

Bush Moves Toward Martial Law

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In a stealth maneuver, President Bush has signed into law a provision which, according to Senator Patrick Leahy (D-Vermont), will actually encourage the President to declare federal martial law (1). It does so by revising the Insurrection Act, a set of laws that limits the President's ability to deploy troops within the United States. The Insurrection Act (10 U.S.C.331 -335) has historically, along with the Posse Comitatus Act (18 U.S.C.1385), helped to enforce strict prohibitions on military involvement in domestic law enforcement. With one cloaked swipe of his pen, Bush is seeking to undo those prohibitions.

Public Law 109-364, or the "John Warner Defense Authorization Act of 2007" (H.R.5122) (2), which was signed by the commander in chief on October 17th, 2006, in a private Oval Office ceremony, allows the President to declare a "public emergency" and station troops anywhere in America and take control of state-based National Guard units without the consent of the governor or local authorities, in order to "suppress public disorder."

President Bush seized this unprecedented power on the very same day that he signed the equally odious Military Commissions Act of 2006. In a sense, the two laws complement one another. One allows for torture and detention abroad, while the other seeks to enforce acquiescence at home, preparing to order the military onto the streets of America. Remember, the term for putting an area under military law enforcement control is precise; the term is "martial law."

Section 1076 of the massive Authorization Act, which grants the Pentagon another \$500-plus-billion for its ill-advised adventures, is entitled, "Use of the Armed Forces in Major Public Emergencies." Section 333, "Major public emergencies; interference with State and Federal law" states that "the President may employ the armed forces, including the National Guard in Federal service, to restore public order and enforce the laws of the United States when, as a result of a natural disaster, epidemic, or other serious public health emergency, terrorist attack or incident, or other condition in any State or possession of the United States, the President determines that domestic violence has occurred to such an extent that the constituted authorities of the State or possession are incapable of ("refuse" or "fail" in) maintaining public order, "in order to suppress, in any State, any insurrection, domestic violence, unlawful combination, or conspiracy."

For the current President, "enforcement of the laws to restore public order" means to commandeer guardsmen from any state, over the objections of local governmental, military and local police entities; ship them off to another state; conscript them in a law enforcement mode; and set them loose against "disorderly" citizenry - protesters, possibly, or those who object to forced vaccinations and quarantines in the event of a bio-terror event.

The law also facilitates militarized police round-ups and detention of protesters, so called

“illegal aliens,” “potential terrorists” and other “undesirables” for detention in facilities already contracted for and under construction by Halliburton. That’s right. Under the cover of a trumped-up “immigration emergency” and the frenzied militarization of the southern border, detention camps are being constructed right under our noses, camps designed for anyone who resists the foreign and domestic agenda of the Bush administration.

An article on “recent contract awards” in a recent issue of the slick, insider “Journal of Counterterrorism & Homeland Security International” reported that “global engineering and technical services powerhouse KBR [Kellogg, Brown & Root] announced in January 2006 that its Government and Infrastructure division was awarded an Indefinite Delivery/Indefinite Quantity (IDIQ) contract to support U.S. Immigration and Customs Enforcement (ICE) facilities in the event of an emergency.” “With a maximum total value of \$385 million over a five year term,” the report notes, “the contract is to be executed by the U.S. Army Corps of Engineers,” “for establishing temporary detention and processing capabilities to augment existing ICE Detention and Removal Operations (DRO) – in the event of an emergency influx of immigrants into the U.S., or to support the rapid development of new programs.” The report points out that “KBR is the engineering and construction subsidiary of Halliburton.” (3) So, in addition to authorizing another \$532.8 billion for the Pentagon, including a \$70-billion “supplemental provision” which covers the cost of the ongoing, mad military maneuvers in Iraq, Afghanistan, and other places, the new law, signed by the president in a private White House ceremony, further collapses the historic divide between the police and the military: a tell-tale sign of a rapidly consolidating police state in America, all accomplished amidst ongoing U.S. imperial pretensions of global domination, sold to an “emergency managed” and seemingly willfully gullible public as a “global war on terrorism.”

Make no mistake about it: the de-facto repeal of the Posse Comitatus Act (PCA) is an ominous assault on American democratic tradition and jurisprudence. The 1878 Act, which reads, “Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both,” is the only U.S. criminal statute that outlaws military operations directed against the American people under the cover of ‘law enforcement.’ As such, it has been the best protection we’ve had against the power-hungry intentions of an unscrupulous and reckless executive, an executive intent on using force to enforce its will.

Unfortunately, this past week, the president dealt posse comitatus, along with American democracy, a near fatal blow. Consequently, it will take an aroused citizenry to undo the damage wrought by this horrendous act, part and parcel, as we have seen, of a long train of abuses and outrages perpetrated by this authoritarian administration.

Despite the unprecedented and shocking nature of this act, there has been no outcry in the American media, and little reaction from our elected officials in Congress. On September 19th, a lone Senator Patrick Leahy (D-Vermont) noted that 2007’s Defense Authorization Act contained a “widely opposed provision to allow the President more control over the National Guard [adopting] changes to the Insurrection Act, which will make it easier for this or any future President to use the military to restore domestic order WITHOUT the consent of the nation’s governors.”

Senator Leahy went on to stress that, “we certainly do not need to make it easier for Presidents to declare martial law. Invoking the Insurrection Act and using the military for law

enforcement activities goes against some of the central tenets of our democracy. One can easily envision governors and mayors in charge of an emergency having to constantly look over their shoulders while someone who has never visited their communities gives the orders.”

A few weeks later, on the 29th of September, Leahy entered into the Congressional Record that he had “grave reservations about certain provisions of the fiscal Year 2007 Defense Authorization Bill Conference Report,” the language of which, he said, “subverts solid, longstanding posse comitatus statutes that limit the military’s involvement in law enforcement, thereby making it easier for the President to declare martial law.” This had been “slipped in,” Leahy said, “as a rider with little study,” while “other congressional committees with jurisdiction over these matters had no chance to comment, let alone hold hearings on, these proposals.”

In a telling bit of understatement, the Senator from Vermont noted that “the implications of changing the (Posse Comitatus) Act are enormous”. “There is good reason,” he said, “for the constructive friction in existing law when it comes to martial law declarations. Using the military for law enforcement goes against one of the founding tenets of our democracy. We fail our Constitution, neglecting the rights of the States, when we make it easier for the President to declare martial law and trample on local and state sovereignty.”

Senator Leahy’s final ruminations: “Since hearing word a couple of weeks ago that this outcome was likely, I have wondered how Congress could have gotten to this point. It seems the changes to the Insurrection Act have survived the Conference because the Pentagon and the White House want it.”

The historic and ominous re-writing of the Insurrection Act, accomplished in the dead of night, which gives Bush the legal authority to declare martial law, is now an accomplished fact.

The Pentagon, as one might expect, plays an even more direct role in martial law operations. Title XIV of the new law, entitled, “Homeland Defense Technology Transfer Legislative Provisions,” authorizes “the Secretary of Defense to create a Homeland Defense Technology Transfer Consortium to improve the effectiveness of the Department of Defense (DOD) processes for identifying and deploying relevant DOD technology to federal, State, and local first responders.”

In other words, the law facilitates the “transfer” of the newest in so-called “crowd control” technology and other weaponry designed to suppress dissent from the Pentagon to local militarized police units. The new law builds on and further codifies earlier “technology transfer” agreements, specifically the 1995 DOD-Justice Department memorandum of agreement achieved back during the Clinton-Reno regime.(4)

It has become clear in recent months that a critical mass of the American people have seen through the lies of the Bush administration; with the president’s polls at an historic low, growing resistance to the war Iraq, and the Democrats likely to take back the Congress in mid-term elections, the Bush administration is on the ropes. And so it is particularly worrying that President Bush has seen fit, at this juncture to, in effect, declare himself dictator.

Source:

<http://leahy.senate.gov/press/200609/091906a.html> and
<http://leahy.senate.gov/press/200609/092906b.html> See also, Congressional Research Service Report for Congress, "The Use of Federal Troops for Disaster Assistance: Legal Issues," by Jennifer K. Elsea, Legislative Attorney, August 14, 2006

<http://www.govtrack.us/congress/bill.xpd?bill+h109-5122>

(3) Journal of Counterterrorism & Homeland Security International, "Recent Contract Awards", Summer 2006, Vol.12, No.2, pg.8; See also, Peter Dale Scott, "Homeland Security Contracts for Vast New Detention Camps," New American Media, January 31, 2006.

(4) "Technology Transfer from defense: Concealed Weapons Detection", National Institute of Justice Journal, No 229, August, 1995, pp.42-43.

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