Who Killed the Berkeley School? Struggles Over Radical Criminology

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Let’s start with a comparison from two disparate moments in history. There are parallels between the anti-reformist campaign against the School of Criminology radicals in Berkeley and the counter-reformation led by 16th-century Jesuit scholars at Collegio Romano, in Rome. The scholars campaigned against scientists who, they believed, undermined their dogmatic interpretation of biblical events. Working covertly at first, they gradually mounted a campaign that convicted Galileo Galilei as a heretic and, for all practical purposes, put him in solitary confinement by sentencing him to a lifetime of house arrest.¹ More recently, and closer to home, around 1971, a counter-reformist faculty network at Berkeley worked covertly with the university administration and state government to repress the “heretics” in the School of Criminology. Eventually, they succeeded in exiling the radicals and destroying the School the radicals had helped create.

This repression was duplicated across the country. Michael Miles reported in 1972 that as “student unrest” dropped off nationally, university authorities carried out

“more firm action” against the student movement than at any other time. These authorities had learned from bitter experience in the late 1960s that “direct engagement involving the use of police force, summary dismissals and the like did what the radical issues of imperialism and racism by themselves could not: they mobilized a majority of students and a significant minority of the faculty to the radicals’ defense.” Their new repressive strategy therefore recommended avoiding the radicalizing effect produced by police crackdowns. It urged the patient and careful choice of the “right moments” to remove the “hard core” students and faculty who supposedly had “manipulated” the “concerned masses.”

While the “hard core” was being removed, the authorities would accommodate to movement demands, making moderate reforms that would co-opt the remaining dissenters.

Such counter-reformist alliances at Berkeley usually relied on networks that formed and reformed depending upon circumstances. In 1969, for instance, a group called The Council for an Academic Community (CAC) appears to have been established during or after the Third World Strike to “work informally toward the preservation of rational discourse in the face of violent and coercive confrontation.”

In 1970, the CAC had 29 members and most, like Paul Seabury, a public policy professor targeted by the anti-war movement, Melvin

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3 The date of its formation and its subsequent 1970 “statement of purpose,” entitled “CAC Principles,” was obtained from the UCB Bancroft Library archives. (The faculty club may have required a note about CAC’s aims to provide a meeting room in 1969 and the right to use the club’s name on the ‘letterhead’ of declarations issued in 1970.)

4 Seabury was a former member of the President’s Foreign
Webber, who taught naval architecture, and Charles Tobias from Engineering and Lawrence Radiation Laboratory, a research center linked with the war machine, were not administrators or aspiring administrators. However, some like Robert Scalapino during the free-speech crisis had been the Political Science Department Chairman. George Maslach, as Provost, monitored undergraduate enrollment in the School of Criminology during its final years. Earl Cheit had been an Executive Vice Chancellor while others, such as Martin Trow functioned, in the 1960s and 1970s, as directors of research centers. Alan P. Sindler, who has been introduced previously, joined the CAC shortly after he quit Cornell. At Berkeley, he was employed as a public policy professor but, in later years, became Dean of the Graduate School of Public Policy.

Still another member, Lincoln Constance, had been a Department Chairman, Dean and Academic Vice Chancellor. During the free speech conflict, he represented the Chancellor’s office to the faculty. In an interview, Constance confessed when he first met with Mario Savio,

Intelligence Advisory Board. He was, among other things, a member of the board of directors of the Committee on the Present Danger, a militantly anti-Soviet pro-defense lobby of which President Reagan was formerly a member. He edited “The Grenada Papers” for the Institute for Contemporary Studies, a group founded by Edwin Meese. (See Richard Hatch and Sara Diamond, “The World Without War Council,” Covert Action Information Bulletin, #31, Winter 1989. Also, #45. Sara Diamond, “Shepherding,” Covert Action Information Bulletin, #27, Spring 1987.)

5 Cheit in later years became Dean of the School of Business. He also became a Senior Advisor to the Asia Foundation, which had been a CIA conduit. In the 1990s Scalapino was honored at Asia Foundation and Kissinger was member of the award committee.
I had to control myself because I wanted to reach across the table and smack Savio right in the face because he was insolent and brash, and frankly I thought he was off his rocker. . . . I’d have loved to punch him in the nose, and I think it might have been an historical favor if I had.  

As the prior chapter indicated, a number of faculty had responded to the 1970 Cambodian invasion by refusing to teach. (Also, Governor Reagan was actually forced to shut down the university temporarily.) When classes resumed, some of these faculty members, depending on their courses and expertise, devoted classroom time to ethical, legal, social, economic or political factors affecting the course of the War. Since the invasion further exposed the criminal policies behind the War, radical faculty at the School felt obligated to devote classroom sessions to such topics as war crimes and crimes against humanity.

But such faculty responses to the Cambodian invasion galvanized the counter-reformists. In 1969 the CAC had intended to achieve its aims unofficially. A year later, however, the faculty response to the invasion brought it out of the closet. The CAC informed the UCB faculty that while the university provides room for intellectual dissent it should remain free of political advocacy and action. Academic freedom, the CAC added, depends

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6 Lincoln Constance “Versatile Berkeley Botanist: Plant Taxonomy and University Governance.” Interviewed by Ann Lage in 1986. Regional Oral History Office, The [University of California, Berkeley] Bancroft Library, 1987. These remarks are in the section incredibly entitled, “Chancellor Strong: Liberal, Contemplative, Principled.” (This information was obtained from Web pages of UCB’s oral history documents, which are not numbered.)
upon “the rejection of all efforts to politicize the University, and especially to transform it into a political weapon.” Even though “the faculty alone” has the right to decide what happens in the classroom, the content of their courses must not be compromised by political aims.⁷

“After U.S. intervention in Cambodia in May 1970,” CAC continued, “many classes were dismissed and some were interrupted by dissidents seeking to coerce professors and students, who wanted to carry on academic pursuits, into quitting.” To support faculty and students who rejected efforts to politicize the university and transform it into a political weapon, the CAC announced that it took a full-page advertisement in the Daily Californian and nearly 500 signatures were received showing agreement with its principles. The CAC expressed its intention to resist attempts to politicize the university perpetrated by “members of the university” (i.e., students and faculty) as well as public officials and people at large. It concluded,

To protect the foundations of this University, open membership in CAC is now proposed. If academic responsibility is not taken by faculty now it will be assumed by forces outside the University. A larger organization is planned and duly elected officers will take over for the calendar year 1971. Membership is free and all members of Academic senate are invited to join.

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⁷ Council for an Academic Community. 1969-1970. “CAC Principles & Statement of Purpose.” UCB Bancroft Library archives. This document appears to have been issued during the 1970 fall semester.
The CAC’s late 1970 campaign was in part aimed at closing a breach opened by the faculty trade union, Local 1474 of the American Federation of Teachers (AFT). During the summer of 1970, thousands of students left Berkeley and support for anti-war protests was scaled down. But the Chancellor’s office took advantage of this circumstance to harass faculty members concerning alleged “excesses” generated by the anti-war protests. For example, in August 1970, Professor of Mathematics Morris W. Hirsch was reprimanded and docked a week’s pay. But a memo issued by Local 1474 asserted that the most elementary forms of due process were violated in Professor Hirsch’s case and that the Chancellor’s evidence appeared to be either irrelevant or insubstantial. Local 1474 backed Hirsch’s appeal to the Senate’s Committee on Privilege and Tenure and called upon faculty to inform the Union immediately if they received calls to discuss teaching with Vice Chancellor Connick. To fore-stall additional administrative actions, Local 1474 asked support for the AFT’s efforts to incorporate the existing disciplinary powers of the Administration into a contract between the Regents and the faculty, to be negotiated through collective bargaining.

During the 1970 fall semester, however, the restored administration-faculty alliance finally recovered control of the Academic Senate, which had been lost five years earlier in the debate about the FSM. The alliance, of course, was not interested in negotiations that would help protect opposition professors like Hirsch. Instead, it moved aggressively to toughen the disciplinary rules in order to shield its own members and to curb the anti-war movement.

But its reliance on the Academic Senate rather than AFT collective bargaining meant traversing the Byzan-
tine corridors of faculty self-governance. To a degree, the faculty policed itself and this policing was channeled through the Senate and its committees. Consequently, to neutralize, threaten or punish the opposition faculty, the CAC had to manipulate the Senate and stack the committees.

Also, a successful campaign was not assured just by Machiavellian politics on a local level. It required similar efforts by administrative-faculty alliances on all 9 campuses of the University of California system, because the Assembly of the Academic Senate, composed of delegates from each one of these campuses, was charged with the task of incorporating revisions into a single code for the entire system.\(^8\)

In November 1970, in Berkeley, the Senate Policy Committee opened the door to local recommendations for changes in the code. It got the Senate to approve a resolution asking the Academic Freedom and Policy Committees to jointly prepare a statement on professional conduct and faculty discipline. The Privilege and Tenure Committee was also asked to add its opinion especially regarding disciplinary procedures.

On January 11, 1971, the three committees—Senate Policy, Academic Freedom and Privilege and Tenure—reported back to the Senate, submitting a draft of their revisions to the code.\(^9\) The joint report submitted on January 11 said the Committees were “mindful” of the necessity to formulate “broad outlines of punishable

\(^8\) The 9 UC campuses were at Berkeley, Davis, Irvine, Los Angeles, Riverside, San Diego, San Francisco, Santa Barbara and Santa Cruz.

\(^9\) The final draft is in the joint reports of the Committees to the Academic Senate circulated on February 4 and presented for approval at the February 16\(^{th}\) Senate meeting.
misconduct” rather than a “detailed criminal code.”

Apparently, the new rules were designed to cover all possible contingencies created by faculty that, in the Committee’s view, “significantly impaired the University’s particular interests as an institution of higher learning.”

On June 29, 1971, the statewide Assembly of the Academic Senate adopted a revised faculty conduct code for the 9 University of California campuses. The justifications for the revisions crammed with platitudes, invoked supposedly “mutually supportive relationships” between academic freedom and the mission of the university. Embedded in its decorous verbiage were prohibitions against faculty intrusion of material unrelated to their courses, their failure to meet class, their participation in disruptions or interference in the classrooms, their unauthorized use of University resources or facilities for political purposes, their intentional disruption of functions or activities authorized by the University, their intentional disobedience of University rules and incitement of others to disobey these rules, especially “when such incitement constitutes a clear and present danger that violence against persons or property will occur.”

Disciplinary consequences were coupled with these prohibitions. Violations could be punished by censure; docking of pay; deferral of an impending promotion or

10 The Senate Policy Committee in November 1970 had objected to the administration’s plans to adopt the criminal code as a model by preparing a “precise delineation” of punishable faculty offenses. Employing this model for revising the code, in its view, would be “insufficiently inclusive” as well as “rigid.”

merit increase; suspension without pay; demotion in professorial rank or in salary; and dismissal from the employ of the University. While enforcement of these prohibitions required judicial procedures administered by faculty committees, the Chancellor was permitted to impose an interim suspension, with full pay, on a faculty member, without following these procedures when he deemed it probable that keeping a faculty member on the job would be harmful to the University community.

Some of these prohibitions and punishments in themselves seem reasonable—including the rule against incitement of violence even though no faculty member had ever been accused of such incitement and even though this rule ignored the fact that the criminal law prohibited such incitement. Nevertheless, when faculty opposition to the Cambodian crisis is kept in mind, the political conformity that could be served by this conduct code seems ominous.

In February 1971, a month after the three committees had submitted their joint report, the Berkeley Senate was confronted with a request to expand the mission of the Academic Freedom Committee. Carefully orchestrated speeches, memos and bulletins about “alarming threats” to academic freedom were being circulated during the time of this request. The CAC, for instance, had issued a bulletin, entitled “THE INTERNAL THREATS TO ACADEMIC FREEDOM.” It urged the Committee to gather information about the sources of these threats that could hold opposition faculty liable for violating the code of conduct. This bulletin observed,

Berkeley has experienced a series of serious internal attacks on academic freedom: the so-called ‘War Crimes Commission,’ the
threats and attacks against Profs. Glaser, Jensen, Scalapino, Searle, Teller, and others, and the recent efforts to disrupt Profs. Jensen’s and Scalapino’s classes. These actions are part of a pattern of efforts to coerce and intimidate faculty members, to punish them for their views, and to serve as a warning to others who might hold or express similar views. These are attacks on the intellectual and academic freedom of our colleagues by self-appointed censors in the community, in the student body, or on the faculty.\textsuperscript{12}

The CAC did not identify the culprits among the faculty. In fact, it granted, “some members of the faculty have felt that we should take no notice of these attacks on our colleagues.” However, it claimed,

\textellipsis our silence in the face of these attacks would lead to a gradual callousing of our sensibilities, and a readiness to accept as ‘normal’ actions that only a little earlier would have provoked shocked condemnation. Already there are signs that we are accommodating ourselves to a situation in which faculty members can associate themselves with groups such as the ‘War Crimes Commission’ whose avowed intention is to intimidate colleagues (our emphasis).

\textsuperscript{12} The February 1971 bulletin is entitled, “THE INTERNAL THREATS TO ACADEMIC FREEDOM.” The bulletin heading also contains these words: “Faculty Center: Occasional notes from the Council for an Academic Community, Published six or more times a year by CAC at Berkeley, Calif.”
Adding that these attacks on highly visible teachers exerted “a subtle pressure on others who teach in sensitive areas,” the CAC urged the Academic Senate Committee on Academic Freedom to investigate reported violations without waiting, as has been its practice, for a request from an “aggrieved” faculty member.\textsuperscript{13}

Importantly, a few days later, a speech by Chancellor Heyns on academic freedom was printed in \textit{Campus Report}, published by the UCB Office of Public Information on February 19, 1971. Heyns thought the Academic Freedom Committee should make a “searching study” of instances in which the freedoms of faculty and students have been “interfered with.” The Chancellor asserted, “The stand that it takes will have a major impact on the quality of academic life here.” But, curiously, the Academic Freedom Committee’s stand and the results of the study were already widely known by the faculty before Heyns made his speech. They had been expressed in a formal statement circulated on February 8, which like the CAC bulletin was subtitled, “Internal Threats to Academic Freedom.”\textsuperscript{14} Because Sindler, too, was a member of the Academic Freedom Committee, his name appeared at the end of the statement below that of the Committee Chairman, who also was a Chairman of a Law School Department.

The Committee statement described the following “threats” to freedom. It reported that “several faculty

\textsuperscript{13} In addition, the bulletin condemned “efforts at coercion or intimidation of faculty members or students, from whatever source” and announced the university administration and Senate’s Committee on Academic Freedom were undertaking “a broader inquiry into this whole problem.”

\textsuperscript{14} Academic Freedom Committee, February 8, 1971, “A Statement of the Committee on Academic Freedom: Internal Threats to Academic Freedom.” Academic Senate, Berkeley Division.
members and administrators had been the object of investigation by a self-appointed ‘war crimes tribunal’.” Students and non-students had even marched to the home of one professor denouncing him as a war criminal, but the police had turned them back. An anonymous handbill distributed at the edge of campus listed another professor’s address, sketched a map pinpointing his residence and urged readers to challenge his actions by calling his residence to discuss matters with him. Still another professor, the statement said, had been called a racist and made the subject of a campaign aimed at exposing his “controversial” research findings and published opinions. Research institutes, it said, had also been targeted because their work was “objectionable to some persons.” A prominent guest speaker had cancelled his lecture out of fear, and others had been subjected to heckling and ridicule.

The Committee appeared deeply troubled. It said “every person,” engaged in “similarly controversial research or whose ideas may be abhorrent to some,” was being threatened by this harassment. It also frighteningly declared, “The victims of campus vigilante activities include not only those who are identified publicly as targets or symbols but many who may fear that they too will become objects of future attacks.” This fear, the Committee alleged, reached beyond the handful of faculty being harassed. “It matters not that the ultimate threat may be averted—that the classroom may not actually be disrupted, the lecture stopped, the house burned or the laboratory bombed; the hazard to academic freedom adheres in a climate of fear that may be caused by such forces,” the Committee concluded.

The Committee finally requested “cooperation” from the faculty while inquiring into all of these threats to
academic freedom. But what, precisely, did “cooperation” really mean? Joining the network of counter-reformists? Supporting administrative measures against “hard core” radicals? Providing new informants for the FBI? Or contributing to the Committee’s own intelligence-gathering mission?

But, first, how real was the threat to freedom in February 1971, when the statement was circulated? Was the Committee—in collusion with the CAC and university officials—creating a panic through the pretense that the “threats” were increasing alarmingly? After all, the numbers of students involved in demonstrations had diminished significantly in the 7 months since the troops were withdrawn from Cambodia. Also, the Committee statement had been preceded by seven or eight long years of protests directed against faculty who justified racial inequality or served the government war machine. Everyone knew the identities of the professors being targeted by students or non-students—regardless of whether they read the CAC bulletin.

Arthur Jensen, for instance, had been under attack ever since his article, “How Much Can We Boost IQ and Scholastic Achievement?” appeared almost two years earlier in the 1969 issue of the Harvard Educational Review, claiming that the differences in I.Q. scores between whites and blacks are primarily due to the genetic inferiority of the blacks. It is worth noting that his article consumed almost all of the winter 1964 edition of the Harvard Educational Review. Furthermore, if anyone at Berkeley missed his article, they could read essays that treated it seriously in U.S. News and World Report.

Time, Newsweek and Life, along with 14 million other readers who bought these publications—not to mention the millions who read it in their doctors’ offices.

Also, in 1971, Richard Herrnstein, a Harvard psychology professor well known by criminologists for his notoriously racist theory of crime,\(^\text{16}\) agreed with Jensen’s article and wrote about its policy implications in Atlantic Monthly. He said that special government programs to assist in the health and education of African Americans were ill advised. Shortly thereafter, Eric Sevareid, the CBS prime-time news commentator, went on national television to say that it had been shown scientifically how some people were less educable than others, and that we should rethink federal policy and priorities.

In addition, Berkeley faculty and students who didn’t read the national magazines or hear Eric Sevareid must have seen the front page of The Daily Californian, on May 11, 1969, after Jensen’s article had been published. The front-page story, “Prominent Psychologists Oppose Jensen,” printed a statement signed by notable psychologists, including the president of the American Psychological Association, attacking the scientific validity of Jensen’s work.

Moreover, Scalapino and Teller had been denounced throughout the late Sixties. And, again, if anyone was still uninformed, The Daily Californian, only days before the Academic Freedom Committee’s complaint was

\(^{16}\) The Bell Curve: Intelligence and Class Structure in American Life (New York: Free Press, 1994), coauthored with Charles Murray, is the most well known publication based on Herrnstein’s theory. Many articles indicated this work is methodologically unsound. For a definitive refutation of The Bell Curve, see Stephen Jay Gould, The Mismeasure of Man. New York: W.W. Norton & Co. 1996.
circulated, had reported that members of a self-styled “War Crimes Commission” had leafleted Scalapino’s class, accusing him of war crimes. Yet even though a Commission member demanded that Scalapino answer the charges when he entered the classroom, *The Daily Californian* reported that the members left the class and did not disrupt his lecture.17

*The San Francisco Bay Guardian*, on June 11, 1970—during the Cambodian crisis and eight months prior to the 1971 memo about threats to academic freedom—had devoted a section to “The Bay Area War Machine,” listing Scalapino as the head of “the most notorious project” devoted to third-world counter insurgency. The *Guardian* quoted a letter of resignation protesting “Pentagon involvement,” written by Gerald O. Berreman, a UC Berkeley anthropologist who had also served on the project. Berreman wrote, “In the context of the illegal involvement of this country in the war in Vietnam, I cannot accept research money from an agency whose prima-

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17 This incident seems blown out of proportion in the Academic Senate’s deliberations. First, as indicated, the Mulford Act gave campus authorities and Berkeley police the right to eject non-students from the campus. Second, this incident is the only one actually cited in the Senate deliberations and none of the self-styled faculty “witnesses” who said they had seen this disruption were questioned. Furthermore, some professors, who failed to win a majority, tried to amend the resolution so that the incident would be considered an allegation rather than a fact. Finally, the description of this incident in “Berkeley Activist Ordered Off,” *Daily Californian*, January 29, 1971, raises questions about its validity. This article indicates that activists had addressed the class before the session actually began and they mentioned they would be available after the session. If any “disruption” occurred during the class, a non-student may not have been the cause; consequently, “disruption” in this case may be comparable to the Cornell incident, which involve academic freedom for students and which had been discussed in a previous Chapter.
ry interest and purpose is the prosecution of that war and the furtherance of policies which are likely to lead to similar wars including wars in the very area of my research endeavor.”

Again, within this short time frame, on March 5, 1971, the Committee on Academic Freedom issued another memo reminding Shelly Messinger, Acting Dean of the Criminology School, about its February communiqué. In this memo, the Committee requested administrators, department chairs and deans from every major academic unit, to provide “material” relevant to their inquiry into internal threats to academic freedom. It added that the scope of its investigation was not being confined to threatening incidents, and it wanted suggestions for developing “a broader perspective” to be “delivered personally or in writing.” Since no instance mentioned by the Committee’s original statement about internal threats to freedom indicated a faculty member being responsible for such threats, this deceitful expansion of its original mandate assumedly had a more sinister purpose, namely, mapping the distribution and identities of political dissenters and their departments throughout the campus.

Apropos of sinister purposes, two months before the Committee was created, UC Regent Max Rafferty, candidly admitted to the press that “unpublicized moves” were under way to remove college professors involved in “objectionable” campus activities.18 Rafferty said, “If the cause remains – more student violence and dissent – there will be more dismissed.” “They’re are [sic] quietly going through that now on more and more campuses,” he added. Regarding 14 professors who had recently been fired from Fresno State College, Rafferty sarcasti-

18 Rafferty had lost his Superintendent of Education position. He had just been defeated in a statewide election.
cally remarked, “More and more of the loose nuts on the faculties are going to be weeded out.”19 Meanwhile, the California legislature had targeted student movements by passing more legislation against students than any other state in the Union.

On this issue, The New York Times reported that “faculty cells” were emerging on university campuses to cope with student unrest. This development at UC Berkeley was accelerated by Governor Reagan’s cuts in university funding. Facing the threat to personal security imposed by these cuts, some faculty, especially those who had remained silent—as many had done in the McCarthy era—supported the counter-reformists. They joined the growing academic lynch mob by denying tenure or renewals to the most visible anti-war faculty members, Richard Lichtman, Michael Leiserson and Kerrigan Prescott.20

Simultaneously, the leaders of the mob institutionalized repression by getting the Academic Senate to protect their interests. From a legal point of view, however, this protection was unnecessary. The Mulford Act, passed by the California State legislature to cope with student unrest, enabled the campus police to arrest a non-student who had challenged Scalapino in the classroom, escort him off-campus and charge him with a crime. Protection against harassment outside the campus was also covered by criminal law.

Given these legal safeguards, what in the world necessitated the Committee’s alarming message and justifi-

20 Later, Stephen Talbot in the Native American Studies program was added to this list.
cation for disciplinary rules? The chain of events inescapably points to its desire to intimidate and search out political dissidents and to deflect attention from threats to these dissidents by “friendly fascists” on the faculty.

**ACADEMIC FREEDOM & WAR CRIMES**

To realize the enormity of the harm veiled by this stage-managing of academic freedom, and to put it in perspective, we must return to the final days of the free speech crisis. On December 8, 1964—five days after mass arrests in Sproul Hall had produced a campus-wide strike and one day after the spectacular failure of Kerr’s convocation at the Greek Theatre—the Academic Senate resolved to end the “free speech crisis” by granting amnesty to the arrested students. Despite the Regents’ opposition, the Senate also voted to allow political speech and activity on campus. The faculty overwhelmingly agreed that this was the only hope of settling “one of the most agonizing, shattering and potentially destructive experiences that any American university has ever had to pass through.”

When the Senate met in Wheeler auditorium, thousands of students massed in front of Wheeler Hall and packed its corridors. Loudspeakers immediately in-

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21 The Regents, however, did not overturn the Senate’s decisions.

22 These activities, as indicated previously, were subject to “time, place and manner” rules preventing students from disrupting “the normal functions” of the university.

23 Professor McClosky expressed this judgment. See the proceedings of the meeting, in UCB Academic Senate, 1964. (The proceedings were transcribed from an audiotape. The pages of the copy provided by the Bancroft Library archives are not numbered.)
formed the students of the faculty vote and, upon emerging from Wheeler Hall, the professors passed single-file through a cheering ecstatic crowd. “Many of us were crying as we applauded. Many of them were crying too,” students reported. Although some professors complained the vote had been extorted by student pressure, university developments sweeping across the nation showed that that vote signified “the most consequential decision made by a university faculty in that era.”

Unlike the Cornell Senate two years later, the Berkeley professors had spent little time debating the question of amnesty. Instead, they argued whether the content of political speech and activity should be restricted. Although the majority had favored a “free speech” resolution offered by the Senate’s Academic Freedom Committee, which did not restrict content, Lewis Feuer, from Philosophy and Sociology Departments, wanted the resolution modified. He proposed an amendment that only permitted activities “directed to no immediate act of force or violence.”

Granting freedom of speech without this restriction, Feuer insisted, would allow a student Ku Klux Klan chapter to organize actions for defacing Jewish synagogues and Negro and Catholic churches. He prophesized that a free speech resolution without this restriction would encourage circumstances similar to those that helped destroy freedom and democracy in Germany during the thirties. Nazi students had claimed immunity from university authorities, which could do nothing, when they organized their attacks on Jews, liberals, Democrats and Socialists, according to Feuer.

24 See the commentary on an afterward to the proceedings cited above.
Carl Landauer, an economist who became a founding member of the CAC, supported Feuer’s amendment. He reminded the Senate of how hard it was to resist the Regents during the McCarthy period. He felt that granting free speech without Feuer’s amendment would make resistance to the Regents totally indefensible.

Professor Arnon, a cell physiologist and another founding member of the CAC, backed Feuer’s amendment. He declared the Senate was being blackmailed by a student mob determined to fight for their principles even if they destroyed themselves and the university. He mentioned rumors that outside groups would be coming to the campus at Berkeley if student demands were granted. He asked rhetorically what would the Senate do if students invited “outsiders”—such as a “President or Chairman of a prominent civil liberties organization”—to join their campus rallies?

Despite these arguments, the majority believed the amendment would perpetuate the conflict between students and authorities. David Rytinn, from the Speech Department, observed that if students prepared boycotts or sit-ins or picketing against the outside community in the name of civil liberties, Feuer’s amendment would render them again subject to the same kind of punitive threats and arrests as led to the crisis in the first place. The amendment was considered so vague that civil disobedience could be called “force and violence.”

Bernard Diamond, identified as a psychiatrist in the

25 Yet Landauer agreed with the majority about the necessity for amnesty. “Mistakes have been made from all sides and the only conclusion we can draw is no further penalties,” he said.
26 See UCB Academic Senate, 1964.
27 Later, Diamond’s joint appointments included the School of
jections. First, he said the criminal law adequately covers acts of force and violence and neither the Senate nor the Regents have any business replacing the law. Second, the courts provide adequate means for administering and interpreting the law; and neither Senate committees nor administration should invade a territory that does not properly belong to them. Third, the definition of force and violence in relationship to civil disobedience is an exceedingly complex one; and the faculty or university “do not and will never have the necessary machinery for the implementation of and interpretation of the individual acts which may be relevant to this.”

Furthermore, many felt the U.S. Constitution and Supreme Court decisions already provided acceptable criteria for judging free speech. Joseph Tussman, from the Department of Philosophy, dared to ask, suppose a person advocates violence but does it in a context in which there is not the slightest danger it will come about? Is there any reason why the authorities should stop that even if their concern is violence?

Upon objecting to Feuer’s amendment, Owen Chamberlain, from the Department of Physics, made an important point. He said the students are proud of their use of civil disobedience because it puts high value on the lives of others and at the same time low value on the arbitrary rules of men. They feel the necessity of having their views heard yet believe there is little that would allow them the effectiveness they feel their conviction warrants. “It is all very well for a committee of the faculty to say that the recent disorders have hindered the consideration of student proposals, yet I for one do not believe it. The students feel that they have had no legitimate channel open.”
The Berkeley Senate had rejected Feuer’s amendment; nevertheless, seven years later it basically approved a “force and violence” rationale similar to the one rejected in 1964. It departed dramatically in 1972 from the 1964 Senate’s wishes by adopting hazy interpretations of “force and violence” rather than those based on the Constitution and criminal law.

However, between 1964 and 1972, the anti-war movement in Berkeley had expanded enormously and so had movements elsewhere. While these movements had repeatedly damned official accounts of the war, the major news media usually defended the government and willingly printed its lies. Nonetheless, significant breaks in media coverage occurred as early as December 1966, when *New York Times* Editor Harrison E. Salisbury filed dispatches from Hanoi. The foreign press had reported that the U.S. had escalated the bombing and civilian areas had been targeted. The administration denied the escalation while Pentagon releases said military targets near Hanoi might have been hit but any damage to the city itself was due to antiaircraft ordnance falling back upon the city. Salisbury’s first dispatch refuted these lies. He reported that the center of the city had been bombed and the U.S. had been bombing North Vietnamese population centers since 1965. He wrote, “The government is waging a war of steel and fire in Vietnam. It should not treat the American people as a second adversary, to be kept at bay with a smoke screen of distortion and soothing syrup.”

From 1967 on, newspapers, pamphlets, magazines and books exposed atrocities routinely committed by American units in Vietnam, mostly against civilians. Eyewitness accounts of the criminal policies being relentlessly pursued by US military were provided at the
proceedings of the War Crimes Tribunal, organized by Bertrand Russell and held in Stockholm and Copenhagen. Vietnam veterans also provided first-hand accounts and, in 1970, 2,000 veterans startled the nation by camping on the Mall in Washington DC and returning medals won in battle by tossing them onto the steps of the Capitol. A year later, Representatives Ron Dellums and John Conyers paraded eyewitnesses at a Congressional hearing on US war crimes.

Consequently, Americans were repeatedly informed about the war crimes being committed in Indochina. They were told about the enormous numbers of civilians killed and wounded by US and ARVN air and artillery strikes; the creation of free-fire zones which were ineffective against the NLF but devastating to civilians; the forced relocation of millions of Vietnamese villagers into dreadful refugee camps and slums; the use of herbicides to destroy crops and presumably deprive the NLF of food, which proved disastrous for the rural population; the customary beatings, torture and killing of NLF and North Vietnamese prisoners of war, primarily by ARVN troops but tolerated by US advisors; the terrorism and assassination promulgated by the notorious Phoenix Program; and the atrocities committed by US troops that were rarely punished. Furthermore, in 1971, government fabrications were blown sky high when newspapers published articles based on a classified historical study, ordered by McNamara in 1967, of US involvement in Vietnam.

Daniel Ellsberg and Anthony Russo, who worked at the Rand Corporation, had secretly copied the study and its supporting documents in 1969. After pleading unsuccessfully with anti-war legislators like J. William Ful-

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28 The term, ‘Indochina,’ includes Vietnam, Laos and Cambodia.
bright, George McGovern and Paul (Pete) McCloskey to release the study, they sent excerpts to a handful of leading newspapers. The government tried to stop these newspapers from publishing and its legal battle with *The New York Times* went all the way to the Supreme Court, which ruled in favor of *The Times* in June 1971.

Dubbed *The Pentagon Papers*, the excerpts of the Rand study demonstrated that American Presidents had deceived, ignored or manipulated a Congress composed of individuals who were either complicit in this deceit or too cowardly to meet their responsibilities under the Constitution. Presidents Truman, Eisenhower, Kennedy, Johnson and Nixon progressively committed US military resources to a criminal war of aggression against the Vietnamese. Truman provided military equipment on a large scale to the French colonial government, to be used against Vietnam rebels. To encourage the breakdown of the Geneva settlement between the French and Vietnamese, the Eisenhower administration undermined their negotiations. Kennedy encouraged the overthrow and assassination of President Ngo Dinh Diem of South Vietnam and his replacement by army officers.  

He also initiated covert warfare, which was escalated into open warfare by Johnson whose plans for further action in 1964 produced the Tonkin Gulf incident.  

For years afterward, Nixon followed up this incident by encouraging the calculated deceitful manipulation of public opinion. To disarm public opposition to the war and boost Nixon’s reelection chances, for instance, Kissinger lied a few days before the 1972 election when he announced:

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29 Members of his family and cabinet were also assassinated in this CIA backed operation.

30 But this incident did not initiate US aggression. Telford Taylor (*Nuremberg and Vietnam*, 174) states that 15,000 troops were already stationed in Vietnam when Johnson took office.
“Peace is at hand!” But the negotiations with the NLF and North Vietnamese collapsed shortly after the November election. Then, in the middle of the next month and through Christmas, Nixon ordered 18 days of carpet-bombing aimed at homes, hospitals and civilians in Hanoi and Haiphong.  

The Pentagon Papers proved conclusively that the government had waged a “war of aggression” in Vietnam—a war crime according to Nuremberg precedents. Before the Papers were published, General Telford Taylor, the chief prosecuting counsel at the Nuremberg trials, in *Nuremberg and Vietnam: An American Tragedy*, had difficulty deciding whether the United States had committed the crime of aggression, because the information to make an informed legal judgment about its possible guilt had not been disclosed. Although the Nuremberg tribunal was equipped with “virtual libraries of the defeated governments’ most secret papers,” the documents proving the United States’ aggression in Vietnam had not been available until *The Pentagon Papers* were published in 1971.

About 36 people worked on the Rand study and most of them were military officers. All of them including Ellsberg had served in Vietnam. The study contained a 3,000-page analysis, to which 4,000 pages of officially

31 During this time, a number of B2-Bomber pilots refused to fly missions.

32 Taylor (*Nuremberg and Vietnam*, 120.), said: “The Nuremberg and Tokyo judgments were rendered by international tribunals on a *post mortem* basis (all too literally), surrounded by virtual libraries of the defeated governments’ most secret papers.”

classified documents were appended. One did not have to be a professor at an elite university to realize that these documents, beyond a doubt, proved the anti-war movements and their unofficial war crime tribunals had been right all along. The documents demonstrated that isolated soldiers were not responsible for the use of airborne weapons of mass destruction or search-and-destroy missions that killed every living thing in sight. Nor were these crimes merely committed by officers—like Lieutenants William Calley and Bob Kerrey—who were following orders or caught up in the frenzy of war. The crimes were inevitable consequences of policies planned and executed by officials at the highest levels of government.

The Papers confirmed that the United States had lied when it justified its invasion of Vietnam on behalf of a sovereign power. The South Vietnamese government was not a sovereign power. Originally, the “zones” distinguishing Northern and Southern Vietnam were based on a cease-fire agreement pending a democratic election. According to Taylor,

The Geneva agreement of 1954 did not purport to establish two nations, but two ‘zones,’ and explicitly declared that ‘the military demarcation line is provisional and should not in any way be interpreted as constituting a political or territorial boundary. It was the basis for a cease-fire, and the purpose of the zones was specified as ‘regrouping.’ The agreement further

34 In 2001, the American public was informed about another atrocity—this time involving the ex-Senator Bob Kerrey who commanded a unit that killed every civilian in a Vietnamese village even though it was not confronted by armed opposition.
provided for ‘free’ nationwide elections, to be held in 1956, as the basis for a government based on ‘the principles of independence, unity and territorial integrity.’

But, the Papers showed the United States encouraged the corrupt South Vietnamese government break that agreement because it knew the government could not obtain domestic support for that tactic democratically. Then, after deciding that the government also incapable of winning the ensuing civil war, the U.S. selected Vietnamese officers who had served in the French colonial forces, and engineered the military coup d’état. Consequently, the US war crimes were not restricted to the manner in which it fought the Vietnamese War. They originated in a “crime of aggression” because the US had invaded Vietnam to maintain colonial surrogates during a civil war.

The growing number of people raising questions about criminality at the highest level of government included Taylor, the Nuremberg prosecutor. Even though he restricted his judgment to My Lai, free strike zones, treatment of prisoners and other atrocities committed by ground troops, he pointed out that if standards applied in the prosecution of German and Japanese war crimes were applied impartially to American statesmen and bureaucrats managing the Vietnam War, they would most

36 See Young, Vietnam Wars, 1945–1990, 159. In early 1966, a U.S. intelligence assessment noted later, there was an “almost total absence of any organized popular support, or even sympathy for the American-backed regime,” quoted in Kahin, Intervention, 421.
likely be found guilty. While clarifying the grounds for this judgment, he dismissed the argument that these Americans were innocent because they were ignorant of the atrocities committed by U.S. forces. He said that after March 16, 1968, when soldiers in the field reported a number of atrocities, (including the My Lai massacre) to their superior officers, nobody could reasonably claim to have been uniformed.

Christopher Hitchens, in the most recent and compelling indictment of Kissinger, goes further than Taylor. His book, *The Trial of Henry Kissinger*, reviewed the overwhelming amount of evidence for the crimes committed in Indochina. To back his indictment, he employs eyewitnesses, documents released under the Freedom of Information Act, previously unpublished correspondence, transcriptions of the “Nixon tapes” and testimony given to Congressional committees. Kissinger’s criminal acts, according to Hitchens, began in 1964 when he prolonged the war by secretly ensuring the failure of peace negotiations between President Johnson’s administration and Vietnamese representatives. While the CAC and Academic Freedom Committee were conducting their campaign against the Berkeley anti-war activists in 1972, Kissinger was designing and managing policies killing and wounding at least three million civilians in Indochina alone.39

38 Christopher Hitchens, *The Trial of Henry Kissinger*.
39 The first few names on the Vietnam War Memorial in Washington, DC, are dated 1954 when the U.S. began to support French forces. Since the last few are dated 1975, the U.S. was involved in the Vietnam conflict for 21 years. Furthermore, when civilians are included, the true Vietnamese casualties may have reached 4,000,000.
What about the university administrators and faculty who condemned both the Berkeley war crimes tribunal and the expression of anti-war sentiments in classrooms? Weren’t these people morally culpable. They certainly could not claim ignorance of the atrocities being committed in Indochina. The publication of excerpts from the *Pentagon Papers*— in leading newspapers and in 1.5 million copies of a paperback edition published by the *NY Times*—had informed the university community about the government’s deceitful manipulation of public opinion. These and other publications indicated that the CAC and Academic Freedom Committee were not impartial apolitical agencies, justifiably defending the university as “a house of reason.” They were an extension, in civil society, of government policies aimed at obstructing justice and enabling serial killers to commit crimes with impunity.

In 1964, the Senate majority rejected Feuer’s amendment and his absurd comparisons between students in Berkeley and Nazi students who had invoked free speech principles to claim immunity for their attacks on Jews, liberals, Democrats, Communists and Socialists. Actually, the Nazi government had granted their immunity and enforced it with assaults, torture, prisons and concentration camps. American federal, state and university authorities, on the other hand, steadfastly opposed the anti-war movement in Berkeley. Along with their allies on the university faculty, they discouraged free speech and employed a double standard when defending particular faculty members from criticism. These members were tacitly accorded institutional “immunity” despite accusations of complicity in the greatest crimes recognized by modern nations.