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4 Legal authority to use federal troops to quell Election
Day disturbances.

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In the meeting Thursday on preparations for Election Day, attention was called to the restriction on use of troops at the polls contained in 18 U.S.C. 592. This suggested a question as to the effect of that section on the authority of the President under 10 U.S.C. 331-334 to use federal troops to quell any civil disturbances which might occur at the polls tomorrow, as the result of planned demonstrations or otherwise, and get beyond the control of local authorities. I have had some research done on this question over the weekend.

Section 592 provides in pertinent part:

10 "Whoever, being an officer of the Army or Navy,
or other person in the civil, military, or naval
7 service of the United States, orders, brings, keeps,
or has under his authority or control any troops or
armed men at any place where a general or special
election is held, unless such force be necessary to
repel armed enemies of the United States, shall be
fined not more than \$5,000 or imprisoned not more
than five years, or both; and be disqualified from
holding any office of honor, profit, or trust under
the United States."

There is explicit legislative history which illuminates the development of this provision of Title 18. It demonstrates to my satisfaction that the section does not restrict the authority of the President to use the Armed Forces in the circumstances provided for in 10 U.S.C. 331-334; e.g., if

federal troops should be requested by a governor to put down an Election Day civil disorder that is beyond the ability of local authorities to control. This legislative history shows, in effect, that the prohibitions of section 592 were primarily intended to prohibit subordinate military or civil officers of the United States from acting at their own discretion to "keep the peace" at the polls. The statute does not restrict the power of the President to act when other authority, such as that of the cited Title 10 sections, becomes applicable.

The legislative history in this respect is quite complex, involving the development of section 592 from the time of its original enactment in 1865, through several modifications and unsuccessful attempts to modify it, to its last substantive revision in 1909. A memorandum containing a comprehensive examination of the successive versions of the law and the relevant legislative history is being prepared, but I thought you should know of our basic conclusion today.

4 cc: The Attorney General