OMNI BILL OF RIGHTS DAY DECEMBER 15 NEWSLETTER,
Compiled by Dick Bennett for a Culture of Peace, December 14, 2008

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I hope you are making plans to make December 15 a special day. The first ten Amendments to
the United States Constitution, our Bill Of Rights were ratified on that day in 1791. If you have
young family members take a little time to read the Bill Of Rights aloud with them. Ask them
if they feel these rights are as important today (Dec. 15) as they were 217 years ago. Take it a
little farther, talk to your friends, find out if they feel we are losing our rights. See if they feel
some of them have been forgotten or are being ignored. Contact your Mayor and City Council.
Urge them to pass a resolution making December 15th Bill Of Rights Day in your area. David
Schantz of the Constitution Party

BILL OF RIGHTS DAY AND CONSTITUTION DAY
FREE DOCUMENTS  Constitution Day Materials, US Constitution, Pocket Constitution ... The US
Constitution, Bill of Rights, Declaration of Independence, Articles Of Confederation. ... Please join us
as we celebrate Constitution Day 2008, ...

PATRIOT ACT VS. BILL OF RIGHTS

"Percentage of the amendments in the Bill of Rights that are violated by the USA Patriot Act, according
to the ACLU: 50."

1.  American Civil Liberties Union : USA PATRIOT Act
Reform the Patriot Act, rtpa.org Just 45 days after the September 11 attacks, with
virtually no debate, Congress passed the USA PATRIOT Act. There are ...
www.aclu.org/SafeandFree/SafeandFree.cfm?ID=12126 - 30k - Cached - Similar
2. **Taking Back America: USA Patriot Act and Civil Liberties**
   Oct 26, 2001 ...
   The following databases will help you identify other material relating to the USA Patriot Act and civil liberties. ...
   [www.lib.washington.edu/Suzref/patriot-act/ - 10k - Cached - Similar pages]

3. **Reform the Patriot Act | American Civil Liberties Union**
   In early 2006, Congress reauthorized the Patriot Act without fixing the law's most fundamental flaws. On March 9, 2006, President Bush signed the flawed ...
   [www.reformthepatriotact.org/ - 15k - Cached - Similar pages]

4. **Video results for patriot act and civil liberties**
   1. Patriot Act - The War on Civil Liberties (1/3)
      10 min
      [www.youtube.com]
      Unconstitutional - The War on Our Civil Liberties
      68 min
      [video.google.com]

5. **VoteMatch: The Patriot Act harms civil liberties**
   VoteMatch Presidential Candidate Matching Quiz: The Patriot Act harms civil liberties.
   [www.ontheissues.org/VoteMatch/q19_2006.asp - 12k - Cached - Similar pages]

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**BILL OF RIGHTS DAY 2008 AND ACLU AROUND THE COUNTRY**

**ACLU of Northern California : Bill of Rights Day Celebration 2008**

**BOR Day - Special Events - Welcome to the ACLU of Hawaii**

**Bill of Rights Day 2008! ACLU of Hawai‘i Seeks Volunteers for National Bill of Rights Day!**

Monday, 12/15/08 Marks the 217th Anniversary of its Ratification ...

**2008 Bill of Rights Day Celebration :: American Civil Liberties ...**

Our honorees have generously given their time and talents to the ACLU of Eastern Missouri over the course of our history. They have served as cooperating ...

**ReadWriteThink: December 15, 2008: Bill of Rights Day is observed ...**

**Bill of Rights Day** is a good opportunity for students to explore a of Rights and the ...
HABEAS CORPUS AND POSSE COMITATUS: RELATED PROTECTIONS OF LIBERTY

HABEAS CORPUS

"Number of Middle Eastern, South Asian, and North African men detained in the U.S. in the eight weeks after 9/11: 1,182. Number of them ever charged with a terrorism-related crime: 0.” "Harper's Index" (Jan. 09).

Habeas Corpus Defined and Explained

A habeas corpus petition is a petition filed with a court by a person who objects to his own or another's detention or imprisonment.

Habeas Corpus Defining habeas corpus, and how to petition for a writ. ... A petition for habeas corpus asks that a court order the custodian of a prisoner to bring the ...

The Restoration of Habeas Corpus Petition Steering Committee

The Restoration of Habeas Corpus Petition Steering Committee.

POSSE COMITATUS: PROTECTION AGAINST MILITARY

"More Troops Planned Inside U.S.: 20,000 would aid in disaster relief by 2011, officials say." ADG (12-1-8). An active duty combat brigade is now assigned to the Northern Command for the first time "to help state and local officials respond to a nuclear terrorist attack or other domestic catastrophe, according to Pentagon officials." But we should be alarmed. Thankfully the ACLU and the Cato Institute are speaking up against this expansion of executive authority. Disaster relief....and crowd control, terrorist attack....and arresting demonstrators. This is another leap in militarization by Homeland Security. Alert your legislators to keep our longstanding democratic tradition of wariness toward the use of standing armies to keep the peace. This breach of the Posse Comitatus Act is a heartbeat away from dictatorship. (Dick)
"The Law of Posse Comitatus: Police and military powers once statutorily divided are swiftly merging"

by Lynne Wilson, CovertAction Quarterly magazine, Fall 2002

Terrorism is escalating to the point that Americans soon may have to choose between civil liberties and more intrusive means of protection...

Former Secretary of Defense William S. Cohen
Army Times, October 27, 1998

President Bush unveiled his broad "Homeland Security" department proposal in mid-July, including "a review of the law that could allow the military to operate more aggressively within the United States." The proposal champions a "greater involvement of military personnel" in "domestic preparedness and response efforts." Prior to this broad proposal, Department of Defense (DOD) officials repeatedly stated that they had no intention to recommend rewriting or repealing the Posse Comitatus Act, a post-Civil War statute that restricts the military's ability to participate in civilian law enforcement. That cautious approach has now been openly abandoned.

At this point, it may not matter. Not much of the Posse Comitatus Act is left to repeal. Whatever viewpoint you come at it from, whether from the perspective of an Army Delta Force commander or an antiglobalization activist, the Posse Comitatus Act no longer provides the strong wall between the military and domestic law enforcement for which it was originally intended.

"The military has been dragged into various internal security roles for a long time now," recently commented Peter Kraska, an expert on the militarization of local police.

BACKGROUND

The Posse Comitatus Act states simply:

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than $10,000 or imprisoned not more than two years, or both.
Congress passed the Posse Comitatus Act in 1878 to end military occupation of the defeated Southern states during the Reconstruction period. Southern Democrats had complained bitterly about the oppressive use of the military in a law enforcement role. The Act incorporates a founding American principle of keeping the nation's military forces separate from and subordinate to the "Civil Power."

The Act embodies the long-standing principle in Anglo-American law that there should be a total separation of military from civil law enforcement. As one southern Senator stated during debates over the Act, "whenever you conclude that it is right to use the Army to...discharge those duties that belong to civil officers and to the citizens, then you have given up the character of your Government; it is no longer a government for liberty...it has become a government of force."

That the Act provides much less of a shield against a "government of force" than its framers intended is the result of complex factors. Part of what has led to the erosion of military/civil law enforcement separation is the language of the Act itself. Unlike a constitutional provision such as the Fourth Amendment, it does not have the status of Supreme Law and can be amended or repealed or excepted by a simple congressional majority. Also unlike the Fourth Amendment, courts have consistently admitted, rather than excluded, evidence obtained in violation of it.

The Posse Comitatus Act is relatively narrow in its scope. For example, the Act appears to prohibit indirect involvement such as the supply of support, training, intelligence and equipment to civilian law enforcement. But courts have consistently interpreted its language to proscribe only direct military involvement in the execution of laws. Only one court has interpreted the Posse Comitatus Act broadly, finding the Act "absolute in its command and explicit in its exceptions." When applied in the context of an individual case, most courts essentially look the other way when a military officer is involved.

Furthermore, the Act only applies on its face to two military branches, the Army and the Air Force. It has been held to apply to the Navy and Marines by DOD regulation. It does not apply to the Coast Guard.

Because the federalized National Guard is part of either the Air Force or the Army, it is covered by the Act. When acting as a militia, however, a state's National Guard is exempt from the Act's proscriptions. By definition, state militias are armed and trained separately from regular armed forces. Under this "State Militia" exemption, state National Guard troops are free to make arrests and to conduct otherwise prohibited searches at airports and elsewhere.
Congress has approved the direct use of military troops during civil disturbances. These provisions grant the President the authority to use military troops to enforce civilian laws where a state has requested assistance or is unable to protect its citizens or property. An order to disperse must first be given. This statutory exception potentially encompasses any civil disturbance that might arise from "terrorist activity." It was used to justify the presence of active duty Army personnel in Los Angeles during the 1992 rioting subsequent to the Rodney King incident. The mere potential for a "civil disturbance" or a terrorist attack at the 1996 Olympics in Atlanta drew over 10,000 U.S. troops and only a faint protest from Congress.

On its face, the Act only provides criminal sanctions as a remedy for violations. However, no one has ever been prosecuted for violating it. Criminal prosecution by the government is the only remedy, as the act by its terms does not give individuals the right to sue. Although attempts have been made to obtain civil damages for violations of the Act, recovery has only been successful against military officials for violating a plaintiff's Fourth Amendment rights under Bivens v. Six Unknown Named Agents.

Courts have also consistently upheld military involvement in local law enforcement where a military purpose such as a "sting" operation justified the involvement. Consistent with the act's language, courts require the active involvement of military officers at the request of local law enforcement before a violation will be found. Such cases are almost nonexistent. Under this interpretation, U.S. Army Delta Force involvement during the 1999 Seattle anti-WTO protests did not violate the Posse Comitatus Act because the involvement occurred at the request of Secretary of State Madeleine Albright, not the mayor of Seattle.

THIS JUST IN

One of the most hawkish congressional enthusiasts for Bush's plans to send U.S. troops to the streets of Baghdad is Joseph Biden, Democrat of Delaware. Apparently he wants to see the same troops on the streets of U.S. cities. Interviewed on Fox News on July 21, he strongly endorsed giving power of arrest to U.S. soldiers. Posse Comitatus, said Biden "has to be amended." Even Mr. Homeland Security Tom Ridge begged to differ.

WOUNDED KNEE

Prior to the "War on Drugs," military involvement in local law enforcement efforts was a relatively rare occurrence. The key exceptions were the use of military equipment and advisers during the large student demonstrations of the early 1970s and in the 1973 American Indian Movement occupation at Wounded Knee, South Dakota. Criminal litigation arising out of Wounded Knee did much to simultaneously clarify and confuse what military behavior does and does not constitute a violation of the Posse Comitatus Act. The litigation also illustrates how fluid the boundaries of the Act are.
During AIM's takeover of the Pine Ridge Reservation at Wounded Knee, Army officers and the South Dakota National Guard supplied local law enforcement officials with military equipment including ammunition, weapons, flares, and armored personnel carriers. Mechanics from both the Nebraska and the South Dakota National Guards repaired and maintained the personnel carriers.

The U.S. government charged four AIM defendants with obstructing justice in violation of 18 U.S.C. §231(a)(3), an offense requiring interference with any "law enforcement officer lawfully engaged in the lawful performance of his official duties." Each federal court assumed that the National Guards had been federalized and were thus subject to the Act.

Each of the four defendants argued that the government could not prove "lawful performance" because civil reliance on military assistance at Wounded Knee violated the Posse Comitatus Act. Although the four federal courts looked at the same evidence, each came to a separate conclusion. The Banks court granted the motion for acquittal on the obstruction charges, stating that civil law enforcers had used the military "as a posse comitatus or otherwise." The Jaramillo court held that while the Act does not per se prohibit the furnishing of military equipment such as armored personnel carriers, advice rendered by military officers and the equipment maintenance performed by military personnel so "pervaded" the activities of civilian personnel that there was a reasonable doubt as to whether law enforcement officers were lawfully engaged in the performance of their duties.

The Red Feather court agreed that "direct active use" of military materiel violates the Act. But the Red Feather court went further to list what "active" military roles are forbidden in civil law enforcement: arrests, seizing evidence, searching persons or buildings, investigating crimes, interviewing witnesses, pursuing escaped prisoners and searching for suspects. In addition, the Red Feather court held as acceptable certain "passive" military roles that indirectly aid civil law enforcers, including the presence of military personnel giving advice or recommendations on tactics or logistics, delivering and maintaining military materiel, training civilian officials in the use and care of equipment and conducting aerial reconnaissance.

Significantly, the McArthur court, like the Red Feather and Jaramillo courts before it, concluded that the Act forbade neither the military's giving materiel or equipment to civil law enforcers, nor the lending of military advisers. However, although three of the four Wounded Knee courts came to this conclusion, none agreed on the standard to be applied to determine when the Act has been violated.

The disagreement among the Wounded Knee courts has created confusion about the Act's parameters. Four different levels of military involvement have been ruled to be acceptable:

* as long as citizens are not subjected to military compulsion;

* if it does not involve direct active use of troops in civil law enforcement;
* presence of military personnel must not pervade or influence the actions of civil officials; and

* mere presence of military advisers is unacceptable involvement.

On appeal, the federal Eighth Circuit Court of Appeals upheld the Wounded Knee convictions. In so doing, however, it merely agreed with the McArthur court's rationale that so-called "passive" military involvement is not prohibited. It did little to clarify what military activities, especially in the context of a mass protest, cross the Act's boundaries.

**AMENDMENTS**

Then came the Drug War in the early 1980s. This was the beginning of an almost obsessive congressional determination to insert a military presence into domestic drug law enforcement, regardless of Posse Comitatus. After the inconsistencies of the Wounded Knee cases, confusion persisted in the courts over what level of military involvement constituted a violation of the Act. Of particular concern was just where "active" participation ended and "passive" participation began. Because of conflicting court interpretations, military authorities expressed reluctance to assist civil law enforcement in the drug war even if the aid might be considered "legally proper."

Congressional hearings were held in 1981 to consider whether amendments to the Act were needed that would more clearly enable the military to "passively" provide intelligence, materiel, transport services, and training to local law enforcement agencies. In debating the proposed amendments, members likened drug smugglers to an "invading army" that was pitted against local law enforcers so lacking in resources that they could interdict only 15% of the then $80 billion worth of drugs flowing into the country annually.

Congress passed amendments to the Posse Comitatus Act as part of the DOD Authorization Act of 1982. The amendments passed over the numerous objections of civil liberties groups. Most important of these was the prediction that even passive military assistance, such as the provision of equipment and equipment operators on a routine basis, would unduly threaten the civil-military separation. Further, the ACLU warned that permitting military personnel to train civilians in the operation of military equipment would allow the military to assume functions that should be the responsibility of police academies.

The 1981 amendments to the Posse Comitatus Act permit the military to provide civilian law enforcement officials with information, equipment and facilities as well as training and advice. They further give military personnel limited authority to actually operate or maintain equipment made available to civilian forces in certain situations such as aerial reconnaissance when enforcing drug laws. Courts have interpreted these amendments as permitting the use of both military equipment and military operators to assist local police officers in searches for drugs.
Later amendments to the Posse Comitatus Act include a 1987 requirement that the Secretary of Defense conduct an annual briefing for local law enforcement personnel in each state regarding the "information, technical support, and equipment and facilities available to civilian law enforcement from the Department of Defense." This section also requires that the DOD make available to these law enforcement officials a comprehensive list of all the "suitable" military equipment available.

In addition, Congress specifically amended the Act in 1993 to provide procedures for states (and local agencies) to purchase "law enforcement equipment suitable for counter-drug activities" through the Department of Defense. What these amendments have meant is the proliferation of local police use of military equipment (flash-bang grenades, assault rifles, armored personnel carriers) that are accouterments of war. Anyone who has participated in anti-globalization protests such as those in Seattle or Washington, DC, has witnessed the proliferation of armored personnel carriers as weapons of intimidation. The use of such equipment is permissible under both amendments to the Posse Comitatus Act as well as court interpretations that approve of the use of military equipment by civilian law enforcement.

Other courts have gone further to say that there are no limits on a state governor's powers to use the National Guard "to execute the laws." Further, courts have also said that all a governor has to do is to "generally authorize" use of the National Guard, leaving implementation and supervision up to local police. At least one state court has held that such an arrangement (almost by definition) does not violate a state constitutional requirement that the "military must at all times be subordinate to civil authority."

COUNTER-TERROR AND BEYOND

In January 1999, the Department of Defense asked President Clinton to appoint a "military leader" in the event of a terrorist attack on U.S. soil. The powers of this "Homeland Defense Command" leader were left unclear. Also left unclear was just how far the U.S. Army can exercise "Homeland Security" law enforcement activities in light of what is left of the Posse Comitatus Act.

We now have a "terrorist attack" and the formation of a new "Homeland Security Department" seems imminent. What is left of the Posse Comitatus Act is being bent into strange contortions. At least 1,600 federalized National Guard troops now patrol "homeland security" activities along U.S. borders under the supervision of federal law enforcement agencies. These troops are considered exempt from the Act since they are somehow no longer part of the Army or Air Force once deputized and are rather under the operational control of a federal law enforcement agency. State-controlled National Guard troops patrol airports. The Senate Armed Services Committee has recommended expanding the use of federally funded state National Guard troops to perform other "homeland security" activities "as has been the practice for more than a decade in connection with counter-drug activities" authorized under 32 U.S.C. §112.
Other congressional discussions encompass the last Posse Comitatus barrier, that of involving the U.S. Army directly in routine state and local law enforcement activities of search, seizure and arrest. Last October, Senator John Warner (R-Va) ranking member of the Armed Services Committee, openly questioned the value of retaining the Posse Comitatus Act. Most military leaders don't even want the burden. Deputy Secretary of Defense Paul Wolfowitz rejected a suggestion that Army Delta Force troops be used to provide airliner security by saying: "This is fundamentally a civil function. It doesn't require all the exotic training that Delta Force members have. It requires law enforcement training that our people don't have."

But the last wall erected by the Posse Comitatus Act has more to do with our basic values and the democratic principles on which our country was founded and by which we profess to live than it does with the practicalities of training. As former Secretary of Defense Caspar Weinberger stated bluntly, military involvement in civilian law enforcement is "extremely repugnant to a democratic society." It is truly a frightening thought that Americans might out of fear of terrorism choose "a more intrusive means of protection" over democracy, civil liberties and egalitarian values.

Lynne Wilson is a Seattle attorney who writes about police misconduct and new police technology for CovertAction and the National Lawyers Guild. She received the 2002 Paul Robeson Peace and Justice Lawyer of the Year award from Mothers for Police Accountability.

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**SOME OF OMNI'S HOPES:** PREVENTION OF VIOLENCE AND WARS, A SOCIETY WITH LIBERTY AND JUSTICE FOR ALL, A COMMUNITY WHERE EVERY PERSON’S POTENTIAL MAY BE FULFILLED, AN EARTH RESTORED. GRASSROOTS NONVIOLENCE, WORLD PEACE, HUMAN RIGHTS, SOCIAL and ECONOMIC JUSTICE, ENVIRONMENTAL STEWARDSHIP PROTECTING SPECIES AND THE EARTH. These are OMNI’s ideals. Read our brochure and our newsletters, attend our Steering Committee, become an active member of one or more of our committees, participate in our dozens of activities to see how these broad goals for building a Community of Peace are realized in action.

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