

USAWC STRATEGY RESEARCH PROJECT

**NATIONAL GUARD DOMESTIC COUNTERDRUG SUPPORT TO UNITED STATES
LAW ENFORCEMENT AGENCIES**

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This SRP is submitted in partial fulfillment of the requirements of the Master of Strategic Studies Degree. The views expressed in this student academic research paper are those of the author and do not reflect the official policy or position of the Department of the Army, Department of Defense, or the U.S. Government.

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ABSTRACT

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TITLE: National Guard Domestic Counterdrug Support to United States Law Enforcement Agencies

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My research paper will answer the question: Should America's National Guard provide domestic counterdrug support to local, state, and federal law enforcement agencies and community based organizations in support of United States National Security interests? In addition, this paper will analyze Department of Defense (DOD) utilization of the National Guard in counterdrug (CD) operations; including an analysis on the ends, ways, and means applied by DOD toward accomplishing success in the "War on Drugs." I will examine the legal authority for National Guard domestic CD operations, the level of National Guard CD support currently provided to civilian authorities in the "War on Drugs," and to what extent, if any, this support should continue.

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NATIONAL GUARD DOMESTIC COUNTERDRUG SUPPORT TO UNITED STATES LAW ENFORCEMENT AGENCIES

“Every race and every nation should be judged by the best it has been able to produce, not by the worst.”¹

—James Weldon Johnson

“The National Guard of the United States predates the founding of the nation and a standing national military by almost 150 years. The Massachusetts Bay Colony organized America’s first permanent militia regiments, among the oldest continuing units in history, in 1636. Since that time, the National Guard has participated in every United States conflict from the Pequot War of 1637 to the modern day “Operation Iraqi Freedom.”² The National Guard finds its formal origins in the provisions of the United States Constitution. Language in the constitution reads in part: “to provide trained units and qualified persons available for active duty in the armed forces, in time of war or national emergency and at such other times as the national security requires, to fill the needs of the armed forces whenever, during, and after the period needed to procure and train additional units and qualified persons to achieve the planned mobilization, more units and persons are needed than are in the regular components.”³

Federal regulations dictate much of the National Guard’s structure and purpose; however, control of the National Guard remains split between federal and state authorities. The Federal Government reserves the right to call National Guardsmen to active duty as a federal reserve of the Army in times of national emergency. The states reserve authority to locate units and headquarters within the state, and governors must approve changes to their respective state National Guard force mix and force structure allotment. The United States Congress provides funds, which are used to equip, man, train, sustain, and mobilize forces of the National Guard when called upon by the governor of the state or the President of the United States. ⁴

The United States Congress has a symbiotic relationship and inherent interest in the National Guard. The National Guard is active in all fifty-four states and territories; therefore the National Guard resides in, or in the vicinity of, all United States congressional districts.⁵ National Guardsmen are a predominantly federally funded force available to the Governors for community engagement and emergency response operations, thereby supporting local, state, and federal efforts to provide for the security and welfare of United States citizenry.⁶ National Guardsmen serve as traditional soldiers, yet many remain active in community volunteer organizations, and at times play an important role in providing community leadership. Most

National Guardsmen live and work in the congressional districts where they exercise their right to vote. All of these points illustrate why congress has an enduring interest in National Guard funding, roles, and missions. This becomes important because as the Honorable Tom Ridge states; "all incidents are local."⁷ This holds true for criminal activity, emergency response, counter-terrorism, and counterdrug operations.

Should America's National Guard provide domestic counterdrug support to local, state, and federal law enforcement agencies in support of United States national security interests? This paper will discuss the National Guard's involvement in counterdrug operations since it's inception. I will examine the legal authority for National Guard domestic counterdrug support to law enforcement agencies and community based organizations, the level of military support currently provided to United States federal, state, and local law enforcement agencies by the National Guard, and to what extent, if any, this support should continue. I will discuss the feasibility of continuing current, or enhanced levels of National Guard counterdrug support based on changing global National Security concerns and United States National Security interests at home. I will address the Department of Defense's (DOD) use of the National Guard in domestic counterdrug operations, and the "Ends, Ways, and Means" of supporting such an effort. Finally, I will make several recommendations to enhance National Guard support for Law Enforcement Agencies and Community Based Organizations if the Administration is committed toward leveraging the National Guard in winning the "War on Drugs."

LEGAL AUTHORITY FOR NATIONAL GUARD COUNTERDRUG OPERATIONS

As early as December 1981, congress recognized the unavoidable fact that law enforcement agencies did not have the manpower or the equipment to properly interdict the flow of drugs into the United States. The Military Cooperation with Civilian Law enforcement statute (10 USC 371-380) allowed military assistance to civilian law enforcement agencies. Although primarily focused outside of the United States, this statute was the beginning of congress's interest in the growing United States drug culture.⁸

In 1989, President George Bush declared a "War on Drugs," appointed a national "Drug Czar" and ordered the DOD to bring its full weight to bear against the drug epidemic. Since that time, United States policy has been "to disrupt, to dismantle and ultimately to destroy the illegal markets for drugs by attacking both supply and demand sides of the problem."⁹ Shortly after President George Bush Senior's declaration of a "War on Drugs," he directed, "We will for the first time make available the appropriate resources of America's Armed Forces. We will intensify

our efforts against drug smugglers on the high seas, in international air space and at our borders.”¹⁰

Although the National Guard was established as a Colonial Militia in America in 1636, it wasn't until the Posse Comitatus Act (PCA) enacted in 1878 as Title 18 of United States Code (USC) section 1385, that the National Guard received legal authority to provide military support to civilian authorities, including counter drug operations, when under the command and control of state and territorial Governors in a active duty special work or state pay status.¹¹ The policy forbids the use of federal military forces against United States citizens short of a declaration of martial law. The policy was legislated by Congress in response to objections by Southern congressional representatives against the stationing of federal troops in “occupied” southern states during the reconstruction period at the conclusion of America's Civil War. The policy does not restrict the use of the National Guard, or the United States Coast Guard, from supporting law enforcement efforts in the United States. However, the United State's Army Reserve is circumscribed in much the same manner as federal active duty forces because they are always in a federal-reserve status with no connection to any state control.¹²

President Bush's declaration, within the restrictions of the PCA, brought the National Guard and the United States Armed Forces into the “War on Drugs.” The Pentagon was reluctant to apply forces toward the President's drug war because of the PCA. In addition, the DOD feared counterdrug operations would degrade unit combat readiness.¹³ The PCA attempted to avoid the future use of federal military forces against United States citizens. National Guard Counterdrug implemented control measures in its counterdrug program to mitigate incidents that may occur and compromise adhering to the intent of the PCA.

“In the nearly 120 years that the PCA has been in effect, there have been no criminal prosecutions under the PCA, although it is a criminal statute. This lack of criminal prosecutions has deprived courts of the opportunity to interpret the PCA directly. Courts have had a few opportunities to interpret the statute indirectly, however.”¹⁴ Below are several key cases indirectly interpreted by United States Courts relative to military support to civilian law enforcement agencies under Title 10 of the United States Code:

United States v. Red Feather: the court defined a PCA violation as “direct active use of Army or Air Force personnel,” thus creating the passive versus direct dichotomy. The court found that a provision of military equipment and supplies was not an active use of the military.¹⁵

United States v. Jaramillo: the court focused on whether uses of the military “pervaded the activities” of the civilian law enforcement agencies to determine PCA violations. The court found that the provision of supplies and equipment alone did not constitute a violation, and it

concerned itself with whether military observers involved had too much influence over civilian law enforcement decisions regarding negotiations, use of equipment, and the policy on the use of force. In this case, evidence cast doubt on whether federal authorities were “lawfully engaged in the lawful performance of their official duties.”¹⁶

United States v. McArthur: approved by the Eighth Circuit in *United States v. Casper*, promulgated the third formulation of the active versus the passive test and focused on the individual subjected to PCA violations. The findings were that regulatory power “controls or directs”; proscriptive power “prohibits or condemns”; and compulsory power “exerts some coercive force.”¹⁷

The enactment of the PCA attempted to draw a line between law enforcement actions and military support to civilian authorities.¹⁸ The PCA has a long tradition in American politics that hits at the core of civil-military relations. The reality was the National Guard (as a component of the DOD in a Title 32 status) was already involved in counterdrug operations in a state active duty status. By 1988, thirty-two states reported 4,052 Guardsmen supporting 456 counterdrug missions on state active duty orders.¹⁹

In the late 1980’s, the United States Congress directed the DOD to provide military support to civilian authorities to “detect, interdict, disrupt, or curtail activities related to counter-narcotics operations.”²⁰ Specific responsibilities were provided by congress through a series of statutes, including:

- Acting as the lead agency in the detection and monitoring of aerial and maritime transit of illegal drugs to the United States.
- Integrating United States command, control, communications, and intelligence assets dedicated to drug interdiction into an effective communications network.
- Approving and funding state governors’ plans for expanded use of the National Guard in drug control within state borders.²¹

The DOD received congressional funding to utilize military equipment, bases and facilities, and personnel to support law enforcement agencies in overseas engagement and in domestic law enforcement operations in the United States. While Congress debated amendments to the National Defense Authorization Act to make DOD the lead agency in America’s “War on Drugs,” defense leaders raised concerns over military involvement in non-military missions, the potential adverse effects these missions could have on military readiness and warfighting skills, and anxieties that involvement in nontraditional missions would establish precedents causing the military to be unable to extricate itself from further participation, particularly if unit personnel were needed for military deployments. Congress, on the other hand, “saw how the use of the

Armed Forces would solve several needs; the military analogy properly fit the drug war image; and the vast military resources of personnel, procurement authority, skills, and equipment would be an immediate infusion of resources into the problem requiring only limited additional funding.”²²

ELEMENTS OF NATIONAL GUARD COUNTERDRUG STRATEGY

Since the beginning of the counterdrug program, DOD has resisted military support of domestic counterdrug operations. The United States Congress remains the main proponent for this support; however, the current Bush Administration has voiced concerns over the DOD's continued involvement in counterdrug operations, which are not defined as a DOD core mission by Secretary of Defense Donald Rumsfeld. Roles and missions discussions between the DOD and the fledgling Department of Homeland Security (DHLS) are focused on resolving this issue.

The Deputy Undersecretary of Defense for Counter-narcotics, Mr. Andre Hollis, published a memorandum on January 31, 2003 stating: “The Secretary of Defense has directed military forces to cease, or significantly reduce non-military activities. To accomplish this task, Mr. Hollis developed three questions to evaluate the necessity of DOD counter-narcotics missions: (1) are counter-narcotics missions militarily unique, (2) are counter-narcotics missions a benefit to DOD, and (3) are counter-narcotics missions essential to national security objectives?”²³ Mr. Hollis visited several different state National Guard counter-narcotics programs to educate himself on the National Guard's execution of their approved Governor's State Counterdrug programs. Mr. Hollis asserted that missions such as marijuana eradication and customs support were not military unique and should be eliminated from the approved list of counterdrug missions the National Guard was conducting.

Mr. Paul Wolfowitz, The Deputy Secretary of Defense, approved all National Guard Governor's State Plans for 2003, however, he further directed the Chief, National Guard Bureau and the State Adjutants General “to provide a plan and timetable to transfer non-essential counter-narcotics missions, not meeting the before-mentioned criteria, to another United States department as appropriate.”²⁴ Mr. Wolfowitz decided to divest several National Guard Counterdrug programs from DOD. He believed that these programs were not military unique, and could be better performed by law enforcement, customs agents, or some other entity. Fiscal Year 2004 was designated as the program divestiture transition year. All 2004 counterdrug state plans were to reflect which programs, and what method of transfer, would be used to accomplish mission transfer. The DOD's primary objective for transferring non-essential military missions to other United States departments was intended to focus the National Guard on

military unique activities which directly enhanced unit preparedness and mobilization readiness.²⁵ Although DOD's National Guard Counterdrug divestiture program was clearly underway by 2003, Mr. Paul McHale, Assistant Secretary of Defense for Homeland Security, testified on March 13, 2003 before the House of Representatives Armed Services Committee on Readiness that "the National Guard would remain DOD's primary component of support to Department of Homeland Security counter-narcotics missions."²⁶

Mr. McHale's testimony seemed to indicate a continued commitment by DOD toward the "War on Drugs" as a support requirement for the Department of Homeland Security, albeit by a more modified mission support approach. Support is the operative word for the National Guard's involvement in counterdrug operations. The National Guard is restricted from being designated as a lead agency in any law enforcement operation. National Guard counterdrug units provide personnel to assist law enforcement agents in the execution of the duties, but Guardsmen cannot issue warrants or make arrests.²⁷ National Guard Counterdrug Task Forces are authorized to provide instructional facilities; such as the five Counterdrug training centers located in Pennsylvania, Florida, Iowa, Mississippi, and California (National Guard counterdrug personnel do not train law enforcement personnel; they facilitate the instruction by identifying the needed curriculum and making available the instructors and resources for the instruction). Special equipment; including automation equipment operated by National Guard Intelligence analysts, ION scan equipment, night vision goggles, and others are operated by National Guard personnel. Aviation and fixed air wing support provide platforms for observation and command and control for law enforcement counterdrug operations. Transportation support enables law enforcement personnel to move law enforcement assets to critical points more rapidly and at times supports moving court evidence from on location to another in a safe and secure manner. National Guard drug demand reduction teams support drug education curriculum as designated by school classroom teachers. In addition, community based organizations direct which drug free workplace techniques and procedures need to be implemented and National Guard personnel facilitate the instruction to train community/local company personnel. State Adjutants General and Guard Commanders make arrangements to support the DOD counterdrug mission in a federal Active Duty Special Work (ADSW) pay status to accommodate PCA.²⁸

National Guardsmen provide direct support to law enforcement agencies, but do not confiscate property or make arrests. Initially, National Guard counterdrug operations focused on marijuana eradication, however, by 1993 National Guard counterdrug operations expanded to six primary missions with multiple sub-missions approved and resourced by Congress. National Guard Regulation 500-2 authorizes the use of National Guard personnel for the purpose of (1)

administrative support, command and control; (2) intelligence, linguistic, communications, and engineer support; (3) marijuana eradication, transportation, maintenance, and logistics support; (4) training support; (5) surface and aerial reconnaissance support; and (6) coalition development, community based organization support, and drug demand reduction (youth education programs).²⁹ All congressionally approved missions receive federal appropriations through the DOD, the Department of the Army (DA), and the National Guard Bureau (NGB). State counterdrug coordinators in close coordination and cooperation with law enforcement agencies and community-based organizations execute state plans, approved annually by the Deputy Secretary of Defense.³⁰

The President's Office of National Drug Control Policy reported 18,000 law enforcement agencies in the United States as of fiscal year 2003. Ninety-four percent of all United States law enforcement agencies are state and local agencies.³¹

The National Strategy for Homeland Security illustrates this point clearly: "Since September 11, every state and many cities and counties are addressing homeland security issues either through an existing office or through newly created offices. Each level of government must coordinate with other levels to minimize redundancies in homeland security actions and ensure integration of efforts. Ultimately, all manmade and natural disasters are local events---with local units being the first to respond and the last to leave."³²

With ninety-four percent of all law enforcement agencies located at the local and state level, success in the "War on Drugs" will depend largely on the success of local and state law enforcement to deter, interdict, and respond to drug threats in American society. In addition, efforts to build anti-drug coalitions with the help of local community based organizations and anti-drug youth education programs begin in America's cities, towns, and unincorporated areas.

NATIONAL GUARD COUNTERDRUG FUNDING

Since 1989, National Guard counterdrug funding has been based on dollars rather than on a set level of dedicated manning. The result of this method of appropriating counterdrug funds to the National Guard was a decrease of over 1,000 counterdrug support personnel due to the impact of inflationary dollars and military cost of living increases.³³ The Department of Defense could stabilize the National Guard Counterdrug force and mitigate future force reductions by simply establishing a base force of counterdrug personnel, which could then be maintained with appropriated funds, adjusted to meet cost of living pay increases and inflationary dollars. A two percent inflation rate of the United States dollar in 2004, coupled with an approved four percent military cost of living increase, will most assuredly set conditions for another reduction of National Guard counterdrug personnel. National Guardsmen, forward

deployed in the nation's communities, are available for counterdrug duty, thus increasing counterdrug support available for law enforcement and community organizations proportionate to the task. National Guard Bureau Counterdrug data from Fiscal Year 2004 clearly illustrates this point. The relatively small National Guard Counterdrug Task Force supported law enforcement in making 59,019 drug arrests. These arrests netted an additional \$10,953,632,842 in asset forfeiture dollars. In addition, National Guard counterdrug fixed and rotary-winged aircraft flew 30,688 support missions. Drug Demand Reduction teams instructed 6,900,911 youths on life skills and methods for positive decision-making.³⁴ The federal and state authority, which governs National Guard missions, provides a cost efficient manner for conducting counterdrug operations as envisioned by the Administration and Congress. Each National Guardsman performs counterdrug operations in an active duty special work status; therefore, each National Guardsman supporting counterdrug operations on a daily basis remains a drill status member of a deployable unit. If the counterdrug soldier or airman's unit is called to active duty, Guardsmen switch from counterdrug status to active federal service and retain the same reemployment rights and benefits as any other traditional Guardsman.³⁵ Many National Guardsmen have been called to active duty along with their units of assignment as most recently illustrated by National Guard unit deployments to Bosnia, Kosovo, the Sinai, Afghanistan, Iraq, and numerous homeland security missions throughout the United States. Approximately 200 National Guard counterdrug personnel were among the 200,000 plus National Guardsmen called to active duty as a federal reserve of the Army.³⁶ The counterdrug status of our National Guardsmen does not restrict Guardsmen from deploying with their units. Conversely, in many cases National Guard Counterdrug soldiers and airmen were some of the first soldiers called to active duty as advance detachment personnel for their units due to their high level of personnel readiness and availability. The counterdrug program is a full-time employer of National Guardsmen in much the same way as Guardsmen who are employed by other federal agencies.³⁷

Mr. Kurt Schmid, Director of the High Intensity Drug Trafficking Area (HIDTA), in The Office of National Drug Control Policy, recently remarked, "National Guard counterdrug assistance is essential to the President's War on Drugs. Consequently, National Guardsmen transcend parochial barriers which exists between local, state, and federal law enforcement agencies."³⁸ The barriers described by Mr. Schmid illustrate the friction that exists between appointed and elected law enforcement officials; distrust between local, state, and federal law enforcement agencies in sharing need to know intelligence which may lead to arrests; and who gets the credit for the arrests determines their portion of asset seizure funds, which contribute to

agency operating funds.³⁹ The barriers described by Mr. Schmid degrade timely and accurate intelligence analysis, cooperation between agencies, and greater success by law enforcement agencies against drug proliferation.

ENDS, WAYS, AND MEANS

The United States Army War College's Department of National Security and Strategy defines three components for implementing national security strategy. Successful security strategy implementation, to include Counterdrug implementation is demonstrated by effective identification and implementation of appropriate "Ends, Ways, and Means."⁴⁰

THE ENDS

President George Bush identified the strain that drugs place on America, however, in declaring his "War on Drugs," the President failed to clearly define his desired end-state. I would suggest the following end-state is implied based on information available from the President's Office of National Drug Control Policy: To reduce the demand for drugs in America to a level where the risk and the subsequent consequences of narco-trafficking outweighs the profit margin obtained through drug proliferation.⁴¹

THE WAYS

Should America's National Guard provide domestic counterdrug support to local, state, and federal law enforcement agencies in support of United States National Security interests? I believe the answer is an unequivocal yes. The "War on Drugs" is a war America cannot afford to lose. The preservation of our society depends on its success. Webster's dictionary defines war as; "a state of hostility or conflict, or a struggle between opposing forces for a particular end."⁴² In the book The Art of War, the military philosopher Sun Tzu emphasizes; "speed is the essence of war. Take advantage of the enemy's unpreparedness; travel by unexpected routes and strike him where he has taken no precautions."⁴³ Sun Tzu's sage advice on war illustrates that preparedness, flexible response, surprise, and the initiative are essential elements for victory in war.

The Governor State Plan for National Guard Counterdrug Operations define four distinct methods to deter, interdict, and reduce the demand for drugs:

"Four distinct methods to deter, interdict, and reduce the demand for drugs have evolved over the past decade; (1) teach positive decision making skills and life skills to America's youth in elementary, junior high, and high schools (hands-on and applied skill training emphasizes goal setting, communications skills, leadership skills, decision consequences, etc); (2) counter America's drug culture in the work place by facilitating the establishment of effective community

coalitions to promote alternatives to drug and alcohol abuse in society (community coalitions work with media outlets, volunteer organizations, service organizations, and employers to educate citizens on the effects of drug and alcohol abuse, the skills to recognize the symptoms of drug and alcohol abuse, and the knowledge to advise on counseling and treatment options); (3) facilitate instruction on how to identify and treat drug abuse in the work place and promote a drug-free workplace through community based organizations (train the trainer on drug-free workplace techniques and procedures); and (4) if deterrence fails, to detect, disrupt, interdict, or curtail activities related to counter drug operations (direct support to law enforcement Counterdrug drug efforts).⁴⁴

The National Guard's citizen-soldiers are embedded in our nation's communities postured to fight the "War on Drugs." Located in each of America's fifty-four states and territories, the National Guard has a threefold mission: (1) serve as a federal reserve of the active army and air force; (2) respond to the orders of Governors for disaster relief and civil disturbance mitigation; and (3) engage local communities to promote security and the health and welfare of United States citizens.⁴⁵ National Guardsmen are already supporting the effort as equal players in the counterdrug fight with law enforcement agencies and community based organizations. The National Guard is predominately federally funded and strategically located throughout America's homeland in all fifty-four states and territories. As citizen-soldiers and community members, National Guardsmen have an immediate interest in the success of domestic counterdrug mission. They serve as members of local service organizations, volunteer groups, school boards, sports leagues, and coalition groups in many of our nation's communities. National Guardsmen are established in our nation's communities where the war on drugs must be won. If we are to win this war, then the administration and congress must increase domestic counterdrug funding, thereby establishing favorable conditions for the ways and means to meet success in achieving the desired end.

THE MEANS

To win the "War on Drugs" scarce DOD, DHLS, and Department of Treasury funds may have to be reallocated from other critical governmental programs to counterdrug operations. The current United States administration must answer the following question to determine the feasibility and risk of reallocating additional resources to the United States domestic counterdrug effort: Is the "War on Drugs" a vital or peripheral United States interest?

President George W. Bush stated in the September 17, 2002 United States National Security Strategy; "Poverty does not make poor people into terrorists and murders. Yet poverty, weak institutions, and corruption can make weak states vulnerable to terrorist networks and drug cartels within their borders. The United States will stand beside any nation determined to

build a better future by seeking rewards of liberty for its people.”⁴⁶ In addition, the United States National Security Strategy outlines eight goals, which if executed effectively, will enable the United States to achieve a greater level of security for her people. One of the United States National Security goals is to work with others to diffuse regional conflicts. A sub-set of this goal, particularly in parts of Latin America, is to combat unrestricted narco-trafficking, which could hamper the health and security of the citizenry of the United States.⁴⁷ I would suggest the intent of this goal is to cut off the supply of drugs, while working strategies in the United States to reduce the demand for drugs.

The United States Quadrennial Defense Review lists three vital United States interests: (1) ensuring United States security and freedom of action; (2) honoring United States international commitments; and (3) contributing to economic well being of United States citizens.⁴⁸ Winning the “War on Drugs” is clearly missing from this short list of vital United States interests; however, I would suggest that winning the “War on Drugs” is embedded in the vital interest of ensuring United States security and freedom of action. The constitution of the United States requires the federal government to provide for “the safety and security of its people against all enemies, foreign and domestic.”⁴⁹ Therefore, the domestic counterdrug threat to the safety and security of the citizens of the United States should be characterized as a peripheral United States interest. All programs, which support interests of the United States, require an appropriate amount of program resources to ensure success. Each effort mutually supports all others. Any weakness will be exploited by our enemies as demonstrated by the catastrophic events of September 11, 2001.

Located in communities throughout America’s states and territories, the National Guard provides a pool of nearly 350,000 soldiers and airmen for potential counterdrug operations. Only 2,265 National Guardsmen, less than one percent of the National Guards assigned end strength, currently support counterdrug operations.⁵⁰ If additional funding were provided, National Guardsmen, forward deployed in the nation’s communities would be available for counterdrug duty, thus increasing the counterdrug capabilities for law enforcement and community-based organizations proportionate to the task.

Funding to support the desired end state, or in this case an acceptable level of drug demand reduction, must start with a review of our state and federal counterdrug funding strategies. Based on method analysis, drug demand reduction must be elevated to the main effort of the counterdrug fight and drug interdiction resourced as the supporting effort to combat drug proliferation. In President George W. Bush’s October 6, 2000 “Turning back the tide of drugs” speech, he declared to “increase funding for safe and drug free schools and

communities by 100 million dollars over a five year period.”⁵¹ The entire National Guard counterdrug budget is only 165 million dollars annually.⁵² Clearly demand reduction is the president’s main effort in the Counterdrug fight. Local, state, and federal law enforcement Counterdrug programs, as well as social services, treatment, judicial, and corrections institutions all require adequate funding if we are to achieve success in the war on drugs. Proper funding for all of the before mentioned organizations will create a synergistic effect to reverse America’s growing dependence on substance abuse. The National Guard is an integral player in this endeavor. Drugs have an impact on all aspects of our society. Funding shortfalls create seams in the counterdrug system, which can be exploited by a well-organized and well-established drug culture. I would argue that the National Guard is the right component of DOD for the counterdrug support mission; however, the National Guard is under-funded for the mission. Therefore, I would suggest a comprehensive review by DOD and Congress to ascertain what appropriate levels of funding would be needed to successfully establish favorable conditions for winning the “War on Drugs.” In addition, the comprehensive review must include all of the National Guard’s partners in the “War on Drugs” such as local and state counter drug task forces, U.S. attorney offices, state department of corrections, treatment, social and human services.

Since 1989, Congress has appropriated funding through the Department of Defense to the states for execution of Governor State Counterdrug plans.⁵³ Cooperative agreements are established allowing counterdrug assets from one state to be used to support counterdrug efforts in another state. Most recently, Guard soldiers provided in excess of 411,336 soldier man-days in support of local, state, and federal law enforcement agencies. However, Inflation and cost of living raises for military personnel has reduced National Guard counterdrug funding over the past six years, reducing by one thousand the number of available soldiers and airmen supporting law enforcement.⁵⁴ In addition the DOD budget for counter drug support was reduced from 871 million dollars in fiscal year 2003 to 817 million dollars in fiscal year 2004.⁵⁵ Traditionally, congress supplemented the Presidents budget with additional dollars for the “War on Drugs,” however, this number looks to be decreased in budget year 2004, creating an additional shortfall in available counter drug resources. The lack of counterdrug funding creates a dichotomy between the desired ends and the utilization of ways and means toward winning, or at least making progress in the President’s “War on Drugs.”

RECOMMENDATION

I would suggest the National Guard remain DOD's component of support to homeland security domestic counterdrug operations. The Department of Defense should stabilize National Guard Counterdrug funding by establishing a base counterdrug force structure (i.e. 2,400 in FY-05, 2650 in FY-06, and 3,000 in FY-07). This would mitigate the additional loss of National Guard counterdrug personnel due to the impact of inflationary dollars and cost of living increases and stabilize the support force for increased mission effectiveness and efficiency. Finally, DOD should improve "unity of effort" by assigning a National Guard counterdrug liaison officer to the DHLS. The National Guard liaison officer would serve as a conduit for information sharing between The DHLS (counterdrug lead agency), United States Northern Command (counterdrug support agency), and The National Guard Bureau (the resource provider).

The combined effect of implementing these three simple changes would be a more stable counterdrug support arrangement between DOD, DHLS, NGB, and our nation's community based organizations and law enforcement agencies. Ultimately, the end result of implementing these recommended changes would be a greater chance of winning the "War on Drugs," while at the same time improving United States national security for her citizenry.

CONCLUSION

Should America's National Guard provide domestic Counterdrug support to local, state, and federal law enforcement agencies in support of United States national security interests? I would suggest the answer to this question is a powerful yes!

The National Guard has the legal authority to support law enforcement counterdrug operations beginning with the United States Constitution, followed by the PCA of 1878, the Military Cooperation with Civilian Law Enforcement Statue of 1981, the National Defense Authorization Act of 1989, and most recently the Traficant Amendment of 1996 and the Patriot Act of 2002.

Counterdrug success will only be achieved when our nation's school system, social groups, religious leaders, volunteer organizations, employers, media, mentors, and parents decide it is time for a cultural change in America regarding the demand for drugs. When American's achieve a cultural change in our society toward drug proliferation, then the demand for drugs will be reduced. If the demand for drugs is significantly reduced to the point that profits no longer out-weigh the risks associated with the possible consequences associated with drug manufacturing and distributing, then America will begin to turn the corner in the "War on Drugs."

The level of support the National Guard dedicates toward these ends has been relatively modest. National Guard Counterdrug support reached its apex at approximately 4,000 dedicated counterdrug personnel in the late 1990's, decreasing to approximately 2,600 dedicated counterdrug personnel today.⁵⁶ The undeniable and unavoidable fact is that local, state, and to a lesser extent, federal law enforcement agencies do not have the full time personnel and equipment to successfully deter, interdict, disrupt, or curtail the demand or trafficking of drugs in America's society.

Unfortunately limited local, state, and federal budgets do not provide law enforcement agencies with the funds to leverage technology equipment and available personnel against narco-traffickers. Purchasing rotary and fixed wing aircraft for observation and command and control, transportation assets to move assets between states rapidly to achieve law enforcements advantages at critical points through cooperative support agreements, and an increase in dedicated counterdrug personnel are outside the means of most local and state law enforcement agencies. Paying law enforcement personnel over time pay for counterdrug functions, performed in addition to other law enforcement duties, detracts from the overall safety of our communities. The National Guard is a suitable alternative toward leveraging federal and state resources in support of law enforcement agencies, schools, and other community based organizations in achieving all of the above for a fraction of the cost.

The mission and desired end state is achievable. The ways are feasible, suitable, and acceptable with slight modifications. However the means have not been appropriated to adequately address either the desired end state, or the ways. Until the balance between "ends, ways, and means" in the counterdrug fight is adequately addressed by the United States Administration, the United States Congress, the Office of National Drug Control Policy, the DHLS, and the DOD, we will fail to achieve success in the "War on drugs." A properly resourced and dedicated National Guard Counterdrug Program is a key ingredient, albeit not the only ingredient, toward achieving success in America's "War on Drugs."

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ENDNOTES

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¹⁶ Ibid.

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²³ *OSD/SO-LIC Counternarcotics Mission Transfer Plan* (Washington DC: 31 Jan 03), para 3a.

²⁴ Ibid.

²⁵ Ibid, para 3c.

²⁶ United States War College Selected Readings, Volume II, Academic Year 2004, Course 3, Joint Processes and Land Power Department (U.S. Army War College, Carlisle Barracks, PA; AY-2004), p. 430; McHale, Paul, Assistant Secretary of Defense for Homeland Defense, testimony before *The Subcommittee on Readiness, House Armed Services Committee, United States House of Representatives*.

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³⁰ Ibid.

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³³ National Guard Bureau-Counterdrug Budget Report on Fiscal Year 2004 (New Orleans, LA: 19 Mar 03).

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