

The original documents are located in Box 3, folder “Civil Disturbances (3)” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

Copyright Notice

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Gerald R. Ford donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections. Works prepared by U.S. Government employees as part of their official duties are in the public domain. The copyrights to materials written by other individuals or organizations are presumed to remain with them. If you think any of the information displayed in the PDF is subject to a valid copyright claim, please contact the Gerald R. Ford Presidential Library.

April 29, 1974

TO: Stan Pottinger
FROM: Bill O'Connor
SUBJECT: Your May 1, Meeting with DAG on Proposed
Civil Disturbance Plan (New) dated 4/24/74

The plan looks okay; Phase IV ¶(b) could be improved cosmetically to avoid any inference of "managing" the news. There is too good a chance for a hostile reporter to doubly inflame reader/viewers by saying he was asked to suppress the inflammatory story, under the proposed ¶(b).

cc: Turner



5/1

April 24, 1974

4/25/74

Memorandum re Revised Civil Disturbance Procedures and Meeting

As you know, the United States Constitution places the primary responsibility for dealing with domestic disorder upon state and local governments. It is only under extreme conditions that the Federal Government becomes involved in what is principally a local law enforcement problem. As the chief law enforcement officer of the Federal Government, the Attorney General has responsibility for ensuring the prompt investigation and prosecution of those individuals who violate Federal laws during civil disturbances. In addition the Department coordinates the Federal response should the use of federal troops be necessary.

As Deputy Attorney General, I am the coordinator of all Department activities prior to and during civil disturbances. Jonathan Rose, Associate Deputy Attorney General, will have ongoing operational responsibility for this area. Under his direction, we have undertaken a thorough review of existing departmental procedures in the event of a disturbance. Part of that review has been to designate Department officials who will be needed to respond on a standby basis in the event of a civil disturbance. You have been identified to serve in the following manner should the need arise:

DAG's Committee on Civil Disturbances (to be convened by the Deputy):

- ▶ Laurence H. Silberman, Chairman
- ▶ Jonathan Rose
- ▶ Francis Niland, Analysis and Evaluation Unit
- ▶ Mary Lawton, Office of Legal Counsel
- ▶ Benjamin Holman, Community Relations Service
- ▶ Wayne Colburn, U.S. Marshals Service
- ▶ Robert Gebhardt, Federal Bureau of Investigation
- ▶ Phil Modlin, Executive Office for U.S. Attorneys
- ▶ Jack Hushen, Public Information Office

Civil Disturbance Teams:

- Team A -- Stanley Pottinger, Senior Civilian Representative of the Attorney General
- ▶ Jack Hushen, Public Information Office
 - ▶ Ben Holman, Community Relations Service
 - ▶ Military Liaison, Department of Defense
 - ▶ Representative of Analysis and Evaluation Unit



(cont'd next page)

cc. Bill O'Connor ✓

Team B -- Wally Johnson, Senior Civilian Representative of the
Attorney General
Horace Webb, Public Information Office
Donald Jones, Community Relations Service
Military Liaison, Department of Defense
Representative of Analysis and Evaluation Unit

Team C -- Vincent Rakestraw, Senior Civilian Representative of the
Attorney General
Mark Sheehan, Office of Public Information
Ed O'Connell, Community Relations Service
Military Liaison, Department of Defense
Representative of Analysis and Evaluation Unit

I would like to meet with the Committee on Civil Disturbances and the members of the Civil Disturbance Teams on Wednesday, May 1, at 2:30 p.m., in my office to review current procedures and answer any questions which you may have. Attached you will find a Civil Disturbance Plan which stands as the current set of guidelines by which we will be operating. It will be formally issued by the Attorney General after the May 1 meeting. If you have any comments on the Plan, please refer them to Jonathan Rose.

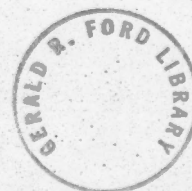
Thank you.



Laurence H. Silberman
Deputy Attorney General

Attachment

cc: Members of DAG's Committee on Civil Disturbances
Members of Civil Disturbance Teams



The President has delegated to the Attorney General responsibility for (1) coordinating all civilian activities in response to civil disturbances and (2) establishing law enforcement policies governing the operations of federal forces, if committed. The Deputy Attorney General is hereby responsible for the following functions:

- a. Establishing Department procedures for collecting and evaluating pertinent intelligence data. The Department has a responsibility to be informed of potential disturbances throughout the country and to monitor all disturbances whether or not they become serious enough to activate a civil disturbance team. The Federal Bureau of Investigation (FBI) retains primary responsibility in this area;
- b. Updating law enforcement policies on the use of force, arrest, detention, search and seizures, curfew, etc., and to ensure that the Army, in the event of commitment of federal forces, will operate within the confines of established policy;
- c. Developing and training three Department civil disturbance teams to be operational on short notice. Each of these teams will be composed of a Senior Civilian Representative of the Attorney General (team leader), a public information officer, a military liaison officer, a representative from the Community Relations Service (CRS), and a representative of the Analysis & Evaluation Unit. If these teams are deployed to the field, they will be met by the local U.S. Attorney, the FBI Special Agent in Charge (SAC), and the local U.S. Marshal.

When there is a likelihood that civil disturbance teams may be activated, the following plan will be executed:

Phase I. Activation of Civil Disturbance Teams

- a. The Deputy Attorney General's Office has responsibility for executing contingency plans and coordinating the activities of all participating agencies.
- b. The Deputy Attorney General will keep the Attorney General, public information officer and civil disturbance team leaders informed of any significant developments. When the situation becomes serious enough to warrant possible activation of civil disturbance teams, the Attorney General and the team members will be notified immediately.
- c. The Attorney General will order the team leader to activate the first civil disturbance team.



- d. Upon activation of a civil disturbance team by the Attorney General, the Deputy Attorney General will take the following steps:
- (1) Inform all team members to report to the Deputy Attorney General's office for a briefing and alert the Senior Civilian Representative of the second civil disturbance team to be on a standby basis;
 - (2) Make all appropriate transportation arrangements;
 - (3) Inform the U.S. Attorney, the FBI/SAC, and the U.S. Marshal to complete their assignments under Phase II;
 - (4) Ensure that the operational civil disturbance team has appropriate communications equipment;
 - (5) Canvass all intelligence sources and provide information and other background material to the Senior Civilian Representative.
- e. Inform Senators and Congressmen who represent the disturbance area.
- f. Advise the public information officer to notify the White House press office.

Phase II. Activation of support personnel in disturbance area.

- a. Upon receipt of notification that the Senior Civilian Representative will be arriving in the disturbance area, the local U.S. Attorney will take the following steps:
- (1) Notify the office of the cognizant Governor and Mayor as well as the Police Department and the Commander of the local National Guard;
 - (2) Alert all of his attorneys and staff to report to duty immediately;
 - (3) Notify FBI/SAC and arrange for the assignment of an agent with a radio equipped vehicle to meet the Senior Civilian Representative at the nearest military air-base or commercial airport;



- (4) Notify the U.S. Marshal and arrange for the transportation of other members of the civil disturbance team from the airbase or airport;
 - (5) Execute, in cooperation with the FBI/SAC, plans for the collection and dissemination of information and intelligence re the civil disturbance to the U.S. Attorney's office or other task force headquarters;
 - (6) Activate all necessary telephone lines.
- b. The U.S. Marshal's office will provide transportation for the members of the civil disturbance team other than the Senior Civilian Representative. The U.S. Marshal will coordinate housing accommodations and execute other duties as assigned by the Senior Civilian Representative.
 - c. The FBI/SAC will execute plans for the collection of intelligence and situation information for dissemination to the civil disturbance team headquarters and provide transportation for the Senior Civilian Representative in a radio-equipped vehicle.

Phase III. Operations.

Upon arrival, the Senior Civilian Representative will be in charge of all Department of Justice operations. The other civil disturbance team members will establish the following contacts:

- a. The public information officer will contact the local newspaper and other media for the purpose of securing information as quickly as possible;
- b. The FBI/SAC will make contact with the local police;
- c. The CRS will make its community contacts and set up liaison with the area Federal Regional Council;
- d. The U.S. Attorney will maintain liaison with state and local prosecutors and will contact the local bar, judges, detention centers, bail bondsmen, and take other necessary steps to activate the process of judicial administration; he will also carry out other duties as assigned by the Senior Civilian Representative.

The Senior Civilian Representative is the personal representative of the President and the Attorney General; therefore, he should be freed of routine matters to the maximum extent possible. It is imperative that all team members be in a position to provide the Senior Civilian Representative with accurate and timely infor-

((cont'd next page))

mation. The Senior Civilian Representative should also be able to take a range of steps to bring about a restoration of order, i.e., negotiation, persuasion and other methods in lieu of physical force. Hence, he should be in a position to meet with all local community leaders, and the effectiveness of these meetings must be evaluated by the entire civil disturbance team operating at the scene. He must also advise the Attorney General and the President when the situation is no longer within the control of local authorities or the National Guard, and when Federalization, pursuant to the previous directives of the President, is considered necessary.

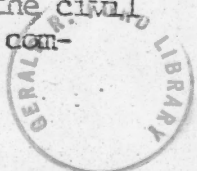
Phase IV. The entry of military forces--to be decided by the President alone.

If at all possible, the headquarters established by the U.S. Attorney will continue to be the center of the Department of Justice operations. The Senior Civilian Representative will accompany the Commanding General and will remain at military headquarters. If it is advisable, the Senior Civilian Representative will take his public information officer, the FBI agent assigned to him, and at least one staff assistant to military headquarters. The military will provide logistical support as necessary.

Public Information Function. No information will be released from the scene of the civil disturbance, except by the public information officer who will seek prior approval from the Senior Civilian Representative. In the absence of the Senior Civilian Representative, staff members at the headquarters established by the U.S. Attorney should coordinate the following actions with the public information officer:

- a. Informing the press when a rumor, which may be inflammatory, is false;
- b. Requesting the press, on a voluntary basis, to delay publication of a story which is true but which may be of an inflammatory nature;
- c. Issuing statements on behalf of the Department of Justice when specifically authorized to do so by the Attorney General.

The public information officer on the scene of the civil disturbance will make contact with media personnel to inform them of the civil disturbance team's presence and to set up direct lines of com-



munication, if and when the need for formal communications becomes necessary.

If the military is activated, the Department of Defense (DOD) will provide the necessary manpower and facilities to accommodate the press at the military command post. DOD will assign several public information officers from the Office of the Secretary, and other help will be made available from the Department of the Army and the individual regiments which are assigned to the civil disturbance area. Also, the National Guard public information function will be coordinated and controlled by the Senior DOD public information officer. If the White House decides that the Department of Justice should control overall public information policy, DOD will provide the manpower, but, the Department of Justice will have the absolute authority to control all public statements made by the military. It must be emphasized that the Senior Civilian Representative, as the agent of the Attorney General, has the final decision-making responsibility as to what information DOD may release. It is advisable that he delegate most of the supervisory power to his own public information officer but reserve to himself and to the Attorney General any major policy decisions.

Phase V. Withdrawal of disturbance teams.

The decision to withdraw or phase out the civil disturbance team will be made by the Attorney General.



WITHDRAWAL SHEET (PRESIDENTIAL LIBRARIES)

FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
Memo	Memo to J. Stanley Pottinger from James P. Turner - Deputy General's Civil Disorder Meeting (10 pages)	5/3/1974	A

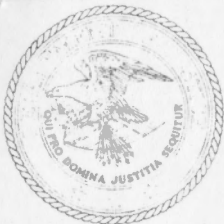
File Location:

Philip Buchen Files, Box 3, Civil Disturbances (3) / TMH / 11/12/2015

RESTRICTION CODES

- (A) Closed by applicable Executive order governing access to national security information.
- (B) Closed by statute or by the agency which originated the document.
- (C) Closed in accordance with restrictions contained in the donor's deed of gift.

*File copies to Bill O'Connor
Jim Turner
Frank Debaugh
Tom Hunt*



Office of the Attorney General
Washington, D. C. 20530

May 24, 1974

MEMORANDUM FOR ALL ASSISTANT ATTORNEYS GENERAL,
HEADS OF OFFICES AND BUREAUS OF THE DEPARTMENT OF
JUSTICE, AND ALL UNITED STATES ATTORNEYS

SUBJECT: Revised Civil Disturbance Procedures

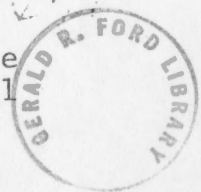
As you know, the United States Constitution places the primary responsibility for dealing with domestic disorder upon state and local governments. It is only under extreme conditions that the Federal Government becomes involved in what is principally a local law enforcement problem. However, as the chief law enforcement officer of the Federal Government, the Attorney General has responsibility for ensuring the prompt investigation and prosecution of those individuals who violate Federal laws during civil disturbances.

The attached Civil Disturbance Plan will assist me in executing the specific duties assigned to the Department by the President, i.e. coordinating all civilian activity under Article IV, Section 4, as manifested in Chapter 15 of Title 10, U.S.C., particularly 10 U.S.C. 331.

I have appointed the Deputy Attorney General to be the coordinator of all Department activities prior to and during civil disturbances. Jonathan Rose, Associate Deputy Attorney General, has ongoing staff responsibility for civil disturbance. A thorough review of existing Departmental procedures in the event of a disturbance has been made. As a result, we are issuing the revised Civil Disturbance Plan which is attached. The Plan designates key DOJ personnel and outlines responsibilities in civil disturbance situations. It is consistent with the Inter-departmental Action Plan issued April 1, 1969.

In addition, liaison with the state governors, the Department of Defense and other relevant agencies and officials has been re-established to ensure mutual understanding of respective roles and procedures.

William B. Saxbe
Attorney General



Attachments

2/18

CIVIL DISTURBANCE PLAN

May 24, 1974

The President has delegated to the Attorney General responsibility for (1) coordinating all civilian activities in response to civil disturbances, (2) coordinating these activities with those of state and local agencies similarly engaged, and (3) establishing law enforcement policies governing the operations of federal forces, if committed. The Deputy Attorney General is hereby responsible for the following functions:

- a. Establishing Department procedures for collecting and evaluating pertinent intelligence data. The Department has a responsibility to be informed of potential disturbances throughout the country and to monitor all disturbances whether or not they become serious enough to activate a civil disturbance team. The Federal Bureau of Investigation (FBI) retains primary responsibility in the area of intelligence gathering;
- b. Updating law enforcement policies on the use of force, arrest, detention, search and seizures, curfew, etc., and to ensure that the federal troops, in the event of commitment of federal forces, will operate within the confines of established policy;
- c. Developing and training three Department civil disturbance teams to be operational on short notice. Each of these teams will be composed of a Senior Civilian Representative of the Attorney General (team leader), a public information officer, a military liaison officer, a representative from the Community Relations Service (CRS), and a representative of the Analysis & Evaluation Unit. If these teams are deployed to the field, they will be met by the local U.S. Attorney, the FBI liaison representative, and a representative of the U.S. Marshals Service.

When there is a likelihood that civil disturbance teams may be activated, the following plan will be executed:



Phase I. Activation of Civil Disturbance Teams

- a. The Deputy Attorney General's Office has responsibility for contingency plans and coordinating the activities of all participating agencies.
- b. The Deputy Attorney General will keep the Attorney General, public information officer and civil disturbance team leaders informed of any significant developments. When the situation becomes serious enough to warrant possible activation of civil disturbance teams, the Attorney General and the team members will be notified immediately.
- c. The Attorney General will order the team leader to activate the first civil disturbance team.
- d. Upon activation of a civil disturbance team by the Attorney General, the Deputy Attorney General will take the following steps:
 - (1) Inform all team members to report to the Deputy Attorney General's office for a briefing and alert the Senior Civilian Representative of the second civil disturbance team to be on a standby basis;
 - (2) Make all appropriate transportation arrangements;
 - (3) Inform the U.S. Attorney, the FBI headquarters, and the U.S. Marshal to complete their assignments under Phase II;
 - (4) Ensure that the operational civil disturbance team has appropriate communications equipment;
 - (5) Canvass all intelligence sources and provide information and other background material to the Senior Civilian Representative.
- e. Inform Senators and Congressmen who represent the disturbance area.
- f. Advise the public information officer to notify the White House press office.



Phase II. Activation of support personnel in
Disturbance Area.

- a. Upon receipt of notification that the Senior Civilian Representative will be arriving in the disturbance area, the local U.S. Attorney will take the following steps:
- (1) Notify the office of the cognizant Governor and Mayor as well as the Police Department and the Commander of the local National Guard;
 - (2) Alert all of his attorneys and staff to report to duty immediately;
 - (3) Notify FBI/SAC and arrange for the assignment of an FBI liaison agent with a radio equipped vehicle to meet the Senior Civilian Representative at the nearest military air-base or commercial airport;
 - (4) Notify the U.S. Marshal and arrange for the transportation of other members of the civil disturbance team from the air-base or airport;
 - (5) Execute, in cooperation with the FBI liaison representative, plans for the collection and dissemination of information and intelligence re the civil disturbance to the U.S. Attorney's office or other task force headquarters;
 - (6) Activate all necessary telephone lines.
- b. The U.S. Marshal's office will provide transportation for the members of the civil disturbance team other than the Senior Civilian Representative. The U.S. Marshal will coordinate housing accommodations and execute other duties as assigned by the Senior Civilian Representative.
- c. The FBI liaison representative will execute plans for the collection of intelligence and situation information for dissemination to the civil disturbance team headquarters and provide transportation for the Senior Civilian Representative in a radio-equipped vehicle.

Phase III. Operations.

Upon arrival, the Senior Civilian Representative will be in charge of all Department of Justice operations. The other civil disturbance team members will establish the following contacts:

- a. The public information officer will contact the local newspaper and other media as appropriate;
- b. The FBI liaison representative will make contact with the local police;
- c. The CRS will make its community contacts and set up liaison with the area Federal Regional Council;
- d. The U.S. Attorney will maintain liaison with state and local prosecutors and will contact the local bar, judges, detention centers, bail bondsmen, and take other necessary steps to activate the process of judicial administration; he will also carry out other duties as assigned by the Senior Civilian Representative.

The Senior Civilian Representative is the personal representative of the President and the Attorney General; therefore, he should be freed of routine matters to the maximum extent possible. It is imperative that all team members be in a position to provide the Senior Civilian Representative with accurate and timely information. The Senior Civilian Representative should also be able to take a range of steps to bring about a restoration of order, i.e., negotiation, persuasion and other methods in lieu of physical force. Hence, he should be in a position to meet with all local community leaders, and the effectiveness of these meetings must be evaluated by the entire civil disturbance team operating at the scene. He must also advise the Attorney General and the President when the situation is no longer within the control of local authorities and the National Guard, and when Federalization, pursuant to the previous directives of the President, is considered necessary.



Phase IV. The entry of military forces--to be decided by the President alone.

If at all possible, the headquarters established by the U.S. Attorney will continue to be the center of the Department of Justice operations. The Senior Civilian Representative will accompany the Task Force Commander and will remain at military headquarters. The Senior Civilian Representative will take his public information officer, the FBI liaison representative assigned to him, and at least one staff assistant to military headquarters. The military will provide logistical support as necessary.

Public Information Function. No information will be released from the scene of the civil disturbance, except by the public information officer who will seek prior approval from the Senior Civilian Representative. In the absence of the Senior Civilian Representative, staff members at the headquarters established by the U.S. Attorney should coordinate the following actions with the public information officer:

- a. Informing the press when a rumor, which may be inflammatory, is false;
- b. Issuing statements on behalf of the Department of Justice when specifically authorized to do so by the Attorney General.

The public information officer on the scene of the civil disturbance will make contact with media personnel to inform them of the civil disturbance team's presence and to set up direct lines of communication, if and when the need for formal communications becomes necessary.


When Federal forces are deployed to provide assistance in a civil disturbance situation, the Department of Defense (i.e., through the Assistant Secretary of Defense (Public Affairs), ASD (PA)), will dispatch a public affairs team to the scene. The ASD (PA) will designate a senior public affairs official as the on-site DOD Public Affairs Chief (PAC) who will establish a military information center at the Task Force Commander's headquarters to serve military information needs at the scene. The PAC will furnish advice and guidance to the Senior Civilian Representative (SCR) and the military

task force commander regarding military public affairs matters.

DOJ will have overall responsibility for public information activities and will provide the liaison between federal information officers and the press. With respect to all military matters, he should consult with the PAC and the Military Task Force Commander in carrying out this responsibility. The PAC, with the concurrence of ASD(PA), will be responsible for providing information regarding military forces and activities to the SCR.

Phase V. Withdrawal of disturbance teams.

The decision to withdraw or phase out the civil disturbance team will be made by the Attorney General.


William B. Saxbe
Attorney General



CIVIL DISTURBANCE -- KEY DOJ PERSONNEL

Deputy Attorney General's Committee on Civil Disturbances
(to be convened by the Deputy Attorney General)

Laurence H. Silberman, Chairman, Deputy Attorney General

Jonathan Rose, Associate Deputy Attorney General

William M. Hoiles, Administrative Assistant to the
Attorney General

Francis Niland, Analysis and Evaluation Unit,
Office of the Deputy Attorney General

Mary Lawton, Office of Legal Counsel

Benjamin Holman, Community Relations Service

Wayne Colburn, U.S. Marshals Service

W. R. Wannall, Federal Bureau of Investigation

Phil Modlin, Executive Office of U.S. Attorneys

Jack Hushen, Public Information Office

Civil Disturbance Teams

Team A -- Stanley Pottinger, Senior Civilian Representative
of the Attorney General

Hand/Wilson

→ Jack Hushen, Public Information Office

Gilbert Pompa, Community Relations Service

Military Liaison, Department of Defense

Niland

Representative of Analysis and Evaluation Unit

Team B -- Wally Johnson, Senior Civilian Representative
of the Attorney General

Horace Webb, Public Information Office

Martin Walsh, Community Relations Service

Military Liaison, Department of Defense

Representative of Analysis and Evaluation Unit

Team C -- Vincent Rakestraw, Senior Civilian Representative
of the Attorney General

Mark Sheehan, Office of Public Information

Ed O'Connell, Community Relations Service

Military Liaison, Department of Defense

Representative of Analysis and Evaluation Unit

May 24, 1974



JUISD
002 17:43:00 06/07/74
RR AA ATERM .

TO: ALL UNITED STATES ATTORNEYS

INFO: ALL ASSISTANT ATTORNEYS GENERAL AND
DIRECTORS EXECUTIVE OFFICE FOR U.S. ATTORNEYS
AND U.S. MARSHALS SERVICE

FM: LAURENCE H. SILBERMAN
DEPUTY ATTORNEY GENERAL

SUBJ: REPORTS OF TERRORISM, POTENTIAL FOR CIVIL DISTURBANCE/
DISRUPTION, AND KEY PERSONNEL ROSTER

THE DEPARTMENT OF JUSTICE INFORMATION CENTER (DJIC) OPERATES, ON A TWENTY FOUR HOUR BASIS, AS THE FOCAL POINT FOR THE RECEIPT, RECORDATION, EVALUATION, COLLATION AND DISSEMINATION OF INFORMATION INVOLVING OCCURRENCES OF NATIONAL SIGNIFICANCE RELATED TO ACTUAL OR POTENTIAL CIVIL DISORDER.

ADDRESSEES SHOULD PROMPTLY REPORT SIGNIFICANT INFORMATION TO THE DJIC THROUGH JUST SYSTEM TELETYPE TERMINAL JUISD OR BY TELEPHONE: (202) 739-4535. NEWS CLIPPINGS AND OTHER SUPPLEMENTAL MATERIAL SHOULD BE FORWARDED BY MAIL.

THE PRIMARY PURPOSE OF THESE REPORTS IS TO SUPPLEMENT INVESTIGATIVE REPORTS WITH THE ADDRESSEES INTERPRETIVE ANALYSIS. A TRENCHANT ASSESSMENT BY THE UNITED STATES ATTORNEY CAN ASSIST IN ENSURING A CAREFULLY MEASURED FEDERAL RESPONSE TO CIVIL DISORDER STIMULI.

ADDITIONALLY, ADDRESSEES ARE REQUESTED TO PROVIDE A "KEY PERSONNEL ROSTER" FOR EVERY LOCALITY IN HIS DISTRICT WHICH THE ADDRESSEE CONSIDERS TO HAVE A SIGNIFICANT POTENTIAL FOR DISORDER. THE ROSTER WILL LIST NAMES, TITLES, BUSINESS ADDRESSES, AND TELEPHONE NUMBERS (OFFICE AND RESIDENCE) OF ALL FEDERAL (OTHER THAN DEPARTMENT OF JUSTICE), STATE, COUNTY, AND LOCAL OFFICIALS, AS WELL AS "UNOFFICIAL" COMMUNITY LEADERS WHO COULD BE HELPFUL IN CONTROLLING A CIVIL DISORDER. THESE ROSTERS SHOULD BE FORWARDED BY MAIL SO AS TO REACH THE DJIC BY JUNE 24, 1974.

REPORTS AND SUPPLEMENTAL MATERIAL FORWARDED BY MAIL SHOULD BE ADDRESSED:

"CHIEF, CIVIL DISTURBANCE UNIT
DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

AND MARKED:

"DO NOT OPEN IN MAIL ROOM"

NNNN



6/11

14
MGMWSHT HSB
2-048713E288 10/15/74
ICS IPMMTZZ CSP
6177273600 MGM TDMT BOSTON MA 114 10-15 0648P EDT
ZIP 20500

 **Mailgram**
western union



PRESIDENT GERALD FORD
WHITE HOUSE
WASHINGTON DC 20500

JF
OCT 16 RECD

DEAR MR PRESIDENT:
CONFIRMING MY EARLIER ORAL REQUEST, IN VIEW OF THE DOMESTIC VIOLENCE,
OR UNLAWFUL COMBINATION, ATTENDANT UPON THE DESEGREGATION OF THE
PUBLIC SCHOOLS OF THE CITY OF BOSTON, IT IS MY DUTY HEREBY TO REQUEST
THAT, PURSUANT TO 10 USC SECTION 333, CAUSE(2), YOU FORTHWITH THE
DEPLOY WITHIN THE COMMON WEALTH SUCH ARMED FORCES OF THE UNITED
STATES AS MAYBE NECESSARY TO PROTECT THE PUBLIC SAFETY. AS YOU
KNOW, THE STATE POLICE HAVE BEEN DEPLOYED AND THE NATIONAL GUARD
HAS BEEN MOBILIZED. IT IS MY JUDGEMENT THAT THE PRESERVATION OF
THE PUBLIC SAFETY REQUIRES FEDERAL FORCES IN ADDITION TO THOSE
THE STATE AND LOCAL FORCES ALREADY COMMITTED. SINCERLEY,
FRANCIS W SARGENT GOVONOR OF MASS.

18:49 EDT

MGMWSHT HSB



JAN 6 1975

cc: Files

Miss Lawton

MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL Mrs. Gauf

Re: Law relating to civil disturbances

Some weeks ago you requested that I prepare a memorandum summarizing the law with respect to use of federal troops to quell civil disturbances. An outline of the law as it relates to the States, the territories and the District of Columbia follows. Except where necessary to illustrate a point of law, we have not cited historical examples; those prior to 1941 may be found in abundance in Rich, The Presidents and Civil Disorders (Brookings).

I. Disorders Within a State

A. Domestic Violence. Article IV, Section 4 of the Constitution imposes on the federal government the obligation to protect a State "on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence." This is the basis for intervention by federal troops or marshals in civil disorders occurring within the States.

Implementing the constitutional provision, chapter 15 of Title 10, U.S. Code, authorizes the President to send troops into a State in cases of domestic violence. Section 331 provides for troops on request of the State; sections 332 and 333 provide for troops, without State request, in order to execute federal law, prevent obstruction of the execution of federal law, carry out federal court orders or protect civil rights. Customarily, the proclamations which precede the sending of troops (as required by 10 U.S.C. 334) rely on the authority of all three sections. Since any large scale civil disorder is bound to interfere with the execution of federal law in the area and the civil rights of individuals, e.g. inability to deliver the mail, restriction of individuals right to travel, there is a factual basis for invoking sections 332 and 333 even when a State has requested troops pursuant to section 331.



Section 331, in referring to disorders, uses the term "insurrection." We have always interpreted the term as being synonymous with the phrase "domestic violence" used in the Constitution. Accordingly, it is not necessary that there be political overtones or actual attempts to overthrow government in order to invoke the section; a riot can form the basis for sending troops pursuant to section 331.

The sending of troops is not automatically triggered by the request of a State pursuant to section 331; the President must use his own judgment as to whether the situation warrants the use of the armed forces. 8 Op. A.G. 8 (1856). Three prerequisites have invariably been insisted upon before troops have been sent: 1) the actual existence of domestic violence, 2) a statement that the violence is beyond the control of the State authorities, using all available resources including the State police and National Guard, and 3) the proper request from the Legislature or the Governor.

No request for the assistance of troops has been made by a State legislature. This may be attributable to an historical accident whereby no violence of the requisite degree has occurred while legislatures have been in session; it may also be, at least in part, attributable to the greater reluctance of the so-called "popular branch of government" to invoke such emergency powers. In the recent truckers' strike, however, there was some discussion of requesting federal troops at a time when the legislatures were in session. The question was raised as to the proper form of a legislative request. This Office expressed the view that any such request should be in the form of a legislative act, i.e., an act or joint resolution requiring the Governor's signature or an override of his veto. We reasoned by analogy to Smiley v. Holm, 285 U.S. 355 (1932), that where a constitutional or statutory provision refers to an action to be taken by a legislature without specifying the form of the legislative act, a traditional legislative act, i.e., passage by both Houses and signature of the Executive, is contemplated. Smiley so interpreted a provision requiring legislative reapportionment, rejecting the argument that this was a purely legislative matter that did not require submission to the Governor.



Our conclusion that the legislative request for troops must be submitted to the Governor has the advantage of requiring either the concurrence of the executive and legislative branches as to the need for troops or, at least, an overwhelming vote of the legislative branch. It protects the federal government, to some degree, from being caught in a squabble between the Governor and the legislature as to whether federal troops are necessary.

The provisions of 10 U.S.C. 331 refer to the use of regular troops and of the "militia of other states." The question has been raised whether the militia of the requesting State may also be federalized. As a practical matter, the National Guard of the requesting State has generally been federalized in order to provide a unified command in the civil disturbance situation. Argument over the technical limitations of the language of section 331 has been avoided by the invocation of all of chapter 15 of title 10, as mentioned above. Since section 332 refers to the "militia of any State" and section 333 to "the militia," the incorporation of these provisions dealing with the obstruction of federal law and the protection of civil rights, provides authority to federalize the Guard of the requesting State independent of section 331.

B. Power of the military when called into service.
There are no general statutes conferring powers of arrest or other specific authority upon troops called into federal service in a civil disorder situation. The law with respect to their implied powers is scant. The general rule seems to be that actions reasonable under the circumstances will be found to be authorized so long as the military does not usurp the civilian power to arrest and prosecute. In any case, DOD Directives now require all individuals taken into custody to be turned over to the civil authorities as soon as practicable. To the best of our knowledge, the authority of the military to take into temporary custody for this purpose has not been challenged.

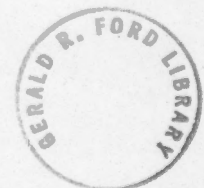
In the Colorado mining disputes at the turn of the century, the Supreme Court found that a declaration of "qualified martial law" by the Governor authorized troops



who had been sent in to detain individuals for substantial periods of time without actual criminal charges having been brought. Moyer v. Peabody, 212 U.S. 78 (1909). The case has not been reversed, and has been cited fairly recently, but we have some doubt that prolonged detention by the military at a time when the civilian courts are open and able to function would survive constitutional attack today.

C. Interdepartmental Action Plan. Since April 1969 the procedures to be followed when troops are called into a civil disorder have been governed by an Interdepartmental Action Plan, executed by the Departments of Defense and Justice and approved by the President. Under the plan, it is the Attorney General who has the responsibility for collecting intelligence concerning actual or potential disturbances and for recommending to the President whether troops should be called. The Secretary of Defense has limited authority to pre-position troops in a potential disturbance area but the troops cannot be deployed without a presidential proclamation and Executive Order. When troops are deployed, the Department of Defense assumes command but the Attorney General determines questions of law relating to arrest powers and the like, and maintains liaison with civilian law enforcement authorities. Appended to the plan are model proclamations and orders. It should be noted that the model Executive Order refers to authority to call Reserves as well as National Guard to active duty. In any future use of the order the references to Reserves should be deleted since the statutory authority to call them in these circumstances has now expired.

D. Use of troops in strike situations. On several occasions when crippling strikes have affected areas of the country, suggestions have been made that troops be called on either to replace the strikers or to preserve order. It is our view that striking workers in private industry cannot be replaced by troops, absent a specific statute authorizing it. Cf. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952). Troops also cannot be used to enforce the law in situations of violence arising out of such strikes unless chapter 15 of Title 10 is invoked.



Where what is involved is the protection of Federal property (e.g., cordoning off a Federal building) or assuming the performance of Federal functions (e.g., sorting or delivering the mails), In re Debs, 158 U.S. 564 (1895), suggests the existence of inherent presidential authority to use troops, not dependent on statute. When, however, the intervention goes beyond this protective purpose and is directed to the enforcement of Federal law or the protection of civil rights of individuals (valid statutory grounds for the use of troops under 10 U.S.C. 332, 333) the statutory procedure of proclamation and order must be observed. Thus, in the Pullman strike in which troops were used not only to protect the mails but also to take action to enforce a federal injunction, a proclamation was issued by the President. In re Debs, supra.

II. Disorders in the District of Columbia.

When a disorder occurs in the District of Columbia, there are unique provisions of law which come into play. This Office has consistently taken the position that the District is a State within the meaning of chapter 15 of Title 10, even though not so defined, and that the Mayor may request troops in the same manner as a Governor under 10 U.S.C. 331. This was the case in the April 1968 riots. At the same time, all D.C. law is federal law and the President can send troops on his own initiative under 10 U.S.C. 332, 333.

The President is also Commander-in-Chief of the D. C. National Guard, D. C. Code 39-603, and may call the Guard into service in the District when a disturbance occurs or is "threatened." When the Guard serves under such a call, it is acting in its militia capacity, much as though a Governor had called it into service. It does not receive the pay and benefits it would if federalized. Under D. C. Code 39-602, the Commanding General of the D.C. Guard may also order it into service for such parades, escort or other duties, as he may deem proper. The Guard has been ordered into service under this provision in cases of large demonstrations. Pursuant to D.C. Code 4-133 the Mayor may also appoint Guardsmen as special police of the District in case of riot, in which capacity they have all the arrest and search powers of



regular police. We have taken the position, however, that the special police statute cannot be used when the D. C. Guard is federalized; it is only available when the Guard occupies its militia status.

There are, of course, parks and other lands in the District which are subject to federal control. In areas which they police, the Park Police possess the powers conferred by the D. C. Traffic Act. D. C. Code 40-615. These include the power to close certain areas, in an emergency, to both vehicular and pedestrian traffic. D.C. Code 40-601 to 617. Actions under this statute were contemplated during the May Day demonstrations.

As a matter of practice, permits for major demonstrations in the District of Columbia have been coordinated among federal authorities -- Park Police, Federal Protective Service, Executive Protection Service and Capitol Police. There is no statute requiring such coordination or centering responsibility in any one agency but arrangements have been worked out under the exigencies of each potentially troublesome situation as it arises. The lead with respect to these efforts has been variously exercised by the Metropolitan Police, GSA, Interior and Justice.

The existence of federal property and functions in the District also gives rise to certain federal powers which are discussed in Parts V and VI, below.

III. Disorders Within the Territories.

Like the District of Columbia, there are certain territories having special provisions of law relating to federal responsibility in civil disturbances. Guam and the Virgin Islands are by definition included within the provisions of chapter 15 of Title 10. 10 U.S.C. 335, 336. In addition, there is specific authority for the Governors of Guam and the Virgin Islands to call upon military in their respective areas to assist in times of civil disturbance. 48 U.S.C. 1422, 1591. The President may call upon the land and naval forces to protect the rights of discoverers of guano islands, 48 U.S.C. 1418, although we have no knowledge that this authority has ever been used.



Aside from the use of troops, there is, of course, a federal responsibility to enforce the federal laws in the territories. This authority may be broader in the territories than within the States. For example, under the Virgin Islands Code the U. S. Marshal may deputize Virgin Islands police personnel to assist him in enforcing the law; and he enforces not only federal law but also all writs and process of the District Court which has local as well as federal felony jurisdiction.

IV. Enforcement of Federal Laws.

A. The Posse Comitatus Act. The use of the Army or Air Force to "execute" the laws is forbidden except where authorized by the Constitution or Act of Congress. 18 U.S.C. 1385. This statute, known as the Posse Comitatus Act, dates from 1878. It was a rider on the Army Appropriation Act of that year and was a reaction to the use of troops to watch the polls and prevent election violations during the Hayes-Tilden election and in a series of labor disturbances in 1877. The legislative history of the Act indicates that it was aimed primarily at restricting the deployment of troops upon the direction of U. S. Marshals or other lesser officials, not at the call of troops by the President in riot situations. It is also clearly aimed at the use of troops to perform law enforcement functions similar to those performed by the U. S. Marshals or the FBI. Even though the Act refers to "execution" of the laws, we have consistently interpreted it as applying only to law enforcement, not to the carrying out of an affirmative duty of the government such as delivering the mail.

The applicability of the Posse Comitatus Act to the Army and Air Force only is probably an accident of history. Since the vehicle at hand for this amendment was the Army Appropriation Act, it originally applied only to the Army. The Air Force, as a subsequent split-off from the Army, has been included by the codifier of Title 18. It should be emphasized that the Judge Advocates General of the Navy and Marine Corps have taken the position that their respective services are bound by the spirit of the Act, if not its letter. To our knowledge, the Navy and Marine Corps have never been used to avoid the strictures of the Posse Comitatus Act.



The Act imposes a felony penalty for its violation but we know of no prosecutions. There have, however, been adverse consequences for noncompliance. In Wrynn v. United States, 200 F. Supp. 457 (E.D.N.Y. 1961), a tort suit was brought against the United States for injuries resulting when the blade of an Air Force helicopter being used to assist a local sheriff in tracking an escapee broke off and hit plaintiff's car. The suit was dismissed on the ground that the local commander and the pilot were in violation of the Posse Comitatus Act and therefore beyond the scope of their employment. The individuals involved would thus be personally liable.

By its own terms the Posse Comitatus Act does not apply when the Constitution or federal statute authorizes the use of troops to enforce the law.

B. Laws Conferring Authority to Use Troops for Enforcement. The use of troops pursuant to inherent constitutional authority is discussed in parts V and VI, below. All that need be said here is that the reference to the Constitution, added to the Posse Comitatus Act as a floor amendment, was a conscious acknowledgement that there is inherent authority in the President to use troops in certain circumstances.

The primary authority to use troops to enforce federal law is 10 U.S.C. 332, 333. These provisions overlap to some extent but both are aimed at violence or insurrection obstructing or interfering with the enforcement of federal laws within a State. 10 U.S.C. 332 is aimed generally at resistance to the carrying out of federal laws, such as resistance to the collection of taxes in the Whiskey Rebellion in Washington's Administration. 10 U.S.C. 333 is concerned with the forcible interference with the civil rights of individuals and with violence aimed at preventing the enforcement of court orders such as the resistance to the desegregation order in Little Rock in 1957. Normally the two sections are invoked together. A proclamation and order are required under section 332 and 333 but no request from the State is necessary in order to send troops to the trouble spot. Indeed, in most instances in which sections 332 and 333 provide the sole basis for sending troops, the Governor has objected to the federal action.



It should be emphasized that the use of troops in these federal enforcement situations has been a last resort. If the U. S. Marshals or other enforcement personnel have been adequate to do the job, troops have not been used. When James Meredith entered the University of Mississippi, for example, an attempt was made to secure compliance with the court order by use of Marshals; only when this proved inadequate were troops called in. On the other hand, in some situations -- where the inadequacy of nonmilitary forces is apparent from the outset -- it may not be advisable to go through the formality of attempting nonmilitary enforcement first. In Little Rock, for example, where the National Guard of the State was being used to prevent enforcement of the court order, troops were used in the first instance, without preliminary resort to Marshals. In such a situation, the use of troops has the advantage of providing a basis for federalizing the Guard and thus insulating it from the Governor's control.

While the call of troops is generally vested in the President, there is a little known provision, 42 U.S.C. 1989, dating from 1866, which authorizes Commissioners (now U. S. Magistrates) to call upon the land and naval forces to execute their orders respecting civil rights violations. To the best of our knowledge, this has not been used, at least in the Twentieth Century. As presently written, S. 1 would repeal this provision.

Other provisions of law may permit the use of military personnel in situations which involve law enforcement. For example, 49 U.S.C. 1657 provides for the detailing of military personnel to the Department of Transportation to assist it in carrying out its duties. By memorandum dated September 30, 1970 to the Department of Defense, this Office took the position that personnel so detailed could be deputized as Marshals and utilized in the Sky-Marshal program. We took the view that since the detailing statute made the military personnel DOT personnel for all intents and purposes, they would not be military within the meaning of the Posse Comitatus Act. There may be other such statutes; we have not canvassed the code.



V. Execution of the Laws.

As noted above, the Posse Comitatus Act prohibits the use of troops to "execute" the laws but the legislative history makes clear that the word is used in the enforcement sense. In re Neagle, 135 U.S. 1 (1890), suggests that the President has inherent constitutional authority to use any forces at his command to carry out the laws or to protect others carrying them out.

We have taken the position that there is inherent constitutional authority in the President to use troops to protect a foreign embassy from demonstrators in order to carry out the treaty obligations of the United States. See United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936). At the same time, it is doubtful that troops could be used on regular guard duty at embassies in this country or could be used to protect against crimes, such as burglary. We have expressed the view that invocation of chapter 15, Title 10 procedures would be necessary if troops were to be used to "liberate" an embassy seized by terrorists since this would involve criminal law enforcement in addition to the carrying out of our treaty obligations. The Department of Defense concurs in this position.

We have also taken the position that troops could be used to sort and carry mail during the postal strike as an exercise of the inherent authority to carry out the laws.

VI. Protection of Federal Property and Functions.

The authority to use troops in a protective capacity to secure federal property or safeguard the performance of federal functions is likewise an inherent authority of the President. The language of Neagle supports this view in the broadest possible terms.

Although routine protective responsibilities are assigned to the Federal Protective Service, the Executive Protection Service and U. S. Marshals, it is our view that troops may be used to cordon off the White House to protect against demonstrators or safeguard bridges used by federal workers to



enter the city to prevent disruption by demonstrators. Again, however, the role played by the military should be limited to protection, not affirmative law enforcement.

In addition to the use of military personnel, questions have arisen from time to time concerning the use of military equipment. Obviously, such equipment may be used when troops are called into service pursuant to chapter 15 of Title 10. Moreover, barring appropriations or other restrictions, military equipment can be loaned to federal law enforcement personnel. It is our view, however, that military vehicles manned by military personnel should not be used for law enforcement absent the invocation of chapter 15 of Title 10; we cautioned against the use of military vehicles and personnel to assist the Marshals by manning road blocks at Wounded Knee.

A recent statute, P.L. 90-331, 82 Stat. 170, 18 U.S.C. 3056 note, authorizes the Director of the Secret Service to call upon any agency of the government to assist the Service in carrying out its protective responsibilities. These duties involve the protection of the President and his family, the Vice President, a President-elect, former Presidents, visiting heads of State or other distinguished foreign visitors, and major candidates for President and Vice President. The statute is phrased in mandatory terms, i.e., the agency head shall assist when called upon. (The Secret Service authority can, however, be revoked by the President.) It is clear from the legislative history that this provision was meant to allow the Secret Service to call upon not only the FBI, Federal Protective Service and other civilian agencies, but the military departments as well. Such a call for troops by the Secret Service would be outside the restrictions of the Posse Comitatus Act on two grounds -- because of its exclusively protective character and because it is authorized by statute specifically.

VII. Conclusion.

The above represents a bare outline of the legal authority relating to federal use of the military in civil disturbances -- we have detailed memoranda on most of the points mentioned. We have not attempted to describe, except



in passing, the roles of various components of this Department or of other agencies. It should also be noted that the handling of civil disturbances may raise questions under other, more general, laws -- such as the scope of federal criminal jurisdiction in relation to Wounded Knee, the scope of 18 U.S.C. 33 in relation to the truckers' strike, the remedies for unlicensed use of a citizen band radio, etc. The variation of legal issues here is as diverse as civil disturbances themselves.

Mary C. Lawton
Deputy Assistant Attorney General
Office of Legal Counsel

