

recommended procedure will strengthen the legal position by adding to the President's inherent constitutional powers the support of this traditional statutory framework (at least by analogy, if it were to be concluded that the provisions of the statute are technically applicable only to violence in a "State").

We have drafted the enclosed documents with a view to minimizing the likelihood that more than one proclamation and one Executive order will be necessary to deal with a local disturbance. The proclamation is therefore somewhat more general in scope than circumstances may require, and the Executive order affords the Secretary of Defense a number of options for dealing with the situation. In this connection, the following features of the enclosed documents should be noted:

1. The request from the President of the Board of Commissioners notes that disturbances exist in the District of Columbia and threaten "the entire Washington metropolitan area." The proclamation picks up the same formula and the Executive order incorporates it by reference. In the event of disorders originating in the District and spreading to some extent beyond the District boundaries -- as appears to be the most likely sequence of events -- these documents would authorize hot pursuit or deployment of forces in the area adjacent to the District.

They would also authorize the deployment of forces to deal with a separate outbreak of violence in a Maryland or Virginia suburb. In such an event, armed forces should not be used until a request from the Governor of Maryland or of Virginia, similar to the enclosed draft request from the Commissioners, has been received by the President. It would not be necessary, however, to issue an additional proclamation announcing that a request from either of these Governors has been received. Since the draft

proclamation and Executive order refer to conditions "in the Washington metropolitan area," these documents as they now stand, together with a request from the Governor concerned, would be sufficient to deal with separate outbreaks of violence in the suburbs. /2/

44/2/###FN2

Of course, if an outbreak should occur beyond the Washington metropolitan area -- for example, in Baltimore -- a request from the Governor of Maryland and a new proclamation and Executive order would probably be necessary to deal with that situation.

2. In line with the request from the Commissioners and the proclamation acknowledging receipt of that request, the Executive order would authorize the Secretary of Defense to employ both units of the National Guard and of the regular Armed Forces. Section 3 of the Executive order would permit the Secretary of Defense to employ the National Guard of the District in its militia status (pursuant to D.C. Code 39-603), as well as in a federalized status as part of the Armed Forces of the United States (pursuant to 10 U.S.C. 331-333). This alternative is included so that a decision to federalize the D.C. National Guard may be made at an appropriate time (perhaps after the Guard has been assembled and before it is called into action). 3/

Whatever combination of National Guard units and regular troops may be employed, and whether the D.C. Guard operates in federalized or militia status, the proposed Executive order would authorize the Secretary of Defense to exert unified control over the employment of all military forces being used.

The enclosed documents, which are offered for your consideration in draft form, have not yet been reviewed with the Attorney General.

4/ Martin F. Richman
| Acting Assistant Attorney General
| Office of Legal Counsel

cc: The Attorney General; Commissioner Tobriner;
Assistant Attorney General Vinson; Robert Jordan, Deputy
General Counsel, Army; Col. Wilton Persons, Army JAGC

4/ ~~###~~ FN3
3/ The Executive order also preserves the possibility of calling National Guard units from Maryland or Virginia into the District, although this course of action probably would not be undertaken in view of objections to depriving the surrounding States of forces they may need to put down their own disturbances.

4 DRAFT FORM

4 7/28/67

4 The President
4 The White House

My dear Mr. President:

The Commissioners of the District of Columbia regret to inform you that serious and continuing conditions of violence and disorder now exist in the District, endangering the lives of residents, obstructing the execution of the laws, and threatening both public and private property. [Here describe the particulars, to the extent feasible.]

These disturbances are beyond the capabilities of our police forces to bring under prompt and effective control. We believe these disturbances threaten the entire Washington metropolitan area. In the unanimous opinion of the Board of Commissioners and the Chief of Police, additional law enforcement personnel are necessary to restore the peace and to minimize further loss of life and property.

Accordingly, the Commissioners hereby request you to employ such units of the National Guard and of regular Federal troops as may be necessary to restore law and order to this area.

7 Yours respectfully,

/ President
1 Board of Commissioners, D. C.

4 DRAFT FORM

4 LAW AND ORDER IN THE DISTRICT OF COLUMBIA

47128/67

4 BY THE PRESIDENT OF THE UNITED STATES OF AMERICA
4 A PROCLAMATION

WHEREAS the Commissioners of the District of Columbia have informed me that conditions of domestic violence and disorder exist in the District and threaten the Washington metropolitan area, endangering life and property and obstructing the execution of the laws, and that the local police forces are unable to bring about the prompt cessation of such acts of violence and restoration of law and order; and

WHEREAS the Commissioners have therefore requested me to use such units of the National Guard and of the Armed Forces of the United States as may be necessary for those purposes; and

WHEREAS under these circumstances it is my duty as Chief Executive to see that the property, personnel and functions of the Federal Government, of embassies of foreign governments, and of international organizations in the Washington metropolitan area are protected against violence or other interference:

NOW, THEREFORE, I, LYNDON B. JOHNSON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do command all persons engaged in such acts of violence to cease and desist therefrom and to disperse and retire peaceably forthwith.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year of our Lord nineteen hundred and sixty-seven, and the Independence of the United States of America the one hundred and ninety-second.

4 EXECUTIVE ORDER

4 DRAFT FORM

4 7/28/67

4 PROVIDING FOR THE RESTORATION OF LAW AND ORDER
/ IN THE DISTRICT OF COLUMBIA

WHEREAS on _____, 1967, I issued Proclamation No. _____, calling upon persons engaged in acts of violence and disorder in the Washington metropolitan area to cease and desist therefrom and to disperse and retire peaceably forthwith; and

WHEREAS the conditions of domestic violence and disorder described therein continue, and the persons engaging in such acts of violence have not dispersed;

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States and Commander in Chief of the Armed Forces under the Constitution and laws of the United States, including Chapter 15 of Title 10 of the United States Code, Section 45 of the Act of March 1, 1889, as amended (D.C. Code 39-603), and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. The Secretary of Defense is authorized and directed to take all appropriate steps to disperse all persons engaged in the acts of violence described in the proclamation, to restore law and order, and to protect against violence or other interference the property, personnel and functions of the Federal Government, of embassies of foreign governments, and of international organizations in the Washington metropolitan area.

SECTION 2. In carrying out the provisions of Section 1, the Secretary of Defense is authorized to use such of the Armed Forces of the United States as he may deem necessary.

SECTION 3. The Secretary of Defense is hereby authorized and directed to call into the active military service of the United States, as he may deem appropriate to carry out the purposes of this order, units or members of the Army National Guard and of the Air National Guard to serve in the active military service of the United States for an indefinite period and until relieved by appropriate orders. Units or members may be relieved subject to recall at the discretion of the Secretary of

Defense. In carrying out the provisions of Section 1, the Secretary of Defense is authorized to use units and members called or recalled into the active military service of the United States pursuant to this section. In addition, in carrying out the provisions of Section 1, he is authorized to exercise any of the powers vested in me by law as commander-in-chief of the militia of the District of Columbia, during such time as units or members of the Army National Guard or Air National Guard of the District shall not have been called into the active military service of the United States.

SECTION 4. The Secretary of Defense is authorized to delegate to one or more of the Secretaries of the military Departments any of the authority conferred upon him by this order.

4 THE WHITE HOUSE,

_____, 1967.