



UNLOCKED

## Who controls the National Guard?

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on Media, Politics and Public Policy

### TRANSCRIPT

**Nancy Gibbs:**

Hello, I'm Nancy Gibbs, the director of the Shorenstein Center at Harvard's Kennedy School of Government, and this is Unlocked. My guest today is former Massachusetts Governor Deval Patrick, who is going to help us understand the circumstances under which the National Guard can be deployed, the lines of authority, the chains of command, and what we need to understand about that.

**Governor Deval Patrick:**

I'm going to tell you how it used to be.

**Nancy Gibbs:**

Well, that's an important piece of this too. So how under normal conditions is authority over the National Guard divided between state government, that a governor is in control of, and the federal government?

**Governor Deval Patrick:**

So when I was in office for the eight years leading up to 2015, and I think it is still the rule that the National Guard is in a way a state agency. The governor appoints the adjutant general, who is the head of the National Guard. The members of the guard themselves are working people, they're part-timers.

**Nancy Gibbs:**

And all residents of the state?

**Governor Deval Patrick:**

And all residents of the state, exactly. They have a regular call to duty to keep up their obligation to the guard. Some are reservists, so theirs is much more regular, but there are periodic trainings and so forth. And I found that I called the National Guard on two kinds of occasions in my experience. One, if there was a weather emergency, for example, where we needed some additional resources. We have hurricanes and snowstorms and so forth, where there was a real risk to the safety of residents, and law enforcement and other resources at the disposal of the governor were not enough. And so we call in the National Guard to help sometimes, sandbagging or deploying water in advance of a situation where we felt we weren't going to be able to get supplies, water and food to a part of the community.

The other is where there's an imminent or ongoing threat to safety, real questions of violence, or the threat of violence, like the marathon bombing for example, where we deployed the National Guard to help with the recovery, and really to help tangentially with the investigation until we knew that those

two bombs and two guys were all that we were dealing with. And there was a period of time that people don't really remember where that was very much uncertain.

**Nancy Gibbs:**

So in both cases, those are very defined, a weather event, in preparation for it, or in the recovery period, or even after the marathon bombing, that there's a clear beginning and ending to the deployment.

**Governor Deval Patrick:**

Yes.

**Nancy Gibbs:**

Did you ever have a deployment that was somewhat more open-ended?

**Governor Deval Patrick:**

No, not really. I mean, there was a period of so-called federalizing the National Guard during the surge in Iraq and Afghanistan. If you remember, there was a period of time when I was in office when the National Guard was deployed overseas in active combat at a level, I think never before for a period of time that was then unprecedented in the United States' history. So I would go to various troop send-offs of National Guard members who were, again, these are working folks who were volunteers, who had then been federalized and sent overseas, in some cases for more than one tour of duty. And I visited them in combat areas in Afghanistan and Iraq just to show support.

**Nancy Gibbs:**

So under what kinds of circumstances can the National Guard be federalized? And other than the Iraq War, did you ever run into some controversy over who had authority over the Massachusetts Guard?

**Governor Deval Patrick:**

No, certainly nothing like the sorts of things we're seeing in the news today in Chicago and other places. In the case of the deployment of National Guard troops overseas during Iraq and Afghanistan, that was a national federalization of the National Guard, and there was some sort of rotation that the Pentagon sorted out with the troops, and I was informed. In the cases where I deployed the National Guard, first of all, I would declare an emergency, and there's a formality about that. And you have to be specific about that emergency and what the scope of their mission was. And so if it was, as I say, a weather event for example, the scope was specific about what it is we needed them to do, and when and over what period of time. Now, that could evolve, but in most cases it didn't. When I deployed them after the marathon bombing, that scope was more open-ended at the moment, as we were sorting out the variety of resources we had at the state, federal, and local level, and who was going to do what in response. But as I say, that ended up only being about three or four days in the end.

**Nancy Gibbs:**

So you were trained as an attorney, you served in the Justice Department in the Civil Rights Division. What are the legal or constitutional constraints over how either a governor or particularly a president can deploy the National Guard?

**Governor Deval Patrick:**

Well, the ultimate constraint is the Constitution, and embedded in that the separation of powers. The National Guard is effectively a state militia that is available at the direction of the governor for not all kinds, but certain kinds of uses, not just because you feel like having a military parade or something like that, because again, these are folks who, they have temporary assignments that are about military or public safety significance and need, not just the free-floating interest in enhancing local law enforcement. You have local law enforcement for that, I had state police for that. The president can, and I think historically has rarely federalized the National Guard on domestic soil. And usually, but not always, that's done at the request of the governor. It's not always done at the request of the governor. At least I don't think so, because I think when the National Guard was deployed in Alabama or Mississippi during the civil rights issues, when local law enforcement and local governors would not respect Supreme Court decisions, the National Guard was federalized in order to enforce a Supreme Court edict.

**Nancy Gibbs:**

And in that case, was it the National Guards of those states?

**Governor Deval Patrick:**

Oh, yes, yes.

**Nancy Gibbs:**

Because one thing we are seeing now are National Guard members from one state being deployed to a different state.

**Governor Deval Patrick:**

I've never heard such a thing. In fact, and I want to be careful because I don't know, but I believe this to be the case, after Katrina, the terrible hurricane that devastated New Orleans and the regions around the Gulf, there were multiple states' National Guards deployed, but their jurisdiction ended at the state line. So for example, when there were refugees being moved from New Orleans to Texas, I think there was support that the National Guard gave to those New Orleans refugees up to the Texas line. And then the Texas National Guard stepped in and helped with the transportation beyond that. Do you understand what I'm saying? So there was-

**Nancy Gibbs:**

Yeah, so I'm thinking in a major weather event, when a major hurricane for instance, hits in the Gulf, it would seem like that could easily overwhelm not only state resources and the state National Guard, but that you would need potentially reinforcement from neighboring states' National Guardsmen. So you're saying that traditionally to have the guard from one state physically entering another state, like what we are seeing now-

**Governor Deval Patrick:**

I think is unusual.

**Nancy Gibbs:**

... is unusual?

**Governor Deval Patrick:**

And certainly not without an understanding, not just at the level of the federal government, but among the governors of the states as well.

**Nancy Gibbs:**

During an emergency, whether it's civil unrest or a weather event, have you seen the chain of command adapt who has operational control?

**Governor Deval Patrick:**

So your question was about the chain of command during an emergency where the National Guard is deployed. When I did it, when I was in office, and we deployed our own National Guard here in Massachusetts, there was never any question about the chain of command. I will say that when the marathon bombing happened, and we had resources from every agency in the federal government, including some I'd never heard of, the black ops organizations and so forth, as well as every conceivable state resource and local resource from Boston and the region. Even there, the chain of command for the National Guard was clear. They reported to me, there was not a federalization of the National Guard, though we thought we might be dealing with a national, let alone global, incident. We were very clear about who was in charge of what, there was a lot of conversation about that just to make sure we were all clear. And I will say to the great credit of the leadership, the whole team, because we behaved as a team, those kinds of issues didn't come up. And it's understandable at a time of stress and chaos that those issues can get blurred, but in that one case it wasn't really a problem.

**Nancy Gibbs:**

So in that case, we were talking about law enforcement, a criminal investigation. Are National Guardsmen allowed to interact with local law enforcement? And can a guardsman arrest someone if they're the first person to identify a suspect?

**Governor Deval Patrick:**

Well, normally not. I mean, this has a lot to do with the scope of the assignment and why it's important to be clear about the assignment. In the case of the marathon bombing, again, I'm just speaking from my own experience, the National Guard was not deployed to help with the criminal investigation. We asked the National Guard to help with, for example, inspecting backpacks and packages of people who were coming into the T afterwards, into the subway system, because that was a question, "Do we open the subway system and therefore enable a potential escape route for the perpetrator?" Or, "How do we balance that against the need to move people out of the area and get them back home and to safe places?" And we thought, "Okay, let's open, but let's tell everybody if they're carrying a backpack or something, they are subject to search and to be asked questions." And that was the job of the National Guard working alongside the MBTA police, because we didn't have enough MBTA police to do that all on their own. So the point was to be clear with what the scope of the assignment was for National Guard, and that's what they did. That's an example of what they did during that particular crisis. Does that make sense?

**Nancy Gibbs:**

Mm-hmm. And it's similar to when the guard deployed in New York City after 9/11.

**Governor Deval Patrick:**

That's right. Exactly. Exactly, same sort of thing.

**Nancy Gibbs:**

So now we're seeing National Guard deployed around immigration enforcement. So now you have local law enforcement, and you have immigration enforcement officers, and you have National Guard all in the same territory. How do those now interact with each other?

**Governor Deval Patrick:**

Well, again, I think it's a formula for trouble, because I have read what some of the administration leadership have said about what the National Guard is supposed to be doing, which is protecting federal resources, federal buildings in these environments. But the idea of the National Guard helping to round up folks the ICE agents are doing is a confusing assignment, and not something, by the way, the National Guard is trained to do. Crowd control, basic security, that's one thing, but identifying who is or is not a lawful immigrant or lawful resident and is subject to immigration enforcement is not what they are trained to do. And it's not something that ICE trains people to do just like that. There's a program, I think it was six to eight months to train an ICE agent to do the job of an ICE agent. So the idea of calling up the National Guard and saying, "Do that," is illogical.

**Nancy Gibbs:**

Because there's been far more coverage of the role of the National Guard, the constraints under which it operates, have you come across any particular misconceptions in the way these deployments are being covered or things that journalists really need to know?

**Governor Deval Patrick:**

Well, I think that this notion, and you touched on it in one of your questions, Nancy, of the president of deploying a willing National Guard from another state and sending them in, I'm thinking of the Texas National Guard being sent to Illinois because the governor of Illinois wasn't willing to invite the federalization or to call up the National Guard, and saw no reason, that's a very dangerous and worrisome situation, because that is a way of inviting state conflict where the issue doesn't warrant state conflict. I mean, there is no discernible need for the National Guard at all except for a show of force and for intimidation purposes in Chicago. I mean, I spend a lot of time in Chicago these days. I hardly ever see the National Guard. It's a lot of performance that seems to be a part of what's happening right now.

And that use of the National Guard should deeply trouble all of us. The notion that you just call up the National Guard to make a statement, to demonstrate action where they are not needed, is not just disrespectful, it's deeply worrisome and troubling about how we think about the use of force for and around and to Americans. So I'm not sure that I always get that sense from some of what I read a lot more about, the governor of this place is willing to do what the governor of that place isn't willing to do, which is another partisan frame, instead of more about what it actually means in a constitutional system, that is a federal system, but has checks and balances built in.

**Nancy Gibbs:**

Is there anything in the Constitution that explicitly or implicitly prohibits a president from sending the guard from one state into another state?

**Governor Deval Patrick:**

Well, it's an interesting question. I would say nothing explicit, but the concept of federalism is so deeply embedded, and has been so enthusiastically embraced, at least as a narrative by conservatives in this country, that the idea of in effect pitting the resources of one state against another is the kind of thing I thought we finished with back in the 1860s.

**Nancy Gibbs:**

Well, and speaking of resources, who pays the bill for what is presumably an expensive deployment of hundreds of guardsmen? Is Texas paying for their guard to go to Illinois, is Illinois paying for it, does federal government pay for it if they're ordering it? Who foots the bill?

**Governor Deval Patrick:**

No, the National Guard is a state expense, yet another reason to be thoughtful about how that expense is deployed. I don't know whether in a situation like Katrina, for example, there were federal supplements to that budget. I don't recall that there were for the short deployments we had around the marathon bombing, and there certainly weren't when we called up the National Guard for purely state-based needs.

**Nancy Gibbs:**

So presumably, extended deployments like we're seeing are very expensive?

**Governor Deval Patrick:**

There's a lot of person power and equipment that goes with deploying the National Guard. So yeah, somebody's paying that bill. And I assume in the case of Chicago right now, it's not Illinois.

**Nancy Gibbs:**

Deval Patrick, thank you for helping us understand how and where and under what circumstances the National Guard can be used.

**Governor Deval Patrick:**

I hope that was helpful. Thank you.

**Nancy Gibbs:**

Very helpful. Thank you.

**Governor Deval Patrick:**

Good to be with you.