

THE U.S. MARSHALS’ POSSE: A MODEL FOR THE 21ST CENTURY

BY JOHN LENOIR

Modern terrorism has blurred not only the distinction between enemies and criminals but also the determination of who is responsible for public safety. Reaction to the Sept. 11, 2001, attacks on the United States focused on the respective roles of the military, law enforcement agencies, and the intelligence community. The war on terror has forced the public to confront enemies who—like criminals—live among us, wear no uniforms, and do not recognize jurisdictions and borders.

In the United States, the national military and intelligence services have directed their considerable resources to counter threats from abroad. American law enforcement is essentially a local matter; there is no national constabulary and no operational coordination among the 17,000 various law enforcement arms of municipal, county, and state governments. This dispersion of responsibilities was starkly apparent in the absence of even radio communications among the police, firefighters, and other first responders at the World Trade Center and Pentagon attack sites.

One response in the aftermath of the attacks received little notice but was brilliant in its simplicity and economy. The U.S. Marshals Service used aircraft normally used to transport prisoners to deploy special deputy U.S. marshals to various parts of the country in order to secure critical installations that could be at risk. These special deputies were law enforcement officials from various agencies located throughout the United States who were deputized as federal marshals for this specific mission.

This deployment of special deputy marshals was an adaptation of an innovative American approach to public safety born of necessity in the frontier West—the posse. The marshals’ posse tradition provides a model through which designated and trained law enforcement officers could be deployed on short notice to address national emergencies.

History of the Posse

In 1789, one of the first acts of Congress was to create the post of U.S. marshal for each federal judicial district in the country. Like ambassadors and federal judges, the U.S. marshal was to be appointed by the President on the advice and consent of the Senate. For a time, the marshal was the only federal law enforcement authority outside of the nation’s capital. The U.S. marshal for a state or territory was responsible for collecting taxes and taking the census as well as enforcing federal law and carrying out federal court orders.

The U.S. marshals carried out these responsibilities in their federal districts with the broad authority akin to that of the county sheriff of English commonlaw tradition. Even though the federal government granted marshals broad authority, it provided little financial support. Resourceful marshals used their authority and stature in their districts to call upon citizens to assist in law enforcement operations whenever circumstances required. The citizens were desig-

nated special deputy U.S. marshals and were granted temporary authority to carry out law enforcement operations related to the mission for which they were called. Thus, the posses were temporary, special-purpose police forces.

In the 19th century, posses established themselves as part of the lore of the American West by effectively countering the criminal bands that preyed on the new communities, stagecoaches, and trains. The genius of the posse system lay in its efficiency. The posse would be formed around a specific mission and would be disbanded when the job was done. Posse members typically provided their own equipment and transportation—guns and horses.

The Principle Evolves

Federal law enforcement infrastructure grew dramatically in the United States in later years with the emergence of agencies that had more specialized missions and responsibilities, including the Federal Bureau of Investigation, Drug Enforcement Administration, Border Patrol, Postal Inspection Service, and others. Each new agency was given the responsibility to enforce a specific area of the law, and the agency’s authority was limited to that area. State, county, and municipal governments enhanced their general law enforcement capabilities by increasing their standards of recruitment and training of personnel.

Today, local departments are highly professional and well equipped. Police departments in large cities, such as New York City with about 35,000 officers, have little need for resource assistance from the U.S. Marshals Service. Nevertheless, no matter how large or well equipped the local police agencies are, they are strictly limited to the jurisdictional boundaries of the city limits or county lines. Other federal law enforcement agencies have overshadowed the marshals in the public consciousness and in federal appropriations—despite the fact that approximately 3,200 deputy U.S. marshals find and apprehend more wanted lawbreakers in America than do all other federal law enforcement agencies combined.

The U.S. marshals, now organized under the U.S. Marshals Service and headquartered in the Washington, D.C., area, remain the only federal law enforcement officials outside of the nation’s capital whose authority comes directly from the President. The director of the U.S. Marshals Service and each of the U.S. marshals for the 94 federal judicial districts throughout the United States and territories are presidential appointees who, like ambassadors, have been confirmed by the Senate.

Congress has codified the broad police powers exercised by the early marshals in statutes that grant current marshals sheriff-like powers for enforcing federal law in the various states. The authority to raise posses has also been retained through statutes that empower a U.S. marshal to deputize and invest others with authority as special deputy U.S. marshals. (Marshals’ authority to specially deputize a posse is derived from 28 USC § 566(c), which reads: “the United States Marshals Service ... shall command all necessary assistance to execute its duties.”) Section 564 provides for the authority of the marshal to have the powers of sheriff in enforcing federal law within a state.

The Posse as a National Police Ready Reserve Force

Today, deputizing individuals is generally limited to granting broad, cross-jurisdictional police authority to other law enforcement officials for specific purposes. For example, in Washington, D.C., security for the inauguration of President George W. Bush was augmented by 1,800 law enforcement officers drawn from a variety of state, local, and federal agencies. Their authority to act as law enforcement officials in Washington, D.C., was provided by the U.S. marshal for the District of Columbia, who administered the oath of temporary office as special deputy U.S. marshals. More than 1,200 such special deputy marshals provided the extraordinary security that was required for the 2002 Winter Olympics in Salt Lake City, Utah. Marshals have deputized police officers who are called to respond beyond their jurisdictions to an area hit by natural disasters.

But not all deputations are occasioned by hurricanes or major spectacles. In 2007, about 6,000 police and sheriff's officials were deputized as special deputy U.S. marshals; most of them were given authority to serve on joint task forces, which combine the resources of federal, state, and local agencies to address a specific criminal activity crisis, such as drug trafficking. The investigative and enforcement missions of such task forces reach beyond the jurisdictional limits of cities, counties, and states. Deputizing local police officers accords them the same nationwide authority that is held by the federal agents with whom local police work. These special deputations are typically made for terms of one to three years.

The operational principles of the posse, as they evolved with the marshals, are rapid assembly and temporary deployment of officers who have been made available by

agencies with limited jurisdiction for cross-jurisdictional missions. The ability of the U.S. Marshals Service to quickly muster a national task force from the ranks of local police officers and specialized federal agents is of interest to military planners in the United States. In post-9/11 counterterrorism scenario exercises within the United States conducted by the Department of Defense, the Marshals Service demonstrated capabilities to bring together disparate police elements to an impacted area for large-scale civilian evacuations.

The American posse model has also been considered as an approach to meet the security interests of member countries of an expanding North Atlantic Treaty Organization (NATO). With appropriate standards for training, skills, and abilities, the law enforcement and paramilitary personnel of the NATO member countries could be qualified for special assignments designed to counter terrorism.

Any cross-jurisdictional police force needs authority to enforce the law and to carry out specific missions no matter where the police are deployed; this aspect has been an obstacle for NATO. The U.S. Marshals Service, however, has a long history as the national convening agency with the authority to assemble Americans from anywhere in the country to perform an extraordinary public safety mission and empower them to do so. Like posses, law enforcement officers currently deployed as special deputy U.S. marshals provide their own transportation and equipment, and they return to their home jurisdictions when the mission is completed. **TFL**

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marshal's major responsibilities are the following: providing courtroom security; assuring that incarcerated individuals who have been charged with all types of criminal behavior are transported to their proper courtroom for appearances while maintaining the safety and security of the judges, lawyers, and members of the general public in the courthouses of the Eastern District of New York; and, at all times, monitoring the activities of all of those present in all areas of these buildings.

All those who spend any time in the courthouses of the Eastern District of New York can do so with the

confidence of knowing that U.S. Marshal Corcoran is protecting them. As for anyone who may be a fugitive from justice being pursued by Marshal Corcoran, they should know that they can never sleep and never rest—they will be caught. **TFL**

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Guccione started his career with the USMS in 1992. He feels privileged to have worked for Romolo J. Imundi, then the U.S. marshal, and to have learned from the senior deputy marshals in that office. For three years, Marshal Guccione was assigned to a headquarters component that was responsible for protecting U.S. Supreme Court justices when they traveled to the Second Circuit. Marshal Guccione was appointed the U.S. marshal for the Southern District of New York by President George W. Bush in 2002. He became the first deputy marshal from the SDNY Marshals Office to become the U.S. marshal in this district. Justice Antonin Scalia, another New

York native, administered the oath of office to Marshal Guccione, the 43rd person to serve in this position. Marshal Guccione believes that he has the best job in law enforcement. I believe we have one of the best people in law enforcement as our U.S. marshal. **TFL**

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