Defending Sovereignty: Domestic Operations and Legal Precedents

Colonel Sean J. Byrne, US Army

The Department of Defense (DOD) "maintains and employs the Armed Forces to:

- Support and defend the *Constitution of the United States* against all enemies, foreign and domestic.
- Ensure, by timely and effective military action, the security of the United States, its territories and areas vital to its interests.
- Uphold and advance the national policies and interests of the United States.
- Safeguard the internal security of the United States."[1]

This mission statement leaves little room for interpretation. Defense against foreign and domestic enemies has the same priority. However, when reflecting on military involvement in defense of US sovereignty, most envision engagements being fought against foreign enemies on distant battlefields, when in fact, throughout the history of our country, the majority of battles to safeguard national security and defend America's values have been fought on US soil.[2]

Although precedents have been established, there continues to be considerable concern over the legal authority and limits of using the Armed Forces in domestic actions. Concerns include fear that "use of military forces may expose civilian government to the threat of military rule and could lead to the suspension of constitutional liberties, and on a lesser scale, that military enforcement of the civil law could leave the protection of Fourth and Fifth Amendment rights in the hands of persons who are not trained to uphold these rights."[3]

Under specific circumstances, use of military forces in domestic operations, while controversial, is not only appropriate, but legal and warranted. The Armed Forces have constitutionally mandated responsibilities to safeguard our nation and its people and will continue to be the instrument of choice for the National Command Authority during emergencies—foreign or domestic.

These concerns were well documented by our founding fathers and formed much of the basis for the *Declaration of Independence* and the *Bill of Rights*. Over the last 200 years, Congress and the executive branch, in the face of new and expanding threats to our national security have increased the military's responsibilities in domestic operations. However, these changes have been in accordance with the intent of our founding fathers—that the militia, today's Active and Reserve Components (AC/RC) would provide for the common defense while remaining subordinate to its legally designated civilian leadership. These nuances are significant.

The* Constitution *addressed these issues by putting strict limitations on the role of the military in civil affairs. It divided authority over the Armed Forces by making "the President, the highest civilian official in the Executive Branch, Commander in Chief of the armed services (Article II, section 2) . . . and grant(ing) to the Congress the power to make rules to govern the Armed Forces (Article I, section 8, clause 14)." The Supreme Court has also noted both constitutional limitations and public concern over military involvement in civil affairs. In deciding the 1972 case of Laird versus Tatum, the court reaffirmed this position when it stated, "The concerns of the Executive and Legislative Branches . . . reflect a traditional and strong resistance of Americans to any military intrusion into civilian affairs."

Although some will argue against virtually any involvement by the military in domestic operations, that involvement is key to safeguarding national security and guaranteeing the continued freedom of our citizens.[4] Under specific circumstances, use of military forces in domestic operations, while controversial, is not only appropriate, but legal and warranted. The Armed Forces have constitutionally mandated responsibilities to safeguard our nation and its people and will continue to be the instrument of choice for the National Command Authority during emergencies—foreign or domestic.

While acknowledging that there is considerable confusion over this issue, the confusion appears to be based on these factors:

- Preconceived notions concerning civil-military relations based on incomplete information.
- Lack of knowledge concerning the history and intent behind a number of key legislative actions governing these operations.
- Failure to fully comprehend the part Congress has played in the evolutionary expansion of the military's role in domestic operations to combat new threats while ensuring actions are taken in accordance with the intent of our founding fathers.

This article addresses the military's role in supporting civil authorities and the effect legal and cultural considerations have on its applications. It further outlines the legal and historical framework for military involvement in domestic actions and addresses a number of misconceptions and philosophical challenges faced by the US Armed Forces in actions of this nature.

Legal, Historical and Cultural Precedents

Throughout US history the three branches of government have often been at odds concerning interpretations of the *Constitution*. However, they have consistently expressed longstanding concerns and biases against involving the Armed Forces in domestic actions. These concerns have been addressed in the *Declaration of Independence*, the *Constitution* and through acts of Congress and Supreme Court decisions. In light of these considerations, it is important to have a grasp of the "laws of the land" before discussing specific issues.

While domestic use of the Armed Forces has been a feature of government in the United States since President George Washington called out the militia to put down the Whiskey Rebellion in 1794, the issue of limiting that involvement was raised well before that time.[5] The *Declaration of Independence* states among the grounds for severing ties with Great Britain that the King "has kept among us, in times of peace, Standing Armies without consent of our Legislature . . . [and] has affected to render the Military independent of and superior to the Civil power."[6]

These concerns were subsequently raised at the Constitutional Convention by Maryland Delegate, Luther Martin—"When a government wishes to deprive its citizens of freedom, and reduce them to slavery, it generally makes use of a standing army."[7] The *Constitution* addressed these issues by putting strict limitations on the role of the military in civil affairs. It divided authority over the Armed Forces by making "the President, the highest civilian official in the Executive Branch, Commander in Chief of the armed services (Article II, section 2) . . . and grant(ing) to the Congress the power to make rules to govern the Armed Forces (Article I, section 8, clause 14)."[8] It further states "Congress shall have the power . . . to provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions . . . and requires the federal government to protect each of the states against Invasion; and on the Application of the Legislature, or of the Executive (when the Legislative cannot be convened) against domestic violence."[9]

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Posse Comitatus

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militia use to aid in law enforcement during emergencies. Throughout the Reconstruction period after the Civil War, Army units performed as *posse comitatus* (law enforcers) in numerous and varied "disorders."[11] In many of these instances, the military forces were under the direct control of state governors and US Marshals and outside the federal chain of command. Under these circumstances, marshals and governors found it increasingly easy to call on the Army rather than face the difficult political consequences of keeping order.[12]

Soldiers deploying on the streets of Los Angeles during the 1992 riots.

Abuses during this period, for the most part by civil authorities, led Congress to pass the *Posse Comitatus Act* in 1878. This act created a general prohibition against the use of military personnel in law enforcement. The statute, as amended, specifically provides: Whoever, except in cases and under circumstances expressly authorized by the *Constitution* or Act of Congress, willfully uses any part of the Army or the Air Force as a *posse comitatus* or otherwise to execute the laws shall be fined not more than $10,000 or imprisoned not more than two years, or both.[13]

This statute prohibits the use of the Armed Forces in active law enforcement unless specifically authorized by the *Constitution* or acts of Congress. It is the key legislative act formalizing the American tradition of military subordination to a strong civil authority that placed the decision for federal intervention directly in the hands of the president.[14]

When arguing the case against military involvement in domestic activities, most cite the *Posse Comitatus Act* as their basis. However, it is not the final word on the subject. Based on emergency situations and emerging threats to national security, Congress subsequently passed a number of exceptions clearing the way for significantly increased involvement by the Armed Forces in domestic activities.

Exceptions to *Posse Comitatus*

With all the concerns about using Armed Forces in civil actions, the obvious question is, why do the executive and legislative branches continue to call on them? The answer is relatively simple—in times of emergency, the Armed Forces are often not only the most effective and efficient assets available, but possibly the only assets available to maintain order, and they can greatly enhance the effectiveness of civil law enforcement by providing military technologies, equipment, information and training.[15]

In acknowledging this situation, Congress enacted a number of exceptions to *Posse Comitatus* (Title 10, *US Code* (*USC*) sections 331-335) dealing with civil disturbances and insurrections.[16] "These statutes authorize the President to provide military assistance to state governments upon request (section 331) . . . or upon his own initiative to use the Armed Forces or federalized militia to suppress any rebellion that makes it 'impracticable to enforce the laws of the United States . . . by the ordinary course of judicial proceedings'…(section 332). Section 333 also permits military intervention when the constitutional rights of any state's citizens are threatened by insurrection, domestic violence, unlawful combination or conspiracy. Under section 334, before the militia can be called out, the president must 'by proclamation immediately order the insurgents to disperse,' that is, read them the riot act."[17]

In 1988, Congress further amended Title 10 providing exceptions "that authorize the Secretary of Defense (SECDEF) to provide equipment and personnel to assist civilian agencies in the enforcement of drug, immigration and tariff laws."[18] "But the statute expressly forbids 'direct participation by a member of the Army, Navy, Air Force or Marine Corps in a search or seizure, an arrest or other similar activity unless . . . otherwise authorized by law' (section 375). Nevertheless, military personnel may

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'operate equipment' to intercept vessels or aircraft outside the land area of the United States, or follow in hot pursuit of such craft inland (section 374b), and Coast Guard personnel are assigned to naval vessels with authority to carry out searches and seizures and make arrests (section 379)."[19]

These two sets of amendments cleared the way for dramatic expansion of DOD's responsibilities in providing support to domestic law enforcement agencies (LEAs). They also provide the Executive and Legislative branches with a standing force involved with domestic law enforcement activities on a day-to-day basis rather than the "by-exception" basis of previous years. These amendments represent a major philosophical shift for using armed forces.

Based on these amendments, DOD's participation in counterdrug operations became routine rather than contingency missions. Although in a support role, the Armed Forces were placed squarely in the middle of police-type activities. At first blush it would appear these amendments could be in conflict with the intent of the *Declaration of Independence*, *Constitution* and the *Posse Comitatus Act* by placing a potentially "unchecked military" in a position to infringe on Fourth and Fifth Amendment rights and subvert their civilian leadership. However, Congress went to great lengths to ensure that while expanding the counterdrug program within the United States, the military's support role would be clearly defined and civil-military relationships would not be subverted. Involvement would be only under the strict supervision of civilian authorities and "without directly involving military personnel in law enforcement confrontations with citizens."[20]

Because of the significance of this major policy and legal shift, I will review the background behind this decision in more detail.

War On Drugs

In 1989, President George Bush "declared" this nation at war with drugs. Since that time, US policy has been "to disrupt, to dismantle and ultimately to destroy the illegal markets for drugs by attacking both the supply and demand side of the problem."[21] While different administrations and "drug czars" have slightly modified this policy, the theme has been relatively consistent over the years.

Shortly after Bush's "war on drugs" declaration, he directed, "We will for the first time make available the appropriate resources of America's Armed Forces. We will intensify our efforts against drug smugglers on the high seas, in international air space and at our borders."[22] This declaration brought the Armed Forces into the battle under the exceptions to the *Posse Comitatus Act's* restrictive provisions.

While Bush provided a broad mission for the Armed Forces, specific responsibilities were provided by the Congress, which "through statutes assigned DOD the duties of:

- Acting as the lead agency in the detection and monitoring of aerial and maritime transit of illegal drugs to the United States.
- Integrating US command, control, communications and intelligence assets dedicated to drug interdiction into an effective communications network.
- Approving/funding state governors' plans for expanded use of the National Guard in drug control within state borders."[23]

As enacted, these amendments do not conflict with the *Posse Comitatus Act*. Rather, they are part of an evolutionary process that the *Posse Comitatus Act* itself had begun 111 years earlier. When it was enacted to stop abuses in military employment, these amendments were enacted to establish a legal framework to involve the Armed Forces in expanded national security missions to protect US citizens from internal threats while ensuring abuses would not take place. Since the military's missions already included ensuring the security of our borders, these new responsibilities simply became an expansion of those duties.

Expansion of Domestic Missions— Readiness Concerns

Prior to the amendments to the *Posse Comitatus Act* and Bush's directive to expand military involvement in counterdrug operations, DOD had gone to great lengths to minimize its participation. In 1988, while an amendment to the defense authorization bill was being debated to make DOD the lead agency for detection of narcotics traffic and give the Navy limited powers of arrest outside US waters, "military [leaders] argued that the additional requirements for drug interdiction would detract from their principal mission, that the *Posse Comitatus Act* prevented a military role in searches and seizures and

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that, in any case, further actions to stop the flow of drugs could not be undertaken unless more money was provided for the Five Year Defense Plan.[24]

While each of these arguments may be somewhat flawed, they do raise a number of legitimate issues. From a strictly military perspective, they include:

Soldiers supporting customs operations along the border with Mexico.

- Concerns over military involvement in nonmilitary missions.
- Potential adverse effects these missions could have on military readiness and warfighting skills.
- Anxieties that involvement in nontraditional missions would establish precedents causing the military to be unable to extricate itself from further participation.

Each of these arguments is credible to a degree. However, they did not sway congressional opinion. In fact, "research indicates that under pressure to respond in a very visible way to the drug and crime problem, the Congress saw how the use of the Armed Forces would solve several needs: the military analogy properly fit the drug war image; the vast military resources of personnel, procurement authority, skills and equipment would be an immediate infusion of resources into the problem requiring only limited additional funding."[25] Regardless of arguments to the contrary, the counterdrug mission was going to be DOD's because of the threat drugs pose to our national security and values and the political sensitivity of the issue. Congressional testimony showed that DOD was criticized for its lack of aggressiveness in the drug support effort and that the determination was made that the military "can and should do that kind of job."[26]

While that argument may have been accepted nine years ago, when DOD budgets and manpower levels were mostly on the upswing, the resource situation has now dramatically changed. Although fiscal cutbacks, personnel drawdowns and *mission creep* have not "hollowed out" the Armed Forces to the extent of the post-Vietnam years, resources throughout DOD are now being stretched to near breaking point. Compounding this situation, "operational deployments (domestic and overseas) have increased by more than 300 percent since 1989," and there is no reason to believe this trend will change.[27] This portends a period of continuing belt tightening and in a zero-based budget environment, increases in funding levels are not expected. Therefore, new or expanded missions will take place only at the expense of other priorities or missions.

It would be easy to recommend that the situation be reviewed with an eye toward returning these responsibilities to LEAs and allowing a downsized military to return its troops and equipment to their services and primary missions. However, it is unlikely that support to LEAs involved with counterdrug operations will be cut back to any extent in the near future for the following reasons:

- The drug problem continues and according to most reports, is worsening.
- LEAs have become dependent on the support they receive from DOD and it would be unrealistic to expect them to acquire the sophisticated technical capabilities DOD brings to the table.

In fact, drug enforcement agencies in many instances have expanded their institutional capabilities as a result of the military support they are receiving and project.[28] While it appears that near-term DOD budgets will continue military counterdrug operations at current levels, cutbacks in funding would decrease DOD involvement and cause other agencies' programs to be curtailed because of their reliance on DOD support. However, because of the drug problem's overall impact, it is doubtful our civilian leadership would allow any changes in funding or support, thereby implying a lower priority for the war on drugs. Therefore, it is extremely doubtful there will be any decrease in DOD's requirements and responsibilities in this area for the foreseeable future.

Under presidential authority and directives, as well as the current exceptions to the* Posse Comitatus Act*, a JTF commander could be responsible for the entire range of law enforcement activities with considerably more authority and far less restrictive ROE. Uninformed commanders may needlessly hinder their forces, limit their effectiveness and could place them in harm's way if they do not understand the laws that govern their operations or are not aware of the responsibilities those laws place on their shoulders.

Law Enforcement Missions — Operational Concerns

DOD needs to closely scrutinize the manner in which it prepares for and responds to law enforcement missions. Although involvement in such actions is increasing, many support operations are done on an ad hoc basis with minimal contingency planning prior to notification and deployment. It seems that every time a domestic emergency arises requiring military support—such as riot control or disaster relief—the force deploying "reinvents the wheel" and starts the planning cycle from scratch. Why? These operations are generally not the focus of routine training programs or contingency planning. Rather, these are often new requirements that place the units in roles for which neither the troops nor their leaders have been trained. When called on, units generally have extremely limited time to prepare, be briefed on their mission and then deploy. This procedure has surfaced significant problems that must be understood and addressed.

During the last eight years, involvement in counterdrug operations has become relatively routine for a number of units. However, even when dealing with the routine, commanders must continually verify their legal justification for involvement. The *Posse Comitatus Act*, as amended, allows the Armed Forces to provide equipment, training and military advice to LEAs in counterdrug operations, but not to conduct searches, seizures or arrests.[29] However, there must be a link between the military support provided and the counterdrug operations conducted. Had legal advisers assigned to Joint Task Force *6* (JTF *6*), which supported the Bureau of Alcohol and Tobacco and Firearms (BATF) during the 1993 siege at the Branch Davidian Compound in Waco, Texas, not questioned that agency's requests for support, the Armed Forces would have been inappropriately and illegally involved in an operation that ultimately led to the deaths of 76 US citizens.

JTF *6* conducts operations on the US southwest border providing ground and aerial surveillance, reconnaissance and other support activities to LEAs charged with policing illegal immigration activities and counterdrug operations, provided the appropriate legal linkage exists. LEAs submit their requests for support through JTF *6*, where they are reviewed and, if valid, forwarded to US Forces Command for final approval."[30] In late 1992, when BATF requested "various types of assistance and equipment, including training sessions conducted by Green Berets, tanks, CS gas and . . . aircraft . . . in making the initial request for use of the helicopters . . . the BATF's Houston office did not mention any 'drug nexus.'"[31] The initial request identified an ongoing investigation "targeting persons believed to be involved in the unlawful manufacturing of machineguns and explosives. These targets are of a cult/survivalist group, its letter requesting . . . helicopters stated. Four days later, however . . . the agency's Austin office followed . . . with a similar request, which added 'the individual is suspected of unlawfully being in possession of firearms and possibly narcotics.'"[32] Without questioning the request, it appeared to JTF *6* that the "drug nexus" had been established and therefore the request was valid.

However, the drug connection BATF used to justify its request for military support was not valid. After-action reports indicate the primary reason for BATF interest in the case was based on the belief that there was an illegal weapons arsenal in the Branch Davidian Compound.[33] The drug connection did not exist. In fact, evidence showed the "drug connection" claimed by the BATF had occurred a full six years earlier, and David Koresh, the Branch Davidian leader, had not only expelled the members involved but had notified the local police and provided them with evidence of the drug offenses.[34] The BATF used this six-year-old offense to attempt to gain military support. The JTF commander initially validated the request and "testified before Congress that he saw no reason to 'pierce the veil of the BATF request.'"[35] However, military lawyers literally saved the day when they conducted a further legal review that resulted in the request not being acted on. Had they not questioned what appeared to be a routine request, JTF *6* most certainly would have been involved in a clear *Posse Comitatus Act* violation and been accessories in a tragedy that ended in the deaths of 76 civilians.

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notification, often without the time needed for detailed planning. This brings up a second key requirement for commanders. Commanders must ensure that upon receiving their mission they have a clear understanding of the legal authority under which their forces are to be used. They must also understand the extent of military involvement, whether the military will be the lead agency or in a support role and the rules of engagement (ROE) under which they will operate. Problems in all of these areas arose during the employment of AC and federalized National Guard forces to aid in quelling riots in Los Angeles, California, after the 1992 Rodney King trial verdict.[36]

A soldier guards food supplies in the aftermath of Hurricane Andrew.

When the King trial verdict was announced in April 1992, riots broke out that were beyond the capabilities of local law enforcement authorities and the California National Guard to control. The California governor notified the president of the situation and requested federal support. The president issued an order for the rioters to disperse and an executive order authorizing the SECDEF, in consultation with the attorney general, to employ the Armed Forces to restore law and order. This order also federalized the California National Guard. A JTF made up of approximately 3,500 Marines and soldiers from Camp Pendleton, California, and Fort Ord, California, deployed two days later to restore order.[37]

The JTF commander and his legal advisers believed that since they were being employed to support domestic operations, the restrictions of *Posse Comitatus* applied. However, this was not the case because the act specifies that activities authorized by the *Constitution* or statute are exempt from the statute's limitations. In this case, forces were employed under statutory authority allowing the president to use federal troops to quell domestic violence.[38] Therefore, the *Posse Comitatus* restrictions did not apply and federal troops were authorized to enforce and execute the law.

Because the JTF commander did not understand this nuance, operational decisions were incorrectly based on the *Posse Comitatus* restrictions rather than the considerably more flexible exceptions authorized under Title 10 *USC*, section 332. "Distinctions were made between military and law enforcement functions with actions such as transporting prisoners being considered law enforcement functions and therefore not supported. This misunderstanding permeated all military activities and led to underutilization [and improper use] of a potent force."[39]

Additionally, National Guard forces were initially employed by the governor under Los Angeles Police Department (LAPD) control, where they were involved in the entire range of law enforcement activities. However, once federalized, they came under the control of the AC JTF commander who initially, and incorrectly, removed them from that role during the height of the riot. "The prospect of placing federalized National Guard soldiers under the operational control of the active duty JTF commander had not been adequately addressed or properly planned. For example, the [ROE] were not initially uniform throughout the JTF…[and] active duty forces were operating under far more restrictive covenants than the federalized National Guard."[40] These discrepancies were eventually rectified, but only after considerable confusion.

This operation reinforced some very basic principles. Prior to engaging in domestic activities, there must be a clear understanding of the authority under which the forces are to be used. When employed under the strictest interpretation of *Posse Comitatus Act* provisions, the Armed Forces are severely restricted. However, under presidential authority and directives, as well as the current exceptions to the *Posse Comitatus Act*, a JTF commander could be responsible for the entire range of law enforcement activities with considerably more

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authority and far less restrictive ROE.[41] Uninformed commanders may needlessly hinder their forces, limit their effectiveness and could place them in harm's way if they do not understand the laws that govern their operations or are not aware of the responsibilities those laws place on their shoulders.

In addition to the examples already discussed, commanders must be aware that regardless of the circumstances behind their deployment to support domestic operations, their performance will be closely scrutinized and could be subject to judicial review. While no case has been found involving criminal prosecution of anyone for *Posse Comitatus Act* violations, violations are often cited by defense counsel for those charged under other criminal statutes. Defendants often argue that a *Posse Comitatus Act* violation has occurred which taints the case against them solely because of military involvement in the operation that led to their arrest—regardless of the capacity under which the military forces were operating.

In 1973, several defendants from Wounded Knee, South Dakota, were charged with interfering with "a law enforcement officer lawfully engaged in the performance of his official duties."[42] Their defense was that "the federal marshals and FBI agents were not performing their duties lawfully, within the meaning of the statute, because they enlisted military forces as a *Posse Comitatus*. Others apprehended by the military while attempting to smuggle drugs into the United States have argued that the evidence obtained in their arrests was inadmissible at trial. However, no court has yet agreed to apply the exclusionary rule because of *Posse Comitatus Act* violations.[43] Commanders and their legal advisers must ensure that the legal basis for involvement is defined and fully understood by all involved prior to commencing operations. While not a "catch 22" for the military, it is clear that errors in interpreting the law could lead to civil prosecution.

These examples identify a number of potential hazards faced by military forces involved in domestic actions. In these cases, the Armed Forces were fortunate. However, leaders of future operations who do not understand the authority for their mission, the extent of their responsibilities and the planning and training required may not be so fortunate.

When asked if he believed the future would bring more involvement with civil authorities, US Marine Corps Commandant General Charles Krulak said, "We view the increased military support to civilian law enforcement as an inevitability. Starting with the war on drugs, forest fires, etc., will, we think, lead to more cooperation, not less. For the USMC, it's not a matter of seeking to do more as much as being prepared to do more when asked."[44]

Not only will the trend continue, but involvement will expand into areas that in the past would have seemed inconceivable. A few years ago it would have been hard to envision the US Armed Forces involved in counterdrug operations on a day-to-day basis, but today that involvement is given little more than a second thought. With DOD's vast capabilities and resources for intelligence gathering, communications and logistics operations, it is clear that many new avenues will be opened. As new threats are identified, the Armed Forces will be called on to confront them.

It is hard to rule out the continued expansion of domestic support operations for two reasons. While the Soviet Union existed, DOD's primary focus was to defend our nation's vital interests, primarily outside our national borders. However, during the past few years, without the monolithic threat communism posed, there has been a far greater emphasis on looking inward to solve America's problems at home. Missions for the Armed Forces have reflected this trend and have increasingly become more focused toward preservation of national values. Virtually all domestic missions fit this category.

Secondly, regardless of the arguments against it, the legislative history behind regulating military involvement in domestic activities has been an evolutionary process and will probably continue in the same manner. Just as the *Posse Comitatus Act* itself was enacted to stop abuses by, but not prevent, the employment of the military, as times have changed, amendments have been enacted to establish the legal framework for increasing involvement by the Armed Forces in still more national security missions. There is no reason to believe this trend will fade as long as it does not compromise the founding fathers' vision of a military subordinate to civil leadership and providing that leadership

with a recourse when the ordinary process of law and order fails.

As much as military leaders may yearn to fight conventional battles against conventional enemies, the roles and missions of the US Armed Forces will continue to change and reflect the needs of the American people. To actively seek to avoid these challenges would be a disservice to the nation we are sworn to protect.

All personnel entering our Armed Forces take the following oath:

"I, _____ do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States against all enemies, foreign or domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God."[45]

In defending US sovereignty, the Armed Forces must simply abide by the basic laws and principles under which our country was founded. The Armed Forces will often be the National Command Authority's instrument of choice to deal with emergencies and difficult situations because their involvement in operations of this nature is not only justified, but legal and necessary. Those in the military must be cognizant of evolving threats to our national security and understand their role and responsibilities in defending the *Constitution of the United States* against all enemies—foreign or domestic. ***MR***

NOTES

1. US Army Field Manual (FM) 100-1, *The Army* (Washington, DC: Headquarters, Department of the Army (HQDA) June, 1994), 15. Also referenced in Department of Defense Directive 5100.1, *Functions of the Department of Defense and Its Major Components* (Washington, DC: Department of Defense, 25 September 1987), 17 and 18.
2. Henry Black, *Blacks Law Dictionary, 4th Edition* (St Paul, MN: West Publishing Co., 1991), 1396. Sovereignty is defined as "the supreme, absolute and uncontrollable power by which any independent state is governed; supreme political authority; the supreme will...the international independence of a state, combined with the right and power of regulating its internal affairs without foreign dictation. ...The necessary existence of the state and that right and power which necessarily follow is sovereignty."
3. Stephen Dycus, Arthur L. Berney, William C. Banks and Peter Raven-Hansen, *National Security Law* (Boston: Little Brown and Company, 1990), 423.
4. American Civil Liberties Union press release, various signatories, *Comprehensive Antiterrorism Act of 1995* (6 December 1995). The letter addressed to Representative Newt Gingrich and simultaneously distributed as a press release, identified a number of concerns involving use of the Armed Forces in counterterrorism activities citing the *Posse Comitatus Act* as the basis for their argument. However, the letter did not detail exceptions to which legislation that legally cleared the way for military involvement.
5. Dycus, 420.
6. Ibid., 423.
7. Ibid.
8. Ibid.
9. *United States Constitution*, Article I, Section 8 and Article IV, Section 4.
10. Laird versus Tatum (1972). The case revolved around a claim that the defendant's First Amendment rights had been violated by the existence of a data-gathering system maintained by Army Intelligence. The court held that the mere existence of the equipment did not infringe on the right of the plaintiff. Also, see Dycus, 423.
11. Black, 1162, *Posse Comitatus* is defined as "The power or force of the county. The entire population of a county above the age of fifteen, which a sheriff may summon to his assistance in certain cases, as to aid him in keeping the peace, in pursuing and arresting felons."
12. Jerry Cooper, *Federal Military Intervention in Domestic Disorders in The United States Military Under the Constitution of the United States*, ed. Richard Kohn (New York: New York University Press, 1991), 134.
13. *United States Code*, Title 18, Section 1385, *Crimes and Criminal Procedures* (1994).
14. Cooper, 135.
15. Dycus, 424.
16. *United States Code*, Title 10, Sections 331-335, *Armed Forces* (1980).
17. Dycus, 428 and 429.
18. *United States Code*, Title 10, Sections 371-380, *Armed Forces* (1993).
19. Dycus, 430.
20. Edward Stelzer, "Military Support to Law Enforcement Agencies: A Policy With Unintended Consequences," US Army War College (USAWC) Strategic Research Project (Carlisle, PA, 1996), 13.
21. Office of National Drug Control Policy, *The National Drug Control Strategy* (Washington, DC: US GPO, 1990), 1.
22. Mathea Falco, "U.S. Drug Policy: Addicted to Failure," *Foreign Policy* (Spring 1996), 122.
23. Joseph Bergantz, "Military Support of the National Drug Control Strategy," *Military Review* (June 1992), 67 and 68.
24. Amos Jordan, William Taylor and Lawrence Korb, *American National Security Policy and Practice* (Baltimore, MD: Johns Hopkins University Press, 1989), 167.
25. Stelzer, 11 and 12.
26. Ibid., 13.
27. Department of the Army, *United States Army Posture Statement: Meeting the Challenges of Today, Tomorrow, and the 21st Century*, presented to the committees and subcommittees of the United States Senate and the House of Representatives, second session, 104th Congress (undated), 3.
28. Stelzer, 43-44.
29. *United States Code*, Title 10, Sections 371-78, *Armed Forces* (1993).
30. Department of the Army Judge Advocate General School, *Military Support to Civil Authorities: Posse Comitatus Act, Civil Disturbances, Counter-Drug Support Operations, and Disaster Relief* (Charlottesville, VA: undated), 29.
31. Richard Reavis, *The Ashes of Waco* (New York: Simon and Schuster, 1995), 124.
32. Ibid., 124 and 125.
33. Ibid., 125 and 126.
34. Ibid., 125.
35. Thomas R. Lujan, "Legal Aspects of Domestic Employment of the Army," USAWC Strategic Research Project (Carlisle, PA: 1996), 11.
36. The case involved an incident, documented via camcorder, of the Los Angeles Police Department (LAPD) using excessive force in apprehending and arresting a suspect. The trial involved charges of police brutality. When the verdict was rendered on 29 April 1992, violence broke out throughout the city and county of Los Angeles that was beyond the capabilities of the LAPD to stop. The governor of California requested federal assistance from the president, who in turn issued an initial proclamation to disperse (literally read them the *Riot Act*) and issued the executive order to the secretary of defense to employ members of the Armed Forces to restore law and order.
37. A report by the special adviser to the Board of Police Commissioners on the civil disorder in Los Angeles, *A City in Crisis* (21 October 1992), 154. See Lujan, 17 and 18.
38. Ibid.
39. Warren Theis, "Domestic Role for the U.S. Army in the Post Cold War Period," USAWC Strategic Research Project (Carlisle, PA, 1993), 11.
40. Department of the Navy, After-Action Report, "Joint Task Force Los Angeles-Garden Plot-Staff Judge Advocate," Section II c (4). The staff judge advocate of the joint task force reported that inconsistent levels of arming were reported throughout the JTF. Specifically, he noted that active-duty troops were uniformly at the correct level one, while federalized National Guard units were noted at levels one through six, apparently at the direction of first line leaders, 3. See Lujan, 16 and 30.
41. *United States Code*, Title 10, Section 332, *Armed Forces* (1956).
42. *United States Code*, Title 18, Section 231, *Armed Forces* (1994).
43. Gates, "Don't Call Out the Marines: An Assessment of the *Posse Comitatus Act*," *13 Texas Tech Law Review* (1968), 1467 and 1468; and Rice, "New Laws and Insights Encircle the *Posse Comitatus Act*," *Military Law Review* (1984), 104, 109 and 110. See Dycus, 428.
44. Walter Wood, "CMC Address—Q&A IRT, Inc. Support to Civil Authorities," electronic mail (E-mail) to George Brock. Subsequently retransmitted to author. E-mail response to a member of the USAWC faculty by the commandant of the Marine Corps office when requesting clarification to an answer given by General Charles Krulak, United States Marine Corps commandant, during an address to the USAWC student body on 3 November 1996.
45. *United States Code*, Title 10, Section 502, *Armed Forces* (1989).

Colonel Sean J. Byrne is commander, 8th Personnel Command (PERSCOM), Yongsan, Korea. He received an B.S. from the University of Detroit and an M.B.A. from the University of Utah. He is a graduate of the US Marine Corps Command and Staff College and the US Army War College. He has served in a variety of command and staff positions in the Continental United States, including chief, Enlisted Distribution Division PERSCOM, Alexandria, Virginia; commander, 82d Personnel Services Battalion, Fort Bragg, North Carolina; deputy commander, 18th Personnel Group, Fort Bragg; Deputy G1, 82d Airborne Division, Fort Bragg; and military aide to the President, Washington, D.C. His article "Looking for Sam Damon" appeared in the May-June 1998 issue of Military Review.