vestigating agency show "a subordinating interest which is compelling" to justify the restraint on First Amendment rights that the Court found would result from the inquiry.[746] The issues in this field, thus, remain unsettled.

Interference With Vietnam War Effort.—Possibly the most celebrated governmental action in response to dissent to the Vietnam War—the prosecution of Dr. Benjamin Spock and four others for conspiring to counsel, aid, and abet persons to evade the draft—failed to reach the Supreme Court.[747] Aside from a comparatively minor case,[748] the Court's sole encounter with a Vietnam War protest allegedly involving protected "symbolic conduct" was *United States v. O'Brien*.[749] That case affirmed a conviction and upheld a congressional prohibition against destruction of draft registration certificates; O'Brien had publicly burned his draft card. "We cannot accept the view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea. However, even on the assumption that the alleged communicative element in O'Brien's conduct is sufficient to bring into play the First Amendment, it does not necessarily follow that the destruction of a registration certificate is constitutionally protected activity. This Court has held that when 'speech' and 'nonspeech' elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms."[750] Finding that the government's interest in having registrants retain their cards at all times was an important one and that the prohibition of destruction of the cards worked no restriction of First Amendment freedoms broader than necessary to serve the interest, the Court upheld the statute. Subsequently, the Court upheld a "passive enforcement" policy singling out for pros-

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[746] Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539 (1963). Justices Harlan, Clark, Stewart, and White dissented. Id. at 576, 583. *See also* DeGregory v. Attorney General of New Hampshire, 383 U.S. 825 (1966).

[747] United States v. Spock, 416 F.2d 165 (1st Cir. 1969).

[748] In Schacht v. United States, 398 U.S. 58 (1970), the Court reversed a conviction under 18 U.S.C. § 702 for wearing a military uniform without authority. The defendant had worn the uniform in a skit in an on-the-street anti-war demonstration, and 10 U.S.C. § 772(f) authorized the wearing of a military uniform in a "theatrical production" so long as the performance did not "tend to discredit" the military. This last clause the Court held an unconstitutional limitation of speech.

[749] 391 U.S. 367 (1968).

[750] 391 U.S. at 376–77. The Court applied the *O'Brien* test less deferentially in Turner Broadcasting System v. FCC, 512 U.S. 622 (1994).