

excerpt from *It Did Happen Here* by Bud and Ruth Schultz (University of California Press, 1989)

*The Conspiracy to Oppose the Vietnam War,*  
Oral History of Benjamin Spock

*The Selective Service Act of 1948 made it a criminal offense for a person to knowingly counsel, aid, or abet someone in refusing or evading registration in the armed forces. In 1968, Dr. Benjamin Spock and four others were indicted for conspiring to violate this act. Evidence of the conspiracy was to be found in the public expressions of the defendants: hours of selectively edited newsreel footage of press conferences, demonstrations, and public addresses they made in opposition to government policy in Vietnam. What could better symbolize the damage such prosecutions made on the free marketplace of ideas?*

*Why were they charged with conspiracy to counsel, aid, and abet rather than with the commission of those acts themselves? Conspiracy, Judge Learned Hand said, is "the darling of the modern prosecutor's nursery." It relaxes ordinary rules of evidence, frequently results in higher penalties than the substantive crime, may extend the statute of limitations, and holds all conspirators responsible for the acts of each. The conspirators may have acted entirely in the open, they may never have met; they may have agreed only implicitly; they may never have acted illegally. It's enough that they were of a like mind to do so.*

*When applied to political activity, writing, and speech, a conspiracy charge has virtually no limits. Government attorneys could have included as co-conspirators the publishers of Dr. Spock's books on the war, the booksellers, and even members of his audience who applauded in support of him. Yale Law School's Professor Thomas Emerson warns: "it thus becomes dangerous for any individual to participate in a campaign or demonstration that in the course of its unfolding may give rise to some violation of the law. It is bad to conceive of a more chilling effect upon the system of free expression."*

*"If I were Attorney General now," said Ramsey Clark, the attorney general who initiated the prosecution of Benjamin Spock, "I would be inclined to prohibit the use of conspiracy charges altogether."*

I was a New Deal Democrat. I was always interested in politics, but I wasn't active until I joined the National Committee for a Same Nuclear Policy in 1962. They had asked me to join them two times previously, in the late 1950s, but I told them, "I don't know anything about radiation. Besides, I reassure parents; I don't scare them."

The issue at the time was the need for a test ban treaty. When SANE came back a third time, in 1962, they got through to my conscience. I have to give them credit for persistence. They convinced me it was a pediatric issue. I realized that if we didn't have a test ban treaty, if all nations kept inventing arms, more and more children would be born with mental and physical defects and would die of cancer and leukemia.

Then I was asked, in 1964, by Lyndon Johnson's campaign committee to support him on radio and television. His Republican opponent was Barry Goldwater, who had said: Let's erase Vietnam if it's in our way. But Lyndon Johnson promised he would not send American boys to fight in an Asian war. So I said, "Sure. I'll support him as a citizen, as a pediatrician, and as a spokesman for the disarmament movement."

And I did enough so that he called me two days after the election to thank me. "Dr. Spock," he said, "I hope I prove worthy of your trust." Then he betrayed all those who voted for him as a nonwar candidate. He waited only three months to do the exact opposite of what he had promised. I was outraged and horrified. And I quadrupled my antiwar activities.

When I retired as a professor in 1967, I became a full-time opponent of the war in Vietnam. I visited a different university every day of the week at the invitation of undergraduates. There would be a press conference at the airport, lunch with students, teaching a class after lunch, television interviews, a radio interview or two, supper with students, say a few words, speech from eight to nine, answer questions from nine to ten, repair to the student lounge for more questions from ten to eleven. At eleven they'd say, "Now we're going to Professor Jenkins's house where we can really relax."

But there was no relaxing. As I sat on the professor's sofa, the discussion with students about the war and what they ought to do about it went on, intensely. I thought the young people who were opposing the war were wonderful. I had the greatest admiration for them and I learned a lot from them.

I supported the Call to Resist Illegitimate Authority that twenty-five thousand people eventually signed, many of them leading academicians. We said that the war was totally unconstitutional, illegal, a crime against humanity, and full of war crimes. We said that the U.S. combat troops in Vietnam destroyed rice crops and livestock, burned entire villages, put villagers in concentration camps, and slaughtered peasants. The call also made this statement, this bold statement drawn from the Nuremberg Principle: ". . . every free man has the legal right and moral duty to exert every effort to end this war, to avoid collusion with it, and to encourage others to do the same." Then it said that we would give moral and financial support to those who resisted the draft.

I had participated in a demonstration at the Whitehall Street induction center in New York City. At five a.m., the center was surrounded by five thousand police, with the street lights glinting on their badges, and two thousand demonstrators. Dan McReynolds was in charge. He asked me to lead the main body of people up to the police barriers in front of the building and wait for a signal from him to crawl under the barriers. I waited for half an hour, with the press asking me every few minutes what we were going to do. Finally, without a signal, I dropped to my knees in the crush of people and press and tried to crawl under the barrier. But the police closed ranks, and I couldn't get through their shins. I had to stand up again and face the press, who demanded to know what I'd been trying to do. I pushed my way down the line of barriers and tried twice more to get under. Then I tried to climb over. But the police pushed me back and laughed at me.

Then I found an opening in their ranks, and there stood Chief Inspector Garelick. In a voice like that of a small child who's been denied a lollipop, I whined, "Inspector Garelick, I want to commit civil disobedience." He pointed to the end of the block where there was just enough space between two barriers for one person at a time to squeeze through. As I did, a police captain demanded, in a loud, ceremonial voice, "Do you have business at the induction center?" I didn't know the counter-sign, so I answered loudly, "Yes, I do," walked past him, sat on the steps, and was arrested. My first civil disobedience.

In jail, I met Ginsberg, the poet; Peck, the pacifist; and Susan Sontag, the writer--good company to be in. In the afternoon, we were taken to court, where I pled guilty and put up bail of twenty-five dollars. In subsequent arrests I learned that it's best to plead not guilty, if it's convenient to return for trial, because in half the cases you can win on one technicality or another.

In January 1968, I found myself indicted by the Johnson administration for conspiracy to counsel, aid, and abet resistance to the military draft. I was supposed to have conspired with four other people, including William Sloane Coffin, the chaplain of Yale University; Michael Ferber, a Harvard graduate student; Mitchell Goodman, a novelist-and professor; and Marcus Raskin, an author and former White House disarmament adviser.

The lawyers explained to us that the conspiracy indictment makes the prosecutors' job easier. They don't have to prove that there was counseling, aiding, or abetting. They only have to show that there was an "agreement" to do that. And, it turned out, the agreement didn't have to be among people who planned anything together or even knew each other. It didn't have to be secret or include illegal acts. As the judge made it clear the first day of the trial, conspiracy only means going on a parallel course. He said conspiring was simply breathing together. That's it, breathing together: Con--together, spiring--breathing; conspiring.

Although some of us had never met one another, we were all working toward the same objective: to end the war in Vietnam. We were doing that very publicly. Yet that was enough for the government to assume that there was a conspiracy. Our lawyers thought this was a serious issue of First Amendment rights.

The indictment included more than the five of us. In the late 1960s, many people were "breathing together." Lots of others, "diverse other persons, some known and others unknown," the indictment said, the thousands of people who were in those demonstrations, were presumed by the government to be co-conspirators and just as liable to prosecution as we were. Certainly the purpose of the trial was not so much to punish us as to intimidate the others.

The judge, Francis Ford, had been a classmate of Franklin Roosevelt at Harvard. They said he was very proud of that. If so, it certainly didn't seem to be a factor that worked in our favor. On the first day of the trial, a friend of ours was going down the stairwell and heard the judge say, "They brought a bunch of slick New York lawyers to try to interfere with justice here, but they're not going to do it." And, from the first day, he referred to "the conspiracy," though it was a trial to see whether there had been one.

The jury selection was absurd. The official who made up the jury pool said he stood in front of the list

of names, closed his eyes, and ran his finger down it. Then he opened his eyes and took that name. Well, it was extraordinary for him to come up with a pool of jurors that had eighty-three men and only five women that way. The probability is pretty small. Needless to say, our lawyers took exception to that. The jury turned out to be made up entirely of white men. I do remember that our lawyers were trying to squeeze on at least one woman, thinking she would be sympathetic to me. But the government threw her out. Ironically, we found out afterward that she believed we were very guilty, long before the trial began.

The government charged us with several overt acts. Our basic "crime" was circulating the Call to Resist Illegitimate Authority. The indictment also charged us with holding a press conference in which some of us denounced the government for its war. Then there was a meeting at the Arlington Street Church in Boston where draft cards were turned in. There was the civil disobedience demonstration at the Whitehall Street induction center. And we were charged with turning in a couple of hundred draft cards to the attorney general in Washington.

There was a ludicrous aspect to that. The man who met with us there was low on the totem pole in the attorney general's office. We took turns denouncing the government and the war to this poor guy who never asked for the job. When we finally got up to leave, the briefcase full of draft cards was still on the table. He saw that he was conspiring in a way by letting us leave it there. So he asked, looking down at it, "Are you tendering me something?"

Bill Coffin, who was the main spokesman, said, "Yes." "I'm not authorized to accept it." And he tried to give it back. But Coffin wouldn't take it and we left. For the most part, the trial itself really very dull. I could go to sleep after lunch every day. Most of the evidence they showed was simply television news footage of us addressing an audience. But first they'd interrogate the cameraman: "What's your name?" "What's your profession?"

"Cameraman."

"What is your age?" "What is your address?" "Were you present at the induction center in New York on the cirly morning of so-and-so?"

"Yes, I was." "And did you take the film that we are about to watch?" You know this took forever, and it didn't prove very much except that he was the cameraman who took the pictures.

The government's case relied heavily on this news footage of *public speeches*, and certainly its use suggested a threat to First Amendment rights and to dissent.

The government also had two FBI agents testify about a conversation they had with me at my apartment. I was completely frank with them about my antiwar activities. I had nothing to hide, but I had no idea then that they were there to try to get evidence to support the coming indictment. Two-thirds of their testimony about the conversation was true. But then they needed something more criminal than that, so they just invented the other third. They said I told them my main purpose was to interfere with the levying of troops. I didn't know the word "levy" had been used for troops since George Washington's time.

I never thought of myself as trying to interfere with the levying of troops or the recruitment or the drafting. I was trying to stop the war in Vietnam. When I stood on the steps of the Whitehall Street induction center, they said I was trying to block the recruitment of troops. But I was not in anyone's way. It was symbolic. I was there to express my opposition to the war.

I was indignant to find that the FBI will lie to get a conviction. But they left their raw notes on the table overnight. We studied them and brought out the next day that the FBI had invented a lot. I enjoyed being able to say in all my subsequent speeches, "Never believe the FBI! I know that they are unscrupulous from my own experience."

I felt our defense at the trial should be based on the Nuremberg Principles mentioned in the Call. The United States put German war criminals to death, tried them and put them to death, for the kind of crimes we were committing in Vietnam. When the Germans said, "I was only obeying the orders of my superiors," our judges ruled that that was no excuse; they were obligated to refuse to obey the orders. If we could put Germans in prison and put them to death for obeying orders to commit war crimes, certainly that means American young men should be able to refuse to participate in similar crimes. And we should be able to talk about their refusal to participate. But our judge said the Nuremberg defense was "not justiciable."

Judge Ford was not going to listen to any arguments that the government was wrong about the war. Early in the trial he made another crucial ruling: The legality of the war was not a relevant issue. That meant we could not challenge the legality of a war that had never been declared by Congress, as we

hoped to do. Instead, we were left to defend ourselves within the narrow limits the judge used to frame the issue.

The judge's bias influenced the jury, there's no question about it. All through the trial he was playing footsie with them, telling them little funny stories and making little side remarks. He was wooing the jury all the time. But when one of our lawyers smiled at something someone whispered to him, the judge became absolutely furious: "If you laugh again, I'll throw you out of the courtroom."

The judge treated our witnesses brusquely. He wanted to hurry them through. "That's enough. That's enough!" he'd say. Mayor John Lindsay came up to testify that our demonstration at the steps of the Whitehall Street induction center was a symbolic, not a bona fide, interference. And, he testified, it was all worked out with the police department and him when he was the mayor. Well, the judge hustled him along.

I had some classy character witnesses. I had the provost of M.I.T., and a professor of pediatrics and psychiatry at the Yale Medical School, and a senator from Ohio. It seemed like the judge was scared to death the jury would be impressed by these people. So he clamped right down on them, demanding one-word answers: Was my reputation "good, bad, or indifferent?" Nothing more.

Toward the end of the trial, some people in the antiwar movement were disappointed that we had been so docile. They felt we should have loudly declared our position, more like the Chicago Eight.\*

[\*The 1969 conspiracy trial of antiwar and New Left leaders stemming from their participation in demonstrations at the 1968 Democratic National Convention in Chicago. The defendants-Bobby Seale (whose case was severed from the others), Rennie Davis, David Dellinger, John Froines, Tom Hayden, Abbie Hoffman, Jerry Rubin, and Lee Weiner-dramatically challenged the legitimacy of the proceedings against them. With their irreverent dress, behavior, and testimony, they attempted to portray the trial as a mockery of justice. "When decorum becomes repression," Abbie Hoffman commented, ..the only dignity free men have is to speak out." Their convictions were reversed on appeal. ]

Not that we would have gotten rowdy, but we could have been more insistent. When we were shushed up in court, at least we could have held a press conference at the end of the day. To me, it seemed perfectly clear that this was

a political trial. We had been doing the things we had been charged with for political reasons. Then why not use the trial politically, as far as we could? I didn't feel like being docile.

I was the last one on the witness stand. When it came to my turn, I was ready to be bolder and more positive in my statements than the others. And my lawyer, Leonard Boudin, got the judge to allow me to make political statements as long as I prefaced them with the words "I believed." Well, I believed that the government was wrong in pursuing the war in Vietnam. The government was blindly stumbling down this path because we had a macho president, advised by some macho assistants, to put it crudely. It was very clear to me that we in the peace movement were trying to save the country. No question about it. We were trying to persuade the American people to stop them. I was able to say these things firmly and positively. And I wasn't the least bit evasive.

I always knew that if two out of three people who were drafted resisted the draft, the war would be over. If somehow or other the less educated men who were most likely to be drafted could see that they had it within their power, if not within their right, to resist, it would be over. I said at the trial I hoped young men would conclude that the war was illegal and would refuse induction, refuse to obey orders. But, I added, that isn't the same as *urging* them to.

I couldn't do that. My psychiatric training says: Never counsel anybody about anything important. You'll only louse up the situation. Never say, "You should get married," or "You should get divorced," or "You should have a child," or "You shouldn't have a child." If a person can't make up his mind whether to get married or to get divorced, he's not ready to get married or get divorced. And if you stick your nose in, you'll only cloud him up further.

At the end, the judge repeated in his charge to the jury many of the same things the prosecutor had said about us in his closing statement. Then the judge gave them a series of questions they had to answer: Are the defendants guilty of conspiracy to counsel? Are the defendants guilty of conspiracy to aid? Are the defendants guilty of conspiracy to abet? These instructions were later found by the court of appeals to be prejudicial.

Four of us were found guilty of conspiracy. Marcus Raskin was the only one acquitted of all charges. It was, I would say, because he was shorter and quieter and, in the scenes of demonstrations shown to

the jury, he wasn't as visible. He was ashen pale after the verdict. When he stepped out of the elevator into a hundred members of the press, he was weeping. They couldn't figure it out. The ones who were convicted smiled, and the one who was acquitted wept. He felt very guilty. He was a main author of the *Call to Resist Illegitimate Authority*. And that was the keystone of our "crime."

I made an angry statement to the media right after the verdict, shouting that the government was behaving criminally in Vietnam, was trying to silence its critics, and that citizens must wake up and demand an end to the war.

The *Boston Globe* got to three of the jurors afterward. They said they thought we were pretty good guys but that the judge persuaded them that it was their patriotic duty to convict. One juror said the way the judge charged them, there was no choice. Another said he was in full agreement with us until they were charged by the judge, which was the kiss of death. \Veil, anybody who knows anything about the law knows that the point of a jury trial is how it look s to the jurors, not what it looks like to the judge.

We were sentenced to two years in prison. The judge said in sentencing "Rebellion against the law is in the nature of treason." My conscience told me that trying to save the country from an endless, brutal war was not treason at all. I was absolutely sure I was right. It was not just by studying the war in Vietnam that I knew I was right, but morally I knew I was right. I was brought up by a fiercely moralistic mother. And everything in the rest of my life has been decided on a moral basis. I knew exactly the Steps I'd taken and what they meant to me. And when I know I'm right, I don't worry about anything.

I was in this to end the war in Vietnam and prove the government wrong. If I were freed, that would be a victory. If I went to jail, that would outrage a whole lot of people. Even in England, Vanessa Redgrave was leading a long parade of moms from Trafalgar Square to the American embassy with big signs saying "Hands Off Spock!" In this country, having been tried gave me tremendous appeal to undergraduates. I spoke at eight hundred colleges and universities all over the United States. That's a tremendous number. And the reason I was such a popular speaker was because I had been convicted for my opposition to the war.

We appealed. A year later the court of appeals reversed the convictions. Ferber and I were acquitted because they said there was insufficient evidence. Coffin and Goodman were supposed to get a new trial because of Judge Ford's biased instructions to the jury. But one of the three judges on the court of appeals felt we were all innocent because the conspiracy laws were never invented to go after political dissidents. If one other judge had joined him, this would have been a significant case. It would have meant that you couldn't use the conspiracy law to go after People for their Political activities. Unfortunately, the decision was reversed on a technicality.

The trial radicalized me. I became convinced that the United States truly is an imperialist country. I had never given a thought to that accusation before. And I realized that as surely as the government represents industry on the international scene, it also represents industry on the domestic scene. I became a socialist. I used to be a very cautious person and considered very carefully anything I said. But when the federal government tried to throw me in jail and I beat them at their own game, that did a lot of good for me. I became much bolder. I don't mean that I'm terribly bold, but I'm a lot bolder than I used to be. At one point, one of my sisters who hadn't seen me for a couple years said to another of my sisters, "Say what's come over Ben?"

Nowadays, I'm frustrated that even though a majority of the American people are for disarmament, a majority are against intervention in foreign countries, a majority believe that Reagan is taking it out of the bides of the poor and other disadvantaged people, nevertheless they say that he's a wonderful leader. It's as if he's a great leader of the lemmings. He's leading the people to their destruction. So again, I have to demonstrate and commit civil disobedience, and keep at it until I keel over.