Approved 3/24/83
Date

MINUTES OF THE House COMMITTEE ON Federal & State Affairs.

The meeting was called to order by Rep. Neal D. Whitaker at
Chairperson

1:30 ~~xxxx~~ a.m./p.m. on March 14, 1983 in room 526-S of the Capitol.

All members were present except:

Rep. Peterson, who was excused.

Committee staff present:

Russ Mills, Legislative Research
Mary Torrence, Revisor of Statute's Office
Nora Crouch, Committee Secretary

Conferees appearing before the committee:

Senator Ron Hein
Major General Ralph Tice, Adjutant General
Tom Kelly, Director, Kansas Bureau of Investigation
Marion Schroll
Ted Cunningham, Kansas Outdoors Unlimited
Denny Burgess, Kansas Wildlife Federation
John Chambers

Chairman Whitaker called the meeting to order and announced that the City of Wichita had made a request for a bill regarding the sale of surplus land. The City feels they need to have some discussion about the statute surrounding the sale and would like to have this bill introduced. Rep. Barr moved, Rep. Ramirez seconding, that the bill be introduced. The motion carried. (See Attachment A)

The Chairman announced that it had not been his intention to hold additional hearings on HB 2541 since the bill had thoroughly been discussed in Judiciary, however, a number of persons had contacted the office and asked to be heard. It was his intention that the Committee discuss the definition of "civil disorder" and who this bill might cover.

Major General Ralph Tice, Adjutant General of Kansas, appeared in favor of HB 2541. He stated he was not against a citizen owning or possessing firearms and organizations that promote sport of target shooting. He is against organizations that might hide behind these rules to further their efforts to obtain training that would be useful to them in cases of civil disorder. There is no reason for an organization to conduct themselves in a parimilitary manner to attach targets in cities and counties.

Tom Kelly, Director, Kansas Bureau of Investigation, appeared in support of HB 2541 stating that he had testified at length on the original bill. There has already been training in Kansas to teach people how to use teargas, explosives, guerrilla warfare, silencers on weapons, and other tactics. Kansas does not need this type of training in the state. It is not used in everyday activities.

The Chairman interrupted the discussion on HB 2541 stating that Senator Hein was available to explain the provisions of SB 244.

Senator Ron Hein appeared to explain the purpose of SB 244. He apologized to the Committee for being late to the hearing. This bill was originally introduced in 1979 after the Whippporwill tragedy of 1978. The intent was to come up with some legislation to insure that a similar tragedy did not reoccur. This provides that any operator on any large vessel be inspected.

Marion Schroll appeared on HB 2541 stating that this bill infringes on the right of people to keep and bear arms. He stated the bill was conceived in haste and emotional reaction to the shooting of the federal marshals up north and urged defeat of the bill. (See Attachment B)

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Federal and State Affairs,

room 526-S, Statehouse, at 1:30 xxx a.m./p.m. on March 14, 1983

Ted Cunningham, Director, Kansas Outdoors Unlimited, appeared in opposition to HB 2541 stating this bill as the original bill still puts in jeopardy some of the things we hold dead. This bill might provide a tool for harrassment for those persons who are against guns and gun use in any form. There are a number of laws on the books that speak to this problem.

Denny Burgess, Kansas Wildlife Federation, appeared in opposition to HB 2541 stating his group probably has less tolerance and sympathy for law-breakers than a lot of other groups. They feel that the right to keep and bear arms is probably one of the most important rights in this country. He stated this bill is not needed at this time as there are other laws to take care of the situation.

John Chambers appeared on HB 2541 stating that the bill is worded to protect the rights of lawabiding citizens to legitimaze weapons training and even survivalist training. The state then has the burden to prove the intent of any paramilitary training exercise is to create civil disorder. (See Attach. C)

The Chairman announced that there was a letter from Attorney General Robert T. Stephan at their places on HB 2541. (See Attachment D)

The Chairman announced that the Committee needs to see if they can narrow the bill down. There is no question that the bill in its present form will not pass either house. He asked whether there was a need for a laundry list of activities that would be exempt from the law. He asked for suggestions Line 40 on the meaning of civil disorder. The Committee spent considerable time discussing HB 2541.

Rep. Vancrum moved, Rep. Ediger seconding that HB 2541 be amended in Sections (a), (b), and (c), the words "civil disorder be stricken and that on Line 25 after the word "of" the words "a civil disorder" be stricken and the words "an assault or damage to property" be added, and that the language on Lines 37 to 41 be stricken.

Due to the apparent confusion and discussion on HB 2541 the Chairman adjourned the meeting to give the Revisor's Office a chance to work out possible amendments to the bill. He advised the Committee that the original motion of Rep. Vancrum would be the first order of business at the next meeting.

The meeting adjourned.

City of Wichita
Scott Wrighton

PROPOSED LEGISLATION RELATING TO THE PURCHASE OF CITY PROPERTY IN FEE SIMPLE TITLE AND THE SALE OF SUCH LAND

Sec. 1. Acquiring Fee Simple Title; Cities.

As a complete alternative to other statutory authority, cities may acquire, for any public purpose, fee simple title or any lesser degree of title or interest or rights in land when such land is acquired by purchase, gift or dedication. The cost of the acquisition of such land may be financed by the issuance of general obligation bonds or revenue bonds if such is authorized by statute. Real estate purchased in fee title, including but not limited to land acquired for street and storm water sewer purposes, may be sold by cities when such is no longer needed for public purposes. Cities holding fee simple title to land may dispose of same, selling in the name of the governing body, thereby transfering all rights title and interest of said governing body in such real estate.

Sec. 2.

(a) Cities may charge an amount in connection with the release of any permanent easement. The amount charged shall not exceed the increase in value accruing to the underlying fee owner resulting from the termination of the property interest held by the governing body of said city. Conveyances of all real estate under this section shall be by deed executed by the governing body of such city; and a record shall be maintained of all such conveyances.

(b) Real estate sold, or easements released under the provisions of this act shall be appraised before sale by three disinterested persons and the sale advertised in a newspaper of general and local circulation in the county where the real estate is situated once each week for three consecutive weeks prior to the date set for such sale. In no case shall the real estate be sold for less than 2/3 of its appraised fair market value, except that if no sale, or release of easement, has been effected after an effort to sell under this subsection. The governing body of any city may set aside the appraisement and order a new appraisement and readvertise the real estate for sale.

(c) Before the release of any permanent easement, cities shall notify the original owners (underlying fee owners) or their heirs or assigns that they may have an option to purchase the property. Such option shall expire if not exercised within a period of six months following notification.

Sec. 3

This act shall take effect and be in force from and after its publication in the Kansas Register.

Atch. A

Testimony of Marion Schroll, an individual, appearing before the Federal and State Affairs Committee, March 14, 1983.

1st Amendment, U.S. Constitution: Congress shall make no law .....abridging the freedom of speech,.....or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances..

2nd Amendment:.....the right of the people to keep and bear Arms shall not be infringed.

Today this committee is holding hearings on H.B.2541, which is a rehash of testimony and debate on H.B. 2269. The latter has been voted down by the House, so this new bill is an attempt to resurrect a bill already killed by the House. I have listened to testimony both pro and con; the pro's are saying that this bill would give law enforcement people a tool to suppress groups like the Posse Comitatus.

To pass this bill, you will abridge the freedom of speech, the right to peaceably assemble. Is it not ironic that this amendment was used to allow Communists to hold and run for public office, and you are trying to pass a law which would have the effect of limiting free speech of anti-Communists?

If you pass this bill, the right of the people to keep and bear arms will be infringed. I know you think none of these people should carry a gun; however well intentioned your motives, the effect is to infringe on that Constitutional right.

Other testimony has mentioned that there are state statutes already on the books to cover illegal use of force, assault, conspiracy, etc. Federal laws already cover illegal use of automatic weapons and explosives.

It would appear that the reason for introducing this bill are for the following reasons: 1. A reaction to the shooting of the Federal marshals up North. 2. We don't want that to happen here. 3. If we outlaw the group to which the alleged shooter belonged, we won't have that trouble here.

My suggestion: Introduce a House Resolution that states that anyone using illegal force be prosecuted. Your message will be heard.

To sum up: Don't vote for this bill. It was conceived in haste and emotional reaction. There are already state and federal statutes that you can urge law enforcement agencies to use. You will be violating people's constitutional rights to free speech, right to assemble, redress grievances, and keep and bear arms.

Why pass a bill not necessary nor needed, and unconstitutional?

Att. B

Federal and State Affairs Committee
Hearing on HB 2541
March 14, 1983

John P. Chambers

Ladies and Gentlemen of the Committee:

Bursts of automatic weapons fire at the North Dakota village of Medina Feb. 14 left two U.S. marshals dead and a third critically wounded.

Officials have blamed the killings on members and sympathizers of the Posse Comitatus, a vigilante, racist, survivalist and tax-protesting group. One suspect still is at large.

This tragedy was spawned by the Posse's cynical view of history and government, its survivalist mind set, and its advocacy of vigilante violence.

Posse Comitatus is one of many religious and political organizations which justify the use of violence to achieve their goals. Some of their methods have included attempts to terrify and dominate lawmakers, judges, U.S. attorneys and minority groups, particularly Jews and blacks. They also have tied up the court system with spurious lawsuits and liens against public officials.

These groups exploit the misery and despair of the unemployed worker and the fears of the bankrupt farmer, blaming the economic problems they are facing on an international conspiracy of Jews, Communists, international bankers, the Trilateral Commission, the news media, the trucking industry, U.S. marshal system and the court system.

Many of them refuse to pay taxes.

Lest there be any mistake about the seriousness of the threat these persons pose to the general peace and safety, let

Attch. C

me quote some of their own material and some news interviews with their leaders (my apologies to my Jewish and black friends for having to repeat these attacks):

1. From The Covenant, the Sword, the Arm of the Lord (CSA): "God wants Christians to kill their enemies...God's enemies include Jews, who are natural enemies of Christians."

2. From James P. Wickstrom, national director of counter-insurgency for the Posse Comitatus: "Better start choosing a telephone pole for your favorite legislator...The Posses of the Plains States KNOW THEIR ENEMIES and will do their job very soon...A prairie fire is starting to burn in the West which will not go out until all the telephone poles are occupied with bodies. By the way, how do you get a Jew or a corrupt judge out of a tree? CUT THE ROPE...Yes there is power in prayer, but there is more in PRAYER AND A 12-GAUGE SHOTGUN."

3. From the official Posse Comitatus Manual: Any official who fails to do his duty (as the Posse interprets it) "Shall be removed by the posse to the most populated intersection of streets in the township and, at high noon, be hung by the neck, the body remaining until sundown as an example to those who would subvert the law."

4. From the Rev. William P. Gale, Mariposa, Calif., a retired Army colonel, on a National Identity broadcast on KTTL-FM, Dodge City: "Empty skulls in Washington, D.C.... going to get filled up or busted -- one or the other very soon....You're either going to get back to the Constitution of the United States in your government or officials are going to hang by the neck until they're dead -- as examples to those who don't."

As repugnant as their views are to most Americans, these radicals are guaranteed the right to express them and to seek adherents for their cause. Our quarrel is not with the free expression or exchange of ideas. Let the warfare consist only of the clash of ideas.

The North Dakota incident -- the most recent and most violent of many incidents in several nearby states -- indicates that the battles envisioned by the Posse Comitatus and similar hate groups is not only a battle for the minds of men.

News accounts around the nation tell of confrontations between Posse members and private citizens, law enforcement agents, federal officials and the courts. Some of these confrontations have been mostly verbal, some were intended to harrass and interfere with officials carrying out official duties, and some have been actual assaults.

Among them has been the macing of Capitol Protection and Security guards in Wisconsin, the assaulting of Internal Revenue Service agents, and the beating of regular law enforcement officers by armed men.

In some areas, Posse members have worn unofficial police uniforms while stopping motorists and issuing bogus tickets. They have stockpiled automatic and other type guns and ammunition in vast quantities, along with bazookas and hand grenades. In Wisconsin, Posse members have been convicted of circulating counterfeit money which officials believed was printed by other Posse members.

Paramilitary camps have been held in Kansas, Missouri and Colorado, among other states. In these camps, Posse and National Identity personnel have taught guerrilla warfare.

Some of the instructors were Vietnam special forces veterans.

The bill you are considering would give law enforcement officials another tool with which to deal with these ~~paranoid~~ vigilantes and stop violence before it is carried out.

The Bill is so worded as to protect the rights of law-abiding citizens to legitimate weapons training, and even to survivalist training. It puts the burden upon the state to prove that the intent of any paramilitary training exercise is to create civil disorder. This is no easy task, but it is a protection built into the bill.

Members of the American Civil Liberties Union told me that they submitted HB 2269, a similar bill originating in the House Judiciary Committee this session, to constitutional law professors at Washburn University and they determined that the bill was constitutional.

Again, our quarrel is not with words, but with actual terrorism and violence, and the training of vigilante or guerrilla groups to perpetrate them.

The point at which government can and should intervene is the point at which philosophy becomes conspiracy, where rhetoric becomes terroristic threat, and where inflamatory speech becomes guerrilla activity -- not merely to defend against some imagined enemy, but to oppress and destroy minority citizens, and to intimidate and harrass duly-elected officials.

It is not enough to wait for these people to attack -- to hand a judge, firebomb a synagogue or lynch a black man. We must <u>prevent</u> the occurrence of such violence.
And we must provide for our law enforcement agencies every legal tool for stopping violence while it is yet in the making.

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION 296-3751

March 14, 1983

Honorable Neal Whitaker
Chairman
House Federal and State Affairs Committee
Room 112-S, State Capitol
Topeka, Kansas

Dear Chairman Whitaker:

I regret that I am scheduled out of Topeka today and am unable to testify regarding House Bill No. 2541. I want to advise you of my continued support for this proposal. Kansas Bureau of Investigation Director Tom Kelly is scheduled to explain to you today circumstances which have arisen in Kansas which cause us to believe this bill to be a suitable tool in dealing with those who threaten and are preparing for violence to carry out their antisemitic racial and anarchistic views.

This bill is a reasonable and appropriate response to such threats of violence and has been adopted by several states. Additionally, there is a similar federal law in regard to violence in conjunction with federally protected activities as well as interstate commerce. House Bill No. 2541 does not restrict weapons training except where acts of aggression against society are contemplated. It does not restrict constitutionally protected free speech; it restricts the violent expression of such views.

I hope the legislature will act to pass this bill to provide law enforcement with this additional tool to deal with those who threaten violence against minority citizens and our lawful

Atch. D

government processes. I believe the deaths of the federal marshals in North Dakota should be ample evidence that we are dealing with a serious matter.

Very truly yours,

Robert T. Stephan
Attorney General

RTS:pc

STATE OF KANSAS

STEVEN A EDIGER
REPRESENTATIVE, ONE HUNDRED FOURTH DISTRICT
1705 EAST 11TH STREET TERRACE
HUTCHINSON, KANSAS 67501

TOPEKA

HOUSE OF
REPRESENTATIVES

March 14, 1983

TO: HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

FROM: REP. STEVE EDIGER

RE: HB 2541

Attached are several excerpts from Federal Courts interpreting 18 U.S.C. Sec. 231, which is substantially the same legislation as HB 2541.

Underlined are the key passages. From these passages, several things are clear:

1. Sporting groups, etc. will not be affected unless they had intent to cause a civil disorder.

2. Civil disorder has a definite legal meaning.

3. This is not a suppression of free speech but a prevention of violent, illegal acts. The State of Kansas need not wait until the Posse Comitatus is at the door of the house to put an end to their racist, ill-conceived plans. The constitution protects beliefs and speech, but not conduct which is a threat to the public peace,

nal Code.[4] Non-plaintiff indictees Froines and Weiner were also charged with that substantive offense. All individual plaintiffs and three others were also charged with conspiring to commit acts to obstruct firemen and law enforcement officers "lawfully engaged in the lawful performance of their official duties", in violation of Section 231(a) (3) of the Criminal Code.[5]

[3] At the oral argument, the plaintiffs did not attack the constitutionality of these Civil Disorders provisions of the Criminal Code. Their brief does not attack the constitutionality of Section 231(a) (3) or Section 232, the definition provision. Their brief does assert that the phrase "technique capable of causing injury or death to persons" in Section 231(a) (1) includes techniques of self-defense or sporting activities and then argues that "the requirement that an instructor or teacher know whether his pupils will use their skills unlawfully or in a 'civil disorder which may in any way' interfere with interstate commerce is certainly too broad and vague." But this ignores the "knowing, or having reason to know or intending" language of the statute. The requirement of intent of course "narrows the scope of the enactment by exempting innocent or inadvertent conduct from its proscription." Landry v. Daley, 280 F.Supp. 968, 989 (N.D.Ill.1968) (three-judge district court), probable jurisdiction noted, 393 U.S. 974, 89 S.Ct. 442, 21 L.Ed.2d 436. In sum, we cannot say that the attack on Section 231(a) (1) involves a substantial constitutional question.[6]

[4, 5] The plaintiffs appear to have conceded the constitutionality of Section 231(a) (3), for it was not attacked in their brief or oral argument. It is true that Section 231(a) (3) does not specifically refer to intent, but it only applies to a person who "commits or attempts to commit any act to obstruct, impede, or interfere" with firemen or law enforcement officers. Under such phraseology, it will not be presumed that Congress intended strict liability for inadvertent or accidental occurrences where, as here, the crime is grounded on the common law. Morissette v. United States, 342 U.S. 246, 262–263, 72 S.Ct. 240, 96 L.Ed. 288. Under Section 231(a) (3), it was unnecessary for Congress to require that offenders know the official capacity of those persons whose activities they intended to obstruct, impede, or interfere with, so long as such persons were lawfully engaged in the lawful performance of their official duties. United States v. Lombardozzi, 335 F.2d 414, 415–416, 10 A.L.R.2d 826 (2d Cir.1964), certiorari denied, 379 U.S. 914, 85 S.Ct. 261, 13 L.Ed.2d 185;[7] cf. United States v. Miller, 379 F.2d 483, 487 (7th Cir.1967), certio-

4. Section 231(a) (1) provides:
"Whoever teaches or demonstrates to any other person the use, application, or making of any firearm or explosive or incendiary device, or technique capable of causing injury or death to persons, knowing or having reason to know or intending that the same will be unlawfully employed for use in, or in furtherance of, a civil disorder which may in any way or degree obstruct, delay, or adversely affect commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function;"

5. Section 231(a) (3) provides:
"Whoever commits or attempts to commit any act to obstruct, impede, or interfere with any fireman or law enforcement officer lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder which in any way or degree obstructs, delays, or adversely affects commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function—"

6. Section 231(a) (2) has not been assailed in plaintiffs' brief or oral argument.

7. The *Lombardozzi* rule has been followed in United States v. Wallace, 368 F.2d 537 (4th Cir. 1966), certiorari denied, 386 U.S. 976, 87 S.Ct. 1169, 18 L.Ed.2d 136; McEwen v. United States, 390 F.2d 47 (9th Cir. 1968), certiorari denied, 392 U.S. 940, 88 S.Ct. 2319, 20 L.Ed.2d 1400, and Pipes v. United States, 399 F.2d 471 (5th Cir. 1968).

[9] Statutes are not unconstitutional just because there are marginal cases in which it is difficult to draw the line. The Constitution only requires the statutory language to give a "sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." United States v. Petrillo, 332 U.S. 1, 7–8, 67 S. Ct. 1538, 1542, 91 L.Ed. 1877. That standard has been met in these Riot provisions. Moreover, the federal government has a strong interest in preventing violence to persons and injury to their property, and when clear and present danger of riot appears, the power of Congress to punish is obvious. Cf. Cantwell v. State of Connecticut, 310 U.S. 296, 308, 60 S.Ct. 900, 84 L.Ed. 1213. The definition of riot as used in Section 2102(a) of the Criminal Code is carefully limited to apply to such situations (see Appendix, *infra*), and Section 2101 does not proscribe the peaceful exercise of the rights of free speech and assembly. As noted in Gregory v. City of Chicago, 394 U.S. 111, 118, 89 S.Ct. 946, 22 L.Ed.2d 134, (concurring opinion) narrowly drawn statutes regulating the conduct of demonstrators are not impossible to draft, and plaintiffs have not sufficiently shown that these Riot provisions are over-broad.

Our conclusion is that the plaintiffs' attack upon these statutes does not present a substantial constitutional question requiring the convening of a three-judge district court.

Affirmed.

APPENDIX

18 U.S.C. § 2101 provides:

"(a) (1) Whoever travels in interstate or foreign commerce or uses any facility of interstate or foreign commerce, including, but not limited to, the mail, telegraph, telephone, radio, or television, with intent—

(A) to incite a riot; or

(B) to organize, promote, encourage, participate in, or carry on a riot; or

(C) to commit any act of violence in furtherance of a riot; or

(D) to aid or abet any person in inciting or participating in or carrying on a riot or committing any act of violence in furtherance of a riot;

and who either during the course of any such travel or use or thereafter performs or attempts to perform any other overt act for any purpose specified in subparagraph (A), (B), (C), or (D) of this paragraph—

"Shall be fined not more than $10,000, or imprisoned not more than five years, or both.

"(b) In any prosecution under this section, proof that a defendant engaged or attempted to engage in one or more of the overt acts described in subparagraph (A), (B), (C), or (D) of paragraph (1) of subsection (a) and (1) has traveled in interstate or foreign commerce, or (2) has use of or used any facility of interstate or foreign commerce, including but not limited to, mail, telegraph, telephone, radio, or television, to communicate with or broadcast to any person or group of persons prior to such overt acts, such travel or use shall be admissible proof to establish that such defendant traveled in or used such facility of interstate for foreign commerce.

"(c) A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

"(d) Whenever, in the opinion of the Attorney General or of the appropriate officer of the Department of Justice charged by law or under the instructions of the Attorney General with authority to act, any person shall have violated this chapter, the Department shall proceed as speedily as possible with a prosecution of such person hereunder and with any appeal which may lie from any decision adverse to the Government resulting from such prosecution; or in the alternative shall report in writing, to the respective Houses of the Congress, the Department's reason for not so proceeding.

the Supreme Court in *Gorin*, and we hold that it is sufficiently definite to apprise men of common intelligence of its meaning and application.[3]

[2] We note also that in both cases the district court instructed the jury that in order to convict the defendants, they must find that at the time and place in question, the defendants knew and intended the incendiary devices to be unlawfully employed for use in, or in furtherance of, a civil disorder. Thus we find no constitutional infirmity arising from the interpretation and application of the statutory language to these appellants.

[3] In sum, the statute does not cover mere inadvertent conduct. It requires those prosecuted to have acted with intent or knowledge that the information disseminated would be used in the furtherance of a civil disorder.

II.

[4] The First Amendment argument is two-fold. First, the contention is that since the statutory language does not require knowledge or intent, it permits prosecution for the dissemination of ideas without a showing of clear and present danger. In view of our decision that the statute as construed here and in the district court does require a showing of knowledge or intent, this contention is rejected.

Second, it is urged, despite our holding in regard to the language of § 231(a) (1), that the statute was unconstitutionally applied because the government failed to prove the happening or pendency of a particular civil disorder and thus failed to show a clear and present danger justifying an interference with activity protected by the First Amendment. We find this argument unpersuasive.

The words "clear and present danger" do not require that the government await the fruition of planned illegal conduct of such nature as is here involved. As stated in Dennis v. United States, 1950, 341 U.S. 494, 71 S.Ct. 857, 95 L.Ed. 1137:

> "[T]he words cannot mean that before the Government may act, it must wait until the putsch is about to be executed, the plans have been laid and the signal is awaited. If Government is aware that a group aiming at its overthrow is attempting to indoctrinate its members and to commit them to a course whereby they will strike when the leaders feel the circumstances permit, action by the government is required." 341 U.S. at 509, 71 S.Ct. at 867.

[5] Here the evidence showed a cohesive organized group, lead by Featherston and aided by Riley, engaged in preparation for "the coming revolution." This group included a force regularly trained in explosives and incendiary devices, standing ready to strike transportation and communication facilities and law enforcement operations at a moments notice.[4] Taken within this fac-

3. Several other criminal statutes utilize the same or substantially the same language as that complained of here. See, e. g., 18 U.S.C.A. §§ 491, 792–794, 954, 1383–1384, 2153–2154, and 2511–2512.

4. One witness who was present at the May 27 meeting stated at p. 61 of the transcript in No. 71–2687:

> "The use for these items were to help us in the upcoming revolution, whenever it came."

Further, at p. 69, the witness stated that:

> "After Mr. Featherston made a statement on the revolution, it was reemphasized by Mr. Jackson [appellant Riley] that 'We must get our heads and minds and bodies right for the revolution, no telling when the revolution might come. We must be prepared for the oncoming revolution.'"

And in No. 71–2385, another witness stated at page 185 of the transcript:

> "Mr. Featherston had taken over the class and was explaining to the group how we could use these different bombs that everyone understood how to make them, that everyone in the organization had to learn how to make them, women and men, and 'We must keep these ingredients around the house or one or two bombs made up so we could use them on a moments notice.'

held an evidentiary hearing, and having heard oral argument, this Court makes the following rulings on defendants' Motion to Dismiss the indictments:

Point I

Defendants' motion to dismiss on the grounds that 18 U.S.C. Sec. 231(a)(3)[1] is unconstitutional on its face and as applied in Counts IV and V is denied.

[1] 18 U.S.C. Sec. 231(a)(3) has been upheld as being neither unconstitutionally vague nor overly broad. See United States v. Mechanic, 454 F.2d 849, 853 (8th Cir. 1971), National Mobilization Committee to End War in Vietnam v. Foran, 297 F.Supp. 1, 3-5 (N.D.Ill. 1968), aff'd in 411 F.2d 934 (7th Cir. 1969). These cases have interpreted Section 231(a)(3) to require "specific intent", which has been alleged in both Counts IV and V, as one of the elements the government must prove. See also United States v. Featherston, 461 F.2d 1119 (5th Cir. 1972), cert. den. 409 U.S. 991, 93 S.Ct. 339, 34 L.Ed.2d 258 (1972), holding that Section 231(a)(3) is not unconstitutional on its face because the statute requires intent and does not cover mere inadvertent conduct. 461 F.2d 1122.

I disagree with defendants' contention that Section 231(a)(3) constitutes an abridgment of First Amendment activities. *Mechanic, supra*, 454 F.2d at 852, specifically states that "Section 231(a)(3) has no application to speech, but applies only to violent physical acts." Therefore,

> . . . since the statute does not attempt to curtail speech, the defendants may not challenge it as vague or overly broad if their own conduct may be constitutionally prohibited, since ". . . one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional . . . ." United States v. Raines, 362 U.S. 17, 21, 80 S.Ct. 519, 4 L.Ed. 2d 524 and cases cited therein. United States v. Mechanic, *supra*, 454 F.2d at 853.

There is a difference between prohibiting free *expression*, which was the concern of the courts in Tinker v. Des Moines School District, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969), and Stamler v. Willis, 415 F.2d 1365 (7th Cir. 1969), and prohibiting certain *acts* to impede, obstruct or interfere with an official described in the statute, such as the throwing of cherry bombs in *Mechanic*, or the locating of trenches, bunkers and roadblocks manned by persons armed with guns as alleged in the present indictments. (Of course, our opinion here refers only to the sufficiency of the indictment and draws no conclusion as to the substantive merits of the same.)

expression vs acts

We do not feel that by interpreting the statute in a constitutionally permissible light, the court in *Mechanic, supra*, rewrote 18 U.S.C. Sec. 231(a)(3). See Screws v. United States, 325 U.S. 91, 98, 65 S.Ct. 1031, 89 L.Ed. 1495 (1945), and United States v. Harriss, 347 U.S. 612, 618, 74 S.Ct. 808, 98 L.Ed. 989 (1954). Even the decision in Aptheker v. Secretary of State, 378 U.S. 500, 84 S.Ct. 1659, 12 L.Ed.2d 992 (1964), cited extensively by defendants, does not state that a court may not construe legislation so as to save it against constitutional attack, but merely holds that the court may not carry this ". . . 'to the point of perverting the purpose of a

1. Section 231(a)(3) provides, in relevant part:
(3) Whoever commits or attempts to commit any act to obstruct, impede, or interfere with any fireman or law enforcement officer lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder which in any way or degree obstructs, delays, or adversely affects commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function . . ..

kinds of assistance in furtherance of a civil disorder. "Civil disorder" is defined simply as "any public disturbance involving acts of violence by assemblages of three or more persons [resulting in or threatening] . . . damage or injury . . . ." 18 U.S.C. § 232(1). The other relevant penal statute passed in that year, 18 U.S.C. §§ 2101, 2102, involves inciting, committing or aiding a riot. "Riot" is defined as "a public disturbance involving . . . an act [or threat of an act] of violence by one or more persons part of an assemblage of three or more persons . . . [resulting] in damage or injury . . . ." 18 U.S.C. § 2102(a). Although plaintiff makes a respectable argument that these laws and HUD's definition of riot or civil disorder contained in paragraph (C) of the reinsurance contract are inconsistent, we agree neither that any substantial inconsistency can be found, nor, even if any inconsistency could be discovered, that it would make HUD's action improper. As to this latter point, we think that, in view of the fact that these statutes were passed to achieve very different purposes, their terms need not be forced into the same mold. Congress may use a broader term for identifying activities which it chooses to proscribe, and use, or allow an agency to use, a narrower term to identify what losses the federal government shall reimburse.

[7] Paragraph (A) of the reinsurance contract, 18 U.S.C. § 232(1) and 18 U.S.C. § 2102(a) all deal with public actions. Paragraph (A) speaks in terms of "tumultuous disturbance of the public peace". The two criminal statutes use very similar language, "public disturbance involving . . . acts of violence", the plain meaning of which is that the act of violence is contemporaneous with, and part of, the public disturbance. They would exclude a covert act which was related to public disturbance only by a causal link. Thus, only paragraph (C) of the reinsurance contract could encompass a covert act and HUD's requirement that some racial or political motivation be shown cannot be seen as inconsistent with the other congressional enactments mentioned above. But in addition to this, HUD's motivation test is quite reasonable. It means that if an act of destruction is not public in the sense that it is openly done, it must be public in the sense of its purpose. After all, the word "civil" (as in civil disorder, civil disobedience, and civil disruption) could appropriately be equated with one of its primary definitions: "the relations of citizens one with another or with the body politic or organized state or its divisions and departments". Webster's Third International Dictionary. If an action is done neither openly or for a public purpose then the term "civil" would be deprived of any meaning. And beyond the definitional problem is the very practical consideration that without some such limitation the scope of paragraph (C) could well reach to any illegal and destructive act at all. We would hesitate to so magnify the breadth of coverage without definite evidence that such was the legislative intent.[5]

definition of ~~public~~ civil disorder

5. As pointed out by both parties to this litigation the legislative history of the Urban Property Protection and Reinsurance Act of 1968 includes the following statement:

"It has been pointed out that there has recently been a pattern of losses resulting from intentionally caused fire or other property damage which may or may not be connected in time or place to riots or group activity, but which could be determined to be a form of civil disorder. It is the view of the committee that losses of this nature might be considered by the Secretary when he issues regulations delineating the precise scope of 'losses resulting from riots or civil disorders.'" House Report No. 1585, Committee on Banking and Currency, 90th Congress, 2d Session, at 80, U.S.Code Cong. & Admin. News 1968, p. 2955.

The precatory language of this statement, and its reference to a "pattern of losses" indicates that HUD's disallowance of this claim did not violate congressional intent, particularly in view of the isolated nature of the loss involved. Furthermore, neither this

CHAPTER 12—CIVIL DISORDERS

Sec.

Historical Note

1968 Amendment. Pub.L. 90-284, Title X, § 1002(a), Apr. 11, 1968, 82 Stat. 90, added chapter 12 and items 231-233.

§ 231. Civil disorders

(a) (1) Whoever teaches or demonstrates to any other person the use, application, or making of any firearm or explosive or incendiary device, or technique capable of causing injury or death to persons, knowing or having reason to know or intending that the same will be unlawfully employed for use in, or in furtherance of, a civil disorder which may in any way or degree obstruct, delay, or adversely affect commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function; or

(2) Whoever transports or manufactures for transportation in commerce any firearm, or explosive or incendiary device, knowing or having reason to know or intending that the same will be used unlawfully in furtherance of a civil disorder; or

(3) Whoever commits or attempts to commit any act to obstruct, impede, or interfere with any fireman or law enforcement officer lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder which in any way or degree obstructs, delays, or adversely affects commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function—

Shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(b) Nothing contained in this section shall make unlawful any act of any law enforcement officer which is performed in the lawful performance of his official duties.

Added Pub.L. 90-284, Title X, § 1002(a), Apr. 11, 1968, 82 Stat. 90.

Historical Note

Short Title. Section 1001 of Pub.L. 90-284 provided that: "This title [which enacted this chapter] may be cited as the 'Civil Obedience Act of 1968'."

Legislative History. For legislative history and purpose of Pub.L. 90-284, see 1968 U.S.Code Cong. and Adm.News, p. 1837.