

**civil
liberties
&
vietnam
protests**

The present opposition to United States military policy in Vietnam, and public and official reaction, raise civil liberties issues of major significance. The American Civil Liberties Union presents this comment in an effort to aid public understanding of these issues, and their importance in the preservation of our constitutional liberties.

Paralleling other periods of national anxiety and tension, the country again is experiencing severe attacks on First Amendment rights of freedom of speech, assembly and association. These attacks necessitate the (1) clear definition of these First Amendment principles, (2) recognition of their vital importance within our democratic system, and (3) scrupulous observance by all government authorities and all citizens of these principles in the current national debate over our Vietnam policy.

Expression of political opinion by individuals and groups was specifically written into the U.S. Constitution for the purpose of bringing to public and governmental attention the views of Americans on critical public issues, especially those issues that personally and directly affect them and their families. Unfettered public discussion which, through the exchange of ideas, can lead to a sharpening of issues and a possible solution, is primarily required in times of high public emotion when there is a tendency to limit critical comment in the name of national unity.

As a civil liberties organization, the ACLU offers no comment on the wisdom or merits of U.S. foreign policy, in Vietnam or elsewhere. We do not analyze the motives or patriotism of those stating their views on American foreign policy. But because of our belief and faith in the process of open discussion, the ACLU welcomes the debate — on both sides of the question — which has brought the Vietnam issue to the forefront of public thinking. This is a proper use of First Amendment rights and we applaud it.

We are deeply distressed with the comment heard in many quarters, that "too much free speech is dangerous," or that curbs should be placed on expression which disagrees with the present national policy because of the harmful effect of such speech on the morale of our armed forces and the misleading impression it creates among foreign governments. We remind those who argue in this vein that freedom of speech is not a right reserved only for the majority, and that criticism of American policy is not equivalent to "anti-Americanism." It is precisely at this time, when there is danger that speech may be diminished, that this unique and most prized element in our American tradition should be fully exercised. To do less is to dishonor the whole purpose of the First Amendment and reduce our citizens to mere puppets.

The right of protest, taking such various forms as demonstrations, parades, rallies, peaceful picketing, literature and newspaper advertisements, is protected by the First Amendment. The Supreme Court has noted on numerous occasions that this Amendment brooks no interference by police officials with demonstrations on the ground that they tend to incite others to retaliatory action. The job of law-enforcement officials, as properly demonstrated by the New York City police assigned to the October 17 "end the war in Vietnam" parade, is to assure that both protestors and counter-protestors each have the opportunity to express their views.

We anticipate that the current state of excitement will lead to prosecutions for different kinds of conduct said to be illegal. In light of the national mood, these prosecutions may very well be directed against forms of expression which are properly guaranteed by the First Amendment. One such example is the burning of draft cards which we regard as a technique of expression which does not approach the point of actual clear and present danger to the national security, no matter how offensive it may be to individual citizens. ACLU affiliates throughout the country, while not endorsing the content of each individual's or protesting group's speech, have defended their right to voice their opinion in different ways.

In implementation of this position, the New York Civil Liberties Union, one of our affiliates, is providing counsel to David Miller of New York City who has been indicted for violation of the recently-enacted federal law barring destruction of draft cards. The ACLU also regards this amendment to the draft law as a violation of substantive due process; there is no reasonable relationship between the burning of a draft card and the administration of the draft law. Moreover, the penalties of the amendment (five years in jail and/or \$10,000 fine) are so inappropriate and excessive that they border on "cruel and unusual punishment."

Such penalties exceed what is necessary to administer the Selective Service Act and serve as a deterrent to free speech by making persons wary of expressing their opinions.

While military conflict always unleashes strong emotions, this is no excuse for the rash of recent statements by Selective Service officials about the Vietnam protest movement, especially its student participants. Lt. Col. Hall, head of the Delaware Selective Service, threatened to revoke the deferral of student protestors, asserting that his headquarters "is running down these people as their names appear in the papers. When they belong to us, we make a move in our files." The head of the Illinois System commented that if participation in demonstrations is considered "unsatisfactory progress" by college officials, the names of demonstrating students could be turned over to draft boards for immediate induction. Col. Arthur A. Holmes, Michigan's Selective Service Director, has called for "the immediate induction" of protestors who violate Selective Service regulations or cause any interruption of procedures. We vigorously condemn this view of the draft law as a vehicle to punish dissent. We ask Lt. Gen. Lewis B. Hershey, national head of Selective Service, to tell these government officials that they are empowered to administer the draft law and nothing else, and that they usurp the authority of the law and their office when they harass lawful political activity.

Other government statements within recent weeks illustrate the rising pressure for a crackdown which endangers First Amendment rights of unpopular political movements. FBI Director Hoover once again has sounded the alarm with his oft-repeated statement that Communists seek to exploit protests against the Vietnam war. The Senate Internal Security Subcommittee, in a staff report prepared at the request of and released by Senator Thomas Dodd, charged that the demonstrations have "clearly passed into the hands of the Communists and extremist elements." In a replay of McCarthyism, a chapter of the report titled "Biographical Notes on Some of the Participants," identifies 19 academicians as supporters of the Inter-University Committee for Public Hearings on Vietnam as having "persistent records of Communist sympathies and/or association with known Communists and known Communist movements and front organizations." Conjuring up once again the vision of "Reds on the Campus" which inflames community feeling, the report was issued with the full panoply of publicity, but with no opportunity for the "accused" professors to answer the charges or present their positions.

When joined with such statements as that of Federal Judge Harold K. Wood in Philadelphia demanding the expulsion from all publicly-supported colleges of student protestors, or the national campaign pledged by the president of the National Junior Chamber of Commerce, now named the "Jaycees," to ferret out communists, socialists, and members of other left-wing organizations and report them to the local police and the FBI, can we really expect teachers, students, and other citizens to voice their views freely?

In contrast to constitutionally-protected speech, investigation of unlawful acts, conducted by the responsible agencies, is a proper governmental function. But against the intolerant atmosphere which now prevails, there is danger that such announcements will produce a climate in which people who want to express their opinions and ideas will refrain for fear of risking the displeasure of some government official or agency. Already headlines throughout the nation, picking up the official statements, are blazoning the threat of a new "Communist take-over," although all responsible analysis of the protest movement agrees that the movement is a complicated one to identify precisely, and that if one characteristic emerges, it is the variety of political and social philosophies represented. At the very least, Government authorities should link any pronouncement they make on the Vietnam protest movement with an affirmation of the content and purposes of the First Amendment, that lawful protest and dissent is not disloyalty, and that no punishment will befall those persons who exercise their constitutional right to speak their minds.

The words of Thomas Paine, "These are times that try men's souls," offer good instruction for government and the private citizen alike in today's period of tension. For these are also times "that try men's reason," the concept which shapes the meaning of the First Amendment. We commend this concept to all as we continue the great public debate over the Vietnam crisis.

NEW YORK
Herald Tribune

Tuesday, October 26, 1965

On the Student Demonstrations

By Walter Lippmann

While the student demonstrations are quite evidently self-defeating, they are, it seems to me, a pathetic reminder of what happens in a free country when responsible debate on great matters of life and death is throttled down and discouraged. The unhappy youths who burn their draft cards are no doubt misguided. But we must not forget that they come from a nation which expects to understand what its government is doing, from a nation which is not habituated to obedience and to the idea that it must listen to its superiors and not talk back.

* * *

There is only one way that a democratic people can be won over and convinced, and that is by enabling this people to hear informed debate by its responsible leaders. These young people have a very high personal stake in the conduct of foreign policy, a much higher stake than the rest of us. Yet, the fact of the matter is that during the past year—from the election of 1964 to the present time—there has been a radical change of policy for the war in Viet Nam. It has occurred without serious, thorough, informing, and candid discussion and responsible debate in Washington. That is why there have been the teach-ins. They have been attempts by educated but not fully informed teachers to fill the void left by the absence of official debate. And from the teach-ins, which could not and did not provide a substitute for responsible debate, a few handfuls of young men, some especially foolish and some especially brave, have gone out into the streets.

It may be said that there has been no suppression of freedom of speech, which is

indeed true. But nevertheless the fact is that debate has been shut down to an inadequate minimum in the Senate and it is only in the Senate that some men outside the Executive branch have access to all authentic information. It is the shutting down of debate in the Senate which is at the root of our uneasiness. The President has not concealed his desire to conduct his foreign policy in Viet Nam and in the Dominican Republic without genuine Senatorial debate. He has achieved his desire by adopting a foreign policy which the Republican opposition cannot criticize, and then, with his real opposition confined to the leaders of his own party, he has silenced them in personal argument.

The main technique employed has been to substitute private Presidential briefing of individual Congressmen and journalists for open debate by independent men. These briefings have not truly illuminated the subject. For one thing, they are not on the public record. Moreover, the man who is being briefed cannot debate with the President. He cannot do so out of respect for the office. For another thing, he cannot debate with the President since he does not have access to all the facts in the case. Only Senators, like Mr. Fulbright in the Dominican affair, who undertake an enormous task of investigation are in a position to argue about what has happened and are equipped to conduct a serious debate.

And when debate by those who have a right to know is discouraged, there is no responsible guidance of public opinion. We must not be surprised that these great matters are then taken to the teach-ins and out into the streets.

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As stated in its October 27, 1965 statement published herein, the American Civil Liberties Union is concerned only with the widest circulation of information and opinion — on both sides of public issues. It does not approve or disapprove of the content of any particular speech, only its right to be heard.

November 5, 1965

Lt. General Lewis B. Hershey, Director
Selective Service System
1724 F Street, N.W.
Washington, D.C. 20435

Dear General Hershey:

The protests, demonstrations and counter-demonstrations concerning United States military policy in Vietnam, in which American students are providing significant leadership and actively participating, have resulted in statements by several Selective Service officials threatening students who join anti-war protests with the loss of their deferred draft status. Wide-spread publicity has been given to such statements as these:

Lt. Col. Hall, head of the Delaware Selective Service, said that his headquarters "is running down these people as their names appear in the papers. When they belong to us, we make a move in our files." The head of the Illinois system commented that if participation in demonstrations is considered "unsatisfactory progress" by college officials, the names of demonstrating students could be turned over to draft boards for immediate induction. Col. Arthur A. Holmes, director of Michigan's system, has called for the "immediate induction" of war protestors who violate Selective Service regulations or cause any interruption of procedures. It even appears that your own voice has been added to this chorus of intimidation. According to the Philadelphia *Inquirer* of October 29, in an address before students of the Haverford School, you warned that persons who burned their draft cards have "an unusual priority" which places them "at the top of the list" in the draft call, even though no statute authorizes induction to be used as a means of punishing either conduct or protests.

While the American Civil Liberties Union understands the strong counter feelings engendered by the students' actions, we believe that the comments of Selective Service officials wholly misrepresent the meaning and purpose of the draft law. We regard them as nothing less than a naked attempt to utilize the law as a device for punishing dissenting opinion. The draft law in no way permits Selective Service officials to discipline registrants because of their political views, and any reprisal taken against a student because of any political belief he holds, including opposition to American policy in Vietnam, is a distortion of the purpose of the draft law and unlawful harassment of constitutionally protected political activity. We deplore such statements.


We realize that under the Selective Service law the decision as to an individual's draft status is made by the local draft board, but the reality of life within government agencies, including the Selective Service System, is that statements of top officials take on the aura of a government directive, especially when, as now, majority opinion favors restrictive action against the minority. We therefore call on you promptly to instruct both state and local Selective Service officials to refrain from these inflammatory comments. The atmosphere of conformity they create will not only tend to limit student expression, but will also so inflate community tension as to suppress honest debate and the expression of dissenting opinions.

Even if you instruct Selective Service officials to cease making emotionally-charged statements and to administer the draft law in a non-discriminatory fashion, we are concerned that local draft boards may already have been so influenced against the anti-Vietnam protests that lawfully-granted student deferments may be improperly terminated.

In view of this officially created hazard, we further call on you to provide for special care to be taken to prevent local draft boards from imposing such punishment on these students. We believe the danger of prejudiced decisions can best be averted by the most expansive interpretation of Section 1624.1 of the Selective Service regulations. For example, a registrant should, on his request, be allowed to bring a few responsible members of the community as observers to the hearing. This in itself could serve as a brake on a draft board which is eager to crack down on a dissident student. Information relating to a registrant's academic status can best be established by the appearance before the draft board of faculty members most intimately familiar with the individual's school record; where necessary, the individual's registration can be transferred to the draft board in the college community for hearing at which the faculty member can appear (paralleling the legal procedure for a change of venue). Beyond this we urge that the probably unconstitutional provision of Section 1624.1 (b) which explicitly prohibits the appearance of an attorney with the registrant be waived. The complexities of the classification standards very often require the services of an attorney for their intelligent exposition, and for facts supporting the classification claim. Similarly, a transcript of the hearing should be provided the registrant so that he may be able to show in his appeal the attitude of the board, especially where he claims that the board's decision was based on the exercise of a constitutionally-protected right.

It is certainly true that times of military conflict always unleash powerful emotions. Feelings of patriotism erupt in the drive for national unity, undermining respect for differing opinion, and the high principles and ideals of democracy come under the most severe attack. This is precisely the reason why in periods of heavy controversy our democratic system, and particularly the government agencies which make up that system, should faithfully observe democratic standards. To do less is to injure gravely the individuals from whom this government derives the consent to govern, and to jeopardize the institutions which represent our belief and faith in freedom.

Sincerely yours,


John de J. Pemberton, Jr.
Executive Director

a letter to General Hershey

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