

Sec. 2—Powers, Duties of the President

Cl. 1—Commander-In-Chiefship

into federal service were required.²³⁹ Since World War II, however, the President, by virtue of his own powers and the authority vested in him by Congress,²⁴⁰ has used federal troops on a number of occasions, five of them involving resistance to desegregation decrees in the South.²⁴¹ In 1957, Governor Faubus employed the Arkansas National Guard to resist court-ordered desegregation in Little Rock, and President Eisenhower dispatched federal soldiers and brought the Guard under federal authority.²⁴² In 1962, President Kennedy dispatched federal troops to Oxford, Mississippi, when federal marshals were unable to control with rioting that broke out upon the admission of an African American student to the University of Mississippi.²⁴³ In June and September of 1964, President Johnson sent troops into Alabama to enforce court decrees opening schools to blacks.²⁴⁴ And, in 1965, the President used federal troops and federalized local Guardsmen to protect participants in a civil rights march. The President justified his action on the ground that there was a substantial likelihood of domestic violence because state authorities were refusing to protect the marchers.²⁴⁵

PRESIDENTIAL ADVISERS

The Cabinet

The authority in Article II, § 2, cl. 1 to require the written opinion of the heads of executive departments is the meager residue from a persistent effort in the Federal Convention to impose a coun-

²³⁹ United States Adjutant-General, *Federal Aid in Domestic Disturbances 1787–1903*, S. Doc. No. 209, 57th Congress, 2d sess. (1903); Pollitt, *Presidential Use of Troops to Enforce Federal Laws: A Brief History*, 36 N.C. L. REV. 117 (1958). United States Marshals were also used on approximately 30 occasions. United States Commission on Civil Rights, *Law Enforcement: A Report on Equal Protection in the South* (Washington: 1965), 155–159.

²⁴⁰ 10 U.S.C. §§ 331–334, 3500, 8500, deriving from laws of 1795, 1 Stat. 424; 1861, 12 Stat. 281; and 1871, 17 Stat. 14.

²⁴¹ The other instances were in domestic disturbances at the request of state governors.

²⁴² Proc. No. 3204, 22 Fed. Reg. 7628 (1957); E.O. 10730, 22 Fed. Reg. 7628. See 41 Ops. Atty. Gen. 313 (1957); see also, *Cooper v. Aaron*, 358 U.S. 1 (1958); *Aaron v. McKinley*, 173 F. Supp. 944 (E.D. Ark. 1959), *aff'd sub nom Faubus v. Aaron*, 361 U.S. 197 (1959); *Faubus v. United States*, 254 F.2d 797 (8th Cir. 1958), *cert. denied*, 358 U.S. 829 (1958).

²⁴³ Proc. No. 3497, 27 Fed. Reg. 9681 (1962); E.O. 11053, 27 Fed. Reg. 9693 (1962). See *United States v. Barnett*, 346 F.2d 99 (5th Cir. 1965).

²⁴⁴ Proc. 3542, 28 Fed. Reg. 5707 (1963); E.O. 11111, 28 Fed. Reg. 5709 (1963); Proc. No. 3554, 28 Fed. Reg. 9861; E.O. 11118, 28 Fed. Reg. 9863 (1963). See *Alabama v. United States*, 373 U.S. 545 (1963).

²⁴⁵ Proc. No. 3645, 30 Fed. Reg. 3739 (1965); E.O. 11207, 30 Fed. Reg. 2743 (1965). See *Williams v. Wallace*, 240 F. Supp. 100 (M.D. Ala. 1965).