

Bringing Civilian Offenders to Justice

In Vietnam, American civilians and deserters regularly committed crimes with impunity. The South Vietnamese Government routinely declined to exercise jurisdiction in cases involving Americans who committed crimes against other Americans or American law. Moreover, American civilian laws against many criminal acts, had no extraterritorial application and could not be tried by any Federal District Court. As a result, this created a group of U.S. civilians and contractor employees, that was not subject to prosecution for crimes committed in Vietnam.¹ Administrative debarment was the sanction applied in most cases of civilian wrongdoing. That involved a bar to the wrongdoer's employment by any U.S. contractor in Vietnam and the firing of the wrongdoer. As an indication of the level of civilian misconduct in Vietnam, by the end of the war, 943 contractor employees had been debarred.ⁱ

NIS investigators decided to take a different approach against a former U.S. Navy enlisted man with aircraft maintenance experience, who was a civilian employee of a U.S. company. He was linked to a major narcotics importation scheme after NIS agents intercepted multiple kilo bundles of opium, and he was alleged to have been involved in a scheme to steal platinum from critical helicopter components. He was also linked to illegal trade in gold and had been arrested and imprisoned by Vietnamese authorities for complicity in car theft and fencing schemes. There was compelling evidence he had also been involved in various illegal currency manipulation scams.ⁱⁱ

The NIS agents decided that their best option was encouraging Vietnamese authorities to act. They collected scores of reports on the suspect's activities and a small Vietnamese police group with a name that roughly translated to Treasury Fraud

¹¹ *State Department considered administrative measures, such as withdrawal of military privileges and loss of employment, to be sufficient punishment. Courts-martial should be reserved for only the most serious cases. MACV, on the other hand, urged courts-martial in all cases. While that disagreement continued, only 16 civilian cases entered the military justice system; four civilians were tried by courts-martial. One was Mr. Raymond G. Averette, a civilian employee of an Army contractor, who was convicted by an Army general court-martial of conspiracy to commit larceny and attempted larceny of 36,000 batteries. He appealed his conviction and sentence to confinement at hard labor for one year and a \$500 fine. In April 1970 the Court of Military Appeals reversed the conviction and dismissed the case. The Court noted that Averette was assigned to an Army post in Vietnam and enjoyed full military privileges. Moreover, his offenses could be tried in a United States District Court. The rationale of the decision, however, was that the article of the UCMJ upon which jurisdiction was based required that the civilian's offense be committed in time of war. "We conclude," the Court wrote, "that the words 'in time of war' mean ... a war formally declared by Congress." Because there was never a declaration of war against North Vietnam, the UCMJ could not apply to civilians accompanying U.S. Armed Forces in the field, or so the military appellate court reasoned.*

Repression Unit expressed interest in the case. Funding for the unit was predominantly based on the assets it was able to seize and this then provided potential legal means for the arrest and remand of the subject.

The subject's latest scheme involved travel to Japan, purchase of vast quantities of stereo and other high value equipment, and shipping the items via the military postal system to Vietnam to avoid Vietnamese customs scrutiny. Checks presented to the exchanges as payment had all been written against an account of the Saigon branch of Chase Manhattan Bank. The account had been established using identification stolen from another serviceman months earlier. NISO Japan agents confirmed in considerable detail aspects of the purchases, banking and postal transfer and forwarded these to NISU Vung Tau.

The agents were certain they had proved the man had been involved in violations of U.S. federal law. But at that time, no established legal mechanism could bring the man to trial, nor did a legal precedent exist for trying him under U.S. law for offences committed in Vietnam. Representations were made to the U.S. attorney in Hawaii who agreed to prosecute the case if the subject was delivered to U.S. marshals on American soil. Some months later, the man and his accomplice were tried and convicted in federal court.

The appellants, James Milton Cotten, and William Lowell Roberts, appealed their convictions in the United States District Court for the District of Hawaii for violations of [18 U.S.C. § 371](#), conspiracy, and [18 U.S.C. § 641](#), theft of Government property. The criminality of the conduct which resulted in the convictions was not in doubt. The only questions raised on appeal concerned the jurisdiction of the district court. The expansive nature of the case required that it be submitted to the court upon an agreed statement of facts. Those facts are important to the questions raised and are substantially as follows:

During 1969, James Milton Cotten and William Lowell Roberts, who were civilian United States Citizens in the Republic of Viet Nam, conspired to defraud the United States by knowingly converting money and other property of the United States Military Exchanges in Japan to their own use and for the use of others. In furtherance of their conspiracy, they obtained falsified military identification cards, falsified military orders showing them to be on authorized "RR" leave in Japan and opened a checking account.

They arrived at Japan in April, 1969, stayed there approximately two weeks, and returned to the Republic of Viet Nam. During their stay in Japan, they negotiated numerous worthless checks drawn on the previously mentioned account at several United States Military Exchanges. The checks were exchanged for cash and for merchandise which was

then sent through the military mail system to military acquaintances of the defendants in Viet Nam.

On August 5, 1970, a twenty-three count indictment was brought against the appellants in the Northern District of California. Both appellants were charged with conspiracy to defraud the United States and with several substantive counts of theft of Government property by means of the worthless checks. [18 U.S.C. § 371](#). [18 U.S.C. § 641](#).

At the time of the indictment, the appellants were still in the Republic of Viet Nam. Immediately after the return of the indictments, the United States Department of State, pursuant to prior arrangements, instituted proceedings to revoke the appellants' passports and to arrange their deportation to this country. In the meantime, the appellants were arrested by Vietnamese officials and charged with several minor local offenses. The Vietnamese officials refused to relinquish custody of the appellants or their passports until final disposition of the local charges. The United States does not have an extradition treaty with the Republic of Viet Nam.

After weeks of negotiation, the Vietnamese charges against the appellants were dropped and, on separate occasions, the appellants were delivered to United States officials waiting to take them to Hawaii. Once in Hawaii, the appellants were arrested and subsequently delivered to the custody of the United States Marshal in San Francisco. Eventually, the parties made and the district court in California granted separate motions for a change of venue to the District of Hawaii. Both appellants timely filed motions to dismiss for want of jurisdiction over the person and to dismiss for want of jurisdiction over the offense. The court denied the motions and the defendants were found guilty. The convictions were upheld on appeal,ⁱⁱⁱ and a **valued court precedent**, which spelled the end of automatic immunity for U.S. civilians, who commit certain offenses against their country in offshore locations, was established.^{iv}

ⁱ Solis, pp. 99-102.

ⁱⁱ Hubbard, p. 16

ⁱⁱⁱ *United States v. Cotten*, 471 F.2d 744 (9th Cir. 1973) <https://casetext.com/case/united-states-v-cotten>

^{iv} Hubbard, p. 166-169.