

THE MILITARY, POLICING, AND COVID-19

**JOHN R. ALLEN, JOHN DONOHUE, RICK FUENTES,
PAUL GOLDENBERG, AND MICHAEL O'HANLON**

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EXECUTIVE SUMMARY

Already today, the U.S. armed forces are providing important help here at home in the struggle against the novel coronavirus. Well over 10,000 members of the Army National Guard and Air Force National Guard have been mobilized to help with things like setting up more hospital capacity, transporting supplies, and providing other logistics. Other personnel, some retired, who have “Individual Ready Reserve” status are in some cases being activated when their particular skills in medicine or other crucial fields can help. They are typically doing so under what is called Title 32 of the U.S. code, whereby they are paid by the federal government but controlled by the governors of the individual states where they operate.

We need to prepare for a much larger, and more fraught, potential role for the American armed forces in this crisis as well. In short, they may need to backstop and backfill certain police forces. With 15% of the New York Police Department recently reporting sick due to COVID-19, self-quarantining measures, and other ailments — and even higher absentee rates reported in places like Detroit — hard-hit communities may soon need major assistance with tasks like patrolling streets, enforcing restrictions on movement, deterring crime, defusing situations of domestic violence, and sometimes arresting suspects. Such police work is legal for the National Guard, though not the active-duty military, under the 1878 Posse Comitatus law. And it may be the most prudent thing we can do to prevent a risk of deteriorating social stability and security conditions in a number of American cities in the spring and the hot, potentially very dangerous summer of 2020. Yet it is also highly fraught, and requires significant preparation — including for training Guard personnel quickly, and pairing them with police if and when they go on the beat. The warrior culture and warrior profession are much different than those of police officers.

INTRODUCTION

Already in the coronavirus disease 2019 (COVID-19) crisis, more than 12,000 National Guard personnel have been activated under Title 32 of the U.S. code, to work for governors in heavily afflicted states with federal financial reimbursement. These guardsmen and guardswomen are working heroically, mostly in logistics support in the realm of health care as well as movements and deliveries of certain supplies. These are important tasks for which the nation is grateful.

But more, much more, may soon be needed of the armed forces, especially the Army National Guard and Air Force National Guard. With 15% of the 36,000-strong New York Police Department (NYPD) absent from work in recent days, and one-fifth of Detroit's police force quarantined, the trendline is foreboding.¹ Even if New York City winds up having the capacity to handle the challenge, smaller cities with even larger per capita crime problems may not.

The law enforcement community has performed courageously during this crisis. The environment in which its personnel operate on any given day can often be hazardous and very stressful. The adverse circumstances confronting law enforcement personnel as result of the COVID-19 will only intensify over coming weeks as they are assigned unfamiliar roles and engage in actions for which they may not have been effectively trained. Fatigue and illness will also be major factors. State, local, tribal, and territorial police, troopers, and sheriffs alike are just now beginning to experience the effects of extended shifts and consequential sleep deprivation, diminution of income in some cases, and the ever-present specter that the virus may afflict a family member, at a time when hospitals are becoming overrun. All these stressors are aggravated by prolonged separation from loved ones. These are effects that many in the NYPD suffered in the aftermath of the terror attacks of September 11, 2001.²

Already, dilemmas have appeared. In Rhode Island, state Guard personnel are working with Rhode Island police to stop cars, interview motorists, and

sometimes ban entry to Rhode Island from virus-impacted states, such as New York. In addition, they are conducting house-to-house searches to find New Yorkers and subject them to mandatory two-week quarantines.³

The Rhode Island mission is much different than the longstanding role of the guard as a humanitarian response element in local, regional, or national emergencies, such as was seen in deployments to Hurricane Katrina and Superstorm Sandy. Such missions risk healthy community relations, challenge police legitimacy, and conjure up for some a more militaristic and authoritarian impression of their interactions with fellow citizens.⁴ We must not forget the late 1960s urban riots in places like Newark and Plainfield, New Jersey. Then, state guardsmen played a role antithetical to their mission of humanitarian assistance. Local police-community relationships suffered serious damage, taking decades to repair. The Los Angeles riots of 1992 provide another salient example of this kind of problem.⁵

Yet if COVID-19 conditions worsen, the military may ultimately have to play the role of backstopping local police, to include on patrol and in other situations for which a warrior background may not be ideal preparation. We need to anticipate this situation now. The problem could become acute rapidly in coming weeks. Although the Posse Comitatus Act of 1878 limits the role of active-duty forces in domestic law enforcement, it does not restrict members of the guard acting in a "Title 32" capacity in which they are controlled by governors.⁶ It is that type of Title 32 role for the National Guard, and not a federalization of the guard or repurposing of the active-duty military, that we focus on here. With more than 400,000 soldiers and airmen and airwomen in the nation's two guard organizations, there is considerable capacity here.

The National Guard, and law enforcement organizations, have considerable experience collaborating in acute disasters. Examples of National Guard deployment are manifold: post-hurricane Katrina in 2005, in response to western U.S. wildfires

in recent years, and after the Midwest's historic floods in 2019. But this situation would be radically different. The assistance we envision is more akin to patrol and response activities—to regular policing, with all its myriad challenges and demands for specific skill sets.

By being ready to deploy the guard in policing capacities, America's cities may avoid the greatest risks for breakdowns in law and order and citizen safety that could otherwise arise in coming months from the coronavirus crisis. In addition, the U.S. military together with first responder communities may then be better positioned to advise armed forces in other countries that have the kind of massive urban areas that led General Raymond Odierno, when he was U.S. Army Chief of Staff, to commission a 2014 study on the daunting challenge of securing megacities.⁷

In any mobilization for policing purposes, National Guard troops need to have legitimacy in the neighborhoods where they will be assigned. So an effort should be made to keep many close to communities where they live. That said, we do not propose mobilizing those members of the guard already doing important crisis-response work in their main jobs as doctors, nurses, emergency medical technicians, policeman, or related occupations.

TURNING WARRIORS INTO COUNTERINSURGENCTS ... AND EVEN POLICE

But how to begin to turn military warriors into individuals who can function as police officers, in a very short time period? The cultures, tactics, and skill sets are very different in the military and the nation's police forces.

The nation's recent experiences with overseas counterinsurgency operations can provide a starting point. When the Iraq war was going badly in the mid-2000s, the U.S. Army and Marine Corps took it upon themselves to write new doctrine, based in part on old lessons that had sometimes been forgotten, about how to be more effective in an environment where protecting the population was crucial

to success. In Iraq, failure to do so was counterproductive to the security mission in the region, and could help insurgencies metastasize. In the United States, failure to do so can leave American citizens unprotected, leading to huge backlashes against police and the government writ large.

The basic principles of successful counterinsurgency operations were codified into doctrine by teams led by two storied generals, David Petraeus and Jim Mattis. They can therefore help speak to a mindset of individuals who rightly think of themselves first and foremost as warriors. The below is excerpted from the counterinsurgency manual (since updated, but with similar themes):⁸

Successful Practices

- Emphasize intelligence.
- Focus on the population, their needs, and security.
- Establish and expand secure areas.
- Appoint a single authority, usually a dynamic, charismatic leader.
- Provide amnesty and rehabilitation for insurgents.

Unsuccessful Practices

- Place priority on killing and capturing the enemy, not on engaging the population.
- Conduct battalion-sized operations as the norm.
- Concentrate military forces in large bases for protection.
- Focus special operations forces primarily on raiding.
- Place a low priority on assigning quality advisors to host-nation forces.
- Build and train host-nation security forces in the of the U.S. Army's image.

- Ignore peacetime government processes, including legal procedures.
- Allow open borders, airspace, and coastlines.”

Clearly, not every principle is exactly applicable to policing, but the analogies are evident. We would also suggest adding “place police in the lead with military support” and “expand and diversify the police force” to the list of successful practices. We would also note that ideally, for the sake of legitimacy as well as local knowledge, many guard personnel placed in a policing role would come from the communities they were asked to help protect and serve. This is different from the case with other roles the guard has been asked to perform in the United States such as disaster relief.

With the above as backdrop, we need to turn to the actual training, mentorship, and apprenticeship of warriors so that they can function as acceptable temporary police officers.

COMPRESSING THE POLICE TRAINING CYCLE

Without a doubt, on-the-ground experience will be needed for guard personnel backstopping police. Even a well-trained soldier or Marine with practical experience in stabilization or counterinsurgency operations will have a distinct set of skills, and different instincts (especially when in situations of duress or danger), than what is optimal for an American police officer.

As one starting point for thinking about field training, the Chicago Police Department has a 12-week period of effective apprenticeship. Each of the following 10 subjects is taught over roughly a week-long period:⁹

1. Motor vehicle operation
2. Written communication
3. Verbal communication
4. Community interaction

5. Patrol procedures
6. Arrest procedures
7. Traffic enforcement
8. Use of force
9. Law and department policy
10. Demeanor

Let us assume that certain of these can be compressed or delayed in an emergency like the COVID-19 crisis. For example, if guard personnel are routinely teamed with conventional-duty police officers, perhaps the latter can handle written communication, as well as the subjects of law and department policy. Since many guardsmen will be older and have some experience with vehicles, perhaps training for motor vehicle operations need not require a full week.

But some skill sets are unique to policing and crucial to success. They likely include, from the above list, about half the topics: verbal communication, community interaction, patrol procedures, arrest procedures, and use of force. We might add another called “civics.” That is a half-dozen topics—normally corresponding to at least one month of training on the ground in total. In the current situation, the teaching will have to be compressed into much less time, and then reinforced during actual on-the-job operations done in partnership with trained police.

One way to think about providing a crash course in basic police skills is with reference to citizen police academies, as offered in many cities in the United States today.¹⁰ These generally last for 10 to 12 weeks, with a class of perhaps 3.5 hours’ duration, one day a week. They give a sense of policing to citizens who are interested in the subject. The parts of such courses dealing with deconfliction, conflict mediation, arrest processing, interviewing victims or complainants, following up on referrals, understanding basic elements of the law, and conducting intelligence gathering could be very useful.

PRACTICAL PRINCIPLES AND RESOURCES

There are abundant resources available on a moment's notice to orient and educate state guard personnel on complimenting, rather than complicating, existing police-community relations in the areas to which they are deployed. On its website,¹¹ the International Association of Chiefs of Police, serving the majority of the more than 18,000 full-time police departments in the United States, offers the following guidance on maintaining and building communities of trust:

- Treat every member of the community with respect and treat non-enforcement engagements as an opportunity to build trust. Trust is earned through sincere interest, collaboration, and commitment to justice. In addition to modeling professional behaviors to the community, officers must be role models for other officers.
- Get out of your patrol vehicle. Build relationships through non-enforcement interactions by participating in community events, seeking out mentorship opportunities with youth, and serving as a community coach for youth sports, particularly in areas where police enforcement is ever present.
- Use favorable discretion by issuing verbal warnings to low-level offenders (i.e., traffic offenses). Articulate why actions are being taken, in order to make the public aware and create trust.
- Engage the youth in high-crime areas by participating in pick-up games of basketball, football, double-dutch, etc. Hold follow-up conversations with parents and guardians of truants and curfew violators. Use community festivals, sporting events, and holiday celebrations to engage in dialogue with diverse community members and increase cultural competencies.
- Work with law enforcement leaders to develop consistent and strategic messaging about expectations for building relationships with

the community, particularly how officers should interact with citizens in a difficult or emotionally charged situation.

- Encourage community stakeholders to participate in programs that increase community trust, such as citizen police academies, Neighborhood Watch, and National Night Out initiatives.
- Seek out training opportunities provided by local colleges and universities, law enforcement organizations, training institutions, and federal partners such as the COPS Office Community Policing Learning Portal. The Community Policing Learning Portal provides free community policing training and resources to law enforcement and citizens.¹²

The training portal for the Community-Oriented Policing Services (COPS) of the U.S. Department of Justice offers several online courses that could be beneficial to the awareness of COVID-19-deployed state guard resources:

- Community Policing Defined¹³
- New Perspectives on Community Policing¹⁴
- Changing Perceptions: A Fair and Impartial Policing Approach¹⁵
- Tactical Community Policing for Homeland Security¹⁶

For guard line supervisors and command staff, there are online video resources that introduce the concepts of community policing.¹⁷ In addition, the Office of Justice Programs¹⁸ and Bureau of Justice Assistance¹⁹ provide excellent monographs for deeper understanding of community policing and professional encounters with civilians.

In addition to training on community relations, it is important to document all instances of use of force, and of searches of vehicles and homes, both subjectively and objectively. Subjective explanations of suspicions and causes to conduct these actions can be effectively documented through concise

radio transmissions and by completing “Use of Force” forms. These are routine protocols used by most law enforcement agencies and have withstood legal review.

Secondly, an objective recording of guard-civilian encounters through the use of body-worn cameras (BWCs) will offer video and audio evidence that will protect both the public and guard members. BWC recordings would also corroborate the accuracy of written reports and mitigate false allegations of misbehavior by guard personnel. Police departments who use BWCs have the ability to upload and store footage for a required period of time. Personnel training in the use of BWCs requires no more than one to two hours. As a matter of policy, guard members would notify the public in specific encounters that their interaction is being recorded. Mandatory supervisory review of use of force documentation and random reviews of BWC recordings

can also provide opportunities for counseling on matters of questionable behavior and adherence to policy and standards.

If these policies seem heavy-handed to guard members, it is important to understand that the concepts of community policing, restraint, deconfliction, and strict accountability are doctrine in the policing profession. They should not be undone in the face of any crisis. Today, the nation benefits from a generation-long reduction in crime rates and, despite ongoing challenges, an improvement in community-police relations in most areas relative to periods of several decades ago. These are precious accomplishments that we must endeavor in every way to preserve in the face of COVID-19. Being ready to send parts of the guard in support of the nation’s police forces is a task that we must prepare for now. The need to act could be upon us very soon.

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ABOUT THE AUTHORS

John R. Allen commanded coalition forces in Afghanistan and U.S. Marines in Iraq; he is president of the Brookings Institution in Washington, DC.

John Donohue is an attorney and the former chief of strategic initiatives for the New York City Police Department where he worked in intelligence and drove innovation for public safety.

Colonel Rick Fuentes is the former superintendent of the New Jersey State Police and visiting fellow at the Rutgers University Miller Center for Community Resiliency.

Paul Goldenberg is former law enforcement executive and member of the U.S. Department of Homeland Security Advisory Council, and senior fellow at the Rutgers University Miller Center.

Michael O'Hanlon is senior fellow at the Brookings Institution and coauthor, with retired General Raymond Odierno, of the 2017 Brookings paper, "Securing Global Cities: Best practices, innovation, and the path ahead."

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