

ent day, is an abomination which has no place in our government. It is under conditions of crisis, that it is most important to respect the principles of our Constitution—not to scrap them, as some are inclined to do under the fears and passions of the moment.

Warner Again Says, Revise ‘Posse Comitatus’

by Carl Osgood

Even though the military is distancing itself from the Department of Justice’s drive to “drag the military across the Rubicon,” or, in this case, the Potomac, Sen. John Warner (R-Va.), the ranking member on the Senate Armed Services Committee, again raised the issue—as he had, last October—of revising the 1878 Posse Comitatus Act, the statute that outlaws use of the military in executing the laws of the United States. Warner’s latest call came on June 20, during the confirmation hearing for Gen. Ralph Eberhart, the current commander of U.S. Space Command and NORAD, to head the soon-to-be-established U.S. Northern Command. The Northern Command (Northcom), set to go into effect on Oct. 1, will have as part of its responsibilities the provision of military assistance to civilian authorities at the direction of the President.

Before he took up the *posse comitatus* issue, however,

Warner raised another equally ominous proposition. He demanded to know from Eberhart, whether he had any intention of setting up an organic intelligence-gathering capability within Northcom. In Warner’s view, because Northcom would have to respond to a terrorist threat that emanated from an individual within the United States, he asked Eberhart if he was “going to have some of your own people who could maybe go into court and file a writ to obtain . . . eavesdropping or whatever you think might be necessary,” as opposed to depending on the FBI or other agencies for the intelligence it needs. The question raised the specter of domestic spying by the military.

Eberhart replied that he was considering, instead, a more “classical” military intelligence organization that would depend on information sharing, no matter the source of that information. He noted that currently, in the case of the Space Command and NORAD, he has liaison with both the Central Intelligence Agency and the National Security Agency. “In this new command,” he said, “we’ll have additional liaison that will make sure we get the threat information, that we get the intelligence information we need to conduct that mission.”

On the *posse comitatus* doctrine, Warner said that “it was a good doctrine for those years in which here at home we were safely protected by our oceans and our neighbors. No longer does that exist.” He admitted that there are already exceptions to the Posse Comitatus law that allow the military to be deployed in “unexpected contingencies,” but added that the issue “needs to be clarified” before a major incident involving weapons of mass destruction occurs on U.S. soil.

He expressed concern that, in the case of such an event, the local military commander might be constrained from bringing his assets to bear on the situation, including in a law enforcement role, because of that lack of clarity. He told Eberhart, “If you think that has to be modified, I would hope you’d come back on your own to this committee and so state.” Warner promised that the next time Eberhart appears before the committee, that will be his first question.

During the hearing, Eberhart did not address the *posse comitatus* issue. However, in written answers to questions submitted to him prior to the hearing, Eberhart told the committee that Northcom’s “mission of military support to civil authorities does not require any changes in the law. While the Command may provide military forces under Title 10 [of the U.S. Code] to assist civilian agencies, these forces will not be directly involved in civilian law enforcement, unless authorized by law to engage in law enforcement activities.”



Sen. John Warner (here announcing his re-election campaign in Alexandria, Virginia) has continued to call for the overriding of the nation’s Posse Comitatus Law, in order to allow the new U.S. Northern Command to carry out “law enforcement” in the United States.