *supra* note 18, at 19.

Military forces always remain under the control of the military chain of command and are subject to redirection or recall at any time. Military forces do not operate under the command of the incident commander or under the unified command structure, but they do coordinate with response partners and work toward a unity of effort while maintaining their internal chain of command.

*Id.* at 6.

<sup>21</sup> The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (1974) (as amended by the Post-Katrina Emergency Management Reform Act of 2006, Pub. L. No. 109-295, 120 Stat. 1355 (2007) and the Sandy Recovery Improvement Act of 2013, Pub. L. No. 113-2, 127 Stat. 4 (2013)) [hereinafter Stafford Act].

<sup>22</sup> DOPLAW HANDBOOK, *supra* note 2, at 115; *see also* U.S. CONST. art II, § 2.

<sup>23</sup> Stafford Act §§ 5121-5206.

<sup>24</sup> *Id.* § 5121(b).

<sup>25</sup> *Id.* § 5191. “Emergency” is defined as “any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.” *Id.* § 5122(1). “Major Disaster” is defined as “any natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.” *Id.* § 5122(2).

<sup>26</sup> DOPLAW HANDBOOK, *supra* note 2, at 33.

<sup>27</sup> Stafford Act § 5191(a).

<sup>28</sup> *See id.*

<sup>29</sup> *See* FEMA, HURRICANE SANDY: A TIMELINE (Apr. 24, 2013), *available at* [http://www.fema.gov/media-library-data/20130726-1912-25045-8743/hurricane\\_sandy\\_timeline.pdf](http://www.fema.gov/media-library-data/20130726-1912-25045-8743/hurricane_sandy_timeline.pdf).

<sup>30</sup> *See The Storm, 14 Days: A Timeline*, PBS FRONTLINE, <http://www.pbs.org/wgbh/pages/frontline/storm/etc/cron.html> (last visited May 19, 2015).

<sup>31</sup> Stafford Act § 5191. For a description and graphic depiction of the Stafford Act process, *see infra* Appendix A (Overview of Stafford Act Support to States).

<sup>32</sup> DoDD 3025.18, *supra* note 10, para. 4.g. (“The Immediate Response Authority exception to the Stafford Act authorized the use of the medevac aircraft, ambulances, bomb detection dog teams, and various military personnel” in response to the 19 April 1995 bombing that destroyed the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma. Commander Jim Winthrop, *The Oklahoma City Bombing: Immediate Response Authority and Other Military Assistance to Civil Authority (MACA)*, ARMY LAW., Jul. 1997, at 4.)

authorities have requested for “imminently serious conditions . . . to save lives, prevent human suffering, or mitigate great property damage” and time does not permit getting approval from a higher authority.<sup>33</sup> Notification of the assistance must immediately be sent to the National Joint Operations and Intelligence Center and the duration of the assistance provided cannot exceed seventy-two hours without another form of authorization.<sup>34</sup> Finally, the assistance provided under the IRA, and the Stafford Act in general, must be consistent with the Posse Comitatus Act.<sup>35</sup>

### C. The Posse Comitatus Act

The Posse Comitatus Act (PCA) is “the primary statute restricting military support to civilian law enforcement.”<sup>36</sup> Originally enacted in 1878, the current PCA states:

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.<sup>37</sup>

In addition to the Army and Air Force, the PCA also applies to the Navy and Marine Corps under 10 U.S.C. § 375: “activity . . . under this chapter does not include or permit direct participation by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law.”<sup>38</sup> While a thorough analysis of every application and exception of the PCA is beyond the scope of this article, a rudimentary explanation is warranted.

The U.S. Code and DoD instruction “outline the restrictions of the PCA as they apply to participation by the military in civilian law enforcement activities. Under these statutes, regulation of military activity is divided into three

major categories: (1) use of information, (2) use of military equipment and facilities, and (3) use of military personnel.”<sup>39</sup> Regarding the “use of information” category, DoDI 3025.21 states that “DoD Components are encouraged to provide to Federal, State, or local civilian law enforcement officials any information collected during the normal course of military operations that may be relevant to a violation of State or Federal law . . . .”<sup>40</sup> Likewise, the portion of DoDI 3025.21 regarding the “use of military equipment and facilities” states, “DoD Components may make equipment, base facilities, or research facilities available to Federal, State, or local civilian law enforcement officials for law enforcement purposes in accordance with the guidance in this enclosure.”<sup>41</sup>

The third category, pertaining to the “use of military personnel” is the most in-depth and generally onerous category.<sup>42</sup> The category is divided into sub-categories: direct assistance, personnel to operate and maintain DoD equipment, training, expert advice, and other permissible assistance.<sup>43</sup> The sub-category of direct assistance is further divided into prohibited and permissible direct assistance.<sup>44</sup>

The prohibition in the PCA, and as implemented through DoDI 3025.21, limits the military in supporting law enforcement agencies and performing civilian law enforcement functions only.<sup>45</sup> If the DSCA mission does not entail either of those aspects, the PCA is not a factor. For example, if the hurricane is declared a major disaster under the Stafford Act and the mission is strictly to help clean up debris and provide aid, the PCA should not be an issue.

However, it is important for the judge advocate operating in a DSCA environment to be aware of the PCA and its limitations on the commander because he may say, “Judge! The local sheriff told me there are riots downtown. He is short handed and asked if we could help with some security and maybe question the punks once we catch them. I’m pulling a squad off debris clean-up to go assist. No problem. Right?” This scenario, absent a constitutional or statutory exception, would go straight to the heart of the PCA and the type of direct assistance that is prohibited.<sup>46</sup> One long

<sup>33</sup> DoDD 3025.18, *supra* note 10, para. 4.g.

<sup>34</sup> *Id.* para. 4.g.2.

<sup>35</sup> *Id.* para. 4.g.

<sup>36</sup> DOPLAW HANDBOOK, *supra* note 2, at 69.

<sup>37</sup> The Posse Comitatus Act, 18 U.S.C. § 1385 (2011) (The PCA was originally passed to end military occupation of the former Confederate states during Reconstruction following the end of the Civil War.).

<sup>38</sup> 10 U.S.C. § 375 (2012) (promulgated by Department of Defense Instruction 3025.21); U.S. DEP’T OF DEF., INSTR. 3025.21, DEFENSE SUPPORT OF CIVILIAN LAW ENFORCEMENT AGENCIES (27 Feb. 2013) [hereinafter DoDI 3025.21]. The Posse Comitatus Act (PCA) also applies to the National Guard when in a Title 10 status and the U.S. Coast Guard when under the DoD..

<sup>39</sup> DOPLAW HANDBOOK, *supra* note 1, at 72; *see also* the Posse Comitatus Act § 1385; DoDI 3025.21, *supra* note 38.

<sup>40</sup> DoDI 3025.21, *supra* note 38, enclosure 7, para. 1.

<sup>41</sup> *Id.* encl. 8, para. 1.

<sup>42</sup> *See id.* encl. 3.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *See id.* encl. 3, para. c. To further assist the judge advocate in PCA analysis, Figure 4.1, which “summarizes PCA restrictions in 10 U.S.C. §§ 371–375 and major areas of guidance from DoDI 3025.21,” has been provided in Appendix B (Posse Comitatus Act Chart).

standing statutory exception to the PCA's limitation on the armed forces conducting law enforcement activities is the Insurrection Act.

#### D. Insurrection Act

The Insurrection Act is a civil disturbance statute and an example of permissible direct assistance outlined in section C above.<sup>47</sup> The Insurrection Act is a statutory exception to the PCA and is "rooted in the constitution" based on the authorities vested in the president.<sup>48</sup> The Insurrection Act allows the president to order the military to enforce or ensure the enforcement of the laws of a state or the federal government and to suppress rebellion.<sup>49</sup>

One way the Insurrection Act can be employed is when a state requests federal assistance.<sup>50</sup> Federal forces responding to state requests to restore law and order during the Los Angeles Riots is an example of an invocation of the Insurrection Act.<sup>51</sup> In addition to a state or territorial request for assistance, the president may also use the Insurrection Act to enforce federal authority or to protect constitutional rights.<sup>52</sup> However, prior to committing federal forces under this act, the president must issue a proclamation to those causing the disturbance to "disperse and retire peaceably to their abodes within a limited time."<sup>53</sup>

In light of this knowledge, a judge advocate responding to the commander wanting to assist the sheriff, as described above, must know if the president invoked the Insurrection Act. If not, he should look to see if there is a permissible way for the commander to assist that is consistent with the PCA. Likewise, the judge advocate may need to determine if there is a permissible use of the commander's organic intelligence capabilities in a DSCA environment.

#### IV. Use of Intelligence Collection Assets

You are starting to feel confident in your understanding of what DSCA is and what authorities the commander will have when the hurricane hits. Then you remember the Staff

Judge Advocate saying the MEU Commander would be "interested in the use of intelligence collection assets," and you know you still have your work cut out for you.

Collecting and using intelligence is a critical function of war fighting. Organic intelligence assets are found at every echelon of command.<sup>54</sup> These assets include, but are not limited to, human intelligence (HUMINT) collectors, Defense Criminal Investigative Organizations (DCIOs), Ground-Based Operational Surveillance Systems (G-BOSSs), and unmanned aircraft systems (UASs).<sup>55</sup> Commanders have grown accustomed to relying on these assets to improve their situational awareness and it should be expected that they will desire to use them in DSCA operations. They will look at "domestic missions . . . no different than overseas missions in that a key requirement for mission success is situational awareness . . . ." Commanders believe that "they must be aware of the situation on the ground and have a complete picture of the 'battle space' within which the unit is operating."<sup>56</sup>

From the mission accomplishment prospective, this seems reasonable enough. However, domestic intelligence collection usually "entails collecting information on U.S. persons."<sup>57</sup> The constitutional rights of U.S. persons that prohibit unlawful search and seizure is a consideration that most commanders have not had to deal with outside of a military justice context. The judge advocate must be prepared to balance the commander's need for information with the protections provided to U.S. persons.

Americans have always been uneasy with domestic information collection regardless of the justification.<sup>58</sup> As

<sup>47</sup> The Insurrection Act, 10 U.S.C. §§ 331-335 (2012) [hereinafter Insurrection Act].

<sup>48</sup> DOPLAW HANDBOOK, *supra* note 2, at 90; *see also* U.S. CONST. art. I, § 8, para. 15, art. II, § 2, and art. IV, § 4.

<sup>49</sup> Insurrection Act §§ 331-335.

<sup>50</sup> *Id.* § 331.

<sup>51</sup> DeRight, *supra* note 5; DOPLAW HANDBOOK, *supra* note 2, at 91-92.

<sup>52</sup> Insurrection Act §§ 331-335.

<sup>53</sup> *Id.* § 334.

<sup>54</sup> *See* U.S. MARINE CORPS, MCWP 2-1, INTELLIGENCE OPERATIONS, ch. 4, at 4-2 (10 Sept. 2003) [hereinafter MCWP 2-1].

<sup>55</sup> *See* U.S. MARINE CORPS, MCWP 2-2, MAGTF INTELLIGENCE COLLECTION, at 1-6 (30 July 2004) [hereinafter MCWP 2-2]; *see also infra* Part IV.A (discussing human intelligence (HUMINT) collectors, Defense Criminal Investigative Organizations (DCIOs), Ground-Based Operational Surveillance Systems (G-BOSSs), and unmanned aircraft systems (UASs) in more detail).

<sup>56</sup> DOPLAW HANDBOOK, *supra* note 2, at 164; MCWP 2-1, *supra* note 58, ch. 1, at 1-1.

<sup>57</sup> DOPLAW HANDBOOK, *supra* note 2, at 164. "United States person" means a United States citizen, an alien known by the intelligence agency concerned to be a permanent resident alien, an unincorporated association substantially composed of United States citizens or permanent resident aliens, or a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments. E.O. 12333, *supra* note). Exec. Order No. 12,333, U.S. Intelligence Activities, 3 C.F.R. 200, para. 3.4(i) (1981), *amended by* Executive Orders 13,284 (2003), 13,355 (2004) and 13,470 (2008).

<sup>58</sup> *See* Mark Jaycox & Trevor Timm, *Multiple New Polls Show Americans Reject Wholesale NSA Domestic Spying*, ELECTRONIC FRONTIER FOUNDATION (Aug. 13, 2013), *available at* <https://www.eff.org/deeplinks/2013/06/multiple-new-polls-show-americans-reject-wholesale-nsa-domestic-spying>.

the U.S. Supreme Court noted, “[t]he Bill of Rights was fashioned against the background of knowledge that unrestricted power of search and seizure could also be an instrument for stifling liberty of expression.”<sup>59</sup> The sensitivities that Americans have toward the Fourth Amendment to the U.S. Constitution and the belief that the government must be limited in its ability to reach too far have led to the promulgation of rules regarding when and how information can be collected and used.<sup>60</sup>

The commander says, “Ok Judge, I got it! There are all of these rules, and we can’t violate anyone’s civil liberties. But we have a mission and people need our help. What can I do?” The judge advocate trying to answer that question needs to look at each intelligence collection activity separately. When a proposal is made to perform some sort of collection function, the first question that a judge advocate should ask is, “Who is doing the collecting—intelligence assets or non-intelligence assets?”<sup>61</sup> The answer to that question will determine which set of restrictions and authorities apply and how to analyze the use.

The landscape is generally split into two categories of collection assets that are available to commanders.<sup>62</sup> The first category includes members of the intelligence community.<sup>63</sup> Generally, “[t]he only authorized mission sets for DoD intelligence components are defense-related foreign intelligence [FI] and counterintelligence [CI].”<sup>64</sup> Executive Order 12333, United States Intelligence Activities, is the primary source establishing who is included as a DoD intelligence component and defines the scope of their authority, including “[t]he intelligence and counterintelligence elements of the Army, Navy, Air Force, and Marine Corps.”<sup>65</sup> This order also states, in regard to the “[c]ollection of information,” that “[e]lements of the intelligence community are authorized to collect, retain, or disseminate information concerning United States persons only in accordance with procedures established by the head

of the Intelligence Community element concerned or by the head of a department containing such element and approved by the Attorney General.”<sup>66</sup>

Pursuant to Executive Order 12333, the DoD has implemented how these intelligence components can conduct “intelligence activities.”<sup>67</sup> Additionally, Executive Order 12333 outlines an exception for assistance to law enforcement and other civil authorities that are not otherwise prohibited.<sup>68</sup> From this exception, the DoD has promulgated procedures and instructions for these types of intelligence components when providing assistance to law enforcement.<sup>69</sup> Additionally, each service has implemented its own regulations based on these references.<sup>70</sup>

The second group is made up of those who are not members of the intelligence community, which basically includes everyone else in the DoD. The rules governing this group are promulgated in DoD Directive 5200.27.<sup>71</sup> Collection by non-intelligence personnel of information on U.S. persons is limited. “DoD policy prohibits collecting, reporting, processing, or storing information on individuals or organizations not affiliated with the [DoD], except in those limited circumstances where such information is essential . . . .”<sup>72</sup> For DSCA missions, the most relevant exceptions are in relation to protecting “DoD [f]unctions and [p]roperty” and “[o]perations [r]elated to [c]ivil [d]isturbance.”<sup>73</sup>

After determining which category of collection assets applies, the judge advocate must ascertain the type of information the commander wants collected, which will further influence whether the desired collection is permissible. If the commander has HUMINT, DCIO, G-BOSS, and UAS at his disposal and would like to use them, each activity/system requires its own analysis.

<sup>59</sup> *Marcus v. Search Warrant*, 367 U.S. 717, 729 (1961).

<sup>60</sup> Exec. Order No. 12,333, U.S. Intelligence Activities, 3 C.F.R. 200 (1981), amended by Executive Orders 13,284 (2003), 13,355 (2004) and 13,470 (2008) [hereinafter E.O. 12,333].

<sup>61</sup> DOPLAW HANDBOOK, *supra* note 2, at 136.

<sup>62</sup> See U.S. DEP’T OF DEFENSE, DIR. 5240.01, DOD INTELLIGENCE ACTIVITIES (27 Aug. 2007) [hereinafter DoDD 5240.01]; see U.S. DEP’T OF DEFENSE, DIR. 5200.27, ACQUISITION OF INFORMATION CONCERNING PERSONS AND ORGANIZATIONS NOT AFFILIATED WITH THE DEPARTMENT OF DEFENSE (7 Jan. 1980) [hereinafter DoDD 5200.27].

<sup>63</sup> See DoDD 5240.01, *supra* note 62. “In simple terms these are the Title 10 intelligence specialists—J2s, G2s, A2s, etc. These groups of people—and the assets they use—are subject to one set of rules referred to as intelligence oversight.” DOPLAW HANDBOOK, *supra* note 2, at 164.

<sup>64</sup> JP 3-28, *supra* note 1, at vii.

<sup>65</sup> E.O. 12,333, *supra* note 60, para. 1.7 (f).

<sup>66</sup> *Id.* para. 2.3.

<sup>67</sup> See DoDD 5240.01, *supra* note 62; U.S. DEP’T OF DEFENSE, REG. 5240.1-R, PROCEDURES GOVERNING THE ACTIVITIES OF DOD INTELLIGENCE COMPONENTS THAT AFFECT UNITED STATES PERSONS (1 Dec. 1982) [hereinafter DoD 5240.1-R]. As of May 2015, DoD 5240.1-R is undergoing revision. Consequently, practitioners citing this reference should first ensure DoD 5240.1-R is still in effect.

<sup>68</sup> E.O. 12,333, *supra* note 60, para. 2.6.

<sup>69</sup> See DoDI 3025.21, *supra* note 38.

<sup>70</sup> See U.S. MARINE CORPS, ORDER 3800.2B, OVERSIGHT OF INTELLIGENCE ACTIVITIES (30 Apr. 2004) [hereinafter MCO 3800.2B]; U.S. DEP’T OF ARMY, REG. 381-10 ARMY INTELLIGENCE ACTIVITIES (3 May 2007) [hereinafter AR 381-10].

<sup>71</sup> See DoDD 5200.27, *supra* note 62.

<sup>72</sup> *Id.* para. 3.1.

<sup>73</sup> *Id.* paras. 4.1-4.3.

## A. Human Intelligence

Human Intelligence is a “category of intelligence derived from information collected and provided by human sources.”<sup>74</sup> In a combat environment, HUMINT operators “cover a wide range of activities encompassing reconnaissance patrols, aircrew reports and debriefs, debriefing of refugees, interrogations of prisoners of war, and the conduct of counterintelligence force protection source operations.”<sup>75</sup> In DSCA operations, the commander may want to use HUMINT operators to collect information from locals regarding potential threats to government personnel or property.

The HUMINT collectors would certainly fall into the intelligence community category. Based on that knowledge, the construct of DoD 5240.01, as discussed above, applies. If the collectors have an approved intelligence mission that fits the activities the commander wants conducted, as well as any required approvals, then they could conduct that mission.<sup>76</sup> However, “intelligence activities” are defined as “[t]he collection, analysis, production, and dissemination of foreign intelligence and [counterintelligence]. . . .”<sup>77</sup> “Domestic activities” are defined as “activities that take place within the United States that do not involve a significant connection with a foreign power, organization, or person.”<sup>78</sup> Depending on the need, a request and authorization using the “Assistance to Law Enforcement and other Civil Authorities” exception discussed above may be a viable solution.<sup>79</sup> Keep in mind that even if a DSCA mission did involve a proper intelligence mission, any collection of U.S. persons information within the United States would need to be done in accordance with Attorney General approved procedures.<sup>80</sup> If available, a better alternative for the commander in a DSCA environment may be to use DCIO personnel.

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<sup>74</sup> JOINT CHIEFS OF STAFF, JOINT PUB. 1-02, DEPARTMENT OF DEFENSE DICTIONARY OF MILITARY AND ASSOCIATED TERMS, at 110 (8 Nov. 2010) (amended through 15 Jan 2015) [hereinafter JP 1-02].

<sup>75</sup> MCWP 2-1, *supra* note 54, ch. 4, at 4.2.

<sup>76</sup> See DoDD 5240.01, *supra* note 62.

<sup>77</sup> *Id.* para. E.2.7. “Foreign intelligence” is defined as “information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, foreign persons, or international terrorists.” E.O. 12,333, *supra* note 62, paras. 3.5(e). “Counterintelligence” is defined as “information gathered and activities conducted to identify, deceive, exploit, disrupt, or protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations, or persons, or their agents, or international terrorist organizations or activities.” E.O. 12,333, *supra* note 60, para. 3.5(a).

<sup>78</sup> DoD 5240.1-R, *supra* note 67, para. C2.2.3.

<sup>79</sup> E.O. 12,333, *supra* note 60, para. 2.6; see also DoDI 3025.21, *supra* note 38.

<sup>80</sup> E.O. 12,333, *supra* note 60, para. 2.3.

## B. Defense Criminal Investigative Organizations

If a commander has DCIO assets, they will “have primary responsibility for gathering and disseminating information about the domestic activities of U.S. persons that threaten DoD personnel or property.”<sup>81</sup> Defense Criminal Investigative Organizations are military law enforcement agencies and include “U.S. Army Criminal Investigation Command, Naval Criminal Investigative Service, and Air Force Office of Special Investigations.”<sup>82</sup> For the purposes of this article and the relevant DSCA analysis, DCIO also includes any Military Police assets at the commander’s disposal.

These assets clearly fall into the second group of non-intelligence components, and are subject to the limitations of DoDD 5200.27, as outlined above.<sup>83</sup> They may only be used to acquire “information essential to accomplish the following DOD missions: protection of DoD functions and property, personnel security, and operations related to civil disturbances.”<sup>84</sup>

The commander’s use of DCIO assets will likely be for “force protection in domestic support operations.”<sup>85</sup> In a DSCA environment, DCIO “are responsible for tracking and analyzing criminal threats to DoD and domestic threats to DoD.”<sup>86</sup> They can “liaise with other law enforcement agencies to develop the criminal threat situational picture.”<sup>87</sup> This can provide the commander with a picture of the criminal element in the area that may compromise success in the DSCA mission and allow him to respond accordingly.

As long as the commander and the DCIO personnel understand the limitations imposed under DoDD 5200.27 and the particular agency regulations, using trained law enforcement personnel in DSCA operations could provide the commander with a valuable force protection asset.<sup>88</sup> Similarly, the commander may want to use a Ground-Based Operational Surveillance System to monitor his surroundings for threats.

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<sup>81</sup> DOPLAW HANDBOOK, *supra* note 2, at 168.

<sup>82</sup> U.S. DEP’T OF DEF., INSTR. 5505.03, INITIATION OF INVESTIGATIONS BY DEFENSE CRIMINAL INVESTIGATIVE ORGANIZATIONS (24 Mar. 2011) [hereinafter DoDI 5505.03].

<sup>83</sup> DoDD 5200.27, *supra* note 62.

<sup>84</sup> JP 3-28, *supra* note 1, at V-5.

<sup>85</sup> DOPLAW HANDBOOK, *supra* note 2, at 168.

<sup>86</sup> *Id.* at 170.

<sup>87</sup> *Id.*

<sup>88</sup> DoDD 5200.27, *supra* note 62.

### C. Ground-Based Operational Surveillance Systems

The G-BOSS, or rapid aerostat initial deployment (RAID) systems as used by the U.S. Army, have become one of the commander's favorite tools for collecting information in combat.<sup>89</sup> Heavily used in Iraq and Afghanistan at bases of all sizes, they have become standard equipment for many units.<sup>90</sup> These systems "consist of a 107-foot-high tower, electro-optical/ infrared (EO/IR) sensor, map overlay software, battle command software connectivity, data link, generator and command shelter."<sup>91</sup> It is a very large tower with a camera or two that can be emplaced very quickly and allow the operators to observe very long distances.<sup>92</sup>

In a combat environment, G-BOSS are used to monitor activities around a base, including attacks and improvised explosive device (IED) emplacement. In DSCA operations, the commander may want to use G-BOSS to observe the activities around a relief center, command and control center, or survey a surrounding disaster area.

As before, the first question to ask is who is doing the collecting? If it is an intelligence community asset, the analysis would be the same as above for the HUMINT assets. However, the G-BOSS would likely be considered non-intelligence assets if controlled and operated by non-intelligence personnel. If not used for an intelligence purpose, the commander's use of these assets in DSCA, as described above, does not fit into the various categories that would trigger DoD 5240.1-R.<sup>93</sup> The G-BOSS type assets are further distinguished from intelligence collection assets by looking to the guidance on how various types of collection are defined.<sup>94</sup>

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<sup>89</sup> Scott R. Gourley, *RAID Tower Sensor Helps Force Protection Equation*, ARMY MAG., Feb. 2009, at 61. (Explaining the capabilities and application of the G-BOSS and RAID systems in a combat environment.)

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> For photographs of various examples of G-BOSS units, see *infra* Appendix C (Ground-Based Operational Surveillance Systems).

<sup>93</sup> See DoD 5240.1-R, *supra* note 67.

<sup>94</sup> "Electronic surveillance" is defined as "[a]cquisition of a nonpublic communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a non-electronic communication, without the consent of a person who is visibly present at the place of communication . . . ." *Id.* para. DL1.1.9. "Concealed monitoring" is defined as "targeting by electronic, optical, or mechanical devices a particular person or a group of persons without their consent in a surreptitious and continuous manner. Monitoring is surreptitious when it is targeted in a manner designed to keep the subject of the monitoring unaware of it. Monitoring is continuous if it is conducted without interruption for a substantial period of time." *Id.* para. C6.2.1. "Physical surveillance" is defined as "a systematic and deliberate observation of a person by any means on a continuing basis, or the acquisition of a nonpublic communication by a person not a party thereto or visibly present thereat through any means not involving electronic surveillance." *Id.* para. C9.2.

The typical use of G-BOSS does not target a particular person or group, nor is its purpose to access communication. The commander's use of this type of asset in a DSCA environment is more accurately defined as a force protection tool. Force Protection includes "preventive measures taken to mitigate hostile actions against DoD personnel (to include DoD family members), resources, facilities, and critical information in an all hazards environment."<sup>95</sup>

If used in this manner, DoDD 5200.27 would apply with the "[p]rotection of DoD functions and property" exception as described above.<sup>96</sup> The limitations that are set out under that directive would also apply, including the requirement that any information that is collected must be "destroyed within 90 days unless its retention is required by law or unless its retention is specifically authorized . . . ."<sup>97</sup> As long as these procedures are followed, the G-BOSS could serve a commander well in a DSCA environment and not violate the rights of U.S. Persons.

### D. Unmanned Aircraft System

Unmanned Aircraft Systems include "an aircraft that does not carry a human operator and is capable of flight with or without human remote control."<sup>98</sup> In a combat environment, these aircraft perform intelligence, surveillance, and reconnaissance (ISR), search and rescue, and target strike missions.<sup>99</sup> Sometimes referred to as drones, the aircraft "range in size from the Wasp and the Raven, at 38 inches long, both of which are 'launched' by being thrown in the air by hand, to the twenty-seven foot long Predator and the forty-foot long Global Hawk."<sup>100</sup> The UAS available for the MEU commander's use in DSCA will include smaller aircraft dedicated to surveillance, rather than the larger models capable of carrying weapons.<sup>101</sup>

On its face, the analysis for UAS appears to be very similar to G-BOSS. However, unlike G-BOSS type assets, the DoD has specifically directed that "[n]o DoD unmanned

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<sup>95</sup> JP 3-28, *supra* note 1, at II-15.

<sup>96</sup> DoDD 5200.27, *supra* note 62, paras. 4.1-4.3.

<sup>97</sup> *Id.* para 6.4.

<sup>98</sup> JP 1-02, *supra* note 74, at 258.

<sup>99</sup> *MQ-1B Predator Factsheet*, U.S. AIR FORCE, <http://www.af.mil/AboutUs/FactSheets/Display/tabid/224/Article/104469/mq-1b-predator.aspx> (last visited May 19, 2015).

<sup>100</sup> Chris Jenks, *Law From Above: Unmanned Aerial Systems, Use of Force, and the Law of Armed Conflict*, 85 N.D. L. REV. 649, 653 (2010). For images of drones, see *infra* Appendix D (Unmanned Aircraft Systems).

<sup>101</sup> Gidget Fuentes, *Lightweight Drone Set for First MEU Deployment*, MARINE CORPS TIMES (Mar. 8, 2011), <http://archive.marinecorpstimes.com/article/20110308/NEWS/103080323/Lightweight-drone-set-first-MEU-deployment>.

aircraft systems (UAS) will be used for DSCA operations, including support to Federal, State, local, and tribal government organizations, unless expressly approved by the Secretary of Defense [SecDef].”<sup>102</sup> However, the SecDef has pre-approved missions for DSCA operations that use UAS.<sup>103</sup> These are known as “incident awareness and assessment (IAA)” missions.<sup>104</sup> As such, UAS are considered an intelligence asset, but these missions are considered a “non-intelligence activity” because they do “not involve FI or CI.”<sup>105</sup>

These pre-approved IAA missions “are actions taken by the commander to collect information about and analyze the impact of events and conditions involved in DSCA operations.”<sup>106</sup> An example is “the collection, retention, production, and dissemination of maps, terrain analysis, and damage assessments . . . .”<sup>107</sup> Specifically, seven IAA missions that are pre-approved exist “to support first responders and decision makers . . . .” They include “situational awareness, damage assessment, evacuation monitoring, [Search and Rescue], [Chemical, Biological, Radiological, Nuclear and high-yield Explosives] assessment, hydrographic survey, and dynamic ground coordination.”<sup>108</sup> “[S]pecific SecDef review and approval on a case-by-case basis” is required for any other purpose.<sup>109</sup>

Even when a mission is authorized, “the use of IAA assets should integrate with capabilities from other government and commercial capabilities.”<sup>110</sup> Further, “IAA must be conducted [in accordance with] all intelligence oversight requirements,” and as such, “[a]ssets tasked to perform IAA should be efficient, effective, and utilize the least intrusive, least costly means to accomplish the support mission within necessary timelines.”<sup>111</sup>

The functions, unique nature, and public attention in UAS have led the DoD to promulgate guidance that may require further analysis.<sup>112</sup> A judge advocate looking to provide the commander with guidance on a particular platform must learn the capabilities and methods of that platform, to include “how . . . the data [is] collected, transmitted, and processed . . . .”<sup>113</sup> The answer to those questions will dictate what can be disseminated and who may receive it.<sup>114</sup> The National Geospatial-Intelligence Agency (NGA) and the Defense Intelligence Agency have instructions and regulations on the classification and use of “geospatial data and imagery” and how it can be used.<sup>115</sup> Most of these sources, however, are classified and must be obtained through official government channels.<sup>116</sup>

The commander could use certain UAS in DSCA missions, provided the intended use is sufficiently narrow enough to fit within the SecDef pre-approved IAA missions, restrictions, and follows the oversight rules. The judge advocate advising the commander on the use of UAS in support of DSCA would also be well served to understand and be prepared to explain the potential political risks associated with an otherwise permissible use.

## V. Conclusion

This article has provided a background in domestic operations and an overview and summary of a commander’s authority and limitations when conducting DSCA operations. Additionally, it emphasized the specific rules and limitations of intelligence collection during those operations. The examples provided above should assist the judge advocate in providing timely and accurate advice to the commander during a DSCA mission. In addition to this article, the NRF, the Stafford Act, JP 3-28, and the *DOPLAW Handbook* are important resources to gain an understanding of domestic operations. Defense Support of Civil Authorities presents unique challenges to commanders and judge advocates because of our history, laws, and structure of government. By understanding the authorities and limitations a federal military unit has during DSCA operations, judge advocates and commanders are better equipped to assist when disaster strikes and the need occurs.

<sup>102</sup> DoDD 3025.18, *supra* note 10, para. 4.o.

<sup>103</sup> Headquarters, Chairman of the Joint Chiefs of Staff Office, Defense Support of Civil Authorities, para. 3.C.4.J.1. (7 June 2013) [hereinafter DSCA EXORD].

<sup>104</sup> “Incident Awareness and Assessment” missions are defined as “Secretary of Defense approved use of Department of Defense intelligence, surveillance, reconnaissance, and other intelligence capabilities for domestic non-intelligence support for defense support of civil authorities.” JP 3-28, *supra* note 1, at GL-7.

<sup>105</sup> *Id.*; DOPLAW HANDBOOK, *supra* note 2, at 167.

<sup>106</sup> JP 3-28, *supra* note 1, at IV-2.

<sup>107</sup> DOPLAW HANDBOOK, *supra* note 2, at 167.

<sup>108</sup> DSCA EXORD, *supra* note 103, para. 3.C.4.J.1.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*; JP 3-28, *supra* note 1, at IV-2.

<sup>112</sup> DOPLAW HANDBOOK, *supra* note 2, at 167.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> See U.S. DEP’T OF DEF., DEF. INTELLIGENCE AGENCY REG. (DIAR) 50-30, SECURITY CLASSIFICATION OF AIRBORNE SENSOR IMAGERY (25 June 1997).

## Overview of Stafford Act Support to States

### Overview of Stafford Act Support to States

This overview illustrates actions Federal agencies are likely to take to assist State, tribal, and local governments that are affected by a major disaster or emergency. Key operational components that may be activated include the National Response Coordination Center (NRCC), Regional Response Coordination Center (RRCC), Joint Field Office (JFO), and Disaster Recovery Centers (DRCs).

1. The Department of Homeland Security (DHS) National Operations Center continually monitors potential major disasters and emergencies. When advance warning is received, DHS may deploy—and may request that other Federal agencies deploy—liaison officers and personnel to a State emergency operations center to assess the emerging situation. An RRCC may be fully or partially activated. Facilities, such as mobilization centers, may be established to accommodate Federal personnel, equipment, and supplies.
2. Immediately after a major incident, tribal and/or local emergency personnel respond and assess the situation. If necessary, those officials seek additional resources through mutual aid and assistance agreements and the State. State officials also review the situation, mobilize State resources, use interstate mutual aid and assistance processes such as the Emergency Management Assistance Compact to augment State resources, and provide situation assessments to the DHS/Federal Emergency Management Agency (FEMA) regional office. The Governor activates the State emergency operations plan, declares a state of emergency, and may request a State/DHS joint Preliminary Damage Assessment (PDA). The State and Federal officials conduct the PDA in coordination with tribal/local officials as required and determine whether the impact of the event warrants a request for a Presidential declaration of a major disaster or emergency. Based on the results of the PDA, the Governor may request a Presidential declaration specifying the kind of Federal assistance needed.
3. After a major disaster or emergency declaration, an RRCC coordinates initial regional and field activities until a JFO is established. Regional teams assess the impact of the event, gauge immediate State needs, and make preliminary arrangements to set up field facilities. (If regional resources are or may be overwhelmed or if it appears that the event may result in particularly significant consequences, DHS may deploy a national-level Incident Management Assistance Team (IMAT).)
4. Depending on the scope and impact of the event, the NRCC carries out initial activations and mission assignments and supports the RRCC.
5. The Governor appoints a State Coordinating Officer (SCO) to oversee State response and recovery efforts. A Federal Coordinating Officer (FCO), appointed by the President in a Stafford Act declaration, coordinates Federal activities in support of the State.
6. A JFO may be established locally to provide a central point for Federal, State, tribal, and local executives to coordinate their support to the incident. The Unified Coordination Group leads the JFO. The Unified Coordination Group typically consists of the FCO, SCO, and senior officials from other entities with primary statutory or jurisdictional responsibility and significant operational responsibility for an aspect of an incident. This group may meet initially via conference calls to develop a common set of objectives and a coordinated initial JFO action plan.
7. The Unified Coordination Group coordinates field operations from a JFO. In coordination with State, tribal, and/or local agencies, Emergency Support Functions assess the situation and identify requirements. Federal agencies provide resources under DHS/FEMA mission assignments or their own authorities.

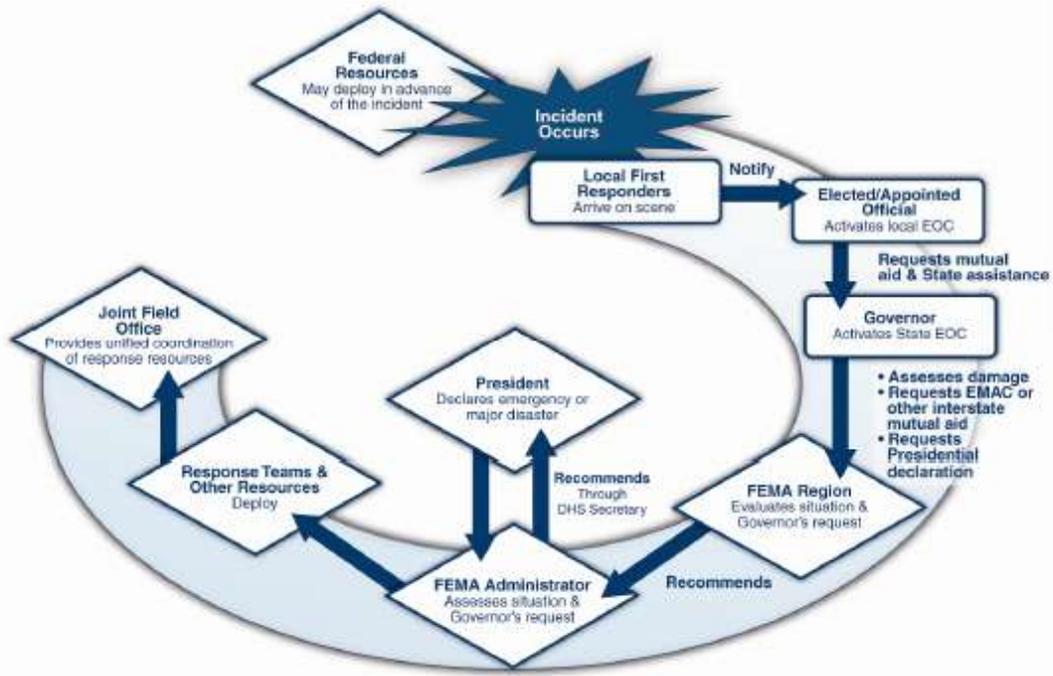
**National Response Framework: Stafford Act Support to States**

1 of 2

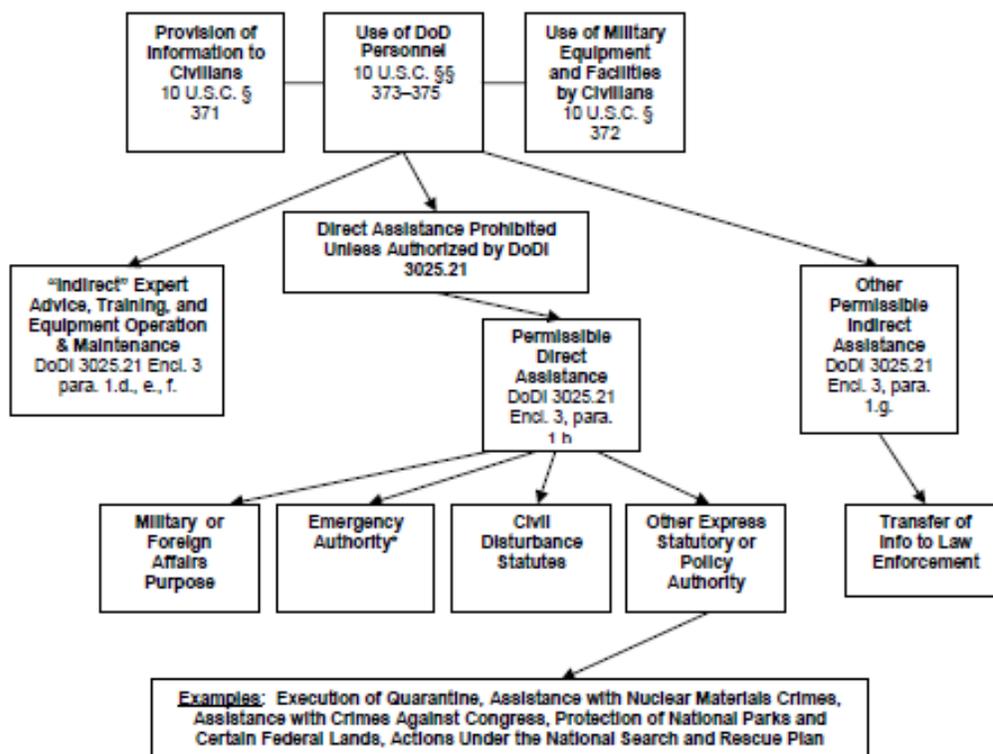
<sup>117</sup> *Overview of Stafford Act Support to States*, FEMA.GOV, available at <http://www.fema.gov/pdf/emergency/nrf/nrf-stafford.pdf> (last visited June 4, 2015).

8. As immediate response priorities are met, recovery activities begin. Federal and State agencies assisting with recovery and mitigation activities convene to discuss needs.
9. The Stafford Act Public Assistance program provides disaster assistance to States, tribes, local governments, and certain private nonprofit organizations. FEMA, in conjunction with the State, conducts briefings to inform potential applicants of the assistance that is available and how to apply.
10. Throughout response and recovery operations, DHS/FEMA Hazard Mitigation program staff at the JFO look for opportunities to maximize mitigation efforts in accordance with State hazard mitigation plans.
11. As the need for full-time interagency coordination at the JFO decreases, the Unified Coordination Group plans for selective release of Federal resources, demobilization, and closeout. Federal agencies work directly with disaster assistance grantees (i.e., State or tribal governments) from their regional or headquarters offices to administer and monitor individual recovery programs, support, and technical services.

The following chart summarizes Stafford Act support to States.



Posse Comitatus Act Chart



\*See DoDD 3025.18 (U.S. DEP'T OF DEFENSE, DIR. 3025.18, DEFENSE SUPPORT OF CIVIL AUTHORITIES (21 Sept. 2012) to distinguish Emergency Authority from Immediate Response Authority.

Figure 4-1

<sup>118</sup> THE JUDGE ADVOCATE GEN.'S LEGAL CTR. & SCH., U.S. ARMY, DOMESTIC OPERATIONAL LAW HANDBOOK FOR JUDGE ADVOCATES 73 (2013).

Ground-Based Operational Surveillance Systems



<sup>119</sup> *Ground Based Operational Surveillance System, Marine Corps Base Camp Pendleton, MARINES*, <http://www.pendleton.marines.mil/StaffAgencies/AssistantChiefofStaffG35/TrainingSupportDivision/TrainingDevices/GroundBasedOperationalSurveillanceSystem.aspx> (last visited June 4, 2015).

# US DRONE CAPABILITIES

Unmanned Aerial Vehicles and systems have existed since at least 1914, but it is only through recent advancements in technology that they have become such a formidable force. These six aircraft represent the diverse spectrum of the US drone program. From the all-seeing Global Hawk, to the deadly Predator, and ultra-portable Raven, there's a system for every mission.



**MQ-42 GLOBAL HAWK**  
Wing span: 102 ft  
Payload: 3,000 lb  
Top speed: 402 mph



\$140.9 million



**MQ-9 REAPER**  
Wing span: 44 ft  
Payload: 7,700 lb  
Top speed: 310 mph

\$36.8 million



**MQ-1 PREDATOR**  
Wing span: 48 ft  
Payload: 400 lb  
Top speed: 158 mph

\$4.03 million



**MQ-40 FIRE SCOUT**  
Wing span: 28 ft  
Payload: 100 lb  
Top speed: 112 mph

\$18.2 million



**MQ-7 SHADOW**  
Wing span: 33 ft  
Top speed: 100 mph

**MQ-1C RAVEN**  
Wing span: 4 ft  
Top speed: 25 mph

\$35,000

Weapons Capable  
Dedicated Reconnaissance

## HELLFIRE MISSILE



## THE BAY WEAPON OF CHOICE

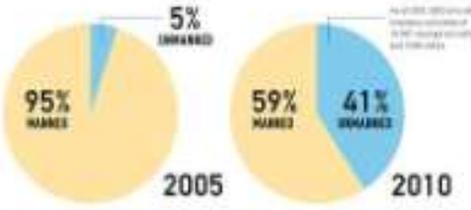
Originally conceived as a tank-killer to be mounted on Apache helicopters, the Hellfire air-to-surface missile has also proved itself a versatile weapon in air-to-ground roles. Its 8,000 meter range and pinpoint accuracy have made it a go-to weapon since being introduced in the mid 80's. The thermobaric warhead creates a scalded blast wave that is capable of doing significant damage to a large area. The more common fragmentation type is used against personnel and light targets, while a shaped-charge warhead variant is used against armor. Ballistic and highly reliable, it is the weapon of choice for both the Predator and Reaper drones.

## OPTICS THE EYE IN THE SKY

A thousand miles of UAVs is their powerful optics. Even the tiny Raven has a wide-angle night-vision camera that can see well during inclement conditions. Though the Global Hawk sports a suite of the most powerful cameras, including an electro-optical infrared imaging system, and Synthetic Aperture Radar, make a single unit capable of surveying an area the size of Illinois.

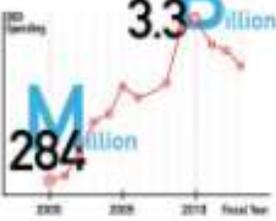
## MANNED VS. UNMANNED

Due to the recent explosion in UAV production and shipments in earnest efforts, manned aircraft inventory have gone from 80% of all 2010 aircraft to 28% by 2015.



## UAV SPENDING

2010 spending on UAVs has increased from \$26 million in 2007 to \$2.2 billion in 2010.



\*All figures reflect publicly available information. Different sources and interpretations of the same aircraft will have different capabilities and costs. Source: US House of Representatives, Unmanned Aerial Systems, January 2010, as well as various websites.

<sup>120</sup> Tech: The 6 Drones You Need to Know About, HEAVY (Feb. 11, 2013), <http://heavy.com/tech/2013/02/the-6-drones-you-need-to-know-about/>.