

## Presidential Authority as Commander in Chief of the Air Force

The President is Commander in Chief of all the armed forces of the United States—the Air Force as well as the Army and the Navy.

August 26, 1947

### MEMORANDUM FOR THE SPECIAL COUNSEL TO THE PRESIDENT\*

The question has been raised as to whether the President is Commander in Chief of the Air Force established as a separate branch of the National Military Establishment by the National Security Act of 1947, Pub. L. No. 80-253, § 208, 61 Stat. 495, 503.

The Constitution provides: “The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States . . .” U.S. Const. art. I, § 2, cl. 1.

It is clear that the President is Commander in Chief of all the armed forces of the United States comprised within the national military establishment—the Air Force as well as the Army and the Navy. Under the Constitution, the President as Commander in Chief of the Army and Navy is the supreme military commander charged with the responsibility of protecting and defending the United States. The phrase “Army and Navy” is used in the Constitution as a means of describing all the armed forces of the United States. The fact that one branch of the armed forces is called the “Air Force,” a name not known when the Constitution was adopted, and the fact that the Congress has seen fit to separate the air arm of our armed forces from the land and sea arms cannot detract from the President’s authority as Commander in Chief of all the armed forces.

This conclusion is supported by other parts of the Constitution. Thus the Constitution speaks of the power of the Congress “to raise and support Armies,” art. I, § 8, cl. 12, “to provide and maintain a Navy,” *id.* cl. 13, and “to make rules for the Government and Regulation of the land and naval Forces,” *id.* cl. 14. In so providing, the Constitution, of course, does not use the words “Air Force.” It certainly could not be contended that the absence of those words from the Constitution rendered the Congress unable to provide for an Air Force.

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\* Editor’s Note: The copy of this memorandum in the OLC daybook is addressed to “Mr. Clark Clifford,” without indication of his position. It appears that Mr. Clifford was serving as Special Counsel to President Truman in 1947. See Jeremy Rabkin, *At the President’s Side: The Role of the White House Counsel in Constitutional Policy*, 56 Law & Contemp. Probs. 63, 66 (1993).