

2006 Wisconsin High School Mock Trial Tournament Case Materials

The 2006 Wisconsin High School Mock Trial case materials are intended for educational purposes only and not for profit.

In re the Pardon of Karleton Lewis Armstrong

PETITIONER'S WITNESSES

Happy Goldberg, Ph.D.
Kropotkin, Ph.D.
Leo/Leona Burt

RESPONDENT'S WITNESSES

Tony/Toni Neidermeyer
D.V. Wormer, Ph.D.
Will/Wille Moss-Appleman, Ph.D.

DISCLAIMER

This year's case is based upon actual events in our state's history, specifically, the tragic events leading up to and following the bombing of Sterling Hall in 1970. The witness statements are based upon the factual record established by the FBI and police investigations, and the actual testimony of witnesses. Each witness represents a combination of different individuals connected with the bombing. Some leeway was given to the witnesses for the sole purpose of making them more usable for mock trial.

This case is designed to explore the line between the freedoms we enjoy in the United States and the boundary which separates legitimate political dissent from illegitimate actions. Our freedoms have been secured at a cost. This case is dedicated to all those whose lives were lost to secure those freedoms.

The authors of the case materials relied on the following sources:

The Last Fugitive; article by Doug Moe
On Wisconsin Magazine; Summer 2005

RADS; Tom Bates; 1992, New York: Harper Collins

The Bombing of Sterling Hall; VHS; Leemark Communications

To order a copy of the tape:

Send check or money order for \$25.00 to:
Leemark Communications
P.O. Box 14653
Madison, WI 53708-0653

Background

Karleton Armstrong was involved in the August 24, 1970 bombing of Sterling Hall on the University of Wisconsin-Madison campus. At the time, Sterling Hall housed the University's physics department and also the Army Math Research Center (AMRC). The latter was a frequent target of opposition by those opposed to the Vietnam War. The bombing of Sterling Hall killed Robert Fassnacht, a physics researcher not associated with the AMRC. Armstrong fled to Canada where he was eventually captured and returned to Wisconsin. He pleaded guilty in 1973 to second-degree murder, arson and transporting explosives. He served seven years in prison. After his release he returned to Madison where he continues to reside.

This case is based upon the hypothesis that Karleton Armstrong has petitioned the Governor of the State of Wisconsin for a pardon from his conviction. Article 5, Section 6 of the Constitution of the State of Wisconsin provides that "the governor shall have the power to grant reprieves, commutations and pardons, except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to such regulations as he may be provided by law relative to the manner for applying for pardons."

The Wisconsin statutes grant the Governor the power to establish such committees as he finds necessary to assist him in performing his constitutional duties. Governor McCallum issued Executive Order No. 24 which continued the practice of Wisconsin governors creating a Governor's Pardon Board to review pardon applications, hold hearings and make recommendations to the Governor on each application. Governor Doyle continues to follow this Order.

Because of the high profile of Armstrong's Petition, the Governor has decided to have the Pardon Board hold a formal hearing on the Petition. He has directed that three members of the Board actually participate in the hearing. Two members of the Board will serve as jurors who will confer and make a recommendation to the Governor. One member will serve as presiding officer over the hearing and will make his/her recommendation to the Governor only in case the jurors do not agree on their recommendation. The hearing will be conducted under formal Rules of Evidence.

Burden of Proof

The standard which will govern the Board in making its recommendation to the Governor is whether there is due and sufficient reason for the Governor to grant a pardon to Karleton Armstrong. "Due and sufficient reason" requires the Board to examine the following elements:

- The nature (seriousness) of the crime for which the pardon is sought;
- The impact of the crime on person and property;
- Mitigating circumstances surrounding the commission of the crime;
- The effect that passage of time has had on society's view of the crime; and
- Karleton Armstrong's conduct since his release from prison.

Armstrong bears the burden of persuading the Board by the greater weight of credible evidence that he should receive a pardon.

Stipulations

The parties have stipulated to the following:

1. Karleton Armstrong has already testified to the Board and shown that his conduct since his release from prison has been exemplary and that he is remorseful for having caused the death of Robert Fassnacht.
2. Armstrong has met all the procedural requirements to obtain a pardon hearing found in Wis. Stats., Sections 304.08 – 304.10.
3. The exhibits are authentic and do not constitute hearsay. They may be used in the questioning of any witness. All witnesses are familiar with these exhibits. Either the exhibits provided in the printed materials or the exhibits provided on-line can be used. [www.legalexplorer.com]
4. The actual date and time of the bombing was Monday, August 24, 1970 at 3:42 a.m.
5. The excerpts provided from Thoreau and Fortas can be referenced in testimony subject to evidentiary issues.

While this case scenario is based upon real events and individuals, it is a fictional setting. Karleton Armstrong has not actually applied for a pardon. The witnesses have been modeled after individuals actually involved in the incidents at the time of the Sterling Hall bombing; however, each witness statement incorporates aspects of a number of different individuals and is not intended to represent the thoughts of or statements made by any one person.

Wisconsin Constitution, Article V

Pardoning power. Section 6. The governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses, except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason he shall have the power to suspend the execution of the sentence until the case shall be reported to the legislature at its next meeting, when the legislature shall pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the legislature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve, with his reasons for granting the same.

Applicable Wisconsin Statutes

14.019 Governor's nonstatutory committees. (1) Creation; tenure; abolition. Under the general powers of the office of the governor the governor may, by executive order, create nonstatutory committees in such number and with such membership as desired, to conduct such studies and to advise the governor in such matters as directed.

304.08 Applications for pardon; regulations. All applications for pardon of any convict serving sentence of one year or more, except for pardons to be granted within 10 days next before the time when the convict would be otherwise entitled to discharge pursuant to law, shall be made and conducted in the manner hereinafter prescribed, and according to such additional regulations as may from time to time be prescribed by the governor.

304.09 Notice of pardon application.

(1) In this section:

- (a) "Member of the family" means spouse, child, sibling, parent or legal guardian.
- (b) "Victim" means a person against whom a crime has been committed.

(2) The notice of the pardon application shall state the name of the convict, the crime of which he or she was convicted, the date and term of sentence and the date if known, when the application is to be heard by the governor. The notice shall be served on the following persons, if they can be found:

- (a) The judge who participated in the trial of the convict.
- (b) The district attorney who participated in the trial of the convict.
- (c) The victim or, if the victim is dead, an adult member of the victim's family.

(3) The notice shall inform the persons under sub. (2) of the manner in which they may provide written statements or participate in any applicable hearing. The applicant shall serve notice on the persons under sub. (2) (a) and (b) at least 3 weeks before the hearing of the application. The governor shall make a reasonable attempt to serve

notice on the person under sub. (2) (c) at least 3 weeks before the hearing of the application. The notice shall be published at least once each week for 2 successive weeks before the hearing in a newspaper of general circulation in the county where the offense was committed. If there is no such newspaper, the notice shall be posted in a conspicuous place on the door of the courthouse of the county for 3 weeks before the hearing and published once each week for 2 consecutive weeks before the hearing in a newspaper published in an adjoining county. Publication as required in this subsection shall be completed by a date designated by the governor. The date shall be a reasonable time prior to the hearing date.

304.10 Pardon application papers; victim's statement.

(1) An application for pardon shall be accompanied by the following papers:

(a) Notice of application and acknowledgments or affidavits showing due service and affidavits showing due publication and posting whenever required;

(b) A certified copy of the court record entries, the indictment or information, and any additional papers on file in the court, if obtainable, as the governor requires;

(c) A full sworn statement by the applicant of all facts and reasons upon which the application is based;

(d) Written statements by the judge and the district attorney who tried the case, if obtainable, indicating their views regarding the application and stating any circumstances within their knowledge in aggravation or extenuation of the applicant's guilt;

(e) A certificate of the keeper of the prison where the applicant has been confined showing whether the applicant has conducted himself or herself in a peaceful and obedient manner.

(2) When a victim or member of the victim's family receives notice under s. 304.09 (3), he or she may provide the governor with written statements indicating his or her views regarding the application and stating any circumstances within his or her knowledge in aggravation or extenuation of the applicant's guilt. Upon receipt of any such statement, the governor shall place the statement with the other pardon application papers.

(3) Any statement or paper containing a reference to the address of a victim or a member of the victim's family which is contained in a statement or other paper accompanying a pardon application is not subject to s. 19.35 and shall be closed to the public. The governor, using the procedure under s. 19.36 (6), shall delete any reference to the address in any statement or paper made public.



EXECUTIVE ORDER No. 24

Relating to the Governor's Pardon Advisory Board

WHEREAS, Article V, Section 6 of the Wisconsin Constitution vests in the Governor the exclusive and discretionary power to grant pardons, commutations and reprieves; and

WHEREAS, it is advantageous to the clemency applicants, the public and the Governor to have an informed review of each application for clemency; and

WHEREAS, such an informed review may ably be performed by a board of advisors; and

WHEREAS, all concerned will benefit from a uniform application process;

NOW, THEREFORE, I, SCOTT McCALLUM, Governor of the State of Wisconsin, by the authority vested in me by the Constitution and laws of this state, and specifically by Section 14.019 of the Wisconsin Statutes, do hereby re-create the Governor's Pardon Advisory Board according to the following guidelines:

1. **Membership.** The Governor's Pardon Advisory Board shall consist of no more than seven members who serve a term of one year at the pleasure of the Governor.
 - (a) One member shall be appointed by the Governor to represent the Attorney General.
 - (b) One member shall be appointed by the Governor to represent the Secretary of the Department of Corrections.
 - (c) The Governor's Legal Counsel or his/her designee shall be a voting member and shall chair the board.
2. **Functions and Operations.** The Board shall review applications for executive clemency and make recommendations to the Governor as to each.
 - (a) **Hearings**
 - (1) The Board shall hold a public hearing on each qualifying application at which hearing the applicant shall be heard.
 - (2) Hearings shall be held subject to the discretion of the chair, at a date and place set at least two weeks in advance of the hearing.
 - (b) **Recommendations to the Governor**
 - (1) After a hearing is concluded, the Board shall meet in closed executive session, as permitted by Wisconsin Stats. s. 19.85(1)(a), to arrive at a recommendation on the application. Four members constitute a quorum for executive action by the board.
 - (2) The factors the Board shall weigh in its decision include, but are not limited to, the severity of the offense, the time passed since discharge or conviction, the applicant's need for clemency and the applicant's activities and conduct since the offense.
 - (3) The chair shall convey to the Governor in writing the Board's recommendation for each application, along with dissenting recommendations, if any, and reasons given for each.
3. **Manner and Form of Applications**
 - (a) **Scope**
 - (1) These rules shall govern all applications for any form of clemency by any person except individuals currently incarcerated.
 - (2) All applications for any form of clemency to which these rules do not apply shall be governed by Wisconsin Statutes Sections 304.08 through 304.11.

(b) Form and Contents

- (1) Applications for any form of clemency shall be in writing, signed by the person seeking clemency, notarized by a notary public and submitted to the Governor.
- (2) Applications shall contain the following information:
 - a. the name of the applicant
 - b. the applicant's current address and mailing address if different
 - c. the applicant's date of birth
 - d. the exact form of clemency sought
 - e. the conviction(s) from which relief is sought
 - f. the court that imposed sentence (county and branch)
 - g. the date of sentencing
 - h. the sentence imposed
 - i. the place of incarceration (if applicable)
 - j. a description, in the applicant's own words, of the circumstances of the crime
 - k. a statement of any facts which the applicant believes justify clemency, including activities since conviction, employment history and information pertaining to the applicant's need for clemency
 - l. subsequent contact with law enforcement
 - m. whether the applicant has applied for clemency in the past and what date the application was decided by the Governor
- (3) The Governor, through the office of Legal Counsel, may set other conditions, requirements and procedures in relation to the application process, including but not limited to, prerequisites and conditions for applying for clemency.

(c) Service of Notice

- (1) The applicant shall serve on the judge of the court of conviction and on the district attorney of the county of conviction, a notice of application which shall contain the information required in the application by s. 3(b) of this order.
- (2) Service of notice may be by mail, but the Governor's Office must be given proof of service by providing a copy of the notice as signed or stamped by the person upon whom notice was served.

(d) Court Records

- (1) The applicant shall obtain and provide to the Governor's Office certified copies of the following court records for all convictions for which the person is seeking clemency:
 - a. The indictment, information or complaint; and
 - b. The judgment of conviction and sentencing
- (2) If copies of any of the required court records are unavailable, the applicant shall submit to the Governor's Office a letter from the clerk of courts of the county of conviction stating that copies are unavailable.

- (e) An application shall be complete when it contains the information and documents required by subsections (a), (b) and (c) of this section.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Wisconsin to be affixed. Done at the Capital in the City of Madison this twelfth day of September in the year two thousand and one.

Scott McCallum

Scott McCallum
Governor

By the Governor:

Douglas La Follette

Douglas La Follette
Secretary of State

STATE OF WISCONSIN OFFICE OF THE GOVERNOR

EXECUTIVE CLEMENCY INFORMATION

Thank you for your interest in obtaining executive clemency. The executive clemency process can be time consuming and has many steps.

I. GENERAL INFORMATION

1. The Governor may grant executive clemency for criminal offenses committed in Wisconsin. The Governor does not grant executive clemency for criminal offenses committed in other states or for federal crimes.

2. Executive clemency is not automatic. The Governor's Pardon Advisory Board makes a recommendation to the Governor, and the Governor makes the final decision to grant or deny an executive clemency request on the facts of each individual case.

3. **Executive clemency is an extraordinary measure and is rarely granted.**

4. Executive clemency may take three forms:

a. Pardon: This restores all of the person's rights which were lost due to the conviction. A pardon does not expunge, erase, or seal your criminal record. If you receive a pardon, you still must answer that you were convicted of a crime if asked. Of course, you may add that you have been pardoned.

b. Commutation: This modifies a person's sentence. It allows the Governor to shorten a person's sentence or to make consecutive sentences run concurrently. It applies only to persons currently serving a sentence.

c. Reprieve: This suspends a person's sentence for a period of time, allowing a person to complete a sentence at a later time. Like a commutation, it applies only to persons currently serving a sentence. Reprieves are extremely rare.

5. **Executive clemency does not expunge, erase, or seal your criminal record.**

6. A person convicted of a felony in Wisconsin loses their:

- A. right to vote,
- B. right to serve on jury duty,
- C. right to possess firearms,
- D. right to hold public office,

- E. right to hold various licenses (for example: alcohol and tobacco licenses.)
- 7. When a person completes his or her sentence (including probation or parole), he or she automatically regains:
 - A. the right to vote,
 - B. the right to serve on jury duty.
- 8. A person must receive a pardon to regain:
 - A. the right to hold public office,
 - B. the right to hold various licenses,
 - C. the right to possess firearms.

II. THE FOUR ELIGIBILITY RULES

1. Rule 1: Pardons, commutations, and reprieves are available for felonies only, not misdemeanors.
2. Rule 2: If you are currently incarcerated or on probation or parole, you are not eligible to apply for a pardon, commutation, or reprieve.
3. Rule 3: If you have completed your sentence (including probation or parole) but it is less than five (5) years since the completion date, you are not eligible to apply for a pardon.
4. Rule 4: If you were convicted of a felony and it is five (5) years or more since you completed your sentence (including probation or parole); you are automatically eligible to apply for a pardon.

III. THE EXECUTIVE CLEMENCY PROCESS

1. After you become eligible to apply for a pardon and have completed and sent in your application, this office will schedule you to appear before the Pardon Advisory Board. You will be notified by mail when and where the hearing will be held. The Board meets several times a year.
2. At the hearing the Board will ask the applicant questions and the applicant will have an opportunity to present his or her reasons for seeking a pardon.
3. The Governor's Pardon Advisory Board consists of seven members, including representatives from the Department of Justice, the Department of Corrections, four public members, and the Governor's Legal Counsel or his/her designee. Each member is appointed by the Governor.
4. The Pardon Advisory Board meets after the hearing and votes to recommend to grant or deny the pardon. The Board's recommendation will be given to the Governor. The Governor then reviews the applicant's file with the Board's

recommendation and makes his decision of whether to grant or deny the pardon request. You will be informed of the Governor's decision by mail.

5. Because of the volume of applications, the Board alone conducts hearings. The Governor does not meet with any of the applicants.

6. Each application is handled on a case-by-case basis. There is no predetermined formula which will guarantee clemency. Among the factors considered by the Board and the Governor are:

- (1) The seriousness of the crime.
- (2) Whether a significant and documented need for clemency exists.
- (3) The applicant's criminal record.
- (4) The length of time since the crime was committed.
- (5) The applicant's personal development and progress since the crime was committed.
- (6) Community or other civic service performed by the applicant.

EXECUTIVE CLEMENCY APPLICATION

Please do not staple these materials.

1. Complete Name: Karleton Lewis Armstrong Have you ever applied before? Yes No

2. Date of Birth 10/15/46 Social Security Number: 555-44-666

3. Type of executive clemency requested: Pardon X
 Reprieve _____
 Commutation _____

4. Mailing Address- Street, Box, or Route P.O. Box 17	City Madison	State Wisconsin	Zip 53701	Telephone # N/A
5. Home Address- if different than above	City	State	Zip	Telephone #

6. Race or Ethnic Classification (OPTIONAL- for statistical studies only)

White X African Amer. _____ Hispanic _____ Am. Indian _____ Other _____

7. Sex (Optional) Male X Female _____

8. Highest Grade Completed: **High School with several years of college course work at U.W. - Madison**

9. Education since Conviction (List Programs & Degree or Certificate Earned Below):
None

10. Crimes for which you requested clemency (use extra sheet if needed)

Crime	Date of Crime	Sentence	Date of Sentence	Discharge Date
(A) Second-degree Murder	8/24/70	14 years (modified)	9/28/73 6/21/78	1/31/80
(B) Arson	8/24/70	14 years (modified)	9/28/73 6/21/78	1/31/80
(C) Transferring Explosives	8/24/70	10 years	9/28/73	1/31/80

11. Have you been convicted of any crimes other than listed in #10? Yes No X

If you answered YES, attach a sheet listing: (1) the crime(s), (2) the date(s) of the crime(s), (3) whether it was a felony or misdemeanor, (4) the sentence, (5) the discharge date.

In addition, on a separate sheet, describe all negative contacts which you have had with law enforcement personnel. Include the date and the events giving rise to the contact.

12. Last two jobs held:

Employer:	1. Self-Employed	2.
Supervisor	_____	_____
City and State	Madison, WI	_____
Telephone	_____	_____

13. If you are eligible because you have received a Waiver of the eligibility rules from this office, you must attach a copy of the Waiver. **Not Applicable**

14. All applicants must attach a sheet describing the crime. **I bombed Sterling Hall on the U.W. - Madison campus on August 24, 1970 which resulted in the death of Robert Fassnacht.**

15. All applicants must attach a sheet explaining why clemency is needed and why it is deserved. **My actions as a means of political protest are better viewed at this time so that their historical context can be understood. I do wish that I could take back everything that happened on the morning of August 24, 1970.**

16. All applicants must attach a certified copy of the Judgment of Conviction. **Attached.**

17. All applicants must send notices to the judge and district attorney involved in your conviction. **Completed.**

18. If you are currently incarcerated, on probation or parole, you must attach proof of newspaper publication. **Not applicable**

19. All applicants may attach letter(s) of recommendation. **Completed.**

20. All applicants may attach any other documents that the applicant wants considered. **Testimony will be provided on my behalf at the hearing.**

I certify, under penalty of perjury, that the information application is true to the best of my knowledge.

Notary Public: _____

Signature _____

Date: _____

Subscribed and sworn before me in this 8th day of December, 2005.

Dr. Marcus Dorfman, Ph.D.
1234 Water Street, Suite 210
Platteville, WI

December 1, 2005

Office of the Governor
Pardon Advisory Board
State Capitol, Room 115 East
P.O. Box 7863
Madison, WI 53707

Re: Karleton Lewis Armstrong

To Members of the Pardon Advisory Board:

I was Mr. Armstrong's parole and probation officer since Karl's release from prison in 1980. It is in this capacity that I have gotten to know Karl and observe him on many occasions over the years. I have since left the State of Wisconsin parole system and now teach Criminal Justice at the University of Wisconsin – Platteville.

During my time as Karl's parole officer, he met all the conditions of parole. Though Karl is no longer required to meet with me on a regular basis, he still keeps me informed of his whereabouts and employment status on a regular basis. I have seen him at his home as well as my office. He kept every appointment with me over the years and was always on time. He behaved appropriately in my presence both during expected meetings and when I dropped in on him unexpectedly.

I know that Karl deeply regrets his actions that caused the death of Dr. Robert Fassnacht and the injuries to the others. I believe he is sincere in that expression.

He has reintegrated himself into the Madison community which took a lot of courage. Karl has owned several businesses in Madison and continues to reside in Madison without incident. During my tenure as his parole agent, he was not arrested, charged or convicted of any crime. He has met the terms of eligibility for pardon.

Thank you for your time and consideration.

Sincerely,

Dr. Marcus Dorfman, Ph.D.

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

STATE OF WISCONSIN,

Case No. CR 7-257 and CR 7-258

Plaintiff,

JUDGMENT OF CONVICTION

v.

SENTENCE TO CONFINEMENT

Amended 6/15/78

Karleton Lewis Armstrong,
a/k/a KARL ARMSTRONG

Defendant.

Upon all the files, records, and proceedings, it is adjudged that the defendant has been convicted upon his plea of (Guilty) on the 28th day of Sept. 1973, of the crime(s) of second-degree murder; arson (4 counts); and transporting, possessing and transferring explosive compound with intent to use such explosive to commit a crime.

in violation of s. 940.02; 943.02(1)(a); 939.05 and 941.31 committed on 8/24/70; 1/4/70; 1/3/70;12/28/69; and 2/22/70.

IT IS ADJUDGED that the defendant is guilty as convicted.

IT IS ADJUDGED that the defendant is hereby committed to the Wisconsin State Prisons for an indeterminate term of not more than 14 years (modified) on each arson charge; 14 years (modified) on the second-degree murder charge, concurrent with each other, and concurrent with the 10 years (unmodified) on charge of possession of explosive. Defendant shall receive full credit for pre-trial incarceration from 2/2/72 to 11/1/73. The above sentences remain concurrent with the sentence imposed in U.S. District Court on 4/1/74.

The Wisconsin State Prison at Waupun is designated as the Reception Center to which the said defendant shall be delivered by the Sheriff.

IT IS ORDERED that the Clerk deliver a Duplicate Original of this Judgment to the Sheriff who shall forthwith execute the same (and deliver it to the Warden).

Dated: June 21, 1978

BY THE COURT:

Judge

Judge P. Charles Jones
Defense Attorney Mark A. Frankel
Asst. Atty. General William L. Gansner

CRIMES—LIFE AND BODILY SECURITY 940.04

CHAPTER 940

940.01	First-degree murder.	940.201	Abuse of children.
940.02	Second-degree murder.	940.205	Battery to peace officers; firemen.
940.03	Third-degree murder	940.206	Battery of witnesses & jurors.
940.04	Abortion.	940.21	Mayhem.
940.05	Manslaughter.	940.22	Aggravated battery.
940.06	Homicide by reckless conduct.	940.23	Injury by conduct regardless of life.
940.07	Homicide resulting from negligent control of vicious animal.	940.24	Injury by negligent use of weapon.
940.08	Homicide by negligent use of vehicle or weapon.	940.28	Abandonment of young child.
940.09	Homicide by intoxicated user of vehicle or firearm.	940.29	Abuse of inmates of institutions.
940.12	Assisting suicide.	940.30	False imprisonment.
940.20	Battery	940.31	Kidnapping.
		940.32	Abduction.

LIFE.

940.01 First-degree murder. (1)

Whoever causes the death of another human being with intent to kill that person or another shall be sentenced to life imprisonment.

(2) In this chapter “intent to kill” means the mental purpose to take the life of another human being.

Conviction of 1st degree murder upheld where, in the course of a robbery, defendant severely and repeatedly hit the victim with a heavy bottle. *State v. Wells*, 51 W (2d) 477, 187 NW (2d) 328.

940.02 Second-degree murder.

Whoever causes the death of another human being by conduct imminently dangerous to another and evincing a depraved mind, regardless of human life, may be imprisoned not less than 5 nor more than 25 years.

As to 2nd degree murder the reference is to conduct evincing a certain state of mind, not that the state of mind actually exists. *Ameen v. State*, 51 W (2d) 175, 186 NW (2d) 206.

It is not correct that provocation may reduce a homicide to 2nd degree murder even though the provocation is not sufficient to reduce the offense to manslaughter. *State v. Anderson*, 51 W (2d) 557, 187 NW (2d) 335.

940.03 Third-degree murder. Whoever in the course of committing or attempting to commit a felony causes the death of another human being as a natural and probable consequence of the commission of or attempt to commit the felony, may be imprisoned not more than 15 years in excess of the maximum provided by law for the felony.

See note to 940.01, citing *State v. Wells*, 51 W (2d) 477, 187 NW (2d) 328.

Where defendant is found guilty of homicide occurring during commission of a felony he may be sentenced for both offenses although separate verdicts were not submitted. *Patelski v. Cady*, 313 F Supp. 1268.

940.04 Abortion. (1) Any person, other than the mother, who intentionally destroys the life of an unborn child may be fined not more than \$5,000 or

imprisoned not more than 3 years or both.

(2) Any person, other than the mother, who does either of the following, may be imprisoned not more than 15 years:

(a) Intentionally destroys the life of an unborn quick child; or

(b) Causes the death of the mother by an act done with intent to destroy the life of an unborn child. It is unnecessary to prove that the fetus was alive when the act so causing the mother's death was committed.

(3) Any pregnant woman who intentionally destroys the life of her unborn child or who consents to such destruction by another may be fined not more than \$200 or imprisoned not more than 6 months or both.

(4) Any pregnant woman who intentionally destroys the life of her unborn quick child or who consents to such destruction by another may be imprisoned not more than 2 years.

(5) This section does not apply to a therapeutic abortion which:

(a) Is performed by a physician; and

(b) Is necessary, or is advised by 2 other physicians as necessary, to save the life of the mother; and

(c) Unless an emergency prevents, is performed in a licensed maternity hospital.

(6) In this section "unborn child" means a human being from the time of conception until it is born alive.

See note to Art. 1, sec. 1, citing *Babbitz v. McCann*, 310 F Supp. 293.

STATEMENT OF AGENT TONY/TONI NEIDERMEYER, FBI

1. My name is Tony/Toni Neidermeyer, special agent, Federal Bureau of Investigation. I was born in Montreal, Wisconsin, raised in Hurley, and worked summers in an iron ore mine, where I learned about explosives. I am a non-violent person. I have some, but no special affinity with the University of Wisconsin and Madison. I graduated from the University of Wisconsin in 1938 and the University of Wisconsin Law School in 1941. After graduation, I worked for an oil company for a while before joining the FBI, which sent me to Venezuela and Columbia to track down Nazis. In the 1940's I investigated organized crime in New York City. In 1951, I joined the Domestic Intelligence Division, with emphasis on surveillance of violent organizations, including the Ku Klux Klan. I headed bureau offices in Houston, Texas and Alaska, and in 1963 was promoted to major case inspector. I was a trouble-shooter on big crimes. I investigated such cases as the disappearance of three civil rights workers in Mississippi in 1964, a case that has been revisited in a book and a fictional movie, "Mississippi Burning." I led the team that solved the murder of Martin Luther King, Jr. and was assigned to the shootings at Kent State, and a series of bombings in 1971 in New York, just before my retirement.

2. When a bomb went off on the campus of the University of Wisconsin in the summer of 1970, I knew I would be sent to investigate. I worked with the Milwaukee FBI office, which nominally led the investigation, and the small Madison office. In addition, we were joined by several other investigating agencies, including the Madison Police Department, the Dane County Sheriff's Office and the University of Wisconsin Department of Protection and Security. We coordinated the investigation, but the FBI isn't known for sharing information. We managed to keep our secrets. Having said that, I would also add that all of the agencies were on the same page; we were united in our cause to eliminate campus radicals and hippies. "Eradication" is the term that was being used.

3. This was not a difficult case to solve. The bombing occurred at 3:42 am. on Monday, August 24, 1970, when a mixture of fuel oil and nitrogen fertilizer, carried in a stolen van parked outside of Sterling Hall, exploded. The target was the Army Mathematics Research Center, located in Sterling Hall along with the University of Wisconsin Physics and Astronomy Departments. One person, Robert Fassnacht, 33, was working in the building and was killed. Three others, a security guard and two researchers, were injured. The estimate of the damage has changed over the years, but at the time the number mentioned most was \$2.5 million. That number today would be well over \$10 million. Windows were shattered blocks away, valuable research was lost, and life on campus and in Madison was interrupted.

4. If you want to know the details, the bomb had the force of more than 3,400 half-sticks of dynamite. It drove the rear axle of the stolen van three feet into the ground and created a mushroom cloud over campus. These guys had no idea what they were doing. I suspect they didn't know how much explosive force they were dealing with.

The bombers were amateurs and made feeble attempts to cover their tracks. They had made earlier, equally inept and unsuccessful attempts at fire-bombing smaller targets, and each time they left clues all over the place. The list sounds like a script for a sequel to the movie, "Jackass."

- They had tried to bomb the Badger Army Ordnance Plant from a stolen airplane on New Year's Eve. Their "bomb" was the same ANFO mixture used on Sterling Hall, but at the time they didn't even know it needed to be ignited. The mayonnaise jars of ANFO fell harmlessly to the ground.
- They had attempted to fire-bomb the Selective Service office, but got the wrong building. Instead, they bombed the Primate Research Center. The bomb fizzled. No monkeys were injured.
- They tossed a glass container of gasoline into the Old Red Gym, and this time a fire got going in the wooden structure. The result was the loss of a lot of University property, including some basketball courts. People on both ends of the political spectrum criticized the pointlessness of this act.
- They tossed a Molotov cocktail into the ROTC building. A few desks were destroyed, otherwise it was laughable.
- They made a cartoonish attempt to blow up an electrical power station, in the mistaken belief they could cut off power to Badger Ordnance. They were spotted before they could rig the bomb, and got cut up by barbed wire getting away.

5. Within about a week we had our suspects identified: two brothers, Karleton Armstrong, 23, and Dwight Armstrong, 19, of Madison; David Fine, 18, of Wilmington, Delaware; and Leo/Leona Burt, 22, of Havertown, Pennsylvania.

6. There wasn't any doubt that Karleton Armstrong was the "mastermind" behind the bombing. A former girlfriend told us that Karleton admitted he was planning to bomb Army Math. We have a receipt for the rental of the U-Haul that Karleton used to carry the 55-gallon drums partially filled with fuel oil. We know that Karleton bought the fuel oil in Middleton. We learned from a farmer named Frank Wiener that Karleton bought nearly a ton of fertilizer at a farmers' co-op in Baraboo. In our search of Karleton's apartment we found his fingerprints on a notebook containing a sketch of Sterling Hall and a traffic log made from that area during the early morning hours. We could even place him in the building, Sterling Hall, two weeks before the bombing. We also found a typewritten

warning note that appears to be the initial draft of the tape of the phone call made to the Madison Police Department shortly before the bomb went off.

7. Karleton told a friend, Oliver Kluseoff, that he knew there was a probability that there would be people working in the building when the bomb went off. Kluseoff told this to Madison Police Officer John Imhoff whose report I read. Hell, anyone who has ever been on campus knew that. Students and researchers and floor washers and maintenance guys are in the buildings at all times. Many of them work only at night.

8. Karleton pled guilty to second-degree murder. I don't charge anybody with a crime. That's the job of the prosecutors. I just get the evidence and the suspect and let the lawyers sort it out. This particular investigation went about as smooth as these things can go. Of course, there was the usual fighting and secrecy and jealousy between agencies. There were a few screwups in our investigation such as stopping a car with the Armstrongs in New York State only to let it go. We hadn't been able to locate Burt until s/he walked into the room this morning.

9. The Sterling Hall bombing fit with the pattern of what we were seeing in opposition to the war in Vietnam. The war brought together numerous anti-establishment groups and gave them a common goal, just like the civil rights movement was able to use similar groups in both violent and non-violent means to achieve some of its goals. Presidents Johnson and Nixon and F.B.I. Director Hoover shared with many Americans a perception of the potential dangers to this country from those who opposed its policies in Vietnam.

10. We in the FBI believed that America was being confronted with a conspiracy, the likes of which we had never seen before. It was a conspiracy that was subtle and devious and hard to understand. Proof of the existence of this conspiracy could be seen in the questionable moods and nonconformist attitudes of some young people. Their clothing, hairstyles, music and even their obscene language reflected this conspiracy.

11. To address the threat posed by this conspiracy, the FBI used the same approach it had with the Communists in the 1950's and the KKK in the 1960's. It used both traditional investigative techniques and counterintelligence programs, including wiretapping and breaking and entering into homes and businesses of those whom we suspected of anti-government activity. Intrusive techniques were standard operating procedure during the Hoover anti-war years despite the fact that some of them were technically illegal.

12. The impact of the bombing of Sterling Hall included more power to the police, who now got the public support needed to infiltrate parts of the student anti-war movement that had been off-limits before. A bombing and a death will do that. So the police got more serious, and they noticed that the people they were watching got more serious, too.

Agent

T. Neidermeyer, Federal

Subscribed and sworn to before me
This 25th day of January, 2006.
Notary Public _____
My Commission expires: _____

AFFIDAVIT OF D.V. WORMER, PH.D.

1. I am 65 years old and live in Madison, Wisconsin. After graduating from the University of Wisconsin-Madison in 1961, I began working for the University in various capacities until my retirement, on October 1, 2001. I currently serve as a consultant for various biomedical research companies in the area of obtaining grants and contracts from the federal government.

2. I am familiar with the bombing of Sterling Hall in 1970 as well as the campus protests that occurred in the 1960's and 70's. While a lot of these protests concerned the government's military actions in Vietnam and other countries, they also included protests on behalf of minority groups, workers rights and other social issues.

3. As the Dean of Student Affairs, I had daily contact with students and faculty from all factions of the University. I spoke to the two University sanctioned newspapers (Badger Herald and Daily Cardinal) on a regular basis. I maintained an open door policy with students to help them adjust to college life and plan for their futures after graduation.

4. Because I was on the management team of the University and due to my contacts with student groups, I was privy to a significant amount of information concerning the University contracts with the U.S. military. The University was and still is a major research institution that relies on its research grants and contracts to attract and retain talented faculty members as well as to subsidize the cost of education so that students from all economic backgrounds are able to attend this prestigious university.

5. From at least 1945, the University of Wisconsin, through the Wisconsin Alumni Research Foundation (WARF), has had contracts with the federal government to research and design products that have been used for national defense and have led to other civilian uses. For example, during the cold war scientists at the University researched and designed products that were used to stop intercontinental ballistic missiles. Through the money earned under these contracts, WARF was able to build a six story wing to Sterling Hall to house this research, originally called Army Math Research Center (AMRC), later called Math Research. AMRC also researched ways for spy surveillance to differentiate between targets so that unarmed civilians would not be confused with people carrying AK47s. Much of what AMRC did was subject to secrecy because of national security interests. From what I understand, AMRC may also have been involved in researching the uses of chemicals to cause defoliation and destruction of agriculture. It may also have been involved in researching the development of infrared detection techniques used for nighttime surveillance. AMRC may also have been working on answers to questions such as "What are the possibilities of wiping out the enemy with man-made tidal waves?" and "How do you assess the effect of concentrated but inaccurate fire on a dispersed

target”? These questions were being researched by many universities, but in 1969-70, AMRC was the only government funded research “think tank” in the country. It employed 28 full-time and 15 part-time mathematicians, 17 support staff and had a budget of \$1.3 million dollars. WARF continues to sponsor world renowned research, such as the Hubble Telescope and Stem Cell Research.

6. The University also allowed ROTC to have a program on campus. It had offices in a couple of places on campus, such as the Red Gym. ROTC helped the country train officers for the armed forces. In the 1960’s there was a selective service office near campus but not in a building owned by the University.

7. The history of the Vietnam War is quite complicated and studied very little today. At the time of the protests against the war, the protestors often based their arguments on conspiracy theories and rumor, mostly because the government tried to suppress any information about the war in the name of National Security. It should be noted, however, that Robert McNamara (the secretary of defense for President Kennedy and President Johnson) has stated that as the war escalated yet failed to bring results, and as resistance to the war mounted at home, he began to push for a negotiated solution. In 1968, after opposing further bombing of North Vietnam, he lost influence in the Johnson administration and left.¹

8. The University tolerated student protests as long as they remained non-violent. In fact, in 1965 the faculty joined students in protesting by staging a teach-in at the Peterson Building. The University sponsored newspapers ran articles critical of the government and University Administration. The Memorial Union was used by many student groups to organize themselves, create agendas of opposition to the government, and plan and stage protests.

9. In 1966, the students protested the fact that Dow Chemical Company recruited for scientists and other employees on the University Campus. Dow Chemical had major contracts with the federal government to provide chemicals used in the Vietnam War. If these protests had remained non-violent and not interfered with the rights of students to seek employment, there would not have been the problems that resulted. The second Dow protest, on October 18, 1967, got especially ugly because the students effectively prohibited this company and students from meeting and discussing employment opportunities. The protesters were given plenty of opportunity to peaceably disperse before the Madison Police Department officers, armed with billy clubs, came in to physically remove them. More than seventy five students were injured during the protests. Some of the most serious injuries, however, were sustained by the police officers. If only the protesters had heeded the advice to disperse, the violence would not have escalated.

¹ CNN interview with Robert McNamara.
<http://www.cnn.com/SPECIALS/cold.war/episodes/11/interviews/mcnamara/>

10. After the Dow protests, the mood on campus changed dramatically. The protesters seemed no longer interested in informing the public of their disagreements with the government. They seemed more interested in inflaming others, encouraging violence. They seemed to have an attitude that violence is the only way to combat injustice, rather than understanding that violence begets violence. They practically took over student housing on campus, making other residents and workers fearful to venture out at night or visit downtown and campus area businesses.

11. On August 23, 1970, I was at my home at 203 Lathrop Street in Madison. I remember being awakened around 3:40 am on the 24th by a blast. The house shook and some knick knacks fell off the bookshelves. Shortly after that, I got a call from the University President that Sterling Hall had been bombed and that I better come down to campus. Since it was only a couple of miles and I knew there would be several emergency vehicles and road blocks, I road my bike to my office at the Peterson Building. I got updates throughout the day. When I heard that Bob Fassnacht was killed, I took it pretty hard. Bob and I had known each other for a couple of years. When he needed student researchers or other student help, he would call me for references. We also socialized with his wife and family. He had three children, three year old Chris and the one year old twins, Heidi and Karin. Their mother is absolutely wonderful, but I often wonder how the children managed without their father and how much better life would have been if their father had not been killed.

12. Dr. Robert Fassnacht was a postdoctoral researcher in Sterling Hall. He was working on a project to solve the secret of superconductivity, something the scientific and industrial community had been waiting for. Once the secret was revealed, the implications were endless. It would allow 100 percent efficient power transmission, pollution free power generation and high speed rail travel. This research had nothing to do with AMRC. In fact, it was common knowledge at the University that Sterling Hall was mostly occupied by non-AMRC research that was very valuable. Also, most students knew that these researchers were nearly fanatic about their research and worked anytime day or night, depending on the needs of the particular project. In fact, on the night of the blast there were several other researchers, all doing non-AMRC research, in the building. No one was in the AMRC section of the building. It was locked as tight as a drum and not one light was on. Dr. Fassnacht's research was in the basement. From what the investigators told me, he had no chance once the bomb went off. It is such a shame, his life was so valuable. Not only would he have contributed to the world of science but he had a lovely wife and family that meant the world to him.

13. In addition to Dr. Fassnacht's research, there was astronomy research that had taken years to develop that was completely destroyed by the bomb. The bomb affected many projects and the careers of many scientists who were committed to making the world cleaner and safer.

D.V. Wormer, Ph.D.

Subscribed and sworn to before me

This 26th day of January, 2006.

Notary Public _____

My Commission expires: _____

CURRICULUM VITAE

D. V. Wormer, Ph.D.

Education

University of Wisconsin-Madison, BS - Physical Science 1961

University of Wisconsin-Madison, BA - Business Administration 1963

University of Wisconsin-Madison, MA - Education Administration 1967

University of Wisconsin – Madison, Ph.D. - -Education Administration 1973

Thesis

“Protecting free speech while ensuring safety of the public”

Professional Experience

Researcher and teacher assistant for Physical Science department, University of Wisconsin-Madison, 1961-63

Researcher and teacher assistant for School of Education, University of Wisconsin- Madison, 1963-65

Assistant Dean of Students, University of Wisconsin-Madison, 1965-1968

Dean of Student Affairs, University of Wisconsin-Madison, 1968-1973

Assistant to University President — Department of Development, 1973-1984

Development Coordinator, WARF, 1984-2001

Private Consultant, 2001- present

Publications

Unraveling the Maze of Federal Contracts, Higher Education Weekly, Vol. 31, September 2003

How to Make a Mountain out of a Mole Hill — Fundraising 101, Higher Education Weekly, Vol 15, October 1988.

Are you with us or against us? Questions for Student Group Advisors, Higher Education Weekly, Vol 2, March, 1975.

STATEMENT OF WILL/WILLIE MOSS-APPLEMAN, Ph.D.

1. My name is Will/Willie Moss-Appleman. I am Jewish. My family was wealthy. My father was a publisher. We fled from Germany when Hitler was in power because we feared for our safety. I remember being frightened by the Nazi Brownshirts as a child. I saw the violence occasioned by the Second World War and the persecution of the Jews by Nazi Germany.

2. I was primarily educated in the United States. I studied at Cambridge University for a semester but ultimately received my undergraduate degree from Haverford College. As a college student, I worked on helping register voters in the south. I was detained by police one day in a southern city and taken to the police station. The police threw a blanket over me and beat me up for forty-five minutes with sand-filled rubber hoses.

3. I received my master's and doctorate from Harvard. I began my teaching career at the State University of Iowa and then came to the University of Wisconsin where I taught for over thirty years. I am now the John C. Bascom Professor of European History Emeritus at the University of Wisconsin and the Koebner Professor of History Emeritus at Hebrew University.

4. I have published extensively on the topic of the cultural history of Western Europe, in particular on the social conflict between the Nazis and Jewish Culture. Some of my published works include *The Culture of Western Europe* (1960), *The Crisis of German Ideology: Intellectual Origins of the Third Reich* (1965), and *Masses and Man: Nationalist and Fascist Perceptions of Reality* (1980). I was a founder and co-editor of the *Journal of Contemporary History*.

5. I am considered one of the foremost European Cultural historians. I am anti-Marxist, which made me a direct rival to another professor in our department, Happy Goldberg. We were considered rivals in the Department. I disagreed with much of what Happy taught about civil disobedience and confrontation with the state. I thought s/he was in error in the ways in which s/he encouraged students. I had my teaching assistants audit his/her classes and report back to me what Happy was teaching. I then tried to address those points which I disagreed with.

6. I disagree with Happy's belief that violence is an acceptable means of political dissent. Happy believes that violence is in some circumstances an acceptable means of social disobedience. Happy was encouraging students to take revolutionary steps when there was not a revolutionary situation. We had a conversation about this. I asked Happy whether s/he ever told his/her students about the ramifications of their violence if it failed. Happy said s/he didn't, but that violence was a fact of life. Revolutions and revolutionary actions have consequences. Every revolution steps over bodies. I don't think Happy appreciated this. The students didn't understand that power doesn't just roll over

and play dead, power hits back. Happy talked the talk, but didn't walk the walk. Happy filled their heads with all of his/her rhetoric and never came forward and was accountable for what s/he said. My experience with violence was different than his/hers - I know about violence and social unrest firsthand, Happy doesn't. Happy was talking against the establishment and yet I happen to know s/he has a stock portfolio worth millions of dollars.

7. I was opposed to the Vietnam War. The citizens of the United States were lied to by the government about many things related to the Vietnam War and the United States' involvement in it. The legal justification for the Vietnam War, the Gulf of Tonkin Resolution, may have been based upon false pretenses, much like "weapons of mass destruction" falsely served as the initial justification by the government for invading Iraq. We have learned that the government was releasing false reports of casualties to minimize opposition to the Vietnam War at home.

8. In the mid-1960's, many citizens were becoming opposed to the war. I urged the University of Wisconsin - Madison president not to let the CIA and Dow Chemical interview on campus. I was opposed to the presence of the Army Math Research Center at the University in Sterling Hall. I understood that AMRC was doing research to support the Vietnam War. I arranged for town meetings at the UW which brought students together with a mix of faculty to discuss issues of concern. I also arranged for peaceful demonstrations and orderly silent vigils of students to show our opposition to the Vietnam War and other war-related campus issues. I advocated my positions in faculty meetings with University of Wisconsin administration. Notwithstanding these actions, the CIA and Dow Chemical were allowed to continue to recruit on campus. The AMRC continued its operations in Sterling Hall. Fatalities increased in Vietnam and more of our youth were being sent there to die.

9. The students and other young activists in Madison were becoming more aggressive in their opposition to the Vietnam War. The University and City of Madison's response to their actions was becoming, likewise, more aggressive. When the students arranged for a sit-in to protest the Dow Chemical interviews, they were beaten and arrested by the City of Madison police. During one student demonstration at the UW, I was tear gassed. I warned the Chancellor not to underestimate the revolutionary romanticism on campus and Happy's advocacy of violent means of opposition.

10. When citizens disagree with governmental policy, the appropriate means of dissent is through broad-based, peaceful, non-violent protest. In any type of movement in opposition to government policy, the goal is to split the ruling class and get one faction to align with the opposition movement. For example, the proper form of civil disobedience with respect to civil rights and the Vietnam War in the 1960's was to create a broad-based fever of discontent in the middle and upper class on those issues so that those in power would modify their policies.

This could only be accomplished by non-violent means. The anti-war movement in the late 1960's which advocated and tolerated violence was not only against the law, but also made no effort to split the middle class on that issue. In fact, the violent acts created the exact opposite result; they unified the ruling class against the student movement against the war. The Sterling Hall bombing effectively killed the anti-war movement on campus.

11. In a democratic society, proper citizen action against government policy should be premised upon the belief that the policy can be changed through persuasion through the free expression of ideas to or by citizens. If a citizen believes a law is unjust, the citizen may protest that law by not obeying the law; however, in that circumstance, the citizen must accept the consequences of failing to obey the law - punishment under the law. If enough people refuse to comply with the law, this creates a pressure on the government to reconsider whether the law is unjust because of the cost involved in enforcing it.

12. Violence against property or person is never an acceptable means of civil protest. Such violence does not target the law or policy at issue. Violence is counterproductive and typically impacts persons and property not involved in the policy or law which is the target of the violence. As shown by the French Revolution, violent overthrow of a government can lead to mass rule characterized by violence and abuses of power far worse than imposed by the government which was overthrown. Of course, the American Revolution did successfully overthrow the British and we managed to establish a government without the excesses of the French Revolution.

13. It is my opinion that the bombing of Sterling Hall was an inappropriate means of protest against public policy. The bombing not only destroyed the AMRC, it also had an impact on innocent lives and property. I knew several of the professors who told me that they had their whole careers destroyed in the bomb blast. How do you tell Mrs. Fassnacht and her children that Robert wasn't coming home because some student thought he could change government policy by blowing up the building Robert worked in because it also housed a government agency? The bombing occurred at a time when the middle class was starting to turn against the war and exert pressure on the administration to withdraw from Vietnam. The bombing of Sterling Hall had no impact on the Nixon Administration's decision to eventually withdraw from Vietnam. Even if one concedes that Armstrong had a right to use violence in his protest against the government, he must accept the legal consequences of that action; namely, conviction for second-degree murder and related property crimes. It is my opinion that Armstrong should not receive a pardon.

Will/Wille Moss-Appleman, Ph.D.

Subscribed and sworn to before me

This 1st day of February, 2006.

Notary Public _____

My Commission expires: _____

STATEMENT OF HAPPY GOLDBERG, Ph.D.

1. My name is Happy Goldberg. I am a Professor of History Emeritus at the University of Wisconsin. At the time of the Sterling Hall bombing I was a professor in the history department. I grew up in Oranges, New Jersey. My father was a wastrel and my grandfather was a shtetl Jew from Russia and a Hassidic rabbi.
2. I am gay. While I was a teacher at the University of Wisconsin, I met a student and had a love affair with that student.
3. I took all of my degrees from the University of Wisconsin, including my Ph.D. After obtaining my doctorate, I taught European history for 24 years, three years at Oberlin College, 11 years at Ohio State, and 10 years at the University of Wisconsin-Madison.
4. I have written in the field of the history of social movements with a major emphasis on the history of East European Socialism. I wrote about one of the great founders of the French Socialist Movement, John Jaures. I wrote a book on the American radical tradition, one on French Colonialism at the time of the Algerian War and one on the French philosopher and leader of the Socialist movement, Charles Rappoport. I am in the midst of a project on immigrant labor in the work force of Eastern Europe.
5. When I came to the University of Wisconsin, I taught every semester I was on campus. I have been on leave part of that time, as is normal in academic life. I was probably off campus six academic semesters—that is the ordinary function of doing research away and teaching away. The classes I taught were courses in the history of social movements and European social history. They have been very popular, consequently – heavily attended, so I have reasonable contact with student life on campus and am very familiar with student attitudes on campus.
6. The semester before the Sterling Hall bombing I taught a course in European Social History which focused on the Bolshevik Revolution in Russia. We concentrated on the political theories of Lenin and Trotsky. I also taught a class called Contemporary Societies which focused on third world revolutions. The books we used in that class promoted the idea that bloodshed of sudden, revolutionary change was preferable to the prolonged agony of corrupt social systems. This was the most popular course ever given at the UW and was attended by a large segment of the students engaged in the protest movement at the UW. The theme of my lectures was *tout est possible* — “everything is possible.” By this, I meant that the only path to permanent peace was violent revolution which would abolish class distinctions and nationalism. When peaceful means fail to end corrupt practices, other means may be justified.

7. I will say straightaway that I do not know Mr. Armstrong. This is the second time that I have seen Mr. Armstrong. The first time was at his sentence mitigation hearing in 1973. Secondly, I will say that I did not happen to be in Madison, Wisconsin, in August of 1970 when the event for which this hearing is assembled took place. I was in Europe and did not return until three weeks after the bombing.

8. In periods of crisis and evolving social movement, no individual act during that time can really be properly evaluated or properly adjudged outside of a very broad context in which it originated. I believe that to be true with respect to Mr. Armstrong's bombing of Sterling Hall. Events that are compressed over a reasonably long period of time and sustained over that period of time build an accelerated atmosphere or an accelerated movement, let us say, of protest and an intensified atmosphere of almost emotional violence. This historical pattern of social unrest played itself out exactly in this manner in the 1960's and early 1970's in the United States and, in particular, at the University of Wisconsin.

9. During that period, I saw an evolution of student concern, of student action, of student questioning that really was unprecedented in my own teaching career, in my own student life, and, in a way, I think unprecedented in the entire experience of young people in the history of the United States.

10. From about 1960 to 1965, a great number of issues were raised. Black people were very much in the vanguard of this. In 1960, for example, you had those first sit-ins which spread like wildfire. You began to see the organization of black and white students in the south. Out of this rose a feeling that maybe black people ought not simply lie back but ought to use the strength of their numbers in defense of their particular interests. The most effective leader of the civil rights movement was the Reverend Martin Luther King, Jr. who advocated non-violent means to achieve civil rights. The civil rights movement began to break a certain kind of aura of silence about very crucial problems in America. At about the same time there was the Bay of Pigs incident which caused the country to question how the United States was deploying its power in the world and what its particular purposes happened to be. The role of the United States in Vietnam continued this questioning.

11. The net product of all of that was a certain kind of new political consciousness, having raised certain questions with a belief that it was possible to work through channels, that it was possible to seek redress, that it was possible to raise questions in a non-violent manner. The idea was that people en masse should petition the government in numbers. I remember that teach-in, for example, in Peterson Hall in 1965. A lot of faculty was down there then, and there was an all-night teach-in, and I tell you that the mood was joyous; people were talking about an issue. This was an effective means of civil protest.

12. A very sharp transition from this non-violent resistance occurred in 1965 and 1966. When President Johnson decided to escalate the Vietnam War in 1965, there was hostility to that action and a terrible sense of having been deceived. President Johnson had run in the elections in 1964 as a candidate against Senator Goldwater and the assumption was that he was for peace. And that sense of having been betrayed was terrific. And, consequently, you begin with actions that are still in no sense violent, but were more direct in their confrontation. In part because of this, President Johnson did not run for re-election in 1968.

13. You began to get a certain amount of draft resistance, of proclamations that young people would not serve in the draft. Then it got worse. Because demands that were being made were not answered, the escalation of the Vietnam War continued, the teach-ins changed to sit-ins and there were attacks on campus buildings where Army recruitment or some kind of Army-based activity was going on. It happened here as it happened everywhere. I remember that change of mood like it was yesterday.

14. By the end of 1967 came what I call the beginning of the crest. 1967 through 1970 was a movement in every sense of the word — almost like civil war in America. The confrontation became very direct as the Vietnam War continued to expand, as more people were threatened by it, as the destruction became more notorious.

15. And it all culminated, of course, in the invasion of Cambodia and the killing of students at Kent State and Jackson State in 1970. American soldiers killing American students. That was cataclysmic; you couldn't just talk anymore about change. There was no talking left at that point. Everything that happened at that point happened in Wisconsin. It didn't happen differently here. Nor was it more spectacular. When the police attacked our students in the Dow Chemical riots in 1970, it changed everything on the campus of the University of Wisconsin. It was a great shock. It was, 1969, I think, when the Mifflin block party took place. I was living then on Dayton Street. I remember very well, for example, walking on my front porch on Dayton Street and that pepper gas coming by, and the anger, the sheer anger I felt. I was never involved in a protest before, so this incident came as a big shock to me.

16. This was the atmosphere in which the bombing of Sterling Hall took place. Karleton Armstrong's actions were the sociological and historical outgrowth of all that had taken place in the prior ten years. His actions fit within the parameters of what I had been teaching the students with respect to political dissent. In retrospect, his opposition to the war proved to be correct and we should not continue to punish him for being an agent for social change.

17. My colleague Mosse doesn't believe violence is an acceptable means of social protest. But what happens when peaceful protest doesn't change policy?

After all, American colonists found themselves in that situation and embarked on a course of violence memorialized in the Declaration of Independence. Americans were quick to judge the German citizenry after World War II and ask them how they could let the atrocities against the Jews happen. Karleton Armstrong asked the same question of his country — how are you going to tell millions upon millions of little children here in America and in Southeast Asia that their fathers, brothers, sisters, mothers, friends and neighbors were not coming home because America was blowing up Vietnam for no legitimate reason. What do we say today to the world which watched us invade Iraq to destroy weapons which the government and its agents knew did not exist?

18. I feel some responsibility for what had happened. I was saddened by the physical damage caused by the bombing and the death of my colleague Robert Fassnacht. The bombing destroyed a significant amount of faculty research. The bombing essentially ended the anti-war movement because it cut off communication with the people the students were trying to convince. It splintered the movement. *Tout est possible.*

Happy Goldberg, Ph.D.

Subscribed and sworn to before me
This 5th day of January, 2006.
Notary Public _____
My Commission expires: _____

STATEMENT OF KROPOTKIN

1. My name is Kropotkin. I was born February 20, 1949, in Madison, Wisconsin. I grew up in a two-flat on Gorham Street, just off University Avenue. I still live close by, on the corner of Mifflin and Bassett. I attended public schools in Madison, and graduated from Madison Central High School in 1967. I attended the University of Wisconsin-Madison, where I received degrees in journalism and history.

2. As a lifelong resident, I have experienced firsthand the shifting political winds in Madison. My parents were politically active; both were members of the American Communist Party. As communists, and as Americans of Russian descent, they attracted more than their share of government attention during the McCarthy Era. The repression and harassment suffered by my family during the 1950's were instrumental in raising my political consciousness. I am an anarchist. I do not believe in any strong or permanent form of government, nor do I believe in societies with organized legal systems. I myself have been convicted of possession of marijuana in 2004, a joke in my mind because it is an activity that affects no one other than myself. Organized social institutions — government, religion and economy — are the root cause of society's problems. I believe that by nature human beings are good and act in the best interests of others. It is only because of the corrupting influences of entrenched power structures and organized religion that people behave badly toward others.

3. As a student, journalist and historian, I have closely watched as the Madison political scene has unfolded over the last forty years. This started when I assisted Jim Rowen, then an editor with the campus newspaper, *The Daily Cardinal*, in researching and helping write articles regarding the Army Math Research Center and Dow Chemical.

4. The bombing of Sterling Hall in August of 1970 is certainly one of those landmark events which forever define the times of which it was a part. But it is only a single event. It has to be viewed in its political and historical context if it is to be understood. It has to be seen from the perspective of a long and fruitless effort to end the Vietnam War by peaceful protest. The American political machinery was, and is, decidedly more interested in perpetuating its own policies than responding to the will of the people. That is the nature of entrenched power. The democratic processes in this country were being used primarily as a way to exhaust people's energies more than anything else. It was a kind of game the ruling class was playing with people.

5. In Madison, organized opposition to the Vietnam War came as early as 1965. In February of that year 10,000 people marched from the UW Library Mall up State Street to the Capitol to protest the first large-scale bombing of North Vietnam. By my freshman year at the UW, 1967, Madison was on the FBI's list of trouble spots. The university had a significant population of "Red Diaper Babies"

like me — students whose parents were card-carrying communists. These students were very visible in the local anti-war movement, and held positions of authority in the student press. For all its reputation as a hotbed of activism, the Madison anti-war movement was relatively peaceful up until 1967. That all changed with the Dow Chemical riots in October of that year.

6. Dow Chemical was a chief supplier of a substance called Napalm B, used by the American military to spice up its bombs. Napalm is a jellylike substance whose primary purpose was to melt human flesh. When napalm burns, it produces hydrogen cyanide. It is similar to the cyanide compounds that the Nazis used against the Jews, and that's what we were using against the Vietnamese people. Dow Chemical was holding job interviews on the UW campus, and in light of the diabolical nature of napalm, many people believed it was inappropriate for the UW to allow Dow on campus. Students protested Dow's presence on campus by staging a sit-in at the Commerce Building, where the interviews were to be held. The strategy was to fill up the narrow hallways of the building with protesters, and then just sit down. The Dow representatives would be stuck in the rooms, and the applicants would have no way to get to them. I was present as a reporter for *The Daily Cardinal*, and at the time I thought it was a beautiful piece of non-violent resistance. The police saw it differently, however. After several warnings to clear the building, officers formed two squads into a wedge formation and entered the hallway. I was about halfway down the hall, standing against the wall. I could see over the heads of the seated protesters as the police moved in. It had a kind of dreamlike, slow-motion quality as the nightsticks rose and fell in a furious rhythm. I heard in a deep slow voice one of the Madison cops say, "Let's go get us some hippy head." These cops meant business. They came in, cracked a few skulls, caught their breath, and then cracked a few more. There was blood everywhere. The protesters were defenseless.

7. Dow was a great shock. The police, the arm of the state, had apparently declared war on middle class kids. It was an entirely unprovoked attack; it was a police riot. This was a very radicalizing experience for the student anti-war movement, and it was followed over the next several years by even worse episodes of repression and brutality. In 1968 it was the Democratic National Convention in Chicago. The level of police violence in Chicago made Dow look like a croquet match. Many UW students witnessed both Dow and Chicago, and the overwhelming feeling was one of betrayal - our government had lied us into the war, and when we tried to call out the lie, we were beaten and gassed and stomped. Dow and Chicago showed us that peaceful protest was useless. The government had shown its true face. The establishment was responding to our peaceful tactics with nightsticks and helicopters and thousands of armed police; like it or not, we were at war with our own government.

8. That's when the fat really hit the fire. In May of 1970 students at Kent State University in Ohio staged a strike to protest the U.S. military's invasion of

Vietnam's neighbor, Cambodia. The ROTC building on the Kent State campus had been firebombed, and Governor Rhodes of Ohio promised to "eradicate" rioters. He called in the National Guard, and they made good on his threat — they opened fire on a crowd of rock-throwing students. They killed four and seriously injured eleven. This was quickly followed by Jackson State College — police opened fire on an unarmed group of anti-war demonstrators, killing two and wounding sixteen. Later, the police said they thought they had heard gunfire coming from the crowd. It was a bottle breaking.

9. The message from our government was, if you demonstrate against the war, we will kill you. *The Daily Cardinal* said it best:

"The stakes are very high now. We are no longer protesting a single war but an attack on both the Southeast Asian people and the people of the United States. The option of non-violent protest is becoming progressively non-existent in the face of overwhelming state violence."

10. Amidst the escalating violence and impending apocalypse sat the Army Math Research Center. "Army Math", as it was known, was the most reviled symbol of U.S. military presence on campus. It was housed in Sterling Hall, along with the physics and astronomy departments. Army Math was a "think tank" funded by the U.S. Army. Its work was classified, and when questioned about the nature of its research, UW administrators denied that it had any military application. Another Cardinal reporter, Jim Rowen, found out otherwise. As the result of an investigation, Rowen and I reported the purpose of the research at Army Math was to solve technical problems which inhibited the army's ability to wage war. Among other things, reports were circulating that researchers at Army Math were studying germ warfare, including anthrax, and better ways of carpet bombing through jungle foliage. Even killing, the most elementary human activity, had become math based. Naturally, these reports enraged and insulted every anti-war activist on campus. There was only one alternative — Army Math had to go. It must be totally destroyed. No one knew who or how or when, but we all knew Army Math had to go.

11. As it happened, it was Karleton Armstrong who took Army Math out. It could have been any one of a number of other people, had they been braver or more committed to ending the war. But it was Karleton. The accidental death of an innocent physicist, Robert Fassnacht, was a great tragedy. For many people, on both the left and the right, Fassnacht's death was the climax of a turbulent time. It was as if the world went from color to black and white. But in the end you have to balance this death, and the destruction of valuable research and property, against the deaths of hundreds of thousands of innocent Southeast Asians as the result of American foreign policy and American firepower. Sterling Hall was bombed out of a concern for life. It was done to hinder the American government's ability to inflict harm on the people of Southeast Asia.

12. I believe time has vindicated the anti-war movement. What the protesters were saying all along has, for the most part, been shown to be true. Our government was lying to the American people about the war — the progress of the war, the political situation in Vietnam, and even the reasons for getting into the war in the first place. Eventually, these lies were exposed, and the government could no longer sell the war to the public. The U.S. military was kicked out of Vietnam. Nixon was kicked out of office. Perhaps if more people at home had acted sooner and more decisively to end the war, thousands of lives, American and Vietnamese, could have been saved.

Kropotkin, Ph.D.

Subscribed and sworn to before me

This 4th day of January, 2006.

Notary Public _____

My Commission expires: _____

CURRICULUM VITAE

Kropotkin, Ph.D.

Education

University of Wisconsin-Madison, BA — History 1971

University of Wisconsin-Madison, MA — Journalism 1975

University of Wisconsin-Madison, Ph.D. — History 1979

Thesis

“The War At Home — An analysis of class structure in America and how it was manifested in America’s involvement in Vietnam”

Professional Experience

Reporter for *The Daily Cardinal*, 1967-71

Teaching Assistant, University of Wisconsin-Madison, History Department, 1974-76

Self-employed vendor

Publications

Cops Gone Wild — The Tragedy of Dow Day, *The Anarchist Papers*, November 1967

Army Math — An Enemy of the People, *Far Out Monthly*, February 1968

Tin Soldiers and Nixon Coming — Four Dead in Ohio, *Rise! Magazine*, June 1970

Class Warfare In The Heartland, Oak Press, 1978

The Commerce of Death — The Military-Industrial Complex in America During Vietnam. Oak Press, 1981

STATEMENT OF LEO (LEONA) BURT

1. My name is Leo (Leona) Burt. Along with Karleton and Dwight Armstrong and David Fine, I participated in the bombing of Sterling Hall. Following the bombing, I became a fugitive; I was on the FBI's Ten Most Wanted list. The others were all caught, but I have managed to simply disappear. The reason I fled Madison and haven't returned until now is that I did not want to go to prison for the bombing. I have done this by living a simple lifestyle and keeping a low profile — until now, anyway.

2. I was born April 18, 1948, in Philadelphia. My family was a traditional, middle-class Catholic family. Growing up, I was very active in various church groups. I was always a good student in school and an excellent athlete. I outworked everyone in the weight room. My willpower, along with a lot of competitive rowing experience, earned me a spot on the Wisconsin Varsity Crew. After two years, I quit the team and began focusing my attention on the serious political issues that were engulfing the UW campus at the time. The war in Vietnam was raging. The U.S. government seemed determined to keep sending young Americans to kill young Vietnamese. Nothing seemed to slow the government down from pursuing this war, even the mounting evidence that it couldn't be won. The Vietnamese people looked at us just as they had the Chinese and the French — we were invaders, and they would never give up the struggle to save their homeland.

3. Events such as the police riots on Dow Day in 1967 and the Chicago Democratic Convention in 1968, and the massacres at Kent State and Jackson State in 1970, made it clear to anti-war protesters that we were in a civil war. I felt the need to be a part of something larger and more important than myself or rowing, so I joined the staff of *The Daily Cardinal*, the UW student newspaper. I reinvented myself as a reporter and activist. At first, I was more of a neutral observer, but after being beaten by police while trying to cover a protest rally, I became an active participant. My circle of friends shifted from the athletic department to the radicals, including Karl Armstrong and David Fine. We would spend hours at the Nitty Gritty, drinking beer and talking revolution. Karl brought us copies of Jim Rowen and Kropotkin's articles on the Army Math Research Center and Dow Chemical. We read these together at the Nitty Gritty while drinking.

4. Inevitably, the topic of the Army Math Research Center came up. Everyone knew that the Army was paying the UW to do research to help them kill Asian people more efficiently — the "Mathematics of Death", we called it. The UW had a contract to do this work for the Army, and the contract said the work was classified, which meant the UW couldn't talk about it. So when university officials denied that the AMRC worked for the Army on military projects, they were doing what their contract with the Army said they had to do. It was a ridiculous situation for university officials to be in, especially after the truth came

out. The true nature of the work done at AMRC came out in a series of articles by Jim Rowen published in *The Daily Cardinal*. The AMRC was the only Army funded think tank in the United States. There were 28 full-time and 15 part-time mathematicians, a support staff of 17, and a budget of \$1.3 million — that's more than \$5 million in current dollars. The practical application of the research done at AMRC was in the area of the "Electronic Battlefield" — in other words, tools for finding the enemy in the jungle. Army Math was peppered by the government with requests for solutions to problems of guerrilla warfare: How do you "see" the enemy at night? How do you "acquire a target" hidden by a dense canopy of foliage? What is the best shape for tires to be used on sand? How do you destroy subterranean tunnels? What are the possibilities of wiping out the enemy with artificially generated tidal waves? That's right — forty years before the tsunami disaster killed so many people in Indonesia, our government was asking University of Wisconsin mathematicians about the possibilities of using such a thing as a weapon of war against the people of Vietnam!

5. In light of the diabolical research being done at AMRC, and in light of the dubious validity of this war in the first place, we came to the conclusion that Army Math had to go. Karl, Dwight, David and I worked on a number of different plans for accomplishing this. It was not easy. There were a number of practical problems. We wanted to totally destroy Army Math, while doing as little damage as possible to other property. More than anything else, we wanted to make sure that nobody would be hurt. We thought about smuggling a bomb in during the day and hiding it with a timing device so it would go off in the middle of the night. There was too much security to be able to accomplish that, plus Karl didn't trust himself with an electrical timing device. Another problem was the size of the bomb itself. Anything large enough to destroy Army Math was going to be too large for us to carry in unseen. We thought about sneaking in at night through the steam tunnels, but again the size of the bomb made that impossible. Finally, it was Dwight who suggested simply putting the bomb in a truck, drive up next to the building, and blow it up. Karl was skeptical. What about the threat to pedestrians? To passing autos? To other buildings, like University Hospital? Karl wanted the destruction to be specific to Army Math, but we could think of no alternative.

6. The key to reducing the risks to people was choosing the optimal time. Karl suggested the best time would be between semesters, when the fewest number of students would be around. The next thing was to determine the day and the hour. For that, we put the building under surveillance for two weeks. Dwight and I hid in the bushes behind the Old Chemistry Building, smoking marijuana and keeping a record of everything that moved between the hours of 2 and 4 a.m. We noticed on Monday mornings there were no lights on in AMRC.

7. So that was it. During the week prior to Monday, August 24, we stole a van. We took it to our staging area, a remote clearing near Baraboo. There, on Sunday night, we mixed the bomb — four 500 pound barrels of fuel oil and

ammonium nitrate. The fuel oil was purchased at a service station in Middleton, and the ammonium nitrate obtained at a farm supply center. After loading it into the van, Karl and I drove to campus and parked it by a building loading dock at Sterling Hall. Dwight followed us in a Corvair. David waited at a phone booth at the corner of University Avenue and Park Street. After the bomb was planted and the fuse lit, Karl and I ran across University Avenue, waving our arms so David would see us. Then he made a warning call that Karl had written out for him, so that the police could clear the building. Dwight picked us all up, and we disappeared along with Army Math.

8. We ran into some problems along the way. First, the bomb itself. We had no idea it was going to create such a huge explosion. Karl was our “expert” and he had never blown anything up before. A couple of months earlier he had tried to bomb the Badger Ordnance plant from an airplane, but at the time he thought his ANFO (ammonium nitrate and fuel oil) bombs would go off on impact. How’s that for an explosives expert? When the bomb at Sterling Hall did go off, it was shocking to us that we had created such a huge explosion. The force of the explosion lifted our car up off its wheels, three or four blocks away. Not only was the explosion bigger than expected, it was earlier, too. Karl had somehow miscalculated how much fuse to use, and the bomb exploded much earlier than we thought it would. It was just dumb luck that Sterling Hall wasn’t full of cops trying to clear the building, after we called and told them to do just that.

9. The biggest unanticipated problem was when we got to Sterling Hall with the van and saw lights on inside. I don’t remember there being lights on at that time of day during our surveillance. Plus, there were two bikes and a car parked next to the building. What should we do? Were there people in the building? This was totally unexpected. Karl kept the van moving slowly down the loading dock ramp as we tried to take this all in. He looked at me as if asking for a sign of what to do. All I could say was, “It’s up to you.” I saw Karl look back up the ramp. It would have been really tricky to back out. It was a steep, narrow ramp, and there were two metal poles at the top which we had just managed to clear coming in. Plus, the van was overloaded with 2,000 pounds of explosives. I’m not sure that transmission could have made it, and even if it did, what would we do with the van?

10. I could see from his body language that Karl had made up his mind. His face went rigid and expressionless. He looked as cold as steel. He straightened up, got out of the van and lit the fuse. The van was directly outside the room where the light was on, and we thought the probability was, in all honesty, that there was someone inside. So, after lighting the fuse, Karl went to the window and looked in. He shouted that he couldn’t see anyone in there. Afterwards he told me if he had seen someone, he was going to smash the window with this heavy keychain he carried, and warn them to get out. Later, we found out there was someone in there, sitting at a desk. I cried when I heard that; nobody was supposed to get hurt. This bomb was intended to save lives.

11. I've been asked whether I support the United States interventions into Afghanistan and Iraq. I haven't made up my mind on this yet. On the one hand, I can see where we are helping free people from the same type of repression we suffered from in the 1960's in this country. However, the increased cost to our young people and the amount of money diverted from social programs is eerily reminiscent of the early stages of the United States intervention in Vietnam after the French departed that country.

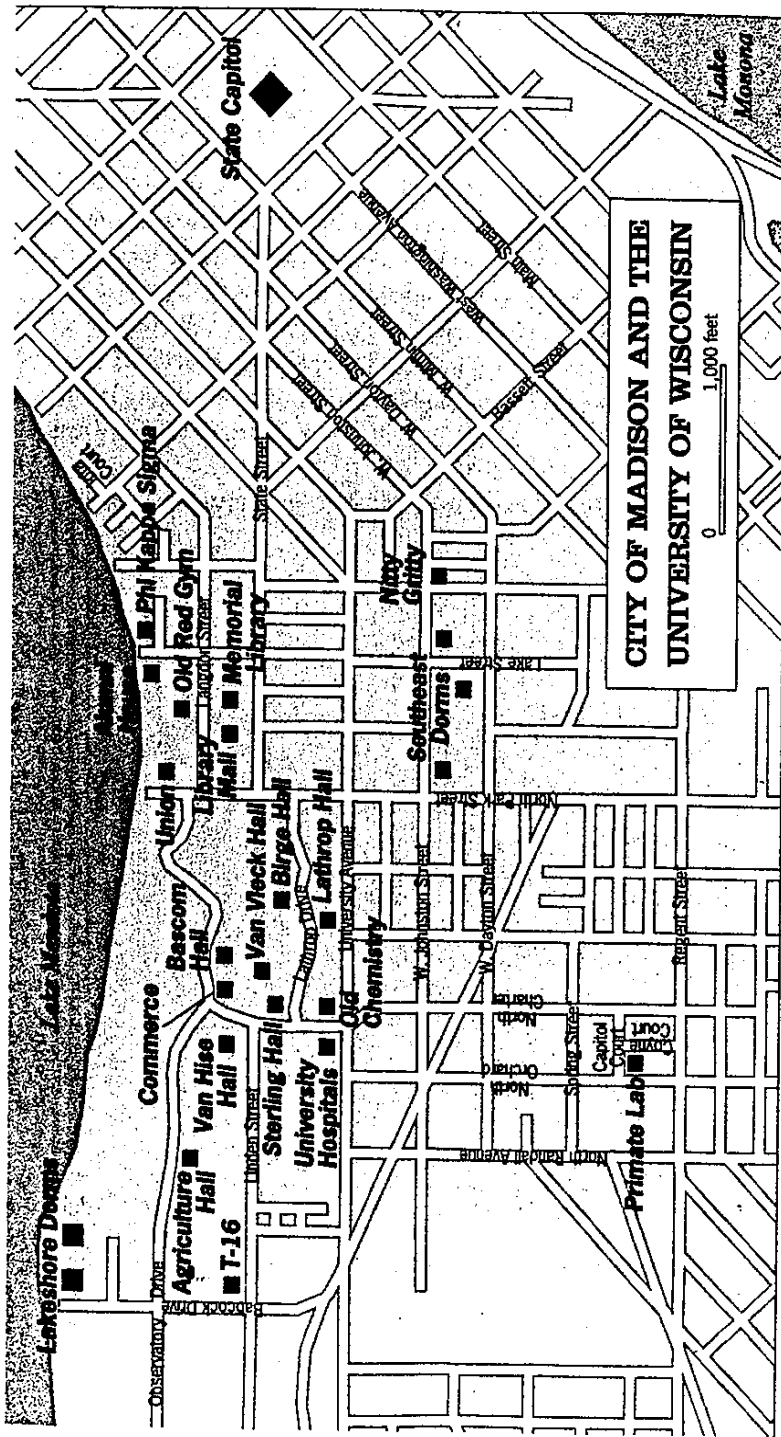
Leo/Leona Burt

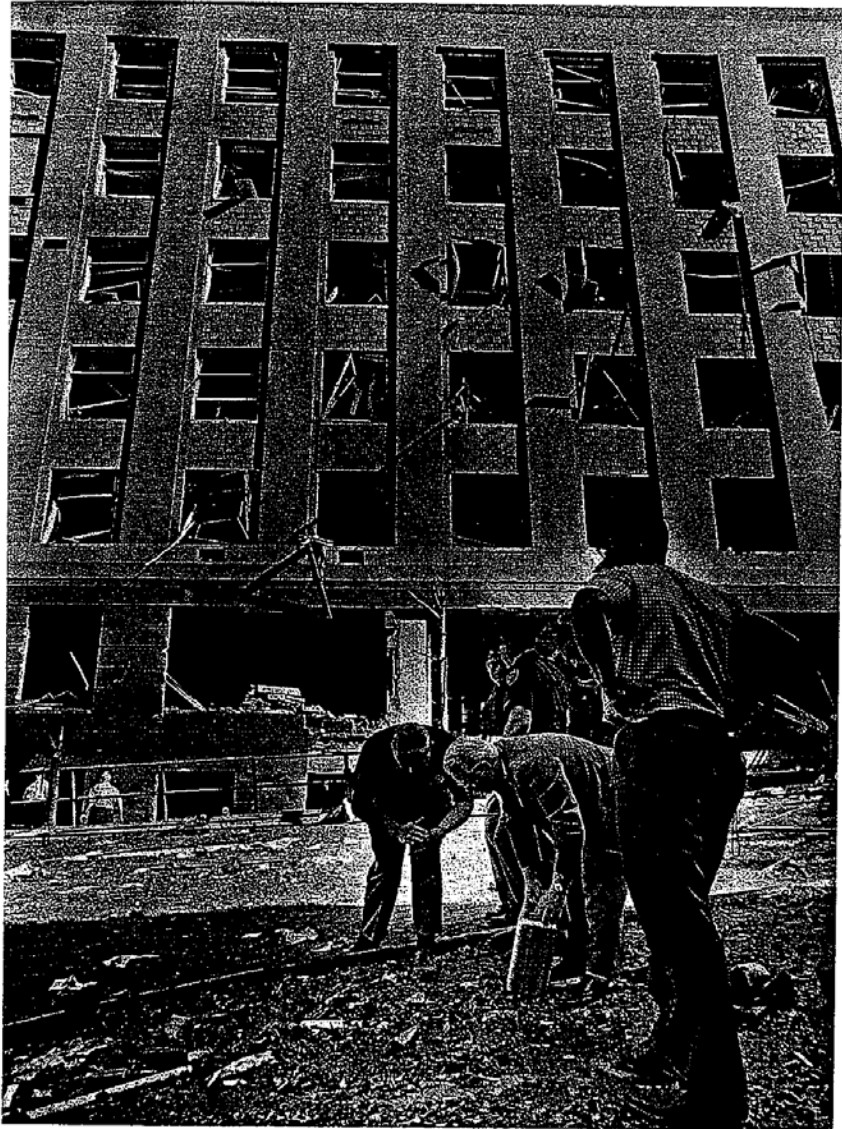
Subscribed and sworn to before me

This 6th day of January, 2006.

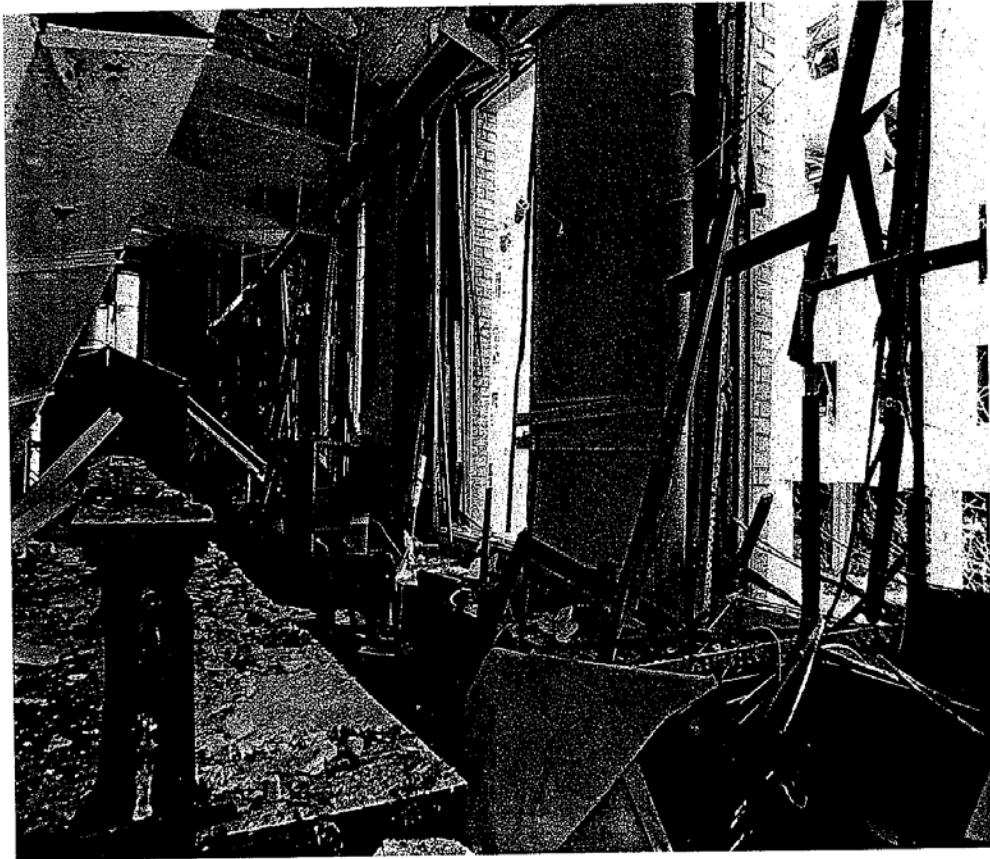
Notary Public _____

My Commission expires: _____

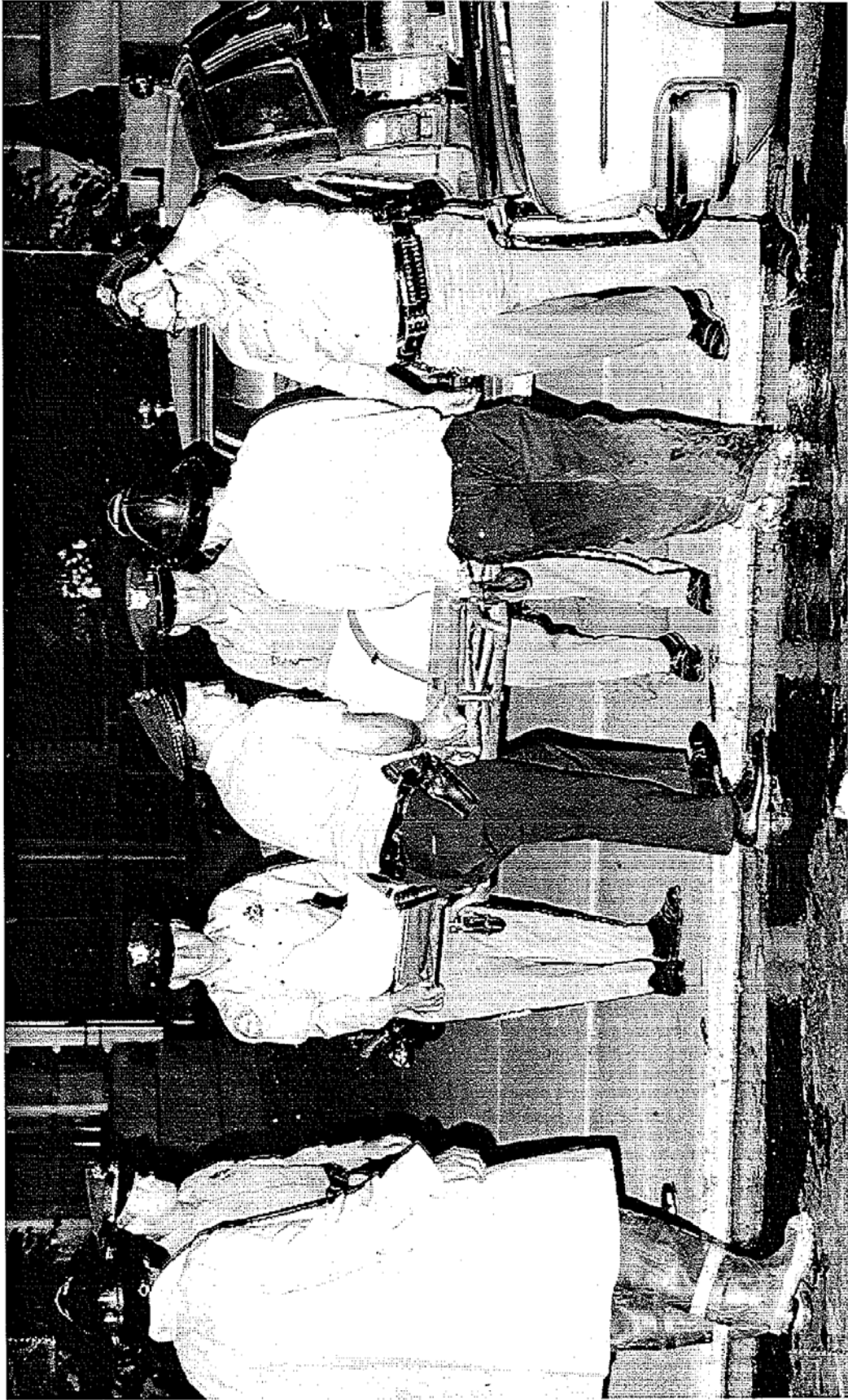




Sterling Hall, August 23, 1970
© Wisconsin State Journal



Sterling Hall - August 23, 1970
Damage to the Basement Physics Labs
© Wisconsin State Journal



The body of Robert Fasnacht is removed from Sterling Hall.

Associated Press



“This photograph of Mary Vecchio, a fourteen year old runaway, screaming over the body of Jeffrey Miller appeared on the front pages of newspapers and magazines throughout the country, and the photographer, John Filo, was to win a Pulitzer Prize for the picture. The photo has taken on a life and importance of its own. This analysis looks at the photo, the photographer, and the impact of the photo. The Mary Vecchio picture shows her on one knee screaming over Jeffrey Miller's body. Mary told one of us that she was calling for help because she felt she could do nothing (Personal Interview, 4/4/94). Miller is lying on the tarmac of the Prentice Hall parking lot. One student is standing near the Miller body closer than Vecchio. Four students are seen in the immediate background. John Filo, a Kent State photography major in 1970, continues to work as a professional newspaper photographer and editor.”

Lewis, Jerry M. and Hensley, Thomas R. “The May 4 Shootings at Kent State University: The Search for Historical Accuracy” Published in revised form by The Ohio Council for the Social Studies Review, Vol. 34, Number 1 (Summer, 1998), pp 9-21.

No National Guardsman was convicted in the death of Jeffrey Miller.



On June 8, 1972 a South Vietnamese airplane accidentally dropped its napalm payload on the village of Trang Bang. With her clothes on fire, 9 year old Phan Thi Kim Phuc ran out of the village with her family to be airlifted to hospital.

No one was charged with respect to the deaths, injuries and property damage at Trang Ban.

Photographer: Nick Ut. Title: "Vietnam Napalm" 6/8/1972 © Associated Press.
Winner of the Pulitzer Prize



On Feb. 1, 1968, Nguyen Ngoc Loan was director of South Vietnam's national police. The North Vietnamese had just begun the Tet Offensive, their huge military push southward. Loan's police were trying to rid the South Vietnamese capital of Viet Cong guerrillas. Loan led the prisoner, Nguyen Van Lam, his hands bound, onto a street corner and in front of a group of journalists pulled his pistol and shot the prisoner point-blank in the head. The general told the newsmen that the prisoner was a known Viet Cong captain.

General Loan was not charged in the shooting death of Nguyen Van Lam.

Photo taken and © by Eddie Adams 2/1/68.
Pulitzer Prize Winner

THE DAILY CARDINAL
FRIDAY, MAY 15, 1970

“The stakes are very high now. We are no longer protesting a single war but an attack on both the Southeast Asian people and the people of the United States. The option of non-violent protest is becoming progressively non-existent in the face of overwhelming state violence.”

Okay, pigs, now listen and listen good. There's a bomb in the Army Math Research Center, University, set to go off in five minutes. Clear the building. Get everyone out. Warn the hospital. This is no bullshit, man!

Transcript of warning call from David Fine to the Madison Police Department, 3:40 A.M., Monday, August 24, 1970.

Note: These are two separate exhibits.

Excerpts from

Civil Disobedience

by Henry David Thoreau

I heartily accept the motto, "That government is best which governs least"; and I should like to see it acted up to more rapidly and systematically. Carried out, it finally amounts to this, which also I believe--"That government is best which governs not at all"; and when men are prepared for it, that will be the kind of government which they will have. Government is at best but an expedient; but most governments are usually, and all governments are sometimes, inexpedient. The objections which have been brought against a standing army, and they are many and weighty, and deserve to prevail, may also at last be brought against a standing government. The standing army is only an arm of the standing government. The government itself, which is only the mode which the people have chosen to execute their will, is equally liable to be abused and perverted before the people can act through it.

But, to speak practically and as a citizen, unlike those who call themselves no-government men, I ask for, not at one no government, but at once a better government. Let every man make known what kind of government would command his respect, and that will be one step toward obtaining it.

After all, the practical reason why, when the power is once in the hands of the people, a majority are permitted, and for a long period continue, to rule is not because they are most likely to be in the right, nor because this seems fairest to the minority, but because they are physically the strongest. But a government in which the majority rule in all cases can not be based on justice, even as far as men understand it. Can there not be a government in which the majorities do not virtually decide right and wrong, but conscience?--in which majorities decide only those questions to which the rule of expediency is applicable? Must the citizen ever for a moment, or in the least degree, resign his conscience to the legislator? Why has every man a conscience then? I think that we should be men first, and subjects afterward. It is not desirable to cultivate a respect for the law, so much as for the right. The only obligation which I have a right to assume is to do at any time what I think right. It is truly enough said that a corporation has no conscience; but a corporation on conscientious men is a corporation with a conscience. Law never made men a whit more just; and, by means of their respect for it, even the well-disposed are daily made the agents on injustice. A common and natural result of an undue respect for the law is, that you may see a file of soldiers, colonel, captain, corporal, privates, powder-monkeys, and all, marching in admirable order over hill and dale to the wars, against their wills, ay, against theft common sense and consciences, which makes it very steep marching indeed, and produces a palpitation of the heart.

How does it become a man to behave toward the American government today? I answer, that he cannot without disgrace be associated with it. I cannot for an instant recognize that political organization as my government which is the slave's government also.

All men recognize the right of revolution; that is, the right to refuse allegiance to, and to resist, the government, when its tyranny or its inefficiency are great and unendurable. But almost all say that such is not the case now. But such was the case, they think, in the Revolution of '75. If one were to tell me that this was a bad government because it taxed certain foreign commodities brought to its ports, it is most probable that I should not make an ado about it, for I can do without them. All machines have their friction; and possibly this does enough good to counter-balance the evil. At any rate, it is a great evil to make a stir about it. But when the friction comes to have its machine, and oppression and robbery are organized, I say, let us not have such a machine any longer. In other words, when a sixth of the population of a nation which has undertaken to be the refuge of liberty are slaves, and a whole country is unjustly overrun and conquered by a foreign army, and subjected to military law, I think that it is not too soon for honest men to rebel and revolutionize. What makes this duty the more urgent is that fact that the country so overrun is not our own, but ours is the invading army.

Unjust laws exist: shall we be content to obey them, or shall we endeavor to amend them, and obey them until we have succeeded, or shall we transgress them at once? Men, generally, under such a government as this, think that they ought to wait until they have persuaded the majority to alter them. They think that, if they should resist, the remedy would be worse than the evil. But it is the fault of the government itself that the remedy is worse than the evil. It makes it worse.

If the injustice is part of the necessary friction of the machine of government, let it go, let it go: perchance it will wear smooth--certainly the machine will wear out. If the injustice has a spring, or a pulley, or a rope, or a crank, exclusively for itself, then perhaps you may consider whether the remedy will not be worse than the evil; but if it is of such a nature that it requires you to be the agent of injustice to another, then I say, break the law. Let your life be a counter-friction to stop the machine. What I have to do is to see, at any rate, that I do not lend myself to the wrong which I condemn.

As for adopting the ways the State has provided for remedying the evil, I know not of such ways. They take too much time, and a man's life will be gone. I have other affairs to attend to. I came into this world, not chiefly to make this a good place to live in, but to live in it, be it good or bad. A man has not everything to do, but something; and because he cannot do everything, it is not necessary that he should be petitioning the Governor or the Legislature any more than it is theirs to petition me; and if they should not hear my petition, what should I do then?

I have paid no poll tax for six years. I was put into a jail once on this account, for one night; and, as I stood considering the walls of solid stone, two or three feet thick, the door of wood and iron, a foot thick, and the iron grating which strained the light, I could not help being struck with the foolishness of that institution which treated me as if I were mere flesh and blood and bones, to be locked up.

The authority of government, even such as I am willing to submit to--for I will cheerfully obey those who know and can do better than I, and in many things even those who neither know nor can do so well--is still an impure one: to be strictly just, it must have the sanction and consent of the governed. It can have no pure right over my person and property but what I concede to it. The progress from an absolute to a limited monarchy, from a limited monarchy to a democracy, is a progress toward a true respect for the individual. Even the Chinese philosopher was wise enough to regard the individual as the basis of the empire. Is a democracy, such as we know it, the last improvement possible in government? Is it not possible to take a step further towards recognizing and organizing the rights of man? There will never be a really free and enlightened State until the State comes to recognize the individual as a higher and independent power, from which all its own power and authority are derived, and treats him accordingly. I please myself with imagining a State at last which can afford to be just to all men, and to treat the individual with respect as a neighbor; which even would not think it inconsistent with its own repose if a few were to live aloof from it, not meddling with it, nor embraced by it, who fulfilled all the duties of neighbors and fellow men. A State which bore this kind of fruit, and suffered it to drop off as fast as it ripened, would prepare the way for a still more perfect and glorious State, which I have also imagined, but not yet anywhere seen.

Excerpts from

Concerning Dissent and Civil Disobedience

by Abe Fortas

Former Associate Justice of the Supreme Court of the United States.

(1) Our Constitution protects the right of protest and dissent with broad limits. It generously protects the right to organize people to protest and dissent. It broadly protects the right to assemble, to picket, to stage "freedom walks" or mass demonstrations, if these activities are peaceable and if the protesters comply with reasonable regulations designed to protect the general public without substantially interfering with effective protest.

(2) If any of the rights to dissent is exercised with the intent to cause unlawful action (a riot, or assault upon others) or to cause injury to the property of others (such as a stampede for exits or breaking doors or windows), and if such unlawful action or injury man occurs, the dissenter will not be protected. He may be arrested, and if properly charged and convicted of law violation, he will not be rescued by the First Amendment.

(3) If the right to protest, to dissent, or to assemble peaceably is exercised so as to violate valid laws reasonably designed and administered to avoid interference with others, the Constitution's guarantees will not shield the protester. For example, he may be convicted for engaging in marching or picketing which blocks traffic or for sitting in an official's office or in a public or private place and thereby preventing its ordinary and intended use by the occupant or others.

Despite the limits which the requirements of an ordered society impose, the protected weapons of protest, dissent, criticism, and peaceable assembly are enormously powerful. Largely as a result of the use of these instruments by Negroes, the present social revolution was launched: by freedom marches; organized boycotts; picketing and mass demonstrations; protest and propaganda. And by the use of the powerful instruments of dissent by people opposed to the war in Vietnam - by dissent expressed in the press, the pulpit, on public platforms, and in the colleges and universities - issues of vast consequence have been presented with respect to the war in Vietnam, and, without doubt, national decisions and the course of that war have been affected.

An organized society cannot and will not long endure personal and property damage, whatever the reason, context, or occasion.

An organized society will not endure invasion of private premises or public offices, or interference with the work or activities of others if adequate facilities for protest and demonstration are otherwise available.

A democratic society should and must tolerate criticism, protest, demand for change, and organizations and demonstrations within the generally defined limits of the law to marshal support for dissent and change. It should and must make certain that facilities and protection where necessary are provided for these activities.

Protesters and change-seekers must adopt methods within the limits of the law. Despite the inability of anyone always to be certain of the line between the permissible and the forbidden, as a practical matter the lines are reasonably clear.

Violence must not be tolerated; damage to persons or property is intolerable. Any mass demonstration is dangerous, although it may be the most effective constitutional tool of dissent. But it must be kept within the limits of its permissible purpose. The functions of mass demonstrations, in the city or on the campus, are to communicate a point of view; to arouse enthusiasm and group cohesiveness among participants; to attract others to join; and to impress upon the public and the authorities the point advocated by the protesters, the urgency of their demand, and the power behind it. These functions do not include terror, riot, or pillage.

We must accept the discomforts necessarily implicit in a large *lawful* demonstration because, in a sense, it is part of the dynamics of democracy which depends for its vitality upon the vigorous confrontation of opposing forces. But we cannot and should not endure physical assault upon person or property. This sort of assault is ultimately counterproductive. It polarizes society, and in any polarization, the minority group, although it may achieve initial, limited success, is likely to meet bitter reprisal and rejection of its demands.

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The Declaration of Independence

IN CONGRESS, JULY 4, 1776

The unanimous Declaration of the thirteen united States of America

When in the Course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. --That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn that mankind are more disposed to suffer, while evils are sufferable than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. --Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected, whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil Power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial from punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing Taxes on us without our Consent:

For depriving us in many cases, of the benefit of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences:

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies

For taking away our Charters, abolishing our most valuable Laws and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts burnt our towns, and destroyed the lives of our people.

He is at this time transporting large Armies of foreign Mercenaries to complete the works of death, desolation, and tyranny, already begun with circumstances of Cruelty & Perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have We been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred. to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces

our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the United States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States, that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. --And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.