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U.S. Department of Justice  
Office of Legal Counsel

Retrieval (simpson)

Office of the  
Assistant Attorney General

Washington, D.C. 20530

November 3, 1989

MEMORANDUM FOR DICK THORNBURGH  
Attorney General

EXECUTIVE SUMMARY

Re: Extraterritorial Effect of  
the Posse Comitatus Act

The Posse Comitatus Act imposes significant restrictions on the use of military forces to assist in civilian law enforcement. The National Security Council has asked for our advice whether this Act applies extraterritorially. In the attached memorandum, we conclude that it does not.

Neither the language, history, nor legislative history of the Act suggests that Congress intended for it to apply extraterritorially. Under these circumstances, established rules of statutory construction impose a presumption that the Act is to be construed as having only domestic effect. Such a construction is necessary to enable criminal laws with extraterritorial effect to be executed. In many cases, use of the military is the only effective means the President has to enforce American law outside the territory of the United States. Moreover, construing the statute narrowly to apply only domestically is necessary to avoid unwarranted restrictions on the President's constitutional powers as Chief Executive and Commander in Chief.

Legislation enacted in 1981 to authorize certain types of military assistance to civilian authorities and accompanying Department of Defense regulations contain some suggestion that the restrictions enumerated therein apply outside the land area of the United States. Although some ambiguity remains, we conclude the better view is that these rules must be read consistently with the purpose of the 1981 legislation, which was to codify recognized exceptions to the Posse Comitatus Act, without enacting additional limitations on the use of military forces in civilian law enforcement. We believe the Department of Defense should amend their regulations to make clear the narrow scope of the rules.

William P. Barr  
Assistant Attorney General  
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