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PERFORMING CIVIL DISTURBANCE
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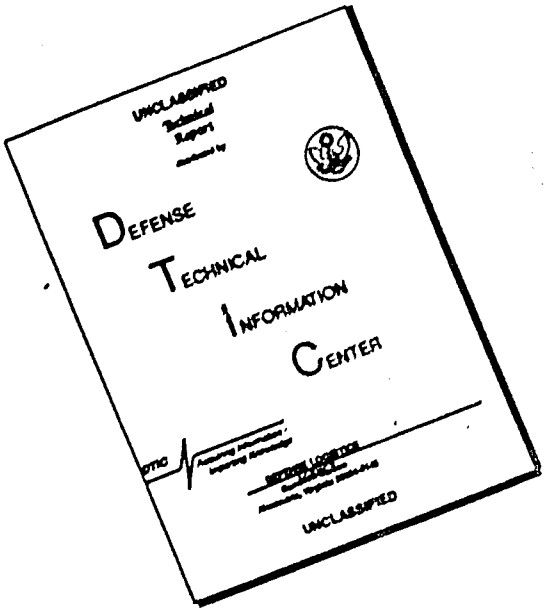

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A STUDY OF THE NEED FOR ARREST POWERS BY FEDERAL TROOPS PERFORMING CIVIL DISTURBANCE MISSIONS

A thesis presented to the Faculty of the U.S. Army Command and General Staff College in fulfillment of the requirements of the Individual Research Elective Program

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Title of Thesis: A STUDY OF THE NEED FOR ARREST POWERS BY FEDERAL TROOPS PERFORMING CIVIL DISTURBANCE MISSIONS

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The opinions and conclusions expressed herein are those of the individual student author and do not necessarily represent the views of either the U.S. Army Command and General Staff College or any other governmental agency. (References to this study should include the foregoing statement.)

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CHAPTER I

INTRODUCTION

Background

Flexibility of military forces deployed in support of local authorities during civil disorders is dependent on legal authority and the policy of the Federal government. For a long time the mode of operation of troops used in civil disturbance situations did not come under close scrutiny because domestic use of Federal troops was a rarity in United States history. Mass destruction during the Watts' riots in August 1965 and subsequent riots in 1967, Newark and Detroit being the largest, served notice that local and state governments did not always possess sufficient power to maintain law and order. The Federal government was forced to provide assistance to local authorities in Detroit, Michigan in July 1967 and to develop and permanently maintain a capability through planning, training, and resource allocation to respond rapidly to future domestic disorders. Methods used by Federal troops deserve a closer look.

Although the basic policy of our Federal government is predicated on the principle that protection of life and property and the preservation of law and order are functions of state and local government, the magnitude of disorders strained and, in cases like

Detroit, exceeded local capabilities for control.[1] As a result of riots in the summer of 1967 and widespread violence following the assassination of Martin Luther King in April 1968, Army contingency plans based on the assumption of possible Federal troop deployment at four different locations were expanded to cover far broader contingencies.[2]

The question of employing Federal troops in domestic situations has both political and legal implications. The Constitution gives the President power to use troops in support of controlling domestic disturbances.[3] Title 10, U. S. Code specifies three main prerequisites for Federal intervention in local disorders: at the request of appropriate state authorities; when states are unable to maintain order; or when states are unwilling to enforce the law.[4] The President also has the power to use military force as a result of other specific legislation which permits use of troops to enforce civil rights, protect Indian reservations and maintain order on public lands.[5] Intervention to protect Federal property is an accepted principle.[6]

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[1]U.S. Department of the Army, "AR 500-50", Emergency Employment of Army Resources - Civil Disturbances (Washington: 1969), p. 2.

[2]U.S., Congress, Senate, Committee on Governmental Operation Subcommittee on Investigation of Riots and Disorders. Riots, Civil and Criminal Disorders. Hearings, 90th Congress, Part IV, 1967 (Washington: Government Printing Office, 1968), p. 1521.

[3]Constitution of the United States, Article IV.

[4]"Controversy Over Proposed Anti Riot Legislation: Pro and Con", Congressional Digest, April, 1968, pp. 102-103.

[5]AR 500-50, op. cit., p. 9.

[6]Ibid.

The various laws under Title 10, U.S. Code already mentioned provide for Federal support during disorders in a complete spectrum of situations ranging from requests for assistance to martial law. This paper is primarily concerned with the use of Federal troops at the request of appropriate state authorities.

Not only are legal means available as a guide for Federal troop employment but historical precedent also exists. President Van Buren in 1838 refused to provide troops requested by the Pennsylvania legislature because full use of available local resources had not been made. This decision established a precedent for use of Federal forces.[7] During Detroit race riots in 1943 President Roosevelt committed troops because the Michigan National Guard was overseas in Federal service and the state did not have sufficient police or troops available to control the situation.[8]

When military support is provided, it is policy for Federal troops to assist local authorities and help create an atmosphere where the military is not needed.[9] The primary mission in civil disturbance employment is to reestablish law and order. A corollary aim is to maintain respect for the law.[10]

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[7]Col. Joe Baker Jr., "Policy Decisions for Civil Disturbance Operations", (Unpublished thesis, Army War College, Carlisle Barracks, 1969), p. 30.

[8]Ibid., p. 31.

[9]AR 500-50, op. cit., p. 2.

[10]Adrian H. Jones and Andrew R. Molnar, Combating Subversively Manipulated Civil Disturbances, Center for Research in Social Systems (Washington: The American University, 1966), p. 35.

Resources available to states for use in controlling civil disturbances vary widely from state to state in both composition and legal authority. Generally, local and county police have the broadest arrest powers. State police powers vary from wide power in some states to little more than authority to write traffic tickets in others. Use of unfederalized National Guard troops hinges on individual state laws. Despite the fact that military functions in civil disturbance situations closely parallel those of the police, no statutes exist which confer arrest power on Federal troops.[11]

Extreme care must be used by the President when considering the use of force due to the broad political and legal implications involved. With the separation of power between state and Federal government a guiding principle of our system, any move which could lead to upsetting the balance would meet with strong opposition. Legislating arrest power for Federal troops would probably incur objections from both civilian and military authorities. Tradition, encroachment of Federal power, and primacy of the states are arguments against granting arrest power to Federal forces. Such a step would put increased pressure on the Army and would require major mission and training efforts. Cyrus Vance in his report on the Detroit riots of 1967 had this to say about using troops as arresting officers.

> . . . The declaration of martial law, however, would itself raise severe problems. Such action results in the abolition of the normal functioning of the courts, but also places soldiers in

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[11] U.S. Army Military Police School, Lesson LW254V, Interagency Authority and Jurisdiction, Legal Aspects of Civil Disturbance, Fort Gordon, Georgia, October 1968, p. 3.

> the position of having to act as arresting officers, which is neither desirable nor feasible . . .[12]

In the light of changing times, tradition may not meet the test of necessity. New tools may well be needed to combat the new wave of violence and civil disorder. The question of arrest powers for Federal troops deserves a close review. The first step in examining arrest power is to determine if a need for such power exists.

The Problem

Hypothesis. Arrest powers of peace officers are needed by Federal troops to properly perform civil disturbance missions.

Scope. By analyzing missions performed by Federal troops in civil disturbance situations and reviewing techniques which might accomplish the same purpose, a determination will be made of the need for arrest powers. The following limitations define the scope of this paper.

1. The paper is concerned with determining the need for arrest powers and not with methods of obtaining these powers and the accompanying legal problems involved.

2. The hypothesis is limited to an environment in the United States where legal employment of Federal troops is made at the request of appropriate state authorities.

3. The conditions for troop employment do not include martial law. (Martial law will be discussed briefly because of its' legal implications and for background information).

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[12] Cyrus R. Vance, Final Report of Cyrus R. Vance, Special Assistant to the Secretary of Defence Concerning the Detroit Riots, July 23 - August 2, 1967 (Washington: Dept of Defence, 1967), p. 54.

4. Political considerations of Federal troop employment will not be included in this investigation.

Definition of Terms

Apprehension: to take into custody.[13] The military term "arrest" differs from the word "apprehension" but in the civilian connotation the words are used interchangably. For the purpose of this paper "apprehension" and "arrest" have the same meaning.

Arraignment. The bringing into court and formal charging followed by a plea by the defendent. Normally if the plea is "guilty" the sentence will be passed immediately. If the plea is "not guilty" the case goes to formal trial.[14]

Arrest. To seize and hold under restraint or in custody by authority of the law.[15]

Citizen's arrest. The authority of citizens to apprehend violators of serious crimes (felonies). The use of citizen's arrest differs in various states. A prerequisite to making the arrest is that the crime must be physically witnessed by the person making the apprehension.

Civil disturbances. Riots, acts of violence, insurrections, unlawful distractions or assemblages or other disorders prejudical to public law and order.[16]

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[13] Webster's New World Dictionary, College Ed. (New York: World Publishing Company, 1966), p. 71.

[14] "Arraignment", The World Book Encyclopedia, Volume I, p. 701.

[15] Webster's New Dictionary of Synonyms (Springfield: C & C. Merriam Company, 1968), p. 60.

[16] AR 500-50, op. cit., p. 2.

Detention. Physical restraint imposed on a person or persons.

Martial law. The law to be exercised in domestic territory when civil authority is overthrown or is no longer adequate to insure public safety and private rights and there is no power left but the military.[17]

Police power: powers such as authority to detain, arrest, or enforce the law. These powers are used to carry out responsibilities usually assigned to police; keeping order, crime prevention, crime detection, and criminal investigation.

Riot. A public disturbance involving acts of violence by assemblages of three or more persons which poses an immediate danger of damage to property or injury to persons.[18]

Method

Relying on historical research, an examination of type of missions performed by National Guard and Federal troops on civil disturbance duty will be made. National Guard missions are also included because they are similar to those performed by Federal troops and, therefore, provide a broader base of data on which to draw. Tasks similar or related to police functions will be isolated for further detailed evaluation. These police type tasks shall then be examined with respect to the need for arrest power to insure their accomplishment.

Alternate methods and techniques which might be substituted for arrest power and still permit mission accomplishment will be reviewed.

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[17]Common Subjects Lesson Plan, Martial Law, The Staff Judge Advocate School (Charlotesville: 1964), p. 3.

[18]"Controversy Over Proposed Anti Riot Legislation: Pro and Con", op. cit., p. 104.

If missions assigned cannot be adequately performed without arrest powers, the hypothesis is valid. However, if arrest powers are not needed or if alternate techniques permit mission accomplishment the hypothesis is not valid.

CHAPTER II

LEGAL CONSIDERATIONS AFFECTING THE USE OF FEDERAL TROOPS

Introduction

The legal authority to employ Federal troops in a civil disturbance is derived from the Constitution, reinforced and clarified by Title 10, U.S. Code, and guided by precedent. Although the power to commit Federal forces is quite clear, the actual authority troops have when deployed is not. Part of the problem lies in the fact that Federal troops are not from the same level of government as state or local authorities. When the Federal government does provide resources at the request of state authorities the officials of local and state governments are in control of directing operations in their respective jurisdictions. Complications exist because military regulations prohibit troops from taking orders from anyone outside their established chain of command. Federal troops are technically responsive only to their superiors and contact with local authorities who are controlling the response to civil disorder depends largely on coordination and cooperation rather than command and control.

The issue is further clouded because many publications, civilian as well as military, are not clear on what authority Federal troops have. Excerpts from one service school lesson plan points up the deficiency.

> No statutes exist which confer arrest powers on soldiers sent into a civil disturbance. It would seem incongruous to hold that they are legally lacking any authorization to perform tasks sent to do. Therefore, Federal troops inherently possess similar arrest powers to those of local law officials.[19]

It is quite an assumption to infer that Federal troops possess complete arrest powers where law confers none. Such an inference must be judged in the light of some very searching questions. Can Federal troops have authority in an area of jurisdiction when that authority has not been conferred by the government of that jurisdiction and the Federal government is only in a supporting role? Why do military publications including the lesson plan already cited hedge on this question with the following type statements?

> Civilian police should if possible make arrests of civilian personnel. In the event it becomes necessary for military personnel to take this action the soldier will immediately seek a civilian policeman to take custody of the civilian detained.[20]

> In the event a soldier is confronted with a situation which demands immediate action and there is no policeman available he should conduct the search.[21]

Army field manual, FM 19-15, "Civil Disturbance and Disaster", when discussing apprehension of lawbreakers makes a point of stressing civilian rather than military arrests.

> Because of legal considerations involved, civil police should be used to make the actual apprehension wherever possible.[22]

Army policy states that it is better to let civilian police make arrests rather than military personnel. This is true for a number

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[19] Military Police Lesson Plan LW254V, op. cit., p. III.

[20] Ibid.

[21] Ibid.

[22] FM 19-15, op. cit., p. 7-7.

of reasons, one of which is that troop authority is not clearly defined in any federal law. The Army does stress that it is better to act than to take no action at all if violence and disorder prevails.

Legal authority does become clear if the situation worsens and martial law is declared. During martial law the Army takes over law enforcement, local and state laws are assimilated, and offenders may be apprehended and detained in military custody until a civil court can be convened.[23]

At best, legal authority of Federal troops deployed to assist civil authorities is unclear. In the final analysis there are no laws which grant arrest power to Federal troops in a situation where they assist civil authorities.

Special Authority for Federal Forces

The government has the power to protect Federal property.[24] Jurisdiction over Federal land is divided into two types, exclusive and concurrent.[25] Exclusive jurisdiction gives Federal law enforcement officials, including military police, the sole right of enforcement with trial before a U. S. Magistrate or in the Federal court system. In other areas the jurisdiction is concurrent, which means the Federal government shares jurisdiction with the states. The main post at the United States Military Academy, as an example, is located on land which due to the nature of its' acquisition, is under exclusive Federal jurisdiction. Adjacent lands which were recently acquired are

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[23]U.S. Dept of Army, Assistant Chief of Staff for Force Development, Operations Report 5-67, Lessons Learned, Civil Disorder-TF Detroit, (Wash: 1967), p. 3.

[24]AR 500-50, op. cit., p. 20.

[25]Military Police Lesson Plan LW254V, op. cit., p. III.

still under state sovereignty and the Federal government's rights are similar to those of any private property owner. Here the jurisdiction is concurrent.

Because the Federal government is restricted by the Constitution to the type laws it can enact, some provision must be made to establish a code of laws for areas of Federal jurisdiction. The answer to this problem is the "Assimilative Crimes Act" which assimilates the laws of the surrounding area for Federal land.[26]

The President not only has power to protect Federal property but also has the authority in a number of other specialized situations to use military forces to enforce the law. R. S. 1984, 42 U.S. Code, 1989 authorizes persons appointed to execute warrants to enforce laws enacted for safeguarding civil rights and to summon land and naval forces for assistance.[27] R.S. 2118, 25 U.S. Code, 180 authorizes troops to remove unauthorized persons from treaty lands.[28] Other statutes enable the President to use troops to enforce neutrality, customs laws, and quarantine laws.[29] These special laws do not materially aid troops in a civil disturbance role.

Martial Law

Although martial rule or law is not included in the scope of this paper, it is necessary to devote some attention to it because

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[26]Ibid.

[27]AR 500-50, op. cit., p. 20.

[28]Ibid.

[29]Ibid.

martial law represents the next and ultimate level of troop involvement in a domestic situation that is within the framework of law.

The Supreme Court has indicated that martial law is the law exercised in domestic territory when civil authorities are no longer able to maintain law and order and there is no power left but the military.[30] The Supreme Court also ruled that martial law was not intended to surplant courts with military tribunals.[31] Law enforcement is taken over by the Army, local and state laws are assimilated, and offenders may be kept in military custody.[32]

In most cases the decision to proclaim martial law is made by the President. However, martial law can also be initiated by local military commanders if immediate action is required and communication facilities do not permit prior approval.[33]

Martial law has certain advantages aside from conferring arrest power on the military. For one, the right of habeaus corpus can be suspended.[34] The psychological effect would also help to impress on civilians the gravity of the situation.

The use of martial law is an extreme measure and even though it gives arrest power to Federal forces it has adverse side effects which could permanently erode state's rights and produce an imbalance of power with the Federal government.

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[30]Lesson Plan Judge Advocate Generals School, "Martial Law", op. cit., p. 3.

[31]Ibid.

[32]After Action Report-TF Detroit, op. cit., p. 3.

[33]AR 500-50, op. cit., par 9 section 2.

[34]Military Police Lesson Plan LW254V, op. cit., p. 5.

Army Policy in Employing Troops in Domestic Disturbances

The legal aspects of Federal troop employment at the request of state authorities involves an environment in which local government is still operable and has not lost its sovereignty as in the case of martial law. All the local government has done in this situation is request assistance.

Army Regulation 500-50, "Emergency Employment of Army Resources-Civil Disturbance", states the basic Army policy.

> Protection of life and property and maintenance of law and order within the territorial jurisdiction of any state are the primary responsibility of state and local authorities.[35]

Federal troops are provided to assist civil authorities, not to intervene or assume responsibility. However, even though local authorities are in control they cannot give orders to the military.

> Federal armed forces committed in the aid of civil authorities will be under the command and directly responsible to their military and civilian superiors through the Department of Army chain of command. They will not be placed under command of an officer of state defense forces or national guard not in Federal service or any local or state civil official.[36]

Any joint civil disturbance operation involving Federal troops depends on close coordination and cooperation at all levels. Should this cooperation break down the legal, political, and practical consequences could be disastrous.

Other Considerations

The use of National Guard forces has special legal considerations. As long as the guard is in state service, the powers it has are derived

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[35]AR 500-50, op. cit., p. 2.

[36]Ibid.

from the laws of the state. Once the guard is Federalized ties with the state are broken and any police powers held under state law would be lost.

Citizens' arrest is another specialized legal tool which varies from state to state. Generally it is an arrest made by a citizen of a person committing a felony in his presence. The use of citizens' arrest is so restrictive and differs between states to such an extent that it is not a reliable tool for use by Federal troops. In addition, soldiers may not fit the definition of a citizen defined by a particular state.

CHAPTER III

SPECIFIC TASKS RELATING TO CIVIL DISTURBANCE TROOP EMPLOYMENT

Introduction

Many varied tasks will be required of federal troops deployed in response to a civil disturbance depending on the local environment and the severity of the disorder. Historical examples, from past riots where federal troops or National Guard forces were used, give the best picture of what can be expected of those elements supporting local police in maintaining law and order.

To facilitate mission analysis, the subdivision of a civil disturbance into various phases helps focus on the tasks required to be performed as the conditions affecting the disorder change. A study for the Office of the Provost Marshal General conducted by the Center for Research in Social Systems divides civil disturbances into four phases: pre-crowd, crowd formation, civil disturbance, and post civil disturbance.[37] Using this phase breakdown to assist with task evaluation this chapter examines missions performed in each stage of the civil disturbance model with the purpose of pinpointing those tasks which would significantly benefit from federal troops having arrest powers.

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[37] Adrian H. Jones and Andrew R. Molnar, op. cit., p. 2.

Pre-Crowd Formation Phase

The pre-crowd formation phase is a preliminary period of tension prior to crowd formation or widespread violence.[38] *It is difficult to accurately pinpoint the beginning of this phase prior to a disturbance because it depends on attitudes and opinions which are often hard to detect and impossible to measure. By definition, the phase ends with formation of a crowd or the start of widespread violence. This point is relatively easy to fix in time. A statement in the U. S. Riot Commission's report in Chapter 2 of the summary, "Patterns of Disorder", gives a description of the type atmosphere that can be expected during the pre-crowd phase.*

> *Disorder did not erupt as a result of a single "triggering" or "precipitating" incident. Instead, it was generated out of an increasingly disturbed social atmosphere, in which typically a series of tension-heightening incidents over a period of weeks or months became linked in the minds of many in the Negro community with a reservoir of underlying grievences. At some point in the mounting tension, a further incident - in itself often routine or trivial - became the breaking point and the tension spilled over into violence.*[39]

During this phase, appropriate moves by local government or civilian organizations within the community can change the atmosphere, reduce tensions, and eliminate the chance for future violence. Information is gathered and contingency plans made which will influence the direction of the entire government effort, both long and short term.

In relative importance the pre-crowd phase is the most critical, because actions here can avert disorder, and, failing this, the planning affects all phases of our model.

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[38] *Ibid., p. 21.*

[39] *The U. S. Riot Commission Report, op. cit., p. 6.*

Tasks performed by local governments include training of law enforcement elements, coordination between agencies, psychological and public relations activities aimed at reducing tension, and continuous intelligence gathering. Probably the most overt action taken if the situation continues to deteriorate is a show of force. Such a move must be carefully considered because, if used at the wrong time or place, it may precipitate the crowd formation or the disturbance.

What role does the Federal military perform during the pre-crowd phase? The Federal government and the Army have become increasingly aware of the fact that they may be called upon to assist local governments during disturbances. Emergency operations centers have been set up throughout the country to help monitor disorders and watch potential trouble areas. For example, prior to the Chicago riots of 1968 associated with the Democratic National Convention, the Army's emergency operations center kept Department of the Army in Washington informed of events as they progressed.[40] In this instance the Army had already placed one battalion of the First Armored Division on two hour standby and the parent brigade on six hour alert before assistance was requested.[41]

During the pre-crowd phase Army missions include gathering information, updating plans, and performing coordination which is necessary should Federal assistance be requested.

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[40]Dept of the Army, After Action Report - Task Force Chicago, Headquarters III Corps, Period 4 - 13 April 1968, (Washington: 1968), p. 5.

[41]Ibid.

Past experience has shown that incidents which increased tensions and ultimately led to violence were the result of police actions in almost half the major riots studied by the Riot Commission.[42] In such areas, outside forces, if committed to patroling, might help remove lingering hostility toward local police because such forces are not emotionally involved and are usually not targets of the local population's hatred. Specialized units such as military police might be used in this capacity although it is much more conceivable that state police or National Guard troops would be used first. Forces committed in a replacement role for police would need police powers to perform assigned missions.

Federal troops might be called on as a show of force in a rapidly deteriorating situation. However, past experience indicates that Federal forces have not been used this early in a civil disturbance cycle primarily because violence has not yet erupted and local authorities are reluctant to request aid. When asked by a Senate subcommittee if troops should be used in a preventive role, John F. Nichols, Superintendent of Detroit police, said "In my opinion Mr. Chairman, I think that the presence of sufficient force to control an action before it is escalated is of vital importance."[43] He went on to add that the presence of extra patrols plus troops had a definite deterrent effect.[44] The introduction of additional forces changes the environment and, if properly done, could help avert disaster.

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[42]The U. S. Riot Commission Report, loc. cit.

[43]U. S., Congress, Senate, Committee on Governmental Opns, op. cit., p. 1475.

[44]Ibid.

Early use of Federal forces has not been the rule in past disturbances because it violates the precedent that all available local force be used first and because local governments are reluctant to request outside aid while they still appear to be in control of the situation. Governor George Romney of Michigan said, "Calling on the U. S. Army in a civil disturbance is a tough, difficult decision. Equally difficult must be the decision to help control civil disorder."[45] To commit troops during the pre-crowd phase as a preventive measure before disorder occurs, appears, at this point in our evolution of riot control measures, unlikely.

Overt action by the military during the pre-crowd phase in the form of replacing local police to quiet hostility in a specific area would require troops to have police powers. In the role of a show of force arrest powers would not be needed at this time.

Crowd Formation Phase

The crowd phase is the period in which as the result of events, grievences, or agitation a crowd gathers.[46] The Riot Commission found that the final incident before the outbreak of disorder generally took place in the evening or at night in a place where the presence of many people was normal.[47] Based on this analysis, which was developed by studying 24 major riots, the formation of crowds under these conditions is only natural. Given a ready made congregation, agitators can easily set about their work even if they had no hand in promoting the gathering.

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[45]Ibid., p. 1248.

[46]Adrian H. Jones and Andrew R. Molnar, op. cit., p. 21.

[47]U. S. Riot Commission Report, op. cit., p. 6.

At the beginning of the crowd phase local government is still in control and widespread violence has not yet begun. It is at this critical time that the situation begins to rapidly deteriorate and action by authorities will largely determine if violence occurs. Techniques used during this phase include show of force, road blocks to isolate the crowd, guarding critical facilities and apprehension of key agitators. Crowd control is essential. Overreaction is disastrous. Psychological measures to sway the crowd, prudence in the use of force, and sometimes no action at all may prove to be wise tactics.

During a crowd formation at Cambridge, Maryland in 1964 the Maryland National Guard permitted demonstrators to sing prior to being dispersed.[48] This restraint which made the crowd feel that it had achieved its' objective prevented violence and accomplished the mission of the security forces as well.

The emphasis of the Army's riot control doctrine as enumerated in FM 19-15, "Civil Disturbances and Disasters", prior to its' revision in 1968 strongly emphasized riot formations and dispersing crowds with little mention of techniques which proved useful in our large disturbances.[49] The widespread riots in 1967 and the gigantic demonstrations such as the various marches on Washington in late 1969 show that the traditional methods of dealing with crowds although valuable tools to the security force will not alone accomplish control and dispersion of massive assemblages.

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[48]Adrian H. Jones and Andrew R. Molnar, op. cit., pp. 38-39.

[49]FM 19-15, loc. cit.

The moratorium march on Washington in November 1969 is an example of a crowd formation phase. As a result of grievences about the war in Vietnam a gigantic crowd gathered. In this instance, adequate time was available to prepare for the demonstration. Restraint on the part of police was important in preventing any major violence. Troops were guarding critical facilities and their availability was a publicized fact even though the government kept troop involvement at a low key.

During the crowd formation phase local government is still in control and troops would generally not require police powers except in isolated incidents.

The Civil Disturbance Phase

The most violent and distructive phase of our model is the riot or civil disturbance period. This is the time when the crowd becomes an unruly mob and social disorder prevails.[50] A wide range of civil disturbances can result,from those of a non violent nature to actions of the type which took place in the Detroit riots of 1967: looting, sniping, arsen, firebombing, attacks on public buildings, and counterpolice activities. During widespread violence, local police forces often find themselves overwhelmed and outside aid is necessary.

Mayor Hetfield of Plainfield, New Jersey, discussed the ability of his local police force to combat civil disturbance during riots in Plainfield in July 1967 before a Congressional subcommittee.

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[50]Adrian H. Jones and Andrew R. Melnar, op. cit., p. 9.

> Our police force was down to about 77 men, so we were short. Our full compliment is 95. A force of that size certainly isn't big enough to cope with a riotous problem where you are protecting a city of 6 square miles. While I'm on that point....I think the best thing the government could do, national or state, would be to provide every city a small garrison or riot squad.... particularly during the summer.[51]

Historically it has been during this phase that local authorities have recognized their inability to control the disorder within their own resources and have made the agonizing decision to request outside help. Let us take a close look at some historical examples of troop use during the civil disturbance phase to ascertain the type missions they have been called upon to perform.

Chicago riot, 7 and 8 April 1968: Illinois National Guard elements were actively engaged guarding firemen fighting several fires. The guard units also were called into the business district to help stop looting.[52]

Chicago riot, 6 April 1968: Sniping and looting were increasing in police districts 3 and 7. The 2nd Battalion, 122nd Artillery was deployed to saturate the area and assist in reestablishing law and order.[53]

Chicago riot, 1100 hours, 7 April 1968: Two companies of the 4th of the 46th Infantry were committed to disperse mobs on 63rd and 67th streets.[54]

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[51]Congressional Committee on Governmental Opns., op. cit., p. 977.

[52]After Action Report - TF Chicago, 1968, op. cit., p. 9.

[53]Ibid., p. 6.

[54]Ibid., p. 7.

Chicago riot, 0600 hours, 6 April: Motorized military patrols were committed in the city.[55]

Detroit riot, 23 July 1967: In conjunction with the Michigan State Police and Michigan National Guard, local police set up a series of roadblocks at the Detroit city limits. As a result many people in possession of stolen property and dangerous weapons were arrested.[56]

Detroit riots, July 1967: As soon as Federal troops were deployed on the street a marked reduction in incidents occurred.[57]

Detroit riots, 4-10 April 1968: National Guard troops helped to enforce the curfew imposed in the city. This measure proved beneficial.[58]

Newark, New Jersey, July 1967: A picture in Life magazine shows troops searching a man caught running away from a clothing store that had been looted.[59]

Detroit riots, July 1967: A convoy of military jeeps patrolled the city for snipers.[60]

The preceding incidents are representative of the type actions troops are called upon to perform. To this sampling must be added many more such as guard duty, custody of prisoners, traffic control, and others. A close look at these functions provide indications of the tools needed by troops to accomplish assigned missions.

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[55]Ibid.

[56]Senate Committee on Governmental Opns., 90th Congress, op. cit., p. 1483.

[57]Ibid., p. 1517.

[58]Ibid., p. 1566.

[59]Life, July 28, 1967, p. 27.

[60]Life, August 4, 1967, p. 21.

Protection of personnel and property: Troops are called on to guard critical facilities, businesses, and various government offices. Firemen called to fires in riot torn districts were often subjected to sniper fire and abuse from the population. This danger can be partially overcome by assigning guards to the firefighters. Protection presupposes that troops have weapons, equipment and, hopefully, training. While performing protection missions troops may be called on to apprehend snipers and looters, turn violators over to proper authorities for trial, and even testify in court. These tasks are primarily of a police nature and do require police powers including arrest to enable successful accomplishment.

Dispersion of rioters: This technique has always been used in riot control. During dispersion, if rioters resist, resort to further violence, or commit crimes, apprehensions may be necessary. Arrest of instigators may also be necessary to help cool the situation.

Motorized and foot patrols: Placing patrols in the streets to maintain law and order requires the patrols to function as police. They must respond to calls, make apprehensions, and conduct some investigations. Arrest powers would be a valuable help.

Curfew enforcement: Apprehension of curfew violators would be necessary to help enforce curfews.

Roadblocks and checkpoints: Peripheral control or isolating the riot area is often effective because it prevents additional rioters from joining the riot, and stops people from bringing in weapons or removing contraband. While manning roadblocks and checkpoints, searches must be conducted and apprehensions might be necessary.

Traffic control: During riots in the area of violence and disorder, troops are often placed at strategic points to control traffic. All is fine if people obey directions. Arrest may be necessary if they do not.

The civil disturbance phase, because of its' violence and disorder, requires troops to help perform tasks that are primarily police functions. Arrest powers are needed to carry out these police type missions.

Post Riot Phase

The post rict phase, the last of our model, is a period when social order has been restored and the transition back to normalcy is made. Troops committed to patrol missions, guard duty, and other missions are gradually withdrawn and local police assume complete control.

Missions performed during the civil disturbance phase will continue to be carried out until proper relief is coordinated. A smooth transition and prevention of conditions from slipping back to the disturbance phase is important. The situation may dictate the desirability of keeping troops in patrol areas where animosity toward local police is high. By stretching out the transition period, tempers may be allowed to cool and good relations may be ultimately easier to establish.

Remarks

In the pre-crowd formation phase, the bulk of the effort goes to planning and coordination. In the crowd formation phase, although

troops may be used in a show of force role, experience has shown that Federal assistance is normally not requested this early in the model cycle. In special situations police powers may be needed but normally local police are in full control.

Functions performed during the disturbance phase and the post riot phase are police tasks and arrest powers or some substitute are needed.

CHAPTER IV

TECHNIQUES OF EMPLOYMENT RELATING TO ARMY CIVIL DISTURBANCE MISSIONS

Introduction

Thus far our investigation has discovered that no statutes exist which specifically provide arrest powers for Federal troops; that powers possessed by Federal forces deployed in civil disorders are unclear; and that police powers to include arrest, search, and detention are needed to properly carry out tasks assigned during the riot and post riot phases of civil disturbances. This chapter is concerned with searching for techniques that can be substituted for legal arrest powers for Federal troops and still permit satisfactory mission accomplishment. Alternatives must be evaluated in terms of legal adequacy; applicability to a wide variety of missions; adaptability to the military command and control system; compatability with Army and local police policy; and finally, resources required. The primary mission in a civil disturbance situation remains to reestablish law and order and to maintain the legal structure which includes prosecution of offenders.

Obviously Federal troops previously committed in civil disorders have been asked to perform without the use of legal arrest powers. It must be kept in mind that the Federal government was not totally

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the legal authority to make arrests. The policeman has knowledge of the area and its people which outside forces do not possess. He is also well acquainted with the court system, booking techniques and rules of evidence. The joint patrol is strengthened by access to a dual means of communications. Compatability in this area has been a problem. Policemen who, because of insufficient numbers, were unable to patrol adequately can when reinforced, spread out and provide more effective coverage. Hostility toward police can be tempered by the presence of troops because of their emotional non-involvement. Both troops and police act as a balance on each others' actions.

In terms of our criteria for evaluation, the system [illegible]es have legal adequacy. Joint patrols do help solve problems and have sufficient physical power to enforce decisions. The system is fairly compatable with military policy and does not adversely effect local methods of policework except that the principle of tactical integrity is somewhat violated. The important aspect which remains a variable is the amount of resources available. In a small city like Plainfield, New Jersey, where, during riots there, only 77 policemen were available to patrol six square miles the police may not be able to provide enough personnel to have joint patrols at all key locations. Military forces working in such an area may still be required to take independent action. Policemen are also lost for a period of time while booking suspects and performing administrative tasks connected with apprehensions.

The principal disadvantage in this method of employment is that close coordination and cooperation is absolutely necessary and complete

command and control is not in being. Joint patrols require a large number of policemen and do not maintain complete tactical integrity. There also are times, which have already been discussed, when local police are not desirable at a scene and only add to the problem.

Generally, with the reservations made, joint patrols do provide a technique of enforcement which in most cases overcomes the lack of arrest power for Federal troops. By proper planning and distribution of resources, compensation can be made for a shortage of personnel.

Alternate Techniques

Consideration should be given to using National Guard troops in joint patrols with Federal forces in areas where local police resources are scarce and when state laws grant arrest powers to the National Guard.

Such a system would meet legal requirements in selected states and does provide manpower for sufficient area coverage of a civil disturbance area. Disadvantages are many. Neither the guardsmen nor Federal troops are trained police or they are familiar with the area. Close coordination is required, tactical integrity is not maintained, the legal advantages are only applicable in certain states, and the National Guard loses all powers granted by the state when federalized. All in all such an arrangement would not be reliable.

A policy presently followed by the Army permits soldiers to detain civilians when no local police are available. This policy is based on necessity. Much is left to an individual's judgment and the soldier can be held liable for improper actions. An immediate benefit

is gained, however, because violators can be remove. rom the riot area. Legal prosecution in such cases is doubtful.

Other techniques under consideration are restriction to evidence gathering, dispersion of rioters without apprehension of legal offenders, and citizen's arrest. Each method offers some assistance but all fall short of most requirements because they can only be used in specialized instances.

In conclusion, the use of temporary detention by Federal troops, based on necessity, provides an emergency measure that can be used with care in lieu of arrest power. A danger exists that we may wind up working outside the law or temporarily setting law aside. Joint police - Army patrols offers an acceptable substitute for arrest powers except when local police resources are scarce, when police visibility is not desirable, or when cooperation breaks down.

CHAPTER V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Summary

State and local police do not have the resources to cope with widespread civil disturbances and violence in the cities. Riots in Detroit during July 1967 required the assistance of Federal troops before law and order could be restored. Subsequent disturbances were of such magnitude that little doubt was left of the need for Federal preparedness to move to major areas of unrest as a backup for local authorities.

Many problems were encountered with the deployment of troops to aid local authorities in restoring law and order. How best could troops be used? What legal authority do Federal forces have? Clearly the President has the authority to use Federal troops. Not so clear, is the powers these forces possess once committed.

The purpose of this paper is to examine the need for arrest powers by Federal troops used to support local and state police in a civil disturbance situation. To do this the hypothesis "Arrest powers of peace officers are needed by Federal troops to perform properly civil disturbance missions", is used. The question concerns only the need for arrest powers and not the desirability politically or the technical manner of providing legal authority. Chapter II

reviews legal considerations affecting the use of Federal troops to determine precisely what powers troops do possess. Chapter III examines specific tasks performed by troops during a civil disturbance to ascertain if arrest powers are needed to accomplish missions assigned. Finally, Chapter IV deals with alternate techniques which permit mission accomplishment without use of arrest powers.

The legal aspects of the problem delt with in Chapter II show that under Title 10, U. S. Code, the President may authorize Federal intervention in local disorders: at the request of appropriate state authorities; when states are unable to maintain order; or when states are unwilling to enforce the law.

There are no statutes which confer arrest powers on Federal forces employed to support local authorities at their request. One argument presented is that the President's power to deploy troops implies that the soldiers possess a complete spectrum of police powers. Two main weaknesses exist in this argument. First, the President does not have the authority to grant powers reserved by another sovereignty, in this case the state, when the local authorities are still in control, have only requested assistance,and have not relinquished sovereignty. Secondly, authority of Federal troops is not clearly spelled out in statutes, regulations, or military publications. In effect the lack of knowledge of what powers are available neutralizes the availability of these powers even if they are in fact implied.

The conclusion from Chapter II is that at best legal authority of Federal troops is unclear. There is no clear indication that troops

do possess police powers in situations short of martial law. Only under a declaration of martial law troops do take over police functions. This uncertainty leaves troops without proper guidance on what actions they may take and limits knowledge of the consequences of their actions.

The specific tasks performed by troops are examined in Chapter III. To assist evaluation a model dividing a civil disturbance into four phases is used: pre-crowd; crowd formation; civil disturbance; and post civil disturbance. Throughout a disturbance the primary mission of authorities is to reestablish law and order and to maintain a legal structure which includes prosecution of offenders.

The pre-crowd phase is a time for planning, coordination, and intelligence gathering. Overt force is not necessary and local authorities are firmly in control, at least on the surface. Historically, troop assistance has not been requested this early in the disturbance cycle primarily because a disturbance is not inevitable or sometimes even discernable at this point.

During the crowd formation phase local authorities are still in control of the situation but troops may be needed in a show of force role or as a reserve in a deteriorating environment. Federal forces would not need police powers at this time.

The riot phase and post riot phase, to a lesser degree, finds troops enforcing curfews, setting up road blocks, operating against snipers, guarding facilities, and performing in many situations where legal offenders must be apprehended or detained. Arrest powers of

peace officers are needed to properly perform missions in the last two phases of the disturbance cycle.

Thus far research has determined that no statutes exist specifically providing arrest powers for Federal troops, that powers of troops operating in a disturbance are at best unclear, and finally that arrest powers are needed to carry out tasks assigned during the riot and post riot phases of a civil disturbance. Chapter IV deals with one remaining question, "Are any techniques available which can be substituted for arrest powers and still permit satisfactory mission accomplishment?" The primary mission of security forces remains to reestablish law and order within a legal framework.

Techniques evaluated include use of joint police patrols, joint National Guard-Army patrols, emphasis on gathering evidence, dispersion of rioters without apprehension of offenders, temporary detention, and citizen's arrest. These methods were viewed in terms of legal adequacy; adaptability to military command and control; compatability with Army and local police policy; overall mission accomplishment; and resources required.

The analysis in Chapter IV resulted in concluding that the use of joint police-Army patrols satisfies most requirements and temporary detention provides a good emergency tool. In joint patrols a policeman is assigned who makes the arrest, thereby providing legal adequacy. Troops provide the physical muscle to back up the police. Other methods evaluated pertain only to specific situations and can not be adapted to wide usage or do not provide legal adequacy.

Shortcomings were also found with the use of joint patrols and temporary detention. In special situations psychological reasons may dictate the desirability of not having police present in an area. In this case troops acting in a police capacity would require police powers. Secondly, use of joint patrols and temporary detention presupposes that adequate local police resources are available to participate in these techniques. In widespread violent disturbances this may not always be the case.

Accepting the limitations of using joint patrols and temporary detention in emergencies, arrest powers are not needed by Federal forces deployed in civil disturbance missions. The hypothesis that "arrest powers of peace officers are needed by Federal troops to properly perform civil disturbance missions", is not valid.

Conclusions

1. The authority which Federal troops possess when deployed on civil disturbance missions is unclear. This is the result of hedging in instructional texts, regulations, and in training where stress is properly placed on local police making arrests and troops taking action in case of emergencies. However, the legal authority of troops is not spelled out Nor ~~is~~ Are the consequences of action taken properly addressed.

2. During the riot and post riot phase of a civil disturbance many missions assigned to military units are police functions. To properly perform these tasks violators of the law must be apprehended, searched, and detained. Troops operating on their own without arrest

powers are placed in an awkward position, being personally liable for actions taken.

3. Joint Army-police patrols are one technique which provides legal adequacy and sufficient force to accomplish civil disturbance missions without giving Federal troops arrest powers. This technique does have two major shortcomings.

a. In areas where hostility to local police is high the use of troops in lieu of police may gain time for tension to subside and the psychological atmosphere to change, thus averting further violence. This technique has not been used in the past primarily because of Federal policy that troops act in a supporting role and not be committed if local resources are available. However, if techniques in riot control become more refined, this method of employment might be considered. Troops acting as police would need arrest powers. Military police who are accustomed to policework are ideal resources in this situation. The use of joint patrols would not be applicable.

b. In a situation such as occurred in Plainfield, New Jersey in the summer of 1967, where police resources were limited in relation to the area patroled, local police would not have the manpower to completely support joint patroling. If military units were forced to operate independently arrest powers would be needed.

4. The hypothesis "arrest powers of peace officers are needed by Federal troops to properly perform civil disturbance missions", is not valid except in situations where joint patrols cannot be used.

5. Martial law and its' total concept of military control is the ultimate step in Federal troop employment. A gap exists between employment of Federal forces in support of local authorities and martial law. By giving arrest powers to Federal troops an additional option in dealing with civil disturbance situations would be available to authorities. This additional option short of declaring martial law is a strong argument for providing arrest powers for troops on a contingency basis.

6. A weakness in the present system of Federal support of local governments is the reliance on cooperation and coordination rather than command and control. In civil disturbances with widespread violence, quick binding decisions are necessary. Such decisions are facilitated by having unity of command with a single person in charge.

Recommendations

1. Specific limitations and guidance on authority of troops committed in civil disturbances should be standardized and deciminated to officers and troops in publications and training.

2. Training to include authority in a civil disturbance should be intensified and given in refresher form on an annual basis to all military personnel.

3. Doctrine on the use of joint patrols should be further developed and published in a field manual.

4. A mobile team to assist in training and coordination with major police forces should be formed. This team would be used to

present Army doctrine to police forces throughout the country in an effort to foster mutual understanding.

5. A committee of local police officials and military personnel to develop doctrine on joint patrols should be formed.

6. A good training film for civil disturbance should be produced for use by military and civilian personnel.

7. Standby powers covering situations short of martial law where police powers are required by Federal troops should be legislated. These powers could be contingency powers similar in concept to the assimilative crimes act. However, instead of adopting local laws for Federal use, as does the assimilative crimes act, the law should grant authority to Federal troops to operate in a local environment under local laws and courts.

8. Arrest powers should be provided on a contingency basis only to specially trained troops. Military police are ideal for this mission because of their familiarity with policework.

9. Army officers should be assigned to permanent liaison sections with major city police departments.

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