

# NAVAL POSTGRADUATE SCHOOL Monterey, California



## THESIS

**THE CITIZEN-SOLDIER AND HOMELAND SECURITY IN  
THE TWENTY-FIRST CENTURY**

by

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December 2002

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**THE CITIZEN-SOLDIER AND HOMELAND SECURITY IN THE TWENTY-  
FIRST CENTURY**

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Submitted in partial fulfillment of the  
requirements for the degree of

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## **ABSTRACT**

This thesis examines the evolution of the civil-military relations gap that has been exacerbated by the recent attacks against America. It then discusses this new and troubling gap and the negative implications to the Global War on Terrorism and Homeland Security. The thesis then offers the National Guard as a means of narrowing the gap, by linking the people of the community through the state to the federal government, and recognizing that first responders are the key to Homeland Security. This thesis reviews the long and successful history of the National Guard in both warfighting and domestic support to civil authorities from the perspective of an underlying tension that has existed between the citizen-soldier and the professional standing army for more than 350 years. This stressed relationship shaped the laws of our country that define the dual state-federal role of the National Guard. It concludes with recommendations policy makers may consider when preparing for both the internal and external threats from terrorism including the National Guard Counterdrug Support Program, the Weapons of Mass Destruction Civil Support Teams and post 9/11 National Guard military support to civil authorities (MSCA).

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## EXECUTIVE SUMMARY

This thesis argues that there is a new and troubling gap in civil-military relations that has been exacerbated by our recent attacks on America. This gap, if not addressed, will negatively impact Homeland Security and our ability to protect Americans at home in the twenty-first century. The gap is fueled by a historic and underlying tension between the citizen-soldier and the professional military, which has also shaped the legal basis of the unique dual state-federal role of the National Guard. This dual role of the National Guard is the link between the people in the local community, through the state, to the federal government, bridging the gap necessary for the nation's common defense.

Chapter II examines the implications of civil-military relations on HLS. Most proponents of a smaller Reserves Component (RC), or for a constabulary type RC, will argue that cost, military effectiveness, and readiness (availability) are the most important issues. This chapter argues that just as important to HLS is the relationship between civilians and the military. The chapter begins with an overview of U.S. civil-military relations and the influence each of the three branches of our federal government may have on HLS. Next is a discussion of the history of the U.S. civil-military relations gap, recognizing a new and potentially troubling gap, and concluding with the implications this gap may have on HLS.

Chapter III observes the National Guard's long and successful history of both traditional warfighting and domestic support to civil authorities. This history is important in defining the current relationship between the Active Component (AC) and Reserve Component (RC). Embedded in American history, and beginning during the Revolution, is a tension between professional (AC) soldiers and citizen (RC) soldiers. This historical tension exists today and will ultimately influence National Guard involvement in HLS. This chapter also shows, in conjunction with this tension, how the Constitution, United States Code (U.S.C.) and Department of Defense (DoD) directives, including the Posse Comitatus Act (PCA) of 1878, define the legal authority for the National Guard to take part in the HLS mission, especially the dual state-federal role.

Chapter IV proposes the National Guard as a solution to this new gap in civil-military relations. The National Guard through community, economy, education, and its unique dual state-federal status, link the people to the federal government. Several case studies are used to show the value of this link. This final link, from the State house to the White House, is the most important consideration in determining the future role of the National Guard in Homeland Security.

Chapter V concludes that the National Guard does provide a valuable link between the people and the federal government, and the National Guard should maintain its traditional, legal, and truly unique, dual state-federal role in the Total Force military to best prepare for twenty-first century threats to American sovereignty. It then offers several recommendations to policy makers on how to proceed with National Guard support to Homeland Security. Recommendations include a National Guard that emphasizes its unique state-federal role, as shown in the immediate aftermath of 9/11. It further recommends, taking the positive attributes from the Weapons of Mass Destruction Civil Support Teams, and the National Guard Counterdrug Support Program, to include legislative changes to Title 32, and apply them to Homeland Security. Finally, the National Guard must be sufficiently organized, trained, equipped, and funded, with less frequent routine deployments, in order to accomplish both the state and federal mission.



## **I. INTRODUCTION**

There is a new and very troubling gap in civil-military relations that if not addressed will negatively impact Homeland Security and our ability to defend American soil in the twenty-first century. This gap has been aggravated by the awareness of threats to Americans here at home, and the debate over how best to protect against future attacks. The National Guard is the solution to bridging this gap, strengthening civilian control of the military, and safeguarding America in the twenty-first century.

### **A. HYPOTHESIS**

Recently there has emerged a new gap in civil-military relations. A gap that has potentially disturbing consequences to defending the United States of America. The National Guard, and its unique dual state-federal role, is best suited to bridge the new civil-military gap and provide sound domestic security.

First, there is a troubling new gap in civil-military relations. The gap is a growing difference in political views between civilians and the military, played out by a strong politically active military leadership in comparison to their congressional counterparts. This new gap has some potentially negative implications to our Nations' experiment in democracy. An effective civil-military relationship, and a narrowing of this gap between our civilian and military leaders will best prepare this Nation in defending our homeland. Second, tensions and growing pains between the active (AC) and reserve (RC) components began with the Revolutionary War and continue to exist today. These tensions have influenced national security decisions throughout history and will continue to influence current Homeland Security (HLS) decisions. Third, the historical and legal framework of the National Guard laid the foundation for the role of the dual state-federal National Guard role in twenty-first century military and homeland security. Finally, the National Guard is sufficiently reflective of society to bridge any discussed "gap" between military and civilian society. There are four examples of how the National Guard can successfully bridge this troubling new gap involved in Homeland Security that insure the ability of the National Guard to fight as part of today's Total Force. The right model for the Citizen-soldier in the twenty-first century for HLS and the "War on Terrorism" is a

well-trained, well-equipped, well-manned, and well-funded National Guard, which emphasizes its unique dual state-federal mission.

## **B. BACKGROUND**

According to a bipartisan commission studying national security for the twenty-first century, the Hart-Rudman Commission concluded that the National Guard ought to be “organized, trained and equipped” to “make Homeland Security (HLS) a primary mission.”<sup>1</sup> A recent journal article argues that “significant elements of the National Guard must be focused primarily on homeland security with a secondary mission of supporting the active forces.”<sup>2</sup>

The United States will become increasingly vulnerable to hostile attack on the American Homeland, and U.S. military superiority will not entirely protect us...attacks on American citizens on American soil, possibly causing heavy casualties, are likely over the next quarter century...America’s openness and freedoms make it more vulnerable... [U.S. government] structures and strategies are fragmented and inadequate...<sup>3</sup>

The Hart-Rudman Commission then concluded:

...the security of the American homeland from threats of the new century should be the primary national security mission of the U.S. government...<sup>4</sup>

Pan Am Flight 109, the World Trade Center bombing in 1993, Khobar Towers, the *USS Cole*, and the Aum Shinriko nerve gas attacks in the subway of Tokyo were the driving forces behind the Hart-Rudman Commission’s strong recommendations. Not until over 3,000 innocent civilians were killed September 11<sup>th</sup>, on American soil, did these comments ring true to the world.

What is Homeland Security (HLS)? More than a year after the attack on U.S. territory there is little consensus on how to prevent, protect, or respond to the terrorist threat against America. The lack of national policy or direction begs for many questions

<sup>1</sup> Roadmap for National Security: Imperative for Change,” U.S. Commission on National Security/21<sup>st</sup> Century Phase III Report, 15 February 2001, 25 Recommendation 6. <http://www.nssg.gov/PhaseIIIIFR.pdf>

<sup>2</sup> Spencer, Jack, and Larry M. Wortzel, *The Role of the National Guard in Homeland Security*. Heritage Foundation Backgrounder #532. Washington, April 8, 2002, <http://www.homelandsecurity.org/journal/Articles/wortzel.htm>

<sup>3</sup> “Roadmap for National Security: Imperative for Change,” U.S. Commission on National Security/21<sup>st</sup> Century Phase III Report, 15 February 2001, 2 and 10. <http://www.nssg.gov/PhaseIIIIFR.pdf>

<sup>4</sup>Ibid., 10.

to be answered. What are the components that make-up HLS? What are the roles and missions that compose HLS? Who are the actors? What part should the different actors play, and what roles and missions will they be responsible for? President George W. Bush said, “Protecting the American homeland from attack is the foremost responsibility of the U.S. Armed Forces and a primary mission for the Reserve Components.”<sup>5</sup> What roles will the military, including the reserve components play?

### **C. RESEARCH QUESTIONS**

My research question is: What role should the National Guard play in HLS? Is there a precedent for National Guard support in HLS? What is the legal authority for the National Guard’s involvement in HLS? Are there social or political implications to the National Guard’s participation in HLS? Does today’s “Total Force” concept, including the dual state-federal role of the National Guard, support a National Guard role in HLS? If so what is that role? Does the National Guard have any current examples that are applicable to a HLS role?

This thesis will not define what Homeland Security means in twenty-first century terms. It will not cover roles, missions or all the potential actors involved. There will be no debate over the President’s signing of the “Homeland Security Act” of November 2002 to establish a new Department of Homeland Security, and whether or not FEMA, the FBI, the CIA, the United States Border Patrol, or the United States Customs Service belongs in this new bureaucracy. I will instead focus on military involvement in HLS, specifically the National Guard and its relationship with the AC, HLS and the Total Force. Some issues may or may not overlap with other members of the RC, but I will focus on the National Guard and its relationship with the AC and civil society. Ever shrinking resources and personnel, combined with increasingly high mission operations tempos, the talk of transformation, and the post 9/11 mission of protecting our homeland, require a hard look at shaping our military for the twenty-first century. The role the National Guard plays in HLS will be an integral part of the future force-mix and force structure of our nation’s military, and ultimately our ability to defend American soil.

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<sup>5</sup> Remarks by President George W. Bush, Yeager Field, Charleston, West Virginia, 14 February 2001. <http://www.whitehouse.gov/news/releases/2001/02/20010214-2.html>

## **D. THESIS ORGANIZATION**

Chapter II will examine the implications of civil-military relations on HLS. Most proponents of a smaller RC, or for a constabulary type RC, will argue that cost, military effectiveness, and readiness (availability) are the most important issues. I will argue that just as important to HLS are the relations between civilians and the military. The chapter begins with an overview of U.S. civil-military relations and the influence each of the three branches of our federal government may have on HLS. Next, is a discussion of the history of the U.S. civil-military relations gap, adding a new and potentially troubling gap, concluding with the implications this gap may have on HLS.

Chapter III will argue that the National Guard has a long and successful history of both traditional warfighting and domestic support to civil authorities. This history is important in defining the current relationship between the AC and RC. Embedded in American history, and beginning during the Revolution, is a tension between professional (AC) soldiers and amateur (RC) soldiers. This historical tension exists today and will influence National Guard involvement in HLS. Chapter III will also show how the Constitution, and in conjunction with United States Code (U.S.C.) and Department of Defense (DoD) directives, including the Posse Comitatus Act (PCA) of 1878, give the legal authority for the National Guard to take part in the HLS mission and solidify the dual state-federal role.

Chapter IV will propose the National Guard as a solution to this new gap in civil-military relations. The National Guard through community, economy, education, and unique dual state-federal status link the people to the federal government. I will use several case studies as examples of the value of this link. This final link from the State house to the White House is the most important.

Chapter V will briefly summarize the over 350-year tension between the Active and Reserve components, and how the underlying tension shaped the legal foundation of the citizen-soldier. It then argues that there is a new and worrisome gap in civil-military relations that may negatively influence Homeland Security. It offers the National Guard as a solution to the gap by linking the community to the federal government. Next, the

chapter will offer recommendations on how policy makers might proceed where military support is required in both the internal and external Global War on Terrorism.

#### **E. METHODOLOGY**

It is my intent to research from primary and secondary unclassified sources and make recommendations to both civilian and military policy makers on the role of the National Guard in HLS, and ultimately the composition the National Guard in the twenty-first century Total Force military. Primary sources will include national level policies, strategies, regulations, and plans, congressional reports, testimony and findings, congressionally commissioned studies and their findings, military rules, regulations, directives, reports, studies and findings, and numerous independent institutions of government studies and policy. Secondary sources will include newspapers, periodicals, past and recent HLS literature, military publications, scholarly books, journals, and past HLS research papers. Additionally, I will use military support to the Los Angeles riots, the National Guard Counterdrug Support Program, and the National Guard Weapons of Mass Destruction Civil Support Teams (WMD-CST) to show how the National Guard links the community to the federal government.

#### **F. FINDINGS**

This thesis concludes that there is a new and potentially dangerous gap in civil-military relations between our political and military leaders. Fueled by a tension that has influenced both national security and the law, the dual state-federal capability of the National Guard is a solution to the troubling new gap and sound Homeland Security.

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## II. CIVIL-MILITARY RELATIONS AND HOMELAND SECURITY

Who will guard the guardians? A question debated by many civil-military relations scholars. It is one of the most difficult and ancient problems of society. Plato addressed this question over 300 years before the birth of Christ.

That I will endeavour to explain, I replied. To keep watchdogs, who, from want of discipline or hunger, or some evil habit or other, would turn upon the sheep and worry them, and behave not like dogs but wolves, would be a foul and monstrous thing in a shepherd?

Truly monstrous, he said.

And therefore every care must be taken that our auxiliaries, being stronger than our citizens, may not grow to be too much for them and become savage tyrants instead of friends and allies?

Yes, great care should be taken.

And would not a really good education furnish the best safeguard?

But they are well-educated already, he replied.<sup>6</sup>

What is a suitable amount of military power in relation to civil authority? What is the correct relationship of military power to the civil authority? How does that relationship manifest itself in civil society?

### A. BACKGROUND

National security in a democracy requires an adequate military, civilian control, and efficient management of the system that governs them both. Acceptance of the national security strategy by the people is another requirement equally important. Public opinion and public policy must be in concert with each other in order for the use of military force in the national security strategy to be credible. Former Army Chief of Staff General Creighton Abrams concluded that the “credibility of the military depended on the will of the American people and the commitment to deploy citizen-soldiers as an integral part of the force.”<sup>7</sup> This chapter will first address the importance of civilian control of

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<sup>6</sup> Plato, *The Dialogues of Plato*, trans. Benjamin Jowett, (Random House, New York, 1937), 680.

<sup>7</sup> Quoted in Meyer, 22.

the military and some of the problems that impact HLS. Next, I will show the American history of civilian control of the military including how the executive, legislative, and judicial branches of government control military power. These various controls have created dynamic civil-military relations. It is in these dynamics that decisions surrounding national security strategy, budget, foreign policy, force structure, roles and missions, and the use of military force are consummated. A proper balance between the three branches of government is essential for proper civilian control over the military and subsequently the ability to defend American soil. Third, I will discuss the “Gap” in civil-military relations. There has been recent discussion of a “Gap” between civilian and military culture and values. Is there a gap? If so, what is the nature the gap and what are the implications of the gap on current civil-military relations. How might this resulting gap impact homeland security?

Much more than a question in a scholarly debate or article, is who will guard the guardians? It is the major problem that all nation states must not only reconcile with, but also solve to a successful conclusion. Without a successful conclusion the welfare of the people and survival of the state are in jeopardy. Throughout history, and in today’s era of globalization, adequate force is required to maintain internal order and have effective policies relative to national security. A lack of force has and will continue to contribute to internal disorder and external aggression. To protect itself from such disorder and aggression, political groups in society and states have developed militaries. The state is not only made up of military power and the strength it projects, but a state that overlooks the value of that power seeking only “idealistic aspirations is sure to perish”.<sup>8</sup> Equally as harmful as inadequate military power, is excessive military power and excessive military organization in relation to the external and internal threats. Improper military strength in proportion to the threat may leave a vulnerability to threats at one end, and an overbearing military at the other end. The monetary cost of an excessive military establishment can cause a large financial burden on its citizens and reduce the Gross National Product (GNP) available for other critical areas. One manifestation of this funding imbalance is a lack of funding available to protect Americans at home. Several

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<sup>8</sup> Louis B. Smith, *American Democracy and Military Power, A Study of Civil Control of the Military Power in the United States* (The University of Chicago Press, Chicago, 1951), 1.

other problems arise with a military that is disproportionately sized relative to the threat and may manifest itself in political or diplomatic risk.

The problem is larger than the issue of too much or too little power. It is the balance of adequate security and civilian supremacy. Many statesmen have a similar opinion as Adam Smith, who said, “it is only by means of a standing army, therefore, that a civilization of any country can be perpetuated, or event preserved for any considerable time.”<sup>9</sup> Praetorianism, Caesarism, and a garrison state are examples of an excess standing army that led to the destruction of a civil government by the armed forces. Civilian control, or dominance, is more than the legal control outlined in a Constitution. It must be appreciated by the people it protects, and become the policy of the people. Just as important is the translation of the Constitution and the accompanying policies, is the ability of the government to effectively administer the sentiment or” will of the people”. The coordination is as important as the subordination.<sup>10</sup>

#### **B. FEDERAL GOVERNMENT CONTROL AND CIV-MIL RELATIONS**

To avoid militarism of a state its citizens must maintain an ever-present passion and maintenance of certain civil democratic procedures.<sup>11</sup> First, the governmental leaders in a democracy are civilians, representative of the majority of the citizens to whom they are accountable, and may be removed by a functioning legal and political process. Second, the military leaders are under the control of the civilian leadership, which is constitutional and effective. Third, the management of the military is under the authoritative supervision of civilians at all levels. Fourth, elected representatives of the people make the policies concerning war, money for military personnel and equipment, emergency powers, and general control over those responsible for execution of the policy. Finally, the judiciary is positioned to hold the military accountable for protection of the basic democratic rights of its citizens.<sup>12</sup> The greatest threat to an enlarged military, and a strain on civil-military relations, is from a security crisis in the form of an external threat. The government must seek to eliminate the prolonged external security threat by

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<sup>9</sup> Adam Smith, *An Enquiry into the True Nature and causes of the Wealth of Nations*, ed. Edwin Cannan Modern Library, New York, 1937), 667.

<sup>10</sup> Louis B. Smith, 13.

<sup>11</sup> *Ibid*, 15.

<sup>12</sup> *Ibid* 15.

all means, except war, to reduce the civil-military relations problem of a military force out of balance with the internal and external threat. In Alexis de Tocqueville's *Democracy in America* Book II, Chapter 22, he writes about why democratic nations naturally desire peace, and democratic armies desire war.

War does not always give over democratic communities to military government, but it must invariably and immeasurably increase the powers of civil government; it must almost compulsorily concentrate the direction of all men and the management of all things in the hands of the administration. If it does not lead to despotism by sudden violence, it prepares men for it more gently by their habits. All those who seek to destroy the liberties of a democratic nation ought to know that war is the surest and the shortest means to accomplish it. This is the first axiom of the science.<sup>13</sup>

Contained in the Federalist Papers, the most important documents in the debate over the ratification of the Constitution, come the American traditions of civil-military relations: an aversion to standing armies, insistence on civilian supremacy over the military, a preference to citizen-soldiers in the form of state militias, and strong congressional powers governing the military and national security.

A wise nation will combine all these considerations; and, whilst it does not rashly preclude itself from any resource which may become essential to its safety, will exert all its prudence in diminishing both the necessity and the danger of resorting to one which may be inauspicious to its liberties.<sup>14</sup>

### **1. Executive Control**

Although ambiguous and overlapping in defining responsibilities of the three branches of government, there is little doubt that military power is to be subordinate to the civil government. Specific roles of the three branches relative to the military have conflicting opinions, and significant changes in power, and constitutional roles during transitions from peace to war make generalizations complex. The Constitution gives the President the executive power as well as commander in chief of the army, navy, and the militia when called into federal service. He is the main figure in foreign affairs and in presenting policy to Congress. These powers place the President in a position of

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<sup>13</sup> Accessed through the C-SPAN website at [http://xroads.virginia.edu/~HYPER/DETOC/ch3\\_22.htm](http://xroads.virginia.edu/~HYPER/DETOC/ch3_22.htm).

<sup>14</sup> Alexander Hamilton, James Madison, John Jay, *The Federalist Papers*, ed. Benjamin F. Wright (Barnes and Noble Press, New York, 1996) No. 41, p. 296.

controlling military power. He has the power to declare war in concert with Congress, and to make peace in conjunction with the Senate. He appoints and assigns every member of the military officers, but Senate approval is required for all military officer commissions. Every member of the military, including the civilian secretaries of the respective services, is subject to his authority. Without this power, civilian control of the military would hardly be possible.

The executive branch has several important ways to impact HLS. One is through the National Security Strategy (NSS). This strategy lays the framework for all national instruments of power to work towards common national security objectives. The *National Security Strategy of the United States of America, September 2002*, mentions *providing security against terrorism and weapons of mass destruction*. Released prior to the NSS, but in subordination of, President Bush released *The National Strategy For Homeland Security: Office of Homeland Security* in July of 2002. Meant as an action plan as opposed to a directive, it asks to review the role the National Guard can play in domestic terrorism. It is the Presidents' NSS that is the blueprint for HLS. One of the President's prompt impacts to HLS was through an executive order. This order created an Office of Homeland Security and new Homeland Security Counsel to coordinate and prioritize the countries efforts in defending our home front.

## **2. Legislative Control**

An adequate national security program, which rests with the consent of the citizens, must have balance between the President and Congress. If this civil-military relationship in national security suffers either an internal or external threat, and becomes unstable, it may have grave HLS implications. Probably the most essential branch of government in maintaining civilian control is Congress. This is the branch closest to the "will of the people" and is the elected representative of the people. The Constitution gives considerable, though not single authority, to the Congress for controlling the military. The principle of separation of powers, articulated in the Federalist Papers, No 51, and written into the Constitution, share this authority with the other two branches. Power granted to Congress, governing control of the military, covers the number of personnel, the support they get (including pay and benefits), the number and type of equipment, the organizational structure, and the overall general use. A key element to the

success of a democratic nation is reflected in how acceptable to the people government policy is. Congress as the representative of the people must actively participate in formulating the national security policy relative to the military use. They can do this by balancing the external and internal threat (HLS) with the will of the people, and control over the military. This is effective control of the military. Some say the most influential way Congress can shape HLS is with the budget. In peacetime it is easier to keep control over the military through the budget. However, inter-service competition and infighting occurs over many issues, including roles and missions and force structure. These inter-service rivalries are more likely to occur during peacetime. During war, the military budget becomes more of a way to allocate resources as opposed to one of fiscal economy, or as a means to exert civilian control over the military. Fiscal year 2003, and our current Global War on Terrorism, has an increase in appropriation of funds to the military of over 88 billion dollars from only three years ago. Does this signal a loosening of Congressional control over our current military? Another way Congress can influence HLS is through legislation. Congress took two significant post 9/11 HLS actions. First, is the Pentagon's establishment of Northern Command (NORTHCOM), on April 17, 2002, for homeland defense. Congressional oversight through both the budget and manning will be crucial to the effectiveness of NORTHCOM in HLS. Congress, if they exercise proper control, will be an important part of determining the place of the National Guard in NORTHCOM. Second, is the passage of the Homeland Security Act of 2002. This restructuring of the executive created the Department of Homeland Security. The details of the new department will have far reaching impact on HLS with Congress playing a critical role in the development and success of domestic security, especially with the relationship between the military and civilian agencies. Equally important to the legislative aspect of the Homeland Security Act is the amount of funds that Congress appropriates to the new department.

### **3. Judicial**

The continuance of civil control of the military in policy and administration primarily rests with Congress and the President. The Constitution has a basic protection of certain fundamental rights. Among them are "Life, Liberty and the pursuit of Happiness." It is here where the judiciary takes a prominent role. It is the Supreme

Court's responsibility to limit the encroachment by public agencies, including the military, from trampling these individual liberties. It is more difficult during wartime, and probably more important, to insure a proper balance of civil control over the military. This idea is communicated in a 1942 Supreme Court ruling.

... and of the duty which rests on the courts, in time of war as well as in time of peace, to preserve unimpaired the constitutional safeguards of civil liberty, and because in our opinion the public interest required...<sup>15</sup>

Evidence of legal issues, HLS, and the military surfaced shortly after 9/11 with the use of military troops on the U.S. borders. Two of these issues are military status (federal vs. state control), and the application of the Posse Comitatus Act to the military use along the border in a HLS role. NORTHCOM will surely generate some challenging legal concerns as the interaction between the military and civilians develops.

Different from the other two branches that can exert both positive and negative control over the military; the judicial branch is only capable of negative control. Negative control meaning the issue must be brought to the court for interpretation. This means that instead of the "power of the purse", or the ability to declare war, the court validates or invalidates the scope and nature of constitutional powers as cases are brought before the bench. It is more of a passive influence on civil-military control. For the courts to safeguard the citizens' fundamental rights, the Constitution, and preserve national security, there must be a balance between the individuals' rights and collective security. Being the weakest of the three branches, due to the fact it has no enforcement capabilities, the judicial branch uses several mechanisms to avoid nullification of its rulings. One way is not to hear the case for a variety of reasons, or to delay a decision until the crisis has lessened or passed. The military has its own separate judicial system, the courts martial. This independence is necessary for the military command in military instances. The Supreme Court check on this system is to determine the scope of authority of the military courts. The Supreme Court power in these situations is to establish if a case belongs in the military or civilian courts? This is another means of civilian control over the military, through the judicial system.

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<sup>15</sup> EX PARTE QUIRIN, 317 U.S. 1 (1942) available at [http://www.c-span.org/laws\\_courts/expartequirin.asp](http://www.c-span.org/laws_courts/expartequirin.asp).

Although the weakest of the three branches, many legal issues have already surfaced for the judiciary in HLS. On October 26, 2001 the President signed the USA Patriot Act (USAPA) into law. This law was enacted to give law enforcement and intelligence agencies powers to fight domestic and international terrorism. Opponents of the USAPA argue that it removes some of the checks and balances of the judicial system. It won't be long before a HLS case makes it through the system to the Supreme Court for interpretation. One such case destined for the highest court is the use of military in domestic law enforcement. The PCA of 1878 will surely be addressed as the role of the military, through NORTHCOM and the National Guard, in HLS increases. The issue surfaced shortly after 9/11 when military support was requested to help secure our ports of entry. National Guard soldiers, who were already providing security (in a state status under the governors control), at our nations airports were requested to provide security to our borders. After much debate and to the dismay of the governors and adjutant generals, National Guard soldiers and airman were federalized. Many legal issues including command and control and arming of troops were not easily addressed. Further indication of military use in a HLS role headed for a legal interpretation.

### **C. TRADITIONAL U.S. CIVILIAN-MILITARY ISSUES AND THE GAP**

Understanding the importance and relationship between the civilians and the military is not new. Serious discussion and analysis of civil-military relations, and the question of a gap began in the late 1950's and early 1960's with Samuel P. Huntington's *The Soldier and the State*, and Morris Janowitz's *The Professional Soldier*. Debate continues today with articles titled *The Gap*, *Gaps - Imagined and Real*, *The Military/Civilian Culture Gap*, *The Growing Divide*, *The Widening Gap Between the Military and Society*, *Is Military Professionalism Declining?*, *The Mirror is Cracked Not Broken*, *Why the Gap Matters*, *Learn to Love the Gap*, *Bridging the Civil-Military Divide*, *Civilian Control A National Crisis?*, *The Erosion of Civilian Control of the Military in the United States Today*, and *American Civil-Military Relation: New Issues, Enduring Problems*. If such a gap exists, is it social, cultural, ideological, or theoretical? Is it a combination of, or something not yet properly identified? What would cause such a gap? Is it due to changes in military or civilian society, or both? Could it be due to base closures, or lack of education? What are the implications of such a gap? What can

we do to “bridge” the gap before Dunlap’s imaginary *American Military Coups of 2012*?<sup>16</sup>

First, it is helpful to understand the history of the discussed gap in civil-military relations and the relevance to HLS. For discussion purposes of the speculated gap, many break the civil-military relations gap into three separate periods based on the threat to national security. The first period begins after the Second World War with a relatively small standing military due to an insignificant threat to our national security. The second period begins in 1973 with the All-Volunteer Force (AVF), one of the results of the threat from the spread of communism and the Vietnam War. One large singular threat, the Soviet Union and her Eastern Bloc communist allies, signify this period. It ends as the post-Cold War era begins, continues today, and is characterized by a threat that is difficult for Americans to grasp. The first two periods provide little to the HLS debate because there had yet to be identified a serious domestic threat.

The final period, the post-Cold War era, is defined by a downsized military and drastically different security environment. Increasing technology, non-traditional missions, and social issues highlighted the cultural value gap. Some suggest there may be a difference in organizational structure rather than a gap in culture. Again, why does the gap matter? Most agree there is a gap, and it is necessary because civilian culture is not compatible with the military mission. They also agree the gap has an “optimum middle ground”. There are also concerns about a serious lack of understanding civilians and the military have about the other. The concern is over a military that question defending a society it finds too liberal, or a government, lacking military experience, that erodes military effectiveness, resulting in a detrimental effect on national security. This current period is where a trending gap exists that has not previously existed. These trends, that may have a dramatic effect on HLS, are the next point of discussion.

#### **D. POST ALL VOLUNTEER FORCE AND THE GAP**

More recent empirical and anecdotal evidence points to an existing gap, and a possible a widening in certain areas. In a 1997 article written by Thomas Ricks about

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<sup>16</sup> Charles J. Dunlap Jr., “The Origins of the American Military Coups of 2012”, *Parameters*, winter 1992-3, pp. 2-20, Available at <http://carlisle-www.army.mil/usawc/Parameters/1992/dunlap.htm> (accessed December 2002).

*The Widening Gap*, he describes three large areas of examination when determining the gap between military and civilians. He first focuses on changes in both the individual military, and civilian societies, and lastly on the changes in international security. Most of the same international security issues mentioned by Ricks existed prior to 9/11, as indicated by such reports as the Hart-Rudman Commission<sup>17</sup>, making his arguments relevant today. As mentioned earlier, possibly the most important change in the twentieth century was the end of the draft and the beginning of an AVF. Today, the roughly 1.5 million active duty military members are all volunteers. The almost thirty years of an AVF has seen the development of a more professional and career orientated military, including in the enlisted corps. Increased education of the enlisted ranks is one example of this increased professionalism.<sup>18</sup> Not only are they better trained and educated, they are more expensive. A Senate aide wrote that family related costs to DoD are now more than \$25 billion a year.<sup>19</sup> The cost of a more family orientated military has risen significantly, and increased operations tempo has a negative effect on many military members, possibly affecting military planning and policy decisions for HLS. An important point to make in relation to the increase in professionalism of the military post-AVF, is that throughout history Americans have been uneasy with professional militaries and up until WWI the professionals were the enemy.

The essential conservatism of the military outlook has caused American liberalism to identify its external and domestic enemies with military professionalism. The Revolutionary War was described as a war of citizen-soldiers against the standing armies and mercenaries of George III. The Civil War was [the Union fighting] against the West Point directed armies of the South.... German militarism was the principal enemy in World War I.... The professionals, in other words, are always on the other side.”<sup>20</sup>

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<sup>17</sup> “Roadmap for National Security: Imperative for Change,” U.S. Commission on National Security/21<sup>st</sup> Century Phase III Report, 15 February 2001, 2 and 10. <http://www.nssg.gov/PhaseIIIFR.pdf>.

<sup>18</sup> Shelia Nataru Kirby, and Harry J. Tile, *Emerging Enlistment Management, A Historical Perspective* (RAND, 1996) 24, Available at <http://www.rand.org/publications/MR/MR755/MR755.chap3.pdf> (accessed November 2002).

<sup>19</sup> Thomas Ricks, *The Widening Gap Between the Military and Society*, An Article In the Atlantic Monthly, July 1997, 6, available at <http://www.theatlantic.com/issues/97jul/milisoc.htm> (accessed March 2002).

<sup>20</sup> Samuel P. Huntington, *The Soldier and the State*, (Harvard University Press, Cambridge Massachusetts, 2001) 154.

Another post AVF trend is a significant decrease in drug use in the military, which has decreased over the last 30 years. Drug use is lower than in civilian society,<sup>21</sup> more indications of a changing military. Geographical isolation of military personnel has increased since the base closure commission began closing military bases in 1988. Not only do fewer military bases give less opportunity for civilians and the military to coexist in communities throughout the country, there have been a disproportionate number of closings in the Far West and Northeast areas. Traditionally these areas are more liberal and expensive to live in. The connection here could be a lack of congressional representation for military issues in those regions and no need for federal representatives to be as educated on military issues.

Base closures also signified another trend of change within the military, the civilianization or privatization of the depot system. This is the system that does large-scale maintenance on ships, planes, tanks and other defense related equipment. The fallout is there are fewer military personnel in military occupations that have the ability to transfer over to the civilian job market. This leaves a higher percentage of the military with less marketable civilian job skills. Two possible effects are increased careerism in the military or greater difficulty in military personnel integrating back into the civilian world.

The relatively smaller and AVF military force, combined with a different security environment, signaled the beginning of a twenty-first century gap in civil-military relations. A military that is smaller, more professional, more educated, and more geographically and socially isolated. A smaller military, whose size is based on a low external threat and an unrecognized internal threat, is not adequately prepared for both. Old equipment and training did not keep up with the unknown new threat. The military hung onto the past because they were unclear of the future. As the military becomes more professional and isolated it is less representative of the society it protects. Civil society is less capable of exercising proper control over a military they understand less. Less representative and less capable, together left a developing vulnerability to protect

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<sup>21</sup> Quoted from Ana Mari Salazar former, Deputy Assistant Secretary of Defense for Drug Enforcement Policy and Support, in Air Force News Link (November 20, 2000) Available at [http://www.af.mil/news/Oct2000/n20001020\\_001595.shtml](http://www.af.mil/news/Oct2000/n20001020_001595.shtml) (accessed November 2002).

America against a deadly new threat. The implications to HLS did not come to light until 9/11. The military budget was shrinking and a new NSS was non-existent, one that should have included HLS. There was plenty of talk of base closures and scandals, both in the military and with civilian leaders. While policy makers and military leaders drifted apart, terrorists came together. I believe we had many indicators of what was to come, but the trending gap between the military and civilians got in the way of taking proper action to minimize our exposure to the changing security environment.

#### **E. NEW AND TROUBLING GAP ISSUES**

A new and troubling trend in the civil-military gap is the politicization of the military, especially in the officer corps. The definition of liberal and conservative, or Democrat and Republican vary. Few agree on where the lines are drawn between them. It is however a little easier to discern trends in political tendencies. Janowitz concluded in 1960 that:

The political beliefs of the military are not distinct from those that operate in civilian society. On the contrary, they are a refraction of civilian society wrought by the recruitment system, and by the education and military experiences of a professional career.<sup>22</sup>

He also mentions there was a shifting trend from conservatism in the military, beginning around the time of the great depression. Prior to this more liberal thinking, most officers thought of themselves as conservative. He concludes a trend from conservatism towards more liberal thinking in the military as an accurate reflection of civilian society. In addition, he noted a tendency towards more conservatism the higher in officer rank, and education at upper level military institutions like the War College. Evidence today seems to indicate a swing back towards conservatism in the military relative to political persuasions in civilian society. This swing is evident even with an increased number of women and minorities in today's military, who are usually more liberal. Thomas Ricks sites a Navy survey indicating Midshipmen at Annapolis today are two times as likely to consider themselves conservative compared to their peers at the Naval Academy in 1974<sup>23</sup>. An Army major who taught at West Point in the 1990's

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<sup>22</sup> Morris Janowitz, *The Professional Soldier, A Social and Political Portrait*, (The Free Press, Glencoe, Illinois, 1960) 234.

<sup>23</sup> Ricks, 9.

concluded that West Point Cadets “overwhelming identified themselves as conservative”, and “being Republican is becoming part of the definition of being a military officer.” In a survey of Marine Corps officers with at least ten years experience, less than half thought “it desirable to have people with different political views within their organizations.” In addition to this increase partisanship in political association by military officers, is the decline in those who identify themselves as independents (no preference). In 1976, data showed 54 percent of active duty officers identified themselves as independent, compared to 28 percent in the 1998-99 TISS study. In 1993 when Senator Strom Thurmond was introduced to the Association of the United States Army, noting his change in party affiliation from Democrat to Republican in 1964, there was a loud applause.<sup>24</sup> This is another visible sign of increased political partisanship within the military.

To go along with this increasing trend of conservatism in the military is an increase in voting. Civil War officers unanimously agreed, “politics and officership don’t mix.”<sup>25</sup> This was evidenced by the fact that less than one in five hundred officers during this period voted.<sup>26</sup> Contrast this with today, where a greater percentage of the military votes compared to the general population. Beginning before the Civil War, American military officers not only avoided political parties and partisanship, as a group they abstained from voting.<sup>27</sup> The military of that time stood above politics and served neutrally for the nation.

### **1. Triangle Institute of Security Studies (TISS)**

Several of these observations have been corroborated by the most comprehensive and systematic study of civil-military attitudes, perspectives and opinions. The 1998-1999 study, titled *The Project on the Gap Between Military and Civilian Society* conducted by the Triangle Institute of Security Studies—a consortium of faculty from Duke University, the University of North Carolina at Chapel Hill, and North Carolina

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<sup>24</sup> Richard H. Kohn, “Out of Control, The Crisis in Civil-Military Relations”, *The National Interest*, No. 35, Spring 1994.

<sup>25</sup> Huntington, 258.

<sup>26</sup> Huntington, 258.

<sup>27</sup> Richard H. Kohn Quoted in “The Erosion of Civilian Control of the Military in the United States Today”, *Naval War College Review*, Summer 2002, Vol. LV, No. 3, 27.

State University-with a grant from the Smith Richardson Foundation. They surveyed over 4900 Americans from three groups: military officers selected for promotion or career advancement, influential civilians, and the general public. The study was designed to answer three questions: What is the character of the civil-military gap today? What factors are shaping it? What are the implications for military effectiveness and civil-military cooperation? The questions on the survey covered many areas: defense and foreign policy, social and moral issues, and relations between civilian policy makers and military officers. The answers were analyzed and combined with other political, sociological and historical studies for conclusions and possible recommendations.

Today military officers are much more conservative than the civilian elite, but not more conservative than the general public.<sup>28</sup> Seven of eight military officers identify themselves as Republicans, whereas the elite civilians and general public are split about fifty-fifty between Republican and Democrat. It is also important to note, that over the last generation, the percentage of military officers who identify themselves as independents has gone down from 46 percent to 27 percent. This is a disturbing trend if it is important for the military to be representative of the citizens it protects. Even though military officers were critical of political leaders, both civilian elites and the general public have confidence in the military, and only one third of each think that a cultural gap has a negative impact on military effectiveness. There seems to be a disconnect between the confidence each has with the other. This may be an indication of a trend towards an increasingly delicate civil-military relationship. Two separate findings of this survey illustrate this eroding relationship. First, seventy-six percent of military officers oppose gay and lesbians serving openly in the military, while more than half of the general public and civilian elites support open service. The second, a majority of officers questioned believe it is their duty to “insist” rather than “advise” civilian leaders on important military issues including: “rules of engagement”, “exit strategy”, and types of military units and equipment necessary to accomplish tasks. An example of this is a military officer admitting in 1999 that the Pentagon’s military leadership had made it his duty to encourage congress to restore a billion dollars that was cut out of his service’s budget by

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<sup>28</sup> Ole R. Holsti, “A Widening Gap Between the U.S. Military and Civilian Society? Some further Evidence, 1998-99”, TISS project paper.

the civilian leadership of the Pentagon.<sup>29</sup> Combine this with the criticism the military has for its political leaders and you have a recipe for a weakening of civilian control over the military.

Another new and significant finding in the gap discussion is in the implications of less military veterans in Congress. Between the late 1960's and late 1990's military experience in the House of Representatives has declined by almost a factor of three, from near seventy five percent to below forty percent.<sup>30</sup> This decrease was caused by a generational replacement of legislators who were veterans of WWII and Korea. Individuals from the Vietnam and the post-Vietnam era who have a much lower probability of military service replaced these veterans. William Bianco also makes clear that a "decline in military experience" has not caused any "systematic policy bias." In an article by Feaver and Gelpi using the TISS data, they concluded that the greater percentage of legislators with military experience, the lower the probability the United States would initiate a militarized dispute in the international area. An accompanying finding complicates the decline of military experience in Congress. Conventional wisdom, and a 1985 and 1995 RAND study conclude that civilian elites and military leaders believe the civilian public is sensitive or averse to casualties in war. This thinking in our policy makers plays a role in the use of military force. The TISS study finds the American public is not unusually "casualty shy". The public will accept casualties if they are determined to be necessary to complete a mission that has their support. In fact, military leaders are less likely to accept casualties than the general public. Many have argued that there has always been a civil-military gap and it is much to do about nothing. Different views between the military and civilians may be normal and even required for unit cohesion and military effectiveness. When you apply those different views to U. S. policy and the use of military force combined with Congressional leadership that is more likely to use military force there is a cause for civilian concern over the relationship with the military.

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<sup>29</sup> Kohn, Erosion, 17.

<sup>30</sup> William T. Bianco, "Last Post for "The Greatest Generation:" *The Policy Implications of the Decline of Military Experience in the U.S. Congress*, (Penn State University, June, 2002) 1-2.

## 2. The New Gap and the War on Terrorism

The relatively new trends of politicization, partisanship, lack of military experience in Congress, and a strengthening of military leaders, especially politically, are trends of a gap in civil-military relations that could have a negative impact on national security policy and the use of military force. A more politically active conservative military that is not afraid to insist rather than advise its civilian leaders is troubling. What are the implications of these trends that gap civil-military relations and how will they impact HLS and the Global War on Terrorism? How will our National Security Strategy, including the new Department of Homeland Security and Northern Command be affected? No one knows for sure. In my opinion these new gaps in civil-military relations are troubling for several reasons. First, in spite of a long history of military involvement in non-combat missions, the military has shown a recent dislike for non-traditional or Operations Other Than War (OOTW) missions, including counterdrug operations. This may be from incidents that occurred during missions in Somalia, and Bosnia and Herzegovina, or the Joint Task Force Six (JTF-6) shooting near Redford Texas in 1997.<sup>31</sup> Reuters quoted Chief of Staff for JTF-6 at the time, U.S. Air Force Colonel Henry Hungerbeeler, as saying,

The military would like to get out of this job. A major concern of the Defense Department now is how do we protect our people from unfair prosecution arising out of their attempts to fulfill their mission. Hungerbeeler also said, "using the military in civilian operations like drug surveillance was problematic."<sup>32</sup>

HLS will, by whatever terminology is used, involve a significant number of OOTW type missions. Second, and possibly due to the fact that OOTW missions involve complex civil-military relations and causes discomfort to the military, these mission receive a low priority.

U.S. law and policy place civil-military operations below combat operations as budgetary priorities. That means low priority for equipment procurement, training, and doctrine -the development of shared

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<sup>31</sup> High School student Ezequiel Hernandez Jr. was shot and killed while tending his family's goats by a USMC Corporal during a Joint Task Force Six Counterdrug mission for the United States Border Patrol.

<sup>32</sup> Quoted by Reuters News Service, July 30, 1997, available at <http://vikingphoenix.com/politics/Election2000/Issues2000/NationalSecurity/marfa-1.htm> (accessed December 2002).

techniques. In doctrine itself, inasmuch as it reflects the attitudes of “warfighters,” civil-military operations have an even lower standing. As a result, civil-military doctrine has been limited, somewhat controversial, and inadequate.<sup>33</sup>

Third, OOTW missions require interagency coordination that is complicated and becomes more complicated as the number of agencies involved increases. This coordination requires a series of compromises leading to a division of responsibilities based on these compromises. The compromises are often based on “turf battles” and not operational effectiveness. The military, due to the nature of their primary warfighting mission, like to operate under the principle of “unity of command” with them in charge. HLS will involve a large number of agencies and coordination beginning with the local agency first responders. “America's first line of defense in any terrorist attack is the “first responder” community local police, firefighters, and emergency medical professionals.”<sup>34</sup> Finally, a weakening congressional body, relative to the military leadership, and a more partisan and politically active military, that is more willing to influence policy, is new and troubling. Determining military roles and missions, AC/RC force mix, NSS policy, HLS policy, and use of military force, will be more susceptible to an uneven balance of power toward the executive over the legislative in military decisions. This could have a devastating effect on National Security and Homeland Security.

## **F. CONCLUSIONS**

Beginning with modern civilizations, control of the military has been a problem. Who and how should those that protect its citizens be controlled? Our country was founded on some basic but very profound principles. Fear of the tyranny of a standing army was a prominent reason why civilian supremacy over the military, the system of checks and balances in the three branches of government, and the importance of a militia, are the beginnings of successful experiment in democracy. The nature of civilian control of the military shapes the NSS, including HLS. Several recent problems and dynamics in our civil-military relations have the potential to negatively affect our ability to defend

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<sup>33</sup> John A. Gentry, “Complex Civil-Military Operations, A U.S. Military-centric Perspective”, Naval War College Review, Autumn 2000, available at <http://www.nwc.navy.mil/press/Review/2000/autumn/art4-a00.htm> (accessed December 2002).

<sup>34</sup> Quoted from the Office of the White House, available at <http://www.whitehouse.gov/homeland/firstresponders/> (accessed December 2002).

Americans here at home. Governmental control over the military, through the three branches of government, help maintain the proper military power relative to the threat. The President is not only the commander in chief of the armed forces but sets the national policy through the National Security Strategy, exhibited by the *National Security Strategy of the United States of America, September 2002*, and *The National Strategy For Homeland Security: Office of Homeland Security*. Congress as the bond to the people through legislation and budget, balance the strategy of the executive with the citizens they represent. The passage of the *Homeland Security Act of 2002*, and oversight of NORTHCOM are Congressional responsibilities to protect the nation. Although not actively involved, it will not be long before the Supreme Court hears legal issues surrounding individual rights over the USAPA and the use of the military in domestic HLS missions.

Most agree there is a gap in civil-military relations, but the size, shape, and meaning garner different opinions. Post WW II history shows a progression of gap issues based on the threat to America. Until recently this threat was external. This new internal threat, combined with a difficult to articulate external threat, and several concerning trends in civil-military relations may be a weakness in defending our homeland. A strengthening of the military in comparison to our political leaders is the most troubling of these trends. A more “republicanized” military, which votes in a higher percentage than any time in history, and is not afraid to “insist” rather than “advise” its civilian leaders on critical issues is worrisome. Combine this with the strengthening of the senior military advisor, the Chairman of the Joint Chiefs of Staff (CJCS), through the 1986 Goldwater-Nichols Defense Reorganization Act, and military leaders who are not troubled by excessively influencing political decisions, raises the question: Who is guarding the guardians? There is a weakening on the civilian leadership side, shown by a decrease in military knowledge in Congress, and caused by a decline in the number of military veterans serving in Congress. If who prevails, military or civilians, in *Major U.S. Civil-Military Conflicts*, are any indication, there is a swing towards the military in

the civil-military balance.<sup>35</sup> This balance shift is not only unhealthy for civilian supremacy, but may contribute to a less than secure homeland.

The Gulf War, seen as a military success, may have actually been the beginning of a civil-military relations predicament. A relative weakness in civilian leaders in comparison to military leaders has indications of a possible bias towards military opinion becoming action. A healthy balance is necessary to make sound national security judgments and to determine the use of military force, either domestically or internationally. In order to adequately protect Americans, on American soil, the divergence between those who control the military (civilians) and those protect (military) must end. This troubling trend of an increasing gap between civilians and the military can be put back into balance. Can the National Guard reconnect the military and civilians, bridging the gap, strengthening civilian control of the military, and secure America's Homeland? The next chapter will show how the National Guard can reduce the trending gap in civil-military relations, restore a healthy balance, and ultimately provide a safer homeland.

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<sup>35</sup> Michael C. Desch in his book *Civilian Control of the Military, the Changing Security Environment* says, "The best indicator of the state of civilian control is who prevails when civilian and military preferences diverge." In the Appendix of his book he charts major civil-military conflicts beginning in 1938 and ending in 1997. Prior to May of 1977 in all 51 conflicts noted, the civilians prevailed in the process. From May 1977, until the responsibility for the bombing of Khobar Towers in 1997, the civilians prevailed 12 times, and the military 7, with 2 mixed decisions and 2 undetermined. According to the method of Robert Dahl, this indicates a trend of increasing political involvement of the military in societies political decision-making and a possible weakening of civilian control.

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### **III. TENSION BETWEEN THE ACTIVE COMPONENT AND THE NATIONAL GUARD**

Beginning with the Revolutionary War there has been a tension between the National Guard and the professional standing army. This chapter will show numerous examples throughout history, that continue today, of this tension and how this tension has influenced decisions concerning the use of the military. It begins with a brief history of the militia and the definition of Active Component (AC) and Reserve Component (RC). It then takes us through the Revolutionary War to the present focusing on the tension between the AC and RC and its impact on today's present-day relationship. In addition, this tension has shaped the legal foundation for the dual state-federal status of the National Guard. This unique status will be important to HLS.

#### **A. BACKGROUND**

Prior to the signing of the Constitution, the written opinions that would later develop into the legal framework of our Nation were being debated. One of the most contentious debates was over the use of the army and the militia. Today we are left with many of these ideas from the Constitution, and Militia Acts that still today impact active and reserve component issues. This chapter will cover those that apply to military involvement in domestic issues. In the wake of September 11<sup>th</sup> these legally binding documents have increased relevance and application in the twenty-first century.

It is important to note, just as the army gets its foundation in the Constitution, Article I, Section 8: "Congress shall have Power ... To declare War", and "To raise and support Armies", so does the National Guard.

The Congress shall have the Power ...

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasion;

To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States, respectively, the Appointment of the

Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.<sup>36</sup>

Amendment II to the Constitution further adds to the legal establishment of the National Guard.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.<sup>37</sup>

It is in the founding document of this nation, which governs still today, that the National Guard's role in HLS begins its evolution. These documents also define the responsibilities of the civilian government in controlling the armed forces that will play an important function in developing our twenty-first century military.

## **B. FOUNDING FATHERS AND THE MILITIA**

It is first important to understand why the Constitution says what it does about the Armies and the Militia, as well as the Eighteenth-Century meaning of militia, before discussing Congressional and Presidential authority and responsibility. Next, I will discuss the National Defense Acts governing the use of the National Guard, with emphasis on The Militia Acts of 1792 and 1933, and the Posse Comitatus Act of 1878, which provides further clarification on the role of the militia in domestic disorders. To complete the written Federal legal backing, I will use both United States Code (U.S.C.) and Department of Defense Directives applicable to the use of the military, including the National Guard, in domestic operations.

It was a concern over external aggression and the apprehension of overwhelming power in any singular agency or person that focused the framers of the Constitution in their conventions on military issues. There was a fear of a standing army and state's right on one side (anti-federalists) of the debate. On the other side, a fear of the British, Spanish, and Indians, who surrounded the new Union, and support of a strong coordinated federal government (federalists) on the other. This led to a large amount of attention in developing the Constitutional clauses concerning the army and the militia.

The "Militia Clauses" to the Constitution, including the II Amendment, reaches as far back as the First Continental Congress in 1774.

<sup>36</sup> The Constitution of the United States, Article I, Section 8, September 17, 1787.

<sup>37</sup> Amendment II to the Constitution of the United States of America, December 15, 1791.

*Resolved, N. C. D. 9.* That the keeping a standing army in these colonies, in times of peace, without the consent of the legislature of that colony, in which such army is kept, is against law.<sup>38</sup>

The concern over a standing army appeared in the above written declaration. It was a crucial division among the delegates, between those that favored a strong central government, and those who believed sovereignty belonged with the individual states. One of the manifestations of these differences was whether the newly forming nation should rely on a standing army or a militia. This debate was further refined with the Articles of Confederation in 1781:

Every state shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutered, and...<sup>39</sup>.

This thought was further echoed in Article 13 of the Virginia Declaration of Rights in 1776:

That a well-regulated Militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free State; that Standing Armies, in time of peace, should be avoided as dangerous to liberty; and that, in all cases, the military should be under strict subordination to, and governed by, the civil power.<sup>40</sup>

Colonial militias were somewhat parochial and did not coordinate with each other. The Articles of Confederation governed the militia after the Revolution and attempted to standardize them. Because the Congress could not force the states to honor its request for troops, further improvements in the system would be required and incorporated into the Constitution.<sup>41</sup> The compromise was the accepted necessity of a national defense, and the avoidance of the creation of a professional standing army that could become too powerful to control. The desired effect was a regular army no larger than absolutely required, and a significant portion of national defense responsible to the militia.

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<sup>38</sup> *Documents Illustrative of the Formation of the Union of the American States*. Edited by Charles C. Tansill, (69th Cong., 1st sess. House Doc. No. 398. Washington, D.C.: Government Printing Office, 1927).

<sup>39</sup> *The Founders' Constitution, Volume 1, Chapter 1, Document 3*, (The University of Chicago Press), available at <http://press-pubs.uchicago.edu/founders/tocs/v1ch1s7.html> (accessed October 2002).

<sup>40</sup> *The Founders' Constitution, Volume 1, Chapter 1, Document 3*, (The University of Chicago Press), available at <http://press-pubs.uchicago.edu/founders/tocs/v1ch1s3.html> (accessed October 2002).

<sup>41</sup> *The Militia Clauses of the Constitution and the National Guard*, (University of Cincinnati Law Review 56, no. 3, 1988) 923.

According to U.S. Law, 10 U.S.C. Sec. 311, militia was defined as:

(a) The militia of the United States consists of all able-bodied males at least 17 year of age and, except as provided in section 313 of title 32 [32 U.S.C. sec. 313], under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States and of female citizens of the United States who are commissioned officers of the National Guard.<sup>42</sup>

Justice Joseph Story, Supreme Court Justice and founder of the Harvard Law School, further expounded on the meaning of a “well-regulated militia”. During the Eighteenth-Century Justice Story wrote:

The militia is the natural defense of a free country against sudden foreign invasions, domestic usurpation of power by rulers. It is against sound policy for a free people to keep up large military establishments and standing armies in time of peace, both from the enormous expense with which they afford ambitious and unprincipled rulers to subvert the government, or trammel upon the rights of the people. The rights of the citizens to keep and bear arms has justly been considered as the palladium of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary powers of rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them.<sup>43</sup>

It is along these lines that the Constitution refers to the militia. The Constitution in Article II Section 2 defines the civilian control of the military:

The President shall be the Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States.

### **C. ACTIVE COMPONENT/RESERVE COMPONENT (AC/RC)**

The sometimes-contemptuous relationship between the two began in 1775 with the beginning of the Revolutionary War and the establishment of the Continental Army.

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<sup>42</sup> At present Title 10 reads as follows... Sec. 311. Militia: composition and classes (a) The militia of the United States consists of all able-bodied males at least 17 years of age and, except as provided in section 313 of title 32, under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States and of female citizens of the United States who are members of the National Guard. (b) The classes of the militia are - (1) the organized militia, which consists of the National Guard and the Naval Militia; and (2) the unorganized militia, which consists of the members of the militia who are not members of the National Guard or the Naval Militia.

<sup>43</sup> Joseph Story. *Commentaries on the Constitution of the United States*. 3 vols., (Hilliard, Gray Boston, Mass., 1833), 2: 607.

This was the beginning of the “two army” military in America. Some use the term “three army” military instead of two. The U.S. Military is composed of a federalized active duty full-time military (AC) and a part-time military, or a reserve military force (RC). I will use the Army to explain the similarities and differences between the AC and RC.<sup>44</sup> There are significant distinctions between all three armies. Tradition and politics are the basis for these differences. It is the distinct dual State and Federal (state-federal) role of the National Guard and colonial militia history that separates it from the active duty and United States Army Reserve (USAR). For this reason I will use AC for the active duty, regular, or standing military, and RC for the National Guard. Although some tension exists between the AC and the USAR, I will use examples from the tension between the National Guard and the AC to emphasize my point, and this is why I use the phrase “two armies”.

#### **D. REVOLUTIONARY WAR**

The tension between the AC and the RC component goes all the way back to the end of the Revolutionary War and our founding fathers. It was widely known that the militia was critical to defeat the British regulars, but as George Washington said, “they introduce disorder among the troops...and [this] introduces abominable desertions.”<sup>45</sup> A successful outcome of the war fought with a Continental Army, and supported by the citizen-soldier, fueled the debate with the founders of the Republic and the framers of the Constitution: whether we should have a standing army or a citizen militia? After the Revolution, Article 9 of the Articles of Confederation governed the militia. The results of the constitutional convention were that the Hamiltonian-Madisonian Federalist view prevailed over the Patrick Henry-George Mason anti-federalist view and a standing army was the result. In the Federalists’ post-Constitutional military policy, there was a plan to centrally control a uniformed militia system.

##### **1. Militia Act of 1792**

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<sup>44</sup> This explanation applies to the Air National Guard, Air Force Reserve, Navy Reserve, and Marine Corps Reserve as well. The exception is there is no Navy or Marine Corps National Guard. The Army can be divided into three different entities: the active Army, the Army reserve, and the Army National Guard. Each entity has its own funding, bureaucracy, command structures and selfish interests. A further division exists. The Army contains one active component (AC) or regular army, and two reserve components. The two reserve components consist of the Army National Guard (ARNG) and the United States Army Reserve (USAR). If you are a member of the reserves (RC) you may be either in the National Guard or the USAR.

<sup>45</sup> Mahon, John K., *History of the Militia and the National Guard*, (Macmillan Publishing Company, 1983), 43.

When George Washington became the first President he had more than 35 years experience with the citizen-soldier. He appreciated their strengths and was aware of their weaknesses. He also understood the new nation's reliance on them. Several general officers, including the Secretary of War at the time Henry Knox, interpreted the fear of a standing army to be unwarranted. They did however recognize the importance of a reliance on the militia, and the fact the country would not support a large standing army in peacetime.<sup>46</sup> The goal was to define an efficient militia force, one that was available for national use. Knox submitted his action plan on the militia to Congress who took more than two years to pass it. On May 8, 1792, the Militia Act became law. The act mandated that every free, able-bodied white man, aged 18-45, owed service to both the state and nation, and would arm and equip himself. The act maintained the separate state militias, effectively leaving control with each individual state. This was a conscious decision by Congress to wash its hands of the militia.<sup>47</sup> The fear of a federal take-over of the state militias led to a successful block of this policy by the anti-federalists. This block was done by providing wording to weaken the Uniform Militia Act of 1792 that: called for every able-bodied white man to serve in the militia and arm and equip himself. The Act maintained the existing state militias, and Congress provided no funding or enforcement provisions. Thus the authority of the citizen-soldier remained with the states. The states sacrificed efficiency for autonomy and have been less trained and equipped than under a national militia system ever since.

#### **E. POSSE COMITATUS ACT OF 1878**

It is my opinion there would only be one significant piece of legislation concerning the militia for the next 110 years, the Posse Comitatus Act of 1878. The frequent use of troops outside the conditions of previous laws in the South between 1865 and 1877, which were normally accomplished by civil authorities, inspired Congress to act. After the election of 1876, several southern congressional Democrats charged federal troops with intimidating voters, seizing political prisoners, and interfering with civil governments within the states.<sup>48</sup> The House asked in the form of a resolution for

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<sup>46</sup> John M. Palmer, *Washington, Lincoln, Wilson*, Doubleday, Doran, 1930), part I, "Washington' Legacy".

<sup>47</sup> Jacobs, 28.

<sup>48</sup> Coakley, 342.

President Grant to produce his directions relating to the use of troops in several southern states. Grant used the Constitution, laws, and precedents as a defense. Nowhere did he use the *posse comitatus* (force of the country) *doctrine*<sup>49</sup> as the authority for using troops in the South. In response, J. Proctor Knox, a representative from Kentucky, had the following amendment to the Army appropriations bill in May of 1878:

From and after the passage of this act it shall not be lawful to employ any part of the Army of the United State as a posse comitatus, or otherwise, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by Act of Congress; and no money appropriated by this act shall be used to pay any of the expenses incurred in the employment of any troops in violation of this section and any person willingly violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine not exceeding ten thousand dollars or imprisonment not exceeding two years, or by both such fine and imprisonment.<sup>50</sup>

The Knott Amendment, more commonly referred to as the Posse Comitatus Act (PCA), was signed into law as part of the Army appropriations Act on June 18, 1878. Today it is Title 18, Part I, Chapter 67, Section 1385:

#### Use of Army and Air Force as **posse** comitatus

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 Presidential powers to use either the regulars or militia remained the same after Posse Comitatus. The act reinforced the constitutional guidelines in that “troops could not be used on any lesser authority than the president...” and that “Commanders in the field would no longer have any discretion, but must wait for orders from Washington.”<sup>51</sup>

There have been several amendments and many interpretations, beginning in 1878 and continuing through until today, as to what the real meaning of the PCA is. The PCA

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<sup>49</sup> A Marshal of the United States, when opposed in the execution of his duty, by unlawful combinations, has authority to summon the entire able-bodied force of his precinct, as a posse comitatus. The authority comprehends. Not only bystanders and other citizens generally, but any and all organized armed forces, whether the militia of the state, or officers, soldiers, sailors, and Marines of the United States. — Opinion of Attorney General for President Franklin Pierce, Caleb Cushing, 27 May 1854.

<sup>50</sup> Coakley, 344.

<sup>51</sup> Ibid.

was not meant to “remove the Army from civilian law enforcement and to return it to its role of defending the borders of the United States.”<sup>52</sup> as suggested by an article in *The Journal of Homeland Security*, or that an “American aversion to military gendarmerie was formalized by Posse Comitatus.”<sup>53</sup> It was enacted to prevent the Army from being abused by having its soldiers pressed into service as police officers (a posse) by local law enforcement officials.<sup>54</sup> It will be crucial to the role of the National Guard in Homeland Security to revisit how Posse Comitatus applies to all military forces in the twenty-first century.

#### **F. NATIONAL GUARD ASSOCIATION (NGAUS)**

By the 1870’s most state militias has adopted the name National Guard in spite of the fact that they were primarily instruments of the state.<sup>55</sup> The militia’s new name gained credibility when the citizen-soldiers formed an organized lobby in 1879. The National Guard Association (NGA), presently named The National Guard Association of the United States (NGAUS), formed to gain a new militia act from Congress. The goal was to have the National Guard recognized as the “organized militia” and supersede the obsolete Uniform Militia Act of 1792.<sup>56</sup> Although recent membership numbers are down, NGAUS is still an effective lobbying group for the citizen soldier.

#### **G. MILITIA ACT OF 1903 (DICK ACT) AND AMENDMENTS**

Pushed by the National Guard lobby, the Militia Act of 1903, also know as the Dick Act<sup>57</sup>, repealed the Militia Act of 1792 and recognized the states’ soldiers as the nations’ “first line reserve”, and instituted “a degree of federal control over the Guard.”<sup>58</sup> The National Guard wanted recognition and financial support from the federal

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<sup>52</sup> MAJ Craig T. Trebilcock, “The Myth of Posse Comitatus”, *The Journal of Homeland Security*, October 2000, available at <http://www.homelandsecurity.org/journal/articles/displayArticle.asp?article=11> (accessed October 2002).

<sup>53</sup> Richard Hart Sinnreich, “For a Real Homeland Defense”, *Washington Post*, December 12, 2001, A35.

<sup>54</sup> John R. Brinkerhoff, “The Posse Comitatus Act and Homeland Security”, *The Journal of Homeland Security*, February 2002, available at <http://homelandsecurity.org/journal/articles/displayArticle.asp?article=30>.

<sup>55</sup> Ibid.

<sup>56</sup> Derthick, Martha, *The National Guard in Politics*, (Harvard University Press, Cambridge, Massachusetts, 1965), 16.

<sup>57</sup> Named after Representative from the 19<sup>th</sup> district of Ohio, Charles Dick.

<sup>58</sup> Cooper, 22.

government, and at the same time to maintain its autonomy under state control. It also wanted control of its organization and officer selection system, and to remain the principle source of manpower during national conflicts. By 1896, with over 100,000 soldiers, the National Guard was four times the size of the regular army.<sup>59</sup> It was about the time of the formation of the NGA when the tension between the newly named National Guard and the regulars surfaced again. In addition to the organized militia, now being called the National Guard, it obligated the federal government to equip, train, and increase funding to the Guard. The Guards' status was solidified as a reserve force and at the same time it maintained state control until federalized under constitutionally established guidelines. This was a historic mark in the establishment of the dual state-federal status.

Congress made several amendments to the Dick Act in 1908. The most significant changes were to allow the President to determine the length of service for guardsman when federalized. Additionally, it was now authorized to use state soldiers outside United States territory. It also required the President to use the newly formalized organized militia prior to any volunteer force. By 1912 many Army professionals felt the Guard fell short in serving the nations' military needs.<sup>60</sup> The War Department tried to obtain greater control over the Guard and create a national reserve that would minimize the Guard's role as the nations' "first-line reserve force". The compromise was the national Defense Act of 1916. The Guard received funding for drill, the one weekend per month training, and the 15 day annual training (AT) period, as well as additional federal appropriations. This funding system for training is still in place today. The AC now had clear guidance as to when funding could be denied to the state for not meeting federal requirements. The law also allowed the President to assign specific types of units to each state and set strict standards for commissioning officers. Also created by the Act of 1916 was a new national reserve, the Officers' Reserve Corps and the Enlisted Reserve Corps. They were intended as a resource pool of prior service Regular Army soldiers. In addition, the Reserve Officers' training Corps (ROTC) was created to commission

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<sup>59</sup> Derthick, 16.

<sup>60</sup> Copper, 101.

Reserve officers at civilian colleges and universities. This will become an important link between the citizens and military through civilian education.

## **H. SPANISH-AMERICAN WAR**

The “traditional animosity”<sup>61</sup> between the regulars and the citizen-soldiers was again apparent during the Spanish-American War when accusations by the regulars that the Guard officers were a bunch of “hometown boys with no military courtesy”<sup>62</sup> and were politically appointed rather than promoted on their qualifications. Despite their apparent lack of discipline, the Guard was “fully equal to the professional competence of the Regulars”.<sup>63</sup> It was during this same time period when the differences between the Secretary of War and the National Guard surfaced, and a legislative battle began over the control of volunteer manpower during wartime. The National Guard fought the AC for two decades, until the National Defense Act of 1920, to be recognized as the nations volunteer reserve.<sup>64</sup> An additional set of compromises was reached with the National Defense Act of 1920. The Guard would assume a permanent place in reserve policy and assurance that the head of the Militia Bureau (National Guard Bureau) would be a National Guardsman. In these compromises the Guard failed to maintain control of unit integrity during federal mobilization, including control over the types of units the states were assigned. Another setback to the Guard was the further solidification of the Army’s Organized Reserve Corps as a rival to the National Guard.

## **I. EMORY UPTON AND REGULAR ARMY THINKING**

Tension between the AC and RC manifested itself in the written form by two military intellectuals. Emory Upton was a 1861 graduate of West Point, and a brilliant young Civil War general. He emerged as the first historian of the U.S. Army. His unchallenged influence dominated American military thinking. As the regular’s most prominent intellectual, he was the principle opponent of state controlled troops and of states rights. Upton argued that the militia system ought to be abandoned in favor of a

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<sup>61</sup> Jacobs, 33.

<sup>62</sup> Mahon, 130.

<sup>63</sup> Jim Dan Hill, *The Minuteman in Peace and War: A History of the National Guard* (The Stackpole Co., Harrisburg, PA, 1964) 391.

<sup>64</sup> Jerry Cooper, *The Militia and the National Guard in America Since Colonial Times, A Research Guide*, (Greenwood Press, Westport, CT, 1993) 89.

regular army and patterned after that of Germany.<sup>65</sup> He believed the institutional flaw of the U.S. military was civilian control, and the German military model of a general staff of professional soldiers, free from civilian meddling, was the answer to preventing a recurrence of past American military failures.<sup>66</sup> His ideas were widely accepted within the Regular Army of that era. Even today, historians who continue to write contemptuously about the militia borrow their phrases like “myth of militia”<sup>67</sup>, and the Guard is ill trained, ill equipped and unprepared for a combat role, from Upton. In many ways this represents the sentiments of today’s Active Component military.

#### **J. JOHN MCAULEY PALMER AND THE CITIZEN-SOLDIER**

The antithesis to Upton’s writings and philosophy of a modern American military composed of a fully professional army, is John McAuley Palmer. Also, a West Point Graduate and member of the regular army, he came to represent and promote the citizen-soldier. He was an advocate of the Swiss system of citizen-soldiers as the “most appropriate for democracies.”<sup>68</sup> The main idea of Palmer was to develop a national defense system that was suited to the “genius of a democratic people.”<sup>69</sup> This would be accomplished by having the majority of the national defense force be of well-trained citizens rather than a standing army of professional soldiers. General George Marshall called Palmer “the Army’s leading intellectual”, and “civilian conscience of the Army”.<sup>70</sup> These two highly educated military men contributed to the polarization of ideas between the Regular Army and the citizen-soldier.

#### **K. WORLD WAR I**

Animosity between the citizen-soldier and the regular army reemerged in World War I. President Wilson based on the National Defense Act of 1916, and the Selective Service Act of 1917, drafted members of the National Guard into the Regular Army as individuals and not as members of their Guard units. He did this in spite of the wording in the draft act stipulating that the Guard units were to retain their identities “so far as

<sup>65</sup> Jacobs, 32.

<sup>66</sup> Emory Upton, *The Military Policy of the United States* (Washington, D.C., 1907), xiv.

<sup>67</sup> Weigley, xi.

<sup>68</sup> I. B. Holley, Jr., *General John M. Palmer, Citizen Soldiers and the Army of a Democracy* (Greenwood Press, 1982), 95.

<sup>69</sup> Hart, 127.

<sup>70</sup> Hart, 123, and 127.

practical.”<sup>71</sup> In addition, the War Department instituted a renumbering of the army ground forces for “orderly bookkeeping”.<sup>72</sup> Not only were Guard units renumbered and named, but some vanished by being absorbed as support units, while others were converted from cavalry to artillery and moved across the country.<sup>73</sup> These actions had a demoralizing effect on Guard unit cohesion. The Guard maintained the Regular Army system to number its regiments, and was not allowed to maintain the original and historic state regimental designations. This was done “to destroy their identity” and “discredit the Guard.”<sup>74</sup> The Chief of Staff of the Army, General Payton C. Marsh, an Upton disciple, issued General Orders 73, stating, “this country has but one Army of the United States.”<sup>75</sup> He also ordered Guardsmen to remove any insignia indicating their state affiliation. Similar stories and accusations occurred during WW II furthering the perception by the National Guard that the Regular Army remained hostile towards the militia.

#### **L. NATIONAL DEFENSE ACT OF 1933 (STATE-FEDERAL STATUS)**

Between WWI and WWII it looked as if the RC and AC were coming to an amiable working relationship with the passage of the National Defense Act of 1933. This was the most significant legislation to the National Guard since the Militia Act of 1792.<sup>76</sup> The Guard was “a part of the Army at all times”, but would not be in the active service of the United States except when ordered thereto<sup>77</sup>, and in time of peace they would remain governed by the militia clauses of the Constitution and maintain their state status. In addition, the NDA of 1933 directed that the Guard officially belong to the National Guard Bureau. Even though this act formalized the important dual state-federal status of the National Guard, tensions continued. The between war years did create a discrepancy between the RC and AC officer promotions. The Regular Army officer lack of promotion, sometimes “12-17 years in one rank”<sup>78</sup>, created a “Hump” (too many officers

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<sup>71</sup> Mahon, 156.

<sup>72</sup> Mahon, 266.

<sup>73</sup> Mahon, 158 and 161.

<sup>74</sup> Richard B. Crossland, and James T. Currie, *Twice the Citizen: A History of the Army Reserve, 1908-1983* (Office of the Chief, Army Reserve, Washington D.C., 1984) 31.

<sup>75</sup> Quoted in Mahon page 161 from AR, Acting CMB, 25 Sep. 1918, 11.

<sup>76</sup> Jacobs, 39.

<sup>77</sup> Mahon, 175.

<sup>78</sup> Mahon, 386.

relative to enlisted) in the promotion list that did not exist in the National Guard. In 1940 while Hitler moved through Western Europe and began aerial bombardment of Great Britain, both Congress and President Roosevelt recognized the need to declare a national emergency. This resulted in Congress authorizing a peacetime national draft, and Roosevelt ordering part of the National Guard into Federal service. Regular officers, craving promotion due to the “Hump”, coveted positions held by Guard officers. Chief of Staff of the Army’s General Headquarters, Lieutenant General Lesley McNair wrote, “the National Guard...contributed nothing to national defense”, and that Guard Generals were uniformly incompetent.”<sup>79</sup> The Regulars also argued that many Guard officers were political appointees of the Governors and did not have proper military training. The Guard countered that it was a Regular Army scheme to make Guard officers scapegoats for their own lack of preparedness due to the envy of Regular officers towards National Guard officer positions.<sup>80</sup>

#### **M. POST WWII TO DESERT STORM TENSION CONTINUES**

In spite of a credible battlefield performance by the National Guard, World War II fueled the debate over forming the postwar reserve policy. The War Department began to draft a specific postwar mission, strength, and organization for the National Guard without National Guard input. Former Commanding General of the Army Ground Forces, General Lesley J. McNair, recommended the Guard be “abolished or assigned domestic missions.”<sup>81</sup> It was through the newly formed National Guard Bureau, and the political strength of the National Guard Association, that Congress was made aware of this violation of the National Defense Act of 1933. This led to an August 1944 joint committee of Regular and National Guard officers drafting postwar policy for the Guard. The recommendation to the chief of staff from the joint committee, which benefited the Guard, was that the Guard be an integral part and first-line reserve component of the postwar military establishment.”<sup>82</sup>

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<sup>79</sup> Mahon, 181.

<sup>80</sup> Hill, 391.

<sup>81</sup> Derthick, 65.

<sup>82</sup> Ibid., 67.

The next considerable legal reform affecting the reserve component was the Armed Forces Ready Reserve Act of 1952. It created the current categories of the reserves. The Ready Reserve, Standby Reserve, and Retired Reserve (Figure 1). It also eliminated the Officer's and Enlisted Reserve Corps, and renamed the Organized Reserve Corps the Army Reserve. The most significant change, to the Guard, governed by the Act of 1952, was that the President could now call the Guard into federal service with the declaration of a national emergency. Appendix A describes current Reserve Recall Authority. This was a further step towards more control of the National Guard by the Regular Army.

Korea and Vietnam had relatively few Guardsman mobilized. The failure of the non-mobilization policy, and the nearing end of the draft, sparked the total force concept of 1970 and the total force policy of 1972. Desert Storm validated in many areas the new total force policy, and in other areas the same old tensions surfaced. Operation Desert Shield and Desert Storm has been the only true test of the Total Force Policy. The scale and speed with which the RC was mobilized was unprecedented. The Guard played a key role, but the operation was relatively short and unique, and is not truly representative of twenty-first century warfare, as we have seen in places like Somalia, Bosnia, and in Afghanistan. There are as many conclusions that can be drawn from Desert Storm as those that cannot be drawn. One conclusion that can be drawn is the tension between the AC and RC remained during Desert Storm. Regular Army officers claimed that National Guard units mobilized for combat missions did not meet readiness standards and thus could not be deployed. The National Guard's claim was the Regular Army has an institutional bias against the Guard and intentionally under-funds, under-equips, and fails to properly train the Guard. Only through Congress does the Regular Army devote appropriate funds to the Guard. Additionally, the RC units were pirated to fill personnel gaps in regular units, further affecting Guard readiness and unit cohesion. The RC perceives the AC and DoD as engaging in politics to slight the Guard.<sup>83</sup> A former president of NGAUS once stated, that the National Guard has "met the enemy, and the enemy is the Department of Defense."<sup>84</sup> A final concern of the Regulars is that the Guard

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<sup>83</sup> Jacobs, 138.

<sup>84</sup> Dave Moniz, "Guard Fighting for Life", *State* (Columbia, S.C., April 5 1992) 1B.

is more concerned about vociferously defending its organization than making the Total Force work.

#### **N. TENSION AND HOMELAND SECURITY**

The tension between the AC and RC has existed from the Revolutionary War to the present, and played apart in most every conflict were either the AC or RC, or both were involved. This tension not only influenced the conflict at hand, but shaped the polices governing the two components afterwards. The debate is basically the same as it was over 350 years ago; the citizen-soldier or the professional soldier?

There is no doubt that September 11<sup>th</sup> 2001 brought a new awareness to terrorism and the threat to Americans at home. There is also little debate that the DoD with all its available resources will have a prominent role in HLS. Most also agree the National Guard can contribute greatly to the security of our homeland and in the Global War On Terrorism. However, there is much debate over the role the National Guard should play in HLS. For FY 2003 thirty eight percent of the 2.25 million military personnel will reside in the RC. The role the National Guard plays in HLS will ultimately effect national security in the twenty-first century, and a long running tension within the military with influence those decisions.

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#### **IV. NATIONAL GUARD AS A SOLUTION TO THE GAP**

Civilian control of the government, especially over the military, and a decentralization of governmental power are not only embedded in the constitution but have survived the test of time. The United States of America is currently the most powerful country in the world with no economic or military peer competitor. The National Guard is the “representative” part of the military. Like Congressman represent the constituents of their districts, the National Guard represents the citizens to the DoD for military matters. The National Guard represents the broad support or “will of the people” when it comes to the military and civilian control. It is a link between the people and national defense, security policy, and use of military force by connecting the community to the federal government.

In this chapter, I will show how the National Guard can successfully bridge the new and troubling gap in civil-military relations to improve Homeland Security. The Guard bridges the gap by ensuring a strong link between the people and the armed forces. There are four ways the National Guard best represents the will of the people in civil-military relations. First, the National Guard is part of the community. It has installations in thousands of communities, and one in every congressional district, a direct and important link to civilian government. Citizen soldiers live and work in the community as doctors, lawyers, teachers, local first responders and community leaders. This community-congressional link ensures the HLS voice of the people will be heard.

Second, the National Guard has a strong Employer Support to the Guard and Reserve Program (ESGR), further linking the peoples’ will, through the economy, to the national policy. National Guard members are both employers and employees of small businesses in the community. Small business is the strength of the U.S. economy. The voice of the people on economic issues is heard through the National Guard as members of the small business community.

The third link between the National Guard to the popular sentiment is through education. Education is not only important in terms of communicating the ideas of civilian supremacy and civil-military relations, but insuring military personnel are a

sufficiently reflective of civil society. The Reserve Officer training Corps (ROTC) and civilian universities are the primary educational institutions for National Guard and Reserve Officers.

The final and most important link is the National Guard's has unique dual state-federal mission. The state mission is an additional link between the people, the states, national policy, and the use of military force at home and abroad. I will use several established National Guard programs that serve as examples of how the Guard links the people with the military HLS related roles. Many are aware of the Military Support to Civil Authorities that links the people, through the state, to the federal government, for natural disasters. I will also show how National Guard support to civilian authority during the riots in Los Angeles in April and May of 1992 also established a similar link between the military, civilian government, and the citizenry. Next, I will further illustrate the local-state-federal link with case studies of two full-time National Guard programs. First, I will use the National Guard Counterdrug Support Program (NGCDSP). This is a federally funded program, under state supervision, providing National Guard support to local, state, and federal law enforcement agencies, and community based organizations, to curb the supply of and demand for illegal drugs in the United States. Next, I will use the Weapons of Mass Destruction Civil Support Team (WMD-CST) program. This is also a federally funded program under state control designed to assist local first responders in determining the nature of terrorist attacks. I will conclude the chapter with post 9/11 National Guard Military Support to Civilian Authorities including airport security, border security, and air defense missions.

#### **A. NATIONAL GUARD LINK TO THE COMMUNITY**

Americans are not held together by money, religion, or ethnicity as other ethnic countries are. The United States is becoming more diverse every day. Census data indicates that the diversity trend will become more complex as America's young citizens increase the new "multiracial" category.<sup>85</sup> As Americans, we are dedicated to something more than culture or religion. We believe in the ideals of the Declaration of Independence.

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<sup>85</sup> Browder, 169.

WE hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness -- That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness.

This is the “religion” that connects Americans to one another. To secure the rights of Life, Liberty, and the pursuit of Happiness, a government deriving its powers from the people is formed. If that government becomes destructive, it is the Right of the people to change or abolish it, and form a new government. This is the contract that links elected leaders to the citizens. It is here that the citizen soldier links Homeland Security Policy with the political leaders and the AC. Those citizens with military training and experience currently serving in the RC are the part of America most representative and educated to communicate the ‘will of the people’. “An Army tied closely to the whole body of the nation is most likely to respect nonmilitary national aims, while a citizenry accustomed to military service is best prepared to pass judgment on military issues.”<sup>86</sup> With a strengthening (politically) and increasingly partisan military, accompanied with a weakening Congressional body (lack of military experience) the National Guard is the best link between the U.S. citizens and Homeland Security Policy.

Unlike the AC with fewer and fewer military installations due to three rounds of Base Realignment and Closure (BRAC) commissions, closing 451 installations, (21% reduction in domestic base structure)<sup>87</sup> the National Guard has installations in 3,400 communities, and is represented in EVERY congressional district.<sup>88</sup> This is the ideal link to keep members of congress informed on military issues and in congressional interest to be informed on their constituents’ issues. The National Guard community-congressional link is important in both developing and executing an effective HLS program. Another way to show the representation of the citizen soldier is the fact that one in six hundred

<sup>86</sup> William P. Snyder, ed., *The Reserve Components: A Primer for the Active Forces* (Maxwell AFB, Ala.: Air War College, May 1995) 157.

<sup>87</sup> “Military Base Closures: Where Do We Stand?”, CRS Report for Congress (June 2001) available at <http://www.globalsecurity.org/military/library/report/crs/RL30440.pdf> (accessed November 2002).

<sup>88</sup> National Guard Association of the United States Briefing, (Washington DC, May 23, 2002).

Americans serve in the National Guard<sup>89</sup>, many of whom serve as a link to the community in critical civilian occupations. One such post 9/11 guardsman linking themselves to the community is Charles Moose. Most Americans remember him as Montgomery County (Virginia) Police Chief Charles Moose. Chief Moose, who also holds a Ph.D. in Urban Studies/Criminology from Portland State University, led the high-profile manhunt for the Washington D.C. area snipers who killed 10 people and terrorized thousands. He is also a citizen-soldier, Major Charles Moose, commander of the 113<sup>th</sup> Security Forces Squadron, District of Columbia Air National Guard. After the terrorist attacks of September 11<sup>th</sup> “He worked around the clock for two or three weeks...all day at Montgomery Country and then with us late into the night.”<sup>90</sup> There are many similar stories of National Guard soldiers and airman linking them to their communities. The National Guard provides critical links to both HLS policy makers and first responders.

## **B. NATIONAL GUARD LINKS THE ECONOMY**

The vast majority of the National Guard are true citizen (part-time) soldiers. Eighty percent of the Army Guard, and seventy percent of the Air Guard have full time employment (other than the National Guard) as their primary source of income. This further fuses the guardsman to the community through their employers. Small business is the backbone of our economy and traditional guardsman are members of the small business community. “Our nation’s 25 million small businesses employ more than 50 percent of the private work force, generate more than half of the nation's gross domestic product, and are the principal source of new jobs in the U.S. economy.”<sup>91</sup> President Bush echoed similar thoughts.

Small businesses have always been the backbone of our economy. They perennially account for most innovation and job creation. Small businesses have sustained the economy when it is robust and growing as

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<sup>89</sup> Ibid.

<sup>90</sup> Quoted from Chief Master Sergeant Bobby Spear, Senior Enlisted Member of 113<sup>th</sup> Security Forces Squadron in Air Force Link News November 28, 2002, available at <http://www.af.mil/news/Oct2002/102802504.shtml> (accessed December 2002).

<sup>91</sup> John Boehner, Congressman 8<sup>th</sup> District, Ohio, Press Release November 2002.

well as in weaker times when small businesses have put the economy back on the track to long-term growth.<sup>92</sup>

These small business owners are active in their communities and gain the attention of political leaders and the process, through organizations like the National Federation of Independent Business (NFIB).<sup>93</sup> This includes employment issues with the National Guard, like the Military Reservists Small Business Relief Act of 1999, introduced by Senator John F. Kerry (D-MA) as the Ranking Member on the Senate Committee on Small Business. These National Guard and small business ties have economic and political implications that can impact national security policy and the ability to execute that policy financially and with the local first responders in the communities.

### **C. NATIONAL GUARD LINK THROUGH EDUCATION**

In the military and civil society, knowledge is power. “Knowledge is needed to produce military power; it is also needed to control it, and education is essential to both purposes.”<sup>94</sup> Educated people from both military and civilian backgrounds will be a part of the solution to America’s twenty-first century security needs. Education of military personnel is accomplished by different institutions, at different locations, at different times in ones career, and for different purposes. Civilian institutions, through Reserve Officers Training Corps (ROTC), are a prime education avenue for the National Guard and Reserves. The Air Force reports that nearly 75 percent of all newly commissioned officers begin their careers after completing Air University's Air Force Reserve Officer Training Corps or Officer Candidate School/Officer Training School (OCS/OTS) programs. The Army shows similar numbers. The Army National Guard has nearly ninety percent of its officers commissioned through ROTC or OCS/OTS. Traditionally about 15-20 percent of officer commissions come from service academies.

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<sup>92</sup> President George W. Bush in a message to Congress, November 19, 2002, available at <http://www.whitehouse.gov/news/releases/2002/11/20021125-8.html> (accessed November 2002).

<sup>93</sup> NFIB, the National Federation of Independent Business, is the largest advocacy organization representing small and independent businesses in Washington, D.C. and all 50 state capitals. NFIB was ranked the most influential business organization (and 3rd overall), in “Washington's Power 25” survey conducted by Fortune magazine.

<sup>94</sup> Andrew J. Goodpaster, “Educational Aspects of Civil-Military Relations”, *Civil-Military Relations*, Andrew J. Goodpaster, Samuel P. Huntington, (American Enterprise Institute for Public Policy Research, Washington, D.C., 1977) 29.

An FY 2001 Army National Guard Accomplishment report noted a significant trend. A thirty percent decrease in officers commissioned by ROTC between FY 2000 and FY 2001, and a greater than 40 percent decrease from FY 1999.<sup>95</sup> Still the vast majority of commissioned officers come from ROTC and OTS in both the AC and RC. According to Charles Moskos in *Public Opinion and the Military Establishment*,

The continued presence in large numbers in the armed forces from a wide variety of civilian education backgrounds is one of the best guarantees against in this country of a military caste or clique.<sup>96</sup>

This is a disturbing trend in the decrease in ROTC commissions for the National Guard. In addition to the importance of non-service academy commissions, is the cost. A GAO study compared the cost of the service academies to ROTC and OCS/OTS. The costs for providing a full four-year program of academic education, military training, and physical training for an Academy graduate totaled between \$153,200 and \$228,500. The average DoD cost per graduate under the Reserve Officers Training Corps scholarship program ranged from \$53,000 to \$58,000, while the DoD cost per graduate of short lead-time programs, such as officer candidate school, ranged from \$15,000 to \$20,000.<sup>97</sup> It is significantly less expensive to commission through ROTC and OTS. The National Guard brings that education back to the community and links that education back to the federal government.

#### **D. NATIONAL GUARD LINKS LOCAL, STATE, AND FEDERAL AGENCIES**

Law and tradition connects the local communities to the federal government through the National Guard. The Guard connects the community, state, and nation with its unique and constitutional dual state-federal status. This status has facilitated the Guard to be the DoD's principal provider of Military Support to Civilian Authorities (MSCA). As a state force, it provides personnel and resources to local communities in support of natural and man-made disasters, civil disturbances and other events in need of

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<sup>95</sup> Military Equal Opportunity Assessment: Army National Guard, FY 2001 Accomplishment Report, available at <http://www.ngb.dtic.mil/staff/eo/docs/MEOA2001ARNG.doc>.

<sup>96</sup> Meyer, Mark P. Colonel, ANG, "The National Guard Citizen-Soldier, The Linkage between Responsible National Security Policy and the Will of the People", *Air War College Maxwell Paper No. 6*, November 1996, 13.

<sup>97</sup> Department of Defense Government BPR Projects Report, p. 2. Available at <http://www.c3i.osd.mil/bpr/bprcd/3216s2.htm>.

military support. The National Guard is employed in support of a civilian agency (MSCA) by order of the governor. Another important fact is that prior to 9/11, 26 of the 54 states and territories adjutants general, already served as the state military leader and state emergency manager.<sup>98</sup> Homeland Security will consist of protecting U.S. territory, sovereignty, domestic population, and critical infrastructure. It will also consist of support to U.S. civil authorities in the form of crisis management and consequence management.<sup>99</sup> “Between 1997 and 2000, the National Guard conducted a total of 1,161 *Homeland Security* missions; 598 of those in response to natural disasters, 133 in support of law enforcement agencies, and 174 in response to civil emergencies.”<sup>100</sup> As the state militia, the National Guard is the peoples’ line of defense in civil disturbances and natural disasters. It is members of the community, with a vested interest, meeting the immediate desires of the community during times of need. It is here the community sees and relates to the value of the National Guard for domestic crisis and consequence management issues.

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

In addition to its disaster response mission, law and tradition connect the local communities to the federal government through the National Guard to support state and local law enforcement agencies for domestic disorders. One such example was the Los Angeles area riots in 1992. This was the most costly domestic disorder in U.S. history, causing more than \$800 million in property damage, covered hundreds of square miles,

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<sup>98</sup> Air Force Maj. Gen. Dale Meyerrose during a Nov. 13 summit on homeland security, available at [http://www.defenselink.mil/news/Nov2002/n11262002\\_200211262.html](http://www.defenselink.mil/news/Nov2002/n11262002_200211262.html) (accessed December 2002).

#### **<sup>99</sup> Crisis Management:**

Definition: Measures to identify, acquire, and plan the use of resources needed to anticipate, prevent, and/or resolve a threat or act of terrorism. Primary authority to the Federal Government to prevent and respond to acts of terrorism; State and local governments provide assistance as required. Crisis management is -predominantly a law enforcement response.

#### **Consequence Management:**

Definition: Measures to protect public health and safety, restore essential government services, and provide emergency relief to governments, businesses and individuals affected by the consequences of terrorism. Primary authority to the States to respond to the consequences of terrorism; the Federal Government provides assistance as required.

From ANSER Institute for Homeland Security, available at <http://www.homelanddefense.org/bulletin/definitions.htm> (accessed December 2002).

<sup>100</sup> Colonel Michael P. Fleming, “National Security Roles for the National Guard”, *Journal of Homeland Security*, August 2001, available at <http://www.homelandsecurity.org/journal/Articles/Fleming.htm> (accessed December 2002).

and more than 54 deaths. At one point there were over 10,000 troops from the California National Guard, 3500 AC soldiers, of which 1500 were Marines. There were many planning and coordination problems with military support to the Los Angeles riots and many lessons learned. I will focus on the difference between the National Guard in a state status and the Title 10 AC troops (including the National Guard once federalized). Even though the Mayor of Los Angeles, Tom Bradley, convinced the Governor, Pete Wilson, to request federal troops to restore law and order, the “riots were over by the time the federal troops arrived”.<sup>101</sup> Once federal troops arrived several issues arose over the ability of federal troops to support the civilian agencies to their satisfaction. First, the federalized troops haphazardly defined their operational boundaries to the dismay of the civilian law enforcement agencies they were supporting. This required coordination with multiple military counterparts that were previously done by one National Guardsman.<sup>102</sup> Second, the National Guard procedure was more rapid and more flexible than their federalized JTF-LA command.<sup>103</sup>

Before the establishment of JTF-LA and federalization of the California National Guard, virtually 100 percent of law enforcement support requests had been approved. Following federalization, only about 20 percent were approved.<sup>104</sup>

Not only were almost 80 percent of the JTF-LA requested missions denied, the approval process was slow and required daily revalidation which often took longer than the original approval. Third, and prior to federalization, troop size was based on mission requirements. Because JTF-LA emphasized command and control, they deployed much larger units that again were less attentive to law enforcement requests. Finally, during the withdrawal of federalized troops, JTF-LA failed to properly take law enforcement priorities into account when canceling missions. The National Guard, civilian leaders,

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<sup>101</sup> James D. Delk, *Fires and Furies – The L.A. Riots*, (ETC Publications, Palm Springs, CA, 1995) 320.

<sup>102</sup> National Guard unit boundaries coincided with police unit boundaries. Lieutenant Colonel Christopher M. Schnaubelt, “The 1992 Los Angeles Riots, Lessons Learned in Command and Control from the Los Angeles Riots”, *Parameters, Summer 1997* (US Army War College, Carlisle Barracks, Pennsylvania) available at <http://carlisle-www.army.mil/usawc/Parameters/97summer/schnau.htm> (accessed December 2002).

<sup>103</sup> Joint Task Force Los Angeles (JTF-LA) was the name of the federalized force providing support to local officials.

<sup>104</sup> Quoted in Schnaubelt.

and local law enforcement agencies were not without fault during this tragic event. However, these three examples clearly demonstrate the National Guard, because of its previous links with local law enforcement were better able to respond to requests for military support to civil authorities during this civil disturbance.

## **2. National Guard Counterdrug Support Program (NGCDSP)**

The consumption and abuse of illegal drugs has a devastating effect on American Society. Our size, culture and economic status contribute to the United States leading the world in illicit drug consumption. The 1989 Defense Authorization Act deemed illegal drugs a threat to national security and subsequently designated the DoD as the lead agency in detecting and monitoring the illegal transit of drugs to America by sea or air. As recently as March of 2001, General Peter Pace, previous Commander of Southern Command (SOUTHCOM), said, “as far as threat to the homeland, sir, I consider drugs to be a weapon of mass destruction, and it is a threat to our homeland.”<sup>105</sup> The National Guard began providing Counterdrug support to law enforcement agencies as far back as 1977 with “Operation Green Harvest” in Hawaii. In 1989, Congress provided approximately \$40 million to the DoD for the states whose governors submitted an annual counterdrug plan, to support civil authorities to combat illegal narcotics and its terrible effects on our communities. Today all 54 states and territories have a full time National Guard force with a combined state plans budget of over \$250 million. National Guard troops are in a Title 32 status; known as Full Time National Guard Duty - Counterdrug (FTNGD-CD) under Title 32 U.S.C. Sec 502 (f). This was previously known as Active Duty Special Work (ADSW). National Guard troops, in all but very few instances, must belong to a traditional warfighting (M-day) National Guard unit and remain in good standing with that unit plus attend all required training periods. This includes one weekend a month, annual training, and any other mandatory unit training, exercises or deployments. There are six mission categories (program management, technical support, general support, counterdrug-related training, reconnaissance/observation and demand reduction support) and 17 different types of authorized missions. All missions are at the request of a law enforcement agency (LEA) or community based organization (CBO) and must have a primary drug nexus. The

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<sup>105</sup> Quoted in testimony before the House Armed Services Committee, March 27, 2001.

requesting agency is the lead in all missions and the National Guard is always in support role to the civilians. Each state and territory develops its own state plan based on requests from civilian agencies and approval from the state attorney general and governor. Along with this come 54 different organizational structures of how best to accomplish mission requests from their states' civilian agencies within the regulation guidance contained in NGR-500-2/ANGI 10-801, March 31 2000.

### **1. Link to First-Responders**

If we can make every hometown secure, then I think the homeland is secure. And the way you make the hometown secure is you make sure you've got your first responders and your public health officials and your elected officials and your education leaders and your community leaders, working together on preparedness plans, working together to support one another, bringing the community together in preparation and in planning and in coordination. It's going on all over America.<sup>106</sup>

The NGCDSP provides many useful examples of military support to civil authorities for first responders in HLS. For more than 13 years in communities all over this country the National Guard has provided unique, adaptable, skilled, and cost effective support to local, state, and federal agencies with a counterdrug nexus as the primary purpose. A majority of these agencies are the same ones who will be responsible for securing America's homeland. The uniqueness comes from the "extensive planning and operational relationships [NGCDSP] with civil authorities that have developed over years of support interaction."<sup>107</sup> These relationships are applicable to HLS will be invaluable when needed. This relationship is also "vastly different than that of the Active Components."<sup>108</sup> The NGCDSP provides skilled troops that are trained to the standards of the military war fighting requirements in their particular Military Operating Skill (MOS) or Air Force Specialty Code (AFSC). Additional skills have developed from 13 years of experience in working on a daily basis with civilian agencies. The NGCDSP is

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<sup>106</sup> Quote from Tom Ridge, Director, Office of Homeland Security, in a speech to first responders in Concordville, Pennsylvania, April 12, 2002, available at <http://www.whitehouse.gov/homeland/20020412-9.html> (accessed December 2002).

<sup>107</sup> Colonel John C. "Duck" Mosbey, Former Chief of the Counterdrug Office of the National Guard Bureau responsible for development and execution of the NGCDSP, in and unpublished document titled: "The Baby And The Bathwater: The Traditional, Appropriate, and Adaptable Nature of the National Guard Counterdrug Program".

<sup>108</sup> Ibid.

adaptable to the needs of each community through the development of the governors state plan. Each state and territory is allowed to develop its program base on the requests of the agencies they support and the National Guard equipment and personnel available. This is possible because the NGCDSP is budget driven and there are no congressionally mandated end strength (personnel) or mission requirements. This flexibility does not exist with the AC who is spending counterdrug funds to execute counterdrug missions; they are using Title 10 resources and personnel that could otherwise be used for their warfighting mission. The cost effectiveness of the NGCDSP program comes from the fact that recruiting, retention, and training costs are paid as part of the M-day units that the counterdrug soldiers and airman belong to. The M-day units also pay for professional education, and development of officers and non-commissioned officers. The NGCDSP gets highly trained and experienced troops and pay only for their pay and allowance, and entitlements while on counterdrug orders. In return the M-day units receive a more qualified troop with a higher individual level of readiness than those than do not participate in the NGCDSP.<sup>109</sup>

There are several limitations to the NGCDSP. One such limitation is the program is funded year to year, and because the program has no military end strength, Congress has no obligation to personnel. A budget crisis, a downturn in the economy, or a political shift in the priorities of military support to combat illegal drugs, and 13 years of success could disappear. Annual funding also makes it difficult for NGCDSP commanders to plan more than one year at a time, generating some frustration with the LEAs and CBOs the National Guard supports. What cannot be taken away is the 13 years of experience the National Guard has gained working with civilians in the community. This relationship that is critical to future HLS missions.

### **3. Weapons of Mass Destruction Civil Support Team**

Another National Guard MSCA program with applicability to HLS is the Weapons of Mass Destruction Civil Support Team (WMD-CST). It is a high-priority response unit supporting civil authorities in response to a WMD incident. Each unit is made up of 22 full-time National Guard members. Unlike the NGCDSP, the WMD-CST

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<sup>109</sup> National Guard Bureau-Counterdrug Offices: Study On Counterdrug Personnel Combat Readiness-Final Report by Science Applications International Corporation, McLean Virginia, April 3, 2001, 9.

members do not belong to a traditional warfighting National Guard unit. The team is composed of six skill sections: Command, Operations, Survey, Medical, Communications, and Logistics/Administration. The WMD-CST was a result of Title XIV of the National Defense Authorization Act of 1996 Public Law 104-201, September 23, 1996 which authorized funding for the Department of Defense to develop a domestic preparedness training and equipment program. Congress authorized 32 WMD-CSTs and currently 27 have been certified for operation. Teams work in support of a requesting civilian agency under Title 32, state control. Team members receive extensive and specialized training, in some cases over 1000 hours, in nuclear, biological, chemical, radiological sampling, detecting and decontamination, use of protective equipment, emergency communications, and coordination of civil-military operations. The WMD-CST is equipped with detection, analytical and protective equipment, and sophisticated secure communications equipment. Their mission is to be available 24 hours a day 7 days a week to respond and support local and state authorities at domestic Weapons of Mass Destruction/Nuclear-Biological-Chemical (WMD/NBC) incident sites by identifying agents and substances, assessing current and projected consequences, advising on response measures, and assisting with requests for additional military support and assist and advise a local incident commander during a suspected WMD event. They can also be pre-positioned at high visibility, and possible terrorist targeted events, like the Olympics or Major League Baseball World Series. The WMD-CSTs are unique because of their state-federal relationship. They are federally resourced, federally trained, federally evaluated, and they operate under federal doctrine. But they will perform their mission primarily under the command and control of the governors of the states in which they are located. They will be, first and foremost, state assets. Operationally, they fall under the command and control of the adjutant generals of those states. As a result, they will be available to respond to an incident as part of a state response, well before federal response assets would be called upon to provide assistance.

Many have criticized the effectiveness of the WMD-CST's. Comments include:

According to a report by the Associated Press: The Pentagon's inspector general said the National Guard is so hopelessly unprepared that its gas masks at one point were assembled with incompatible parts and its mobile labs outfitted with air filters installed backward. Pentagon investigators

concluded that the National Guard's equipment and training was so defective that team members are in danger of succumbing to the very weapons they are intended to identify. As for those defective gas masks the National Guard was issued, one team commander said, "It probably would work. I'm just not willing to bet my life on it."<sup>110</sup>

Another report commented "The overwhelming recommendation from the front lines—even from responders who are in the Guard—is that the Guard teams should be abolished."<sup>111</sup> At the time these comments were probably justified. Poor program management, ineffective equipment acquisition and unclear command and control caused these problems.<sup>112</sup> The unclear command and control is from a vague structure for HLS and "because officials tried to get the teams ready very quickly" and not because of any fault of the National Guard. The advantages of the dual state-federal mission that links local, state and federal agencies will be an advantage to the WMD-CSTs in HLS when some of the other mentioned concerns work themselves out.

#### **E. CONCLUSIONS AND POST 9/11**

The National Guard is a solution to bridging the troubling new gap in civil-military relations. The Guard ensures the military is sufficiently reflective of the citizens it protects. First, as members of the local communities with links through Congressional leaders, the peoples interest can be heard in the role the military plays in HLS. First-responders are recognized as the key to HLS. As members of the local community, many National Guard troops are themselves first responders, or will work closely with first responders during HLS emergencies. These first responders will integrate with federal agencies as the crises grow. Second, as members of the local small business community, recognized as the heart of the U.S. economy, National Guard personnel link locals to the larger economic issues of the federal government. This will be important for funding HLS initiatives and the overall welfare of the economy. Third, most National Guard officers receive their education at civilian universities. Educated at civilian universities

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<sup>110</sup> Amy Smithson and Leslie-Anne Levy, "Ataxia: The Chemical and Biological Terrorism Threat and the US Response", *The Henry L. Stimson Center*, Stimson Center Report No. 35, Washington, D.C., October 2000.

<sup>111</sup> Smithson, 293.

<sup>112</sup> Major Larry S. Walker, "Weapons Of Mass Destruction Civil Support Teams (WMD-CST): A Necessary Failure", Air Command And Staff College, Air University, Maxwell Air Force Base, Alabama, April 2001, vii.

instead of military academies gives a similar academic background to those in society and civilian leaders. This is important when establishing and interpreting HLS policy. Finally, and most importantly is the unique dual state-federal role of the National Guard. This dual capability to work with civilian agencies (MSCA) in a state status has a long history. This time tested relationship makes the National Guard experts in supporting local, state, and federal civilian agencies.

Because of its federal warfighting mission and very high operations tempo, the National Guard integrates frequently and fully with the federal military (AC). This dual role capability links the National Guard from the State House to the White House. This connectivity will be critical as HLS military involvement evolves, especially in NORTHCOM, the designated lead for domestic HLS military support. It will also be important as local HLS situations turn into state or federal emergencies and interagency cooperation at all levels will be mandatory to a successful outcome. Prior to 9/11 the Los Angeles Riots provide an example of how the dual status of the National Guard provided more favorable support to civilian law enforcement agencies than their AC counterparts, illustrating the value of pre-established relationships and procedures during Military Support Civil Authorities.

After 9/11 the National Guard has been called to HLS duty in a variety situations. First, immediately after the National Guard was providing 24-hour air defense and combat air patrols. Several weeks after 9/11 the National Guard sent nearly 9,000 troops to 444 airports in a Title 32 (State) status to provide additional security to our nations airports and ensure our civilian air carriers continued to fly.<sup>113</sup> This state status allowed the different law enforcement jurisdictions at our countries airports the flexibility to best use military support to augment their agencies. Several weeks after that 1700 National Guard soldiers and airman deployed to our borders to assist our federal border agencies to better control our ports of entry and minimize the negative economic effects.<sup>114</sup> Concerns over arming of troops dictated the National Guard be employed in a Title 10

<sup>113</sup> Master Sergeant Bob Haskell, "National Guard Wending Airport Security Mission", Army Link News, available at <http://www.dtic.mil/armylink/news/May2002/a20020520arngport.html> (accessed December 2002).

<sup>114</sup> News from the U.S. Senate National Guard Caucus, "58 Senators Ask President To Reverse Ban On Firearms For National Guard Troops On Borders", March 22, 2002, available at <http://leahy.senate.gov/press/200203/032202.html> (accessed December 2002).

(Federal) status. These were all very successful National Guard missions and performed under a variety of circumstances, some in a state status and others in a federal status. This was immediate validation of the dual status of the Guard in operational HLS missions.

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## V. CONCLUSIONS

The purpose of this thesis was to examine a proposal to make Homeland Security the primary mission of the National Guard and make future Homeland Security policy recommendations. I began by hypothesizing that in order to adequately defend our homeland, the National Guard should maintain its current place in the twenty-first century Total Force military. My research suggests something different. By law and tradition the dual-status of the National Guard indicates they are better positioned to be a true citizen-soldier force and not the Total Force of the last several years. The Army National Guard had a 300 percent increase, and the Air Guard a 600 percent increase in activity over the previous year. The citizen-soldier was designed as a reserve force to mobilize in times of need to defend our country from both domestic and international threats, and minimize the need for a large standing army. The National Guard is the link between the communities all across the country and the nation's common defense. The Guard must be manned, equipped, trained, and funded to protect the homeland, fight the Global War on Terrorism, and transform to meet the threats of the twenty-first century along side the Active Component. At the same time, the distinctive and historic state and federal roles of the National Guard must be preserved.

First, I showed that there has always been a tension in the relationship between the citizen-soldier (RC), and the professional standing army (AC). As far back as the Revolutionary War and the founders of our Constitution did this tension exist. The most heated debates, and much of the Federalist Papers, was over whether we should have a citizen militia or a standing army. Could a militia protect America from the Spanish, British, and the Indians, or was a full-time professional force required? This tension has shaped both national policy and the use of military force throughout history, and may even have contributed to our lack of preparedness on 9/11. New tension has already surfaced over the role of the National Guard in NORTHCOM. Less than five percent of the proposed 500 positions on the NORTHCOM staff are labeled for the National

Guard.<sup>115</sup> Second, I discussed, given this underlying tension, the legal foundation of the relationship of the AC and RC beginning before the Constitution and continuing within today's unique state-federal dual status of the National Guard. The National Guard's dual status stands on sound legal authority. Next, I showed that there is a new gap in civil-military relations that is very troubling. A gap created by a more partisan and politically active military whose new leaders are not afraid to influence the political process, and a civilian leadership with less military experience that is not capable of balancing this new military political power. This gap has been exacerbated by the new security threat to Americans at home and threatens our country's ability to make the proper policy decisions necessary to secure our homeland from future terrorist attacks. It may also cloud the ability of our civilian leaders to properly man, equip, train, fund and transform the military forces to defend us domestically. Finally, I showed how the National Guard is capable of bridging this troubling new gap in civil-military relations by ensuring a strong link between the people, the armed forces and national security. Bridging this gap allows for strong civilian control, sound HLS policy, and a safe and secure America.

I first showed how the National Guard, embedded in the communities around the country, provides a link from local government to the federal government with representation in every Congressional district. I also showed how the Guard links local first responders to the federal government. The National Guard citizen soldier uniquely connects every police station to the federal government. In many cases, like Police Chief Charles Moose, National Guard personnel are first responders in their civilian jobs. Second, as members of the small business community, the backbone of the U.S. economy, the National Guard links the people to the economy. The continued strength of the U.S. economy will determine if HLS programs will be adequately resourced. Third, as the vast majority of National Guard officers are educated at civilian universities, the National Guard leaders will more sufficiently reflect the educational background of future civilian policy makers. Finally, and most importantly, is the unique dual state-federal status of the National Guard. This sound legal status and tradition unite the local

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<sup>115</sup> Master Sgt. Bob Haskell and Sgt. 1st Class Paul Mouilleseaux, "Newly activated NORTHCOM includes National Guard", Army Link News, (October 8, 2002) available at <http://www.dtic.mil/armylink/news/Oct2002/a20021008northcom1.html> (accessed December 2002).

communities from the State House to the White House. Throughout history the National Guard has successfully responded to natural and man-made disasters and domestic disorders. The Los Angeles Riots in 1992 exemplify the quality support the National Guard provides to civilian agencies (MSCA) using established procedures and relationships with local agencies. Two fulltime National Guard programs show how close interagency cooperation with local, state, and federal agencies further connects the sentiment of the people to the federal government. The flexibility of the unique dual status surfaced immediately after 9/11 in the federal Air Defense mission and shortly after with the Airport Security mission (state status) and the Border Security mission (federal status). This link and flexibility are necessary for protecting America in the Global War on Terrorism.

#### **A. RECOMMENDATIONS**

Several pre September 11<sup>th</sup> reports identified the vulnerability of the United States to possible terrorist attacks on American Soil, and that our incredible U.S. military superiority would not be able to protect us. Two oceans are no longer enough security for American's on American soil. There is nothing more important than defending our country and its freedoms. The Department of Defense has, and will continue to play an important part in Homeland Security. The role the citizen-soldier plays in HLS, and the Total Force military of the twenty-first century, will ultimately determine how successful we are in preserving our country, our freedoms, and each individual American's quest for life, liberty and the pursuit of happiness.

To adequately defend America at home the Total Force must be able to simultaneously deal with threats at home and abroad. The National Guard must be an integral part of both the external and internal military missions. They should not become primarily a domestic security or constabulary force. The Total Force and the AC/RC mix should be balanced based on the Post Cold War and Post 9/11 threats and not the legacy force that in many ways is still intact. The National Guard should have less frequent routine deployments. Just as DoD was assigned the lead agency in detecting and monitoring aerial and maritime transit of illegal drugs into the United States so should DoD be the lead agency in protecting our land, sea, and air borders from hostile attack. Although the lead agency, there will be missions more suited for the National Guard and

civilian agencies that involve the protection of our land, sea, and air borders. There is already a system in place for local, state and federal officials to go for Military Support to Civilian Authorities (MSCA), and it has worked well for years.

The primary mission of DoD is to fight. In fact Army Lt. Gen. Joseph Kellogg, director of command, control, communications and computer systems (J-6) for the Joint Staff said, “We view the United States of America as a battlefield.”<sup>116</sup> To me this indicates a serious difference of opinion between the civilian control of the military and a senior military leader. It is for such reasons the National Guard is important in connecting the people to the federal government. It is also important to keep fulltime programs like the WMD-CST and NGCDSP to further the connection from the people to the federal government in HLS missions. The WMD-CSTs can become more effective if they continue to improve program management, the equipment acquisition process and further clarify the command and control structure. They should also look into organizing the teams based on federal response regions similar to FEMA. The NGCDSP with minor changes in current law and consistent, not increased, funding could bring a positive and immediate impact in supporting law enforcement efforts to secure our borders and help fight the domestic war on terrorism. One such suggestion is to amend Section 112 of Title 32 to allow the NG in California, and nationwide, to support, when requested, under a declared emergency, law enforcement agencies in anti-terrorism and Homeland Security missions. Appendix B contains suggested wording. Additions are bolded and omissions are shaded. This would allow the structure of the 54 NGCDSPs support civilian law enforcement agencies for HLS emergencies. It would not create any new organizations and allow the flexibility of the National Guard’s dual role support first responders as needed.

Future Homeland Security demands on the National Guard must be adequately resourced. There will continue to be increased commitments placed upon the National Guard both at home and abroad. A big part of the increased operations tempo is post conflict reconstruction and peacekeeping. Currently there is no way to accomplish these ongoing and future OOTW missions without the National Guard.

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<sup>116</sup> Gerry J. Gilmore, “Verga Clarifies DoD's Homeland Defense Role”, Armed Forces Press Service, December 11, 2002.

## APPENDIX A. RESERVE RECALL AUTHORITY

### SECTION A

#### *Authorities for Recall and Mobilization*

The following laws pertain to recall/mobilization of reservists and retirees. The laws are paraphrased rather than quoted. Table 1 provides a quick reference guide for recall authorities for various types of contingencies.

1. ***Selective Mobilization.*** These authorities may be used to support domestic emergencies.
  - a. ***Involuntary Active Duty for Domestic Emergencies.*** Authority for this type of recall is established under 14 U.S.C. 712. A domestic emergency is defined as a serious natural or man-made disaster, accident, or catastrophe. Secretary of Transportation may, subject to the approval of the President and without the consent of the member, order to Active Duty members of the Coast Guard Ready Reserve for not more than 30 days in any 4-month period, and not more than 60 days in 24 months. This authority applies to Coast Guard only.
  - b. ***Voluntary Active Duty for Emergency Augmentation of Active Forces.*** Authority for this type of recall is established under 10 U.S.C. 12301(d). An authority designated by The Secretary of Transportation may order any reservist to Active Duty with the consent of the member. District commanders are delegated the authority to recall reservists to Active Duty (other than for training) with their consent. No more than 10 officers and 100 enlisted members may be on Active Duty for more than 30 days.
2. ***Partial Mobilization.*** Authority for this type of recall is established under 10 U.S.C. 12302 (formerly 10 U.S.C. 673). Following a declaration of national emergency by the President, up to 1 million members of the Ready Reserve may be recalled without their consent for not more than 24 months. (Coast Guard portion will be determined by JCS at the time of the emergency).
3. ***Full Mobilization.*** Authority for this type of recall is established under 10 U.S.C. 12301 (formerly 10 U.S.C. 672). Members of the Ready Reserve may be called to Active Duty without their consent in time of war or national emergency declared by Congress for the duration of the emergency or war and for a period of up to 6 months thereafter.
4. ***(PSRC) Involuntary Active Duty for Military Operations.*** Authority for this type of recall is established under 10 U.S.C. 12304 (formerly 10 U.S.C. 673b). It empowers the President, without a declaration of national emergency to authorize the Secretary of Defense and the Secretary of Transportation to order to Active Duty, up to 200,000 members of the

Selected Reserve. The Coast Guard's apportionment is coordinated with services by the Joint Chiefs of Staff (JCS) according to contingency requirements. Period of Active Duty can be no longer than 270 days. The type of recall is commonly referred to as "PRESIDENTIAL SELECTIVE RESERVE CALL-UP (PSRC)." It is prohibited to mobilize reservists to respond to domestic emergencies under PSRC authority.

## SECTION B

### *Authority for Involuntary Recall of Different Categories of Personnel*

1. **Ready Reserve.** 10 U.S.C. 12301 and 12302 -- may be called under full or partial mobilization conditions as described above. Ready Reservists may also be ordered for duty in domestic emergencies by the Secretary of Transportation under 14 U.S.C. 712.
2. **Selected Reserve.** Subject to all Ready Reserve call-up actions, plus 10 U.S.C. 12304 Presidential Selected Reserve Call-Up.
3. **Standby Reserve.** 10 U.S.C. 12306 (formerly 10 U.S.C. 674) -- (subject to conditions in 10 U.S.C. 12301, war or national emergency declared by Congress) only after the Secretary determines that there are not enough qualified members in the Ready Reserve in the required category who are readily available.
4. **Retired Reserve.** 10 U.S.C. 12307 (formerly 10 U.S.C. 675) -- (subject to conditions in 10 U.S.C. 12301, war or national emergency declared by Congress) only after the Secretary determines that there are not enough qualified members in the Ready Reserve in the required category who are readily available.
5. **Retired Regular.**
  - a. **Officers.** 14 U.S.C. 331 -- The Secretary may order "in time of war or national emergency" (declared by either the President or Congress).
  - b. **Enlisted.** 14 U.S.C. 359 -- The Commandant may order "in time of war or national emergency" (declared by either the President or Congress).

## APPENDIX B. PROPOSED TEXT CHANGES TO 32 U.S.C. § 112

32 U.S.C. § 112. Drug interdiction and counterdrug activities

- (a) **FUNDING ASSISTANCE** -The Secretary of Defense, **through the Chief, National Guard Bureau**, may provide funds to the Governor of a State who submits to the Secretary a State drug interdiction and counter-drug activities plan satisfying the requirements of subsection (c). Such funds shall be used for the following-
- (1) The pay, allowances, clothing, subsistence, gratuities, travel, and related expenses, as authorized by State law, of personnel of the National Guard of that State used while not in federal service, for the purpose of drug interdiction and counterdrug activities.
  - (2) The operation and maintenance of the equipment and facilities of the National Guard of that state used for the purpose of drug interdiction and counter-drug activities.
  - (3) The procurement of services and equipment, and the leasing of equipment for the National Guard of that state used for the purpose of drug interdiction and counter-drug activities. However, the use of such funds for the procurement of equipment may not exceed \$5,000 per item, unless approval for procurement of equipment in excess of that amount is granted in advance by the Secretary of Defense.
- (b) **USE OF PERSONNEL PERFORMING FULL-TIME NATIONAL GUARD DUTY.** -(1) Under regulations prescribed by the Secretary of Defense, personnel of the National Guard of a State may, in accordance with the State drug interdiction and counter-drug activities plan referred to in subsection (c), be ordered to perform full-time National Guard duty under section 502(f) of this title for the purpose of carrying out drug interdiction and counter-drug activities.
- (2)(A) A member of the National Guard serving on full-time National Guard duty under orders authorized under paragraph (1) shall participate in the **training required under section 502(a) duty authorized under section 502** of this title in addition to the duty performed for the purpose authorized in that paragraph. The pay, allowances and other benefits of the member while participating in the training shall be the same as those to which the member is entitled while performing duty for the purpose of carrying out drug interdiction and counterdrug-activities. The member is not entitled to additional pay, allowances, or other benefits for participation in training required under section 502(a) (1) of this title.
- (B) Appropriations available for the Department of Defense for drug interdiction and counter-drug activities may be used for paying costs associated with a member's participation in training described in subparagraph (A). The appropriation shall be reimbursed in full, out of

appropriations available for paying those costs, for the amounts paid. Appropriations available for paying those costs shall be available for making the reimbursements.

- (C) To ensure that the use of units and personnel of 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, the following requirements shall apply in determining the drug interdiction and counter-drug activities that the units and personnel of the National Guard of a State may perform:
  - (i) 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 unit.
  - (ii) National Guard personnel will not degrade their military skills as a result of performing the activities.
  - (iii) The performance of the activities will not result in a significant increase in the cost of training.
  - (iv) In the case of drug interdiction and counter-drug activities performed by a unit organized to serve as a unit, the activities will support valid unit training requirements.
  
- (3) A unit or member of the National Guard of a State may be used, pursuant to a State drug interdiction and counter-drug activities plan approved by the Secretary of Defense under this section, to provide services or other assistance (other than air transportation) to an organization eligible to receive services under section 508 of this title if-
  - (A) the State drug interdiction and counter-drug activities plan specifically recognizes the organization as being eligible to receive services or assistance;
  - (B) in the case of services, the performance of the services meets the requirements of paragraphs (1) and (2) of subsection (a) of sections 508 of this title; and
  - (C) the services or assistance is authorized under subsection (b) or (c) of such section or in the State drug interdiction and counter-drug activities plan.
  
- (4)(A) **In the event of an emergency declared by the President of the United States, Congress, or the Governor of a State, the governor of a State, with the consent of the Chief, National Guard Bureau, may assign any member of the National Guard serving under full-time National Guard Duty under orders authorized under paragraph (1) to perform activities in support of such emergency.**
- (B) **Appropriations available for the Department of Defense for drug interdiction and counter-drug activities may be used for paying personnel and operation and maintenance expenses associated with a member's participation in such emergency activities. In the event of an emergency declared by the President of the United States or**

**Congress, such appropriations shall be reimbursed in full out of amounts appropriated by Congress for expenses incident to such emergency, for the amounts paid. In all other cases, such appropriations shall be reimbursed in full out of amounts available to the State for expenses incident to such an emergency, for the amounts paid.**

(C) PLAN REQUIREMENTS - A State drug-interdiction and counter-drug activities plan shall-

- (1) specify how personnel of the National Guard of that State are to be used in drug interdiction and counter-drug activities;
- (2) certify that those operations are to be conducted at a time when the personnel involved are not in Federal service;
- (3) certify that participation by National Guard personnel in those operations is service in addition to training required under section 502 of this title;
- (4) certify that any engineer-type activities (as defined by the Secretary of Defense) under the plan will be performed only by units and members of the National Guard;
- (5) include a certification by the Attorney General, a civilian official of the State for the activities proposed under the plan is authorized by, and is consistent with, State law; and
- (6) certify that the Governor of the State or a civilian law enforcement official of the State designated by the Governor has determined that any activities included in the plan are carried out in conjunction with Federal law enforcement agencies serve a State law enforcement purpose.

(D) EXAMINATION OF PLAN -

- (1) Before funds are provided to the Governor of a State under this section and before members of the National Guard of that State are ordered to full-time National Guard duty as authorized in subsection (b), the Secretary of Defense shall examine the adequacy of the plan submitted by the Governor under subsection (c). the plan as approved by the Secretary may provide for the use of personnel and equipment of the National Guard of that State to assist Immigration and Naturalization Service in the transportation of aliens who have violated a Federal or State law prohibiting or regulating the possession, use, or distribution of a controlled substance.
- (2) Except as provided in paragraph (3), the Secretary shall carry out paragraph (1) I consultation with the Director of National Drug Control Policy.
- (3) paragraph (2) shall not apply if-
  - (A) the Governor of State submits a plan under subsection (c) that is substantially the same as a plan submitted for that State for a previous fiscal year; and
  - (B) pursuant to the plan submitted for a previous fiscal year, funds were provided to the State in accordance with

subsection (a) or personnel of the National Guard of the State were ordered to perform full-time National Guard duty in accordance with subsection (b).

- (E) EXCLUSION FROM END-STRENGTH COMPUTATION - Members of the National Guard on active duty or full-time National Guard duty for the purposes of administering (or during fiscal year 1993 otherwise implementing) this section shall not be counted toward the annual end strength authorized for the reserves on active duty in support of the reserve components of the armed forces or towards the strengths authorized in sections 12011 and 12012 of title 10.
- (F) END STRENGTH LIMITATION - (1) Except as provided in paragraph (2) (3), at the end of a fiscal year there not be more than 4000 fiscal year 2003 there shall be 3500 members of the National Guard—
- (A) on full-time National Guard duty under section 502(f) of this title to perform drug interdiction and counter-drug activities pursuant to an order to duty for a period of more than 180 days; or
  - (B) on duty under State authority to perform drug interdiction or counter-drug activities pursuant to an order to duty for a period of more than 180 days with State pay and allowances being reimbursed with funds provided under subsection (a)(1).
  - (C) **At the end of fiscal year 2005 there shall be 3750 members of the National Guard on duty as specified I paragraph (1)(A) and (1)(B). At the end of fiscal year 2006 and at the end of every fiscal year thereafter, there shall be 4000 members of the National Guard on duty as specified in paragraph (1)(B).**
- (2)(D) The Secretary of Defense may increase the end strength authorized under paragraph (1) by not more than 20 percent for any fiscal year if the Secretary determines that such an increase is necessary in the national security interests of the United States.
- (G) ANNUAL REPORT - The Secretary of Defense shall submit to Congress and annual report regarding assistance provided and activities carried out under this section during the preceding year. The report shall include the following:
- (1) The number of members of the National Guard excluded under subsection (e) from the computation of end strengths.
  - (2) A description of the drug interdiction and counter-drug activities plans referred to in subsection (c) with funds provided under this section.
  - (3) An accounting of the funds provided to each State.
  - (4) A description of the effect on military training and readiness of using units and personnel of the National Guard to perform activities under the State drug interdiction and counter-drug activities plan.
- (H) STATUTORY CONSTRUCTION - Nothing in this section shall be construed as a limitation on the authority of any unit of the National Guard of State, when such a unit is not in Federal service, to perform law

enforcement functions authorized to be performed by the National Guard by laws of the State concerned.

(i) DEFINITIONS - For purposes of this section:

- (1) The term “drug interdiction and counter-drug activities”, with respect to the National Guard of a State, means the use of National Guard personnel in drug interdiction and counter-drug law enforcement activities, including drug demand reduction activities, authorized by the law of the State and requested by the governor of the State.
- (2) The term “Governor of a State” means, in the case of the District of Columbia, the Commanding General of the National Guard of the District of Columbia.
- (3) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of possession of the United States, or a territory of possession of the United States.

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## **APPENDIX C. PROPOSED NEW SECTION OF 32 U.S.C. § 112**

### **New Section 32 U.S.C. 112(b)(2)(D):**

Notwithstanding any other provision of law, in the event of an emergency declared by the President of the United States, or the Governor of a State, the Chief, National Guard Bureau may authorize any member of the National Guard serving on full-time National Guard duty under orders authorized under paragraph (1) to perform activities in support of such emergency. Appropriations available for the Department of Defense for drug interdiction and counter-drug activities may be used for paying costs associated with a member's participation in such emergency duties. In the event of an emergency declared by the Governor of a State, such appropriations shall be reimbursed in full, out of such State funds as may be made available for paying those costs of such emergency, for the amounts paid.

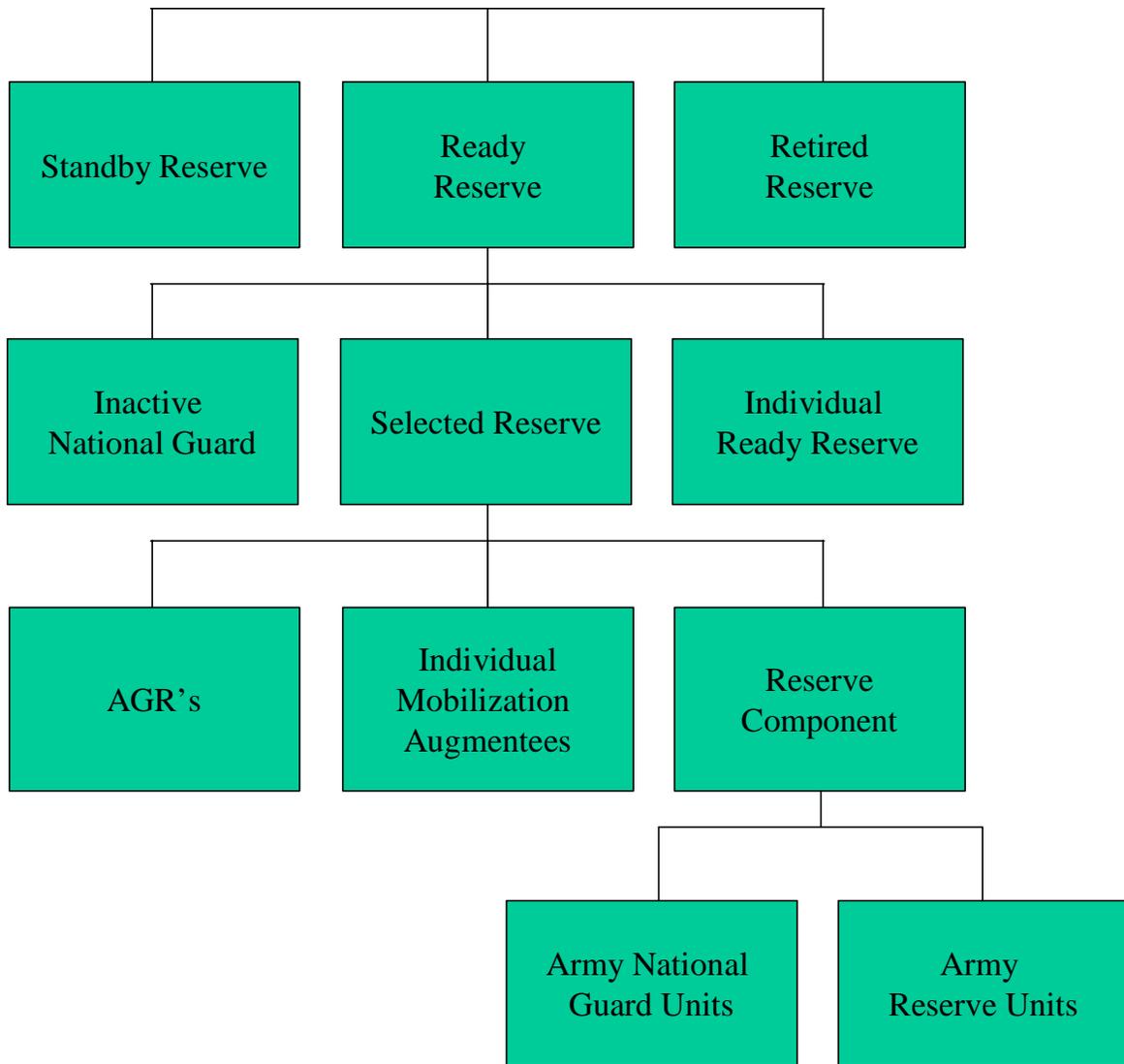


Figure 1. Reserve Structure Diagram

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