

**HEARINGS REGARDING H.R. 16742: RESTRAINTS ON
TRAVEL TO HOSTILE AREAS**

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HEARINGS
BEFORE THE
COMMITTEE ON INTERNAL SECURITY
HOUSE OF REPRESENTATIVES
NINETY-SECOND CONGRESS
SECOND SESSION

SEPTEMBER 19 AND 25, 1972
(INCLUDING INDEX)

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Committee on Internal Security



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COMMITTEE ON INTERNAL SECURITY

UNITED STATES HOUSE OF REPRESENTATIVES

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The House Committee on Internal Security is a standing committee of the House of Representatives, constituted as such by the rules of the House, adopted pursuant to Article I, section 5, of the Constitution of the United States which authorizes the House to determine the rules of its proceedings.

RULES ADOPTED BY THE 92D CONGRESS

HOUSE RESOLUTION 5, JANUARY 22, 1971.

RESOLUTION

Resolved, That the Rules of the House of Representatives of the Ninety-first Congress, together with all applicable provisions of the Legislative Reorganization Act of 1946, as amended, and the Legislative Reorganization Act of 1970, be, and they are hereby adopted as the Rules of the House of Representatives of the Ninety-second Congress * * *

* * * * *

RULE X

STANDING COMMITTEES

1. There shall be elected by the House, at the commencement of each Congress,

* * * * *

(k) Committee on Internal Security, to consist of nine Members.

* * * * *

RULE XI

POWERS AND DUTIES OF COMMITTEES

* * * * *

11. Committee on Internal Security.

(a) Communist and other subversive activities affecting the internal security of the United States.

(b) The Committee on Internal Security, acting as a whole or by subcommittee, is authorized to make investigations from time to time of (1) the extent, character, objectives, and activities within the United States of organizations or groups, whether of foreign or domestic origin, their members, agents, and affiliates, which seek to establish, or assist in the establishment of, a totalitarian dictatorship within the United States, or to overthrow or alter, or assist in the overthrow or alteration of, the form of government of the United States or of any State thereof, by force, violence, treachery, espionage, sabotage, insurrection, or any unlawful means, (2) the extent, character, objectives, and activities within the United States of organizations or groups, their members, agents, and affiliates, which incite or employ acts of force, violence, terrorism, or any unlawful means, to obstruct or oppose the lawful authority of the Government of the United States in the execution of any law or policy affecting the internal security of the United States, and (3) all other questions, including the administration and execution of any law of the United States, or any portion of law, relating to the foregoing that would aid the Congress or any committee of the House in any necessary remedial legislation.

The Committee on Internal Security shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Internal Security, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, to hold such hearings, and to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

* * * * *

28. (a) In order to assist the House in—

(1) its analysis, appraisal, and evaluation of the application, administration, and execution of the laws enacted by the Congress, and

(2) its formulation, consideration, and enactment of such modifications of or changes in those laws, and of such additional legislation, as may be necessary or appropriate,

each standing committee shall review and study, on a continuing basis, the application, administration, and execution of those laws, or parts of laws, the subject matter of which is within the jurisdiction of that committee.

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HEARINGS REGARDING H.R. 16742: RESTRAINTS ON TRAVEL TO HOSTILE AREAS

TUESDAY, SEPTEMBER 19, 1972

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNAL SECURITY,
Washington, D.C.

EXECUTIVE SESSION ¹

The Committee on Internal Security met, pursuant to call, at 10:05 a.m., in room 311, Cannon House Office Building, Washington, D.C., Richard H. Ichord, chairman, presiding.

Committee members present: Representatives Richard H. Ichord of Missouri, Richardson Preyer of North Carolina, Robert F. Drinan of Massachusetts, Roger H. Zion of Indiana, and Fletcher Thompson of Georgia.

Staff members present: Donald G. Sanders, chief counsel; Alfred M. Nittle, legislative counsel; Daniel R. Ferry, assistant counsel; and DeWitt White, minority legal counsel.

The CHAIRMAN. The committee will come to order.

Without objection, the meeting will be held in executive session.

As ordered by the committee on August 10, the Chair directed a letter to Attorney General Kleindienst, asking that, in the event that the Attorney General determines that the travel of Jane Fonda did not constitute sedition or treason, the Department of Justice furnish a report to the committee on the matter, together with recommendations of action that the Congress should take or, in the alternative, a representative of the Department appear before the committee.

This letter was acknowledged on August 22.

On September 13 Mr. William Olson advised the Chair that the Fonda matter was still under consideration and that it would be inappropriate under the circumstances for the Department to comment upon a pending matter and therefore a report could not be furnished.

On September 14, by letter to Mr. Kleindienst, the Chair asked that a representative meet at this executive meeting today.

Without objection, I would direct that the correspondence referred to be placed in the record at this point.

(The letters referred to follow :)

AUGUST 10, 1972.

HON. RICHARD G. KLEINDIENST,
Attorney General of the United States,
Department of Justice, Washington, D.C.

DEAR MR. ATTORNEY GENERAL: The Committee on Internal Security met this morning in executive session to consider a request that a subpoena be issued to

¹ Released by the committee Sept. 25, 1972, and ordered to be printed.

require Jane Fonda to appear before the Committee in regard to her travel to North Vietnam and radio broadcasts to U.S. military forces during July 1972. During the meeting a number of reasons were expressed as a basis for opposition to the issuance of a subpoena. Important factors in the ultimate determination of the Committee were that the facts seemed to be already rather well-known, that the matter was under study by the Department of Justice and Fonda would be entitled to the full protection of the Fifth Amendment, that any such hearing might work to the prejudice of the Government in the event prosecution is undertaken and that the Committee's overriding interest is not in what additional information might be secured from Fonda, but rather in any insufficiency in the terms of the law or in its enforcement.

I am sure that you recognize the pernicious nature of Miss Fonda's statements to our servicemen, and the seriousness with which nearly all Members of Congress view her conduct. Although it might be fairly said that public support for American involvement in the Vietnam conflict is steadily declining, such aid and comfort to a nation with which we are engaged in hostilities is nevertheless condemned by the public. But whatever political or public reaction might obtain under the circumstances, I am sure you agree that the Department of Justice has a most solemn obligation to engage the full weight of the law against conduct which the Congress has made criminally punishable.

The Committee has reviewed the treason, sedition and other relevant statutes. It has also been informed of Fonda's travel itinerary, and has studied the transcripts of her broadcasts while recently in Hanoi. It is not difficult to perceive why a cry of treason has been raised. But if the burden of proof is too great for treason, would not a prima facie case exist under Section 2387 of Title 18, United States Code or even Section 2388, notwithstanding the jurisdictional limitation?

In discharging its responsibility to the Congress to insure that statutes within its oversight jurisdiction are being duly enforced by the Executive Branch, the Committee resolved that the staff investigation of Fonda's activities will continue, and in the event the Justice Department determines that the broadcasts of Jane Fonda from Hanoi during July 1972 do not constitute treason or sedition, or that her conduct cannot be reached by existing statute for any other reason, then the Department is requested to furnish a report to the Committee with recommendations for legislation which would be effective to impose criminal sanctions under similar circumstances in the future. Desiring to resolve the questions at an early date, but hoping to avoid an unreasonable burden upon the Department, the Committee voted to request that the report be submitted by September 14, or in the alternative, that a representative of the Department appear before the Committee on that date.

Your cooperation and assistance in providing an analysis of the federal criminal law vis-a-vis the recent conduct of Jane Fonda will indeed be appreciated. Would you please advise me as soon as possible whether the Department will furnish a report on or before the above date or will provide for the appearance of a representative so that arrangements can be made for a meeting of the Committee.

Sincerely,

RICHARD H. ICHORD, *Chairman.*

AUGUST 22, 1972.

HON. RICHARD H. ICHORD,
*Chairman, Committee on Internal Security,
House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your letter of August 10, 1972 to the Attorney General concerning the recent activities of Jane Fonda in North Vietnam.

You requested that by September 14, 1972 the Department furnish the Committee with a report as to whether the evidence is sufficient to charge Miss Fonda with a violation of the sedition, treason or other statutes, or in the alternative, that a representative of the Department appear before the Committee on that date.

As you know, the Department is currently reviewing the texts of statements allegedly made by Miss Fonda and broadcast over Radio Hanoi. We are still re-

ceiving such statements. However, in the event our review of this material is completed on or before September 14, 1972, we will be pleased to furnish you with a report at that time.

Sincerely,

A. WILLIAM OLSON,
Assistant Attorney General.

DEPARTMENT OF JUSTICE,
INTERNAL SECURITY DIVISION,
Washington, D.C.,
September 13, 1972.

HON. RICHARD H. ICHORD,
*Chairman, Committee on Internal Security,
House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: In my letter of August 22, 1972, regarding Jane Fonda you were advised that in the event our review of this matter is completed before September 14, 1972, we would be pleased to furnish you with a report by that date.

We have since received, and are continuing to receive, material and information which is pertinent to our review of the activities of Miss Fonda. Since this matter is still under active consideration in the Department, I know you will appreciate that it would be inappropriate, and contrary to long standing Department policy, to comment upon a pending matter.

I regret, therefore, that in these circumstances, I cannot furnish you the report at this time. However, I shall contact you further when our review is completed and a decision is reached in this matter.

Sincerely,

A. WILLIAM OLSON,
Assistant Attorney General.

SEPTEMBER 14, 1972.

HON. RICHARD G. KLEINDIENST,
*Attorney General of the United States,
Department of Justice,
Washington, D.C.*

DEAR MR. ATTORNEY GENERAL: I have received the letter of Assistant Attorney General A. William Olson dated September 13, 1972 in regard to Jane Fonda. It was with regret that I read of the declination of the Department of Justice to furnish a report to the Committee on Internal Security at this time.

While it is gratifying to learn that the Department of Justice is considering the ramifications of the activities of Miss Fonda, it is at the same time disappointing that your review cannot be completed more promptly. Certainly there are understandable difficulties of proof but the views of the Department would be helpful to the Committee in evaluating whether there is a necessity for new legislation, and if so in formulating its terms.

In my letter to you of August 10 I related the Committee's desire for a report by September 14, or in the alternative that a representative of the Department appear before the Committee on that date. Inasmuch as no report has been furnished the Committee would be pleased to receive your oral views, or your official representative, in an executive meeting which I am scheduling for 10:00 a.m. on Tuesday, September 19, 1972 in Room 311 of the Cannon House Office Building.

I hope this will be convenient, and I am looking forward to a discussion Tuesday which will produce a solution to the problems resulting from activities such as those engaged in by Miss Fonda.

Sincerely,

RICHARD H. ICHORD, *Chairman.*

The CHAIRMAN. Mr. William Olson, Assistant Attorney General in charge of internal security, is with us today in response to my letter of September 10.

Mr. Olson, it is a pleasure to welcome you to the committee. You are accompanied by Mr. Maroney. Do you have a prepared statement, sir?

Mr. OLSON. Yes, I do, Mr. Chairman.

The CHAIRMAN. Without objection, then, the gentleman will be recognized to proceed with his statement.

(Biographical data furnished by Mr. Olson follows:)

A. WILLIAM OLSON

Born. Portland, Oregon; July 3, 1922.

Education. Elementary, Lebanon, Oregon; Secondary, Camas, Washington; College, University of Washington; U.C.L.A., B.A., 1947; Law School, University of Southern California, J.D., 1950.

Military service. U.S. Army, 1943 to 1946, Staff Sergeant, Rifle Company, 32nd Division, South Pacific; Second Lieutenant, Military Intelligence Reserve, 1948 to 1953.

Work experience. Commenced private practice of law in Pasadena, California, January 1951; Associated with Joslyn & Joslyn, 1951 to 1952; Associated with Barrick & Wright, 1952 to 1953; Partner, Barrick & Olson, 1953 to 1958; Partner, Barrick, Poole & Olson, 1958 to 1971; Department of Justice, January 1971 to present.

Organizations. Admitted to the State Bar of California, January 1951; Member of the Pasadena, Los Angeles County and American Bar Associations; admitted to the Bar of the United States Supreme Court.

Served as president, Pasadena Junior Barristers, 1955; District Commissioner, San Gabriel Valley Boy Scouts of America, 1956; Board of Governors and Vice President, University Club of Pasadena, 1956 to 1958; Board of Trustees, Executive Committee, Pasadena Playhouse Association, 1965 to 1967; member, Pasadena Kiwanis Club and Legal Aid Society of Pasadena.

Honors. Purple Shield, underclassman's scholastic and honorary, University of Washington; Eagle Scout.

Family. Patricia Ann Custer, 1948. Two sons: Scott William and Robert Kirk.

TESTIMONY OF A. WILLIAM OLSON, ASSISTANT ATTORNEY GENERAL, INTERNAL SECURITY DIVISION, DEPARTMENT OF JUSTICE, ACCOMPANIED BY KEVIN T. MARONEY, DEPUTY ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Mr. OLSON. Mr. Chairman, I am appearing today in response to your request that the Attorney General or his official representative appear before the committee for the purpose of discussing matters relating to the treason and sedition statutes. The Logan Act is also relevant to a consideration of this matter.

As I informed the committee in my letter of September 13, 1972, it would be inappropriate for me to comment on the reported activities of Jane Fonda in North Vietnam since that is a matter presently under active consideration in the Department. I would like again to make that point clear.

The Federal Bureau of Investigation has been requested to conduct an investigation regarding Miss Fonda's activities, and, of necessity, we cannot complete our review or come to a prosecutive determination until all investigation is concluded. To comment on this matter at this time would not only be contrary to longstanding policy of the Department, but could very well prejudice any possible prosecution, if such should eventuate. (See *Delaney v. United States*, 199 F. 2d 107 (1st Cir. 1952).)

I regret therefore that I cannot testify concerning any of the facts regarding Miss Fonda's activities in North Vietnam, nor can I answer any hypothetical questions which might in any way relate to that subject matter.

Mr. Sanders, of your staff, has been furnished with a written report discussing the law of treason and sedition.¹ I think it might at this time be appropriate to review the provisions of these statutes and briefly discuss their application.

The treason statute, 18 U.S.C. 2381, provides that whoever levies war against the United States or adheres to their enemies, giving them aid and comfort, is guilty of treason. Additionally, Section III, Article 3 of the Constitution provides that no person shall be convicted of treason except on the testimony of two witnesses to the same overt act or a confession in open court.

Treason is a breach of allegiance to the Government, and as an offense against the state, it has always been regarded as the most serious and heinous of all crimes.

In early English law, "treason" was given a very broad scope and became an instrument of oppressing anyone who opposed the will of the King. However, to avoid such evils, the framers of our Federal Constitution, although resorting to some of the terms of the old English statute of Edward III, commonly known as the Statute of Treason, made great effort to define carefully the offense of treason, specifically limiting its scope. Significantly, the principal discussion in connection with the drafting of the treason clause of the Federal Constitution centered around three aspects; namely, the two-witness requirement, the concept of an overt act, and the concept of "aiding and comforting the enemy."

The basic law of treason was not written into the Constitution by accident. It was framed and put there by men who had been taught by experience and by history to fear the abuse of the treason charge almost as much as they feared treason itself. Treason under English law had become so broad and loose as to make treason consist not only of a breach of allegiance to the Crown or adherence to its enemies, but to include the mere utterance of opinions. Many of our Colonies had enacted similar broad treason statutes. None of the framers intended to withdraw the treason offense from use as an effective instrument against treachery that would aid external enemies nor did they appear reluctant to punish as treason any genuine breach of allegiance to one's government. But the thing they did want to prevent was legislation in later years becoming so broad as to make treason consist of the mere utterance of an opinion.

The proceedings of the Constitutional Convention of 1787 reflect that Charles Pinckney proposed that Congress be given the power to declare what should be treason against the United States. However, the "Committee on Detail" reported a draft constitution which left no latitude to create new treasons and, after thorough and able discussion, this was the provision adopted.

The framers combined all known protection against the extension of treason and wrote into the organic act a prohibition of legislative or judicial creations of treason. In doing so they seemed to have been concerned by two kinds of dangers: (1) the suppression by lawful authority of peaceful political opposition, and (2) the conviction of the innocent as a result of perjury, passion, or inadequate evidence.

¹ For transmittal letter and Memorandum of Law, see appendix, pp. 7625-7632.

To correct the first they limited treason to levying war or adhering to the enemies of the United States, giving them aid and comfort, thus making it impossible for lesser offenses to become treason. To correct the second and safeguard the procedures incident to the trial of those persons charged with treason, they provided that no one should be convicted except upon the testimony of two witnesses to the same overt act or upon confession in open court.

(At this point Mr. Drinan entered the hearing room.)

Mr. OLSON. The crime of treason is unique among criminal statutes as regards the stringent requirements of proof which it places upon the prosecution of such cases. The Government is required to allege specific overt acts of treason upon the part of the accused and to prove each of these acts by the testimony of two eyewitnesses to the particular act. In *United States v. Robinson*, 1919, 259 F. 685, Judge Learned Hand wrote with regard to treason, "conviction cannot be had on the testimony of one witness together with circumstantial evidence, though it was well nigh conclusive." In the Supreme Court's decision in *Cramer v. United States*, 325 U.S. 1, Justice Jackson presented an exhaustive treatise on the history of the treason statute to evidence the necessity for a narrow and restrictive interpretation of the statute. He stated:

Thus the crime of treason consists of two elements: adherence to the enemy; and rendering him aid and comfort. A citizen intellectually or emotionally may favor the enemy and harbor sympathies or convictions disloyal to this country's policy or interest, but so long as he commits no act of aid and comfort to the enemy, there is no treason.

Where there is no evidence that a person has "levied war" against the United States, the basic elements which must be established to prove treason are:

1. allegiance to the United States
2. existence of an "enemy"
3. aid and comfort to the "enemy"
4. intent to betray the United States [adherence to the enemy]

A country with which the United States is engaged in open hostility presumably would qualify as an "enemy." No case has decided the specific question whether "enemy" is dependent upon a declared war. However, in two cases, *United States v. Greathouse*, 4 Sawy. 457, 26 Fed. Cas. No. 15, 254 (C.C., D. Cal. 1863) and *Stephan v. United States*, 133 F. 2d 87 (6th Cir. 1943) cert. denied 318 U.S. 781, the courts defined the term "enemy" as used in the treason laws as applying to subjects of foreign powers in a state of open hostility with the United States. It should be noted, though, that in *Greathouse* the "hostility" was levying war against the United States and in *Stephan* there was actually a state of declared war.

Most of the World War II treason cases involving aid and comfort to an enemy were based on "broadcasting." The principal cases are:

Chandler v. United States, 171 F. 2d 921 (1st Cir. 1948), cert. denied 336 U.S. 918

Best v. United States, 184 F. 2d 131 (1st Cir. 1950), cert. denied 340 U.S. 939.

Gillars v. United States ("Axis Sally"), 182 F. 2d 962 (C.A.D.C. 1950)

D'Aquino v. United States ("Tokyo Rose"), 192 F. 2d 338 (9th Cir. 1951), *cert. denied* 343 U.S. 935.

Burgman v. United States, 188 F. 2d 637 (C.A.D.C. 1950), *cert. denied* 342 U.S. 838.

Also significant is *Cramer v. United States*, 325 U.S. 1, which involved aid and comfort to a German national in the United States and which has important rulings on the "two witness rule."

The treasonous language used in the broadcasts in these World War II cases follows a similar pattern in that it expressed the superiority of the Axis Powers; that the efforts of the United States and Allied Forces were hopeless; that the cause of the Axis Powers was correct and justified; and generally that the statements were designed to affect adversely the morale of the U.S. servicemen to the point of making them want to stop fighting. The courts said that such statements gave aid and comfort to the enemy.

There are some important factors in these World War II cases bearing on intent to adhere to the enemy. In each of the cases the defendants were voluntary, *paid employees* of the "enemy" who were *hired* for the purpose of dispensing (i.e., broadcasting) anti-U.S. propaganda to the military and who remained at their jobs for most, or a considerable part, of the war. Their adherence to the enemy, their intent to betray, was knowing, willful, and clear. It is made clear in the cited World War II cases that when broadcasting is charged as the overt act, the two-witness rule means two witnesses who saw the act of broadcasting and heard the words spoken by the defendant. Circumstantial evidence is not admissible to prove this point. See also, *Cramer v. United States, supra*.

The sedition statute, 18 U.S.C. 2387, provides, among other things, that:

(a) Whoever, with intent to interfere with, impair, or influence the loyalty, morale, or discipline of the military or naval forces of the United States:

(1) advises, counsels, urges, or in any manner causes or attempts to cause insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States; * * *

* * * * *
 Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both * * *.

Section 2387 is applicable during times of both peace and war, *Dunne v. United States*, 138 F. 2d 137 (9th Cir., 1943).

In view of the first amendment rights of freedom of speech and of the press, the courts have imposed stringent standards of proof to establish a violation of the sedition statute. When the activity consists of written or spoken words, it is necessary to meet the test laid down by the Supreme Court in *Schenck v. United States*, 249 U.S. 47. There the Court said that:

The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.

The clear and present danger doctrine has through the years been imposed as a guide in determining the constitutionality of restrictions on the right of free speech and free press. Under that doctrine, freedom of speech and of the free press is susceptible of restric-

tion when, and only when, necessary to prevent grave and immediate danger to interests which the Government may lawfully protect. The clear and present danger test of the Schenck case has afforded from 1919 to the present date a practical guide in various lines of cases in which the scope of constitutional protections of freedom of expression was in issue. Moreover, it has provided a so-called working principle that speech could not constitutionally be restricted unless there would result from it an imminent, i.e., close at hand, substantive evil.

In *Hartzel v. United States*, 322 U.S. 680, a World War II case involving dissemination in the U.S. of pamphlets denouncing certain aspects of the war, the Supreme Court established that two major elements are necessary to constitute an offense under the sedition statute. The first, a subjective element, a specific intent to deliberately and with specific purpose do the acts proscribed by Congress; and the second, an objective element, "consisting of a clear and present danger that the activities in question will bring about the substantive evils which Congress has a right to prevent." This requisite specific intent, said the Court, "may be proved not only by the language actually used in the statements or writings themselves but also by the circumstances surrounding their preparation and dissemination."

In determining whether utterances are seditious, the words used must have the capability and the tendency to cause the prohibited act (*Butlyer v. United States*, 138 F. 2d 977 (7th Cir., 1943)), but the result is immaterial (*United States v. Krafft*, 249 F. 919 (3d Cir., 1918), *cert. denied* 247 U.S. 520), and it is not necessary to show that a member of the military actually received or was influenced by the publication or utterance (*Dunne v. United States*, *supra*), although it might be helpful. The test is whether the statements actually are in such form and spoken in such circumstances as to present a substantial danger (*United States v. Pelly*, 132 F. 2d 170 (7th Cir., 1942), *cert. denied* 318 U.S. 764; and cases cited above).

The Logan Act, 18 U.S.C. 953, prohibits any citizen of the United States, without authority of the United States, from carrying on any correspondence or intercourse with any foreign government with intent to influence the measures or conduct of any foreign government in relation to any disputes or controversies with the United States, or to defeat the measures of the United States.

In order to establish that a person has violated the Logan Act, the Government would not only have to prove that he, in fact, carried on conversations with officials of a foreign government in relation to a dispute or controversy with the United States, but, in addition, we would also be required to establish the fact that such conversations were undertaken "with intent to influence the measures or conduct of any foreign government or of any officer or agent thereof * * * or to defeat the measures of the United States * * *."

I am sure you will appreciate the difficulty in securing evidence of the content of conversations between a citizen of the United States and officials of a hostile foreign government. In this connection, I would point out that uncorroborated admissions of a citizen concerning such conversations would be insufficient to support a prosecution under the Logan Act. See *Opper v. United States*, 384 U.S. 84.

Mr. Chairman, that concludes my statement.

The CHAIRMAN. Thank you, Mr. Olson. I can fairly well understand the evidential difficulties in the Fonda case and I also well understand

the reluctance of the Department of Justice to testify in regard to the matter because of the possibility that it would prejudice any eventual prosecution. That, in fact, was one of the reasons why the Chair did not favor a subpoena for Miss Jane Fonda to testify before this committee. But it has been over 2 months since Miss Fonda made her first broadcast from North Vietnam; it has been over a month since the committee asked for the Department's opinion. I wonder if you can be more specific.

You have gone over the statutes involved which obviously have applicability to the matter. I wonder if you can be more specific in apprising the committee of why the Department requires so much time to reach a conclusion when the statements are readily available to the Department of Justice and to the public and to this committee.

Mr. OLSON. Miss Fonda's statements were made, I believe, during a period from July 12 to July 25 approximately. We were receiving in our division transcripts of broadcasts that were made and continued to be made after she left. The last such transcription that we received was on August 29. We feel now that we have probably received all of them. Up until that time we had not looked at all of the broadcasts, all of the transcriptions.

I would like to read a little quote regarding the amount of time that has been taken and may still have to be taken before this matter is resolved, from Justice Marshall in the *Ex parte Bollman* case many years ago: "As there is no crime which can more excite and agitate the passions of men than treason, no charge demands more from the tribunal before which it is made a deliberate and temperate inquiry."

The CHAIRMAN. Is the delay brought about by the belief that the Department may not be successful in a prosecution, or is it brought about by fear of making a martyr of Miss Fonda?

Mr. OLSON. I don't know that we have reached that particular situation right now where we are weighing these factors. The first inquiry was trying to get all of the statements that were made and, once we had what we thought were all of them, analyzing them for content. Necessarily next comes an investigation of the evidentiary problems that you have, of securing the necessary evidence if it is available, et cetera.

The CHAIRMAN. This isn't the first time that an American citizen has traveled to North Vietnam. In fact, there have been tens if not scores of citizens that have traveled to North Vietnam since the year of 1965. This is not the first time that an American citizen made a broadcast in Hanoi and it isn't the first time that an American citizen has made a broadcast obviously aimed at American troops.

Let me ask you this question. Has the Department of Justice considered any of those cases in the light of the treason statute, the peacetime sedition statute and the Logan Act, as well as the wartime sedition statute?

Mr. OLSON. During my tenure in the division, which has been since January of 1971, I don't believe to my knowledge that we have considered some of these other visits that you speak of, statements that have been made by citizens in Hanoi.

I believe that there was one where there was an incident of one broadcast during that time that was considered.

The CHAIRMAN. That is during your term of office?

Mr. OLSON. Not during my term of office as Assistant Attorney General, but during the time I was in the division as Deputy Assistant Attorney General.

The CHAIRMAN. There has only been one case, then, to your knowledge, since the war in Vietnam?

Mr. OLSON. No.

The CHAIRMAN. Only one during the time you have been associated with the Department of Justice?

Mr. OLSON. That's right.

Mr. THOMPSON. And how long has that been?

Mr. OLSON. Since January 15, 1971.

Mr. ZION. Mr. Olson, apparently Ramsey Clark, Abbie Hoffman, and Jerry Rubin have been to North Vietnam and allegedly have been in contact with our enemy over there. Is any investigation being made of their activities?

Mr. OLSON. Ramsey Clark is the most recent incident. It has come to my attention, I believe, that the visits of Jerry Rubin and Abbie Hoffman were prior to that time and I have no knowledge of any inquiry that went on regarding them. We are not aware of any evidence with respect to Ramsey Clark's visit that points toward his violating any of the criminal statutes that I have just spoken of.

The CHAIRMAN. Let me ask you this question in regard to the previous broadcasts: One case you referred to was the Lawson matter which happened in 1970?

Mr. OLSON. I am sorry, Mr. Chairman.

The CHAIRMAN. There is one case that you referred to that was considered by the Department of Justice, the Lawson case, which I believe occurred in 1969 or 1970.

Mr. OLSON. I am not familiar with that.

The CHAIRMAN. What case was it that the Department of Justice considered?

Mr. OLSON. We considered during 1971 a ——— case.

The CHAIRMAN. In these broadcast cases that you have considered, do you feel that you have to have the original tape of the broadcast?

Mr. OLSON. There has to be a voice identification and certainly having tapes of the actual conversation is one of the better ways to make that voice identification.

The CHAIRMAN. Can you make the voice identification by recordings of the broadcast?

Mr. OLSON. Yes.

The CHAIRMAN. In that case and also in the Fonda case you have gotten recordings of the broadcasts, have you not?

Mr. OLSON. We have not. In the first case that I spoke of, I believe we had recordings that were listened to, of the broadcasts.

Mr. THOMPSON. Mr. Chairman, may we follow up on that point?

The CHAIRMAN. I yield to the gentleman.

Mr. THOMPSON. Are we being told that you only have transcripts, that the Department of Justice does not have any actual taped recordings of the Fonda messages?

Mr. OLSON. No. Those tapes and recordings are available.

Mr. THOMPSON. You do have them in the Department of Justice?

Mr. OLSON. I do not know whether we have them in the Department of Justice; I assume that we do. We have transcriptions of them.

Mr. THOMPSON. But certainly a transcript is not the same high standard of evidence that a recording of the actual voice transmission is, should you go to court?

Mr. OLSON. That is correct.

Mr. THOMPSON. But you do have available the actual taped messages?

Mr. OLSON. Yes, we do; they are available, yes.

Mr. THOMPSON. Thank you.

The CHAIRMAN. Let's go specifically into your statement. You mentioned the so-called peacetime statute, which is 2387 of title 18 of the U.S. Code. I don't see where you referred to section 2388. Don't you consider that section 2388 is perhaps applicable to such broadcasts?

Mr. OLSON. I don't believe that it would be applicable to the Fonda broadcasts because it is limited to having been made in the United States itself or to the admiralty or the maritime jurisdiction. So for that reason we did not include it. The provisions are much the same except for that restriction.

The CHAIRMAN. Section 2388 does have a provision to the effect that this section shall apply within the admiralty and maritime jurisdiction of the United States and on the high seas as well as within the United States. Since these broadcasts are occurring on foreign soil, you do not feel that this would come in within the United States, but on the high seas?

Mr. OLSON. That has been our analysis. The other statute would seem to be applicable, 2387, and the penalties are the same, I believe.

The CHAIRMAN. And you also believe that the Vietnam war may not be synonymous with the use of war in the section?

Mr. OLSON. That is a possibility, but I believe in the state of emergency you might cover that situation.

The CHAIRMAN. Let's get into more specifically the elements of an offense related to a broadcast under section 2387. What are the elements of an offense under section 2387 in the light of the Schenck case, which you mentioned, the Dunne case, and many other Supreme Court decisions? Similarly what are the elements of a case under section 2387?

Mr. OLSON. The elements are two, I think, as I have stated in my opening statement. The first is the intent, willful, conscious intent, on the part of the person who makes the statement or disseminates the literature to interfere with, impair, influence the morale, et cetera, of the military forces.

The second element is covered in the Schenck case, a clear and present danger under the circumstances that those statements would accomplish that purpose.

The CHAIRMAN. A clear and present danger that it would bring about a substantive evil which the Congress is empowered to prevent?

Mr. OLSON. Correct.

The CHAIRMAN. There is no question about the substantive evil. The disloyalty, mutiny, or disaffection would be a substantive evil that the Congress has the power to prevent; is that correct? You would agree with that?

Mr. OLSON. Yes, I would.

The CHAIRMAN. And there is a question of a clear and present danger. Is that a question of law or a question of fact for the jury to decide?

Mr. OLSON. It is a question of law.

The CHAIRMAN. It would be a question of law.

Mr. THOMPSON. Clear and present danger is a question of law, and a jury could not determine the fact of a clear and present danger?

Mr. OLSON. I believe that is correct, Congressman.

(At this point Mr. Zion left the hearing room.)

Mr. THOMPSON. What constitutes clear and present danger by law? It would appear to me this is a question of fact to be determined by a jury.

Mr. OLSON. I understand what you mean. It appears to be a mixed question. I think it is a difficult question certainly. It depends upon the words that are used, the probability that they will bring about a substantive evil. However, I still feel that it is a question of law rather than a question of fact.

Mr. THOMPSON. What is the law? If it is a question of law, what is the law as to clear and present danger if it is not a question of fact?

Mr. OLSON. The best I can give you, I believe, are the words of Justice Holmes in the Schenck case. The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that the Congress has a right to prevent. There is a question of proximity and degree.

Mr. THOMPSON. That very clearly points out it is a question of fact, which must be determined through testimony and, of course, it would be up to the jury to decide whether or not that is in fact the case, and I would say that it is not a question of law, but it is a question of fact to be determined by a jury as to whether it is a clear and present danger.

Mr. OLSON. I still believe, and I think the cases so hold, that the judge will make his determination and will so instruct the jury based upon the facts and circumstances of the case and the words used, and that determination will be—

Mr. THOMPSON. So it is your assessment that the judge would make the determination on the law and instruct the jury that there has been a clear and present danger present and it would not be a determination of fact for the jury.

Mr. Chairman, I am sorry if I am assuming the floor here, but I do think this is important.

The CHAIRMAN. I yield to the gentleman.

Mr. THOMPSON. When you deal in psychological broadcasts such as the Fonda broadcast and such as Axis Sally, and so forth and so on, you talk about a clear and present danger; a clear and present danger in an event of a person with a weapon in his hand is evident; a clear and present danger where there is a psychological message, that may have a time element involved. In other words, it may take repetition, it may take a period of time for the danger to exist, but a psychologist would say it is a clear and present danger. It may appear to somebody else that it is not. Do you mean the determination of that would be by a judge and he would instruct the jury that as a matter of law this is a clear and present danger?

Mr. OLSON. That is correct, after hearing the evidence in the case.

The CHAIRMAN. It would be a mixed question of law and fact then, would it not?

Mr. OLSON. I believe I stated that before, but I think it comes out as probably an instruction to the jury.

The CHAIRMAN. I yield to the gentleman.

Mr. DRINAN. Mr. Olson, going back to your oral testimony here, it is my understanding that of the 10 or more people who have gone to Hanoi that we know about in the last several months, that you have investigated only one person since you took office on January 15, 1971. I did not get the name of that person about whom you did make an inquiry.

Mr. OLSON. The name was _____.

Mr. DRINAN. And what was the result in that investigation?

Mr. OLSON. That we did not prosecute; we decided not to prosecute _____.

Mr. DRINAN. And I didn't understand your remark about Ramsey Clark. You said that some information had come to your attention?

Mr. OLSON. I said we have no information that has come to our attention that he with his trip to Hanoi and his activity there has violated any of the Federal statutes that I have covered here today. I know of no others.

Mr. DRINAN. I respect what you say here that you can't go into the merits of the Jane Fonda case because it is under investigation, but I don't think this question would violate that premise. Why is it that you are investigating Jane Fonda and you have not investigated Jerry Rubin and Abbie Hoffman and others?

Mr. OLSON. I have no personal knowledge of Jerry Rubin and Abbie Hoffman. Those visits were prior to my time. I would not be able to distinguish them.

Mr. DRINAN. In your time Jane Fonda is the one and only case that you say you have under active consideration?

Mr. OLSON. At this time, yes, and the only other one I know of is the one previously mentioned, _____.

Mr. DRINAN. Can you tell us something about the alleged activities of Jane Fonda which make this case different from all of the others?

Mr. OLSON. I am sorry, Congressman Drinan, I don't believe that I can under the ground rules of not commenting on the case.

Mr. DRINAN. Why did you come here, then, if you could not tell us a thing?

Mr. OLSON. I came here because I was invited to come. I was told to come by the Attorney General who, in turn, Chairman Ichord requested that he send a representative or that he come himself. I believe, in my response of August 13, I indicated that we could not comment on the specific facts of the Fonda case.

The CHAIRMAN. I will not yield any further at this time.

Let me go ahead and complete my questions on this line and then I will yield to the gentleman from Georgia, who in effect is responsible for this meeting today.

Back to the question of intent as required by 2387. Now you don't have to have any evidence of intent to bring about the things mentioned in 2387 outside of the words themselves, do you? You can infer that intent from the nature of the language used?

Mr. OLSON. Certainly you can infer the intent from the language used or the writings used.

(At this point Mr. Drinan left the hearing room.)

Mr. OLSON. In the Hartzel case I believe that there were pamphlets distributed.

The CHAIRMAN. In the Fonda case the Chair has looked at the transcripts of the broadcasts. Personally I did not see any words in the broadcasts that asked the military people to do anything other than to think. For example, she asked the question, "Have you any idea what your bombs are doing when you pull the lever?"

Now getting away from the Fonda case, let me ask you this: What would be the effect if a person went to Hanoi and made a broadcast to troops deploring the bombings of North Vietnam if the person making the broadcast had said, "Don't pull the lever"? Do you figure that would be a stronger case than merely asking them to think about what they are doing when they pull the lever?

Mr. OLSON. I think it probably would be. However, again we are dealing with hypothetical cases.

The CHAIRMAN. Mr. Olson, the Congress certainly has the responsibility, if it feels that such action should be prohibited, to explore ways that this can be effectively prohibited. I think that the Department of Justice as a part of the executive, with a responsibility of enforcing the law, should be willing to give the Congress the benefit of your expert advice. This is my purpose in my line of questioning today.

I have no statement from the Department of Justice as to whether the statute is enforceable. You have mentioned that it is difficult of enforcement. But what I am asking about is specific ways that the statute can be amended to make it effective and enforceable perhaps.

Mr. OLSON. Mr. Chairman, I think it is a question of timing. The areas of your inquiry are certainly proper, but the context of this time while we are still considering investigating, if you will, this particular case, I don't think it is an appropriate time for us to comment when we have not decided against prosecution or for prosecution.

The CHAIRMAN. I will yield to the gentleman. The Chair recognizes the gentleman from Georgia.

Mr. THOMPSON. I thank the gentleman for yielding.

Mr. Olson, is this a proper statement, then: The reason for your reluctance to discuss fully and completely Jane Fonda's involvement as it is viewed by the Justice Department is because of your concern for prejudicing any of her rights or jeopardizing a possible prosecution should you in the future decide that the evidence warrants a prosecution?

Mr. OLSON. That is the primary reason for my reluctance. It is a matter of policy, but that is the reason behind the policy.

Mr. THOMPSON. So this matter is still under active investigation: a decision has not yet been made whether or not there should or should not be prosecution, and until such time as a decision is reached, you would prefer not to make statements which would tend to jeopardize your case or possibly prejudice the rights of a person who may be charged with a crime?

Mr. OLSON. That is very true and that is better than I could have said it.

Mr. THOMPSON. I would like to refer to your statement and try to ask you some general questions relating to treason, sedition, and the Logan Act.

I have a question concerning adherence to the enemy, rendering him aid and comfort. Do the cases in this area require that adherence to the enemy or rendering him aid and comfort be only an overt act of aid or may it also be psychological aid, such as a series of statements which have a psychological impact and which, it may be argued, does have the effect of aid and comfort? If there should be a finding by the court that a psychological statement would have in fact aided the enemy, would that suffice to meet the requirements of the second part of the definition of treason? Adherence has been established as the first part, and aid and comfort to the enemy as being the second part of the definition. In short, could a psychological type broadcast render aid and comfort to the enemy within the meaning of the treason statute?

Mr. OLSON. I believe that it could. I believe that type of broadcast we are speaking of was present in the Axis Sally and Tokyo Rose cases. I think the overt act is the fact of making the broadcast itself.

Mr. THOMPSON. Concerning the requirement of two witnesses, does this require that there be two witnesses present to the act of broadcasting or may there be two persons who have heard a live or recorded broadcast who are familiar enough with the voice of the person broadcasting to testify that "I heard this," or does it require an actual visual sighting of two witnesses of the person charged with treason actually speaking the words into a microphone or recording device?

Mr. OLSON. It is my understanding of the law that it is the former. There must be two perceptive witnesses to the act of broadcasting, if you will, in the studio where the broadcast is made. I believe that is the enunciated factor in the Axis Sally and Tokyo Rose cases.

Mr. THOMPSON. You say there must be two in the studio. There must be two persons in the studio at the time that the broadcast is made, who actually viewed the broadcast rather than hearing it over the air?

Mr. OLSON. That's right.

Mr. THOMPSON. What if an individual secretes himself in a room with a tape recorder and records a message and then takes it and hands it to the radio who then play it over the air? Would it be impossible even if they advocated killing the President, advocated the troops rebelling, killing their commanders, and so forth, to ever prove treason?

Mr. OLSON. I think possibly that you could, if you could show witnesses to the recording.

Mr. THOMPSON. I am saying there is no witness to a recording; in other words, a person closes himself off into a room with a tape recorder and speaks into this tape recorder calling on the troops to mutiny, to kill their officers, and so forth, and then that is, in turn, broadcast. Are we in a position by which there can be no treason under such circumstances?

Mr. OLSON. It would seem to offer problems.

Mr. THOMPSON. Should we come up with legislation designed to clarify this? It is obvious when the original Constitution was drafted and our laws were enacted pursuant to this, we did not have a modern electronic means of voice communication, and so forth. Should not the Department of Justice investigate this and possibly recommend to this committee or to the Congress legislation which would plug up some of these what I would call loopholes?

Mr. OLSON. This two-witness rule is a pretty basic thing. It is contained in the Constitution.

Mr. THOMPSON. Yes, and it may require a constitutional amendment, but at the time the Constitution was written I don't think anyone had any idea that we would ever have a machine or device whereby a person could close himself in a closet, record a message, and then be completely free of any prosecution because of the two-witness rule, and should not the Department of Justice look at this?

In fact, I would like to request that you do look at the possibility of legislation that could be considered. I am not saying that it should necessarily be advocated, but certainly I think we should look into this in view of the fact that this is a changing world we live in with the technological developments that take place. The laws must be changed in certain areas.

I in no way want to take away from the rights of individuals protections afforded by the Constitution, but at the very same time I think that we must recognize that there have been technological changes which require changes within the Constitution so that it relates to the technology we have and that society be protected.

Let me go on to another question. Concerning treason in a declared war or an undeclared war, in your opinion is this really a relevant question? Can there not be treason when there is a state of hostilities, a war existing? The Constitution does not state a declared war or undeclared war. Can there be treason committed in an undeclared war?

Mr. OLSON. I would agree that there can be and I cited a couple of cases that use that language as being open hostilities. I think it would be a defense that someone would raise.

Mr. THOMPSON. But it would not preclude a finding that treason actually has been committed if you have the adherence to the enemy, you have the aid and comfort to the enemy, you have the two witnesses, and the act is of such overtness and magnitude that certainly the mere fact that there is an undeclared war would not preclude a finding of treason?

Mr. OLSON. I agree with you. I think in the historical beginnings of treason they did not have in mind declared or undeclared war.

Mr. THOMPSON. I think we have covered the question of broadcasting. That frankly does concern me greatly, that we may be precluded from being successful in prosecution of treason because of our two-witness rule when a broadcast can go to millions of people and yet there were not two persons present.

Mr. OLSON. We do have sedition.

Mr. THOMPSON. I realize that, and sedition is what I am coming to next. The question of freedom of speech was raised in your statement. Do the same guarantees of freedom of speech in the Constitution apply to the person who speaks within the geographic limits of the United States or in an area under the control of the United States as would apply if a speech is made beyond the territorial limits or laws of the United States?

For example, a statement made in North Vietnam by an American national, is that protected to the same degree as a statement made in America by an American national under the first amendment of the Constitution?

Mr. OLSON. It is my understanding that there is no difference.

Mr. THOMPSON. Concerning the laws of sedition, you pointed out that one of the statutes that we had mentioned apparently relates only to crimes committed within the jurisdiction of the United States, the admiralty or those areas—

Mr. OLSON. 2388.

Mr. THOMPSON. 2387, however, would apply in this particular case. What are the requirements so far as witnesses to the event under the laws of sedition?

Mr. OLSON. We do not have the two-witness rule.

Mr. THOMPSON. We do not have the two-witness rule. Would it be your opinion that under the law of sedition that you could try a person if there are recordings of the statements made and if it has been determined that does fall under the sedition statute in giving aid and comfort to the enemy—or as the statute reads, I don't have it in front of me—but that a recording could suffice in this area?

Mr. OLSON. Yes.

Mr. THOMPSON. And also in your opinion would it require an overt statement of "Kill your commanders, don't carry out your orders," or could a psychological speech, designed by the actual reading of the statement, that has the psychological impact of demoralizing the troops to get them to disobey orders, could that suffice as well?

Mr. OLSON. I believe that could suffice. It depends upon the facts and circumstances, where it is made.

The CHAIRMAN. Would the gentleman yield at that point?

Mr. THOMPSON. Yes, surely.

The CHAIRMAN. How would you go about proving or presenting evidence to the effect that this would be psychologically designed to bring about the effect of demoralizing the troops?

Mr. OLSON. I believe we would rely to a great extent upon the words themselves. I don't know about expert testimony being available in this situation. It doesn't seem to be an area in which an expert could be qualified to give testimony.

The CHAIRMAN. You have psychological war experts, do you not?

Mr. OLSON. I believe that we do, yes.

The CHAIRMAN. I take it that the Department of Justice has not considered the use of psychological warfare experts in proceedings that might be brought in the broadcast cases.

Mr. OLSON. I also think that although not absolutely necessary that people to whom the speeches were directed who had actually heard them could testify as to the effect that they had on them.

The CHAIRMAN. You are specifically referring to testimony by military people who may have heard the broadcasts?

Mr. OLSON. Yes, I am.

The CHAIRMAN. I thank the gentleman for yielding.

Mr. THOMPSON. The *New York Times* on August 15 carried a small item datelined San Francisco, August 14: "Mr. Kleindienst said at a news conference here that the Justice Department had found no evidence of criminal violations by Miss Fonda."

That is the complete full statement of the *New York Times*. It is about three-quarters of an inch. Has there been a finding by the Justice Department, is this an accurate reporting by the *New York Times* that Mr. Kleindienst says there has been no finding of criminal violations by Miss Fonda, or what is the status?

Mr. OLSON. I am aware of that news release. I discussed that with the Attorney General and that was not the intent of what he said. He did not mean to say we conducted a full investigation and it had been completed and as a result thereof we found no violations. That was not the intent. I believe he meant when he was asked a question regarding Miss Fonda that as of this instance, as far as an inquiry has progressed, we have no statements to make.

Mr. THOMPSON. You had no statement to make back on August 14.

Now on September 16 there is an item, this happens to be from the *Pittsburgh Press*, but also there is an item in *The Evening Star*: "Antiwar activist Jane Fonda in a brief visit here said the U.S. Justice Department has dropped its investigation of her Hanoi radio broadcasts."

Have you dropped your investigation?

Mr. OLSON. Certainly not. I don't know where she got her information. I don't believe her sources are very good.

Mr. THOMPSON. So the matter is still under active investigation. A determination has not yet been made whether or not there should be prosecution or no prosecution.

Mr. OLSON. That is correct.

Mr. THOMPSON. I would like to ask you a question or two concerning the Logan Act. What is the date of the Logan Act?

Mr. OLSON. I think it is about 1799, approximately.

Mr. THOMPSON. In other words, it is an act that was enacted years ago. Was the purpose of it to provide, in effect, that we would have only one voice speaking for the United States on foreign policy matters being negotiated?

Mr. OLSON. I believe that was the purpose.

Mr. THOMPSON. Have there been any cases brought, to the best of your knowledge, in the history of the United States concerning the Logan Act? I have not researched this myself.

Mr. OLSON. I read an article in the *Post*, I believe, quite a comprehensive article on the history of this several weeks ago, and they mentioned there had been only one prosecution under this act. There may have been an indictment, but I don't believe it progressed any further than the indictment stage and I don't have the name of that particular matter.

To my knowledge at most one, probably as far as the indictment stage.

Mr. THOMPSON. During the time you have been a Deputy Attorney General—is it Deputy or Assistant?

Mr. OLSON. Assistant.

Mr. THOMPSON. During the time you have been a Deputy or Assistant Attorney General, have you considered any indictments under the Logan Act because of the actions taken by private citizens? I am not asking you whether or not you have. I am simply asking you whether or not you have looked into the actions of various people concerning this, or have you simply considered this to be a law that is so vague and indefinite that there is no chance of prosecution and therefore you are not investigating the possibility?

Mr. OLSON. We have during my tenure as Assistant Attorney General and for the year before, I am not aware of facts coming to our attention or investigation being requested of us under the Logan Act.

We have from time to time had inquiries by way of public mail, et cetera.

Mr. THOMPSON. But you make a distinction between an inquiry being made by the Justice Department and an investigation; is that correct? In other words, you may inquire into certain circumstances without having the investigation?

Mr. OLSON. I would say that is correct; before instituting a formal investigation sometimes you make some preliminary inquiries to see whether other agencies of Government have an interest.

Mr. THOMPSON. In order to establish that a person has violated the Logan Act, you state in your statement that the Government would, one, not only have to prove that he, in fact, carried on conversations with officials of a foreign government in relation to a dispute or controversy, but, in addition, two, he would be required to establish that such conversations were taken "with intent to influence the measures or conduct of any foreign government or of any officer or agent thereof * * * or to defeat the measures of the United States * * *."

Mr. OLSON. That is primarily a quote from the statute and is not an interpretation from any case authority that we have to go back on.

Mr. THOMPSON. When we have people going and negotiating with North Vietnam concerning the prisoners of war releases, do you feel that this in any way comes under the provision of the Logan Act?

Mr. OLSON. I think that is a hard question. It is certainly in the general field.

Mr. THOMPSON. Taking the quote that you have, item one, proof he carried on conversations with officials in relation to dispute or controversies of the United States, certainly we can prove that certain people carried on conversations. We have some people over there right now in North Vietnam; we can prove that conversations went on, that they are in the field of the prisoners, that there is a dispute or controversy with the United States. That part is satisfied.

The second part, we be required to establish that such conversations were taken with intent to influence the measures or conduct of a foreign government or any officer thereof, certainly it would appear to me that could be substantiated, that these were taken "with intent to influence the measures or conduct of any foreign government * * *."

I would think that based upon the quote that you have given us here, there would be ample reason, if the Department so chose, that some people could be brought to trial under the Logan Act.

Now you have a third measure; you have "or to defeat the measures of the United States." Certainly I would not say the release of prisoners is something we would desire to defeat. We would welcome the release of all prisoners, but it is obvious it is being used as a propaganda tool, and I suspect these people will be brought back to the United States and be put before television cameras and make certain statements which the North Vietnamese would consider beneficial to their cause.

Is there any reason why the Department is not bringing cases here? Is it political, the reason you do not bring charges against people negotiating with the enemy, attempting to influence them?

Mr. OLSON. In cases of this nature where foreign policy is involved, as it certainly is in this particular act, as you pointed out the rea-

son for it, we rely pretty much on the State Department's interests and impetus. There is also in all of these cases "without authority of the United States."

Mr. THOMPSON. You don't rely upon the State Department to tell you what to prosecute and who not to prosecute, do you?

Mr. OLSON. We certainly do rely upon them, as we do in espionage cases, for a great deal of our testimony.

Mr. THOMPSON. As to where prosecution is concerned, if there is a clear violation of a statute of the United States, is not the Attorney General charged with the duty and responsibility in carrying out the duties of his office to prosecute those whom he knows are in violation of the statutes of the United States?

Mr. OLSON. I don't think this knowledge can be entirely ours from reported activities where there is an actual violation of the statute involved. I am talking about a statute such as the Logan Act. I also analogize with the espionage statutes. We have to have consultation.

Mr. THOMPSON. Within your Department, do you carry on—I know the FBI routinely reports upon the activities of certain people who go to North Vietnam, and so forth, and are in fact negotiating with the enemy. But within your Department do you not consider these matters and make a determination as to whether to prosecute or not, or are you simply sitting over there ignoring it?

Mr. OLSON. We are certainly not ignoring it, but in matters of this nature usually the initiating order would come from the State Department because of the foreign policy situation implications, because of the consent or the authority to do this, engage in this type of activity, because many of the visits that are made over there are made with some approval, official, tacit or otherwise, with some briefing beforehand.

Mr. THOMPSON. So in effect you are saying that some of these people have gone to Hanoi with the cooperation of the United States Government. Would this be true of the planned trip of Jimmy Hoffa that was planned and the publicity leaked out and it was canceled?

Mr. OLSON. I don't have any particular knowledge of that particular matter.

Mr. THOMPSON. Is there any political reason as to why the Department of Justice would delay any action on the Jane Fonda matters until after the election for the President of the United States in November?

Mr. OLSON. I don't think it is the Department of Justice's role to engage in judging prosecutions based upon political expediency. That is my personal opinion.

Mr. THOMPSON. Does the Department of Justice from time to time try to time the request for indictments before a grand jury dependent upon external events that are occurring in the United States, such as elections or possibly emotional events that are taking place, or do you operate strictly upon the facts of the case and, once your investigation is complete, then present it to a grand jury independent of external events which are occurring in other branches of Government?

Mr. OLSON. When we have matters under investigation and come to the point where we recommend prosecution, we usually prepare a prosecution memorandum, and many times it has to go higher up to be approved. Sometimes it is approved, sometimes it isn't approved. I don't know what goes into all of the decisionmaking process of those decisions.

Mr. THOMPSON. The decisionmaking process, would this reach the President's desk in some instances as to whether or not a prosecution would be brought? Is he ever consulted in a matter such as this?

Mr. OLSON. I don't have any knowledge about that. I am not quite high enough up in the echelon.

Mr. THOMPSON. Do you have an estimate of the time interval that we should expect before a decision is made in the Jane Fonda matter, concerning whether or not there would be prosecution or no prosecution? Would this occur before the November elections?

Mr. OLSON. Congressman, I could not make an estimate on that. We have requested certain investigation to be completed, to be looked into, certain evidentiary matters. When we will receive the necessary information to put into the whole picture I could not say. It could be before and it could be after.

Mr. THOMPSON. Here is something you can answer. Would you in your Department be governed to any extent by the political factors of a request for prosecution occurring before the election? Would that cause you to either delay or to prevent it before the election? In other words, would your Department, I am talking of yourself, would you be motivated by political factors in this?

Mr. OLSON. As far as I am concerned, you are asking me subjectively would I, and I would say "No."

Mr. THOMPSON. I believe, Mr. Chairman, that just about finishes the questions that I have in this matter.

The CHAIRMAN. Thank you very much.

Mr. Counsel, in regard to the questioning concerning political warfare and the psychological effect of the statements, I would point out that the committee has had analyses made of the Fonda broadcasts by persons who at least have some degree of expertise in the matter and, if there be no objection, I would place in the record analyses of the Fonda broadcasts prepared by Edward Hunter, Francis M. Watson, Jr., and General S. L. A. Marshall.¹

The CHAIRMAN. The Chair recognizes the gentleman from North Carolina, Mr. Preyer.

Mr. PREYER. Mr. Chairman, I have no questions at this time. I think that the elaborate staff studies here have done a good job in framing the issues with the questions that have been brought out, what could be brought out within the range of permissible questions today.

I have no questions at this time.

Mr. THOMPSON. Mr. Chairman, may I ask one more question, make one more observation?

The CHAIRMAN. Mr. Thompson.

Mr. THOMPSON. Concerning specifically the Jane Fonda matter and the time frame, I take what you are saying is that there is no deliberate procrastination within the Department for political reasons in pursuing the Jane Fonda matter, that you are pursuing it with all deliberate speed, whatever that may be, and when your investigation is full and complete a determination will be made. If possible this will be before the election; it is possible it will be after the election but that you want to be very careful and certain that when you do make a recommendation that it is substantiated by a complete, thorough investigation whether this takes 1 month or 4 months or whatever it

¹ See pp. 7581-7602 for these analyses.

may be, and that at that time it would be released without regard to political impact?

Mr. OLSON. That is correct.

Mr. THOMPSON. Thank you.

The CHAIRMAN. Thank you very much, gentleman from Georgia. Let me ask you this question in regard to all of these broadcasts, Mr. Olson. Is it the position of the Department of Justice that an individual who endeavors to instill doubts in the minds of troops concerning their loyalty to the United States or obedience to military orders is not engaging in sedition, even though the other elements of sedition are present?

Mr. OLSON. I don't know that I quite understand. Is it our position that psychological statements rather than direct statements are not sufficient, is that your question?

The CHAIRMAN. Psychological statements which clearly manifest intent to instill doubts in the minds of troops concerning their loyalty to the United States, can they be seditious in your opinion?

Mr. OLSON. I certainly believe they can be seditious, all the facts and circumstances, the number made, all the factors.

The CHAIRMAN. I want to ask you this question specifically concerning the Fonda matter for your consideration. The committee, as I stated before, has examined the transcript. In these transcripts she said:

Please think what you are doing. Have you any idea what the bombs are doing when you pull the levers and push the buttons? How does it feel to be used as pawns? Tonight when you are alone ask yourself what are you doing? Accept no ready answers fed to you by rote from basic training. I know if you saw and knew the Vietnamese under peaceful conditions you would hate the men who are sending you on bombing missions. If they told you the truth, you would not fight, you would not kill. You have been told lies so it would be possible for you to kill.

Wouldn't you have to conclude that these statements are designed to engender doubt?

Mr. OLSON. Mr. Chairman, I don't believe I should respond to that under the guidelines I have set up on commenting on the Fonda case.

The CHAIRMAN. Let me ask you this question. I have to conclude in the light of the history and the actions of the Department of Justice concerning the broadcasts that we have mentioned that either the law that would possibly prohibit such statements and such actions is unenforceable or that the law does not proscribe these activities as criminal activities or that the Department of Justice fears making a martyr out of the individuals or at least fears that the trials would enter the political arena, such as the Conspiracy Seven, along the lines the gentleman from Georgia has mentioned.

Let me ask you this question: Do you feel that it is constitutionally permissible to prohibit travel by any United States citizen to a geographical territory under the de jure or de facto control of a foreign power that is engaged in hostilities with the United States?

Mr. OLSON. Yes, I do. I think that question has been answered in the affirmative in the Zemel case. I believe it is.

The CHAIRMAN. Has the Department of Justice considered making the recommendations to the Congress for legislation in this area?

Mr. OLSON. I believe that since 1967 the Department of Justice and our division, in fact, has supported legislation of this type on numerous occasions. I understand that there are six such bills currently be-

fore the House. I certainly know of no reason for us to change our position that we have taken in the past. We have supported such legislation in the past and I know of no reason why we shouldn't in the future.

The CHAIRMAN. I have checked the reports of the Department of Justice and have come to the conclusion that it did, in fact, support, that it did support such legislation. There have been several bills introduced that touch upon the matter.

Let me ask you this question: Do you feel that it would be more effective to enact legislation in this area that would effectively control and restrict the travel of American citizens to a country with which the Nation is having hostilities?

Mr. OLSON. I certainly feel so.

The CHAIRMAN. We do have with us today representatives of the Passport Office of the State Department. I don't think it is necessary at this time to go into detail as to the status of the law in this area. The passport restrictions are, in your opinion, not effective; is that not right?

Mr. OLSON. I understand by case law that there is no statute with which a person can be effectively prevented from traveling to an unauthorized area. The only possible way really is to try to revoke the passport, once this has occurred, if it has been used improperly.

Mr. THOMPSON. Will the chairman yield?

Concerning the Fonda matter and the memorandum submitted to the chairman by the Department of State on September 12, in effect it pointed out that the U.S. courts have determined U.S. law on this date that passport is not restricted to travel in any foreign country or area. However, the use of U.S. passports for travel into or through any of the following areas is authorized only when specifically validated for such travel by the Department of State: Cuba, North Korea, and North Vietnam.

Now if a person goes ahead and travels in these areas without that foundation, do you feel that he can be tried and there would be a reasonable chance of a conviction?

Mr. OLSON. No, I don't. They can be possibly indicted, but the problem of proof that they actually used the passport for that purpose—

Mr. THOMPSON. Does the law require an actual use of a passport? This goes on to state that Miss Fonda was issued a passport in the legal name of Jane Seymour Plemiannikov on June 23. It says there was no indication in the Department's file that Miss Fonda ever applied for a validation of her passport in order to travel to North Vietnam. Upon Miss Fonda's return to the United States the Department was advised of her arrival by the Immigration and Naturalization Service. At the request of the Department her passport was examined by the agent who reported that detailed examination failed to show any evidence of admission or exit from North Vietnam.

Had that been stamped that she entered and then left North Vietnam, could she then have been tried more successfully?

Mr. OLSON. Certainly. That would be evidence that she used the passport to travel there.

Mr. THOMPSON. What about the fact that she was, in fact, there as shown by television cameras, and so forth? Is it the use of her passport or her presence in the country?

Mr. OLSON. I think it is the use of the passport that would be the only violation.

Mr. THOMPSON. So, therefore, there is no violation of passport laws.

The CHAIRMAN. At that point, we do have the analyses of the broadcasts by the individuals mentioned in the record. Of course, this is not testimony; it is prepared outside of this executive hearing. I don't think there would be any limitations upon sending the analyses to the Justice Department. So, without objection, the Chair will furnish the Department of Justice with those analyses.

Thank you very much for appearing today, Mr. Olson.

Mr. OLSON. Thank you.

The CHAIRMAN. On August 15 the Chair directed a letter to Mrs. Frances Knight, Director of the Passport Office, in regard to the travel of Miss Fonda to North Vietnam, and on September 14, 1972, the Chair extended an invitation to Mrs. Knight to appear at this hearing today.

Without objection that correspondence will be put in the record at this point. It is my understanding that Mrs. Knight is out of the country today and appearing in her place is the Deputy Director of the Passport Office, Mr. Robert Johnson, Deputy Director.

(The documents follow:)

AUGUST 15, 1972.

Mrs. FRANCES G. KNIGHT,
Director, Passport Office,
Department of State,
Washington, D.C.

DEAR MRS. KNIGHT: The Committee on Internal Security has a current interest in the recent trip by actress Jane Fonda to Hanoi because of her reported radio broadcasts directed to United States servicemen. I have noted news accounts stating that the State Department "rebuked" Jane Fonda for her broadcasts.

I am enclosing copies of two news releases explaining in more detail the Committee's interest.

In order that this Committee will be in a position to assess Fonda's activities in light of existing laws and decisions I would be most appreciative if you would furnish me for Committee use a memorandum covering the following points:

1. the regulation upon which is based the State Department prohibition against travel to North Vietnam and the nature of the notice given to U.S. passport holders of that prohibition and whether such notice was given to Jane Fonda;
2. whether travel to North Vietnam contrary to State Department regulations is a violation of Title 18, U.S. Code, Section 1544 (use of passport in violation of the conditions or restrictions therein) and, if so, the current state of the law, with respect to prosecutions under that section;
3. any evidence in your possession, or to which you could direct the Committee, establishing the fact of Fonda's travel to Hanoi (such as records accessible to the Committee showing travel from Vientiane to Hanoi).

I will be grateful for a reply on or before September 7, 1972 in order that the Committee will have your material for study along with that requested from the Department of Justice.

Sincerely yours,

RICHARD H. ICHORD, *Chairman.*

DEPARTMENT OF STATE,
Washington, D.C., September 12, 1972.

HON. RICHARD H. ICHORD,
Chairman, Committee on Internal Security,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: I am replying to your letter of August 15, 1972, addressed to Miss Frances G. Knight, Director of the Passport Office, concerning the recent trip by Jane Fonda, whose legal married name is Jane Seymour Plemiannikov, to Hanoi.

As you requested, there is enclosed a memorandum covering the points set forth in your letter which I hope is fully responsive to your inquiry.

If I can be of any further assistance to you, on this or any other matter, please do not hesitate to let me know.

Sincerely yours,

DAVID M. ABSHIRE,
Assistant Secretary for Congressional Relations.

Enclosure.

MEMORANDUM TO THE COMMITTEE ON INTERNAL SECURITY
RELATING TO TRAVEL TO NORTH VIET-NAM

1. Title 22, Code of Federal Regulations, Section 51.72 is the basis for the Department of State's prohibition against travel to North Viet-Nam. This section reads as follows:

"Upon determination by the Secretary that a country or area is:

- (a) A country with which the United States is at war, or
- (b) A country or area where armed hostiles [sic] are in progress, or
- (c) A country or area to which travel must be restricted in the national interest because such travel would seriously impair the conduct of U.S. foreign affairs.

U.S. passports shall cease to be valid for travel into or through such country or area unless specifically validated therefor. Any determination made under this section shall be published in the FEDERAL REGISTER along with a statement of the circumstances requiring the restriction. Unless limited to a shorter period, any such restriction shall expire at the end of 1 year from the date of publication of such notice in the FEDERAL REGISTER, unless extended or sooner revoked by the Secretary by Public notice. (Dept. Reg. 108.583, 33 F.R. 5681, Apr. 12, 1968)"

The notice given to United States passport holders consists of the following:

- (a) The notice consists of a public notice published in the Federal Register on March 24, 1972, by the Secretary of State restricting the use of the passport for travel into or through North Viet-Nam unless properly validated. (Copy of this notice is attached).

- (b) The following legend which appears on page 4 of all current United States passports including the passport issued to Miss Fonda:

"U.S. courts have interpreted U.S. law in effect on the date this passport is issued as not restricting the travel of a U.S. citizen to any foreign country or area.

However, the use of a U.S. passport for travel into or through any of the following areas is authorized only when specifically validated for such travel by the Department of State: Cuba, North Korea, North Viet-Nam.

You should consult a passport agency or an American consular office to determine whether any changes have been made in the above list.

This passport must not be used by any person other than the person to whom issued or in violation of the conditions or restrictions placed therein or in violation of the rules regulating the issuance of passports. Any willful violation of these laws and regulations will subject the offender to prosecution under Title 18, United States Code, Section 1544."

2. Title 18, U.S. Code, Section 1544 provides as follows:

"Whoever willfully and knowingly uses, or attempts to use, any passport issued or designed for the use of another; or

Whoever willfully and knowingly uses or attempts to use any passport in violation of the conditions or restrictions therein contained, or of the rules prescribed pursuant to the laws regulating the issuance of passport; or

Whoever willfully and knowingly furnishes, disposes of, or delivers a passport to any person, for use by another than the person for whose use it was originally issued and designed—

Shall be fined not more than \$2,000 or imprisoned not more than five years, or both."

In order to secure a conviction under this law, the Government must be in a position to prove that the passport was *used* in violation of the geographic restrictions which are contained therein.

Because admissible evidence of sufficient weight to sustain a conviction showing illegal use of the passport for travel in or through a restricted area is most

difficult to obtain, only a few prosecutions have been recommended. Of those cases recommended not one has been accepted for prosecution by a United States attorney.

3. Miss Fonda was issued a passport in her legal name of Jane Seymour Ple-miannikov on June 23, 1972. There is no indication in the Department's files that Miss Fonda ever applied for a validation of her United States passport in order to travel to North Viet-Nam. Upon Miss Fonda's return to the United States the Department was advised of her arrival by the Immigration and Naturalization Service. At the request of the Department her passport was examined by an agent of the Immigration and Naturalization Service who reported that detailed examination of her passport failed to show any evidence of admission or exit from North Viet-Nam. Since no incriminating evidence was found in her passport, her passport was properly stamped to show her reentry and returned to her. The Department has no evidence showing that Miss Fonda used the passport in traveling to or in North Viet-Nam.

The records of the Department do not contain evidence relating to the travel by Miss Fonda between Vientiane and Hanoi.

[From the Federal Register, March 24, 1972]

DEPARTMENT OF STATE

[Public Notice 353]

TRAVEL INTO OR THROUGH CUBA

RESTRICTION ON USE OF U.S. PASSPORTS

Pursuant to the authority of Executive Order 11295 and in accordance with 22 CFR 51.72 (c), use of U.S. passports for travel into or through Cuba is restricted as unrestricted travel into or through Cuba would seriously impair the conduct of U.S. foreign affairs. To permit unrestricted travel would be incompatible with the resolutions adopted at the Ninth Meeting of Consultation of Ministers of Foreign Affairs of the Organization of American States, of which the United States is a member. At this meeting, held in Washington from July 21 to 26, 1964, it was resolved that the governments of the American States not maintain diplomatic, consular, trade or shipping relations with Cuba under its present government. This resolution was reaffirmed in the Twelfth Meeting of Ministers of Foreign Affairs of the OAS held in September 1967, which adopted resolutions calling upon member States to apply strictly the recommendations pertaining to the movement of funds and arms from Cuba to other American nations. Among other things, this policy of isolating Cuba was intended to minimize the capability of the Castro government to carry out its openly proclaimed programs of subversive activities in the hemisphere.

U.S. passports shall not be valid for travel into or through Cuba unless specifically validated for such travel under the authority of the Secretary of State.

This public notice shall expire at the end of a year from the date of publication in the FEDERAL REGISTER unless extended or sooner revoked by public notice.

Effective date. This notice becomes effective on March 16, 1972.

Dated: March 16, 1972.

[SEAL]

WILLIAM P. ROGERS,
Secretary of State.

[FR Doc. 72-4539 Filed 3-23-72; 8:51 am]

[Public Notice 354]

TRAVEL INTO OR THROUGH NORTH KOREA

RESTRICTION ON USE OF U.S. PASSPORTS

Pursuant to the authority of Executive Order 11295 and in accordance with 22 CFR 51.72(c), use of U.S. passports for travel into or through North Korea is restricted as unrestricted travel into or through North Korea would seriously impair the conduct of U.S. foreign affairs. In view of the expressed virulent hostility of the North Korean regime toward the United States, the

provocation by North Korea of incidents along the military demarcation line, and the special position of the Government of the Republic of Korea which is recognized by resolution of the United Nations General Assembly as the only government in Korea, the Department of State believes that wholly unrestricted travel by American citizens to North Korea would seriously impair the conduct of U.S. foreign affairs.

U.S. passports shall not be valid for travel into or through North Korea unless specifically validated for such travel under the authority of the Secretary of State.

This public notice shall expire at the end of a year from the date of publication in the FEDERAL REGISTER unless extended or sooner revoked by public notice.

Effective date. This notice becomes effective on March 16, 1972.

Dated: March 16, 1972.

[SEAL]

WILLIAM P. ROGERS,
Secretary of State.

[F.R. Doc. 72-4540 Filed 3-23-72; 8:51 am]

[Public Notice 355]

TRAVEL INTO OR THROUGH NORTH VIET-NAM

RESTRICTION ON USE OF U.S. PASSPORTS

Pursuant to the authority of Executive Order 11295 and in accordance with 22 CFR 51.72(b), use of U.S. passports for travel into or through North Viet-Nam is restricted as this is "a country or area where armed hostilities are in progress."

U.S. passports shall not be valid for travel into or through North Viet-Nam unless specifically validated for such travel under the authority of the Secretary of State.

This public notice shall expire at the end of a year from the date of publication in the FEDERAL REGISTER unless extended or sooner revoked by public notice.

Effective date. This notice becomes effective on March 16, 1972.

Dated: March 16, 1972.

[SEAL]

WILLIAM P. ROGERS,
Secretary of State.

[F.R. Doc. 72-4541 Filed 3-23-72; 8:51 am]



DEPARTMENT OF STATE

Washington, D.C. 20520

September 25, 1972

Honorable Richard H. Ichord
Chairman
Committee on Internal Security
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

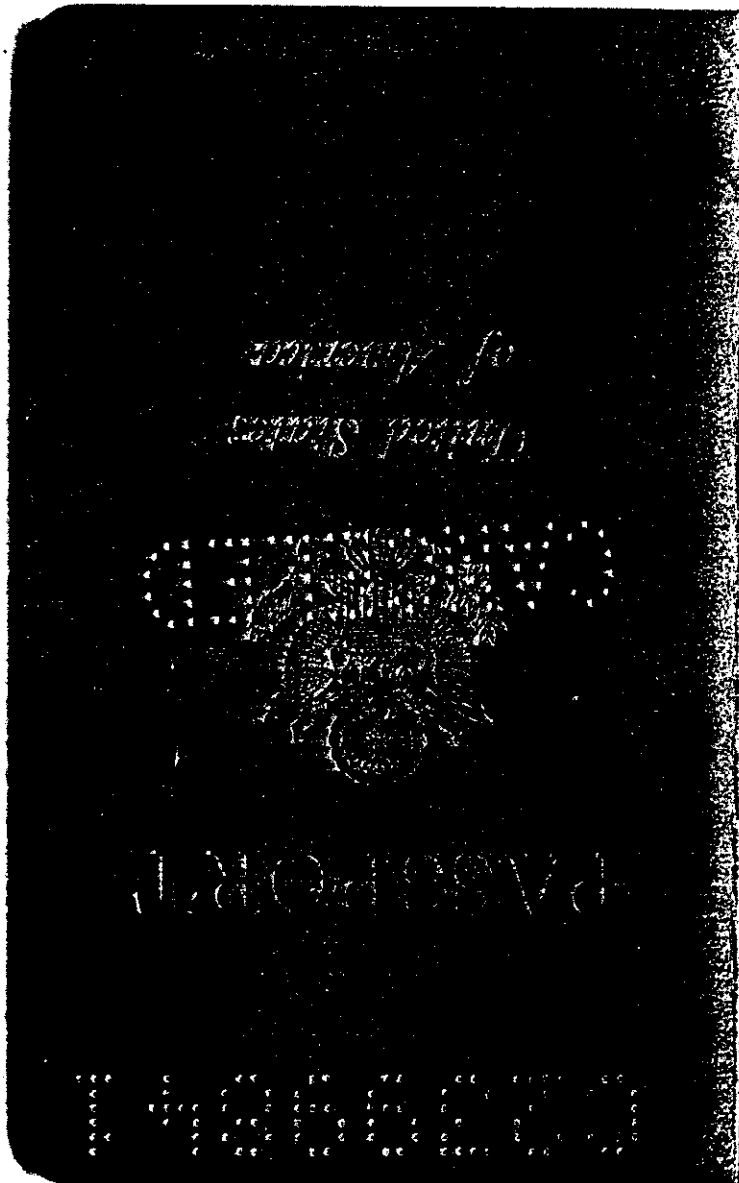
In accordance with the request made by Committee Counsel, Mr. Donald Sanders, to Mr. Robert D. Johnson during his appearance before your Committee on September 19, 1972, there is enclosed a canceled sample United States passport for the record.

If we can be of any further service to you or to the Committee, please do not hesitate to call on us.

Sincerely yours,

David M. Abshire
Assistant Secretary for
Congressional Relations

Enclosure:
Canceled sample passport



7567

0 2 5 9 0 4 4

PASSPORT NUMBER

FOR AND THE ENTRY OF THE PASS-
PORT NUMBER BY THE BEARER

PLEASE FILL IN THE NAMES AND ADDRESSES BELOW.

BEARER'S ADDRESS IN THE UNITED STATES:

BEARER'S FOREIGN ADDRESS:

IN CASE OF DEATH OR ACCIDENT NOTIFY THE NEAR-
EST AMERICAN CONSUL OR OFFICE AND:

Name

Address

IMPORTANT INFORMATION

This passport is the property of the United States Gov-
ernment and must be surrendered upon demand by an
authorized representative of the Department of State.
It is NOT VALID until signed BY THE BEARER
on page two.

LOSS, THEFT OR DESTRUCTION OF PASSPORT. The loss, theft,
or destruction of a passport is a very serious matter
and must be reported immediately to local police
authorities and to the Passport Office, Department
of State, Washington, D. C. 20524, or to the nearest
American consular office. A new passport will be
issued only after careful investigation which will
entail considerable delay and may result in the
issuance of a limited passport.

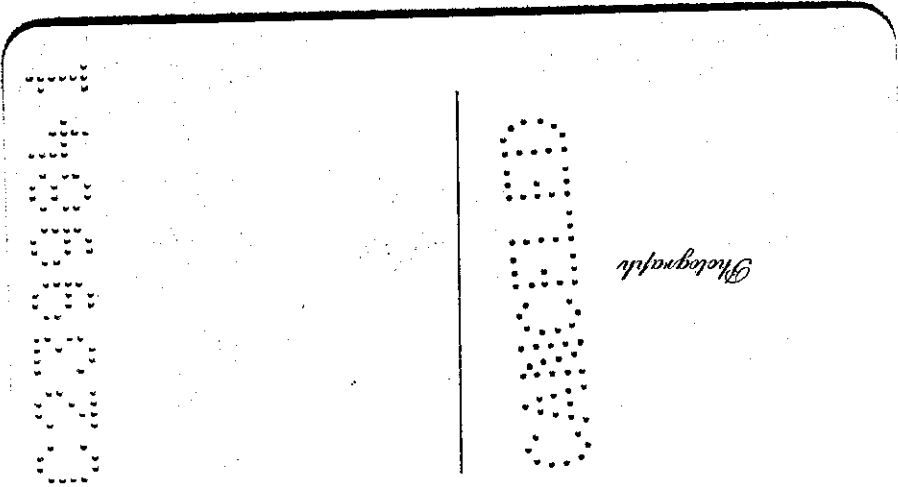
(CONTINUED ON LAST PAGE)

0 2 5 9 0 4 4



*The Secretary of State
of the
United States of America*

*humbly requests, all persons, its
may, citizens, to forward the
citizen(s) of the United States
named herein to pass without
delay or hindrance and in
case of need to give said
citizen(s) all helpful aid and
protection*



WARNING: ALTERATION, ADDITION OR MUTILATION OF ENTRIES IS PROHIBITED. ANY UNOFFICIAL CHANGE WILL RENDER THIS PASSPORT INVALID.

NAME		BIRTH DATE	
HEIGHT		HAIR	EYES
WIFE		INCHES	
MINORS		FEET	
WIFE		ISSUE DATE	
MINORS		EXPIRATION DATE	
SIGNATURE OF BEARER			

IMPORTANT: THIS PASSPORT IS NOT VALID UNTIL SIGNED BY THE BEARER. PERSONS INCLUDED HEREIN MAY NOT USE THIS PASSPORT FOR TRAVEL UNLESS ACCOMPANIED BY THE BEARER.

4

Notes

U.S. courts have interpreted U.S. law in effect on the date this passport is issued as not restricting the travel of a U.S. citizen to any foreign country or area.

However, the use of a U.S. passport for travel into or through any of the following areas is authorized only when specifically validated for such travel by the Department of State:

- CUBA
- NORTH KOREA
- NORTH VIET-NAM

You should consult a passport agency or an American consular office to determine whether any changes have been made in the above list.

This passport must not be used by any person other than the person to whom issued or in violation of the conditions or restrictions placed therein or in violation of the rules regulating the issuance of passports. Any willful violation of these laws and regulations will subject the offender to prosecution under Title 18, United States Code, Section 1544.

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5

Amendments and Endorsements

5

IMPORTANT INFORMATION

EXPIRATION. This passport is valid for five years unless expressly limited to a shorter period. The expiration date is given on page two.

NEW PASSPORT. This passport should be presented when applying for a new passport.

TRAVEL IN DISTURBED AREAS. If you travel in disturbed areas, you should keep in touch with the nearest American consular office.

PROLONGED RESIDENCE ABROAD. If you reside abroad for a prolonged period, you should register at the nearest American consular office.

LOSS OF NATIONALITY. You may lose your United States nationality by being naturalized in, or by taking an oath or making a declaration of allegiance to, a foreign state; or by serving in the armed forces or accepting employment under the government of a foreign state. For detailed information, consult the nearest American consular office.

WARNING TO DUAL NATIONALS. A person is considered a dual national when he owes allegiance to more than one country at the same time. A claim to allegiance may be based on facts of birth, marriage, parentage or naturalization. A dual national may, while in the jurisdiction of the other country, which considers him its national, be subject to all of its laws, including military service. If difficulties occur, consult the nearest American consular office.

ALTERATION OR MUTILATION OF PASSPORT. This passport must not be altered or mutilated in any way. You must not alter any dates or make any changes in your description, on the photograph, or on any other page of this passport. Alteration may make it invalid and, if willful, may subject you to prosecution (Title 18, U.S. Code, Section 1543). Only authorized officials of the United States or of foreign countries, in connection with official matters, may place stamps or make statements, notations or additions in this passport. However, you may amend or update information supplied by you on the inside of the front cover of this passport, if necessary.

GENERAL INFORMATION

IMMUNIZATIONS. The International Health Regulations adopted by the World Health Organization stipulate that vaccination against smallpox, cholera, and yellow fever may be required as a condition of entry to any country. For return to the United States, a Smallpox Certificate will be required only if, in the preceding 14 days, a traveler has visited a country reporting smallpox. Many countries require entering travelers to possess a valid International Certificate of Vaccination against Smallpox. In addition, some countries require travelers to possess valid Cholera and/or Yellow Fever Certificates. Details concerning recommended and required immunizations and prophylaxis for travel to all areas of the world, may be obtained from your local or State health department.

HEALTH INSURANCE. Persons contemplating travel abroad should contact their medical insurance company to determine what coverage, if any, they have while outside the U.S. Generally Social Security Medicare does not cover health care expenses outside the U.S.

CUSTOMS SERVICE. Know before you go. A pamphlet "Customs Rules" gives you current pertinent information about Customs requirements, and how they apply to articles carried abroad. Obtain a copy from your nearest customs office or from U.S. Customs, P.O. Box 7118, Washington, D.C. 20044.

TREASURY. Treasury regulations prohibit the unlicensed purchase or importation of merchandise of Cuban, North Korean, North Vietnamese and Rhodesian origin. For information, write to the Office of Foreign Assets Control, Treasury Department, Washington, D.C. 20220.

AGRICULTURE. Your reentry into the United States will be speeded if you bring with you NO foreign meat, other animal products, fruits, vegetables, plants, soil, or other agricultural items. It is unlawful to import foreign agricultural items without permission, since they may be the means of introducing destructive plant or animal pests and diseases. For specific information, write "Quarantines," U.S. Department of Agriculture, Hyattsville, Maryland 20782.

SEPTEMBER 14, 1972

Miss FRANCES G. KNIGHT,
Director, Passport Office,
Department of State, Washington, D.C.

DEAR MISS KNIGHT: In response to my letter of August 15 I have received the September 12 reply of Mr. David M. Abshire together with enclosures. I wish to express my appreciation for the information which has been furnished.

The Committee on Internal Security has been studying the circumstances of the travel of Jane Fonda to North Vietnam in July 1972, and the broadcasts which she made to United States servicemen over Radio Hanoi. An executive session of the Committee is scheduled for 10:00 a.m. on Tuesday, September 19, 1972 in Room 311 of the Cannon House Office Building, at which time the Committee will take the Fonda matter under further advisement. I am hopeful that some solutions will be developed which will in the future effectively prevent the adversities resulting from activities such as those engaged in by Miss Fonda. The material enclosed with the letter of Mr. Abshire seems to indicate some conflict and uncertainty in the administration of the statutes and regulations pertaining to the issuance and use of passports for travel to North Vietnam.

Realizing that the period of notice is very brief, I would indeed be grateful if you could appear before the Committee next Tuesday morning to give us the benefit of your experience concerning the difficulties inherent in restricting the travel of United States citizens to countries with which we are engaged in armed conflict.

Sincerely,

RICHARD H. ICHORD, *Chairman.*

The CHAIRMAN. Mr. Johnson, will you please be seated?

Mr. JOHNSON. Yes, sir.

(Biographical data furnished by Mr. Johnson follows:)

ROBERT D. JOHNSON

He was born in Philadelphia, Pennsylvania on February 10, 1908. He received his law degree from the South Jersey Law School (now Rutgers University) in 1930; served his clerkship under the Honorable William C. French, Camden, N.J. He was in private practice from 1932-36. He was with the U.S. Post Office Department from 1936-41. He enlisted in the U.S. Army as a private in 1941 and served overseas for the U.S. Army. In 1946, he was released from active service as a captain after serving four years overseas.

Subsequently, he joined the Veterans Administration and from 1946-51 served as attorney adviser and legal consultant to the Board of Veteran Appeals at Washington, D.C. He entered the Department of State in January 1951. In February 1955 he was assigned to the Passport Office. He is now the Deputy Director and Chief Counsel of the Passport Office and has been such since December 1964.

TESTIMONY OF ROBERT JOHNSON, DEPUTY DIRECTOR, PASSPORT OFFICE, DEPARTMENT OF STATE, ACCOMPANIED BY JAMES F. BROOKS, SPECIAL ASSISTANT TO THE DIRECTOR, PASSPORT OFFICE

The CHAIRMAN. It is a pleasure to welcome you to the committee. I have also already put into the record the letters inviting Mrs. Knight and explaining that Mrs. Knight is out of the country and you are here in her place.

Do you have a prepared statement in response to the invitation, Mr. Johnson?

Mr. JOHNSON. No, sir, Mr. Chairman. I was talking to Mr. Sanders by telephone and he told me he would probably need some technical advice and he would ask me to answer questions on that matter.

This is James F. Brooks. He is a Special Assistant to the Director of our office. He used to work with me closely on the Communists down there in the Passport Office when we handled them, and so forth, and he is very knowledgeable on this matter, too, along with myself.

The CHAIRMAN. Thank you. It is a pleasure to have you both before the committee.

Mr. JOHNSON, first for the record, would you explain to the committee the statutory basis for State Department issuance of passports and the control of passports?

Mr. JOHNSON. The basic law is contained in 22 U.S.C. 211a and that is the authority for the issuance of passports. I have it right here.

The Secretary of State may grant and issue passports and cause passports to be granted, issued and verified in foreign countries by diplomatic representatives of the United States and by such consul generals or vice consuls when in charge whom the Secretary may designate.

Then it proceeds to state that passports may also be issued by the chief executive officers of the—well, at that time, at the time of the statute the outlying territories, Puerto Rico, the Virgin Islands, and so forth. Then it also provides that the Secretary may issue passports under such rules as the President may prescribe.

This is the basis for the Secretary's regulations in line with this statute.

The CHAIRMAN. That is your statutory basis. Now would you explain in detail the regulations which have been issued by the Department of State to implement the statute?

Mr. JOHNSON. The regulations are contained in title 22 of the Code of Federal Regulations and the particular ones involved are section 51.72, 51.73. Basically section 51.72 provides for the invalidation of passports for certain areas, restricted areas.

Now I think it is a very brief regulation and I will read it for you.

Upon determination by the Secretary of State that a country or area is, one, a country with which the United States is at war, a country or area where armed hostilities are in progress, or a country or area to which travel must be restricted in a national interest because such travel would seriously impair the conduct of U.S. foreign relations.

Now that particular section (C) is the one that we are involved with here today, I am sure. A country or area to which travel must be restricted in national interest because such travel would seriously impair the conduct of U.S. foreign affairs. Then the U.S. passport shall cease to be valid for travel into or through such country or area unless specifically validated therefor, any determination made under this section shall be published in the *Federal Register*, et cetera.

Now this is your basic authority for the invalidation of a passport for restricted areas.

The CHAIRMAN. You say there has been a prohibition of travel to certain countries?

Mr. JOHNSON. Yes, sir. At the present time passports are not valid for travel to Cuba, North Korea, and North Vietnam, unless they bear a special validation authorizing such travel.

The CHAIRMAN. Now 51.72 is the specific regulation that enables the State Department to impose this prohibition?

Mr. JOHNSON. Yes, sir.

The CHAIRMAN. And the statutory basis for the regulation has been given heretofore?

Mr. JOHNSON. Yes, sir.

The CHAIRMAN. Let me ask you this, Mr. Johnson: Is there any decisional law in conflict with the existing prohibition to travel?

Mr. JOHNSON. Well, there are no decisions in conflict with it. The Zemel case¹ which reached the Supreme Court of the United States upheld this authority. I will briefly recite the facts in the case.

Zemel applied for travel to Cuba. He wanted to go to Cuba. The Secretary denied the validation. So this is a very interesting case. We refused to issue him a passport and the Supreme Court in Zemel said that the Secretary did have the authority to grant or withhold a validation of a passport and the Secretary could refuse to validate a passport.

So there is no conflict. The law, the Supreme Court decision in Zemel is very clear.

The CHAIRMAN. Let me ask you this: In a memorandum that your office has supplied to the Committee on Internal Security it states as follows:

A notice given to United States passport holders consists of the following, notice consists of a public notice published in the Federal Register on March 24, 1972, the Secretary of State, restricting the use of passports for traveling into or through North Vietnam unless properly validated; (B), the following legend which occurs on page 4 of all current United States passports [including passports issued to Miss Fonda]: "U.S. courts have interpreted U.S. law in effect on the date this passport is issued as not restricting the travel of a U.S. citizen to any foreign country or area."

Now is that language included in the passport?

Mr. JOHNSON. Yes, sir. I have a mockup of a passport that I brought up with the exact wording of the notice that you just read. That is substantially correct.

The CHAIRMAN. Aren't those court decisions in conflict with the regulation and if they are not, how are they not in conflict?

Mr. JOHNSON. The crux of the whole matter is this: If a person travels to a restricted area, like the case of Fonda, she goes to North Vietnam and she doesn't come into the State Department for a validation of her travel to Vietnam.

(At this point Mr. Thompson left the hearing room.)

She goes there and there is nothing in the passport to indicate that she traveled to Vietnam. This section has been interpreted as being the use of a passport which is prohibited. Now in the Lynd² case, he traveled to North Vietnam, and the Justice Department prosecuted him under—no, they didn't prosecute. I am getting confused with another case I had.

He traveled to Vietnam, we revoked his passport in the Passport Office. He refused to give assurances if we gave him a passport that he would not use the passport for travel again to a restricted area. The Court of Appeals in the District of Columbia, here, held that while we could restrict the use of the passport itself, we could not control the travel of the individual. Do you see the distinction, Mr. Chairman?

The CHAIRMAN. Yes. When an individual desires a passport, he is not required to state every country to which he specifically intends to travel; is that correct?

¹ See appendix, pp. 7695-7734.

² See appendix, pp. 7751-7760.

Mr. JOHNSON. Yes, sir.

The CHAIRMAN. Now if Jane Fonda, for example, obtained a passport to travel to the country of France specifically validated for that and then that passport was not used, was not used for travel to a country which is prohibited, such as North Vietnam, there would be no offense committed under the regulations?

Mr. JOHNSON. That's right, sir.

The CHAIRMAN. Now if that passport were used in some manner, there would be an offense?

Mr. JOHNSON. Yes, sir. As a matter of fact on that very point is the Laub¹ case. It was a Supreme Court case. Laub traveled to Cuba without validation of his passport and the Justice Department prosecuted him under the travel control regulations, leaving the United States without a valid passport under 8 U.S.C. 1185 (B), what we call the travel control regulations, you can't leave the United States unless you have a valid passport. Now Justice went on the theory since this passport was not validated for travel to Cuba, he violated that particular statute.

Do you see the point I am making, Mr. Chairman?

The CHAIRMAN. By what documentary means would an individual travel from a permissible country to one which is banned? What would be the documents that are used to travel once he traveled to a permissible country?

Mr. JOHNSON. They need a U.S. passport to travel to the country. Now going back on my experience, these communist countries make arrangements with the traveler. They are persona grata with the country involved and this applies to the whole communist setup. They don't bother stamping your passport at all. They will give you a visa, but even when they issue a visa, they will put it on a separate piece of paper for you.

Now Dellinger and this Cora Weiss and Ramsey Clark and Fonda and all these people that have traveled to Vietnam, they have gone the same route. They don't bother. The same way in the old days years ago when these students would travel to communist youth festivals, they would gravitate to the Soviet Union and the first thing you know they are in Communist China when travel was restricted to Communist China.

But what they do—the Soviets and the Chinese would pick up their passports and then they would issue them visas on separate pieces of paper, like entry visas, resident visas, and exit visas. This is the bane of our existence on this particular law and regulation.

The CHAIRMAN. The means of travel is issued by the host country?

Mr. JOHNSON. That's right.

The CHAIRMAN. Of course there would be a possibility, would there not, of a violation of the regulation if a host country picked up their American passport?

Mr. JOHNSON. How can you—you would have to prove that. It is an evidentiary matter.

The CHAIRMAN. I can well understand the difficulties of proof.

Mr. JOHNSON. Out in California, I think it was L.A. or the Southern District of California where one of these characters went to Cuba and the Cubans accidentally stamped his passport; he had a Cuban visa

¹ See appendix, pp. 7735-7750.

and a passport and he had an entry stamp in Cuba. But the U.S. attorney out there declined prosecution because you could not prove these were official stamps of the Cuban Government.

Now there are bills here in the Congress—Do you want me to go on? I am sort of anticipating.

The CHAIRMAN. First let's get to the Jane Fonda matter.

You have provided the committee with details concerning the issuance and the use of Jane Fonda's passport and her travel to North Vietnam during the month of July.

Mr. JOHNSON. Yes. Jane Fonda was issued passport No. C1478434 in her legal name of Jane Seymour Plemiannikov on June 23, 1972.

The CHAIRMAN. At that point, Mr. Johnson, you indicated her maiden name. Is she married?

Mr. JOHNSON. Yes, sir.

The CHAIRMAN. That is not the name of her father.

Mr. JOHNSON. Her father was Henry Fonda and her mother was named Seymour, I think. He was born in Nebraska and I think the mother was born in Canada. Then she married this Russian I think in 1967.

The CHAIRMAN. Is she married to a Russian citizen or just a person with a Russian name?

Mr. JOHNSON. He is not a U.S. citizen, according to the application. I think this is one of those movie individuals, Roger Vadim. I think he goes under the name of Roger Vadim. He drops off the Plemiannikov. He married her in August of 1967, according to the application. There is no indication in the Department's file that Miss Fonda ever applied for a validation of her U.S. passport in order to travel in North Vietnam. There is absolutely no information.

Upon Miss Fonda's return to the United States we were advised of her arrival by the Immigration and Naturalization Service at Kennedy. We requested the Immigration people to examine her passport very carefully and the detailed examination of her passport failed to show any evidence of admission to or exit from North Vietnam. Since no incriminating evidence was found on her passport, her passport was stamped by the Immigration Service up at Kennedy to show her reentry and returned to her.

So far we have no evidence whatsoever showing that Miss Fonda used the passport to travel to or in Vietnam. I might say that we have made a check of the Department's records and we could find no record of the use of the passport.

The CHAIRMAN. In view of the way they travel to North Vietnam, it would be a very unusual case that a passport would show any evidence of travel to North Vietnam?

Mr. JOHNSON. That's right.

The CHAIRMAN. In view of the national publicity concerning her travel to North Vietnam, what action, if any, was taken by INS or the Passport Office upon her return to this country?

Mr. JOHNSON. Sir, since we had no evidence of the use of the passport, our hands are tied under these present laws and regulations.

The CHAIRMAN. Would you actually be in a position to take any action in the event that you were furnished with evidence?

Mr. JOHNSON. If she used the passport, then I think she could be prosecuted under 18 U.S. Code 1544. That section concerns the use

of the passport in violation of the restrictions contained therein. I will read that section to you. Now this:

Whoever willfully and knowingly uses, or attempts to use, any passport issued or designed for the use of another; or

Whoever willfully and knowingly uses or attempts to use any passport in violation of the conditions or restrictions therein contained, or of the rules prescribed pursuant to the laws regulating the issuance of passports; * * *

I think it provides a criminal penalty of \$2,000 fine or imprisonment of not more than 5 years, or both.

The CHAIRMAN. I take it, under the circumstances, there has not been any action taken to recommend prosecution of Fonda by your Department?

Mr. JOHNSON. No, sir. I can't speak for the State Department, sir.

The CHAIRMAN. None by the Passport Office?

Mr. JOHNSON. That's right.

The CHAIRMAN. To what extent has the Passport Office examined the statements that are submitted by an applicant for a passport?

Mr. JOHNSON. We examine very carefully if the person indicates he is going to travel to Hanoi or North Korea or Cuba, and so forth. We would hold up the issuance of a passport. We would certainly not issue a passport for them. There are certain criteria under which we can validate a passport for travel to Vietnam and travel to these restricted areas. That is provided for in our regulations, too.

The CHAIRMAN. Who would issue such a passport that validates travel to Vietnam?

Mr. JOHNSON. The way it works, the procedure in the State Department is we are more or less a channel of communication between the applicant and the State Department. So they come in and they apply and they give their reasons for going. We submit it to the political desk, the desk in turn makes their decision and then they forward it to the Bureau of Security and Consular Affairs in the State Department and they are the ones that make the ultimate decision. They notify us that the validation has been granted, it has not been granted, or they need additional information.

So we in the Passport Office actually only perform the mechanical operation of validating the passport. We put an endorsement in the passport saying this passport is valid for one roundtrip to Cuba or one roundtrip to Hanoi or to North Vietnam or wherever the person is going.

The CHAIRMAN. To your knowledge did Ramsey Clark in his recent trip to North Vietnam apply for any passport to North Vietnam? Did he have any special clearance or waiver?

Mr. JOHNSON. Mr. Clark applied for a passport, but he never did apply for validation for travel to North Vietnam, no, sir.

The CHAIRMAN. So where was his validated?

Mr. JOHNSON. Ramsey Clark was issued passport No. A345296 on February 24, 1970, and in that application he said he wished to visit Sweden. That was issued February 24, 1970.

The CHAIRMAN. Do you have any knowledge of how he traveled to North Vietnam?

Mr. JOHNSON. No, sir, all I know is what I read in the newspapers.

The CHAIRMAN. What is the basis for the issuance of a U.S. passport? Is that strictly citizenship?

Mr. JOHNSON. Yes, citizenship and identity. When you apply for a passport, you have to produce a birth certificate or baptismal records or other evidence showing that you are a U.S. citizen. You must identify yourself as the person whom you say you are or related to the birth certificate, nationality, and then two photographs and that is it.

The CHAIRMAN. You can get a U.S. passport without necessarily being a U.S. citizen, can't you?

Mr. JOHNSON. No, U.S. passports can only be issued to U.S. citizens, or U.S. nationals. That would cover the people out in some of the Insular Possessions.

The CHAIRMAN. It appears to me, Mr. Johnson, that under the existing statutes and under the regulations and the court decisions, the Passport Office has its hands tied insofar as travel to any of the prohibited countries is concerned?

Mr. JOHNSON. That's right. But we have made recommendations and our recommendations have never been followed.

The CHAIRMAN. What recommendations have you made?

Mr. JOHNSON. We recommended that travel to a restricted area, whether you use or don't use your passport, would be a violation of the law because you have to consider that it is not in the national interest to travel to these areas.

The CHAIRMAN. How do you feel that restriction should come about? Do you feel it should be an absolute prohibition of travel to certain countries or do you feel that there should be some flexibility for travel by U.S. citizens to prohibited countries for special purposes?

Mr. JOHNSON. I think the legislation should provide that anyone who travels to an area without a validation of the passport or without so-called permission should be in violation of the law.

Now whether that would stand constitutional tests or not is open to question. There have been various bills introduced in the Congress on this very point, travel to and/or through a restricted country. Now this is important because some people say travel to a country—travel to does not necessarily mean you went into the country, or you could go through the country.

The CHAIRMAN. Don't you think it would need to be done by a statute authorizing regulations rather than an absolute prohibition by statute, that is, when you get into difficulty if you merely legislated prohibiting travel to such countries with which the United States has had hostilities, wouldn't you have trouble defining what constitutes hostilities? Would there be a question of when do you go into hostilities with a nation?

Mr. JOHNSON. I don't think that would be vague. You see, the country with which the United States is at war, the country or area where hostilities are in progress, I think that would cover what you are talking about; for example, during the recent Arab-Israeli conflict a few years ago we invalidated passports for travel there by American citizens. We felt we were trying to get the American citizens who reside in those countries out and we thought there would be a lot of controversy if we let other American citizens go in.

The CHAIRMAN. Did your office prepare any specific bill for accomplishing this purpose or did you just make the recommendation in general terms?

Mr. JOHNSON. We made the recommendation in general terms, sir. The CHAIRMAN. I have been considering the drafting of such legislation, Mr. Johnson, and I have prepared language that would accomplish the effect which you have recommended. The language reads as follows:

The President may restrict travel or authorize such travel when he deems it in the national interest by citizens and nationals of the United States to, in or through any country or area whose military forces are engaged in armed conflict with the military forces of the United States. Such restrictions shall be announced by public notice which shall be published in the Federal Register. It shall be unlawful for any citizen or national of the United States willfully to travel to, in or through any country or area to which travel is restricted pursuant to this subsection.

Do you feel that language of that nature would be sufficient to accomplish what you have in mind?

Mr. JOHNSON. Yes, sir. Of course, this is my personal opinion though. I am under restrictions from the State Department.

The CHAIRMAN. I understand.

Mr. JOHNSON. Personal view, yes.

The CHAIRMAN. I have some questions about the language or at least the form of the language in that it does not specifically provide for a waiver of such restriction in the event that the national interests of the United States would require such travel.

Mr. JOHNSON. You could always put a proviso in there to say "in the national interests." Despite this the Secretary of State or the President could prescribe rules for the validation of travel through that area. The control should be in the passport, I feel myself.

The CHAIRMAN. What about the notice in the *Federal Register*? Is that sufficient?

Mr. JOHNSON. Yes, that is sufficient; yes, sir.

The CHAIRMAN. Would you also have notice on the passport itself?

Mr. JOHNSON. On the passport itself. The average American never heard of the *Federal Register*, you know, and last year we issued 2,396,000 passports. This year we will probably go about 10 or 12 percent above that, so we will probably issue 2.7 million passports.

The CHAIRMAN. Thank you very much, Mr. Johnson and Mr. Brooks. It is now 5 minutes after 12. Your testimony has been very helpful in answering some of the questions I had.

I would state to you it is my intent to, either today or tomorrow, introduce such legislation which I hope can be considered promptly by the Congress.

I will ask chief counsel if he has any questions.

Mr. SANDERS. Mr. Johnson, has the State Department validated passports to North Vietnam?

Mr. JOHNSON. Yes, sir.

Mr. SANDERS. Are there any recent ones that would be within your recollection that you could mention?

Mr. JOHNSON. We could submit that information to you, but I don't recall; most of those that have been validated are in the newspaper field, like CBS, UPI, AP, and the like. But I don't think there have been too many of them; I mean other than the newspaper people, the journalists.

Mr. SANDERS. Would you know offhand whether the mother and wife of the just recently released POWs had passports validated?

Mr. JOHNSON. Yes. Minnie Lee Gartley had no validation, and Olga Charles, she is the wife of the Navy boy, I think she had no validation, and this William Sloane Coffin, Jr., the chaplain of Yale University, he didn't have a validation.

The CHAIRMAN. Who did have validation in that trip?

Mr. JOHNSON. As far as we know, none of them has.

Mr. SANDERS. I have before me a book entitled *Night Flight to Hanoi*, authored by Daniel Berrigan. In the preface on page 10, apparently discussing an anticipated trip to North Vietnam, he says that he received a visit from a State Department man in Averell Harriman's office; "he offered to validate our passports for travel to North Vietnam, an officially forbidden destination."

Does this ring any familiarity to you?

Mr. JOHNSON. No, I don't get to Mr. Harriman's office very often.

The CHAIRMAN. Thank you very much.

Mr. White.

Mr. WHITE. Mr. Johnson, in the event that we should have legislation in this area as suggested by the chairman, would you consider it desirable that the language of this legislation be broad enough to give us control of travel in any country or any area where hostilities might exist?

Mr. JOHNSON. Oh, absolutely, because like I have just mentioned, the Israeli-Arab conflict. We had quite a few applications for validations. They heard so many properties were bombed they wanted to go to the country and see how much damage was done. In the meantime we were trying to get Americans out of there. We had a terrible time getting them out; we had all kinds of plans and everything else, and emergency evacuation procedures.

Mr. WHITE. What would you think of language which would also give us control of travel to countries with whom we might be engaged in hostilities in some third country, for example, control over travel to Soviet Russia, although we might be engaged in hostilities in Czechoslovakia with them?

Mr. JOHNSON. I think you have something like the national interest and this is a crux—national interest, or interference with the conduct of foreign relations of the United States, you tie in foreign relations and hostilities, and so forth, you are on safe grounds.

The CHAIRMAN. Thank you, Mr. White.

I specifically mentioned the prohibition of travel to countries with which the United States was at hostilities. I realize that your office and the United States Government have been caused considerable problems by travel to areas where there may be some type of hostilities to which the United States might not be a part; I would certainly consider easing the administration of your duties. But I am a little dubious as to how far we should go, whether we should go any farther than a country with which the United States is at hostilities because of the attitude of the courts on the right of travel being a constitutional right of an American citizen.

I am a little concerned about going too far.

Mr. JOHNSON. Then you get the mercenaries, the Americans going over to fight on one side or the other. Did you ever think of that, Mr. Chairman?

The CHAIRMAN. That has been done in the past. Of course, there has been no statutory prohibition of the same.

Thank you very much again, Mr. Johnson.
 The meeting will be adjourned until further call of the Chair.
 (Whereupon, at 12:10 p.m., September 19, 1972, the committee recessed, to reconvene at the call of the Chair.)

PSYCHOLOGICAL WARFARE ANALYSES

(The biographical data and analyses of Edward Hunter, Francis M. Watson, Jr., and General S. L. A. Marshall, respectively, referred to by the chairman on page 7559, follow :)

EDWARD HUNTER

Mr. Hunter served as a propaganda specialist with the Office of Strategic Services during World War II. Later, from an intermediary agency called the Strategic Services Unit of the U.S. Army, he went to the CIA when it was organized. In Japan, prior to World War II, he served as a newspaperman and foreign correspondent. Following the period in Japan, he was editor of various newspapers in China, one of which he took over on the expulsion of the Communists from Hankow.

Later he witnessed not only the creation of the puppet state of Manchukuo, but covered the invasion of Ethiopia by Mussolini and two civil wars in Spain. He also served the U.S. Government abroad as a propaganda specialist, including the Korean war theatre. He learned about the new techniques of psychological warfare from the inside.

He is a leading authority on the techniques of Communism. He put the word, "brainwashing" into our language, and what was more important, alerted our people to its content as the name for an especially vicious form of modernized so-called "rationalized" warfare. His basic books on the subject are classics, and include "Brain-Washing in Red China" and "Brainwashing: Pavlov to Powers." He also is the author of "In Many Voices: Our Fabulous Foreign-Language Press," and "The Black Book on Red China."

Warren R. Austin, our first ambassador to the United Nations, declared in 1958 in reference to Mr. Hunter's "Black Book on Red China"; "This is the first time that the crimes committed by the so-called People's Republic of China against the Chinese people they claim to represent—and against their neighbors and all free men—are documented under one cover." The authoritative textbook, "American Journalism," by Frank Luther Mott, published as far back as 1941, paid tribute to Mr. Hunter with the statement, "though threatened with death if he investigated the rumor of a wholesale massacre of peasants (in Manchuria) by the Japanese, (he) got firsthand information and wrote a report which was later made a part of the records of the League of Nations."

He has served as a consultant and as a staff member for various members of the Congress and Congressional committees, as a psychological warfare specialist in the Pentagon, and for various government agencies at home and abroad.

At present, Mr. Hunter is publisher and editor of the monthly magazine, Tactics, a professional, technical publication in the field of cold-hot (psychological) war. Mr. Hunter lives at 4114 North Fourth Street, Arlington, Virginia.

ANALYSIS OF JANE FONDA ACTIVITIES IN NORTH VIETNAM

By Edward Hunter, Publisher and Editor, TACTICS

I had the opportunity as part of my responsibility in World War II to review and analyze enemy propaganda for the U.S. Government. This came in many forms, from radio broadcasts directed at Allied forces and publics, to enemy films and photos, devised to weaken and subvert morale on our side. My classification was cleared for any material in this field. My duties were operational.

My special focus was on what is technically called clandestine or covert propaganda, popularly known as "black propaganda". This is contrasted with what is called overt propaganda, popularly known as "white".

The overt, as its name implies, is aboveboard, and truthfully reveals its source, which usually is itself. The Voice of America is an overt propaganda source; it frankly discloses its source as the American Government.

Covert propaganda, which naturally is much more effective, conceals its true source, and creates the impression that it emanates from the other side. When something the Allies produced in World War II was issued as an Axis message, it was a successful covert operation. The fake Free Poland radio station set up by Moscow on Soviet soil toward the close of World War II, aimed at the Polish people, was such a "black" operation.

Material produced in a government office, and secretly passed along by it to some outside enterprise in private life to give to the press, as if it were its own product, concealing the government's primary role, is called "gray". A source that issues a statement or document as its own, when it actually comes from some other source on the same side, is said to be engaging in a "gray" operation.

Troops ordinarily discount anything known to come from the enemy's side. They know that the enemy has a harmful intent in telling it. The enemy knows this, and so a number of devices are concocted to lend credibility to what emanates from its territory. When such material contains names and gossip, for instance, from within one's own regiment, it achieves the desired purpose, injuring morale. How did the enemy find out those details? Who is the traitor in their midst, or even more disturbing, at headquarters? Such questions are sure to arise in the men's minds with a destructive impact on morale.

These very personal details, unimportant in themselves, have an impact favorable to the enemy's psychological warfare way out of proportion to their true significance. They lend credibility to whatever else the enemy says, forcing attention by those who otherwise would ignore such broadcasts, and making lies palatable.

The enemy seeks to add credibility to its propaganda, too, by putting an American citizen before the microphone, and by having him or her address the American troops. The purpose is the same as when everyday gossip from within one's own military camp is told by the enemy over its own radio. When a change in personnel or location can be told the troops before they have been informed themselves, the impact is even greater. When the American citizen, especially one with the glamour and the prestige value of a Jane Fonda, can travel back and forth between the United States and the enemy capital without interference or arrest by the American authorities, the effect on military morale is bad to devastating.