
OVERVIEW OF THE POSSE COMITATUS ACT

This appendix provides a broad overview of the Posse Comitatus Act, which restricts the participation of the military in domestic law enforcement activities under many circumstances.

LANGUAGE

The origins of “posse comitatus” are to be found in domestic law. *Black's Law Dictionary* defines the term “posse comitatus” 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, etc.¹

The Posse Comitatus Act, 18 U.S. Code, Section 1385, an original intent of which was to end the use of federal troops to police state elections in former Confederate states, proscribes the role of the Army and Air Force in executing civil laws and states:

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

¹Lujan (1997) notes that the commander of JTF-LA mistakenly believed his activities were subject to Posse Comitatus restrictions when they were not.

to execute the laws shall be fined not more than \$10,000 or imprisoned not more than two years, or both.²

According to Lujan (1997), the Air Force was added to the original language in 1956. Although the Navy and Marine Corps are not included in the act, they were made subject to it by DoD Regulation (32 C.F.R. Section 213.2, 1992).

KEY EXCEPTIONS TO THE POSSE COMITATUS ACT

A summary of key exceptions to the Posse Comitatus Act follows:³

- National Guard forces operating under the state authority of Title 32 (i.e., under state rather than federal service) are exempt from Posse Comitatus Act restrictions.
- Pursuant to the presidential power to quell domestic violence, federal troops are expressly exempt from the prohibitions of Posse Comitatus Act, and this exemption applies equally to active-duty military and federalized National Guard troops.⁴
- Aerial photographic and visual search and surveillance by military personnel were found not to violate the Posse Comitatus Act.
- Congress created a “drug exception” to the Posse Comitatus Act. Under recent legislation, the Congress authorized the Secretary of Defense to make available any military equipment and personnel necessary for operation of said equipment for law

²The language of the Posse Comitatus Act was further amended by congressional action reflected in P.L. 103-322 (1994).

³For further details, the reader is directed to: Lujan (1997); Department of the Army (undated); and to the notes of various court decisions refining the interpretation of the Posse Comitatus Act. For the latter, see United States Code, Title 18, Crimes and Criminal Procedures, Sections 1361 to 1950 2000 Cumulative Annual Pocket Part, St. Paul, Minn.: West Group, 2000, pp. 13-17.

⁴10 U.S. Code Sections 331 through 334 provide guidance. Section 332 states: “Whenever the President considers the unlawful obstructions, combinations, or assemblages, or rebellion against the United States, makes it impracticable to enforce the laws of the United States in any state or territory by the ordinary course of judicial proceedings, he may call into federal service such of the militia of any state, and use such of the armed forces to suppress the rebellion” (Lujan, 1997).

enforcement purposes. Thus, the Army can provide equipment, training, and expert military advice to civilian law enforcement agencies as part of the total effort in the “war on drugs.”

- Use of a member of the Judge Advocate Corps as a special assistant prosecutor, while retaining his dual role in participating in the investigation, presentation to the grand jury, and prosecution, did not violate Posse Comitatus Act.
- The Coast Guard is exempt from Posse Comitatus Act during peacetime.
- Although brought under the Act through DoD regulation, described above, the Navy may assist the Coast Guard in pursuit, search, and seizure of vessels suspected of involvement in drug trafficking.

IMPLICATIONS FOR ARMY HOMELAND SECURITY ACTIVITIES

There is a rather diverse range of potential activities engendered in each of the homeland security task areas—domestic preparedness, COG, border and coastal defense, and continuity of operations—that may involve circumstances in which the Army is asked to assist domestic law enforcement. Accordingly, it is critical that the Army develop doctrine, leadership, and training programs that can provide clear and specific guidance on when and how the Posse Comitatus Act—as well as any other laws that proscribe Army activities in the domestic arena—applies and when it does not.