Part IV

Closure

9

The Government's Capitulation

Treason doth never prosper: what's the reason? For if it prosper, none dare call it treason (Sir John Harington [1561–1612]* Epigrams of Treason*)

Fonda had not been back from Hanoi very long, nor from her inflammatory press conferences in Paris, New York and Los Angeles, when "an unprecedented influx of mail demanding action against her"[1] began to arrive in Washington. Given Fonda's notorious activities in Hanoi, the impact that they had, the high-profile publicity they attracted, and the resultant outcry that followed in the United States, certain Members of Congress demanded that something be done. Indeed, "[s]oon after learning of [Fonda's] initial broadcasts … Congressman Fletcher Thompson [of Georgia] asked that the Committee on Internal Security [of the House of Representatives] conduct an investigation of the matter, giving consideration to the issuance of a subpoena to Miss Fonda."[2]

According to a UPI press release:

Rep. Fletcher Thompson, R-Ga., accused actress Jane Fonda today of giving aid and comfort to the enemy and asked the Justice Department to charge her with treason.

Thompson … quoted Miss Fonda as urging U.S. troops in Vietnam to "desert and turn themselves in to the North Vietnamese."

"Declared war or undeclared war," Thompson said, "this is treason. It is time this government took some action against such people as Jane Fonda giving aid and comfort to an enemy."

Thompson said he was writing Attorney General Richard G. Kleindienst "urging him to investigate fully and to bring charges of treason against Jane Fonda."

Miss Fonda has been in Hanoi and among other statements, according to Radio Hanoi, has called on U.S. pilots to quit bombing North Vietnam.

Later Thompson told a reporter he was asking the Attorney General to determine the facts and, if Miss Fonda has been quoted accurately, to bring treason charges against her.[3]

Accordingly, the Chief Investigator for the House's Internal Security Committee tried to contact Fonda to arrange an interview. It is noteworthy that even though the Committee, from the outset, handled Fonda with kid gloves, still, she stonewalled:

On August 7, 1972, after determining that Fonda was at her home in North Hollywood, California, Chief Investigator Robert M. Horner[4] made three attempts to reach her by

telephone for the purpose of arranging a personal interview, speaking on each occasion to Ruby Ellen, self-described as Fonda's "assistant". At 5:00 p.m. the same day Horner received a telephone call: from Leonard Weinglass[5] who described himself as Fonda's attorney "for this purpose" and said he practices from offices at 208 Washington Street, Newark, N. J. Horner explained to Weinglass the Committee's interest in Fonda's trip to Hanoi, particularly her broadcasts from Hanoi, and said the purpose in attempting to contact her was to determine if she would be agreeable to a staff interview; that no subpoena was involved; that the interview would be strictly voluntary on her part and would be scheduled at her convenience but preferably within the next several days. Weinglass said he would discuss the matter with Fonda and furnish her decision the following day. On August 8th Weinglass informed Horner that Fonda would not agree to an interview. Weinglass asked what she might expect next and was told that as the purpose of Horner's contact was to arrange for a voluntary interview, which Fonda would not agree to, it appeared that the matter was concluded [and] that Weinglass would have to confer with the Committee's Chief Counsel as far as any other Committee action was concerned. The Committee staff has received no subsequent communication from Fonda or her attorney.[6]

So a mere two weeks after Fonda had returned from Hanoi, the House Internal Security Committee — even after an avalanche of complaints, some from highly reputable sources — was pussyfooting around: repeated attempts to reach her by phone, a "strictly voluntary" interview, if that was "agreeable," possible scheduling at Fonda's convenience, reassurance that no subpoena was involved. Despite this delicate approach, Fonda's lawyer put off the Committee. Nothing in the Reports of the Hearings even suggests that the Committee ever again sought to interview Fonda, let alone subpoena her.

What is not commonly known is that, in fact, the Committee considered issuing a subpoena.

The committee met on August 10 [1972] to take the request of Mr. Thompson [for an investigation and a subpoena] under advisement. By a vote of 8 to 1[7] the committee agreed to ask the Department of Justice for a report on the case.[8]

In a press release of the same day, after the Committee had concluded its "executive session" — a euphemism for a meeting closed to outsiders — it issued a surprising announcement:

Members of the House Committee on Internal Security, meeting in executive session, agreed that a subpoena of actress Jane Fonda for testimony about her recent trip to North Vietnam would not be appropriate at this time.

What follows is the press release's somewhat labored explanation:

A Committee Member, Rep. Fletcher Thompson, R-Ga., had advocated issuance of such a subpoena at a news conference [suggesting] that she would be an appropriate subject for a Committee hearing.

After lengthy discussion at today's Committee meeting, [Internal Security Committee] Chairman Richard H. Ichord, D-Mo., said "there are several reasons why it would be improper to subpoena Miss Fonda.

"One is that her actions are already well known to the public and the Congress and little,

if any, value would be gained through further airing of them, particularly before a Congressional forum. The Justice Department is studying tapes of her broadcasts to determine whether she was in violation of the 1940 Sedition Act. I think that is a course that should be pursued vigorously by the Department of Justice. Should Justice decide to prosecute Miss Fonda, hearings before our Committee prior to prosecution might serve only to cloud the legal issue."

Ichord said that "the Committee's overriding interest is not in what additional information might be secured from Fonda, but rather any deficiency in the law or any dereliction on the part of the Department of Justice." Ichord added that "It is the responsibility of the Congress, and each Committee within its own jurisdiction, to insure that the Executive Branch is enforcing the law enacted by the Congress, and if not, to effect remedies."

He said, "it is the duty and obligation of the Department of Justice to determine whether the broadcasts in question did indeed cause or attempt to cause disloyalty or refusal of duty."

In other words, it is not our job — at least, not at this time.

On Ichord's motion … [it was] resolved that "the Committee continue the staff investigation of Fonda's activities and in the event the Justice Department determines that the broadcasts of Jan [*sic*] Fonda from Hanoi during July 1972 do not constitute treason or sedition, or that her conduct cannot be reached by existing statute for any other reason, then the Department should render a full explanation to the Committee by September 14 with recommendations for legislation which would be effective to impose criminal sanctions. In the event the report is not submitted on or before September 14, a representative of the Department of Justice will be expected to appear before the Committee on September 14, to furnish explanation."

"Whatever the outcome of this matter," Ichord said, "Miss Fonda is indeed fortunate to have the protection of U.S. citizenship. Personally I believe that her disgraceful and shameful activities speak for themselves. She is being and should be tried at the bar of public opinion.

"I also feel that Congressman Thompson should be complimented for his action in highlighting this matter. Her actions and statements were at the most treasonable. At the very least they revealed her to be a woman with an extremely distorted sense of values who has apparently allowed herself to be used by communist propaganda experts."

The press release concluded:

Miss Fonda has long been a militant opponent to American involvement in Southeast Asia. Broadcasts she made while in Hanoi aimed at U.S. servicemen in South Vietnam apparently sought to raise doubts in their minds about the morality of performing their duties.[9]

On the same day, August 10, 1972 — only three days after Chief Investigator Horner's abortive attempt to talk to Fonda — Chairman Ichord wrote to the Attorney General of the United States:

Dear Mr. Attorney General: The Committee on Internal Security met this morning in executive session to consider a request that a subpoena be issued to require Jane Fonda to appear before the Committee in regard to her travel to North Vietnam and radio broadcasts to U.S. military forces during July 1972. During the meeting a number of

reasons were expressed as a basis for opposition to the issuance of a subpoena. Important factors in the ultimate determination of the Committee were that the facts seemed to be already rather well-known, that the matter was under study by the Department of Justice and Fonda would be entitled to the full protection of the Fifth Amendment, that any such hearing might work to the prejudice of the Government in the event prosecution is undertaken and that the Committee's overriding interest is not in what additional information might be secured from Fonda, but rather in any insufficiency in the terms of the law or in its enforcement.

Translation: In a closed session, some Committee members, whose identities will never be known, voiced objections to issuing a subpoena that would have forced Fonda to appear before the Committee (and, doubtless, before television cameras).

Why? Let's look at the professed reasons Ichord advanced to the Attorney General.

"[T]he facts seemed to be already rather well-known."

Why, then, did Chief Investigator Horner want to "interview" Fonda only a few days earlier? What facts were "already rather well known"? As the material in Chapter 4 shows, all the Committee knew was where Fonda went, the text of her broadcasts, and some of the people she met with. There was much more that the Committee apparently did *not* know. Who sponsored her trip? Who accompanied her? Was she in touch with North Vietnamese, Viet Cong, Soviet, Chinese, North Korean or other Communist intelligence agents? Which American POWs did she meet with, under what circumstances, and what was their condition? Did any of the POWs give her messages? What were her instructions from those who sent her, and from the Communists in Hanoi? Who did she report to when she returned? What did she tell them? And so much more.

"[T]he matter was under study by the Department of Justice."

So what? The Department of Justice is part of the Executive Branch of our government. Its constitutional responsibility under our separation of powers system is to enforce the laws. Equally, Congress' constitutional duty is to make those laws. Incident to that legislative duty is the power to investigate. Congressional investigations—including hearings as part of those investigations—are an everyday occurrence, as, for example, the Truman Committee Hearings during World War II, the Army-McCarthy Hearings of the 1950s, and the Iran-Contra Hearings in the 1980s. For the Internal Security Committee to have demurred about subpoenaing Fonda because "the matter was under study by the Department of Justice" was a cop-out.

"Fonda would be entitled to the full protection of the Fifth Amendment."

This excuse strains credulity. In the first place, it presumes to know that had Fonda been subpoenaed to testify before the Committee, she would have "taken the

Fifth." There is no way the Committee could have known what Fonda would or would not have done — particularly since, as a prominent celebrity, she would have had to weigh the cost of taking the Fifth very carefully.

Secondly, if the Committee actually anticipated Fonda's taking the Fifth, that alone might have been sufficient reason to subpoena her. Let's not forget — as Ichord apparently did — that this important constitutional right can be invoked only if an answer would "tend to incriminate."

"[A]ny such hearing might work to the prejudice of the government."

This platitude has no meaning whatsoever — which is probably why Ichord made no effort to explain it. Apparently, he thought it sufficient merely to drop two buzzwords — "prejudice" and "government" — and all discussion, let alone inquiry, would end. To the contrary, not only would a hearing *not* have prejudiced the government, but it would have benefited the government in at least three ways and at a very opportune time.

First, even as the government sought to cope with the unbridled attacks by the virulent anti-war movement, it was trying to extricate the country from a war that had occupied four administrations, from Eisenhower through Nixon. Fonda's conduct in North Vietnam, had it been exposed for all Americans to see, could have triggered patriotic sentiment and, ironically, helped the government to end that war.

Second, a hearing could have had the effect of reassuring the American people that their government would not tolerate pro–Communist, anti–American, freelancers who had no inhibitions about junketing to the bosom of our enemy. An enemy, it should be stressed, that had tortured and killed American servicemen (and some civilians, for good measure) even while hosting the likes of Hayden, Lynd, Aptheker, Dellinger and other anti-war zealots.

Third, hearings would have demonstrated that our North Vietnamese enemies were — with great success — orchestrating morale-breaking propaganda in an effort to undermine our military efforts.

Chairman Ichord's letter to Attorney General Kleindienst continued:

> I am sure that you recognize the pernicious nature of Miss Fonda's statements to our servicemen, and the seriousness with which nearly all Members of Congress view her conduct. Although it might be fairly said that public support for American involvement in the Vietnam conflict is steadily declining, such *aid and comfort* to a nation with which we are engaged in hostilities is nevertheless condemned by the public. But whatever political or public reaction might obtain under the circumstances, I am sure you agree that the Department of Justice has a most solemn obligation to engage the full weight of the law against conduct which the Congress has made criminally punishable.[10]

You can be sure that Ichord's letter did not go out to Kleindienst until it had been carefully reviewed, if not actually written, by Internal Security Committee lawyers. The dead giveaway is reflected in the words italicized: "aid and comfort." The Committee Chairman, in characterizing Fonda's conduct in Hanoi, refrained from using

the actual word *treasonous.* Clearly under no illusions about the political aspects of the Fonda case—"whatever political or public reaction might obtain under the circumstances"—still, he reminded the Attorney General of the Department of Justice's "solemn obligation to engage the full weight of the law against conduct which the Congress has made criminally punishable." In other words, Ichord was saying, Fonda may have committed treason, and no matter what the political fallout, the Department of Justice (not the Internal Security Committee) had a duty to enforce the treason laws.

Ichord didn't stop there:

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

At this stage of the proceedings, it had become obvious that the House Internal Security Committee was of two minds. On the one hand, Ichord wanted to avoid getting too deeply involved in the Fonda affair. On the other, he seemed genuinely concerned about whether Jane Fonda had committed treason in Hanoi and, to that end, he pressed the Attorney General into service:

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

In other words, Congress had a right to know that the laws it passed were being enforced, and to that end, the Committee's own staff investigation of Fonda's activities would continue, with the Department of Justice keeping the Committee in the picture.

Five days later, on August 15, 1972, Chairman Ichord stood in the well of the House of Representatives and made the following statement:

> Mr. Speaker, last week the Committee on Internal Security discussed, at some length, the question of whether or not to issue a subpoena to the actress, Jane Fonda, with respect to broadcast statements she made over the Communist Radio Hanoi to our troops in Vietnam.
>
> It was agreed by the committee that it would be best, at this time, to give the Justice

Department time to complete its announced inquiry into the Fonda affair before considering any further course by the committee.

At the request of my colleagues on the committee, I addressed a letter which was hand-delivered Friday afternoon to Attorney General Kleindienst setting forth the committee's concern with this matter and our desire to have a report from the Justice Department by September 14 or an explanation on that date regarding what can be done with respect to Miss Fonda's activities in the capital of our enemy.[11]

Ichord got a response nearly two weeks later.

As you know, the Department is currently reviewing the texts of statements allegedly made by Miss Fonda and broadcast over Radio Hanoi. We are still receiving such statements. However, in the event our review of this material is completed on or before September 14, 1972, we will be pleased to furnish you with a report at that time.

Sincerely,
A. William Olson[12]
Assistant Attorney General

The day before the deadline, Olson wrote again to Ichord:

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

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

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

Sincerely,
A. William Olson
Assistant Attorney General[13]

Ichord was not pleased:

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

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

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

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

Sincerely,
RICHARD H. ICHORD,
Chairman

It was clear that Ichord was going nowhere with his correspondence. A face-to-face confrontation would produce no better results. It quickly became apparent that the Department of Justice was not interested in pursuing the issues that the Internal Security Committee had raised about Fonda's conduct. And, clearly, some members of the committee knew it, as would become obvious at the hearing.

HEARINGS REGARDING H.R. 16742:
RESTRAINTS ON TRAVEL TO HOSTILE AREAS[15]

TUESDAY, SEPTEMBER 19, 1972

U.S. House of Representatives
Committee on Internal Security
Washington, D.C.
Executive Session

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

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

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

The Chairman. The committee will come to order.

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

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

This letter was acknowledged on August 22.

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

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

Without objection, I would direct that the correspondence referred to be placed in the record at this point.[16]

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

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

Mr. Olson. Yes, I do, Mr. Chairman.

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

Testimony of A. William Olson, Assistant Attorney General,
Internal Security Division, Department of Justice,
Accompanied by Kevin T. Maroney, Deputy Assistant
Attorney General, Department of Justice

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

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

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

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

Mr. Sanders, of your staff, has been furnished with a written report discussing the law of treason and sedition. I think it might at this time be appropriate to review the provisions of these statutes and briefly discuss their application.[17]

Interestingly, the Department of Justice's "written report" was entitled "Memorandum of Law," and its significance rests not so much in what it contains, but in what was left out.

Memorandum of Law Concerning Treason (18 U.S.C. 2381)

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

Whoever, owing allegiance to the United States, levies war against them or

adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason….

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

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

The proceedings of the Constitutional Convention of 1787 reflect that Charles Pinckney proposed that Congress be given the power to declare what should be treason against the United States; however, the "Committee on Detail" reported a draft constitution which left no latitude to create new treasons and after thorough and able discussion, this was the provision adopted. The framers combined all known protection against the extension of treason and wrote into the organic act a prohibition of legislative or judicial creations of treason. In doing so they seemed to have been concerned by two kinds of dangers: (1) the suppression by lawful: authority of peaceful political opposition; and (2) the conviction of the innocent as a result of perjury, passion or inadequate evidence. To correct the first they limited treason to levying war or adhering to the enemies of the United States, giving them aid and comfort, thus making it impossible for lesser offenses to become treason. To correct the second and safeguard the procedures incident to the trial of those persons charged with treason, they provided that no one should be convicted except upon the testimony of two witnesses to the same overt act or upon confession in open court.

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

> limitations on the crime of treason and such provisions were inserted to prevent the possibility of extension of treason to offenses of minor importance. The crime of treason, moreover, was never to be extended by construction to doubtful cases….
>
> The crime of treason is unique among criminal statutes as regards the stringent requirements of proof which it places upon the prosecution of such cases. The Government is required to allege specific overt acts of treason upon the part of the accused and to prove each of these acts *by* the testimony of two eyewitnesses to the particular act. In the Supreme Court's decision in *Cramer* v. *United States* … Justice Jackson presented an exhaustive treatise on the history of the treason statute….

This three-and-one-half-page Memorandum of Law, containing a bit of history and a brief quote from the *Cramer* case, did not even mention, let alone discuss, the two other Supreme Court treason cases (*Haupt* and *Kawakita*), nor the five Courts of Appeal broadcast treason cases (*Chandler*, *Burgman*, *Gillars*, *Best*, and *D'Aquino*)—all of them crucially important and highly relevant, as we demonstrated in Chapters 6 and 7. Choosing to ignore the cases placed the Justice Department in the "judicious" position of not having to deal with them in its glaringly deficient Memorandum of Law.

And this, in turn, resulted in a Memorandum that could not—and thus did not—compare the facts and the precedential holdings of those eight cases to the facts involving Fonda. Significantly, the Memorandum does not even mention Jane Fonda's name.

Olson's two-and-a-half page oral testimony on the subject of treason was similarly without substance and suffered from significant omissions. Again, he delved briefly into history. Again, he steered clear of mentioning Fonda by name. Again, he made no attempt to connect the facts and holdings of the treason cases to the Fonda facts. On the contrary, Olson, albeit implicitly, tried to uncouple the relevant precedent cases from Fonda and to undermine their applicability to her. Here is what he said:

> There are some important factors in these World War II cases bearing on intent to adhere to the enemy. In each of the cases the defendants were voluntary, *paid employees* [emphasis is Olson's] of the "enemy" who were *hired* [emphasis is Olson's] for the purpose of dispensing (i.e., broadcasting) anti-U.S. propaganda to the military and who remained at their jobs for most, or a considerable part, of the war. Their adherence to the enemy, their intent to betray, was knowing, willful, and clear. It is "made clear" [quotation marks are ours] in the cited World War II cases that when broadcasting is charged as the overt act, the two-witness rule means two witnesses who saw the act of broadcasting and heard the words spoken by the defendant. Circumstantial evidence is not admissible to prove this point.[19]

Olson's oral testimony is thus evasive and misleading in several ways. He does not recognize, let alone address, the truism that intent (as with the other three requisite

elements necessary to prove treason) is ultimately a question for the jury — so long as there is *some* evidence of that intent. He avoids actually saying that the World War II broadcast treason cases militate against a prosecution of Fonda, though that is what he means. In fact, as we showed in Chapter 8, they do not. He hedges what those cases say about intent by stating that "important factors" have a "bearing." But what all of the Chapter 7 broadcast cases hold about intent is that *the defendant's state of mind is a question for the jury.*

Let's take a closer look at those "important factors" which Olson identifies. He emphasizes that the defendants were "paid employees" who were "hired" to propagandize, and who worked at their tasks for all or most of the war. Yet, not one of those cases turned on the defendants' employee status or on the duration of their propagandizing — nor did any of the cases hold that these two criteria were necessary for a treason indictment or conviction. Indeed, for at least two reasons, the cases could not have turned on those grounds. For one thing, pay and duration, even if relevant, would only be *indicia* of intent to betray, which, as we have seen time and again, is a question for the jury. For another, while Olson did not discuss *Cramer* or *Haupt*, it is noteworthy that there was no evidence in either case that the defendants were in the pay of the Nazis (indeed, the evidence was to the contrary), or that their traitorous conduct lasted for all or most of the war.

Finally, Olson (or, more likely, the Justice Department law clerk who wrote the Memorandum of Law) could not have really believed that the prosecutors who indicted Chandler, Gillars, Best, Burgman and D'Aquino would not have done so if they had made only a few propaganda broadcasts within a few days. If Tokyo Rose, without pay, had broadcast the most vile Japanese propaganda on December 8, 1941, and again during the Bataan Death March, and then retired, it is hard to believe that Olson would have advised the Attorney General of the United States that there was insufficient evidence of her intent to send to a jury.

Perhaps most misleading of all is Olson's glib reference to what the "World War Two" treason cases presumably "made clear." Every lawyer knows — as Olson knew — that appellate courts don't make "clear," they make "holdings." They establish legal principles. Olson's interpretation of the two-witness rule is specious. *Not one of those five cases even stated, let alone held, that "the two-witness rule means two witnesses who saw the act of broadcasting… ."* In *Chandler*, "[t]he authenticity of the twelve sample Paul Revere recordings introduced into evidence was established by competent testimony, *and is not challenged by the defendant.*"[20] In *Gillars*, while there was testimony by those who saw Axis Sally make the recordings, *she admitted doing so*. Accordingly, the Court did not have to rule on, and therefore did not rule on, whether the proof had to show independently that two people saw her speak into the microphone. In *Best*, the Court repeated what it had said about overt acts in *Chandler*: "[t]he overt acts, *viewed in their setting* … were part and parcel of the totality of aid and comfort given by the *course of conduct as a whole.*"[21] In *Burgman*, propaganda broadcast records made by the defendant were presented as evidence at the trial. Significantly, in

D'Aquino, the Court of Appeals noted that overt act Number 6 was testified to by witnesses who not only observed the broadcast, but *also listened to it*—thus making it unnecessary for the court to rule on whether two-witness proof required that, for a broadcast overt act to be sufficient, the speaker had to be observed by two witnesses while actually speaking. In addition, even before these five cases were decided by the Courts of Appeals, the Supreme Court had held in *Haupt*:

> The Constitution requires testimony to the alleged overt act and is not satisfied by testimony to some separate act from which it can be inferred that the charged act took place. And while two witnesses must testify to the same act, *it is not required that their testimony be identical. Most overt acts are not single, separable acts, but are combinations of acts or courses of conduct made up of several elements. It is not possible to set by metes and bounds the permissible latitude between the testimony of the two required witnesses.*… One witness might hear a report, see a smoking gun in the hand of defendant and see the victim fall. Another might be deaf, but see the defendant raise and point the gun, and see a puff of smoke from it. The testimony of both would certainly be "to the same overt act," *although to different aspects*. And each would be to the overt act of shooting, although neither saw the movement of a bullet from the gun to the victim. It would still be a remote possibility that the gun contained only a blank cartridge and the victim fell of heart failure. *But it is not required that* [two-witness] *testimony be so minute as to exclude every fantastic hypothesis that can be suggested.*[22]

Olson surely had to know that in *Kawakita*, which he also failed to mention, the Supreme Court had expressly ruled with regard to the two-witness rule, albeit not in a broadcast case, that "[w]hile two witnesses must testify to the same act, it is not required that their testimony be identical. 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."[23]

Lastly, it needs to be emphasized that Olson knew Fonda had done much more in North Vietnam than merely broadcast. He said nothing about whether her other conduct—tours, consorting with Communists, "interviewing" American POWs—was potentially grounds for a treason prosecution. Seven American military witnesses—who would eventually be repatriated—were, as Fonda readily admitted, "interviewed" by her. Why didn't Olson regard even *that* as an overt act? Yet, Mr. Olson had nothing to say about any of Fonda's non-broadcast conduct.

A. William Olson, the Justice Department's witness before the House Committee on Internal Security, did not try very hard to convince the Committee that there were grounds for a possible treason case against Jane Fonda. It appears that he was trying to do just the opposite.[24]

Olson concluded his formal remarks. Questions and answers followed.

> *The Chairman.* Thank you, Mr. Olson. I can fairly well understand the evidential difficulties in the Fonda case and I also well understand the reluctance of the Department of Justice to testify in regard to the matter because of the possibility that it would prejudice any eventual prosecution. That, in fact, was one of

the reasons why the Chair did not favor a subpoena for Miss Jane Fonda to testify before this committee. But it has been over 2 months since Miss Fonda made her first broadcast from North Vietnam; it has been over a month since the committee asked for the Department's opinion. I wonder if you can be more specific.

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

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

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

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

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

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

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

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

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

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

I have a question concerning adherence to the enemy, rendering him aid *and* comfort. Do the cases in this area require that adherence to the enemy or [25] rendering him aid and comfort be only an overt act of aid or may it also be psychological aid, such as a series of statements which have a psychological impact

> and which, it may be argued, does have the effect of aid and comfort? If there should be a finding by the court that a psychological statement would have in fact aided the enemy, would that suffice to meet the requirements of the second part of the definition of treason? Adherence has been established as the first part, and aid and comfort to the enemy as being the second part of the definition. In short, could a psychological type broadcast render aid and comfort to the enemy within the meaning of the treason statute?
>
> *Mr. Olson*. I believe that it could. I believe that type of broadcast we are speaking of was present in the Axis Sally and Tokyo Rose cases. I think the overt act is the fact of making the broadcast itself.
>
> *Mr. Thompson*. Concerning the requirement of two witnesses, does this require that there be two witnesses present to the act of broadcasting or may there be two persons who have heard a live or recorded broadcast who are familiar enough with the voice of the person broadcasting to testify that "I heard this," or does it require an actual visual sighting of two witnesses of the person charged with treason actually speaking the words into a microphone or recording device?
>
> *Mr. Olson. It is my understanding of the law that it is the former. There must be two perceptive witnesses to the act of broadcasting, if you will, in the studio where the broadcast is made. I believe that is the enunciated factor in the Axis Sally and Tokyo Rose cases.*
>
> *Mr. Thompson. You say there must be two in the studio. There must be two persons in the studio at the time that the broadcast is made, who actually viewed the broadcast rather than hearing it over the air?*
>
> *Mr. Olson. That's right*.

We must interrupt the Thompson-Olson colloquy at this point. As I said above, Olson is at least mistaken and, at worst, attempting to mislead. Whatever he meant by "the enunciated factor in the Axis Sally [Gillars] and Tokyo Rose [D'Aquino] cases," *in neither of those cases was the question presented to the Court as to whether the two witnesses had to have actually seen the broadcasts. Why? Because two witnesses had seen Sally and Rose at the microphone.* Accordingly, the Court did not decide the question. Nor has any other court, anywhere, ever explicitly decided the question As We suggested above, if the question were to be decided, reason, logic and precedent dictate what the courts would hold: *that two-witness proof would be sufficient if it showed the defendant made the broadcast — however that was demonstrated*. It is apparent from Mr. Thompson's next question to Assistant Attorney General Olson that the Congressman was not satisfied with the answers he was getting:

> *Mr. Thompson*. What if an individual secrets himself in a room with a tape recorder and records a message and then takes it and hands it to the radio who then play it over the air? Would it be impossible even if they advocated killing the President, advocated the troops rebelling, killing their commanders, and so forth, to ever prove treason?
>
> *Mr. Olson*. I think possibly that you could, if you could show witnesses to the recording.
>
> *Mr. Thompson*. I am saying there is no witness to a recording; in other words, a person closes himself off into a room with a tape recorder and speaks into this

tape recorder calling on the troops to mutiny, to kill their officers and so forth, and then that is, in turn, broadcast. Are we in a position by which there can be no treason under such circumstances?

A very good question. One which removes from the equation actual witnesses to the broadcaster's physical act of facing a microphone and speaking words. In other words, what if there's no question that the alleged traitor made the broadcast, proved by two witnesses who heard, or by the speaker's own admission, but no one actually saw a microphone, and saw the speaker's lips move, and saw words come out? A direct answer — up or down, yea or nay — was called for. And Olson's response?

Mr. Olson. It would seem to offer problems.

Problems, indeed. Olson was telling an important Congressional Committee, *without a shred of precedential authority to back him up*, that in a treason prosecution evidence of an overt act of broadcasting would be insufficient to go to a jury unless there were two witnesses to the act of speaking words. This equivocation by a ranking member of the United States Department of Justice is as shocking today as it must have been some 30 years ago.[26]

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

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

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

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

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

Have you dropped your investigation?

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

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

Mr. Olson. That is correct.

Mr. Thompson. Is there any political reason as to why the Department of

Justice would delay any action on the Jane Fonda matters until after the election for the President of the United States in November?

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

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

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

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

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

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

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

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

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

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

The Chairman. Mr. Thompson.

Mr. Thompson. Concerning specifically the Jane Fonda matter and the time frame, I take what you are saying is that there is no deliberate procrastination within the Department for political reasons in pursuing the Jane Fonda matter, that you are pursuing it with all deliberate speed, whatever that may be, and that when your investigation is full and complete a determination will be made. If possible, this will be before the election; it is possible it will be after the election but that you want to be very careful and certain that when you do make a recommendation that it is substantiated by a complete, thorough investigation whether this takes 1 month or 4 months or whatever it may be, and that at that time it would be released without regard to political impact?

Mr. Olson. That is correct.[27]

What was going on here? After some back and forth, the head of the Justice Department's Internal Security Division finally deigns to appear before the House of Representatives Committee on Internal Security. The grave matter before the Committee is Jane Fonda's trip to Hanoi, which could have exposed her to extremely serious criminal liability. But Olson cannot discuss the subject. His proffered excuse of an ongoing investigation, and the Justice Department's wish to protect Fonda's rights in the meantime, sounds embarrassingly lame. Then Olson produces a written "report," one that fails to mention any of the three Supreme Court treason cases or any of the five lower court treason cases (*every one of them "broadcast" cases*). Fonda's name is omitted. No attempt is made to connect the legal precedents to her broadcasts and other conduct in Hanoi.

Olson's oral testimony is cut from the same cloth. He goes a step further in a transparent attempt to undermine valid, and controlling, legal precedents on three specious grounds: hire and money; duration of the treason; and the need for the two requisite witnesses to actually see (and actually hear?) the broadcast(s). The tenacious Congressman Thompson, refusing to be sidetracked or blindsided, has the guts to ask Olson whether the Justice Department has succumbed to political expediency by throwing in the towel — and gets what he probably expects: a quick, forceful denial. Nor is Olson about to respond to Chairman Ichord's musings about whether Fonda, and her seven radical friends from Chicago, were too hot to handle.

Following the September 19, 1972 hearing, and remarks by Chairman Ichord in the House on September 20,[28] and yet another hearing on September 25, 1972, which again didn't deal with the question of whether Fonda may have committed treason in Hanoi, nothing was ever again heard on that subject from Congress. Nor, not surprisingly, from the Department of Justice.

We now know why. As the result of public outcry to Members of Congress, the House Committee on Internal Security had contacted the Department of Justice's Internal Security Division. They, in turn, had asked the Federal Bureau of Investigation to obtain the Fonda Hanoi broadcasts, to transcribe them and to acquire other information about her conduct in North Vietnam. The FBI did so, and forwarded the material to the Criminal Section of the Internal Security Division of the United States Department of Justice. The Criminal Section did its own analysis of the FBI–generated data, and recommended to the Assistant Attorney General in charge of the Internal Security Division — the same Mr. A. William Olson who was later to testify before Ichord's committee — that Fonda not be prosecuted for treason. Olson and his people in this division of the Justice Department agreed, virtually unanimously. The next step was to have the Assistant Attorney General recommend non-prosecution to the Attorney General. This was done. The chief law enforcement officer of the United States concurred, and Jane Fonda was never prosecuted for her reprehensible conduct in wartime North Vietnam.

If this was not a political decision, then that term has no meaning. What both Chairman Ichord and Committee Member Thompson feared would happen had come

to pass. Although persons who were close to the decision not to prosecute Fonda have offered, as part of the reason, that there were some legal problems with a treason case, that was by no means the primary reason, and, more likely, a handy excuse.

Ironically, the very reason that argued in favor of Fonda *being* indicted for treason — that her celebrity was what made her invaluable to the North Vietnamese propaganda efforts — is what in the chaotic fall of 1972 *saved* her. *Fonda was a famous, even admired, actress, protesting an unpopular war. The United States Department of Justice feared that Fonda, aided and abetted by savvy militant left-wing counsel, would "make a monkey out of us," and, consequently, government lawyers worried about being able to convict.*[29]

Was the government really doubtful about being unable to obtain an indictment? About getting a case against Fonda to a jury? That was not what kept the Justice Department from moving forward. What our government feared was being made to look stupid by the likes of Jane Fonda and the rabble-rousing counsel whom she doubtless would have employed. The government of the United States feared losing the case before a jury. This strongly implies — nay, virtually admits — that there was a case that could have been brought against Jane Fonda. It must be said that even if the Justice Department's pessimistic assessment had been correct, still, there was a case to be made.

It would have been easy to draw an indictment against "Hanoi Jane."

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1. Editorial, *Tallahassee Democrat*, August 10, 1972.

2. Statement of Richard H. Ichord, Chairman, House Committee on Internal Security, Hearings, at 7634.

3. United Press International release, July 18, 1972, via Washington Capital News Service. (In the possession of the authors.) Indeed, some newspapers had already editorialized that an inquiry was warranted. See, for example, the *Tallahassee Democrat* of August 10, 1972: "The law is perfectly clear. What is not clear is exactly what Miss Fonda said to American troops during her broadcasts. Inevitably, Miss Fonda and her supporters will decry the Justice Department investigation as political persecution. We doubt many Americans will agree, however, for if there is any foundation to press accounts of Miss Fonda's broadcasts from Hanoi, they are certainly a proper subject of inquiry."

4. Horner had been an F.B.I. investigator.

5. Weinglass was a lawyer whose career was laced with the representation of left-wing figures.

6. *Hearing Report*, at 7681.

7. It is noteworthy that one Member of the Committee was Father Robert F. Drinan (D.–Mass.), a well known anti-war activist.

8. *Hearing Report*, at 7634.

9. News Release, House Committee on Internal Security, August 10, 1972.

10. Emphasis added.

11. *Hearing Report*, at 7633.

12. Mr. Olson, a World War II veteran (1943–1946) who had served in the South Pacific, was a staff sergeant in a rifle company. He received his law degree from the University of Southern California in 1950, during 1971–1972 was Deputy Assistant Attorney General, and during 1971–1972 was Assistant Attorney General in the Internal Security Division of the Department of Justice.

13. *Hearing Report*, at 7541. Emphasis added.

14. In fact, the Committee's Chief Counsel-Staff Director, Donald G. Sanders, a former F.B.I. agent from Chairman Ichord's State of Missouri, had tasked a Committee lawyer to produce a written Opinion as to whether Fonda had committed treason. The legal staffer's Opinion reached the conclusion that while it was a close question, on the basis of six precedents (the treason cases analyzed in Chapter 7) there had been no treason committed. (Interview with confidential informant.) The staffer was confusing two issues, putting himself in the position of a jury. As we

have seen, whether the government could have gotten an indictment, and then gotten Fonda's case to the jury, was a far different question from whether the jury, after hearing the evidence, would have convicted. The staffer was asked the *former* question; there is no way he could have been asked — or answered — the *latter* one.

15. The following material from the Hearings — including the testimony of Mr. Olson, the Department of Justice Memorandum and the questions and answers between the committee members and Mr. Olson — are reproduced here verbatim, except for material indicated as having been omitted or added. In order that this material be presented exactly as it appears in the *Hearing Report,* no effort has been made to correct typographical and other errors.

16. The correspondence to which Chairman Ichord referred is set forth above.

17. *Hearing Report,* 7543–7546; emphasis added.

18. Here, Olson's Memorandum of Law inserted a footnote quoting from the *Greathouse* case: "It would appear that the treason statute would be applicable when the United States is engaged in open *hostilities*, even in the absence of a declaration of war" (*Hearing Report,* 7626; emphasis added). The significance of the text and footnote is that in their Memorandum of Law Olson and the Department of Justice recognized, as we argued in Chapter 6, that treason *can* be committed in the absence of a formal declaration of war.

19. *Hearing Report,* 7545.

20. 171 F2d at 940; emphasis added.

21. 171 F.2d at 941; emphasis added.

22. 330 U.S. at 640.

23. 343 U.S at 742. The quotation is from *Haupt.*

24. *Hearing Report,* 7543–7546, 7626–7632.

25. This was a misstatement. The Constitutional provision is not in the disjunctive, but rather the conjunctive: adhering *and* giving aid and comfort. Emphasis added.

26. Olson's position is also absurd. Would he have contended, for example, that there was no overt act if one witness to the actual broadcast were deaf but saw the microphone, and saw the speaker mouth the words? Or if the other witness were blind and did not see the microphone, but did hear the words? Could Olson have really believed, especially in light of *Kawakita*, that each witness had to perceive exactly the same thing at the same time?

27. *Hearing Report,* 7539–7560. It is noteworthy that virtually the last statement of substance made by Chairman Ichord at this hearing was to raise the question of whether "the Department of Justice fears making a martyr out of the individuals or at least fears that the trials would enter the political arena, such as the Conspiracy Seven [Ichord meant the infamous "Chicago Seven"] …" (*Hearing Report,* 7560). All emphasis in the Committee's colloquy with Olson has been added.

28. Basically, Ichord stated what Fonda had done, and the Committee's response.

29. Indeed, this was the same sort of reasoning that accounts for Fonda's never being subpoenaed by the House Internal Security Committee: strong anti-war sentiment in the country, and fear that providing Fonda with a forum in an appearance before the Committee would create "turmoil." (The sources for the information in note 14 and this note are confidential informants whom we interviewed, whose comments were imparted to us with the understanding that the sources remain anonymous. We can say, however, that there is no doubt whatsoever that the information is correct.)

It is worth noting that the craven attitude of the United States Department of Justice and the House of Representatives regarding Fonda was shared by the Pentagon in the matter of the so-called "Peace Committee" in an Hanoi prison called the Plantation. Among enlisted men POWs in Hanoi, there was a small group of collaborators who became known as the Peace Committee (PC), some of whom actually petitioned the North Vietnamese to join their army rather than be repatriated. After repatriation, Lt. Col. Ted Guy, now deceased, "charged the PCs with aiding and abetting the enemy, accepting gratuities, and taking part in a conspiracy against the U.S. government.… I was walking the corridors of the Pentagon, beating on the doors, asking that a complete investigation be conducted. The U.S. Army didn't want to press charged against the PCs.… The army's argument was that we should forgive and forget.… The army and navy later conceded that they had not conducted an investigation" (Grant, *Survivors,* 334–343). In addition, there were at least two officer collaborators in Hanoi who met with Fonda, and soon after repatriation Admiral Stockdale pressed charges against them. Again, as with the Peace Committee members, the Navy and Marines declined to prosecute (Rochester and Kiley, *Honor Bound*, 568).