

A Post-Katrina Look at the National Response Plan

**Panel Discussion on
Disaster Management Challenges
Disaster Roundtable Workshop:
Law, Science and Disaster
National Academy of Sciences
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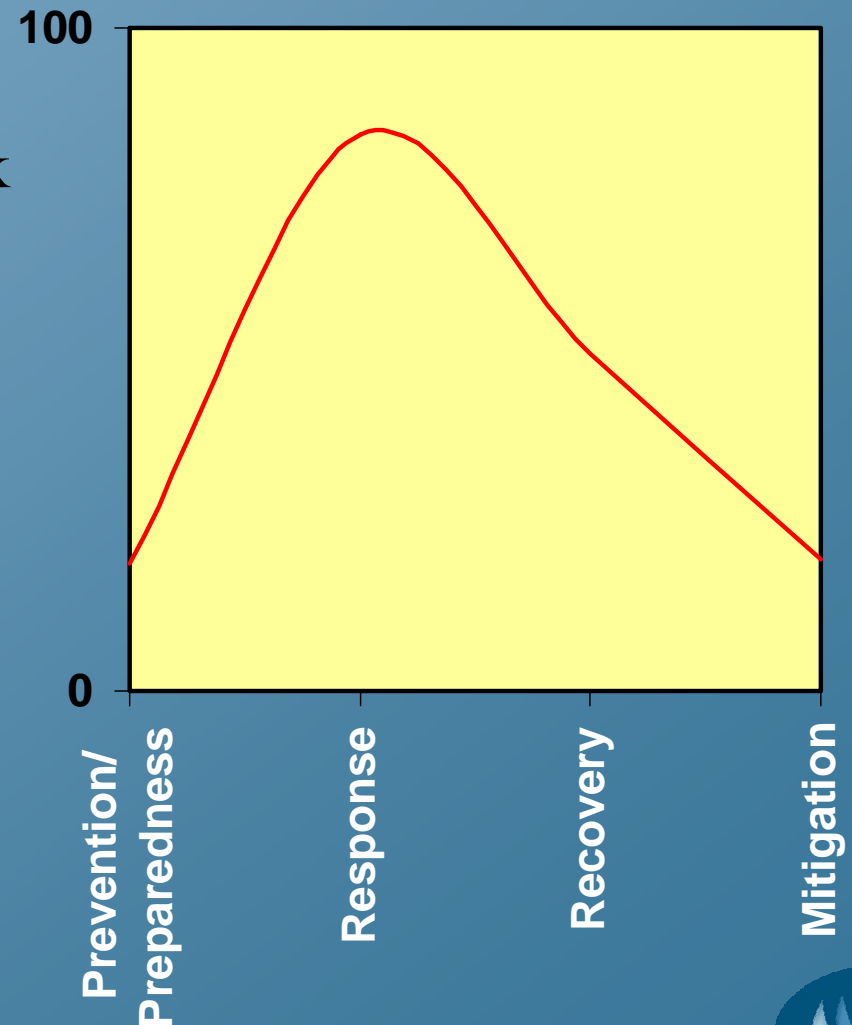
Objectives

- **Clarify understanding of Legal Authorities in Major Catastrophic Events**
 - **Focus on *Response* Authorities**
- **Generate discussion about How Legal Authorities support National Response Plan**



Government Authority to Act in Emergencies: Model

- Legal *authority* is at its peak at the height of an emergency
- As crisis comes under control, legal authority is subject to greater legal constraints
- *Attention then shifts to* responsibility for costs and damages/losses



The New York Times

September 9, 2005

NATIONAL DESK

**STORM AND CRISIS:
MILITARY RESPONSE;
Political Issues Snarled
Plans For Troop Aid**

THIS ARTICLE WAS



Constitutional Framework of Emergency Authorities

Historical / Legal Source of federal and state powers

- Sovereign States granted enumerated powers to the Federal Government
 - Interstate Commerce
 - National Defense
 - Power to Tax and Spend for Public Welfare
- Powers not Granted were “Reserved” to States
 - Police Power



Local Incidents - Scale and Complexity

- **All** emergencies start locally
 - As scale/complexity increase, state and federal support may be needed
 - Larger incidents require increased coordination and information flow across agencies
- Managing complex incidents requires...
 - Data to assess the evolving situation
 - Tools to analyze and interpret the data
 - Interoperability to share information/decisions across diverse agencies and IT systems
 - Resources: what, where, and how to supply



Managing Large Scale Emergencies

- Homeland Security Presidential Directive-5 (HSPD-5) directs Homeland Security Secretary to develop and administer:
 - National Incident Management System (NIMS)
 - National Response Plan (NRP)
- To ensure effective management of large-scale emergencies



Local Incident Management

Incident Command System (ICS)

- Model for first responders (EMS, fire, police) for command, control, and response coordination
- Coordinates agencies working toward shared goals: stabilize the incident, and protect life, property & environment



NIMS Overview

- A consistent, nationwide approach for incident management
- **Requires [?]** Federal, State, tribal, and local governments to work together before, during, and after incidents
- Involves preparing for, preventing, responding to, and recovering from domestic incidents
- All causes, sizes, and complexities of incidents



National Response Plan (NRP)

- Provides framework for:
 - Federal interaction with state, local, and tribal governments; the private sector; and NGOs
 - For domestic incident prevention, preparedness, mitigation, response, and recovery activities.
- Describes capabilities and resources and establishes responsibilities, operational processes, and protocols.
- Signed by all cabinet agency secretaries



Legal Underpinning of National Response Plan (NRP)

- Presidential directive to Administration: HSPD 5 and 8
- Contract: Signed by all cabinet agency secretaries
 - Note: Tom Ridge, not Mike Chertoff
 - No state and local governments
- Delegations of statutory authority
 - Stafford Act: to Secretary of DHS
 - “Principal Federal Official” vs. “Federal Coordinating Officer”



Legal Authorities of National Response System: Emergency and Disaster Declarations

Many types of declarations:

- Level of government: local, state, federal
- Geographic area: part of a city, entire city, county, region, or a state
- Type of event:
 - Any threat to life, health, safety, property
 - Specific threat: public health, drought, fire, insurrection



Principal Declarations in Catastrophic Events

- Declarations provide particular powers to particular governments/officials
- Multiple declarations are common—
 - and were declared during Hurricane Katrina!
- State level:
 - State of Emergency and
 - Public Health Emergency
- Federal level:
 - Public Health Emergency and
 - Stafford Act Emergency or Major Disaster



Federal Assistance Available Without Declaration (e.g.)

■ Public health

- “NDMS” and Strategic National Stockpile
- Quarantine, travel restrictions
- CDC assistance in epidemiological investigations

■ Military Support

- Authority of military commander to respond immediately without orders to assist in life saving missions
- Support state quarantine
- Efforts to save lives and protect property before declaration on request of Governor



Governor's Declaration of State of Emergency

- Based on sovereign police power
- Activate emergency plans and authorize deployment and use of personnel
 - Suspend restrictions on appropriations
- Allows suspending / waiving state laws
- Trigger special powers
 - To control persons and property
 - To seek mutual aid from other states



The Stafford Act

- Stafford Act is the principal discretionary federal authority to assist state and local governments in responding to catastrophic events of any type
- Stafford Act activated by declaration of either
 - A major disaster or
 - An emergency
- The Stafford Act provides for federal authorities and funds



Stafford Act Declaration Procedure

- Procedure: President makes declaration (of major disaster or emergency) after **Governor:**
- Activates state's emergency plan
- *Requests declaration, saying*
 - *Situation beyond capability of state and local governments*
 - *Specifies nature of federal assistance requested*
- DHS/FEMA makes recommendation to President based on severity: President alone decides



Unilateral Federal Powers: Stafford Act

- Ability of federal government to act unilaterally
 - President **CANNOT** declare a major disaster without request from Governor
 - President **CAN** declare an *emergency* without request of State Governor *IF*:

“Primary responsibility rests with the United States because the emergency involves a subject area for which, under the laws of the United States, the United States exercises exclusive or preeminent authority.”
- Examples: Federal buildings. Indian tribes. Nuclear materials. WMD/National Defense?



Stafford Act Declarations

- After declaration, Stafford Act actions delegated to DHS/FEMA – coordinated through NRP
- Authorizes use of federal resources “in support of state and local assistance efforts”
- Includes both direct federal assistance and contributions to state or local governments



Authorized “Emergency” Measures

- Both major disaster and emergency declarations authorize the same emergency measures
- Emergency powers – President may:
 - *direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law . . . in support of state and local emergency assistance efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe.*



Stafford Act § 403(c): “Utilization of DoD Resources”

- (1) General rule
During the immediate aftermath of an incident which may ultimately qualify for [a declaration] the Governor . . . may request the President to direct the Secretary of Defense to utilize the resources of the Department of Defense for the purpose of performing on public and private lands any emergency work which is made necessary by such incident and which is essential for the preservation of life and property.
....
- “Such emergency work may only be carried out for a period not to exceed 10 days.”



Posse Comitatus: 18 USC 1385

“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.”

- Non-law enforcement missions permitted
 - E.g., Search and rescue, power restoration, debris removal, emergency services
- National Guard in state status, enforcement of state quarantine not covered



Insurrection Act: 10 USC §§ 331-334

“Whenever the President considers it necessary to use the militia or the armed forces under this chapter, he shall, by proclamation, immediately order the insurgents to disperse and retire peaceably to their abodes within a limited time.”

- Can be used:
 - On request of Governor or legislature
 - When unlawful obstructions, rebellion makes it impossible to enforce laws of United States through ordinary course of Judicial Proceedings
 - To surpress any insurrection, domestic violence, unlawful combination, or conspiracy to protect constitutional rights in a State



Failings of NRP in Katrina

- Information
- Coordination – state federal
 - State not co-located with federal response
 - Breakdown of trust between state and federal partners
 - Lack of clarity in communication
- Coordination -- between federal agencies
 - FEMA – DHS – White House – NORCOM
- Media
 - Issue: Response to media reports that were not true



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