

LAW AND SOCIETY

FREEDOM TO DISSENT: THE VIETNAM PROTESTS AND THE WORDS OF PUBLIC OFFICIALS

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[W]hen men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market That at any rate is the theory of our Constitution.†

—Mr. Justice Holmes

The constitution is the mandate of a sovereign people to its servants and representatives, and no one of them has a right to ignore or disregard its plain commands. Every officer, legislative and executive as well as judicial, is required by the constitution, as a condition of holding his office, to take a solemn oath to support it. It was not intended that the whole burden of that support should fall upon the judicial department. As a matter of fact it rests equally upon every department In a doubtful case the final responsibility is with the court, but in a case reasonably plain it is the duty of every officer to support it even though his act may have undesirable consequences to himself.‡

—Mr. Justice Rosenberg

Of the many problems posed by the conflict in Vietnam, not the least troublesome is one that has arisen in the United States. The increasing national involvement in the Vietnamese struggle has brought with it a corresponding increase in the breadth and militancy of the protests against our government's policies there. Government in turn has responded to these protests in a number of ways: with legislation; with investigation; and, most significantly for our purposes, with a variety of public statements directed at the propriety of protest itself. It is with this last form of response—

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† *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting).

‡ *John F. Jelke Co. v. Emery*, 193 Wis. 311, 321-22, 214 N.W. 369, 373 (1927).

as embodied in the official reports, speeches, and offhand comments of government officials—that we shall be concerned in this article.

Statements issued by government officials can perform an important educational function, for they furnish citizens with the information and ideas relevant to a rational examination of national policy. And, subject to limitations not relevant here, government officials are entitled to the same freedom of speech that private citizens enjoy. But there is another side of the coin. Such statements can also cause potential protesters to fear the consequences of openly expressing their views. Government touches the individual in many ways, and for that reason the attitudes of its officials are important: one may think twice before angering Presidents, Senators, prosecutors, selective service administrators, and others who have the power both to bestow favors and impose punishment.

In a more subtle fashion, too, the statements of government officials may deter dissent by either creating or reinforcing an atmosphere in which those who protest official policy find themselves exposed to various private sanctions: to the loss of friends, for example, and other forms of social ostracism; to denial of employment; to verbal abuse; and at times even to physical assault. This relationship between governmental statements and private sanctions was rather clearly suggested by events which occurred earlier this year. On March 5, 1966, newspapers reported the Attorney General's announcement that he had instituted proceedings to require the W.E.B. DuBois Club to register as a Communist-front organization.¹ The next day an angry crowd gathered in front of the DuBois office in Brooklyn.² One of those present, a member of a social club located a few doors away, said, "I didn't know what they were, till I read in the papers that they were Commies."³ Someone else shouted, "Kill the Commie bastards."⁴ When the youths within the DuBois office emerged, they were pelted with eggs, then attacked and beaten.⁵ On the same day, across the country in San Francisco, an explosion ripped the DuBois headquarters, scattering debris over nearby rooftops and shattering windows in a one-block area.⁶

Viewed against the basic values embodied in the Constitution, the potential consequences of such statements suggest the two problems with which this article deals. The first concerns the extent to which government officials, in issuing public statements, may be obliged to avoid those which are likely to deter dissent. It

is our thesis that officials, though they have the legal power to say what they want, ought nevertheless to exercise that power consistently with constitutional values. One set of values critical in this respect is that reflected in the protection the first amendment affords to speech, petition, and assembly. Similarly, given a causal relationship between official conduct and the invocation of private sanctions against such protest, the implications of our constitutional commitment to due process of law must also be examined. A consideration of these matters will suggest, we believe, the criteria by which the propriety of government's public pronouncements ought to be gauged. This brings us to the second problem: so gauged, have the statements in fact issued by government officials about the Vietnam protests been proper?

Before proceeding to these problems, however, it is important to relate the events that have given rise to them. Thus the first portion of this article presents a brief résumé of United States policy in Vietnam, followed by a more detailed description of the actions protesting this involvement and a survey of the private and public responses to those protests. No doubt events of this sort will go on as long as the war itself. Our descriptions, however, come to a close at the end of February 1966.

It may be just as well at this point for us to disclaim any personal involvement with the Vietnam protest movements.⁷ Our views on the merits of United States foreign policy have varied widely from time to time; and in any event, the questions discussed here in no way turn on the soundness of the government's policies in Vietnam. Rather, as we have suggested, they turn on the implications of constitutional values applicable to all dissent, wise and foolish alike.

I. WAR, PROTEST, AND RESPONSE

A. *The American Positions in Vietnam*⁸

1. THE BACKGROUND: THE FRENCH WAR WITH THE VIET MINH

After the Second World War, the French returned to their Indochinese colony intent on resuming their prewar status. The Viet

⁷ Along with a number of other law professors such as Dean William C. Warren of Columbia and Dean Louis H. Pollack of Yale, we both signed a letter to President Johnson opposing the use of draft reclassifications as a penalty for demonstrating against the war in Vietnam. N.Y. Times, Dec. 23, 1965, p. 1, col. 7, p. 4, cols. 4-5. Whatever the merits of the war or of demonstrating, we think it clear that draft reclassification or threats to take such action are improper.

⁸ Except where specific citations are given, all of the discussion of the American position in Vietnam is based on the following sources: COLUMBIA BROADCASTING SYSTEM, CBS NEWS SPECIAL REPORT—VIETNAM PERSPECTIVE (1965) [hereinafter cited as VIETNAM PERSPECTIVE]; FALL, VIET-NAM WITNESS 1953-66 (1966); LACOUTURE, VIETNAM: BETWEEN TWO TRUCES (1966); PRUDEN, VIETNAM: THE WAR (1965) (a *National Observer* newsbook); VIET-

¹ N.Y. Times, March 5, 1966, p. 1, cols. 6-7, p. 4, cols. 3-5.

² *Id.*, March 6, 1966, p. 53, col. 1.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Id.*, March 7, 1966, p. 15, col. 1 (city ed.).

Minh had other ideas. Led by Ho Chi Minh, a Vietnamese nationalist and Communist, the Viet Minh, in late 1946, began a war to win independence from France. The French responded by creating the state of Vietnam within the French Union and installed former emperor Bao Dai as chief of state. It was at this time that the United States began to supply Viet Nam with limited military and economic aid.

The war with the Viet Minh went badly for the French. The United States increased its military aid, but the French Army still was unable to cope with the Viet Minh's guerrilla tactics. In France the colonial war became increasingly unpopular. Hoping to turn the tide with a decisive victory, the French military command fortified Dien Bien Phu in northwestern Vietnam in an effort to tempt the Viet Minh into a conventional military battle. Accepting the challenge, the Viet Minh attacked the fortress in the spring of 1954. The French generals thought the terrain made it impossible to bring artillery to bear on the fortress, but they were wrong. As the battle turned against the French, the United States government debated sending troops to relieve the garrison, but finally decided to avoid involvement in an Asian land war.⁹ On May 8, 1954, the Viet Minh defeated the French at Dien Bien Phu. The French government fell, and a new premier who was willing to negotiate a settlement came to power.

The negotiations took place in Geneva under the chairmanship of Great Britain and the Soviet Union. Though invited, the United States refused to participate officially but did send observers.¹⁰ While the Geneva Conference on Indochina was in session, Bao Dai, the French-appointed chief of state, named Ngo Dinh Diem as premier of Vietnam.¹¹

NAM (Gettleman ed. 1965); THE VIET-NAM READER (Raskin & Fall ed. 1965); Carver, *The Faceless Viet Cong*, 44 FOREIGN AFFAIRS 347 (1966).

An excellent chronology of events in Vietnamese history can be found in THE VIET-NAM READER 377 (Raskin & Fall ed. 1965). A shorter but still useful chronology appears in *Saturday Review*, Dec. 18, 1965, pp. 18-19. While we have placed great reliance on this material, we have tried to use it all with appropriate caution. See, e.g., MADGE, *THE TOOLS OF SOCIAL SCIENCE* 75-119 (1965). For example, Senator Fulbright has pointed out that while Mr. Carver is a specialist on Vietnamese affairs who works for the American Central Intelligence Agency, his position and possible bias were not disclosed in the issue of *Foreign Affairs* that contained his article. N.Y. Times, April 30, 1966, p. 10, col. 6 (city ed.). On the other hand, M. Lacouture has known many of the leaders of the North Vietnamese government for a number of years and obviously admires them. Despite these indications of possible bias both the Lacouture book and the Carver article are useful if read critically.

⁹ See Roberts, *The Day We Didn't Go to War*, in THE VIET-NAM READER 57 (Raskin & Fall ed. 1965).

¹⁰ See Lancaster, *Power Politics at the Geneva Conference 1954*, in VIET-NAM 118 (Gettleman ed. 1965).

¹¹ LACOUTURE, *VIETNAM: BETWEEN TWO TRUCES* 12 (1966); *Saturday Review*, Dec. 18, 1965, pp. 18-19.

On July 21st the Geneva accords were signed by France and the victorious Viet Minh. These agreements provided that Vietnam was to be partitioned temporarily along the 17th parallel; the Viet Minh were to remove their forces from South Vietnam and the French theirs from the North; the North, of course, would be governed by the Viet Minh while it was assumed that the French would continue to control the South. Foreign military personnel and bases were to be limited and there was to be no increase in armaments. National elections, leading to the reunification of North and South Vietnam, were to be held by July 20, 1956. Finally, an International Control Commission was created to supervise the execution of the agreements.¹² The final declaration of the conference contained language which invited trouble:

7. The Conference declares that, so far as Vietnam is concerned, the settlement of political problems, effected on the basis of respect for the principles of independence, unity, and territorial integrity, shall permit the Vietnamese people to enjoy the fundamental freedoms, guaranteed by democratic institutions established as a result of free general elections by secret ballot. In order to ensure that sufficient progress in the restoration of peace has been made, and that all the necessary conditions obtain for free expression of the national will, general elections shall be held in July, 1956, under the supervision of an international commission composed of representatives of the Member States of the International Supervisory Commission, referred to in the agreement on the cessation of hostilities. Consultations will be held on this subject between the competent representative authorities of the two zones from July 20, 1955, onward.¹³

Neither Communists nor non-Communists were likely to agree on the meaning of these terms. The United States and the government of Ngo Dinh Diem did not join in the agreements. President Eisenhower said that the United States would accept them as the best of a bad bargain, but would not be bound by their terms.¹⁴

2. 1954 TO 1956: FAILURE TO HOLD ELECTIONS

After the Geneva accords the Diem government sought to assert control over the southern part of the country. Generally the situation was chaotic. Battles were fought against several religious sects which had their own armies. Tensions developed between the Roman Catholics, who controlled the government, and the Buddhists, who composed the country's largest religious group.

¹² Agreement on the Cessation of Hostilities in Vietnam (July 20, 1954), in VIETNAM 137-50 (Gettleman ed. 1965).

¹³ Final Declaration of the Geneva Conference (July 21, 1954), in VIETNAM 151, 152-53 (Gettleman ed. 1965).

¹⁴ N.Y. Times, July 22, 1954, p. 1, col. 8.

Hoping to create a stable situation and to contain Communist expansion in Southeast Asia, the United States decided to back the Diem government. On October 24, 1954, President Eisenhower wrote Premier Diem, promising that economic and military assistance would be given to South Vietnam if certain reforms were made.¹⁵ In early 1955 American military personnel began training the South Vietnamese Army, and in February the Southeast Asia Treaty Organization (SEATO) was formed.¹⁶ Arguably this treaty contained an American pledge to defend South Vietnam.¹⁷

Diem won his battles against the religious sects and their armies, and there followed a period of relative calm. In July he took a stand on national elections: first, he asserted that since his government had not signed the Geneva agreements, it was not bound by them; second, he stated that there could be no free elections in the North because of the nature of the Communist government, and as a result the conditions for elections under article 7 of the declaration of the conference had not been met; finally, he refused to discuss the situation with representatives of North Vietnam. In 1955 and 1956, both North and South accused each other of violating the Geneva agreements.¹⁸ Certainly United States military assistance ran counter to the terms of the accords unless it could be interpreted as no more than a replacement of existing personnel and equipment, or unless the obligations imposed by the agreements either did not apply to the United States or were excused because of violations by North Vietnam.¹⁹ On April 26, 1956, the French, who

¹⁵ 31 DEP'T STATE BULL. 735 (1954).

¹⁶ See Southeast Asia Treaty Organization: Response to the Communist Threat (September 1954), in *VIETNAM* 92-96 (Gettleman ed. 1965). Secretary of State Dulles viewed the Geneva agreements as a major setback of 1954 for United States foreign policy. The SEATO agreement was viewed as an effort to limit American losses. *N.Y. Times*, Jan. 1, 1955, p. 1, col. 1.

¹⁷ This argument was first introduced by Secretary of State Rusk in February 1966. See *id.*, Feb. 20, 1966, § 4, p. 1, col. 2.

¹⁸ See First and Second Interim Reports of the International Commission for Supervision and Control in Vietnam, in *VIETNAM* 166-72 (Gettleman ed. 1965); Fall, *How the French Got Out of Vietnam*, in *THE VIET-NAM READER* 81, 91-92 (Raskin & Fall ed. 1965).

¹⁹ The official position is:

The Accords prohibited the reinforcement of foreign military forces in Viet Nam and the introduction of new military equipment, but they allowed replacement of existing military personnel and equipment. Prior to late 1961 South Viet Nam had received considerable military equipment and supplies from the United States, and the United States had gradually enlarged its Military Assistance Advisory Group to slightly less than 900 men. These actions were reported to the ICC and were justified as replacements for equipment in Viet Nam in 1954 and for French training and advisory personnel who had been withdrawn after 1954.

As the Communist aggression intensified during 1961, with increased infiltration and a marked stepping up of Communist terrorism in the South, the United States found it necessary in late 1961 to increase substantially the numbers of our military personnel and the amounts and types of equipment introduced by this country into

were clearly bound by the Geneva agreements, left South Vietnam to Ngo Dinh Diem. Not surprisingly, July 20th of that year passed without all-Vietnamese elections. Many assert that had the elections been held, Ho Chi Minh would have won, although it also seems clear that at least a large minority of the South Vietnamese did not want a Communist government.

3. THE SECOND EISENHOWER AND THE KENNEDY ADMINISTRATIONS: GUERRILLA WARFARE AND RESPONSE BY PROXY

After 1956 the Diem government increased its efforts to suppress opponents and to impose the authority of Saigon on the rural areas. Some time after 1957 Diem's opponents responded to these efforts and the failure to hold all-Vietnamese elections with terror tactics: bombs were exploded in theaters in the larger cities, and in the rural areas district officials were tortured and killed. The degree to which this action was an invasion from North Vietnam, a revolution controlled and directed by the North, or a local revolution only aided by the North is a point of contention between the American government²⁰ and its critics.²¹ On one hand, the tactics of the guerrillas were consistent with the Communist "war of national liberation" strategy, and Ho Chi Minh had many followers in the South at the time of partition; on the other hand, many non-Communist opponents of Diem were involved. The Diem government sought to characterize all these opponents as Communists by labeling them the "Viet Cong" (which means Vietnamese Communist(s)).²²

South Viet Nam. These increases were justified by the international law principle that a material breach of an agreement by one party entitles the other at least to withhold compliance with an equivalent, corresponding, or related provision until the defaulting party is prepared to honor its obligations.

OFFICE OF THE LEGAL ADVISER, U.S. DEP'T OF STATE, *THE LEGALITY OF UNITED STATES PARTICIPATION IN THE DEFENSE OF VIET NAM* 29-31 (1966).

²⁰ See, e.g., U.S. Dep't of State, *Aggression From the North: The Record of North Vietnam's Campaign to Conquer South Vietnam* [the "White Paper"], in *THE VIET-NAM READER* 143 (Raskin & Fall ed. 1965).

²¹ See, e.g., I. Stone, *A Reply to the White Paper*, in *THE VIET-NAM READER* 155 (Raskin & Fall ed. 1965).

²² On the nature of the Viet Cong and the involvement of North Vietnam, compare LACOUTURE, *VIETNAM: BETWEEN TWO TRUCES* (1966), and Devillers, *Ngo Dinh Diem and the Struggle for Reunification in Vietnam*, in *VIETNAM* 210 (Gettleman ed. 1965), with Carver, *The Faceless Viet Cong*, 44 *FOREIGN AFFAIRS* 347 (1966), and Pike, *How Strong Is the NLF?*, *The Reporter*, Feb. 24, 1966, p. 20. See also FALL, *op. cit. supra* note 8, at 234.

While the paragraph in the text speaks of the serious faults of the Diem government and the terrorist tactics of its opponents in South Vietnam, perhaps it is appropriate to note some of the history of the government of North Vietnam. Bernard Fall reports:

Following the Geneva accords, the D.R.V.N. settled down to the task of transforming itself into a full-fledged "people's democracy." A "Population Classification Decree" issued in March, 1953, had divided the population into distinct social categories, and the regime now proceeded to eliminate all landlords by methods of force and

From 1956 to the present, American military support for the Diem government and its successors has progressively increased. During President Eisenhower's administration and the early part of President Kennedy's, American policy was to equip and train the South Vietnamese forces, but to let them do the actual fighting. By 1961 Americans were going into combat as advisors; in 1962 two United States Army air support companies were sent to Vietnam, increasing the total American military personnel there to 4,000. By the time of President Kennedy's death in 1963, the total had advanced to over 15,000.²³

4. THE JOHNSON ADMINISTRATION: ESCALATION BY BOTH SIDES

President Johnson took office shortly after Ngo Dinh Diem was assassinated and his government overthrown in a military coup. In the initial months of the Johnson administration, the South Vietnamese government proved to be unstable and the Viet Cong continued to defeat the South Vietnamese Army. The Johnson administration continued to increase the American military commitment. By July 1964 American forces in South Vietnam numbered 25,000, and they were participating significantly in the fighting.²⁴

In August North Vietnamese torpedo boats attacked American destroyers in the Gulf of Tonkin. In retaliation, American planes bombed the boats' bases in North Vietnam. In February 1965 the American base at Pleiku was attacked and heavy losses inflicted. It was reported that President Johnson saw this action as a test;²⁵ he responded by ordering regular bombing of military targets in North Vietnam.²⁶ American forces were openly fighting by June, and by the end of the year about 200,000 American soldiers had been sent to Vietnam.²⁷ During the fall of 1965, large numbers of North Vietnamese regulars began to appear in battles in the South.²⁸

terror reminiscent of the Chinese Communists—and with similar results. Exact figures remain unavailable, but the number of peasants killed during the North Vietnamese "land reform" drives from 1954 to 1956 is variously estimated at between 50,000 and 100,000.

This brutal policy led to the outbreak, in November, 1956, of a veritable peasant rebellion in Nghe-An Province—the same region which had been the seat of the pro-Communist peasant uprising of 1930. Ho [Chi Minh] stepped in . . . to save the unity of his movement In the ensuing "rectification of errors" campaign, tens of thousands of people were released from prison camps

Id. at 124. See also Carver, *supra* note 8, at 353-55.

²³ See the chronologies in *THE VIET-NAM READER* 377-93 (Raskin & Fall ed. 1965); *Saturday Review*, Dec. 18, 1965, pp. 18-19, 20.

²⁴ See the chronologies in *THE VIET-NAM READER* 393-96 (Raskin & Fall ed. 1965).

²⁵ *N.Y. Times*, Feb. 8, 1965, p. 1, col. 7.

²⁶ *Id.*, col. 8.

²⁷ *Id.*, Jan. 13, 1966, p. 1, col. 2.

²⁸ *THE VIET-NAM READER* 402 (Raskin & Fall ed. 1965).

The Johnson administration has explained its policy as the fulfillment of the commitment made by President Eisenhower in 1954,²⁹ as the fulfillment of its obligation to defend South Vietnam under the SEATO treaty,³⁰ as the containment of Communism in Asia,³¹ and as a test case of American ability to win a "war of national liberation"—a war waged by Communist-supported nationalists and fought with guerrilla tactics.³² In February 1965 the official view of the war was stated in a White Paper released by the State Department:

North Viet-Nam is carrying out a carefully conceived plan of aggression against the South. . . .

The people of South Viet-Nam have chosen to resist this threat. At their request, the United States has taken its place beside them in their defensive struggle.

. . . the United States . . . will not abandon friends who want to remain free. It will do what must be done to help them.³³

Both sides have talked about a negotiated peace at various times. In August 1964 United Nations Secretary General U Thant told the United States that the North Vietnamese were willing to discuss the possibility of ending the war; but our government, feeling that it lacked bargaining power at that point, declined the offer.³⁴ In April 1965 President Johnson offered "unconditional" discussions to North Vietnam and a one-billion-dollar aid program for Southeast Asia.³⁵ The degree to which the American offer was unconditional is a subject of debate.³⁶ In May, to indicate American good faith, the bombing of North Vietnam was halted for five days; but the American government perceived no satisfactory signal of an intention to negotiate and the bombing was resumed.³⁷ Many asserted that the five-day suspension was not long enough to prompt negotiations.³⁸ The bombing was again stopped for the Christmas truce and was not resumed for thirty-seven days.³⁹ During that time

²⁹ *VIETNAM PERSPECTIVE* 5 (interview with Secretary of State Rusk).

³⁰ *N.Y. Times*, Feb. 20, 1966, § 4, p. 1, col. 2.

³¹ *VIETNAM PERSPECTIVE* 17-19 (interview with Secretary of State Rusk).

³² Rusk, *American Foreign Policy and International Law*, in *VIETNAM* 330, 331-34 (Gettleman ed. 1965).

³³ U.S. Dep't of State, *Aggression From the North: The Record of North Vietnam's Campaign to Conquer South Vietnam* [the "White Paper"], in *THE VIET-NAM READER* 143, 155 (Raskin & Fall ed. 1965).

³⁴ See FALL, *op. cit. supra* note 8, at 313, for a discussion of the incident.

³⁵ Johnson, *American Policy in Viet-Nam*, in *THE VIET-NAM READER* 343 (Raskin & Fall ed. 1965).

³⁶ Morgenthau, *We Are Deluding Ourselves in Vietnam*, in *VIETNAM* 365 (Gettleman ed. 1965).

³⁷ *VIETNAM PERSPECTIVE* 17.

³⁸ See, e.g., *N.Y. Times*, Dec. 4, 1965, p. 1, col. 8.

³⁹ See, e.g., *Newsweek*, Feb. 14, 1966, pp. 17-22.

President Johnson waged his "peace offensive" by conveying the American position to governments around the world and making contacts with the North Vietnamese.⁴⁰ On January 31, 1966, American planes again resumed their raids on North Vietnam because there had been only a negative reaction from Ho Chi Minh's government and the rebels in the South.⁴¹ At the same time, the American government asked the United Nations to prompt the resumption of the Geneva Conference so that negotiations would start.⁴² The war continues.

B. The Protests

1. THE DISSENTERS: REASONS AND IDENTITY

At various times during the war in Vietnam, some Americans have opposed or criticized our government's policies there. The arguments which have characterized this dissent have been many, and we can do little more than sketch them here. Most of the critics of our policy have based their objections to the war on one or another, or some combination of, the following contentions:

(1) This war offends the moral sense of Americans because of the way in which it is fought. The United States, for example, has used weapons which kill or injure in horrifying ways. The victims have included many innocent bystanders—old people, women, and children. All sides have mistreated prisoners of war.⁴³

(2) All wars are morally wrong; military force should never be used.⁴⁴

(3) South Vietnam, by refusing to hold national elections, and the United States, by encouraging this refusal, have violated the Geneva agreements of 1954.⁴⁵

(4) The United States, until 1966, violated its obligations to invoke the assistance of the United Nations in settling conflicts which endanger world peace.⁴⁶

(5) The policy of the United States has in effect blocked elec-

⁴⁰ See, e.g., N.Y. Times, Jan. 1, 1966, p. 1, cols. 1, 2, 4, 5; *id.*, Jan. 2, 1966, p. 22, cols. 1, 2, 5.

⁴¹ See, e.g., Newsweek, Feb. 14, 1966, pp. 17-22.

⁴² *Ibid.*

⁴³ See, e.g., FALL, *op. cit. supra* note 8, at 295, 300-03; VIETNAM HEARINGS—VOICES FROM THE GRASS ROOTS 136-37 (1965) (transcript of unofficial hearings held by Congressman Robert W. Kastenmeier in Madison, Wis., July 30-31, 1965).

⁴⁴ See, e.g., *id.* at 92, 100.

⁴⁵ See, e.g., *id.* at 27; N.Y. Times, May 17, 1965, p. 30, cols. 1, 4 (city ed.) (statement of Dr. George Kahin at National Teach-In).

⁴⁶ See, e.g., VIETNAM HEARINGS—VOICES FROM THE GRASS ROOTS, *op. cit. supra* note 43, at 17-18, 84-85, 89. See also Memorandum of Law of Lawyers' Comm. on American Policy Toward Vietnam, reprinted in the *Congressional Record* at the request of Senators Wayne Morse and Ernest Gruening, 111 CONG. REC. 24010, 24011-18 (daily ed. Sept. 23, 1965).

tions which the Communists would probably win; this, in turn, is seen as inconsistent with the principle of self-determination to which this nation subscribes.⁴⁷

(6) The governments we have supported in South Vietnam have been dictatorial and have represented the upper or privileged classes; as a result, our efforts have prevented a social and political revolution that would serve the best interests of the vast majority of the Vietnamese people.⁴⁸

(7) Negroes and other members of American underprivileged groups have supplied a disproportionate share of the fighting men in Vietnam; at the same time, the war has diverted attention and resources needed to combat poverty and discrimination at home.⁴⁹

(8) The risks of escalation and a general nuclear war are too great to justify whatever gains might be realized through military action in Vietnam.⁵⁰

(9) Before engaging in what amounts to a war, the government should supply full and accurate information to the public to facilitate intelligent discussion of the issues, and the President should obtain a declaration of war from Congress; yet without doing these things, President Johnson has committed more and more troops to South Vietnam and has ordered the bombing of North Vietnam.⁵¹

(10) Vietnam is the wrong place to fight to contain Communism because the North Vietnamese and the Chinese enjoy great logistical advantages; moreover, our superior weapons are of little use in a guerrilla war.⁵²

Those opposing the war have also advanced a variety of proposals concerning what should be done in Vietnam. Some have urged that all forces be withdrawn immediately.⁵³ Others want a negotiated settlement and call for discussions with North Vietnam and the Viet Cong leading to a coalition government for South Vietnam which might include the Communists.⁵⁴ Some have proposed

⁴⁷ Wisconsin State Journal (Madison, Wis.), April 2, 1965, p. 1, col. 6, at 2, col. 8.

⁴⁸ VIETNAM HEARINGS—VOICES FROM THE GRASS ROOTS, *op. cit. supra* note 43, at 27; STAFF OF INTERNAL SECURITY SUBCOMM., SENATE COMM. ON THE JUDICIARY, 89TH CONG., 1ST SESS., THE ANTI-VIETNAM AGITATION AND THE TEACH-IN MOVEMENT 141, 200 (Comm. Print. 1965) [hereinafter cited as STAFF STUDY].

⁴⁹ See, e.g., N.Y. Times, March 10, 1966, p. 4, cols. 4-5 (city ed.).

⁵⁰ VIETNAM HEARINGS—VOICES FROM THE GRASS ROOTS, *op. cit. supra* note 43, at 32, 36, 51.

⁵¹ See, e.g., *id.* at 68.

⁵² See, e.g., Morgenthau, *We Are Deluding Ourselves in Viet-Nam*, in THE VIET-NAM READER 37 (Raskin & Fall ed. 1965); N.Y. Times, Feb. 9, 1966, p. 1, col. 7, at 14, col. 1 (city ed.) (retired General James M. Gavin).

⁵³ VIETNAM HEARINGS—VOICES FROM THE GRASS ROOTS, *op. cit. supra* note 43 at 109.

⁵⁴ Capital Times (Madison, Wis.), Feb. 23, 1966, p. 11, cols. 1, 2-3 (statement of Senator Robert Kennedy); see also Newsweek, March 7, 1966, pp. 24-25.

that we defend enclaves which we now control, but abandon efforts to fight outside of them or to make military gains by bombing.⁵⁵ Some have talked of a United Nations military force which would stop the fighting and keep the peace.⁵⁶

The great majority of those who have opposed United States policy in Vietnam during the past few years are middle-class adults who consider themselves part of the mainstream of American society.⁵⁷ In many instances they are opposing an administration which they helped elect by working for the Democratic Party in the 1964 elections.⁵⁸ Many are leaders of local churches and synagogues.⁵⁹ Many are college teachers.⁶⁰ A number are prominent people: for example, writers Saul Bellow⁶¹ and Arthur Miller,⁶² and actors Robert Ryan⁶³ and Tony Randall.⁶⁴ Dr. Benjamin Spock,⁶⁵ undoubtedly this nation's best-known pediatrician, has vigorously opposed American policy. Recently Senator J. William Fulbright⁶⁶ joined Senators Morse⁶⁷ and Gruening⁶⁸ in their long-standing opposition to the war in Vietnam.

Then there are the student groups which have organized and participated in many of the protests. One writer has described them in this fashion:

On many campuses, all factions of the peace movement are

⁵⁵ N.Y. Times, Feb. 9, 1966, p. 1, col. 7, at 14, col. 1 (city ed.) (retired General James M. Gavin).

⁵⁶ VIETNAM HEARINGS—VOICES FROM THE GRASS ROOTS, *op. cit. supra* note 43, at 17-18.

⁵⁷ For example, the *New York Times* said of those who participated in the November 27, 1965, march on Washington, D.C., "Most of the marchers appeared to be middle-class whites . . . and they far outnumbered the student groups and the radical left." N.Y. Times, Nov. 28, 1965, § 1, p. 87, col. 4.

⁵⁸ See, e.g., Statement of Wisconsin Americans for Democratic Action, in VIETNAM HEARINGS—VOICES FROM THE GRASS ROOTS, *op. cit. supra* note 43, at 77.

⁵⁹ See, e.g., N.Y. Times, Feb. 15, 1966, p. 2, cols. 3-4 (city ed.); *id.*, Feb. 17, 1965, p. 1, col. 8, p. 2, cols. 5-8 (city ed.); *id.*, Feb. 20, 1966, § 1, p. 2, cols. 4-6; *id.*, Feb. 23, 1966, p. 15, cols. 3-5 (city ed.); *id.*, March 20, 1966, § 4, p. 8, cols. 1-2.

⁶⁰ Over 1,200 college teachers were listed as sponsors of the National Teach-In. NATIONAL TEACH-IN ON THE VIETNAM WAR 10-35 (undated pamphlet distributed as a program at the National Teach-In, May 15, 1965).

⁶¹ See the full-page newspaper ad listing sponsors of the November 27, 1965, march on Washington, D.C., N.Y. Times, Nov. 23, 1965, p. 28, cols. 1-8 (city ed.).

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ Severeid, *Why Our Foreign Policy Is Failing—An Exclusive Interview With Senator Fulbright*, Look, May 3, 1966, p. 23.

⁶⁷ For a recent statement by Senator Morse, see Morse, *American Policy in Viet-Nam*, in THE VIET-NAM READER 281 (Raskin & Fall ed. 1965).

⁶⁸ For a recent statement by Senator Gruening, see The Progressive, Feb. 1966, p. 15.

united in an Independent Committee to End the War in Vietnam—a frail, tangled coalition of forces and personalities that includes groups ranging from religious pacifists to militant supporters of the Vietcong; sociological types ranging from children of left-wingers of the thirties to what one student called "some of your preppier New Englanders, who are in it for moral reasons;" a few students who simply hope to evade the draft; a few representatives of national, local, and ad-hoc committees; a few hard-line members of the Young Socialist Alliance (Y.S.A.), who are commonly referred to as Trotskyists and are known within the movement, familiarly, as the "Trots;" and a new breed of lonely hangers-on and demonstration enthusiasts who might be described as Sunday Outing Radicals.⁶⁹

2. THE TACTICS AND TECHNIQUES OF DISSENT

At this point we shall sketch a short history of the protests against American policy in Vietnam and catalogue the tactics used by the dissenters. In this connection, four events deserve special emphasis because of the responses they prompted: the National Teach-In held in Washington, D.C., in May 1965; the nationwide protests held on October 15th and 16th; the march on Washington held on November 27, 1965; and the Fulbright hearings of February 1966.

The first protests were made in 1954 when Democrats in the United States Senate opposed going to the aid of the French at Dien Bien Phu.⁷⁰ Senator Fulbright stated that we had no right to intervene on behalf of a colonial power,⁷¹ and then Senator John F. Kennedy joined in this opposition.⁷² What was probably the first actual protest demonstration occurred in July of that year when four Vietnamese students who were studying in the United States picketed the White House to protest the partition of their country.⁷³ But apart from these efforts, little else occurred until the end of 1963. Since then, as the war has escalated, so have the expressions of dissent. They have become progressively more organized and have received an increasing amount of publicity.

In September 1963 Senator Church offered a resolution opposing continued aid to the Diem government;⁷⁴ and an advertisement protesting American involvement, representing the views of 17,358 clergymen of all faiths, appeared in the *New York Times*.⁷⁵ In the months that followed, some student groups and various peace organizations took up the cause of opposition to American policies.

⁶⁹ The New Yorker, Dec. 11, 1965, p. 195.

⁷⁰ N.Y. Times, Oct. 18, 1954, p. 19, col. 2.

⁷¹ *Id.*, July 12, 1954, p. 3, cols. 3-5.

⁷² *Id.*, Sept. 22, 1963, § 4, p. 11, col. 1.

⁷³ *Id.*, July 21, 1954, p. 3, cols. 1, 2, 5-7.

⁷⁴ *Id.*, Sept. 11, 1963, p. 1, col. 4.

⁷⁵ *Id.*, Sept. 15, 1963, § 4, p. 5, cols. 1-8.

In March 1964 students at the University of Wisconsin picketed a speech given in Madison by Secretary of State Dean Rusk.⁷⁶ The Columbia University chapter of the Congress of Racial Equality (CORE) sent a petition to President Johnson opposing any military action against North Vietnam and urging him to support the French proposal to neutralize Vietnam.⁷⁷ In April FBI agents seized a Viet Cong propaganda film which some Haverford College students had planned to show at a protest meeting.⁷⁸ A group of eighty-seven students stated in an advertisement that they would refuse to fight in South Vietnam.⁷⁹ On May 2nd about 400 college students held a rally in New York protesting the United States participation in the war;⁸⁰ the group continued thereafter as an organization known as the May 2nd Movement.⁸¹ Other demonstrations, rallies, and picketing were held at prominent places during the rest of 1964.⁸²

At the beginning of 1965, Senator Morse called the United States policy in Vietnam "bankrupt" and asserted that it violated the United Nations Charter and the Geneva accords.⁸³ Norman Thomas, the Socialist leader, urged neutralization and withdrawal of American forces.⁸⁴ Quincy Wright, the noted international relations scholar, urged the United States to respect international obligations and permit nations to follow a policy of self-determination.⁸⁵ The bombing of North Vietnam, which began in February, prompted greatly increased activity. Students on college campuses began wearing buttons symbolizing opposition to the war. Two thousand pickets, sponsored by the Women's Strike for Peace, demonstrated in front of the United Nations.⁸⁶ An organization called Youth Against War and Fascism conducted a protest march in front of the United States Mission to the United Nations.⁸⁷ Demonstrations in front of the United Nations,⁸⁸ the White House,⁸⁹ and other

⁷⁶ *Id.*, March 7, 1964, p. 1, col. 8.

⁷⁷ *Id.*, March 11, 1964, p. 36, col. 3. A few days later a military building in New York City was picketed to protest United States participation in the fighting in Vietnam. *Id.*, March 15, 1964, p. 72, col. 5.

⁷⁸ *Id.*, April 22, 1964, p. 9, col. 6. See also *id.*, April 15, 1964, p. 5, col. 5.

⁷⁹ *Id.*, April 26, 1964, p. 20, col. 3.

⁸⁰ *Id.*, May 3, 1964, p. 5, col. 1.

⁸¹ See, e.g., LUCE, *THE NEW LEFT* 110-17 (1966); Munk, *Most Radical Youths Nonsocialist—New Left: The Ideological Bases*, in STAFF STUDY 217, 218-19; Lens, *The New Left—and the Old*, *The Progressive*, June 1966, p. 19.

⁸² See, e.g., N.Y. Times, Aug. 7, 1964, p. 3, col. 1; *id.*, Aug. 9, 1964, p. 1, col. 2; *id.*, Aug. 16, 1964, p. 1, col. 2; *id.*, Oct. 4, 1964, p. 5, col. 1; *id.*, Dec. 15, 1964, p. 18, col. 5; *id.*, Dec. 20, 1964, p. 52, col. 2; *id.*, Dec. 26, 1964, p. 4, col. 4.

⁸³ *Id.*, Jan. 6, 1965, p. 8, col. 4.

⁸⁴ *Id.*, Jan. 3, 1965, § 4, p. 8, col. 5.

⁸⁵ *Id.*, Jan. 31, 1965, § 4, p. 8, col. 5.

⁸⁶ *Id.*, Feb. 14, 1965, p. 5, col. 1.

⁸⁷ *Ibid.*

⁸⁸ See, e.g., *id.*, Feb. 13, 1965, p. 7, cols. 1-4; *id.*, Feb. 20, 1965, p. 2, cols. 3, 5-6; *id.*, March 6, 1965, p. 2, col. 2.

⁸⁹ See, e.g., *id.*, Feb. 11, 1965, p. 6, col. 4; *id.*, Feb. 21, 1965, p. 4, col. 1.

places⁹⁰ became more frequent. A large number of college professors used newspaper advertisements to assert their opposition to American policy.⁹¹ The Central Conference of American Rabbis urged President Johnson to negotiate through the United Nations.⁹²

In March 1965 thirteen professors at the University of Michigan, seeking a more effective way to express their dissent, announced a plan to cancel their classes in protest against the war.⁹³ Governor George Romney attacked the proposal,⁹⁴ and the state senate passed a resolution which declared that the action would be "a clear violation of their duties as instructors at a State University to their students and to the people of the State of Michigan . . .".⁹⁵ After much informal discussion, the original thirteen professors, now joined by many others, held an all-night meeting at which it was decided that on March 24th the professors would conduct a "teach-in."⁹⁶ On that day instead of cancelling classes about 200 faculty members supported anti-war-in-Vietnam rallies, speeches, and panel discussions which extended over a twelve-hour period and occupied four auditoriums.⁹⁷

From March to July, teach-ins were held at many schools. Wisconsin,⁹⁸ Columbia,⁹⁹ Pennsylvania,¹⁰⁰ Temple,¹⁰¹ Swarthmore,¹⁰² Carlton,¹⁰³ Rutgers,¹⁰⁴ Princeton,¹⁰⁵ Oregon,¹⁰⁶ Yale,¹⁰⁷ Illinois,¹⁰⁸ Berkeley,¹⁰⁹ and Harvard,¹¹⁰ among others, saw this kind of faculty

⁹⁰ See, e.g., *id.*, Feb. 8, 1965, p. 16, cols. 1-3, 5; *id.*, Feb. 21, 1965, p. 4, col. 1; *id.*, Feb. 23, 1965, p. 9, col. 1; *id.*, March 27, 1965, p. 3, col. 3.

⁹¹ See, e.g., *id.*, Feb. 16, 1965, p. 14, cols. 3, 4, 8, p. 31, col. 1; *id.*, Feb. 28, 1965, § 4, p. 10, col. 3; *id.*, March 1, 1965, p. 17, col. 5; *id.*, March 4, 1965, p. 9, col. 1.

⁹² *Id.*, March 7, 1965, p. 3, col. 5.

⁹³ STAFF STUDY 17.

⁹⁴ N.Y. Times, March 17, 1965, p. 8, col. 1.

⁹⁵ STAFF STUDY 18.

⁹⁶ The notion of a "strike," while sufficiently dramatic, was so controversial that it diverted attention from the basic aim of the protest group. During a meeting on the night of March 17 they were battling around alternative ideas such as night classes or a vigil, when Anthropologist Sahlins suddenly interrupted the discussion. "Hold everything. I've got it," he shouted. "They say we're neglecting our responsibilities as teachers. Let's show them how responsible we feel. Instead of teaching out, we'll teach in—all night." *Id.* at 32; see also N.Y. Times, May 9, 1965, p. 2, col. 3 (city ed.).

⁹⁷ *Id.*, March 25, 1965, p. 9, col. 1.

⁹⁸ *Ibid.*

⁹⁹ *Id.*, March 27, 1965, p. 29, col. 2.

¹⁰⁰ *Id.*, April 8, 1965, p. 2, col. 5.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ *Id.*, April 24, 1965, p. 2, col. 3.

¹⁰⁵ *Id.*, May 5, 1965, p. 16, col. 1.

¹⁰⁶ *Id.*, May 9, 1965, § 6 (Magazine), p. 25.

¹⁰⁷ *Id.*, May 30, 1965, p. 39, col. 6.

¹⁰⁸ *Id.*, May 16, 1965, p. 62, cols. 2, 6, 8.

¹⁰⁹ *Id.*, May 23, 1965, p. 26, col. 1.

action. It would be difficult to describe a typical teach-in, but the atmosphere may be suggested by a look at one held at the University of Wisconsin on April 1st. It began at two o'clock in the afternoon and ended some time after midnight.¹¹¹ It was held in several large lecture halls in the Social Science building of the university.¹¹² There were signs on the wall of one room reading, "Out of Vietnam by Easter," "End Gas Warfare," and "In Your Heart You Know It Is Wrong."¹¹³ Antiwar buttons and literature were distributed.¹¹⁴ The campus newspaper reported that the crowd ranged from 300 early in the afternoon to 1,600 late in the evening;¹¹⁵ a local paper hostile to the event estimated the peak crowd at 900.¹¹⁶ CBS televised excerpts on the network's evening news program.¹¹⁷

All told, twenty-six professors participated.¹¹⁸ There were at least ten from the history department and four from sociology, two from philosophy and two from the Humanities Institute. One law professor moderated a panel discussion. While many of the teachers were only assistant professors, at least three or four were among the most distinguished senior professors at the university.

What happened at the ten-hour affair? Eighteen of the participants lectured on "a wide range of topics ranging from U.S. foreign policy to French existentialist philosophy,"¹¹⁹ and eight others participated in two panel discussions.¹²⁰ Basically, all the speakers opposed the war; and there was no spokesman for the administration.¹²¹ A wide variety of positions were taken. For example, one professor said that America had no clear objective in Vietnam; there was no border to close and no permanent government to support; given free choice, South Vietnam would prefer Communism; the United States should negotiate with the North and, he added, hold the free elections it advocates for East and West Germany.¹²² Another professor argued that the United States was losing the war and that nothing short of the use of nuclear weapons would

¹¹⁰ *Id.*, July 16, 1965, p. 17, col. 5.

¹¹¹ *Daily Cardinal* (Madison, Wis.), April 2, 1965, p. 1, col. 4.

¹¹² *Ibid.*

¹¹³ *Wisconsin State Journal* (Madison, Wis.), April 2, 1965, § 1, p. 1, col. 6, at 2, col. 8.

¹¹⁴ *Id.* at 1, cols. 6-8.

¹¹⁵ *Daily Cardinal* (Madison, Wis.), April 2, 1965, p. 1, col. 4.

¹¹⁶ *Wisconsin State Journal* (Madison, Wis.), April 2, 1965, § 1, p. 1, col. 6.

¹¹⁷ *Daily Cardinal* (Madison, Wis.), April 2, 1965, p. 1, cols. 4-5.

¹¹⁸ *Ibid.*; *Capital Times* (Madison, Wis.), April 2, 1965, p. 1, col. 4, p. 4, col. 1; *Wisconsin State Journal* (Madison, Wis.), April 2, 1965, § 1, p. 1, cols. 6-8, p. 2, col. 8.

¹¹⁹ *Capital Times* (Madison, Wis.), April 2, 1965, p. 1, col. 4.

¹²⁰ *Daily Cardinal* (Madison, Wis.), April 2, 1965, p. 1, col. 4.

¹²¹ *Capital Times* (Madison, Wis.), April 2, 1965, p. 1, cols. 4, 6.

¹²² *Wisconsin State Journal* (Madison, Wis.), April 2, 1965, § 1, p. 1, col. 6, at 2, col. 8.

make any difference.¹²³ Another said that the entire East Asian situation should be discussed with Red China.¹²⁴ Still another asserted that "this is an age of overkill and of underthought." He contended that America's attitude reflected a "scorched earth policy" which was "an assault on beloved earth belonging to other people."¹²⁵ One, who had some involvement with the civil rights movement, announced that the affair was not really a teach-in at all, but rather Wisconsin's "first Freedom School." He received, it was reported in the campus newspaper, a five-minute standing ovation in response to this remark.¹²⁶

Undoubtedly, the majority of the audience heard from the speakers what they wanted to hear. There were relatively few in the audience who supported American policy in Vietnam.¹²⁷ A locally prominent member of patriotic groups tried to question one of the speakers. The local newspaper which opposed the teach-in reported that he was "beaten down";¹²⁸ the other paper, which had some sympathy for the event, reported that he was handled quietly.¹²⁹ Some students appeared in their ROTC uniforms, worn apparently to show support for American policy.¹³⁰ In so far as the University of Wisconsin teach-in was a rally for protesters and not a balanced debate, it was probably typical of most teach-ins. But the lack of administration supporters on the platform and in the audience may have been caused in part by the fact that another rally, in support of the war, was going on at the same time in another university building.¹³¹ Reports from other teach-ins indicate that some efforts have been made to have the administration's case presented.¹³² But in most instances speakers supporting the government have addressed predominately hostile audiences.¹³³

At the University of Michigan the professors who had participated in the original teach-in created a group called the Inter-University Committee for a Public Hearing on Vietnam in order to continue and promote activities such as teach-ins.¹³⁴ Some time in late April Richard Mann, a professor of psychology and executive

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ *Daily Cardinal* (Madison, Wis.), April 2, 1965, p. 1, col. 4, at 15, col. 2.

¹²⁶ *Id.* col. 1.

¹²⁷ *Capital Times* (Madison, Wis.), April 2, 1965, p. 1, cols. 4, 6.

¹²⁸ *Wisconsin State Journal* (Madison, Wis.), April 2, 1965, § 1, p. 1, cols. 6, 8.

¹²⁹ *Capital Times* (Madison, Wis.), April 2, 1965, p. 1, cols. 4, 6, p. 4, col. 1.

¹³⁰ *Wisconsin State Journal* (Madison, Wis.), April 2, 1965, § 1, p. 1, col. 6, at 2, col. 8.

¹³¹ *Daily Cardinal* (Madison, Wis.), April 2, 1965, p. 1, col. 1.

¹³² See *STAFF STUDY* 21-33.

¹³³ *Ibid.*

¹³⁴ *N.Y. Times*, May 1, 1965, p. 3, col. 6 (city ed.).

secretary of the Inter-University Committee, wrote McGeorge Bundy, President Johnson's chief assistant on foreign affairs, and invited him to debate in a national teach-in to be held in Washington, D.C., on May 15th.¹³⁵ Bundy accepted, which was something of a surprise since he had refused a similar offer from a group of professors at Washington University in St. Louis shortly before.¹³⁶ However, the academic criticism had been growing, and the State Department's "truth teams" which had been sent to various college campuses had failed to quiet the critics of American policy.¹³⁷

Bundy and the Michigan committee negotiated arrangements carefully.¹³⁸ There were to be no placards in the hall and no demonstrations. Bundy's opponent was to be George Kahin, a professor of political science at Cornell. There was to be a series of panel discussions, and Bundy demanded fair representation for his side.¹³⁹ Later he remarked that "the preliminary arrangements . . . have been fair to a fault."¹⁴⁰

The confrontation between Bundy and his academic critics was viewed as a major event. About 5,000 people, many of whom travelled great distances to be there, attended the Washington sessions on May 15th.¹⁴¹ Special radio-telephone hookups were set up on over 100 college campuses in thirty-five states.¹⁴² An estimated 100,000 listened at these meetings.¹⁴³ Many educational television stations carried live the entire fifteen-and-one-half-hour teach-in.¹⁴⁴ The three major networks broadcast highlights of the debate at various times.¹⁴⁵ Some of the debate was carried by radio stations throughout the country.¹⁴⁶

At the morning session Professor Hans Morgenthau of the University of Chicago opened the attack on American policy. He said that America's announced goals in Asia required a willingness "to go to war with China, with all that that implies."¹⁴⁷ In short, "we set ourselves goals in Asia . . . which cannot be achieved with the means we are willing to employ."¹⁴⁸ Arthur M. Schlesinger, Jr., a Harvard professor and formerly an assistant to Presidents Ken-

¹³⁵ Greenfield, *After the Washington Teach-In*, The Reporter, June 3, 1965, p. 16.

¹³⁶ N.Y. Times, May 1, 1965, p. 3, col. 5 (city ed.).

¹³⁷ See, e.g., *id.*, May 5, 1965, p. 16, col. 1; *id.*, May 6, 1965, p. 13, col. 1; *id.*, May 7, 1965, p. 2, col. 4; *id.*, May 8, 1965, p. 4, col. 3.

¹³⁸ Greenfield, *supra* note 135, at 16.

¹³⁹ *Ibid.*

¹⁴⁰ N.Y. Times, May 17, 1965, p. 30, col. 1 (city ed.).

¹⁴¹ *Id.*, May 16, 1965, § 1, p. 1, cols. 2-3.

¹⁴² *Id.*, May 14, 1965, p. 16, col. 1 (city ed.).

¹⁴³ *Id.*, May 16, 1965, § 1, p. 1, cols. 2, 4.

¹⁴⁴ See *id.*, May 15, 1965, p. 63, cols. 2-3.

¹⁴⁵ See *id.* col. 3.

¹⁴⁶ See *id.*, May 14, 1965, p. 16, col. 1.

¹⁴⁷ See *id.*, May 17, 1965, p. 31, col. 3 (city ed.).

¹⁴⁸ *Ibid.*

nedy and Johnson, was presented as a defender of the administration. He found fault with both the administration's policies and the slogans of its academic critics. He was questioned sharply by the audience.¹⁴⁹

A two-hour recess was taken for lunch. During this period it was announced that McGeorge Bundy, who was scheduled to speak at the afternoon session, could not appear because of an important assignment from the President.¹⁵⁰ The great confrontation was not to take place. There was considerable disappointment, and some charges of evasion were made.¹⁵¹ At the afternoon session Professor Kahin delivered his argument against American policy, stressing that the United States had failed again and again to work with Asian nationalism.¹⁵² Professor Robert Scalapino of the University of California at Berkeley made the main presentation in support of the administration.¹⁵³ He asserted that Communist China views the United States as a "paper tiger" that will collapse when pushed. "If Peiping is able to demonstrate this works in South Vietnam, it will work elsewhere."¹⁵⁴ Shorter statements were made against the administration's position by Professor Morgenthau, Professor Mary Wright of Yale, Professor Stanley Millet of Briarcliffe College, and Professor William A. Williams of the University of Wisconsin.¹⁵⁵ Statements supporting the administration were made by Professor Zbigniew Brzezinski of Columbia, Professor Wesley Fishel of Michigan State University, and Professor Michael Lindsay of American University.¹⁵⁶ Members of the panel commented on statements made by the other members, and there were a number of questions from the audience.

Up to this point the atmosphere resembled that of a heated roundtable at a professional meeting. The comments and questions were pointed but presented with politeness.¹⁵⁷ Undoubtedly most of the audience was critical of the administration, but much of the debate was played to those watching on television. The *New*

¹⁴⁹ *Id.*, May 16, 1965, § 1, p. 1, col. 2, at 62, cols. 3-4, 5-6.

¹⁵⁰ *Id.*, May 17, 1965, p. 30, col. 1 (city ed.).

¹⁵¹ *Id.*, May 16, 1965, § 1, p. 62, col. 5.

¹⁵² *Id.*, May 17, 1965, p. 30, cols. 1-5 (city ed.).

¹⁵³ *Id.* cols. 5-8, p. 31, cols. 1-2.

¹⁵⁴ *Id.* at 30, col. 8.

¹⁵⁵ *Id.* col. 2.

¹⁵⁶ *Ibid.*

¹⁵⁷ Greenfield, *supra* note 135, at 17. The *New York Times* reported the comments of a professor of philosophy at City College of New York. "I liked the spirit of it, the sharp questioning. There was nothing stereotyped about it." A graduate student at George Washington University was critical. He thought that there was insufficient representation of the administration point of view. N.Y. Times, May 16, 1965, § 1, p. 62, cols. 5, 6. One of the participants at the University of Wisconsin teach-in who attended the National Teach-In was critical but for a very different reason. He complained privately that there was too much discussion and not enough emotional condemnation of an immoral war.

York Times commented that "contrary to some expectations among the sponsors, however, [the debate] produced few specific recommendations of alternative policies in Vietnam."¹⁵⁸ Most of the critics urged negotiations; the supporters replied that the administration wanted negotiation; the critics then charged that the administration had set too many conditions.¹⁵⁹ In the context of the discussion, it was perhaps inevitable that few participants would address themselves to how the war might be ended in a manner acceptable both to the United States and its opponents. There were simply too many disputes about the facts, as well as about ends and means.

In the evening the teach-in continued with nine panel discussions. The topics were called the Realities of North Vietnam, the Issues of Chinese Expansion, the Domino Theory in Southeast Asia, the United States Record in South Vietnam, the "Civil War" and "Aggression From the North," United States Military Policy, Can the War Be Won?, Political and Moral Effects of United States Policy, and the Making of United States Policy.¹⁶⁰ No one represented the administration on some of these panels because for some reason those who were supposed to participate had not been asked.¹⁶¹ At the end of the panels, members of the audience were allowed to make statements, which tended to be highly critical of American policy in Vietnam and, in some instances, highly emotional.¹⁶² Nevertheless, while some criticized the evening sessions, the *New York Times* noted in an editorial that "the academicians on both sides conducted themselves with a dignity and respect for fact that contrasted favorably with the emotionalism that too often passes for discussion in foreign affairs among champions and critics of Government policy alike."¹⁶³

After the National Teach-In, the debate continued. The sponsors of the teach-in called on Bundy to face a panel of academic critics on national television;¹⁶⁴ and on June 21, 1965, CBS News, with Eric Sevareid as moderator, televised a debate between critics and supporters of American policy.¹⁶⁵ Besides Bundy, the participants were Professor Hans Morgenthau, Professor Zbigniew Brzezinski, Professor Edmund O. Clubb, Dr. Guy J. Pauker, and Professor John D. Donoghue. Sevareid posed four questions and changed the subject about every fifteen minutes. As a result, the debate was very fragmentary. But unlike the National Teach-In, it did focus on the gains and costs of possible alternatives open to the

United States.¹⁶⁶

The July 1965 protest schedule was a full one: Martin Luther King, Jr., stated that the war in Vietnam must be stopped and that the United States must negotiate a settlement,¹⁶⁷ nine pacifists blocked the entrance to an army recruiting center in New York City,¹⁶⁸ about 400 people protesting the war silently picketed the same center,¹⁶⁹ and several burned their draft cards.¹⁷⁰

August saw an event of major significance. A group called the Assembly of Unrepresented People met in Washington, D.C.¹⁷¹ Many leaders of this event had directed civil rights projects in the South, and others were active in various causes, sometimes collectively referred to as "The New Left" to distinguish their adherents from the radicals of the 1930's.¹⁷² The Assembly symbolized a loose merger of one wing of the civil rights movement, the more militant peace groups, and a group of young radicals. Although opposition to the war was only one of the announced goals of the Assembly, the activities of those who came to Washington dealt almost exclusively with that topic.¹⁷³ The group held rallies at the Washington Monument and picketed the White House, singing songs of the civil rights movement.¹⁷⁴ It staged a sit-down at the White House and sought to block one entrance until its leaders could talk with President Johnson, McGeorge Bundy, or Secretary of Defense Robert S. McNamara and present a "declaration of conscience" against the war.¹⁷⁵ The group also attempted to march from the Washington Monument to the Capitol¹⁷⁶ with a view to sitting-in at the House of Representatives and forcing Congress to "declare peace with the people of Vietnam."¹⁷⁷ At the Washington meeting, the various groups making up the Assembly formed a thirty-three-member National Co-ordinating Committee to End the War in Vietnam.¹⁷⁸ The Committee's first project was to prompt peace demonstrations throughout the United States and other countries on October 15-16, 1965.¹⁷⁹ A co-ordinating center was opened in Madison, Wisconsin.¹⁸⁰

One of the most active members of the National Committee was

¹⁵⁸ *Id.*, May 17, 1965, p. 1, col. 4, at 29, col. 2 (city ed.).

¹⁵⁹ *Id.* at 30, cols. 1-8, p. 31, cols. 1-8.

¹⁶⁰ *Id.*, May 16, 1965, § 1, p. 62, cols. 2-4.

¹⁶¹ STAFF STUDY 150.

¹⁶² *Id.* at 35.

¹⁶³ N.Y. Times, May 17, 1965, p. 34, col. 1 (city ed.).

¹⁶⁴ *Id.* at 1, col. 4.

¹⁶⁵ *Id.*, June 22, 1965, p. 1, col. 8.

¹⁶⁶ A transcript of this program is reproduced in STAFF STUDY 224-35.

¹⁶⁷ N.Y. Times, July 3, 1965, p. 6, col. 2.

¹⁶⁸ *Id.*, July 22, 1965, p. 3, col. 3.

¹⁶⁹ *Id.*, July 30, 1965, p. 2, col. 4.

¹⁷⁰ *Ibid.*

¹⁷¹ See, e.g., *id.*, Aug. 9, 1965, p. 4, cols. 5-7 (city ed.).

¹⁷² See, e.g., *id.*, Aug. 11, 1965, p. 3, cols. 5-8 (city ed.).

¹⁷³ *Ibid.*

¹⁷⁴ *Id.*, Aug. 9, 1965, p. 4, cols. 5-7 (city ed.).

¹⁷⁵ *Id.* col. 5.

¹⁷⁶ *Id.*, Aug. 10, 1965, p. 3, cols. 2-4 (city ed.).

¹⁷⁷ *Id.*, Aug. 9, 1965, p. 4, cols. 5, 7 (city ed.).

¹⁷⁸ *Id.* col. 7.

¹⁷⁹ *Ibid.*

¹⁸⁰ *Id.*, Sept. 12, 1965, § 1, p. 6, cols. 1, 2.

the Vietnam Day Committee, an organization which grew out of the teach-in held at Berkeley, California.¹⁸¹ During August 1965 this group organized a series of attempts to stop troop trains bound for the Oakland army base from which troops sailed for Vietnam.¹⁸² There were at least four such attempts, involving groups of from 200 to 300 people.¹⁸³ The trains did not stop, and some of the demonstrators narrowly escaped injury.¹⁸⁴ Also two people tied an out-rigger canoe to a troopship at Oakland as a form of protest.¹⁸⁵ Demonstrators invaded the hotel in San Francisco where General Maxwell Taylor, former American Ambassador to Vietnam, was staying.¹⁸⁶

Meanwhile, the National Co-ordinating Committee to End the War in Vietnam was proceeding with plans for the October 15th and 16th International Days of Protest, an event which was to trigger considerable hostility and some calls for suppression of protests. The various groups affiliated with the National Co-ordinating Committee notified it of their plans, and the Committee, in turn, disseminated this news to interested people. Thus on September 13th the Committee issued a newsletter which first described the protest plans of groups located in seven different cities¹⁸⁷ and then suggested: "direct action such as sit-ins at induction centers or recruiting centers could be tried. Furthermore, a demonstration consisting of a march of young men to the local draft board or induction center with the expressed intention of filling out CO [conscientious objector] forms might be attempted."¹⁸⁸

Berkeley's Vietnam Day Committee was very active in planning and promoting the International Days of Protest. On September 11th Dr. Stephen Smale, a professor of mathematics at the University of California and one of the leaders of the Vietnam Day Committee, held a press conference to announce the International Days of Protest.¹⁸⁹ He distributed a statement which said in part that "revolutionary struggles for self-determination are sweeping the world today. American suppression of these movements is immoral and a threat to the peace of the world."¹⁹⁰ He announced that there would be civil disobedience, including "peace invasions" of the Oakland army base and movements of boats into restricted waters.¹⁹¹ Later, on October 11th, the Vietnam Day Committee an-

nounced that groups in seventy American cities and in some major foreign cities were planning to participate in the mid-October protest.

It was indeed a major production. On Friday, the 15th, there were speeches and a poetry reading in Chicago.¹⁹² Hundreds of demonstrators gathered at Philadelphia's City Hall.¹⁹³ In New York, there was a rally outside the Army induction center, and one man burned his draft card.¹⁹⁴ Demonstrations were held at many schools, including City College of New York,¹⁹⁵ Wayne State University,¹⁹⁶ the University of Colorado,¹⁹⁷ the University of California at Santa Barbara,¹⁹⁸ the University of Texas,¹⁹⁹ and Iowa State University.²⁰⁰ At Yale University, 250 students and faculty members held a rally and a march in New Haven.²⁰¹ A forty-eight-hour peace vigil was held at the University of Michigan;²⁰² some 300 people marched to the selective service office in Ann Arbor, where a few attempted a sit-in.²⁰³ At Berkeley, a large rally was held on the University of California campus, and there were folk songs, speeches, and seminar discussions.²⁰⁴ In the evening approximately 10,000 marchers began to walk from the campus to the Oakland army base.²⁰⁵ However, the city of Oakland had denied the Vietnam Day Committee a march permit,²⁰⁶ and the group was blocked by police just short of the city limits.²⁰⁷ There was no attempt to resist the police. As a price for permission to use the university facilities for the rally, the Chancellor of the Berkeley campus had received written guarantees from the Vietnam Day Committee that there would be neither civil disobedience nor advocacy of it, and these guarantees were honored.²⁰⁸

The protests continued on Saturday, the 16th. Demonstrations were held in many American and foreign cities, typically involving marches, rallies, and speeches against the war in Vietnam. The largest occurred in New York City where 10,000 to 20,000 paraded

¹⁸¹ *Id.* col. 3.

¹⁸² *Id.* cols. 1, 3.

¹⁸³ See *id.*, Aug. 7, 1965, p. 3, cols. 2, 6; *id.*, Aug. 13, 1965, p. 3, col. 2; *id.*, Aug. 24, 1965, p. 2, col. 4.

¹⁸⁴ *Id.*, Sept. 12, 1965, § 1, p. 6, col. 1.

¹⁸⁵ *Id.*, Aug. 25, 1965, p. 15, col. 3.

¹⁸⁶ *Ibid.*; *id.*, Aug. 26, 1965, p. 4, col. 4.

¹⁸⁷ STAFF STUDY 196-205.

¹⁸⁸ *Id.* at 204.

¹⁸⁹ N.Y. Times, Sept. 12, 1965, § 1, p. 6, col. 1 (city ed.).

¹⁹⁰ *Ibid.*

¹⁹¹ *Ibid.*

¹⁹² *Id.*, Oct. 16, 1965, p. 1, col. 8; at 2, col. 2.

¹⁹³ *Id.* col. 5.

¹⁹⁴ *Id.* cols. 2-4.

¹⁹⁵ *Id.* col. 4.

¹⁹⁶ *Id.* cols. 4-5.

¹⁹⁷ *Id.* col. 5.

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.*

²⁰¹ *Id.* col. 2.

²⁰² *Id.* col. 4.

²⁰³ *Ibid.*; *id.*, Oct. 17, 1965, § 1, p. 1, col. 6, at 43, col. 1.

²⁰⁴ *Id.*, Oct. 16, 1965, p. 2, col. 1.

²⁰⁵ *Ibid.*

²⁰⁶ San Francisco Chronicle, Oct. 14, 1965, p. 1, col. 5, at 12, col. 1; *id.*, Oct. 15, 1965, p. 1, cols. 6-8, p. 16, col. 1.

²⁰⁷ *Id.*, Oct. 16, 1965, p. 1, cols. 7-8, p. 7, col. 2.

²⁰⁸ San Francisco Examiner, Oct. 17, 1965, § 1, p. 1, col. 3, at 20, col. 1.

down Fifth Avenue.²⁰⁹ "One group carried dozens of enlarged copies of a photograph showing a Vietnamese mother comforting a maimed child. Another group wearing skeleton masks, marched with instruments, playing the Marine's Hymn."²¹⁰ Following the parade, there was an outdoor rally with folk songs and speeches demanding an end to the war.²¹¹ On the West Coast, the Vietnam Day Committee led another attempt to march through Oakland, but once again the marchers were turned back by the police.²¹² In San Francisco approximately 750 people marched and 1,500 attended a rally where poet Allen Ginsberg read a work attacking President Johnson and the war.²¹³

There were other activities besides speeches and marches. For example, at a football game students of the University of Colorado formed a card section and flashed antiwar messages to the crowd at halftime.²¹⁴ In Madison, Wisconsin, most of the protesters marched and attended a rally at the state capitol,²¹⁵ but eleven went to the United States Air Force Base at Truax Field and attempted to arrest the base commander for war crimes.²¹⁶ They were barred from the military base, sat down in the road, and were arrested for obstructing traffic.²¹⁷

All told, many people took part in some form of protest activity over this week end. The chairman of the National Co-ordinating Committee placed the number at between 70,000 and 100,000.²¹⁸ Other leaders of demonstrations pointed out that most of these people could hardly be classed as radicals.²¹⁹ The bulk of the activity consisted of picketing, marching, making speeches, and singing folk songs.²²⁰ Far less civil disobedience than was announced beforehand actually occurred.

²⁰⁹ N.Y. Times, Oct. 17, 1965, § 1, p. 1, col. 7, p. 43, cols. 2-3.

²¹⁰ *Id.* at 1, col. 7, p. 43, col. 2.

²¹¹ *Ibid.*

²¹² *Id.* at 1, col. 7, p. 43, cols. 5-8; San Francisco Examiner, Oct. 17, 1965, § 1, p. 1, col. 8, p. 1B, cols. 5-6.

²¹³ N.Y. Times, Oct. 18, 1965, p. 8, cols. 2-3 (city ed.). Ginsberg's poem discussed the pains of a malfunctioning gall bladder and of death in Vietnam.

²¹⁴ Denver Post, Oct. 17, 1965, § c, p. 29, cols. 4-8. Also, the local Vietnam Day Committee distributed handbills before the game. On one side it had printed the rosters of the teams playing in the homecoming game; on the other it had printed a satire describing "the University of Reason's difficulties in trying to get into the Brinksmanship Conference over the objections of the U. S. Naval Academy, the University of Hanoi and Saigon College."

²¹⁵ See Wisconsin State Journal (Madison, Wis.), Oct. 17, 1965, § 1, p. 1, col. 7, p. 2, col. 3.

²¹⁶ N.Y. Times, Oct. 17, 1965, § 1, p. 1, col. 6, p. 43, col. 1.

²¹⁷ *Ibid.*

²¹⁸ *Id.*, Oct. 18, 1965, p. 8, col. 1 (city ed.).

²¹⁹ *Id.* cols. 1-2.

²²⁰ For a national report, see *id.*, Oct. 17, 1965, § 1, p. 1, col. 6, p. 43, col. 1. For local reports, see Dallas Morning News, Oct. 16, 1965, § A, p.

The weeks following the mid-October protests saw numerous scattered sequels. Six more men burned their draft cards, in violation of the new federal law.²²¹ One explained his action by citing the need for a dramatic protest since picketing had become too common.²²² Some antiwar groups announced plans to attack the draft by helping young men avoid induction into the Army. The Students for a Democratic Society (SDS) announced plans to distribute leaflets urging inductees to claim exemption as conscientious objectors; to picket recruiters for the various services and members of the ROTC, labeling them as war criminals; and to give advice in neighborhoods on how to stay out of service.²²³ About a month later, SDS announced that it was dropping this program because some local chapters feared that the issue of draft dodging would cloud the group's position against the war in Vietnam.²²⁴ Other groups, however, announced that they would help those who did not want to fight in Vietnam.²²⁵ In California, United States District Judge William T. Sweigert ordered the city of Oakland to give the Vietnam Day Committee a permit for a march through the city,²²⁶ and on November 20th about 8,000 people marched through Oakland to protest the war.²²⁷ Also during this period, at least two groups sought to collect blood and supplies to aid civilian injured by American bombing raids. One group was at the University of Michigan,²²⁸ another was at Stanford University.²²⁹

Almost overlooked in the activity of the International Days of Protest was an announcement on October 15th that a march on Washington was planned for November 27th.²³⁰ This march was co-ordinated by Sanford Gottlieb, Washington political action director for the National Committee for a Sane Nuclear Policy (SANE), the sponsoring organization.²³¹ Among the prominent sponsors were writers John Hersey, Arthur Miller, Saul Bellow,

13, cols. 4-5; *id.*, Oct. 17, 1965, § A, p. 4, cols. 2-4; *id.*, Oct. 19, 1965, § A, p. 6, cols. 1-2; Denver Post, Oct. 16, 1965, § 1, p. 3, cols. 5-8; *id.*, Oct. 17, 1965, § 1, p. 3, cols. 1-8; Raleigh News & Observer, Oct. 19, 1965, p. 16, cols. 3-4.

²²¹ N.Y. Times, Oct. 19, 1965, p. 5, cols. 1, 4; *id.*, Oct. 21, 1965, p. 14, cols. 4-6; *id.*, Oct. 23, 1965, p. 2, cols. 5, 6; *id.*, Nov. 7, 1965, p. 1, col. 3.

²²² *Id.*, Nov. 4, 1965, p. 9, col. 2 (city ed.).

²²³ *Id.*, Oct. 18, 1965, p. 9, cols. 1-4; *id.*, Oct. 19, 1965, p. 1, col. 8, p. 6, cols. 3-8 (city ed.).

²²⁴ *Id.*, Nov. 19, 1965, p. 5, col. 1 (city ed.).

²²⁵ *Id.*, Dec. 6, 1965, p. 15, cols. 1-2 (city ed.) (May 2nd Movement; W.E.B. DuBois Club; War Resisters League).

²²⁶ *Id.*, Nov. 19, 1965, p. 5, col. 1 (city ed.).

²²⁷ *Id.*, Nov. 21, 1965, p. 32, col. 3 (city ed.). One of the leaders of the Vietnam Day Committee commented, "most of us know we are going to the army terminal . . . We wanted to go today. We are very disappointed by the judge's order. But that's what you get when you go to court." *Ibid.*

²²⁸ *Id.*, N.Y. Times, Nov. 24, 1965, p. 21, col. 1 (city ed.).

²²⁹ Stanford Alumni Almanac, Autumn 1965, p. 1, col. 4, at 3, cols. 1-2.

²³⁰ N.Y. Times, Oct. 15, 1965, p. 35, col. 6 (city ed.).

²³¹ *Ibid.*

and Michael Harrington, and actors Ossie Davis, Tony Randall, and Robert Ryan.²³² In the beginning, this was to be the project of the "moderates." Gottlieb stated, "This is not a protest march but a march to make positive proposals. . . . This is to be a demonstration in support of a negotiated settlement and not for a pullout."²³³ The official call for the march said, "The tone of the march will be affirmative and creative. There will be no civil disobedience."²³⁴

But Gottlieb's group was not to have things its own way. A five-day convention which the National Co-ordinating Committee to End the War in Vietnam had scheduled for Madison, Wisconsin, was moved to Washington so that delegates could participate in the march on Saturday, the 27th.²³⁵ Many of the student groups which made up the National Co-ordinating Committee viewed SANE as too conservative and ineffective, and the positions which were to be taken in the Washington march as too moderate.²³⁶ On the other hand, SANE viewed the National Committee as sufficiently militant to drive away most Americans.²³⁷ At first, Gottlieb stated that anyone could join the march but that no unauthorized signs could be carried.²³⁸ The Students for a Democratic Society issued its own call to march, demanding an immediate cease fire and the withdrawal of all American troops.²³⁹ Leaders of the May 2nd Movement asked their members to invade the march with their own signs, including two which read "Get Out of Vietnam Now" and "Organize Against the Draft."²⁴⁰ Gottlieb asked the Washington police to help in preventing participation by groups carrying such unapproved signs.²⁴¹ However, the next day all efforts to exclude them were dropped; the difficulties, including the risk that disorder might erupt, were too many.²⁴²

The group that proved most disruptive was the United States

²³² *Ibid.*

²³³ *Id.*, Nov. 21, 1965, § 1, p. 32, col. 7.

²³⁴ *Ibid.*

²³⁵ *The New Yorker*, Dec. 11, 1965, pp. 195, 196.

²³⁶ *Ibid.*

²³⁷ See *N.Y. Times*, Nov. 21, 1965, § 1, p. 32, cols. 7-8 (city ed.). The cochairmen of SANE sent a cable to President Ho Chi Minh of North Vietnam which read, "our organization helping provide leadership for Nov. 27 demonstration in support of cease-fire and negotiated settlement based on 1954 Geneva accords. Again urge you respond favorably to immediate peace talks. Demonstrations will continue, but will not lead to a U.S. pullout." *Id.*, Oct. 29, 1965, p. 3, cols. 1, 2. Since many groups in the National Co-ordinating Committee advocated an immediate pullout and civil disobedience tactics, inevitably there were major differences between the organizers of the November march and groups in the National Co-ordinating Committee.

²³⁸ *Id.*, Nov. 21, 1965, § 1, p. 32, col. 7.

²³⁹ *Ibid.*

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.*

²⁴² *Id.*, Nov. 22, 1965, p. 4, col. 3 (city ed.).

Committee to Aid the National Liberation Front of South Vietnam.²⁴³ In addition to soliciting money and supplies for the Viet Cong, this group set up a booth and sold Viet Cong flags for ten dollars.²⁴⁴ Several members announced that they would carry these flags in the march.²⁴⁵ Sanford Gottlieb said that people carrying Viet Cong flags would be asked to leave the march, but conceded that if they refused, not much could be done. He suggested that his group might surround them with American flags.²⁴⁶ The battle over the Viet Cong flag occupied far more television news coverage than the ideas of the various participating groups. *The New York Times* editorialized: "It is tragic that the action of exhibitionists—many of them openly pro-Peking—now threatens to upset the useful purpose the demonstration might have served in promoting a valid debate."²⁴⁷

The actual march and rally were subdued. The first two hours were spent in marching around the White House with picket signs.²⁴⁸ Between 20,000 to 50,000 people participated.²⁴⁹ The great majority were "middle-class adults," and they far outnumbered students and members of the radical left.²⁵⁰ Most marchers carried the approved signs calling for an effort to negotiate a settlement.²⁵¹ Only a relatively small number carried signs demanding an immediate withdrawal and an even smaller number carried Viet Cong flags.²⁵² One small group chanted, "Hey, hey, LBJ. How many kids have you killed today?"²⁵³ While all this was going on, Gottlieb, Dr. Spock, Norman Thomas, and other leaders of the march held a ninety-minute discussion with three "second string" administration officials. Each side praised the other for sincerity and courtesy, but neither made any concessions.²⁵⁴

After the picketing and the meeting, the group marched to the Washington Monument to hear speeches by Norman Thomas, Dr. Spock,²⁵⁵ and Carl Oglesby, president of Students for a Democratic Society.²⁵⁶ Oglesby attacked American liberals on the score of complacency. He asked, "[W]hy can't we see that our proper human struggle is not with Communism or revolutionaries but with the social desperation that drives good men to violence, both here and

²⁴³ *Id.*, Nov. 26, 1965, p. 4, cols. 4-5 (city ed.).

²⁴⁴ *Id.* col. 4.

²⁴⁵ *Id.* cols. 4-5.

²⁴⁶ *Id.*, Nov. 27, 1965, p. 12, col. 1 (city ed.).

²⁴⁷ *Id.* at 30, col. 2.

²⁴⁸ *Id.*, Nov. 28, 1965, § 1, p. 1, col. 3.

²⁴⁹ *Ibid.*

²⁵⁰ *Id.* at 87, cols. 4-6.

²⁵¹ *Id.* p. 1, col. 3, at 86, col. 3.

²⁵² *Id.* at 1, col. 3; *id.* at 87, cols. 4-5.

²⁵³ *Newsweek*, Dec. 6, 1965, pp. 29, 30.

²⁵⁴ *N.Y. Times*, Nov. 28, 1965, § 1, p. 1, col. 3, at 86, cols. 4-5.

²⁵⁵ *Id.* col. 4.

²⁵⁶ *The New Yorker*, Dec. 11, 1965, pp. 195, 201-02.

abroad?"²⁵⁷ Sanford Gottlieb raised Oglesby's arm to rousing cheers from the large crowd.²⁵⁸ Oglesby had struck a note that united many who were there.

The next evening, Norman Thomas and Dr. Spock defended the march on an ABC television program while Georgia Governor Carl E. Sanders and United States Senator Joseph Tydings charged that it had helped the Communists.²⁵⁹ Dr. Spock said that "we should turn Vietnam over to the Vietnamese people for them to decide their Government as they see fit."²⁶⁰ Thomas said that the Vietnam conflict was "an immoral war ethically and a stupid war politically."²⁶¹ Sanford Gottlieb issued a statement saying that the march had made the point that "many serious, respectable people are looking for an alternative policy in Vietnam"²⁶²

During December 1965 and January 1966, a variety of demonstrations against the war took place. For example, leaflets were sent to American soldiers in Vietnam urging them to stop fighting.²⁶³ Pickets marched in Times Square²⁶⁴ and Herald Square²⁶⁵ in New York City. Women's Strike for Peace mailed many Christmas cards to President Johnson urging him to work for peace.²⁶⁶ There was a demonstration in front of a factory where military helicopters for use in Vietnam were made.²⁶⁷ An antiwar group dropped leaflets from an airplane on Oakland, California.²⁶⁸ Also, late in January, debate about the wisdom and legality of American policy in Vietnam began in the United States Senate. Secretary of State Dean Rusk testified before the Senate Foreign Relations Committee in support of a foreign aid bill and clashed with the committee's chairman, Senator J. William Fulbright, about the legal basis for large-scale American operations.²⁶⁹

More Americans had an opportunity to consider American policy in Vietnam in February when that policy was challenged in a new forum. The Senate Foreign Relations Committee continued its hearings, and a significant new dimension was added when NBC and CBS decided to televise a large part of them, including a seven-hour exchange between Secretary of State Rusk and the commit-

tee.²⁷⁰ The participants in these televised debates were administration defenders Rusk,²⁷¹ General Maxwell D. Taylor,²⁷² and foreign aid administrator David Bell,²⁷³ critics General James M. Gavin²⁷⁴ and former ambassador George F. Kennan,²⁷⁵ and the nineteen members of the committee.²⁷⁶ Chairman Fulbright was a major challenger of administration policy,²⁷⁷ as was Senator Wayne Morse.²⁷⁸ Senator Russell B. Long emerged as the most passionate advocate of this country's role in Vietnam.²⁷⁹

Senator Fulbright explained the need for public hearings by saying that while top administration officials had made speeches presenting their case, the public would nevertheless benefit from discussion clarifying the boundaries of American policy and exploring the factual assumptions behind it.²⁸⁰ To some extent, at least, Senator Fulbright was right. One commentator observed:

The desirability of televising the hearings was clearly demonstrated in the six hours of questioning of David E. Bell, administrator of the Agency for International Development. . . .

In answering the extraordinarily wide range of questions asked by Senator J. W. Fulbright, Democrat of Arkansas, committee chairman, and his colleagues, Mr. Bell gave a lucid picture of the exceptional complexity of the Asian war. Seldom on television has there been such a full primer on the endless economic ramifications of the Vietnam conflict, both in Saigon and here at home.

That the Senators and the spokesmen for the Johnson Administration disagreed much of the day added to the viewer interest, but the larger gain was the set owner's

²⁷⁰ See *id.*, Feb. 4, 1966, p. 55, col. 4 (city ed.); *id.*, Feb. 19, 1966, p. 1, cols. 5-6 (city ed.). In May of 1966, extensive excerpts of the Senate hearings were published as a Vintage paperback book: *THE VIETNAM HEARINGS* (1966). Thus the information presented at the hearings will be widely available and could, in Senator Fulbright's words, "provide the American people with the raw material upon which they must base their judgment of the efficacy of national policy in serving the national interest." *Id.* at xi.

²⁷¹ *N.Y. Times*, Feb. 19, 1966, p. 1, col. 8, p. 3, cols. 1-4 (city ed.); *id.* at 2, cols. 1-8.

²⁷² *Id.*, Feb. 18, 1966, p. 1, col. 8, p. 12, cols. 1-2 (city ed.); *id.* at 12, cols. 4-8 (city ed.).

²⁷³ *Id.*, Feb. 5, 1966, p. 1, col. 7, p. 7, cols. 3-5 (city ed.).

²⁷⁴ *Id.*, Feb. 9, 1966, p. 1, col. 7, p. 14, cols. 1-3 (city ed.).

²⁷⁵ *Id.*, Feb. 11, 1966, p. 1, col. 8, p. 3, cols. 1-4 (city ed.).

²⁷⁶ *Id.*, Feb. 20, 1966, § 4, p. 1, col. 1; *id.*, Feb. 5, 1966, p. 1, col. 7, at 7, col. 3 (city ed.).

²⁷⁷ *Id.*, Feb. 19, 1966, p. 1, col. 8, at 3, col. 1 (city ed.).

²⁷⁸ *Id.*, Feb. 20, 1966, § 4, p. 1, col. 4.

²⁷⁹ *Id.*, Feb. 20, 1966, § 4, p. 1, cols. 4-5.

²⁸⁰ *Id.*, Feb. 8, 1966, p. 1, cols. 6-7, at 21, col. 2.

²⁵⁷ *Id.* at 195, 201.

²⁵⁸ *Id.* at 195, 202.

²⁵⁹ *N.Y. Times*, Nov. 29, 1965, p. 3, col. 1 (city ed.).

²⁶⁰ *Ibid.*

²⁶¹ *Ibid.*

²⁶² *Ibid.*

²⁶³ *Id.* at 7, col. 1; *id.*, Dec. 1, 1965, p. 6, col. 1 (city ed.); *id.*, Dec. 19, 1965, p. 8, col. 2.

²⁶⁴ *Id.*, Dec. 17, 1965, p. 3, col. 6.

²⁶⁵ *Id.*, Dec. 24, 1965, p. 2, col. 8.

²⁶⁶ *Id.*, Dec. 13, 1965, p. 12, col. 1; *id.*, Dec. 16, 1965, p. 3, col. 4.

²⁶⁷ *Id.*, Dec. 30, 1965, p. 8, cols. 4, 5.

²⁶⁸ *Id.*, Jan. 11, 1966, p. 3, col. 8.

²⁶⁹ *Id.*, Jan. 25, 1966, p. 1, col. 1.

sense of great familiarity with the over-all agonizing problem.²⁸¹

Those who watched saw General Gavin assert that American troops should stay in South Vietnam.²⁸² But he warned that increasing the tempo of the war might impair the nation's ability to meet other more important commitments and might provoke Red China to intervene.²⁸³ Foreign affairs expert George F. Kennan called for the United States to dig in and wait for a political solution.²⁸⁴ He argued that we could not expect to win a complete victory over the Viet Cong without inflicting unacceptable civilian suffering.²⁸⁵ In his view a settlement was preferable, even though it "appears to us as something less than ideal."²⁸⁶ On the other hand, General Maxwell Taylor, the architect of much of present American policy, contended that the United States should win military and political victories in order to force Communist acceptance of a non-Communist South Vietnam.²⁸⁷ The committee confronted Secretary of State Rusk for seven hours.²⁸⁸ Rusk called for toughness to preserve the peace of the world.²⁸⁹ Senator Fulbright sharply questioned the Secretary and said that this war did not involve the vital interests of the United States and might trigger a world war.²⁹⁰ The hearings occasionally were a good show: this was particularly true when General Taylor and Senator Morse clashed angrily.²⁹¹ After the public hearings closed, a number of Senators proposed alternatives to the present American policy. Some wanted more war;²⁹² in various degrees others wanted to give recognition to the National Liberation Front (the South Vietnamese rebel group) in peace negotiations.²⁹³

C. Responses to the Protests

So much, then, for the various ways in which opposition to the Vietnam war has been expressed. The following description of responses to those protests is divided into two sections. The relevance of the second section is obvious because in it we shall report the very statements by government officials which we evaluate in the last part of this article. Before, that, however, we shall describe

²⁸¹ *Id.*, Feb. 5, 1966, p. 58, cols. 2-3 (city ed.).

²⁸² *Id.*, Feb. 9, 1966, p. 1, col. 7, at 14, col. 1 (city ed.).

²⁸³ *Id.* at 1, col. 7.

²⁸⁴ *Id.*, Feb. 11, 1966, p. 1, col. 8 (city ed.).

²⁸⁵ *Ibid.*

²⁸⁶ *Id.* at 2, cols. 1, 5.

²⁸⁷ *Id.*, Feb. 12, 1966, p. 12, col. 4 (city ed.).

²⁸⁸ *Id.*, Feb. 19, 1966, p. 1, cols. 5-7 (city ed.).

²⁸⁹ *Id.* col. 8.

²⁹⁰ *Id.* at 3, col. 1; *id.* at 2, col. 1.

²⁹¹ *Id.*, Feb. 18, 1966, p. 12, cols. 4, 5-6 (city ed.).

²⁹² See, e.g., *id.*, Feb. 6, 1966, § 4, p. 4, col. 5.

²⁹³ See, e.g., *id.*, Feb. 20, 1966, § 1, p. 1, col. 8; *id.* at 20, col. 1; *id.*, Feb. 22, 1966, p. 1, col. 6 (city ed.).

other kinds of responses in order to suggest something of the larger context in which these statements were made. An ideal study of context would show just what impact different kinds of statements have on the public's reaction to protests; some statements might be ignored while others might inspire violence. An ideal study would also show how such responses, in turn, affect the willingness of dissenters to express themselves. Undoubtedly, the influence of an official's statements depends on many interrelated factors. Geography probably is important: the reactions in Madison, Wisconsin, would probably differ from those in Atlanta, Georgia, which in turn would differ from those in Santa Barbara, California, and so on. People also are important: some are made afraid by government criticism; others are goaded on to more extreme protests. In addition, the positions which protesters assert, as well as their appearance, are likely to have a bearing on whether they are ignored, cheered, or jeered. A neatly dressed young man urging a negotiated settlement in Vietnam is likely to evoke different reactions than a sloppily dressed, bearded student waving a Viet Cong flag. But to our knowledge, no such ideal study exists. The best we can do here, then, is to take note of those factors which seem to reflect the existing situation and suggest some of the implications of each.

1. THE CONTEXT: REACTIONS TO DISSENT

On balance, a number of indicators suggest that people are not only remarkably willing to express dissent, but face relatively little risk of harassment or violence when they do. In the first place, the number of people taking part in antiwar demonstrations and the quantity of protest activity itself have grown steadily.²⁹⁴ Nor has any political leader gained lasting prominence by attacking antiwar activity. Indeed, some well-known Senators,²⁹⁵ Congressmen,²⁹⁶ and former government officials²⁹⁷ have criticized the administration's policy in Vietnam. And it seems likely that one would suffer fewer penalties for agreeing publicly with Senator Robert Kennedy's statements about dealing with the Viet Cong²⁹⁸

²⁹⁴ See text accompanying notes 71-268 *supra*.

²⁹⁵ See, e.g., Senator Ernest Gruening, *The Reality of Vietnam, The Progressive*, Feb. 1966, p. 15; Sevareid, *Why Our Foreign Policy Is Failing—An Exclusive Interview With Senator Fulbright*, Look, May 3, 1966, p. 23; N.Y. Times, Sept. 11, 1963, p. 1, col. 4 (Senator Frank Church); *id.*, Jan. 6, 1965, p. 8, col. 4 (Senator Wayne Morse); *id.*, Feb. 6, 1966, § 4, p. 1, col. 1 (Senator Robert Kennedy); *id.*, Feb. 16, 1966, p. 17, col. 1 (city ed.) (Senator George McGovern); *id.*, March 9, 1966, p. 15, col. 1 (city ed.) (Senator Eugene McCarthy).

²⁹⁶ See, e.g., *id.*, Feb. 16, 1966, p. 6, col. 2 (city ed.); *id.*, Feb. 27, 1966, § 1, p. 33, col. 1.

²⁹⁷ *Id.*, Feb. 9, 1966, p. 1, col. 7, p. 14, col. 1 (retired General James M. Gavin); *id.*, Feb. 11, 1966, p. 1, col. 8, p. 3, col. 1 (city ed.); *id.* at 2, cols. 1-6 (George F. Kennan, former ambassador and State Department official).

²⁹⁸ For the full text of Senator Kennedy's statement, see Capital Times (Madison, Wis.), Feb. 23, 1966, p. 11, cols. 1-8.

than for asserting the same ideas without this source of legitimacy. Moreover, the Johnson administration may have dignified dissent when it argued with its critics about the merits of the war. This may be true, for example, of McGeorge Bundy's agreement to participate in the Washington teach-in and his later television debate with professors who opposed the war.²⁹⁹ It also may be true of the State Department's White Paper on Vietnam³⁰⁰ and its brief on the legality of the war.³⁰¹ Then too, the public apparently agrees with many of the substantive positions taken by those who protest. Most people, for example, seem to favor negotiations with the Viet Cong, and, while rejecting any immediate withdrawal of American troops from South Vietnam, would accept the result of elections, even were the Viet Cong to win.³⁰² Protesters advocating these positions, rather than the more radical ones, are less likely to provoke public hostility.

Another operative factor is that the mass communications media generally have come to portray much of the opposition to the war as respectable. *Life* magazine, for example, although defending the administration's position, ran a long article which sympathetically discussed opposition to the war.³⁰³ *Look* painted a sympathetic picture of Senator Fulbright's disagreement with American policy in Southeast Asia.³⁰⁴ The way in which many major daily newspapers reacted to the nationwide protests of mid-October 1965 is also important. It will be recalled that not only were marches and rallies held then, but some men burned draft cards and some organizations announced plans to interfere with the draft.³⁰⁵ Yet most papers we have been able to read³⁰⁶ took stands similar to

²⁹⁹ See text accompanying notes 135-40, 150 & 164-66 *supra*.

³⁰⁰ See note 33 *supra*.

³⁰¹ See note 19 *supra*.

³⁰² See N.Y. Times, March 15, 1966, p. 1, col. 6, p. 7, col. 2 (city ed.); *id.* at 6, cols. 1-3.

³⁰³ *Life*, Feb. 25, 1966, p. 27.

³⁰⁴ Severeid, *supra* note 295, at 23. The editor of the *Wall Street Journal* observed that Senator Fulbright "is debating the questions a Senator should. And he is bringing to that debate the kind of provocative thought that you always hope for, seldom expect and rarely find in the public forum." Royster, *Thinking Things Over*, *Wall Street Journal*, May 5, 1966, p. 16, col. 3.

³⁰⁵ See text accompanying notes 192-225 *supra*.

³⁰⁶ Our research assistants checked the editorial pages of twenty-five newspapers for the week before and the week after the October 15-16th weekend when the first of the nationwide protests was held. They looked at all the newspapers available in early November in the University of Wisconsin Library, the State Historical Society of Wisconsin Library, and the Madison and Milwaukee Public Libraries. The papers available were the *Atlanta Constitution*, the *Boston Globe*, the *Boston Herald*, the *Capital Times* (Madison, Wis.), the *Chicago Tribune*, the *Dallas Morning News*, the *Denver Post*, the *Detroit Free Press*, the *Jackson Daily News* (Jackson, Miss.), the *Los Angeles Times*, the *Milwaukee Journal*, the *Milwaukee Sentinel*, the *Minneapolis Star*, the *New York Herald Tribune*, the *New*

that of the *Boston Globe*:

In the current hubbub over the demonstrations against United States military involvement in Viet Nam, the critical distinction between peaceful expression of opinion and affirmative illegal acts has been largely missed by zealous partisans on both sides of the ideological fence.

To wear a beard and carry a sign saying, "Withdraw U.S. Troops from Viet Nam Now!" is simply an exercise of the constitutional rights of freedom of expression and assembly. Wrongheaded it certainly is, in view of Hanoi's persistent rejection of the United States' standing offer of unconditional peace talks.

York Times, the *Philadelphia Inquirer*, the *Plain Dealer* (Cleveland), the *Raleigh News & Observer*, the *St. Louis Post Dispatch*, the *Salt Lake Tribune*, the *San Francisco Chronicle*, the *San Francisco Examiner*, the *Seattle Daily Times*, the *Washington Post*, and the *Wisconsin State Journal* (Madison, Wis.). Both the south and the southwest areas of the United States seem significantly under-represented.

It should be noted that while most editorials reflected the same views as those of the *Boston Globe* quoted in the text and the *New York Herald Tribune* quoted in note 307 *infra*, many deplored draft evasion and approved the Attorney General's investigation of Communist participation in the "beat-the-draft" movement. Only the three papers quoted in the text at notes 316, 317, and 319 *infra* suggested that all antiwar activity was improper, if not actually disloyal.

The research assistants also checked the editorial pages for the same two-week period of all twenty-nine daily newspapers published in Wisconsin cities other than Madison and Milwaukee. Of course, these cities are smaller than New York, Chicago, and even Madison, but they are large enough to support a daily paper. Fifteen of the Wisconsin papers ran editorials on the antiwar demonstrations. Three papers stressed the values of the antiwar protests. *Beloit Daily News*, Oct. 23, 1965, p. 8, col. 1; *Chippewa Herald-Telegram*, Oct. 20, 1965, p. 2, cols. 1-2; *Portage Daily Register*, Oct. 21, 1965, p. 10, col. 1. Three papers acknowledged the right of free speech but stressed negative aspects of the protests such as possible Communist involvement and the impact on Hanoi and Peking and on the morale of American servicemen. *Green Bay Press-Gazette*, Oct. 22, 1965, p. 4, col. 1; *Monroe Evening Times*, Oct. 22, 1965, p. 2, col. 1; *Waukesha Freeman*, Oct. 19, 1965, p. 8, col. 1. Seven editorials asserted only that the protests were improper. *Baraboo News-Republic*, Oct. 23, 1965, p. 1, col. 1, p. 2, cols. 2-3 (students who attempted to arrest the Commander of Truax Field should be "kicked out" of the University of Wisconsin); *Fond du Lac Commonwealth Reporter*, Oct. 21, 1965, p. 4, cols. 1-2 (Communists have infiltrated the antiwar movement and demonstrations will prolong the war); *Janesville Daily Gazette*, Oct. 19, 1965, p. 6, cols. 1-3 (protests against the war in Vietnam are treason and should be prosecuted); *Marinette Eagle-Star*, Oct. 22, 1965, p. 6, col. 1 (antiwar demonstrators should be allowed to go to North Vietnam to help fight poverty there); *Oshkosh Daily Northwestern*, Oct. 19, 1965, p. 6, cols. 2-3 (political cartoon defending a teacher's right to protest the war but stating that there is no requirement that he be paid to teach his views); *Evening Telegram (Superior)*, Oct. 22, 1965, p. 6, col. 1 (demonstrations will prolong the war because they will arouse public opinion against negotiating with Communists); *Wisconsin Rapids Daily Tribune*, Oct. 22, 1965, p. 4, col. 1 (Communists may have infiltrated the antiwar movement and the demonstrations will prolong the war because Hanoi will misjudge our willingness to fight).

But treason it is not. The First Amendment is premised upon the notion that the truth can win out over wrong-headedness in the market place of ideas.

By the same token, it is simply an exercise of constitutional freedom to parade in a Legionnaire's uniform with a sign saying, "Draft These Punks Now!"

It is not anyone's right either to burn his draft card, as at least one demonstrator is now charged by the FBI with doing in New York, or to engage in vigilante assaults on peaceful demonstrators, as a member of the notorious Hell's Angels has been accused of doing in California.

It has been wisely observed that the "peace" demonstrators are working at cross purposes with their avowed aims, since their well-publicized activities strengthen Hanoi's resolve not to negotiate.

But domestic support for an immediate withdrawal is not, in fact, strong. Americans approve of the Johnson administration's handling of the Viet Nam situation by more than two to one—57 percent as against 25 percent, according to a recent poll. And few of those who do disapprove would have us pull out with our tail between our legs.

Public reaction toward the demonstrators should not be hysterical. Such a course can only dignify their views, for which the best antidote is sweet reasonableness. As for law violations, there is no reason to believe that the FBI is not capable of doing its job.³⁰⁷

³⁰⁷ Boston Globe, Oct. 19, 1965, p. 36, cols. 1-2. Compare the following editorial:

Little men in little numbers have had some success in making trouble only because they have been taken more seriously than they deserve in Washington, Hanoi, Peking and Moscow. The recent anti-war marches, teach-ins, sleep-ins and related branches of the bizarre in-fashion for out (way out) groups claimed about 100,000 participants—less than one-tenth of one per cent of the U.S. population. That's hardly enough to merit a sneeze, yet it has produced a minor storm.

The President, through his press secretary, has unwisely honored them by expressing his concern; so have the Senators and the Congressmen who have been indulging in public expressions of outrage. . . .

The anti-war movement is composed of two distinct aspects which should be kept clearly differentiated. The first is the criminal aspect, involving those who are breaking the laws of the land by evading or inciting others to evade the draft. The courts and the prisons can easily dispose of them. . . .

The second relates to the right of any minority—however small, insignificant and vociferous—to demonstrate in public against the majority and against the foreign policy of the national government. This is a constitutional and a sacred right which we always have defended and should continue to uphold both at home and abroad. . . .

What is cause for concern is the effect of these demonstrations not on the United States but on the Communist high commands, especially in Hanoi and Peking. . . .

Thus the efforts of those who are demonstrating for peace may result only in prolonging the war—and prolonging it needlessly, foolishly and senselessly for both sides. They are deceiving not only

Finally, only a few protesters, relatively speaking, have suffered serious penalties for their actions.³⁰⁸ Almost all of the professors who took part in teach-ins are still professors; and almost all of the students who demonstrated are still draft-deferred students, or have graduated.

While these indicators support the inference that there is great freedom to oppose the war in Vietnam, they tell only part of the story. Over the last year or so, there have been many events tending to suggest to the public that antiwar activity is improper, if not actually disloyal. These suggestions probably played a part in generating some hostile response to opposition to the war. And hostility can lead to widespread private punishment of those who actively protest, which, in turn, can silence those who might otherwise do so. Senator Fulbright commented:

"The longer the Vietnamese war goes on without prospect of victory or negotiated peace, the war fever will rise, hopes will give way to fears, and tolerance and freedom of discussion will give way to a false and strident patriotism," he said.

"In a contest between a hawk and dove, the hawk has a great advantage, not because it is a better bird but because it is a bigger bird with lethal talons and a highly developed will to use them."³⁰⁹

Various incidents suggest that the seeds of this process may already have taken root.

Private citizens have militantly supported the government's position.³¹⁰ Of course, this is no more than the exercise of free speech.

the Communist capitals but themselves. And that may be the most ironical and contemptible aspect of their performance.

N.Y. Herald Tribune, Oct. 20, 1965, p. 30, cols. 1-2.

³⁰⁸ For a description of the private and governmental sanctions that have been invoked against protesters, see text accompanying notes 320-50 *infra*. Not everyone would agree with us. Some radical groups charge that free speech is only theory and not part of the reality of American society. For example:

Civil liberties . . . are even enshrined in the political constitution of the society. But the actual exercise of civil liberties by dissidents (as opposed to their theoretical expostulation by establishment intellectuals) is . . . a revolutionary threat and is reacted to as such by the authorities.

Spartacist, *Pluralistic Society or Class Rule*, in *THE BERKELEY STUDENT REVOLT* 231 (Lipset & Wolin ed. 1965).

³⁰⁹ Milwaukee Journal, April 22, 1966, p. 3, col. 4.

³¹⁰ Two weeks after the International Days of Protest, 25,000 people expressed their support for government policy by parading down Fifth Avenue in New York. N.Y. Times, Oct. 31, 1965, § 1, p. 1, col. 3. The parade had been endorsed by the city council, which declared the day to be "Support American Vietnam Effort Day." *Id.*, Oct. 27, 1965, p. 2, cols. 5-6 (city ed.). Veterans Day observances in 1965 became demonstrations in support of the war. Capital Times (Madison, Wis.), Nov. 11, 1965, p. 1, col. 6, p. 4, col. 6; N.Y. Times, Oct. 27, 1965, p. 2, cols. 5, 6 (city ed.); *id.*,

But such activities to some extent may carry the implication that those who oppose the war are behaving in a questionable manner. This implication has been made more explicit: three conservatives produced a thirty-minute film called "While Brave Men Die," intended to "alert America to the danger within"; the film included interviews with leaders of some of the groups opposed to the war and shots of the demonstrations.³¹¹ Others have made comments about the opponents of the war in Vietnam in a more direct fashion. Counterpicketing has become fairly common; that is, when an antiwar group marches, supporters of the war effort march with their slogans too.³¹² For example, people have carried signs such as "Pink College Students Make Yellow Reds,"³¹³ "When Will Students Demonstrate for America?,"³¹⁴ "Peace Yes, Appeasement No," "Don't Be Left, Be Right in Our Foreign Policy," and "Communism on the March."³¹⁵

While most newspapers stressed free speech in their editorials in mid-October of 1965, a few took the view of the *Chicago Tribune*, which scored all demonstrations against the war in Vietnam:

When the attorney general of the United States gets

Nov. 12, 1965, p. 3, cols. 1-4 (city ed.). The American Legion has conducted a "Show Your Colors" campaign; American flag lapel buttons are distributed together with cards that proclaim the wearer's support for the men "serving the cause of freedom in Vietnam." *Id.*, Nov. 25, 1965, p. 10, col. 2 (city ed.). Governor Rockefeller called on New Yorkers to participate in the Legion's campaign. *Id.*, Jan. 5, 1966, p. 6, col. 1 (city ed.).

The AFL-CIO, at its national convention, endorsed President Johnson's policies. *Id.*, Dec. 16, 1965, p. 2, col. 3 (city ed.).

Students have conducted numerous rallies and parades expressing support for the government. See, e.g., *id.*, Oct. 28, 1965, p. 1, col. 2 (city ed.) (600 students at Manhattan College; 1,500 at University of Pittsburgh); *id.*, Oct. 31, 1965, § 1, p. 1, col. 3, at 70, col. 4 (parade by one hundred students at Brigham Young University; parade by 200 at Michigan Technological University); *id.*, Nov. 14, 1965, § 1, p. 9, cols. 1, 3 (200 at Union Jr. College; 150 at Cornell); *id.*, Dec. 18, 1965, p. 3, col. 1 (city ed.) (750 at Purdue). Many thousands more have signed progovernment petitions. See, e.g., *Wisconsin State Journal* (Madison, Wis.), Oct. 24, 1965, § 1, p. 1, cols. 3, 6 (Texas A. & M. students send sixty-foot telegram to President Johnson; 1,200 Yale students sign petition); *N.Y. Times*, Nov. 4, 1965, p. 9, col. 1 (city ed.) (1,500 students at Stanford University); *id.*, Nov. 6, 1965, p. 2, col. 3 (city ed.) (4,000 at Rutgers and Douglas); *Wisconsin State Journal* (Madison, Wis.), Nov. 15, 1965, § 1, p. 10, cols. 3, 5 (6,000 at University of Wisconsin); *N.Y. Times*, Nov. 20, 1965, p. 6, col. 3 (city ed.) (6,000 at Boston University); *id.*, Jan. 7, 1966, p. 1, col. 2 (city ed.) (National Student Committee for Defense of Vietnam presents Vice-President Humphrey with pledges of support by 477,000 students from 322 schools).

³¹¹ *Id.*, Dec. 30, 1965, p. 26, col. 2.

³¹² See, e.g., *id.*, Oct. 17, 1965, § 1, col. 6, at 43, col. 1; *id.*, Nov. 28, 1965, § 1, p. 1, col. 3, at 86, col. 3; *id.*, Feb. 6, 1966, § 1, p. 4, col. 1; *Wisconsin State Journal* (Madison, Wis.), April 16, 1966, § 1, p. 4, col. 3; *N.Y. Times*, April 17, 1966, § 1, p. 1, col. 6, at 9, col. 1.

³¹³ *Id.*, Oct. 17, 1965, § 1, p. 1, col. 6, at 43, col. 1.

³¹⁴ *Ibid.*

³¹⁵ *Id.*, April 17, 1966, § 1, p. 1, col. 6, at 9, col. 1.

around to conceding that there are Communists among the demonstrators who are stridently demanding that we bug out of the war in Viet Nam, that is not especially news to anyone who can tell a hawk from a handsaw. Nevertheless, the fact that Mr. Katzenbach has been able to make this obvious discovery encourages us to hope that he will act on it.

There have been so many "demonstrations" and "marches," beginning with the rash of civil rights processions and sit-ins, that the country has become inured to them and accepts the easy rationalization that this sort of thing is an exercise of the right of petition. Not enough attention has been paid to the fact that, all too often, these were exercises in provocation and incitement.

The development of anti-war and "beat the draft" demonstrations, organized usually from university centers and spreading out from there, represents a further refinement of the tactics of civil disobedience. The operation is intended to hamstring national policy, discourage the laws requiring patriotic duty in service of the flag, and impede the conduct of a war. To that degree it meets the constitutional definition of treason, which consists in making war against the United States or in "adhering" to its enemies, "giving them aid and comfort."

Communist propaganda mills all over the world are making the most of the opportunities afforded them by American student radicals, party-lining professors, and pacifists of all descriptions. . . .

It seems to us that this organized disloyalty verges on criminal syndicalism and should be prosecuted as such, for the ring-leaders of the movement are feeling chesty over how much they have already been able to get away with and are planning fresh excesses for the weeks ahead. As the attorney general mentioned, the government is not impotent in this situation, and we hope it will go to work.

We have seen how far the young activists are willing to go—"demonstrations" which are more nearly riots; challenges to university and police authority; lying down in front of troop trains; seeking to immobilize the Oakland port of military embarkation; even trying to make a "citizens' arrest" of an air base commander. The President is called a murderer and a war criminal. The government itself is challenged and reviled.

A stop must be put to this business. The government must act, and it must act in the toughest way possible. For if this movement goes much farther, it will be insurrection and there will be violence in the streets.³¹⁶

The *Dallas Morning News* talked of the "transparent motives be-

³¹⁶ *Chicago Tribune*, Oct. 19, 1965, p. 18, col. 1.

hind the demonstrations and the obvious use of them to offset Viet Cong military defeats"³¹⁷ It concluded that "as is usually the case, a handful of kooks and Communists on the American scene have been given publicity in the world press far out of proportion to their number or influence."³¹⁸ The *Jackson Daily News* called for direct action:

U.S. citizens who burn . . . draft cards and march against everything that the country stands for should be punished more than by mere heckling and jeering from on-lookers. This is the time for "police" brutality if there ever was one.

. . . We are most assuredly concerned over this threat of Communist sympathizers who parade around free and undisturbed.

And we suggest that Lady Bird's "beautification" campaign should begin in a big way by wiping out the anti-war marchers in every city and planting dogwood trees instead.³¹⁹

The formal actions of government, such as enacting statutes and enforcing laws (as well as making announcements of planned formal activity), probably have contributed to the atmosphere in which discussion and competition for adherents take place. Some of this formal action was clearly proper; some may not have been. Both the federal and state governments have taken such action in response to the antiwar movement. Congress, for example, responded to those who burned their draft cards as a means of protest by enacting a statute with strong penalties;³²⁰ and there have been several prosecutions for violations which occurred after the effective date of the act.³²¹ A Negro who was elected to the Georgia Legislature was denied his seat³²² because he supported a statement of the Student Nonviolent Co-ordinating Committee which expressed sympathy for those "unwilling to respond to a military draft which would compel them to contribute their lives to United States aggression in Vietnam in the name of the 'freedom' we find so false in this country."³²³ Demonstrators have been arrested un-

der various "all-purpose" statutes and ordinances; typically the arrests were prompted by acts of civil disobedience.³²⁴ High school students have been barred from attending classes when they wore black armbands to mourn the dead and protest the war.³²⁵

There have also been publicized threats to take formal legal action. One Congressman proposed a statute,³²⁶ and a constitutional amendment to validate his statute,³²⁷ which would have outlawed

³²⁴ See, e.g., LUCE, *THE NEW LEFT* 112-13 (1966); *Capital Times* (Madison, Wis.), March 25, 1966, p. 4, col. 2; *id.*, March 31, 1966, p. 1, col. 8, p. 4, col. 4; *N.Y. Times*, Oct. 16, 1965, p. 1, col. 8, at 2, col. 2 (city ed.); *id.*, Nov. 9, 1965, p. 11, cols. 2, 4 (city ed.); *id.*, Nov. 12, 1965, p. 3, cols. 1, 2 (city ed.); *id.*, Dec. 21, 1965, p. 3, cols. 5-6 (city ed.).

Two men in the armed forces have been court-martialed because of their protest activities. One had refused to obey an order to remove a peace symbol from his uniform. *Ibid.* The other man, while he was off duty and dressed in civilian clothes, had participated in an antiwar demonstration carrying a sign which said "End Johnson's Facist Aggressions in Vietnam"; he was sentenced to two years' imprisonment at hard labor. *Id.*, Dec. 23, 1965, p. 5, col. 3 (city ed.).

³²⁵ *Id.*, Dec. 18, 1965, p. 3, col. 2 (city ed.); *id.*, Jan. 5, 1966, p. 6, col. 1 (city ed.).

Two American students studying in India and receiving financial support from the federal government were placed on probation by their program director after they, along with thirteen others, demonstrated against United States policy. *Id.*, Dec. 10, 1965, p. 16, cols. 7-8 (city ed.). A Congressman who witnessed this demonstration said he planned to introduce legislation to withdraw financial support from such students. *Milwaukee Journal*, Dec. 14, 1965, § 1, p. 11, cols. 3-4.

In Wisconsin a resolution was introduced in the state senate calling for the expulsion from the University of Wisconsin of several students who had participated in a protest. *N.Y. Times*, Oct. 28, 1965, p. 1, col. 2, at 4, col. 5 (city ed.).

³²⁶ H.R. 12775, 89th Cong., 2d Sess. (1966). The bill was introduced by Representative Teague of Texas. It provides that anyone who with intent to interfere with the successful prosecution by the United States of a declared war or of any armed conflict . . . shall give aid or encouragement to the enemies of the United States by opposing any lawful measure or policy . . . related to the conduct of such war or armed conflict by public speeches, lectures, or other public utterances, by written or printed matter displayed or otherwise disseminated to the public, or by public picketing, parades, rallies, or similar public demonstrations . . .

is punishable by imprisonment for up to ten years, by a fine up to \$10,000, or by both.

See also H.R. 11864, 89th Cong., 2d Sess. (1966); H.R. 12047, 89th Cong., 2d Sess. (1966). Both are aimed at actions interfering with military operations either with or without a declaration of war. Thus H.R. 11864 applies whenever the United States is "at war or engaged in armed conflict with any nation," and strikes at persons who advise, counsel, or urge, or "distribute any written or printed matter which advises, counsels, or urges," interference with the operations of United States military forces. One provision of H.R. 12047 applies "whenever any element of the Armed Forces of the United States shall be engaged in hostilities abroad"; the other provision is applicable to persons who "interfere with the United States, or any member of the Armed Forces, in preparing for, or carrying on, any military duty or activity"

³²⁷ H.R.J. Res. 833, 89th Cong., 2d Sess. (1966). See also H.R.J. Res. 795,

³¹⁷ *Dallas Morning News*, Oct. 20, 1965, p. 1, cols. 1-2.

³¹⁸ *Ibid.*

³¹⁹ *Jackson Daily News* (Jackson, Miss.), Oct. 20, 1965, p. 8, cols. 1-2.

³²⁰ 79 Stat. 586 (1965), 50 U.S.C.A. App. § 462(b) (Supp. 1965), amending 62 Stat. 622 (1948), 50 U.S.C. § 462(b) (1964). On August 5, 1965, the statute was introduced in the House. H.R. 10306, 98th Cong., 1st Sess. (1965). A slightly different version went to the Senate five days later. S. 2381, 98th Cong., 1st Sess. (1965). The House bill was accompanied by a two-page report, H.R. Rep. No. 747, 89th Cong., 1st Sess. (1965), and a briefer report went with the Senate bill. S. Rep. 589, 89th Cong., 1st Sess. (1965). The Senate approved the House version, which became law on August 30, 1965. Pub. L. No. 89-152, 89th Cong., 1st Sess. (Aug. 30, 1965).

³²¹ See, e.g., *N.Y. Times*, Oct. 19, 1965, p. 1, cols. 6-7, p. 4, cols. 4-5 (city ed.); *id.*, Nov. 4, 1966, p. 9, cols. 2-4 (city ed.).

³²² *Id.*, Jan. 11, 1966, p. 1, col. 4, p. 8, cols. 3-8 (city ed.).

³²³ *Id.*, Jan. 8, 1966, p. 2, col. 5. For a biographical sketch of Julian Bond, the man in question, see *id.*, Jan. 12, 1966, p. 18, cols. 2-3 (city ed.).

protests against American policy when American troops are fighting. Some legislators proposed legislative investigations of protesters.³²⁸ Some state directors of selective service threatened reclassification of draft status as a penalty for protests.³²⁹

No one knows whether the publicity given to these matters has affected anyone's willingness to tolerate antiwar opposition. We do know that a variety of unpleasant consequences have been visited on some who have opposed the war. For example, there is interpersonal tension between some people who differ on the war. Perhaps the most famous broken friendship is that of President Johnson and Senator J. William Fulbright. Fulbright, Chairman of the Senate Foreign Relations Committee, is no longer on the White House guest list, even when dinners are held for visiting foreign officials.³³⁰ In some circles, the war in Vietnam is not a subject for discussion; "hawks" and "doves" are not seated together or are not invited to the same affair. For many, such strains on social relations are significant enough to affect their expression of views or their response to those who take strong stands.³³¹

Other private sanctions have also been invoked. An American Legion Post in Boston announced it would give a "good government" award to a rabbi for a sermon on the brotherhood of man. But when the rabbi became a sponsor of the march on Washington, the Legion Post publicly withdrew its award.³³² Several organizations opposing the war met hostility on the part of their landlords. The New York Committee to End the War in Vietnam had its rent raised from eighty to 250 dollars,³³³ and the May 2nd Movement was given an eviction notice.³³⁴ A Jesuit priest who protested the war was sent from New York City on a three-month tour of Latin

89th Cong., 2d Sess. (1966) (proposal to amend the constitutional definition of "treason" to include "giving aid and comfort to any foreign power, group, or organization engaged in armed opposition to, or hostilities with, the United States.").

³²⁸ See 111 CONG. REC. 26242 (daily ed. Oct. 18, 1965) (Congressman Bryan Dorn); *id.* at 26243 (Congressman Hugh Carey); N.Y. Times, Oct. 28, 1965, p. 1, col. 2 (Senator Thomas Dodd). There were other types of investigations, too. The Vice-President for Academic Affairs of the University of Michigan asked the United States Attorney to investigate a student group that had been selling Viet Cong stamps and lapel pins. *Id.*, Oct. 29, 1965, p. 3, cols. 2-3 (city ed.). In Georgia, shortly after the mid-October protests, Governor Carl Sanders ordered the state attorney general to investigate the protests that had occurred there to determine whether there had been a "subversive element involved." Atlanta Constitution, Oct. 19, 1965, p. 1, col. 5.

³²⁹ See, e.g., N.Y. Times, Feb. 18, 1966, p. 10, cols. 6-8.

³³⁰ *Id.*, Feb. 6, 1966, § 1, p. 37, col. 1 (city ed.).

³³¹ See Berkowitz & J.R. Macaulay, *Some Effects of Differences in Status Level and Status Stability*, 14 HUMAN RELATIONS 135, 136 (1961).

³³² N.Y. Times, Dec. 4, 1965, p. 6, cols. 1-4.

³³³ *Id.*, Nov. 7, 1965, p. 67, cols. 1, 4 (city ed.).

³³⁴ *Id.* cols. 1, 4-5.

America.³³⁵ A doctor was threatened with the loss of a research appointment at a psychiatric institute if he participated in a peace vigil near the LBJ Ranch in Texas.³³⁶ Drew University, a Methodist-affiliated school, refused to renew the teaching contract of a Marxist instructor who stated at a teach-in that he favored a Viet Cong victory.³³⁷

Other private sanctions against opposition have been less genteel. Insults are common: at one march in New York City, onlookers yelled "traitors"³³⁸ and "kill a commie for Christ!"³³⁹ At a demonstration in Chicago the jeers were "chicken . . . scum . . . commies . . . cowards . . . sissies . . . punks . . . weirdos."³⁴⁰ Some spectators have grabbed signs and banners from marchers opposing the war.³⁴¹ In Madison, Wisconsin, a local paper reported that police "stood by without interfering when counter-pickets kicked in the paper coffin" being carried by the opponents of the war.³⁴² Eggs, beer cans, rocks, and red paint are now regularly thrown at demonstrators who march in large cities.³⁴³ At a march in Boston, the protesters were harassed by leather-jacketed motorcyclists who zigzagged their cycles through the line of march.³⁴⁴ Some witnessing antiwar events have attempted to beat those who participated; some have succeeded. For example, during a march in Berkeley, California, on October 16, 1965, sixteen members of the Hell's Angels motorcycle club ran through a police line and attempted to seize the lead banner;³⁴⁵ according to the *San Francisco Chronicle*, a "melee" followed.³⁴⁶ In Boston, a group of pacifists held a demonstration on the steps of a courthouse, and four burned

³³⁵ *Id.*, March 11, 1965, p. 15, col. 1 (city ed.).

³³⁶ *Id.*, Dec. 26, 1965, p. 52, cols. 1-2 (city ed.).

³³⁷ *Id.*, Oct. 16, 1965, p. 1, col. 8; *id.*, Oct. 25, 1965, p. 1, col. 6.

In New Jersey the Republican gubernatorial candidate called for the dismissal of a Rutgers University professor who had declared his support for the Viet Cong. However, since the professor's comments had not been made in the classroom, he had not violated the university's regulations, and the board of governors refused to take any action against him. The Republican candidate then called upon the incumbent, a Democrat, to take some action. He, too, refused, stating that he deplored the professor's remark but that any action by him would violate principles of academic freedom. Whether the professor should be fired became a central issue in the gubernatorial campaign, which the incumbent won in a landslide. *Id.*, July 6, 1965, p. 24, cols. 2-3; *id.*, Aug. 4, 1965, p. 14, col. 6; *id.*, Oct. 17, 1965, § 1, p. 84, cols. 5-8; *id.*, Nov. 3, 1965, p. 1, col. 5 (city ed.).

³³⁸ Milwaukee Journal, March 27, 1966, p. 1, col. 1.

³³⁹ *Ibid.*

³⁴⁰ *Ibid.*

³⁴¹ See, e.g., N.Y. Times, Nov. 28, 1965, p. 1, col. 3, at 86, col. 3 (city ed.).

³⁴² Capital Times (Madison, Wis.), Nov. 29, 1965, p. 17, col. 3.

³⁴³ See, e.g., Milwaukee Journal, March 27, 1966, p. 1, col. 1; N.Y. Times, Aug. 10, 1965, p. 3, cols. 2, 4.

³⁴⁴ Milwaukee Journal, March 27, 1966, p. 1, col. 1.

³⁴⁵ San Francisco Examiner, Oct. 17, 1965, § 1, p. 1, col. 8.

³⁴⁶ *Ibid.*

draft cards.³⁴⁷ Twenty-five high school students then attacked, kicked, and pummelled the demonstrators, knocking at least seven of them to the ground.³⁴⁸ In perhaps the most extreme case, forty New York City patrolmen were required to rescue one opponent of the war who had been knocked to the ground, kicked, and stripped of his clothing.³⁴⁹ Several of the attackers were shouting "kill him" and "string him up."³⁵⁰

2. STATEMENTS OF GOVERNMENT OFFICIALS ABOUT DISSENT

Many government officials have commented on the protests against the war in Vietnam, and their words have received varying amounts of publicity. In some instances it is likely that the public perceived certain statements as representing the official or semi-official position of the government; at other times they appeared as the views of individuals who also held government posts. The statements have run the gamut from vigorous support of the right to criticize government policy to equally vigorous denunciation of those who offered criticisms.

Not surprisingly, both Senators Wayne Morse³⁵¹ and J. William Fulbright,³⁵² critics of American policy in Vietnam, have praised the antiwar activity. Fulbright said that criticism "is more than a right; it is an act of patriotism, a higher form of patriotism . . . than the familiar rituals of national adulation."³⁵³ He added that the "wisdom and productivity of the protest movement of students, professors, clergy and others may well be questioned, but their courage, decency and patriotism cannot be doubted."³⁵⁴ President Johnson on several occasions has also stressed the right to question his policies. In June 1965, speaking at his daughter's high school commencement, he said:

I have disagreed with some of the views that have been expressed. I know the large majority of Americans support our efforts everywhere to stop aggression.

But I also know that such discussion is one of the great strengths of American democracy. How rare is the land and extraordinary the people who freely allow, and really encourage, as I have on many occasions, the citizens of our

³⁴⁷ Capital Times (Madison, Wis.), March 31, 1966, p. 1, col. 8, p. 4, col. 4.

³⁴⁸ *Ibid.*

³⁴⁹ N.Y. Times, Oct. 31, 1965, § 1, p. 70, col. 1.

³⁵⁰ *Ibid.*

³⁵¹ See, e.g., *id.*, Oct. 16, 1965, p. 1, col. 8, at 2, col. 2. Senator Morse, commenting on the October demonstrations, said he was glad that there were some people "who will not be cowed into submission by the intolerant bigots who believe that because our country is on an illegal course of action, we must support its illegality." *Ibid.*

³⁵² *Id.*, April 22, 1966, p. 16, col. 1.

³⁵³ *Ibid.*

³⁵⁴ *Ibid.*

nation to discuss and to debate their nation's policies in time of danger.

Nor should we forget that the purpose of liberty is not merely to allow error but to discover truth, not only to restrict the powers of government but to enrich the judgment of the nation. So, by testing ideas in the forum of the nation we discover their strength as well as their wisdom.

Therefore, we welcome and we ask for new ideas from serious and concerned men and women, from universities and journals and public platforms all across this land. We are constantly searching for views and proposals which might strengthen and unite and help our government.

For even among those who do not support our Government policies, the very process of discussion rests on a broad and deeply set foundation of shared belief, principle, faith and experience.

There are, first of all, the assumptions of American democracy. Thus, most of those who disagree are really trying to influence the democratic process and not rip it and tear it apart. They are really seeking to exercise their own freedom and not deny it to others. They try to affect the decisions of the nation—not flaunt or ignore them.³⁵⁵

A few weeks later, there was an affair at the White House honoring American artists.³⁵⁶ The President, impliedly recognizing that many artists oppose his Vietnam policy, stated that "art flourishes most abundantly when it is fully free—when the artist can speak as he wishes and describe the world as he sees it without official direction."³⁵⁷ A long excerpt from a play was presented at this affair despite the fact that the playwright had picketed the White House a month before.³⁵⁸ In November, on the day before the march on Washington, President Johnson's press secretary said that the President, though convinced that the great majority of Americans supported his actions in Vietnam, also believed that those who opposed his policies had a basic right to criticize them.³⁵⁹ Dissent, he said, was healthy for the nation because it showed that the majority's endorsement had been tested in "an atmosphere of prediscussion and openness";³⁶⁰ endorsement by the majority should not deter dissent by the minority.³⁶¹

However, the President has also challenged the dissenters in ways likely to discourage at least some people from questioning

³⁵⁵ *Id.*, June 2, 1965, p. 52, cols. 1-3 (city ed.).

³⁵⁶ *Id.*, June 15, 1965, p. 1, cols. 3-6 (city ed.).

³⁵⁷ *Id.* at 48, col. 2.

³⁵⁸ *Id.* cols. 2-3.

³⁵⁹ *Id.*, Nov. 27, 1965, p. 1, col. 8.

³⁶⁰ *Id.* at 10, col. 4.

³⁶¹ *Ibid.*

government policy. His response to the demonstrations of October 15th and 16th was very different from his other statements. In October his press secretary reported that the President was "dismayed" by the demonstrations.³⁶² First, he feared that the Communists in Hanoi and Peking would be misled by the protests, would think perhaps that they represented a sizable segment of American opinion, and would thus continue to fight on the theory that public opinion here would force an end to the war.³⁶³ Second, he was disturbed by preliminary reports that Communists had infiltrated the peace movement.³⁶⁴ His press secretary said that the President was concerned "that even well-meaning demonstrators can become the victims of Communist aggression."³⁶⁵ Moreover, he was said to have expressed "surprise that any one citizen would feel toward his country in a way that is not consistent with the national interest."³⁶⁶

The President's concern with misleading the Viet Cong, Hanoi, and Peking, and thus giving them reason to continue the war, has been echoed by other government officials. In November Secretary of State Rusk, while noting that in "a vigorous and thriving democracy such as ours . . . we must have debate and an opportunity for dissent,"³⁶⁷ also said that "evidences of dissent are used by Hanoi and Peiping, and undoubtedly these evidences bolster their morale, lead them into perhaps some miscalculations and misjudgments."³⁶⁸ Senator Russell Long hit the Fulbright hearings by asserting:

"Every time a Senator suggests that we retreat and accept defeat or surrender, that word goes right back to Ho Chi Minh and the powers at Peking, who say, 'If we just keep after those Americans, even though they are killing 10 of our men to every one of theirs, that great nation will lose courage and quit.'"³⁶⁹

Another charge is that the demonstrations hurt the morale of the troops in Vietnam;³⁷⁰ perhaps this is what the President meant by conduct "inconsistent with the national interest."³⁷¹

President Johnson's remarks about Communist infiltration have also been reiterated by other officials. The day before the President spoke, Attorney General Nicholas deB. Katzenbach announced that the Department of Justice would investigate groups seeking to at-

³⁶² *Id.*, Oct. 19, 1965, p. 1, col. 8 (city ed.).

³⁶³ *Ibid.*

³⁶⁴ *Id.* at 1, col. 8, p. 5, col. 1.

³⁶⁵ *Id.* at 5, col. 1.

³⁶⁶ *Ibid.*

³⁶⁷ *Id.*, Nov. 6, 1965, p. 2, col. 7.

³⁶⁸ *Ibid.*

³⁶⁹ *Id.*, Feb. 17, 1966, p. 1, col. 5, at 5, col. 4.

³⁷⁰ See, e.g., Dallas Morning News, Oct. 18, 1965, § A, p. 5, col. 3.

³⁷¹ See note 366 *supra*.

tack the draft as a means of protest.³⁷² He was reported as saying that he would hesitate to call the demonstrations and related activities treason because of a "large bite of constitutional protection."³⁷³ He disagreed "strongly and violently" with the antidraft demonstrators but upheld their right to express their views.³⁷⁴ Asked about Communist influence, he replied that in groups such as Students for a Democratic Society "where people are saying things similar to what is being said by Peking, you are likely to find some Communists involved."³⁷⁵ However, he said that Communists, "by and large," were not the leaders of SDS.³⁷⁶ The *Denver Post* combined the report of the President's concern over misleading the Communists with the Attorney General's statement so that Katzenbach's charge apparently went to all demonstrators rather than just those who were in the "beat-the-draft" movement.³⁷⁷

The FBI and the Senate Internal Security Subcommittee made less ambiguous charges of Communist infiltration. J. Edgar Hoover stated that the Communist Party had played an "ever-increasing role in generating opposition to the United States position in Vietnam."³⁷⁸ He charged that the party and other subversive groups "supported and participated" in most of the major antiwar demonstrations.³⁷⁹ The Senate subcommittee issued a staff study on October 13, 1965, which charged more than support and participation³⁸⁰—it asserted that "the great majority of those who have participated in anti-Vietnam demonstrations and in teach-ins are loyal Americans who differ with administration policy in Vietnam for a variety of reasons, ranging from purely strategic considera-

³⁷² N.Y. Times, Oct. 18, 1965, p. 1, col. 6 (city ed.).

³⁷³ *Id.* at 7, col. 1.

³⁷⁴ *Ibid.*

³⁷⁵ Dallas Morning News, Oct. 18, 1965, § A, p. 1, col. 6 (UPI story).

³⁷⁶ N.Y. Times, Oct. 18, 1965, p. 1, col. 6, at 7, col. 1 (city ed.).

³⁷⁷ President Johnson is deeply concerned about demonstrations against U.S. policy in Viet Nam because they might be misinterpreted by American adversaries as reflecting the nation's mood, the White House said Monday.

White House Press Secretary Bill D. Moyers said the President had conferred by telephone with Atty. Gen. Nicholas Katzenbach about his investigation into possible Communist involvement in the demonstrations.

Moyers said Johnson wants Katzenbach and the Justice Department to conclude the investigation as soon as possible.

"The President feels concerned . . . that even well-meaning demonstrators can become victims of exploitation," Moyers said.

Katzenbach telephoned the President at the Bethesda Naval Hospital during the weekend to report on his investigation. Johnson is recuperating from gall bladder surgery.

In Chicago on a speaking engagement Sunday, Katzenbach said, "There are some Communists involved" and "we may very well have some prosecutions."

Denver Post, Oct. 18, 1965, § 1, p. 1, cols. 7-8.

³⁷⁸ N.Y. Times, Jan. 7, 1966, p. 3, col. 4 (city ed.).

³⁷⁹ *Ibid.*

³⁸⁰ STAFF STUDY.