

BORDER SECURITY AND UTILIZING THE NATIONAL GUARD: A NEW PARADIGM

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BORDER SECURITY AND UTILIZING THE NATIONAL GUARD: A NEW PARADIGM

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ABSTRACT

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In the wake of increased violence, Political pressure, and public outcry; the current Administration is sending 1,200 National Guard soldiers to the border area between the United States and Mexico. This paper provides a brief history of troops on the border, legal considerations and a new paradigm. This paper seeks to explore options to better utilize National Guard Soldiers in the security of the border.

BORDER SECURITY AND UTILIZING THE NATIONAL GUARD: A NEW PARADIGM

In the wake of increased violence, political pressure, and public outcry; the current Administration is sending 1,200 National Guard troops to the border area between the United States and Mexico. The issue at hand is twofold; the Customs Border Patrol is tasked to deal with illegal immigration as well as the flow of drugs that it brings with it. With 20,000 Border Patrol agents the agency simply cannot secure the border without unity of effort between federal, state and local law enforcement as well as the National Guard.

History of Border Issues

Problems along the Border are by no means new to us as they have plagued the United States throughout its history. The deployment of troops to the Border is also nothing new. Troops were repeatedly deployed from 1855-2010. In 1845, 4,000 troops were deployed to Corpus Christi, Texas. In 1855, the U.S. Army stationed 3,449 troops in Texas.¹ In 1870-86, 800 troops were sent to Arizona and New Mexico while 2,500 were sent the out posts along the Rio Grande River.² In 1916, Francisco “Poncho” Villa conducted a cross-border raid against Columbus, New Mexico killing 17 Americans. In response, President Woodrow Wilson ordered 10,000 Army soldiers to the region under the command of Brigadier General John “Black Jack” Pershing. With the bulk of these forces in Mexico, the Southwest border towns were left wide open to band raids and on May 9, 1916, the President ordered the governors of Texas, New Mexico, and Arizona to deploy Guardsmen for Border protection. Two days later, 5,260 State soldiers headed to the Border. In 1919 about 18,500 troops were deployed to the Border in a

build up to prepare for the Battle of Juarez. After that battle, about 20,000 troops remained there to guard the U.S./Mexico Border.³ During that time Secretary of War, Newton C. Baker, appeared before the Military Affairs Committee of Congress and recommended “at least 100,000 soldiers...be available to deal with the Mexican menace.”⁴

By the 1920's, the Army's prominent role in combating armed raiders and revolutionaries from South of the Border came to a close. Generally, Border law enforcement became more regularized in dealing with cross-border criminality and Border control.⁵ The main reason for this was the increase in new federal agencies stepping forward to support state and local law enforcement police along the Border. This cooperation allowed the Army's role to decrease.⁶

The U.S. Border Patrol was established in 1924 to help regulate the revolving door of illegal immigration along the Border. During the 1930's the influx of Mexican workers increased due to a shortage of labor because of the demands of U.S. entry into World War II. During the time, the U.S. and Mexico agreed to allow workers to come across the Border on a temporary basis. This was called the Bracero Program; though, by the 1950's the Immigration and Naturalization Service (INS) was alarmed as the massive influx of undocumented workers and fear the numbers would overwhelm the capabilities of the Border Patrol.⁷ This fear precipitated the 1954 Operation WETBACK, which was a roundup of over 100,000 of these undocumented immigrants. This operation had a negative effect on the U.S./Mexico relations because the Mexicans believed we were going to use the Army to conduct the operation. A U.S. Embassy counselor wrote:

The slant of these comments, which are being overheard in typical local cafes, restaurants, and other like places patronized by Mexicans, is that we are imperialistic, warmongering and ruthless people and that the poor and wretched wetbacks who want to the return to the lands which the United States forcibly took from Mexico, will be met by a hail of bullets.⁸

In the end, it was only the Border Patrol that conducted the operation which rounded up more than 100,000 Mexicans. Mexican-Americans were also negatively affected as they had to be able to prove their citizenship at all times. The Military involvement in this operation surely would have made matters worse.⁹

From 1982-2005, the U.S. Army and Mexico Border security was not only a time of rapid influx of illegal immigrants into the United States, but also one of an explosion in drug smuggling. This called for a recommitment of U.S. Army forces along the Mexican border and started with the passage of the Defense Authorization Action of 1982 which allowed the military to assist law enforcement with the War on Drugs. This act provided a solid recommitment of U.S. forces to the Mexican Border. This Act relaxed certain broad rules pertaining to the Posse Comitatus Act of 1878 (PCA). The PCA reads as follows:

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a Posse Comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years or both.¹⁰

The Defense authorization Act specifically allowed for the military to be able to operate and maintain equipment on loan to federal agencies as well as train and share information on criminal activity. Dunn explained:

During the 1980's, the military was called on to take a new and expanding role in the antidrug efforts in the border region, one which centered on providing high-tech equipment and conducting surveillance operations and training exercises. The Defense Department was to become the extra eyes and ears for civilian

agencies engaged in drug enforcement activities and, at least on occasion, in playing this role it also added immigration enforcement efforts on the Border.¹¹

By the mid 1980's drugs were pouring across the Border and when the Secretary of Defense declared the War on Drugs a "high priority national security mission," this brought about the Defense Authorization Act of 1989 which allowed the further expansion of the military's role in civilian law enforcement. The Defense Authorization Act specifically added Southwest Border and allowed the military to further expand its role in law enforcement along the Southwest Border and specifically allowed the U.S. Military to operate its own equipment, lend it to state, local, and federal law enforcement while supporting the campaign along the South west Border. The act even allowed the U.S. Military to lend its equipment to foreign law enforcement units involved in the War on drugs.¹² This act also indirectly established in 1989, the Joint Task Force-6 (JTF-66), renamed Joint Task Force North in 2004, was created. This task force element became the planning and coordinating headquarters to support local, state, and federal law enforcement agencies within the Southwest border region to counter the flow of illegal drugs in the U.S. When the Secretary of Defense declared the War on Drugs a "high priority national security mission,"¹³ two actions, the creation of JTF-6, as well as additional laws passed by Congress in the early 1990's, slowly chiseled away at the PCA and strengthened the Military's role in the ongoing drug war.¹⁴ The Pentagon responded to these new "high priority missions" by sending both Active and Reserve military personnel to the Border. Military support to local law enforcement quickly gained momentum. Dunn further reflected:

(The new missions)...took myriad forms in the U.S. Mexican border region. These included conducting small-unit and long-range reconnaissance patrols in hard-to-cover areas; providing, deploying, and monitoring electronic ground sensors; providing intelligence support; clearing brush and improving roads along the Border; training law enforcement personnel in intelligence analysis and survival skills; providing air transport of law enforcement personnel in interdiction and eradication efforts; staffing listening and observation posts; using remotely piloted reconnaissance aircraft; staging military exercises in suspected drug trafficking zones; conducting radar and imaging missions; providing operational planning assistance and providing DoD personnel to develop data bases as well as mapping and reconnaissance folders for Border Patrol sectors.¹⁵

By pulling the military further into domestic law enforcement's War on Drugs, Congress indirectly relaxed the Posse Comitatus restrictions imposed upon the military. With all the militarization of the Border, many groups in the United States and Mexico were very critical of the U.S. Army support to the War on Drugs and their presence on the Border.¹⁶

In 1997, several live fire encounters took place along the Border, one involving a drug smuggler who was shot and wounded by a soldier from the 5th Special Forces Group and another involving a Marine who mistakenly took a citizen's recreational fire as hostile fire.¹⁷ These events led to Secretary of Defense William Cohen suspending the use of armed soldiers on the Border and ordered an end the use of ground troops for antidrug missions.¹⁸

In 1999, Secretary of Defense Cohen announced a new policy for the employment of military in War on Drugs along the Border. Cohen wanted to ensure that armed troops were only deployed with the permission of the Secretary of Defense or his deputy. His thinking was that such a policy would ensure all counter-drug activities received the appropriate level of oversight.¹⁹

While the continued use of JTF North's assets and passive manpower in supporting the Border Patrol are substantial, such efforts have done little to cut the wave of illegal immigrants or to weaken the upsurge in criminal activity and movement of drugs across the Border due to the porous nature of the border and the lack of Border Patrols Manpower. Today, one in five illegal aliens are apprehended or arrested²⁰ and according to the DEA 90% of the illegal drugs coming to this country are going through the U.S./MEX border.²¹ Border governors and outraged citizens demanded action. This outrage prompted Operation JUMP START. President Bush ordered 6,000 troops to the Border to allow Customs and Border Patrol (CBP) time to train 6,000 more agents. This operation lasted from 2006-08. Specifically their mission was military support to civilian authorities to operate surveillance systems; build roads; install fences and vehicle barriers; and to provide training while under the control of the governors.²²

Military support to civilian authorities is defined as "assistance to civilian government entities federal, state, local to help manage an attack, crisis, or calamity."²³ The National response plan issued by the Department of Homeland Security in December of 2004 states that Department of Defense civil support is generally provide when state, federal, and local resources are "overwhelmed."²⁴ The Administration as well as the National Guard wanted to make sure that the people in Mexico did not see the mission as a closure of the Border to legal immigration, trade, and business.

The results of Operation JUMP START were impressive:

- 176,721 Illegal Immigrants apprehended with National Guard assistance
- 1,116 vehicles seized

- 316,401 pounds of marijuana and 5,224 pounds of cocaine seized
- 581 Border agents returned to law enforcement duties
- 102 undocumented aliens rescued
- 28,667 flights logged in aviation support
- 13 miles of road, 31 miles of fencing, and 86 miles of vehicle barriers built
- More than 1,153 miles of road improved and repaired.²⁵

Despite these accomplishments, the Border is growing more dangerous.

Sections of the Border are being shut down and signs installed which advise citizens that the area is unsafe and they are “on their own.” As recently as September 30, 2010, Mr. David Hartley was shot by suspected drug cartel members while jet skiing on Falcon Lake along the U.S./Mexican Border.²⁶

As a result of the violence and an overwhelming amount of drugs coming into the United States from Mexico, public outcry has once again demanded action. As a result, the current Administration is sending 1,200 National Guard troops to the Border between the United States and Mexico. The Drug Enforcement Administration (DEA) estimates that 96 percent of the cocaine coming into the U.S. is coming in from Mexico. Eighty percent of the out-sourced marijuana as well as the majority of methamphetamine is going through the U.S./Mexico Border.

Is all the media coverage focused on the Drug Cartel violence combined with the illegal immigration causing or exacerbating economic growth slowing down along the Border? Currently, there is an 18 percent unemployment rate in Santa Cruz County, Arizona. This is almost twice the national unemployment rate that hovers at around ten percent. A year ago, it was 15 percent, a year before that it was about nine percent,

and in the spring of 2006, it was six percent. If history proves a guide, it is quite possible that increasing the presence of law enforcement and Border Patrol in more rural areas will cause crossing of illegal immigrants and crime to come down. Nogales, Arizona has seen a decline in crossings as well as crime largely due to the increase in Border Patrol and law enforcement in the area.²⁷

With all the accomplishments of Operation JUMP START that sent 6,000 National Guard troops to the Border; why is it thought that sending 1,200 National Guard soldiers will come even close to the results that Operation JUMP START had on the Border? Albert Einstein defined as insanity as “doing the same thing over and over and expecting different results.”²⁸ All indications are that this Administration has decided to use the same Rules of Engagement (ROE) as in Operation JUMP START and allow Guardsmen to fire weapons in self-defense but otherwise not allowed to engage those they encounter. Instead they must call the Border Patrol to report suspicious activity.²⁹

Arizona Senator Russell Pierce (R) does not want a repeat of Operation JUMP START in which the state of Arizona received 2,400 of the 6,000 troops deployed to the four borders but those 2,400 were not allowed to actually patrol the Border. Senator Pierce, as well as other illegal immigration opponents, insists that the only way the troops will make a difference is to allow them to actually enforce immigration law and arrest illegal border crossers and drug traffickers.³⁰

Legal Considerations

Posse Comitatus Act

Soldiers along the Border can enforce such laws as the Posse Comitatus Act does not apply to National Guard soldiers under a state governor's control while the soldiers are in a Title 32 Status. Title 32 is the U.S. Code that outlines the role of the United States National Guard. In this case, it refers to the status that a soldier is in while working under the control of the Governor. If a guardsman is working for federal missions, he or she is in a Title 10 Status (meaning the President has "federalized" National Guard forces.³¹

In fact, it is the federal government that is affected by the Posse Comitatus Act of 1878 in that it prohibits federalized military troops from conducting internal law enforcement in most situations; however, this does not apply to National Guard troops under a governor's control. The National Guard can be used by governors to maintain peace, restore order, and enforce laws in emergencies, such as Louisiana following Hurricane Katrina and in Los Angeles during the race riots in 1992.³² The U.S. Mexican border was declared a "high priority mission" in 1989 by the Secretary of Defense.³³ Was the intent of the PCA to prevent the use of the military to assist law enforcement in issues that are beyond their abilities? Was the PCA passed by our forefathers to provide a barrier against the unnecessary deployment of troops against the American people by the President? Perhaps the situation on the Border is a hybrid between crime and war and the enforcement cannot be bifurcated between civilian and military entities but must be through both. Currently, we do not have the civilian law

enforcement assets and manpower to enforce the smuggling of drugs and illegal immigrants crossing the Border into the United States. The bottom line is that the military possess unique capabilities that local, state and federal law enforcement agencies do not. National interests may sometimes make military assistance necessary.

Insurrection Act

The Insurrection Act of 1807 is codified in 10 U.S.C. § 331 - 10 U.S.C. § 335. It requires that a condition exist that "so hinders the execution of the laws of a State, and that of the United States within that State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect the right, privilege, or immunity, or to give that protection; or opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws. This series of laws provides the President of the United States the ability to federalize and deploy troops within U.S. borders to put down "lawlessness, insurrection, and rebellion." ³⁴ Actions taken under this act are exempt from the PCA. Changes in 2006 widened the scope of the Insurrection Act to include natural disasters, epidemics, terrorist conditions, and the like. However, modifications were repealed at the behest of political leaders who noted that unless revoked, it would be easier for presidents to declare martial law and take authority over National Guard elements without the consent of the affected governors. The repeal was wholesale and the original Act of 1807 is in force.

A New Paradigm

Can one argue that the illegal drug activities ARE terrorism? Or does that even matter? Noah Feldman suggests that it is the values we seek to protect that should drive law enforcement such as liberty, privacy, the rule of law, and safety – they are the true values we must safeguard.³⁵ Feldman proposes that we cannot ignore the Constitution or the rule of law that has served the United States for more than 125 years.³⁶ Differences of opinion seem to derive when trying to find the appropriate balance of values. It is unreasonable to expect all illegal drugs and immigration to be prevented; however, they cannot be politically ignored either. Many Americans propose that we must make every effort to defend the legal citizens of the United States from the violence and destruction that the drugs and illegal immigration brings to the country.³⁷ This requires thinking through issues from perspectives that may not have previously been considered such as the willingness to review the PCA issues. The intent of the PCA was threefold: First, civil liberties are more easily trampled by the existence of a strong federal government using its military than by state governments. Second, the Army should focus on its primary mission instead of enforcing civil law. Third, and likely the most urgent reason, is that soldiers do not receive training in law enforcement. But unconsidered is that military police soldiers do receive training that in content and length is very similar to what a typical law enforcement officer receives in the four border states of Arizona, California, Texas, and New Mexico.³⁸ A military police soldier receives training that includes Constitutional Law, Case Law, and policing procedures such as collecting and protecting evidence.

Using the Army National Guard Military Police Units from the four Border States is possible tactically and strategically as they are already trained in law enforcement and live close to the issue. In many cases, they would be assisting their own communities. Additionally, many National Guard military police soldiers are likely local law enforcement officers themselves and know the federal agencies already involved at the Border as did many of the California National Guard (CANG) with the Los Angeles Police Department during the 1992 riots after the Rodney King incident.³⁹ This can create a synergistic teaming of the CBP, Immigration Customs and Enforcement (ICE), and military police soldiers. National Guard Military Police Units possess unique capabilities that state, local and federal law enforcement officers do not.

The Los Angeles Riots

During the Los Angeles riots, the California Highway Patrol was assigned the sole mission to protect fire fighters who were being fired upon by rioters. The Los Angeles Police Department asked the CANG to handle everything else and they responded in a very short time. While National Guard operations cell and police commanders attempted to identify and prioritize missions, enterprising brigade and battalion commanders sought out missions from their local police stations. The CANG understood the need for expediency and sent units to various locations to perform whatever mission local law enforcement deemed necessary. They sealed off areas and barricaded roads. From the first night there was direct communication and coordination between mid-level law enforcement and military police units. Battalion commanders and senior level law enforcement were working in concert with each other.⁴⁰ Once deployed, the CANG made their presence known immediately. When police units

encountered violent confrontations on the streets, the swift response to an antagonistic gang member sent a message to fellow gang members and a surging crowd dispersed. CANG members set up security at various sites targeted by looters, provided security for firefighters and set up check points. At least two dozen shots were fired at National Guard soldiers on the first night they were deployed to the streets.⁴¹

After the riots, Judge William Webster chaired a commission to investigate the causes of and response to the riot. The Webster Commission found the following: “Despite an expressed declaration by the President to the contrary (giving the federalized troops commander to do what was necessary to quell the violence in Los Angeles) the federal troop commander, Major General Covault, took the position that the defense Department’s internal plan for handling domestic civil disturbances coupled with the “Posse Comitatus” statute prohibited the military from engaging in any law enforcement functions”. In other words, though the President gave MG Covault the ability to stop the rioters and engage in direct law enforcement duties, MG Covault failed to use all of his options.⁴² There was some controversy surrounding the facts as to whether or not Mr. Mueller, the senior representative of the Attorney General, advised Major General Covault that the PCA prohibited direct support to law enforcement personnel. As explained in this paper the PCA does not apply in situations where the President has proclaimed that a state is unwilling or unable to enforce the law, the Insurrection Act applies. President Bush signed the proclamation on May 1, 1992, specifically directing the persons engaged in violence to cease and desist thus clearing the way for him to exercise his constitutional powers (through the Insurrection Act of 1807) to quell the riot with federal troops.⁴³

The Los Angeles riots are but prime example of the difficulty and confusion that can occur when the PCA is applied in the field. The facts are difficult to apply for a number of reasons. Firstly, the soldiers at ground level intuitively want to help and secondly, American citizens do not want military commanders to question orders to assist civilian authorities in need. The PCA can interject an unnecessary degree of confusion in to an already confusing situation.⁴⁴

The National Guard and its military police are suited for Border missions. They know how to conduct checkpoints and have law enforcement training and experience. Section 502(f) of Title 32 has been used to expand the operational scope of the National Guard beyond its specified duties. This provision provides that “a member of the National Guard may....without his consent, but with pay and allowances provided by law, be ordered to perform training or other duty” as they did at U.S. airports in the 1990’s during the Reagan Administration and after 9/11 under the Bush Administration. States such as Arizona argue that this “other duty” language should be liberally applied on the Border (as it was in Hurricanes Katrina and Rita).⁴⁵

Under Title 32 U.S.C. 112, States can request grant funding for a Drug Interdiction and Counterdrug Activities Plan. While the emphasis is certainly on counterdrug efforts, a State plan may include some related border security and immigration-related functions that overlap with drug interdiction activities. Arizona, Texas, New Mexico and California all have such plans.⁴⁶ In 2004, Congress again chiseled away at the PCA by passing another law. Chapter 9 of Title 32 of the U.S. Code authorizes the Secretary of Defense to provide federal funding under his discretion to a state, under the authority of the governor of that state, for the use of

National Guard forces if there is a “necessary and appropriate homeland defense activity.”⁴⁷ One can argue that the deployment of 1,200 troops to the Border was undertaken for the protection of a domestic population and arguments are being made that the infusion of drugs across the border and its entry of illegal aliens is the type of threat and aggression that is “necessary and appropriate” for the use of National Guard troops. The State of Arizona once again has requested federal funds under Chapter 9 for the performance of Homeland Defense Border Security activities just as they did in 2006.⁴⁸ This Administration’s funding of the deployment of the 1,200 troops to the Border is part of the answer to that request.

Recommendations

There are a variety of ways that the National Guard troops may be used along the Border. The following are three options on how best to use such a limited number of troops but in ways that will best serve the needs of the governors, local law enforcement, and the citizens of the respective states.

Option 1: Each Governor deploy the National Guard for a “state emergency” from each representative state under Title 32 status but have the soldiers play a more active role patrolling the border, not just providing eyes and ears for the CBP. Such an approach will have the National Guard soldiers working hand-in-hand with the Border Patrol to include physically patrolling with them. The PCA will not apply under such conditions.

Option 2: The President federalizes the National Guard soldiers under the Insurrection Act of 1807. The PCA does not apply in such a situation; however, politically, this may be the least feasible option in dealing with border issues.

Option 3: The President federalize the National Guard soldiers as a national emergency (as was done for Hurricane Katrina). The PCA will apply in such situations; however, it is not as restrictive as it is being purported to be - particularly if the "War on Drugs" is couched in national security terms and not law enforcement terms.

Some have proposed that the Active Army has used the Posse Comitatus Act to avoid certain assignments. Matthews purports that "many officers considered domestic law enforcement missions unglamorous and fraught with potential career-ending pitfalls and from time to time...used the PCA as a clever guise to avoid distasteful assignments."⁴⁹ Others have suggested that the PCA is complex and commanders err on the side of caution so as not to inflame civilian sensitivities. One must ask then, is the threat on the Border a genuine threat? Are the hundreds of thousands of illegal immigrants crossing the Border each year a threat, or is just the drugs that some of them bring, or both? Some call the deployment of 1,200 troops to the Border "clearly insufficient", "a drop in the bucket". Conversely, others say they are not needed at all. Regardless, the lack of unity of effort between Homeland Security and other federal entities must stop. Cooperation between state and local governments, law enforcement (to include the National Guard) is a key to Border security. Border security is first and foremost a federal responsibility and the four governors intend to keep their needs squarely in the sights of the federal government.⁵⁰

ENDNOTES:

- ¹ Matt Matthews: *U.S. Army on the Mexican border: A Historical Perspective*
- ² *Ibid.*, 46.
- ³ *Ibid.*, 75
- ⁴ Arthur Sears Henning, *Calls 26,450 Volunteers to serve on Border*, Chicago Daily Tribune, June 21, 1919.
- ⁵ Graham H. Turbiville: "US-Mexican border security: Civil-Military Cooperation" *Military Review* July-August 1999, 3.
- ⁶ Mathews, *U.S. Army on the Mexican Border*, 75.
- ⁷ Timothy J. Dunn: *The Militarization of the US-Mexico Border 1978-1992*.
- ⁸ *Ibid.*, 231.
- ⁹ Dunn, *The Militarization of the U.S.- Mexico Border 1978-1992*, 17.
- ¹⁰ Matt Mathews: *The Posse Comitatus Act and The US Army: A Historical Perspective* Page, 43-44.
- ¹¹ Dunn, *The Militarization of the U.S.- Mexico Border 1978-1992*, 111.
- ¹² Matthews, *U.S. Army on the Mexican Border*, 78-79.
- ¹³ Dunn, *The Militarization of the U.S.- Mexico Border 1978-1992*, 124.
- ¹⁴ Matt Matthews: *U.S. Army on the Mexican border: A Historical Perspective*, 79.
- ¹⁵ Dunn, *The Militarization of the U.S.- Mexico Border 1978-1992*, 124.
- ¹⁶ James Pinkerton, "GI Shoots Suspect at Mexican Border Observation Post," *Houston Chronicle*.
- ¹⁷ William Branigan, "Questions on Military Role in Fighting Drugs Ricochet from Deadly Shot," *The Washington Post*.
- ¹⁸ Douglas Holt, "Pentagon Halts Routine Use of Troops for Anti-Drug Border Patrols," *Chicago Tribune*.
- ¹⁹ Matthews, *U.S. Army on the Mexican Border*, 83.
- ²⁰ *Global Security*, <http://globalbalsecurity.org> (accessed February 9, 2011).
- ²¹ Interview with DEA intelligence analyst, January 2011.
- ²² Matt Matthews: *U.S. Army on the Mexican border: A Historical Perspective*, 83.

²³ Robert A. Preiss, "The National Guard and Homeland Security," *Joint Forces Quarterly*, no. 36 (2003): 72.

²⁴ U.S. Department of Homeland Security, National Response Plan (December 2004), 42.

²⁵ SSG Jim Greenhill, National Guard Bureau, "National Guard, Border Patrol Celebrate Continuing Partnership, August 2008.

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²⁷ Jeremy Duda, "Arizona Action on Border Security Unlikely," *The Arizona Capital Times*, July 23, 2010.

²⁸ Great Quotes, <http://greatquotes.com> (accessed 5 November 2010).

²⁹ Duda, Ibid. "Arizona Action on Border Security Unlikely"

³⁰ Duda, Ibid. "Arizona Action on Border Security Unlikely"

³¹ Title 32 U.S. Code and Title 10 U.S. Code.

³² Noah Feldman, "Choices of Law, Choices of War," *Harvard Journal of Law and Public Policy*, Spring 2002.

³³ Matthews, Ibid. *U.S. Army on the Mexican Border*, 78.

³⁴ 10 U.S.C. § 331 - 10 U.S.C. § 335

³⁵ Feldman, Ibid. Choices of Law, Choices of War."

³⁶ Feldman, Ibid. Choices of Law, Choices of War."

³⁷ Gallup Poll. "Americans Value Both Aspects of Immigration Reform," July 6, 2010.

³⁸ Donald J. Currier, "A Harmless Relic from the Post-Reconstruction Era or a Legal Impediment to Transformation," AWC Papers, September 2003, 15.

³⁹ Currier, Ibid. 12.

⁴⁰ Matthews, Ibid. *U.S. Army on the Mexican Border*, 48.

⁴¹ Matthews, Ibid. *U.S. Army on the Mexican Border*, 49.

⁴² Currier, "A Harmless Relic from the Post-Reconstruction Era or a Legal Impediment to Transformation," Ibid. 12.

⁴³ Currier, Ibid. 12.

⁴⁴ Currier, Ibid. 13.

⁴⁵ Lowenburg, "The Role of the National Guard

⁴⁶ Arizona Press Release, "Title 32: Statutory Funding Options, March 6, 2006

⁴⁷ Title 32 U.S.C., § 905.

⁴⁸ Stephen R. Vina, "Border Security and Military Support: Legal Authorizations and Restrictions," Congressional Research Service Report for Congress, May 2006.

⁴⁹ Matthews, *Ibid.* U.S. Army on the Mexican Border, 49.

⁵⁰ Editorial Board, "Border Security: It remains a Federal Responsibility," *El Paso Times*, July 20, 2010.

