HOMELAND SECURITY LAW AND POLICY

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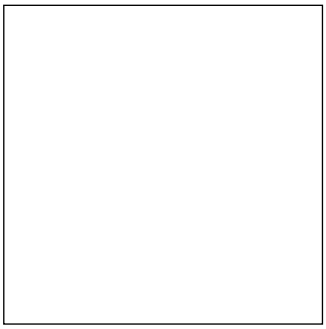

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HOMELAND SECURITY LAW AND POLICY

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Widener University School of Law
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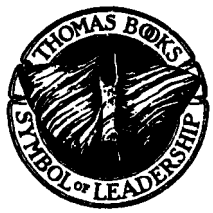
With a Foreword by

SENATOR JOSEPH BIDEN



CHARLES C THOMAS • PUBLISHER
Springfield • Illinois • U.S.A.

Published and Distributed Throughout the World by

CHARLES C THOMAS • PUBLISHER, LTD.
2600 South First Street
Springfield, Illinois 62704

ISBN 0-398-
ISBN 0-398-

Library of Congress Catalog Card Number:

Printed in the United States of America
R-3

Library of Congress Cataloging-in-Publication Data

This book is dedicated with appreciation to the warriors who defend us on foreign soil and the emergency responders and emergency managers who daily confront homeland security's challenges.

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Administration Review. Vol. 62, Special Issue (September): 98–107. "Governance under Fire: Organizational Fragility in Complex Systems." 2002. In *Governance and Public Security*. Syracuse, NY: Campbell Public Affairs Institute, Maxwell School of Citizenship and Public Affairs, Syracuse University, pp. 113–127. "Managing Intergovernmental Response to Terrorism and Other Extreme Events." 2002. *Publius*. Vol. 32, No. 4 (Fall): 29–50, and "Assessment of Homeland Security Initiatives: Commonwealth of Pennsylvania." 2003. Invited paper. Century Foundation Study on Homeland Security at the State Level. Century Foundation, New York, New York. Submitted February 16, 2003. Published June 25, 2003.

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FOREWORD

The term "homeland security" was virtually unused in the United States before September 11, 2001, but the attacks of that day have forced all of us to rethink our relationships abroad, the missions of federal, state, and local governments here at home, and the best way to "provide for the common defense." *Homeland Security Law and Policy* frames those discussions in a unique and incredibly helpful way, and its publication is extremely timely.

At the federal level, many changes have been made to address the nation's vulnerabilities. Antiquated statutes have been rewritten so that law enforcement and intelligence investigators can better share critical information. We are well into the second year of operations for the third-largest federal agency, the Department of Homeland Security. This reorganization–the most ambitious attempt to redraw the federal bureaucracy in fifty years–is an attempt to merge together twenty-two formerly distinct agencies, an effort that has not yet entirely borne fruit. Congress is considering ways to reorganize itself to better fund and oversee our homeland security operations. Efforts to share intelligence and information among all levels of government and with the private sector are underway, yet those projects as well are not yet completed.

More explosive detection systems, advanced checkpoint X-ray devices, and explosive trace detection systems are at work in over 400 airports around the country. A biometric-based entry-exit program has been implemented at our borders. More cargo containers are being inspected. Radiation detectors have been installed in some areas to check for nuclear weapons or radioactive materials that can be used to make dirty bombs. Risk assessments at some chemical plants have been conducted, and billions of dollars have been appropriated to the country's first responders.

However, many challenges remain. We inspect only a tiny fraction of all cargo containers entering the United States. Too few resources are directed toward securing our most vulnerable and critical infrastructures: rail lines, chemical plants, and surface transportation modes. The Coast Guard protects over 95,000 miles of shoreline with an aging fleet and workforce the size of a large city's police department. The number of customs inspectors is unchanged since 9–11. The FBI is in the midst of a massive transformation, but it has not increased its overall number of special agents. Its information technology–so low-tech on 9–11 that the FBI resorted to overnight delivery services to obtain current photographs of al Quaida suspects–remains woefully unsuited to a great investigative agency.

At the local level, too little has been done in the nearly four years since we were attacked. The number of uniformed local law enforcement personnel is dropping in many areas of the country. Commission after commission has reported on the problems facing our first responders: no routine access to critical intelligence, poor preparedness to deal with a chemical or biological attack, underequipped and underfunded agencies across the nation, and a lack of interoperable communications gear.

Our country long ago determined that federal expenditures for national defense are necessary and appropriate, but we have not yet had a national conversation on how to effectively fund the homeland security improvements experts tell us are necessary. Today, state and local governments are being asked to shoulder a fiscal burden that many believe ought to be a federal responsibility. Yet in important respects the federal government remains on the sidelines. The Department of Homeland Security has not yet issued a plan to protect our critical infrastructures, nor have standards been set to guide cities and states in their preparedness efforts.

As I write this, Congress is in the midst of rare August hearings to consider the recommendations of the 9–11 Commission to reform our intelligence agencies and wage a more effective war on terrorism. For these reforms to succeed, and in order to truly create a safer America, the public must be informed on homeland security policy. All levels of government will benefit from an engaged electorate so that tough decisions can be made on the homeland security and the war on terror. *Homeland Security Law and Policy* will help educate students on the choices facing the nation, and I compliment Professor Nicholson for his contribution to the debate.

Senator Joseph R. Biden, Jr.
Wilmington, Delaware
August 2004

INTRODUCTION

The United States of America faced a watershed moment on September 11, 2001. The terrorist attacks shocked our nation into the realization that a major hazard existed for which preparedness was insufficient. The overwhelming nature of the challenges involved in making our country safe from future terrorist attacks soon became apparent. The debate over what constitutes the challenges and how the country can best respond to them has been ongoing since the day of the attacks.

Homeland Security Law and Policy has as its goal the presentation of a broad range of legal and policy issues that face our country as we grapple with the new reality of terrorism. The subject matter is very extensive, encompassing the entire range of activities in the American economy and government. Complete coverage of all aspects of the matter is, therefore, not possible in a volume such as this. Rather than provide superficial treatment of every issue, therefore, in-depth consideration of an assortment of key topics was deemed to be the best approach. So, for example, all types of transportation policy are not included. Rather, mass transit and aviation policy issues provide a focus for the subject matter. Similarly, bioterrorism and "dirty bombs" supply the means to discuss issues related to Weapons of Mass Destruction.

The reader will note a number of thematic topics that recur at various points in the text. Some of the most controversial spring from challenges to traditional concepts of federalism as the national government assumes control of matters once the province of state and local governments. Decisions on funding and personnel priorities coming from Washington affect all emergency responders to a much greater extent than ever before. Multiple perspectives on important policy issues illuminate them in important ways.

The first test the nation faces is the basic one of defining what is meant by homeland security. The text opens with consideration of this issue, from the strictly legal and pedagogical perspectives. Subsequent chapters also address the issue as it applies directly to their subject matter.

The immediate response to the 9–11 attacks came from our existing structure of emergency responders and emergency managers. The roots of homeland security in the Federal Emergency Management Agency's (FEMA's) hazardous materials responsibilities provide a context for the subsequent development of the discipline. The changes in FEMA's priorities after it became part of the new Department of Homeland Security (DHS) illustrate the new pressures that homeland security duties have put on the federal government, and highlight the difficult choices that must be made when needs outstrip resources. The internal debate over whether the "all-hazards"

approach or a strong terrorism concentration is the proper path captures an ongoing policy dispute. The process by which DHS is adopting the National Response Plan (NRP) and the National Incident Management System (NIMS) demonstrates the difficulties in creating truly national policies and getting buy-in from the affected stakeholders. The choice among different legal avenues for their adoption illustrates the intersection of law and policy options.

Homeland security decisions made in Washington, DC, have far-reaching impacts on state and local governments, who often find themselves saddled with unfunded mandates when the federal government decides that an issue must be tackled nationwide. The cascading effects of federal choices on other government partners show the far-reaching nature of these policy selections.

As new challenges arise, new or revised structures often come into place to allow a cooperative approach to common problems. The government, private sector, and higher education can create promising partnerships, as shown in the case study on that subject. From the federal side, the Department of Defense (DoD) possesses more assets that can be brought to bear in the event of a disaster than any other entity. Utilizing these advantages requires understanding a range of legal matters, as well as some institutional history.

In the immediate aftermath of the 9–11 attacks, the Congress enacted strong new statutes designed to more fully protect the nation from terrorist attacks. Many observers decried the effect of these laws on civil liberties, and campaigned for less intrusive alternatives. On the other side of the fence, supporters argued that even more steps were needed to fully protect us from potential terror attacks. Comparison of the attitudes of the two groups allows an interesting exploration of the underlying policy choices. Some parts of the new laws were less controversial: controlling money laundering and, thusly, preventing the financing of terrorist entities was a generally well-accepted step. While reporting requirements increased, strict limitations on sharing the information resulted in acceptance by the general public.

The transportation industry continues to be a potential target for terrorists, as it offers potential victims in concentrated numbers. Perhaps the most challenging aspect of transportation is mass transit, the vehicles that take people to and from work every day. Providing meaningful security for mass transit is very difficult, because the numbers of people using the system preclude detailed inspections of all passengers. The March 11, 2004, terrorist attacks on subways in Madrid, Spain, illustrate how devastating a strike on mass transit might be. Terrorists using passenger airliners as flying bombs carried out the 9–11 attacks. The airline industry therefore faces very close scrutiny as it undergoes extensive security reforms. The evolution of aviation security policy provides an interesting view of the changing nature of the terrorist threat.

Al Quaida leader Osama Bin Laden has said, "If it is true that I have acquired [chemical or nuclear] weapons, I thank God who has made it

possible. And if I seek to procure such weapons, it is a duty." The reality of this threat makes the possible use of weapons of mass destruction (WMD) perhaps the most frightening aspect of terrorism. One thorny issue that confronts those considering proactive steps to address the enormous threat of WMD is how much to spend and where to spend it. The overwhelming nature of potential WMD effects and competing priorities means that there will literally never be sufficient resources to completely address the issue. Many bioterrorism preparedness steps, for example, will increase readiness for a variety of public health hazards. Others, however, are specific to WMD and have limited or nonexistent application to other risks. Sometimes, the best preparedness steps must take place before the event occurs, as with administration of medication to lessen the effect of radiation poisoning. Unfortunately, the widespread availability of radioactive elements to enhance the effect of conventional explosives, turning them into "dirty bombs," means that a possible detonation could occur anywhere and anytime.

In the immediate aftermath of the September 11, 2001, attacks, the nations of the world were virtually unanimous in their support of the United States and the war on Al Quaida, the group that masterminded the blows. Following our invasion of Iraq, however, other nations around the world have been far less helpful. Understanding U.S. policy decisions that resulted in the Iraqi invasion and other nations' attitudes toward that conflict sheds light on potential steps that may assist us in finding more allies in the war on terror. Domestically, some leaders have rethought our commitment to Iraq and criticized the process that led the nation down that road. President Bush continues to pursue the war vigorously despite questions from critics. The decisions of policymakers regarding the war in Iraq, in all probability, will result in the war on terror's most lasting international legacy.

Americans want to avoid any repeat of the 9–11 attacks. To that end, the 9–11 Commission investigated the precursor events in detail, with the goal of recommending steps to make our nation safer in the future. Their report contains significant proposals for reorganization of American intelligence assets. The Commission focuses on the need to unify all aspects of our intelligence efforts, from management to analysis. Response from the executive branch and Congress was quickly forthcoming, in the form of new executive orders and sweeping legislative proposals. The outcome of the policy discussions exemplified by these documents will determine the future of our intelligence agencies and, in large part, will dictate our vulnerability to future attacks.

The future of homeland security will involve both domestic and international aspects. Our nation is currently engaged in a war on terror with no readily apparent exit strategy. The commitment to Iraq appears to be a deep one, with all involved aware of the potential downsides of failure. Here in the United States, the high levels of funding over the past few years for terrorism preparedness reportedly will decline significantly in the next few years. The danger to our nation from terrorists as well as more mundane natural and

manmade hazards will continue. Homeland security law and policy issues will continue to be with us, but whether the current high level of attention to these matters will persist is uncertain. Understanding and debating these vital subjects will assist future leaders in making wise choices when their turn comes to decide the direction of our national strategy.

William C. Nicholson
Wilmington, Delaware
October 2004

ACKNOWLEDGMENTS

My thanks to Senator Joseph Biden for his leadership and insight into homeland security matters. Our nation and the state of Delaware both benefit every day from his wise guidance and informed perspectives on homeland security policy issues, both foreign and domestic. I wish to thank the nationally renowned authors who kindly submitted the excellent materials contained in this book, including: Keith Feigenbaum; Robert W. Smith; William R. Cumming; Richard T. Sylves; Frances L. Edwards; Louise K. Comfort; Monica Teets Farris; Gregory M. Huckabee; Kristin S. Nolan; Eva Lerner-Lam; Frank J. Costello; Ann Strack Angelheart; Professor Leslie Gielow Jacobs; and Michael P. Donohue. I am grateful to the Honorable Birch E. Bayh, a great and wise mentor, and to Senator Evan Bayh, in whose gubernatorial administration I had the honor to serve. My appreciation to those who encouraged and fostered my interest in this subject matter include: former Director of the Indiana State Emergency Agency (SEMA) and current Indiana State Police Superintendent Melvin J. Carraway; former SEMA Director Patrick R. Ralston; SEMA Deputy Director Phillip K. Roberts; the Honorable Melanie George; and many other current and former emergency response and emergency management friends both in Indiana and in Delaware. My gratitude to my friend LTC Stephen T. Udovich USAR for sharing information on the obligations and rewards of life as a regular Army officer, member of the National Guard, and now Army reserves. Steve was notified in early October 2004 to deploy to Iraq to train a battalion of the Iraqi National Guard. My prayers focus on Steve and his two young sons, Ethan and Adam, as well as my good buddy and former snake eater SGM Gaetano A. Gravino, Sr. DEANG, who is serving as a security consultant in Iraq. I join the nation in thanking all of our warriors serving in harm's way. Thanks to John R. Powers, Ph.D. for his guidance on emergency management issues and leadership of the innovative FirTH Alliance and CCRI. A special word of gratitude to B. Wayne Blanchard, Ph.D., C.E.M., and his able assistant Barbara L. Johnson for their dedicated devotion to the FEMA Emergency Management Higher Education Project. They have created the proper atmosphere for incubation and growth of emergency management and related academic pursuits, including homeland security programs, in institutions of higher learning across the United States. Their work is largely responsible for the ongoing professionalization of emergency management in the United States.

My greatest thanks and all my love go, as always, to my wife Nancy, who keeps my homeland happy and my heart secure.

W.C.N.

CONTENTS

Natural hazards continue in a time of terrorism. ORANGE BEACH, AL–The vast fury of Hurricane Ivan's 130 mph winds and 30-foot swells. Hurricane Ivan passed directly over Orange Beach. September 16, 2004. FEMA photo by Butch Kinerney.

Section I

HOMELAND SECURITY AND EMERGENCY MANAGEMENT

Chapter 1

PART 1: DEFINING HOMELAND SECURITY AND TERRORISM: LEGAL ENACTMENTS

KEITH FEIGENBAUM

On November 25, 2002, President George W. Bush signed into law the Homeland Security Act of 2002,[1] thus moving various governmental agencies under one roof with one poorly defined goal: homeland security. A preliminary challenge was writing legally binding definitions of terrorism and homeland security.

Prior to September 11, 2001, only piecemeal definitions of terrorism existed in legislation. These related to the destruction of aircraft or aircraft facilities, violence at international airports, biological weapons, arson and bombings, hostage taking, and assassinations, among a variety of other serious offenses.[2] Meanwhile, what we now consider homeland security was better known as homeland defense prior to September 11.[3] As of yet, there is no consensus on the meanings of terrorism and homeland security, although legislation has been enacted with varying definitions of these expressions.

This part of the chapter examines the definitions that have been enacted into law or published with the goal of setting boundaries to these expansive terms. In his concurring opinion in *Jacobellis v. Ohio*, Supreme Court Justice Potter Stewart wrote on the term obscenity: "I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description. . . . *But I know it when I see it.*"[4] It is tempting to take a similar approach to defining terrorism and homeland security, yet elements of both the federal government and state governments have gone a few steps further.

I. FEDERAL DEFINITIONS

> When we see people walk into cafeterias with bombs strapped to their bodies, that's terrorism. When we see people fly airplanes into fully occupied buildings, that's terrorism. When people in the name of revolution go and cut off the hands and arms of little children in a village to terrorize them, that's terrorism. That's what we need to stop. That's what this campaign is about. If we can delegitimize those tactics for political purposes, we will have won our campaign against terrorism.[5]
>
> *—Ambassador F.X. Taylor, U.S. Coordinator for Counterterrorism*

The notion of defending the homeland from outside threats and responding to catastrophes within our borders is nothing new. The U.S. Constitution gives Congress the power to "provide for calling forth the Militia to execute the laws of the Union, suppress Insurrections and repel Invasions."[6] Following the Revolutionary War, militias were formed to respond to real and perceived threats from Great Britain, Spain, and France, each of which retained territories in North America and maintained navies that preyed on U.S. merchant ships.[7] The Army set out to defend the homeland

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from fortified positions near our harbors, while also protecting settlers and traders engaged in the country's westward expansion.[8] Meanwhile, the Navy sought to control the sea lanes, thus projecting U.S. might overseas and protecting the country's economic interests.[9]

These early efforts at securing the homeland are best termed "homeland defense," an expression that gained new meaning following the Japanese attack on Pearl Harbor in 1941 (the first foreign assault on U.S. soil since the War of 1812). The United States responded to that attack on service members and civilians with renewed efforts by the Navy to patrol the seas, defending against enemy submarines with help from the Army Air Force.[10] In following decades, the North American Air Defense Command was formed to respond to the Soviet nuclear threat. This threat spawned Americans to engage in civil defense efforts that, in part, consisted of building backyard bomb shelters and engaging in air raid drills in schools.[11]

Today, homeland defense and civil defense have essentially merged, both in the way the country sets out to protect itself and in the country's lexicon. The President's *National Strategy for Homeland Security* defines homeland security as "a concerted national effort to prevent *terrorist* attacks within the United States, reduce America's vulnerability to *terrorism*, and minimize the damage and recover from attacks that do occur."[12] (Emphasis added.) The Homeland Security Act sets out the broader goals for a Department of Homeland Security, which include disparate agencies like the Federal Emergency Management Agency and the U.S. Customs Service (formerly part of the Department of the Treasury) that work toward common goals:

- Prevent terrorist attacks within the United States;
- Reduce the vulnerability of the United States to terrorism;
- Minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States;
- Carry out all functions of entities transferred to the Department, including by acting as a focal point regarding natural and manmade crises and emergency planning;
- Ensure that the functions of the agencies and subdivisions within the Department that are not related directly to securing the homeland are not diminished or neglected except by a specific, explicit Act of Congress;
- Ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland; and
- Monitor connections between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and otherwise contribute to efforts to interdict illegal drug trafficking.[13]

The President's *National Strategy for Homeland Security*[14] and the Homeland Security Act[15] demonstrate that the overriding goal in homeland security is to prevent and respond to terrorism, without actually defining the term. The Federal Bureau of Investigation (FBI) defines terrorism as "the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives."[16] This definition, while helpful in focusing attention on the elements of terrorism, is not legally binding, as it has never been enacted into statute or regulation or adopted by court decision.

Even prior to September 11, the FBI separated terrorism into two types: domestic and international. The FBI defines domestic terrorism as involving "groups or individuals whose terrorist activities are directed at elements of our government or population without foreign direction."[17] Examples of domestic terrorism include the 1995 bombing of the Murrah Federal Building in downtown Oklahoma City, OK, allegedly by U.S. citizens. Before September 11, the Oklahoma City bombing was the most deadly terrorist attack on U.S. soil, killing 169 men, women, and children.[18]

According to the FBI, international terrorism involves "groups or individuals whose terrorist activities are foreign-based and/or directed by countries or groups outside the United States or whose activities transcend national boundaries."[19] The terrorist attacks of September 11 and the 2000 bombing of the Navy destroyer USS *Cole* in the Yemeni port of Aden are examples of international terrorism.[20] The FBI defines a "terrorist act" as an

attack against a single target (e.g., a building or physical structure, an aircraft, etc.), whereas the term "terrorist incident" is used to describe the overall concerted terrorist attack.[21] A terrorist incident may consist of multiple terrorist acts.

The FBI definitions have since been augmented and codified in the U.S. Code. Now, the term "international terrorism" means activities that:

(A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;
(B) appear to be intended–
  (i) to intimidate or coerce a civilian population;
  (ii) to influence the policy of a government by intimidation or coercion; or
  (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
(C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum;

The term "domestic terrorism" means activities that:

(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;
(B) appear to be intended–
  (i) to intimidate or coerce a civilian population;
  (ii) to influence the policy of a government by intimidation or coercion; or
  (iii) to affect the conduct of a government by mass destruction, assassination or kidnapping; and
(C) occur primarily within the territorial jurisdiction of the United States.[22]

These definitions are reflected in parts of the USA PATRIOT Act,[23] the Homeland Security Act,[24] and the Department of the Treasury definitions of terrorism.[25] Each piece of legislation defines terrorism, in short, as a violent or dangerous act intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion, or to affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage-taking. The evolution of this language reveals that a consensus among federal agencies has come about only in recent years.

II. STATE RESPONSES

Some states encountered terrorism prior to September 11 and many, if not all, were home to state emergency management offices. Few, however, had sought to define homeland security or terrorism until after September 11. In the aftermath of the attacks, very few states created their own definitions of the term homeland security, although many have enacted legislation that adopted the federal definition (18 states) or their own meaning for terrorism.

Only two states have adopted definitions of homeland security: Alabama and Washington. The Alabama Homeland Security Act of 2003 defines homeland security as "the development, coordination, and implementation of a state policy to secure the State of Alabama from terrorist threat or attack. The term includes efforts to detect, prepare for, prevent, protect against, share intelligence where applicable, respond to, and recover from terrorist attacks within the State of Alabama."[26] In its Statewide Homeland Security Strategic Plan, Washington cites the *National Strategy for Homeland Security*[27] and adds its own spin on homeland security:

> The preparation for, prevention of, deterrence of, preemption of, defense against, and response to threats and aggressions directed towards U.S. territory,

> sovereignty, domestic populations, and infrastructure; as well as crisis management, consequence management, and other domestic civil support.[28]

Alabama and Washington employ different terminology in their definitions, but there is consensus as to what homeland security involves: preparation for, prevention of, protection against, response to, and recovery from threats of terrorism and terrorist acts. While Alabama and Washington are the only states to have memorialized their notions of homeland security, all states have formally recognized the threat to the homeland, with each state creating a homeland security office or commission to address terrorism-related threats.[29]

As stated earlier, eighteen states have adopted the federal definition of terrorism.[30] The remaining states have adopted some notion of terrorism as acts intended to intimidate, coerce, influence, and affect the civilian population or the government, as described in 18 U.S.C. § 2331.[31] Some states, such as California, have gone no further in their definitions, favoring a broad definition. California defines terrorism as "any unlawful harm, attempted harm, or threat to do harm to, any state employee, state property, or the person or property of any person on the premises of any state-occupied building or other property leased or owned by the state."[32]

In contrast, Washington, D.C., takes a narrow approach, specifying those acts that "intimidate" or "coerce" civilians or the government. The broadness of the intimidation language is troubling. The nonviolent protests of the Civil Rights movement of the 1960s would fall within its ambit. Had this law been in effect during that period, our nation might conceivably still be bearing the burden of segregation and Jim Crow laws that limited the opportunities and contributions of many of our citizens. The District of Columbia also includes

> murder in the first degree; placing obstructions upon or displacement of railroads; murder of law enforcement officer or public safety employee; murder in the second degree; manslaughter; kidnapping and conspiracy to kidnap; assault with intent to kill only; mayhem or maliciously disfiguring; arson; malicious burning, destruction, or injury of another's property, if the property is valued at $500,000 or more; or an attempt or conspiracy to commit any of the [above] offenses.[33]

Illinois goes a step further in its definition of terrorism, including an act that "disables or destroys the usefulness or operation of any communications system . . . ," or one that "disables or destroys the usefulness or operation of a computer network. . . ."[34] Other acts of terrorism defined in the Illinois statute include those intended to damage ground, air, or water transportation; the production or distribution of electricity, gas, oil, or other fuel; the treatment of sewage or the treatment or distribution of water; or controlling the flow of any body of water, among others.[35] Nebraska, like California, has taken a broader approach to its definition:

> A person commits terroristic threats if he or she threatens to commit any crime of violence: (a) With the intent to terrorize another; (b) With the intent of causing the evacuation of a building, place of assembly, or facility of public transportation; or (c) In reckless disregard of the risk of causing such terror or evacuation.[36]

What each state holds in common is it recognition that terrorism, however defined, is a threat for which the civilian populations and state governments must prepare. As stated in Washington's Statewide Homeland Security Strategic Plan, "terrorist organizations remain committed to death and destruction within our borders. . . . Only by concerted action can we reduce our vulnerabilities and defend against further domestic attacks."[37]

III. CONCLUSION

At its essence, homeland security means protecting our way of life against those who threaten it, or wish to destroy it. While the United States is a nation that has always fought to defend the homeland and preserve our way of life against such threats, the threat of terrorism is redefining

the environment in which we must respond. By defining homeland security and terrorism, we are taking steps to identify the threat and defeat it, rather than allowing the terms to delineate themselves through further, perhaps ever more damaging, examples of killing and destruction of property.

ENDNOTES

1. Homeland Security Act, Public Law 107-296, H.R. 5005, Sec. 2, 2002.
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3. Jenkins, Brian Michael, "Perspectives on Terrorism: Where I draw the line," *Christian Science Monitor*, www.csmonitor.com, 2004.
4. *Jacobellis v. Ohio*, 378 U.S. 184 (1964).
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7. Garamone, Jim, "A Short History of Homeland Defense," American Forces Press Service, http://www.defenselink.mil/news/Oct2001/n10252001_200110252.html, 10/25/01.
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. *National Strategy for Homeland Security*, Office of Homeland Security, The White House, July 2002, *Introduction*, Page 2, http://www.whitehouse.gov/homeland/book/nat_strat_hls.pdf
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14. *National Strategy for Homeland Security*, Office of Homeland Security, The White House, July 2002, *Introduction*, Page 2, http://www.whitehouse.gov/homeland/book/nat_strat_hls.pdf
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23. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, H.R. 3162, Sec. 802.
24. Homeland Security Act of 2002, Public Law 107-296, H.R. 5005, Sec. 2.
25. 31 C.F.R. § 595-97 (2004), Executive Order 13224 - "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism" (Department of the Treasury).
26. Alabama Homeland Security Act of 2003, ALA. CODE § 31-9A-3 (2003).
27. *National Strategy for Homeland Security*, Office of Homeland Security, The White House, July 2002, *Introduction*, Page 2, http://www.whitehouse.gov/homeland/book/nat_strat_hls.pdf
28. "The Washington Statewide Homeland Security Strategic Plan," http://emd.wa.gov/3-map/a-p/hlssp/wa-st-hlssp-04.pdf, p. 71 (2004).
29. National Conference of State Legislatures, "State Offices of Homeland Security," http://www.ncsl.org/programs/legman/nlssa/sthomelandoffcs.htm, accessed 05/19/04.
30. 18 U.S.C. § 2331 (2004).
31. "Domestic terrorism" means activities that (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; (B) appear to be intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and (C) occur primarily within the territorial jurisdiction of the United States.
32. CAL. GOV'T CODE § 8549.2 (2004).
33. D.C. CODE ANN. § 22-3152 (2003).
34. 720 ILL. COMP. STAT. 5/29D-10 (2004).
35. *Id.*
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PART 2: DEFINING "HOMELAND SECURITY:" CONTENT AND CONTEXT GROUNDED IN THE CURRICULA

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The purpose of this chapter is to develop a definition of homeland security based on the content and context of a purposeful sample of graduate and undergraduate courses ranging from emergency management, preparedness and planning, to terrorism and disaster response, to homeland security and national security at selected four-year colleges and universities in the United States.[1] The reasons for this exploratory study stem from definitional questions raised by both practitioners and academics about a) the variety of course descriptions and treatments of homeland security; b) the quandary posed by this definitional imprecision; and c) possible implications of this ambiguity for the substantive curriculum in the respective disciplines.[2]

This chapter is not meant to be an exhaustive study that catalogs all courses on homeland security nor will it be an exhaustive synthesis of all syllabi in the field. Instead this chapter establishes a framework for guiding future research in the field by establishing a conceptual definition grounded by what is being taught in homeland security courses.

I. BASIS FOR THE ANALYSIS

To begin this type of grounded analysis, it is important to offer some a priori observations about the genre of courses that teach, treat, or evaluate homeland security:

1. There has been a widespread recognition of courses that treat homeland security as a major theme (many begun as a response to the terrorist events of September 11, 2001);
2. The content of these courses are only loosely coupled under the term homeland security; and
3. Many of these courses have either been newly added to the curriculum, or have long been offered as part of a specialized knowledge base but without any substantive contribution to defining homeland security.

In some respects, even the articulation of these a priori observations may encourage practitioners and academicians to move beyond a rather instrumental definition and toward development of a fuller conceptual definition of homeland security. These a priori observations lead to a general research question posited in this chapter: What is homeland security?

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