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Mexico border: evaluation of its role in the  
post September 11th era

Luoma, Benjamin C., Jr.

Monterey, California. Naval Postgraduate School

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**THESIS**

**THE U.S. MILITARY AND SECURITY ALONG THE U.S.  
MEXICO BORDER: EVALUATION OF ITS ROLE IN THE  
POST SEPTEMBER 11<sup>TH</sup> ERA**

by

Benjamin C. Luoma Jr.

December 2002

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EVALUATION OF ITS ROLE IN THE POST SEPTEMBER 11<sup>TH</sup> ERA**

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Submitted in partial fulfillment of the  
requirements for the degree of

**MASTER OF ARTS IN INTERNATIONAL SECURITY AND CIVIL-MILITARY  
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from the

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## **ABSTRACT**

This thesis examines the use of the U.S. Armed Forces in civil authority support missions along the U.S.-Mexico border from the creation of the boundary between the U.S. and Mexico in 1848, to the post-September 11<sup>th</sup> border security support operations. Many questions arise from using the military in this capacity, for example; how effective is the military's support to civil authorities (MSCA), can the military perform MSCA operation without the threat to human and rights of civilians, how do MSCA missions such as these impact the combat readiness of the military? This thesis found that military support to civil authorities was indeed effective, especially with in cases where non-federalizes National Guard personnel were employed. It also shows that the military has implemented control measures that enable troops to conduct law enforcement support missions while respecting the human and civil rights of civilians. Lastly , it found that the combat readiness the military was not necessarily diminished, but could actually be enhanced during MSCA operations.



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## **I. SECURITY ALONG THE U.S.-MEXICO BORDER: EVALUATING THE ROLE OF THE U.S. MILITARY**

Since the attacks on the World Trade Center and the Pentagon on September 11, 2001, Homeland Security became an important issue to the United States. A new sense of national vulnerability has forced the United States to reexamine its security posture. Immediately after the attacks, the military (both active duty and reserve forces) deployed to airports, nuclear power plants, vital dams and bridges and the national borders to guard against further terrorist attacks. However, previous to September 11<sup>th</sup>, the U.S. military was already being used extensively along the U.S.-Mexico border for a variety of counter-narcotic missions. Along with continuing the counter-drug operations, the military has also provided support to civil authorities tasked with keeping terrorists and weapons of mass destruction (WMD) from crossing over the border from Mexico.

Since the end of the U.S. war with Mexico in 1848 that established the present U.S.-Mexican boundaries, the border has represented a challenge for the United States to control. Many problems ranging from illegal immigration, to weapons and narcotic smuggling, to aggressive criminal and military incursions have occurred along the border. Throughout the 154 years of history since the creation of the international border, the U.S. military has been deployed to and across the border to address these issues. Deployment of the military to the border has produced both mixed results and mixed public reaction.

Perhaps the largest and most known use of the military on and across the Mexican border was General John "Blackjack" Pershing's punitive expedition against Francisco "Pancho" Villa in response to Villa's attack on Columbus, New Mexico, on March 9, 1916. Although Pershing's forces received valuable training for their entry into World



War One, the commitment of thousands of U.S. soldiers (federal and militia) failed to punish Pancho Villa and U.S. relations with Mexico were severely strained.<sup>1</sup>

On May 28, 1924, the U.S. Border Patrol was formed to protect the nation from illegal immigration. The Border Patrol is tasked with performing the demanding and complex task of preventing the smuggling and unlawful entry of undocumented aliens in the United States, apprehending immigration law violators and serving as the primary agency responsible for drug and contraband interdiction between ports of entry.<sup>2</sup> The Border Patrol is joined by other federal, state, and local law enforcement organizations in support of its border policing and drug interdiction operations.<sup>3</sup> The “most controversial partner, as viewed from both sides of the border, has clearly been the U.S. military.”<sup>4</sup> The support of drug enforcement efforts along the border by both active component military and the National Guard has sparked both official and media protests in the United States and Mexico.

Beginning in the early 1990s, the National Guard from the southwest border states (California, Arizona, New Mexico, and Texas) began to assign full-time, active-duty Guardsmen to counternarcotic law enforcement agency support duties along the Mexican border. In addition, active duty troops also provided assistance to law enforcement. The support offered by the military included listening post/observation post (LPOP) teams, radio and camera room operators, x-ray equipment operators and cargo/vehicle inspectors (supporting U.S. Customs Service at the POEs), fixed and rotary winged aircraft surveillance platforms, and field craft training (land navigation, map reading, and patrolling techniques).

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<sup>1</sup> (Author/Date not cited), President Wilson’s “War with Mexico”, <http://gi.grolier.com/presidents/aee/bios/28pwils.html>.

<sup>2</sup> Turbiville, Jr., Graham H. (1999), *US-Mexican Border Security: Civil-Military Cooperation*, Military Review (July-August 1999), Foreign Military Studies Office, Fort Leavenworth, Kansas, p. 1.

<sup>3</sup> Turbiville, Jr., (1999), p. 2.

<sup>4</sup> President Wilson’s, *War with Mexico*, found at: <http://gi.grolier.com/presidents/aee/bios/28pwils.html>-accessed.

Despite the popularity of the military with the law enforcement agencies that they support, other groups argue that the military should not be involved in civilian law enforcement and fear that the border with Mexico will become militarized.<sup>5</sup> These fears were realized in May of 1997 when a U.S. Marine Corps team (while conducting LP/OP operations along the border near Redford, Texas) shot and killed Esequiel Hernandez, an American citizen. An investigation of the shooting found that the Marine corporal in charge of the team had acted within the existing rules of engagement (ROE) and was not subject to military or civil prosecution.<sup>6</sup> The “Redford Incident” resulted in a temporary suspension of “armed missions” (the carrying and use of firearms by military personnel) and caused both civil and military leaders to re-think how the military could appropriately support law enforcement authorities on the U.S.-Mexico border.

Deploying the military for operations along the Mexican border raises many important questions. What role (type and scope of missions) is appropriate for the military’s support of law enforcement along the border? What missions are the military “uniquely qualified” to perform, in other words, what can soldiers do that civil authorities cannot? How effective is the military in the performance of non-traditional, civil-support missions? Can the military perform its mission without violating U.S. Posse Comitatus laws? Can soldiers be restrained from violating the human rights of U.S. citizens and foreign nationals? How does the border mission impact the military’s primary mission of training and preparation for war? In sum, is the military “the right tool” for the job?

The purpose of my thesis is to answer these questions and to provide a model for effective use of the U.S. military along the border with Mexico. Chapter II will briefly cover the history of using the military in support of civil authorities along the U.S.-Mexican border. It will also explore the range of roles and missions in which the military has been employed along the border, focusing on the military’s on-going counterdrug and

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<sup>5</sup> Dunn, Timothy, 1996, *The Militarization of the U.S.-Mexico Border, 1978-1992: Low-Intensity Conflict Doctrine Comes Home*, (Austin: CMAS Books, University of Texas, 1996).

<sup>6</sup> Turbiville Jr., Graham H., (1999), *U.S.-Mexican Border Security: Civil-Military Cooperation*, *Military Review*, July-August 1999, p. 2, Found at: <http://call.army.mil/fmso/fmsopubs/issues/border/bord>.

the post September 11<sup>th</sup> security missions in support of border law enforcement operations.

Chapter III will discuss the effectiveness of using the military to assist law enforcement officials in enforcing customs, immigration, and narcotic laws along the border. The performance measurements of effectiveness used by law enforcement and the military will be examined to evaluate the value of military support to civil authorities. In addition, the question of whether the military is uniquely qualified to perform these missions and their level of effectiveness compared to standard law enforcement assets will be addressed. The chapter finds that military support to civil authorities can be very effective under the proper conditions. First, civil and military leaders must plan and prepare in advance for emergency joint operations. Second, the effectiveness of the National Guard's support of law enforcement authorities is shaped by whether troops are mobilized in a federal or state status. Federalized National Guard troops can be severely hampered by posse comitatus laws – laws that do not apply to the Guard while operating under their Governor's control.

Chapter IV will examine the possible dangers to civil liberties posed by the military along the border. This chapter will examine the fears of the opponents of the military's support of border law enforcement operations and evaluate whether the legal framework that authorizes military's support to civil authorities (including Posse Comitatus restrictions) and special training measures have been successful in protecting private citizens rights from possible military overuse of authority. The chapter demonstrates that military support to civil authorities does not automatically equate to human and civil rights violations at the hands of the troops. For much of the history of the use of the armed forces in support of civilian law enforcement operations, human and civil rights infractions by the military have been rare. Furthermore, after tragic incidents like the shooting of civilians at Kent State University, Ohio, and Redford, Texas, corrective measures were enacted by the military to prevent future reoccurrences of such tragedies. This chapter will also show that annual civil disturbance training and the

community-based nature of the National Guard make it better prepared than the Active Component of the military to provide support to civil authorities with a greatly reduced chance of human or civil rights violations.

Chapter V will look into the effects of military support in border security missions on the readiness of military units. Is combat readiness degraded when military units focus their attention on law enforcement support missions or can readiness actually be improved through missions that support civil authorities? The chapter argues that support missions that actually involve the service member's military "warfighter" skills can improve individual and unit readiness. In particular, in the case of the National Guard's counternarcotic operations, the personnel who support law enforcement agencies on a full-time basis, while attending traditional Individual Duty Training (IDT -training conducted one weekend a month) and Annual Training (AT -two weeks of uninterrupted training) with their military units show greater levels of warfighter skills, physical fitness, and "deployability" than their non-counterdrug operation counterparts. In contrast, the federalization of National Guard personnel for civil authority support missions can have a negative impact on readiness by preventing the service member from participating in their unit's training events that helps sustain their readiness.

Lastly, I will argue that a negative public perception of a support operation can have an adverse impact on readiness. The military must enjoy public support for its training activities and sites; loss of support can spell loss of training opportunities that will weaken readiness. All requests should be carefully reviewed to avoid missions that offer possible bad public reaction.

Chapter V will conclude my thesis by reviewing the main issues and key findings of the thesis. It will also answer the central question of the appropriateness of using military members to help enforce laws along the U.S.-Mexican border. This chapter will include recommendations for civilian and military leaders who are faced with the

challenges of planning and executing military support to border law enforcement agencies.

## II. THE HISTORY OF U.S. MILITARY SUPPORT TO CIVIL AUTHORITY ON THE U.S.-MEXICO BORDER

The U.S.-Mexico border, as we know it today, was established over 150 years ago by two separate “feat of arms.” The success of the Texans in their war for independence created the boundary between the new nation of the “Republic of Texas” and Mexico in 1836. In 1845, less than a decade after the founding of the Republic of Texas, it was peacefully annexed into the United States as its 28<sup>th</sup> state. The annexation stirred the tension that already existed between the United States and Mexico and the two nations were soon at war. The United States prevailed in the U.S.-Mexican War (1846-47) and the resulting Treaty of Hidalgo in 1848 led to “more than half of the territory of Mexico becoming one third of the territory of the United States.”<sup>7</sup>

The use of military forces along the border did not end with its establishment in 1848. To the contrary, often when the United States has been faced with great problems along the border that seem to overwhelm civil authorities, the military has been called in to help civilian agencies correct the problem and restore order. This pattern of mobilizing the military to aid civilian law enforcement agencies along the border in times of crisis has repeated itself on numerous occasions throughout history. The tendency to rely on the military when civil authority resources are outmatched by cross-border criminals is understandable. The military possesses large amounts of sophisticated equipment designed to see and “rapidly close in” on, and if necessary, destroy an enemy.<sup>8</sup> Also, traditionally the American people have held the U.S. military in very high esteem, and trusts that the military possesses the right manpower, training and skills to get the nation’s toughest jobs done. Whether threatened by violent, cross-border insurgents, drug traffickers, illegal immigrants, or terrorists attempting to gain access into the United States, since 1848, the U.S. armed forces have played a major role in supporting civil authorities maintain control of the southwest border.

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<sup>7</sup> Turbiville Jr., Graham H., (1999), p. 30.

<sup>8</sup> Routers, Peter, (1988), *Can the Borders be Sealed?*, in Peter Router, Gordon Crawford, and Jonathon Cave, eds., *Sealing the Borders* (Santa Monica, California: The RAND Corporation, 1988).

The purpose of this chapter is to examine such of the use of the armed forces along the U.S.-Mexico border in support of civil authorities. The chapter will be broken down into four sections, each one dealing with a different historical period. The first section examines the early U.S. military response to Mexican insurgents along the new border between the United States and Mexico. The second section looks into the causes of Pancho Villa's raid on Columbus, New Mexico, and the United States military's response to the raid. The third section discusses the introduction of the military to the efforts of civilian law enforcement agencies' "war on drugs" along the U.S.-Mexico border. Finally, the last section describes how the U.S. armed forces were employed to support civilian authorities charged with heightened post-September 11<sup>th</sup> security operations at the ports of entry (POE) on the U.S. southwest border.

**A. EARLY MILITARY SUPPORT TO CIVIL AUTHORITIES: THE "CORTINA WAR" (1859-60)**

The establishment of the border with Mexico did not bring peace to the region. Challenging the "appropriation of land by the United States Anglos and the treatment of the Mexicans and new Mexican-Americans," Juan Nepomuceno Cortina formed an army and in the fall of 1859, began the "Cortina War." Cortina's forces were able to occupy the town of Brownsville, Texas, and for a short period of time, controlled parts of the Lower Rio Grande valley.<sup>9</sup>

In response to the violence, Texas governor Hardin Runnels sent the Texas Rangers, supported by a company of United States Army "regulars," to stop Cortina. According to Texas Ranger history, the forces combined for a campaign that lasted nearly sixty days.<sup>10</sup> Supported by Lieutenant Colonel Robert E. Lee's United States cavalry, the Texas Rangers defeated Cortina forces in three straight battles. With his men thoroughly beaten, Juan Cortina and his "army" retreated across the border and into Mexico, thus

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<sup>9</sup> Turbiville, (1999), p. 30.

<sup>10</sup> Found at: <http://www.alvyray.com/Family/Stories/TexasRanger.htm>.

ending the “Cortina War.”<sup>11</sup> But even after Cortina’s forces had fled to Mexico, sporadic cross-border attacks on Americans continued into the 1870s. Eventually the combined actions of Captain Lee McNelly’s Texas Rangers and the U.S. military put an end to Juan Cortina’s cross-border violence.<sup>12</sup>

## **B. PANCHO VILLA’S ATTACK ON COLUMBUS, NEW MEXICO, AND GENERAL PERSHING’S PUNITIVE EXPEDITION**

Angered over the U.S. support for the Mexican “Constitutionalist” government that he was revolting against, Francisco “Pancho” Villa began planning a retaliatory attack against the United States.<sup>13</sup> Early in the morning of March 9, 1916, Pancho Villa with over 600 revolutionary soldiers attacked the small border town of Columbus, New Mexico, and Camp Furlong where the U.S. 13<sup>th</sup> Cavalry Regiment was posted.<sup>14</sup> Although the raid took the town and the U.S. Army totally by surprise, quick reactions by the soldiers of the 13<sup>th</sup> Cavalry enabled them to make effective use of their machine guns against Villa’s forces. As dawn began to break, the attack ended with the “Villistas” withdrawing back across the Mexican border. Left in Villa’s wake were 10 civilians murdered, 8 U.S. soldiers killed, and close to 100 of his own men dead.

In response to the attack on Columbus, President Woodrow Wilson sent Brigadier General John “Blackjack” Pershing into Mexico to lead the “Punitive Expedition” against Villa and his forces. In addition to sending the Army into Mexico, Wilson also federalized 75,000 National Guardsmen into service to assist in border security.<sup>15</sup> During the pursuit, “Villa cleverly drew Pershing so deeply into the country that the Mexican government threatened war.”<sup>16</sup> After a clash between U.S. and Mexican forces at

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<sup>11</sup> Found at: <http://www.alvyray.com/Family/Stories/TexasRanger.htm>.

<sup>12</sup> Turbiville, (1999), p. 30.

<sup>13</sup> Telles-McGeagh, Maria, (1991), *In Search of Pancho Villa*, Borderlands Research Monograph Series No. 6, Border Research Institute New Mexico State University, Los Cruces, New Mexico 88003, pp. 40-43.

<sup>14</sup> Dean, Richard R., (1994), *The Columbus Story*, J & J Publishing, Deming, New Mexico, p. 1.

<sup>15</sup> Author not cited, *The Army on the Mexican Border*, Chapter 16, Transition and Change, 1902-1917, American Military History, found at: <http://www.army.mil/cmh-pg/books/AMH/AMH-16.htm>.

<sup>16</sup> Author/date not cited, *President Wilson’s War with Mexico* found at: <http://gi.grolier.com/presidents/ea/bios/28pwils.html>.



Carrizal, President Wilson withdrew the expedition in January 1917 and averted a war with Mexico. Despite the commitment of thousands of U.S. soldiers (federal and militia) and millions of dollars, the expedition failed. Pancho Villa was not punished and a war was nearly started with Mexico.<sup>17</sup>

### C. THE MILITARY ENTERS THE “WAR ON DRUGS”

Limited military support to law enforcement authorities engaged in counterdrug operations began during the Nixon Era.<sup>18</sup> This early involvement was limited to U.S. Coast Guard support to the Customs Service.<sup>19</sup> However in 1981, Congress through Public Law 97-86 amended the Posse Comitatus Act to permit the other branches of the military to assist law enforcement agencies in the war against drugs.<sup>20</sup>

Despite these efforts, America in the 1980s was facing what many considered to be an epidemic of drug abuse, particularly with cocaine. Illegal narcotics were identified as a threat to national security and stemming the growth in their use in the United States became a priority in Washington. To further amplify the military’s efforts in this arena, on April 8, 1986, President Reagan implemented National Security Directive Number 221 (NSD # 221) “Narcotics and National Security.” NSD #221 identified illegal drug use as a threat to the nation’s security and called for more active military support for the counter-narcotics operations of law enforcement agencies:

The Secretary of Defense and the Attorney General, in conjunction with the Secretary of State, should develop and implement any necessary modifications to applicable statutes, regulations, procedures, and guidelines to enable U.S. military forces to support counter-narcotics efforts more actively, consistent with the maintenance of force readiness and training.<sup>21</sup>

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<sup>17</sup> Author/date not cited, President Wilson’s *War with Mexico* found at: <http://gi.grolier.com/presidents/ea/bios/28pwils.html>.-

<sup>18</sup> Shaffer, David W. Lieutenant Colonel, U.S.A. (2000), *An Analysis of the Military’s Role in America’s Counterdrug Operations*, Strategy Research Project, U.S. Army War College, Carlisle Barracks, PA 17013-5050, p. 1.

<sup>19</sup> Shaffer (2000), p. 1.

<sup>20</sup> Shaffer (2000), p. 1.

<sup>21</sup> National Security Directive Number 221, April 8, 1986, p. 3.

Late in 1988, the U.S. military's active participation in America's fight against illegal narcotics was further expanded by the George W. Bush administration through Public Law 100-456 that created amendments to USC Title 10, Chapter 18.<sup>22</sup> The changes to public law now required the Department of Defense (DoD) "to serve as the lead agency for the detection and monitoring of aerial and maritime transit of illegal drugs into the United States."<sup>23</sup> It also required the DoD, "to the maximum extent practicable," to consider the needs of civil law enforcement agencies when planning and conducting military training or operations.<sup>24</sup> The Secretary of Defense was now authorized to not only make available military equipment and facilities for law enforcement authorities, but also the personnel to train law enforcement agents in the operation and maintenance of equipment. Finally, Public Law 100-456 authorized the DoD to provide the funds "sufficient to pay for all expenses of the National Guard of such State when engaged in drug interdiction assistance activities."<sup>25</sup>

The military quickly responded to the new MSCA mission. By November of 1988, just three months after beginning its new mission the military created Joint Task Force-6 (JTF-6) at Fort Bliss, Texas, near El Paso.<sup>26</sup> The mission of JTF-6 was to "serve as a planning and coordinating headquarters to provide support from the Defense Department to federal, state, and local law enforcement agencies."<sup>27</sup> Much of the support that JTF-6 has coordinated has been focused along the U.S.-Mexico border region.<sup>28</sup> Following shortly behind the Active duty military, the National Guard Bureau began establishing counter narcotic programs throughout the United States and the territories.

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<sup>22</sup> Pub. L. 100-456, div. A, title XI, Sec. 1104 (a), Sept. 29, 1988, 102 Stat. 2043, Found at: <http://www4.law.cornell.edu/uscode/10/372.notes.html>.

<sup>23</sup> H.R.4481 Public Law: 100-456 (09/29/88) SPONSOR: Rep. D. Arney (introduced 04/28/88) Found at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d100:HR0448:@@D|TOM:/bss/d100query.html>]

<sup>24</sup> H.R.4481 Public Law: 100-456 (09/29/88) SPONSOR: Rep. D. Arney (introduced 04/28/88) Found at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d100:HR0448:@@D|TOM:/bss/d100query.html>]

<sup>25</sup> H.R.4481 Public Law: 100-456 (09/29/88) SPONSOR: Rep. D. Arney (introduced 04/28/88) Found at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d100:HR0448:@@D|TOM:/bss/d100query.html>]

<sup>26</sup> Dunn, Timothy, (1996), *The Militarization of the U.S.-Mexico Border, 1978-1992: Low-Intensity Conflict Doctrine Comes Home*, (Austin: CMAS Books, University of Texas, 1996), p. 133.

<sup>27</sup> Dunn, Timothy, (1996), p. 134.

<sup>28</sup> Dunn, Timothy, (1996), p. 137.

The new National Guard organizations had a mission similar to that of JTF-6 but, instead of relying on “rotational troops” (units that would leave their home base for a counter drug operation, then return to base at the close of the mission), they provided most of the support through their own full-time, counterdrug ranks. The California, Texas, and Arizona programs, which have very heavy law enforcement commitments on the U.S. - Mexico border, are the largest in the nation.

The combined Active Components (U.S. Army and U.S. Marine Corps) and the National Guard have been used in a wide variety of support to civil authority missions along the United States border with Mexico. Almost solely focused on missions with a “counter-drug nexus,” the military participates in a diverse range of operations that include: training law enforcement agents in field craft, patrolling techniques, and sophisticated thermal imaging/night vision equipment operations, conducting both air and ground reconnaissance missions, providing listening post/observation post support to law enforcement agencies, and the monitoring of radio/camera rooms.

Following the increased counterdrug responsibilities was increased funding to support the counterdrug MSCA missions. For example, in 1990, the DoD received \$450 million for drug-interdiction and counterdrug activities.<sup>29</sup> This represented a 50% increase in DoD counterdrug funding over the previous fiscal year.<sup>30</sup> The National Guard also benefited from the increased budget with leaps in funding from \$40 million in 1989, to \$110 million in 1990 (\$70 million for counterdrug operations and 40 million for support equipment), and an estimated \$163 million in 1991. Of the \$70 million budgeted in 1990 for counterdrug operations nationally, Arizona, California, New Mexico, and Texas combined received \$21.8 million.<sup>31</sup> Today the annual counterdrug budgets for the four southwestern border-states has risen to \$50 million out of the total \$182 million for

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<sup>29</sup> Dunn, (1996), p. 119 (From the “National Defense Authorization Act for fiscal years 1990 and 1991”: sec 1208).

<sup>30</sup> Dunn, (1996), p. 119.

<sup>31</sup> Dunn, (1996), p. 124.

the entire National Guard.<sup>32</sup> This represents a 44% increase in counternarcotic operations budget for the southwestern border -states in 12 years.

#### **D. THE POST-SEPTEMBER 11<sup>TH</sup> SUPPORT MISSIONS**

During the weeks following the attacks on September 11th, the Department of Defense began to receive requests from law enforcement agencies to provide troops to support the new, heightened security measures to guard against further terrorist attacks. The security of U.S. borders became a special concern after September 11<sup>th</sup> and, according to Homeland Security Director Tom Ridge, the borders with Canada and Mexico are vulnerable to terrorists.<sup>33</sup> The federal law enforcement agencies responsible for the control of the U.S. borders -- United States Customs Service (USCS), United States Immigration and Naturalization Service (INS), and the United States Border Patrol (USBP) -- submitted requests for military support to help with the new heightened security measures being implemented at the nation's borders.<sup>34</sup> To emphasize the criticality of the need to bolster security at the borders to prevent terrorist entry, Representative Jim Ramstad (R. -Minn.) stated that, "We must use all necessary resources and that unavoidably means using our military."<sup>35</sup>

The concerns over border security stemmed from INS estimates of that between 1.2 and 2.4 million illegal aliens successfully gain entry to the United States each year. Since these illegal aliens have not gone through pre-visa background checks, nor have they been identified or interviewed, it is impossible to determine how many terrorists are entering the country.<sup>36</sup> With the three major border law enforcement agencies focusing their resources on preventing terrorists from crossing the border, the military would

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<sup>32</sup> National Guard Bureau, Counter/Drug State Plans Budget for FY03, SFC Scott Martin, Southwest border coordinator, NGB/CD.

<sup>33</sup> Rivera, Ray (2002), Beefed-Up Border Security Delayed It'll Be A Month As Feds Take Control, The Seattle Times, February 13, 2002.

<sup>34</sup> No Author Cited, *U.S. Troops to Secure Mexican Border*, The Associated Press, February 24, 2001.

<sup>35</sup> D'agostino, Joseph A. (2002), *Put U.S. Troops on U.S. Borders*, Human Events, 24 June 2002, Vol. 58, Issue 24, p. 1.

<sup>36</sup> D'agostino, Joseph A., (2002).

provide the support needed to free-up more law enforcement agents to help secure the border.<sup>37</sup>

Early in November 2001, the military began to send troops to the ports of entry (POE) on U.S. international borders. Although the first troops to arrive to the Mexican border were National Guard personnel under the command of their state's governor (U.S. Code Title 32), they were later called to federal active duty (U.S. Code Title 10) and served under an active component Army command structure. For more than six months, approximately 378 military members provided support to civil authorities along the southwest border.<sup>38</sup> The troops conducted support missions, largely involving the inspection of vehicles and cargo containers, and other unarmed security details around the POEs. By the spring of 2002, additional law enforcement officers had been brought to the U.S.-Mexico border and began to assume the missions previously accomplished by the military. After over a half of a year of post September 11<sup>th</sup> support service to U.S. border authorities, the mission ended and the National Guard troops were released and returned to their homes and to state control.

Despite this recall of personnel, the security of the nation's borders continues to be threatened by drug traffickers and terrorists and the military remains an important part of national plans to defend the border. If history is any indication, it is likely that additional military personnel will again be called to support law enforcement authorities on the U.S.-Mexico border in times of crisis in the near future. For over 150 years, the military has provided support to aid civilian law enforcement agencies along the border in times of crisis. Armed with technologically advanced equipment, and possessing trained, disciplined personnel, the military can offer resources that are often unavailable to law enforcement authorities. History has shown that the military is capable of

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<sup>37</sup> Ellington, Ken (2002), *Guard Troops May Be Assigned to Mexican Border*, Los Angeles Times, California Metro, Part 2, p. 1, February 23, 2002.

<sup>38</sup> Rotstein, Arthur H. (2002), *National Guard Deployment Helping Customs on Mexican Border Ends*, The Associated Press State & Local Wire, May 16, 2002, BC Cycle.

providing support to civil authorities during emergencies on the southwest border, but how effective is this support? This is the subject of the next chapter.

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### **III. THE EFFECTIVENESS OF MILITARY SUPPORT TO CIVIL AUTHORITIES ALONG THE U.S.-MEXICO BORDER**

Since the late 1980s, the military has been providing personnel and equipment to help law enforcement agencies interdict the flow of illegal drugs entering the U.S. through the Mexican border. Every year, hundreds of millions of dollars are provided by the Department of Defense to Joint Task Force-6 (the main coordinating agency for active-duty military operations) and to the National Guard Counterdrug programs in the Southwest border-states (Texas, New Mexico, Arizona, and California) to fund their counternarcotic law enforcement support missions. Following the terrorist attacks on September 11<sup>th</sup>, 2001, additional military missions were also funded to provide help to the civil authorities responsible for preventing terrorists and weapons of mass destruction from entering the U.S. through the ports of entry.

Those who question the effectiveness of military support to civil authorities along the U.S.-Mexico border argue that the military is an overly expensive and ineffective asset and that the military's funding for these operations should go directly to the law enforcement agencies. The critics point to the example of the overall dismal effects of U.S. counternarcotic efforts, and that since the military became involved in the 1980s, the figures still remain very disappointing.<sup>39</sup>

This chapter reevaluates the effectiveness of military support to civilian authorities in border control missions. The first section describes the wide range of resources that the military alone is capable of providing to law enforcement agencies and argues that without military participation, the effectiveness of border control missions would suffer. The second section refutes the claim made by critics of a military role that the military consumes resources that would otherwise be devoted to civilian agencies for border control, thus undermining increased civilian effectiveness. Finally, the third

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<sup>39</sup> Schnaubelt, Christopher M. (1994), *Can the Military's Effectiveness in the Drug War be Measured?*, The Cato Journal, Volume 14, Number 2, Fall 1994, p. 1.



section shows that military support to civilian authorities on a routine basis is effective in providing the framework necessary for a rapid and effective mobilization of forces during times of crisis.

#### **A. MILITARY CONTRIBUTIONS TO BORDER CONTROL MISSIONS**

Faced with an epidemic growth of cocaine abuse in the U.S., President Reagan implemented National Security Directive Number 221 - "Narcotics and National Security" which identified illegal narcotics as a threat to the nation's security and called for military support to civilian law enforcement agency's counter-narcotics operations. Believing that the nation's law enforcement resources were being overwhelmed by the powerful drug cartels, the leadership in Washington felt that the military possessed the advanced technology, equipment, and trained, disciplined professionals that could help drug enforcement authorities win the "war on drugs." The entry of the U.S. Armed Forces into the war on drugs ushered in a new era of military support to civil authorities. America's law enforcement agencies soon began to enjoy the benefits of specialized, highly advanced military equipment, previously unavailable to them, in their efforts to fight illegal narcotic sale, transportation, and use.

Following the September 11<sup>th</sup> terrorist attacks, many argued for even an increased role for the military in support of civil authorities responsible for U.S. border security. Proponents of these measures, like U.S. Representative Tom Tancredo, 6<sup>th</sup> District Colorado, believe that increasing the use of the U.S. armed forces to help federal law enforcement agencies secure the international borders is essential for national security. When asked whether the military should be used along the U.S.-Mexico border to support civil authorities, he responded by saying, "Absolutely" and that the nation was being "invaded" by narcotic traffickers and terrorists.<sup>40</sup>

Echoing this position U.S. Representative J.D. Hayworth, 6<sup>th</sup> District, Arizona stated that September 11<sup>th</sup> changed his opinion from being against the military assuming

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<sup>40</sup> Congressman Tom Tancredo, Telephone Interview with Author, Monterey, California, August 27, 2002.

MSCA missions along the Mexican border to now believing that it is the “Guard’s role” (referring to the National Guard) and “a federal responsibility” to support law enforcement agencies during security operations on the U.S.-Mexico border.<sup>41</sup> Referring to current border security measures as “dangerously inadequate,” Congressman Hayworth supports efforts to increase the use of the military to help secure the nation’s border.

Advocates of using the military to support civil authority border control efforts highlight the unique skills that military personnel possess and the advanced technology and equipment that the military has to offer these missions. For identical reasons for the military’s support of law enforcement’s counter narcotic operations, many leaders at the federal, state, and local level are convinced that the military offers the people and tools to greatly strengthen the civil authority’s efforts to secure the nation’s borders. Additionally, they argue that every soldier applied in a support role to civil authorities can “free up” a law enforcement officer from administrative or auxiliary tasks and engage them into a direct “crime-fighting” role. But by providing personnel to support law enforcement agencies, the military is offering much more than just an administrative person; it is providing a trained, disciplined specialist that possesses technical and analytical skills and abilities that are valuable assets to civil authorities. Many of these assets are difficult and expensive to find outside of military organizations. Some of the military specialties that civil law enforcement agencies have come to rely on include:<sup>42</sup>

#### **1. Intelligence Analysts**

Military intelligence analysts support agencies of different sizes. Many smaller agencies operate with very limited budgets, and in some cases have come to rely on a single military analyst, provided at no cost to the agency. Many military analysts can comprise of 50% of a small agency’s intelligence staff.<sup>43</sup> Military intelligence analysts bring analytical abilities, learned through military training and experience that has greatly

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<sup>41</sup> Congressman J. D. Hayworth, Telephone Interview with Author, Monterey, California, September 3, 2002.

<sup>42</sup> Chapter 2-Authorized Missions, National Guard Regulation 500-2/Air National Guard Instruction 10-801, 31 March 2000, pp. 8-10.

<sup>43</sup> The Cochise County Sheriff’s Office (Arizona) has a two-person intelligence team (one civilian and one military person) provided by the Arizona National Guard Counter Narcotic Task Force.

enhanced the intelligence gathering and predictive analysis capabilities of law enforcement agencies.

## **2. Aviation Support**

The military possesses specialized aircraft and people who can fly and maintain them. Without aviation support, these assets would be available only to police departments with large enough budgets to afford sophisticated aircraft of their own. Many small to medium sized agencies regularly take advantage of the military aviation offered to them during critical operations. Without the military aviation support, it would be nearly impossible for the smaller organizations to incorporate any flying assets into their operations.

## **3. Ground Sensor Placement/Maintenance**

Ground sensors are electronic devices that detect vibrations and ground disturbances that indicate vehicular or foot traffic in an area suspected to be a smuggling route and send a radio signal to law enforcement personnel who can respond. The military provides personnel who are trained in proper emplacement techniques and how to repair them.

## **4. Engineering Support**

Military engineering assets have built/improved border walls and roads for the civil authorities that operate along the U.S.-Mexican border. The military engineer teams arrive with equipment, trained personnel, and materials that would otherwise have been nearly financially impossible for the law enforcement agencies to provide themselves. The engineering projects that are accomplished by the military provide a safer work environment for law enforcement officers by restricting the flow of dangerous drug smugglers and improving hazardous desert trails.

## **5. Reconnaissance/Observation Support**

Military personnel support law enforcement operations by providing additional “eyes and ears” in critical locations on the ground and in the air. Listening

Post/Observation Post (LP/OP) teams use highly specialized night imaging equipment to aid police agencies stem the flow of illegal narcotics that are attempting to cross the U.S. border from Mexico at night. In addition to the team's ability to locate and identify possible drug smugglers, they can also warn law enforcement personnel of potential danger should the "bad guys" get too close to their positions.

#### **6. Cargo Inspection Support**

Military personnel who support the U.S. Customs Service at the Ports of Entry into the United States from Mexico provide cargo inspection support that often uses highly specialized and technologically advanced scanning equipment. The troops assigned this mission not only bring special technical skills to the assignment but also, as indicated earlier, often their availability to conduct cargo inspections often frees a U.S. Customs official to perform more critical law enforcement duties.

#### **B. DO MSCA MISSIONS "ROB" RESOURCES FROM CIVILIAN AGENCIES?**

Some opponents of using the military to support law enforcement organizations claim that the money spent on military salaries and equipment for these missions would be better utilized if they were given directly to the civilian agencies. They argue that the military essentially becomes a "middle man" that taps into funding that could flow directly between the Treasury Department and the supported law enforcement authorities. This position is mistaken, however, because it fails to consider the "shared" nature of the services offered by the military. In other words, much of the resources that the military supplies to law enforcement agencies are not required on a constant basis and the personnel and equipment are frequently scheduled to provide support to different agencies at different times.

The funding necessary to provide these military services cannot be effectively split between the various supported civilian agencies. This is because many of the resources are shared between many agencies and are not solely committed to one agency. For example, how can you divide the resources that provide one soldier that support

multiple agencies? Additionally, many smaller police agencies, particularly in rural areas, rely on the support provided to their departments by the military due to their diminutive budgets. If the funds that provide military support to multiple law enforcement agencies across the nation were split between these organizations, the smaller, usually rural agencies, would actually see far fewer resources than they currently enjoy from the armed forces. This measure would hurt these agencies that have come to rely on military support that they ordinarily could never afford. Finally, to divide the counternarcotic budget between the law enforcement agencies would actually mean fewer resources would be available to them individually due to the synergistic nature of the military's ability to share resources with multiple agencies.

### C. MEASURING MILITARY EFFECTIVENESS IN MSCA OPERATIONS

Shortly after the military became involved in "America's War on Drugs" by supporting domestic law enforcement agencies, the difficulty of providing reliable measurements of effectiveness became clear. Due to the "supporting" and not "leading" nature of military involvement in counternarcotic operations, it is nearly impossible to quantify the contributions that the armed forces offer the civil authorities.<sup>44</sup> Since the military is not the "lead agency" for the planning and execution of operations, it is possible for the military to perform superbly in a mission that was poorly planned and executed by the civilian law enforcement organization. Additionally, since the measure of effectiveness for civil authorities is often the amount of narcotics seized, or suspects arrested, how can the effectiveness of the armed forces be measured when it is forbidden by law from seizing property and arresting citizens? Is it possible to measure the effectiveness of the military's support to civil authorities?

Some have argued that military effectiveness in MSCA operations is best measured by "customer satisfaction."<sup>45</sup> This measurement is accomplished through

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<sup>44</sup> Burden, Raymond T., LTC (1991), *Measuring the Performance of the Department of Defense in Counternarcotic Operations*, Study Project, United State Army War College, p. 8.

<sup>45</sup> Schnaubelt, Christopher M. (1994), *Can the Military's Effectiveness in the Drug War be Measured?*, *The Cato Journal*, Volume 14, Number 2, Fall 1994, p. 13.

customer surveys, and perhaps less formally, through the volume of mission requests that are received from the law enforcement community. At the beginning of every fiscal year, law enforcement agencies submit their annual requests to the National Guard Counterdrug offices and JTF-6 for personnel to support continuing missions throughout the year. Additionally, “pop-up” mission requests are received during the year from federal, state and local police authorities for quick, shorter duration operations support. The number of mission requests received by the military often out-paces their counterdrug resources and have to be declined.<sup>46</sup>

As further evidence of the effectiveness of the military’s support to civil authorities, during times when the military is in jeopardy of losing counterdrug funding, it is often these law enforcement agencies that campaign the hardest to ensure that the money continues to flow to these programs. The pressure that the law enforcement organizations place on congressional leadership to maintain funding for military counternarcotics programs is an indicator of how valuable the military’s support to their operations have become. A close look at two case studies on Military Support to Civil Authorities-the L.A. Riots and the post-September 11<sup>th</sup> security missions -will provide ample evidence of the military’s effectiveness in these operations. Also the case studies will highlights obstacles to the effective deployment, like improper planning for military support by civil authorities and inappropriate federalization of the National Guard that must be overcome to improve military effectiveness.

#### **D. CASE STUDIES OF MSCA: EVIDENCE OF EFFECTIVENESS**

During two emergencies, one state and one federal, the military was called in to help civilian authorities restore order during intense rioting and civil unrest in Los Angeles, and to provide additional security following the terrorist attacks on the United States on September 11<sup>th</sup> 2001. In both cases, the military was credited for the successfully supporting law enforcement agencies during times of extreme crisis. The military was able to quickly respond with much needed organization, manpower, and

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<sup>46</sup> Based on the author’s experience as a counternarcotics operation officer for the Arizona National Guard.

equipment that greatly improved the civil authorities effectiveness. I will first look at the effectiveness of military support to the civilian agencies during the L.A. Riots in 1992, and parallel how the military effectiveness in this episode can be applied to MSCA mission on the U.S.-Mexico border, then I will examine how the armed forces aided federal authorities with emergency security operations after the attacks on September 11<sup>th</sup> 2001.

### **1. The Los Angeles Riots**

Within hours of the April 29<sup>th</sup>, 1992 acquittal of white police officers that had been charged with the beating of a black man riots broke out in Los Angeles. Widespread violence and arson quickly grew beyond civilian law enforcement organization's capacity to control them. By 9:00 PM that evening, at the request of L.A. Mayor Tom Bradley, the California Governor Pete Wilson called 2000 National Guard troops to state active duty to aid L.A. County and city police officials restore order.<sup>47</sup> By 8:00 PM on April 30<sup>th</sup>, (the second day of the rioting) the California National Guard had 1000 troops supporting the Los Angeles Police Department (LAPD) and the Los Angeles County Sheriff's Department (LASD), with an additional 1000 standing by in local armories waiting law enforcement requests for their support.<sup>48</sup> At the end of this day however, the LAPD and LASD requested an additional 2000 troops.<sup>49</sup>

Overcoming the confusion created by the poor emergency planning and conflicting messages from the civil leadership in Los Angeles,<sup>50</sup> the California National Guard was able to quickly respond to the Governor's call-up.<sup>51</sup> California National Guard personnel began appearing on the streets of Los Angeles at 2:35 PM on the second

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<sup>47</sup> Schnaubelt, Christopher M. (1997), *Lessons in Command and Control from the Los Angeles Riots*, Parameters, Summer 1997, p. 104.

<sup>48</sup> Schnaubelt, Christopher M. (1997), p. 104.

<sup>49</sup> Schnaubelt, Christopher M. (1997), p. 104.

<sup>50</sup> Delk, James D. (1995), *Fires and Furies: The LA Riots* (Palm Springs, Calif.: ETC Publications), p. 45.

<sup>51</sup> Harrison, William H. (1992), *Assessment of the Performance of the California National Guard During the Civil Disturbances in Los Angeles*, April & May 1992, Report to the Honorable Pete Wilson, Governor, State of California, 2 October 1992, p. 6. Cited from: Schnaubelt, Christopher M. (1997), *Lessons in Command and Control from the Los Angeles Riots*, Parameters, Summer 1997, p. 108.

day of the riot.<sup>52</sup> The deployment of the troops was greatly aided by the California National Guard counterdrug organization that had great experience in coordinating military support to civilian law enforcement missions.<sup>53</sup> The arrival of the National Guard had a significant impact in restoring order to Los Angeles.<sup>54</sup> Civil authorities came to view the military not only as a free security force, but also "...as the only power on the scene that everyone trusted."<sup>55</sup>

An example of the effectiveness of the National Guard's support to law enforcement agencies was demonstrated on the third day of the riot. On this day in Long Beach, rioters had set up barricades to keep the police and firefighters out of their neighborhood and began looting at will, ignoring police demands to disperse. When the HUMVEE's of the 270<sup>th</sup> Military Police Company arrived the disturbances stopped instantly, and the streets cleared.<sup>56</sup> Further evidence of the National Guard's effectiveness was found in the survey conducted a few months after the riots. One of the 53 questions asked of Los Angeles residents was: "Which do you think were the two

most effective public safety agencies in handling the LA riots?" A majority of the people polled (66%) indicated that they felt that the National Guard had been the most effective agency in handling the L.A. riots.<sup>57</sup>

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52 Schnaubelt, Christopher M. (1997), p. 104.

53 Schnaubelt, Christopher M. (1997), p. 112.

54 Webster, William H. and Williams, Hubert, *The City in Crisis*-A report by the Special Advisor to the Board of Police Commissioners on the Civil Disorders in Los Angeles, October 21, 1992, p. 151.

55 Quote, FM JTF/LA to CDR FORSCOM, 051300Z May 92, sub: 7<sup>th</sup> ID, SITREP #6, p. 2. In JFT SitRep Folder, LA Riot File, CMH. Referenced in Scheips, Paul J., *The Role of Federal Military Forces in Civil Disturbances, 1945-1971*, U.S. Army Center of Military History, p. 94.

56 Delk, James D. (1995), *Fires and Furies: The LA Riots* (Palm Springs, Calif.: ETC Publications), p. 109.

57 Webster, William H. and Williams, Hubert, *The City in Crisis*-APPENDICES -A report by the Special Advisor to the Board of Police Commissioners on the Civil Disorders in Los Angeles, October 21, 1992, p. 16.



On May 1<sup>st</sup>, federal forces began to arrive in L.A. and created Joint Task Force Los Angeles (JTFLA), set up a headquarters, and federalized the California National Guard troops that were on the scene in L.A.<sup>58</sup> By this time however, the efforts of “more than 4000 CANG troops, 5000 LAPD officers, and about 4000 additional police officers from around the state” had essentially ended the riots.<sup>59</sup>

The ability for the military (especially the California National Guard in this case) to mobilize so quickly, and to provide trained, well disciplined men and women ready to support civil authorities, even under some of the most dangerous conditions, demonstrates the effectiveness that the military can also offer law enforcement agencies along the U.S.-Mexico border during times of national crisis. The following case looks into such a crisis.

## **2. The Border Security Missions Post September 11<sup>th</sup> 2001**

Following the terrorist attacks on September 11<sup>th</sup> 2001, the National Guard from every state and territory were asked to deploy to airports and Ports of Entry to provide additional support for the civil authorities that were struggling with new security requirements. The National Guard quickly responded and fulfilled the security role until federal authorities could bolster their own ranks and relieve the Guard. As the military had been “important psychologically to the restoration of order”<sup>60</sup> during the L.A. Riots, many believed that the presence of highly visible service members in airport terminals and ports of entry would restore the confidence of American travelers still shaken by the September 11<sup>th</sup> attacks, and also aid U.S. Customs officials at the Ports of Entry.

The post-September 11<sup>th</sup> security missions demonstrated that the National Guard possessed an ability to respond almost instantly to civil emergency situations. On Friday, November 2<sup>nd</sup> 1991, Jane Hull, Governor of Arizona, announced that she planned on

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<sup>58</sup> Schnaubelt, Christopher M. (1997), p. 112.

<sup>59</sup> Schnaubelt, Christopher M. (1997), p. 112.

<sup>60</sup> Cannon, Lou (1997), *Official Negligence-How Rodney King and the Riots Changed Los Angeles and the LAPD*, Random House, p. 345.

sending the National Guard to Arizona's six Ports of Entry to help U.S. Customs officials who were overwhelmed by the volume of traffic coming from Mexico with the new security measures in place. According to the governor, these Guard personnel were to be "on station" by November 6<sup>th</sup>, only four days after her public announcement. This represented a challenge in two ways: there was very little time for the National Guard to respond to the governor's order, and most of the planning and execution had to occur over a weekend.<sup>61</sup> Despite these challenges, the Arizona National Guard had the required number of troops at the Ports of Entry on the day requested by the governor.<sup>62</sup> The deployment of the troops was greatly aided by the Arizona National Guard counterdrug organization that had already established a professional working relationship with many of the civilian law enforcement agencies that the Guard would be supporting.<sup>63</sup>

## **E. CASE STUDIES OF MSCA: OBSTACLES TO EFFECTIVENESS**

Despite the military's success in restoring order during the L.A. riots and providing additional border and airport security after the September 11<sup>th</sup> terrorist attacks on the United States, there were a number of obstacles to military effectiveness that inhibited the speed of the deployment and limited the support that was available to law enforcement officials. In the case of the L.A. riots, one of the obstacles was the Lack of prior planning between civil and military leaders that hampered the speed and efficiency of the California National Guard's reaction to the governor's call for mobilization. But in both the L.A. riots and the post September 11<sup>th</sup> security cases, the hasty federalization of the National Guard unnecessarily introduced Posse Comitatus restrictions that limited the operations that were less restricted while under the state's control.

The civil leaders in Los Angeles never predicted the sudden, explosive public reaction to the verdict from the Rodney King beating trial or the enormity of the violence and destruction of the L.A. riots. All emergency plans that involved the National Guard

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<sup>61</sup> This section is based on the author's experience as Operations Officer responsible for executing this mission.

<sup>62</sup> Rotstein, Arthur H. (2001), *National Guard Arrives at Border to Help Customs Speed Up Traffic*, The Associated Press State & Local Wire, November 6, 2001.

<sup>63</sup> Schnaubelt, Christopher M. (1997), p. 112.

were of natural emergency nature, like earthquakes, city authorities believed that law enforcement officials could handle any civil disturbances without help from the military.<sup>64</sup> In fact shortly after the riots had begun, the California Office of Emergency Services (OES), the agency responsible for coordinating statewide emergency responses, told the National Guard that “on-the-street” support would not be required from the Guard.<sup>65</sup> At this point, the National Guard began to loan out thousands of protective masks, Kevlar helmets, and flak vests to the LAPD and local fire departments.<sup>66</sup> When the governor activated the National Guard it was forced to pull back the equipment that it had earlier loaned out. This delay cost the Guard precious mobilization time.

Despite the superb efforts of the California National Guard in its mobilization of so many troops, so quickly, some civil authorities complained that the Guard was moving too slowly and began to demand federal troops.<sup>67</sup> This was an unfortunate byproduct of the failure to incorporate the National Guard into L.A.’s emergency plans and the lack of a clear understanding by some civilian leaders of National Guard mobilization procedures.<sup>68</sup> Again, Mayor Tom Bradley asked Governor Pete Wilson to send in the military, only this time he requested federal troops.<sup>69</sup> It is important to note that the Mayor’s request for federal troops did not come “at the prodding by local law enforcement officials, but through the influence of former Secretary of State Warren Christopher, who was a well-connected private citizen at the time.”<sup>70</sup> Apparently surrendering “to politics and the images on national TV screens”, Governor Pete Wilson, agreed to ask the President for federal help.<sup>71</sup> Yet even as the governor’s office phoned

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<sup>64</sup> Schnaubelt, Christopher M. (1997), p. 106.

<sup>65</sup> Schnaubelt, Christopher M. (1997), p. 106.

<sup>66</sup> Schnaubelt, Christopher M. (1997), p. 106.

<sup>67</sup> Schnaubelt, Christopher M. (1997), p. 112.

<sup>68</sup> Schnaubelt, Christopher M. (1997), p. 108.

<sup>69</sup> Schnaubelt, Christopher M. (1997), p. 112.

<sup>70</sup> Schnaubelt, Christopher M. (1997), p. 112.

<sup>71</sup> Schnaubelt, Christopher M. (1997), p. 112.

Washington for additional troops, approximately 1000 California National Guard troops were waiting in armories for civilian requests for support.<sup>72</sup>

When the active Army and Marine units and leadership arrived in Los Angeles, they immediately federalized the National Guard troops on the ground there and began the creation of new command and control relationships between themselves and the civilian authorities. The federalization of the National Guard during the L.A. riots had an unexpectedly negative impact on the amount of support provided to the civil authorities once the active military took control. Before federalization, nearly 100% of all law enforcement mission requests sent to the California National Guard were approved and executed. After federalization, only approximately 20% of the mission requests were approved.<sup>73</sup> Changes in the procedures for mission request review and approval and the impact of Posse Comitatus restrictions dramatically reduced the missions that the military, now under federal control, was capable of supporting.

Although the military, both California National Guard and U.S. Army and Marine Corps, were credited with helping civilian law enforcement agencies restore order and end the rioting in Los Angeles, poor or absent planning and the hasty federalization of the National Guard troops limited the effectiveness of the military's support to civil authorities.

Shortly following the deployment of the National Guard to the U.S. Border in response to post September 11<sup>th</sup> security demands, debates began in Washington over the status of the state troops at the border. Many argued that since the border is a federal responsibility, the National Guard should be under federal (USC Title 10) authority, and not the authority of the governors of their states. Despite the protests of many of the governors, the border security mission became federalized and the National Guard personnel now reported to a U.S. Army command set-up to assume the mission.

<sup>72</sup> Schnaubelt, Christopher M. (1997), p. 112.

<sup>73</sup> Schnaubelt, Christopher M. (1997), p. 113.

The belief that the Guard personnel must become “federalized” to support federal law enforcement agents along the border was mis taken, however. Since the early 1990’s, National Guard personnel had been performing counterdrug duties in support of U.S. Customs and Border Patrol on the U.S. border under USC Title 32 authority. In this capacity, they remained under the control of the governors of their states while still supporting federal law enforcement agencies. Therefore there was no legal reason to federalize the Guard personnel that were performing the security duties. Additionally, once federalized, the National Guard troops were sent to a “mobilization station” and when through six-weeks of in processing. The time spend in the federal mobilization process was extremely long and expensive when measured against what the states were able to accomplish in much less time. For example, when the Arizona National Guard personnel became federalized, they were sent to Fort Bliss, Texas for in processing that took several weeks. Conversely, when they were originally activated on state orders, the process took less than two days, and that was accomplished in their own communities.<sup>74</sup> Clearly, federalization of the National Guard in this case was inefficient and unnecessary.

## **F. CONCLUSION**

This chapter highlighted examples of the effectiveness of the military’s support to civil authorities. Due to the military’s unique mission of defending the nation, it possesses exceptionally well trained and disciplines personnel and highly advanced technology and equipment. All this coupled with the military’s ability to deploy these resources very quickly enables the armed forces to provide highly effective support to civil authorities in day-to-day operations, like counterdrug missions, and also respond to

<sup>74</sup> Based on the author’s experience as Operations Officer for the Arizona National Guard Joint Counter Narcotic Task Force (JCNTF) responsible for executing these missions.

requests for emergency aid, like in the cases of civil disturbances and other national crises.

A great deal of the assets that the military offers to law enforcement agencies is unavailable anywhere else. By sharing these resources with agencies of all sizes, the military provides services that otherwise would be impossible for small, rural police departments to access due to their small budgets. For all agencies of any size, the availability of trained military personnel enables them to shift law enforcement officers from auxiliary/administrative duties to “crime fighting” activities.

These lessons learned from the deployments to the L.A. riots and the post September 11<sup>th</sup> border security operations have application to improve the military’s effectiveness in future MSCA missions. For example, to increase the effectiveness and speed up the deployment of the military’s support to law enforcement agencies, detailed discussions and planning must be conducted to ensure the proper coordination is made between civil leaders and the National Guard in the case of an emergency. Civil-Military contingency plans must include realistic timetables for National Guard responses. This measure will reduce the likelihood of misunderstandings of the procedures for a National Guard emergency call up.

Another improvement to effectiveness can be found by avoiding the hasty federalization of the National Guard. Before National Guard troops are federalized, a clear understanding of the limitations that Posse Comitatus places on the amount and types of support missions that federal forces can offer law enforcement agencies must be clearly understood. Because of the nature of military support to civil authorities in crisis situations like the Los Angeles riots, federalization may actually reduce the effectiveness of the military’s support efforts and should be avoided. Also, by keeping Guard troops under local control, mobilization processes can be conducted much quicker and less expensively than transporting personnel to a federal mobilization site (two states

away as in the federalization of Arizona Guard personnel during the post September 11<sup>th</sup> border security mission).

#### **IV. THE IMPACT ON HUMAN AND CIVIL RIGHTS**

To many people, using the armed forces to support law enforcement agencies along the southwest border region is a poor domestic policy and the beginning of a very dangerous trend toward the “militarization” of the U.S.-Mexico border. The opponents of placing the military on the U.S.-Mexico border claim that the “militarization” of the border will result in human and civil rights violations at the hands of the military. They argue that border control missions are more appropriate for trained civilian law enforcement agents who are oriented toward arrests and civil rights, then the military, which is geared toward destroying enemies. The accidental killing of an eighteen-year-old American citizen near the border town of Redford, Texas by a team of U.S. Marines conducting a counter-narcotic patrol for the U.S. Border Patrol in 1997, confirmed the fears of the opponents of militarization of the Mexican border.

The purpose of this chapter is to examine the nature of these concerns and how civil and military leaders can best address them. It does so by answering a series of questions: Are soldiers prone to violating the human and civil rights of U.S. citizens and foreign nationals while conducting civil authority support missions? To what extent do the longstanding Posse Comitatus laws help guard against the violation of human and civil rights by the military? Can specialized training for military service members bridge the gap between the “vaporize” mentality and the “Mirandize” mentality?

This chapter evaluates the ability of the military to support civil authorities without violating human or civil rights. The first section looks at examples of human and civil rights violations by the military while supporting law enforcement agencies. The second section examines the legal framework that not only authorizes military support to civil authorities, but also the restrictions placed on the military that prohibit human and civil rights violations. The third section discusses the additional measures that the military has taken to prevent such violations. Finally, the last section highlights actual



cases where the military's support to civilian authorities have many times saved lives and protected the human and civil rights of illegal immigrants and narcotic smugglers.

**A. CONCERNS OVER MILITARY SUPPORT TO CIVIL AUTHORITY:  
THE REDFORD INCIDENT**

Since the Department of Defense began providing military personnel to support domestic law enforcement counternarcotic operations, many critics expressed concern over the appropriateness of applying the military in an environment that required the restraint of physical force and application of legal rules and procedures. Critics argue that as law enforcement officers are trained in a "Mirandize" culture, the military comes from a "vaporize" culture that makes it unsuitable for this mission. According to opponents of using the armed forces for law enforcement support operations, military personnel lack the training and experience to be effective in this environment without violating the human or civil rights of U.S. or foreign citizens.

An incident involving a team of Marines and the death a U.S. citizen outside of the rural border town of Redford, Texas, confirmed the fears of many who argued that military participation in civilian law enforcement missions would result in violations of human and civil rights. The "Redford Incident" dramatically demonstrated that the human and civil right of civilians could be in jeopardy when the armed forces are used in domestic law enforcement operations. What happened at Redford, Texas and does the incident prove the military's unsuitability for civil authority support missions?

In May of 1997, a four-member U.S. Marine Corps team was supporting (through Joint Task Force-6) a U.S. Border Patrol counter narcotic operation along the border near Redford, Texas. The team was conducting a listening post/observation post mission that involves occupying a concealed, static position (although some patrolling may be involved) that offers the team the ability to see and hear possible drug smugglers crossing the border from Mexico. By law, military personnel involved in domestic law enforcement are not allowed to search, seize, arrest or confront a suspect. Military

involvement is strictly limited to activities such as surveillance and intelligence (10 USCA Sec. 375). Soldiers are allowed to return fire in self-defense.

During the mission, the Marines spotted a local 18 year-old goat herder named Esequiel Hernandez. Believing that Hernandez was a drug smuggler, or a smuggler's scout, the team kept him under observation. According to team leader Corporal Manuel Banuelos, Hernandez fired two shots at them from a .22 caliber rifle. Under the rules of engagement that were a part of the team's pre-mission briefing, they were authorized to use deadly force to protect themselves or the life of another.

After receiving fire from Hernandez, Corporal Banuelos made radio contact with his headquarters (70 miles away in Marfa, Texas) to report the incident and receive guidance. Initially, he was instructed to shoot Hernandez if he raised his rifle again to fire, but a later transmission told him to "follow the R.O.E." (Rules of Engagement).<sup>75</sup> However, inconsistent with the rules of engagement with regards to following suspects only in defense or recovery of personnel, the Marine "fanned out" and paralleled Hernandez for 20 minutes.<sup>76</sup> At this point, according to the Marines, Hernandez raised his rifle to shoot again at the team and was shot by Corporal Banuelos.

Despite having a trained medic on the team, the Marines provided no first aid to Hernandez (the autopsy found that he had bled to death). Approximately 10 minutes after Hernandez was shot, the U.S. Border Patrol arrived and took control of the scene. Due to miscommunications between the Marines and the Border Patrol (each thought that the other had requested medical-evacuation (Med-Evac)), 18 minutes elapsed after Hernandez was shot before medical assistance was requested. By the time Med-Evac arrived, Esequiel Hernandez was dead.

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<sup>75</sup> Dunn, Timothy, (2001) *Border Militarization Via Drug and Immigration Enforcement: Human Rights Implications*, Social Justice Volume 28, No. 2, 2001, p. 15.

<sup>76</sup> Coyne, John T. (Major General, U.S.M.C.), (1998), Investigation to Inquire into the Circumstances Surrounding the Joint Task Force -6 (JTF-6) Shooting Incident That Occurred on 20 May 1997 Near the Border Between the United States and Mexico, Unpublished report –Referenced from Dunn, Timothy, (2001), p. 16.

Based on the findings from their investigation, military officials called the shooting a tragic incident, and that all indications were that the Marines had been operating inside of their rules of engagement.<sup>77</sup> Two grand jury investigations followed the shooting, - one federal and one state – neither jury decided to indict Corporal Banuelos or any of the Marines on the team.<sup>78</sup> The Hernandez family, the community of Redford, and many human rights groups were outraged by these findings and the alleged lack of cooperation that the Department of Defense offered during the civil investigation.

The Redford Incident has confirmed the worst fears of those who opposed the militarization of the U.S.-Mexico border and has become the cornerstone of the arguments against using the military for civil authority support missions. Opponents claim that the military’s primary mission of fighting wars makes it incompatible with civil law enforcement operations that are concerned with legalities and the protection of civil rights. Can the military conduct law enforcement support missions without becoming a serious threat to human and civil rights? How can future “Redford Incidents” be prevented?

## **B. THE LEGAL FRAMEWORK FOR MILITARY SUPPORT TO CIVIL AUTHORITIES**

When a government wishes to deprive its citizens of freedom, and reduce them to slavery, it generally makes use of a standing army. Luther Martin, Maryland Constitutional Convention Delegate, 1787

Since the early colonial days, Americans with the memories fresh in their minds of British military occupation and enforcement of law, feared the possible tyranny from a strong standing army. Concerned that a large standing army would become “dangerous to the liberties of a country” the new government took measures to limit the size and

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<sup>77</sup> Dunn, Timothy, (2001) Border Militarization Via Drug And Immigration Enforcement: Human Rights Implications, Social Justice Volume 28, No. 2, 2001, p. 17.

<sup>78</sup> Dunn, Timothy, (2001), p. 17.

strength of the army.<sup>79</sup> Shortly following the end of the American War for Independence, the Continental Army was reduced to “80 artillerymen retained to guard military stores at West Point and Fort Pitt.” [and] “...a new force of 700 men, a regiment of eight infantry and two artillery companies, which was to become the nucleus of a new Regular Army.”<sup>80</sup> The tendency to dramatically cut the size of the American Army immediately following wars to ensure that it did not interfere with the freedoms of U.S. citizens was to continue until the end of World War Two. However, during the Reconstruction Period that followed the American Civil War, a problem was encountered in the southern states when the occupying U.S. Army became involved in the enforcement of civil law.

Following the Civil War, the U.S. Congress divided the former Confederate States in five military districts and placed a Major General at the head of each of these districts. The Army was used extensively to restore order and enforce law in the South during this period. Quelling riots and civil disturbances, administering oaths of allegiance, and aiding law enforcement officials were a few of the duties that the Army became involved in. Southerners soon became outraged by the military occupation and its use for civil law enforcement. As a result, Congress enacted the Posse Comitatus Act of 1878 that placed strict limits on the military’s participation in civilian law enforcement duties.<sup>81</sup> The act states that:

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.<sup>82</sup>

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<sup>79</sup> MacGregor, Morris J. Jr., (No date given), *The Formative Years, 1783-1812*, Reprinted from AMERICAN MILITARY HISTORY, Army Historical Series, Office of the Chief of Military History, United States Army, p. 103.

<sup>80</sup> MacGregor, Morris J. Jr., p. 105.

<sup>81</sup> Scheips, Paul T., (No date given), *Darkness then Light, The Inter-War Years, 1865-1898*, Reprinted from AMERICAN MILITARY HISTORY, Army Historical Series, Office of the Chief of Military History, United States Army, p. 284.

<sup>82</sup> United States Code, Title 18, Part I, Chapter 67, Sec. 1385.

Additional restrictions to the use of the armed forces for law enforcement authority support are outlined in Title 10 of the U.S. Code:

The Secretary of Defense shall prescribe such regulations necessary to ensure that any activity (including the provision of any equipment or facility or the assignment or detail of any personnel) under this chapter does not include or permit direct participation by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law.<sup>83</sup>

Despite the protections offered by these longstanding protections, a U.S. citizen was still killed by U.S. troops that were engaged in domestic law enforcement support operations. The “Redford Incident” has become the battle cry for individuals and organizations that are opposed to using the military to support civil authorities along the U.S.-Mexico border. What further steps to protect human and civil rights has the military taken? How effective has the military been in preventing another “Redford Incident?”

It should be noted that the National Guard faced similar condemnation over the fatal shooting of four students and the wounding of eight others during anti-Vietnam War protests on the campus of Kent State Ohio on May 4, 1970. Following the government’s announcement that U.S. combat forces would be sent into Cambodia, anti-war demonstrations began on Kent State’s campus.<sup>84</sup> The protest soon “spilled into the city of Kent’s downtown” resulting in vandalism and damage to a number of businesses and eventually the mobilization of the Ohio National Guard.<sup>85</sup> The National Guard troops arrived on Saturday, May 2<sup>nd</sup>, but the disorder continued into the evening marked by the burning of the campus headquarters of the Army Reserve Officers' Training Corps (ROTC).<sup>86</sup> Calm settled on Kent State’s campus on Sunday, but at noon the following day, an estimated 2,000 to 3,000 people began another anti-war rally.<sup>87</sup> The National Guard soon arrived and attempted to disperse the crowd, but instead of clear the area, the

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<sup>83</sup> United States Code, [Title 10, Subtitle A, Part I, Chapter 18](#), Sec. 375.

<sup>84</sup> <http://www.geocities.com/RainForest/2556/kent.html>.

<sup>85</sup> <http://www.geocities.com/RainForest/2556/kent.html>.

<sup>86</sup> <http://www.geocities.com/RainForest/2556/kent.html>.

<sup>87</sup> <http://www.geocities.com/RainForest/2556/kent.html>.

crowd responded with “verbal epithets and stones.”<sup>88</sup> Shortly after an unsuccessful attempt to break-up the demonstration with tear gas, the National Guard opened fire on the students with their rifles.<sup>89</sup> After 13 seconds of rifle fire by 28 Guardsmen four students were dead, eight more were wounded, and one person permanently paralyzed.<sup>90</sup>

After the smoke had cleared from the campus, what was to become known as the “Kent State Massacre” shocked much of America. Even those who detested the politics of the rioters could not condone the actions of the National Guard. Public outrage was followed by governmental action. Federal and state grand juries conveyed to investigate the Kent State shootings. Although no Guardsmen were indicted by the grand juries, the training and equipment that the National Guard had received for civil disturbance operations were criticized.<sup>91</sup> In fact, the Federal grand jury found that the Guardsmen had “inappropriate weapons” for ending campus riots and that they had been placed in an “untenable and dangerous position.”<sup>92</sup>

The National Guard leadership at the federal level began to make changes in the training and the equipment that the Guardsmen would receive for civil disorder operations. At this point, the National Guard began to consider “civil disturbances as a critical mission, rather than a state or local distraction.”<sup>93</sup> It has become an annual training requirement that all National Guard personnel receive civil disturbance training. Since changing the training, equipment and tactics that the National Guard uses for civil disorder, it has been deployed to many domestic crises without instances of human rights violations. This fact speaks well for the National Guard when as an example, one considers that thousands of Guard personnel were deployed for days to the L.A. riots, the

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<sup>88</sup> <http://www.geocities.com/RainForest/2556/kent.html>.

<sup>89</sup> <http://www.geocities.com/RainForest/2556/kent.html>.

<sup>90</sup> <http://www.geocities.com/RainForest/2556/kent.html>.

<sup>91</sup> Daniel, Lisa (2000), *Kent State Changed Forever the Way the National Guard Responds to Civil Unrest*, National Guard, the National Guard Association of the United States, May 2000.

<sup>92</sup> Daniel, Lisa (2000).

<sup>93</sup> Daniel, Lisa (2000).

most violent riots in the city's history, with no episodes of excessive use of force.<sup>94</sup> It also appears that the National Guard has improved its abilities in civil-military cooperation. Due to the National Guard's community-based nature, and with many federal, state and local law enforcement officers in its ranks, the Guard is now more capable of coordinating its efforts with those of law enforcement.

### **C. DEPARTMENT OF DEFENSE AND NATIONAL GUARD POLICIES AND TRAINING TO PREVENT HUMAN RIGHTS VIOLATIONS**

Slightly over a year after Esequiel Hernandez' death, Major General John T. Coyne (USMC) released the results of his investigation of the shooting. In a 1300 page report, General Coyne concluded that the mission that ended in Hernandez' shooting was full of "systematic failures at every level of command."<sup>95</sup> "It was a mission fraught with errors, communication breakdowns and questionable judgments, led by a team leader who seemed oddly eager to pull the trigger of his M-16."<sup>96</sup>

But the Department of Defense (DoD) did not wait for the release of General Coyne's report before it took measures to prevent another "Redford incident". On July 29, 1997, DoD officials ordered an end to armed missions in MSCA missions and was even considering whether or not to pull all troops out of domestic counter-narcotic missions.<sup>97</sup> But the DoD did not end the military's involvement with counterdrug law enforcement support missions. After reviewing General Coyne's report of the shooting, DoD officials determined that specialized training for the soldiers that were conducting these types of missions could help prevent another "Redford Incident." According to Air Force Colonel Henry Hungerbeeler, chief of staff of Joint Task Force-6, the improved training is "primarily aimed at the proportional use of force, trying to clarify that

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<sup>94</sup> Summers, Harry (1992), *Fire Discipline All the Way to L.A.*, Washington Times, May 21, 1992, p. G-4.

<sup>95</sup> Holt, Douglas (1998), *An Identity Crisis Most Deadly*, Chicago Tribune, July 5, 1998.

<sup>96</sup> Holt, Douglas (1998).

<sup>97</sup> Ricks, Thomas E. (1997), *Pentagon Lifts the Troops Patrolling Mexico Border After Killing of Shepard*, Wall Street Journal, July 29, 1997, p. B6.

although deadly force might be authorized, it might not be necessary...”<sup>98</sup> He went on to say that, “The last thing we want to do is have the American people afraid of us...”<sup>99</sup>

The National Guard counterdrug programs, which are operated at the state level under the governor’s command, also took steps to avoid another “Redford Incident” by reviewing the policies and procedures that involved the arming of National Guard personnel supporting civil authorities on counter-narcotic missions. Additional training was mandated for personnel involved in missions that required the carrying of firearms for self-defense. This includes “force continuum” training begins with defensive team extraction from the area, and then shifts to verbal commands (in Spanish and English) if extraction is not possible. Only when all non-lethal means of defense are exhausted will the team resort to the use of deadly force. The Arizona National Guard Joint Counter Narcotic Task Force went so far as to permanently end armed patrolling missions and did not return to arming their static LP/OP teams until 2001, almost four years after Esequiel Hernandez’ death.<sup>100</sup>

The California National Guard Counter-Drug Task Force took similar steps following the Redford shooting. According to the Secretary of Defense’s directive following the Redford shooting, the California National Guard ceased conducting armed law enforcement support missions along the U.S. -Mexico border. After a few years of reviewing their policies and procedures, the California National Guard resumed armed operations. But the armed missions were resumed along the border only after improving the training that the personnel conducting these missions received.<sup>101</sup>

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<sup>98</sup> Gonzalez, John W. (1997), *Border Shooting Spurs New Military Training*, Houston Chronicle, July 13, 1997, p. 1A.

<sup>99</sup> Gonzalez, John W. (1997), p. 1A.

<sup>100</sup> Based on the author’s personal experience as Operations Officer Joint Counter Narcotic Task Force, Arizona National Guard.

<sup>101</sup> LtCol Jay Brookman, California National Guard’s Deputy Counter-Drug Coordinator, Telephone Interview with Author, Monterey, California, 27 August 2002.



Although the New Mexico National Guard stopped providing armed personnel to support Border Patrol missions after the Redford shooting, it did continue to support armed missions for other federal, state and local law enforcement agencies.<sup>102</sup> But according to the New Mexico National Guard's Counter-Drug Coordinator, Lieutenant Colonel Andrew Salas, his task force "ratcheted down the armed missions" by more closely scrutinizing the mission requests from the law enforcement agencies and reducing the number of missions that required that the troops carry weapons.<sup>103</sup> Additionally, his task force began to use the Federal Law Enforcement Training Center (FLETC) firearms and rules of engagement training.<sup>104</sup>

To help the various states' counter-drug task forces train the personnel who are involved in law enforcement support missions that require the carrying of firearms, the National Interagency Counterdrug Institute (NICI) began conducting advanced firearm training. This course and annual refresher training is now mandatory for National Guard personnel who participate in armed law enforcement support operations. According to NICI's website, the five-day program (that receives financial support from the National Guard Bureau) focuses on:

Skills and techniques for executing armed LP/OP (5A) missions in both rural and urban settings  
Risk and vulnerability assessments  
Safety and medical procedures  
Rules of engagement and use of force  
Lessons learned  
It describes the program in the following fashion:

This course is taught by experienced military and law enforcement personnel who have planned, coordinated and executed Mission 5A. Instructors are also from offices that provide medical, logistical, communication, and legal support to these operations. Attendees discuss rules of engagement and use of force in both rural and urban settings. Instructors emphasize procedures utilized for identifying locations, conducting risk and vulnerability assessments and contingency planning. Attendees are given techniques for ensuring effective communication and

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<sup>102</sup> LtCol Andrew Salas, New Mexico National Guard's Counter-Drug Coordinator, Telephone Interview with Author, Monterey, California, 27 August 2002.

<sup>103</sup> LtCol Andrew Salas, New Mexico National Guard's Counter-Drug Coordinator, Telephone Interview with Author, Monterey, California, 27 August 2002.

<sup>104</sup> LtCol Andrew Salas, New Mexico National Guard's Counter-Drug Coordinator, Telephone Interview with Author, Monterey, California, 27 August 2002.

coordination between the military and the supported law enforcement organizations. At the conclusion of the course, students participate in an interactive scenario-based training exercise that tests the participant's ability to safely and effectively execute Mission 5A.<sup>105</sup>

National Guard personnel now receive firearm training that is identical, or similar, to that received by the law enforcement officers that they support in the field and therefore it becomes far less likely that another mistake like the one that took Esequiel Hernandez' life can happen again.

#### **D. MILITARY EFFORTS TO PROVIDE HUMANITARIAN ASSISTANCE**

When evaluating the impact on human and civil rights by the military while supporting civilian authorities along the U.S.-Mexico border, the protection of these rights offered by the military is often overlooked. Perhaps the greatest unexplored, unpublished byproduct of the MSCA operations along the southwest border is the humanitarian efforts that occur during the course of these missions. Widely published are reports of illegal alien deaths in the hot, arid deserts that border Mexico, but largely (due to the sensitive nature of some of these missions) unreported, are the lives saved by military personnel on the ground and in the air who provide water, medical assistance, and radio for, or conduct themselves, medical evacuation for those who have become stranded or seriously injured while crossing the dangerous terrain. In fact it has become Standing Operational Procedures (SOP) in many task forces that vehicles and aircraft that are operating in the deserts along the U.S.-Mexico border carry an extra water supply solely for humanitarian purposes should the military teams locate people who are in danger of dehydration.<sup>106</sup>

Although humanitarian assistance is not the primary mission of the military in operations on the U.S.-Mexico border, they have become a part of these activities. In fact, the military has been credited for saving many lives and protecting people from

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<sup>105</sup> [http://www.nici.org/Course\\_Info/special005.html](http://www.nici.org/Course_Info/special005.html).

<sup>106</sup> Based on the author's experience as Operations Officer for the Arizona National Guard Joint Counter Narcotic Task Force (JCNTF) responsible for executing these missions.

harm. The following examples highlight the military's ability to provide aid and comfort to those in need, in places where help is otherwise unavailable.

Early in 2000, a listening post/observation post (LP/OP) team spotted a female accompanied by a young boy, staggering, almost in an intoxicated fashion, in a remote area of the Arizona desert near the U.S. -Mexican border. When the team approached the pair, they found a woman in her late twenties and her five-year-old son. Her staggering was not caused by drunkenness, but by the fact that she was a diabetic and was going into shock. Being unable to keep up with a group of Mexicans that were being smuggled into the United States, the *coyote*<sup>107</sup> leading them through the desert insisted on leaving them behind. The LP/OP team provided food and water to the pair, who was terribly dehydrated, and radioed in life-saving medical evacuation. Both were taken to a nearby hospital where they were provided medical care.<sup>108</sup>

Later in the same year, another LP/OP team noticed two people hiding behind some desert brush. Noting that the couple appeared to be in distress, the team vectored help to the position where the two were located. When help arrived, they found a young, married Mexican couple that had been apprehended by a squad of Mexican soldiers just before crossing into the United States. During their ordeal with the Mexican squad, the soldiers had sexually assaulted the woman and seriously injured the male. While his wife was being assaulted, the husband was instructed by the soldiers to shine a flashlight on her. When at one point he dropped the flashlight, his arm was broken by a blow from a Mexican soldier's rifle. When the LP/OP team sighted the couple, the pair was quite naturally in a great deal of distress. The couple was taken to a local hospital where they both received medical treatment.<sup>109</sup>

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<sup>107</sup> Slang term for people who smuggle aliens into the United States illegally.

<sup>108</sup> LP/OP team members from this operation, Telephone Interview with Author, Monterey, California, 27 September 2002.

<sup>109</sup> LP/OP team members from this operation Telephone Interview with Author, Monterey, California, 27 September 2002.

Relief to those who have become dangerously lost or stranded in the desert can also come from military aviation. Frequently, helicopter pilots spot fires that have been lit by illegal aliens who have been abandoned by their *coyotes* and have ran out of water. In one such case, when the pilot set down his helicopter to help a Mexican migrant who had been without water for days, the man was so badly dehydrated that when rescued, his eyes could produce no tears as he cried.<sup>110</sup>

Humanitarian assistance is sometimes given to the least expected persons in the least expected situations. During a counterdrug operation in 2000, law enforcement personnel operating with military aircraft support near the U.S.-Mexico border had surprised narcotic smugglers. As the smugglers attempted to run back across the border in very steep and rocky terrain, one of them fell and received a compound fracture to his leg. Still on U.S. soil, with his femur protruding from his thigh, bleeding profusely from his wound, and miles from the nearest hospital, the narcotic smuggler would have bled to death if not for military aviation. The man was taken aboard the helicopter and flown to a treatment facility that saved his live.<sup>111</sup>

## **E. CONCLUSION**

Despite the possible terrorist threats coming from the southwest border of the United States, opponents of using the military in a law enforcement capacity voice grave concerns over possible human and civil rights violations at hands of soldiers. They argue that military personnel lack the temperament and training to restrain themselves from using unnecessary force. The shooting of 18-year-old Esequiel Hernandez near Redford, Texas, in 1997 provides these critics with evidence that their fears are not unfounded. What is missing from their argument is the fact that however tragic the “Redford incident” was, it was one isolated occurrence among hundreds of other armed missions that produce no human or civil rights violations and have even provided aid and comfort to illegal immigrants and narcotics smugglers that have come into peril in the desert.

<sup>110</sup> Helicopter pilot from this mission, Telephone Interview with Author, Monterey, California, 27 September 2002 and 25 September 2002.

<sup>111</sup> Helicopter pilot from this mission, Telephone Interview with Author, Monterey, California, 27 September 2002 and 25 September 2002.

More importantly, is the military has investigated the causes of the Redford shooting and has corrected the deficiencies that caused the incident by improving the training that military personnel receive before engaging in missions where deadly force may be used. By receiving advanced rules of engagement and escalation of force training, military personnel become more capable of successfully conducting armed support missions that do not harm, and even protect the human and civil rights of both U.S. and foreign citizens.

Additionally, the civil disturbance training that became a mandatory part for every National Guard troop following the Kent State shootings has proven to be effective when the National Guard has been called in to support law enforcement authorities. This has been demonstrated during numerous civil disturbances, counterdrug operations, and border and airport security missions that National Guard personnel have been engaged in. The civil support training and the “community-based” nature of the National Guard makes it “uniquely qualified” for many civilian authority support missions.

## **V. U.S. BORDER LAW ENFORCEMENT SUPPORT MISSIONS- THE LOSS OF READINESS AND CREDIBILITY?**

Some critics of military support of civil authority (MSCA) operations like border security missions, claim that when soldiers shift their focus from training for war to non-military, civil-support roles that they degrade or lose their combat skills. They argue that the loss of these “warfighter” skills weakens America’s readiness for war and place additional pressures on military units to correct training deficiencies during limited training cycles. Proponents of the use of the military for these missions claim that combat skills are not lost and that law enforcement support missions can actually improve readiness.

But even some supporters of these missions are concerned with the political backlash that can come from citizen groups opposed to the military’s involvement in some types of law enforcement support roles. They argue that when the military assumes missions that are not popular with some civilians or politicians, that the military’s credibility can be damaged. The loss of credibility with the public (and legislators) due to participation in politically unpopular missions could spell the loss of operational funds, the use of training areas, and support for other military programs through legislative action and/or public protest. For example, the U.S. Navy is still feeling the effects of civilian outrage over the accidental killing of a Puerto Rican security guard by an errant bomb on the Puerto Rican island of Vieques in October of 1999. Protestors are still demanding today, that the Navy cease using Vieques for target practice and pull its installation located off of the island.<sup>112</sup> Reputation damaging events such as this can severely limit or even restrict the military’s ability to conduct war-fighting training missions due to public opposition. Because of the “Vieques Incident” the Navy has had to postpone or cancel training events that improve Naval war-fighting readiness and search for new locations to conduct this type of training.

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<sup>112</sup> Heery, Bill, (2001) Bomb Training Could Shift To Avon Park, The Tampa Tribune, August 3, 2001, Final Edition.

Do non-military, civil-support operations have a positive or negative impact on unit readiness? Are some support roles more politically sensitive than others? Should the military accept some missions but reject others? In this chapter, I will argue that military readiness is improved or degraded by the *type* of law enforcement mission supported (rather than all support missions) and by the status (whether the military is under federal or state control) of the mission. I will also show that military leaders must be concerned with politically sensitive missions along the U.S.-Mexico in order to maintain a high level of credibility necessary for public support for future training events and operations.

**A. WAR FIGHTERS OR POLICE? THE IMPACT OF BORDER LAW ENFORCEMENT SUPPORT MISSIONS ON MILITARY READINESS**

On April 20<sup>th</sup>, 2002, Secretary of Defense Donald Rumsfeld announced that he believed that the National Guard should remain focused on war. He further stated that he wants National Guard troops out of the nation's airports and off its borders as soon as possible. "They are civilian functions, and they ought to be performed over any sustained period of time by civilians and by people who signed up to do that." Rumsfeld added, "We train our people to be war fighters."<sup>113</sup>

The statements made by the Secretary of Defense reflect the concerns of civilian and military leaders over the use of military personnel assigned "civilian functions" that will result in the weakening or loss of their combat skills and readiness for war. Military leaders have always been wary of any non-military tasks that rob soldiers of precious training time needed to develop and sustain their warfighter skills. In fact, active-duty Army units returning from peacekeeping missions around the world must go through a rapid retraining program that sometimes includes training rotations at the Joint Readiness Training Center (JRTC), Fort Polk, Louisiana or the National Training Center (NTC), Fort Irwin, California to rebuild individual and unit proficiencies.<sup>114</sup>

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<sup>113</sup> Postman, David, Rumsfeld Says Guard Should Be Focused on War, Seattle Times, April 20, 2002.

<sup>114</sup> Weible, Jack, Congress to Consider Whether Pentagon Robs Military Readiness to Pay for Peacekeeping Efforts, Army Times, January 12, 1998, p. 4.

Have non-military, civil-support roles like the peacekeeping operations in the Balkans improved combat skills? According to General David Grande (USA, Ret.), they do improve soldier skills and he insists that America's fighting men should be able to move rapidly up and down the full range of contingencies "from brutal combat to humanitarian assistance."<sup>115</sup> A survey conducted by Charles Moskos, a Northwestern University sociology professor, seems to validate General Grande's position.<sup>116</sup> The survey given to American peacekeepers in Kosovo indicated that nearly half (46%) of the soldiers surveyed disagreed that peacekeeping operations "weaken the warrior spirit", in fact, an additional 37% thought that the Kosovo mission actually made them more prepared for combat. Only 14% said the opposite.

But the Unit Status Reports (USR) that indicates a military unit's preparedness for war, and evaluations of the unit performance from the JRTC and the NTC seem to indicate otherwise. The evaluators report that units returning from operations other than war (OOTWA) assignments have shown a decrease in their readiness to conduct their primary combat missions. In fact early in 2000, both the 1<sup>st</sup> Infantry and the 10<sup>th</sup> Mountain Divisions, after lengthy peacekeeping operations, reported a C-4 combat readiness level (next to the lowest level possible) on their USRs.<sup>117</sup> Can some OOTWA missions that support law enforcement agencies improve warfighter skills while others degrade those skills?

## **B. THE RANGE OF LAW ENFORCEMENT SUPPORT MISSIONS**

In a recent article in *Social Justice*, Professor Timothy Dunn outlined the "spectrum of militarization of the U.S.-Mexico border."<sup>118</sup> In his outline (fig. 1), Dunn listed the support missions from least to most "militaristic." The list also describes what

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<sup>115</sup> Author Not Cited, No They're Not Incompatible, *Economist*, August 18, 2001, Vol. 360 Issue 8235, p. 22, 2p, 1c

<sup>116</sup> Author Not Cited, No They're Not Incompatible, *Economist*, p. 22, 2p, 1c.

<sup>117</sup> Lewis, Mark, Peacekeeping Deployments Erode Combat Readiness, *Army Times*, February 7, 2000, p. 62.

<sup>118</sup> Dunn, Timothy, (2001), Border Militarization Via Drug and Immigration Enforcement: Human Rights Implications, *Social Justice*, Volume 28, No. 2, 2001, p. 24.



the support mission entails and indicates the type and level of soldier skills that would be practiced while performing the missions.

**Spectrum of Militarization of the U.S. -Mexico Border**  
Less Militaristic (1) to Most Militaristic (11)

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1. Military gives or loans equipment to Border Patrol (BP) and law Enforcement Agencies (LEA);
2. Military troops operate and/or maintain loaned equipment;
3. Military provides "expert advice" to BP and LEAs;
4. Military construction for BP/LEAs;
5. Military provides advisors and training for BP/LEAs;
6. Military transports supplies, equipment, and personnel for BP/LEAs;
7. Military aerial reconnaissance and surveillance for BP/LEAs;
8. Military ground troops deployed on a small scale at or near the border, mainly recon for BP/LEAs;
9. "Improved integration"- "total integration" of military and BP/LEAs efforts. Blurring of institutional lines between military and BP/LEAs;
10. Mass deployment of military troops at or near the border to perform a variety of border enforcement roles;
11. Military granted authority to arrest, search, and seize civilians and property.

**Sections 1 through 3:** Allowed by the 1982 DoD Defense Authorization Law; added new chapter to U.S. Law, *Military Cooperation with Civilian Law Enforcement Officials*. This support is allowed for police bodies with jurisdiction to enforce drug, contraband, and immigration laws.

**Section 4 through 9:** Allowed by 1989-1991 Defense Authorization Laws, amending 1982 provisions, specific to drug enforcement (broader in practice, however)

**Section 10 and 11:** Bills filed and debated in Congress; no laws passed.

Figure 1. Spectrum of Militarization of the U.S. -Mexico Border.

Many of the MSCA missions listed above can provide training opportunities for service men and women to maintain and enhance their traditional warfighter skills. For example, support missions that utilize a service member's military skill like engineering projects, vehicle and equipment maintenance, and reconnaissance/patrolling operations can exercise and strengthen military job know-how. As long as the tasks that the service member performs while supporting law enforcement authorities are identical or similar to their military specialties, MSCA missions become just a different training environment for improving warfighter skills.

However many of these tasks fall outside of a service member's military specialty. For example, tasks like providing advice and training to law enforcement

agents, and the arrest, search/seizure of civilians and their property stray outside of traditional military skills. Missions such as these, concern critics of MSCA operations because while conducting these non-military specialty tasks, service members can lose the skills needed to fight and win the next war.

As mentioned above, the evaluations of active-duty Army units returning from extended deployments where non-traditional military operations were performed showed that warfighter skills and unit readiness were weakened. Should the military reject law enforcement requests to perform tasks that have no military skills involved, or when a task is outside the scope of the service member's warfighter job? Can tasking the National Guard with law enforcement support duties have a different effect on National Guard readiness than the same duties have on active Army readiness? The answer may be found in the way the National Guard Bureau organizes and operates its counterdrug program.

### **C. THE NATIONAL GUARD COUNTERDRUG PROGRAM**

Beginning in the early 1990s, a majority of the states and U.S. territories began using their National Guards for counter-narcotic operations. Each state and territory received federal funding to start and support counter-narcotic "task forces" designed to aid law enforcement agencies and community based organizations in their fight against the smuggling, manufacturing, distribution, and use of illegal narcotics. Today these task forces consist of full-time, active-duty National Guard personnel that perform a wide variety of missions that range from occupying covert listening post/observation posts (LP/OP) along the U.S.-Mexico border to intelligence analysis to anti-drug demonstrations in elementary schools. Many of the counter-narcotic missions are the same or at least complementary to the Guardsman's military (warfighter) duties. However, there are other counterdrug missions that do not utilize traditional military war fighting skills. These duties include video screen monitoring (scanning important border smuggling locations via cameras), radio room monitoring (listening to law enforcement radio traffic), and x-ray equipment operation at the points of entry to the United States.

Have conducting non-military tasks while supporting civil authorities had the same negative impact on National Guard war fighting abilities that they seem to have for the active Army?

Some proponents of using National Guard troops to support civil authorities in domestic OOTWA missions believe that due to the special part-time status of the traditional National Guardsmen, proficiency in their military skills is not necessarily lost during these support missions. They argue that National Guardsmen can maintain their military skills by continuing to participate in his unit's Individual Duty Training (usually conducted on weekends) and Annual Training (two continuous weeks of focused training) when not performing civil support operations.

To test this argument, a sixteen-month study was conducted by the Science Applications International Corporation (SAIC) for the National Guard Bureau's Counterdrug Office to determine the effects that full-time, counterdrug support missions have on individual and unit readiness.<sup>119</sup> The study consisted of a number of surveys to compare the readiness of individuals with full-time law enforcement support duties against their counterparts with civilian employment. The indicators of readiness studied were: Inactive Duty Training (IDT) and Annual Training (A/T) attendance, Military Occupational Specialty (MOS-Army)/Air Force Specialty Code (AFSC) availability, physical fitness scores, Individual Weapons Qualification (IWQ), and compliance with height and weight standards.<sup>120</sup>

The study found that servicemen and women with full-time law enforcement support missions have a higher than average (when compared with their civilian-employed counterpart) IDT/AT attendance, physical fitness test scores, and IWQ scores. Additionally, the study found that many of the military personnel assigned to these duties

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<sup>119</sup> National Guard Bureau-Counterdrug Office's: Study on Counterdrug Personnel Combat Readiness -Executive Summary, April 3, 2001, SAIC, 1410 Spring Hill Road, Suite 400, McLean, Virginia 22102.

<sup>120</sup> National Guard Bureau-Counterdrug Office's: Study on Counterdrug Personnel Combat Readiness -Executive Summary, April 3, 2001, p. 2.

had increased exposure to their military occupational duties and had gained Additional Skill Identifiers (ASI) through their law enforcement support jobs.<sup>121</sup> In short, the SAIC report indicated an overall improvement in individual readiness and warfighter abilities when National Guard personnel conduct civil authority support missions while continuing to participate in their military unit's training exercises.

The SAIC report validates the beliefs of the proponents for the using of National Guard for domestic, civil authority support missions. But shortly after September 11<sup>th</sup>, a new argument appeared with regards to the use of National Guardsman for civilian law enforcement support: Under what authority should the Guardsmen conduct the mission...federal or state?

#### **D. UNITED STATES CODE: TITLE 10 VERSUS TITLE 32**

A flurry of requests from law enforcement agencies for National Guard support of emergency security measures followed immediately after the terrorist attacks on September 11<sup>th</sup>.<sup>122</sup> These requests, largely from federal law enforcement agencies responsible for security along the United States' borders, stirred debates over the authority by which the National Guard should be activated. The states argued that the National Guard troops should remain under the governor's command (United States Code Title 32), but others at the federal level pushed for federalization of the National Guard putting them under the control of the active Army (United States Code Title 10).

Titles 10 and 32 represent the United States Codes (USC) that authorize the federal armed forces (Title 10) and the National Guard (Title 32). The title chosen for activating a National Guardsmen can have considerable impact on the Guardsmen's active service. For example, when a National Guardsman is activated under title 10

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<sup>121</sup> National Guard Bureau-Counterdrug Office's: Study on Counterdrug Personnel Combat Readiness-Executive Summary, April 3, 2001, p. 4.

<sup>122</sup> Rivera, Ray, *Beefed-Up Border Security Delayed It'll Be A Month Yet As Feds Take Control*, The Seattle Times, February 13, 2002.

orders, he becomes a member of the federal armed forces and “subject to the laws and regulations governing the Army or the Air Force”- no longer under the control of the governor of his or her state.<sup>123</sup> While serving under Title 10 federal orders, the Guardsman’s activities are now severely restricted by the Posse Comitatus Act of 1878 that restrict soldiers and airman from enforcing civil laws.

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.<sup>124</sup>

Under Title 10 federal orders, the Posse Comitatus Act can place severe limits on the military’s role in civil law enforcement support mission along the Mexican border.

More importantly for the question of readiness, activation under Title 10 status also relieves the Guardsman from duty to their state.<sup>125</sup> Under conditions of armed conflict, federally activated National Guard units receive additional training in individual and unit war fighting tasks at the mobilization center. However, individual troops or units activated for civil support duties under Title 10 orders would not receive training to sustain or enhance their warfighter proficiency. Once activated under Title 10 authority for MSCA duties, National Guardsmen are no longer able to train in their military job skills, individually or as a unit.

Contrary to Title 10 activation, a National Guardsman that is placed in Title 32 status remains under the control of the governor and continues to be subject to the laws and regulations of their state. Under this authority, the individual Guardsman and National Guard units continue their Inactive Duty Training and Annual Training events that build and maintain war-fighting skills while still supporting the law enforcement agencies.

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<sup>123</sup> United States Code, Title 10, Subtitle E, Part II, Chapter 1211, Sec. 12405.

<sup>124</sup> United States Code, Title 18, Part 1, Chapter 67, Sec. 1385. - Use of Army and Air Force as posse comitatus.

<sup>125</sup> United States Code, Title 10, Subtitle E, Part II, Chapter 1211, Sec. 12405 - National Guard in Federal Service: status.

An example of how this can be accomplished is with the National Guard Counterdrug Program. A cornerstone of the counterdrug program's success has been its ability to provide valuable military assistance to law enforcement agency counter-narcotic operations, while simultaneously continuing to participate in warfighter training.

A special amendment to Title 32 requires this symbiotic relationship between civil-support duties and military training and ensures that:

- a. The National Guard of a State pursuant to a State drug interdiction and counter-drug activities plan does not degrade the training and readiness of such units and personnel
- b. The performance of the activities may not adversely affect the quality of that training or otherwise interfere with the ability of a member or unit of the National Guard to perform the military functions of the member or unit.
- c. National Guard personnel will not degrade their military skills as a result of performing the activities.
- d. The performance of the activities will not result in a significant increase in the cost of training.<sup>126</sup>

The dual nature of Title 32 status allows a soldier to conduct law enforcement support duties without those duties having a negative effect on the soldier's military skills. Therefore, activating individual Guardsmen or National Guard units under Title 32 authority can help protect against an erosion of military proficiencies while providing support to civilian law enforcement agencies along the U.S. -Mexico border.

## **E THE POLITICAL IMPACT OF BORDER SUPPORT MISSIONS**

There are other critics of using the military for border security operations that are more concerned with the militarization of the U.S. border, not military readiness. Groups that want reforms in U.S. immigration laws are not supporters of increased military presence along the Mexican border. Many of these groups have taken their concerns over

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<sup>126</sup> United States Code, Title 32, Chapter 1, Sec. 112, (C), (i -iii).

immigration issues to the federal and state governments, thus making military support to civilian authorities along the border a politically sensitive issue.

One such group formed by Roman Catholic bishops, called the U.S. Conference of Catholic Bishops' Committee on Migration, is urging the United States to reduce the militarization of the border with Mexico and adopt "softer" policies toward the immigrants coming from Mexico. The group's chairman, the Reverend Nicholas DiMarzio said in a written statement, "We must replace a policy which militarizes our border with a system which encourages migrants to enter legally and safely through points of entry."<sup>127</sup>

Derechos Humanos (Human Rights), a Tucson-based immigrants rights organization, also is fearful of increasing the military's presence along the border. According to Randy Serraglio a spokesman for the group, "We're objecting to the war mentality on the border. They keep increasing the budget and the number of Border Patrol agents in the area, and they're turning it into a war zone."<sup>128</sup> The group recently held a march through Nogales, Arizona to protest what they call the militarization of the border and mistreatment of illegal immigrants.

Opponents to the use of the military for border security duty can also be found in the government. Arizona State Representative Bobby Lugo fought a bill that would modify a law affecting the Arizona National Guard's counter-narcotic operations. "This was the camel's nose. If this was just a drug war we're fighting, I'd be for it. But, there are other things it would be used for. You let the camel's nose in, pretty soon you have the whole camel in the tent. If you get National Guard, you get military down here." Rep. Lugo warned.<sup>129</sup> Representative Lugo is one of a group of southern Arizona legislators who fear that increasing the National Guard's presence will include armed

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<sup>127</sup> Ibarra, Ignacio, *Bishops Oppose INS Policy*, Arizona Daily Star; Tucson, Ariz.; September 9, 2001.

<sup>128</sup> No Author Cited, *Nogales March Protests Border*, Phoenix Gazette, Phoenix, Arizona; July 5, 2000.

<sup>129</sup> Webb, Catharine, *National Guard Not Coming*, The Bisbee Observer, Bisbee, Arizona; April 5, 2001.

soldiers patrolling the streets of small Arizona border towns. Fears of another “Redford, Texas Incident” (discussed in detail in chapter three) in an Arizona border town have many people who live near the border concerned over the use of the military in their communities.

The protests expressed by these groups and some legislators put political pressure on decision makers to be selective in the missions that they are willing to have the military support, especially those that are too politically sensitive. In Arizona’s case, during the post September 11<sup>th</sup> terrorist attacks border security build-up, Governor Jane D. Hull prohibited Arizona Guardsmen and women from supporting the Immigration and Naturalization Service or the U.S. Border Patrol in public areas. These organizations could be aided by the National Guard only in areas that were not exposed to citizens from the United States or Mexico. In fact, the Guardsmen assigned to border security missions were prohibited from supporting any agency even if it only could give the impression that they were aiding an INS or Border Patrol agent enforcing unpopular immigration laws.

By ensuring that the National Guardsman were assigned to missions that did not support politically sensitive immigration laws, Governor Hull was able to provide the services requested by the border law enforcement agencies while avoiding angering groups that protest U.S. immigration laws. As this example shows, missions that remain under state control are more likely to be conducted in a manner that is sensitive to local concerns than those under federal control.

The importance of the military maintaining a positive public image goes beyond whether a politician gets re-elected or not. Negative public perceptions of the missions that the military conducts can result in a lack of citizen support for important legislation for the military, continued use of critical training sites, and the military in general. Perhaps the best example of the effects of negative public opinion on the military can be found in what is referred to as the “Vietnam Syndrome”. The “Vietnam Syndrome”



describes the attitude of the American public after the withdrawal of U.S. forces from Vietnam in 1975 after failing to successfully end the war in that nation.<sup>130</sup> After the Vietnam War, the U.S. military fought to restore confidence, at home and abroad, in its ability to wage and win wars.

On a smaller, but not less important scale, the National Guard must ensure that the MSCA missions that it assumes will not have an adverse effect on how the Guard is viewed by the local citizenry. As stated earlier, the National Guard, like the military in general, needs popular public support in order to continue to enjoy favorable legislation and funding. To do this, it may be necessary to carefully study each mission request from law enforcement agencies to identify missions (or portions of missions) that could cast the National Guard in a negative light. Perhaps a different twist on the Title 10 vs. 32 debate, should National Guard personnel be activated under Title 10 authority, the governor of the state not only loses command of the personnel, but also the ability to control the types of MSCA missions that they become involved in. Once activated under Title 10 orders, the federal authorities controlling the operation will decide where and how the National Guard will support the civil authorities without regard for local public sentiment or politics.

## **F. CONCLUSION**

Despite the concerns over the loss of warfighter skills and military readiness when providing law enforcement assistance along the Mexican border, putting National Guardsmen in other civil support roles has not proven to have an adverse impact on military skills or unit readiness. When activated under Title 32 authority, a National Guardsman can perform support duties to law enforcement agencies while still conducting traditional National Guard unit training on weekends and annual training. The National Guard's Counter-Narcotic operations have demonstrated since the early

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<sup>130</sup> Summers, Harry G. Jr., *The Vietnam Syndrome and the American People*, Journal of American Culture; Bowling Green; Spring 1994.

1990's that blending civil support roles with National Guard military training can improve individual and unit proficiency and readiness.

Leaders may find that despite the effectiveness of the mission for law enforcement agencies and unit readiness, that local political sensitivities may require a careful examination of where the military is best deployed. The civil authority support roles along the border that could bring protests from different segments of the public can be avoided by shifting military assets to missions that are less controversial. Additionally, National Guard leaders and troops can be trained to be sensitive to, or to avoid, situations that might stir resentment in certain communities to their law enforcement support duties.

Another improvement to effectiveness can be found by avoiding the hasty federalization of the National Guard. Before National Guard troops are federalized, a clear understanding of the limitations that Posse Comitatus places on the amount and types of support missions that federal forces can offer law enforcement agencies must be clearly understood. Because of the nature of military support to civil authorities in crisis situations like the Los Angeles riots, federalization may actually reduce the effectiveness of the military's support efforts and should be avoided. Also, by keeping Guard troops under local control, mobilization processes can be conducted much quicker and less expensively than transporting personnel to a federal mobilization site (two states away as in the federalization of Arizona Guard personnel during the post September 11<sup>th</sup> border security mission).

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## VI. CONCLUSIONS AND RECOMMENDATIONS

This thesis described how throughout history the military has become involved in supporting civil authorities enforce the law along the U.S.-Mexico border. Whether dealing with masses of armed, violent forces attacking Americans from across the Mexican border (Cortina and Villa raids), or narcotic traffickers employing advanced smuggling techniques, civilian authorities often have relied on the manpower and technical capabilities of the military to assist them with the threats. Today, the active-duty military and the National Guard provide personnel and equipment to assist federal, state and local law enforcement agencies conduct counterdrug operations on the southwest border.

After the terrorist attacks on September 11, 2001, the military again responded to the requests from civilian authorities to provide troops for emergency security operations on the border. Homeland Security has become an important issue and the new sense of national vulnerability has forced the United States to reexamine its domestic security posture. Many civic leaders are arguing for an increased involvement for the military in border security missions. The proponents of using the military to support civil authorities tasked with keeping terrorists and weapons of mass destruction (WMD) from crossing over the Mexican border argue that failure to take these steps equates to “national suicide.”<sup>131</sup> The opponents, on the other hand, have voiced concerns over the effectiveness of MSCA missions, the increased possibility of military violations of human and civil rights during these operations, and the loss of the military’s readiness to fight and win wars while executing “non-warfighter”, civil support duties. This thesis evaluated the validity of each of these concerns. This chapter summarizes the main findings and recommends ways in which military support missions can be executed effectively and with minimal negative impact on civil rights and military readiness.

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<sup>131</sup> Congressman Tom Tancredo, Telephone Interview with Author, Monterey, California, August 27, 2002.

Chapter III presented evidence that shows that military support to civil authorities is generally very effective. Civilian law enforcement agencies have been able to effectively capitalize on the resources that the military has offered to counternarcotic operations, civil disturbance control in Los Angeles in 1992, and post September 11<sup>th</sup> U.S. border security operations. These examples of military support to civil authorities illustrate how law enforcement officials have benefited operationally from the military's well trained and disciplined personnel and advanced technology and equipment. All this coupled with the military's ability to deploy these resources very quickly enables the armed forces to provide highly effective support to civil authorities in day-to-day operations, like counterdrug missions, and also respond to requests for emergency aid, like in the cases of civil disturbances and other national crises.

A great deal of the assets that the military offers to law enforcement agencies is unavailable anywhere else; by sharing these resources with agencies of all sizes, the military provides services that otherwise would be impossible for small, rural police departments to access due to their small budgets. Also regardless of the agency's size, the availability of military personnel makes it possible to shift law enforcement officers from auxiliary/administrative duties to actual law enforcement activities.

The episodes where the military has demonstrated the ability to provide effective support to civil authorities have also revealed areas that need to be addressed to improve the timeliness and types of military support. In the case of the Los Angeles riots in 1992, the efficiency and effectiveness of the California National Guard's deployment was degraded due to ineffective emergency planning by the civilian leadership in the city and county of Los Angeles. In order to improve the speed of the deployment and the effectiveness of the military's support to law enforcement agencies, detailed discussions and planning must be conducted to ensure the proper coordination is made between civil leaders and the National Guard in the case of an emergency. Civil-Military contingency plans that are detailed and include realistic timetables for military responses will greatly

enhance the quickness of the military and the effectiveness of the support to civilian agencies.

The effectiveness of military support to civil authorities can also be improved by avoiding the unnecessary federalization of the National Guard. For law enforcement support roles, it is unnecessary and sometimes unwise to federalize National Guard troops. Once federalized, a Guardsman will fall under USC Title 10 laws and hence be limited by the Posse Comitatus Act. This act places strict limits on the amount and types of support missions that federal armed forces can offer law enforcement agencies, but ordinarily places no restriction on a Guardsman. In the case of the Los Angeles riots, the number of requests from civil authorities fulfilled by the military was greatly reduced when the California National Guard became federalized. Because of the nature of MSCA missions, and the restrictions that Posse Comitatus imposes on federally controlled troops, the federalization of the National Guard for civil support missions should be avoided. Additionally, by keeping Guard troops under local control, the mobilization processes can be conducted more efficiently and less expensively than a federal mobilization, which can involve the time consuming transportation of Guards personnel to a “mobilization station.” For example, in the case of the Arizona National Guard’s post September 11<sup>th</sup> border security mission, once federalized, the troops were sent to a mobilization station over 300 miles from their duty stations.

Chapter IV dealt with the concerns of other opponents of using the military for law enforcement support roles that are concerned over possible human and civil rights violations at hands of soldiers. These opponents argue that the military is incapable of performing missions that require a great amount of restraint on the use of force. The shooting of 18-year-old Esequiel Hernandez near Redford, Texas, in 1997 provides these critics with evidence that their fears are not unfounded. Chapter IV has also shown however, that their argument is flawed by the fact that the “Redford incident,” however tragic, was one isolated occurrence among hundreds of other armed missions that

produce no human or civil rights violations. Their argument also ignores examples of where the military has protected human rights by providing aid and comfort to illegal immigrants and narcotics smugglers who have come into peril in the desert.

Perhaps more importantly, the chapter showed that the military had investigated the Redford shooting, isolated the causes, and had corrected the deficiencies by providing advanced training that produces personnel capable of successfully conducting armed support missions that do not harm, and even protect the human and civil rights of both U.S. and foreign citizens. The civil disturbance training that became a mandatory part of every National Guard troop following the Kent State shootings has proven to be effective when the National Guard has been called in to support law enforcement authorities. This has been demonstrated during civil disturbances, counterdrug operations, and border and airport security missions that National Guard troops have been engaged in. The civil support training and the “community-based” nature of the National Guard makes it “uniquely qualified” for many civilian authority support missions. Based on that fact, Civilian leaders should first look to the National Guard for military support for missions of this type. In cases where it becomes necessary to employ federal troops for law enforcement support operations, the active forces should receive civil authority support training very similar to what National Guard troops receive annually.

Chapter V addressed the arguments from the opponents of MSCA operations who claim that missions of this nature that degrade rather than improve warfighter skills actually weaken unit and individual readiness. While showing that in many cases the Unit Status Reports (USR) from some of the military organizations that have recently completed peacekeeping missions have indicated a reduction in readiness for war, this chapter has also shown that the type of unit deployed, and the mission executed, has a greater impact on readiness. Using evidence from a National Guard Bureau study conducted by the Science Applications International Corporation (SAIC), chapter V illustrated that members of full-time National Guard counternarcotic task forces actually

demonstrated higher levels of readiness for war than their part-time counterparts (those participating in weekend and two-week training events).

In the case of full-time counterdrug personnel, combat readiness was enhanced by many law enforcement support missions that mirrored their warfighter duties and more importantly, by participating in their military unit's training events. This is an important point for understanding how combat skills can be maintained during civil support operations. In this example, the troops are not totally pulled away from their warfighter skills training while executing law enforcement support mission. On the contrary, unlike many active duty units that perform support to civil authority missions at the expense of combat training, National Guard counterdrug personnel are required to continue their participation in their unit's combat preparedness training.

This becomes another argument in favor of not federalizing Guard personnel for civil authority support missions. As long as Guard personnel remain under their state's control (USC Title 32), the Guardsman can continue sustaining warfighter skills with their unit during scheduled training events. However, once federalized under USC Title 10 authority for civil support duties, the individual and unit combat training schedule is eliminated until the return to Title 32 status.

Chapter V also showed that some military support to civil authority missions that fail to gain public support could also have an adverse effect on readiness. By using the example of the negative public reaction to the Navy's accidental killing of a Puerto Rican security guard by an errant bomb on the Puerto Rican island of Vieques and the U.S. military's loss of credibility during the Vietnam War, the chapter illustrated the relationship between the public's opinion of military operations and combat readiness. Public relation considerations have affected the way Arizona National Guard personnel have supported different law enforcement agencies along the U.S.-Mexico border. Often there are elements within border communities that are deeply resentful of U.S.



immigration policies and therefore strongly protest the military's support of the INS and U.S. Border Patrol. This resentment and protest can result in a lack of support for the military by these communities and their elected representatives.

It therefore becomes important for law enforcement support requests to be carefully reviewed to gauge them for possible adverse public reactions to the mission. The civil authority support roles along the border that could bring protests from different segments of the public should be avoided by shifting military assets to missions that are less controversial. Additionally, military leaders and troops must be trained to be sensitive to, or to avoid, situations that might stir resentment toward their law enforcement support duties in certain communities.

For over 150 years, the military has provided support to aid civilian law enforcement agencies along the border in times of crisis. Proponents of military support to civil authorities have argued that armed with technologically advanced equipment, and possessing trained, disciplined personnel, the military can offer resources that are often unavailable to law enforcement authorities. This paper has shown that the military is capable of providing support to civil authorities during emergencies on the southwest border that is effective, protects the human and civil rights of citizen from both sides of the border, and can do so without a loss to its combat readiness. If history is any indication, it is likely that military personnel will again be called to support law enforcement authorities on the U.S.-Mexico border for Homeland Security missions in the near future. By applying the lessons learned from past MSCA missions to future missions, they can be effectively executed, safe for rights of all citizens, and improve the military's capability to fight and win the nation's wars.

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