

# United States Senate

WASHINGTON, DC 20510

September 29, 2005

The Honorable George W. Bush  
The President of the United States  
1600 Pennsylvania Avenue  
Washington, DC 20501

Dear Mr. President:

Hurricanes Katrina and Rita have focused the nation's attention on the use of the military in domestic emergencies. We understand the desire to examine the role and responsibilities of the active military in these types of devastating situations and believe that the current system that puts the active military in a supporting role is fundamentally sound. This arrangement preserves local control and state authorities granted under the Constitution, avoids the potentially dangerous use of the active military for law enforcement, and takes advantage of the enormous capabilities and experience that exist within the National Guard.

Putting the military in the lead role in domestic disaster situations negates one of the most fundamental attributes of the National Guard, its experience in working with local and state first responders and its familiarity with local communities. Under the current system, when a local community relief effort becomes overwhelmed, it turns to state resources and assistance without relinquishing control. When a state is overwhelmed it will turn to the federal government for support. This arrangement flows directly from the Constitution's separation of powers and has the practical benefit of ensuring that the elected officials who best know their communities remain in control.

Placing the active military in control creates an almost certain conflict with Posse Comitatus statutes that prevent the use of the military for law enforcement activities. These laws reflect longstanding conventions that prevent the military from becoming inappropriately involved in civilian affairs. Exceptions to the Posse Comitatus statutes allow the President in extreme cases to invoke the Insurrection Statutes to maintain order, and these good laws create a strong presumption against interjecting the military into decision-making situations best handled by democratically elected officials.

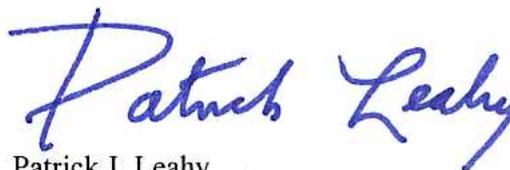
The most expeditious way to leverage military assets in response to a domestic crisis is to activate National Guard forces under the Title 32 provision which provides for the dual-benefit of maintaining the National Guard under the command-and-control of the governor with federal financing. The worst lesson to take away from recent natural disasters would be to alter our emergency management system in a fundamental way and change the presumption against using the military as the lead organization. Such a radical change would go against our Constitution, threaten civil liberties in emergency situations, and ignore the full capabilities of the National Guard.

As you oversee the many reviews of the federal government's emergency response capabilities, we hope you keep our thoughts in mind. We look forward to discussing this matter with you in the very near future.

Sincerely,



Christopher S. Bond  
Co-Chair, National Guard Caucus



Patrick J. Leahy  
Co-Chair, National Guard Caucus