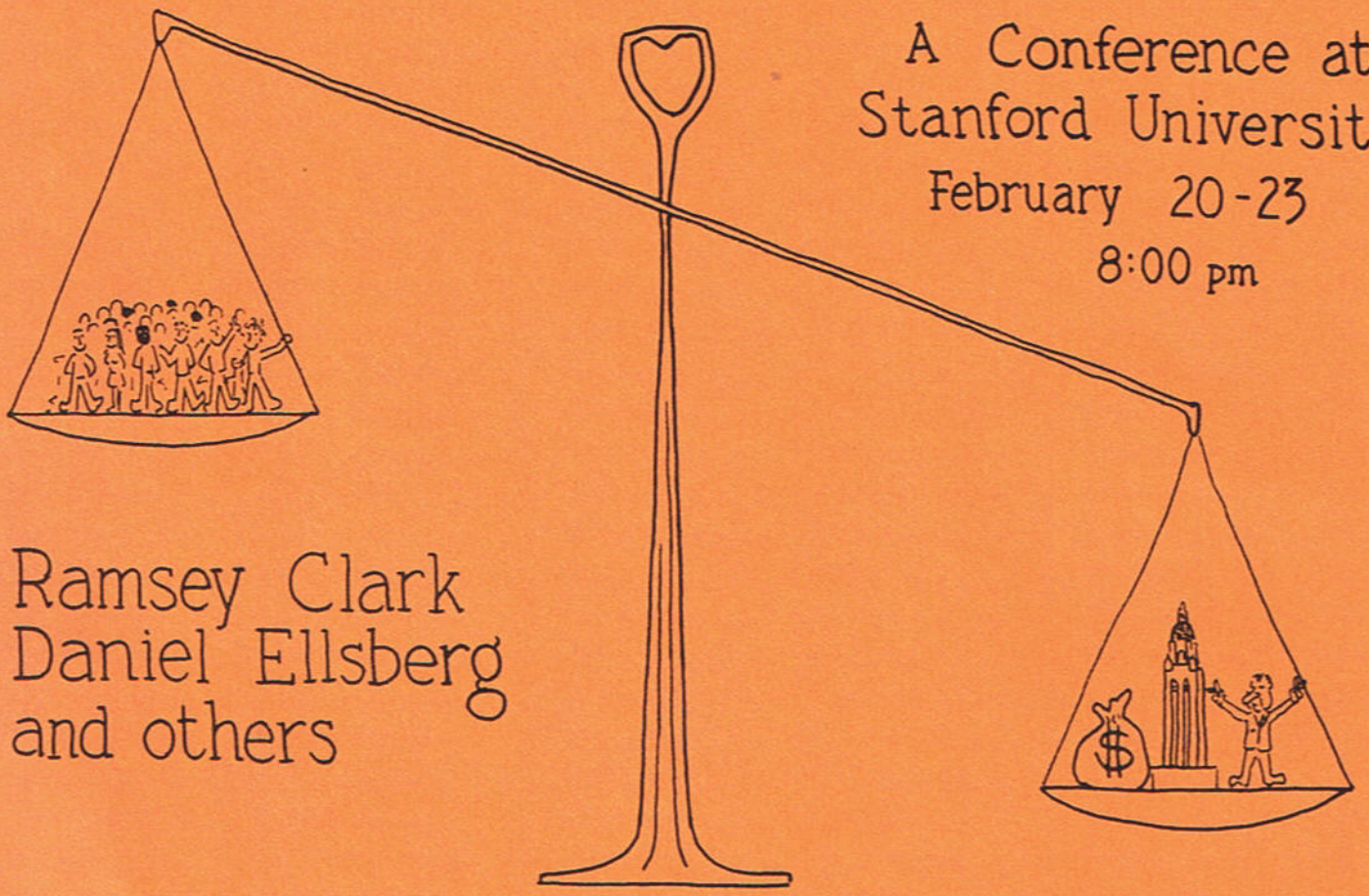
MIGHT vs RIGHT in AMERICA



A Conference at
Stanford University
February 20-23
8:00 pm

Ramsey Clark
Daniel Ellsberg
and others

February 20 ..	Paul Rupert, Military Law Project Bill Kurtis, CBS network news	Free Admission Cubberley Auditorium
February 21 ..	Barbara Babcock, Stanford Law School Ramsey Clark, former US Attorney General	50¢ Donation Memorial Auditorium
February 22 ..	Paul Halvonik, Northern California ACLU Frank Donner, ACLU Political surveillance unit	Free Admission Cubberley Auditorium
February 23 ..	Steve Weissman, author Ramparts press Daniel Ellsberg, Pentagon Papers case	Free Admission Memorial Church

sponsored by Stanford Committee on Political Education
205 Tresidder, Stanford, Calif. 94305

and A.S.S.U. Speakers Bureau

SCOPE

The Bill Of Rights

Articles in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

ARTICLE I[1]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

ARTICLE III

No soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

ARTICLE VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

ARTICLE VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

[1]The first ten amendments went into effect November 3, 1791.

Introduction

The Bill of Rights was added to the Constitution essentially as a condition of ratification. Without it the Constitution stands largely as a document regulating the forms of government, commerce and the interactions between the various states.

The people in the nascent federation were leery of the direction the new government might take, having only recently emerged from the despotism of George III. They recognized the need to protect themselves against the power they were concentrating in a central authority. They recognized the need to protect avenues of dissent, to provide a counterforce to the government should it lose touch with them and become self perpetuating against their interests. In demanding that the Bill of Rights be added to the Constitution, the people in revolutionary America established a framework, within which, at least to a reasonable extent, they could openly oppose governmental abuse of power.

Now nearly 200 years later, Federal government has grown far beyond what might have been imagined by the founding fathers. It serves many groups with conflicting interests. Often it is more responsive to the wishes of the powerful and wealthy few who manipulate the controls than to the needs of the majority of its citizens.

In the name of self preservation our government has made war on peasant peoples and enriched its friends at the expense of its own citizens as well as the rest of the world. It has moved to stifle opposition to these policies, frequently ignoring the constitutional restraints on its own power.

Suppression of Dissent

We in the Stanford Committee on Political Education (SCOPE) have organized this conference because of our growing concern with institutional and governmental suppression of dissent. We are afraid that this country, by infringing on the rights of its citizens, is rapidly moving away from the democratic traditions which are necessary to insure fair and equal treament of **all** citizens.

We are familiar with recent attempts by the government to infiltrate and manipulate our lives. The Pentagon Papers and Watergate trials have brought out, more clearly than ever, the willingness of government officials to use their power to deceive the American people through distortion and outright lies.

The attempt to prevent newspapers from printing the Pentagon Papers, the attempted suppression of the CBS documentary "The Selling of the Pentagon," the jailing of newsmen who refuse to disclose their sources, and the ominous speeches by White House Communications Director Clay Whitehead attacking the "liberal" TV networks all pose grave threats to freedom of the press and the public's right to know.

Government Spies

In addition, the reports of government infiltrators in the Phillip Berrigan case and the more recent ease against Native Americans who sat in at the Bureau of Indian Affairs building in Washington, D.C. point out the increasing use of government informers and provocateurs sent out to spy on the American people.

The massive surveillance system containing profiles of all those considered "threatening" to the government and the numerous grand jury witchhunts which have sought to persecute and harrass leftist organizations with little or no justification present dangerous steps toward a totalitarian police state.

This type of activity not only occurs at the national level, however, but locally as well. Right here at Stanford, we have our own examples of how the administration uses power to pressure us not to oppose its policies.

Police photographers inevitably appear at peaceful campus rallies to take pictures of both speakers and listeners. It is not clear what happens to these photographs once they are taken, but the chilling effect police photographers produce at peaceful rallies clearly inhibits free discussion. This is especially repulsive to us on a university campus where freedom of speech and open exchange of ideas are supposedly sacred.

Students Denied

The formation of the Campus Judicial Panel (CJP) last year demonstrated the University's willingness to deny students the basic right to a fair trial. Faculty members hold a four-to-three majority on the Panel and are chosen by the faculty Senate while the students on the Panel are selected at random. Attempts to even get a simple student majority on the Panel have continuously been rejected by the faculty and administration despite two overwhelming votes by the student body in favor of a student majority.

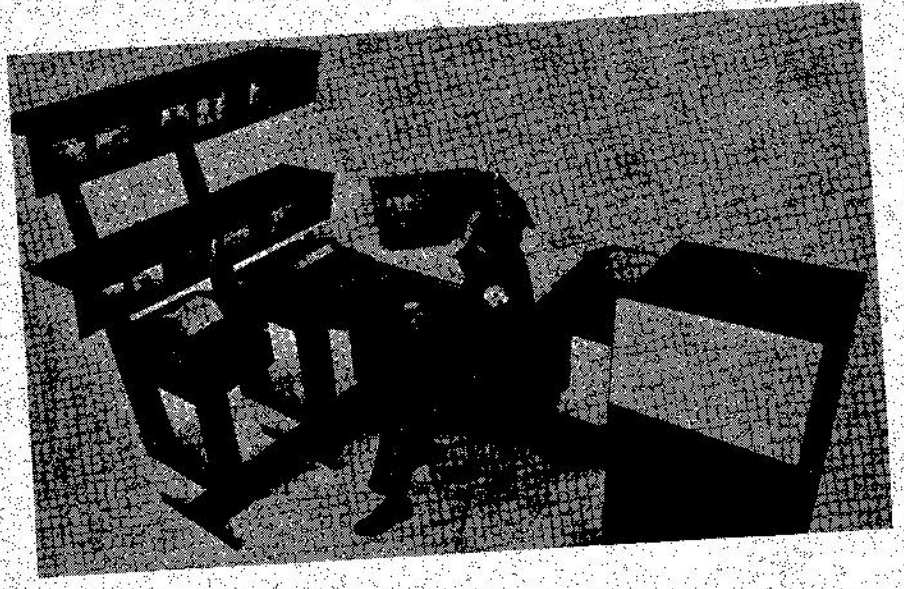
Earlier this month, Prof. Daniel Bershader, a CJP member, said, "The [faculty] Senate is not ready to give a student majority on a panel which might decide political problems." CJP Chairman William Cohen, a law professor, cited possible "peer pressure" on students as a reason for not giving them a majority. Does he mean to imply that faculty members who are employed by the University are not subject to pressure while ruling on cases such as Bruce Franklin's? The answer is clear. The faculty and administration don't trust students and don't want to relinquish power to them.

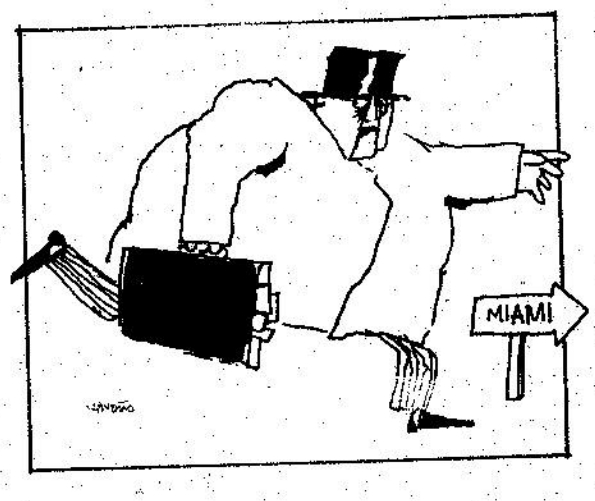
Why? One of the most controversial CJP cases last year concerned the prosecution of students who had protested an appearance at the Placement Center by companies heavily involved in the Vietnam war. Although the demonstration was peaceful and involved a minimum of disruption, the students were suspended for three quarters each. It is certainly relevant that President Lyman claims the Placement Center must be kept open for military recruiting so as not to jeopardize the vast amount of money Stanford gets each year from the Department of Defense.

Provocateurs And Informers

Stanford has even been exposed to the undercover world of provocateurs. In 1969 and 1970, FBI recruit Tom Mosher infiltrated the movement at Stanford and admitted in testimony before the Senate Internal Security Subcommittee that he helped lead militant activities on this campus. He testified that he had appeared to be an activist here during the April Third Movement of 1969 which attempted to stop the Stanford Research Institute (SRI) from carrying out classified research.

Mosher admitted that he had participated in a sit-in at the Applied Electronics Laboratory (AEL), had clashed with the police at SRI, and had helped build a barricade in front of SRI which caused great tension when it was later set on fire. The use of provocateurs who actually incite others to illegal and dangerous actions while working for





the government raises very serious moral questions about who **really** *is responsible for whatever violence results.*

The Bruce Franklin case is Stanford's most notorious example of disregard for constitutional rights and liberties. Despite the frequent claims of the Advisory Board which voted to dismiss him as a Stanford professor, Bruce Franklin's case was not tried on constitutional grounds. There was nothing in the evidence presented during the case to show that Bruce Franklin overstepped the constitutional limits of free speech. His firing by the University demonstrates that Stanford does not guarantee constitutional rights to its students, faculty and staff: speeches and actions protected by the Constitution are punishable at Stanford.

'Daily' Search

Finally, even the campus press has come under severe pressure. In the spring of 1971, **The Stanford Daily***'s photo files were searched by the Palo Alto Police Department. The police were, not surprisingly, searching for photographs of demonstrators, taken during the 1971 Hospital Sit-In, but they didn't find what they were looking for. The* **Daily** *sued the Palo Alto Police Department to stop such searches in the future. A federal district judge in San Francisco ruled the search illegal and unconstitutional. However, the PAPD is appealing the ruling. This attempt to turn the* **Daily** *into an information-gathering service for the police foreshadowed the wave of new threats to the press in this country.*

The **Daily** *also came under pressure due to another celebrated incident in Stanford history which ties many of these issues together. On October 2, 1970, the* **Daily** *published a column by Diarmuid McGuire which seemed to call for bodily harm to two members of the Free Campus Movement (FCM), Ray White and Roger Reed, who had helped to convict him of breaking windows during the Cambodia demonstrations.*

This column raised an incredible furor in the Stanford community. In fact, pressure from the faculty and administration was so intense that it spurred the **Daily** *to become independent in order to avoid possible censorship in the future.*

The McGuire column also relates to the issue of informers on the Stanford campus. Ray White and other FCM members have consistently worked with police as informers and "witnesses," and are normally allowed to go behind police lines at demonstrations when this privilege is denied to others. They have worked closely with both police and Stanford administrators in bringing about prosecutions and convictions of demonstrators.

Threats And Perjury

It is interesting to note that, while there was great outrage over Diarmuid McGuire's column, there was hardly any outrage when Ray White was found to have sent anonymous threatening notes to former student government leader Tom Forstenzer and to have perjured himself when questioned about this during the Franklin trial.

It would appear that Stanford as a University and as a community has sunk to the national norm in embracing and protecting informers. Convictions may be easier to obtain with such willing witnesses, but whether justice can be served by such unsavory alliances is a major concern.

Much of the movement activity at Stanford has been centered around "getting Stanford out of the war." We have had some successes, notably getting ROTC off campus and getting most classified research banned. We have learned, however, that Stanford's involvement in Defense Department research is not an isolated, easily removed appendage to the academic pursuits of the institution. It is instead an integral part of the University structure, symptomatic of the way in which the Board of Trustees and their friends shape the priorities for the campus.

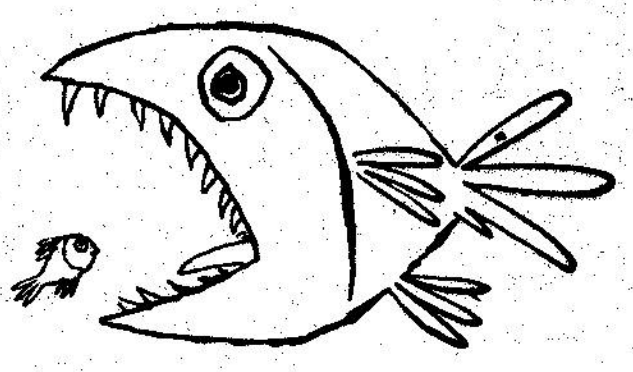
Stanford entered into Department of Defense contracting in much the same way the United States entered into Vietnam: gradually and without much obvious foresight. Its corporate interests took it there. But in achieving the eminence of an elite research institution, Stanford has put itself into the position of protecting the values of corporate society, even when that means curtailing traditional freedoms.

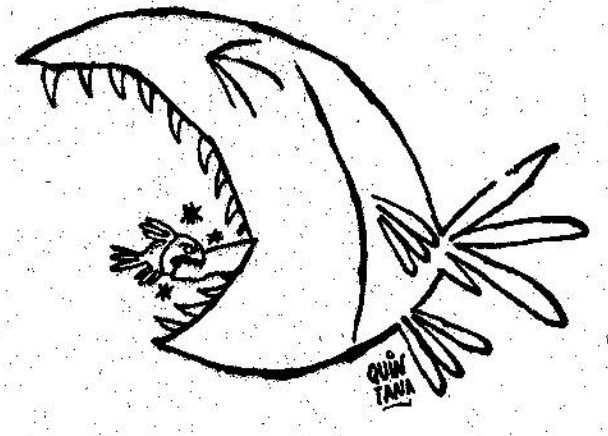
Creative Thought

We question the wisdom of that course. We question whether Stanford, in protecting its financial interests, should require the sacrifice of basic rights of members of the Stanford community. We question whether creative thought, the heart of an academic institution can truly survive such sacrifice.

As indicated throughout this introduction Stanford is not an isolated example. The threat here is symptomatic of a depletion of rights on a much grander scale. The people who are running this country have specific reasons for not wanting the full guarantees of the Constitution to prevail for everyone. We must oppose that trend as strongly as we can.

The speakers at this conference will not, in general, cover local Stanford issues. They will be talking more generally about what is occurring in American society at this point in history. However, we hope that the information they bring will be useful in helping to set Stanford on a better path. We could, as an institution, provide much needed leadership in creating a fair and just society.





Might Vs. Right In America

Tuesday, February 20

"Two Crisis Cases: The Military and the Press"

Paul Rupert . . . . . **Military Law Project**
Bill Kurtis . . . . . **CBS Network News**
Moderator: Cary Ridder

Wednesday, February 21

"The Courts: Encroachment or Protection?"

Barbara Babcock . . . . . **Stanford Law Professor**
Ramsey Clark . . . . . **Former U.S. Attorney General**
Moderator: Mark Noble

Thursday, February 22

"Patsies, Provocateurs and Power"

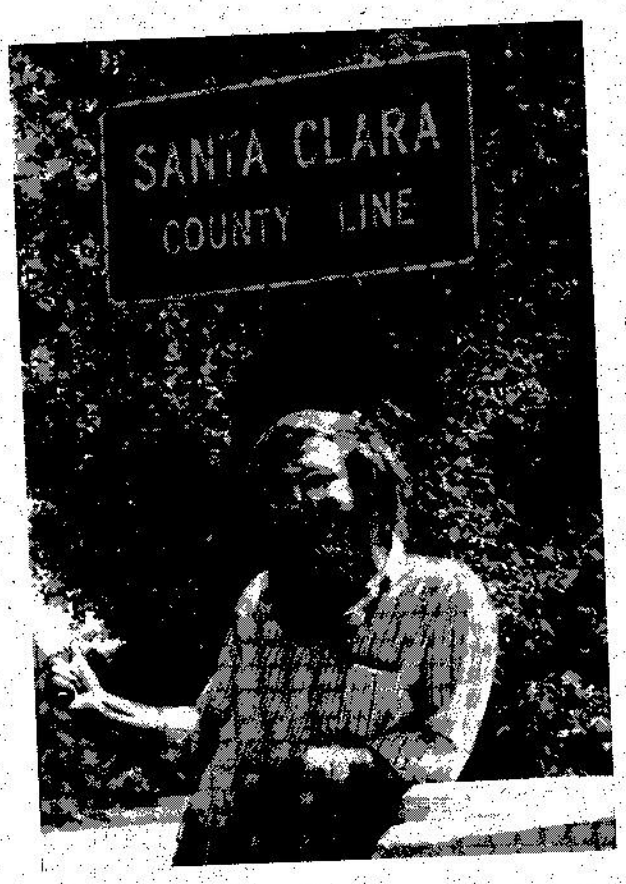
Paul Halvonik . . . . . **Northern California ACLU**
Frank Donner . . . . . **ACLU Political Surveillance Committee**
Moderator: Anne Hetherington

Friday, February 23

"Why Is Nixon Doing What He's Doing?"

Steve Weissman . . . . . **Author, Ramparts Press**
Daniel Ellsberg . . . . . **Defendant, Pentagon Papers Case**
Moderator: Kevin Smith

Music by the Rose Redwoods



Paul Rupert

Paul Rupert was raised in the working class-tourist town of Chatham, Massachusetts by working-middle class parents who hoped for his success. Planning a career in conventional politics, he went to Stanford University to meet future "West Coast Ruling Class" contacts and to spend the four years necessary before he could go to Harvard University Law School to meet future "East Coast Ruling Class" contacts.

He attended Stanford from September 1963 to June 1967, during which time the Civil Rights movement in the South and the War in Vietnam brought much conflict and awareness to students of that period. Six months in Europe, and a year of sponsoring and wrestling with the draft were among the things that led him to a radical critique of capitalism, Stanford University and American life in general.

He attended the University of Chicago Divinity School from September 1967 to June 1968. He burned his draft card on October 21, 1967 at the Pentagon demonstrations and began organizing with the Chicago Area Draft Resistance (CADRE). He refused induction into the Army in March 1968, and returned to work with the Palo Alto Resistance in June of 1968.

He began work with the United Campus Ministry at Stanford in the Fall, and was active in the April 3rd Movement, which challenged Stanford's role in weaponry and counter-insurgency research for the "American Empire." He was indicted for induction refusal on April 3rd, and his Campus Ministry job was terminated in June.

He began work in the Fall of 1969 with Grass Roots, a group organized to oppose Stanford's "imperial land use policies." He was tried for induction refusal in December, and sentenced in April 1970. A liberal judge, who was a Stanford alumnus, gave him probation and kicked him out of Santa Clara County for five years.

He worked with the People's Medical Center in Redwood City as administrator from May 1970 to August 1972, when his probation was ended. He is currently working as a staff person for the National Lawyers' Guild Military Law Office in San Francisco. The MLO sends lawyers to projects near U.S. military bases in Asia to offer "good legal counsel to GIs who are struggling against the workings of the U.S. military as it wages war on Asians and its own dissenters."

(The following article by Paul Rupert is reprinted from the December 1972 issue of

Guild Notes, *the national newspaper of the National Lawyers Guild.)*

There is a saying in the New China that "to be attacked by the enemy is a good thing, not a bad thing." If the U.S. military command and the National Lawyers Guild (NLG) Southeast Asia Project are enemies–and this is certainly the way the military has chosen to define our relationship–then things couldn't be better for us in Asia.

In the Philippines, the American commander of the Subic Bay Naval Base suggested that the Philippine police detain our project staff for alleged violations of martial law, and allowed them to enter the base to make their arrest. In Okinawa our people report an active, verbal, red-baiting campaign aimed at discrediting the Project, based on the House Un-American Activities Committee (HUAC) allegations of the early '50s that the Guild is a Communist Party front. In Iwakuni, Japan, the chaplain's page of the **Torii Teller** (the official publication of the Marine Air Wing stationed there) featured a new column entitled "Reasoning based on facts" in which the following "facts" were revealed to the readership:

> "Did you know....
> 1. That the House Committee on Un-American Activities has identified the National Lawyers' Guild as the foremost legal bulwark of the Communist Party of the United States?
> 2. That the Build has representatives at a number of U.S. bases in the Far East, including Iwakuni, allegedly to provide free civilian legal counsel to U.S. servicemen? Consider this if you have to choose legal counsel. Mr. Tim Coulter, while coordinator of the National Lawyers' Guild military law project in New York, discussed the work of the Guild lawyers in the G.I. movement. He stated their job is mainly concerned with political issues, rather than legal or constitutional issues. In his opinion, the critical issues are political questions of power and policy, only remotely concerned with questions of the individual's legal status or rights.
> Compare Mr. Coulter's statement with opinions of Marines here at Iwakuni who have been represented by Guild lawyers. Some of these Marines have made sworn statements to the effect that they felt they had been used by their lawyers–politically exploited for

Consider Lee King, a Black GI currently in the brig in Okinawa awaiting trial. Lee was subjected to Army racism for five years before he finally began to fight back. He initiated the removal of two racist warrant allegations, and equal space for a rebuttal. We still await an answer.

Reber Boult, a NLG lawyer at Iwakuni, has written to the Commander of the base demanding a retraction or proof of all officers from their commands. One regularly called him "colored boy" and chattered about the slaves his granddaddy used to own. The other assigned Lee and other Black men to work in the sun and white men on the same detail to work under an awning, claiming that Blacks didn't sunburn as easily. Lee filed Article 138's against them, a legal right he was guaranteed and knew how to exercise.

Murder Charge

Then one night Lee's 20-month-old son fell out of his crib, fractured his skull on the concrete floor, and died. After three months of investigation, the CID (Criminal Investigation Division of the Army) charged Lee with murder.

To substantiate the charge, they rooted around for months trying to find a witness to child-beating, which was difficult since Lee was not a childbeater. He was not even at home the night of his child's death. But eventually they got a guy, who Lee had been drinking with at home that afternoon, to testify that he'd heard a thud from the child's room when Lee went in to answer the child's cries. Their means of eliciting this "testimony" were primitive: the GI was told that a 14-year-old girl had been raped by a Black man and if he would testify against Lee, he would not be charged with the crime, which carried a 15-year sentence.

This sordid story was revealed at the preliminary hearing, along with the "friend's" partial retraction of his story and the autopsy report that the cause of death could have been the fall. But the Army, whose desire for revenge seems to know few bounds in this matter, presses on.

We are defending Lee King, and his right to exercise the rights guaranteed him by the UCMJ (The Uniform Code of Military Justice) without being subjected to such an incredible frame-up. We will continue to defend GIs and to expand their rights. For this, the military attacks us and will continue to attack us. The more effective we are, the more viciously they will attack. We will fight back, and will not leave Asia voluntarily unless we are following the GIs home.

Bill Kurtis

Bill Kurtis, West Coast correspondent for CBS news, is eminently qualified to discuss the practical, political and legal problems of protecting the First Amendment guarantees of freedom of the press. After receiving his undergraduate degree in journalism from the University of Kansas in 1962, Kurtis attended the Washburn University School of Law, from which he obtained his J.D. He passed the Kansas Bar in 1966.

Upon completion of his legal education, Kurtis became a reporter for WBBM-TV in Chicago—a job which called upon him to cover many major political events of the late 1960s. From the ravaging urban riots in several American cities, to the 1968 Democratic Convention in Chicago and the ensuing trial of the Chicago 7, Kurtis' journalistic talents, augmented by his legal background, combined to produce award-winning coverage of the most pressing social and political stories of the day. For his documentary "Tokyo Rose: Two Years Later," Kurtis received the Dumond International Journalism Award followed by an Emmy Award for his insightful coverage of the Chicago Conspiracy Trial.

Moving to CBS in 1970, Kurtis regularly provided perceptive reporting at the trials of Charles Manson, Angela Davis, and Juan Corona. Presently, Kurtis is assigned to the Pentagon Papers trial of Daniel Ellsberg and Anthony J. Russo.

In addition to covering both national conventions last year in Miami, and the Managua earthquake, Kurtis has covered virtually every major news story on the West Coast in the last three years.

(The following excerpts were compiled from reports on the Chicago 7 Conspiracy trial which Bill Kurtis made while working for WBBM-TV in Chicago during 1969-1970.)

[The defendants are using their trial] as a forum for their views on Vietnam, racism, poverty, and what they called the injustices of the system....

Like most trials, it's based on an adversary system. By legal definition, adversary means opponent, contestant, an opposite party.

At its heart are rigid rules and the demand of respect for the system itself, before a judge who governs the whole proceeding and maintains fairness.

But adversary also means enemy or foe. And that might fit this trial a little better. For in the conspiracy trial, the adversary system

has been stretched to its limits and sometimes beyond....

Lack of Respect

From that first day, a pattern developed—it was clear the defendants, thinking they were charged for their beliefs (they called it a political trial), were not going to show much respect for this system that brought them to Chicago—they refused to stand when the Judge came in that first day, during opening arguments Abbie Hoffman blew the jury a kiss, and Tom Hayden raised his fist when introduced. It was clear the Judge liked neither them nor their actions. He admonished their laughing in court, "This is not the plaza downstairs; I will not tolerate this sort of thing...."

With each outburst, the trial took on a new dimension—suddenly the system itself seemed on trial. Its very ability to function, in the face of these defendants who defied that ability, became the issue, and again, perhaps like August 1968, the system found itself with an ugly dilemma: give in to demands or take measures to stop them.

Judge Hoffman took those measures....

A 'Right' To Talk

[One] morning when Bobby Seale entered the courtroom, he spoke to followers in the gallery and said, "Just hold your cool. I've got a right to speak out. If anybody attacks you, you have a right to defend yourself. But I've got a right to talk."

Seale persisted in exercising that right for days with almost daily interruptions of court proceedings, demanding his constitutional rights that he be allowed to represent himself and cross-examine witnesses.

Extra marshals were in the courtroom, and when Seale jumped up to interrupt an argument by government attorney Richard Schultz, several marshals forcibly put him back in his chair. It tipped and rolled backwards slightly as he struggled with the marshal.

Defense attorney Kunstler said, "Let the record show Mr. Seale was attacked by a marshal in the courtroom...."

The argument lasted nearly an hour before Seale's final interruption. Judge Hoffman [ordered the marshals to] "take him into the room and deal with him as he should be dealt with in this circumstance."

A white cloth rag was tied around his mouth; it was later reinforced with adhesive tape. His arms and legs were handcuffed to a metal folding chair placed at one corner of the defense table.

As he sat before the jury, Judge Hoffman explained, "It is necessary on occasion to impose stern measures to maintain order."

Bobby Seale's gagging is symbolic to both sides in this conspiracy trial which stems from the Democratic National Convention.

Function Vs. Dissent

In a single act, it represents to the defense the gagging of free speech and dissent; and to the government, it represents a critical test of the establishment's ability to function, especially in the face of those who doubt its ability to function.

That kind of confrontation may have been what the Democratic National Convention was all about....

The feeling of what the five months meant was found in the final arguments.

The defense [told the jury], "Your verdict will, in effect, determine the future of the principle of free speech in America.

"We are living in extremely troubled times: an intolerable war has split this nation; racism and poverty at home have been the causes of despair and discouragement. These problems do not go away by destroying their critics.

"You can crucify a Jesus Christ, poison a Socrates, hang a John Brown, you can assassinate a John F. Kennedy or Martin Luther King, but the problems remain.

"It is your responsibility to see that these men remain able to live as masters of their souls, able to live and speak freely. Perhaps by your verdict, singer Judy Collins will never again have to say the words, 'When will they ever learn.'"

Lack Of Communication

In trying to reach some conclusions about this trial, a popular phrase keeps coming back: a lack of communication. There seemed to be a gap of understanding between Judge, Government, and Defense, with attempts to restrict the flow of information instead of increase it.

The trial seemed to be a continuing confrontation with each side on the extreme edge of some middle ground of justice that was never reached.

The defendants seemed to hold a mystical power to force the system into an unattractive, embarrassing position.

The defendants would say it's because the system *is* unattractive. The government would say the appearance was caused by unorthodox defendants.

If the conspiracy trial became the test of the juridical process to handle unorthodox defendants, perhaps it was [also] a reflection of a system trying to handle unorthodox citizens.

Barbara Babcock

Prof. Barbara A. Babcock received her B.A. in 1960 from the University of Pennsylvania and her law degree in 1963 from Yale. She was valedictorian, Phi Beta Kappa, president of the Debate Council, and a Woodrow Wilson Scholar at Penn, and at Yale was on the Law Journal and received the Harlan Fiske Stone Prize.

Upon graduation from Yale she clerked for Judge Henry Edgerton of the U.S. Court of Appeals, District of Columbia Circuit. She then joined the Washington law firm led by famed attorney Edward Bennett Williams, where she specialized in criminal law litigation.

Following her tenure in the Williams firm, she was Staff Attorney for the D.C. Legal Aid Agency. During her two years with the Agency she represented approximately 200 people charged with serious crimes, conducting defenses before juries in about 60 cases. This prepared her for her next position, that of Director, D.C. Public Defender Service (PDS); this organization was the "descendant" of the D.C. Legal Aid Agency. The PDS has 44 attorneys, 16 social workers, 14 investigators, and is the major channel for the defense of serious criminal cases in the District of Columbia. As Director, Prof. Babcock conducted the staff training program, carried out administrative and policymaking duties, and tried major felony cases.

Since her resignation in 1972, she has been a professor of civil procedure and sex discrimination at Stanford. She recently finished a book, to be published this fall, entitled **Sex Discrimination: Causes and Remedies.**

Along with Prof. Babcock's other activities, she was a visiting Professor at Georgetown and Yale Law Schools, and is a member of the National Legal Aid and Defender Association Executive Board, the Criminal Law Council of the American Bar Association, the Committee on the Operation of the D.C. Bail Reform Act, and the Advisory Council to a Ford Foundation on the administration of law and justice.

While at Stanford she has been a popular guest speaker on criminal justice and sex discrimination, her major areas of expertise. She is also currently sponsoring a SWOPSI (Student Workshop on Political and Social Issues) course on alternatives in the legal profession for social activists.

(Perhaps the most basic constitutional right in criminal cases is the right to counsel. This usually refers to the public defender or

other appointed counsel programs. In an informal class discussion recently, Barbara Babcock comments on the difference between what our legal system promises the poor and what they actually receive.)

A lot of people who are in the system are getting severely misrepresented and sold down the river, because they're poor and not because of what they did....

Poor people accused of crimes are a special class. There's an element of fear and hostility towards them that is present to a much lesser degree towards poor people with civil law problems. . . . Society does not want to give the resources to represent poor defendants, because the things they are charged with are frightening and hateful....

Law has a tremendous educative effect on the people that deal with it. . . . If we gave everybody an adequate lawyer, even the people who were convicted would know that they had had the benefit of fairness and justice; and that really *does* make a difference, a step towards rehabilitation if you will. . . . [The quality of defense] certainly makes a difference in their attitudes when it's bad. . . . Poor people who go through the system today, even those who get lenient sentences, know that they have not "had" a lawyer in actual effect, and that their case was never really looked at. *This really* creates a lot of disrespect and hostility for the law....

Cynical Lawyers

Public defending grinds lawyers down and wears them out, and they sometimes become more cynical about their clients than even the judges, the social workers, the court personnel, and the prosecutors....

The system is not geared for the poor to get adequate representation. The lowliest clerks will resist you. The judge will give you a very hard time day after day, and there are lots of ways a judge can give you a hard time that will never appear on the record, that he could never get reversed for....

Although it is very seldom that you represent an accused person who is totally innocent of doing anything illegal, indigent defendants *are* usually overcharged, in order to induce guilty pleas to lesser charges. Typically, the authorities take one act, break it up into six crimes, and charge them all . . A lot of people are pleaded guilty in a mill-like fashion who could have gotten a better plea if the lawyer had done his job....

Poor people accused of crime in this country have never ever been adequately represented, and I don't think that that is basically understood by people. The person on the street believes that poor people get good representation, and in fact that poor people accused of big crimes are ripping off the system by getting good lawyers and getting off when they're really guilty. People believe this because it's comforting to believe, but they really should be disabused of the notion. . . .

The poor don't 'get a lawyer' in any traditional sense of the term. The ABA Canon of Ethics describes what the function of a lawyer is, and it's to be a learned counselor, a wise friend, and to really advise a person about all the options available, in addition to being in court and signing the papers on the day of trial. Most poor people don't even get these basic primary things....

In most places, the function of a public defender is to plea bargain; and he has no interest in what is a good bargain for the individual client, because he doesn't know anything about the individual client. He might not even see him until the day he arrives in court. The public defender doesn't have the tools to bargain *with*, because he doesn't have the resources to investigate the individual case....

Overwhelming Caseloads

In the vast majority of defender offices the lawyers have such overwhelming caseloads that basic little things like adequate pretrial preparation just don't get done....

When we're talking about the criminal justice system we're really talking about people pleading guilty, about plea bargaining. And to plea bargain adequately, you've got to have something to bargain *with*, like a defense you've worked out in advance with witnesses you have under subpoena. Otherwise you don't get a fair plea bargain at all...

I could name on the fingers of one hand the adequate public defender programs in existence today. *Almost every lawyer representing the poor who stands up in court and puts his name on court papers and stands beside a person as if he had been that person's counselor is telling a lie.*

It's hard to be a good public defender, even given the ability and resources. You suffer the quiet mistrust from the client that comes from being known as the "government lawyer" because of who pays your salary. Also, you are in court every day with the same prosecutors and judges. Any particular client will be gone tomorrow, but you and other clients will be back. It's very hard to be willing to antagonize that judge and the prosecutor for the sake of one client, especially if he is an unattractive personality....

Ramsey Clark

Ramsey Clark was born December 18, 1927 in Dallas, Texas. He is the son of Tom C. Clark who later became an Associate Justice of the U.S. Supreme Court.

He attended public schools in Dallas, Los Angeles and Washington, D.C., and after serving in the U.S. Marine Corps in 1945 and 1946, Clark received his B.A. from the University of Texas in 1949. He received both an M.A. in American History and a J.D. from the University of Chicago in 1950.

Clark was admitted to the State Bar of Texas in 1951 and was admitted to the Bar of the U.S. Supreme Court in 1956. From 1951 to 1961, he practiced private law in Dallas.

From 1961 to 1965, Clark served as Assistant Attorney General, heading the Lands Division of the Justice Department after being appointed by President John F. Kennedy. In 1965, President Lyndon Johnson nominated Clark as Deputy Attorney General, and Clark held that position until the Senate confirmed his nomination as U.S. Attorney General in 1967.

After his tenure as Attorney General had expired in 1969 when the Nixon Administration took over, Clark has been with the law firm Paul, Weiss, Rifkind, Wharton and Garrison.

He is married and has two children.

(The following is excerpted from Ramsey Clark's book **Crime In America.***)*

The crucial test of American character will be our reaction to the vastness of crime and turbulence in which we live. It will not be an easy test. The obvious and instinctive reaction is repressiveness. It will not work. You cannot discipline this turbulent, independent young mass society as if it were a child. Repression is the one clear course toward irreconcilable division and revolution in America. The essential action is to create a wholesome environment....

To fail this test is to destroy liberty for the individual in mass society. To pass it is to liberate the powers of the individual for the good of mankind—to provide even for the most miserable among us the chance to fulfill himself, to do all he can, to be whatever he has within him to be....

Reason fades as fear deprives us of any concern or compassion for others. Fear can destroy our desire for justice itself. Then there is little hope. We are prepared to deny justice to obtain what unreasoning, overpowering emotion falsely tells us will be security: arm yourself, suppress dissent, invade privacy, urge police to trick and deceive, force confessions, jail without trial,

brutalize in prisons, execute the poor and the weak. Due process can wait—we want safety! Naked power becomes sovereign. Only force can rise to meet it. The end is violence....

Vast Unrest

Safety can come only from service to others, because until the basic human needs of all are fulfilled, there will be a vast unrest at work that cannot be stilled by force or by admonition to respect the law....

There are degrees of repression. Each demeans the dignity of the individual in its different way. Intimidation of speech or conduct by force or threat of force in essence says the state is supreme, the individual has no rights, he must do as he is told. Stealth and trickery as methods of repression mean that the state has no respect for the individual. It will deceive, lie, invade privacy, steal documents, do whatever it thinks necessary to catch people in crime. By wiretapping, the government says to its citizens: Do not trust us, for we do not trust you. We will hide, overhead, wait secretly for months for you to do wrong. If you do anything to displease us, we may choose to watch your every move.

Denial of bail and preventative detention are essentially premised on the belief that the individual must yield his liberty to the state if he is poor, ignorant, despised—and apparently dangerous. He can be tried later. Society will not presume him innocent. No respecters of human dignity, these measures imply that judges can tell who the bad people—the dangerous ones—are and can say that they should be denied freedom and punished as guilty until proven innocent.

Judicial Impotence

The desire to compel confessions and to repeal the Fifth Amendment admits the impotence of the system of criminal justice to find truth and do justice. Instead, it seeks to crush the individual, to make him bend his knee to its sovereignty, to coerce from his own mouth words that will convict him, to question him—if he is poor, ignorant, and afraid—until he cracks. Frustrated and frightened in its impulse, it ignores the unreliability of the emotional or psychotic response, seeking only conviction.

Finally, repression attacks life itself. We become so terrified we see safety in death imposed by courts and carried out in prisons. When all history says violence begets violence, when reverence for life is essential if life is to be dear, the state kills—encouraging some to do the same.

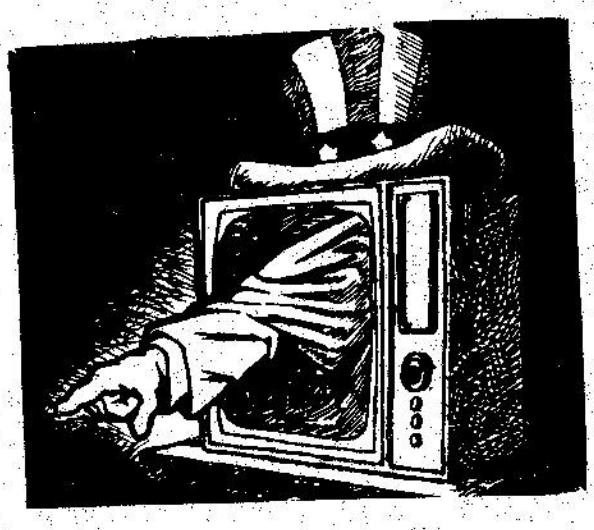
There is no conflict between liberty and safety. We will have both or neither. . . . We can enlarge both liberty and safety if we turn from repressiveness, recognize the causes of crime and move constructively.

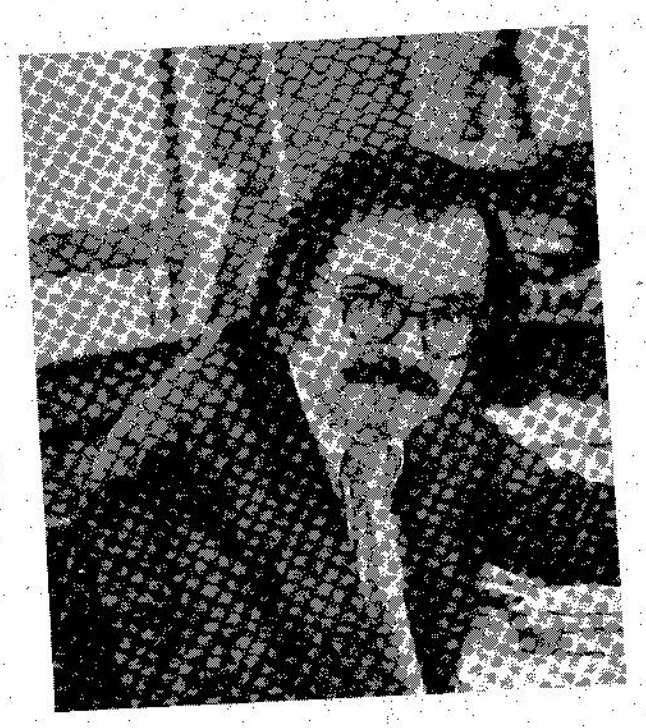
The major contribution law can make is moral leadership. Only then can it hope to permanently influence the conduct of its citizens. The law cannot therefore impose immoral rules or act immorally. The government of a people who would be free of crime must always act fairly, with integrity and justice....

(The following is excerpted from the **New Yorker** *magazine of September 2, 1972.)*

The editor of **Nhan Dan**, the leading North Vietnamese newspaper, had told me earlier that this war was not the most important war in history, but that it was the most suffering war in history. I told the audience that I didn't agree that it wasn't the most important war because if it taught us that we couldn't live by war, that we couldn't solve our problems any more by violence on this scale, then it had to be the most important war in history.

[The Administration's attack on me] was an attempt to direct the people's attention from the bombing to my character and to smother questions about our acts under charges that I was a dupe or worse. They were worried about the effects of my trip on the bombing campaign—they don't want anybody to think or talk about it—so they tried to destroy what I might come back and say before I could say it. But if Nixon wants to compare, legally and morally, his bombing policy with my going there to see what it means and to talk about what I saw openly, I'm ready. We have to end this killing and we have to understand what we have done. The only way to do that is to see what we have done. If we're afraid to see that, we'll do it again.





Paul Halvonik

Paul N. Halvonik, 33, received his A.B. (in Political Science) at the Berkeley Campus of the University of California in 1960 and his law degree from Boalt Hall at the Berkeley Campus in 1963. While in law school he served on the California Law Review and was elected to the Order of the Coif, the national legal scholarship fraternity.

Halvonik first practiced law in Carmel, California, where he also managed the successful 1964 re-election campaign of then Senator Fred Farr of Monterey County. After that election, he joined the California Department of Justice, serving first as Deputy State Attorney General in criminal law and later as a civil rights division attorney. In November of 1966 he left the State Justice Department to become Assistant Staff Counsel and Legislative Representative of American Civil Liberties Union of Northern California. In 1968 he was elevated to the position of ACLUNC Legal Director.

In 1972 Halvonik left the ACLU staff to join the San Francisco law firm of Friedman, Sloan and Halvonik. Additionally, he serves as Director of the ACLU's Grand Jury Project, General Counsel of ACLUNC and Chairman of the Constitutional Law Committee of the San Francisco Bar Association.

As an ACLU attorney, Halvonik has been involved in litigation that has: 1. Invalidated the death penalty; 2. Invalidated as unconstitutional the state loyalty oath; 3. Invalidated as unconstitutional California's one-year residency requirement for voting; 4. Established the right of citizens and students to distribute anti-war literature on high school campuses; 5. Invalidated California's abortion laws; 6. Established the right of all persons to service in California business establishments free from any arbitrary discrimination; 7. Invalidated as unconstitutional the orders of a racially discriminatory draft board; 8. Guaranteed the right of prison inmates to receive and read literature and publish their manuscripts.

Halvonik is married, has two children, and resides in Berkeley, California.

(The following is excerpted from a memo which Paul Halvonik wrote to the Board of Directors of the American Civil Liberties Union about the Franklin case before the ACLU decided to accept the case.)

Jay Miller has asked me to prepare a memorandum on the distinction between advocacy and incitement. Since we have already been served an excellent debate on the topic by Professors [Alan] Dershowitz and [Gerald] Gunther, it may be a bit presumptuous of me to add another course. And yet it may be helpful for someone to join the discourse who is not a partisan. I designate myself non-partisan because I have not yet made a decision on the wisdom of becoming directly involved in the Franklin matter. There are a number of considerations aside from the free speech issue that must be taken into account and it is those issues which leave me in a quandary. On the free speech issue, however, I find myself squarely aligned with Alan Dershowitz and it will be the purpose of this memorandum to explain why.

At the outset we can, I think, be grateful that Dershowitz and Gunther have scotched the notion that the question presented by the Franklin case is whether ACLU will support incitement to violence. That is an artificial question; both our distinguished academicians define the issue thusly: did Franklin merely advocate or did he incite? If the latter, Franklin's words were not constitutionally protected.

Gunther seems further implicitly to concede that if Dershowitz's definition of incitement is adopted, Franklin's words were protected by the First Amendment. I agree.

The starting point, then, must be the Dershowitz formulation. As I perceive that formulation it can be summarized as follows:

Reflective Consideration

Words uttered are advocacy not incitement, as long as they communicate ideas for reflective consideration. That is to say, ideas are advocacy when offered under circumstances which give the audience an opportunity to consider their merit, assess competing thoughts, and then accept or reject the idea as a basis for action. When that opportunity for reflection is present and the lawful act nevertheless occurs the state's remedy is to punish the actors, not the speaker. Justice Black made that point with his special blend of economy and elegance in *Thomas v. Collins:*

> "... [T]he protection they [the framers of the Bill of Rights] sought was not solely for persons in intellectual pursuits. It extends to more than abstract discussion, unrelated to ... action. The First Amendment is a charter for government, not for an institution of learning. 'Free trade in ideas' means free trade in the opportunity to persuade action, not merely to describe facts. ... Indeed, the whole history of the problem shows it is to the end of preventing action that repression is primarily directed and to preserving the right to urge it that the protections are given." 323 U.S. 516, 537 (1945) (Justice Black was speaking for the majority.)

Advocacy-Incitement Distinction

The advocacy-incitement distinction advanced by Justice Brandeis is, to my mind, the most satisfying of all attempts. It is worthwhile to quote Brandeis at some length:

> "Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence. Only an emergency can justify repression. Such must be the rule if authority is to be reconciled with freedom. Such, in my opinion, is the command of the Constitution. It is, therefore, always open to Americans to challenge a law abridging free speech and assembly by showing that there was no emergency justifying it."
>
> **Whitney v. California,** 274 U.S. 357, 377-378 (1927) (concurring opinion of Brandeis, J. joined by Holmes, J.)

But we need not go all the way with Brandeis on the facts of the Franklin case. There was, in each instance, an opportunity for considered reflection and the responsibility for the unlawful acts must, accordingly, pass from the speaker who communicated but did not act on the idea, to those who did act on the idea. To adopt the Gunther theory is to say that speech is not protected when there is any likelihood of action which is but another way of saying that only impotent speech receives the protection of the First Amendment. I do not believe that "those who won our independence by revolution" had that in mind.

Frank Donner

Frank Donner was born February 25, 1911. He received both his B.A. and his M.A. from the University of Wisconsin in 1934. He received his LL.B. from Columbia Law School in 1937. During his studies, Donner specialized in American History, American and English Legal History, Constitutional Law, and Labor.

Donner is a member of the U.S. Supreme Court Bar as well as the New York Bar and the bars of various Federal District Courts and Courts of Appeals.

After getting his law degree, Donner became a research fellow in Legal History at Columbia until 1940 when he became an attorney on the staff of the National Labor Relations Board (NLRB). From 1945 to 1946, he worked as Assistant General Counsel to the Congress of Industrial Organizations (CIO) and to the United Steelworkers of America.

Donner spent a few years in private law practice and then in 1950 he became a partner in the law firm Donner, Kinoy and Perlin, and later in the firm Donner and Piel. During most of the '60s, Donner worked as a single practitioner mainly in the areas of labor law and civil liberties, and has served as General Counsel to the United Electrical, Radio and Machine Workers of America.

Donner has published one book, **The Un-Americans** *(Ballantine, 1961), and has written another book on political surveillance which will be published by Holt, Rinehart and Winston this year. In addition, he has written numerous articles on civil liberties including many for* **The Nation** *magazine.*

Donner has been involved in litigation dealing mainly with labor regulation and freedom of expression. He has briefed and/or argued seven cases before the U.S. Supreme Court.

At the present time, Donner is director of the American Civil Liberties Union research project on political surveillance at the Yale Law School, in addition to writing and handling cases.

(The following is excerpted from Frank Donner's article "The Theory and Practice of American Political Intelligence" which appeared in **The New York Review of Books** *in 1971.)*

The twentieth century has been marked by a succession of different forms of restraint of political expression: criminal anarchy statutes, sedition laws, deportations, Congressional antisubversive probes, loyalty oaths, enforced registration. These and related measures still survive. But in recent years new, more formidable ways of responding to political and social movements on the left have emerged. The most important of these is the system of political intelligence which is

rapidly coalescing into a national network.

Despite the efforts of intelligence officials to keep intelligence operations secret, reliable information about our intelligence system is steadily accumulating. We now have a clearer picture of the methods and targets of political surveillance. As a result, we can no longer seriously doubt that the main purpose of such activity is political control of dissent or that the frequently advanced justifications of law enforcement or national security are often no more than a "cover." . . .

Black communities swarm with urban intelligence agents and informers, as do university and peace groups; invitations to young people to defect or to sell information at high prices are becoming routine. Young college graduates—black and white—are offered "career opportunities" in urban intelligence; courses in intelligence and surveillance are being taught to municipal police units and campus security police....

FBI's Central Role

The FBI plays a central role in coordinating the intelligence system; it exchanges information with other agencies, performs investigative work for intelligence groups with limited jurisdiction, and trains intelligence agents for service in other agencies. Its intelligence techniques and political standards serve as a model for local operations. It compiles albums of photographs and files of activists which are transmitted to agencies throughout the United States....

Protest activities have inevitably served to draw the police into politics and to expand their intelligence functions. Especially ominous is the widening use of photographic surveillance by intelligence units. Police in communities throughout the country systematically photograph demonstrations, parades, confrontations, vigils, rallies, activities....

Still, personal surveillance is necessary in those areas where technology cannot—at present anyway—replace human beings. Thus infiltration of dissident groups by informers remains a common procedure. Ironically, the Warren Court's limitations on wiretapping and bugging have themselves led to a heavier reliance on informers as a substitute....

The informer is not only a reporter or an observer, but also an actor or participant, and he frequently transforms what might otherwise be idle talk or prophecy into action....

Nationwide System

Experience with other official record systems suggests that it is only a matter of time before the intelligence now being collected by thousands of federal and local agencies will be codified and made accessible on a broad scale. Indeed, we are not far away from a computerized nationwide system of transmittal and storage.

While the recent bombings and the hunt for fugitives have supplied justification for some surveillance practices, the emerging system as a whole is oriented toward the future and is justified as preventive: the security of the nation against future overthrow is said to require the present frenzy of surveillance. In cases where such an argument makes no sense, surveillance is justified on grounds that it is necessary to prevent local violence and disorder in the future.

Political intelligence indiscriminately sweeps into its net the mild dissenters along with those drawn to violence; when the national security is at stake, so the argument runs, it is folly to take risks. . . .

While intelligence is developing new clandestine activities, it is also becoming highly visible. American political activity is plagued by an intelligence "presence" which demoralizes, intimidates, and frightens many of its targets—and is intended to do so. Intelligence not only continually expands the boundaries of subversion in its operations, but inevitably generates a stream of fear-mongering propaganda in its evaluation of intelligence data. A troubled period such as the present intensifies this process: the number of surveillance subjects increases greatly as the intelligence agencies circulate propaganda dramatizing their life-and-death struggle with subversion....

Americans will now have to answer the question whether the risks that we face—and some of them are real enough—outweigh the danger of a national secret police. One can hardly question the right of the government to inform itself of potential crimes and acts of violence. The resort to bombing as a political tactic obviously creates a justification for intelligence to forestall such practices. But the evolving intelligence system I have been describing clearly exceeds these limited ends. Before it is too late we must take a cold look at our entire political intelligence system: not to determine whether one aspect or another is repressive . . . but to decide whether internal political intelligence as an institution, divorced from law enforcement, is consistent with the way we have agreed to govern ourselves and to live politically.

Steve Weissman

Steve Weissman was born in Tampa, Florida on March 22, 1940. He grew up in Tampa, receiving his B.A. from the University of Tampa in 1962 and his M.A. in European History from the University of Michigan in 1964.

In September 1964, Weissman went to Berkeley to study Latin American History and became active in the Free Speech Movement (FSM) there. He was chairman of the Graduate Coordinating Committee of the FSM and a member of its Steering Committee.

He then left Berkeley to work as a campus traveler for Students for a Democratic Society (SDS), organizing opposition to the Vietnam war and to "restrictive" policies on university campuses. When he returned to Berkeley in the fall of 1965, he worked for the Vietnam Day Committee which, he claims, "started much of the early direct action against the war."

Weissman worked briefly for the Radical Education Project of SDS in Ann Arbor, Michigan, before coming to Stanford as a graduate student in Latin American Studies in 1967. He was active in the Old Union Sit-in of April 1968 after which he says the professor who was supervising his graduate work no longer wanted to work with him. He was also actively involved in the sit-in at the Applied Electronics Laboratories (AEL) and the movement against the Stanford Research Institute (SRI).

In the summer of 1969, Weissman, along with long-time Stanford activist Lenny Siegel, helped organize the Pacific Studies Center, and still maintains a loose affiliation with it.

In mid-1969, Weissman became a consulting editor for **Ramparts** *magazine, and served for a time as one of the editors in 1970. He is still an editor of Ramparts Press, and is currently co-authoring a book with Harry Cleaver for them entitled* **The Green Revolution: Foreign Aid and the Politics of Hunger.** *He researched the book during 1971 by traveling through Asia interviewing agricultural experts and people involved with AID.*

Weissman also edited **The Trojan Horse: Aid and the Multinational Empire,** *a collection of foreign aid articles, and wrote the foreword to* **Marx and Engels on the Population Bomb.** *Both books are from Ramparts Press.*

Weissman is currently a free-lance journalist, and writes a weekly column called "The Emperor's Clothes" for Alternative Features Service, which distributes it to campus newspapers and underground publications around the country.

(The following is excerpted from Steve Weissman's "The Emperor's Clothes" column of Nov. 24, 1972.)

Those were the days, the days when the **New York Review of Books** put on its cover a diagram of a Molotov Cocktail, when the measured use of force—even violence—gave way to guns and talk of revolution, when mass movements gave way to small groups and provocateurs, when activists eagerly awaited—even as they criticized—the next explosion of the Weathermen. For the oppressed, stealing from the Man, burning, and killing became standing up, fighting back. Where conservatives sought vengeance on the sinner, and liberals found fault in sinful social conditions, New Leftists saw criminal violence as a rational response to oppression and a step in the long march toward personal liberation and social revolution.

(The following is excerpted from Steve Weissman's article "Berkeley and Freedom: Comments and Criticisms," **Atlantic magazine**, *October, 1966.)*

Many people, including FSM [Free Speech Movement] lawyers, have defended the FSM Sproul Hall sit-in as a final form of petition for ends (free speech) which everyone accepted. I oppose that view, for petitions grant the legitimacy of pre-existing authority, imply a harmonious reintegration into "the system" after redress of grievance, and suggest an ongoing consensus about ends, if not about means....

Still, the Great Sit-in was a strong-arm, uncivil, disruptive act, justified by the end of unrestricted advocacy and by the need to struggle for a free university. Moreover, force will continue to be necessary and justified as long as the American university deprives students of their voice in decisions that affect them, supports the politics of a repressive status quo, and subordinates intellectual activity to security clearances and the national interest.

(The following is excerpted from Steve Weissman's unpublished manuscript, "Not Letting the State Do Its Thing," 1967.)

Progress *and* order, change and stability—this weighing and balancing remains Liberalism's greatest strength, but also its greatest defect. For, in the balancing, liberals assume a possible harmony of interests among competing social groups. "Justice," argued James Madison, "ought to hold the balance" between debtors and creditors, between "those who hold, and those who are without property...."

Today's liberals are no less balanced, no less reasonable. Doves call for moral leadership of the world, for new policies in Vietnam, for negotiations with the National Liberation Front. But they offer no way out, no policy to complete U.S. withdrawal.... Throughout, the liberal proponents of "peace" assume that both sides *can* cooperate, that some balance can be found between the desire of the Vietnamese (the Thais and Laotians, too) for national independence and the desire of doves and hawks alike to maintain a U.S. presence ("Peace and stability") in Southeast Asia....

Order Vs. Progress

Domestically as well, liberalism's commitment to procedure and orderly process remains comfortably above the fray. The morning after every summer riot, liberals can be found nodding their heads in vigorous agreement: of course order must be regained before progress can be made. They only later discover that without continued disorder "pacification first, reform later" never seems to get very far beyond legislation to train and equip Tactical Mobile police units.

Opposition to change will come not so much from the radical right, but from the liberal center. Liberals will condemn the incivility of demonstrators, the bad taste of accusing leading statesmen of murder "(LBJ, LBJ, How many kids did you kill today?") They will defend "free speech" and "academic freedom" against the hordes of the New Left. They will even raise the spectre of a new fascism from the left.

'Party Of Order'

Against this liberal "Party of Order," radicals might protest the inadequacy of evolutionary change, the incompatibility of progress and order, the impossibility of changing the majority's counter-revolutionary assumptions with responsible dissent.

Yet, liberal belief to the contrary, rational argument alone will never overcome the concentration of power and the ideologies which support it. Only the concerted and forceful action of a growing radical movement offers any hope at all. And that hope in turn depends upon our own conviction that, as Herbert Marcuse put it, the task "is not that of finding a compromise between competitors, or between freedom and law, between general and individual interest, common and private welfare, in an *established* society, but of *creating* the society in which man is no longer enslaved by institutions which vitiate self-determination from the beginning."

Daniel Ellsberg

Daniel Ellsberg was born in Chicago in 1931 and grew up in Detroit, where he was a scholarship student at Cranbrook School. He graduated in 1952 with highest honors from Harvard College, majoring in economics. From 1952-53 he studied at King's College, Cambridge University, on a Woodrow Wilson Fellowship. In 1954, he voluntarily enlisted in the Marine Corps in which he served as a rifle company commander, and he extended his term of service for a year in 1956 in order to accompany his battalion to the Mediterranean during the Suez crisis. He later became a member of the Society of Fellows at Harvard University, and in 1962 he received a Ph.D. in economics.

From 1959 to 1964, Dr. Ellsberg was a strategic analyst at the RAND Corporation and a consultant to the Department of Defense. During that period he worked primarily on problems of strategic deterrence and control of nuclear forces by the President. He was a member of the CINCPAC Command and Control Study, 1959-60, and of the (General) Partridge Task Force on Presidential Command and Control in 1961. He participated in Defense and State Department staff working groups serving the Executive Committee of the National Security Council during the Cuban missile crisis of 1962. In 1964, he was sole researcher on a project sponsored by Walt Rostow, then Chairman of the Policy Planning Council of the State Department, to study patterns in high-level decision-making in crises, with unprecedented access to data and studies in all agencies on past episodes such as the Cuban missile crisis, Suez, the Skybolt decision, Berlin, and the U-2 incident.

Dr. Ellsberg was Special Assistant to John T. McNaughton, Assistant Secretary of Defense for International Security Affairs, in the election-and-escalation period, 1964-65. He spent two years in Vietnam, 1965-67, first as a State Department volunteer on General Edward Lansdale's senior liaison team, and then as Special Assistant to William Porter, the Deputy Ambassador.

In the fall of 1967, Dr. Ellsberg returned to RAND, where he began work on the McNamara study of U.S. decision-making in Vietnam, now known as the Pentagon Papers. He remained active as a consultant to high Government officials throughout this period.

Soon after the Pentagon Papers were published, Dr. Ellsberg was indicted on two criminal counts that could have brought a maximum sentence of ten years in prison. In December, 1971, that indictment was

superseded by a 15 count indictment that named Anthony J. Russo, Dr. Ellsberg's former RAND colleague, as a co-defendant. Dr. Ellsberg now faces a possible sentence of 115 years in jail on twelve criminal counts including charges under three statutes: espionage, theft of Government property, and conspiracy.

In April, 1972, Dr. Ellsberg completed a book of analytical and background essays on Vietnam policy begun in 1970 for the M.I.T. Center for International Studies. The major essay, "The Quagmire Myth and the Stalemate Machine," was awarded by the American Political Science Association as the best paper at its annual meeting in 1970. His book, **Papers on the War,** *published by Simon and Schuster, was released last year.*

(The following quotations are excerpted from Ellsberg's book **The Papers and the War.**)

"What is evident is that the President's role was not passive, 'inadvertent,' nonresponsible; it did not merely reflect bureaucratic pressures or optimistic reporting, or the assurances of the adequacy of his chosen course. Contrary to most public accounts, the last two elements simply were not present in 1961. Nor were they—I found to my surprise as I looked through past intelligence estimates—present in 1950 or 1954-1955.... In each of these years of decision, what stood out from among the internal documents was the President's personal responsibility for the particular policy chosen. And in each case, as in 1961, this fact of his responsibility was concealed from the public by misleading accounts of the internal matrix of advice and predictions on which he supposedly based his decisions."

"I am speaking of the limitations not only of public awareness but of the best analyses by 'experts'—former officials, radical critics, journalists or academic specialists. No one known to me—and that includes myself—seems to possess as yet an adequate comprehension of the forces, institutions, motives, beliefs, and decisions that have led us as a nation to do to the people of Indochina what we have done as long as we have. No one seems to have an understanding fully adequate, that is, either to wage successful opposition against the process or effectively change it; or even adequate to the intellectual challenge of resolving the major puzzles and controversies about the way the process works today and has worked for at least the past quarter-century."

"Or is it possible that the American people, too, are part of the problem; that our passivity, fears, obedience weld us, unresisting, into the stalemate machine: that *we* are the problem for much of the rest of the world?

"It is too soon to conclude that. There is too much information to be absorbed from the Pentagon Papers and the disclosures and analyses that are beginning to follow; too many myths and lies to be unlearned; habits too strong to be changed so quickly in a public that has let its sovereignty in foreign affairs atrophy for thirty years....

"To be radical is to go to the roots; and in Dwight Macdonald's phrase, 'the root is man.' The stalemated killing 'machine,' so far as there is one, is made of men and women, of human habits and relationships that they have made or maintained, and that can be unmade by them."

"Randolph Bourne said during the First World War, of which he was a lonely opponent: 'War is the health of the state.' But that is not true of all the branches and institutions of the State. The role of Congress, for example, is much diminished, and so is that of the courts and of the press. War is the health of the Presidency, and of the departments and agencies that serve it, the Executive branch. In no other circumstances can the President and his officials wield such unchallenged power, feel such responsibility and such awful freedom."

"What happened here was the gradual habituation of the people little by little to being governed by surprise; to receiving decisions deliberated in secret; to believing that the situation was so complicated that the Government has to act on information which the people could not understand or so dangerous that, even if the people could understand it, it could not be released because of national security. And their sense of identification with Hitler, their trust in him made it easier to widen this gap, and reassure those who otherwise would have worried about it.

"This separation of government from the people, this widening of the gap took place so gradually and so insensibly, each step disguised or associated with true patriotic allegiance or with real social purposes. And all the crises and reforms (real reforms too) so occupied the people they did not see the slow motion underneath, of the whole process of the Government growing remoter and remoter." *(Quotation reprinted in Ellsberg's book from Milton Mayer's* **They Thought They Were Free,** *Chicago, 1966.)*

Moderators

Cary Ridder is a junior in History who grew up in Washington, D.C. After coming to Stanford in 1968, she left in the spring of 1970 to work at the People's Medical Center in East Redwood City for a year and a half. She was a delegate to a conference of North American women and Southeast Asian Communist women in Vancouver in April 1971. Having returned to Stanford in the spring of 1972, she mentions poverty and women's rights among her major political concerns.

Mark Noble is presently a graduate student in the Department of Genetics, where his main interest is behavioral genetics. His undergraduate work was done at Franklin and Marshall College in Pennsylvania, where he majored in biology and philosophy, and was a campus leader in both the anti-war and environmental movements. His main political concern is the development of an ecologically viable world community.

Anne Hetherington is in her third year at Stanford, as a Human Biology major. Occasional participation in on- and off-campus peace marches, extensive work for the McGovern campaign on campus, and living at Columbae House have given her the beginning of an understanding of American politics and the importance of non-violent radical involvement. She hopes to participate in setting up clinics for those who have no easy access to doctors, while educating herself and others as to the salience of population control, ecology, and finding a cure for Republicanism.

Kevin Smith is a sophomore in Political Science. His political experience has included three weeks with the Friends Committee on National Legislation's Washington, D.C. office in the spring of 1971, and an internship in the Washington office of Michigan Congressman Don Riegle during the summer of 1972. He plans to return to Riegle's office this coming summer. In addition, he served as Opinions Editor of **The Stanford Daily** *from September 1972 through January 1973. His primary political interest is seeing that more "good" men get elected to Congress—a body which he believes, perhaps somewhat naively, is not completely beyond salvation.*

The Stanford Committee on Political Education (SCOPE) was formed last fall by people who had worked on the McGovern campaign and who saw the need for an ongoing organization to plan and coordinate projects at Stanford related to the issues raised during the McGovern campaign.

The ASSU and the Stanford chapter of the National Lawyers Guild have joined with SCOPE in sponsoring this conference.

The conference has been costly. We are presently in great debt, and would appreciate any contributions to help defray our expenses for the speakers and the booklet. Tax deductible contributions can be sent to: SCOPE, 205 Tresidder Union, Stanford, California 94305. Thank you.