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Understanding Your State or Territory's Rules for the Use of Force

National Guard members: have you been activated? Please read the disclaimer at the end.

BEFORE YOU GO

Things You Should Consider

For Guardsmen called to support civilian law enforcement during the ongoing nationwide protests, you should be rightfully proud. You're being called on to protect your fellow citizens' right to peaceful protest. This is exactly what the First Amendment is all about. At the same time, you're being placed in an incredibly difficult, potentially dangerous situation. You may need to use force, possibly deadly force, in the execution of your duties.

- Your leadership should provide you with the Rules for the Use of Force. If you've not been given Rules for the Use of Force, ask immediately for this information. If you've deployed before, you may remember receiving Rules of Engagement. The rules for using force here in the United States are drastically different. Don't rely on what you remember from your deployment.
- Rules for the Use of Force are based on your state or territory's law. If you use force in a manner that violates state or territory law, you can be arrested and face criminal prosecution for your actions. Depending on your state or territory, you could also face a civil lawsuit for actions considered illegal.
- If you have questions about what your Rules for the Use of Force mean, ask!
- Try to avoid using any kind of force. Whenever possible, let law enforcement officers handle violent offenders.
- If you're given an order that sounds illegal, immediately ask for clarification. If you're given an order that sounds possibly illegal, ask for the order to be put in writing, if possible. Ultimately, if you are given an illegal order, you have a duty to disobey.
- You always have the right to defend yourself and defend others. This means if you are being attacked, or another Guardsman, law enforcement officer or protester is being attacked, you can use force to protect yourself or others.
- Your state or territory's Rules for the Use of Force should specify when you can use deadly force. Specifically, you need to understand when you can legally fire your issued military weapon. Typically, this will only be in response to someone using deadly force against you or someone else. Your specific rules may also allow for using deadly force when you are threatened with deadly force. Ask, and keep asking until you get clear answers that you understand.

- Understand who is in your chain of command. Do your orders require you to obey the commands of law enforcement officers? Or are you strictly under the command and control of your organic chain of command? If this is not clear, ask. This is important because law enforcement officers have different training, policies and authorities.
- The amount of force you use must always be limited. Only use the minimum amount of force needed to safely neutralize the threat you're facing. If a fellow Soldier or Airman is using excessive force, stop them.

AFTER

If You Are Required to Use Any Kind of Force

- As soon as possible, make notes of what happened and why you took action. For example, document, as specifically as possible, the number of protesters you were dealing with at the moment you used force. Who else was present at the scene? What force was used against you? Did you feel scared, and why? The more details the better. Save this document. Investigations may not be immediate, and you could face allegations weeks or months later.
- If you seriously injure or kill someone, your actions will be scrutinized. Specifically, your use of force will be investigated to determine if you violated criminal laws. Seek the help of a criminal defense attorney immediately.
- If you are required to use force of any kind, you may be questioned by law enforcement officers. You have the right to remain silent. Resist the urge to "make a statement" until after you speak with an attorney.

About the Author

Attorney Doug O'Connell is a retired National Guard colonel. Based in Austin, Texas, Doug routinely helps National Guardsmen around the country with legal issues. Doug can be contacted at Doug@DougOConnell.com or (512) 547-7265.

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