

What comes from a source on one's own side commands attention, under any circumstance. When the enemy can obtain the assistance of a national of the country it is fighting, to propagate its material in his or her own country, and also to broadcast it personally over the enemy's radio, going to its capital city to do so, it has achieved a form of war propaganda for which as yet there is no professional term—except, perhaps, the old fashioned word, treason. Both the "white" and "black" propaganda forms are combined in it with great subtlety.

The most appropriate term for this might be "enemy blue", a term that just now arises in my mind. A new label surely is needed, for what we have is an expanded kind of warfare, with a new dimension added to it—the psychological—although it is yet to receive legislative or judicial recognition, in spite of its obvious existence.

The effect on Americans stationed in the Asian theatres, within hearing distance, or in reach of propaganda leaflets, pamphlets, or other materials in which her statements are quoted, are obviously expected to be injurious to stamina and morale. The question is only whether the communists have achieved this objective. A study of this approach, that takes advantage of our leniency unparalleled in military annals, shows that damage must certainly have been inflicted by it. Indeed, Fonda's impact is certainly greater than the achievements of a Tokyo Rose in World War II, or even a Hanoi Hanna of the early period of the Vietnam warfare. Fonda has taken this technique a big step forward, proportionate to the new "psywar" dimension in modern warfare, by being able to operate both on her own soil and in communist areas. Once we entered World War II, neither Germany or Japan had this advantage.

Jane Fonda seriously assaulted the stamina of any fighting American listening to her highly dramatic and professional war propaganda. An incalculable number of Americans must have been more or less shaken. The impact of war propaganda is frequently a delayed reaction, that rises to the surface during a period of fatigue, frustration or personal danger. Jane Fonda's emotional outpourings were particularly attuned to this characteristic.

The price we will be paying will be exacted in many cases after Americans return to the United States, and confront some situation or environment that exploits this vulnerability. What we are witnessing in the United States today is a development by Reds of a psychological warfare program that will follow through on all such opportunities. It is being planned scientifically this way.

Factors that lead to these conclusions, as they come to mind after my survey of the Fonda material, include the following:

Whether we recognize it or not, it exists! The enemy's objective is to prevent us, by all means within its power, from

giving legislative or judicial recognition to this new psychological dimension that has been added to traditional warfare. Your Committee—the House Committee on Internal Security—and other committees of the Congress, experience this kind of pressure, for whenever they have made an effort to delve into this problem, the roof has fallen in on them. Yet, so far as psychological warfare—“psywar”—is concerned, failure to recognize this new dimension shields the enemy in its attack. The stamina and morale of our manpower is left defenseless, by default. This is the framework in which the Jane Fondas operate.

A blind man may refuse to recognize the existence of a lighted candle because he can not see it, but that does not change the fact of the candle's existence. He can be burned by it, exactly as our nation is being burned, only on a commensurately greater scale.

The natural tendency when hearing a source on one's own side is to give it fair consideration, assuming that the intent, at least, is to tell the truth. When the enemy can exploit such a natural reaction, planting its own propaganda in the mouth of such a person, the impact can be devastating. This ordinarily can be accomplished only rarely, though, and usually at high cost. The gain though, is well worth practically any expenditure. The price of “black” propaganda hitherto often included lives. The new dimension added to war has made all that quite cheap for the enemy, when employed against us. The enemy will permit none of it on its own side; it is wholly a unilateral phenomenon, all take and no give by the foe. Its psychological warfare within the United States has enabled it, so far, to retain this advantage that is unprecedented in the annals of warfare down all of history, and which cannot help but be lethal to the target country, if allowed to persist.

I have just read and analyzed the text of the numerous statements, interviews and broadcasts made by Jane Fonda during her July, 1972 trip to North Vietnam. This survey will therefore be limited to her activities, and her impact, particularly on American troops in Vietnam. Her broadcasts to the American forces and the Vietnamese and her declarations made during that journey continue to be put on the air, directed at U.S. troops and the Vietnamese, after her departure. The enemy obviously recognizes this as highly suitable for exploitation as propaganda weaponry against the Americans, the South Vietnamese, and others helping us.

1) *Identification*

Jane Fonda is not restricted to the scene of her operations, on enemy soil, as was Tokyo Rose, sure to be arrested and prosecuted upon her return to the United States. She is able to pursue her propaganda work in her native land, that is the target of communist international operations, while supporting Hanoi's position on every issue. The mind of an American soldier in Vietnam is attacked this way from front and rear.

The enemy is not only in front of him, but behind him, in his homeland. At the same time, those whom he is fighting are being portrayed to him as not really the enemy.

If this weren't so, they obviously would be arrested, wouldn't they? This is the confused picture that is being presented to the typical soldier, who is forced to do the fighting and the dying. Such a moral dilemma can lead only to at least frustration. The ready outlet for frustration in Vietnam has been readily at hand and cheap—heroin, and he has heard how it is waiting for him back home in the U.S., too. The soldier gets no respite for his frustrations unless such questioning can be resolved. He does not deal with theory but with the actuality of war. When he returns, the distinction between friend and foe already will have become dim, blurred by the malignant appeals over Radio Hanoi. Such broadcasts and other activities of Fonda constitute a propaganda pressure in which foe becomes friend, making foes of one's friends. This is how propaganda warfare is designed to work. Identification is subtly switched about by this new, sophisticated approach which we have left practically unresisted in the hands of the enemy.

2) *Coordination*

Jane Fonda's broadcasts and declarations parallel, in the points she stressed and in what she did not mention, precisely what the enemy was insisting upon, or ignoring. This dual approach, in addition, coincided with the line that was being followed in the United States itself, by important or dominant segments in our intellectual life, ranging from the press and radio-television to academicians and the clergy. The same messages were being pounded into his ears no matter where he turned, toward the United States or toward North Vietnam.

The American soldier heard what she said, and then saw or heard it repeated by prominent American figures, even in our legislatures. He became the target of this practically unprecedented form of war called psychological warfare, that continues the old, while adding the new dimension to it. A man's stamina must be strong, indeed, to be able to resist such traumatic assault upon it without some conscious or subconscious impact being inflicted. Jane Fonda's activities and words were fit scientifically into this context. A so-called "peace front" at home was being coordinated with the fighting front abroad, with its "psywar" adjuncts.

3) *Reinforcements and orchestration*

Two of the most forceful tactics in a propaganda warfare assault on troops require precisely the contribution made by Fonda. The one is reinforcement. When a soldier hears something from his own as well as the enemy's side, this is the strongest possible reinforcement. The enemy's contentions are provided by it with a false quality of credibility that is very difficult to disprove. No such advantage accrues to his own side. Instead, he hears what the enemy says being repeated by his fellow nationals.

The other tactic, also reinforced by Fonda, is orchestration. When the same propaganda line is heard practically everywhere one turns, whether on one's own side or the other, this is orchestration. It reaches its most effective form in propaganda warfare. Jane Fonda serves to round out this operation for the enemy by her appearances in North Vietnam.

Orchestration of a pro-Red nature is so developed in the United States that the echoing of Hanoi's line, especially when enunciated by Jane Fonda, becomes almost automatic.

4) *Professionalism*

Jane Fonda's broadcasts and other declarations made in North Vietnam fit neatly into the up-to-the-minute, Communist Party line, and were tactically adapted to the most recent developments in the fighting and "peace" sectors. They were visibly the product of communist psychological warfare planning. Their wording was highly professional in structure and aims. Her varied talks and statements dove-tailed, with her arguments adapted to different audiences. Her operations were those of a team member in the enemy's "psywar" organization.

Examples of all of this can be found in her monitored broadcasts and in the other statements she made during her travels in enemy territory, as compared to what was being declared by pro-Red sources elsewhere, even in the United States. Intelligence material on what was happening in South Vietnam and in the United States had to have been made available to her promptly, for her material to conform so neatly to the enemy's "psywar" program and needs.

Orchestration and reinforcement characterized her entire output, constituting a coordinated operation that could only blur the line between friend and foe, confusing and identifying foe as friend, in the minds of her soldier-targets. Whether they listened to her as actress or as propagandist made no difference to the foe, so long as they listened.

Any soldier who listened, or read her crisp, dramatic presentations, could not help but be at least subtly affected, in present or future attitudes. His defense depended on his having received special training, to equip him to withstand such psychological combat.

Firstly, he would have to be knowledgeable in communist tactics. Practically all were too young to have had the time or opportunity for the exhaustive study required. This is true, too, for the men who have not had a special professional need—and time—to obtain such background.

Second, and this is the protective device that is most effective when the soldier has not received extensive, specific training, to develop an attitude of disbelief and unconcern over anything that came from an enemy source, properly assuming that whatever the enemy said or did, he meant by it no good for our side. He would have to know that the enemy would not hesitate under any circumstances to twist or fabricate any piece of information, and that this would be the same whether

the voice heard on the enemy side were that of an American citizen or not. Whoever was being used as a channel for the propaganda would be supplied with plenty of the most up-to-date intelligence to make sure that whatever he or she said would sound credible. Fortunately this negative attitude toward the enemy is the healthy safeguard soldiers are most likely to employ. They immunize themselves this way against weakening influence of scientifically formulated enemy propaganda.

This is the average man's natural safeguard under normal circumstances, but the new dimension that has been added to modern warfare confuses and makes these circumstances peculiar or difficult to detect. The enemy's success in enlisting Americans who possess what is called "prestige value" to help in the execution of its propaganda warfare catches the target-soldier off balance. He does not anticipate being deceived and lied to by fellow Americans. His stamina, therefore, is more likely to be shaken. In war time, this is tantamount to being wounded. A psychological casualty is as advantageous, or more so to the enemy as any other kind. The enemy finds its best use for such as Jane Fonda in this area of service.

Examples of the reinforcement tactic were plentiful, and illustrated the manner in which the Red propaganda tacticians carefully coordinate issues. The obvious, of course, was opposition to Richard Nixon in the presidential race, accusing him of causing the deaths of American pilots "in a last, desperate gamble to keep his office come November." Fonda also told the fliers that the American people back home opposed the war and wanted them to return, a tempting thought for those whom our *anti-anticommunist* policy leave perplexed as to the reason for the war.

Her broadcasts and statements at Hanoi reinforced and coordinated major issues that the communists are propagandizing in the United States and elsewhere. Paramount, of course, is the line that South Vietnam's President Thieu must be dumped. She accused him of mass arrests of "tens of thousands of people" who were supposedly demonstrating "for peace" in South Vietnam. She reported, without having gone to South Vietnam, what its people were saying and thinking. Her prestige value as a famous actress helped inject her subversive suggestions into the heads of her target audience.

Recently, the communist propaganda machine has been conducting a campaign to condemn President Truman because of his Truman Doctrine, that contributed largely to the saving of Western and Southern Europe from Red conquest. She accordingly brought this into her text, including Truman among the American leaders she criticized.

She supported the communist claims by clever use of calculating selected material such as the Pentagon Papers. She simply did not mention the invasion across the DMZ (demilitarized zone) by most of the North Vietnamese Army, but by reverse logic, she accused the United States of being the invader.

"There is an invasion taking place," she declared over the air; "It's taking place from the 7th Fleet, from the aircraft carriers, from Thailand, from Guam, but essentially from the Pentagon and the White House."

5) *Reverse Logic*

Reverse logic is perhaps her basic tactic, as it is of Marxist propaganda generally. No matter how obvious a Red crime, semantic trickery or upside down logic, in a "through the looking glass" manner, can make it appear that the aggrieved party is the culprit. The target becomes the marksman by this Orwellian approach. Reverse logic of this sort permeates all communist propaganda, as it did these effusions by Fonda.

Rarely did even Goebbels go to greater extremes of calculated distortion and propaganda lying against the United States than Fonda did during her brief month of North Vietnamese vituperation against her native land. She kept sounding the Red note of inevitable American military defeat and inevitable Red victory—a win policy becomes the desirable goal for the communists, whereas a no win policy has to be America's destiny. Indeed, she called on Americans to help this process along, of achieving a Red victory and American defeat.

She supported, in this context, Hanoi's insistence on American submission to each of its demands. We are to be permitted only to camouflage our surrender by a gradual, point-by-point acceptance of the Red demands. "There can be no compromise," she declared, meaning no compromise by the enemy, by our enemy, engaging in reverse logic to prove that the communist invasion was the same as the American Revolution. "If our country were attacked, we wouldn't compromise, we would fight to the end," she said, in a glaring although subtle non-sequitur.

The extremes to which she employed reverse logic were illustrated by her daring to refer to treason, saying "we should think very carefully" about it. She thereupon called President Nixon "a traitor to everything that the United States stands for." Dramatically, as if addressing him personally she declared: "Richard Nixon, history will one day report you as the new Hitler."

Subtly, she supported the build-up by the Reds of an Orwellian basis for the concocted charge of genocide against the United States, that we can surely anticipate, if Red psychological warfare deceptions enable communist conquest to succeed. She repeatedly used such terms as crimes, heinous crimes, and criminals—all referring to Americans and the United States. She had only the greatest praise for the North Vietnamese. Her accusations against us actually surpassed those of Tokyo Rose.

Indeed, I have just come across a news article by Clarence Page in the Chicago Tribune of September 5 that tells of the indignation of Mrs. Iva Toguri D'Aquino—the real Tokyo Rose—who was convicted of treason, sentenced to 10 years in prison and fined \$10,000, because Jane Fonda was being com-

pared to her. Wayne M. Collins, her attorney is quoted in the article as declaring: "The Japanese forced her to broadcast, but she never turned against America," pointing out that Fonda is making her broadcasts for the enemy voluntarily. "She is a damned traitor who should be thrown in jail," he added. "Jane Fonda condemns American actions all the time." He went on to say that there never was any evidence that Tokyo Rose criticized the Federal Government of the United States.

Certainly, anyone who recalls the text of Tokyo Rose's broadcasts must admit that Jane Fonda's goes far beyond what Tokyo Rose said, certainly in the actress' condemnation of the United States.

An up-to-the-minute propaganda service was rendered to the enemy by Fonda. Frequent references to the fighting at Quang Tri, the provincial capital in South Vietnam that was captured by the North Vietnam divisions in their dash across the demilitarized zone—demilitarized unilaterally, only to our side—demonstrates this.

Communist atrocities against the Quang Tri residents are an international scandal. So was the set-back to the communist divisions. Red troops, fleeing from the city, slaughtered civilian men, women and children indiscriminately along with South Vietnamese prisoners. Residents of the city significantly fled toward the South, into Saigon-controlled areas, and away from the North and Hanoi-controlled territory, even when it was American planes that were bombarding the Red troops. Nobody wanted to stay with the communists.

Yet Fonda took this opportunity to demonstrate her loyalty to the communist side. She referred to the strategic hamlets in the South where the refugees were being given a haven as "concentration camps". She indulged in the big lie that the "liberation troops"—meaning the Red divisions—occupied the province "in cooperation with the peasants . . . All the people in the province arose like birds breaking out of their cages."

These lies by an American citizen whom every movie goer knew, whose prestige had only just been shockingly enhanced by receipt of a top Hollywood award, were translated into Vietnamese. They could not be without impact on those who heard her in the South. She shifted the facts, in her English text for Americans, away from Red terror and the flight from the Reds, and the Red set-backs, to which she made no reference. She spoke, instead, of the thousands of years the Vietnamese fought for "freedom and independence" and identified this with the present fighting by the invading communists in their occupation of Quang Tri.

She made a hero out of the Vietnamese hijacker, Nguyen Thai Binh, who was killed trying to seize a plane at Saigon to go to Hanoi after returning from his education in the United States. He "wanted to do nothing more than to return to his people and fight for freedom and independence for his country," she said in a Hanoi broadcast beamed to "the Saigon students."

"We have a common enemy—U.S. imperialism", she declared, identifying herself in plain English with the enemy. "Imperialism" is a present day code word used by Reds when they specifically mean United States.

This broadcast declared that the American people were demanding acceptance of Hanoi's demands, and that "we identify with the struggle of your people," referring to the communist side. The Vietnamese who hear this—and many Americans, too—knowing that she passed freely between the United States and enemy territory, implementing her self-appointed task, could only be confused, certain that for her to be able to do this, there must be powerful influences in the American Government—wittingly or unwittingly—supporting this. Vietnamese must remember that treason inside the French Government facilitated France's defeat in Indo-China, and cannot help but equate the situation today. Too many parallels exist. Americans hearing her preach this way can only have their doubts and frustrations increased.

The soldier is the prime target of war propaganda, which becomes as effective as a bullet shot from behind him, from his own side, when the paralyzing or killing words are uttered through the mouth of an American. This becomes an especially insidious type of covert or "black" propaganda, especially so when the American propagandist on the side of the enemy insists that he or she has only the country's interest at heart. Covert propaganda of this nature also conforms to the expanded needs of the new type of warfare nowadays—psychological warfare—that embraces the shooting, as well, using guerrilla warfare tactics disguised as arson, the "executions" of police, and violence generally against civilians. Civilians are considered the same as soldiers in the manuals of "psywar."

The activities of Jane Fonda conform precisely to this format, as a text book example of it.

American Government policy is exploited by the communists to make the outpourings of Jane Fonda sound even more credible in the ears of both these classifications of modern soldiery—military and civilian targets alike. The patent fact that this constitutes conspiracy, obvious as it should be, is made difficult of comprehension because the American people have been indoctrinated in the dogma that no conspiracy exists, and Government policy makes their thesis almost impossible to combat. This is the main obstacle to recognition of the reality of modern, all-out warfare as confronted by the American people in general. It constitutes America's greatest danger for our future survival. After all, government sets the example.

The word, conspiracy, has been made practically a taboo or non-word. As the World War II psychological warfare specialist and psychiatrist, Dr. Joost A. M. Meerloo, states in his book, "Conversation and Communications", one cannot fight something for which no word exists. This is why use of the word, brainwashing, that I introduced into our lan-

guage, was fought so vigorously for so long, until the mere weight of people using it forced it into our dictionaries. The same circles that are suppressing such words nowadays as conspiracy and treason, no matter how accurately they apply, are still hushing up the word, brainwashing.

Where official policy and prestige circles effectively hush up the use of a word, and make it appear boorish and stupid to use it, it is more than as if the word did not exist. The fact named by the word, its content or reality, is denied as well.

Such words as conspiracy and treason, plain though the conspiracy be, and obvious the treason, become non-words.

When an American travels to an enemy capital, and coordinates his or her declarations with enemy needs and claims, what else can it be but conspiratorial, and what other description can apply but treasonable? Of course, this has to have a detrimental influence on stamina and morale. This impact is increased and given a respectability when the propagandist is able to go back and forth between her own and enemy soil. A legitimacy is given by government in this way to whatever she says, as if it had secret approval. What other impression can a soldier, for whom facts stand out starkly—you either live or you die—be expected to get?

The fact of the war being undeclared cannot change these realities, any more than it can eliminate the lethal qualities of a bullet or a Molotov cocktail. Congressional testimony has amply brought this out. I remember the hearings of your own House Internal Security Committee of a few years back that dealt specifically with overt acts in relation to treason, and how this extremely valuable testimony was hushed up and undercut. This text of some years back is even more timely now, because of visits of many Americans to North Vietnam. So timely, indeed, that I have reprinted large parts of it in recent issues of my magazine, *Tactics*.

My propaganda analysis of the Fonda broadcasts from Hanoi were made in the same manner as I analyzed propaganda in World War II for the Government. What I have found in her work was irrefutable evidence of intent to assault the morale and stamina of the American fighting man and the South Vietnamese soldier. Her outpourings also were translated into Vietnamese, and beamed at the South Vietnamese troops and civilians alike, to soften both up for fifth columnism and treason.

The information that an American of glamour, such as Jane Fonda, was telling them that they were on the wrong side, that they should be distrusting and opposing the Americans, and rejecting their own elected government in favor of the Viet Cong and the North Vietnamese communist forces, could even have a decisively detrimental impact in some minds. Jane Fonda's broadcast of July 21 from Hanoi to U.S. pilots was typical, in this framework.

This was essentially a wedge-driving or splitting job, with this added subtlety. She, as an American, simultaneously identified herself with the American pilots and with the side

they were fighting. Quite specifically, she identified the U.S. pilots with herself against their higher officers and against the American government. This was a tactical transfer—a transfer tactic—in which sides were transposed, the enemy becoming our own side. Indeed, this was a highly professional piece of “psywar” propaganda.

Indeed, it is so concise and professional a job that I most strongly doubt that she wrote it herself. She had to have been working on it with the enemy. Her movements and utterances disclose skilled indoctrination—a brainwashed mind—but even so, her work in Hanoi could not have been an unassisted effort.

The listener, charmed by the voice of the “famous actress” hearing it come so appealingly from the enemy capital at Hanoi, might well have his own thoughts of war guiltily shifted entirely to himself and to the military machine to which he was attached, making it seem as if these were the source of the fighting and the cruelties of war, being convinced that the other side really consisted only of peaceloving people, busily building up, as she said, a free country, who “cannot understand what kind of people would fly over their heads and drop bombs on them.” Such inside-out logic is constructed in an appealing manner, so as to exploit the target-recipient’s best traits. What can be made to sound more rational, particularly to a calculatingly confused, war-weary mind?

No hint was contained in anything she said of any invasion having taken place of South Vietnam, or of any attack from the North across the officially agreed-upon demilitarized zone. No hint that this was accompanied by a terror campaign planned by communist “psywar” tacticians with cruel fitness. Hers was a sob-sister-type of appeal, skillfully and professionally designed to inject guilt feelings into the minds of the American officers and men. “Tonight, when you are alone, ask yourself, what are you doing?” she asked dramatically. “Do you know why you are flying these missions, collecting extra pay on Sundays?”

Yes, indeed, pay for this sort of national task, much more so, overtime pay, did seem incongruous. The injection of the element of financial compensation in terms even of overtime pay subtly suggested to the American pilots that they were hired hands, killing as a job, comparable to gangsters who collect from their bosses to “rub-out” some civilian. Indeed, she used this term, “your bosses”, with its sinister connotation, declaring that they had created militarily useless instruments of torture that were being employed against “babies and women and old people” alone. Her words well fitted the actress role in which she was raised.

She referred in this way to “pellet bombs”, containing “plastic pellets”, which she said “cannot destroy bridges or factories . . . they cannot pierce steel or cement.” The listener would have to shake himself to recall that there were any communist soldiers using any sort of weaponry at all, especially any devilishly cunning booby traps, or that any military

supplies were being sent by the Reds into South Vietnam. Her description was of an idyllic countryside, despoiled by us. "I know that if you saw and if you knew the Vietnamese under peaceful conditions, you would hate the men who are sending you on bombing missions," she declared. Thus subtly, she injected hate of their own side.

Her strictures, in common with communist-type propaganda in general, were adapted to long-range, world-wide aims, as well as to short-range, local objectives. Her message undercut the use of tactical weaponry developed for our forces, while at the same time supporting the campaign to induce our scientists to sabotage the development of advanced defense production. She referred to people "whose minds think in terms of statistics, not human lives," who "are proud of this new perfection"—that she described as "rough-edged plastic pellets." She closed this broadcast with the declaration, "I believe that in this age of remote controlled push button war, we must all try very, very hard to remain human beings."

Who could argue with this? Except that it related to an extraneous state of affairs, apart from the warfare being fought at that moment, in which all the aggressions actually were those of the communists, who were implying, through her, in effect, that any defense against the rapist, the mugger, and the invader constituted the assault, not the acts themselves. This is the "psywar" contest in which Fonda represented world-wide communist corrosion of will and character in those being set up as their next target.

Not a hint was given, of course, that every conceivable form of booby trap is used routinely by the Reds with exquisite ingenuity as part of a terror campaign that dismembers and kills those who stumble on them. Their victims are just as often, or more frequently, the truly "innocent civilians" of South Vietnam, not the guerrillas whom Hanoi employs in the guise of workers and peasants, or the children, women and old people forced to act as terrorists. Nor was there the slightest reference to the use of whatever advanced weaponry was received from the Soviet Union. The focus was entirely on the weaponry required for defense. This was all bad.

Her broadcast, referring to the enemy side, portrayed all of it as people who do not differ "from our own children, our mothers, or grandmothers." The fatigue and understandably frustrated mind of a pilot, fresh from a mission over North Vietnam, cannot be considered wholly invulnerable to such plaintive appeals from such an American source, particularly in view of the anti-anticommunist policy that permeated most of what he read that issued from his own country, and seemed to be official government policy, as if Fonda only were echoing American official and intellectual views.

The communists were being given all the advantage by default. Jane Fonda being allowed to assault every phase of our society specifically, by name, whereas even the words communism, and treason, were practically taboo on our side. We

were fighting a propaganda war with not merely one hand tied behind our backs, but with a gag in our mouths. Communism is no enemy, eminent government authorities seemed to be saying. The American soldier can be excused if he has difficulty detecting the difference, particularly when no legal action is taken against obvious collaboration with the enemy.

Here, in front of me, is another Fonda broadcast from Hanoi, of July 30, about 1500 words long, announced as "An address to American GIs in South Vietnam". Her appeal to the American flyers had been directed toward breaking their will to hit the targets assigned to them. This appeal to GIs encouraged them to disobey orders, turn their weapons against their officers, desert, and generally take the side of the enemy. Her broadcasts to the GIs were more brashly worded than to the usually better educated pilots. She preached subversion with subtlety, using as a vehicle the descriptions of what she said other supposedly rebellious American soldiers were doing, dramatically leaving the impression that such insurrection is right and good, and that those hearing her should go and do likewise.

Even those who listened to her out of curiosity, to hear a glamourized film star in a real life role, sure that they could not be influenced, could be softened up by it to accept the same line when they came across it elsewhere, reinforced and orchestrated in our customary channels of communications. We would be foolish to discount this impact simply because we cannot pin down what will bring it to the surface later on, when and where.

One of the most astonishing phenomenon in the whole range of propaganda pressures is in what is called assessment—the assessing of results. Accuracy is practically impossible in this field, because what may seem to be without effect can later on be decisive in changing an entire attitude. Fonda's broadcasts were devised to also have this delayed impact when the Americans returned home.

Jane Fonda's July 30 broadcast to the GIs was in unabashed support of the campaign to destroy the American forces, particularly the U.S. Army, from within. This has been an enemy tactical objective that was built up out of the antidraft movement.

The broadcasts in which she was introduced as talking to Saigon students, was adapted to that age level, which provides the fighting forces of the country, almost wholly so now that the American and other foreign troops are leaving. The patent objective too, was to encourage treason in faculties and student bodies, a prime target of world-wide communism. The age of the American troops made them particularly vulnerable to this approach.

At the start of the broadcast, she said, "I loudly condemn the crimes that have been committed by the U.S. Government in the name of the American people against your country," thus supporting the Red splitting tactic that differentiates between the American people and their government. She

subtly proceeded along this line, as if what she termed "the repression by the U.S. Government and the Saigon clique" were recognized facts accepted by the peoples of both countries.

Her broadcast gave a shocking insight into the conduct of the American-educated Vietnamese student-hijacker. She told of talking to the Vietnamese students in the United States—one can imagine what she told them!—and of their longing to return "to a peaceful Vietnam."

"For the time being," she said, "they feel that their duty is to remain in the United States and do their political work among the American people."

She subtly put over a particularly cunning piece of enemy propaganda pressure by this approach. She casts suspicion on every patriotic South Vietnamese student in the United States by classifying them all as pro-Red conspirators.

One of the major propaganda gimmicks of the Reds, wherever their people are living a particularly onerous life in a controlled environment that excludes information from the outside, is to portray conditions in the non-communist world as even worse. The truth about the incomparably better life led by people in the United States than elsewhere can hardly be suppressed, so particular attention is paid to whatever isolated case can be drawn on to dispute this fact.

When Jane Fonda can come out and say over the air, as she did that July 26, from Hanoi, describing the United States as a country where "people have no reason for living", it is a particular propaganda gain for the Reds. Those inside communist quarters who are thinking of resistance can be discouraged from undertaking it, and in frustration, may even turn their hatred against America, which they then see as letting them down. This is a long-time Red propaganda operation to which Jane Fonda contributed her prestige and dramatic skill.

She engaged in a transfer tactic, too, telling the South Vietnamese that their troubles were due to the United States. She described it as "the American cancer in the Southern part of your country."

Indeed, one would have to go with a hair comb through the rantings of Lord Haw Haw to find much, if anything, equivalent in spleen against the Allies in World War II equivalent to Jane Fonda's tirades against the United States.

Obviously addressing those who are engaged in guerrilla warfare and in other forms of terrorism in South Vietnam, whose booby traps and ambushes have dismembered and disfigured so many American and Vietnamese, she told them: "We thank you for your brave and courageous and heroic fight."

She admitted in this broadcast, "recently in the United States we've been doing a lot of political propaganda work." She ended up by singing in Vietnamese a song that she said was written "by the students in the prisons who have been imprisoned by the Thieu regime in the South."

Her report on American prisoners of war followed the long established routine by which a few were trotted out for abject interviews, obviously cowed and rehearsed. The Hanoi regime, in support of this P.O.W. operation, extracts weeks of favorable nation-wide publicity in the United States by releasing, at long intervals, three American prisoners—always three.

Accordingly, a statement broadcast of a “press conference” by Fonda on July 20 records her as saying: “There were 7 prisoners that I talked to, some of them who had never spoken to Americans before, and they all re-expressed regret about what they had done, and they said they had come to recognize that the war is a terrible crime that must be ended immediately.”

This must have been a cruel ordeal for the P.O.W.s. The questioning by an American actress who was taking the enemy’s position on all things assaulted whatever stamina they had been able to maintain, and to have seemed to confirm the communist propaganda that their country was letting them down, and of inevitable Red victory.

The same program included her acceptance of the whole Red line on supposed American bombing of the dikes in North Vietnam. “The point is that its results are genocidal,” she declared.

Her July 30 broadcast that encouraged mutiny in the American forces generalized with the remark: “In America we do not condone the killing of American officers; we do not condone the killing of anyone.” Then she promptly followed this equivocal observation with a “but”. “But,” she said, using double talk, “We do support the soldiers who are beginning to think for themselves. I’ve spent two years working with the antiwar soldiers in the United States, in the Philippines, in Okinawa and in Japan.”

These remarks followed her statement that new American recruits in South Vietnam “were separated from the guys who had been there for a while behind barbed wire so they wouldn’t find out what had been going on. The men had to turn in their arms at night. Why? Because there were so many U.S. officers being killed. Fragging—the word fragging entered the English language. What it meant was that the soldiers would prefer to roll a fragmentation grenade under the tent flap of their officer, if he was a gung-ho officer who was going to send them out on a suicide mission, rather than go out and shoot people that they did not feel were their enemy.”

One hardly needs knowledge of communist double talk to see through these sentences, particularly when they emanated from the enemy capital at Hanoi, uttered by an American known to be favoring the Hanoi cause.

The deteriorating effect on morale and stamina of the Fonda broadcasts should not be underestimated, nor the delayed impact of her tactically chosen subject matter, and its relationship to the major issues with which the Marxist network was concerned.

She went farther, in her assaults on her own country in this Vietnam warfare than Tokyo Rose or even Lord Haw Haw in World War II. The prestige value to the enemy of her as a movie star gave her activities an added impact that none of her predecessors in wartime broadcasting from enemy capitals possessed.

The fact that she can engage in such corrosive activity with impunity, and be accorded a respectability by the press that is without precedent in the annals of warfare, and be able to travel freely to the enemy capital and back is worth Army divisions to the foe. We can be sure they know this, and are determined to take full advantage of it.

One would be hard put to imagine anything more unfair to our fighting men than this inexplicable tolerance.

FRANCIS M. WATSON, Jr.

Francis M. Watson, Jr. is a graduate of the University of Georgia where he received both a BS in Education and a Masters degree in journalism. In the early 1960's he was Deputy Manager of an information analysis center for the American Institutes for Research where he conducted research in insurgency and propaganda techniques and revolutionary tactics. He became a specialist in media analysis whereby public opinion trends may be determined from newspapers and other information sources. In 1970 he became chief analyst for a Washington, D.C., firm named National Media Analysis where he studied the so-called "underground" press and edited published reports detailing the propaganda impact of such newspapers with respect to revolutionary and protest movements in the United States. He currently manages his own firm, Media Research, located in Dunn Loring, Virginia.

FRANCIS M. WATSON, Jr.
Media Research

September 11, 1972

Dr. Joseph E. Thach
Research Analyst
Committee on Internal Security
House of Representatives
309 Cannon Building
Washington, D.C. 20515

Dear Doctor Thach:

The enclosed selection of broadcasts, attributed to actress Jane Fonda, were reviewed as you requested. Frankly, although I have pored over literally thousands of pages of underground press material in the past few years, I have found little that I felt qualified more precisely as purely *psychological warfare* than these. I use this term in the sense of Dr. Paul M. A. Linebarger's classic book on the subject and of the FM 33 series of field manuals produced by the U.S. Army since the 1940's.

I have to discount Miss Fonda's words as constituting an anti-war *protest*, not only because they were allegedly directed toward U.S. military forces in the field—a group hardly in a position to act on anyone's protest without disobeying the orders they are operating under—but because she says as much in her text. In other words, she is not addressing her

remarks toward influencing the voting behavior of fellow citizens, or toward legislators who are passing on military appropriations etc., or the President, Secretary of Defense, or even commanders in the field, she is, in her own words, addressing herself to men at the operational level of military units and suggesting to them that they not follow their orders.

As I noted in the beginning, her techniques, phraseology, and themes are more comparable to *combat propaganda operations*, designed to encourage misbehavior on the part of troops, than anything else I can think of. For example, her words seem to fit the following passage rather well:

. . . Another major direction of the propaganda effort is to emphasize to the enemy soldier the dangers of combat. Such an appeal, combined with a questioning of the worth of his country's war aims, is designed to encourage the enemy soldier to be particularly cautious and to mangle and avoid danger at every opportunity, thus reducing the combat effectiveness of his unit. [p. 12, U.S. Army FM 33-5, January 1962]

Perhaps more specifically to the Vietnam situation, I see the texts of these broadcasts as falling quite handily into the statement of a primary psychological goal of insurgent forces as stated in the 1966 edition of this same manual:

. . . to convince the world and the local population that the motives of nations assisting the threatened government are false. Through national and international media, the insurgent will attempt to malign the motives of all assistance to the local government. Economic exploitation, neo-colonialism, genocide, and capitalism seeking raw materials and markets are some of the numerous themes used to elicit sympathy and support. [p. 35, U.S. Army FM 33-5, October 1966]

Certain passages in Miss Fonda's material call to mind descriptions of propaganda aimed at the French in the Algerian experience:

. . . Frenchman were told that the war waged by France was unjust, that the FLN was justified in fighting for independence, that the very principles invoked by the FLN were learned from the French Revolution, etc. . . [p. 279 *Undergrounds in Insurgent, Revolutionary, and Resistance Warfare*, Special Operations Research Office, The American University, November, 1963]

Similar material, of course, can be found in the literature on most revolutionary operations in the past fifty or sixty years. The Huks in the Philippines, for example, used some of the same themes.

Getting directly to the resemblance of Miss Fonda's material and traditionally accepted psychological warfare techniques and the prospects of this material affecting troop morale, let me call attention briefly to the origin, history, and theory of this branch of military tactics. As pointed out in

U.S. Army manuals, these techniques are as old as recorded history, but came into habitual use in the U.S. services in World War I. There these efforts focused on surrender appeals to hungry enemy soldiers in trenches. In World War II the techniques were further perfected and broadened, but still, as far as combat troops were concerned, the propaganda appealed heavily to hungry or beleaguered troops or forces whose chances of victory and eventual return to their homeland were rather easily shown to be poor. And, more often than not, that has been the case, the propagandist could see a host of personal deprivations among the enemy troops he could seize upon. Even the Tokyo Rose type of effort, at the strategic level, dwelled on the length of time troops had been away from home and played upon their being out of communication with their families and the home scene.

Part of the intelligence operation connected with the propaganda effort has always been to find out what the target troops did and did not have. It would always have been ridiculous to beam "hunger appeals" to well-fed troops or "we have got you surrounded" messages to carrier-based pilots. But, the application of the techniques has generally been to make the propaganda appeal on the lowest rung of the "physiological-need" ladder—tired, hungry, cold, beaten men's minds are at the lower rungs and it is futile to appeal to them with more abstract messages.

Perhaps many of us have become used to judging propaganda in these terms—and perhaps we have become used to judging troop morale primarily on these bases. But, of course, the propaganda theory has always been that if the baser needs were satisfied the propagandist had to raise his sights. When the next level of needs were satisfied he had to raise them again. When personal welfare and safety were not really in much jeopardy he had to get almost completely out of those areas or his propaganda would simply be laughed at.

Look at Vietnam. The U.S. troops have had essentially everything they could possibly want for, in terms of creature comforts. And, compared to other military experience in world history, their tours have been short, their communications with home good, and so on. I don't mean to suggest that Vietnam duty is a picnic—having been all through the Vietnam command, I know better. It would be foolish, however, for any propagandist to try to get at those troops with the old ploys. About the only themes left are precisely those Miss Fonda harps on. Nothing in the books suggests the propaganda will therefore be any less effective—a well-fed man can simply be reached on matters that a hungry man would not even listen to.

Thus, in the broadcasts it is easy to spot attacks on what is the basic element of any healthy, well-attended fighting man's spirit—the justice of his cause. Obviously, a man who is hungry enough, will kill just to eat—a frightened man will kill to preserve his own life, etc.—but a man who is

not so deprived or so threatened must believe in his cause in order to take another human life. Keep pounding at him with arguments otherwise—supported by evidence that the obvious enemy is not the only one who says this—and you begin to get to him.

Then, inject the “war crimes” fear—the “even you may have to answer for this behavior later!!” Use as a background the “women and children” plea, support it with the “I am seeing it with my own eyes, and I am an American, too” credibility potential, and lace it with allusions to the beauty of the women and the pastoral nature of the countryside. Come in with the “inhumanity of buttons and levers” against an enemy you don’t have to face, and the tearing of flesh with plastic and metal. It is all in Miss Fonda’s text and it is just as it should be, from the standpoint of good propaganda operations.

Finally, there are some distinct advantages to Jane Fonda, American movie star, and frequent personality around Army posts, as a speaker. She is immediately known. She is glamorous. She has all the trappings of self-sacrifice, and she has rapport. She knows youth and she knows the Army. In this respect she is better than any Tokyo Rose history has ever known—she is a walking encyclopedia of *current, cultural* and technical intelligence on the U.S. military and the young people who occupy so many of its ranks. She is even an expert on the anti-military movement. She mentions that and thus provides a readily available philosophy and group-association for her listeners.

Just in case all of these things will miss some people, she puts in the personal risk, the prisoner-of-war threat, and the people back home crying over the men overseas, and tops that off with hints that there won’t be a job or a place in life for the returning veteran. It is quite complete.

Again, these broadcasts are, in my opinion, *good, military* propaganda. Whether or not they affect troop morale is a matter of assessment, but there is nothing wrong with the design.

Sincerely,
FRANCIS M. WATSON, JR.

BRIG. GEN. S. L. A. MARSHALL, USA (RET.)

The author of more than 25 books, Brig. Gen. S. L. A. Marshall, USA (Ret.), has been a military writer both in and out of uniform since 1922 after service in World War I during which he rose from infantry private to lieutenant.

Marshall’s writing career began on the El Paso, Tex., Herald in 1922 and in 1927 he joined the Detroit News as military critic. Subsequently he became a news foreign correspondent in Latin America and in 1936 went to Spain to cover the civil war in that country.

During World War II, Marshall first served as Chief of Orientation for the Army and later was named by Chief of Staff George C. Marshall as one of three officers to establish the Army’s Historical Division.

Marshall left active service after World War II but returned to uniform in 1948 to assist in formation of the North Atlantic Alliance. He served in Korea

during the war there from 1950 to 1953 and was later an Army observer of conflicts in Sinai, Lebanon, the Congo and Vietnam.

Marshall retired in 1960 as Deputy Chief of Information of the Army but returned to Vietnam in 1967 as a columnist, historian and training adviser to Army historians.

He is presently the author of a newspaper column on military affairs that is syndicated by the Los Angeles Times and Washington Post.

SLAM Birmingham, Michigan
28 August 72

To Robert M. Horner,
Chief Investigator,
HR Comm on Internal Security,
Washington, DC

Dear Mr. Horner:

You wrote me asking my judgment as to the likely effect of the Jane Fonda broadcasts out of North Vietnam on U S service people stationed in that area.

First as to my credentials, the following points should be pertinent and sufficient, though there are others:

1. During WW II, I was special adviser to high command Central Pacific on psywar problems, in particular, how to increase our take of POWs, and in this I succeeded. I had the same advisory role in Korea, 1950-51.

2. In between wars I was called as an expert witness on this subject by the directors of Project Vista.

3. From 1955-58 I was a member of Special Ops Panel, D of D, responsible for scientific guidance on psywar ops.

There is no question about the intent of the Fonda broadcasts. The evidence prima facie is that the purpose is to demoralize and discourage, stir dissent and stimulate desertion. But then, that is not the question you posed.

Would it have any one or all of these effects provided the words of the broadcaster were heard by a vulnerable individual? Here I speak of the Fonda production as a whole. There is no reason to doubt that it would. To be effective, what is said has to be credible. When the propagandist speaks in the idiom of the audience to whom the words are directed, and in reporting as an eye-witness, cites facts, objects and circumstance with which the listener is likely to be familiar, that meets all of the requirements that insure maximum belief.

I would speculate that Miss Fonda gets help in the preparation of her broadcasts. They are expertly done and are models of their kind.

All of this having been said, as to the main question of whether she did material damage to the well-being of forces in Asia, or for that matter, in the ZI, I am unable to answer.

I would stand on the general proposition that in the occurring circumstances, when any fellow citizen is permitted with impunity to go to such extremes, men and women in the serving forces feel resentful, and in the overwhelming majority, to the degree that they believe they have been let down by government because it does not act, their own feelings of loyalty become taxed. The hurt here is long-term and indirect.

That still does not answer the question. I have no idea how many serving people heard Miss Fonda, or of those who heard, what percentage had previously discounted her as a liar, a trouble-making subversive or a half-cracked female. One would need to know such things to make an intelligent estimate.

I do know we have an extremely sensitive situation in Indochina, one probably without precedent in our history. On returning there in July, 1970 to get a measure of troop morale and discipline the Chief of Staff, USA, felt so much alarm at what he found that on getting back to Washington he visited the President to warn him that "anything might happen." That would include large-scale mutiny. Where the balance is just that delicate, any act of aid and comfort to the enemy of the United States could become the fatal straw.

Faithfully yours,

SLA MARSHALL

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

MONDAY, SEPTEMBER 25, 1972

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

PUBLIC HEARINGS

The Committee on Internal Security met, pursuant to call, at 11 a.m., in room 311, Cannon House Office Building, Washington, D.C., Hon. Richard H. Ichord, chairman, presiding.

Committee members present: Richard H. Ichord of Missouri, Richardson Preyer of North Carolina, Mendel J. Davis of South Carolina, and Roger H. Zion of Indiana.

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 meeting will come to order. The Chair has called this public hearing today to receive testimony concerning H.R. 16742, a bill introduced on September 20 for myself and five of my colleagues on this committee, Mr. Ashbrook, Mr. Davis, Mr. Thompson, Mr. Schmitz, and Mr. Zion. The bill the committee hears today is very concise and quite simple. It would authorize the President to determine that travel to any country whose military forces are engaged in armed conflict with military forces of the U.S. shall be restricted, and thereby become unlawful.

Before proceeding to hear the testimony of the witnesses, I want to insure that the background is clearly understood and that the issues are properly framed. We are faced with the problem of imposing some limitation on one of the many freedoms our citizens cherish and enjoy, that is, freedom of travel. We shall see that while there are restrictions on the use of U.S. passports for travel to certain countries, including North Vietnam, there are no effective criminal penalties for traveling to North Vietnam if a U.S. passport is not utilized. So this measure is not a new effort to restrict travel, it is a measure to make existing restrictions effective. The question then is whether the right to travel to North Vietnam (or possibly to any other country with which we might encounter similar circumstances) has been so abused and has so adversely affected our national interests as to require some reasonable measure of limitation. Has there been such harm or such clear and present danger of harm resulting from the journeys of citizens to North Vietnam that the Congress would be justified in plac-

ing some effective restriction on this aspect of the freedom of travel? And are there any measures which would prevent the harm, or the danger of harm, and thus accomplish the same objectives, but with some lesser degree of impingement upon the freedom of travel? Personally, I can see no reason why any citizen should have the right to travel to a country with which the United States is carrying on armed conflict without prior authorization.

The matter of private citizens attempting unauthorized negotiations and transactions with a foreign power contrary to the national interest has caused serious problems since virtually the founding of the Nation. Before the end of the 18th century, Congress thought it necessary to pass the Logan Act to forbid such transactions. Although many accusations have been made of violations of the Logan Act, the record is barren of any completed prosecution. Nevertheless, some types of transactional behavior in foreign countries have been prosecuted in the past under other statutes such as treason or sedition. "Tokyo Rose" and "Axis Sally," for example, were convicted of treason for their broadcasts to American troops on behalf of Japan and Germany during World War II.

Since the mid-1960's, soon after the beginning of U.S. military involvement in Vietnam, we have been treated to the spectacle of a stream of unauthorized U.S. citizens going to North Vietnam for a variety of purposes, such as POW negotiations, POW interviews, bombing inspections, and broadcasts to American troops. Most of them, consciously and willingly, have been used by the North Vietnamese in a massive propaganda campaign. They have performed a great disservice to their own country.

The recent broadcasts of Jane Fonda over Radio Hanoi are only the latest of a continuing series of activities of U.S. citizens in North Vietnam which the Department of Justice seems unable to control, because of the existing law. Jane Fonda is not the first to travel to Hanoi, not the first to make radio broadcasts in Hanoi, not the first to make radio broadcasts to American troops, and the problem is not new with Jane Fonda. Her travel, her broadcasts to encourage disaffection with U.S. military forces, and the widespread publicity given to her activities have only underscored the problem.

This committee, as well as other committees of Congress, has previously considered the adversities resulting from the travel of others to various Iron Curtain countries. The hearing records overflow with evidence concerning the injurious effects of travel to Cuba, a nation with which we are not engaged in armed conflict, but is in the category of a hostile power.

Legislation even more comprehensive than H.R. 16742 has been pending before the Congress for several years. H.R. 14428, introduced in 1967 by Chairman Celler and referred to the Judiciary Committee, would have authorized the Secretary of State to restrict travel to certain countries for any one of four reasons, one of which was the armed conflict condition of H.R. 16742. Identical bills, strongly supported by the Justice and State Departments, were reintroduced in 1969. We have with us today, Congressman Bennett, who has long been an advocate to make such travel restricted and unlawful. He, I think, was the first in the Congress to recommend the passage of such legislation.

In 1965 the Supreme Court in *Zemel v. Rusk* (381 U.S. 1)¹ sustained the power of the Secretary of State, acting under considerations of foreign policy, to refuse to validate a passport for travel to Cuba. But the seeming authority of the executive branch to prohibit travel to certain designated areas was washed away by the decision in *U.S. v. Laub*² in 1967. In that decision, the Supreme Court held that Laub could not be convicted for travel to Cuba in violation of restrictions since he had an otherwise valid passport and because the restrictions on travel to Cuba were not penal because of the absence of statutory authority.

Thus it appears that citizens can secure passports on the pretense of traveling to a nation which is not on the restricted list. Once there, the citizen can then secure a visa from North Vietnam, not using the U.S. passport, and travel to North Vietnam without fear of prosecution.

In my remarks in the *Congressional Record* of August 15, 1972, and September 20, 1972, I covered in greater detail the development of the Fonda case, the actions of the committee, and the admittedly difficult evidentiary problems attendant with prosecution. Rather than go over this again, I will insert those remarks in the hearing record,³ if there is no objection.

On September 19 the committee heard in executive session the testimony of representatives of the Department of Justice and the Passport Office. That testimony will soon be made public and be made a part of this hearing. A number of studies have been prepared by the staff and by consultants which have entered into our considerations. Without objection, I am entering these in the record today. They include, in addition to the psychological warfare analyses introduced on September 19,⁴ the July travel itinerary of Jane Fonda, the list of Radio Hanoi broadcasts by Fonda, the texts of Fonda's broadcasts to U.S. servicemen, Dr. Joseph Thach's analysis of her broadcasts, a staff compilation of relevant statements made by Fonda prior to her travel to Hanoi, a statement of staff efforts to interview Fonda, and a compilation of broadcasts previously made by other U.S. citizens.⁵

Following the testimony of the witnesses this morning, it is my intention to hold an executive meeting of the committee to deliberate upon H.R. 16742. We were once hopeful that at least one aspect of travel to North Vietnam, propaganda broadcasts, could be controlled by use of the treason or sedition statutes. But in the absence of optimism on the part of the Justice Department, we must seek other statutory remedies. Limited prosecutions for sedition or treason would prevent the harm while permitting travel by others for nonharmful purposes. But if the Department of Justice finds the evidentiary problems insurmountable, then we can simplify the evidentiary requirements by broadening the proscription. I am hopeful the committee will take some action to stem the venomous flow of propaganda emanating from the mouths and actions of U.S. citizens on enemy soil.

(A copy of H.R. 16742 follows:)

¹ See appendix, pp. 7695-7734.

² See appendix, pp. 7735-7750.

³ See appendix, pp. 7633-7638.

⁴ See pp. 7581-7602.

⁵ See appendix, pp. 7639-7694.

92^d CONGRESS
2^d SESSION**H. R. 16742**

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 1972

Mr. ICHORD (for himself, Mr. ASHBROOK, Mr. DAVIS of South Carolina, Mr. THOMPSON of Georgia, Mr. SCHMITZ and Mr. ZION) introduced the following bill; which was referred to the Committee on Internal Security

A BILL

To amend section 4 of the Internal Security Act of 1950.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) section 4 of the Internal Security Act of 1950
4 (50 U.S.C. 783) is amended by adding immediately follow-
5 ing subsection (c) of such section the following new sub-
6 section:
7 “(d) The President may restrict travel by citizens and
8 nationals of the United States to, in, or through any country
9 or area whose military forces are engaged in armed conflict
10 with the military forces of the United States. Such restriction
11 shall be announced by public notice which shall be published

1 in the Federal Register. Travel to such restricted country or
2 area by any person may be authorized by the President when
3 he deems such travel to be in the national interest. It shall
4 be unlawful for any citizen or national of the United States
5 willfully and without such authorization to travel to, in, or
6 through any country or area to which travel is restricted
7 pursuant to this subsection.”

8 (b) Section 4 of such Act is further amended by redesignig-
9 nating existing subsections (c) through (f), as (d) through
10 (g).

The CHAIRMAN. If no other member of the committee wishes to add anything, we do have with us—Mr. Zion.

Mr. ZION. Thank you, Mr. Chairman.

I would like to read an article which appeared this morning, September 25, 1972, in *The Evansville Courier*.

Look at dissenters urged.

To the Editor of The Courier :

We have always had the dissenters, the protesters and the disloyal in America and have been able to live with them.

But now it has come to the point where these groups take it on themselves to make deals with our enemies and other acts of treason. It is time to take a good look at the situation.

A Constitution and a Bill of Rights that have fully protected the dissenter, the protester and the nonconformist for decades are now being used by intellectual activists to forbid the overwhelming majority of people the right to exercise vows, pledges and oaths of loyalty.

Loyalty is a good thing. It is of tremendous value between two or more people. It has a great place in the home, family, church and the community. There is absolutely nothing wrong with a citizen proudly loving the nation that has allowed him a superior life.

If there are those among us who have no love, no affection, no loyalty and no concern for the welfare of this nation and its people, our Constitution and laws permit them to live here without penalty.

But such freedom does not extend to them the further right to prevent those who love their fellow man and country from pledging their fidelity, faith and loyalty to the whole of the land.

What tragic lives must these people lead who have become loyal to nothing but their own weird ideas of what this world should be like.

Delbert Hart, Pres.

Spencer County Farm Bureau
Rockport, Ind.

I thank you very much for these hearings and I hope, and share with you the desire, that legislation such as 16742 will prevent the minority of those with weird ideas from exercising their rights to the detriment of the millions of loyal Americans who like it here.

The CHAIRMAN. Thank you very much, Mr. Zion.

It is a pleasure to welcome to the committee our distinguished colleague from Florida, and a ranking member of the House Armed Services Committee, Congressman Charles E. Bennett.

TESTIMONY OF HON. CHARLES E. BENNETT, U.S. REPRESENTATIVE FROM FLORIDA

Mr. BENNETT. Mr. Chairman and Members of the Committee on Internal Security :

I have great pleasure in appearing before you today to voice my strong support of the bill under consideration, namely, H.R. 16742. This bill is intended to fill a broad gap in the Nation's protective armor by providing penal sanctions in support of the President's existing authority to impose travel restrictions to countries with which we are engaged in armed conflict. While the President under existing law possesses authority to withhold passports for travel to restricted areas pursuant to the Passport Act of 1926, and has been authorized under certain circumstances to prohibit a departure from the United States without a passport pursuant to the provisions of the Immigration and Nationality Act of 1952, he is unable to apply penal sanctions for unauthorized travel to, in, or through restricted areas. This failure has

seriously affected the President's capacity to protect our Nation's security interests.

In upholding the President's authority to impose restraints on travel to Cuba by withholding passports for such travel, the United States Supreme Court in *United States v. Laub*, 385 U.S. 475 at 486 (1967), had occasion to advert to the existing gap in our laws, and noted the President's efforts to enact legislation of this type. It said:

The Government, as well as others, has repeatedly called to the attention of the Congress the need for consideration of legislation specifically making it a criminal offense for any citizen to travel to a country as to which an area restriction is in effect, but no such legislation was enacted.

The bill before us would fill this urgent requirement with respect to a situation most deeply affecting the conduct of our foreign relations, and for the defense of the Nation and the prevention of full-scale international war.

In my appearance before your committee in September of 1969, you will recall my testimony in connection with a bill I had introduced which had a related purpose of prohibiting and penalizing certain intentional misconduct obstructing the military forces of the United States. This bill, H.R. 959, subsequently reported by the committee, dealt with this general subject. I then likewise proposed an amendment which was intended to accomplish a purpose similar to that addressed by the present bill before you. I noted then that a great deal of support had been rendered to communist countries engaged in armed conflict with the United States by a number of United States citizens who have actually traveled to such enemy territory and engaged in friendly communication with a government actually at war with us.

Such activities impair the execution of our national policies and endanger the lives of our young men and women in the military services. It must be evident that neither the patience nor the tolerance of the vast number of our patriotic citizens should be tested by any further postponement in the enactment of necessary legislation designed to cope with activities which are an obvious affront to their patriotic sensibilities.

The power of Congress to enact the proposed legislation is no longer open to question. That the President of the United States and the Congress, acting together, may validly impose such travel restraints in the regulation of the Nation's foreign affairs is the effect of the most recent decisions of the judicial branch on the subject. The enactment of this legislation will demonstrate our will to persevere in maintaining vital national policies, while at the same time allaying those misapprehensions now shared by many of our citizens as to the Government's capacity to fulfill its mission. Let us enact this legislation promptly. I congratulate the committee for bringing it up and hope it can be enacted in the very near future.

The CHAIRMAN. Thank you very much, Mr. Bennett. The legislation you propose was also restricted in its operation, was it not? I believe you used the terminology, "hostile country," rather than "armed conflict."

Mr. BENNETT. Yes. I did.

The CHAIRMAN. I think this is one of the points that should be made in connection with this legislation—very restrictive in its application.

I know the State Department, for one, has recommended a broadening to prohibit travel where there is armed conflict perhaps in which the U.S. is not involved. I see why there are valid considerations because it does cause the U.S. difficulty in extending protection to the U.S. citizen in a foreign conflict to which it is not a party. You would recommend a broadening of the legislation in that respect?

Mr. BENNETT. I think the statute you have before you is a good statute. It allows the President to allow anybody to go to any country if he feels it is in the national interest to do so. He could have regulations under this to restrict how far it would go. I think it gives him the necessary tools to protect what I think most people consider to be treason from taking place, but it doesn't require us to go through the procedures and penalties involved with the more heinous crime of treason.

The CHAIRMAN. Thank you. Are there any questions?

Mr. ZION. I would just like to say we are pleased to have the gentleman with us. Thank you very much.

Mr. PREYER. I commend you for all you have done in the past for us.

The CHAIRMAN. Thank you very much.

The next witness is our distinguished colleague from the State of Mississippi, Mr. Montgomery.

**TESTIMONY OF HON. G. V. (SONNY) MONTGOMERY, U.S.
REPRESENTATIVE FROM MISSISSIPPI**

Mr. MONTGOMERY. Mr. Chairman, Members of the Committee, I appreciate this opportunity to appear before you this morning to lend my support and to urge my colleagues to support H.R. 16742, the limited travel ban bill introduced by you, Mr. Chairman, and several members of the committee.

There is little doubt that the Vietnam war has created great controversy in our country. There is little that has not been said about our participation and involvement in it, but, Mr. Chairman, the recent activities of Jane Fonda, broadcasting specifically to U.S. servicemen who are serving the United States in that war is the most despicable act that has yet been committed by anyone who advocates our withdrawal from this frustrating and expensive war. Mr. Chairman, as you know, I have a deep personal interest in the plight of our POWs. I have been to Southeast Asia on seven separate occasions—I realize this doesn't make me an expert—in attempts to gain information regarding the condition of our POWs. Included in these trips have been three visits to Vientiane, Laos, but every trip I have kept the Department of State and the Department of Defense fully apprised in my trip and intentions. I have had the approval of each of my trips. However, the situation of American citizens traveling with apparent impunity to North Vietnam and broadcasting propaganda messages from Hanoi to Americans fighting that foreign government is incomprehensible. I believe Mr. Thompson is to be commended for raising this issue that reveals a serious deficiency in our present statutes.

I am unable to see how any purpose can be served or any good can result from permitting American citizens to privately take it upon themselves to travel to the enemy's capital to condemn our involvement in this or any other war. Whatever the motives may be of those

citizens in traveling to North Vietnam, there can be no doubt of the effect on our soldiers, sailors, and airmen's morale, and will, to accomplish their assigned missions when they listen to the messages of the enemy being broadcast by a fellow citizen from the enemy stronghold. That effect can only be compounded when that citizen has the identity and fame that Jane Fonda possesses. If the situation is as it appears to be, that present statutes designed to prevent this type of activity on behalf of an enemy are unenforceable, then it is clear that we in Congress must take the responsibility to equip the President with the tools he needs to carry out those measures necessary to our national interest. It certainly is not in the interest of this country to permit and allow any citizen to traffic with an enemy with which we are engaged in open hostilities. The enactment of H.R. 16742 will prevent, in my opinion, the unilateral involvement of citizens with an enemy, whoever it happens to be. I believe the travel restrictions imposed under authority of this measure are reasonable and necessary, Mr. Chairman. I hope that there will not be any future occasion in which it is necessary to impose this travel ban, but if that time comes, with this bill as law, the President will have the resources to conduct foreign policy without having to compete with conflicting efforts of private citizens or to contend with efforts to subvert, from an enemy's capital, the loyal servicemen and women attempting to accomplish the tasks assigned to them.

Mr. Chairman, I believe we are fortunate to have your leadership in pushing forward with this measure. I support this bill and urge my colleagues to do the same.

Thank you.

The CHAIRMAN. Thank you, Congressman Montgomery, for a very clear and forceful statement. I want to take this opportunity to publicly commend the gentleman from Mississippi for the outstanding service that he has rendered the American troops serving in Vietnam. Regardless of how one feels about the war in Vietnam, our troops are there and I think that everyone in the U.S. and particularly the American troops serving in Vietnam owe the gentleman from Mississippi a debt of gratitude for the services that he has provided.

Are there any questions?

Mr. ZION. I wish that the gentleman from Mississippi, who has done such an outstanding job, got one-tenth of the publicity for his services as those who want to subvert the activities of our loyal fighting men.

Mr. PREYER. I think that Mr. Montgomery has probably been to Vietnam more often than anybody in Congress. Therefore his testimony is entitled to considerable weight.

The chairman asked the question, in his opening statement—said, rather—“The question then is whether the right to travel to North Vietnam * * * has been so abused and has so adversely affected our national interests as to require some reasonable measure of limitation.”

So, it is your judgment, based on your trips, that it has been abused, has adversely affected our national interests. Do you know, from your trips there, that these messages are actually getting through to our troops, say, Jane Fonda's?

Mr. MONTGOMERY. Gentlemen, the North Vietnamese have a good communication system, and it does get back to our troops on the car-

riers in Thailand, in South Vietnam, and they are well abreast of these persons going into North Vietnam. And I think this is a reasonable bill. It would give the President discretion, if he did want to grant permission to someone such as a Member of Congress, someone that would have some complete interest in the overall situation, to go into North Vietnam. I think it is a reasonable bill, as I said in my statement. No question about it including Ramsey Clark—I don't question his patriotism, but I question his judgment in going into North Vietnam. There is no question about it, he was brainwashed. And when you get into a country like this, they will do everything in their power to show you things that happen and they can take it out of context; they can show you areas that some of our air strikes have hit, but this is the exception and not the rule. And to get back to this legislation, it is necessary and needed, probably should have been passed 2 or 4 years ago, and I think there is no question about it that those who have gone into North Vietnam and have spoken out supporting the North Vietnamese have delayed the war and have caused other Americans to lose their lives.

Mr. PREYER. I suppose the way the word gets to the troops in the field and troops on the carriers—there would be several ways. I assume Hanoi radio is easily in reach, but probably it would come in through American news rebroadcast, if not any other way?

Mr. MONTGOMERY. That is correct; and thank goodness that we don't control any news that goes into our American fighting forces on the carriers. I am sure you have been on some of our carriers. They have their own television station, radio station, own news staff, and the news is not censored. And anything that comes out of Hanoi, anything that comes out of New York or California, AP, UP, is given right to the Americans on the carriers, as I say, and the American Armed Forces broadcasting system in South Vietnam is not censored. Anything that comes over the news, why it goes out.

Mr. PREYER. Thank you very much.

The CHAIRMAN. Thank you very much, gentlemen.

Mr. DAVIS.

Mr. DAVIS. I want to join in thanking our very capable colleague from Mississippi, who, I believe, can really render to us expert testimony. It hasn't been brought out, but a lot of the trips Mr. Montgomery has made, he has made at the sacrifice of his own time, going at Christmas time to help boost morale while others have tried to destroy it. I think he should be complimented for these efforts and all efforts he has made.

Thank you, Mr. Montgomery.

The CHAIRMAN. Thank you, Mr. Montgomery.

Mr. MONTGOMERY. Thank you, gentlemen.

The CHAIRMAN. Our next witness, this morning, is Mr. A. William Olson, the Assistant Attorney General, Internal Security Division, representing the Department of Justice.

Mr. Olson, it is a pleasure to have you again before the committee. Do you have a prepared statement?

Mr. OLSON. Yes, I do.

The CHAIRMAN. You may proceed.

TESTIMONY OF A. WILLIAM OLSON, ASSISTANT ATTORNEY
GENERAL, INTERNAL SECURITY DIVISION, DEPARTMENT OF
JUSTICE

Mr. OLSON. Mr. Chairman and Members of the Committee, I am pleased to appear before the committee to present the views of the Department of Justice concerning H.R. 16742, a bill to restrict travel by citizens and nationals of the United States to any country or area whose military forces are engaged in armed conflict with the military forces of the United States.

H.R. 16742 would authorize the President to institute such restrictions through an announcement which shall be published in the *Federal Register*. Travel to such restricted country or area would then be unlawful unless the traveler had been authorized by the President to so travel after a determination that such travel was in the national interest. Substantial criminal sanctions are provided for United States citizens and nationals who violate the restriction.

Mr. Chairman, as you know, the Department has for many years supported efforts to provide appropriate and effective travel control legislation. The problem became particularly apparent in 1967 when the Supreme Court in *United States v. Laub*, 385 U.S. 475, held that travel to a restricted area with an otherwise valid passport was not punishable under section 1185(b) of title 8, United States Code. The power to prescribe area restrictions had previously been sustained in *Zemel v. Rusk*, 381 U.S. 1 (1965), which sanctioned the Secretary of State's refusal to validate a citizen's passport for travel to Cuba.

Although the Secretary may request a criminal prosecution under 18 U.S.C. 1544, for use of a passport in violation of the restrictions contained therein, it is, as a practical matter, almost impossible to obtain sufficient evidence of such violation to sustain a prosecution under that law. The only other action which the Secretary might possibly take is to deny or revoke a passport when the sole travel intended is to a restricted area (*Lynd v. Rusk*, 389 F. 2d 940, D.C. Cir. 1967).¹ The narrow scope of this action is inadequate to deter such travel by persons who are so inclined. Consequently, area restrictions today are ineffective since the Secretary has no realistic means of enforcing them.

As you know, Mr. Chairman, numerous bills have been introduced in the Congress over the years aimed at plugging this loophole in the law. H.R. 14428, in the 90th Congress, was a bill, drafted in the Department of State with the assistance of the Department of Justice, which would have accomplished this purpose. The Department reported favorably on that bill on March 5, 1968. In the last Congress, the Department reported on H.R. 383 and H.R. 14893. These bills, "to restrict travel in violation of area restrictions," were substantially identical to H.R. 14428, mentioned previously, except that the caption had been changed and the penalty increased from a misdemeanor to a felony. Mr. Kleindienst, then Deputy Attorney General, in his letter report of July 16, 1970, stated that the Department "strongly supports" this kind of legislation.

¹ See appendix, pp. 7751-7760.

H.R. 16742, the bill before this committee today, differs from H.R. 383 and H.R. 14893 in many details, but the basic substance is the same. We prefer the broader coverage of the latter bills, which would authorize restrictions to a country or area that is—

- (1) a country or area which is at war,
- (2) a country or area where insurrection or armed hostilities are in progress,
- (3) a country or area whose military forces are engaged in armed conflict with forces of the United States, or
- (4) a country or area to which travel must be restricted in the national interest because such travel would seriously impair the conduct of United States foreign policy.

Furthermore, we would prefer that the authority to designate restricted countries or areas and to grant travel exceptions be given directly to the Secretary of State, although presumably it is intended that the President's authority under H.R. 16742 could be delegated.

In summary, while we would prefer the broader coverage and other details of previously mentioned bills, we nevertheless strongly support the purpose of H.R. 16742 and the goal which it would attain.

That ends my statement, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Olson. Of course, it is the intent of the authors of the bill that the authority to promulgate orders concerning restricted travel can be delegated by the President of the United States, and I think that would logically be delegated to the Secretary of State. Now, I think that this measure is very restricted in its application. It only applies to travel to countries with which the U.S. is at armed conflict, and does have the proviso that travel can be granted if it is considered to be in the national interest. I think the primary reason why the authors of the bill have not broadened it is because it is very doubtful that this committee would have jurisdiction over passport legislation. Certainly we have jurisdiction in this area with its limited application. That measure to which you referred is now pending before the House Committee on the Judiciary, is it not?

Mr. OLSON. I believe it is.

The CHAIRMAN. Did the Judiciary Committee hold hearings on the legislation?

Mr. OLSON. I do not believe so.

The CHAIRMAN. Apparently, there is no prospect then, good prospect, for passage by the Congress out of this committee.

I did have one other question, Mr. Olson. You will note that the legislation reads, "The President may restrict travel 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."

We have included the term, "nationals," as well as "citizens," and for the record, I would like to determine just how broad is the term "nationals." It is my understanding that there are very few nationals of the United States today in view of legislation that has been passed recently. Formerly, people who were citizens of Puerto Rico were nationals, but I think they are definitely full-fledged citizens of the United States at this time. What about Guamanians? Haven't they also been made citizens of the United States?

Mr. OLSON. Would you pardon me just a moment? I don't have that information.

The CHAIRMAN. I think most of them have been——

Mr. OLSON. Mr. Chairman, I have no definite information on Guamanians. I believe Samoans are still nationals.

The CHAIRMAN. Samoans are definitely still nationals.

Mr. OLSON. There may be some other small groups that would come within that definition.

The CHAIRMAN. Thank you very much, Mr. Olson.

Mr. Zion?

Mr. ZION. No questions.

The CHAIRMAN. Mr. Preyer?

Mr. PREYER. No questions.

The CHAIRMAN. Mr. Davis?

Mr. DAVIS. No questions.

The CHAIRMAN. I have one more question, Mr. Olson. I don't think that there would be any increased cost with the enactment of this bill, but I do need to get it in the record. Could you estimate any increased cost to carry out the bill in this fiscal year if the bill is reported and passed?

Mr. OLSON. There would be no increased cost as far as the Internal Security Division of the Justice Department in terms of manpower. I don't know of any other increased costs we might anticipate.

The CHAIRMAN. One other question. The bill provides for notice to be published in the *Federal Register*. It is my understanding that the State Department now includes such notice of restricted travel on the passport itself, does it not?

Mr. OLSON. That is correct.

The CHAIRMAN. It certainly is contemplated by the authors of this legislation that that notice is to be further given to American citizens, and I am quite sure that the State Department will carry out that intent.

Mr. OLSON. I would agree that certainly that is true.

The CHAIRMAN. What about the next 5 fiscal years—would you contemplate any increased cost to carry out the bill?

Mr. OLSON. That is highly speculative. I don't contemplate, within the next 5 years, we would have any increased cost in terms of manpower and prosecution of the statute.

The CHAIRMAN. Thank you very much.

Mr. OLSON. You are very welcome.

**STATEMENT OF HON. CARLETON J. KING, U.S. REPRESENTATIVE
FROM NEW YORK**

The CHAIRMAN. Gentlemen of the committee, I have been requested by our colleague, Carleton King of New York, to present a statement to be included in the record. If there is no objection, the statement of Congressman King will be included in the record.

(Mr. King's statement follows:)

Mr. Chairman, it is a pleasure for me to appear before the House Committee on Internal Security and speak in support of H.R. 16742.

We have all witnessed the notorious travel by U.S. citizens to Cuba, North Vietnam, and North Korea. This travel by student adventurers, publicity seekers, and self-presumed experts on warfare and foreign policy has been in contravention of travel prohibitions promulgated by the Department of State, the authority for which is found in Title 22, Code of Federal Regulations, Section 51.72.

Generally this section provides that in the absence of specific authorization by the State Department, U.S. passports shall not be valid for travel into or through such country or area which is at war with the United States, or where armed hostilities are in progress, or when such travel would seriously impair the conduct of U.S. foreign affairs.

Willful violation of these laws and regulations purportedly subject the offender to prosecution under Title 18, U.S. Code, Section 1544. I use the term purportedly, because the fact is that 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.

It is also a fact that U.S. citizens who do travel to unauthorized countries are assisted by the complicity of hosting government officials.

Aware of the jeopardy which would confront a U.S. citizen, should his passport bear an official stamp of entry from an unauthorized country, the officials of Cuba, North Korea, and North Vietnam, have simply issued separate visas and failed to stamp U.S. passports in compliance with customary passport procedures.

Mr. Chairman, I believe that the existing passport regulations, which I have just outlined, are totally inadequate to restrict unauthorized travel and to protect the national interest.

I fully support the provisions of your bill which would restrict travel 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.

It is my understanding that the Department of Justice is reviewing the radio broadcasts made by Jane Fonda while in Hanoi to determine possible violations with respect to the treason and sedition statutes.

It is not my intention to offer testimony concerning the reported activities of Jane Fonda, or express my opinion as to her culpability under law.

However, in connection with the legislation under consideration here before this committee, I would like to state that in my opinion restricting the travel of persons such as Jane Fonda, Ramsey Clark, and the hundreds of students who traveled to Cuba with the Venceremos Brigades, is certainly within the national interest of the United States.

I further believe that the people of this country recognize that the activities of these Pied Pipers of pernicious propa-

ganda do nothing more than play into the hands of the enemies of the United States.

It is apparent from the mail that I have received that the law-abiding citizens across the country are sick and tired of reading about the vocal protagonists who, though few in number, continue to flaunt the travel laws of the United States in promoting their own special form of allegiance to disunity and degradation of the United States.

Mr. Chairman, I commend you for your offering legislation which gets directly to the heart of the matter and I offer my support for the enactment of H.R. 16742.

/s/ CARLETON J. KING,
30th District

**STATEMENT OF HON. WILLIAM J. SCHERLE, U.S. REPRESENTATIVE
FROM IOWA**

Mr. ZION. Mr. Chairman, I have been requested by a former member of the committee, the Honorable William J. Scherle, to introduce a statement of record at this point.

The CHAIRMAN. Do you wish to include that in the record?

Mr. ZION. Yes, Mr. Chairman.

The CHAIRMAN. No objection, so granted.

(Mr. Scherle's statement follows:)

**STATEMENT BY HON. WILLIAM J. SCHERLE BEFORE INTERNAL
SECURITY COMMITTEE—SEPTEMBER 25, 1972**

Mr. Chairman: I wish to take this opportunity to express my support for your bill, H.R. 16742, allowing the President to restrict travel by United States citizens and nationals to, in, or through any country or area whose military forces are engaged in armed conflict with those of the United States. I have cosponsored similar legislation myself.

The many unauthorized trips by American citizens to Hanoi since 1967 have resulted in the misrepresentation of American opinion to the North Vietnamese and the entire Communist world to the detriment of our national interest, particularly to the morale of the armed forces and our prisoners of war. The publicity which always attends these friendly forays into enemy territory gives undue weight to what is still the minority view in this country, outraging the loyal sensibilities of the majority.

It is my firm belief that such unwarranted pilgrimages should be restricted, and I support legislation which will accomplish that objective.

**STATEMENT OF HON. LOUIS FREY, JR., U.S. REPRESENTATIVE FROM
FLORIDA**

Mr. ZION. Lou Frey has a statement. He has long been interested in this subject. He regrets very much he was unable to be here in person to testify. He has a comprehensive statement he would like included in the record at this point.

The CHAIRMAN. No objection, so ordered.
(Mr. Frey's statement follows:)

STATEMENT OF LOU FREY, JR., 5TH DISTRICT, FLORIDA, BEFORE THE
INTERNAL SECURITY COMMITTEE, HOUSE OF REPRESENTATIVES,
SEPTEMBER 25, 1972

Mr. Chairman, since 1967 there have been an escalating number of American citizens traveling to restricted countries and engaging in activities in those countries which undercut the foreign policy objectives of the United States. The most recent, and perhaps most flagrant episode involved the visits of Jane Fonda and Ramsey Clark to North Vietnam.

It was assumed prior to 1969 that the Department of State had authority to refuse to issue or to revoke U.S. passports because of unauthorized travel to restricted countries or areas and to require assurances from the traveler that he would not use his passport for travel to the area and would not travel to the area. However, the Court of Appeals held in *Lynd v. Rusk* (1967) that although the Department could restrict the validity and use of a U.S. passport for travel to certain foreign countries or areas, it was without statutory authority to restrict the travel of U.S. citizens to such countries or areas.

Shortly thereafter, Stokely Carmichael took advantage of this decision and traveled to Cuba and North Vietnam to condemn U.S. aggression against North Vietnam and call for total revolution against the imperialist, capitalist, and racialist structure of the United States.

In August 1969, an American delegation comprised of SDS leaders, and other militants toured North Vietnam and held a mass rally on August 4, 1969, during which they condemned the United States, praised the North Vietnamese, and called for solidarity between the antiwar factions in the United States and North Vietnam. In September 1969, Eldridge Cleaver and a delegation of Black Panthers appeared at the World Conference of Journalists Against U.S. Imperialism in Pyongyang, North Korea, and said in part:

"U.S. imperialism seeks to turn the entire world into a huge prison under its bloody thumb and under the boots of the troops and puppets. The people of the world must unite and stage a massive, universal prison break against U.S. imperialism."

Perhaps the largest contingent to leave our shores to assist our adversaries occurred in early 1970—600 young radicals joined the "Venceremos Brigade" to cut cane for Castro at the very time when our embargo on trade with Cuba was beginning to have its desired effect. Actually, the real purpose of this SDS-sponsored expedition was not to cut cane, but to make Cuban propaganda hay. It furnished considerable propaganda ammunition to Cuba and Latin American Communists.

The recent activities of Jane Fonda and Ramsey Clark in North Vietnam further illustrates the need to control such unauthorized trips.

Jane Fonda made several broadcasts over Radio Hanoi in which she attempted to demoralize American servicemen and get them to disobey orders. Similarly, Ramsey Clark representing an organization called the International Commission for Inquiries into the U.S. war crimes in Indochina over Hanoi Radio referred to the "cruel and terrible slaughter in North Vietnam."

Both Miss Fonda and Mr. Clark condemn our action against North Vietnam, yet ignore the fact that it was the North Vietnamese who entered into South Vietnam as the aggressors. Moreover, who can recall Miss Fonda or Mr. Clark ever condemning the North Vietnamese aggressors for the vicious atrocities, deaths and casualties they have caused the people of South Vietnam over a 10-year period, and for their refusal to comply with the Geneva Convention on POW's?

The effect of the many unauthorized trips by American citizens to restricted countries since 1967 has been to: first, misrepresent American opinion to our adversaries; second, provide misinformation to the American public; third, provide propaganda ammunition and actual economic assistance to our adversaries; and fourth, to make the attainment of peace more difficult by interfering with private negotiations and other foreign policy activities.

I am of the opinion that one of the most important reasons for the intransigence of the North Vietnamese in the Paris negotiations is the blurred picture of the American electorate which has been painted by the fringe minority who have traveled to Hanoi in deliberate violation of the restrictions imposed by the Secretary of State.

A case in point is the recent trip of Ramsey Clark. Clark, while in Hanoi, stated that he expected a big McGovern victory and if McGovern were elected the war would end on the day he came into office. He also inferred that McGovern would accept Hanoi's "seven points," and Nixon would not.

H.R. 16488 which I introduced on August 18 of this year would control such flagrant intervention in the conduct of American foreign policy. This bill would give the Secretary of State the satisfactory authority, which the Court of Appeals said he presently does not have to impose and enforce area restrictions on travel. In other words, it formally gives the Secretary the authority which he exercised prior to the court decision in 1967.

Under this legislation, the Secretary could restrict travel to a country that we are at war with, where armed hostilities are underway, or when such travel would seriously impair the conduct of U.S. foreign policy. After reviewing an application to travel to a country classified as restricted, the Secretary could, however, grant permission to visit that country. Minimal penalties are provided for travel to designated countries or areas without specific authorization by the Secretary. This legislation has been supported in the past by the Department of State and Department of Justice.

H.R. 16742 is very similar to H.R. 16488. They both provide for the imposition of restrictions on travel to a country with whom the United States is engaged in armed conflict. Both would prevent future unauthorized trips by the Jane Fonda's and Ramsey Clark's. We can no longer tolerate interference by private American citizens with our diplomatic negotiations and the use of American citizens as propaganda conduits. I strongly urge this Committee to act favorably on this legislation.

STATEMENT OF DAVID M. ABSHIRE, ASSISTANT SECRETARY OF STATE FOR CONGRESSIONAL RELATIONS

Mr. ZION. The Assistant Secretary of State, Mr. David Abshire, has a statement relative to this which I would like to have included in the record at this time.

The CHAIRMAN. There being no objection, it will be so ordered. (Mr. Abshire's letter views follow :)

DEPARTMENT OF STATE

WASHINGTON

JULY 13, 1970

Honorable Emanuel Celler
Chairman, Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman :

This is in response to your requests for the views of this Department on H.R. 383 and H.R. 14893, identical bills to provide for area travel restrictions.

The bills would authorize the Secretary of State, subject to such policy or policies as the President may prescribe, to designate foreign countries or areas to which travel by U.S. citizens without special authorization would be unlawful. The Secretary would be required to determine that the country or area met one of the four criteria set forth in the bill. The Secretary could authorize travel to a country or area so restricted when he deems it to be in the national interest. Travel to restricted countries or areas without such authorization would be punishable by up to five-years imprisonment, a fine not to exceed \$5,000, or both.

Prior to the 1967 decisions of the Supreme Court in *U.S. v. Laub*, 385 U.S. 475, and *Travis v. U.S.*, 385 U.S. 491, it was assumed that section 215(b) of the Immigration and Nationality Act made it unlawful for citizens to depart the United States during a period of national emergency for travel to a restricted country or area unless they possessed passports specifically validated for such travel. The *Laub* and *Travis* decisions, however, made it clear that section 215 is a "border control" and not a "destination control" statute. That is, in a national emergency the United States can require Americans

to have a passport in order to leave the United States, but once they leave our border they can travel anywhere.

It was assumed, prior to 1967, that the Department of State had authority to refuse to issue or to revoke U.S. passports because of unauthorized travel to restricted countries or areas and to require assurances from the traveller that he would not use his passport for travel to the area and would not travel to the area. In *Lynd v. Rusk*, 389 F. 2d 940, however, the Court of Appeals held, in substance, that although the Department could restrict the validity and use of a U.S. passport for travel to certain foreign countries or areas, it was without statutory authority to restrict the travel of U.S. citizens to such countries or areas.

H.R. 383 or H.R. 14893 would provide such statutory authority by specifically authorizing the imposition of restrictions on travel to designated countries or areas and providing criminal penalties for travel to designated countries or areas without specific authorization by the Secretary. In addition, the proposed bills spell out with some specificity the circumstances under which area restrictions may be imposed. Although the Supreme Court in *Zemel v. Rusk*, 381 U.S. 1, sustained the Secretary of State's power to refuse to validate a passport for travel to a restricted area, different constitutional considerations are at stake when criminal punishment is contemplated. The proposed bill expressly confers authority upon the Secretary of State and prescribes the limit of the Secretary's delegated power.

The Department has supported similar bills in the past and does so now. We suggest, however, that the Committee give consideration to a maximum penalty of one year's imprisonment and/or a fine of \$1,000 as being a more reasonable and enforceable penalty for violation of such travel restrictions.

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,
David M. Abshire
Assistant Secretary for
Congressional Relations

The CHAIRMAN. It is my understanding that Professor Charles E. Rice is on his way to testify before the committee today, but that he has incurred plane difficulties. As I stated before, it was my intention to present this measure to the members of the committee for action today, because today is the last day that bills will be accepted by the Rules Committee. What is the pleasure of the committee?

Mr. ZION. I move that the bill be presented before the committee in executive session today.

The CHAIRMAN. I note there are only four members of the committee present. I think it wouldn't be possible to take action on the measure at this time.

Mr. PREYER. I hope we could put Mr. Rice's statement in the record when he gets here. I assume we could do that. He is an able man. I

assume his testimony is going to back up what everyone else has said. We would be interested in having it.

The CHAIRMAN. Then, we can reopen the hearing if Mr. Rice does appear while we are in executive session. It is my understanding a quorum is on the way.

The Chair will declare that the public hearing is adjourned, and the committee will go into executive session.

(Whereupon, at 11:45 a.m., Monday, September 25, 1972, the hearing was adjourned.)

**STATEMENT FURNISHED TO COMMITTEE BY CHARLES E. RICE,
PROFESSOR OF CONSTITUTIONAL LAW, NOTRE DAME UNIVERSITY
LAW SCHOOL, SOUTH BEND, INDIANA, ON SEPTEMBER 25,
1972**

Mr. RICE. This hearing concerns H.R. 16742, which would authorize the President to "restrict travel 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." A willful violation of such a restriction would be punishable as a crime.

The right to travel "is a part of the 'liberty' of which the citizen cannot be deprived without due process of law under the Fifth Amendment." *Kent v. Dulles* 357 U.S. 116, 125 (1958). However, as the Supreme Court noted in *Zemel v. Rusk* (381 U.S. 1, 14 (1965)), "The fact that a liberty cannot be inhibited without due process of law does not mean that it can, under no circumstances, be inhibited."

In *Zemel v. Rusk*, the Supreme Court held that the Passport Act of 1926 authorized the Secretary of State to refuse to validate the passports of U.S. citizens for travel to Cuba and that such refusal by the Secretary of State is constitutionally valid, 22 U.S. Code, section 211a, the provision of the Passport Act of 1926 which was held to be a sufficiently definite authorization, merely provided: "The Secretary of State may grant and issue passports * * * under such rules as the President shall designate and prescribe for and on behalf of the United States * * *." The authorization that was upheld in the *Zemel* case is far more sweeping than the limited delegation of authority that would be made to the President by H.R. 16742. The *Zemel* case is in contrast to *Kent v. Dulles*, 357 U.S. 116 (1958), and *Dayton v. Dulles*, 357 U.S. 144 (1958), where the Court invalidated the Secretary of State's denial of a passport because the denial was based on the applicant's beliefs or associations and the authorizing statute did not give the Secretary of State authority to deny a passport on such grounds.

The restriction imposed by the Secretary of State in the *Zemel* case was upheld as sufficiently authorized by statute and the statute was held to contain sufficient standards to control the exercise of the Secretary's discretion. So also would the restriction authorized by H.R. 16742 be upheld. The restrictions in *Zemel* and in H.R. 16742, unlike those invalidated in *Kent* and *Dayton*, are based on objective considerations, e.g., the state of affairs in Cuba in late 1962 and the existence of armed conflict as provided in H.R. 16742. Neither the *Zemel* restriction nor

the restriction in H.R. 16742 is based on personal characteristics, beliefs, or associations of the would-be traveler.

In *U.S. v. Laub*, 385 U.S. 475, 1967, the Supreme Court held that Congress did not intend to make it a criminal offense to travel to a country, Cuba, to which travel had been restricted by the Secretary of State. The criminal statute in question, section 215(b) of the Immigration and Nationality Act of 1952 (8 U.S.C., section 1185(b)), was held not to be intended to make it a crime to travel in violation of an area restriction. Defendants in *Laub* had passports, but had not obtained the special endorsement thereon required by the Secretary of State for travel to Cuba. It is significant that the Supreme Court in *Laub* supported its reasoning by quoting from the report, "The Freedom to Travel," by the Special Committee To Study Passport Procedures of the Association of the Bar of the City of New York. This report stated:

The Committee has not discovered any statute which clearly provides a penalty for violation of area restrictions, and this seems to be a glaring omission if the United States is seriously interested in the establishment and enforcement of travel controls. Knowing violation of valid restrictions should certainly be subject to an effective sanction, which is not known the case. (385 U.S. at 486).

H.R. 16742 is well designed to remedy this defect. In a precise and limited matter, it provides the needed sanction for violation of the area restrictions it authorizes.

In *Lynd v. Rusk*, 389 Fed. 2d 940 (D.C. Cir., 1967) the court of appeals held that the Secretary of State had statutory authority to forbid a citizen to take his passport into a restricted area, but that he has no statutory authority to withhold or revoke a passport on the grounds of the applicant's refusal to give assurances that he will not travel without the passport to the restricted areas:

To recapitulate, we think the Secretary may deny a passport, or revoke one already extant, when the sole travel that is intended by the citizen is to an area that the Secretary has declared restricted. But the soft support of silence from Congress does not permit an inference that it has authorized executive curtailment of the constitutionally protected "liberty" of travel to non-restricted areas to achieve the objective of restraining travel to restricted areas. 389 F.2d at 947.

The court of appeals in *Lynd* held that a congressional intent to curtail the right to travel could not be based on "the soft support of silence from Congress." Therefore, said the court:

In short, we think the Secretary has authority to control the lawful travel of the passport, even though Congress has not given authority to control the travel of the person. 389 F.2d at 947.

But the restrictions authorized by H.R. 16742 and the criminal penalties for their violation are not based on "the soft support of silence from Congress." They are based on an explicit congressional intent to authorize the President to forbid, subject to criminal penalty, travel to a specifically limited type of country or area, i.e., one whose military forces are engaged in armed conflict with the military forces of the United States. The authorization is not limited by the traveler's possession of a passport or lack of it. The congressional intent is clear. The bill is specific. It contains adequate standards to govern the Presidential discretion and it is entirely reasonable and constitutional.

In *Zemel v. Rusk*, the Supreme Court emphasized that the right to travel is susceptible of limitation:

The right to travel *within* the United States is of course also constitutionally protected, cf. *Edwards v. California*, 314 U.S. 160. But that freedom does not mean that areas ravaged by flood, fire or pestilence cannot be quarantined when it can be demonstrated that unlimited travel to the area would directly and materially interfere with the safety and welfare of the area or the Nation as a whole. * * * That the restriction which is challenged in this case is supported by the weightiest considerations of national security is perhaps best pointed up by recalling that the Cuban missile crisis of October 1962 preceded the filing of Appellant's complaint by less than 2 months. 381 U.S. at 15-16. (Emphasis in original.)

In the same opinion the Court stated that—

the Secretary has justifiably concluded that travel to Cuba by American citizens might involve the Nation in dangerous international incidents, and that the Constitution does not require him to validate passports for such travel. [381 U.S. at 15.]

If travel can be prohibited in "areas ravaged by flood, fire or pestilence," if passports to Cuba can be refused in the wake of the Cuban missile crisis in 1962, which did not even involve any overt hostility, it would seem plain that travel might legitimately be forbidden to, in, or through nations that are actively engaged in open combat with the military forces of the United States. To deny Congress the right to authorize the President to impose such restrictions under such limited terms and conditions as are contained in H.R. 16742, would be a gross infringement upon the congressional prerogative.

An additional reason for concluding that the travel restrictions which would be authorized by H.R. 16742 would be valid, is that the imposition of such restrictions would involve the Congress and President working together in the crucial area of national security and foreign affairs. In *Youngstown Sheet & Tube Co. v. Sawyer*, 353 U.S. 579, 1952, Justice Jackson said in a concurring opinion:

When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum for it includes all that he possesses in his own right plus all that Congress can delegate.

Significantly, the Supreme Court in the leading case of *U.S. v. Curtiss-Wright Export Corporation*, 299 U.S. 304 (1936) upheld a Presidential arms embargo imposed pursuant to congressional authorization and stated:

It is important to bear in mind that we are here dealing not alone with an authority vested in the President by an exertion of legislative power, but with such an authority plus the very delicate, plenary and exclusive power of the President as the sole organ of the Federal Government in the field of international relations * * *.

The congressional delegation of authority contained in H.R. 16742 would be employed by the President in this delicate field of national security and foreign relations. While even in this field the exercise of congressional and Presidential authority must be in subordination to the Constitution, nevertheless it is significant that H.R. 16742 would operate precisely in this field where the combined congressional and Presidential powers, acting together, has been given the greatest latitude by the courts.

In conclusion, it is fair to say that H.R. 16742 is a reasonable and constitutional delegation of authority to the President.

Mr. Donald G. Sanders
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Committee on Internal Security
309 Cannon House Office Building
Washington, D. C. 20515

Dear Mr. Sanders:

Pursuant to our conversation, I am forwarding the
enclosed memorandum on the treason and sedition laws.

I hope that this material will be useful to you.

Sincerely,

A. WILLIAM OLSON
Assistant Attorney General

Encl
a/s

(7625)

Memorandum of Law Concerning
Treason (18 U.S.C. 2381) and
Sedition (18 U.S.C. 2387, 2388)

Treason (18 U.S.C. 2381)

Title 18, United States Code, Section 2381, provides that:

Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason. . . .

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 carefully define 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. 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.

The Constitution of the United States (Art. III, Sec. 3, cl. 1), as well as, the statutory provision relating to treason (Title 18, United States Code, Section 2381) specifically provide that treason shall consist only (1) in levying war against the United States or, (2) in adhering to enemies of the United States, giving them aid and comfort. Unless the activities in question constitute making war against the United States or the giving of aid and comfort to an "enemy," that is, a foreign power with whom we are in a state of at least open hostilities if not war^{1/}, the

^{1/} It would appear that the treason statute would be applicable when the United States is engaged in open hostilities, even in the absence of a declaration of war. In the charge to the jury, Mr. Justice Field in U. S. v. Greathouse, 26 Fed. Cas. 18, stated:

crime of treason is not applicable. Thus, the Constitution has placed specific limitations on the crime of treason and such provisions were inserted to prevent the possibility of extension of treason to offenses of minor importance. The crime of treason, moreover, was never to be extended by construction to doubtful cases. Ex Parte Bollman, 4 Crouch 75

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 convictions disloyal to this country's policy or interest, but so long as he commits no act of aid and comfort to the enemy,

^{1/}Footnote continued from preceding page

"The term 'enemies' as used in the second clause according to its settled meaning at the time the constitution was adopted applies only to the subjects of a foreign power in a state of open hostility with us."

there is no treason. On the other hand, a citizen may take actions which do aid and comfort the enemy --making a speech critical of the government or opposing its measures, profiteering, striking in defense plants or essential work, and the hundred other things which impair our cohesion and diminish our strength-- but if there is no adherence to the enemy in this, if there is no intent to betray, there is no treason. (p. 29)

. . . to make treason the defendant not only must intend the act, but he must intend to betray his country by means of the act. (p. 31)

Sedition (18 U.S.C. 2387, 2388)

Congress enacted the first Sedition law in 1798, which law was very unpopular, provoked great resentment and expired of its own limitation in 1801. No additional Sedition legislation was enacted by the Congress until World War I, when conditions accompanying the war with Germany in 1917 resulted in the enactment of the Espionage Act of 1917. The language of the original Espionage Act of 1917 with respect to Sedition was incorporated into the 1940 edition of the United States Code, Title 50, U.S.C., Sections 33 and 34. When the Criminal Code was revised in 1948, Sections 33 and 34 of Title 50 were consolidated into Title 18, Section 2388.

The territorial applicability of the wartime Sedition statute, Section 2388, is limited by subsection 2388(d) to the "admiralty and maritime jurisdiction of the United States, and on the high seas, as well as, within the United States." (See: United States v. Powell, D.C. Cal. 1959, 156 F. Supp. 526; 171 F. Supp. 202)

Section 2388 is in effect divided into three parts:

- (a) "whoever . . . willfully makes or conveys false reports or statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies;"
- (b) "whoever . . . willfully causes or attempts to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States,"
- (c) "whoever . . . willfully obstructs the recruiting or enlistment service of the United States, to the injury of the service or the United States, or attempts to do so-"

Section 2388 is applicable when the United States is at war and, under Section 2391, the provisions of Section 2388 are made applicable during the current period of national emergency, which was proclaimed by President Truman on December 16, 1950.

Section 2387 is the peacetime sedition statute. It provides for the punishment of anyone who, with the intent to interfere with or impair the loyalty, morale, or discipline of the military or naval forces, advises, counsels, urges, or in any manner causes or attempts to cause insubordination, disloyalty, mutiny, or refusal of duty by any member of the Armed Forces, or distributes any written or printed matter to the same effect.

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 statutes. 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. In that case, Mr. Justice Holmes stated:

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. (249 U.S. at 52)

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 such doctrine, freedom of speech and of the press is susceptible of restriction 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 present date a "practical guidance" 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."

During World War II only one case, Hartzel v. United States, 322 U.S. 680, arose under the sedition statute to be decided by the Supreme Court. In this case, the defendant in 1942 wrote three articles condemning our wartime allies and urging that the war be converted into a racial conflict, and mailed the publication to 600 persons, including high-ranking military officers. The Supreme Court reversed a conviction for wilfully causing insubordination in the military forces on the ground that the intent required by the statute was not shown. In Hartzel it was established that two major elements are necessary to constitute an offense under the statute. The first, a subjective element, a specific intent, which springs from the statutory use of the word "willfully," 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." (322 U.S. at 686, 687) The Court in Hartzel found that the pamphlets distributed by the defendants contained "vicious and unreasoning attacks on one of our military allies, flagrant appeals to false and sinister racial theories and gross libels of the President," but contained nothing specifically intended to cause insubordination, disloyalty, etc. in the military forces or to obstruct the recruiting and enlistment service. The court ruled in the Hartzel case that ". . . while such iniquitous doctrines may be used under certain circumstances as vehicles for the purposeful undermining of the morale and loyalty of the armed forces, and those persons of draft age, they cannot by themselves be taken as proof beyond a reasonable doubt that petitioner had the narrow intent requisite to a violation of this statute." (322 U.S. at 687)

The most recent case under Section 2388 was United States v. Powell, 171 F. Supp. 202. The activities with which Powell and his two co-defendants were charged occurred in China and Korea during the Korean War. The Court in that case held that the Government's key evidence, which related to Powell's activities outside the United States, was inadmissible, as Section 2388 was not deemed to have extraterritorial application. As a consequence of the Court's ruling, it was necessary to dismiss the case.

The language of Section 2387, per se, does not contain any impediment to prosecutions under the section. Rather, as noted above, it is the stringent evidentiary requirements which make it difficult to establish violations of Section 2387. Generally, the same evidentiary problems also apply to Section 2388. However, the language of Section 2388 contains an additional impediment to prosecutions. It contains a geographic limitation in that it is made applicable "within the admiralty and maritime jurisdiction of the United States, and on the high seas, as well as within the United States." As indicated above, the Court in the Powell case held that this language precludes the applicability of Section 2388 to activities which occur in foreign countries.