

Sentencing of Michael D. Therriault and Francis X. Kroncke by
Judge Phillip Neville - trial of the "Minnesota 8," January
1971.

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MR. ANDERSON: Good morning, Your Honor.

THE COURT: Good morning, Mr. Anderson.

MR. ANDERSON: The first matter, Your Honor, is the United States vs. Francis Xavier Kroncke and Michael Duane Therriault.

Will you please step forward, please?

Your Honor, may the record show that Mr. Kroncke and Mr. Therriault are in the Courtroom, accompanied by counsel, Mr. Kenneth Tilsen.

The matter is before the Court after a finding of guilty after a Court trial on a one-charge Indictment of violation of 50 Appendix, United States Code, Section 462 (a), an attempt to interfere with the administration of the Military Selective Service Act.

The matter was referred to the Probation Office for a pre-sentence investigation. It is the understanding of the Government that that is now completed, and the Government would move the imposition of sentence.

THE COURT: Mr. Tilsen, are you prepared that your clients should be sentenced at this time?

MR. TILSEN: We are, Your Honor.

THE COURT: Mr. Kroncke?

DEFENDANT KRONCKE: My client is Prepared, Your Honor.

THE COURT: All right. Do you wish to make any statement to the Court?

MR. TILSEN: Yes, but my client would prefer to speak to the Court first, with the Court's permission.

THE COURT: All right.

DEFENDANT THERRTAULT I would like to communicate with You as one human being to another. I don't know if it is

possible, but it is probably worth a try. I want it understood, however, that whatever I say is in no way an attempt to appease you, but an attempt to confront you with the responsibility you have as a human being to a world of human beings.

Even though you were present during the so-called "irrelevant testimony" in the trial concerning such things as the daily appearances of My Lai, you still might not be convinced of the human tragedy that is taking place in Indo China. Maybe you would give the Pentagon more credibility than you gave our defense witnesses.

According to the Pentagon, 4.5 million tons of bombs have been dropped on Indo China. That averages out to 500 pounds of bombs for every man, woman and child in Indo China, and the total ordinance expended is more than doubled where the land and naval attacks are taken into consideration. The testimony in the trial, along with the present situation in Cambodia, Laos and Viet Nam, indicate that the United States' prosecution of the war is de-escalating, if at all, only in the American casualties and not at all in any of the other aspects, that it is escalating in every other area.

All Americans who participate in or endorse by their actions policies of the United States in Indo China or who sit by silently and allow the Government to pursue those policies are guilty of the mass murder that is taking place. They are just as guilty as the Nazis, and the silent Germans were of the Jews in Germany; but to the Nazis' way of thinking, they weren't committing genocide, they were strengthening the Arian race. To the way of thinking of many Americans, we aren't committing genocide, we are bringing freedom and democracy to the peasants of Indo China. But can you really accept that as a rationalization for the millions of civilian casualties that the war has generated, and the war based on U.S. initiative?

It seems that you can, that you might claim you are as much against the war as any of the peace criminals who come before

you, but the way you live your life makes you a war criminal. You pay your Federal taxes knowing that they finance the slaughter that is taking place in Indo China, knowing that 70 percent of it goes to pay for past, present and future wars.

During our trial, you struck our evidence claiming it was irrelevant as to what had happened in Little Falls, Minnesota, on the night of July 10, 1970.

But that is a lie and you must know it is a lie, but it is consistent with your rulings in the trials of previous peace criminals before you. I have the names of four peace criminals who refused to become pawns of the Government like yourself and who could not stoop to their game of deaths in Indo China or play it here in this country. Roger Uhel you sentenced to two years at Sandstone. James Hack you sentenced to six months at Milan, Michigan, with 18 months probation. Jim Dombrowski you gave two and a half years for failing to report for a physical and destroying two cents worth of Government papers, and George Crocker, George Crocker is presently serving a three year sentence in Milan, Michigan, the three years that you gave him.

According to international law, your actions make you a war criminal. But international law is apparently irrelevant to the Judges and yourself in this country. After all, you are only doing your job, right, just like the other war criminals that are doing their jobs, just like Thor and Mr. Renner and the Federal Marshals and the people who work at Honeywell and make anti-personnel fragmentation bombs and military personnel to reign death and destruction on the lives and all forms of life in Indo China and especially the corporate elite who form Policies of death for the pitiful submissive masses to carry out. You are all just doing your job and nobody is responsible for the deadly consequences of those jobs.

But who are you trying to kid in your job to sentence people who won't kill and who won't apply for CO's because they don't feel they have to prove their sincerity in not wanting to

kill other human beings. You would have to sentence Frank and myself, and I know you are going to give us five years, and that's just fine because you are going to have to live with it, and like I said, I don't want in any way to appease you, I want to confront You.

You have to sentence Frank and myself because we encourage people not to do their jobs, not to kill other human beings, not to become the hired guns and the hired murderers of a few Government and corporate fanatics.

Two imperial powers are playing the game of death with the lives of people around the world, and with continued help of people like the prosecuting attorneys and Judges like yourself, they will succeed in destroying all human life on this planet.

As American society is constructed today, it forces all responsible Americans to become criminals; you are either a peace criminal or a war criminal.

Mr. Neville, the choice is yours. That's all I have to say.

MR. TILSEN Your Honor, on behalf of my client, I would like to speak to the Court. I do not want to detract one iota from the moving, eloquent and relevant comments of Mr. Therriault.

It is one of the shames of my life that at the age of 40 I find myself and my contemporaries at the Bar spending their time in sending people in their 20's to jail. I think it is the shame of our judicial system and the shame of our country that we have not yet reached a point in morality where we can say that people who are trying to make a better life for us, for the world, that we have not yet reached the point where we can say that they do not belong in prison.

I know it is difficult for the Court to say that prior persons in this position have been sentenced for five years. The Court is aware that prior persons in this position have been sentenced to two years. Prior persons in this position have been sentenced to

probation. I suspect that if we were to examine and take the time today to examine what Judges in your position have done throughout history, there are Judges when faced with defendants who have confronted society in the way in which these defendants have confronted society, there are Judges who have ordered the defendants to be hanged, or whatever the appropriate penalty was at the time; and I suspect there are Judges throughout history, when faced with analogous situations, who have said that their Courtroom would not be a part of meting out punishment to persons whose only crime was to attempt to save human life.

Here we are in Minnesota in this Courtroom within a week of the date when two-thirds of the state Senate have passed a bill authorizing the Attorney General to intervene on behalf of persons ordered to fight in this war, when the polls show that 73 percent of the people are opposed to the war, when we must turn directly to Frank and to Mike and to others like them and recognize that it is their contribution, their confronting of the conscience of the community that have brought us to this position, and for this accomplishment we say to them, You didn't do it in the right way. You were supposed to do it by running for elective office or writing a letter to your Congressman. That would have persuaded the American people that the war is wrong and the war is immoral, and besides, under no circumstances, no matter how evil it is, you cannot take individual acts of conscience, no matter what the risks are to society as a whole, no matter how much society is being torn apart, no matter how many millions of lives are done, we must punish you and send you to prison for this act.

I don't believe that this Court is impotent in the face of its knowledge of reality. I think the Court knows that if it were not for the literal army of young men who have come before Federal Courts in the last three or four Years refusing to go to Viet Nam, if it were not for the resistance of thousands of Minnesotans to the war, and by resistance, I specifically mean the acts of the 18, 19, 20-year olds in refusing to register, refusing to otherwise

participate in the war, we would not have a situation today where the great bulk of the American people and the people in Minnesota oppose the war.

This is accepted as Gospel by all of us. Its accepted as Gospel by those who prosecute, who say, "Yes, we know the effect that these acts and the acts of the people who oppose the Selective Service and the war have had upon the total body of the American people, and yet, how, in the face of that recognition, can we reward that recognition of their accomplishment by sending them to prison?"

It literally moves me to tears to recognize that most of our Court have failed to see their role in the continuation of the war and their role in tearing apart our society. In failing to see that role, they have also failed to see the potential that their power gives them, for while they play a fundamental role in tearing this society apart, they have the capacity to make one step forward in healing. They have the capacity to make an affirmative step for humanity and for justice and for law. The Courts do have the capacity, the ability to say, 'I will not send Mike Therriault and Frank Kroncke to prison.' I would hope that that capacity of the Courts would be recognized here in this Courtroom by Your Honor. Thank you.

THE COURT: Thank you, Mr. Tilsen.

MR. TILSEN: I believe Mr. Kroncke wishes to speak.

THE COURT: Mr. Kroncke, did you wish to make any statement, sir?

DEFENDANT KRONCKE I don't know, Your Honor. You know, I have said an awful lot, and you have turned around and said that my life is irrelevant and immaterial. Sometimes I wonder if you realize the depth of the personal sort of insult you have committed against me by refusing to recognize my existence; something that, I guess, in my meeting you has really been a precipitating factor in changing my life, and you and I are never ever going to be apart from one another.

Maybe physically you will send my body away somewhere for five years, but our spirits are never going to be apart. It is impossible. We have ventured into a very human engagement here, a very deep commitment.

Last night I walked around quite a bit. I was walking around Lake Calhoun, and as usual, I had about a thousand million things to say, scriptural, moralistic, political, personal. I almost came to the point of saying that maybe I shouldn't say anything, that that might impact you more, your knowing how much I talk, that you might wonder what that is all about.

That may have been the only proper way to express how I feel, but I don't know if I have words any more to talk to human beings.

At the trial, I tried to speak, in 1970 I tried to speak the word peace to people, and see what it does, people who speak peace. They have to lock you up and shoot you in your bed at night.

In the beginning of the trial when we had our Pre-trial motions, I was hopefully reading you something from Pope John, trying to give you then a beginning insight into the moral tradition I had come out of and which I elaborated on in the trial.

One of the things that we tried to point out at that point is that we do exist in a strange time in America, like we exist in an undeclared war and we exist with a system of involuntary servitude, both of which strike me as very strange types of systems or facts to have within a democracy.

In a certain sense, I would almost think that the only thing the Judge could feel today is some shame that the political situation itself has gotten so far away from its tradition in the sense that we would have an undeclared war for over ten years and that we would have an involuntary conscription system. So in hopes that somehow this trial would be some experience of growth for you as well as for myself, I read this passage, because I don't think that all the truth in the world comes out of my mouth. As I have said during the trial, I relate to a tradition, and I tried to give

you other men's visions, other men's words as guidelines; so I would like to read again this statement that I read to you before the trial actually began. It is from Pope John, and it says:

It is unquestionable that a legal structure in conformity with the moral order and corresponding to the level of development of the political community is of great advantage to the achievement of the common good, and yet social life in the modern world is so varied, complex, and dynamic, that even a juridical structure which has been prudently and thoughtfully established is always inadequate for the needs of society.

"It is also true that the relations of the citizens with each other, of citizens in intermediate groups with public authorities, and finally, of the, public authorities with one another, are often so complex and so sensitive that they cannot be regulated by inflexible legal provisions.

"Such a situation, therefore, demands that the civil authorities have clear ideas about the nature and extent of their official duties if they wish to maintain the existent juridical structure in its basic elements and principles, and at the same time meet the exigencies of social life adapting their legislation to the changing social scene in solving new problems. They must be men of great equilibrium and integrity, competent and courageous enough to see at once what the situation requires, and to take necessary action quickly and effectively."

I have done a lot of speaking since I have last seen you, and most of the people I have talked to are sort of upper middle-class groups. A lot of people are social friends of yours. I have met a lot of people who know you, and they have said things to me like, You are really lucky, Frank, You have got Judge Neville. He is the most liberal Judge in the Federal District Court.

My response in all honesty could only have been that it doesn't make any difference whether it is Judge Devitt or Judge Neville, whatever a man's reputation is, it's because they do the same thing; it's sort of a different show.

It's like with our trial. You said "Well, Frank, you had a forum." I said, "I didn't want a forum, I wanted justice," and I said that I felt Mr. Neville was a much more ardent prosecutor of my case than the prosecution, if there was a prosecution.

This is difficult for me to say because, in a sense, I realize that I am naming you, in my understanding, as an immoral and evil person to people. They are hard words to come from my mouth in reference to other people, but somewhere the problems of society go on, and somewhere people have responsibility, and you are the type of man who has had many people come before you with problems, especially with reference to the war, and you have seemingly consistently, as all the Judges in this District Court, handled them in the same way, saying, "Well, the responsibility lies somewhere up there with some unknowing God called the state."

So I found myself talking in public, saying things about you, and so I said to people, "I am not going to be surprised when Judge Neville himself gives me five years. People said that that will never happen, but it is going to happen.

So the last thing I would like to say to you at this point, and I emphasize that in my way of understanding reality, we are never going to be apart, somehow we are going to be together somewhere, whether we talk in spirit or whatever. We will be together.

I would almost like you to tell me when you are sentencing me what you think putting me in jail is going to do. From what I know of the jail system, and I gave you that book and I don't know if you read parts of it about war resisters in prison, but I really wonder, with the type of person I am, what you think jail is going to do.

It would almost make more sense to shoot people like me. It is obvious that I have a commitment to peace and will always be working vigorously in this society and possibly come into conflict with laws.

It seems that most criminals, such as we are now, with our type of background are either given probation or leniency for the first

offense. Yet, I am sure it is going to happen because we are political prisoners and the Court runs not on morality but on politics. Putting me in jail I know is a political act. I would like you to explain it to me, how am I going to be rehabilitated, how am I going to serve my community by being in jail? This I would like to know.

Now, I am willing to undergo the experience, obviously, or I wouldn't be here today, but I would like to know from the depths of your person. You give out sentences to people, like five years of a person's life or one year of a person's life. Do you understand what happens to people? Do you know how they are going to grow? Who is going to take care of me and help me develop my concepts and get a better perception of how to bring peace? What is going to happen when I am in prison?

You are a man who sends people to prison. I am a man who, I guess, tries to make people think. That was my job, or send them to God, whatever you want. I sort of have a vague idea from talking to people what that is like, and I have tried to experience it myself. But have you experienced jail? Will you come to see me in jail? Will we share that in any way, or will I be out of your life for good?

I know that what I have said is probably not as eloquent as maybe other people might say certain passages, but I guess this is not the time for eloquence, but really, for honest truth.

I don't understand -- and I would like you to explain to me -- I don't understand what putting us in jail is going to do. I would like to understand your position. I would like to understand how you think. I would like to understand the system that you claim allegiance to. I want to understand this country. I want to understand its people or I wouldn't have acted, and I think you owe it to me in honesty and to the people here as you sentence us to tell us, and to tell us, because they go to prison with us as they have stood with us through the trial and as thousands of people in this community have stood with us and I think you owe it to us

to at least tell us what you are doing to a; by putting our bodies in Prison. Speak.

JUDGE NEVILLE

THE COURT Is there anything further from anyone?

I don't suppose I have to say that this matter has been disturbing to the Court. I have had a number of letters, some from your family, Mr. Kroncke, perhaps more relating to you, but as to both of you, most of them along the vein that you had a right to do what you did. I have had visits from members of the clergy. Personally, one of the most difficult things I have to do as a Judge is to pass sentence on you or anybody, but as I see my duty, I must assume my duty and pass sentence.

Now, let me say before I pass sentence, and I will direct this particularly to you, Mr. Kroncke, because pursuant to Rule 4(h) of the Rules of Appellate Procedure, you will have a right within ten days to file a Notice of Appeal. That is one of your Constitutional rights and you should be advised of it, and you should be advised that it expires in ten days.

DEPENDANT KRONCKE: I know that.

THE COURT: And if you wish to file such, you should do so. Mr. Tilsen, I am sure, knows that as a lawyer. If you do not within the ten days, it is going to be the Order of the Court that you shall report to the United States Marshal on March 23rd at ten o'clock in the morning. That is eleven days away from today. That would be at Minneapolis.

If an appeal is taken, the Court will want, if there is a motion directed to the Court, to review the conditions of any bond. Currently, and until March 23rd, the existing bond will be in force and will be continued.

I am going to do as was done in prior cases of others of the so-called Minnesota 8 insofar as parole is concerned in conditioning the sentence on 18 U.S.C. 4208(a) Parole, of course, is,

and I am not experienced with it because I don't sit on a Parole Board, but the Parole Board has the right to consider prisoners as the law reads, there is a reasonable probability that such prisoner will live and remain at liberty without violating the laws, and if it the opinion of the Board such release is not incompatible with the welfare of society, then the Board may in its discretion authorize the release of such prisoner.

It is very difficult for you two gentlemen because you are intelligent, you are educated, you are both college graduates, you are articulate. Mr. Therriault speaks as a paragon of good English, and yours is. You are sincere, I can't deny that. I recognize your sincerity.

The difficulty that the Court has, and you are not run of the mine criminals as we sometimes see them here, that when you take the law into your own hands because you believe something is unjust and commit what may people would consider an act of violence, at least, breaking and entering, and there was no violence as to individuals, but as Mr. Therriault testified, had you been successful, the records of as many as you could have carried out would have been dropped in the bottom of the Mississippi River, or if they turned out to float, you had an alternative plan of burning them so that they would be destroyed. I don't need to argue whether that is an act of violence or not, but it is an act of destruction of property. If everyone in this country who didn't like the law took it unto himself to say, I don't like the law, automobiles are killing too many people in this country, and therefore, I am going to break in and destroy the plan for next year's automobile, and they kill more people than the Viet Nam War has killed every year, pretty near, if you take the law into your own hands because you don't like the result that you see, then we have no government and no laws at all.

We just then have anarchy and the Court cannot countenance the proposition, despite the sincerity and the eloquence of your arguments that because you were motivated by the Viet Nam War

or because you are motivated by religious principles, or otherwise, to do what you consider to be a moral duty, that you therefore have the right to say, "The law doesn't count. I believe it is wrong, and therefore, I am going to do my best to impede it."

That is just so contrary to our system that it has consequences far reaching.

Now, so far as your serving in jail, I try not to put people in jail as a mere punishment. I try not to put them in jail, although some do, for rehabilitation purposes. There are other ways to rehabilitate. I recognize that.

But the public is entitled, in this Court's opinion, to the administration of justice and to the upholding of the law, and you gentlemen, however sincere you were and however futile you feel it is to appeal to Congress to change the draft law or the war, that is the orderly process, as I indicated at the trial, and I recognize that I took from the Jury the consideration of much of the evidence that you presented, there isn't any doubt about that, I did it. But I think that was right and I think that is the law.

The presence of the two of you here disturbs me greatly because of what I feel I must do.

It is adjudged that the defendants, and each of them, based on the verdict of guilty returned by the Jury after trial are guilty of the charge contained in a joint one-count Indictment charging them with attempting to interfere with the administration of the Military Selective Service Act of 1967, 50 Appendix, United States Code, Section 462(a).

It is further adjudged that the defendants, and each of them, are hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of five years, provided that the defendants and each of them become eligible for parole under 18 U.S.C. 4208(a) (1) upon serving a term of one year, and at any time thereafter, but not prior to such one year, as the Board of Parole may determine.

MR ANDERSON: Your Honor.

THE COURT: Mr. Anderson.

MR. ANDERSON: With the consent of the Court, I have two matters. Mr. Kroncke and Mr. Therriault should be advised that in connection with the Appeal that you have advised them they have the right to, if they cannot afford a lawyer, they have a right to petition the Court to file that appeal as a pauper, pursuant to the Rule and pursuant to the law.

MR. TILSEN: We have already discussed this at some length. I intend to file a petition the Court should know, in order that the appeals can go forward in forma pauperis. Mr. Kroncke has expressed a desire to continue pro se in connection with the appeal, and although I or other counsel may give him some advice as to formalities of handling that, he, after some discussion, has indicated that at least it is his present intention or his intention as of several days ago to prosecute his own appeal, with whatever informal assistance he seeks from myself or others. I will ask to be appointed to continue to represent Mr. Therriault.

In that connection, I will probably be sending within the next several days a petition on behalf of both Mr. Kroncke and Mr. Therriault to prosecute these appeals in forma pauperis.

THE COURT: I will act on the petitions when I receive them.

I think this is an ideal case to appeal because the record of the evidence that you think is convincing was received and it is on the record and people can review it, and there is higher authority than me, and I am sure Mr. Kroncke would say of another type, but there is higher authority than me in the secular things in administering a Court of justice, and you don't aggrieve me any by taking an appeal.

MR. ANDERSON: Your Honor, in connection with the bond, it would be the motion of the Government that from this point forward and during any time of appeal that the present bond as relates to financial arrangements be continued, but that

the condition be added that the defendants report to the Office of the United States Marshall in the United States Court House in Minneapolis at nine o'clock on the mornings of every Tuesday and Thursday.

DEFENDANT KRONCKE: I object to that. That is real harassment. I see no need for doing it twice a week. It really makes it almost impossible for me to do some of the things that I have to do, talking and traveling and stuff like that, even within the state. I don't see what good it does, reporting. We have certainly so far been here and have been coming back.

THE COURT: The both of you have been very responsive whenever the Court or the United States Attorney or anybody else or your own attorney has requested an appearance.

MR. TILSEN: I would think that if the United States Marshall had an address where they could always be reached, that that would be sufficient, and obviously, they cannot leave the state without a Court Order.

THE COURT: I have signed several.

MR. TILSEN: And you have signed them even when Judge Devitt was out of the country, and they continued to be signed regularly. We will continue to do that in connection with leaving so that there will be a Court Order every time they leave the state, but I see no reason for them to formally report to the Marshall twice a week.

MR. ANDERSON: Your Honor, the reason for the motion is that once a conviction is entered the presumptions all change. The temptation to flee is greater. It is just an opportunity to periodically ascertain that they are in fact in the jurisdiction. I think it is a reasonable request and it is one frequently employed, and I think it is perfectly appropriate to do it in this case.

DEFENDANT KRONCKE: If we wanted to skip, this is not the best time to do it. We didn't want to be here today just to hear you give us five years for the fun of it.

I will call you up once a week, if you want. I don't get up that early, for one thing, and I don't see why I should have to run up twice a week.

THE COURT: Well, supposing I make it --

MR. TILSEN: Could they call?

THE COURT: Supposing I make it once a week at a time that you might arrange with the Marshal each week, and if you need to you can call him up and say that you will be out of town for three days and that you will appear some other day, and Mr. Therriault the same. I don't think that is wholly unreasonable, really, I don't.

DEFENDANT KRONCKE: If military intelligence is like the paper says it is, I don't think they will have any problem.

THE COURT: I have no knowledge of that except as I read the paper.

I do hereby certify that the foregoing is a true and correct transcript of the stenographic notes taken by me in the above-entitled matter. Ward L. Sutfin, Official Court Reporter