

JANE FONDA AND THE LAW OF TREASON

Whether Chandler was “sincere” in what he did, whether he had a heart of a patriot, is a matter that may be sifted out at the last Great Judgment Seat; but the law of treason is concerned with matters more immediate (United States v. Chandler, 171 U.S. 921 [1st Cir. 1948])

The genesis of Jane Fonda’s broadcasts and other conduct in wartime Hanoi is found in the history of Communist efforts to take over Vietnam.¹ In the 1930s, anti-colonial sentiment in Vietnam was in disarray. Into the vacuum stepped a young Marxist, later to be called Ho Chi Minh. In the 1930s and early ’40s, Ho led underground activities against the French and Japanese. After the war, Ho and his military commander Vo Nguyen Giap openly fought the French, whose northern fortress, Dien Bien Phu, fell to the Viet Minh in 1954. The French pulled out and Vietnam was partitioned, the United States stepping in as a patron of the South. By mid-1965, America was embroiled in a war with the Viet Cong in the South, and the North Vietnamese in both South and North.

From the beginning of Ho’s war against the South and his effort to solidify his hold on the North — doubtless under the tutelage of his Soviet, Chinese, and North Korean Communist colleagues — “Ho and his cadres installed a propaganda network throughout the North Vietnamese countryside — broadcasting official statements over village loudspeakers, holding indoctrination and ‘reeducation’ classes for dissidents, and wringing ‘confessions’ from those suspected of plotting against the regime — a system of mind manipulation and control that the Viet Minh had used effectively with French PWs ... and that American PWs would experience firsthand in the years to come.”²

As early as 1954, five American enlisted men, assigned to support the French military, were captured by Viet Minh guerrillas near Da Nang. Though released a few months later, they were obliged during their detention to complete lengthy personal history forms (nearly identical to those that had been extracted from UN prisoners in Korea by the Chinese and North Koreans). After being interrogated for military information and drawn into political discussions, the Americans were treated to a history of Vietnam’s centuries-old exploitation by foreign powers.

That the Americans were favorably impressed if not converted was attested by their comments following repatriation. Upon their release, the Viet Minh broadcast on the radio a prepared statement, attributed to the five Americans and circulated in the world press, that suggested how successful the Communists had been in conveying their point of view: “Since our capture we slowly came to realize American intervention in the Indochina war was against peoples fighting resolutely for independence. Had we realized the truth beforehand, we would not have agreed to come to this country.”³

Sound familiar? It should. In the years following 1954, much of the Communist propaganda emanating from North Vietnam — *including the broadcasts of Jane Fonda from Hanoi in 1972* — was of the same flavor.

The essential point here is that virtually from the first day of Ho Chi Minh’s bid to take over the country, he viewed indoctrination and propaganda as important weapons on a par with military hardware. The following — one of hundreds of similar stories — makes this point eloquently:

[A prisoner of the Viet Cong] later recounted his amazement at the VC’s extraordinary effort to obtain what seemed to him so trivial — a mild propagandistic statement. They had constructed a camp in a remote jungle area, staffed it with trained interrogators and guards, and spent more than two months — not to learn vital military information, but to force him to say merely that they were treating him well, that the Viet Cong were good people, and that the United States was interfering in their just struggle. It would be years ... before he would realize the importance the Communists attached to such statements. Then he would learn about the antiwar movement in the United States, *Hanoi’s international propaganda campaign*, and the lengths to which the Viet Cong and North Vietnamese would go to present their case.⁴

It was on behalf of Hanoi’s “international propaganda campaign” that Jane Fonda would be recruited, and would serve so well.

A Question for the Jury

With few exceptions, defendants in federal criminal trials are tried, not by a judge, but by a jury. In each of the treason cases discussed in the last two chapters, the jury, as trier of fact, had the burden of deciding whether the four requisite elements of the crime of treason — intent, overt act, two-witness proof, aid and comfort — had been proved beyond a reasonable doubt. Before measuring these four elements against Jane Fonda’s activities in North Vietnam, let us stress that the question we are addressing *is not whether a jury necessarily would have convicted Fonda* — remember the verdict in O. J. Simpson’s criminal case — *but only whether there was sufficient evidence of her intent, her overt acts, two-witness proof, and aid and comfort to the North Vietnamese, to submit to a jury.*

Intent⁵

Let us revisit legal precedents on the essential element of intent:

There was ample evidence for the jury that Cramer had a treasonable intent. The trial court charged the jury that “criminal intent and knowledge, being a mental state, are not susceptible of being proved by direct evidence, and therefore you must infer the nature of the defendant’s intent and knowledge from all the circumstances.” ... It also charged ... *If the defendant knowingly gives aid and comfort to one who he knows or believes is an enemy, then he must be taken to intend the consequences of his own voluntary act....* ... So if you believe that the defendant performed acts which by their nature gave aid and comfort to the enemy, knowing or believing him to be an enemy, then you must find that he had criminal intent, since he intended to do the act forbidden by the law....

Cramer had a traitorous intent if he knew or believed that Thiel and Kerling were enemies.... ... *The conclusion is irresistible that Cramer believed, if he did not actually know, that Thiel and Kerling were here on a secret mission for the German Reich with the object of injuring the United States and that the money which Thiel gave him for safekeeping had been supplied by Germany to facilitate the project of the enemy.* The trial court charged that if the jury found that Cramer had no purpose or intention of assisting the German Reich in its prosecution of the war or in hampering the United States in its prosecution of the war but acted solely for the purpose of assisting Kerling and Thiel as individuals, Cramer should be acquitted. *There was ample evidence for the jury’s conclusion that the assistance Cramer rendered was assistance to the German Reich, not merely assistance to Kerling and Thiel as individuals.*

The trial judge stated when he sentenced Cramer that it did not appear that Cramer knew that Thiel and Kerling were in possession of explosives or other means for destroying factories in this country or that they planned to do that. He stated that if there had been direct proof of such knowledge he would have sentenced Cramer to death rather than to forty-five years in prison. But however relevant such particular knowledge may have been to fixing the *punishment* for Cramer’s acts of treason.... But the present case is much stronger. For, it surely was not essential to proof of his traitorous intent. A defendant who has aided an enemy agent in this country may not escape conviction for treason on the ground that he was not aware of the enemy’s precise objectives. Cramer claims he believed the enemy agent’s objective was to destroy national morale by propaganda and not to blow up war factories. Propaganda designed to cause disunity among adversaries is one of the older weapons known to warfare, and upon occasion one of the most effective. No one can read this record without concluding that the defendant Cramer knew this. ... *When he was shown consciously and voluntarily to have assisted this enemy program his traitorous intent was then and there sufficiently proved....*⁶

And *Cramer v. United States* was not even a propaganda case.

Best v. United States was:

The evidence in this case of intent to betray was quite as strong as that presented in the Chandler case. ... *Best certainly knew that he was dealing with enemy agents. He knew the hostile mission of the German Short Wave Station, which was to facilitate a German military triumph by disintegrating the fighting morale of the American armed forces....* He voluntarily hired himself to the execution of that hostile mission.⁷

In paraphrase of the Supreme Court’s words in *Cramer*: Was there “ample evidence for the jury” that Jane Fonda had “a treasonable intent”? Must Fonda “be taken to intend the consequences” of her “voluntary” acts?

If Cramer’s intent was deemed “traitorous” because he knew or believed that Thiel and Kerling were enemies working in the interests of the German Reich, could

a jury have deemed Fonda's intent similarly because she knew or believed that North Vietnamese propaganda experts were working in the interests of North Vietnam?

If Cramer's "traitorous intent" was "sufficiently proved" by his knowing participation in "propaganda designed to cause disunity among adversaries" — and if Best's "intent to betray" grew out of broadcasts designed to "facilitate a German military triumph by disintegrating the fighting morale of the American armed forces" — could a jury have fairly concluded that Fonda's knowing participation in North Vietnamese propaganda, unabashedly aimed at undermining the morale of embattled POWs and American troops in the field, sufficiently proved the necessary intent?

The question presented is whether these Supreme Court findings of "ample" evidence and "irresistible" conclusions as to treasonous intent could reasonably have been applied by a jury to the following acts by Jane Fonda:

- Touring the so-called "War Crimes" museum in the company of North Vietnamese Communist civilian and military officials and members of the international press, and there making pro-Communist and anti-American propaganda statements, as set forth in Chapter 4 above and in the Appendix.
- Touring a North Vietnamese hospital in the company of North Vietnamese Communist civilian and military officials and members of the international press, and there making pro-Communist and anti-American propaganda statements.
- Touring dikes and populated areas in the company of North Vietnamese Communist civilian and military officials and members of the international press, and there making pro-Communist and anti-American propaganda statements.
- Touring the North Vietnamese countryside in the company of North Vietnamese Communist civilian and military officials and members of the international press, and there making pro-Communist and anti-American propaganda statements.
- Making a live broadcast, through the radio facilities of the North Vietnamese regime, containing pro-Communist, anti-American propaganda, which broadcast was taped for later replay.
- Touring a textile center in the company of North Vietnamese Communist civilian and military officials and members of the international press, and there making pro-Communist and anti-American propaganda statements.
- Making a second live broadcast, through the radio facilities of the North Vietnamese regime, containing pro-Communist, anti-American propaganda, which broadcast was taped for later replay.
- Meeting with seven captured American airmen and haranguing them with pro-Communist, anti-American propaganda.
- Being interviewed by a French journalist and continuing to make her pro-Communist, anti-American propaganda statements.
- Making a third live broadcast, through the radio facilities of the North Vietnamese regime, containing pro-Communist, anti-American propaganda, which broadcast was taped for later replay.
- Holding a press conference in Hanoi, where she described her activities since arriving in North Vietnam, and continuing to make her pro-Communist, anti-American propaganda statements.
- Making a fourth live broadcast, through the radio facilities of the North Vietnamese regime, containing

- pro-Communist, anti-American propaganda, which broadcast was taped for later replay.
- Making two more live broadcasts on one day, through the radio facilities of the North Vietnamese regime, containing pro-Communist, anti-American propaganda, which broadcasts were taped for later replay.
 - Meeting with North Vietnamese Vice Premier Nguyen Duy Trinh and continuing to make her pro-Communist, anti-American propaganda statements.
 - In the company of Communist civilian and military officials and members of the international press, posing in the control seat of a North Vietnamese anti-aircraft gun, feigning taking sight on an imaginary American aircraft, and, by her conduct and words, continuing to make her pro-Communist, anti-American propaganda statements.

When one compares what the courts have deemed sufficient evidence of intent in the eight treason cases discussed in Chapters 6 and 7, it is our opinion that the above evidence would have been more than sufficient to submit to a Fonda jury, and that the jury could have found Fonda intended to betray her country — based on any *one* of the foregoing episodes.

Overt Act

To get to a jury on this essential element, a treason prosecutor needs only one overt act. As the Court said in *Kawakita*, “One overt act alone, properly proved, would be sufficient to sustain the conviction, all other elements of the crime of treason being established.”⁸ And as the Court of Appeals said in *Chandler*, “It is enough if any one of the overt acts, in its setting, warranted a finding [by the jury] that the accused actually gave aid and comfort to the enemy.”⁹

How have the treason cases defined an “overt act”? You may recall that one of Chandler’s defenses was “freedom of speech” and that, in rejecting the defense, the Court forcefully observed the following on the subject of overt acts: “It cannot be said that what Chandler did was merely exercising his right of free speech in the normal processes of domestic political expression. *He trafficked with the enemy and ... collaborated in the execution of a program of psychological warfare designed by the enemy to weaken the power of the United States to wage war successfully.*”¹⁰

The actions in collaborating with the enemy by Cramer, Haupt, Chandler, Axis Sally, Best, Burgman and D’Aquino — one after another — were characterized as sufficient treasonable “overt acts.” Those acts included

- Cramer’s meeting with Nazi saboteurs Thiel and Kerling, arranging for Thiel’s girlfriend to come to New York, safeguarding Thiel’s money, and lying to the F.B.I. to protect Thiel;
- Haupt’s facilitating his Nazi saboteur son’s attempt to obtain employment in a sensitive defense plant, sheltering and harboring his son, and purchasing a car for him;
- Chandler’s broadcasting Nazi propaganda and otherwise consorting with Nazi propagandists;
- Gillars’ (Axis Sally) broadcasting Nazi

propaganda and otherwise consorting with Nazi propagandists;

- Best's broadcasting Nazi propaganda and otherwise consorting with Nazi propagandists;
- Burgman's broadcasting Nazi propa-

ganda and otherwise consorting with Nazi propagandists.

- D'Aquino's (Tokyo Rose) broadcasting Japanese propaganda and otherwise consorting with Japanese propagandists.

What actions of Fonda's could properly have been submitted to a jury as "overt acts"? The catalogue is extensive:

- Touring the so-called "War Crimes" museum in the company of North Vietnamese Communist civilian and military officials and members of the international press, and there making pro-Communist, anti-American propaganda statements (as set forth in Chapter 4 above and in the Appendix).
- Touring a North Vietnamese hospital in the company of North Vietnamese Communist civilian and military officials and members of the international press, and there making pro-Communist, anti-American propaganda statements.
- Touring dikes and populated areas in the company of North Vietnamese Communist civilian and military officials and members of the international press, and there making pro-Communist, anti-American propaganda statements.
- Touring the North Vietnamese countryside in the company of North Vietnamese Communist civilian and military officials and members of the international press, and there making pro-Communist, anti-American propaganda statements.
- Making a live broadcast, through the radio facilities of the North Vietnamese regime, containing pro-Communist, anti-American propaganda, which broadcast was taped for later replay.
- Touring a textile center in the company of North Vietnamese Communist civilian and military officials and members of the international press, and there making pro-Communist, anti-American propaganda statements.
- Making a second live broadcast, through the radio facilities of the North Vietnamese regime, containing pro-Communist, anti-American propaganda, which broadcast was taped for later replay.
- Meeting with seven captured American airmen and haranguing them with pro-Communist, anti-American propaganda.
- Being interviewed by a French journalist and continuing to make her pro-Communist, anti-American propaganda statements.
- Making a third live broadcast, through the radio facilities of the North Vietnamese regime, containing pro-Communist, anti-American propaganda, which broadcast was taped for later replay.
- Holding a press conference in Hanoi, where she described her activities since arriving in North Vietnam, and continuing to make her pro-Communist, anti-American propaganda statements.
- Making a fourth live broadcast, through the radio facilities of the North Vietnamese regime, containing pro-Communist, anti-American propaganda, which broadcast was taped for later replay.
- Making two more live broadcasts on one day, through the radio facilities of the North Vietnamese regime, containing pro-Communist, anti-American propaganda, which broadcasts were taped for later replay.

- Meeting with North Vietnamese Vice Premier Nguyen Duy Trinh and continuing to make her pro-Communist, anti-American propaganda statements.
- In the company of Communist civilian and military officials and members of the international press, posing in the control seat of a North Vietnamese anti-aircraft gun, feigning taking sight on an imaginary American aircraft, and, by her conduct and words, continuing to make her pro-Communist, anti-American propaganda statements.

Two-Witness Proof

The Constitution, the federal treason statute, and the treason cases we've examined in the last two chapters, all make clear that in a treason prosecution, the overt act must be proved by the testimony of two witnesses. It was in *Kawakita* that the Supreme Court had the last word on this third essential element:

Each witness who testified [against *Kawakita*] to an overt act was, however, an eye-witness to the commission of that act. They were present and sought or heard that to which they testified. In some instances there was a variance as to details. Thus overt act (b) was testified to by thirteen witnesses. They did not all agree as to the exact date when the overt act occurred, whether in April, May, or June, 1945. But they all agreed that it did take place, ... and most of them agreed that [*Kawakita*] struck Grant. The Court of Appeals concluded, and we agree, *that the disagreement among the witnesses was not on what took place but on collateral details*. "While two witnesses must testify to the same act, it is not required that their testimony be identical." [citing *Haupt*]. There is no doubt that as respects each of the eight overt acts the witnesses were all talking about the same incident and were describing the same conduct on [*Kawakita's*] part.¹¹

Without a doubt, a prosecutor could have adduced the requisite two-witness proof sufficient to go to a jury on at least one of the nearly score of Jane Fonda's overt acts. On every one of her tours, and at all four of her press conferences, she was surrounded not only by North Vietnamese Communist civilian and military officials, but by members of the international press. Many of the journalists filed text and photographic stories about her conduct. There is motion picture evidence of her tours; of Fonda posing on the North Vietnamese anti-aircraft gun; of Fonda cavorting with her Communist hosts. Moreover, scores of journalists interviewed her at formal press conferences held in at least four major cities. Countless American POWs, as well as soldiers, sailors, airmen and marines still in the field, heard her broadcasts. *Seven* American prisoners of war — *not merely the required two* — met with Fonda in Hanoi and suffered her propaganda harangue.

Perhaps most significantly, Jane Fonda admitted publicly — with seeming pride — all that she had done.

Aid and Comfort

Could a Fonda jury have concluded that her overt acts, as described above — tours, broadcasts, meetings and other conduct — constituted giving aid and comfort to the North Vietnamese enemy?

In *Haupt*, the father was deemed to have provided aid and comfort to his saboteur son. If “facilitation of the [son’s] mission”—trying to get his son a job at a sensitive defense plant, sheltering and harboring the son, getting him a car—remains the criterion by which the requisite element of “aid and comfort” is to be judged, certainly a jury could have concluded that Fonda’s broadcasts and other conduct in Hanoi “facilitated” the North Vietnamese enemy’s international propaganda mission. In *Chandler*, the court emphasized those aspects of the defendant’s credentials that made his broadcasting all the more effective. “It was an obvious advantage to the enemy in the execution of that [broadcast propaganda] program to have the open assistance of a cultivated and widely traveled American citizen like Chandler.”¹²

Fonda, of course, was an international celebrity, and a jury could have concluded that her status, by itself, was sufficient to provide aid and comfort to the North Vietnamese. As the court stated categorically: “Certainly the making of recordings by Chandler, on the occasions proved under overt acts 17 and 18 warranted findings [by the jury] that Chandler gave aid and comfort to the enemy.”¹³ So, too, in *Best, Burgman, Gillars and D’Aquino*.

In *Kawakita*, the Supreme Court characterized the defendant’s overt acts as “more than sympathy with the enemy, more than a lack of zeal in the American cause, more than a breaking of allegiance to the United States. They showed conduct which actually promoted the cause of the enemy. They were acts which tended to strengthen the enemy and advance its interests. These acts in their setting would help make ... prisoners fearful, docile, and subservient. ... These acts would tend to give the enemy the ‘heart and courage to go on with the war.’ ... *All of the overt acts tended to strengthen Japan’s war efforts; all of them encouraged the enemy and advanced its interests.*”¹⁴

A Fonda jury could have concluded that her conduct in North Vietnam also went beyond mere sympathy with the enemy, beyond severing allegiance to her country. It could be argued that she crossed the line and “actually promoted” Hanoi’s cause because her broadcasting and other conduct, in *their* setting, had a devastating impact on morale:

- POWs tormented by endless replays of her broadcasts;
- POWs punished for not listening to her anti-American harangues;
- POWs distraught and horrified that a prominent American movie star—Henry Fonda’s daughter, no less!—would propagandize for their captors;
- POWs being coerced into meeting with her;
- POWs, and American troops still in the field, undermined by the knowledge that her propaganda efforts were buoying up the enemy’s spirits and keeping them in the fight.¹⁵

A Fonda jury also would have been apprised of the international publicity her propaganda trip to North Vietnam garnered, as well as the extensive media coverage her Hanoi, Paris, New York and Los Angeles press conferences generated.

As for giving the enemy “the heart and courage to go on,” what would the jury

have made of this revealing statement by a high-ranking North Vietnamese functionary at the conclusion of Fonda's trip: "That visit and the support it showed had great impact on the Vietnamese people.... We realized that there were two Americas—one who dropped bombs on us, and the other who had sympathy."¹⁶

Finally, given the theme and content of Jane Fonda's broadcasts and other statements (as discussed in Chapter 4), it is reasonable to assume that testimony by the following three experts on psychological warfare on the issue of "aid and comfort" would have had a profound impact on a Fonda jury.

Said Edward Hunter:

- When the American citizen, especially one with the glamour and the prestige value of a Jane Fonda can travel back and forth between the United States and the enemy capital without interference or arrest by the American authorities, the effect on military morale is devastating.
- What comes from a source on one's own side commands attention, under any circumstance. When the enemy can obtain the assistance of a national of the country it is fighting, to propagate its material in his or her own country, and also to broadcast it personally over the enemy's radio, going to its capital city to do so, it has achieved a form of war propaganda for which there is no professional term — except, perhaps, the old fashioned word, treason.
- Fonda has taken this technique a big step forward, proportionate to the new "psywar" dimension in modern warfare, by being able to operate both on her own soil and in Communist areas. Once we entered World War II, neither Germany or Japan had this advantage.
- Jane Fonda seriously assaulted the stamina of any fighting American listening to her highly dramatic and professional war propaganda. An incalculable number of Americans must have been more or less shaken. The impact of war propaganda is frequently a delayed reaction, that rises to the surface during a period of fatigue, frustration or personal danger. Jane Fonda's emotional outpourings were particularly attuned to this characteristic.
- Jane Fonda's broadcasts and declarations parallel in the points she stressed and in what she did not mention, precisely what the enemy was insisting upon or ignoring.
- Two of the most forceful tactics in a propaganda warfare assault on troops require precisely the contribution made by Fonda.
- Jane Fonda's broadcasts and other declarations made in North Vietnam fit neatly into the up-to-the-minute, Communist party line, and were tactically adapted to the most recent developments in the fighting and "peace" sectors. They were visibly the product of communist psychological warfare planning. Their wording was highly professional in structure and aims. Her varied talks and statements dovetailed, with her arguments adapted to different audiences. Her operations were those of a team member in the enemy's "psywar" organization.
- Any soldier who listened, or read her crisp, dramatic presentations, could not help but be at least subtly affected, in present or future attitudes.
- Her broadcasts and statements at Hanoi reinforced and coordinated major issues that the Communists are propagandizing in the United States and elsewhere.
- She supported the Communist claims by clever use of calculating selected material such as the Pentagon Papers.

- Rarely did even Goebbels go to greater extremes of calculated distortion and propaganda lying against the United States than Fonda did during her brief month of North Vietnamese vituperation against her native land.
- She supported, in this contest, Hanoi's insistence on American submission to each of its demands.
- Subtly, she supported the build-up ... of an Orwellian basis for the concocted charge of genocide against the United States....
- Her accusations against us [the United States government] actually surpassed those of Tokyo Rose.
- An up-to-the-minute propaganda service was rendered to the enemy by Fonda.
- These lies by an American citizen whom every movie goer knew, whose prestige had only just been shockingly enhanced by receipt of a top Hollywood award, were translated into Vietnamese. They could not be without impact on those who heard her in the South.
- [One] broadcast declared that the American people were demanding acceptance of Hanoi's demands, and that "we identify with the struggle of your people," referring to the Communist side. The Vietnamese who hear this—and many Americans too—knowing that she passed freely between the United States and enemy territory, implementing her self appointed task, could only be confused, certain that for her to be able to do this, there must be powerful influences in the American government — wittingly or unwittingly —supporting this. Vietnamese must remember that treason inside the French government facilitated France's defeat in Indo-China, and cannot help but equate the situation today. Too many parallels exist. Americans hearing her preach this way can only have their doubts and frustrations increased.
- *What I have found in her work was irrefutable evidence of intent to assault the morale and stamina of the American fighting man and the South Vietnamese soldier.*
- *This appeal to GIs encouraged them to disobey orders, turn their weapons against their officers, desert, and generally take the side of the enemy.*
- Jane Fonda's July 30 broadcast to the GIs was in unabashed support of the campaign to destroy the American forces, particularly the U.S. Army, from within.
- The patent objective, too, was to encourage treason in faculties and student bodies, a prime target of worldwide communism. The age of the American troops made them particularly vulnerable to this approach.
- When Jane Fonda can come out and say over the air, as she did that July 26, from Hanoi, describing the United States as a country where "people have no reason for living," it is a particular propaganda gain for the Reds. Those inside Communist quarters who are thinking of resistance can be discouraged from undertaking it, and in frustration, may even turn their hatred against America, which they then see as letting them down. This is a long-time Red propaganda operation to which Jane Fonda contributed her prestige and dramatic skill.
- Her report on American prisoners of war followed the long established routine by which a few were trotted out for abject interviews, obviously cowed and rehearsed. The Hanoi regime, in support of this P.O.W. operation, extracts weeks of favorable nation-wide publicity in the United States by releasing, at long intervals, three American prisoners— always three.
- *This must have been a cruel ordeal for the P.O.W.s.* The questioning by an American actress who was taking the enemy's position on all things

assaulted whatever stamina they had been able to maintain, and to have seemed to confirm the communist propaganda that their country was letting them down, and of invincible Red victory.

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

Said Francis M. Watson, Jr.:

- Her techniques, phraseology, and themes are more comparable to combat propaganda operations, designed to encourage misbehavior on the part of troops, than anything else I can think of.
- Finally, there are some distinct advantages to Jane Fonda, American movie star, and frequent personality around Army posts, as a speaker. She is immediately known. She is glamorous. She has all the trappings of self-sacrifice,

Said Brigadier General S.L.A. Marshall:

- There is no question about the intent of the Fonda broadcasts. The evidence prima facie is that the purpose is to demoralize and discourage, stir dissent and stimulate desertion.
- Would it have any one or all of these effects provided the words of the broadcaster were heard by a vulnerable individual? Here I speak of the Fonda production as a whole. There is no reason to doubt that it would.
- I would stand on the general proposi-

tion that in the occurring circumstances, when any fellow citizen is permitted with impunity to go to such extremes, men and women in the serving forces feel resentful, and in the overwhelming majority, to the degree that they believe they have been let down by government because it does not act, their own feelings of loyalty become taxed. The hurt here is long-term and indirect.¹⁹

- She went farther, in her assaults on her own country in this Vietnam warfare than Tokyo Rose or even Lord Haw Haw in World War II. The prestige value to the enemy of her as a movie star gave her activities an added impact that none of her predecessors in wartime broadcasting from enemy capitals possessed.¹⁷

and she has rapport. She knows youth and she knows the Army. In this respect she is better than any Tokyo Rose history has ever known — she is a walking encyclopedia of current, cultural and technical intelligence on the U.S. military and the young people who occupy so many of its ranks. She is even an expert on the anti-military movement. She mentions that and thus provides a readily available philosophy and group-association for her listeners.¹⁸

From the beginning, propaganda was an integral part of Ho Chi Minh's strategy. Clearly, the North Vietnamese, like their Communist brethren elsewhere in Asia, understood the crucial importance of orchestrating political and military propaganda on a worldwide scale. Among their most effective weapons was Jane Fonda. Indeed, "many a torture was accomplished just to force a POW to say or agree to the same

things that were attributed to fellow Americans [like Jane Fonda] . . . ”²⁰ In other words, tortured American POWs refused to give up the propaganda that Fonda gave the North Vietnamese voluntarily. Did Fonda’s activities in wartime North Vietnam make for a jury question? Undoubtedly, the answer is *yes*. And that answer necessarily gives rise to yet another question: *Then why wasn’t Jane Fonda prosecuted?*

1. Rochester and Kiley, *Honor Bound*, in Chapter 1, contains a succinct overview of Vietnamese history.

2. Rochester and Kiley, *Honor Bound*, 6.

3. Rochester and Kiley, *Honor Bound*, 27.

4. Rochester and Kiley, *Honor Bound*, 8; emphasis added.

5. Since the Supreme Court of the United States and at least two of the Courts of Appeal have definitively distinguished between “motive” and “intent” in the context of a treason case, and conclusively held that the former is quite different from the latter and no defense to a charge of treason, we shall not address the concept of motive here.

6. 325 U.S. at 54; emphasis added [*Cramer*].

7. 184 F.2d at 137; emphasis added.

8. 343 U.S. at 736.

9. 171 F.2d at 942.

10. 171 F.2d at 939; emphasis added.

11. 343 U.S. at 742; emphasis added.

12. 171 F.2d at 941.

13. 171 F.2d at 941.

14. 343 U.S. at 965; emphasis added.

15. See, generally, Chapters 4 and 5.

16. *Hearing Report*, 7670.

17. See Mr. Hunter’s remarks in Chapter 4. His testimony to the House Internal Security Committee is quoted verbatim, and the emphasis has been added.

18. See Mr. Watson’s remarks in Chapter 4. His testimony to the House Internal Security Committee is quoted verbatim.

19. See General Marshall’s remarks in Chapter 4. His testimony to the House Internal Security Committee is quoted here verbatim.

20. Day, *Return with Honor*, 131.