

THE DOOMSDAY SUCTION: DISASTER MANAGEMENT IN THE AGE OF HOMELAND SECURITY

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I. Introduction

Why was the federal government’s response to Hurricane Katrina so screwed up? Though nothing less magnanimous than the *Summa Theologica* could really provide the answer, this Article offers a few starting points that suggest the botched response was inevitable.

What this Article does not offer, however, is a punch list of suggestions on improving disaster response for first-responders, or thoughts on the optimal allocation of responsibility between local actors and the federal government. It is not a polemic against the Federal Emergency Management Agency’s (FEMA) labyrinthine bureaucracy or a chronicle of the federal government’s failure to provide adequate levee protection to New Orleans.

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Instead, this Article sketches the reasons leading to our current dysfunctional system for dealing with major disasters and explains why the current “all hazards” approach is fundamentally flawed. In short, this Article proposes that the world of terrorism—mired in intelligence gathering and evaluating the unlikelihood of devastating hypotheticals—is so different from that of disaster preparedness that resources committed to one cannot easily be shared with the other.

This battle of prioritization plays out in the Department of Homeland Security (DHS), under whose aegis the national response to “natural” disasters¹ and terrorism is grouped.² It was not always so. This structure is a result of the Homeland Security Act of 2002 which merged twenty-two federal agencies into a new department in the largest reorganization of government since the creation of the Department of Defense.³ FEMA was merged into DHS, and its mission reprioritized to focus on terrorism.⁴ This focus is not surprising given the political climate after 9/11, but, as this Article suggests, FEMA’s shockingly inept response to Hurricane Katrina in August and September of 2005 questions the wisdom of this reorganization.

This Article begins in Part II by explaining FEMA’s “all hazards” model and exploring the fundamental differences between natural disasters and terrorism that suggest grouping government policy towards them is ill-advised. Part III examines the special issues that federalism presents for response to catastrophes and how these issues further complicate the “all hazards” model. Part IV presents a brief history of FEMA to show how the tensions mapped in Parts II and III have played out in the United States, with an emphasis on how federal obsession with threats of annihilation have stunted the agency’s effectiveness.

¹ “Accidental” disasters involving chemical spills, nuclear reactor meltdowns and other failures of man-made devices are not explicitly considered by this Article.

² DHS: Strategic Plan – Securing our Homeland, <http://www.dhs.gov/xabout/strategicplan/index.shtm> (last visited Nov. 20, 2007).

³ CHRISTOPHER COOPER AND ROBERT BLOCK, *DISASTER: HURRICANE KATRINA AND THE FAILURE OF HOMELAND SECURITY* 80 (2006).

⁴ FEMA: FEMA History, <http://www.fema.gov/about/history.shtm> (last visited Nov. 20, 2007).

II. *Problems with the “All-Hazards” Model*

Among the different calamities FEMA is responsible for—earthquakes, fires, heat waves, hurricanes, thunderstorms, tsunamis and winter storms—one stands out as an odd duck: terrorism.⁵

Terrorism is included on this list because of FEMA’s underlying “all hazards” philosophy. This model “seek[s] to prepare all sectors of American society—business, industry and nonprofit, state, territorial, local and tribal governments, and the general public—for all hazards the nation may face, i.e., any large scale emergency event including terrorist attacks and natural or accidental disasters.”⁶ This “all-hazards” approach is based on the notion that “terrorist attacks share many common characteristics with natural and accidental disasters . . . [and] capabilities required to address terrorist attacks and to address natural and accidental disasters are most similar for protection, response, and recovery, and differ most for prevention.”⁷

At first glance, this formulation might seem reasonable, even sensible. But the reality of the disaster management world is different. Even momentarily putting aside the political difficulties of lumping preparedness for terrorism and natural disasters together, there are several foundational reasons why preparation and response for these different types of catastrophes should not be so tightly linked. These reasons are explored below, organized into four major categories: preparation, response, recovery, and mitigation.⁸

⁵ FEMA: Learn About the Types of Disasters, <http://www.fema.gov/hazard/types.shtm> (last visited Nov. 20, 2007).

⁶ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-05-652, HOMELAND SECURITY: DHS’ EFFORTS TO ENHANCE FIRST RESPONDERS’ ALL-HAZARDS CAPABILITIES CONTINUE TO EVOLVE 2 n.2 (2005) [hereinafter DHS EFFORTS].

⁷ *Id.* at 26.

⁸ H.R. REP. NO. 000-000, 109th Cong., A FAILURE OF INITIATIVE: FINAL REPORT OF THE SELECT BIPARTISAN COMMITTEE TO INVESTIGATE THE PREPARATION FOR AND RESPONSE TO HURRICANE KATRINA 151 (2006) (explaining these four categories), available at <http://www.gpoaccess.gov/katrinareport/mainreport.pdf> [hereinafter A FAILURE OF INITIATIVE].

A. Preparedness

FEMA explains that its preparedness role is to “ensure[] that if disaster occurs, people are ready to get through it safely, and respond to it effectively.”⁹ This conception of pre-disaster duties is incomplete because natural disasters are predictable and terrorist attacks are not. Natural disasters, unlike terrorist attacks, are a fact of life in the United States and occur with dismaying regularity. Science will only become more adept at predicting when the next catastrophe will occur, but predicting terrorist attacks is uncertain, because doing so depends on robust intelligence gathering and informed analysis.¹⁰ This information gathering ability advances less predictably than the science behind disaster preparedness because of the United States’ ungainly response to the changing intelligence needs of the post-Cold War world, such as its failure to train agents to speak foreign languages and familiarize them with the cultural pathways of likely terrorist groups.¹¹

Terrorist acts also resist other sorts of analysis, such as large-scale data mining, because of their scarcity and uniqueness.¹² The 9/11 plane attacks, for instance, were followed by mailed anthrax, an abortive attempt at “shoe bombing,” and fears about a “dirty bomb.”¹³ Terrorism preparedness in the U.S. is obsessed with these

⁹ FEMA: About FEMA, <http://www.fema.gov/about/prepare.shtm> (last visited Nov. 20, 2007).

¹⁰ NAT’L COMM’N ON TERRORIST ATTACKS UPON THE U.S., THE 9/11 COMMISSION REPORT 399–429 (2004) [hereinafter 9/11 REPORT].

¹¹ See, e.g., Report On A James Bamford Talk At Berkeley, <http://www.lewrockwell.com/orig2/bamfordreport.html> (last visited Nov. 20, 2007); JAMES BAMFORD, A PRETEXT FOR WAR: 9/11, IRAQ, AND THE ABUSE OF AMERICA’S INTELLIGENCE AGENCIES (2004); Malcolm Gladwell, *Open Secrets: Enron, Intelligence, and the Perils of Too Much Information*, THE NEW YORKER, Jan. 8, 2007, available at http://www.newyorker.com/printables/fact/070108fa_fact (“In a post-Cold War world of ‘openly available information,’ Inman said, ‘what you need are observers with language ability, with understanding of the religions, cultures of the countries they’re observing.’ Inman thought we needed fewer spies and more slightly batty geniuses.”).

¹² See, e.g., Bruce Schneier, *Why Data Mining Won’t Stop Terror*, WIRED, Mar. 9, 2006, <http://www.wired.com/politics/security/commentary/securitymatters/2006/03/70357>.

¹³ See *Anthrax Testing in N.J. Expands to Bulk Mail Carriers*, CNN, October 23, 2001, <http://edition.cnn.com/2001/HEALTH/conditions/10/23/anthrax/index.html> (describing developments in the investigation into the Anthrax Mailings of October

"low-probability, high-consequence" events such as "nuclear suitcases detonated on crowded streets, poison-gas attacks with crop dusters, mail sabotage with biological agents, [and] suicide bombers targeting shopping malls."¹⁴ Our security response to terrorist threats relies on them being repeated—travelers must remove their shoes and discard certain liquids before boarding a plane, despite those plots having failed.¹⁵ Security expert Bruce Schneier terms these events "movie plot scenarios" and notes that though they might make a compelling season of 24, they probably offer little value in policy-making because "focusing on [one specific plot] has the effect of shifting attacks toward less-defended targets, and the result is that we're no safer overall."¹⁶

This means that government efforts to anticipate terrorist attacks should not be predictive but preventive. When intelligence indicates an attack is imminent, the government should try to prevent the attack from ever happening, instead of preparing for the destruction that will occur as they do for unpreventable natural disasters. Natural disaster preparedness, on the other hand, is an issue of prediction that relies on the scientific method's experimentation and repetition. What works to model one hurricane will work to model the next, making rehearsal and routine perfectly suited to natural disaster preparedness.¹⁷ For

2001); Fran Fifer, *Suspect in Shoe Bombing Case Indicted*, CNN, January 17, 2002, <http://archives.cnn.com/2002/LAW/01/16/reid.charges/index.html> (listing the charges Richard Reid faced for his involvement in his shoe-bombing attempt); *Is the U.S. Ready for a "Dirty Bomb"?*, CBS NEWS, December 18, 2001, <http://www.cbsnews.com/stories/2001/12/18/archive/main321759.shtml> (indicating the vulnerability of the country to an attack using such a device, as well as providing a history of attempts by terrorists to obtain materials used to construct such bombs).

¹⁴ COOPER & BLOCK, *supra* note 3, at 8.

¹⁵ Transportation Security Administration, What to Know Before You Go, <http://www.tsa.gov/travelers/airtravel/prohibited/permitted-prohibited-items.shtm> (describing permitted and prohibited items for air travel) (last visited Jan. 26, 2008); see Transportation Security Administration, Travel Assistant, <http://www.tsa.gov/travelers/airtravel/assistant/index.shtm> (discussing the requirement to submit shoes for inspection prior to boarding aircraft) (last visited Jan. 26, 2008).

¹⁶ Bruce Schneier, *Terrorists Don't Do Movie Plots*, WIRED, Sept. 8, 2005, <http://www.wired.com/politics/security/commentary/securitymatters/2005/09/68789>.

¹⁷ COOPER & BLOCK, *supra* note 3, at 7–8 (describing a plan to create simulations of hurricanes at the mouth of the Mississippi River and present these simulations to first responders).

example, a year before Hurricane Katrina struck, FEMA organized an intense simulation of a slow-moving storm over New Orleans called “Hurricane Pam” that is credited with leading to substantial improvements in the area’s evacuation process.¹⁸

Ultimately, it is not a necessary fact of nature that the United States will ever be attacked by terrorists again; conversely, another giant hurricane, earth shattering quake or other natural disaster will undoubtedly occur. But until al-Qaeda develops a James Bond villain weather control device, this model of prediction does not have anything to do with a terrorist attack.

The differences between disaster preparation and terrorism prevention have important consequences for the culture surrounding each set of scenarios. In their book *Disaster*, Christopher Cooper and Robert Block describe the stark contrasts between these two groups by noting that “former law enforcement officials who advocated secrecy, tight security and intelligence” populate the terrorism-response side while the natural disaster side consists of “firefighters, rescue workers, and emergency managers who emphasized collaboration, information sharing, public awareness, and mitigation efforts” to help alleviate the impact of disasters.¹⁹

The culture surrounding each scenario is important because it informs the activities that receive funding. DHS’s approach to funding is as untethered from reality as some of the scenarios they prepare for; for example, while DHS funded bullet proof vests for dogs in Ohio, it reduced New York City’s terrorism grant money more than other cities’ grants.²⁰ DHS also funded ridiculous exercises in “interdisciplinary” preparedness, such as the document “How Terrorists Might Exploit a Hurricane,” prepared by a DHS “Red Cell,” a collection of “academics, pop-fiction writers, retired military officers, and musicians.”²¹ The “Red Cell”

¹⁸ *Id.* at 116.

¹⁹ *Id.* at 81.

²⁰ *Id.* at 84; Kevin Bohn, *Homeland Security Grants Rile D.C., N.Y.C.*, May 31, 2006, <http://www.cnn.com/2006/US/05/31/homeland.grants/index.html>.

²¹ INFO. ANALYSIS AND INFRASTRUCTURE PROT., DEPT. OF HOMELAND SEC., HOW TERRORISTS MIGHT EXPLOIT A HURRICANE (Sept. 14, 2004), <http://www.disasterthebook.com/docs/HowTerroristsMightExploitaHurricane15Sept2004>.

produced a useless conclusion: terrorists are not likely to exploit a hurricane, but they might try.²²

Separating disaster preparedness from terrorism response would prevent these cultural differences from having much effect on each other, and might also foster greater institutional competence and knowledge at the disaster agency. Staffing needs would remain constant over time because disaster preparation would be a part of government programs regardless of the political desirability of focusing on terrorism. There would be no need to displace disaster response experts with terrorism experts, as has happened under the current administration.²³ As former FEMA director James Lee Witt remarked, involving federal law enforcement in preparedness efforts may lead to wasted time and effort because they will try “to reinvent everything.”²⁴

These cultural differences become less important once preparedness becomes a concern of the physical world. In all large-scale catastrophes, first-responders require immediate and unblinking support, though the exact scope of this support is determined by the nature of the crisis. Attacks, on the other hand, require immediate medical triage to care for victims of violence, as well as intense forensic analysis performed by law enforcement. These needs can be met more easily than the panoply of supplies and expertise needed to restore damaged infrastructure after a disaster. A terrorist attack, short of detonation of a nuclear bomb, will not destroy power stations or water processing plants that shut down entire cities.

The different preparedness strategies required for each catastrophe category do not lend themselves to much cross-over. A terrorism agency must focus on prevention by using military and intelligence assets—capabilities that FEMA does not have—while natural disaster preparation emphasizes modeling, the staging of

pdf (hereinafter HURRICANE EXPLOIT); COOPER & BLOCK, *supra* note 3, at 231.

²² HURRICANE EXPLOIT, *supra* note 21, at 1.

²³ Justin Rood, *FEMA's Decline: An Agency's Slow Slide From Grace*, GOVERNMENT EXECUTIVE, Sept. 28, 2005, available at <http://www.govexec.com/dailyfed/0905/092805jl.htm>.

²⁴ COOPER & BLOCK, *supra* note 3, at 66.

massive amounts of aid, and the mobilization of civic engineering resources to restore damaged city services.

B. Response

The public safety and security response for natural disasters and terrorism attacks mobilize different parts of the American government. After a terrorist attack, responses include military maneuvers, quick action by intelligence agencies, an influx of medical assets to the affected region and high-alert behavior from local law enforcement.²⁵ Some of these different responsibilities are summed up by one disaster response expert's description of 9/11 as "a disaster, overlaid with a search and rescue operation, overlaid with a crime scene, overlaid with threats to public health."²⁶ Immediately after 9/11, the White House's priorities included organizing federal assistance to the affected areas, restoring civil aviation, reopening financial markets, evaluating border and port security, and addressing the economic fallout to the airline industry.²⁷ A dedicated terrorist response agency must have connections to all of these groups in addition to lines of communication with local law enforcement to inform them of security risks.

While natural disasters receive the same media coverage and have a greater potential for loss of life and property, they do not prompt the same national response as a terrorist attack. When planes struck the World Trade Center and the Pentagon, government and high-profile buildings across the country were emptied and all commercial air traffic grounded.²⁸ A natural disaster's impact is localized to a much greater degree. For instance, buses were not sent to Giants Stadium because the

²⁵ See DHS: Homeland Security Advisory System, Aug. 28, 2007, http://www.dhs.gov/xinfo/share/programs/Copy_of_press_release_0046.shtm (discussing government response under the color-coded Homeland Security Advisory System and noting that "[r]aising the threat condition has economic, physical, and psychological effects on the nation . . .").

²⁶ Lori A. Peek & James E. Beavers, *Role of the Natural Hazards and Disaster Field in the Aftermath of September 11*, 3 NAT. HAZARDS REV. 2, 3 (2002).

²⁷ 9/11 REPORT, *supra* note 10, at 326–27.

²⁸ *Terror Attacks Hit U.S.*, CNN, Sept. 11, 2001, <http://archives.cnn.com/2001/US/09/11/worldtrade.crash/index.html>.

Superdome needed them during Katrina. A natural disaster may have a larger immediate footprint than a terrorist attack, but it does not inspire nationwide fear and uncertainty in the same way. On the other hand, the psychological effects of a terrorist attack cascade across the whole country.²⁹

The different emotional tenors of terrorist attacks and natural disasters result in different styles of public address by our leaders during media appearances. We see these different modes of communication in how President Bush approached his major speeches after of 9/11 and Katrina. When President Bush addressed the nation on the evening of 9/11, he was seated in the Oval Office in a suit.³⁰ But when he delivered his most prominent post-Katrina speech, he wore only a button-down shirt without a tie, with his sleeves rolled up,³¹ and stood at an outdoor podium with the St. Louis cathedral shadowing him.³² Even more telling are emails to FEMA's director Michael Brown urging him to roll up his sleeves during media appearances to "look more hard-working."³³

These examples show that terrorist attack response plans should include a delicate and sophisticated message to help allay the fears caused by an attack.³⁴ Natural disasters do not require the same type of nuanced and considered messages; instead, they require dealing with the physical problems resulting from such a situation. Disaster relief must concentrate on mobilizing physical

²⁹ For a general discussion of the social impact of terrorism on a national scale, see BOAZ GANOR, *THE COUNTER TERRORISM PUZZLE: A GUIDE FOR DECISION MAKERS* (2005).

³⁰ The White House, *White House Photos: War on Terror*, Sept. 11, 2001, <http://www.whitehouse.gov/president/september11/07.html>.

³¹ The White House, *News & Policies*, Sept. 15, 2005, http://www.whitehouse.gov/news/releases/2005/09/images/20050915-8_flg8141-515h.html.

³² The White House, *News & Policies*, Sept. 15, 2005, http://www.whitehouse.gov/news/releases/2005/09/images/20050915-8_speech-515h.html.

³³ "Can I Quit Now" *FEMA Chief Wrote As Katrina Raged*, CNN, Nov. 4, 2005, <http://www.cnn.com/2005/US/11/03/brown.fema.emails/>.

³⁴ BRIGITTE L. NACOS, *MASS-MEDIATED TERRORISM: THE CENTRAL ROLE OF THE MEDIA IN TERRORISM AND COUNTERTERRORISM* 166-67 (2002); Andrew H. Kydd & Barbara F. Walter, *The Strategies of Terrorism*, 31 *INT'L SECURITY* 49, 65-66 (2006).

resources, instead of managing nationwide fear and foreign intelligence.

C. *Recovery*

FEMA is also tasked with the immediate recovery from both natural disasters and terrorist attacks, and this combination represents another misstep in the grouping of terrorism and disaster response. The economic and community recovery efforts undertaken in each instance are different because the populations affected by each incident are different. National sympathy and political will for mobilizing a response is finely tuned to the nature of the victim of each catastrophe and, as Katrina amply demonstrated, the most visible people suffering from natural disasters will be the poorest and sickest. Conversely, terrorist attacks in the U.S. have been overwhelmingly targeted at the middle-class and wealthy—the 9/11 attacks destroyed the two largest office buildings in Manhattan, the Oklahoma City bombing targeted an office building, and the anthrax letters were sent to major media representatives. Al-Qaeda in particular has an ideological opposition to American society and is more likely to choose symbolic targets that would not have a disparate impact on the poor.³⁵

This selectivity makes it easier for aid to flow to victims of terrorist attacks because they are truly “innocent” for not having chosen to live on an earthquake fault or a flood plain.³⁶ The patriotic fervor aroused by a terrorist attack is too persistent to tolerate victims being forced to live in FEMA trailer parks, or having their benefits cut off only a few months after the incident. Despite the massive initial outpouring of public sympathy and charitable giving for Katrina aid—over \$4.25 billion³⁷—the wells of

³⁵ See MESSAGES TO THE WORLD: THE STATEMENTS OF OSAMA BIN LADEN 101–36 (Bruce Lawrence ed., James Howarth, trans., Verso 2005).

³⁶ See, e.g., Bill Quigley, *How to Destroy An African American City in 33 Steps*, The Black Commentator, June 28 2007, http://www.blackcommentator.com/235/235_cover_justice_watch_destroy_african_american_city_quigley.html.

³⁷ Charity Navigator, *Hurricane Katrina: One Year Later*, <http://www.charitynavigator.org/index.cfm/bay/katrina.main.htm> (last visited Nov. 20, 2007).

sympathy for Louisiana in Congress ran dry, as the recovery from Katrina dragged into weeks, months, and years.³⁸

Terrorist attacks have a different symbolic effect on their targets, and these effects have an important influence on how much political will is available for funding recovery efforts.³⁹ For example, as soon as Katrina struck New Orleans, some leaders began publicly questioning the wisdom of rebuilding an area historically prone to flooding.⁴⁰ Few, however, doubted the need to rebuild the World Trade Center, which has already been the victim of two successful terrorist attacks, because the sites of terrorist attacks are considered by some to be sacred ground that, rightly, must be preserved and memorialized.⁴¹ This attitude towards Ground Zero contrasts sharply with that towards New Orleans's Superdome or Convention Center where thousands suffered and some lost their lives in the days following Katrina. The Superdome and Convention Center were rehabilitated and opened for profit-making purposes as soon as possible after the hurricane.⁴²

These symbolic effects have other consequences, such as the alacrity of the federal government's response to each event. Michael Brown, FEMA director during Katrina, testified before Congress:

[I]f somebody had said that a terrorist had blown up the 17th Street Canal, you know, we would all have been spun up and there would have been somebody, 24/7,

³⁸ See, e.g., Bill Barrow & Steve Ritea, *Livid Blanco Says Award 'Shorts' La.*, TIMES-PICAYUNE, Dec. 23, 2006, at 2 ("Kathleen Blanco expressed outrage Friday over the state's \$74.5 million share of a \$388 million pilot housing program for storm-ravaged states, and she called it a parting shot from a Republican Congress with a pattern of favoring GOP-dominated Mississippi.").

³⁹ See George Lakoff, *Metaphors of Terror*, in THE DAYS AFTER, (2001), available at <http://www.press.uchicago.edu/News/911lakoff.html>.

⁴⁰ Charles Babington, *Hastert Tries Damage Control After Remarks Hit a Nerve*, WASH. POST, Sept. 3, 2005, at A17.

⁴¹ Cf. *Nation in Brief*, WASH. POST., Aug. 28, 2006, at A04 (New Orleans Mayor Ray Nagin apologized for describing the World Trade Center site as a "hole in the ground.").

⁴² See *City Update: New Orleans Metropolitan Convention and Visitors Bureau Issues State of City Report*, December 12, 2006, available at http://trade-show-expo.com/html/national_news.html (indicating both the Convention Center and Superdome had reopened at the end of 2006).

breathing down everybody's neck. But, hey, this is a hurricane. So we will let Brown and that group go deal with it.⁴³

The same overriding concern with terrorism also helps explain why important legislation resulting from each incident had different paths through Congress: the PATRIOT Act was pushed through Congress in record time, but Katrina relief had to be brought to the table repeatedly.⁴⁴

Finally, the recovery from a catastrophic natural disaster is different from a terrorist attack because of the geographic areas and resource sharing involved. Terrorism response requires a temporary surge in aid to a small geographic area, while disasters often require a long entrenchment. For example, after the Mississippi flood of 1927, Hebert Hoover was appointed in a czar-like capacity and given near absolute authority over directing the expenditure of federal money and coordinating the response of different relief agencies.⁴⁵ During Katrina, President Bush took the unprecedented step of declaring the states providing shelter to Katrina evacuees federal disaster zones, thus authorizing FEMA to provide assistance to areas well outside the usual range of a disaster.⁴⁶

Resource sharing is also easier to quantify for disaster recovery. Under federal law, FEMA and a locality share the cost

⁴³ *Deposition – FEMA Director Michael Brown: Before the H. Select Bipartisan Comm. to Investigate Preparation for and Response to Hurricane Katrina*, 109th Cong. 109 (2006) (statement of Michael Brown, Director, Federal Emergency Management Agency), available at <http://katrina.house.gov/brown.depo.doc> [hereinafter Brown Deposition].

⁴⁴ *Compare* Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act, Pub. L. No. 107-56, 115 Stat. 272 (2001), with Deon Roberts, *N.O. residents stuck in a house trap*, NEW ORLEANS CITY BUSINESS, <http://www.neworleanscitybusiness.com/viewFeature.cfm?recID=374> (last visited Nov 20., 2007) (showing that the PATRIOT Act was passed in October 2001, one month after 9/11, while money to fund Louisiana's "Road Home" program was authorized in June 2006, nine months after Hurricane Katrina).

⁴⁵ KEVIN R. KOSAR, CONG. RESEARCH SERV., CRS REPORT FOR CONGRESS: DISASTER RESPONSE AND APPOINTMENT OF A RECOVERY CZAR: THE EXECUTIVE BRANCH'S RESPONSE TO THE FLOOD OF 1927 at 1 (2005), available at <http://fpc.state.gov/documents/organization/55826.pdf>.

⁴⁶ Richard T. Sylves, *President Bush and Hurricane Katrina: A Presidential Leadership Survey*, 604 ANNALS AM. ACAD. POL. & SOC. SCI. 26, 27 (2006).

for FEMA's assistance, a scheme that leads to bickering over the bill.⁴⁷ It is easier to create a receipt for tangible items like trailers, MREs, gas, water and so on, than it is for the resources needed after a terrorist attack. Though one can imagine charging a state for the cost of scrambling fighter jets overhead in response to a terrorist attack, it is difficult to envision the federal government charging a city for it. After Katrina, FEMA sent Louisiana a bill for \$3.7 billion, to which state Representative Roy Hopkins responded, "What are they going to do if we can't pay it back? Are they going to repossess New Orleans?"⁴⁸ Arguing over the bill is an essential part of all FEMA responses, and an accounting mechanism must be in place to make sure it proceeds efficiently and honestly. This is easier to do with natural disasters, which are frequent and similar to each other, than with terrorist attacks, which are exceedingly rare and heterogeneous.

D. Mitigation

The final element in the United States' current disaster policy is mitigation, which FEMA defines as "the effort to reduce loss of life and property by lessening the impact of disasters. This is achieved through risk analysis, which results in information that provides a foundation for mitigation activities that reduce risk, and flood insurance that protects financial investment."⁴⁹ This mission statement emphasizes natural hazards, but not terrorism, as if addressing how to mitigate the effect of a terrorist attack is an impermissible admission that a terrorist attack is inevitable. Despite the need to make financial preparations relating to terrorist attacks, this major area of disaster policy simply does not address terrorism.⁵⁰

⁴⁷ Alan Levin, *Louisiana Can't Pay Katrina, Rita Bills*, USA TODAY, Nov. 4, 2005, at A1.

⁴⁸ Terry O'Connor, *Stunned Louisiana Lawmakers Rip \$3.7B FEMA Bill*, NEW ORLEANS CITYBUSINESS, Nov. 7, 2005, available at http://www.findarticles.com/p/articles/mi_qn4200/is_20051107/ai_n15841547.

⁴⁹ FEMA: Mitigation, <http://www.fema.gov/government/mitigation.shtml> (last visited Nov. 20, 2007).

⁵⁰ See G. Andrew Karolyi & Rodolfo Martell, *TERRORISM AND THE STOCK MARKET* (2005), available at www.cob.ohio-state.edu/fin/dice/papers/2005/2005-19.pdf; but see GAIL MAKINEN, CONG. RESEARCH SERV., CRS REPORT FOR CONGRESS: THE ECONOMIC

One reason for this might be that it is difficult to mitigate the effects of terrorism because attacks are rare. Reducing any one individual's risk is almost impossible because we do not know when and where attacks will occur. Conversely, we know all the high-risks areas in a floodplain or along earthquake faults, so mitigation activities are easier to undertake there. The dearth of mitigation available for terrorism is another indicator suggesting that the framework developed for disaster response is ill-suited for use in the terrorism arena.

III. Federal Meddling

Our government's structure further complicates concerns about grouping disaster and terrorism response. Disaster relief remains rooted in local actors, with the federal government stepping in only at their request. The Stafford Act, which authorizes federal involvement in disaster response, calls for a declaration of a "major disaster" by the President upon request by a state governor who anticipates that the disaster "is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary."⁵¹ Because disaster response is a local matter that does not involve any functions exclusive to the federal government, such as those concerning foreign relations, the federal involvement can be closely cabined by the practical assistance provided immediately after a disaster. But federal functions activated by a terrorist attack are not merely supplementary to local efforts because they include responses from the military and intelligence communities.

The federal government's supplemental role in disaster response can create tension with local governments in ways that response to a terrorist attack would not. Barely a month after Katrina made landfall, Florida's governor Jeb Bush offered his view that "FEMA should not be responsible for manpower or a

first response [to a natural disaster].”⁵² Governor Bush wrote further that:

[The] federal government cannot replicate or replace the sense of purpose and urgency that unites Floridians working to help their families, friends and neighbors in the aftermath of a disaster. If the federal government removes control of preparation, relief and recovery from cities and states, those cities and states will lose the interest, innovation and zeal for emergency response that has made Florida’s response system better than it was 10 years ago.⁵³

The “interest, innovation and zeal” at the heart of effective disaster response is especially endangered by an overbearing federal involvement.⁵⁴ Although disaster response must be strictly coordinated and efficient, it must still be flexible and robust enough to create innovative solutions to new problems that arise. Indeed, when the federal government behaved proactively in Florida during Hurricane Rita, local officials derided their efforts as “reindeer games” because of their focus on meaningless details.⁵⁵ An effective response plan must have clear objectives and next steps, but not be so rigid that it forbids driving the wrong way down a one-way street to reach people who need help.⁵⁶ The appropriate utilitarian mindset is expressed succinctly in a list of rules from Craig Fugate, Florida’s emergency management director: “Rule 1: Meet the needs of the disaster victim. Rule 2: Take care of the responders. Rule 3: See rule 1.”⁵⁷ The director of

⁵² Jeb Bush, Op-Ed., *Think Locally on Relief*, WASH. POST, Sept. 30, 2005, at A19.

⁵³ Bush, *supra* note 52.

⁵⁴ *Id.*

⁵⁵ COOPER & BLOCK, *supra* note 3, at 276–77.

⁵⁶ COOPER & BLOCK, *supra* note 3, at 55 (outlining FEMA’s response to Hurricane Hugo in 1989 and noting that “FEMA reacted with a maddening bureaucratic slowness, demanding that local officials follow rigid procedures and apply through their governor for every type of federal support they might need.”); *see also* DOUGLAS BRINKLEY, *THE GREAT DELUGE* 232–33 (2006) (showing that lack of local expertise has practical consequences for any relief efforts—during their first foray into New Orleans following Hurricane Katrina, federal officials became lost and made camp at a Sam’s Club outside of town because they did not know about un-flooded routes to the Superdome and Convention Center).

⁵⁷ *Id.* at 273.

emergency management in Alabama further explains that “[g]ood plans do not mean smooth execution.”⁵⁸

This flexibility afforded to first-responders is endangered by excessive federal involvement because such involvement can lead to off-site stage managing by federal officials. At a meeting of FEMA federal coordinating officers following Katrina, FEMA unveiled plans to send federal SWAT teams into disaster zones to gather information, and also to track all ice and water supplies by means of satellites under exclusive control of Homeland Security officials in Washington, thus cutting local federal officials out of the loop for “security reasons.”⁵⁹ Local officials also complain that greater federal involvement can be triggered arbitrarily, and that the addition of the federal bureaucracy that slows everything down—and turns local responders into “Hollywood extras”—could ultimately cost lives.⁶⁰

But this strategic overview is exactly what terrorism response requires because a terrorist attack is an international incident. Acts of international terrorism necessarily involve the national government, and not just out of empathy, economic or political concerns. Even when a terrorist attack against United States citizens or property happens on domestic soil, these actions are overwhelmingly motivated by actions taken by the United States government in foreign lands.⁶¹ This means that the federal government will respond through the sort of diplomatic or military mechanisms that states or local governments do not have.

The activation of these resources changes the role the federal government plays because a terrorist attack is not an issue of local resources being outmatched. During Katrina, Louisiana’s governor and President Bush did not come to an immediate agreement about who would control the National Guard units that would enter New Orleans.⁶² Each side wanted to maintain control,

⁵⁸ *Id.* at 300.

⁵⁹ *Id.* at 301–02.

⁶⁰ *Id.* at 300–01.

⁶¹ See, e.g., MESSAGES TO THE WORLD: THE STATEMENTS OF OSAMA BIN LADEN, *supra* note 35, at 105.

⁶² BRINKLEY, *supra* note 56, at 568–69.

and the dickering over this issue cost valuable time.⁶³ But in a terrorist attack there is no doubt about whose jets to scramble or whose warships to mobilize because only the federal government is capable of marshalling this overwhelming response. The federal government is not supplementing response to a terrorist attack—it is providing the only possible reaction and therefore must be more involved in every stage of the response in a way it does not need to be in a natural disaster.

IV. Executive Issues: FEMA's Checkered Past

Whatever the efficacy of linking counter-terrorism efforts and disaster preparedness as an abstract design matter, the issue becomes impossible in execution because of the political nature of FEMA. This problem stems from more than mere bureaucratic ineptitude; it results from the fundamental differences between FEMA's two competing missions of disaster preparedness and terrorism response.

President Carter created FEMA to formalize and improve the de facto network of federal agencies already providing help to state and local governments.⁶⁴ This marshalling of federal resources was a long time coming. The first federal response to a local disaster was aid for damage caused by a fire in Portsmouth, New Hampshire, in 1802.⁶⁵ This was followed by more ad hoc assistance from the federal government during the Mississippi flood of 1927⁶⁶ and Hurricane Camille in 1969, until President Carter created FEMA with Executive Order 12127 in 1979 at the behest of state governors.⁶⁷

FEMA was created late in Carter's presidency, and the agency began to develop its identity while Ronald Reagan was president.⁶⁸ FEMA quickly earned a reputation as "a suitable reward for midlevel political hacks," a place where the President's appointees

⁶³ *Id.*

⁶⁴ A FAILURE OF INITIATIVE, *supra* note 8, at 29.

⁶⁵ COOPER & BLOCK, *supra* note 3, at 47.

⁶⁶ See KOSAR, *supra* note 45, at 1.

⁶⁷ COOPER & BLOCK, *supra* note 3, at 49.

⁶⁸ *Id.* at 51.

to positions at the agency were evaluated in how they helped him during his election campaign and not for any background related to the job.⁶⁹ Reagan's FEMA director from May 1981 to September 1985, Louis Giuffrida, focused on turning FEMA into a "black-budget" agency operating in secrecy to develop plans for bomb shelters and evacuation schemes.⁷⁰ Under Giuffrida, FEMA moved away from its origin as a federal clearing-house and became a Cold War bugaboo: FEMA's "natural disaster staff was segregated from the doomsday workers There were armed guards at the elevators and the stairwells. The natural hazards experts lived a far more relaxed existence . . . FEMA truly was a two-headed agency."⁷¹ Perhaps the culmination of the agency's preoccupation with national security was FEMA's assumption of the management of Mount Weather, the premier government "undisclosed location" that was built to house key figures from the U.S. government in the event of a nuclear strike.⁷²

With the end of the Cold War, FEMA focused less on these paranoid contingency plans. However, even under the first President Bush, FEMA remained staffed with inexperienced management. When Hurricane Andrew struck Florida during an election year, FEMA's mismanagement of the disaster contributed to Bush's defeat in 1992's presidential election.⁷³

When Bill Clinton succeeded Bush, he took this lesson to heart and transformed FEMA into an agency that met its mission.⁷⁴ Clinton's FEMA director James Lee Witt actually had experience managing disaster response services.⁷⁵ Clinton also give Witt a direct line to the Oval Office, and Witt did not hesitate to use his presidential access to get resources into place as he needed them.⁷⁶

⁶⁹ IVOR VAN HEERDEN & MIKE BRYAN, *THE STORM* 137–38 (2006).

⁷⁰ *Id.* at 52.

⁷¹ COOPER & BLOCK, *supra* note 3, at 55.

⁷² *Id.* at 45, 52–53.

⁷³ *Id.* at 58.

⁷⁴ *Id.* at 63 (noting FEMA's elevation in status was motivated by desires to "help regular folks, to connect with local politicians, and maybe pick up a few votes along the way.").

⁷⁵ VAN HEERDEN & BRYAN, *supra* note 69, at 138.

⁷⁶ COOPER & BLOCK, *supra* note 3, at 64.

During Witt's tenure, FEMA became a well-regarded federal agency that responded to several high-profile disasters.⁷⁷

This all changed when George W. Bush entered office. President Bush's choice for FEMA director was Joe Allbaugh, his campaign manager in the 2000 election and someone with no emergency relief experience.⁷⁸ Bush also proposed cutting \$500 million from FEMA's \$2.5 billion annual budget.⁷⁹ After 9/11—and with initial resistance from the White House on grounds of not wanting to expand the size of the federal government⁸⁰—Congress passed the Homeland Security Act which created the Department of Homeland Security by absorbing numerous government agencies, including FEMA.⁸¹ During this transition, Allbaugh was replaced by Michael Brown, who was promoted from within FEMA but who, infamously, had no prior disaster relief experience prior to his two years with the agency.⁸²

The Homeland Security Act reorganization got off to a rocky start, with many top positions in the new department remaining vacant and office space creating logistical issues.⁸³ The reorganization also resulted in several major changes to the structure for responding to disasters. The "National Response Plan" developed during this time was given its first workout during Katrina,⁸⁴ and it quickly became clear during the storm that even DHS Secretary Michael Chertoff did not completely understand the steps necessary to unleash the full power of the federal response.⁸⁵ Michael Brown, in testimony before Congress, reported that under this new framework, his ability to circulate

⁷⁷ *Id.* at 63 ("[As Witt's term progressed], [n]ewspaper articles began to run stories about the new FEMA that could. State disaster officials were pleased. In opinion surveys, more than eighty percent of respondents rated the agency's service as good to excellent.").

⁷⁸ VAN HEERDEN & BRYAN, *supra* note 69, at 139.

⁷⁹ COOPER & BLOCK, *supra* note 3, at 68.

⁸⁰ *Id.* at 75.

⁸¹ Homeland Security Act of 2002, Pub. L. No. 107-296, Title V, 116 Stat. 2135 (2002).

⁸² BRINKLEY, *supra* note 56, at 245–46.

⁸³ John Mintz, Government's Hobbled Giant, WASH. POST, Sept. 7, 2003, at A01.

⁸⁴ VAN HEERDEN & BRYAN, *supra* note 69, at 147.

⁸⁵ COOPER & BLOCK, *supra* note 3, at 298–99.

among affected areas was severely curtailed, especially compared to how he had functioned in Florida during hurricanes the year before.⁸⁶ Post-DHS, FEMA's director no longer has a direct line to the President⁸⁷ and though Brown indicates that he was eventually able to reach Bush and his advisors during Katrina, he also had to deal with interference from Chertoff along the way.⁸⁸

DHS's formation was presaged by the findings the Hart-Rudman Commission, a Congressional committee that convened during Clinton's presidency. The Commission pointed to the growing threat of international terrorism and called for the creation of a "National Homeland Security Agency."⁸⁹ This proposed department was sketched to rely on FEMA as a "key building block,"⁹⁰ as well as the Coast Guard, and Customs and Border Patrol. The creation of this entity was not envisioned as a massive government reorganization that would have terrorism grafted onto the mission of the agencies thrown under its yoke, but rather as a coordination that would "strengthen these three individual organizations themselves."⁹¹ The report also emphasized that preserving civil liberties would be an important priority for the new agency—another point where this proposal diverges from the current Department of Homeland Security, whose Secretary Michael Chertoff was a chief architect of the PATRIOT Act, which is widely perceived as weakening civil liberties in the service of law enforcement's ability to gather information.⁹²

One way to see how the actual DHS merger eroded FEMA's effectiveness is to examine their funding priorities after the

⁸⁶ Brown Deposition, *supra* note 43, at 16–17.

⁸⁷ COOPER & BLOCK, *supra* note 3, at 76–77.

⁸⁸ Brown Deposition, *supra* note 43, at 17.

⁸⁹ U.S. COMM'N ON NAT'L SEC./ 21ST CENTURY, ROAD MAP FOR NATIONAL SECURITY: IMPERATIVE FOR CHANGE 15–29 (2002), available at <http://www.fas.org/irp/threat/nssg.pdf> [hereinafter ROAD MAP].

⁹⁰ *Id.*

⁹¹ *Id.* at 16.

⁹² *Id.* at viii; see also *Bush Picks A 'Known' For Cabinet*, CBS NEWS, Jan. 12, 2005, available at <http://www.cbsnews.com/stories/2005/01/11/politics/main666125.shtml> (describing then-nominee Chertoff's role as one of the architects of the PATRIOT Act); Sheryl Gay Stolberg, *Key Senators Reach Accord on Extending the Patriot Act*, N.Y. TIMES, Feb. 10, 2006, at A14 (citing criticisms of Senator Feingold and other detractors of the PATRIOT Act who claim it weakens civil liberties).

department's creation. FEMA's guidelines for granting money to local governments have become dominated by concerns about terrorism. Local emergency managers note that "federal DHS funding restrictions dictate that almost all [preparation] exercises involve a terrorism-based threat or scenario."⁹³ Though equipment bought with these grants can be used for "all hazards" purposes, many local first responders do not grasp the subtleties of a grant application process that allows a hardy communication system to be justified under "terrorism response" but still used for other purposes.⁹⁴ For example, the ill-prioritized DHS grant process gave Shelby County of Alabama \$250,000 for chemical warfare suits, but no money to build an operations center to help coordinate response to the many tornados that strike the area.⁹⁵ This shift in the grants award process has also damaged cooperation among some first responders. During DHS's early days, great controversy arose when grants traditionally given to firefighters for responding to chemical incidents began to be awarded to police officers since they were viewed as being more closely linked to terrorism.⁹⁶

The federal government's remarkable myopia has dangerous consequences. It fosters a preparedness culture that alienates many local stakeholders who must follow through on creating and executing preparedness plans once bankrolled by the federal government. The federal government's decision that terrorism is the number one threat facing the nation does not make hurricanes, earthquakes or snowstorms any less dangerous to city or state leaders. When Shelby County's local emergency manager received his chemical warfare suits, he commented that "I really don't think Osama bin Laden wants to attack Shelby County."⁹⁷ This frustration may explain the disturbing results of a study released in June 2006 by DHS reporting that even five years after 9/11, and one year after Hurricane Katrina, "the vast majority of America's states, cities, and territories are far from ready for terror

⁹³ A FAILURE OF INITIATIVE, *supra* note 8, at 152.

⁹⁴ *Id.* at 153.

⁹⁵ COOPER & BLOCK, *supra* note 3, at 83.

⁹⁶ *Id.* at 81.

⁹⁷ *Id.* at 83.

attacks, huge natural disasters, or other wide-reaching emergencies.”⁹⁸

This result makes little sense given the billions of dollars and hours of attention in the media directed towards anti-terrorism measures,⁹⁹ but it can perhaps be explained by the defection of many of FEMA’s experienced staffers. Under Bush’s first FEMA chief, Joe Allbaugh, twenty-two senior staffers at FEMA quit or were fired—staffing changes that did not occur to improve the agency’s expertise but were decided on the basis of whether “anybody was deemed too close to [Clinton’s FEMA director James Lee] Witt.”¹⁰⁰ This “brain drain” has had serious effects on the agency’s prowess. For example, of fifteen possible catastrophes highlighted in the DHS National Preparedness Guidance, only three were not terrorist-related.¹⁰¹ DHS admitted that the list was not ranked by risk,¹⁰² even though the overwhelming majority of presidential disaster declarations are not terrorism related.¹⁰³

V. Conclusion

FEMA’s incongruous national security focus is an almost inevitable result of the pairing of civil defense and natural disaster preparedness and response. Indeed, when Congress contemplated prioritizing terrorism as part of FEMA’s mission after the 1995 Oklahoma City Bombing, James Lee Witt demurred, fearful that assuming such responsibility would, as Cooper and Block write in *Disaster*, “drag the agency back to the days of [Ronald Reagan’s FEMA director] Louis Giuffrida; time, energy, and resources

⁹⁸ Lara Jakes Jordan, *Catastrophe Plan In Most Major Cities, States Get Low Rating*, June 17, 2006, http://www.boston.com/news/nation/articles/2006/06/17/catastrophe_plans_in_most_major_cities_states_get_low_rating.

⁹⁹ Bruce Schneier, *Billions Wasted on Anti-Terror Security*, June 3, 2005, http://www.schneier.com/blog/archives/2005/06/billions_wasted_1.html.

¹⁰⁰ COOPER & BLOCK, *supra* note 3, at 73. This statement was made by Leo Bosner, a FEMA medical emergency response specialist and the head of the agency’s union.

¹⁰¹ DHS EFFORTS, *supra* note 6, at 16.

¹⁰² *Id.* at 17; *see also* DHS EFFORTS, *supra* note 6, at 20 (noting that DHS has “less concern about planning for natural disasters because there is a tremendous amount of experience, actuarial data, geographical and seasonal patterns, and other information that is not available in the context of terrorism.”)

¹⁰³ *See* FEMA: Annual Major Disaster Declarations Totals, http://www.fema.gov/news/disaster_totals_annual.fema (last visited Nov. 20, 2007).

would once again be sucked away from the certainty of natural disasters to prepare for a new bogeyman.”¹⁰⁴

Our country's fortunate freedom from terrorist attacks may allow flashy plots to seduce preparedness officials and the media, but for all of the government's rhetoric about hunting down terrorists, the high-profile targets presented to the American public have been less than omnipotent satanic fiends. Jose Padilla was jailed largely on procedural grounds for many years; Richard Reid, the “shoe bomber,” was a pathetic failure; Zacarias Moussaoui, the “twentieth hijacker,” has been exposed as an egotistical madman; President Bush misidentified the target of a foiled terrorist plot; a plot to commit “mass murder on an unimaginable scale” with liquid explosives¹⁰⁵ seems quickly forgotten; and the masterminds behind an impossible plan to blow up JFK airport were described as “sad sacks” by law enforcement.¹⁰⁶ The policy decisions to pursue these individuals have distorted the focus on emergency preparedness across the board, particularly in the federal departments with the capabilities to deal with major disasters. If the federal government feels compelled to adopt terrorism preparedness as a well-funded, visible policy issue, it should do so without compromising the less glamorous but more often needed disaster preparedness functions that FEMA has performed well in the past.

There is some merit to the notion that a truly balanced “all hazards” approach may present some advantages in coordination and efficiency—but that sort of reality-minded agency simply seems impossible in our government. Instead, the government builds bunkers inside of mountains and when hurricanes occur as

¹⁰⁴ *Id.* at 65.

¹⁰⁵ ‘Airlines Terror Plot’ Disrupted, BBC, Aug. 10, 2006, http://news.bbc.co.uk/2/hi/uk_news/4778575.stm.

¹⁰⁶ See Peter Whoriskey, *Jury Convicts Jose Padilla of Terror Charges*, WASH. POST, Aug. 17, 2007, at A01; Kirk Semple, *Padilla Gets 17-Year Term For Role in Conspiracy*, N.Y. TIMES, Jan. 23, 2008, at A14; Fifis, *supra* note 13; John M. Broder, *A Distinctive Shape, and an Inviting Target*, N.Y. TIMES, February 10, 2006, at A22 (referring to a terrorist plot to attack the largest building in Los Angeles, President Bush mistakenly named the Library Tower as the “Liberty Tower.”); Cara Buckley & William K. Rashbaum, *4 Men Accused of Plot to Blow Up Kennedy Airport Terminals and Fuel Lines*, N.Y. TIMES, June 3, 2007, at 1–37.

scientists say they will, thousands of people are left stranded on their rooftops. This Article has shown the problems that arise when the two different missions of terrorism and natural disaster emergency management are lumped together: a cycle of eschatological panic about low-probability terrorist attacks siphons money and other resources away from preparedness for ploddingly predictable natural disasters.