

The Constitution Party of Ohio Citizen's Courier

THIRD AMENDMENT VIOLATED?

Remember the Third Amendment?

You know, the part of the U.S. Constitution that goes like this: *"No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law."*

Well, a Henderson, Nevada, family in a recent lawsuit claims

that their Third Amendment rights were violated on July 10, 2011, when police officers commandeered their homes and arrested two family members for "obstruction."

"Henderson police arrested a family for refusing to let officers use their homes as lookouts for a domestic violence investigation of their neighbors," Reason explains.

The Las Vegas Review Journal (<http://www.reviewjournal.com/news/crime-courts/henderson-family-sues-police-breaking-their-homes>) provides details on the domestic violence situation police officers were dealing with on that blistering summer day:

Police had gone to the 300 block of Evening Side Avenue, near Horizon



Ridge Parkway and the Las Vegas Beltway, for an alleged domestic violence incident at Phillip White Jr.'s home...

White was believed to have barricaded himself and a child inside his home at 363 Evening Side.

SWAT officers closed all entrances and exits to the neighborhood. The standoff lasted hours.

Police began to call people in their homes.

When officers called on Anthony Mitchell and asked if they could "occupy his home in order to gain a 'tactical advantage' against the occupant of the neighboring house," he declined, saying he didn't want to get involved.

Things turned ugly — fast. "The officers banged forcefully on the door and loudly commanded Anthony Mitchell to open the door to his residence," the official complaint reads. "Surprised and perturbed, plaintiff Anthony Mitchell immediately called his mother (plaintiff Linda Mitchell) on the phone, exclaiming to her that the police were beating on his front door."

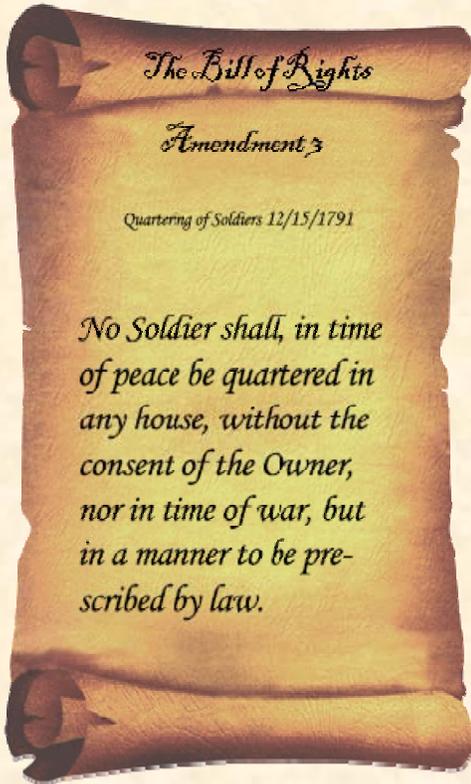
"Seconds later, officers...smashed open plaintiff Anthony Mitchell's front door with a metal ram as plaintiff stood in his living room," it continues. "As plaintiff Anthony Mitchell stood in shock, the officers aimed their weapons at Anthony Mitchell and shouted obscenities at him and ordered him to lie down on the floor."

Amazingly enough, the complaint gets worse:

Fearing for his life, plaintiff Anthony Mitchell dropped his phone and prostrated himself onto the floor of his living room, covering his face and hands.

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Americans' experience with the quartering of troops in their homes began shortly after the French and Indian War ended in 1763. The British Parliament decided it was necessary to keep a permanent supply of troops in the colonies in order to protect them from further uprisings of the French and Indians.

This rankled the colonists in two ways. First of all, Parliament wanted them to pay the expenses of housing the troops in America. This violated the precedents of English law that required that all taxation must be with the consent of the people. The colonists reasoned that they had not given their consent to pay for these troops

and that, therefore, the requirement that they pay for them was against the law.

Secondly, English law forbade the presence of a standing army without the consent of the people, in preference to a citizen army. Standing armies were viewed as threats to freedom because they could quickly and easily overpower the common person. So, the colonists rightly viewed the presence of a standing army in their midst without their consent as a threat to their freedom. Both of these rights, freedom from taxation without consent and freedom from standing armies without consent, were guaranteed to English citizens in English law since the English Bill of Rights of 1689.

belonging to the citizenry such as stables, alehouses, barns and uninhabited buildings should be used.

The **Quartering Act** required that the citizens who owned the properties must pay for the food for these troops and also stated that the citizens would not receive any compensation for the use of their property.

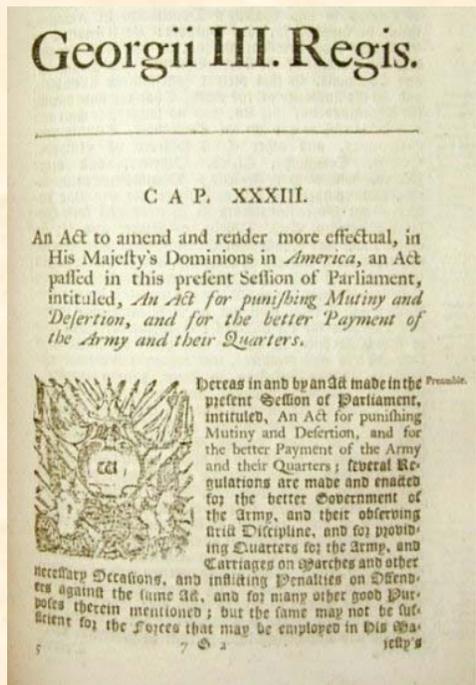
The colonists generally refused to cooperate with the **Quartering Act**. The resistance was strongest in New York. Violence broke out in August, 1766 between British troops and the colonists over New York's refusal to pay for the quartering of troops. Parliament suspended the governor and the provincial assembly over this issue. Eventually, the **Quartering Act** expired in 1770 and was not renewed. It never was successful in its intent to cover the expenses of keeping British troops permanently in America.

Read Here: <http://www.revolutionary-war-and-beyond.com/quartering-act-may-15-1765.html>

The Second Quartering Act

On June 2, 1774, an additional **Quartering Act** was passed by Parliament that was part of a series of acts called the **Intolerable Acts** by the colonists. This act gave colonial Royal governors the right to house troops on private property (though not in occupied homes), if enough public property was not available. The colonists rejected the use of their private property without their consent, but, of all the **Intolerable Acts**, this one generated the least dissent. This **Quartering Act** expired on March 24, 1776. Read here: <http://www.revolutionary-war-and-beyond.com/quartering-act-june-2-1774.html>

The quartering of troops on private property is one of the grievances of the colonists specifically mentioned by Thomas Jefferson in the Declaration of



Third Amendment History The First Quartering Act

The first **Quartering Act** was enacted on May 15, 1765. It required that British soldiers be housed in American barracks and public inns first, but if there was not enough room in these, that other buildings

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Independence. The section that mentions it reads like this:

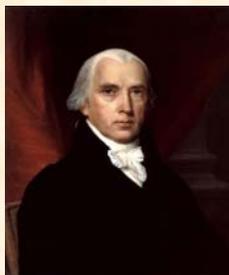
"He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation... For quartering large bodies of armed troops among us."

As a result of this experience with having their private property used by the government without their permission, the Founding Fathers wanted a guarantee that they would be protected from this abuse in the future by the new government they were creating.

Many people were skeptical that the new Constitution adequately protected their rights and they demanded that a [Bill of Rights](#) be added to it. A bill of rights is a list of rights that are specifically mentioned that the government has no right to interfere with. Bills of rights were added to make the rights of the citizens very clear, so there would be no room for government officials to "weasel" their way into tampering with them.

Once the states began to debate the newly proposed Constitution, it became apparent that the Constitution would not pass without changing the minds of its critics. Proponents of the Constitution were called Federalists. They wanted a stronger central government because the current government, governed by the Articles of Confederation, could barely function. The Federalists were led by:

James Madison



Alexander Hamilton



John Adams



George Washington



Patrick Henry



George Mason



Elbridge Gerry



The anti-Federalists opposed the Constitution. They were against a strong federal or central government because they feared the government would grow too powerful and take away the rights of the people. Men such as:

were leading anti-Federalists. The Federalists came up with a compromise offer known as the [Massachusetts Compromise](#), that would eventually persuade enough anti-Federalists to vote to support the Constitution so it could go into effect. In the **Massachusetts Compromise**, the Federalists promised that the First Congress would take into consideration the states' proposed amendments and add a bill of rights to the Constitution if the opponents would just vote yes to accept it. This promise persuaded enough of the critics to vote yes to accept the Constitution and it became the law of the land.

Keeping the promise, James Madison proposed a list of twenty amendments to the First Congress in a June 8, 1789 speech. Congress debated these amendments and

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eventually sent twelve of them to the states for their consideration. Ten of them were agreed upon by the states.

These first ten Amendments that were agreed upon, including the **3rd Amendment**, finally became law on December 15, 1791 and are known as the **Bill of Rights**.

"Quartering" means that the government cannot "quarter" troops in your home or on your land. A modern word that we use to say the same thing would be **"housing."** The government cannot "house" or "quarter" soldiers on your property. The word is used in the way that we today would call someone's room his "quarters."

The **Third Amendment** is one of the least cited parts of the Constitution in legal cases. It has never been addressed by the **Supreme Court** in over 200 years, but it has been referred to by the Court a few times. The reason it has been cited so few times is that there have been so few wars fought on American territory, especially since the Civil War. Another reason is that the American army now has substantial military bases to house its soldiers.

The only significant case involving the **Third Amendment** to be addressed by any court was called **Engblom vs. Carey**, which was decided in 1982. In this case, several New York corrections officials were evicted from their homes on the prison grounds during a strike. National Guard members were brought in to act as prison guards during the strike and some of them were housed in the homes of the missing officials.

The officials sued claiming that the **Third Amendment** protected them from having military personnel living in their homes. The state's position was that the officials did not own the homes so they were not the private property of these officials and, consequently, the **Third Amendment** could not be applied to them.

The officials lost their case originally on the grounds that they were not the owners of the homes, but on appeal, the 2nd Circuit Court agreed with them that their **Third Amendment** rights had been violated, saying that they had a reasonable right to call the prison property their own since they were the current occupants and controllers of the property.

If you would like to do a more in depth study on the **3rd Amendment**, check out this article by Tom W. Bell. It is quite lengthy, but very thorough.

"The Third Amendment: Forgotten but Not Gone" (<http://www.tomwbell.com/writings/3rd.html>)

Article Source:

<http://www.revolutionary-war-and-beyond.com/third-amendment.html>

Third Amendment Violated?

*Continued from page one...*Addressing plaintiff as "asshole", officers, including Officer Snyder, shouted conflicting orders at Anthony Mitchell, commanding him to both shut off his phone, which was on the floor in front of his head, and simultaneously commanding him to "crawl" toward the officers.

Confused and terrified, plaintiff Anthony Mitchell remained curled on the floor of his living room, with his hands over his face, and made no movement.

Although plaintiff Anthony Mitchell was lying motionless on the ground and posed no threat,

officers, including Officer David Cawthorn, then fired multiple "pepperball" rounds at plaintiff as he lay defenseless on the floor of his living room. Anthony Mitchell was struck at least three times by shots fired from close range, injuring him and causing him severe pain.

Police officers supposedly discharged a few pepperball rounds in the direction of Mitchell's dog before allegedly locking the family pet outside for hours in the Nevada heat.

Anthony's parents' luck with the police wasn't any better.

"Mitchell's parents, Michael and Linda Mitchell, live in the same neighborhood and say they experienced a similar situation," the Huffington Post reports..

"Michael says he went willingly with officers to the command center on the premise of making a phone call to the domestic violence suspect, but when he tried to leave, he was arrested.



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Meanwhile, Linda Mitchell says officers physically forced her from the home," the report adds.

The complaint adds that law enforcement officials occupied both homes and "rummaged through the Mitchells' belongings, including opening cabinets and using a water dispenser."

Anthony, like Michael, was also arrested by Henderson police on charges of "obstructing an officer" and was forced to spend nine hours in jail.

The family's claim that their Third Amendment rights were violated is a bit of a rarity in U.S. courts.

But Frank Cofer, the family's lawyer, argues that the police had plenty of time to obtain the appropriate warrants. Remember, the standoff with White was an hours-long affair.

Cofer continued, noting that the family's case hinges on the definition of "soldier."

Do Henderson police officers technically count as "soldiers"? And can one say that they were "quartered" in the homes of the Mitchells?

"The lawyer said that police forces throughout the country, including local law enforcement, are employing military weapons and tactics and the facts of the Mitchells' case shows the spirit of the Third Amendment of the U.S. Constitution was violated," the Las Vegas Review-Journal notes.

"Ultimately, we want the case to go to a jury. That's the type of vindication the Mitchell family wants," Cofer said. "We definitely intend to see that the Mitchell family gets justice for the pain and humiliation they suffered."

The Henderson police department, for its part, has declined to comment on the lawsuit, saying instead that it "doesn't comment on pending lawsuits."

Source includes court documents and video interview with writer:

<http://www.theblaze.com/stories/2013/07/08/third-amendment-violated-nev-police-allegedly-invade-familys-home-to-use-during-swat-call-arrest-two-for-obstruction-when-owner-refuses/>



Third Amendment Application

In cases like the Mitchell case, the definition of "soldier" will likely come into play. What exactly constitutes a "soldier"? How do we apply the Third Amendment to what citizen's are facing today? It could be argued that "soldier" only refers to those actively serving in a branch of the U.S. military. However, it could also be argued that it could refer to any armed agent of the "state". As we have seen recently

many police departments are arming themselves with military style weapons and are engaging in military style training and tactics.

The official knocking on your door is no longer necessarily the single Sheriff or a couple of police officers asking questions while respecting your civil rights. It could be a SWAT team of armed men with a battering ram who will break down your door and enter without a warrant. It is apparent in all aspects of our civil rights that the government is playing fast and loose with its interpretation of The Constitution and The Bill of Rights. I believe as a citizenry who values our liberty, we must demand a close adherence not only to the letter of the law, but the spirit of the law. Certainly our founders would not want any agent of the state to be able to forcibly inhabit a private citizen's residence without the citizen's consent.



by
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