

**MILITARIZING THE HOMELAND  
AND  
PRIVATIZING ANTI-TERRORISM**

**September 26, 2005**

**Part of a broader study,**

***TERRORISM AND COMMUNITY POLICING  
IN THE  
21<sup>ST</sup> CENTURY:***

***THE UNITED STATES AND EUROPE COMPARED***

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## **INTRODUCTION**

*An army of principles can penetrate  
where an army of soldiers cannot.*

----- Thomas Paine

This chapter documents the falling star of Community Policing in the United States, while contrasting it with the rising star of Community Policing in Europe. In it, we examine the uniquely American phenomenon of private sector security businesses replacing state and local police in the “war on terror.”

First, the reader should be aware that, in the worldwide fight to stop terrorism, there is a deep and ever-widening gulf between the United States and Europe in their methods of approach. Europe has developed, and practices, a composite police and prevention response to terrorism, deploying police at all levels internationally. These interlocking efforts combine:

- Intelligence gathering and information sharing;
- International collaboration in terrorist cell identification;
- Cross-border surveillance and sweeps;
- Europe-wide arrest warrants;
- Advanced, multidisciplinary training;
- Interoperable communications systems;
- Real time computer tracking, locating and mapping.

New legislation, both national and EU level, is providing more extensive antiterrorist powers and a more efficient structural network. European police forces are also given periodic guidelines by an international council of chiefs of police, and Community Preventive Policing is emphasized as the most efficient, knowledgeable and experienced means of securing public safety while preserving democratic institutions.

By contrast, the United States has implemented a strong military response, viz., the invasion of Iraq, coupled with off-shore detention facilities and specially designed

judicial proceedings. Their domestic anti-terrorist efforts are headed up by the Department of Homeland Security, which devises central strategies, manages electronic and human intelligence gathering under the auspices of the CIA, the FBI, and the Office of the Director of National Intelligence, and disburses federal funding to state and local police and other first responders.

At the heart of this EU-US dichotomy is a basic difference of philosophy. European governments consider terrorism to be a tactic. It is impossible to declare “war” against a tactic. Also, military might, to Europeans, misses the point entirely. Military incursions can deter attacks, save lives, and dismantle regimes. They cannot, however, promote or improve public ethics, social and political education, acceptable political behavior, or civic institutions.

Neither soldiers nor private security guards are trained for those tasks, but the public police forces of the 21<sup>st</sup> Century increasingly are being educated to achieve precisely those goals.

In large part, that is why Europeans –both EU and non-EU member states—have chosen to expand and educate their Community Policing forces to fight terrorism. Community Policing, when practiced in depth, robs terrorism of its allure, its romance, and its appearance of validity to potential recruits. Invading soldiers, foreign or domestic, do not have that effect.

The disparity between Europe and the U.S. in this area cannot be traced to popular social or cultural forces: Community Policing is more widely accepted and approved at grass roots level on both continents than ever before. Instead, the diminution or downgrading of Community Policing in the U.S. is the direct, intended consequence of the Bush Administration’s policies regarding counterterrorism.

American policy is currently fixed around a “war on terror” emphasizing the use of military means, working in close conjunction with private security companies providing armed guard personnel in great numbers and military logistical support. That same bundle of actors, motives and interests is now attaching itself to the fight against terrorism at home. This paper discusses the new plans for phasing out state and local police forces in favor of private security services and the military, now being unveiled in stages by the Secretary of the Department of Homeland Security, Michael Chertoff, and by the Department of Defense under Secretary Donald Rumsfeld.

## **FOR THE PRIVATE SECTOR: MONEY, INFLUENCE, AND IMMUNITY**

*“In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist.”*

- - - President Dwight D. Eisenhower, Farewell Address to the Nation, January 17, 1961

We begin with two major policy speeches given by Michael Chertoff, the newly-installed Secretary of Homeland Security, on April 26, 2005, at the International Center for Enterprise Preparedness, New York, and at the U.S. Chamber of Commerce, on April 29, 2005, in Washington, DC. In both of those talks, he addressed the Bush Administration’s action plan for a national response in the event of a future domestic terrorist strike in light of its inherent likelihood and imaginable consequences.

Making no mention of the role of state and local police in this great historical challenge to public safety, Secretary Chertoff instead offered the private sector money, influence, and immunity. His rationale, stated in both speeches, is that the “private sector controls 85 to 90 percent of the assets in the country”. In another passage, he repeated that “85 percent of the nation’s infrastructure is owned by private sector enterprises.”

Accordingly, and in conformity with the importance of private ownership, Secretary Chertoff promised private businesses the following: “We can do many things on the federal level to help our private sector partners...We can provide you information and intelligence...and we can provide some level of funding.”

Next, Chertoff reiterated his earlier promises of influence in determining Homeland Security policy through private sector representation on the Sector Councils, among other channels:

“I think that we have a great opportunity bringing the private sector into strategic planning, because the private sector has terrific experience in a lot of the things we are

just now beginning to learn how to do.” Further, in the list of things to be delegated to private security industry, are “[S]etting standards...working through the Sector Councils to coordinate...in creating a set of priorities to use to work with private partners in determining how we allocate our resources to protect infrastructure.”<sup>1</sup>

The policy influence of business enterprises in various public-private councils is discussed below under NRP (National Response Plan).

As to immunity, Chertoff clearly intends to expand the safety zone of private players far beyond mere product liability:

“If we are to really embrace the kind of technological and services solutions which are out there in the marketplace, we need to be able to afford actors a real opportunity to present those without the fear of undue litigation and unduly high transaction costs...”<sup>2</sup>

The “services solutions” to which Secretary Chertoff refers would presumably include personnel services, as they are understood in the Iraq war. Also, the “high transaction costs” referred to would be those noticed by other Bush Administration officials: Private security guards cost less than one-third to hire, train (if at all) and equip than do professional, sworn police officers. Specifically,

“By the same token, we will provide some protections in the event that you are sued in connection with a terrorist attack.”<sup>3</sup> This promise raises serious constitutional questions.

Although Chertoff ignored the role of police forces entirely in these and subsequent speeches and public appearances, he certainly did not overlook the National Guard:

“Disrupting their (terrorist) training camps, disrupting their laboratories, putting them into hiding, has been and is continuing to be the number one defense we have against terrorists who are committing an offense. The National Guard carrying out that mission is critical. They have another mission, too, which is homeland security. I want to thank the business community for working with the Guard...”<sup>4</sup>

Taken as a whole, Mr. Chertoff’s plans are apparently to replace police agencies nationwide with a coalition of private security businesses and the National Guard, funding their actions and protecting them from accountability.

There are four main areas of concern with the NRP and with Secretary Chertoff’s views of “public-private partnership” in that endeavor. They are:

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<sup>1</sup> From Transcript of Homeland Security Secretary Michael Chertoff at the U.S. Chamber of Commerce, Washington, D.C., April 29, 2005, [www.dhs.gov/dhspublic/display?theme=44&content=4481&pr...](http://www.dhs.gov/dhspublic/display?theme=44&content=4481&pr...)

<sup>2</sup> Id., at p. 2.

<sup>3</sup> DHS Secretary Michael Chertoff in address to Center for Catastrophic Preparedness, New York, April 26, 2005.

<sup>4</sup> DHS Secretary Michael Chertoff, address to U.S. Chamber of Commerce, April 29, 2005, op. cit.

**First:** they reflect a consistent pressure by the Bush Administration to reduce and to marginalize the role of state and local policing in the entire anti-terrorist matrix. As we will note later, the current government has drastically cut the budget of the C.O.P.S. office (Community Oriented Policing Services, the federal agency created by the 1994 Crime Act to organize and propagate crime prevention and community policing techniques and philosophy nationwide), and has nearly eliminated funding to police forces for equipment, technology, interoperability, cross-training, education and salaries for officers. At the same time, state and local taxation has been operating on a severely reduced base.

The result is a near-universal scramble for scarce local police financing nationwide, coupled with significant cutbacks and the loss of the central “think tank” and clearing house functions (C.O.P.S. and its research/training institutes) at national level. The applied philosophy of Community Policing, as it is presently practiced in the U.S., will be in danger of withering if it continues to be unable to develop and disseminate new Community Policing programs as they evolve.

Also, intelligence gathering and first responder responsibilities of state and local police under DHS authority have been intentionally downplayed and neglected. In fact, in a DHS paper released April 1, 2005, a vague “future goal” of Secretary Chertoff is to “expand regional collaboration among first responders.” Richard Clarke, former chief of antiterrorism under Presidents Clinton and George W. Bush, immediately denounced it as “such an anemic little list of goals for our first responders.”

According to Clarke and many other experts, if the Bush administration were seriously planning an expanded role for community policing, it would presumably be making preparations or overtures to national and local police departments and police associations similar to the preparations Secretary Chertoff is swiftly making for the private security and manufacturing sectors.

**Second:** There is growing concern over the lack of accountability inherent in public-private partnerships that are vaguely defined yet grant a paramilitary status (or, more precisely, a police replacement status) to privately owned and operated security businesses. The track record is abysmal. Private contractors are almost never brought to justice for wrongs committed in the course of anti-terror activities.<sup>5</sup>

Over 36% of all prisoner abuses and civilian casualties/injuries caused by Americans to date in the Iraq and Afghanistan operations were inflicted by private security company employees. None were prosecuted.<sup>6</sup>

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<sup>5</sup> Fred Schreier and Marina Caparini, **Privatising Security: Law, Practice and Governance of Private Military and Security Companies**, Geneva Centre for the Democratic Control of Armed Forces (DCAF), Occ. Paper No. 6, p. 60, Geneva, Switzerland, March 2005; see also US Senate Bill No. 768, 29 SEP 04.

<sup>6</sup> P.W. Singer, *The Private Military Industry and Iraq*, November 2004, p. 13.

Moreover, the question of loyalty rears its head early on in any consideration of the relative merits of outsourcing homeland security tasks to private security companies and the commercial guards they place on the open market. Even if there were strict security and regulatory requirements in place nationwide –there are not—it would be impossible to check credentials and vet qualified personnel out of the vast existing pool. In the Department of Defense alone, one year ago there was a security clearance backlog of over 270,000 investigative and 90,000 adjudicative cases.<sup>7</sup>

The Department of Homeland Security has never yet addressed the basic questions of loyalty and trust. Perhaps Secretary Chertoff assumes that private sector security employees can be trusted with intelligence gathering. Worldwide experience shows clearly that there are no guarantees, even with large-scale vetting, that individual employees hired by a private security firm to perform public safety intelligence tasks will be favorably disposed toward the American citizenry's needs.<sup>8</sup>

In fact, the US Army has recognized, at least since December 2000, that employees of private security companies can be security risks.<sup>9</sup> Specifically, the December 2000 Memorandum cautions that contractors “may be acquired by foreign interests, acquire or maintain interests in foreign countries or provide support to foreign customers.” It continues to warn us that “...[W]hen actors whose main responsibility is not to voters and democratic institutions but to shareholders perform [sensitive tasks], there is reason for concern.”<sup>10</sup>

By contrast, municipal police forces are subject to a highly evolved legal structure of oversight and liability. It is an area of voluminous judicial decisions at all levels, both federal and state. And we must appreciate the broad civilian control over Community Policing and contrast it with the narrow military hierarchy –great power concentrated in few hands—and private security companies that offer no civilian control or accountability. The comparative picture, to be complete, must include the diligent research conducted by European governments and police forces that led, *inter alia*, to their adoption of Community Policing, in its present and future forms, as the linchpin of antiterrorism.

**Third:** As contrasted with Community Policing sworn officers, private security forces are not held to uniformly high standards across the country. There are no well-established training curricula; no history of public service; no *ethos* requirement. They are, in fact, mercenaries.

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<sup>7</sup> US General Accounting Office, “DoD Personnel Clearances. DOD needs to Overcome Impediments to Eliminating Backlog and Determining its Size”, Wash., DC, GAO-04-344, March 2004.

<sup>8</sup> Schreier and Caparini, op. cit., at p. 40.

<sup>9</sup> US Department of the Army, Office of the Assistant Secretary, Manpower and Reserve Affairs, Memorandum by Patrick T. Henry, Assistant Secretary of the Army, available on Internet site of the Center for Public Integrity, <http://www.publicintegrity.org>  
<sup>6</sup> Schreier and Caparini, op. cit., at p. 40.



There are no Federal laws setting minimum standards for training or education of private security forces in the U.S. Even state laws are spotty on this issue. Thirty states have no training requirements at all. California, one of the four most “rigorous” states, requires a minimum of 40 hours (e.g., five eight-hour days) of training. No state requires even the scantest introduction to government, civics, or constitutional studies for private security operations. Sixteen states require no background checks. In 22 states, private security services do not have to be licensed.<sup>11</sup>

European governments and citizens, EU members and non-members alike, have made an informed, judicious choice in avoiding the path the U.S. is taking:

“The public service may embrace other goals, such as social justice and being representative of social diversity. The lesson is that the decision to outsource [homeland security] would be taken purely for financial reasons, while social, economic or environmental factors would be left out of the decision. Values that are promoted by the public [policing] service will be jeopardized.”<sup>12</sup>

**Fourth:** The track record to date of private industry in the war on terror, both at home and abroad, is abysmal. The U.S. has, in fact, sent dubious “private armies” into a legal vacuum. Not surprisingly, the amateurism of the more than 25,000 (some estimates are as high as 45,000)<sup>13</sup> private security guards, sent into Afghanistan and Iraq with military equipment and with quasi-military assignments, has met with worldwide dismay and disgust.<sup>14</sup>

The pending lawsuits are mounting daily. Among the civil defendants are Custer Battles, Inc., CACI International, Titan Corp., Blackwater USA, Northrop-Grumman, Halliburton, Kellogg-Brown-Root, L-3 Communications, DynCorp, CSC, MPRI, Kroll Associates, and a growing number of others, all U.S. Government contractors in a “public-private partnership.”

The employees of those contractors enjoy a virtual immunity from prosecution for acts committed abroad. They are not subject to military justice and are almost never tried in the U.S. for crimes, including murder and torture, they commit abroad. Much legal effort, and taxpayers’ money, is expended in perfecting the avoidance of accountability.

This should be no surprise to Americans. Private security employees are loyal only to their employers. They answer to nobody but the shareholders. The nation as a whole has

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<sup>11</sup> M. Hall, “*Private Security Guards are Homeland’s Weak Link*”, cited in Schreier, op. cit., fnote 401.

<sup>12</sup> Schreier & Caparini, **Privatising Security**, op.cit.supra, at p. 98.

<sup>13</sup> W. D. Hartung, “An Incomplete Transition: An Assessment of the Iraqi Transition and its Aftermath”, in the *American Newswomen’s Club*, Wash., DC, June 22, 2004.

<sup>14</sup> See, e.g., Seymour M. Hersh, “Torture at Abu Ghraib”, *The New Yorker*, May 10, 2004, pp. 42-47.

no legal means to impose or enforce even the most minimal standards of decency on them.

To quote P.W. Singer, a noted authority on public-private security questions, “Our democratic principles of public safety and security were formulated by leaders who did not, nor could they, anticipate the consequences if the security and public safety system became commingled with very real market forces, with all their dynamic shifts, uncertainties and extrinsic purposes.”<sup>15</sup>

Similarly, when police forces are privatized, or private policing acts at odds with the civic mission of police, a new agent of action parallel to the state is created: ruled by money alone.

All democracies are governed by a consensus of their citizens, openly arrived at, that they share a civic unity of spirit. It can be successfully policed and maintained only if the police themselves are an efficient delivery instrument of civil and human rights. They must be well trained, and carry a thorough working understanding of the constitutional, human and civic structure they protect.

The state and municipal police of the 21st Century are, increasingly, recruited and educated precisely with all those aims in mind. They represent one of the greatest achievements of the struggles of the 20<sup>th</sup> Century for ethics and accountability in government. The educational Renaissance of American police came with Community Policing as an applied philosophy supported by federal programs. The march toward an open civil society and the even-handed protection of human and civil rights is still unfinished. It is a work in progress.

Deeply ingrained in American democracy is the duty to ensure every local community’s ownership of its government infrastructure. Diluting that guarantee with a partnership between a federal cabinet officer and any number of private security corporations will result in sidelining local governance in security planning, thus wiping out all local ownership of communities and circumventing the few existing requirements of accountability.

In fact, in all countries that experimented with commingling of public safety and private security companies since the end of WWII, the result was a disastrous weakening of the state itself. It proved a sure-fire recipe for corruption, and brought about a loss of local ownership of civil governance.<sup>16</sup>

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<sup>15</sup> P.W. Singer, **Corporate Warriors: The Rise of the Privatized Military Industry**, Cornell University Press, 2003, p. 226.

<sup>16</sup> Caparini, M., “Security Sector Reform in the Western Balkans”, *SIPRI Yearbook 2004* (note 61, pp. 251-85); Shearer, D., **Private Armies and Military Intervention**, International Institute for Strategic Studies, Adelphi Paper (Oxford University Press: Oxford, 1998); Milliard, T.S., “*Overcoming Post-Colonial Myopia: A Call to Recognize and Regulate Private Military Companies*”, **Military Law Review**, vol. 176 (June 2003), pp. 608; Cilliers, J., and Mason, P. (eds.), **Peace, Profit or Plunder: The Privatisation of Security in War-torn African Societies and Security in Africa** (South African Institute for Security Studies: Johannesburg, 1999), pp. 37-39; Avant, D., “*The Privatisation of Security and*

Using private security firms, their equipment, their tactics and methods, and their security guard employees to carry out what are properly police functions deprived public safety of its whole political context and exacerbated the difficulty of securing local ownership of deciding, funding and budgeting public works matters altogether, all because a third, commercial actor had been thrust into the community equation.<sup>17</sup>

Further, many experts cite the experience of countries around the world –in the Balkans, former USSR, Russia, Central Asia, Afghanistan, Indonesia, Malaysia, Central and South America, and (perhaps most widespread and most catastrophic in result) Africa—for the proposition that public-private partnerships in domestic public safety lead to the dismantling of government in ways that are clearly traceable and provable. They begin with political-commercial cronyism, then proceed to the establishment of parallel or shadow structures of power and authority.<sup>18</sup>

The reliance on private security continues its harmful effects on states by weakening them in the following ways:

1. A false image of security in the short term. This distorts assessments of security needs; a conflicted view then leads to
2. Corruption and inefficiency in planning, equipping and staffing security programs, which causes
3. Unequal and unfair distribution of security among populations, favoring influential commercial interests at the expense of less wealthy civilian populations; the next step is
4. Increases in potential terrorist and other forms of infiltration, then violence, in the less-protected communities; and finally,
5. The crowding out of legitimate and functioning state institutions, such as state, county and municipal police.<sup>19</sup>

The Bush Administration in general, and DHS Secretary Chertoff in particular, have repeatedly argued that the GWOT (Global War on Terror) could last ten, twenty, or even thirty years. Thus it should be clear that any partnerships conducted between the Department of Homeland Security and a broad spectrum of private sector commercial security providers would also be with us for the long haul. Therein, according to international security experts, lies the greatest danger of all.

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*Change in the Control of Force*”, *International Studies Perspectives*, vol. 5, no. 2 (2004), p. 154; Mandel, R., *Armies without States: The Privatisation of Security* (Lynne Rienner: London 2002), p. 54; also see “*Windfalls of War: US Contractors in Iraq and Afghanistan*”, Center for Public Integrity, Washington, DC, URL <http://www.publicintegrity.org/wow/>.

<sup>17</sup> Spear, J., *Market Forces: The Political Economy of Private Military Security*, Forskningsstiftelsen Fafo, Oslo, Norway, June 2005, p. 17.

<sup>18</sup> Fearon, J. and Laitin, D., “*Ethnicity, Insurgency and Civil War*”, *American Political Science Review*, vol. 97, no. 1 (Feb. 2004).

<sup>19</sup> Singer, *Corporate Warriors*, op. cit. supra, at pp. 128-9; Holmquist, Caroline, “*Private Security Companies: The Case for Regulation*”, *SIPRI Policy Paper No. 9*, January 2005, Stockholm International Peace Research Institute, at pp. 11, 12, 17; Leander, A., “*Global Ungovernance: Mercenaries, States and the Control over Violence*”, *COPRI Working Paper* (Copenhagen Peace Research Institute, Copenhagen, Denmark) 2003, p. 6

Short-term reliance on the private sector may further governments' immediate objectives, but the way in which it tends to crowd out the public security apparatus means that extensive reliance on private security companies in the longer term weakens state authority. Extreme care must be taken to ensure that homeland security is not carried out at the expense of democratic accountability and transparency in the security sector.<sup>20</sup>

Beyond doubt, the involvement of private security companies and their hired guards in homeland security, now or after cessation of US presence in Iraq, will weaken American policing, and will weaken American democracy.

Yet, despite the foreseeable consequence that it will result in dismantling our institutions, DHS Secretary Chertoff intends to partner, closely and permanently, with private security manpower and technology. To Secretary Chertoff, it is a matter of risk management. And, according to him, risk management is a matter for corporations: "That is why we must and do count heavily on partnerships with many of you [private businesses]. And this is especially important given the private sector owns about 85 percent of our nation's critical infrastructure."<sup>21</sup>

Also, Secretary Chertoff now offers private businesses a resource that the Bush Administration just recently stripped away from police forces: money. "We can do many things on the federal level to help our private sector partners...we can provide you information and intelligence...and we can provide some level of funding."<sup>22</sup>

But will accountability increase under Secretary Chertoff's National Response Plan?  
No.

"...[W]e have to be candid in recognizing that fear of the transaction costs of litigation has inhibited full deployment of our private ingenuity. That is why [we] provide limited liability protection to companies and manufacturers that develop qualified homeland security technology and processes." And more clearly, "We will provide some protections in the event that you are sued in connection with a terrorist attack."<sup>23</sup>

But it has never yet been demonstrated that fighting private lawsuits has harmed the security industry. In fact, PSCs are currently in unparalleled boom times, and the prospects are even brighter. They are getting billions of dollars in no-bid contracts, and a large number of top executives from DHS are now leaving to become lobbyists for private security companies.<sup>24</sup>

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<sup>20</sup> Holmquist, C., op.cit., p. 15; Singer, **Corporate Warriors**, op.cit, pp. 238-9; Leander, A. Danish Institute for International Studies (DIIS), *The Commodification of Violence: Private Military Companies*, Working Paper no. 11 (2003), p. 4, URL <http://www.edi.org/issues/mercenaries/merc1.htm>.

<sup>21</sup> DHS Secretary Chertoff, speech to the U.S. Chamber of Commerce, Washington, DC, April 29, 2005).

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> *U.S. News and World Report*, May 30, 2005.

The legal vacuum in which private security firms have been operating abroad will now be extended to cover them at home in the U.S. The program, as outlined by Chertoff, aims to insert private business into the public trust and to diminish the role of police in public safety. It strips police budgets, while offering both money and legal immunity to private security and technology firms.

The machinery for implementing that program is largely set forth in the 426-page National Response Plan. Briefly, in the event of a “significant terrorist strike”, an all-powerful vertical hierarchy of newly-created councils and committees will go into action. Many of them consist of the FBI and three major partners:

1. Private sector commercial interests;
2. The National Guard and other military units; and
3. Local police.

The participation –or policy-making representation—of FBI, private security industry, National Guard, Department of Defense, and (lastly) local police, will take effect in the following bodies, among others:

Joint Operations Center (JOC); responsible for policy-making decisions<sup>25</sup>;

Joint Operations Center, Intelligence Unit (JOCIU); joint public-private decisions on intelligence security and usage<sup>26</sup>;

Joint Field Office (JFO); awards and dispenses money for public-private partnership action<sup>27</sup>.

Thus, private sector firms such as Kroll Associates, Halliburton, Brown & Root, and many others, will wield even greater, unprecedented influence in the awarding of lucrative DHS contracts. Municipal police will evidently have to compete with them, and with the National Guard, for funds<sup>28</sup>.

There are no special or general provisions in the entire 426-page text of the National Response Plan for the protection and preservation of civic government or of accountability to civilian bodies.

Secretary Chertoff has addressed the plan for cooperation with private commerce in great detail. Under the banner of professional risk management, he has redefined the major tasks of antiterrorism and simply labeled them “private sector jurisdiction”. Small wonder, then, that the Department of Homeland Security has become a revolving door as at least fifteen of its top-level officials left the Department to take lucrative positions with private security companies and/or their lobbyists in the first half of 2005<sup>29</sup>.

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<sup>25</sup> **National Response Plan (NRP)**, issued by the United States Department of Homeland Security, January 2005, at p. 30.

<sup>26</sup> NRP, pp. 30, 37, 38.

<sup>27</sup> NRP, at pp. 28, 33, 36.

<sup>28</sup> NRP, at p. 85, citing Executive Order 13356 of October 2, 2004, published in 69 Fed. Reg. 53599 [2004].

<sup>29</sup> Angie C. Marek, “*Security at any Price?*” in **U.S. News and World Report**, May 30, 2005.

Secretary Chertoff has likewise begun putting together the plan for National Guard participation. “If we were to have a critical event here, we would look to the National Guard as a critical part of our response, in terms of the ability to manage an emergency. I want to thank the business community for working with the Guard...”<sup>30</sup>

Indeed, National Guard units have performed admirably and courageously in the aftermath of Hurricane Katrina. Yet, there are other tasks for which the National Guard has a less well-developed ethos. We are often reminded of the need for preserving state and local ownership, checks and balances, and public accountability of police functions:

“California’s National Guard has quietly set up a special intelligence unit that has been given ‘broad authority’ to monitor, analyze and distribute information on potential terrorist threats, the Mercury News has learned. Known as the Information Synchronization, Knowledge Management and Intelligence Fusion program,...top National Guard officials have already been involved in tracking at least one recent Mother’s Day anti-war rally organized by families of slain American soldiers, according to e-mails obtained by the *Mercury News*.”

“It’s nothing subversive,” said Guard spokesman Lt. Col. Stan Zezotarksi. “Because who knows who could infiltrate that type of group and try to stir something up? After all, we live in the age of terrorism, so who knows?”<sup>31</sup>

This current incident demonstrates both the mission creep and the loss of public accountability that accompany military-private sector arrangements, and offers a powerful argument for Community Policing’s role in anti-terrorism as opposed to the National Response Plan ordained by DHS.

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<sup>30</sup> Speech to U.S. Chamber of Commerce, Washington, D.C., April 29, 2005.

<sup>31</sup> Dion NIssembaum, “*State Guard forms Anti-Terrorism Intelligence Unit*”, **San Jose Mercury**, June 26, 2005.

## **FOR THE MILITARY:**

### **Elbowing out the Police**

In addition to the DHS marginalization of police in its homeland security planning, an entire new “layer” of military and private sector authority will be superimposed by the Department of Defense. In late June 2005, DoD unveiled a new strategy that will increase military activities on American soil, entitled “**Strategy for Homeland Defense and Support**”. The plan sets the stage for massive military intrusion into the United States as a support for Homeland Security, and at the sole discretion of the President or the Secretary of Defense:

“At the direction of the President or the Secretary of Defense, the Department provides defense support of civil authorities in order to prevent terrorist incidents or manage the consequences of an attack or a disaster... where we have unique capabilities to contribute or when civilian responders are overwhelmed.”<sup>32</sup>

At another passage in that same document, the DoD clearly lays its foundation for disposing of civilian police forces in one fell swoop:

“[D]omestic employment of the US military in a homeland defense role will likely come in response to transnational terrorist, rogue state, or other threats that exceed the capabilities of domestic counterterrorism and law enforcement authorities.”<sup>33</sup>

Both the Department of Defense and the Department of Homeland Security are assuming, or rather constructing, a self-fulfilling prophecy: If we fail or refuse to expand, strengthen, train and equip our Community Policing assets to enable them to prevent terrorist acts in the communities and to act as effective first responders in the event of attacks, then we will have guaranteed that they will be “overwhelmed”, and that any threat, real or imagined, will justify calling in the military and private sector security personnel because it “exceeds the capabilities of law enforcement authorities.”

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<sup>32</sup> **Strategy for Homeland Defense and Civil Support**, U.S. Department of Defense, June 24, 2005, p.20.

<sup>33</sup> *Id.*, at p. 23.

It is noted that DHS Secretary Chertoff has already taken a stand against funding police in their efforts to secure public transit, leaving it to “local officials” to find the money. This idea is also reflected in the DoD’s Strategy for Homeland Defense paper, according to which the military will

“Protect infrastructure at the direction of the President or the Secretary of Defense where the nature of the threat exceeds the capabilities of an asset owner and civilian law enforcement is insufficient.”<sup>34</sup>

In an ominous admission, Defense Secretary Rumsfeld then outlines his plan to prepare the military for what, over the past four years, should have been done for policing:

“The Department (of Defense) will ensure proficiency and interoperability in responding to multiple (mass casualty) incidents. The Department will ensure that dedicated civil support capabilities are sized, trained, equipped, and ready for the domestic consequence management mission... DoD is currently examining the augmentation of ... civil support teams with National Guard and other military capabilities and forces that are task-organized for this mission.”<sup>35</sup>

Thus the gutting –asset stripping—of police as the key component in any democratic program of counterterrorism, which began shortly after the Bush administration took office in 2001, can be explained in the greater strategic context of virtually disbanding state and local police and their accountability. They will be replaced by soldiers and private security cohorts.

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<sup>34</sup> Id., at p. 35.

<sup>35</sup> Id., at p. 37. Also see Kelley Beaucar Vlahos, “*Pentagon to Increase Domestic Surveillance for Counterterrorism*”, **FoxNews.com**, August 1, 2005.



## POSSE COMITATUS ACT OF 1878:

### Pressure, Pretext, Prelude

« *Plus ça change, plus c'est la même chose* »  
---Alphonse Karr, *Les Guepes*, January 1849.

Questions concerning the federal government's response to the devastation of Hurricane Katrina have triggered a lively debate about the **Posse Comitatus Act of 1878**<sup>36</sup>. To a large extent, the political dialogue resembles the one which took place four years ago, in the aftermath of the September 11, 2001, terrorist attacks.

The Act prohibits U.S. military from acting as a domestic police force. It provides, in its entirety,

“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.”

Originally, the Act was passed to prevent local politicians and sheriffs from drafting and deputizing U.S. Army personnel in the Southern states during post-Civil War Reconstruction years.

However, the Act also embodies the traditional American principle of separating civilian and military authority. As such, it currently forbids the use of the Army and Air Force to enforce civilian laws.<sup>37</sup>

It also continues and preserves a vital, central principle of democracies everywhere: The separation of military from civilian law enforcement and the protection of civilian control over domestic policing. It dates from the Magna Carta of 1215 a.d., and has been

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<sup>36</sup> Title 18, U.S. Code, Section 1385.

<sup>37</sup> Matthew C. Hammond, *The Posse Comitatus Act: A Principle in Need of Renewal*, in **Washington University Law Quarterly**, Summer 1997, 75 Wash. U. L.Q. 953.

expanded and developed continuously from that date until today.<sup>38</sup> It is also a basic feature of parliamentary democracies and constitutional monarchies worldwide.

Four years ago, U.S. Senator John Warner (R-Va.) wrote to Defense Secretary Donald Rumsfeld, “Our way of life has forever changed. Should this law now be changed to enable our active-duty military to more fully join other domestic assets in this war against terrorism?”<sup>39</sup>

Recently, four years later and now in reaction to the Hurricane Katrina controversy, Senator Warner once again wrote an almost identical letter to Defense Secretary Rumsfeld, with the same request, viz., that the Posse Comitatus Act of 1878 be scrapped, but this time for a different reason:

“We [the Senate Armed Services Committee] will be looking into the entire legal framework governing a President’s power to use the regular armed forces to restore public order in... a large-scale, protracted emergency”. Sen. Warner then asked Secretary Rumsfeld to do the same.<sup>40</sup>

For his part, President Bush was ready with a repeat of his perennial expressions of desire for a more imperial America, a centralized, command-and-control behemoth:

“It is now clear that a challenge on this scale requires greater federal authority and a broader role for our armed forces, the institution of our government most capable of massive logistical operations on a moment’s notice.”<sup>41</sup>

But military lawyers are certainly not united on the issue whether a partial or total abrogation of Posse Comitatus 1878 is necessary, helpful or even relevant. Jeffrey Addicott, a retired Army Judge Advocate General (JAG) lawyer, deems the Act a potent and harmful constraint on effective military force: “The law handcuffs the nation when it comes to responding to terrorist attacks. We’ve got a homeland defense office, but if there’s not reform, the Posse Comitatus Act will cut them off at the knees.”<sup>42</sup>

Others do not share this view of the Act as manacle/machete. Retired Army JAG Colonel Michael Spak contends that Posse Comitatus has already eroded sufficiently over the years to allow for government use of the military for domestic action as and when it chooses. To Col. Spak, repeated exceptions in the name of national security in past decades have left the Act a “hollow shell”.<sup>43</sup>

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<sup>38</sup> Stephen Young, **The Posse Comitatus Act: A Resource Guide**, February 17, 2003, Reference Library of The Catholic University of America, DuFour Law Library; [www.llrx.com/features/posse.htm](http://www.llrx.com/features/posse.htm).

<sup>39</sup> T.A. Badger, *1878 Military law Gets New Attention*, Associated Press, Nov. 24, 2001.

<sup>40</sup> Mark Sappenfield, *Bush Suggests Lifting the Ban on Using the Military Domestically*, in **The Christian Science Monitor**, September 19, 2005.

<sup>41</sup> Angie C. Marek, “*National Response Watch: The Militarization of Disaster Response*”, in [www.usnews.com/usnews/news/articles/050921/21natsec.htm](http://www.usnews.com/usnews/news/articles/050921/21natsec.htm), September 21, 2005.

<sup>42</sup> Lt. Col. J. Addicott (US Army retired), in Badger, op.cit. fn. 39 supra.

<sup>43</sup> Col. Michael Spak (US Army, retired), in Badger, op.cit., fn. 39 supra.

Thus, two authorities favor scrapping the law altogether, because

1. It is toothless and useless; or
2. It is too powerful and menacing.

A third view, advanced by retired US Army JAG Colonel Dennis Corrigan, who taught the Act at the Army's Judge Advocate General School, pierces through the smoke and mirrors to address the real point at issue: "The military isn't trained to be a police, so it should stick to the skills for which it is trained. Legislators should resist the urge to change it."<sup>44</sup>

It must be added that, in the current repeat performance of "scrap the Act" fervor, the White House proffered help to the governors of Louisiana, Mississippi and Alabama, while placing a waiver form under their noses for overnight signature and return. These releases would have relinquished to the Department of Defense all state control over the National Guard units belonging to those states, even in their currently diminished ranks owing to the war in Iraq. In effect, the *conditio sine qua non*, at least for a day, of federal disaster assistance was to sign away all civilian control over law enforcement. If we understand that such federal help could become long-term as envisaged by Sen. Warner ("restore public order during a large-scale, protracted emergency"), then we may also understand why all three governors refused to sign the waivers.<sup>45</sup>

Although the Hurricane Katrina disaster was surely unprecedented in its devastating scale, the Bush administration penchant for parlaying disaster into a pretext for more centralized –and less accountable—federal executive power was not unusual.

Before any serious reconsideration of the Posse Comitatus Act takes place, the investigations and debriefings over Hurricane Katrina should be allowed to take their unfettered course. Military missions in domestic settings may appear tempting to some as a quick fix, but may be considerably less swift or effective than portrayed:

"Despite the greater speed of the vehicles, trains, aircraft and ships involved, statistical comparisons between World War II, Korean War campaigns, and recent actions in similar terrain indicate U.S. corps have not improved their ability to conduct operational movements."<sup>46</sup>

Detailed studies reveal the reasons why our expectations of military efficiency, in general, may prove disappointing:

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<sup>44</sup> Col. Dennis Corrigan (US Army JAG, retired), in Badger, *op. cit.*, fnte 39, *supra*.

<sup>45</sup> Stone Phillips, MSNBC September 9, 2005, "What went wrong in hurricane crisis?"

<sup>46</sup> Thomas C. McCarthy, Army Command and General Staff College, Fort Leavenworth, KS School of Advanced Military Studies, "The Difficulty in Increasing Operational Movement Rates", in **Storming Media Pentagon Reports: Military Operations, Strategy and Tactics**, at [www.stormingmedia.us](http://www.stormingmedia.us)

“Deficiencies in doctrine, equipment, organization, and training inhibit corps from increasing their movement rate. Current U.S. Army doctrine is not specific or holistic enough to be treated as a science. Doctrine becomes more vague as movements become more complex. Doctrine does not prescribe equipment, organization, and training necessary to support faster movements.”<sup>47</sup>

Finally, Col. John R. Brinkerhoff (U.S. Army, retired), a former FEMA acting associate director for national preparedness, summarizes that “Although the current interpretation of the Posse Comitatus Act is the opposite of its original intention, it does discourage the military services from being used as a national police force –something we have wisely avoided up to now.”<sup>48</sup>

Other military analysts note that the biggest lesson to be learned from Katrina has more to do with coordination and communications between state and local governments and the Department of Homeland Security than any change in laws.<sup>49</sup>

However, DHS Secretary Chertoff still has mentioned no specific roles for state and local police apart from the vague phrase “information sharing” as set forth in the National Response Plan. He has not publicly recognized the importance of policing, community or otherwise, in preserving the nature of America’s democracy while it protects us from terrorists and other disasters.

It is extremely disturbing that Secretary Chertoff has not publicly explained or addressed the issue of police funding. In fact, the current Bush Administration plan is to cut back C.O.P.S. (Community Policing) spending to a meaningless \$18 million, down from its peak of \$538 million in 2000. (Note: Community Policing finances are also discussed in other sections of our study). Major cutbacks in metropolitan police forces have occurred in the past four years. Los Angeles Police Department, NYPD, and other forces have lost as many as 1,000 officers each. Detroit is laying off 150 officers and merging its 12 precincts into six district stations. Typically, when a police department reduces its ranks, the first programs to suffer are the Community Policing and crime prevention efforts.

Thus, in stark contrast to European operations in countering terrorism, as much money as possible is being taken away or diverted from U.S. policing nationwide. The Bush administration is also planning to hobble police across the US in performing their duties of protecting trains, subways and buses by slashing the budgets for transit system security. We have noted *supra* that, according to Secretary Chertoff,

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<sup>47</sup> Ibid.

<sup>48</sup> John R. Brinkerhoff, “*The Posse Comitatus Act and Homeland Security*”, in [www.homelandsecurity.org](http://www.homelandsecurity.org) dated February 2002.

<sup>49</sup> Tom Bowman and Siobhan Gorman, “*Debate Flares on the Role of Troops in Disasters*”, in **The Baltimore Sun**, September 20, 2005, citing Anthony Cordesman of the Center for Strategic and International Studies.

“The federal government can provide only limited help to states and local government to protect transit systems from terror attacks, and local officials must be largely responsible for the costs of improved subway, train and bus security.”<sup>50</sup>

Secretary Chertoff is, of course, aware that state and local officials are already grappling with the problem of finding money to pay for upgrades to protect commuters and other mass transit passengers in US cities. The technology alone necessary to protect mass transit systems in the 30 largest urban areas will probably cost an estimated \$ 6 billion. If we count personnel, administrative and other operating costs for an integrated mass transit security system, the cost could exceed \$ 6.5 billion per year.<sup>51</sup>

Even the DHS funding to local and regional police forces is at risk of disappearing. According to data released in early May 2005, over 56% of all Homeland Security grants intended for local police remained undistributed after up to two years. Unspent monies were due to be returned to DHS after June 30, 2005, if not otherwise subject to special extension<sup>52</sup>.

Instead, while stiff-arming police forces away from lucrative Homeland Security partnership arrangements with armed forces, security guards and their equipment producers, Secretaries Chertoff and Rumsfeld, plus other administration officials, have proposed to shift Community Policing efforts toward ferreting out the potential terrorists from among illegal immigrants nationwide<sup>53</sup>.

The idea behind channeling state and local police resources into concentrating on massive surveillance and arrests of illegal immigrants serves the agenda, not of returning to a policy supportive of Community Policing, but precisely the opposite. In order to fund the wholesale harassment of undocumented foreigners in our midst, the Bush Administration proposes to strip the last remaining money out of Community Policing:

“The federal government has the responsibility to assist state and local law enforcement in their efforts to detect, prevent, and respond to terrorism. To find funding for such [federal] assistance, Congress must shift dollars away from ineffective and wasteful law enforcement grant programs like the COPS program.”<sup>54</sup>

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<sup>50</sup> Homeland Security Secretary Michael Chertoff, in press conference with Associated Press, article by Lara Jakes Jordan, AP writer, July 14, 2005.

<sup>51</sup> Arthur A. Jones and Robin Wiseman, “*Target for Terror? Smart Policing Needed to Protect L.A. Rail Riders*”, in **Los Angeles Daily News**, Sunday, November 28, 2004

<sup>52</sup> Spencer S. Hsu and Sarah Cohen, “*Most Area Terrorism Funding not Spent*”, in **The Washington Post**, May 10, 2005.

<sup>53</sup> Mary Beth Sheridan, “*Immigration Law as Anti-Terrorism Tool*”, in **The Washington Post**, June 13, 2005.

<sup>54</sup> Testimony of David B. Muhlhausen, Heritage Foundation, Wash., DC, chief Bush administration mentor on the topic of Community Policing and privatization of public safety, 2002, and repeated/updated 2005, The Heritage Foundation.

The plan to coerce state and municipal police departments into restricting their homeland security activities to the concentrated pursuit of illegal aliens and undocumented immigrants was put in place in late 2002 by then-Attorney General John Ashcroft, and recently promoted by DHS Secretary Chertoff. On the one hand, the curtailment of federal funding has indeed had the intended chilling effect on Community Policing. On the other, an additional coercive bludgeon is being used to stifle police and municipal dissent: "Police departments that refuse to cooperate with the Attorney General's request are announcing to the world that their communities are safe havens for terrorists."<sup>55</sup>

As conceived, the "police vs. illegal immigrants" suggestion would have the following consequences:

- (1) It would divert or distract Community Policing away from the "war on terrorism" altogether;
- (2) It would further burden state and municipal police with an unfunded mandate to spend precious time, efforts, and dwindling resources, thus weakening police departments and the communities that operate them; and
- (3) It would violate the trust and confidence that police departments have built up within local communities nationwide over the past fifteen or more years, restoring the old "us versus them" stress and rekindling the pre-1990s mistrust, especially in poor and minority communities, of the police as occupying forces.<sup>56</sup>

In any event, the evidence does not support the thesis that massive police intrusion into undocumented workers' lives would locate terrorists. Recent testimony before the House Judiciary Committee revealed that Justice Department sweeps of airport workers across the country identified some 1,000 undocumented workers, but no terrorists. The number of potential terrorists located by means of immigration violations to date can only be considered infinitesimal.<sup>57</sup> In fact, only three employers were even threatened with sanctions in 2004, down from 417 in 1999. Obviously, the massive government pursuit of undocumented workers is already known by federal officials to be a statistically unproductive activity in the search for terrorists.

It is small wonder that European observers emphasize the lack of regulation, accountability, and civic content in the U.S. approach. To Europeans, it appears from the record that the U.S. intends to pursue terrorism within its own borders in much the same way it now does in Iraq and Afghanistan. It will apparently use military force (U.S. armed forces and National Guard) in partnership with private sector security guard and technology businesses, while decimating the numbers of American police officers and ruining their community role, their capabilities, and their functions in society.

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<sup>55</sup> David Muhlhausen, John Ashcroft, on PBS *Online Newshour*, "Policing Immigration", August 14, 2002; also see Muhlhausen, D., "Why the Bush Administration is Right on COPS", April 23, 2003, Heritage Foundation.

<sup>56</sup> See Seattle Police Chief Gil Kerlikowske, PBS *Online Newshour*, supra note 30.

<sup>57</sup> Testimony of Richard M. Stana, director of homeland security and justice team at the General Accounting Office (GAO), House Judiciary Committee, June 21, 2005.

Officials and experts now predict that, upon departure of US forces from Iraq, much of the considerable rage and resentment of the Muslim radical factions of Islamism, together with the more general and widespread anger at the US invasion, will be directed against the US homeland. Thus, Secretary Chertoff's and Secretary Rumsfeld's plan to substitute military forces and paramilitary firms (private security companies) for community policing may well constitute part of their self-fulfilling prophecy.

The DHS/DoD plans would also call into question the legitimacy of domestic actions taken by private security companies and their employees or consultants. Even if they are sanctioned by a federal department or task force, their presence in communities will not create a perception of legitimacy.<sup>58</sup> Public concerns over reliance on non-local, private commercial firms hired as mercenaries to protect the homeland could easily undermine the social contract. Openly linking co-determination of basic public safety policy with economic interests would lead to a breakdown of respect for governmental authority and would, at the least, delegitimize its right to rule.

As noted in the foregoing, history teaches us that using the military, in lockstep with private commercial means to fulfill public safety functions inevitably leads to massive abuses of power and wholesale mistreatment of entire segments of the population.<sup>59</sup> It also clearly demonstrates the "travesties that result from treating government responsibilities as an adjunct to commercial operations."<sup>60</sup>

Finally, private security operations introduced to replace policing, or to function parallel to municipal police, will lead to a loss of transparency and of local ownership of public safety, even before such travesties begin. Once the "mission creep" common to such commercial enterprises is activated, however, abridgments of citizens' rights will become the order of the day.<sup>61</sup>

In that event, a return to police forces paid by taxes and accountable to the people will be difficult, perhaps impossible. Community Policing will have become a distant memory.

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<sup>58</sup> Kinsey, C., "Regulation and Control of Private Military Companies: the Legislative Dimension", in **Contemporary Security Policy**, to appear July 2005; see also Holmquist, C., op.cit. supra, at p. 43.

<sup>59</sup> P.W. Singer, **Corporate Warriors**, op. cit. supra, at pp. 226-227.

<sup>60</sup> Ibid., citing Adam Hochschild, **King Leopold's Ghost: A Story of Greed, Terror, and Heroism in Colonial Africa** (New York, Houghton Mifflin, 1999); Christopher Clapham, **Africa and the International System: The Politics of State Survival** (Cambridge: Cambridge University Press, 1996, p. 26.

<sup>61</sup> Krahmann, E., *The Privatization of Security Governance: Developments, Problems, Solutions*, **Arbeitspapiere zur Internationalen Politik und Außenpolitik (AIPA), AIPA 1/2003 (Lehrstuhl für Internationale Politik der Universität Köln, 2003)**, pp. 13-17.

## CONCLUSIONS

A new generation of Islamist terrorists is becoming active. The nucleus apparently has tangential interest in warfare in Iraq, which is rapidly producing its own brand of insurgencies based roughly on religious and ethnic statism. Moreover, European police and researchers are concluding that their home-grown variety of violent militants, such as those involved in bomb plots in London, Madrid, Milan and Istanbul, do not aim exclusively to liberate the Middle East, but also to combat the world order and its authority as they see it.<sup>62</sup>

“The young second generation Muslims radicalized in the rundown suburbs and inner-city slums of Europe are motivated by their own situation, not Iraq. They fight where they live and where most of them were born.”<sup>63</sup>

European police agencies and community leaders have recognized that many Muslim young people are recruited by terrorist radicals because they have no established roots, no sense of citizenship, and no effective education or career programs. The answer, just as in the U.S. struggle against urban youth gangs, must emphasize Community Policing, not privatized or militarized strangers.

According to London Metropolitan Police Assistant Commissioner Tarique Ghaffur, who is responsible for Community Policing in that city, “we advocate a blend of hard and soft approaches to Community Policing, where we have hard-nosed intelligence-led enforcement backed up by strong confidence-building measures, and wrapping partnerships around it.”<sup>64</sup>

Europeans are increasingly reaching out to minority communities and engaging them. They are applying the innovative side of Community Policing to offer Muslim youth “something of value” that will strengthen them and their communities against radicals and their recruitment techniques.

By contrast, the U.S. government’s experimenting with privatization and/or militarization of public safety will only prolong and worsen the current period of uncertainty, instability and unrest.

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<sup>62</sup> Olivier Roy, “*Britain: Homegrown Terror*”, in **Le Monde Diplomatique**, August 2005.

<sup>63</sup> Ibid.

<sup>64</sup> Tarique Ghaffur in “*Muslims Accused of Failing to Help Police*”, by Roger Blitz, **Financial Times**, August 10, 2005.



European insistence on strengthening Community Policing in human intelligence gathering, data sharing, interagency and international cooperation, efficient centralization of police efforts, coordinated deployment of tactical units, and EU-wide arrest warrants, is a complex, progressive and sophisticated process.

It is also a successful program that could be emulated in great part in the U.S. to our advantage. It is not emblematic of an anti-American posture on the part of Europeans, nor do European police forces generally wish to lose valuable time mulling over possible American reactions to their accelerated efforts.

Instead, the available evidence leads us to the conclusion that to prevent the worst kinds of attacks, and to respond efficiently to others, we need to fund, train and equip as many law enforcement officers as possible in Community Policing as it interlocks with the fields of human and electronic intelligence gathering, compiling interactive databanks, and forming close partnerships with local communities and civic organizations at grass-roots level.

We need better education and training for police, public transit bodies, and citizens in general. We need better communications systems between and among police and other first responders, and between all of them and the citizenry.

As it now stands, the Department of Homeland Security, under Secretary Michael Chertoff, refuses to recognize the duty to protect adequately our public infrastructure as opposed to privately-owned commercial enterprises recently re-classified as 'infrastructure'. Secretary Chertoff also refuses to fund Community Policing or even to recognize its pivotal importance in defeating terrorism.<sup>65</sup>

The dangerous policy of emphasizing private sector commercial security and military supplier companies in contrast with publicly sworn law enforcement agencies is a symptom of the dogmatic abdication of all public duties for which our government is and should be accountable. The foremost, and most basic, among those duties is that of public safety and security.<sup>66</sup>

Ironically, one of the newest and most threatening phenomena to arise from the war in Iraq is precisely the uncertainty of police and military loyalties in the intended commingling, or confusion, or public roles. According to the chief of police of the City of Basra, Gen. Hassan al-Sade, some three-quarters of his force of 13,600 men are openly loyal, not to the police corps, but to a national, religious political party.<sup>67</sup>

In a conflict of loyalty situation eerily resembling the current U.S. domestic situation,

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<sup>65</sup> Fareed Zakaria, editor of Newsweek International, in *Khaleej Times Online*, July 11, 2005.

<sup>66</sup> See, e.g., Alexander Hamilton in *The Federalist Papers*.

<sup>67</sup> Yochi J. Dreazen, "Basra Violence Challenges U.S. Strategy: Doubts on Free Rein For Militias Linked to Iran", in *The Wall Street Journal*, September 21, 2005.

“You have fighters from the different militias in the police force who don’t give their allegiance to the police commander or the Governor. [There is] no transparency in their recruitment, no control over their training, and no vetting of their backgrounds.”<sup>68</sup>

We also have a bitter lesson to learn from history. The privatization of public safety has been tried before, under the Roman Empire. Historians are nearly unanimous in the conclusion that private exercise of state functions was one of the chief factors leading to the downfall of the Roman Empire:

“Here was a development that accompanied the dissolution of the Roman Empire: powerful landowners gathered private armies with which they increasingly took over state functions, such as the preservation of peace, policing authority, and enforcement of the law.”<sup>69</sup>

The result was a complete and swift ethical breakdown that ended the authority of government and of law. A very few years later, the era we know as the Dark Ages began.

Finally, the U.S. drive to create democracies quickly in all areas of tension worldwide, combined with the current insistence upon engineering the degradation of such basic institutions as police forces at home, will combine to produce a dilution of democratic institutions, within both the newly-minted governments abroad and in the United States.

The ultimate product will be a great leveling process—in which Americans have fewer rights, less constitutional protection and little civilian oversight or accountability, serving as a model for dozens of fledgling republics that will see no need or reason to surpass the U.S. in quality of democracy.

In the words of the Chief of one of Europe’s foremost national police forces, “Subverting one’s own institutions for the declared purpose of fighting an open-ended war on terror is like surrendering to gain a ceasefire. There is no way to estimate the cost.”<sup>70</sup>

Arthur A. Jones, J.D., Dr.jur.                      Robin Wiseman, J.D., Dr.h.c.  
Los Angeles, California/Genoa, Italy, 26 September, 2005

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<sup>68</sup> Id., quoting Peter Khalil, former advisor to the Iraq occupation authorities.

<sup>69</sup> Herwig Wolfram, **Geschichte der Goten**, C.H. Beck’sche Verlagsbuchhandlung, Oscar Beck, München, 1979; English translation by Thomas J. Dunlap, 1979, University of California Press, London, 1988, at pp. 50, 51, emphasis by authors.

<sup>70</sup> Name withheld at request of source for security reasons.