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HOMELAND DEFENSE – ANALYSIS: Militarized Inauguration and the National Guard – Questions and Concerns ©

With the ongoing questions about the January 6 Capitol Riot, the subsequent militarized response to the 59th Presidential Inauguration, a new focus on ‘domestic enemies,’ and calls to root out ‘extremism in the U.S. military, CADS is creating a new focus area called ‘Homeland Defense.’ With the addition of Major General Donald McGregor, USAF Ret., to the CADS Board of Advisors, we can now bring a unique perspective on issues related to the National Guard, civil response, and homeland defense. This thought piece by General McGregor raises important questions about the Inauguration security, National Guard, and serious cascading concerns.” Paul Crespo, President.

Militarized Inauguration and the National Guard - Questions and Concerns

By Donald McGregor, Major General, USAF, Ret.
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January 6, 2021, is “a date which will live in infamy.” But not for the reasons given in the mainstream media and by Congress. That day’s tragic events are far-reaching and go well beyond the event itself. The malevolent behavior of a few laid the foundation for a disproportionate military response in support of the 59th Presidential Inaugural. Worse, it led to the unwarranted and ill-defined “screening” of our National Guard. And now a confusing ideological purge of military members accused of possible ‘extremism.’

Background

After the January 6 riot at the Capitol, the Secretary of Defense (SECDEF), in coordination with the National Guard Bureau (NGB), requested additional National Guard (NG) forces to support the presidential inaugural. It remains unknown how the request unfolded and whether it was solely the Pentagon’s doing or went through more appropriate channels such as a civilian federal agency, the District of Columbia Mayor, local law enforcement—or did it come directly from the President?

On the day of the inauguration, the NG deployed more than 25,000 troops to the District of Columbia (DC) and an estimated 6% of each State’s NG to assist law enforcement for potential civil unrest nationwide. This puts the number of guardsmen requested by the Department of Defense (DoD) in the tens of thousands—an unprecedented demand that should raise justified concerns.

Critical Question - Was it legal?

What drove the DoD to insist on this excessive level of domestic military activity? Were legitimate threats identified by the United States Secret Service (USSS), the Department of Homeland Security (DHS), or the FBI to justify this extraordinary military response? Were the proper authorities used to

request the National Guard or direct the DoD to activate the NG?

Further, was it legal for the NG to provide direct support to civil law enforcement—a controversial mission for the military? Were the proper authorities used to request the National Guard or direct the DoD to activate the NG? And more importantly, what were the arguments, discriminators and rationales behind the unusual “screening” and subsequent removal of service members from the National Guard inaugural detail and civil disturbance operations?

The devil is in the details and it appears congressional concerns and a lack of confidence in our National Guard may have been the driving force behind excessive activations of the NG and inappropriate and gratuitous screenings.

A more central question is whether the deployment was legally authorized to begin with. One state’s National Guard Adjutant General (AG) questioned the legality of the request for Guard support to civil disturbance operations in DC and possible lack of presidential authorization. The Adjutant General for Arizona denied National Guard support due to legal concerns, noting in a [letter](#) that it appeared the President’s involvement with this request was in question, which is legally problematic.

The AG stated in his [letter](#):

My legal team raised the above concerns, regarding the Posse Comitatus Act and related DoD regulatory prohibitions on the use of the Title 32 USC 502(f)(2)(A) status to perform direct support to law enforcement and civil disturbance operations in the District of Columbia.”

Further, the AG questioned, “The press release [11 January 2021 White House press release] does not mention Presidential approval for the use of DoD resources in support of civilian law enforcement and civil disturbance operations.

According to [executive order 11485](#), The President is “Commander-in-Chief of the Armed Forces of the United States and the National Guard of the District of Columbia...”

More Questions

For example - What drove the DoD to insist on this excessive level of domestic military activity? Were legitimate threats identified by the United States Secret Service (USSS), the Department of Homeland Security (DHS), or the FBI to justify this extraordinary military response? And if there was a legitimate justification where is the official assessment and who wrote it? The DoD (and National Guard), conducted by the Undersecretary of Defense for Policy and supported by the NGB, have a deliberate process for reviewing the rationale, in this case a threat assessment, for NG [Title 32](#) USC activations.

Where is this DoD review and what were the results?

While it is not unusual for the National Guard to be activated in support of a [National Special Security Event \(NSSE\)](#) such as the inaugural, usually fewer than 10,000 NG troops are deployed and they rarely engage directly in law enforcement activities. NSSE is a term used by the Department of Homeland Security (DHS) to identify specific events that have a “higher chance of being targeted by terrorism or other criminal activities that may pose a threat to protectees and the mass crowds that often surround these events.”

By comparison, the 56th Presidential Inaugural for Barack H. Obama had just over 10,000 National Guard members in support, which was then considered an extraordinary number.

Normally, in these NSSE events, the National Guard has a support role, providing capabilities such as communications, explosive ordnance disposal, transport, traffic control, medical, and logistical support, as well as playing music and marching in the inaugural parade. The NG usually stays in the background *assisting* law enforcement, not the other way around. It does not directly engage in law enforcement activities, specifically under the dubious legal status they were activated under.

Beyond that, arming the NG for such an event is rare, requiring strict rules of engagement (ROE) and well-defined mission roles. Numerous observers also noted that many of the NG members in DC did not have magazines in their pistols or rifles, which in itself implies they were intended more as ‘security’ theater, than as a civil disturbance force.

Was the NSSE Security Planning Process Ignored or Politicized?

NSSE Security planning always begins with one thing – A threat assessment. This is fundamental to the planning process as it drives the security resources and commensurate response to secure the event. Put simply, *what* is the threat, *how* bad is it, and *what* do we do about it? DHS did release a “first of its kind” [Homeland Threat Assessment](#) October 6, 2020, before the election—an important document that can be used to build a baseline threat appraisal.

But the specifics of the event such as location, logistics, geographics, lines of communication, and local jurisdictions require a separate and more detailed review, not to mention a serious update after the January 6 riot. Since this threat assessment is supposed to drive the allocation of every security resource, threat level, and the need for additional background checks, was one completed? From the publicly available reports, it appears that only a limited overall threat assessment was performed beyond the above noted October 2020 DHS Assessment. And it is very possible that it was not updated to incorporate the events of January 6.

Real Threats or Politics?

Based on indicators such as a lack of logistical resources to support the increase in numbers, possible misuse, and violation of policies and/or statutory military activation laws, improper assigned missions and roles, hasty and unwarranted additional screening, and questionable outside pressure, make it appear that the level of NG response had little to do with the actual threats and more to do with politics.

One major indicator of unsound planning is the still rising cost for the short-term NG deployments to Washington. Some place the estimate at \$300 million. Others put the price tag closer to [\\$500 million](#) - or half a billion dollars. By comparison, the entire Capitol Police [annual budget](#) is only \$464 million.

Unfortunately, all this implies that the military resources originally requested were most likely increased based on hasty reactions and an unknown or ill-described security threat. In fact, the addition of NG participation may have been driven by congressional pressure with little understanding of the menace our guardsmen were supposed to defend against.

Alternative Inauguration Scenarios?

At this point, a prudent planner would ask if the heightened security concerns and enormous cost should have prompted plans for alternative inauguration scenarios. If the militarized reaction was due to what Congress and others somehow intuitively felt was a serious risk from armies of deranged anarchists and extremists — then why not, simply have a different kind of inauguration?

Add to the mix the fear of COVID-19 and it seems that canceling or holding a totally virtual event would have been a reasonable alternative; preferable, far more prudent, and far less costly. Yet, the inauguration proceeded as planned. And considering the politics of a contested election and the unnerving siege of the Capitol, the massive security deployment - which essentially created a militarily 'occupied' downtown DC — ended up being more a stage show of political and security theater, than a reasonable response to any plausible threat.

And the Guard appeared to get caught in the middle of this politicized reaction.

What was the Credible Threat?

The violence at the Capitol on January 6 by what still appears to have been by an unarmed mob, was appalling and unacceptable. Some involved may have had more nefarious intent than others. And they are rightly being identified, arrested, and prosecuted. But for many of the rioters, the breach of the Capitol was more symbolic than revolutionary, using the event to roam the halls of Congress taking self-promoting selfies.

Based on the information provided thus far, five persons died during or shortly after the events of January 6. However, of those five, three rally attendees unrelated to the rioters reportedly died from preexisting medical conditions, not from any violence. The cause of death for the one Capitol Police Officer who died shortly afterwards - Brian Sicknick - is still unknown, but news reports state he did not suffer from any blunt force trauma injuries during his clash with rioters.

In fact, only one death can be directly attributed to violence at the Capitol — the shooting death of unarmed rioter Ashli Babbitt - killed by Capitol Police within feet of the room housing Congressional members.

Many contrasted the actual violence and property destruction during the months of burning and looting and direct attacks on federal buildings and police in DC and cities across the nation during months of violent Antifa and BLM riots. These riots, according to [reports](#) by the Insurance Information Institute, caused as much as \$2 billion in property damage (making them the worst in U.S. history), and the harming and even maiming of over 2,000 police officers — some permanently blinded by lasers used by the rioters. This, according to the Major Cities Chiefs Association Intelligence Commanders Group October 2020 [report](#).

Critics argue that the actual damage and harm at the Capitol pales in comparison to last summer's riots, which makes the militarized reaction to the January 6 riot highly suspect.

Screenings - Did DoD Violate Its Policies and the Law?

Adding to the earlier serious questions, one of the most critical is - Did the Pentagon break the law and its own policies to order the massive deployment of military force to the capital? It is imperative that this question is properly addressed and answered.

DoD activated the National Guard under [Title 32 502 \(f\)\(2\)\(A\)](#) in direct support of law enforcement, which violates [10 U.S. Code section 275](#) (restrictions of direct military participation with law enforcement), [18 U.S. Code section 1385](#) (posse comitatus), and the DoD's overarching civil support directive [DoDD 3025.18 \(Defense Support of Civil Authorities\)](#).

Further, other possible offenses include the unconstitutional "additional screening" of National Guard participants, which infringed their right to free speech and due process, as well as potentially violating [social media privacy laws](#) and [retaliation for political activities](#) in the workplace.

The DoD requested the National Guard Bureau to solicit the Adjutant Generals of the states and territories to "screen" participating guardsmen using unspecified 'discriminates' and then to remove those identified for ill-defined defamatory and/or extremist social media content. The Director of the Army National Guard then allegedly sent an email to all 54 adjutants-general requesting that they screen National Guard members participating in the District of Columbia operations, and identify anyone they have concerns with after reviewing their social media posts.

As noted earlier, the Arizona Adjutant General denied the request for Guard support. In his [letter](#) to the NGB denying the request the AG further questioned the apparently baseless screening methods, stating that:

"I do not believe the above-described social media screening is appropriate."

Even regarding existing DoD policies for social media screening, DoD's [Insider Threat Program](#), only calls for reporting (not screening), spoofing or questioning foreign radicals for "suspicious cyber incidents" ... "through social networking sites." The difference here is between an incidental versus a purposeful review of a military member's social media.

In other words, what was the legal justification for searching or acting on this information to expel a member of the military from a security detail? And who was the primary source for this information – DoD, local commanders, or another federal agency? It is estimated that as many as twelve serving members of the National Guard were removed from inaugural security for unspecified reasons – and this number could be getting larger?

The additional screening of our National Guard made it clear that some political decision makers did not trust the Americans they were requesting to protect them. The problem is who decides when our own soldiers cannot be trusted? Is it Congress? Another federal agency? And what are the discriminates—being active members in 'alt-right' groups or white supremacist organizations, or simply being a traditional conservative?

As many continue to point out, when many of America's cities burned and anarchy seemed to reign last summer during anti-police and racial riots, those radical left-wing extremists were not subject to similar scrutiny.

CONCLUSION

The highly questionable militarization of the inaugural, and the controversial screening of National Guard members – as well as the Capitol riot - are unprecedented events in U.S. history. They should all concern all Americans. However, the entire U.S. National Guard is now being treated with the same suspicions as those few who stormed the Capitol. Is the National Guard, or our active-duty military, less trustworthy than the Capitol Police, or the Washington, DC Metropolitan Police Department?

Is the question now that the men and women who place themselves in harm's way to safeguard our institutions and country cannot themselves be trusted? If so, the real question is - how soon before every citizen falls under suspicion.

BIOGRAPHIES

Donald McGregor, Major General, U.S. Air Force, Retired, is an accomplished national security leader, fighter pilot and career Air Force Officer with a diverse career, and expertise in Homeland Defense and National Guard issues. He was a former lead advisor to the Chief of the National Guard Bureau, who is a member of the Joint Chiefs of Staff. In this lead advisor role, he was the National Guard's Director of Strategy, Policy, Plans, and International Affairs, developing overall strategy, Secretary of Defense (SECDEF) policy, and civil support planning for the National Guard's warfighting, homeland, and international partnership missions.

A leading military-civil response expert, General McGregor was Deputy Director of Operations for United States Northern Command (NORTHCOM), overseeing daily operations of NORTHCOM's homeland defense and civil response. Earlier, he commanded a Minnesota Air National Guard squadron during 9/11, standing up three geographically displaced alert operations in support of Operation Northern Watch. General McGregor has a Master of Arts in Diplomacy and International Conflict Resolution from Norwich University, and a Bachelor of Arts in Computer Science from the University of Minnesota.

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