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THE NATIONAL GUARD AND POLICE SUPPORT IN THE  
DISTRICT OF COLUMBIA

CORE COURSE III ESSAY

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**THE NATIONAL GUARD AND POLICE SUPPORT IN THE  
DISTRICT OF COLUMBIA**

On Friday, Oct. 22, 1993, the Mayor of Washington, D.C. requested authority from the President to activate the D.C. National Guard to support the District's efforts of stemming violent crime. The Mayor's request to the President (and notification of certain Members of Congress) had implications beyond the issue of using the Guard to control crime. These implications include: constitutional issues concerning control over the National Guard, military concerns over the use of the Guard as a part of the Total Force concept, fiscal and budgetary considerations, and political arguments concerning D.C. statehood. Ultimately, the Mayor's request was rejected by the President on constitutional grounds. However, had the President allowed Guard troops to be mobilized, it is the thesis of this paper that bureaucratic, legal and political pressures would have been brought to bear to limit the Guard's effectiveness. Indeed, it can be argued that these pressures also played a role in the President's decision to reject the Mayor's request.

In considering this issue, this paper describes those background events that led to the Mayor's request. This paper also discusses the role of the National Guard, its "dual status," and, its unique structure in regard to the District of Columbia.

Next, the constitutional issues are examined. Finally, this paper considers the politically contentious nature of the Mayor's request and argues that the bureaucratic and political forces, as they emerged, would serve to limit the Guard's role.

### **Background**

Over the last few years, crime rates--particularly homicide rates--have risen dramatically in the District of Columbia.

So far this year, there have been 378 homicides in the capital, most occurring in poor, predominantly black neighborhoods and most involving young men in their teens and early 20's who deal in drugs and guns. At the current rate, the 1993 death toll will exceed the 451 deaths counted in 1992, but will fall short of the 489 deaths counted in 1991, the worst year on record and the year the city acquired the sobriquet of being the nation's murder capital.<sup>1</sup>

This crime problem is one that Mayor Sharon Pratt Kelly inherited. However, during her campaign for office, her opponent (former D.C. police Chief Maurice Turner), criticized Kelly as being soft on crime. "[Kelly] countered that criticism saying once she was elected, there would be 'major reform in the police department.'" <sup>2</sup> The Mayor's promise of placing more police on the

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<sup>1</sup>Ayres, B. Drummond, Jr. "Washington Mayor Seeks Aid of Guard in Combating Crime." New York Times 23 Oct. 1993: 1.

<sup>2</sup>Harrison, Keith A., and Yolanda Woodlee. "Kelly Saw Risks of Troop Request, Aide Says." Washington Post 24 Oct. 1993: 1. As this article notes, the D.C. City Council authorized higher manpower levels and appropriated funds to add an additional 300 officers (arguably fewer than needed). However, the recruitment of new officers has been a slow process. Nearly three years ago, after one hiring binge, a substantial number of officers (113) were indicted on criminal charges or had departmental charges of misconduct pending. (The Mayor has suggested that she could ask for up to 3,000 troops although the true number may be as low as 100 to 200. Washington Post (editorial) 24 Oct. 1993: C1.

streets or reforming the police department has yet to materialize--due in part to financial and manpower shortages. Pressure has been mounting on the Mayor to address the problem before she begins her campaign for reelection. In response to these political pressures, and recognizing financial and personnel shortages, the Mayor sought the authority to call the D.C. National Guard to assist the police.

### **The Role of the National Guard**

Under current military manpower policy, the National Guard has both a Federal and state status. The National Guard is a modern militia reserved to the states by the Constitution.<sup>3</sup> Stated another way, the National Guard, when not called into the service of the United States, is not part of the Army but is a state organization, although it may be trained and equipped according to Federal standards.<sup>4</sup> Under this "dual status," training and deployment of the National Guard (for natural disaster or civil disorder, for example) are under the control of the state through the Governor. During periods of national emergency declared by Congress, the President can "federalize" the Guard. The President also has the authority to "call" the Guard into Federal service when there is imminent danger to the U.S. Finally, the Secretary concerned (Army or Air Force) may

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<sup>3</sup>" . . . the organized militia . . . consists of the National Guard . . . ." 10 USC 311. See *Maryland for Use of Levin v. United States*, 381 U.S. 41 (1965), vacated on other grounds, 382 U.S. 159 (1965).

<sup>4</sup>*United States ex rel. Gillette v. Dorn*, 74 F.2d 485, 487 (1934).

order the Guard to federal service for training with the Governor's consent (subject to certain limitations).<sup>5</sup>

Guard members deployed by states can still be mobilized by the President for Federal purposes. Such a Federal mobilization would create political tensions concerning the deployment of the Guard for Federal purposes when there exists a need for them in their home state. In addition, military leaders note that police activities--using minimal force and protecting civil rights in making arrests, are fundamentally different from military activities--requiring the use of lethal, maximum force against an enemy. Military leaders are concerned that the extended use of Guard troops for police activities by a state or the District may prove to be deleterious to readiness in a national emergency.<sup>6</sup>

### **Constitutional Issues**

Since the District of Columbia is not a state, and therefore does not have a Governor, the D.C. National Guard is under the authority of the President.<sup>7</sup> D.C. Guard units are directly

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<sup>5</sup>10 USC 672.

<sup>6</sup>Goldich, Robert L. Congressional Research Service, interview, 19 Nov. 1993.

<sup>7</sup>The Constitution neither provides for, nor prohibits, the District of Columbia from having a militia or National Guard. In the late-1700s, Congress defined the militia:

The militia of the United States consists of all able-bodied males at least 17 years of age and . . . under 45 who are, or have made a declaration to become, citizens of the United States . . . . (See 10 USC 311; underline not in the original)

Thus, the ability to form a militia cannot be limited by domicile (i.e. state, District, or territory). According to Col. Frank

administered and commanded by a Commanding General. The Mayor of Washington<sup>8</sup> may seek the assistance of the National Guard.

Unlike state Governors, the Mayor has no constitutional authority to call the Guard nor does the Mayor have the authority to deny the use of these troops for Federal training purposes.

Conversely, the President may, with or without mayoral consent, deploy the D.C. Guard in the District under his constitutional authority as Commander in Chief. Since the Constitution does not explicitly provide for or deny the use of the Guard in the case of the city of Washington, the Mayor could, arguably, seek such authority under the Tenth Amendment to the Constitution.

(Broadly interpreted, this Amendment reserves powers, not otherwise delineated, to the people.) However, these Guard troops serve the District, not Washington, and therefore remain under Federal control.

The Mayor's request for authority to call up the Guard is decidedly different from the Mayor's request that the President

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Rush, (ret.) OASD(RA), the earliest citation of Federal recognition of the District's National Guard is in the National Defense Act of 1916 (39 Stat. 199, June 3, 1916). Although a main purpose of this legislation was to standardize the militia and to provide for a mobilization force in the event of a national emergency, it did not restrict the role of the Guard to Federal service alone. The President, therefore, has the authority to use the D.C. National Guard in the event of civil disturbances or natural disasters. Since the District does not have the constitutionally-mandated governor as the commander of the Guard, this legislation assigned control of the District's Guard to the President--Commander-in-Chief--via the Secretary of the Army. Thus, the D.C. National Guard is structured in a manner that is consistent with the Constitution and Federal laws.

<sup>8</sup>Washington is a city in, but not comprising the entirety of, the District of Columbia.

call the Guard. Under the former, the Mayor's request for authority means the granting of powers to the Mayor that are constitutionally reserved to the states (via a Governor),<sup>9</sup> Congress<sup>10</sup> and the President.<sup>11</sup> If the Mayor were given the authority to mobilize the Guard, but did not have command authority over the Guard (as does a Governor), the command of these units would arguably be left to the Commanding General. In other words, no civilian would be in charge of the Guard when called into service at the city level. (The President could still step in at the Federal or District level, but this would negate the Mayor's authority.) In addition, the Mayor's request failed to specify what authority or oversight legislators at the city level would have when the Guard is called. Without legislative checks to the use of the Guard, the Mayor would have ill-defined or undefined authority concerning the use of these troops.

In addition, the specific mission of the Guard, once deployed in the city, was not spelled out clearly by the Mayor (i.e., would Guardsmen serve independent of, or under the Chief of Police?, would Guardsmen serve in an administrative capacity or be able to make arrests?). Nor was it clear who, the city or the Federal government, would pay the cost of these deployments. Both of the above issues raise constitutional questions in terms

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<sup>9</sup>U.S. Constitution. Article I, Section 8.

<sup>10</sup>U.S. Constitution. Article I, Section 8.

<sup>11</sup>U.S. Constitution. Article II, Section 2.

of control of the Guard. Nevertheless, the Mayor's request was undefined in terms of the bureaucratic responsibilities and oversight of the National Guard at the city level. This lack of specificity did not help the Mayor in making her case.

Finally, the deployment of National Guard troops in domestic situations has historically been used with great circumspection. These forces have traditionally been deployed for short-term emergencies such as disaster assistance or civil disorder. With one exception, the Guard have not been deployed for long-term police activities.<sup>12</sup> Ultimately, the President rejected the Mayor's request under legal advice that he could not transfer his powers to call the Guard to anyone outside of the Executive branch.<sup>13</sup>

### **Political Issues**

Although the President's final decision to reject the Mayor's request was based on constitutional and legal considerations, many bureaucratic and political groups were silent on, or opposed to, the Mayor's request. As noted, the Department of Justice (via the Attorney General) issued legal advice against the Mayor's request. This legal advice can also be viewed as a form of political opposition on the part of the

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<sup>12</sup>The Puerto Rican National Guard have been deployed to assist the local police in fighting crime. Unlike the D.C. situation, these forces were activated by the Governor of Puerto Rico under his Constitutional authority. Rohter, Larry. "In a First, National Guard Units are Marching to Fight Crime. New York Times 28 July, 1993: 10.

<sup>13</sup>"DoD Reserve Affairs Chief Cautions Against Using Guard for Policing." Inside the Army 1 Nov. 1993: 3.

Justice department. The Secretary of Defense and Assistant Secretary of Defense (Reserve Affairs) "cautioned against using the guard for policing."<sup>14</sup> Although many were sympathetic with the Mayor's plight, there exists no evidence that any Executive branch agency or department supported the Mayor's request for authority to call the National Guard.

Opposition to the Mayor's request could also be found in Congress. Rep. G.V. "Sonny" Montgomery, the "patron saint of the Guard in Congress," advised the President against such a call-up.<sup>15</sup> Congressional Committee Members (Armed Services) who had oversight responsibility were silent on the issue. The Chairman of the Senate Judiciary Committee, Sen. Joseph Biden, sidestepped the issue by using the controversy as a reason to pass the anti-crime legislation before the Senate.<sup>16</sup> Only the Chairman of the House Committee on the District of Columbia expressed support for using the Guard (although he did not explicitly endorse providing the Mayor with this authority to call the Guard).<sup>17</sup> Thus, Federal legislators either opposed, explicitly, the use of the Guard, failed to support the Mayor's request for the use of the Guard, or, refused to endorse the Mayor's request for the authority to call the Guard.

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<sup>14</sup>Inside the Army, 1993: 3.

<sup>15</sup>Matthews, William. "D.C.'s Guard bid mired in politics." Army Times 8 Nov. 1993: 22.

<sup>16</sup>Sawyer, Kathy. "Reno: D.C. Request for Guard Under Review" Washington Post 25 Oct. 1993: 5.

<sup>17</sup>WTOP Radio, 24 Oct. 1993.

The Mayor noted that her request was based on requests for assistance from constituents in high crime neighborhoods. However, opposition to the Mayor's request in the District itself was significant. These sources of opposition included the following: 1) rank and file police officers and police union representatives who believe that more police should be hired to deal with the problem; 2) civil rights organizations who saw this as an unconstitutional, and potentially abusive, use of military forces against a civilian population; 3) hotel and tourist associations who viewed calling the Guard as damaging to the city's image and potentially threatening to the tourism business; and, 4) D.C. City Council Members who did not support the Mayor. Kevin Chavaus, a Member of the D.C. City Council representing a high crime area, called the Mayor's request "premature."<sup>18</sup>

Interestingly, proponents for D.C. statehood saw the Mayor's positions as a reason to support making D.C. a state. As a state, they argued, D.C. would have a Governor who would have the same access to National Guard resources. Beyond the issue of statehood, however, these groups did not explicitly endorse or reject the Mayor's request for the authority to call the Guard.

Although there are compelling reasons to mobilize the Guard, the Mayor failed to mobilize political support for her request. Many on the D.C. Council and in the police department were not certain of what role the Guard would play (i.e., administrative

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<sup>18</sup>Harrison, Keith A., and Yolanda Woodlee. "Guard Plan Stirs Uproar in the District" Washington Post 23 Oct. 1993: 1, 4; see also the above cited news articles.

or actually involved in law enforcement and making arrests). Without this support and lacking a clear understanding what in fact the Mayor intended to do, it should not be surprising that few of those involved in the political process stepped forward to support the Mayor.

### **Conclusion**

In making her request to the President, Mayor Sharon Pratt Kelly did not consult with the appropriate Federal and city authorities. Nor did the Mayor seek to gather their support. In addition, active opposition within the Executive branch was already in place. The opposition of the police and business associations only served to weaken the Mayor's case. Without the constitutional authority to transfer the power to mobilize the Guard, the Mayor's request was denied by the President. However, and also important, without political and organized local and Federal support, it appeared unlikely that the President, under his own authority, would call the Guard in support of the Mayor.

Although it remained possible that the President could have supported the Mayor by calling the Guard himself, political opponents would likely intervene (e.g., by limiting the use of funds for such deployments or seeking injunctions against the transfer of authority) to restrict the President's actions. Given these legal and political constraints, as well as the historic precedent of not using the Guard in these types of police functions, it appears likely that the D.C. National Guard would be of marginal use in the District's war on crime if

eventually activated by the President.

The Mayor's request appears to have been motivated, in part, by her concern over reelection and the public/political pressure to "do something" concerning the problems of violent crime in the District of Columbia. Even with the rejection of her request, she can at least claim that she sought help and was rejected. All is not lost for the Mayor. The Mayor can use this rejection to play on the "anti-federal oversight" feelings among her constituents in the District. Opposition to Federal oversight of the Guard is a populist factor in D.C. politics and can be exploited in the Mayor's efforts to get reelected.