NASTAS

cc: Files
Mr. Schlei
Mrs. Copeland

JUN 26 1964

MEMORANDUM

Re: Possible Application of the Posse Comitatus Act to Use of Armed Forces in Mississippi Search

The question has been raised whether the "Posse Comitatus Act" (18 U.S.C. 1385) precludes the use of naval personnel in the search currently in progress in Mississippi. For the reasons indicated hereafter, it is clear that it does not.

The statute, 18 U.S.C. 1385, provides as follows:

"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...."

First, it is clear from the terms of the statute that it has no application whatever to personnel of the Navy. As originally enacted, 20 Stat. 152 (1878), the statute applied only to the Army. When Congress codified Title 10 of the United States Code in 1956, it added § 1385 to Title 18 and extended the statute to cover the Air Force, 70 A Stat. 626, but made no other relevant substantive change. The fact that the Navy is not covered by the statute undoubtedly is attributable to the fact that it was originally enacted for the purpose of putting an end to a specific practice to which Congress objected, namely, the use by federal marshals of Army personnel to assist them in policing elections in the South during Reconstruction.

Furthermore, it is clear that the statute, even if otherwise applicable to the personnel involved, would not prohibit the use currently being made of them in Mississippi. The statute prohibits the use of military personnel "as a posse comitatus or otherwise to execute the laws," and is clearly limited in its effect to the use of armed forces for domestic law enforcement purposes. The present operations in Mississippi are in the nature of search and rescue operations and are directed solely at attempting to locate the three students. No use of military or naval personnel for law enforcement purposes has been made or is contemplated.

Personnel of the armed forces have traditionally been used in search and rescue operations and other similar activities in aid of the civilian population to the maximum extent consistent with their primary mission of maintaining the national defense. This activity on their part is in the national interest and is in no sense inconsistent with either the letter or the spirit of 18 U.S.C. 1385.

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