

The following is from an audio recording. Although the transcription is largely accurate; in some cases, it may be incomplete, or inaccurate due to inaudible passages or transcription errors. Nothing from this show or any others would be construed as legal advice. Please consult an attorney for any legal issue. Nothing from this show is endorsed by the Federal Government, Air Force, or any of its components. All content and opinions are those of our guests and host. Views and hyperlinks expressed herein do not necessarily represent the views of The Judge Advocate General, the Department of the Air Force, or any other department or agency of the United States Government. The inclusion of external links and references does not imply any endorsement. They are meant to provide an additional perspective or as a supplementary resource.



Lieutenant Colonel R. Curtis
McNeil, USAF (Ret.)

AFJAGS Podcast: Episode 19

Defense Support to Civil Authorities & Domestic Operations with Retired Lieutenant Colonel R. Curtis McNeil – Part 1

HOST: MAJOR RICK HANRAHAN, USAF

GUEST: LIEUTENANT COLONEL R. CURTIS MCNEIL, USAF (RET.)

This is part one on defense support to civil authorities and domestic operations with retired Lieutenant Colonel R. Curtis McNeil. In part one of the interview, we offer a behind-the-scenes look at defense support to civil authorities and domestic operations leading up to, during, and after a natural disaster.

MAJOR RICK HANRAHAN:

This episode is part one of a two part interview where we discuss defense support to civil authorities and domestic operations with retired Lieutenant Colonel R. Curtis McNeil, the current Chief of Domestic Operations and Intelligence Law, at [1st Air Force](#), Tyndall Air Force Base, Florida. If you have any interest in learning more about how the federal government supports local communities in times of emergency and natural disasters, such as Hurricane Michael that devastated the Florida Panhandle and Tyndall Air Force Base, you're in for a jam packed session. Here are a few clips from today's show.

[upbeat intro music]

SHOW EXCERPT, LIEUTENANT COLONEL (RET.)

R. CURTIS MCNEIL:

We're operating in the United States, we're using defense capabilities for a nondefense mission. And that's where the legal part comes into play. As the water rises, so does the jurisdiction of the Coast Guard [laughs]. So the Coast Guard jurisdiction kept getting bigger and bigger, and they were running out of capacity, and we had helicopters available.

ANNOUNCER:

Welcome to The Air Force Judge Advocate General's Reporter Podcast, where we interview leaders, innovators, and influencers on the law, leadership, and best practices of the day, and now to your host from The Air Force Judge Advocate General's School. [music fades out]

MAJ HANRAHAN:

Welcome to another episode from The Air Force Judge Advocate General's School at Maxwell Air Force Base. I'm your host Major Rick Hanrahan. Remember if you like the show, please consider subscribing on Apple podcast and leaving a review. This helps us to grow our outreach to the JAG Corps, and beyond. Well if you have any interest in defense support to civil authorities or domestic operations, today's show is for you.

I'm excited to introduce our guest, who's an expert in these fields of law and gained a unique and newfound perspective, when he lived through Hurricane Michael and nearly lost everything as a victim. Our guest today is retired Lieutenant Colonel R. Curtis "Crash" McNeil. Sir, it's a pleasure to have you in studio today.

LT COL MCNEIL:

Thank you, happy to be here, and hopefully this will be helpful to folks and may be useful to somebody, but I am looking forward to the opportunity to share whatever information I can.

GUEST INTRODUCTION

MAJ HANRAHAN:

Lieutenant Colonel McNeil is the current Chief, Domestic Operations and Intelligence Law at 1st Air Force, Tyndall Air Force Base, Florida. He provides legal advice and support to air component commanders and operators who plan for and execute Homeland Defense and civil support missions for the United States Northern Command. He is also a legal adviser to United States and Canadian military personnel who plan and perform aerospace warning, aerospace control, maritime warning and defense missions for the continental United States on a daily basis in furtherance of North American Aerospace Defense Command or NORAD charter to detect, deter and defend against attacks on North American land by air and space.

Colonel McNeil received his commission December of 1988 through the Air Force ROTC [Reserve Officers' Training Corps] program at Baylor University. He

served as a systems engineer for satellite development programs and advanced technology program analyst as the Air Force Militarily Critical Technologies Program Manager before cross training into the law. He entered the Judge Advocate General's Corps through the Excess Leave Legal Education Program in 1988 and retired from the Air Force in April of 2009.

He has served in numerous positions throughout his career, including Headquarters Air Force Special Operations Command at Hurlburt Field, Headquarters Continental United States North American Air Defense, 1st Air Force at Tyndall Air Force Base, Headquarters Air Combat Command at Langley Air Force Base in Virginia, the 49th Fighter Wing at Holloman Air Force Base in New Mexico, Air Force Flight Test Center at Edwards Air Force Base, California, Headquarters Air Force Materiel Command at Wright-Patterson Air Force Base in Ohio, and also Space Systems Division at Los Angeles Air Force Base, California.

He's also written and published on today's topics, and has extensive experience in the topics.

PODCAST INTERVIEW

MAJ HANRAHAN:

So sir with that backdrop, perhaps you could provide a little more background on how you became interested in these areas, the law on domestic operations and defense support to civil authorities.

LT COL MCNEIL:

Having spent the first half of my career as an engineer in advanced technology research and in operations of, like at the Flight Test Center we were looking into how to do additional launch vehicles from different places in the United States. And the engineering background, when I started working in the JAG Corps, one of the things I did was a mishap investigation. And when I went to do this mishap investigation, the fact that I understood engineering, understood how the things were put together, it made it easier to understand how they might have fallen apart.

And so the engineering background became useful to the legal work, and that evolved into an operational focus. I ended up doing more mishap investigations and more operations type legal challenges. And as that evolved, I ended up at Air Combat Command in charge of mishap investigations for the command. And again, using that engineering background to enhance my legal work, because I had that background and could understand what people were saying about the engineering and translate that into good questions to ask to pilots, to maintainers, to weather officers, to people involved in the actual mishap. And so that mishap investigation experience and that experience with the operational focus pushed me down to Tyndall to a homeland operations environment.

And so the assignment down at Tyndall, as I'm working on Air Defense in North America and then civil support, it was shortly after the stand up of U.S. Northern Command following the Katrina hurricane experience. And so the 1st Air Force is also Air Force's Northern, for Northern Command, and so we're the air component that is responsible for both Homeland Defense and defense to support to civil authorities. And so it's sort of a learn while doing in an operational classroom, where I developed an expertise just over the years of doing it. I mean, I've been doing that now for 13, 14 years. Anything you do for that long, you ought to suddenly, at some point become good at, one would hope.

MAJ HANRAHAN:

Sir, if I could ask, how did you acquire the call sign "Crash"?

LT COL MCNEIL:

So, I was doing mishap investigations, and I was on a mishap investigation overseas. And it was the fourth one that I had done for that same airframe. And it's a UAV [unmanned aerial vehicle], so they can actually, it's on an 1G environment. You can change pilots mid-flight. And the guy who was the mishap pilot in this case had been the mishap pilot on all four mishaps. Because he was the most experienced pilot, and if anyone had a chance to recover the airframe, it was him. So I show

up and I look at him and I said, "You know, you do one more, we're gonna make you an ace." We got a chuckle out of that. And his friends laughed and I laughed, and we had a good time with it. And about two weeks later, I was invited to a naming ceremony and I thought they were gonna rename him "Ace", which would have been really funny, and I got a kick out of. What I found out was that they were actually naming me "Crash", because it had become kind of a joke, that when I showed up at a unit they'd ask, "So what went wrong? Who crashed?" Because I had done enough of them, that I had a reputation, and they just shortened it to "Crash".

MAJ HANRAHAN:

Great story sir. So maybe, as a backdrop for our listeners and our listener base is broader than just the JAG Corps. Could you perhaps provide an overview on what exactly is on domestic operations and defense support to civil authorities?

LT COL MCNEIL:

So domestic operations is really two things. One part is defense of North America. That, fortunately, isn't a common problem. We haven't had a land war in the North American continent in a while. We do have visits from our friends in Russia and other countries who will fly by to say hi on the Fourth of July and other times, just to let us know they're here, sort of an exploration of their power, but we have to be prepared at all times for an event like 9/11, where it's an internal threat coming from somebody flying an aircraft from inside the United States, as well as looking to external threats.

Some of our adversaries have been going through a substantial upgrade of their capabilities, and have now got the capability to reach out to North America. North America is no longer a safe space. We have adversaries who can, through cruise missiles, through air capabilities, through ballistic missiles, actually reach North America and do harm. And so because of that, we have to be prepared to defend against those attacks. We have to first be able to detect those attacks. Then, we have to defend against those attacks and defeat those

attacks. We try to deter those attacks by showing that we're ready, we're capable, we're able. So we do a lot of exercises. We do a lot of flying.

The Air Operations Center, the [601st Air Operations Center](#) actually has probably the busiest Air Operations Center in the world today, just because they are monitoring the airspace over North America 24/7/365.

So we've got that part of the mission, and then you've got the civil support side of the mission, and that's the DSC of the defense support to civil authorities [DSCA]. And that's where when there's a natural disaster, fire, flood, hurricane, whatever it might be, and the state and local authorities have reached their capacity, their ability to help, they turn to the [Department of Homeland Security](#), and then they will turn to the [Department of Defense](#) for assistance. And so we will provide anything from high water vehicles, to boats, to aircraft, to sensors. A lot of times, we'll be flying imagery missions to try and figure out whether or not for example, a bridge is standing. 'Cause if I'm trying to get help from point A to point B, and I've gotta cross a bridge, it's nice to know whether that bridge is actually usable.

So frequently what we're doing, is we're operating in the United States, we're using defense capabilities for a nondefense mission. And that's where the legal part comes into play. We have a generation of leaders who have been used to operating in an overseas environment, particularly in the aviation environment, where the airspace is essentially ours. Nobody else is flying, we control the airspace, we control the operations. We don't have a lot of the situations that we have in the United States where we're worried about people's civil rights and their privacy and a lot of other things. So one of the things we end up trying to teach our leaders who have spent their entire career in this overseas operational environment, kind of the, I call it the big three.

I start out with, we're not at war, because we're not when we're doing defense support to civil authorities, we're actually here to help. I know we're from the government,

we're here to help this kind of a standing JAG, but our goal is to help the American people. And so we have to remind ourselves, we're not at war. This is not a combat environment, this is a supportive environment.

And the next one is we're in the United States. And that's a big deal because the airspace in the United States is used for commercial enterprise. It's used for a lot of other things. We also have the people that are in on and around the mission are U.S. citizens, and they have constitutional protections, rights to privacy. We've got the First, the Second, the Fourth, and the 10th Amendment. The states actually are in charge.

So the federal government is there to help the state. We're not in charge of the event, and that's the third thing I was trying to remind people is we're not in charge. We are there in support of civil authorities, whether it's Department of Homeland Security, whether it's the [Federal Emergency Management Agency](#), FEMA. So used to using the acronym, I forgot how to say the name. So a lot of times, we have to remind our leaders who are used to being in charge. I mean, you're talking to a four-star general, who spent 30 years or more, becoming the person they look to for guidance and leadership and being in charge and taking that hill and doing the mission. And they have to step back and realize we're in a support role.

So the people in charge are FEMA, or the people in charge are the state and we're here to help them to achieve their goals. We don't get to set the goals, we don't get to set the mission. Our mission is a support mission. That becomes a challenge in this environment.

So a lot of the rules that we have, for example, [Executive Order 12333](#), which is the executive order that prohibits intelligence component capabilities from being used to collect on U.S. persons. So here I am, I'm flying an imagery platform in the United States. Now, my mission is to determine the height of the floodwaters or to determine whether a bridge is standing or determine the status of a dam to make sure that the dam is going

to hold the water and the people downstream aren't gonna die. To see where the hotspots are in a fire. I'm looking at public works projects or geological features or geographical features, but inadvertently in or amongst that, the victims of the disaster are there. And those are U.S. persons and we're not authorized to collect information about individually identifiable or identified U.S. persons.

So in order to comply with the law and the spirit of the law while still providing the support, that's where the lawyers come in. We look at what is the mission? What is the objective? How are we going to minimize collection on U.S. persons who are not participating?

We have the same thing with search and rescue. Although we do have a theory of implied consent, meaning if you're lost, we assume you wanna be found. And therefore, you will allow us to collect information about you that is necessary to find you in a lost environment.

For example, the [Air Force Rescue Coordination Center](#) (AFRCC) actually coordinates all inland rescue in the United States. It starts locally of course, but if a local sheriff for example, needs assistance from an aviation asset to come out and find somebody lost in the mountains, they call the AFRCC. The AFRCC then contacts the closest most available resource that can meet that need, gives them a mission number and sends them out to do that. There's a presumption there that the person that we're looking for actually wants to be found.

I do occasionally wake up at night and worry about the "Grizzly Adams" scenario. You probably don't remember "Grizzly Adams." It was a TV show when I was growing up, about a guy who went into the woods to hide and didn't wanna be found. And one of my biggest fears is, we're gonna go find somebody who was not wanting to be found. When we're doing that a lot of times, the call comes from a law enforcement agency. And as you know the Posse Comitatus Act, doesn't allow DoD forces to be used for law enforcement.

So when we're doing search and rescue and it's clean, you know, somebody is lost in the woods, that's easy. But we've had situations where somebody was, evading the police, fell in a river and was going down river. Well now they're drowning and they're in need of rescue. But when we rescue them, the police are gonna want to arrest them. So is it Posse Comitatus Act or not? Those are the kinds of calls you have to make on the flying a DSCA environment.

End result, we rescued the guy, took him to the hospital. I believe the police came to the hospital later and secured his room, but that was between, that was after we were done. We did not help enforce the law, we saved his life. Law enforcement did their bit later. But those kinds of issues come up in a DSCA environment when you're trying to do that.

Also, when you're not using intelligent component capabilities, when you're using non-intel platforms, there's a [DoDD 5200.27](#), that prohibits collection of information about persons not affiliated with DoD, unless there are certain exceptions, one of which of course is when we're trying to help them and find them and that kind of thing. But major disasters, that kind of thing, we have to navigate through those legal parameters in order to ensure that what we're doing is consistent with law and policy, and that's the big deal.

In a DSCA environment as we start using DoD capabilities, we always have to recognize that DoD has certain restrictions put on us. Intended to protect the American public. Unlike many other countries, Americans are traditionally distrustful of our government, and sometimes for a very good reason. As such, we have a lot of restrictions to keep the government from overreaching into the public sphere, particularly with DoD. The [Church Commission](#) post Vietnam, was an experience where the civilian authorities looked at the DoD as having encroached. And so as a result of that, we have a lot of restrictions on us. We try to find a way to adhere to the law and policy and meet those restrictions

while still also meeting the needs of the American public and meeting the needs of FEMA or other responding agencies when they ask us for support.

MAJ HANRAHAN:

So just as a broad backdrop question, what are the main governing laws and or regulations that apply in a DSCA environment? And I am familiar with like the Stafford Act would be one of them, but if you can maybe speak to that a little bit?

LT COL MCNEIL:

So the [Stafford Act](#) of course is the big daddy of them all. But a lot of times, responses are done either in a major disaster declaration, which is a Stafford Act environment, but sometimes the response is done using other laws like the Economy Act.

And under the [Economy Act](#), any federal agency can go to any other federal agency and request support, so long as you've got the checkbook to pay for it. And so when you look at things like, even like the Coronavirus going on today, military facilities are being used to house people who have been evacuated from areas that are experiencing a greater virus spread. When they come into the United States they have to be quarantined somewhere. DoD has been requested, and the Secretary of Defense has approved using certain military facilities to house those evacuees. That's all being done under the Economy Act. So, Department of Health and Human Services is responsible for cleaning the facilities, they're responsible for the food and the medical care, everything else. We're providing facilities and Health and Human Services is paying the cost of those facilities and any personnel or any other costs that the DoD incurs in providing that service.

So a lot of times, it's a matter of which Act you're under. Once you get past, "Okay, which Act am I under and what am I supporting?" Then you get into a lot of other rules like the [Posse Comitatus Act](#). Because the police power is retained by the states, and under the 10th Amendment, the states have that authority. Anytime

the DoD is participating, we have to look at and make sure that we're not enforcing civilian law. That's not our function. So we look at the Posse Comitatus Act, we have to look at the Stafford Act or the Economy Act to make sure that we're not misusing appropriations. We then look at like Executive Order 12333 to look at the intel oversight portion of it. DoD 5200.27 for the non-intel units as far as collection on persons not affiliated with DoD.

So there's a number of different laws that come into play, and then there are execute orders. Like there is a standing defense support to civil authorities or DSCA EXORD. And that lays out what things the Secretary of Defense has authorized within his authority. And it's essentially a delegation of authority to the commander of USNORTHCOM, commander of USINDOPACOM. So it's a delegation of the Secretary of Defense's authority, under certain circumstances to take certain actions. What that really does is when an emergency occurs, it gives us the ability to respond quickly, because, let's face it, the Secretary of Defense is fairly busy, and if you need him or her to make immediate decisions, in a crisis you can get a hold of them, it's been done. But it's preferable if that authority has been delegated to something a little lower in the food chain who can execute faster. So we use a lot of that.

There's a chemical, biological, radiological and nuclear execute order of the same nature. So that if there's a major chemical incident that needs DoD response, we can respond in a quick and efficient method without having to go all the way to the Secretary of Defense for approval. So it's just a matter of, that those are policies that are put in place, they're essentially delegations of authority.

And then it becomes what is the disaster? What is the issue? Because a pandemic influenza or infectious disease brings in all kinds of medical issues. The DoD is not authorized to enforce civilian quarantines, for example. So let's go back to this Coronavirus. The Health and Human Services is about actually using

U.S. Marshals to enforce the quarantines. Because DoD, we don't do that. So we'll provide you facilities, we'll provide you a place to take care of these folks, but as far as providing security, medical care, all of that, that's a Health and Human Services function, and a U.S. Marshals function. It's not a DoD function. And that's part of the Posse Comitatus Act, and it's part of also the control of medical activities. HHS is in charge of that. So a lot of times it comes down to who's in charge, and what do they need from us? And then whether or not we can provide that.

During a disaster, everybody goes out of their way to save lives, prevent human suffering, and mitigate great property damage. So any way you can within law and policy, provide the service that's needed, you do it, so long as you're not violating law and policy. So there's always this push, and our commanders are action-focused and action-biased. So they're looking for ways to go and do and help. And anytime the lawyer is between them and go and do and help, you're under an obligation to look at the law and look at the goal and find a way if it's there, to get the support. I call it mapping the minefield. Sometimes you can't run right down the middle, 'cause that's where all the landmines are. But usually there's a way to get from point A to point B, with limited damage that gets the end result you're looking for. So a lot of times, the lawyer's job is to go through the various laws and policy and figure out how to achieve the objective without busting through certain legal requirements. Our friends in Congress write a lot of laws and the President signs a lot of laws, and there's at least an expectation that we'll follow some of them.

MAJ HANRAHAN:

Well sir I know we spoke offline before this interview, and you had a lot of very interesting stories and tons and tons of experience on actual specifics of different events that you've had to work through, including hurricanes. And I would like to talk about two of those. One with Hurricane Dorian and then one with your personal experience you had with Hurricane Michael, in the Panhandle of Florida with, there's lots of leadership

points there. But before we jump into those two, maybe could you walk our listeners through what happens kind of more or less, quote unquote, behind the scenes as, let's say we spot that there's a hurricane in the Bahamas and we're pretty certain it's gonna be hitting continental United States. What is going on at that point? What are you doing with your team? What are all the legal things you're working through? Could you walk us through day one, so to speak, as you're working pre-hurricane actually getting to land.

LT COL MCNEIL:

So, before we ever spot the hurricane, at the very beginning of every calendar year, we put together what's called an Annual PUM and an Annual DILR. So a PUM is a Proper Use Memorandum, and it's a document that says, "I know what the law is, I'm gonna be using DoD intelligence component capabilities to collect information. I recognize that I'm not allowed to collect on U.S. persons, but I'm looking at geographical features. I'm looking at bridges, dams, roads, that kind of thing. Here's the plan for how we're going to use those capabilities and we promise we'll follow the law". And it has to be signed by the intelligence oversight lawyer, which is me. And then by the Senior Intelligence Official at the unit, which is usually the Director of A2. That document then goes up to USNORTHCOM, United States Northern Command, and they have a review of it by their intelligence officials and their legal officials, and they give us an endorsement of that document. So we do that and we used to have to do one for every event. And PUMs are usually very specific to a particular mission.

But we found that the process right after a hurricane makes landfall, the imagery you need is right now, and that process was taking longer than we wanted. So we figured out how to do one for an annual in the vicinity of the event. We have this PUM that we write, this Proper Use Memorandum. We also do what's called a Domestic Imagery Legal Review. That's for the imagery done by non-intelligence component capabilities. So at the beginning of the year we write PUMs and DILRs for catastrophic natural disasters, chemical, biological,

radiological, and nuclear incidents, and for search and rescue. So that our search and rescue mission, so long as they meet the requirements in that document, and it's about a three page document, and the document lays out what they're allowed to do, what they're not allowed to do, what laws they have to comply with, and how they're going to comply with the law. And as long as they're operating within the four corners of that document, we don't have to do a new one. We do an addendum that says we did this mission under this PUM.

So the PUMs and the DILRs are done in January. Hurricanes usually start sometime in July through November. So we do those way early, but we're also doing fires and floods and search and rescue and all of that. So we've got the PUMs and DILRs, we get those in place at the beginning of the year. Usually over the Christmas break, I write them and send them to NORTHCOM for their review. We have those in place then an event starts to gin up. Let's call it a hurricane coming, and we watch the weather coming off the Horn of Africa all day, every day. We've got people who are looking at that. Every morning during hurricane season, we actually pull up the chart, you can see the potential hurricanes forming off the Horn of Africa. So we're watching them all the way across the Atlantic. Same thing in the Pacific, so we're looking for storms in the Pacific and the Atlantic. The Atlantic is obviously the greater hurricane threat. So that's what we're looking at most.

So one starts forming up, and we look at it, and it's 20 days away. At that point, you make sure the PUM and DILR are current, review the CJCS DSCA EXORD. You look at where it might be going and start talking to those states, because those state authorities are the ones. We call FEMA and make sure that we've got phone numbers and everybody starts talking.

And then as it gets closer, we usually stand up our Contingency Action Team, the CAT, and usually that's about a week out. The CAT will stand up, and we'll start

going through and looking at, "Okay, what do we have available? What aircraft, what supplies, what equipment? Where is it? Where is it relative to where this thing looks like it's going? Do we need to request that the services preposition some assets here or there?"

So you'll actually have assets start moving before the hurricane makes landfall. Now you don't wanna move the assets to the point of landfall or move people to the point of landfall, 'cause you don't need more victims. You don't need your supplies to get destroyed by the hurricane, that's not particularly helpful. So you generally get them just outside the area, but if something's in that you need and is important and is in Washington State and the hurricane looks like it's gonna hit South Florida, you might move it to Texas or Alabama. So you move it to a place that's closer, so that your response time is lessened and then you have to wait because again, defense support to civil authorities is driven by the civil authorities.

So at that point, prior to landfall, a lot of times you'll start getting pre-event mission assignments, where FEMA starts figuring out, "Okay, what are they going to need? Let's start looking at..." 'Cause a mission assignment is essentially a request from FEMA to DoD to provide certain support. And there are some things they always need. So Civil Air Patrol, always gonna be needed. That imagery from those platforms is always gonna be needed. You're going to, if it's a flooding situation, we need high water vehicles from the army. You're gonna need some boats, usually Coast Guard. So there are certain things you know you're gonna need, so you start pre-positioning those, and getting them ready for the mission.

MAJ HANRAHAN:

Do you work pretty closely with the Coast Guard?

LT COL MCNEIL:

We do. There's actually, as part of the NORAD mission, we actually have Coast Guard helicopters who participate

on a daily basis in that mission. And then as part of the NORTHCOM mission, there is actually a Coast Guard JAG at USNORTHCOM.

And there are Coast Guard, there was a SJA who was a Coast Guard guy at the, Coast Guard Officer, excuse me. I'm retired now. I can call them guys. Anyway, [chuckles] He was a Coast Guard Officer. So the Coast Guard is an active part, because in particularly in the search and rescue environment, the Air Force Rescue Coordination Center is responsible for inland search and rescue in the United States. The Coast Guard is responsible for all of the maritime search and rescue in the United States. And frequently, there will be missions where the Coast Guard and the Air Force work together, particularly for those missions that are a reasonable distance off the coast of the United States.

We've had missions where for example, a fishing trawler had somebody who became ill and needed immediate medical care, and the Coast Guard could get there with a cutter eventually, but it was gonna take too long. So what they ended up doing was taking a Air Force C-130 and go flying out with Air Force rescue helicopters and rescuing the person off the ship, at the request of the Coast Guard. So the Coast Guard and the Air Force work together to make that rescue occur.

Frequently, during for example [Hurricane Harvey](#) in Texas, the Coast Guard had the primary search and rescue mission, because it was a flood. And as the water rises, so does the jurisdiction of the Coast Guard [laughs]. So the Coast Guard jurisdiction kept getting bigger and bigger, and they were running out of capacity. And we had helicopters available that FEMA hadn't asked for yet, and we had pre-positioned in case they were needed. And so we didn't have a request for support from anybody else and the Coast Guard turned to us, turned to the Air Force and said, "Hey, you got some helicopters, can you help us out?" And there is a statue that allows the Coast Guard to request from anybody else's assistance. And we have a long standing relationship, so we were

able to help the Coast Guard to help the people of Texas during the flooding, during Hurricane Harvey.

MAJ HANRAHAN:

So we get to maybe a few days or maybe within the 48 hours of a hurricane hitting landfall, what's going on at this point in the CAT, and I'm sure you're working some long hours?

LT COL MCNEIL:

So at that point, I'll use the Harvey example. We stood up the CAT for Hurricane Harvey on August 25th in 2017. I know that 'cause it was my birthday, and I was in Dothan, Alabama at a medical appointment trying to get that done because I had seen a hurricane coming in, I wanted to get that taken care of. So my paralegal actually went to the CAT, and manned the CAT for the first 10 hours or so, until I could get back. We were between SJA's, so it was me and the paralegal.

So I get back and, yeah, you're working long hours. That weekend I put in 36 hours. That was from Saturday morning until Monday [laughs]. So that should give you kind of a flavor for how that goes. At that point, what you're trying to do is be prepared to make sure everybody knows what their authorities are, knows where their left and right boundaries are. And we're anticipating what missions are gonna be required and what we can pre-position. We don't have the authority in AFNORTH or NORTHCOM to tell anyone to pre-position assets. Because we haven't received a request from FEMA. We haven't got any Stafford Act declaration or anything else. What we do is we request that the services will pre-position assets.

And then in the case of Civil Air Patrol; first, Civil Air Patrol is a federally chartered corporation who also works as an auxiliary of the Air Force. So they're all volunteers, who are flying small aircraft, mostly Cessna's, and they're flying them in support of disaster response. They also do range surveys, they do all kinds of other missions, light airlift. There's also a huge training program with

the cadet corps. So they're out there, and we start pre-positioning those assets and getting them close enough to respond quickly, but far enough away to not become victims of the event.

So during those days, you're really moving things along, you're trying to move assets, you've got your logistics guys who are trying to figure out what commodities are gonna be needed? Where do we have them? How would we move them? Your airlift folks are looking at what airlift is available? Where are the commodities? Where are we going? How do we get from point A to point B? How do you schedule all of that? We've got an Air Mobility Division who works that issue with of course TRANSCOM, who owns all the heavy aircraft, all the cargo aircraft. So you're trying to arrange all of that, you're reaching out to your counterparts that you know at FEMA, at FBI, at CBP, **Customs and Border Protection. Customs and Border Protection** because they're part of DHS and so is FEMA, and they have aviation capabilities, they have other capabilities that they can bring to bear. So a lot of times we're coordinating with them.

We're coordinating with the Air and Marine Operations Center for the Department of Homeland Security, we're coordinating with **FAA** for airspace. What are we gonna do with that airspace? FAA controls all the airspace in the United States, but they will provide for us Certificate of Authorizations to fly, for example a unmanned aerial vehicle or a UAV, sometimes called drones into an area, and they'll clear some airspace so we can operate and not worry about manned aviation being in the same airspace.

You start working with the state on deconfliction of state assets and federal assets. 'Cause if the state is going to bring in federal aviation assets to support them, they've also got state aviation assets going on. One of the things we discovered during the **Deepwater Horizon oil spill**, you had a lot of civil aviation out trying to help. We had Civil Air Patrol out in their role as an Air Force auxiliary, out trying to help. We had DoD assets out there, we had other federal agency assets out there. And once

you get out away from the coast, that's uncontrolled airspace, that's international airspace. And it was a lot like watching eight year olds play soccer.

If you've ever seen an eight year old soccer game, everybody runs to the ball, and then the ball goes somewhere else and everybody runs to the ball, and you don't have a whole lot of people thinking about being forwards or half-backs or full-backs or goalies. Well, one of the things initially in Deepwater Horizons was, everybody who was trying to collect imagery would end up at the same spot. So we get 10 pictures of one spot and no pictures of another one. So what we ended up with was a thing we called the CRASS which was the Civil Reserve Aviation Support System, I think, I don't recall what it even stands for. Essentially, it was a coordination document where we all got together, everybody who was flying in the space and said, "Okay, I'm going here, you're going in..." Somebody else say, "Okay, I'm going here." Well, if one person is going to point A, and gonna take the imagery of point A, "nobody else needs to take pictures of point A. While you know, everybody. And so, the other thing it did was make sure that people weren't trying to fly in the same airspace at the same time.

Those who've studied basic physics or chemistry understand that there's a certain rule that no two objects can be in the same place at the same time. That's particularly true in aviation. There's not really a minor fender bender in aviation. If you scrape paint with somebody else, it's a bad day for everybody. So by coordinating and deconflicting the aviation, what we ended up with was better imagery so that we had more pictures of more different places, and a safer set of airspace.

So a lot of times we're trying to coordinate with the states and with the other federal agencies and everybody else about "Okay, how are we going to manage the airspace? How are we gonna work together in this airspace?" FAA is overall in charge of the airspace, but a lot of times like during Deepwater Horizons, we're in an airspace that they can't see or control. So we have to use procedural

controls to keep everybody from bumping into each other, much like you do in an uncontrolled airfield in civil aviation. Everybody talks on the radio and there's, you fly the pattern, you do things so they're smart, so nobody gets hurt. So a lot of times, different disasters bring to you those different things.

MAJ HANRAHAN:

So it sounds to me that if things are going quote unquote "well" in this situation, all agencies more or less are staying within their lane, doing what they do best, and everybody is working together as a team. And then let's now move on to the point where we actually have the hurricane hit land. What is going on during that period, and then maybe you can also speak about the aftermath, the next 24 hours?

LT COL MCNEIL:

So once we've got landfall, that's the point where, and just before landfall, we try to get a pre-event picture of the environment. So we'll do some collection with commercial satellites. We'll pull up some pictures that were taken previously. There's a lot of overhead imagery that is taken of the United States and of our territories on a routine basis. Every week or every two weeks, a satellite pass goes over. Or somebody in the commercial industry has taken imagery of an area. Think about Google Earth for example.

So you've got pre-landfall imagery, and so immediately upon landfall, of course everybody's ducking, but shortly thereafter, you start going out and that's FEMA usually, one of the first things they asked for is that post event imagery. So you're trying to go out and catch imagery to determine whether or not the dams are holding water. The bridges will support traffic, the roads are clear, how bad's the flooding? How bad's the damage? Are there trees down everywhere like there were in Hurricane Michael? What does the damage look like so that you can start getting a shared situational awareness as to what the needs are going to be, so that the right resources are provided to the right places at the right times? You get to things like Puerto Rico during Harvey,

Irma and Maria, getting anything into Puerto Rico was a challenge. It's an island. And I realized that's obvious to the most casual observer, it's an island, but that's a unique challenge.

In a hurricane that hits Texas, there's a lot of ways to get resources there including trucks and roads and that kind of thing. Puerto Rico, it was ports and airfields, both of which were unusable. The ports are full of broken boats, the airfields are covered in debris. So the only way to get there is not available. So you start looking at bringing in a naval ship with some helicopters, they go out and clear a runway. So you can bring in an airplane to bring in more people to clear another runway, and you bring in a couple of ships to clear out a port, 'cause the port's full of well, other boats and anything else and you can't bring a vessel.

One of the reasons ports work, is 'cause you've got an area that's been dredged out. That's a deepwater channel that all of the dirt debris, everything else is out of the way. If you try to bring a boat in and the water is not deep enough anymore, the boat doesn't go in. So it became an issue of clearing ports and clearing airfields and clearing runways. So a lot of times it really does depend on the environment. What do you need to do before you can do anything else. You gotta be able to get there before you can do anything.

So one of the first things you do is start taking imagery. You start looking at what is the extent of the damage? What are our ingress and egress points? How will we be able to get support to these people. In the case of Puerto Rico, most of it was airlift. Eventually it was sea lift, but that is not nearly as fast as airlift. A really, really, really fast boat, is gonna do 30 or 40 knots. Your airplane is up there doing a couple 100 knots. So your speed difference, I can drive cross-country at 25 miles an hour, or I can get in an airplane and fly cross-country in a day. It's the same idea. So that becomes an immediate, having an immediate need is, assessing the damage and figuring out what we need to do and where we can do.

Search and rescue is also a very, almost immediate need. Because the rule in search and rescue is, you're doing search and rescue for about 72 hours. After that, you're doing recovery, because somebody who's been left exposed to the elements in danger, there's only a certain amount of time before they're just not gonna make it. A lot of times that has to do with, are they in the water? Is it cold water? Are they in the mountains? Is it cold out in the mountains? I mean, depending on the environment, how long you can survive without support, depends on where you are, and also how much water you have, how much food you have, how healthy you are. There's a lot of factors that go into that, but an immediate need after any natural disaster or any disaster for that matter, is search and rescue. Finding people who need help and getting them the help they need.

And so the search and rescue operational coordination element, SARCE, at 1st Air Force is the primary search and rescue agency when you get into the major disaster. Prior to that it's the Air Force Rescue Coordination Center for inland and the Coast Guard for the maritime. But once you get to a major disaster, you centralize that and try and make it work, at the same time recognizing you're supporting the state, local and civil authorities in the entire process. So immediately after landfall, you're looking at search and rescue and gathering that situational awareness, so that you can do what needs to be done to support the people who are in need essentially.

MAJ HANRAHAN:

And in the weeks following, let's just say the hurricane is here. What are you doing at that point?

LT COL MCNEIL:

So in the weeks following, one of the things you're doing is evaluating. So you get these requests from FEMA and they say, "Oh, we need this. Okay." We try to get them much like you do in a combat environment where you say, "What effect are you looking for? And let me figure out the appropriate aircraft, weapons, etc. to do that."

We do the same thing with FEMA. "What effect are you looking for?"

"I wanna know whether the bridge is standing. "

"Great."

Then we look at what assets do we have available, what capabilities can we bring to bear, so that we can go look at the bridge. Frequently and more frequently now than ever, we do that through the [Civil Air Patrol](#) and their role as an Air Force auxiliary. Civil Air Patrol is in every state, in every territory, they've got aircraft all over the state, so that they are a rapid response capability. They also are very inexpensive capability, because these are volunteers, community members who do this out of the goodness of their heart. We essentially pay for their food, fuel, wear and tear on the aircraft, that kind of thing, but I mean we're paying, they're flying aircraft that are owned by the Civil Air Patrol mostly, that we maintain through the Civil Air Patrol. The Congress gives them money to do that, but the cost of a Civil Air Patrol aircraft, it's fuel for a small aircraft, it's essentially per diem, paying for any hotel bills or food or anything else. So it's a very low cost capability, and it's immediately available. And it's not an intelligence component capability. It has no intelligence purpose, no intelligence function. So it's done under the Domestic Imagery Legal Review under those rules as an Air Force auxiliary, and we can get that capability out and they can get you very quick imagery of what you're looking for.

MAJ HANRAHAN:

That concludes part one of our two part interview with retired Lieutenant Colonel McNeil, please tune in to part two, where we'll explore Lieutenant Colonel McNeil's fascinating personal account of living through Hurricane Michael in the Florida Panhandle as a victim and some leadership lessons from his experience. It's a story you won't want to miss. We'll see you on the next episode.

ANNOUNCER:

[upbeat music]

Thank you for listening to another episode of The Air Force Judge Advocate General's Reporter Podcast. You can find this episode, transcription and show notes along with others at reporter.dodlive.mil (now JAGreporter.af.mil). We welcome your feedback. Please subscribe to our show on [iTunes](#) or [Stitcher](#) and leave a review. This helps us grow, innovate, and develop an even better JAG Corps. Until next time.

DISCLAIMER:

Nothing from this show or any others should be construed as legal advice. Please consult an attorney for any legal issue. Nothing from this show is endorsed by the Federal Government, Air Force, or any of its components. All content and opinions are those of our guests and host. Thank you.

GLOSSARY

- **AFRCC:** Air Force Rescue Coordination Center
- **CAT:** Contingency Action Team
- **CBP:** Customs and Border Protection
- **CJCS:** Chairman of the Joint Chiefs of Staff
- **DHS:** Department of Homeland Security
- **DILR:** Domestic Imagery Legal Review
- **DSCA:** defense support to civil authorities
- **EXORD:** execute order
- **FAA:** Federal Aviation Administration
- **FBI:** Federal Bureau of Investigation
- **FEMA:** Federal Emergency Management Agency
- **JAG:** judge advocate general
- **NORAD:** North American Aerospace Defense Command
- **PUM:** Proper Use Memorandum
- **ROTC:** Reserve Officers' Training Corps
- **SARCE:** search and rescue operational coordination element
- **SJA:** staff judge advocate
- **TRANSCOM:** Transportation Command
- **UAV:** unmanned aerial vehicle
- **USNORTHCOM:** U.S. Northern Command
- **USINDOPACOM:** United States Indo-Pacific Command