

STATEMENT OF REAR ADMIRAL DONALD C. THOMPSON
CHIEF OF OPERATIONS
UNITED STATES COAST GUARD
BEFORE THE HOUSE SUBCOMMITTEE ON CRIMINAL
JUSTICE JUDICIARY COMMITTEE

JUNE 3, 1981

DEAR MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I AM REAR ADMIRAL DONALD C. THOMPSON, CHIEF OF OPERATIONS,
U.S. COAST GUARD. ACCOMPANYING ME TODAY IS CAPTAIN ROBERT L.
COOK, CHIEF, INTELLIGENCE AND SECURITY DIVISION, AND
LIEUTENANT COMMANDER BRUCE E. WEULE, MY STAFF ATTORNEY.

IT IS A PLEASURE TO APPEAR BEFORE YOU TODAY TO REPORT ON THE
COOPERATIVE EFFORTS BETWEEN THE COAST GUARD AND THE DEPARTMENT
OF DEFENSE, SPECIFICALLY IN REGARD TO THE POSSE COMITATUS ACT
AND TO COMMENT ON SECTION 908 OF H.R. 3519, WHICH PROVIDES FOR
COOPERATION BETWEEN THE ARMED FORCES AND CIVILIAN LAW ENFORCE-
MENT AGENCIES.

DUE TO THE UNIQUE QUALITY OF THE COAST GUARD AS BOTH AN ARMED
FORCE AND THE PRIMARY FEDERAL MARITIME LAW ENFORCEMENT AGENCY,
THE COAST GUARD IS IN AN EXCELLENT POSITION TO UTILIZE THE
SERVICES OF OTHER MILITARY COMPONENTS WHEN AVAILABLE. THE
COAST GUARD HAS NUMEROUS OBLIGATIONS BESIDES ITS RESPONSI-
BILITIES TOWARDS LAW ENFORCEMENT, INCLUDING A RESPONSIBILITY
TO BE PREPARED TO BE ASSIMILATED WITHIN THE DEPARTMENT OF

THE NAVY IN TIME OF WAR. IN RESPONDING TO THE QUESTIONS ON JOINT COOPERATIVE EFFORTS I SHALL THEREFORE LIMIT MY TESTIMONY TO THOSE OPERATIONS DEALING WITH THE ENFORCEMENT OF U.S. LAW RATHER THAN DESCRIBING THE TOTAL COOPERATIVE EFFORTS BETWEEN THE COAST GUARD AND HER SISTER SERVICES.

AS THIS COMMITTEE IS WELL AWARE, THE POSSE COMITATUS ACT (18 U.S.C. 1385) WAS DEVELOPED DURING THE RECONSTRUCTION PERIOD AFTER THE CIVIL WAR. THE ACT HAS BEEN EXTREMELY SUCCESSFUL IN ITS PURPOSE OF RESTRICTING THE APPLICATION OF MILITARY FORCE IN REGARDS TO CIVIL LAW ENFORCEMENT. SINCE ITS ENACTMENT THERE HAVE BEEN ONLY A DOZEN OR SO REPORTED CASES CONCERNING ITS USE AND TO MY KNOWLEDGE IT HAS NEVER BEEN APPLIED AGAINST A MILITARY PERSON FOR A CRIMINAL VIOLATION OF ITS PROHIBITION. INSTEAD, THE ACT HAS GENERALLY BEEN USED AS A DEFENSE WEAPON TO ATTACK THE GOVERNMENT'S CASE IN A CRIMINAL PROSECUTION.

THE STATUTE COVERS ONLY THE ARMY AND AIR FORCE. THE NAVY IS NOT INCLUDED WITHIN THE SPECIFIC CONSTRAINTS OF THE ACT BUT HAS ADOPTED ITS RESTRICTIONS AS A MATTER OF INTERNAL POLICY. THE COAST GUARD IS NOT INCLUDED WITHIN THE ACT, NOR WOULD THAT BE APPROPRIATE SINCE A BASIC FUNCTION OF OUR SERVICE IS TO ENFORCE FEDERAL LAWS ON THE HIGH SEAS. ALSO, THE COAST GUARD

IS AUTHORIZED BY 14 U.S.C. 141 TO PROVIDE ASSISTANCE TO CIVIL LAW ENFORCEMENT AGENCIES WHEN OUR FACILITIES OR PERSONNEL ARE ESPECIALLY QUALIFIED FOR SUCH A MISSION.

THE ADMINISTRATIVE APPLICATIONS OF THE ACT AND IMPLEMENTING REGULATIONS ENCOMPASS A BROAD SPECTRUM. THIS HAS BEEN CAUSED, IN PART, BY THE GRADUAL EXPANSION OF MILITARY FUNCTIONS, AND BY THE AMBIGUITY OF THE PHRASE "TO EXECUTE" AS USED IN THE STATUTE. THERE IS NO SINGLE INCLUSIVE INTERPRETATION OF THE RESTRICTIONS OF THE ACT THAT EITHER THE EXECUTIVE OR THE JUDICIARY CAN RELY UPON. HOWEVER, IT APPEARS THAT ONE LIMITED INTERPRETATION CAN BE RELIED UPON: NAMELY, THAT CONGRESS NEVER INTENDED THE PROHIBITIONS OF THE ACT TO IMPACT ON THE TRADITIONAL FUNCTIONS OF THE ARMED SERVICES CAN BE RELIED UPON. THUS, BY BOTH JUDICIAL AND ADMINISTRATIVE INTERPRETATION, THE DEPARTMENT OF DEFENSE IS PERMITTED TO RELEASE INFORMATION ACQUIRED IN THE COURSE OF PERFORMING A FUNCTION WHICH IS PRIMARILY MILITARY. UTILIZING THIS INTERPRETATION, THE COAST GUARD IS ROUTINELY GIVEN INFORMATION CONCERNING INCIDENTAL VESSEL SIGHTINGS BY NAVAL UNITS, AND SEVERAL OF THESE HAVE LED TO SEIZURES OF DRUG TRAFFICKING VESSELS ON THE HIGH SEAS. THE COAST GUARD HAS RECEIVED EXCELLENT SUPPORT FROM THE DEPARTMENT OF THE NAVY.

IN JUNE OF 1978, FOR EXAMPLE, THE CHIEF OF NAVAL OPERATIONS AUTHORIZED NAVAL COMMANDS TO REPORT SIGHTINGS OF SHIPS SUSPECTED OF PARTICIPATION IN SMUGGLING OPERATIONS. TO IMPLEMENT THIS POLICY THE COAST GUARD BRIEFS NAVAL COMMANDS, PRIOR TO THEIR MISSIONS, ABOUT DRUG SMUGGLING MODUS OPERANDI, TYPICAL VESSEL PROFILES, DRUG TRAFFICKING ROUTES, SPECIFIC SUSPECT VESSELS WHICH MAY BE ENCOUNTERED AND REPORTING PROCEDURES. THE ASSISTANCE PROVIDED DOES NOT NORMALLY INCLUDE ANY DIVERSION, OR SPECIAL OPERATIONS, ON THE PART OF THE NAVAL COMMAND.

THE COAST GUARD ALSO HAS AN OFFICER STATIONED AT THE NAVAL OCEAN SURVEILLANCE INFORMATION CENTER (NOSIC), AND THE SECRETARY OF THE NAVY HAS AUTHORIZED THE ASSIGNMENT OF A NAVAL INTELLIGENCE OFFICER TO COAST GUARD HEADQUARTERS TO FACILITATE ACCESS TO AND INTERPRETATION OF NATIONAL SENSOR SYSTEMS INFORMATION.

THE NAVY INTERPRETATION OF THE RESTRICTIONS IMPOSED BY THE POLICY ADOPTION OF POSSE COMITATUS CONSTRAINTS CONFORMS TO A DEPARTMENT OF JUSTICE, OFFICE OF LEGAL COUNSEL OPINION DATED 24

MARCH 1978. AFTER REVIEWING THE LEGAL PRECEDENTS, INCLUDING THOSE RESULTING FROM THE WOUNDED KNEE INCIDENT IN 1975, THAT OPINION FOUND THAT THE POSSE COMITATUS ACT WAS INTENDED TO PROHIBIT THE EMPLOYMENT OF THE MILITARY TO COERCE OR THREATEN CIVILIANS IN THE ORDINARY COURSE OF CIVILIAN CRIMINAL OR CIVIL PROCEEDINGS. THE USE OF THE TERM "EXECUTE" AND THE PRACTICES COMPLAINED OF BY PROPONENTS OF THE ACT SHOW THAT CONGRESS INTENDED TO REMOVE THE THREAT OF ACTUAL OR POTENTIAL MILITARY FORCE FROM THE ORDINARY OCCASIONS OF COMPULSION BY THE CIVIL AUTHORITIES. THE NAVY, APPLYING THESE PRINCIPLES, HAS HELD THAT SURVEILLANCE ACTIVITIES DO NOT VIOLATE THE CONSTRAINTS OF ITS REGULATION AND THEREFORE PERMITS AERIAL SURVEILLANCE OR PHOTO-RECONNAISSANCE MISSIONS IN SUPPORT OF LAW ENFORCEMENT ACTIVITIES ON A NOT-TO-INTERFERE BASIS. THIS SUPPORT WAS RECENTLY EMPHASIZED BY THE SECRETARY OF THE NAVY AND CHIEF OF NAVAL OPERATIONS IN THE FORM OF SPECIFIC GUIDANCE TO FLEET COMMANDERS. THIS GUIDANCE APPROVED NAVY ASSISTANCE TO THE COAST GUARD IN LOCATING, SIGHTING AND SURVEILLING SUSPECTED DRUG TRAFFICKING VESSELS, DURING THE NORMAL COURSE OF NAVAL OPERATIONS.

ON TWO SEPARATE OCCASIONS, WE HAVE CONDUCTED JOINT SURVEILLANCE OPERATIONS OF THE MAJOR VESSEL TRAFFICKING ROUTES. THE COORDINATED

OPERATIONS INVOLVED LOCATING SUSPECT VESSELS AND THEN VISUALLY IDENTIFYING THE TARGET WITH COAST GUARD AIRCRAFT. ALSO, OCCASIONALLY, WHEN NATIONAL ATTENTION IS FOCUSED ON A SENSITIVE ISSUE, LIKE THE CUBAN FREEDOM FLOTILLA, WE HAVE HAD ACCESS TO INTELLIGENCE INFORMATION NOT NORMALLY AVAILABLE.

ALTHOUGH THE DEPARTMENT OF JUSTICE HAS CONTINUED TO SUPPORT ITS 1978 ANALYSIS OF THE POSSE COMITATUS ACT, IT HAS ON SEVERAL OCCASIONS FOUND THAT SPECIFIC SURVEILLANCE ACTIVITIES REQUESTED BY CIVILIAN ACTIVITIES WERE WITHIN THE CONSTRAINTS OF THE ACT.

THE COAST GUARD'S NEED FOR ASSISTANCE IN ITS LAW ENFORCEMENT MISSION GENERALLY REVOLVES ABOUT THE ACQUISITION OF INTELLIGENCE INFORMATION REGARDING THE IDENTIFICATION AND LOCATION OF SUSPECTED DRUG TRAFFICKING VESSELS, RATHER THAN THE ACQUISITION OF EQUIPMENT.

DURING THE LAST FIVE YEARS THE COAST GUARD HAS BECOME DEEPLY INVOLVED IN THE NATIONAL EFFORT TO STEM THE FLOW OF DRUGS INTO THE UNITED STATES. THEREFORE, WE MUST ACCOMPLISH OUR LAW

ENFORCEMENT RESPONSIBILITIES MORE EFFICIENTLY, IF WE ARE TO MAINTAIN AN ADEQUATE DETERRENT. IMPROVED INTELLIGENCE INFORMATION IS A MUST IF WE ARE TO POSITION OUR FACILITIES TO MAXIMIZE INTERDICTION. EFFICIENT AND REASONABLE USE OF AVAILABLE INFORMATION WOULD RESULT IN SUBSTANTIAL IMPROVEMENT IN OUR SUCCESS AT INTERDICTING DRUG TRAFFICKING VESSELS.

THE COAST GUARD HAS OCCASIONALLY OBTAINED EQUIPMENT FROM THE DEPARTMENT OF DEFENSE FOR USE IN LAW ENFORCEMENT OPERATIONS AS PERMITTED IN THE ECONOMY ACT (31 U.S.C. 686) AND SECTION 145 OF TITLE 14 OF THE U.S. CODE. THIS PAST YEAR, WE RECEIVED THREE VESSELS FROM THE U.S. NAVY TO AID IN OUR RECOVERY FROM THE TRAINING AND MAINTENANCE DEGRADATION WHICH RESULTED FROM THE CUBAN FREEDOM FLOTILLA OPERATIONS. WE HAVE ALSO UTILIZED SPECIAL LONG RANGE NAVY PHOTOGRAPHIC EQUIPMENT ON BOARD COAST GUARD AIRCRAFT TO PHOTOGRAPH DRUG TRAFFICKING VESSELS. COST FOR THE USE OF THIS EQUIPMENT WAS MINIMAL AND WAS COVERED UNDER ROUTINE OPERATING EXPENSES. GENERALLY IT HAS NOT BEEN NECESSARY FOR THE COAST GUARD TO SEEK SUCH EQUIPMENT.

THE DRAMATIC BURDEN PLACED UPON OUR ATLANTIC RESOURCES LAST YEAR DURING THE CUBAN "FREEDOM FLOTILLA" FORCED THE COAST GUARD TO SEEK ASSISTANCE FROM THE NAVY. SEVERAL NAVAL VESSELS WERE USED FROM WHICH LAW ENFORCEMENT BOARDINGS BY COAST GUARD PERSONNEL WERE CONDUCTED. THESE VESSELS ALSO INCREASED OUR

SEARCH AND RESCUE POSTURE WITHIN THE STRAITS OF FLORIDA. THIS EXPANDED ASSISTANCE WAS PROVIDED THROUGH A LIMITED EXEMPTION FROM THE POSSE COMITATUS REGULATION GRANTED BY THE SECRETARY OF THE NAVY.

THE LIMITATION CREATED BY THE QUESTIONABLE APPLICATION OF THE ACT TO SURVEILLANCE ACTIVITIES BY THE MILITARY SERVICES, AND THE EXTREME IMPORTANCE OF THIS INFORMATION TO A VIABLE INTERDICTION OPERATION, CAUSE THE COAST GUARD CONCERN OVER THE PROVISIONS OF SECTION 908 OF H.R. 3519. THE PROPOSAL WOULD ADD A CHAPTER 18 TO TITLE 10 OF THE U.S. CODE DEALING WITH MILITARY COOPERATION WITH CIVILIAN LAW ENFORCEMENT OFFICIALS. SECTION 371 OF THAT CHAPTER WOULD READ: "THE SECRETARY OF DEFENSE MAY PROVIDE TO FEDERAL, STATE AND LOCAL CIVILLAN LAW ENFORCEMENT OFFICIALS ANY INFORMATION COLLECTED DURING THE NORMAL COURSE OF MILITARY OPERATIONS THAT MAY BE RELEVANT TO A VIOLATION OF ANY FEDERAL OR STATE LAW." THE LIMITATIONS CONTAINED WITHIN THE PHRASE "THE NORMAL COURSE OF MILITARY OPERATIONS" MAY RESTRICT THE CAPABILITY OF THE COAST GUARD TO REQUEST SPECIFICALLY TARGETED SURVEILLANCE INFORMATION. THE COAST GUARD RECOGNIZES THAT THE PROPOSED WORDS, A CLARIFICATION OF THE POSSE COMITATUS ACT, ARE NOT WORDS OF LIMITATION BUT MERELY CLARIFICATION. BUT THE STATUTE THAT IS BEING CLARIFIED IS ONE OF CRIMINAL LIMITATION, AND IS, AS SUCH, CAUTIOUSLY APPLIED BY THOSE IN THE FIELD.

MR. CHAIRMAN, YOU HAVE ASKED FOR THE COAST GUARD'S EVALUATION AS TO THE ADVISABILITY OF PROPOSED SECTION 375 OF TITLE 10. SINCE THIS PROVISION IS CURRENTLY UNDER ACTIVE REVIEW BY THE ADMINISTRATION, I CAN STATE NO POSITION AT THIS TIME. THIS CONCLUDES MY TESTIMONY THIS AFTERNOON. I WOULD BE PLEASED TO ANSWER ANY QUESTIONS YOU MIGHT HAVE.