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# Planning for martial law?

Civil libertarians say the Bush administration may give the military scary new police powers in its secret planning for a bunker-based, post-disaster shadow government.

DAVE LINDORFF

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When the Washington Post revealed the existence of an American “shadow government,” operating secretly in Tora Bora-style mountain bunkers over the six months since Sept. 11, it shocked even some congressional leaders, who learned about it March 1 from the Post, not the Bush administration.

Now civil libertarians on the left and right are raising new questions about the shadow government — about its secrecy, its leadership, and the way it involves the military in domestic

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roles. In particular, plans to have the military assume domestic police functions in case of national emergency alarm some scholars and advocates, who believe the shadow government could be an early step on the way to martial law.

Obviously there are worst-case scenarios — massive terrorist attacks, nuclear war — in which it's the government's duty and responsibility to assure its own continuity, and maintaining order in such circumstances could well demand the domestic use of troops. But critics fear that the present administration might be willing to impose martial law under ambiguous circumstances, citing the fact that the Bush administration has pushed through harsh restrictions on civil liberties like the USA PATRIOT Act, and is already using military personnel to assume police functions.

"It has become clear that the response of this administration since 9/11 has been to try and set up a complete government that is not subject to visibility and accountability," says Michael Ratner of the Center for Constitutional Rights in New York. "You have a shadow government operating in complete secrecy, and then you have these efforts, like military tribunals and the Patriot Act, to undermine basic constitutional protections."

The left-leaning Ratner has counterparts on the right who worry that this administration has been too quick to sacrifice civil liberties in the name of public safety in the last six months. **William J. Olson**, a conservative lawyer and onetime Bush supporter who counts among his clients the U.S. Gun Owners Association, says its moves since Sept. 11 make clear that the Bush administration has "decided that it doesn't need to follow constitutional processes."

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The leap from shadow government to martial law may seem alarmist. Certainly the fact that the Bush administration has made plans to deliver the mail, administer government assistance programs, collect taxes and protect public safety in the event of a major terror attack or nuclear war is not in itself alarming, and the shadow government that's been operating since Sept. 11 is a long way from martial law. According to the Post, up to 150 civilian and military employees are living and working in heavily fortified mountain bunkers. Carved out under Pennsylvania's Raven Rock Mountain and Weather Mountain in Virginia during the Cold War in the 1950s, these underground cities are home to government officials who rotate through on three-month stints — their identities and even their titles kept secret.

In the event of a massive terror attack, the Post reported, "the underground government would try to contain disruptions of the nation's food and water supplies, transportation links, energy and telecommunications networks, public health and civil order. Later it would begin to reconstitute the government."



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Spotlight

The White House didn't invent its shadow government Sept. 11. In fact, in implementing its classified "continuity of operations plan," the Bush administration was following — at least in part — a script that was first drawn up back in the Cold War days of the 1950s, and maintained during every administration, up through the Clinton years. But at the Pentagon, at the Federal Emergency Management Agency (FEMA) and at the new Office of Homeland Security, officials have been busy updating those plans, particularly the way they relate to using the military as a kind of domestic national police. Sources at all those agencies confirm that domestic military deployment is an integral part of their "continuity of government" planning. And those military-as-police plans, which have been on the shelf at the Pentagon (where they are referred to as the Defense Deployment Plan, or Operation Garden Plot) since at least the 1970s, are classified.

"The Office of Homeland Security is working on the issue" of domestic use of the military in police-type functions, confirms a spokesperson at the Pentagon responsible for "homeland security" issues, but he refused to give any other details.

"That information is not available. It's classified," says a spokesperson at the Office for Homeland Security, when asked about the military planning going on there.

Critics complain that most Americans, including members of Congress, learned about the shadow government from the Post story, not from the Bush administration (and even the Post agreed to a White House request not to publish the locations of the shadow government bunkers, though their location has been widely reported [elsewhere](#)). Senate Majority Leader Tom Daschle, D-S.D., told reporters after the Post story came out that he was disturbed that he had been told of the secret government by the media instead of by the Bush administration.

"They're calling it a shadow government, but half the government was being viewed as the enemy," says Chris Simpson, an American University communications professor who has written several books on national security during the Reagan and Bush administrations. The fact that Bush's shadow government excluded not only members of the Democratic opposition, but the whole legislative branch, is not something intended by the original "continuity of government" scheme, Simpson notes.

"The authorities in those two locations are not career government employees; they are the assistant secretaries and undersecretaries of Cabinet departments. They're Bush's political appointees," Simpson adds. "And what are they doing? Not just sitting there waiting to be needed. They are planning the next phase of the Bush administration's anti-terror campaign."

And at one extreme, that includes planning for martial law, a scary term for the substitution of military forces for domestic police, and the invoking of special emergency laws, such as curfews, preventive detention and the like.

The idea that the government is looking at scenarios that include the declaration of martial law in the U.S., or some part of it, may seem outlandish. After all, the Posse Comitatus Act, passed at the end of Reconstruction by Congress in 1878, would seem to bar domestic police activity by the military. But martial law planning has always been an integral part of the government's "continuity of government" planning process, whether at FEMA or at the Office of Homeland Security. And martial law has been declared over limited U.S. jurisdictions more than 100 times in U.S. history, the last occasion being in 1941 in Hawaii, just after the Japanese attack on Pearl Harbor.

Earlier versions of the government's martial law plans during the Nixon and Reagan/Bush years have included provisions for mass arrests and the establishment of internment camps for domestic dissidents (Nixon's Justice Department had a list, called the ADEX file, of thousands of known dissidents who were to be picked up immediately in an emergency). And today, even the seemingly innocent phenomenon of having National Guard soldiers patrol airports strikes some observers — and even some Guardsmen — as a worrisome federal encroachment on the rights of state and local authorities, and a first step toward some kind of national militia that combines police and military functions.

There are staunch civil libertarians who downplay the likelihood that shadow government planning could lead to martial law. "I'm not sure you can jump from word that the government has implemented contingency plans to start operating a shadow government to talking about martial law being invoked," says one civil liberties law expert who specializes in domestic military issues — but who wouldn't go on record downplaying the seriousness of Bush administration martial law planning. And Chip Berlet, who monitors right-wing extremists as director of the

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Boston-based Political Research Associates, notes that the Pentagon has had martial law plans for years, and he isn't convinced the current planning marks a departure from what's come before. "Besides, the reality of government repression under Bush is bleak enough," adds Berlet.

Senate Majority Leader Daschle, after finally being briefed about the administration's plans six months late, claims to be satisfied. But his office's response to questions makes it clear that the shadow government, secreted away in the mountains, remains a purely executive-branch affair. Asked if Daschle and Congress were now being included in the contingency plan, a Daschle spokeswoman said, "I can't answer that. You'd have to ask the White House. This is a White House operation."

But isn't the government composed of three equal branches? Isn't Congress part of this contingency government in waiting? Since when has a member of Congress referred all questions to the executive branch? "This is a White House operation," repeated the Daschle spokeswoman.

But some experts are alarmed by reports of stepped-up martial law planning by the executive branch, and they include voices on the right. "Anyone who is going to rely on Posse Comitatus as a protection against military abuse is leaning on a thin reed," says conservative attorney Olson. He notes that despite Posse Comitatus, laws are already on the books authorizing martial law.

Olson points to Section 32CFR 501.4 of the Code of Federal Regulations, which simply states: "Martial law depends for its justification upon public necessity. Necessity gives rise to its creation, necessity justifies its exercise; and necessity limits its duration. The extent of the military force used and the actual measures taken, consequently, will depend upon the actual threat to order and public safety which exists at the time."

Nor, says Olson, does establishment of military rule have to result from an order by the president. Under Section 32CFR 501.4, virtually any military officer in a position of authority can make that decision. As the statute reads: "In most instances, the decision to impose martial law is made by the president, who usually announces his decision by proclamation, which usually contains his instructions concerning its exercise and any limitations thereon. However, the decision to impose martial law may be made by the local commander on the spot, if the circumstances demand immediate action, and time and available communications facilities do not permit obtaining prior approval from anybody."

The operating assumption is that someone in the constitutional chain of command would be in charge of the country in an emergency, of course. But the shadow government is designed to function even if a terrorist act or an act of war were able to wipe out virtually everyone in Washington. That is one situation in which military officials in the bunkers, or elsewhere in the country, lacking a clear chain of civilian command, might start taking the law into their own hands.

Even some National Guard officers have expressed concern about encroaching federal control of their work. "One of the things they're doing in the Office of Homeland Security is working to unite the separate state authorities over the state Guard into a national command," says Michael Leventhal, a lieutenant colonel in the New York National Guard. "What they're doing is establishing the precursor to a national domestic military command, which is scary."

State National Guard divisions are technically considered to be state militias, under the authority of state governors, not the president, even if they are being paid by the federal government and are performing their duty across the nation. But Leventhal says they are actually already acting as a kind of national police force. He points to the national call-up of Guard units to patrol the nation's airports and inspect passengers and crews. Reports of excessive force and abusive treatment of passengers and crewmembers, some of whom have been pulled from flights and even detained at gunpoint by some of those M16-toting soldiers, make some people worry about what military rule might be like.

"It's a short step from having a national domestic military command to having martial law," says Leventhal, a self-described libertarian Republican whose unit was put on active duty after Sept. 11 to guard New York City-area military armories. "All it would take at this point would be another major terrorist attack or two in the heartland, and that would do it."

Critics see other signs that the government may be preparing for a military role in domestic affairs. Wayne Madsen, a former communications security specialist for the National Security Agency during the Reagan and first Bush administrations, describes a convention he attended in

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Washington in early February, hosted by the National Defense Industrial Association, where military special forces and special operations soldiers mingled freely with Justice Department officials, discussing urban warfare and crowd-control techniques and equipment. "There was a lot of talk about things like shooting Spiderman-type nets and about mass arrest techniques," he says, "none of which would be of much use in the mountains of Afghanistan or the deserts of Iraq. It was pretty clear that the Posse Comitatus Act was being completely ignored there."

While the "continuity of government" program has never before been put into effect, the idea of declaring martial law was raised recently as a serious possibility by someone who ought to know what he's talking about: Clinton administration Secretary of Defense William Cohen. In an Oct. 27, 1998, *Army Times* article headlined "U.S. Martial Law Coming? Cohen Predicts Army Will Patrol Streets," Cohen warned: "Terrorism is escalating to the point that Americans soon may have to choose between civil liberties and more intrusive means of protection." He added that the specter of armored vehicles surrounding civilian hotels or governments "could happen here."

It's also not the first time the idea has been seriously explored by government officials in recent years.

At the end of the Nixon administration in the mid-1970s, there were reports in the media — most notably a 1975 *New Times* magazine article by award-winning investigative reporter Ron Ridenhour — that the president, about to be ousted because of the Watergate scandal, actually went so far as to approach some top Pentagon brass to ask if they would support a declaration of martial law, which would have kept him in power. Fortunately, the generals that he reportedly contacted turned him down. More testimony about Nixon's desperate gambit came out during the Senate Watergate hearings, but the allegations weren't pursued by investigators.

The hearings also featured testimony about a series of Pentagon war games run during Nixon's second term, which included mock martial-law exercises and mock mass roundups of dissidents. The code name of those exercises was reportedly Operation Garden Plot, the same name given to the current Pentagon plan being worked on at the Office of Homeland Security, FEMA and the Pentagon. The most recent version of that plan, dated Feb. 15, 1991, was approved during the administration of George Bush the elder. At that time, the secretary of defense was Dick Cheney, now vice president and chief cave-dweller-in-residence.

More recently, in the late 1980s, Iran-Contra scandal co-conspirator Oliver North, then a member of President Reagan's national security staff, also had FEMA look into the possibility of declaring martial law — and of rounding up dissidents en masse — in the event of major civil unrest should the U.S. government decide (as was being contemplated at the time) to commit troops to battle in the El Salvador civil war.

After martial law was declared in Hawaii in 1941 following the Japanese attack on Pearl Harbor, local agribusiness companies tried to have it extended indefinitely in hopes that it would help them combat local labor organizing, but their efforts were rejected in 1946 by the U.S. Supreme Court. In another case of martial law being used against labor organizing, in 1918 President Wilson sent federal troops into Colorado during a coal labor dispute, and had them disarm the state's apparently insufficiently reliable sheriffs and National Guard, after which the federal troops oversaw the breaking of the strike.

These examples show the way martial law can be used to serve interests other than public safety, and that history alarms critics who are already suspicious of the Bush administration's pro-business, anti-dissent agenda.

Nobody would argue with the notion that the government needs to have contingency plans for disasters, and those contingency plans, in today's world, need to include the possibility of the entire government in Washington being wiped out. The question is, why all the secrecy? If anything, letting an enemy know that America has plans in place to continue with its democratic form of government, no matter what heinous attacks are mounted against it, might act as a deterrent.

To many legal scholars, the administration's martial law planning, together with the USA PATRIOT Act passed last October (under which anything defined as "aiding terrorists" or "threatening lives or property" could lead to 10 years in jail), cast the shadow government in a more ominous light.

The Center for Constitutional Rights' Ratner thinks it's possible there may not ever be a formal proclamation of martial law, in the sense of having the military take over the running or the

policing of the country. It could be more of a creeping thing. "If you view martial law as a bundle of rights that get denied, then some of it is here already, with military tribunals and detentions without charges," says Ratner, who is currently suing the government over its internment of Afghan combatants at Guantanamo Bay in Cuba, and its plans for military tribunals instead of court trials. But eventually, Ratner says, "under martial law any dissent and you get taken off right away."

Even during the Clinton administration, thanks to the war on drugs, the Pentagon and the White House found creative ways to get around the letter of the Posse Comitatus Act. For example, soldiers have been sent to beef up security at border crossing points. It turns out they aren't being considered to be in violation of Posse Comitatus because officially they are not armed, and are thus not considered by the Pentagon and the Justice Department to be real soldiers.

But what about the Supreme Court, that final arbiter of and check on executive power? Wouldn't it guard against executive rule or martial law? In fact, only once out of the 100 times that the Supreme Court has been asked to limit the power of the executive branch, it has refused to lift

The concept of martial law is fairly wide open, says Peter Jordan Faust, a law professor at Catholic University's Columbus School of Law and a former judge advocate general in the Army. "I don't think that the Supreme Court has ever acted to limit a lot of evil things that could happen. I really don't know what restraints there are. I just don't think that we've had enough attention paid to this issue, and that's a concern."

Adds Ratner, "The courts have been very reluctant to do anything about martial law or executive power when military action is ongoing." Meanwhile, with a war on and fears of terrorism at home, there seems to be little public concern about either secret government or encroachments on civil liberties.

"It's a sad thing," says the politically conservative Olson. "Today the American people are so trusting of people in authority and in government that it never dawns on them that these might not be men and women of goodwill."

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