

Covert Operations May Be Federal Crimes

In discussing the Rockefeller Commission's report on CIA activities at his press conference recently, President Ford was asked what federal laws may have been violated. In reply, Ford referred only to possible violations of the National Security Act of 1947, which created the CIA.

What the President apparently did not know—nor do many other people seem to know—is that another law may have been violated by improper CIA activities.

The United States Code, in a statute first enacted in 1794, forbids anyone in the United States from assisting in any military action against a country with whom the United States is at peace. Specifically, Section 960 of Title 18 states that "[w]hoever, within the United States, knowingly begins or sets on foot or provides or prepares a means for or furnishes the money for, or takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony district, or people with whom the United States is at peace, shall be fined not more than \$3,000 or imprisoned not more than three years or both." According to an 1896 Supreme Court opinion, the law "was undoubtedly designed in general to secure neutrality in wars between two other nations, or between contending parties recognized as belligerents, but its operation is not necessarily dependent on the existence of such state of belligerency."

Given the broad language and purpose of the statute, courts have interpreted it to prohibit virtually any association with individuals who intend to use armed force against a country with whom the United States is at peace. As federal judge Augustus Hand observed in a 1917 case concerning the use of spies, the law can be violated even though the men involved do not "answer in a fair way the description of soldiers."

Thus, in the late 19th century, an American ship captain was convicted under the statute for transporting Cuban rebels from New Jersey to Cuba. Three decades later an Arizona gun

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dealer was convicted for selling arms to Indians planning a revolt against Mexico. And as late as 1971, a federal court upheld convictions against a group of civilians who conspired to overthrow the government of Haiti.

All this raises a serious question. Does the law apply to American government officials, including intelligence agents operating abroad? The statute itself provides no exception for government personnel, and the National Security Act of 1947 contains no language to exempt the CIA from the scope of Section 960. Indeed, the legislative history of the National Security Act contains virtually no evidence to

indicate that Congress consciously authorized the CIA to engage in any covert operations abroad other than the gathering and protecting of intelligence information.

It also seems doubtful that the President can waive application of Section 960. In 1806 a federal court rejected the defense that the President knew of and approved the accused's activities. The court declared, "The President of the United States cannot control the statute, nor dispense with its execution, and still less can he authorize a person to do what the law forbids. If he could, it would render the execution of the laws dependent on his will and pleasure, which is a doctrine that has not been set up and will not meet with any supporters in our government." The court then made a distinction between Congress' constitutional power to declare war and the President's power under a then-existing statute to "repel invasions (and) suppress insurrections," pointing out that "the right to repel invasions arises from self-preservation and defense." The judge summarized the distinction by saying, "But to repel aggressions and invasions is one thing, and to commit them against a friendly power is another."

Congress is presently engaged in a detailed examination of government intelligence activities. As part of that effort, the legislators should decide and then publicly explain why Section 960 does or does not apply to government agencies. Otherwise, we face the risk that government agents—and not the law—will define the scope of the government's powers in national security matters.