

Creating A Coordinated Game Plan: Improving the Effectiveness of Military Civil Support to Law Enforcement

By Bob Brooks

Sheriff, Ventura County, California

(Note: This is an adaptation by Sheriff Brooks' of his thesis, submitted in partial fulfillment of the requirements for the degree of MASTER OF ARTS IN SECURITY STUDIES (HOMELAND DEFENSE AND SECURITY) from the NAVAL POSTGRADUATE SCHOOL March 2007. The complete thesis can be found in [PWH Archives/Reference Library](#))

One simple but difficult principle provides the opportunity for the United States to achieve *never again*. That is: The will to win. The will to do whatever is necessary with the Constitution to protect America separates us from more death and destruction within our shores. It is the will to sacrifice; to persevere in the face of adversity and criticism just as generations of Americans did before us. It is no guarantee, but if we falter, grow complacent, or fail to do what we can, we give the terrorist network opportunities that, with time and patience, they will exploit to kill more innocent Americans.i

INTRODUCTION

In 2004, some of the best professional players in the world comprised the United States Olympic Men's Basketball team. The American team had never fallen short of winning a gold medal since NBA players were allowed to participate. Although they had the most talented players, they needed a come-from-behind victory just to win a bronze medal. Players with less talent, who knew how to play as a team, defeated them.ii There is no question that America's military and law enforcement organizations are among the best on earth, but their interaction in actual responses and exercises demonstrates that talented individuals and agencies fall short of expectations when their efforts are not coordinated. Instead of an effective unified command, the military and civil participants can be reduced to performing like all-stars who cannot play to their potential because they do not fully understand their role as teammates and have not practiced to the point of confidence.

In athletics the difference between a winning team and a losing team is often that the losing team practices until they finally get a play right, while the team that successfully deals with the opposition practices until they do it right every time. The reality of catastrophic natural disasters or terrorist attacks is that local and even state authorities may have to rely on military and other federal resources in the first critical hours of a response. Law enforcement and military emergency responders must have the same commitment to planning and practicing for a unified response if they expect to maximize the effectiveness of their resources to save lives and protect property given the magnitude of the threats that face us.

Problem

On an average, the federal government needs 72 hours to marshal national resources in response to an incident that has surpassed a state's response capacity. Better planning at a regional level could prevent such shortfalls in disaster response. Such efforts should take the form of state-based regional programs that focus on ensuring that states are prepared to sustain themselves and that facilitate cooperation among federal, state, and local efforts.ⁱⁱⁱ

Two associated problems arise when local law enforcement and military assets are deployed to a domestic event. The first is the lack of a clear, consistent, and practical understanding of legal authority permitting and restricting military assistance to, and interaction with, civil authorities. The second is when cooperative action is required; the difference in culture, protocols, terminology, communications and systems between law enforcement authorities and their military counterparts create confusion and friction. The dual state/federal role of the National Guard presents additional complications.

The historic pace of federal, and especially military response, to police and sheriffs' agencies was acceptable because of the scope of the threats faced by local jurisdictions. Because recent experiences including terrorists using planes as weapons of mass destruction, the most devastating natural catastrophe in American history, and the real threats of chemical, biological and nuclear devices, a 72-hour response is no longer acceptable.

The question this thesis will attempt to answer is whether a common emergency management structure can be identified that can be adapted to a terrorist incident or natural disaster when the National Guard and possibly federal military resources respond to a mutual aid request from local authorities.

On April 27, 2006, California's "Little Hoover Commission" released a report entitled: *Safeguarding the Golden State*. The Commission is a bipartisan and independent state agency charged with recommending ways to improve the performance of state programs. Chairman Michael E. Alpert concluded, "Without immediate action by the State of California, millions of Californians are at risk in a catastrophic disaster." The report also states, "State law and federal funding provisions require state and local agencies to assess preparedness needs, develop improvement plans and participate in training and exercise programs but neither OES (Office of Emergency Services) or OHS (Office of Homeland Security) ensures that state or local agencies are prepared. The Commission further stated that the Office of Emergency Services has not ensured that state agencies are making progress toward preparedness goals."^{iv} It is consistent with the direction of this Commission report that state agencies such as OES, OHS and the National Guard take an active leadership role in creating a coordinated approach to providing military support to law enforcement. If this is true in the state with the largest population, it is reasonable to believe that elements of may face the same challenges.

ANALYSIS OF ALTERNATIVES

Specifically defining the responsibilities of the National Guard and law enforcement in a mutual aid environment can be approached at several different levels. The first option is to change the governing legislation empowering and limiting the role of the Guard. The

primary advantage would be to create a common all-hazards game plan that would apply to Guard deployments within a state, as part of the Emergency Management Assistance Compact (EMAC), or at the direction of the President. The level of resistance that could be encountered by the states and the complexity and time that would be required reduces the viability of this option. This option would require massive changes on a state, local and national level.

The second option would be to change the federal protocols and guidelines to clearly define the role of the National Guard in assisting law enforcement. This would avoid disadvantages and opposition to changing legislation. It would focus on the more bureaucratic functions of amending existing military publications and the National Incident Management System. The narrower focus makes this option more attractive in terms of the goal of this thesis. It still requires consensus or agreement between branches of the federal government and the 50 states, which is a disadvantage. The implementation impacts will be explored because this option falls within the acceptable range in terms of time and effort.

The third and recommended option proposes achieving the same goal within the confines of each individual state. The elimination of the need to find national agreement or to deal with the specific distinctions governing the National Guard in 50 states makes this a proposal that is readily achievable, while still making a positive recommendations capable of changing the State's response capabilities. If a successful model were established in any state, it could provide a template for other states to follow. Because of the promising nature of this option it deserves strong consideration.

Sample Implementation Format

It is far beyond the scope of this paper to attempt chart a course for improving interaction between law enforcement and the National Guard in fifty states. A more reasonable approach would be to offer a sample that has been reviewed and found support from both law enforcement organizations, elected and appointed officials, and the National Guard in the State of California. While the terminology may change from state to state, the basic objectives have universal application. The following implementation steps are listed in the order that would most likely lead to achieving the desired change:

Action Items

1. Gain the formal support of the Governor, Office of Emergency Services, Office of Homeland Security, and the National Guard to establish a stakeholder committee for creating statewide guidelines for National Guard support of local law enforcement, within the parameters of the National Incident Management System.
2. Request the Governor issue an Executive Order to assign responsibility to the Office of Emergency Services to develop standards, guidelines and training for the National Guard related to support of law enforcement authorities.
3. Task a committee under the Office of Emergency Services to recommend military support guidelines for both law enforcement and the National Guard. This

- committee should include the State Sheriffs' Association, State Police Chiefs' Association, Commission on Peace Officers' Standards and Training, Highway Patrol or State Troopers, and USNORTHCOM, in addition to the initial agencies approving the committee process.
4. Present recommendations to the Office of Emergency Services, Homeland Security and the Adjutant General of the National Guard for final amendments and presentation to the Governor for approval.
 5. Assign the Commission for Peace Officers' Standards and Training to create a training program for law enforcement and military command and control personnel. The training could be a qualification for a certification qualifying personnel for Incident Command assignments.
 6. Request that the Governor and legislature support National Guard funding and scheduling requirements to conduct training and associated exercises for military personnel who serve as the Liaison Officers (LNO) to law enforcement. Request that the Governor requires the National Guard to train their emergency responders in accordance with state law, so that they qualify to enforce the Penal Code in support of a law enforcement role.
 7. Identify training funds from existing budgets or from additional appropriations for law enforcement training and exercises. Additional appropriations will require the support of the Governor and State Legislature.
 8. Schedule training at the mutual aid region level, which includes the National Guard and the law enforcement agencies within each region. Since the protocols relate primarily with the command and control element of the State Emergency Management System, tabletop scenarios with the same personnel who might be identified as having an ICS role or be assigned as a Liaison Officer in the event of an actual deployment should be sufficient. The objective will be to produce experienced command and control teams composed of both law enforcement and National Guard personnel.

CONCLUSION

The legendary football coach Vince Lombardi used to say that the will to win is not the most important thing; the will to prepare to win is the most important. Anyone who gets into a fight wants to win, but if he hasn't prepared ahead of time, he will be at a distinct disadvantage. Similarly, in our fight against terrorism, we must prepare to win. We must prepare for the next attack...v

This thesis began with a quotation from former Attorney General John Ashcroft, followed by a metaphor taken from the world of sports. It will conclude in the same way. Attorney General Ashcroft lived through the difficult days following 9/11, when the role of the FBI and other intelligence agencies were being quickly redefined. He presided over the investigation of the attacks in New York, Washington D.C. and Pennsylvania. He struggled with the knowledge that an unknown number of terrorists could still be planning domestic attacks. Through all the uncertainty, he was motivated by the memory of innocent people hurling themselves out of the windows of the World Trade Center to

escape the flames. His zeal for his job was also fueled by the knowledge that we faced an enemy who would never stop trying to destroy us, no matter how long it took. If we had the same clarity and memory today, we would address our responsibility to plan, train, and practice together with a sense of urgency. Whether we are dealing with an Olympic basketball team, a law enforcement SWAT team, or a military unit preparing for battle, the following basic elements are required to ensure success.

A. Having A Common Playbook

The National Incident Management System and National Response Plan have clearly defined the roles of federal and local agencies in the event of a terrorist attack or natural disaster, but they do not address the myriad of operational issues that are critical to an efficient multi-level emergency response. The National Guard operates under state law and the control of the Governor in their Title 10 status and does not function exactly like the active duty military or the National Guards in other states.

The process to develop guidelines proposed here for law enforcement and the National Guard will help them standardize responses to civil requests anywhere in the state. The involvement of all stakeholders, prior to an actual deployment, could resolve many potential conflicts regarding command and control, logistics, communications, training, terminology, processes, and chain of command. These guidelines would require the reinforcement of a training process for both law enforcement and the National Guard.

B. Conducting Effective And Frequent Practice

A survey of 58 sheriffs, and input from a state association representing 350 police chiefs, revealed that jurisdictions desire greater participation with the National Guard in planning and exercises designed to equip both entities for a major deployment of military personnel or the participation of the National Guard in a Unified Command in support of law enforcement.

Both law enforcement and the military understand successful actions require realistic training and the value of such training erodes with time. The recommended option proposes that, at a minimum, the National Guard participates at the mutual aid region level with law enforcement Incident Commanders in training exercises scheduled on a recurring basis.

C. Knowing And Developing Trust In Your Teammates

Guidelines and systems are of great value, but at any level of endeavor a team functions most effectively when individual participants develop a relationship of trust based upon common knowledge and experience. A military unit or specialized law enforcement team would never consider entering a dangerous situation that required them to rely on people they do not know, or have not earned their confidence. In addition to training and practicing as organizational units, it would be beneficial to provide training with law enforcement personnel and a designated Liaison Officer assigned to that mutual aid region.

SUMMARY

Lieutenant General Russel Honore was the Joint Task Force Commander who provided the most visible and effective leadership in the days immediately following the devastation caused by Hurricane Katrina. In response to an inquiry about what he thought law enforcement should know about National Guard support, he stated that based on his experience, “The first responders and any other response organization should have exercised and collaborated before the storm. The scene of a disaster is not the place to exchange business cards.”¹ He also recommended that coordination between law enforcement and the National Guard could be improved by threat specific planning accompanied by training in which potential participants are stressed to the point of failure.

Law enforcement and military responders cannot afford to ignore the lessons learned from prior events. Jurisdictions will have to rely on National Guard support for law enforcement in future catastrophic events, just as we have in the past. Citizens have a right to expect an effective, coordinated and rapid response to a life threatening disaster. Only by beginning to plan, train and exercise together can law enforcement and the National Guard fulfill their obligation to be at their best when the need is the greatest.

Notes

¹ John Ashcroft, *Never Again: Securing America and Restoring Justice*. (New York: Center Street Press, October 2006), 279-280.

² “Dream Team Surrender Title,” *BBCSPORT*, Newsvote.bbc.co.uk/sport2/Olympics_2004 [Accessed Feb 13, 2006].

³Jill Rhodes, “State and Regional Responses to Disasters: Solving the 72-Hour Problem,” *Heritage Foundation*, No. 1962 (August 21, 2006), 1.

⁴ Safe Guarding the Golden State (Little Hoover Commission, Sacramento, CA), April 27, 2006, Report #184, 34-35.

⁵ John Ashcroft, *Never Again: Securing America and Restoring Justice* (Center Street, New York NY. Townhall.com, October 2006), 281.

⁶ Lt. General Russel Honore, U.S. First Army, Interview by author January, 22, 2007.

Bibliography

Ashcroft, John. *Never Again: Securing America and Restoring Justice* (New York: Center Street Press, October 2006).

Beakley, J. E. “Organizational Response Initiative,” Center for Asymmetric Warfare (2005): 13.

Block, Robert. Local and Federal Authorities Battle to Control Disaster Relief, *Wall Street Journal* (December 8, 2005).

Bloomer, Stephen. "National Guard Domestic Counterdrug Support to United States Law Enforcement Agencies," U.S. Army War College (2004).

Blum, Steven. "Responding to Catastrophic Events: The Role of the Military and National Guard in Disaster Response," Homeland Security Subcommittee on Science and Technology (2005): 2-3.

Brinkerhoff, John. The Posse Comitatus Act and Homeland Security, Homeland Security.org, February 2002, 4.

Bolgiano, David. "Military Support of Domestic Law Enforcement Operations: Working with Posse Comitatus," FBI Law Enforcement Bulletin (2001).

Brake, Jeffrey. "Terrorism and the Military's Role in Domestic Management: Background and Issues for Consideration," Army War College (2001).

California Military and Veterans Code. Sections 143 and 365.

Clark, Major General Jack. "Title 10 - Title 32: The Basics – the Issues – the Possible Fixes," Air National Guard (2005): 1-14.

Collins, Admiral Thomas. "Responding to Catastrophic Events," Homeland Security Subcommittee on Science and Technology (2005): 2-4.

Delk, James. Fires and Furies: The L.A. Riots (EIC Publications, Palm Springs, CA, 1995), 45.

Department of Defense. "Strategy for Homeland Defense and Civil Support" (2005): 1-6.

Doyle, Charles. "The Posse Comitatus Act & Related Matters: The Use of the Military to Execute Civilian Law," Congressional Research Service, November 2000, 1.

"Dream Team Surrender Title." BBCSPORT, Newsvote.bbc.co.uk/sport2/Olympics_2004 [Accessed February 13, 2006].

"The Posse Comitatus Act & Related Matters: The Use of the Military to Execute Civilian Law." Congressional Research Service (2000).

General Accounting Office. "DOD Needs to Assess the Structure of U.S. Forces for Domestic Military Missions." General Accounting Office (2003).

Harrison, William. "Assessment of the Performance of the CALIFORNIA NATIONAL GUARD During the Civil Disturbances in Los Angeles, May 1992," California National Guard (October 2, 1992), 31.

Hurricane Katrina: The Role of the Governors in Managing a Catastrophe: Hearing Before the Senate Committee on Homeland Security and Government Affairs, 109th

Congress 2006 (testimony of Warren J. Riley, Superintendent of the New Orleans Police Department).

Jackson, Michael. "Homeland Security, the Military and the National Guard's Response to Disaster," Washington D.C.: Committee on Armed Services Subcommittee on Terrorism (2005): 3.

Kean, Thomas. "Final Report on 9/11 Commission Recommendations," December 5, 2005, 1.

Kim, W. Chan and Renee Mauborgne. *Blue Ocean Strategy*, Harvard Business School Press, Boston Massachusetts, 2005, 23-184.

Law Enforcement Mutual Aid Plan (California Office of Emergency Services), 2006, 24-25.

Leahy, Senator Patrick and Senator Christopher Bond. "Letter to President George W. Bush," Congressional Record (2005): 1.

Lowenberg, Major General Timothy. "The Role of the National Guard in National Defense and Homeland Security," National Guard Association (November 2005).

McHale, Paul. "Observations on the Federal Response to Hurricane Katrina." U.S. House of Representatives (2005): 3-4.

Minority Staff of the House Committee on Homeland Security. "Final Report of the 9/11 Commission," U.S. House of Representatives (2005): 13.

Petroni, Jim. Asymmetric Warfare Training Lessons, November 5, 2005.

Pumphrey, Carolyn. "Transnational Threats: Blending Law Enforcement and Military Strategies," Duke University Center for Law, Ethics and National Security (2002).

Rhodes, Jill. "State and Regional Responses to Disasters: Solving the 72-Hour Problem," Heritage Foundation, No. 1962 (August 21, 2006): 1.

Rosegrant, Susan. *The Flawed Emergency Response to the 1992 Los Angeles Riots* (John F. Kennedy School of Government, Harvard University, Cambridge, Mass., 2000), 1

Rowe, Major General Richard. "USNORTHCOM Lessons Learned," House Armed Services Committee (2005): 2-4.

Safe Guarding the Golden State (Little Hoover Commission, Sacramento, CA), April 27, 2006, Report #184, 34-35.

Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina. "A Failure of Initiative," U.S. Government Printing Office (2006): 1-5.

Sheriff's Offices, 2003. U.S. Department of Justice Bureau of Statistics, Washington D.C., May 2006, 1.

Smith, Michael and Jeff Rojek. LawEnforcement Lessons Learned from Hurricane Katrina (University of South Carolina Publications, May 2006), 1.

Stein, Jeff. Fine Print in Defense Bill Opens Door to Martial Law, CQ.com, December 1, 2006, 8:25am [Accessed December 19, 2006]

U.S. General Accounting Office, COMBATTING TERRORISM: How Five Foreign Countries are Organized to Combat Terrorism (Washington, D.C., GAO, April 2000).

Zubeck, Pam. NORTHCOM Official Lists Katrina Lessons, *The Gazette* (October 22, 2005).
