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PRESIDENTIAL PROCLAMATION FOR USE OF
FEDERAL TROOPS IN CIVIL DISTURBANCES

4 R. S. § 5300 (50 U.S.C. 204) provides that -

10 Whenever, in the judgment of the President, it becomes
7 necessary to use the military forces under this Title, the
President shall forthwith, by proclamation, command the
insurgents to disperse and retire peaceably to their respec-
tive abodes, within a limited time.

The relevant sections to which the proclamation statute applies are
(1) R. S. § 5297 (50 U.S.C. 201), Federal aid to a State upon application
of the legislature, or of the Governor, when the legislature cannot be
convened; (2) R. S. § 5298 (50 U.S.C. 202), the use of military force
to enforce the authority of the Federal government, and R. S. § 5299
(50 U.S.C. 203), the use of such force in situations in which it may be
concluded that there has been a denial by a State of the equal protection
of the laws. The authority conferred upon the President by R. S. §§ 5298
and 5299 does not depend upon application by the State. K

Attached are suggested forms of proclamation to cover the foregoing
situations. Form A is a proclamation for issuance upon application by
the Governor of a State when its legislature cannot be convened; Form B
is a proclamation for issuance upon application by the legislature of a
State; Form C is a form for issuance under R. S. §§ 5298 and 5299. The
forms have been adapted from those contained in Corbin, Federal Aid in
Domestic Disturbances, S. Doc. 263, 67th Cong., 2d Sess., and from the
most recent proclamation in this field, that of President Roosevelt in
1943 in connection with the Detroit race riot (Proc. 2588, June 21, 1943,
8 F. R. 8733).

Forms A and B - Every proclamation issued upon application of a State refers to the disturbance as being an "obstruction to the laws" of the State, as well as being an insurrection in the State. R. S. § 5297 authorizes the President to employ the military forces upon State application "In case of an insurrection in any State against the Government thereof"; it does not specifically provide for the use of military force to put down a disturbance which constitutes an "obstruction" to State law. While the basis for using the obstruction phrase is not entirely clear it seems to be sanctioned by uniform precedent and accordingly its use is continued in the forms suggested here. In addition to the sanction conferred by precedent, it can probably also be justified on the ground that the term "insurrection", as construed by the courts, refers not only to an insurrection against the government but also to lesser civil disturbances involving opposition to the laws of the government. See Horn Life Ins. Co. of New York v. Davila, 212 F. 2d 711, 736 (C. A. 1st, 1954); United States v. Fisher, 280 Fed. 208, 210 (D.C. Neb. 1922); In re Charge to Grand Jury, 62 Fed. 828, 830 (D.C. Ill. 1894); Boon v. Aetna Insurance Co., 40 Conn. 575, 584 (1873). It will also be noted that Article IV, Section 4, of the Constitution, provides that the United States shall protect the States against "domestic violence", rather than merely against insurrection. The history of this clause of the Constitution suggests that the intention was to extend the protection of the national government to cases that did not rise to open insurrection against the State government as such. See Corbin, op. cit., pp. 14, 22. It would seem that it was in this broad sense that R. S. § 5297 uses the term

"insurrection". A similar indication appears in the debates on the statute from which R. S. § 5297 is derived, Act of May 2, 1792, 1 Stat. 264. Thus, Representative Steele stated that "he hoped it would always be found that there were a sufficient number of persons within every State well affected to the laws to suppress any opposition to them within the State"; and Representative Benson observed that an inhabitant of one State was equally bound with that of another "to march to suppress insurrections, and to assist in execution of the laws as much as the inhabitants of a State in which the opposition to the laws existed". 3 Ann. Cong. 576, 577.

It does not appear that any State, in applying for aid, has acted through its legislature; it has always been done by the Governor.

Form C - The draft form contemplates two situations: (1) where the disturbance involves the enforcement of the laws of the United States (R. S. § 5298), and (2) where, in addition, because the State cannot or will not act, it can be said that there has been a State denial of equal protection of the laws (R. S. § 5299). The paragraph in brackets covers the latter situation. Although so far as is known, no proclamation has ever been based on R. S. § 5299, it would appear to be desirable to rely upon that section in addition to R. S. § 5298 when the State fails to take adequate measures to suppress a race riot.

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