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July 22, 2002

## Biden backs letting soldiers arrest civilians

By Joyce Howard Price  
THE WASHINGTON TIMES

Sen. Joseph R. Biden Jr., Delaware Democrat, yesterday strongly endorsed giving soldiers the power to arrest American civilians.

Interviewed yesterday on "Fox News Sunday," Mr. Biden, a member of the Judiciary Committee, said the Posse Comitatus Act of 1878, which prevents the military from exercising police powers in this country, should be re-examined and "has to be amended."

Such a change will happen soon, he said.

However, Tom Ridge, director of the Office of Homeland Security, said in several appearances on political talk shows yesterday that the Biden proposal should be considered but that he thinks it's "very unlikely" such a change will be made.

The Biden proposal and the Ridge "knockdown" — not necessarily a "knockout" — may have been coordinated and calculated to measure public reaction. Mr. Ridge grew more emphatic later in the day in his view that military authorities should not have such powers of arrest over civilians.

Mr. Biden said that "we're not talking about general police power, changing the idea that you would have your local National Guard with arrest power like your local policeman."

But "it's not very realistic" that, under the current law, soldiers with knowledge of weapons of mass destruction, who might be checking out the discovery of a terrorist weapon in the United States, would "not be able to exercise the same power a police officer would in dealing with that situation."

"Right now, when you call in the military, the military would not be able to shoot to kill, if they were approaching the weapon," nor could they arrest any suspects. Mr. Biden is chairman of the Senate Foreign Relations Committee.

Air Force Gen. Ralph E. Eberhardt, President Bush's choice to lead the military's new Northern Command, told the New York Times that he favors changes in existing law to give increased domestic powers to the military to protect the nation against terrorist attacks.

"We should always be reviewing things like Posse

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Comitatus and other laws if we think it ties our hands in protecting the American people," said Gen. Eberhardt, whose command's primary goal is domestic security, in a dispatch published yesterday in the newspaper.

The New York Times reported that the general's opinion is shared by other senior military officials and represents a "shift in thinking" at the Pentagon, which historically has resisted involvement in domestic law enforcement.

The White House has instructed lawyers at the departments of Defense and Justice to analyze federal laws on the books that restrict the military's role in law enforcement on U.S. shores, the paper reported.

Congress assigned to federal troops a large role in law enforcement in the 11 Confederate states after the Civil War, tasks such as guarding election polling places, arresting members of the Ku Klux Klan, and halting the production of illegal moonshine and the fomenting of labor strife. The Posse Comitatus Act was enacted in 1878 to eliminate military enforcement of the civil law, effectively ending Reconstruction.

Mr. Biden recalled that in 1995 he and Sen. Sam Nunn, Georgia Democrat, after the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, introduced legislation that would have "moderately altered" the Posse Comitatus Act, enabling the military to intervene in incidents involving weapons of mass destruction.

Mr. Biden said some lawmakers are likely to be more receptive to repealing the 1878 act now than they were before September 11.

On Fox, Mr. Ridge called Gen. Eberhardt's remarks about the need for such a review "very appropriate."

"We need to be talking about military assets in anticipation of a crisis event. And, clearly, if you're talking about using the military, then you should have a discussion about Posse Comitatus. It's not out of the question [that there could someday be a situation] when, in support of civilian authorities, we would give the National Guard or troops arrest ability" in a crisis situation where there may be "severe consequences to a community or region."

However, he said such a scenario is "very unlikely."

In a separate interview on CNN's "Late Edition With Wolf Blitzer," Mr. Ridge was even more emphatic that the discussion is an academic one. "There's been absolutely no discussion with regard to giving military authorities the ability to arrest in their support of civilian authorities." Asked whether he believes the military should have the power to arrest U.S. citizens, he replied: "No."

Mr. Ridge said he could imagine, hypothetically, the secretaries of defense and homeland security broaching the possibility of changing the 1878 act at some future meeting.

"That does not mean that it will ever be used or the discussion will conclude that it even should be used," he said. "I think that generally goes against our instincts as a country to empower the military with the ability to arrest."

On "Late Edition," Sen. Fred Thompson of Tennessee,

ranking Republican on the Governmental Affairs Committee, said he believes military troops could be useful for tasks such as "surveillance along the borders thousands of miles that are very difficult for law enforcement to deal with."

"It would be against our traditional Posse Comitatus principles. But it might be an idea whose time has come."

But Sen. Carl Levin, Michigan Democrat and chairman of the Armed Services Committee, said the Posse Comitatus Act is a "solid law" that "has served us well." He said: "We should not assume that we're going to have to change it. On the other hand, I don't fear looking at it to see whether or not our military can be more helpful than they've been up to now" in providing training, equipment and other assistance in disaster situations. But the military should not be arresting people.

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