

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA, FIFTH DIVISION

United States of America, Plaintiff

vs.

Francis Xavier Kroncke and Michael Duane Therriault, Defendants

5-70 Cr. 19

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 - Ken Tilsen, lead lawyer
 - Frank Kroncke, “Minnesota 8” and attorney *pro se*

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VOLUME II
UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA
FOURTH DIVISION

United States of America, Plaintiff,

vs.

5-70 Criminal 19

Francis Xavier Kroncke and Michael Duane Therriault, Defendants.

The above entitled matter came on for trial before the Honorable Philip Neville, one of the Judges of the above court, and a jury, at Minneapolis, Minnesota, on January 11, 1971.

The following contains the proceedings had on January 12, 1971.

(APPEARANCES: as heretofore noted.)

9:30 o'clock a.m., Tuesday, January 12, 1971

(Whereupon, the following was had in chambers.)

MR. TILSEN: Kenneth Tilsen speaking in chambers this morning. I just wanted to advise the Judge that when I came in this morning the elevators apparently were all shut down and instead of being self service, the elevators appear to be run by personnel from the Building Service and the personnel in charge advised me that I could go to the sixth floor if I had the permission of the Marshall.

The thing that is disturbing about it is the inference that the Marshall thereby creates an inference which I think is totally unjustified, totally false, that somehow or another some kind of special security beyond the searching of bags and the other things which are unfortunate but apparently now an accepted part of our method of operation not only in this building, in any other public building and quasi public building, so I guess we can't really raise too much question about that, but when people came into the building wanting to go into Judge Neville's courtroom, and they got on the elevator with me and they immediately said "What's going on" and somebody said "The Minnesota Eight", and they said "Wow. You have to do all that", and it really leaves an impression. Now these are professional people, lawyers, the kind of impression it leaves on the total public and on the jurors is just totally uncalled for. Not only that, it's just without any reason.

The thought occurs to me that the General Services Administration must have rules and regulations governing the availability of this building to the public and that the courts of the Judges of the Federal District Court have certain powers over the conduct of the building and I quite frankly think that the U. S. Marshall has taken the position in effect that he has the gun, therefore he determines who gets in and out and how this building runs.

I know of no rule or regulation that he is following. He is a law unto himself in the total conduct of the building and takes unto himself by reason of his holding a physical power over the building those powers which normally seem to lie at least --

well, I'm quite certain lie elsewhere and do not lie in the Marshall. He is supposedly not to be a decision making personnel but a person simply to carry out instructions and I would be willing to predict that there is nobody who has given him those instructions, that he has simply done this on his own and thereby adversely affecting the rights of the defendants and it's sort of a subtle kind of -- it's very pervasive and very dangerous to our society.

THE COURT: Well, the Court is aware of some of the facts that you are presenting. I think it is true that Judge Devitt held two prior trials of some of the "Minnesota Eight"; that on one of them -- one occasion there was some disturbance in the courtroom.

I recognize that you may think that that is perfectly within everybody's rights. This Court, himself, had the only experience with this nature with sentencing George Crocker where eight or ten people got up and began to talk and raise their voices at the Court and the sentence that was imposed to the point where the Court felt it necessary to adjourn and later to reconvene to continue the sentencing.

Now none can say that that would happen here, but the Marshall did come in to see me prior to trial and told me that he was going to have what he called security in the building.

I did instruct him that except for the first day when we had ninety or some jurors in the courtroom and would have no room, that he was to permit people to come up and be in the courtroom and observe the trial as they wished until the courtroom was filled, and we didn't want any standing room; that I have no power sitting up here on the sixth floor to determine how that's going to work out.

Consequently he does have that discretion from me to see that things are kept orderly and to see that people are presented to the courtroom in a manner that will not disrupt the proceeding or affect what I have heard loosely called the dignity of the court, and now he is instructed however by me that it is a public trial and that within the measure and the reaches of keeping order and decorum, that people are to come and

he is to permit them in, so today we should have no more problem with that unless more than ninety some show up in which event we can't seat more than that in the courtroom.

MR. TILSEN: I would like to respond because I think the Court has probably obtained some erroneous information, I don't know the source of it exactly, concerning the prior trials.

About three weeks before the trial started -- two weeks perhaps at one of the presentence -- pretrial hearings a letter was sent to the Judge explaining why certain personnel who would be in the courtroom would not stand. There was no effort made -- it was an effort to communicate a certain point of view to the court. There was no demonstration, there was one person who was not -- who made some exclamations thereafter.

DEFENDANT KRONCKE: Who did sign the letter.

MR. TILSEN: But what took place simply was that the court -- these eight to ten people did not- perhaps more, I think eight or ten who signed the letter -- did not stand. This was not at the trial but prior thereto.

They were dragged from the courtroom and one of them spoke, the others were all silent.

That was the only thing that can remotely be called an untoward incident in the trial in three separate trials. There was never a word or a thing of any sort.

The trials were depressingly devoid of the capacity of people to express a normal relief of tension and I defy anybody to honestly say that the crowd went -- and incidentally the courtroom was always packed. There was hardly ever a time when there was not -- when there was an empty seat and it's a much larger courtroom than this.

At the sentencing, at the time that the third or fourth person spoke -- defendant spoke, he made some remarks which occasioned some polite applause. The applause

lasted, I put on the record, somewhere between five to ten seconds perhaps fifteen seconds would be allowed. It was polite and mild and it was after some four or five other comments and this one defendant's comments occasioned this reaction and it was very short-lived, it was applause; no whistle, no shouting, nothing of that sort.

The persons who applauded were ordered removed from the courtroom and several of them were carried from the courtroom. Quite a number of other people got up and left the courtroom in protest over their removal.

I objected strenuously. I think that the inference that those were incidents that affronted the dignity of the court, if that information has been given to the court, I would object to strongly. My own personal point of view as to what was appropriate or inappropriate conduct is not really relevant at the moment but I think that the idea that the people who attend these trials are interested in disrupting the trial or disrupting the dignity of the court is just a terribly unfair inference and it's an inference that is maintained by the efforts on the part of the Chief Marshall, I think, to set an atmosphere of open hostility and I don't want to see it happen in this courtroom.

THE COURT: I hope it won't. I don't either. I don't want to see any disturbance.

I can remember another occasion where I think it was one of the preliminary motions in this case, a group of people sat in the front row or near the front row and chanted in unison "Free Crocker. Free Crocker".

DEFENDANT KRONCKE: I said that.

THE COURT: That may not have been -there was an occasion where a group so did. Now maybe -- and I wish I could recall exactly --

DEFENDANT KRONCKE: Could you handle something like that, see, like the difference -- the real fine point, I will give you an example of it, is a distinction between security and harassment. My brother has never been to a court before, he's a professor of

finance, he's really a straight guy. He's a really establishment person. He came to the sentencing -- we came up to the building and he turned around to me and he said this place is full of fear and he was very frightened himself and he was just sitting in the courtroom. It was obvious from all that we had to get through to get up to the seventh floor, and a lot of mothers and stuff had the same feeling, and that's, you know, like fear is not the tool that we use and it's just too ease for security's sake, you know, to justify the fact of harassment and I think that's what's happening. I know it's happening.

THE COURT: You may be aware of course that we have bulletins from Washington about security for this building, security for other buildings. Of course that has no place in this trial and will never be mentioned, but we know of the bombing that took place in the Federal Building here some time ago and it causes people to be on the alert, but I will see that the Marshall does not exclude the public from the trial.

I cannot say what his authority is to check people as they come in, to examine packages --

MR. TILSEN: That's okay.

THE COURT: (continuing) to open briefcases and to regulate to some extent the traffic that might come to the sixth floor, not prohibitively but in a regulatory way so that it is in good order and without incident.

I recognize your feeling that it creates a hostile atmosphere. I really don't think I can order the Marshal to abandon the building and --

DEFENDANT KRONCKE: We are not asking for that. We are asking for courtesy, kindness.

THE COURT: Well, of necessity any restriction involves some purported discourtesy, I suppose, to somebody who is restricted.

DEFENDANT KRONCKE: Well then, abuse. Okay.

THE COURT: Well, you made the point and I will try, as the time goes on if you will keep me advised of things that you think --

MR. TILSEN: If there is any incident we will tell you about it.

THE COURT: To tell the Marshall or to rectify them, but I am not willing at this stage to call the Marshall out of the building and say "Just forget it". Mr. Anderson?

MR. ANDERSON: Well, Your Honor, we had a motion set on for this morning which I'd like to pursue this briefly at this time, and the government would like to move that the jury in this matter be sequestered.

THE COURT: Now on this matter I just got a buzz, the press is out there. They wish we were in the courtroom so they could hear this.

MR. ANDERSON: Well, I have no objection to that.

MR. TILSEN: It doesn't make any difference to us at all.

THE COURT: Well, I don't like the idea of a court behind closed doors.

MR. ANDERSON: Find with me.

(The following was had in open court, the jury not being present.)

THE COURT: Are there any jurors in the room? All right.

There's a motion I understand that the government wishes to make in the absence of the jury.

MR. ANDERSON: Good morning, Your Honor. The government would like to move at this time that the jury in the matter be sequestered from and after the time the testimony commences in the action.

We feel that by having the jury sequestered several possible pitfalls can be avoided and that the likelihood of any mistrial can be minimized. The reasons for this is that when the jury is together, if it is sequestered, the Marshall will be present and can stop conversations which might touch on the case or issues related to it among the jurors, and such conversations are of course improper and the Marshall can stop them before they get started.

It will insure that there be no conversation of any kind with outsiders, whether proper or improper, and as Your Honor pointed out yesterday in addressing the jury, there can be conversations which in fact are quite innocent, which invite suspicions that might be unwarranted but still leave a cloud of doubt over whether in fact the jury has been talking with people they shouldn't talk with outside the courtroom and if there is a sequestered jury, everybody; defendants, government and public can know that insofar as the conduct of the jury is concerned in conversations they might have had there has been no impropriety.

Now this is a case which has some mention from time to time in the press and on the radio and on TV, and sequestration of the jury will limit access to news reports. Now there have been some similar trials in the Minnesota District in recent weeks and at some of those trials people over whom the defendants apparently had no control were passing out newspapers daily to everybody that walked in; jurors, prospective jurors, members of the public, attorneys and everyone else, which editorialized on the conduct of the trial and on the weight that should be given to the evidence that was given by various witnesses and the weight that should be attached to exhibits that were admitted into evidence and various comments on the merits or demerits of rulings by

the Court.

Access to this kind of material can be prevented if the jury is sequestered.

In fact in a trial similar to this there was a mistrial because there was not a Marshall present with the jurors to prevent them from conversing about the trial. These conversations can be stopped before they get started if the jury is sequestered and based on those facts the government would so move.

THE COURT: Well, just a minute. Before you leave, I don't regard that if the jury were sequestered that it's the duty of the Marshall to audit their conversations. I wouldn't think that the Marshall is expected to intended to overhear what they talk about.

I have requested and suggested and instructed them that they should not discuss the case even among themselves, but I don't believe that it's grounds for sequestration and that the Marshall should sit in on their discussions and overhear their conversations.

I recognize and I am aware of what happened over in St. Paul because I was informed of a discussion among the jurors that was overheard by others, not members of the jury.

MR. ANDERSON: Well, the Marshall would be with them at meal times.

THE COURT: But I don't believe it's the function of the Marshall -- do you, really? -- to sit in and say: Now gentlemen, you shouldn't discuss this, or ladies, you mustn't talk about that. I don't believe that's the function of the Marshall should the jury be sequestered. Now the question of keeping outsiders from them, that's another thing.

MR. ANDERSON: Well, I think the only time the Marshall would likely to be with them when they are conversing would be at meal times, because he takes them to meals and he could remind them of the admonition of the Court.

THE COURT: Well, if they were sequestered they would be in his custody and would be in a hotel presumably or a motel or somewhere overnight, and would be brought here in the morning.

MR. ANDERSON: Well, I had no thought that they'd have their ear up to the hotel door. As a matter of fact as I understood it the only time they were with them is when they were together at meal times.

THE COURT: Well, all right. Mr. Tilsen, do you wish to be heard on this?

MR. TILSEN: Yes. I do. I would just like to comment; my first comments and thoughts were about the same thing, the role of the Marshall.

I would even add one thought in addition, that if a Marshall were to overhear an improper conversation I would think it would be grounds for misconduct by the Marshall for him to discuss the impropriety of the conversation with the jurors.

I think his function is to report what he heard to the Court and any instruction of that jury is by the Court and not by the Marshals, and apart from the impropriety of suggesting that they should be sequestered so that the Marshall could listen in on what they are saying, the suggestion that the Marshall would then choose to discuss or to tell the jury various things is a terribly improper conduct.

THE COURT: Well, I don't know that he suggested that.

MR. TILSEN: Well, he said the Marshall could stop it.

THE COURT: The Marshall would be instructed not to visit with them. You could be sure of that.

MR. TILSEN: I'm sure he would be.

Your Honor, the question of sequestration of the jury is not unlike the question we were discussing in chambers of the total atmosphere in which a trial takes place.

As you know, the defendants have raised concern that the atmosphere in the courtroom and in the court house in general not become so oppressive and repressive as a result of measures taken by the Marshall so as to lead the public, the jurors and others involved to take a view -- a prejudged view of the nature of the defendants and the nature of the case being presented.

I think that sequestration is the final step in presenting a false image of the character of the defendants, the character of the visitors to the courtroom and the character of the case in total to the public and to the jury themselves, more important.

There is nothing that can possibly happen in the course of a trial that could possibly be as prejudicial to the defendants in terms of contact by a person with the jury as the fact of the court determining that the jury must be insulated and must be locked up under lock and key, deprived of their family, deprived of the necessary ability to take care of the needs of their children.

We have some -- we have one woman on this jury with eleven children. I think it is asking an awful lot to expect that she is going to be able to sit on this jury and devote her time and attention to the problems of the evidence and the legal arguments here in this case when she is unable, during the course of the trial, to see her eleven children, to see that they have gotten to school, that their colds and needs and clothes and other problems have been attended to. We have men who likewise have problems of the same sort.

I think that the suggestion that the defendants' rights must be protected from illegal information coming to the jury by the prosecution, which is the essence of this argument, somehow falls flat in the mouth. It doesn't go down very well.

The defendants aren't worried about the jury receiving false information about them. We are willing to take those chances. Sequestration is generally a process of protecting the rights of the defendants. The government can make no claim that its rights will be damaged by sequestration.

Frequently in cases where there is large public outcry against the activity of the defendants or certain witness's testimony may be excluded from the public, the jury might find out the testimony of the witness through a roundabout way from a member of the household or otherwise. None of those things will happen in this case. We know what the prosecution's case is. There's been pretrial discovery, all of their evidence will come in very quickly and simply. The defendants are not worried about the jury finding out any matters and no rights of the defendants can possibly be prejudiced by not sequestering the jury.

On the other hand we do feel that sequestering the jury would fundamentally say something very wrong to this jury about the nature of the case and the nature of the process that we are engaged in and for that reason we would most strenuously oppose the same.

DEFENDANT KRONCKE: I'd like just to say two things in response to the type of logic that Mr. Anderson has gone along with, and that is that if these people are supposed to be in the eyes of the court intelligent enough and capable enough to make a decision about the material that's going to be presented to them, we certainly think they can follow your simple instructions of going home and not talking to one another and following on that is the fact that if you sequester them and the only people that they live with for a whole week is themselves, and they are bound to talk with one another for human contact. The only thing they have in common is the trial and it will probably be something that they will talk about, whereas if they go home they have their kids and everything else, they're probably not going to talk to their four year old kid about the trial or something like that.

It's just sort of logical that if you put people together you run the risk of committing the offense that you're trying to protect.

THE COURT: Well, in response to Mr. Tilsen, it's not unusual in a criminal case

to sequester a jury. Of course one of the reasons of course for sequestering is fear that the welfare of the jurors themselves -- I have no concern about that here, I don't have any fear that -nor do I have any fear that you or any of the defendants are going to try and contact the jurors. I have instructed them and do intend to again, that if they have any contact from anybody of a nature of that type that attempts to influence them, they should report it to the court right away, but I don't anticipate that. Maybe I'm naive, but I don't really do that.

The question is whether sequestration would, first, keep them out of contact with outsiders, and second, keep them away from the publicity. There are reporters in the courtroom and of course they will publish what they will and what they are entitled to in open court, hear the proceedings.

Are you aware of this reference that Mr. Anderson makes to a daily leaflet or flyer or paper that was passed out at one of the other trials?

MR. TILSEN: I don't know if it was daily. There were some leaflets passed out in -- not at the last trial, perhaps at the first trial. I'm sure there weren't any at the last trial.

THE COURT: Are you able to give any assurance that they will or won't be passed out at this trial?

MR TILSEN: I haven't the faintest idea.

THE COURT: Well, I didn't think you would.

DEFENDANT KRONCKE: They are not doing it now. The people who are responsible for it aren't doing it, so I guess it's not going to be done, but even if the people were instructed not to accept the leaflet and they were told, so they didn't, you know.

MR. TILSEN: But there's not going to be any.

DEFENDANT KRONCKE: No. There hasn't been for the last two trials.

MR. TILSEN: And won't be at this trial.

MR. ANDERSON: Your Honor, the arguments of Mr. Tilsen and Mr. Kroncke can be very appealing and we'd all like to believe them. The problem is that experience teaches us that in fact the things that they assure us will not happen did happen in a similar trial and a mistrial was called, and we had to try it again and I of course don't know what's going to happen in the course of the trial and none of us do, but I think that it's an insurance policy against problems and I think that the ominous characterization of it as some sort of repressive tactic is not justified because as Your Honor pointed out it's often done in a criminal trial, and whether the newspaper has published a little flyer -- a little flyer is published or not, nobody knows. In any event there will be newspaper accounts and comments.

THE COURT: Well, yes, if they are sequestered I suppose the Marshall would be instructed to clip out any articles from a newspaper that they might have or would be instructed to.

MR. ANDERSON: My understanding is that such a short trial they just don't get newspapers. In any case it's an insurance policy against an event which actually did happen in a similar trial, and I think the fact that there was a mistrial, because of the things that could be prevented by sequestration, speaks more loudly than either my arguments or counsel's. I pursue the motion.

THE COURT: Well, the court understands what happened is that three or four jurors were visiting at a lunch table and were overheard by those who were not jurors,

wherein they expressed some view concerning the case. Whether that was the ground for mistrial I'm not here to pass on. A mistrial was granted, I'm so informed.

MR. TILSEN: I would just make this quick comment: that their one argument boils down to the fact that there was a mistrial. If the jury had been sequestered the defendants would have been convicted by a jury that had prejudged the case as the evidence at the mistrial hearing so indicated. At least it prejudged the defendants if not the case.

The fact of overhearing should be something that we are pleased about. Now I don't suggest that I recommend that anybody ever listen into the jury, but all that sequestering would have done is not changed the prejudiced character of the jury, it just would have made it that we wouldn't have found out about it. In other words as one person said to me, everybody knows lots of juries do this, you just never know about it.

Sequestering has nothing to do with that mistrial issue. It's a totally different issue and really it's completely separate. Sequestering is normally for the protection of the defendants.

THE COURT: All right. The court at this time is going to deny the government's motion for sequestration, subject however to the right of the government to renew it as the trial progresses if any untoward incident occurs, if leaflets and things are passed out which are thought to be influential on the jury, if any effort is made to harass or contact the jurors or if any conversation with outsiders is reported or anything of that nature, or if the court's assay of the publicity which attends the trial is of such a nature that on the government's motion the court would be convinced that it's prejudicial, then that might make it a matter for the court's consideration, but to date I have no reason to believe that any reporting of the trial won't be a fair presentation of what transpires and I have no reason to believe that there be any effort to "reach" the jury or some of its members and I have no reason to believe that any effort will be made unduly to harass or

influence them.

Therefore the motion at this time is denied subject to the right, if any such thing does appear, to renew it.

All right. Would you bring the jury in.

(Whereupon, the following was had in open court, the jury being present.)

(Whereupon, a roll call of the jury was taken, all jurors present.)

THE COURT: Well, members of the jury, I am sorry for the delay but the court was in conference with counsel.

I should say just a word to you. One of the counsel suggested that the jury should be sequestered, that is, kept confined until the trial is over. The court denied that motion at this time, but I instruct you that if anybody from the government or anybody from the defendant should approach you and start to talk about the case, I'd want to know about it immediately, or anybody, whether you know whether they are from the government or the defendants or where they are and I would instruct you that if there is any fliers or leaflets that are passed out in or around the court house that you do not read them. I would instruct you that if you hear anything over TV or see anything in the newspapers, if you can discipline yourselves that well that you not read it. That's a difficult assignment.

If you were confined we wouldn't have any problem because you wouldn't get newspapers, but that doesn't seem the likely thing to do here and consequently I'm indicating that if any untoward incident occurs, the court will reconsider the motion, but at this time it's denied and you are going to be free to go home at 5:00 o'clock and come back again at whatever time we set tomorrow morning absent any further ruling from the court, but I do caution you again about talking to anybody.

If you see somebody in the hall or the rest room or somewhere and he may be a government witness or he may be a defense witness, you don't know, and I caution you about making any decision amongst yourselves until the case has been tried and

submitted.

All right. With that we will now hear the opening statements of counsel. Mr. Anderson, for the plaintiff, are you ready, Sir?

PROSECUTOR'S OPENING ARGUMENT

MR. ANDERSON: Ready, Your Honor, and may it please the court, counsel and ladies and gentlemen of the jury. As the judge mentioned to you, seated at my left at the government's counsel table is Mr. Stephen Palmer and my name is Thor Anderson and we represent the government and it will be the duty of Mr. Palmer and myself to present to you the government's case in this matter, and it will be the duty and it will be our job to introduce evidence and exhibits which we believe will cause you to believe beyond a reasonable doubt that the crime that was charged in the indictment that was read to you by the judge was committed and that the two defendants that are charged in fact committed that crime.

Now the crime that is charged is that on about the 10th of July of last year, in 1970 in Little Falls, Morrison County, Minnesota, that the defendants attempted to interfere or hinder the operation of the Selective Service System by entering the local Board office in Little Falls, Minnesota with the purpose in mind of removing and destroying Selective Service files.

Now the government will present evidence which will show that the local Board office in Little Falls is located on the second floor of an office building near the downtown area of Little Falls, Minnesota and the evidence will show that that local office consists of two rooms, both of which face onto the center hall of the second floor area and there is a connecting door between the two rooms that doesn't go out to the hall.

One of the rooms is usually called a reception room and the other room is usually called the local Board office and the evidence will indicate that it contains the

desk of the Executive Secretary who is the Chief Administrative Officer of the Board and the files and records.

There will be the testimony of certain agents of the FBI and they will testify that at about 9:30 on the night of July 10 they were in the city of Little Falls and that some of them stationed themselves outside of the building in which the local Board office was located and some of them stationed themselves in an office that adjoins the Executive Secretary's office in the local Board and that office apparently is an insurance agency known as the Faulk Insurance Agency and that those agents remained on those stations until about 11:30 and at 11:30 the group of agents that were in the Faulk Insurance Agency were notified by walkie-talkie that somebody was approaching the window of the reception room to the local Board office.

Now the testimony you will hear will be to the effect that the reception room is on the back wall of the office building and by the back wall I mean the one away from the street, and that abutting the building that the Selective Service building is in is a one-story building which comes up and comes very close to this window and from the window to that building the testimony will be that there is a catwalk of sorts so that a person can climb out of the window of the reception room and go to a catwalk and walk to the roof of the adjacent building and from there go to a fire escape which 's provided for situations when it might be needed.

The testimony will be that at about 11:30, and after this little walkie-talkie communication was heard, that the agents in the Faulk Insurance Agency heard some noises toward the back of the building. They heard a sound which they characterized as a screen being cut and they heard a noise which sounded like a window being opened and then they heard footsteps and sounds and noises in the rear of the second floor area of this building.

A little later they heard the noise of breaking glass. Their testimony will be that the door from the hall to the Executive Secretary's office has a -- or had at the time of this incident, a glass panel. They heard some breaking glass and they heard people entering the Executive Secretary's office of the local Board.

A short period of time passed and during that time they heard some sounds that sounded like metal banging against metal and four agents who were in the Faulk Insurance Agency and one local police officer of the Little Falls or Morrison County police establishment left the Faulk Insurance Agency to go down the hall and ascertain what was going on in the Executive Secretary's office.

Their testimony will be that as they left and as one leaves the Faulk Insurance Agency and turns left down the hall the first door one comes to is the door from the hall into the Executive Secretary's office and on further down the hall, the testimony will be, there will be the door into the reception room.

Two of the agents proceeded down the hall and entered the reception room. Apparently the people that were in the Executive Secretary's office heard that door open and they immediately went to the door leading to the hall and when they opened it they found two agents standing there and they went back in the room and then the two agents that were standing at the door to the Executive Secretary's office entered and there found Mr. Therriault and Mr. Kroncke and at that time announced that they were officers of the FBI and arrested them.

One of the agents took pictures of the room, which will be offered in evidence and which will show you the condition of the local Board office immediately after the arrest, and it will show the things that were found there.

The testimony will be that the agents found in the room certain garbage can liner sacks, one of them was on the floor and had in it some records of the local Board. The testimony will be that those records -- I take that back -- the testimony will be that certain file cabinets which were locked had been sprung in an attempt to open them and the testimony will be that found in the room were various tools. There was a short pry bar, claw hammer, two screw drivers, one or two pen lights.

On the floor there was an army type knapsack or field pack which apparently had been brought by the defendants and had the certain tools in it and in that knapsack was found among other things some charcoal lighter, a can of the fluid used to light charcoal for home charcoal fires, and matches and some other tools. These tools will be offered

in evidence and you will have a chance to see what was found in the local Board.

The agents will testify that they took pictures and they will offer the pictures of the condition of the reception room after the arrest and that will show the open window, the cut screen and certain potted plants which were kept on a ledge directly in the center of the window and had been moved over to a table.

The clerk of the local Board who was employed by the local Board as an assistant clerk at the particular time that these events took place was on duty on Friday, which is the tenth, and that when she left the office the office was locked and that none of these tools or the garbage can liners or anything of this nature was in fact the property of the local Board.

The FBI agents will testify that prior to entering into the Faulk Insurance Agency in fact they checked the FBI office -- the local Board office and the reception room and found the windows closed, the doors locked and that at the time that the individuals Mr. Therriault and Mr. Kroncke entered the building, in fact the doors were locked and the window was closed. Now the garbage can liner sacks or some of them have cut in them some holes -- diamond shaped holes apparently for air access to the bags and I guess I said before that some of the files had been put into those bags or one of the bags. Two empty bags were on a table and that was the posture of the situation when the agents entered the office.

We believe when our case is completed that you will be convinced that we have shown you beyond the reasonable doubt necessary that there was an attempt to remove and destroy files. I should mention in closing that the FBI agents searched the rear of the -- or searched the area and found the car which had a license number which was licensed to Mr. Kroncke's family; that a search warrant was later obtained for that car and that pursuant to that warrant the car was searched and in that car was found some letters addressed to various newspapers in the state.

There was a letter addressed to the Little Falls newspaper in an envelope prepared for mailing which said -- which started off "We have destroyed the 1-A files of your Board", and then you will see the letter and it goes on to offer a rationalization for

doing that and three other letters to, I believe, the Associated Press, the United Press and the Minneapolis newspapers of similar tenor and import.

Those letters were found in the car found at the scene owned by Mr. Kroncke's family, so we will be presenting the case roughly as I have described it to you and as I say, we believe it will show to your satisfaction the facts set out in the indictment. Thank you.

THE COURT: Mr. Tilsen, do you wish to make your opening statement now or later?

MR. TILSEN: I wish to make it at this time, Your Honor.

THE COURT: All right. You may.

KEN TILSEN'S OPENING ARGUMENT – LEAD LAWYER

MR. TILSEN: Ladies and gentlemen of the jury, as you have already heard my name is Kenneth Tilsen. I am an attorney and I am representing the defendant Mike Therriault who sits at the end of the counsel table and associated with me in the defense is Mr. Wells.

When I'm through speaking to you Mr. Kroncke will speak on his own behalf as he's representing himself, and I certainly don't intend to take away anything in the comments I say from Mr. Kroncke's remarks.

From time to time Mr. Wells and myself may serve or consult with Mr. Kroncke as advisors, but he is his own lawyer and will speak throughout the trial on his own behalf at all appropriate times.

Just in passing I would say this: that because Mr. Kroncke in his modesty might not tell you this, he is a -was at the time of his arrest - a lecturer at St. Catherine's College in the city of St. Paul, of theology and an employee of the Newman Center, a Catholic student organization on the campus of the University of Minnesota.

Mr. Therriault, my defendant, the gentleman that I'm representing here, was born -- he's twenty-three years old, was born here in Minneapolis, attended grade schools in Minneapolis; Incarnation, Basilica of St. Mary. He attended DeLa Salle, spent a year at Nazareth Hall in preparation for the seminary, ultimately graduated from public school in Minneapolis, has attended the University of Minnesota with sufficient degree credits to obtain a Bachelor of Arts from the University of Minnesota in psychology.

Mr. Therriault, and I think Mr. Kroncke too, do not deny that they were present at the time and place mentioned at Little Falls and on the contrary they assert that they were present. They don't deny that they were present for the purpose of removing and destroying records of the Selective Service system and on the contrary Mr. Therriault asserts that he was present for that purpose and he says that his actions that day result from a series of circumstances that he will present before you, which circumstances required that he take the actions that he take, that he was compelled by the necessities of the circumstances to do what he did, and as such was justified.

To explain the justification in greater detail, more detailed explanation will come both from the court and in our final argument, but before in order that you understand the nature of the testimony that we will present, the argument and the testimony that we will present is analogous to the testimony of a man who is charged with larceny for stealing a boat and he responds by saying that there was a man drowning and I stole that boat in order to save that man. Under American law and the law of most lands if that is proven to be the fact, he would not be guilty. If he were to destroy some property in order to save that man he would not be guilty. Many other analogies also can be drawn —

MR. ANDERSON: Your Honor, I'm going to object to counsel arguing on an opening statement, whose purpose is to describe the facts, if any, in the evidence.

MR. TILSEN: Well, I intend to cut, to simply make one more statement in that regard and then move on to greater detail of the testimony, Your Honor.

THE COURT: Well, the purpose of an opening statement is to outline what you expect your testimony to show, not your legal theories.

MR. TILSEN: Well, that's correct, but I want them to understand why it is that we are showing them, if I could just --

THE COURT: All right. One more statement.

MR. TILSEN: All right. Just one more perhaps analogy to the situation comes to my mind from a comment -- from a circumstance that happened from a law associate of mine who had a farm -- as a child grew up on a farm in Nebraska and there was a flood and it became necessary to destroy and blow up with dynamite a United States highway, and the brother of my associate, unable to reach any public officials, took it upon himself to so blow up the highway in order to save the homes, lives and farmlands of several settlements.

The principles involved in those circumstances are the principles to what we allude in this case.

What will our testimony then show and how will we show it? We intend to produce testimony concerning the character of the records that Mr. Therriault allegedly attempted to destroy. These records are records by which individuals are selected out for service in the armed forces.

The character of the records are no more irrelevant to this matter than the character of the records would be if these were records perhaps of Jews being selected out for burning in the ovens of Dachau.

It is our position and we will produce evidence to show that as a result of these records, persons enter the armed forces with a chance of between five and eight out of ten of going to Vietnam. Testimony will be presented by Mr. Andrew Glass of the National Journal who conducted, together with the United States Defense Department,

an exhaustive study of the role of the Selective Service System in the war in Vietnam.

This study which appears in the National Journal and in the Congressional Record reveals that eighty-eight per cent of the infantry men in Vietnam are selected through the process of the Selective Service System. It reveals further that consistently the chances of a draftee being killed and the chances of a draftee being wounded in Vietnam have been twice that of a nondraftee.

Further we will have testimony concerning the effect of these records on a young person of our community and of the country generally insofar as forcing them to become criminals in this society.

Our testimony will show that there are presently pending for trial in the District Courts of the Districts of Minnesota, approximately one hundred cases involving persons who have refused in one fashion or another to cooperate with the Selective Service System.

The testimony will show that nationally approximately three hundred and twenty-five prosecutions for violation of the Selective Service Act are being commenced per month.

Mr. Dave Gutknecht, a young man who was a founder of the Twin City Draft Information Center here in the city of Minneapolis, a person whose name has been associated with a well-known Supreme Court decision ruling that the delinquency regulations of the Selective Service System were invalid, will testify in detail to a study he conducted of the numbers of persons involved in Selective Service refusals and the numbers of persons who have been otherwise personally forced to take a position in apparent violation of the laws of the United States.

Following this testimony it is our intention to present a number of witnesses -- actually only, I believe, three in number -- four -- well, there's five I guess, who will testify about certain aspects of the character of the war in Vietnam. We will have two young men, veterans of the war in Vietnam themselves, who will testify.

Gordon Neilson, Minneapolis, an ex-Marine in the Third Battalion in Vietnam from '66 to September of '67 was a section leader of squads called the Igniting Eye which

was a reference to the character of the squad and what the squad did.

He will describe in detail -- some detail, the nature of search and destroy missions, free-fire zones and the kinds of things from his point of view that he saw and observed.

In addition Robert Anderson, Minneapolis, an any veteran, holder of a Bronze Star in Vietnam with the 198 Infantry Brigade from October of '67 to November of '68 will describe the security support actions in search and destroy missions. He will describe the orders to destroy hamlets including shooting the pigs and cows, to destroy all the food supplies, throw it on the ground, to break up hammers and saws and anything upon -- with which persons could rebuild their hamlet.

Following that testimony will be presented by Dr. Arthur Westing, Professor of Biology at Windham College, Putney, Vermont. He will present a report prepared for the American Association for the Advancement of Science on the use of herbicides in Vietnam by the United States military. This report comes about as a result of the appointment of a Dr. Matthew Meselson Professor of Biology at Harvard by the American Association for the Advancement of Science of a special commission to study the herbicide assessment.

Dr. Meselson in turn appointed Dr. Westing who will be here from Windham College to direct the study.

Dr. Meselson, Dr. Westing and others had spent several months in Vietnam after meeting with a large group of scientists and laying out the pattern of the study. This study was reported during the last -- just before New Years at the meeting of the American Association for the Advancement of Science in Chicago.

Fundamentally this study describes that at least a fifth of the 1.2 million acres of mangrove forests in South Vietnam have been destroyed. It estimates that 600,000 persons have been cut off from their normal food supply by the spraying of rice fields and other crops.

Dr. Westing will show slides that he took of the character of the destruction of the countryside in Vietnam as a result of the policies of the American military related

directly to the records involved in this case.

Two additional witnesses will also deal with the question of the character of the war in Vietnam; Dr. Romeyn Taylor, the University of Minnesota and Daniel Ellsberg of the Center for International Studies, the Massachusetts Institute of Technology. Dr. Romeyn Taylor is a professor of Far Eastern history, and author. He's written extensively in the last ten to fifteen years on the Far East, the nature of the war and what is happening. He, along with Dr. Ellsberg, will detail facts concerning the present situation in Southeast Asia and the escalation of the war in Southeast Asia. Dr. Taylor will rely heavily on a report that was issued by a subcommittee of the judiciary of the United States Senate which subcommittee of the judiciary was dated September 28 -- staff report was dated September 28, 1970.

The judiciary committee was headed by Senator James Eastland; the subcommittee entitled the subcommittee on refugee and civilian war casualties and problems in Indonesia was headed by Senator Edward Kennedy.

The report continues the subcommittee's effort to document what it calls the devastating impact of the Indochina war on the civilian population. It talks about a current widening warfare, and expanding U. S. involvement in the war. It documents the fact that millions of persons have been displaced within their country or are fleeing across international boundaries.

The report dated, as I say, the end of September of last year says that in Cambodia alone over the last four to five months the population of Phnom Penh (phonetically) has doubled from 700,000 to well over a million persons. The report finds that hundreds of new refugees are being generated every day. It concludes and Dr. Taylor will conclude. Mr. Ellsberg will conclude that despite the claim that the war is winding down we find that by official records at least five thousand civilian war casualties are being admitted to government of Vietnam and U. S. military hospitals every month, an admission rate which has varied little in recent years and fails to reflect the large numbers of civilians killed outright or treated elsewhere or not at all, and several military regions and the details this will be testified to by the witnesses, the

actual rate of hospital admissions of civilians has increased.

In the Danang area the report predicts a continued generation of war victims at the level of 10,000 persons per month. The figures bring the cumulative total for civilian war casualties since early '65 to Vietnam to over one million including more than 300,000 deaths.

It summarizes itself; well over 500,000 refugees remain on the books and thousands more are falling victim to the war each month. At least three million refugees not on the books remain in camps or urban slums to which they moved in recent years. That's for Vietnam.

In Laos the number of officially recognized refugees is approaching 300,000. In Cambodia in less than six months of the war, the war and related events have probably generated a million refugees. I think it's important for me to tell you a little bit about Daniel Ellsberg who, as I say, will be one of the witnesses to testify to these events. Mr. Ellsberg has served as an advisor to the White House on foreign affairs for the last three or four administrations. He served in the Defense Department in Vietnam at a GS grade of 18 which is the highest civilian grade in the Defense Department. His service in the Defense Department in Vietnam was equivalent to a Lieutenant General. He served -- following his period in Vietnam which was '64 to '65 he spent '66 to '67 with the State Department in Vietnam and his service in Vietnam in the State Department was what's called an FSR rank of 1. This is the highest rank in the State Department of the United States below an American Ambassador level. The only persons of higher rank in the State Department than Mr. Ellsberg when he was in Vietnam, was the Ambassador to Vietnam.

He will testify to his special observations and the fact that he has up to this year had access to and remains available to him the details of the information concerning the character of our war in Vietnam. In addition to this

Mr. Ellsberg will talk about and give you the benefit of some expert opinions as to what's happening.

It is his expert opinion, and he will so testify, that the war in Vietnam is continuing

primarily as a result of massive misinformation by the administration, Defense Department, State Department, of Congress, of the press and of the public. It is his observation that the war in Vietnam is not winding down and is not likely to wind down; that it is in fact simply changing its form and character and that we will see in this current year an increase in the destruction of the life of the people of Vietnam, in the society of Vietnam on a greater scale than we have seen in the past.

As a person intimate with the decision making process he has testified to this effect before the Senate Foreign Relations Committee of the United States Senate. He has written widely, particularly on the decision making process that got us into Vietnam and the decision making process that keeps us there and he concludes and will so testify that the fundamental questions that keep us in Vietnam are the moral questions.

The reasons we are in Vietnam is because the decision -structure of decision making as such that people at every level of decision perceive their interest to be in the interest of keeping us in Vietnam and not ending the war. At every level of our government a person says the facts as they are, who says we have lost the war and we should be out, immediately removes himself from the decision making process, and in order to stay in the decision making process must continue the argument that has kept us in.

As a result at the highest and lowest administrative levels decision making is rampant with the self interest of the deciding person who knows what the truth is, who knows what the facts are and who yet makes a decision contrary to the truth and the fact because his own interest, his own position and his own status would be jeopardized.

Mr. Ellsberg will testify that in his opinion the most important and most fundamental things that can be done to change the war, to possibly get us out and as I say he's exceptionally pessimistic about it ever happening, are those things that force individuals to confront the moral issues and to confront where their own judgment should lie.

The only possibility of ending the destruction of millions of persons, in Mr.

Ellsberg's opinion, is to force people to make a moral choice -- an individual and personal moral choice.

Two other persons will testify as to the felt and observed necessity of Mike Therriault in attempting to destroy the Selective Service System because of the necessities that he felt and observed. One is Mary Davidov, a local leader of the peace movement, a person described I guess the best as a radical pacifist, a person who has a long history of involvement, first in the civil rights movement then in the peace movement, who will describe the impossibility from a local point of view of expecting change to the fundamental kinds of problems that we have through electoral politics alone and why it becomes necessary for persons to take the kinds of action that Mike Therriault and Frank Kroncke took on that day in Little Falls.

In addition Dr. Staughton Lynd, well-known historian, writer, author and lecturer who has written at least three or four books on the specific area, will talk about the role of specific acts, albeit technically illegal acts, in changing history and in changing events; events such as the Boston Tea Party and its relationship to our present freedom from England. Events such as John Brown's illegal raid on Harper's Ferry and its present fact that we don't have slaves in America, and a series of such events primarily in American history and their observed documented relationship to the circumstances, to the historical context in which they took place and what could reasonably be expected to flow from such events.

Based upon this testimony it will be our position at the conclusion of the case and we will ask you to find that the evils sought to be avoided by Mr. Therriault, that is the evils of the forced criminalization of young men of Minnesota, the evils of sending young men to die in a war and the primary evil of the continuation of a war which has destroyed the life, society and structure of a whole nation, perhaps three nations, that these evils sought to be avoided by Mr. Therriault are far greater than those sought to be prevented by the law defining the offense of attempted interference with the Selective Service System.

We will ask you to find that he acted to avoid these evils, that he believed his act

was necessary, that such belief was reasonable and that based upon that he should be acquitted by you, the jury. Thank you.

THE COURT: It's probably an appropriate time, although we started a little late this morning, for a morning recess. I will ask that the jury step down and pass out the side door here and then we will adjourn court and we will have a ten minute -- ten to twelve minute recess.

(Whereupon, the jury was excused from the courtroom.)

THE COURT: All right. We will stand in recess.
(Whereupon, recess taken.)

COURT: Mr. Kroncke, do you wish to make an opening statement now or later?

DEFENDANT KRONCKE: Right now, Your Honor.

THE COURT: All right.

FRANK KRONCKE'S OPENING ARGUMENT – "MINNESOTA 8" AND ATTORNEY PRO SE

DEFENDANT KRONCKE: Several personal things: first of all I use this because it's more comfortable – I hope you're comfortable too - but I teach.. I'm used to it.

The other thing is that I would appreciate it if I'm talking too fast -- the court reporter is going to try and stop me -- but if you don't understand me I wish you would indicate that. I do want to communicate with you.

Just several reflections upon what Mr. Tilsen said.

Some people have often remarked that one of the characteristic of American people is that they have to learn to read statistics with feeling. This trial is going to be full of a lot of statistics and I want you to try to feel what those statistics mean. The type of testimony that we are going to bring, is going to try to speak to you why we did do what we did, Mike and I, and I must admit that what the prosecution said is true. We have no reason to deny that. We have every reason to try to tell you why we did it. It was not just a careless, accidental type of act. It was a very well, premeditated and thought out act that took a lot of searching on our part to do and entails lots of risk that we knew ahead of time and I want you to understand why that happened, and I guess that will be my burden to try to enable you to come to that understanding.

I, myself, will be one of the witnesses but I won't be the first. In the testimony that I would like to elicit I think well have to try to show you to understand something about myself; why I come from a very sort of traditional type family, nine kids in the family, five sisters and three brothers, grew up in the East Coast and very strict Roman Catholic family, went to mass and communion every day, went through the whole total Catholic school system all the way up through high school, was in the seminary studying for the priesthood for a while; left the seminary went to St. John's College up here in Minnesota, graduated with honors from St. John's.

Pursued a degree in theology, a Master's Degree during the period over a great occurrence in our church called the Vatican II Council.

Now part of the difficulty also of what I'm going to say is to enable you to understand something about Roman Catholics. Now I'm going to be speaking of that tradition and I don't know if you are familiar with it or not, but I hope at least you will be tolerant if now and then I slip back into -- or my witnesses slip back into very theological language, but I would like to explain what -- and my witnesses will try to set the background and give testimony why it was necessary for someone who has taught college theology for a couple of years, who has been pursuing the doctoral degree, who has become a conscientious objector against the war has worked within the system. I took alternative service. I decided to do my service to the country where I was working

at the Newman Center.

While I was at the Newman Center I not only taught theology but I was a preacher. I preached at mass on Sunday. I had direct contact and a certain responsibility for the spiritual growth and direction of the community there, and why during that year with my contact, with my concern about the war, about my own salvation, about the people that I was dealing with it became necessary to do something which probably in your mind seems disconnected as raiding the draft board, as they talk about it, going up to Little Falls, Minnesota in an attempt to make a statement to the moral consciousness of a community that I was serving, in particular the Newman Center community, and to people like yourself.

You may not want to discuss the issue of the war. A lot of us don't want to. For many years in my life I didn't want to. I'm twenty-six and it took me another five years out of college before I finally decided to try to do something.

To enable you to understand why we did what we did, why it was necessary, I want to bring forth witnesses who will testify to what is happening in the American culture and also what is happening within the Roman Catholic Church. First, three witnesses that I will bring are what I call "cultural witnesses", people who will talk about the culture. The first person will be Mr. Alan Hooper who is a professor at the University of Minnesota in Genetics and Biochemistry. Mr. Hooper teaches a class there of significance called The Biologist as Scientist, Citizen and Educator, and he will in general elicit testimony as to the influence of science upon the American culture, specifically as it influenced Americans during the '40's and how this interest in science gave many people visions about what could be done with American culture.

He will talk about a progressive change in attitude in the American culture towards what we could do with science. He will talk about the visions that encourage many people, especially in the '40's and '50's, to go into the scientific field and he will talk how even within the profession of science it was indicated at the very recent American Academy for the Advancement of Science meeting that the whole approach

to looking at science and the uses of science in the society have changed; where people in the past had looked at science and young men had been encouraged to go into the field, that today there is a growing concern among Americans, especially signified in the young, the youth culture in the students, as his course indicates, where they are asking the biologist, the scientist and other professional scientists to account for themselves what they are doing as citizens as well as what they are doing as scientists.

Relevant issues to this and to this trial will then be the effect and relationship of the scientist to the war and development of our national defense and how this has influenced young men's understanding of what is actually happening to the American visions that were offered in the past.

He's also an extensive lecturer in the ecology movement and some references to that field will also be brought in.

Along this culture line we have a witness also, a professor, David Noble. Professor Noble is also from the University of Minnesota. He is a professor in what is called American Intellectual History. He is a very popular professor on campus. He was twice voted on the campus the best teacher. I think you will enjoy listening to him. This is quite an honor. People have enjoyed listening to him.

What Mr. Noble will specifically point out in view of American culture is the developing understanding that many of us in America have sort of adopted America as a religion. This is called in professional terms Civil Religion, the belief in civil religion and he will try to show how, in the course of our history, that this country was founded by men who were escaping persecution in Europe and had come to America with the vision that this was the new world and that God had given us a new errand, that he had established with us a covenant. These terms, errand, covenant, are actual terms used by the historians who have talked about America to describe how we view ourselves as a people and therefore he will show how in the writings of the major historians of our culture Americans have gathered the idea like in foreign policy that it is our responsibility to save the world and that therefore this, in a sense, has gotten carried

away by many people and has resulted in the inability, in a sense, in the present situation for example of getting out of Vietnam, but the inability to admit that Vietnam is not God's land alone, that we are part of the world and we must take our part in the world and admit mistakes when we make them.

In bringing out these ideas Professor Noble will talk about the peculiar place of men like myself and Mike in American history, that we are not unique, we did not just rise up in the 1970's but that there have been problems in our culture all along with determining which came first, the rights of property or the rights of people, and the most clear example that I think he will be talking about is the controversy around the Civil War when it became incumbent upon some people, specifically in the North, to violate the law of the land, the slavery law and free people from slavery and how breaking of the law by concerned citizens is a very, shall we say, American thing to do at times given certain circumstances.

The third culture witness will be a professor, Jim McClendon. Mr. McClendon and I are personal friends. He taught me when I was in graduate school. Though I was taught at a Jesuit Catholic college in San Francisco, Mr. McClendon is a Southern Baptist and he will specifically give some witness to the relationship between theology and cultures, how in the history, specifically of Christianity, religious people have related to the cultures that they have existed in and he will discuss how it is the usual point of view of Christians that they obey laws, that they try to build a good society, but he will also point out that there are certain points in certain cultures where the individual had to refuse to obey the state in order to be true to God.

The most clear example in Christianity that might be aware to you, is that persons only had to refuse to worship the Emperor which was the primary law of the land in Roman society, and in refusing to worship the Emperor because they claimed allegiance to God they were persecuted, and regardless of that persecution for the first four hundred years of Christianity thousands of people preferred to die than to live obeying what we can say was a mere law.

I will also be utilizing some of the witnesses that Mr. Tilsen is going to call forth,

and the particular thing among others that I might pull out of them, that I want to talk to you about, is the very peculiar nature of the Selective Service System. Our attack on property, our ability to be -- take ourselves -- I was teaching like I was in the middle of summer school teaching forty nuns who may teach your children, I went out one Saturday and the next Monday they found out I was arrested in jail. A lot of them said, you know, "Why you have been teaching us theology, you have been teaching us about how to live in the world", you know, "Why did you do it", and one of the reasons that will enable you to understand why I took myself to try to learn rather unsuccessfully certain trades like breaking and entering and learning about what goes on in the draft board and what makes a draft board run and what would, in the sense, be a very symbolic protest, why I took myself to do this is that the Selective Service System is not like any other property system in this society.

It is the only one, and I think you will have to reflect upon this, in which a young male in the society has absolutely no choice but to relate to. When a man is eighteen, regardless of his physical health, stature, capability, mental condition, he has to sign up with the Selective Service System. They keep your file on this person which is not his personal file, he cannot take that file away from the Selective Service System, he cannot sell it, he cannot destroy it, he cannot do anything with it. It is a very peculiar piece of property which some people think is very essential to developing our society.

We must have people in the military, and only in a sense when you understand, as some of the political" witnesses will show. that there has been in the last fifteen years a real attempt on the part of the people like myself, like some of the people in the audience and like Mike, to bring this to the conscience of the people, that the peculiarity of the Selective Service System, that we have marched, that we have written petitions, that we have set up draft counseling centers, that we have taken to working for peace candidates, that we have believed along with the American people that the last three presidents were going to end the draft, that they were going to end the war, that we have really tried to work through the system, that men have come into the courts through resisting the draft and have said -- tried to bring the issue into the courts and as

the Minneapolis paper about a month ago indicated, the United States Supreme Court for the seventh time refused to consider whether the Selective Service system is constitutional.

That is a right that we want to bring out and let you understand that we, as people, in this democracy have, to redress our grievances and we have tried to work through the system and the only people who have not worked through the system, we will elicit in testimony, are the people who are in the system, the people in power, that there have been thousands and millions of people who have descended upon Washington D. C. to make this moral protest over the years and we have exhausted all our means to bring to the public consciousness the nature of the system and what it is doing to our culture and when you understand that it may give you a better background to understand why we have "acted" I guess in a lawless manner to bring people to a consciousness of what must be law and order, the preservation of unity life and the giving of dignity to people.

I will have four additional witnesses who will be my last witnesses, who will talk about and try to establish for you an understanding of this Roman Catholic tradition that I have come out of, and at present and I hope -- he was sick this morning-when I called him -- but a Bishop of the church will be coming here, his name is Bishop {Wenceslao} Padilla from Puerto Rico. He's a member of the hierarchy of the church. A Bishop, for you who don't know, is considered to be the person through whom the tradition is carried on in the church. He is set aside by the community, he is consecrated, which is a process of, we believe, in making a man holy and he stands for us like one of the Apostles in the New Testament stands. He is the man to whom we look for guidance and for guidance in our own moral judgments, look for -- he's a spiritual father in a very real sense of the term.

Bishop Padilla will come here and he will talk about the principles of this Vatican II, this Council which was held, which is a unique Council in many ways because it is the first Council in our own history of the church to try to deal with social, economic and political questions.

You find in the Council, which is the authoritative institution of our church, discussions about war, about the Christian responsibility, about economic conditions. These were issues that were never dealt with before. This is a case of a new consciousness in the church, and he will talk about how many Christians in responding to this have found themselves out of, shall we say, the theological classroom and into the streets trying to work with the people.

He will give you the hierarchal viewpoint upon what is happening in my church, and he will try to give you an understanding of how and why people who have broken the law in claiming to be doing Christian acts.

The second theological witness will be a young layman whose name is Mark Jesenko, who was also a seminarian for a while and who I personally knew, we went to graduate school together in San Francisco, and Mark and I have co-authored a paper which I will somehow try to bring into the trial later on, which traces the theology, which supports the type of social involvement that men like myself are in.

He will give a theologian's and a layman's view about what is happening in the church, about the response of this Vatican II. It is interesting to know that he does not consider himself a Catholic radical, which is what I'm called, a Catholic radical, so he is in a sense, even though we worked on the paper together, he does not exactly do what I do, and so his view I think will be very helpful though in giving a rounded view of an individual's -- we are called laymen -individual's response to what is going on in our church.

Another witness will be Father Al Janicke. Father Janicke is very much in this tradition, called the Catholic radical tradition. He, himself, has been a man who as a priest has responded to social-political issues and he has just gotten out of jail. I guess you should know on the side that a lot of people who have been involved in social-political action and who as Christians have found themselves in jail, it is not uncommon since the civil rights movement to see the jails, not full of but at least spotted or sprinkled with nuns and priests and brothers of the Catholic faith, and Father Janicke will explain his response as a priest to everyday problems of the people.

He has worked here in Minneapolis in parishes, he was serving a parish when he was arrested. His name is -- and his actions have been discussed in the city and there have been many of his parishioners who have looked towards him as a sort of moral leader in understanding how we must begin to look at our commitment in the world as Catholics.

He will also talk about the tradition of Christian pacifism and try to relate how this act that I have done is a proper Christian act, not just an act inspired by Christian thoughts.

The difficulty is to allow you to understand how we view this as a Christian act first and a political act second. Father Janicke will speak to that.

The last person I have to talk about is a Father Bill Hunt. Father Hunt is a professor at the Catholic seminary here in St. Paul. He is a professor of theology. He has also just been appointed the head of the Newman Center on campus which is the center which is responsible for the spiritual development and welfare of all the Catholic students at the University.

Father Hunt will probably identify himself as a conservative, which he is, but he will also talk about Vatican II, about the changes in the church. He will talk about how he, as a priest, sees men like Father Al Janicke and myself doing in the contemporary world as we see it, you know, priestly acts; how we fit into the overall desire of the church to care for people; how our acts fit in there.

He will try to help, I think, give you the final touchstone from a conservative point of view from a man who is not involved in doing what we do, how he sees us relating to what he does do, so I think the testimony of these witnesses will try to speak to why the act was committed.

They will enable you to understand, I think, what was going into my mind and what I was actually doing when I did that act.

When I did that act I was not, I think the testimony will bring out, just breaking and entering, looking for personal gain, looking for any type of fame or status, but in doing that act I was doing and responding to my Christian faith and specifically to my

Catholic teaching.

The final thing that I would like to say -- this will also be some of the testimony that these people will speak to--is read this quote from Vatican II which I will probably have some of the witnesses reflecting upon and bring into their testimony. It's under a chapter called "Reverence for Human Life", or Reference for the Human Person, and this is all a direct quote; it says "In our times a special obligation binds us to make ourselves the neighbor of absolutely every person and of actively helping him when he comes across our path".

It continues further down in the paragraph "Furthermore, whatever is opposed to life itself, such as any type of murder, genocide" -- which is the wiping out of a whole race of people -- "whatever violates the integrity of the human person such as mutilation, torments inflicted on the body and mind, attempts to coerce the world, whatever insults human dignity such as subhuman living conditions, arbitrary imprisonment or slavery, all these things and others of their like are infamies indeed. They poison human society", and that is what we are going to try to speak to, is that the situation of the war which the Selective Service keeps going is poisoning the American society and that we have to respond to try to prevent that from happening, and that is the reason why we acted.

Within its own peculiar wisdom let me end by just saying that this is how -- and reflect upon what is actually happening to America because of the war -- this is how Vatican II concludes the statement, that "thought these things which people do poison the Inman society, but they do more harm to those who practice them than those who suffer from the injury".

THE COURT: Mr. Anderson, are you ready to proceed?

MR. ANDERSON: The government is ready to proceed, and the government calls -- I might say, Your Honor, that I would suggest that witnesses not testifying, both defense and government, not be in the courtroom, be sequestered. Agreeable with --

MR. TILSEN: Well, I would have no objection to your witnesses staying in and I would make no request to sequester your witnesses. There is, I think, one person in the courtroom who is a prospective witness and I suppose the court has the power, it's Mr. Davidov I think was or is present. Yes, he is. Otherwise there aren't any other persons, and obviously their testimony isn't going to be affected by hearing the testimony of your witnesses, so I would think that under the nature of the defenses raised I have no objection to all of your witnesses hearing each other and would ask not to sequester the witnesses just as a courtesy, especially to people who might be coming from out of town. None of their witness's testimony will be affected by anybody else.

DEFENDANT KRONCKE: I agree with Mr. Tilsen.

THE COURT: Well, what do you have in mind as to why they should be? Is there

--

MR. ANDERSON: Well, I think that witnesses just as a matter of principle can be sequestered at the request of a party so that their testimony relates only to the events to which they are testifying and are unrelated to what's happened at the trial.

THE COURT: Well, I know and frequently I do enter such an order. I don't really see the necessity for it here, though, and so I will deny that motion.

MR. ANDERSON: The government will call Mr. Ray Williams.

RAYMOND WILLIAMS, FBI

a witness called by and on behalf of the plaintiff for examination, having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION BY MR. ANDERSON

Good morning, Mr. Williams. Could you tell the court where you live?

A I live in Minnetonka, Minnesota.

Q And where are you employed, Sir?

A I'm employed with the FBI at Minneapolis.

Q And what is the nature of your duties with the FBI?

A I am a Special Agent and Investigator.

Q How long have you been so employed?

A Nineteen and one half years.

Q And how long of that has been in Minneapolis?

A Almost nine years.

Now going back to July of 1970, Mr. Williams, specifically July 10, 1970 --

THE COURT: Excuse me just a minute.

(Discussion off the record.)

BY MR. ANDERSON:

Going back to July 10 of 1970 did you have occasion to be in the city of Little Falls, Minnesota?

A Yes, I did.

Q And when did you arrive in-Little Falls that day?

A Oh, about six p.m.

Q How had you traveled to Little Falls?

Q A By automobile.

Q Where did you leave from?

A Minneapolis.

Q Was anyone with you or were you alone?

A No. There were other individuals with me.

In your party was there more than one car or just one car?

A More than one car.

Q Who was in the party -- or how many agents were in the party that went to Little Falls?

A There were six.

Q Do you remember their names?

A Yes, I do.

Q Would you tell the jury who they were?

A William Lais, James Riley, James Bentley, Charles McCullough, myself and Donald Jackson.

Q Now on your arrival in Little Falls, what did you do?

A We went to the police station -- Little Falls police station.

Q And who did you meet there, if anyone?

A We met the Chief of Police and the Sheriff.

Q And were all six of those agents at that meeting or was it just some of them?

A No.

Q Were you there?

A Yes.

Q And who was with you?

A Mr. Lais.

Q And what happened at that meeting or -- what was the purpose of going there?

A Well, the purpose of going was to tell these individuals, the local law enforcement agencies, what might happen in their town that night and that we were there to check to see if anything of this nature did happen and exercise our jurisdiction.

Q After that meeting what did you do?

A After that meeting we ate.

Q Okay, and what happened after you had dinner?

A We came back to the police station, stayed for a while and then we left the station.

Q Where did you go when you left the station? A We went to a building located on Second Street and East Broadway.

Q And why did you pick that building out and what is the building?

A Well, the building is a two-story building which houses the Selective Service offices.

Q And why did you go there at that particular time? A Well, we anticipated that there would be some efforts -- an attempt to enter this building for the purpose of doing damage or in some way affect the draft records and we wanted -- if this did happen we wanted to be in a position to exercise federal jurisdiction, which is a violation of federal law.

Q About what time was this?

A The time we went to the building?

Q Right.

A About nine o'clock.

Q And were you familiar with the layout of the building and the floor plan, this type of thing, when you went at that time?

A Generally.

Q And how had you become familiar with the building?

A Well, we were familiar with the exterior of the building by driving past it and around it.

Q I see. Now what did you do when you arrived at the building?

A Well, we checked the layout of the interior and the office -- one of the offices of the Selective Service Board and got a general layout of just what the possibilities of entering might be.

Q Then did you enter the building at that time?

A Well, we were in the building when we were doing this checking.

Q Excuse me. What floor was the Selective Service office on?

A On the second floor. It's on the second floor.

Q And how many rooms does the Selective Service office use?

A Two.

Q And I'm wondering if you could, with a piece of chalk on that blackboard, just

make a very rough sketch of the layout of the second floor of that building with particular reference to where the Selective Service office is?

A It will be very rough, so -- (indicating).

Q Now just so far as you have gotten, does that represent generally the second floor of the building?

A Yes. This is the second floor and these are the stairs. The stairs going up -- leading from the front door up, fairly deep into the building, almost halfway back.

Q And is that front door on a business street?

A Yes, it is.

Q All right. Go on.

A All right. Do you want me to put in windows?

Q Well, you have drawn at least three rooms at one end of the building there. What are those rooms?

A These two rooms are --were occupied by Selective Service offices.

Q And you have drawn what appears to be doors. What are those?

A Those are doors.

Q And do they lead out onto the hall then?

A Yes. They lead off the hallway.

Q And is there a door between the two rooms of the Selective Service office?

A Yes. That would be this door (indicating).

Q Okay. Are there windows?

A Yes. One window particularly right at this point (indicating).

Q Okay. Do you remember in particular any other windows?

A Not particularly.

Q Now the room just to the front of the building from the Selective Service office rooms, what is that?

A This room?

Q Yes.

A That, as I understand it, is a -- I believe a real estate office.

Q And does it have a door leading to the hall?

A It has a door located at this point (indicating).

Q Does that door face straight out onto the hall like the others do?

A No. It's somewhat of an angle, about like that (indicating). It faces back this way a little bit. The hallway cuts back a little narrower in the rear -- or more towards the front. All right. Going back to the two rooms that are occupied by the Selective Service local Board, did you have occasion to go in those rooms when you came to the building that night at around nine o'clock?

A Yes.

Q And who was with you when you did that?

A Well, all the fellows in the building went into these -- at least this room (indicating).

Q I see, and what is in that room particularly?

A Well, it's more of a reception type room. There's a desk and in comparison to, say, this room where the file cabinets were, apparently all their files are stored.

Q Fine. You can sit down there if you want. I think we have a picture.

Now you mention that you came to the building to exercise possible federal jurisdiction in the event a crime was committed. Did you have a plan among the six of you as to how you would conduct this observation?

A Yes, we did.

Q And what was that plan? How had you planned to proceed?

A Well, we planned to station so many individuals in this front room. the one that angles off at the top of the stairs, and we had some individuals outside.

Q And where were you located?

A I was located in that room (indicating).

Q And who was with you?

A Mr. Lais, Mr. Bentley, Mr. McCullough and a Deputy Sheriff by the name of Fred Pelzer.

Q And where were the other agents located?

A They were outside the building, across the street.

Q Now prior to taking your post in that room which you characterized as a real estate office, did you make any examination of the premises and particularly the Selective Service office?

A Yes.

Q And about what time was that?

A Well, this was shortly after nine o'clock.

Q And did that -- what did that examination disclose with reference particularly to the security of the Selective Service office?

A Well, the doors were locked from the hallway and after entering the reception room which we had a key for, the door between the two offices was also locked but the windows didn't appear very secure.

Q Were they closed?

A The window was closed.

Q Did it have a lock?

A Not to my knowledge.

Q Did it have a screen?

A Yes.

Q Was the screen closed?

A Yes.

Q Then when you left the reception room did you lock the door?

A Yes.

Q And was a similar investigation made of the room you characterized as more of an office or file room?

A I did not make the examination of that room.

Q Okay. Then after this examination what did you do? A We located in the forward room, the real estate -- the room I presume to be a real estate office. And those were the same men that you mentioned as being in there? Yourself and Mr. McCullough, Mr. Bentley, Mr. Lais and Mr. Pelzer?

A Right.

Q Now how long were you there before anything happened?

A Approximately two hours.

Q And what next occurred?

A Well, shortly before -- or about eleven thirty we received a communication from the individuals across the street that there was a shadow or silhouette on top of the nearby building which appeared to be a person.

Q And could you show us on that diagram where that building would be?

A That building would be on this order (indicating).

Q How tall is the building?

A It is just about to the height of the bottom of this window (indicating).

Q And is there any sort of way of getting from the window to the building?

A Yes. There is a fire escape there. There is a space between these buildings and there is some other sort of a fire escape there which would allow that.

Q After you heard the communication -- you can sit down now, thank you -- and after you heard the communication what then occurred or what did you hear or see?

A Well, shortly thereafter we heard some sounds; for instance one like a zinging sound like something being ripped or torn or something on that order.

Q I see, and what did you see or hear next after that?

A Well, next we heard a sound like someone in the building and then after that we heard breakage of glass.

Q And after the breaking of glass what did you hear?

A Then we heard sounds like metal on metal that's forced, prying like -- oh, in that instance where there's lots of cabinets as if somebody might be prying cabinets open, cabinet drawers.

Q And for what period of time did you hear this type sounds?

A From the beginning sound I'd say about twelve, fifteen minutes.

Q Now where did these sounds -- from where did these sounds appear to be coming from where you could hear in the real estate office?

A Well, in the direction of the Selective Service office from where we were.

Q Now after this period of time passed, did you do anything?

A Yes. After this period of time, after the twelve, fifteen minute period, we left our room, went down to the Selective Service offices and discovered two individuals in there.

Q Now you say you left the room. I assume the real estate office?

A Yes.

THE COURT: Counsel, I recognize any time is going to be difficult to interrupt but something came up that the court should be somewhere at 12:30 this noon and so I'm going to exercise my prerogative to adjourn ten minutes early. I know you won't be through with him by that time anyway, and besides there will be cross-examination, there will be time for that.

MR. ANDERSON: Perfectly agreeable with us.

THE COURT: All right. Will we all remain seated until the jury passes out and you are excused until 2:00 o'clock.

(Whereupon, the jury was excused from the courtroom.)

(Whereupon, court was adjourned for lunch until 2:00 o'clock p.m., Tuesday, January 12, 1971.)

(Whereupon, the jury returned to the courtroom.)

THE COURT: All right, Mr. Anderson, you may proceed.

BY MR. ANDERSON:

Q Mr. Williams, before the lunch hour you had been testifying in connection with things you heard when you were in the real estate office and you had testified that after a certain length of time you and the agents that were in that office left the real estate

office to find out what was going on in the Selective Service offices. Now specifically will you tell the jury where you went and where the other agents went upon leaving the real estate office, if you know?

A Shall I use the diagram?

Q Yes, Sir. That would be fine.

A After a few minutes when we heard the sounds, metal against metal as if someone may be entering the cabinets in this room, this occurred while we were in this room (indicating); Mr. Lais and I -- he was in the lead -went down the hall, down and into this room (indicating). The other three fellows came out and were about here (indicating) when -- as we entered this room, so Mr. Lais and I went in this room with the intention of coming through this door into the room to see if there was anybody in there because there was nobody in this room (indicating).

Q I see, and --

THE COURT: For the record when you say "this room" you mean the room nearest the rear of the building?

THE WITNESS: Yes, the corner room.

BY MR. ANDERSON:

Q You entered the room that you had characterized then as the reception room?

A Yes, I would call it that.

Q And then by "the other fellows" you would mean Mr. McCullough and Mr. Bentley and Mr. Peizer were by the door into the draft board record office?

A Yes. They were in this area (indicating).

Q Why don't you just write "reception room" and "record office" and maybe "real estate office" in the respective squares up there.

A (indicating).

Q Now when you and Mr. Lais reached the door of the reception room, what did

you do?

A Well, we entered this door (indicating) and went inside.

Q And what did you find there?

A Well, we found the window raised from the bottom as far as it would go. The screen -- we noted the screen on the outside of the window had been cut and that there had been a shelf over -- about half way up the window with flowers -- potted plants on it. These plants and the shelf had been removed.

Q Was there anybody in the room?

A Nobody in the room.

Q Then what did you do?

A Well, we tried to enter this door (indicating) -- come in this way and the door was locked.

Q I see. Did you do anything in respect to the window?

A Yes. I went to the window and looked out on the roof of the building and outside, the best I could, without leaving the room or even going partly out the window, to see if there was anyone outside or just what unusual may have occurred out there.

Q And after finding the interior door into the file room locked, what did you do or where did you go?

A Well, we then came back out through the door into the hall and around and into the file room.

Q And by the time you left the reception room were Mr. Peizer and Mr. Bentley and Mr. McCullough still in the hall?

A No. They had entered this room (indicating).

Q And did you enter it after them then?

A Yes, I did.

Q And what did you see when you entered the room?

A Well, there were two individuals in the room that had been placed under arrest by the three individuals who had entered ahead of us, and I noted as I entered the room a knapsack on the floor containing several items. A military type knapsack.

I noted several drawers to various cabinets had been partly opened and I noticed a large plastic type bag like a garbage can liner which contained various papers which were later determined to be records which had been in the drawers, belonging to the draft board.

Q You said you saw two individuals in the room who had been arrested. Who were those individuals?

A Mr. Kroncke and Mr. Therriault.

Q And do you see those individuals in the courtroom now?

A Yes, I do.

Q Would you point them out to the jury, who Kroncke is?

A Mr. Kroncke and Mr. Therriault, if that's the proper pronunciation -- I believe it's pronounced Therriault.

A Therriault.

Q Did you see anything in the room other than the knapsack and the plastic bags, that you had noticed was not there when you came in earlier?

A Well, I hadn't been in the room earlier so I can't really say --

Q Well did you see anything else other than the knapsacks and the bags?

A Well, on top of one of the cabinets I noticed a hammer and a screw driver.

Q I see, and now I think you can be seated.

Did you have occasion -- before I get to that point, what was happening in the room when you entered with respect to the two individuals that you have identified as being in there?

A Well, they had been apparently ordered to put their hands up and they were undergoing somewhat of a search. Personal search.

Q And who was conducting the search?

A Well, Mr. McCullough for one. I'm not sure who was doing the other -- conducting the other search.

Q But you did not primarily concern yourself with the defendants at that point then?

A No. I did not.

Q Did you have occasion in connection with your investigation of the incident that night to look for any form of transportation that might have been used by the defendants to get to Little Falls?

A Yes.

Q And how did you go about that?

A Well, we of course were interested in any transportation they may have used and the people outside were to check for any means of transportation after we had taken the fellows into custody inside the office. I mentioned -- I asked Mr. Kroncke shortly after I arrived in the room where his car or their means of transportation may be located.

Q And what did he say?

A He said that the car they used was in the back -- at the rear of the building.

Q Did you subsequently look for that car?

A Yes.

Q And what did you find?

A Well, we found a 1968 Chevrolet.

Q And were you able to identify that car in any way?

A Yes.

Q And how?

A Well, we had a list of possible automobiles that could be used and this license number of this car appeared on that list.

Q And on your list did you have an indication with reference to the license plate you saw on the car as to who the car might belong to?

A Yes.

Q And who did the car belong to according to your information?

A Well, it was registered to a Charles Kroncke.

Q Now what was done with the car after you found it that night?

A Well, we asked the local policemen to impound the car.

Q Did you do anything further with the -- in respect to the car that night then?

A No.

Q Okay, and what did you do or where did you go after you had went in search of the automobile?

A Well, after we had properly checked the room and picked up any items that we felt necessary, we transported Mr. Kroncke and Mr. Therriault to Minneapolis.

Q And were you in the reception room when the various items that were there were collected? Did you watch that being done?

A Partly. I watched part of it. I wasn't really in - have an interest in that. That was handled by another agent.

Q And who was that agent?

A That was Mr. Bentley.

Q When Mr. Kroncke told you that the car was wherever he told you it was, did he say anything else in respect to it?

A Yes. He commented that we wouldn't find anything in the car except maybe some letters which he had written to the news media explaining the reason for their action.

MR. ANDERSON: I have no further questions.

MR. TILSEN: I have just a few.

CROSS-EXAMINATION BY MR. TILSEN

Q The defendants, were they known to you prior to that evening?

A Not personally known to me.

Q Were they known to one of the other agents?

A Possibly. Possibly.

Q They had no weapons, no guns?

A Not to my knowledge.

Q They weren't in any other fashion armed, to your knowledge?

A Not to my knowledge.

Q They had no explosives?

A Not to my knowledge.

Q You were in the room immediately next door to where they were waiting, as you said, some twelve to fifteen minutes for whatever to take place to take place, is that correct?

A That's approximately from our first -- from the original noise or sounds we heard about that much time elapsed before we moved in, so to speak.

Q Had you a pretty good idea that what was going to take place was that records were going to be removed?

A Well, we assumed that.

Q You weren't particularly concerned or sufficiently concerned at least that there was going to be any explosion exploding or danger to yourselves or anybody else? Nobody was in danger waiting in that room? You didn't feel you were in danger at any rate?

A No. That wasn't a real concern.

Q The defendants offered no resistance and admitted why they were there so far as when you entered? There was no problem of that sort in terms of resistance by the defendants?

A No. I didn't note any resistance.

Q Mr. Kroncke's statement to you or Mr. Therriault's statement to you such as they were, were conversation about why they were there between you or the agents involved and them? There was no effort to hide their reason for being present?

A No.

Q You mention a list of cars with numbers. Was there a list of different license numbers of cars that might have been involved with names attached to that list?

A As I remember -- it was never in my possession -- it was in that list of license numbers and the possible owner or the registered owner of the car -- the believed owner of the car.

Q Do you have any idea where that list is at present?

A I have no idea.

Q Do you know which agent had possession of it that night?

A I can't really say because I just saw it briefly and that was told to me that that was on there.

Q You mentioned some flowers that were on the window. Were the flowers immediately in front of the window so that if a person entered they might knock over or damage or destroy the flowers, when you first went into the reception room earlier that day?

A Possible. Yes. Likely they could knock them over but I'm not sure that the entry could not have been made without removing them, but they were removed from the way I originally saw them.

Q In any event somebody had taken care not to damage the flowers? It appeared that way, did it not?

A Well, I can say it appeared that way.

MR. TILSEN: Thank you. That's all I have.

MR. ANDERSON: I have no questions.

MR. TILSEN: Wait, Mr. Kroncke might have some.

MR. ANDERSON: I'm sorry.

THE COURT: Mr. Kroncke, do you have some questions?

DEFENDANT KRONCKE: I have a few questions. Is it proper for him --

THE COURT: You may proceed.

DEFENDANT KRONCKE: I just don't want to violate procedure too much..

CROSS-EXAMINATION BY DEFENDANT KRONCKE

Q It's interesting you're there and I'm here. It's fascinating. You have arrested a lot of people I presume, Ray. Would you characterize our evening as a friendly type of evening? I mean we talked to one another; we didn't resist and things like that, Ray?

MR. ANDERSON: I would object. The question is irrelevant.

THE COURT: Oh, objection overruled. You may answer if you can.

THE WITNESS: Yes, I have been involved in a considerable number of arrests during my career and I consider your arrest -- there was no opposition or attempt to resist arrest on your part, in my interpretation.

BY DEFENDANT KRONCKE:

Q Do you remember what we first said when we -- when you guys came into the room?

A Now I wasn't one of the first individuals in the room. I came in -- in fact I probably was the last individual in the room.

Q Okay. I said something, I just was -- I don't know how to bring this up -- but we did have something of a conversation, did we not?

A Yes, we had some -- you and I had a conversation.

Q You and I talked. What did we talk about? Do you remember?

A Well, my first conversation that I remember was I asked you about the car.

Q Right.

A Where the car was you used for transportation. Then you mentioned the letters which we would find in the car, that that's all we'd find if we checked the car and later you had some conversation of why you did what you were caught doing.

Q In other words I volunteered information? I didn't just respond to your questions? I engaged you in conversation?

A Yes. I asked you no questions beyond where your car was.

Q I mentioned a few things about the war and other stuff, right?

A Yes. Your conversation was in that line.

Q Do prisoners usually talk to you like that?

A Well, that all depends upon what kind of prisoner you have. I mean, it's hard to say. You try to make an arrest and treat people in accordance with what you might

expect from them in the way of danger or fleeing or whatever.

Q You also mentioned that some of the agents met like the day before, I think -- was it the day before you went up to Little Falls or on the day? You had a meeting before you went up there, as a group, right?

A I was not involved in a meeting other than the meeting with the group I went up with, and that was -- that would have been the same day.

Q I see. Did you meet before you went up and everybody went up in different cars or did you meet when you got up in Little Falls or how did that go?

A Well, we didn't -- well, we did briefly meet before we left Minneapolis so we could kind of -- we went in two cars but we wanted to coordinate our travels and that's the result of that initial meeting.

Q And you mentioned as Mr. Tilsen brought out that you had a list of possible cars to look for, correct?

A There was a list in our group. I did not have the list.

Q Did you -- was there also any list of names of people who were -- might be involved?

A Now that I don't know. I did not see or hear of such a list.

Q Was there any discussion about other -- or names of people mentioned like my name or Mr. Therriault's name, names of other people who might be in the Minneapolis area?

A Yes. At some time that was mentioned, various names.

Q Could you remember like some of those names?

A Well, I believe your name was one of them.

Q And other names besides myself?

A Well, it wasn't your partner. His name was not mentioned to my knowledge.

Q Can you name some of the other people?

Q

MR. ANDERSON: Well, I would object on the grounds that it's irrelevant.

THE COURT: I will sustain the objection to that. I don't know that that's material.

DEFENDANT KRONCKE: Well, can I tell you why I want to know? If they have a list of cars it seems to be quite relevant. If they have a list of people they are looking for too --
THE COURT: No. Objection sustained.

BY DEFENDANT KRONCKE:

Q Okay. Was there any discussion like on your way up about the -- you knew you were going to do what is called the draft raid arrest, is that correct?

A Well, we anticipated that.

Q Right. Is the organization, the FBI, familiar with these types of actions; like you call things burglary and homicide? Are you familiar with the action?

A We have had a few. We are somewhat familiar with them.

Q It is correct to say that what we did is not unique or original, it has been done before in the United States?

A Yes, it's been done before July the 10th when this incident occurred.

Q Right. Did you talk about the fact that like most of the people who do these actions are religious people?

MR. ANDERSON: I would object to that It's irrelevant. Furthermore there's no foundation that he would know.

THE COURT: Objection sustained, I think.

BY DEFENDANT KRONCKE:

Q Did you have a conversation about the character of the type of people who engage in this kind of activity?

A Before the arrest?

Q Okay, before the arrest?

A No.

Q After the arrest?

A I don't recall any.

Q Did we come down in the same car? I don't think so.

A No.

Q Just one thing I have to ask, basically because my mother raised a problem: were you in charge of like impounding the car or taking care of having the car taken care of? In other words we didn't drive back in our car. Someone took care of my mother's car. Were you in charge of handing it over?

A I asked the police officer who was with us if he would see that this car was safely impounded.

Q Was there any order given to the fact to remove or install any type of electrical equipment into the car?

A Not to my knowledge.

Q Okay. Just that the car doesn't work so well since we got it back. I was wondering why. She keeps saying you did something to it.

A It was towed in so I don't know that it was started or run by anybody in our group.

Q Okay. Was there any mention on the way up that any of the people -- well, that the information received was received by -- where the information was received? From where the information was received from? Obviously we didn't call you up ahead of time.

A I'm not sure. I don't know the source of any sources of information along that line. I was just told on that day that I would be participating and I knew nothing practically of the background.

Who did you receive your information from? A From the leader of our group.

Q Was that Lais?

A Mr. Lais.

Q Mr. Lais. Considering that you knew about the act that morning before you went up there, how come you never came to talk to us to prevent us from doing it?

A Well, we might safely say that we didn't know who would be involved.

Q You said like my name was mentioned.

A Among many names.

Q How many? You don't remember?

A No. I don't. I don't remember many. I don't remember --

Q Approximately how many?

A Oh, possibly -- this is a rough estimate -- fifteen, twenty.

Q Would it be safe to say that the information was acquired by a special agent working as an informer in the community?

MR. ANDERSON: I would object to that question. There's no -- the witness has said he doesn't know where the information came from so there's no foundation that he would know and it would be irrelevant anyway.

THE COURT: Well, I'm going to sustain the objection and this court's Pretrial Order docketed December 17 pretty well covered that subject.

DEFENDANT KRONCKE: I didn't ask for the name, Your Honor. I just asked if he knew if that's where the information came from. I didn't ask him for a specific name. They might have mentioned in the conversation on the way up that this was the result of infiltration, such and such, you know, that we got the information or something like that.

THE COURT: Well, I take it he's already stated that he "doesn't know the source of any information along the line you were asking", and is that correct?

THE WITNESS: That's correct. I can answer your question by saying I don't know that to be a fact.

BY DEFENDANT KRONCKE:

Q Have you ever enforced a law which you think is a bad law?

MR. ANDERSON: Your Honor, I would object because it's irrelevant.

THE COURT: Objection sustained.

DEFENDANT KRONCKE: I have no more questions then, I guess.

MR. ANDERSON: I have no more questions.

THE COURT: All right. You're excused, Mr. Williams.

(Witness excused.)

MR. ANDERSON: Your Honor, the government calls as its next witness Mr. James Bentley.

(Whereupon, Government Exhibits 1 through 16 marked for identification.)

JAMES E. BENTLEY, JR., FBI

a witness called by and on behalf of the plaintiff for examination, having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION BY MR. ANDERSON

Q Mr. Bentley, could you tell the jury how you are employed?

A I am employed as a special agent with the FBI.

Q And how long have you held that job?

A Approximately two years.

Q And where are you stationed now?

A Presently in Akron, Ohio.

Q And in July of 1970 where were you stationed?

A In St. Paul, Minnesota.

Q And were you on duty in connection with your duties as a special agent of the FBI on the afternoon and evening of July 10 and the early morning hours of July 11 of last year?

A I was.

Q And where were you that evening?

A Little Falls, Minnesota.

Q And specifically where were you at about the hour of 9:30?

A I was located in the real estate room as shown on the blackboard there.

Q And that was next to the Selective Service office on the second floor of the building represented in that picture?

A That's correct.

Q And who was there with you?

A Special Agent McCullough, Special Agent Dais, Special Agent Williamson and Detective Pelzer, a local police officer.

Q And why were you there?

A Well, we were observing the Selective Service Board which is located next door.

Q And when did you arrive at the real estate office?

A The evening of July the 10th.

Q And about what time?

A 9:45 I believe, somewhere in that area.

Q Now aside from the men that were in that real estate office, were there any other agents that were on duty as a part of this observation?

A Yes, there were. There were two agents located outside the building.

Q And were you in contact with them in any way?

A We were in contact with them.

Q And how long did you remain in the real estate office?

A Until approximately or about 11:45.

Q And what happened at that time?

A At about that time we were, by walky-talkie, advised that someone was on the roof of the building located adjacent to the building we were in and shortly thereafter we heard the sound of what appeared to be someone entering the building, the ripping of the screen and then the breaking of the glass. We heard someone in the hall and then what eventually sounded to be metal on metal or someone trying to pry something

open, and --

Q What did you do upon hearing those noises?

A Well, upon hearing those noises we -- all the agents left the room and Special Agent Lais and us went down the hall -- you want me to show that on the board?

Q Yes, would you?

A It's pretty much of a repetition of what the other agent showed, but as he indicated to you we were all located within the real estate office. Upon our decision to leave the room which was when we heard this sound of what appeared to be metal on metal in the room next to us, we left the hall, went down to this room (indicating) and myself and Special Agent McCullough went to this room right here (indicating), the file room and upon Special Agent Lais and Williams entering this room right here (indicating), Special Agent McCullough was located almost immediately in front of the door. I was located on the other side of the door towards this wall (indicating) and upon them entering in this room this door was jerked open and at that time Special Agent McCullough went in saying "FBI, you're under arrest", then the officer -the local officer followed him and then I followed them in.

Q Thank you. You can sit down, and what did you see upon entering the file room?

A Well, the first thing I saw was Mr. Kroncke and Mr. Therriault.

Q And do you see them in the courtroom?

A Yes, I do.

Q And would you point them out?

A Mr. Kroncke with the dark beard and Mr. Therriault with the light beard.

Q And those are the same two?

A Those are the same two individuals.

Q And would you describe then what happened when you entered the room?

Describe what you did or describe what you observed.

A Well, upon entering the room of course the two individuals were placed under arrest, at which time they were searched and their personal belongings were noted and then I noticed in the room the fact that they were -- the drawers were open. There was a

plastic bag -- yellow hype garbage bag with what appeared to be files in it, some type of paper work down within this. There were some tools laying on top of the cabinet and I believe a blue nylon jacket.

Q And you mentioned that there was a search made of the persons of Mr. Kroncke and Mr. Therriault. Did you play any part in that search?

A Yes, I did.

Q And what did you do in that connection?

A Well, myself and the officer searched the individuals.

Q Was this team of agents equipped with any sort of a camera?

A I had a camera, yes.

Q And did you use the camera that evening?

A Yes, I did use the camera that evening.

Q What did you do?

A Well, prior to removing anything that I saw I took photos of the scene just as it was when we found it except for the fact that we had taken from their initial search what was recorded and I believe there was a pocket knife and a few personal belongings. A pen light with black tape over the bulb end of the pen light.

And did you have occasion to take pictures in the reception room?

A Yes, I did.

Q And when did you do that?

A I did this immediately after taking pictures of the file room.

Q Now, Mr. Bentley, I'm showing you a group of documents which I have asked the reporter, just before we met, to number as Government Exhibits for identification, 1 through 16, and I'd like you to look at those documents and could you tell the jury what they are?

A These are the photos that I took of the interior of the file room to include all -- you might want to show them to the jury -- all that I found at the scene and then I went into the -- what you would call the reception room and then took photos of the way the

entrance was gained to the room to show the cut screen, to show the broken glass on the door where the tape was put on the door so there would be no -- the sound of glass would be -- the sound of breaking glass would be diminished by taping it so it wouldn't fall on the floor and make a lot of noise, and then I got outside on the catwalk and took a photo from across the catwalk on the other building looking into the building and these photos are photos of the objects that I found at the scene, exactly as I found them, before anything was moved.

Q Now I'm showing you a picture labeled Plaintiff's Exhibit 4 for identification and I will ask you if that is a true representation or what it purports to show?

A That's exactly as it is.

Q And that's one of the pictures you took?

A That's right.

Q And what does this show?

A It shows a picture of Mr. Kroncke and Mr. Therriault without their beards. Mr. Therriault sitting on the desk and Mr. Kroncke standing.

MR. ANDERSON: Your Honor, I offer Exhibit 4.

(Whereupon, Government's Exhibit 4 offered into evidence.)

MR. TILSEN: Your Honor, if you are going to offer 1 through 16 we probably wouldn't object to them if we could look at them right now. We have no objection to 4 and I doubt if we'd object to the others.

THE COURT: Well, do you want an individual ruling on this or are you going to offer them all?

MR. ANDERSON: Well, ultimately I will offer them all but I think it might make it a little clearer if --

TIE COURT: All right. There being no objection Plaintiff's Exhibit 4 is received in evidence.

(Whereupon, Government's Exhibit 4 received into evidence.)

BY MR. ANDERSON:

Q Now, Mr. Bentley, I'm showing you three pictures numbered 6, 7 and 8 for identification, and I'm going to ask you if they are accurate portrayals of what they purport to show?

A They are and they show the plastic garbage can liners with the files inside of them. One garbage can liner inside the other.

Q And where was this located when you photographed it?

A This was located on the floor right directly in front of the empty cabinets.

MR. ANDERSON: The government would offer Exhibits 6, 7 and 8 for identification in evidence.

(Whereupon, Government's Exhibits 6, 7 and 8 offered into evidence.)

MR. TILSEN: We have no objection.

THE COURT: There being no objection Plaintiff's Exhibits 6, 7 and 8 are received in evidence.

(Whereupon, Government's Exhibits 6, 7 and 8 received into evidence.)

BY MR. ANDERSON:

Q Mr. Bentley, I'm showing you Plaintiff's Exhibit 13 and 14 and I'm asking you if those are accurate portrayals of what they purport to show?

A They do. They show the door into the file room with the tape on the window and then they show the exterior -- that's an exterior shot and an interior shot of that door with the tape on the window where it was broken and entrance gained.

MR. ANDERSON: The government would offer 13 and 14 for identification in evidence..

(Whereupon, Government's Exhibits 13 and 14 offered into evidence.)

MR. TILSEN: We have no objections to 13 and 14.

THE COURT: Mr. Kroncke, does that include you?

DEFENDANT KRONCKE: Yes.

THE COURT: All right. There being no objection, Exhibits 13 and 14 are received in evidence.

(Whereupon, Government's Exhibits 13 and 14 received into evidence.)

BY MR. ANDERSON:

Q Mr. Bentley, I'm showing you documents that are numbered 5, 9, 10 and 12 for identification and asking you if these are accurate representations of what they purport to show?

A They do. One shows the army knapsack containing the strapping tape or the scotch type tape, the pliers, the glass cutter and the wizen charcoal lighter. This one shows the extra plastic bags which were found on the desk and this one shows the file drawers as -just exactly as they were to include the nylon jacket and the tools located on top of the file drawers and the sprung drawer and this is a close-up shot of the tools found on top of the file cabinets.

MR. ANDERSON: The government would offer 5, 9, 10 and 12 for identification in evidence.

(Whereupon, Government's Exhibits 5, 9, 10 and 12 offered into evidence.)

MR. TILSEN: We have no objection.

DEFENDANT KRONCKE: No objection.

THE COURT: There being no objection the record will show that Plaintiff's Exhibits 5, 9, 10 and 12 are received.

(Whereupon, Government's Exhibits 5, 9, 10 and 12 received into evidence.)

BY MR. ANDERSON:

Q Mr. Bentley, I am now showing you the documents numbered Plaintiff's Exhibits 15 and 16 for identification and I'm asking you if they are accurate representations of

what they purport to show?

A They are. The first picture is from the interior of the building looking out to show the cut screen and the second picture is the one taken from the building opposite the catwalk also showing the cut screen and the way the building appeared to be entered.

MR. ANDERSON: The government would offer 15 and 16 for identification into evidence.

(Whereupon, Government's Exhibits 15 and 16 offered into evidence.)

MR. TILSEN: No objection, Your Honor, to Exhibits 15 and 16.

DEFENDANT KRONCKE: No objection.

THE COURT: There being no objection then Exhibits 15 and 16 are received in evidence.

(Whereupon, Government's Exhibits 15 and 16 received into evidence.)

BY MR. ANDERSON:

Q Mr. Bentley, I'm showing you documents labeled Exhibits 1, 2 and 11 for identification and I'm asking you if those are accurate representations of what they purport to show?

A Yes. This is a photo showing the open file drawers This is the photo showing the empty smaller files and another photo showing the open file drawers.

Q Now were these drawers as shown in this photo exactly as you found them upon entering the file room?

A Exactly as we found them. Nothing was touched prior to the photos being taken.

MR. ANDERSON: The government would offer 1, 2 and 11 for identification in evidence.

(Whereupon, Government's Exhibits 1, 2 and 11 offered into evidence.)

MR. TILSEN: We have no objection to them.

DEFENDANT KRONCKE: No objection.

THE COURT: There being no objection, Exhibits 1, 2 and 11 are received in evidence.

(Whereupon, Government's Exhibits 1, 2 and 11 received into evidence.)

BY MR. ANDERSON:

Q Mr. Bentley, I'm showing you a document labeled Plaintiff's Exhibit 3 for identification and I'm asking if that's an accurate representation of what it purports to show?

A Yes, it is. That shows the car that Mr. Kroncke apparently traveled to Little Falls in.

Q And where was this taken?

A This was taken to the rear of the building across the alley.

Q And was it taken the night in question?

A It was taken by myself that very night.

MR. ANDERSON: The government would offer Exhibit 3 for identification in evidence.

(Whereupon, Government's Exhibit 3 offered into evidence.)

MR. TILSEN: No objection to Exhibit 3.

DEFENDANT KRONCKE: No objection. THE COURT: There being no objection then Exhibit 3 will be received in evidence.

(Whereupon, Government's Exhibit 3 received into evidence.)

MR. ANDERSON: Your Honor, at this time I would like to ask permission of the court to display the pictures to the jury, to pass them around and permit them to observe the pictures.

THE COURT: Well, you may, but is it necessary to stop all procedures or --

MR. ANDERSON: I would not think so. I would, with the permission of the court, intend to continue.

THE COURT: All right. Let me see the last one, number 3.

BY MR. ANDERSON:

Q Mr. Bentley, you mentioned that on the floor in the file room there was a plastic

bag with some files in it and you have shown us a picture that you have taken of those files. What did you do with that bag that night?

A Well now the bag which contained the files we picked up in mass to include the files, brought them back to the FBI office located here in Minneapolis at which time myself and another agent took from the plastic garbage can liners the files, included them -- put them in a cardboard box and then put the plastic bag which the files were in, in evidence, which is nothing more than a clear envelope, marked it with my initials and sealed it.

Q Now I'm showing you what looks like an evidence container and I'm asking you what appears to be in it?

A This is the plastic bag, one inside the other with diamond shaped holes cut in them, which contained the Selective Service forms 1-A.

Q And did you put the bag in that evidence container?

A Yes. Yes, I did.

MR. ANDERSON: I would ask the reporter to label this.

(Whereupon, Government's Exhibit 17 marked for identification.)

BY MR. ANDERSON:

Q Now I'm holding before you, Mr. Bentley, Government's Exhibit 17 for identification. Is that the item you just pulled out of the evidence bag?

A That is. One bag was down inside the other and the files were in that bag.

Q And is that the bag then that the files were in as you found it on the floor?

A With the holes cut in it, yes, it is.

O Which was inside and which was outside?

A The bag with the holes in it was inside this bag (indicating). This one only had the holes in the bottom, I believe.

MR. ANDERSON: The government would offer Exhibit 17.

(Whereupon, Government's Exhibit 17 offered into evidence.)

DEFENDANT KRONCKE: No objection.

THE COURT: Well, there being no objection Plaintiff's Exhibit 17 is received in evidence.

(Whereupon, Government's Exhibit 17 received into evidence.)

BY MR. ANDERSON:

Q Now you had mentioned that the records that were in that bag themselves were put in a cardboard box. When was that done?

A That was done here in the Minneapolis FBI office.

(Whereupon, Government's Exhibit 18 marked for identification.)

BY MR. ANDERSON:

Q The reporter has just labeled the box I'm holding and showing to you as Exhibit 18. What is this box?

A That box contains the 1-A -- the 1-A forms that we took out of the plastic bag and put down into the box itself and we did that because we didn't know whether the Selective Service would need them back again.

Q Out of the bag I'm pulling some cards. Are these --

A Those are the cards.

Q (continuing) the cards that you took from the bag?

A Yes, all the 1-A's.

MR. ANDERSON: Would you like to come look at this?

The government would offer Plaintiff's Exhibit 18 and the contents thereof in evidence.

(Whereupon, Government's Exhibit 18 offered into evidence.)

MR. TILSEN: I would ask the witness a question or two for clarification.

THE COURT: You may.

MR. TILSEN: These are registration cards, Selective Service form 1-A?

THE WITNESS: Uh huh.

MR. TILSEN: Is that what you mean when you say 1-A card?

THE WITNESS: Yes.

MR. TILSEN: These are the registration cards of registrants, not a classification card referring to a classification of 1-A?

THE WITNESS: No. Just strictly the form number for the card.

MR. TILSEN: I see. Okay. The second thing is, have these been in the FBI's possession all along?

THE WITNESS: I can't answer all of that because at the time I put them in the box they were in our possession and I have since been transferred and to my knowledge they have still been in our possession.

MR. TILSEN: And to your knowledge these appear, from the material on the front, to have been sent to Washington and apparently in connection with -- you normally keep the evidence in Washington and then ship it back for the trial or —

THE WITNESS: I don't know that, Sir.

MR. TILSEN: There's an REA Express government -- U. S. Government shipment and that identification. You don't really know then what's happened to these records all along?

THE WITNESS: Well, Sir, I have been out of town. As I said, I had been transferred to Akron, Ohio. At the time I put those in there I sealed them up and put the slip in there. I think you will find a green slip in there that tells what they are.

MR. TILSEN: Well, is this the green slip you're talking about (indicating)?

THE WITNESS: Yes.

MR. TILSEN: Have you seen this green slip before today?

THE WITNESS: Have I seen it before today?

MR. TILSEN: Yes.

THE WITNESS: I saw it when the original was made up.

MR. TILSEN: I see, and this indicates that this material was sent to Washington then? This may not be too important.

THE WITNESS: Sent to the Bureau's Laboratory on 7-15-70.

MR. TILSEN: That's Washington? Apparently that's what all this shipping --

THE WITNESS: So far as being in the hands of the FBI it's been in the hands of the FBI. I believe that green slip goes inside there.

(Discussion at the bench between court and counsel, off the record, not within the hearing of the jury.)

DEFENDANT KRONCKE: No objection.

COURT: Well then, I understand there's no objection to the receipt in evidence of Plaintiff's Exhibit 18 which is a box containing certain cards and data.

(Whereupon, Government's Exhibit 18 received into evidence.)

BY MR. ANDERSON:

Q Mr. Bentley, you mentioned that you had occasion to search Mr. Therriault. In connection with that search did you find any items?

A Yes, we did.

Q And what did you do with the items you found?

A I noted who I took them from and the date and then I encased them in a clear plastic envelope and sealed them with the evidence tag.

Q I am showing you a clear plastic envelope and asking you if that envelope in fact is the one that you put the items that you found on Mr. Therriault in?

A Yes, it is.

(Whereupon, Government's Exhibit 19, 20 and 21 marked for identification.)

BY MR. ANDERSON:

Q Mr. Bentley, I'm showing you three items labeled 19, 20 and 21 for identification and I will ask you what they are?

A One is a package of paper matches from the Hopkins House advertisement on it. One is a small pocket knife, two bladed type, and the other was the pencil flashlight with the tape over the bulb end of it.

Q And you say these were found on the person of Mr. Therriault?

A On the person of Mr. Therriault.

MR. ANDERSON: The government would offer 19, 20 and 21 for identification in evidence.

(Whereupon, Government's Exhibits 19, 20 and 21 offered into evidence.)

MR. TILSEN: We have no objection.

DEFENDANT KRONCKE: No objection.

THE COURT: There being no objection then Exhibits 19, 20 and 21 will be received in evidence.

(Whereupon, Government's Exhibits 19, 20 and 21 received into evidence.)

BY MR. ANDERSON:

Q Mr. Bentley, was Mr. Therriault wearing anything on his hands?

A He had on a pair of gloves.

Q And did you take those gloves?

A Yes, I did.

Q And what did you do with them?

A I encased them in an evidence bag and marked it just as I did all the evidence.

Q And I'm showing you an evidence bag and asking you if that is the evidence bag you just described?

A Yes, it is. Those are the gloves.

(Whereupon, Government's Exhibit 22 marked for identification.)

BY MR. ANDERSON:

Q Mr. Bentley, I'm showing you an item that has been labeled Government's Exhibit 22 for identification and I will ask you what it is?

A Its a pair of brown leather gloves that was taken from Mr. Therriault at the time of the search.

MR. ANDERSON: The government would offer 22 for identification in evidence.

(Whereupon, Government's Exhibit 22 offered into evidence.)

MR. TILSEN: No objection, Your Honor.

THE COURT: There being no objection Exhibit 22 is received in evidence.

(Whereupon, Government's Exhibit 22 received into evidence.)

BY MR. ANDERSON:

Q Mr. Bentley, did you have occasion to conduct a search of Mr. Frank Kroncke?

A Yes, I did.

Q And what did you find, if anything, when he was searched?

A We also found a pair of gloves on him.

Q And what was done with that pair of gloves?

A It was handled in the same manner as the other pair. They were marked as evidence and put in the evidence container.

Q And I'm showing you an evidence container and is that the evidence container you have just described?

A Yes, it is. One pair of Super Tiger gloves.

(Whereupon, Government's Exhibit 23 marked for identification.)

BY MR. ANDERSON:

Q Mr. Bentley, I'm showing you Government's Exhibit 23 for identification and I will ask you what that is?

A That's a pair of white Super Tiger gloves that we took from Mr. Kroncke.

MR. ANDERSON: I would offer Government Exhibit 23 for identification in evidence.)

MR. TILSEN: No objection.

DEFENDANT KRONCKE: May I ask a questions?

THE COURT: You may.

DEFENDANT KRONCKE: Are these usually referred to as handball gloves?

THE WITNESS: I don't know. I don't play handball.

DEFENDANT KRONCKE: No objection.

THE COURT: All right. There being no objection Exhibit 23 will be received in evidence.
(Whereupon, Government's Exhibit 23 received into evidence.)

THE COURT: What did you call them?

THE WITNESS: That's the name on them, Super Tiger.

THE COURT: It has a name printed on them?

THE WITNESS: Yes, it does.

BY MR. ANDERSON:

Q Mr. Bentley, you have shown us a photograph of a knapsack or a pack sack that was seen on the floor of the local Board and I'm asking you if you had occasion to do anything with that knapsack that evening?

A After photographing the knapsack just as I found it, I then itemized the items found – or inventoried the items in the knapsack, labeled the knapsack and labeled the items found inside the knapsack in an evidence container and put the items found inside the knapsack in an evidence container. I believe that's the bag that that would have gone in, would it have fit.

Q Now is this the evidence container you have Just spoken of that I'm showing you?

A Yes, it is.

And what does it contain? Well, does it contain the items in the knapsack?

A Yes, it does.

(Whereupon, Government's Exhibits 24 through 29 marked for identification.)

BY MR. ANDERSON:

Q Mr. Bentley, I'm showing you Government's Exhibits 24, 25, 26, 27, 28 and 29 and I'm asking you what those items are?

A One is a glass cutter with a green handle which was found --

THE COURT: Which number?

THE WITNESS: Number 29 is a glass cutter, type number 02 Fletcher -- looks like the

brand name. A small -- number 28 is aluminum colored vice grips.

THE COURT: Aluminum colored what?

THE WITNESS: Vice grips, appears to be. Some type of vice grip. Number 27 is a pair of Drop Forged pliers. Number 26 is an Eveready pencil type flashlight with tape on the bulb end of it. Number 25 is a roll of Scotch brand strapping tape and number 24 is a can of Wizard charcoal lighter. All these items were found in the knapsack.

BY MR. ANDERSON:

Q Was anything else found in the knapsack?

A One nail.

Q I haven't numbered that.

DEFENDANT KRONCKE: Thank you. I have no objections to that or the knapsack.

MR. ANDERSON: Government's Exhibits 26, 27, 28 and 29 are offered in evidence.

(Whereupon, Government's Exhibits 25, 27, 28 and 29 offered into evidence.)

THE COURT: What about 24?

MR. ANDERSON: And 24.

(Whereupon, Government's Exhibit 24 offered into evidence.)

MR. TILSEN: No objection.

THE COURT: Well, there being no objection Exhibits 24 through 29 are received in evidence.

(Whereupon, Government's Exhibits 24 through 29 received into evidence.)

(Whereupon, Government's Exhibit 30 marked for identification.)

BY MR. ANDERSON:

Q Mr. Bentley, I'm showing you an item the reporter has marked as Exhibit 30 for identification. Will you tell the jury what that item is?

A That's an army type knapsack with a G 8-8 located on the interior of the cover, written in what appears to be a ballpoint pen.

Q And where was that found, if you know?

A That was located by the door. This is the knapsack that contained all the items that were just presented.

MR. ANDERSON: Government would offer Exhibit 30 for identification in evidence.
(Whereupon, Government's Exhibit 30 offered into evidence.)

MR. TILSEN: No objection. Frank has no objection.

DEFENDANT KRONCKE: I have no objection.

THE COURT: All right, there being no objection Exhibit 30 is received.
(Whereupon, Government's Exhibit 30 received into evidence.)

BY MR. ANDERSON:

Q Mr. Bentley, you mentioned that on the table of the Executive Secretary -- strike that. Aside from the garbage bag liner that you have testified to that the files were found in and that had been introduced in evidence, were there any other bags or sacks or containers in the room?

A Yes, there were more of the same type of plastic garbage bag located on the desk as shown in one of the photos.

Q And did you have occasion to take custody of those?

A Yes, and I handled it in the same manner.

Q And did you put it in an evidence sack?

A Evidence sack, yes.

Q And I'm showing you an evidence sack and asking you if that is the evidence sack to which you have just referred?

A Yes, it is.

(Whereupon, Government's Exhibit 31 marked for identification.)

BY MR. ANDERSON:

Q Mr. Bentley, I'm showing you Exhibit 31 for identification and I will ask you what that item is?

A This is a plastic garbage bag, one inside the other; the interior bag having the

holes cut in it. It was found empty on top of the desk.

MR. ANDERSON: The government would offer 31 for identification.

(Whereupon, Government's Exhibit 31 offered into evidence.)

MR. TILSEN: No objection.

THE COURT: No objection from anyone? Exhibit 31 then will be received in evidence.

(Whereupon, Government's Exhibit 31 received into evidence.)

BY MR. ANDERSON:

Q Now the photographs that you have shown us and that have been admitted in evidence showed certain tools on top some of the file cabinets. Did you have occasion to take those tools into your possession?

A Yes, I did.

Q And what did you do with them?

A I put them in evidence bags marking them as I did the others.

And this is an evidence bag and is it the one to which you have referred?

A Yes, it is one of the ones.

(Whereupon, Government's Exhibits 32, 33 and 34 marked for identification.)

BY MR. ANDERSON:

Q Now while we are about it, you mentioned two evidence bags, or that that was one of the evidence bags. Were there other tools in another evidence bag?

A Yes, there were.

Q Also tools found on top of the filing cabinets?

A Yes, Sir.

Q And I'm showing you an evidence bag and is this the evidence bag?

A Yes, it is.

(Whereupon, Government's Exhibits 35 and 36 marked for identification.)

BY MR. ANDERSON:

Mr. Bentley, I'm showing you Government's Exhibit 34 for identification and I will ask

you what that item is?

A This is the blue nylon Sir-Jack type jacket that was located on top of the filing cabinet.

MR. ANDERSON: The government would offer 34 in evidence.

(Whereupon, Government's Exhibit 34 offered into evidence.)

MR. TILSEN: No objection.

DEFENDANT KRONCKE: I have no objection.

THE COURT: There being no objection Exhibit 34 is received.

(Whereupon, Government's Exhibit 34 received into evidence.)

BY MR. ANDERSON:

Q Now I'm showing you Exhibits 32, 33, 35 and 36 and I'm asking you what those items are?

A 32 is a Handyman -- Stanley Handyman screw driver found in the jacket.

33 is the Turnerday 105 claw hammer found also with the blue nylon jacket.

This looks like Exhibit 35, it's a Job Master Stanley screwdriver found with Exhibit 36 which is the -- some type of crow bar or pry bar with the label scraped off, and this was located on a separate filing cabinet.

MR. ANDERSON: Exhibits 32, 33, 35 and 36 are offered.

(Whereupon, Government's Exhibits 32, 33, 35 and 36 offered into evidence.)

MR. TILSEN: No objection.

DEFENDANT KRONCKE: No objection.

THE COURT: There's no objection, Exhibits 32, 33, 35 and 36 will be received in evidence.

(Whereupon, Government's Exhibits 32, 33, 35 and 36 received into evidence.)

THE COURT: Now do you think it's time that we have an afternoon recess? Is this convenient?

All right, we will remain seated while the jury retires for an afternoon recess.

(Whereupon, the jury was excused from the courtroom.)

THE COURT: All right, we will be in recess for about twelve, fifteen minutes.

(Recess taken.)

(Whereupon, the jury returned to the courtroom.)

THE COURT: You may proceed.

MR. ANDERSON: I have no further questions of Mr. Bentley.

MR. TILSEN: I have just a few questions.

CROSS-EXAMINATION BY MR. TILSEN

Q Mr. Bentley, the defendants had no guns or weapons on them, no explosives?

A None that I saw.

Q They offered no resistance or attempted in any way to put up any fight or struggle?

A No, Sir.

Q Did you know the defendants or either of them personally before that evening?

A No, Sir.

Q Did you know who they were when you entered the room?

A No, Sir.

Q Was it clear to you that one or more of the other agents did know who they were or was that not clear?

A That wasn't clear. It was an assumption.

Q You assumed that one of the other agents would know who they were?

A Yes, I did.

Q You had no reason before you walked into the room to expect that Mr. Kroncke or Mr. Therriault would be there -people by those names would be there?

A No. No one by those names.

Q As you waited in the adjoining room you had a reasonable expectation of what was taking place in the file room, in the draft room?

A Yes, a reasonable expectation. Metal on metal I assumed that was the drawers

opening.

Q You assumed from prior knowledge, even from what -- even before you heard the file drawers, what you assumed to be the file drawers opening, that what was going to take place is that files were going to be removed from the cabinet?

A Yes.

Q You had no reason to be in fear of danger to yourself or any other person?

A Well, I don't think so.

Q And there wasn't anything that happened that night to change that expectation? I mean, you weren't afraid that anybody was going to attack you or anything at any time?

A No.

Q Or that the building would be blown up or anything like that would happen? You were never afraid of that?

A No.

Q There's been some testimony about a list with the numbers of cars or license numbers of cars and names. Do you have such a list?

A I did not.

Q Did you have such a list?

A I did not.

Q Incidentally you have testified that you are a special agent. As I understand it that's simply designation for an FBI agent? All FBI agents are special agents?

A That's correct.

Q Its not special in the sense that you deal with any particular kind of incident? A special agent deals generally with the business as an agent of the FBI?

A As an agent of the FBI.

Q Do you know if evidence other than the registration cards that were in that box which were introduced in evidence were also sent to Washington?

A I do not.

Q By that I mean you don't know whether they were or they weren't?

A I don't know that any other evidence was sent to Washington. No.

Q You don't know that it wasn't, though?

A I do not.

Q The tools that have been introduced in evidence are without exception ordinary tools that can be purchased anywhere in a hardware store, dime store insofar as the tape is involved, etc.?

A I would think so, yes.

Q Nothing particular about it? When you say claw hammer, all you mean is that it has something to remove nails?

A That's what I would assume to be a common term for a claw hammer.

Q Right. Screw drivers are the ordinary type of screw driver?

A Yeah.

Q And this little bar here is an ordinary kind of tool that can be purchased probably most anyplace?

A I would assume that, yes.

Q Also they, in the main, appear to be used in the sense that they may have been taken from somebody's basement or garage shop?

A Well, they certainly don't appear new.

Q And the gloves -- I think you did indicate that you don't play handball?

A I do not play handball.

Q You have never seen a game or handball?

A Not to my knowledge, except maybe something on TV, but handball itself I'm not familiar with.

Q I see. Were these -- did anybody observe before this afternoon that these were handball gloves? Did that observation come as a surprise to you?

A Yes. Nobody -- I handled the gloves and as I say, I took them and I made a notation of what they were. Just light leather gloves with the brand name Super Tiger.

Q Right. Did the Hopkins House match book appear to be complete and insofar as I

could observe no matches have been used from them?

A This was exactly how I found it and that's exactly how I recorded it.

Q And would you agree with my observation that it does not appear that any matches have at any point been torn from that match book?

A From what I can see it doesn't appear that any matches have been torn from the handbook or from the match book.

Q Were any efforts made to ascertain whether or not at any time this charcoal lighter fluid had had any removed from it or whether or not it is currently filled to the same capacity that it left the factory?

A You mean by that did I take some sample and try to set it on fire?

Q No. Did you in any fashion try to ascertain whether or not it was full or empty?

A Only by opening the top and --

Q I didn't --

A Through the weight of the container itself.

Q Did you weigh it as against a standard sample of one that would be purchased at any hardware store?

A No. I did not weigh it against anything.

Q Did you make an observation that it would appear to be full, a fresh can, unused?

A Yes, I would say it appeared to be full.

Q Fresh and unused?

A It appeared to be full. I couldn't tell whether it was fresh and unused or not.

Q I see. You testified that you waited in the real estate room twelve, fifteen minutes before you went, from the time that you observed -- that is observed by hearing -- the persons had entered the reception -- the Selective Service room before you and the other agents entered the Selective Service room?

A Well, I don't think that I said any exact time but approximately ten to fifteen minutes from the time we heard the entrance.

Q Did anybody -- was anybody charged with the responsibility of keeping a log so that the exact amount of time between the noises of entry and the time of the FBI

agents' entry could be noted?

A Yes. There were notations taken for that.

Q Who kept the log?

A I believe Special Agent Lais and Williams kept the log.

Q Have you seen the log?

A No. I have not.

MR. TILSEN: I have no further questions.

CROSS-EXAMINATION BY DEFENDANT KRONCKE

Q Were you One of the first ones into the room to make the arrest?

A I was the third individual into the room.

Q Could you say that you were one who entered in at such an extent that you were the first people I met? You all came in together -- like the three came in together?

A Well, Mr. McCullough, then the officer and then myself.

Q What did you say to us?

A Mr. McCullough says "This is the FBI, you are under arrest", and I told you to get against the wall for the search, put your hands against the wall. Myself and the other officer searched you and Mr. Therriault.

Q Did I do that?

A Yes, you did.

Q Did I say anything before I did that?

A Not to my recollection.

Q You don't recollect me saying "You have nothing to fear from us, we have nothing to fear from you"?

A No. I cannot recollect you saying anything like that.

Q In other words before -- do you recollect me saying that at any time, either before or after you searched us?

A Those exact words, no. I remember you speaking but I was -- we were getting

the search underway and I had another specific assignment such as taking care of the evidence or making sure nothing was moved prior to my --

Q Did I speak to you before you frisked me, so to speak?

A You may have spoken but whether you spoke to me -- whether you spoke to me personally I could not say that.

Q Were you ever at Little Falls before that evening?

A I have been in Little Falls, Minnesota before, yes.

Q Could you tell me when?

A I could not give you an exact date.

Q Approximately?

A Maybe a month.

Q And could you tell me on what business?

A We were there in a normal scope of the FBI business. This was -- occurred after the initial draft board thing in St. Paul, I believe.

Q What --

A When the draft board was broken into in St. Paul and then just a normal routine of checking of the draft board for their security measures.

{FXK – reference to “Beaver 55” raid on over 54 centralized draft boards in Post Offices in Minneapolis and St. Paul, February 1970. No one was ever caught. Ten thousand or more 1-A files destroyed. Head of MN SS said it shut him down for six months.}

Q The draft board raid in St. Paul, when did this occur?

A I don't remember the date.

Q Well, you came here -- well, did you come to Minneapolis in response to that?

A Pardon?

Q I mean did you come to Minneapolis as a special agent in response to this draft raid in St. Paul?

A No, I was in St. Paul.

Q I see, but in other words you were doing some follow-up in response to another previous draft board raid? Is that what you're trying to tell me?

A No. As I said, we were just checking the draft boards to see what their security measures were and determining who was there.

Q Well how long after this initial raid, whenever - I don't understand now. There was a raid when?

A Well, there was some type or a breaking in or the draft board in St. Paul and then consequent to this we were at Little Falls.

Q So in other words there had been a similar draft raid like this before?

A Well, I don't know. All I know is that the draft board was broken into in St. Paul.

Q Was anyone apprehended?

A I don't know.

Q What were you doing in Little Falls? What would be your procedure in reference to what you did at that point?

A How do you mean it?

Q That one month. The month before you arrested us, what were you doing? Did you talk to the draft board clerk?

A I believe we did talk to the draft board clerk.

Q Did you give them any information about people who are suspected about --

A No. We did not.

Q Did you anticipate from that a month from that time there was going to be a raid on that board?

A No. I did not.

Q Did you visit other boards in that area?

A No. I did not.

Q The only place you went was Little Falls?

A That's correct.

Q And excuse me if I ask you again, I forget; did you talk to anyone in the draft board, like the clerk?

A We may have talked to the clerk, identified ourselves, but that was all.

Q And did you tell her that you expected that there would be raids at some time in the future on all the boards?

A No. I did not.

Q And you are previously -- how long have you been in Minneapolis or were you in Minneapolis before you moved to Akron?

A A little over a year.

Q Have you ever been involved in making arrests similar to the one you made with us, on draft boards?

A On draft boards?

Q Yes. In other words is this your specialty? Do you go around the country --

A No. There's no specialty such as that.

Q But you would admit that there is an amount of frequency that draft raids are similar acts like homicide and larceny? They are referred to as draft raids?

A No. I wouldn't say that.

Q Would it be wrong for me to say it would be like almost three hundred similar type draft raid actions in the United States that the FBI has investigated?

MR. ANDERSON: Well, I would object, Your Honor, on the grounds that that's irrelevant to this Inquiry relative to the case.

THE COURT: Objection sustained.

BY DEFENDANT KRONCKE:

Q Had you planned to stay overnight when you went to Little Falls or had you planned to leave and go back that evening?

A I don't understand how you mean that. Did I plan to stay overnight? Did I have a hotel room?

Q Well, right. Did you plan on staying there a day or two, or did you know that you were just going up there for an evening?

A I didn't know how long I would be there.

Q Were you taking stuff along with you in case you had to stay overnight? Clothes, you know, toiletry articles?

A No. I did not.

Q When you had left Minneapolis though they said this might be a weekend affair? Did they give you any duration of the time you were going to wait out and watch for what was going to happen?

A No. They did not give me any duration.

Q Okay. This is Government Exhibit Number 4, you have stated before that that is myself and Mike, is this correct?

A That's as I saw you then.

Q We were in what posture? Were we just relaxing, sitting around the room? Casual? We weren't handcuffed or up against the wall?

A Not at that time. No.

Q Looks like I'm talking to someone. I'm not talking to Mike, is that true? I'm talking away? Would you assume that I was talking to some agents?

A I could not say who you were talking to. I was taking the picture.

Q Was that highly probable?

A I would say that was a probability, yes.

Q We did engage in conversation, didn't we, during the evening?

A With me, personally?

Q Yes.

A I think on the way back to Minneapolis we engaged in some conversation.

Q There was how many people in the car on the way back to Minneapolis?

A Three agents and yourself.

Q And did we sort of talk casually for the whole -about -- what did it take? An hour, hour and a half on the return?

A I believe you talked casual.

Q Did you respond to me? Did we talk about, like Vietnam?

A I think we -- that you spoke of Vietnam and I think my specific questions with you were regarded to the restroom when we stopped at the gas station and did you want a cup of coffee or something.

Q But what were you wearing that evening?

A Let's see. I was wearing a -- some type of hunting shirt and a pair of pants I believe and just regular shoes and I believe that was about what I had on.

Q By "hunting shirt" you mean some sort of like a camouflage jacket?

A I believe the -- yeah, a camouflage jacket, like a duck hunter or deer hunter.

Q Did you -- as I recall, you correct me, you said this was sort of a standard issue sort of Vietnam type of shirt you use in the war when you go out on patrol, is that true?

A I don't recall that, but I believe probably camouflaged it would be a --

Q Well, you did serve in the army, correct?

A Yes, I did serve in the army.

Q Then we talked -- you recall our talking about some of your experiences as opposed to my understanding of the war? You mentioning the fact that you were against the war too and our setting out our differences of response to our opposition to the war?

A Well, of course I can't remember exactly what you said, but of course I have thought -- given some thought to That I was -- to the comment that I might have made and my comment was something to the effect of the -- I believe the type of work that I did with the peasants in Vietnam in regards to trying to build up the local economy and things along this line.

Q You brought out the fact that your task over there was to bring peace to the people in general? That's how you felt, that that's what the Americans were doing in Vietnam?

A That's probably -- I mean that would be my idea, Yes.

Q We talked about other issues than that, though, is that true? We talked about a wide variety of issues? nonviolence, violence?

A Well, I think you expounded on a wide variety of issues but I don't believe I said too much to you.

Q But when we were back here being processed, we were processed, were we not, through the standard FBI building somewhere -- it's in this building, I think?

A Yes.

Q And fingerprinted and everything? The usual, and during that time did we not continue to talk casually?

A Well, I assume this, you know. I assume that you are speaking to me and I probably answered your question or may have spoken to you about --

Q Would it be just to characterize the whole evening is sort of a friendly evening? No hostility, rather casual?

A I think that you could say that you were friendly and open and above the board.

Q And when we were finally going over, you fellows left us off at the Hennepin County Jail, there were some jokes made about women and is it true that I mentioned the topic of interest to the people in the movement called "male chauvinism"?

A I don't recall that. No.

Q No. Right. I don't think you would, and when we left didn't we all shake hands and as we went off you went off back to sleep and we went off to sleep in jail and we shook hands and said goodbye?

A Well, I think we parted with a smile on our face.

DEFENDANT KRONCKE: All right, thank you. No more questions.

THE COURT: Anything more, Anderson?

REDIRECT EXAMINATION BY MR. ANDERSON

Q Mr. Bentley, there's been some reference about the records that were in that garbage pail sack being sent to Washington. Do you know why they were being sent there?

A I assume they were sent there to be photographed because we don't have the facilities to do it here, of such a Large number of them and if the draft board needed the

records why they could have the records back and we would still have a record.

Q When you walked in the file room was anybody playing handball?

A No. They were not.

MR. ANDERSON: I have no further questions.

MR. TILSEN: Did he say he has no more questions?

A No more questions, Your Honor.

DEFENDANT KRONCKE: No more questions, Your Honor.

THE COURT: I guess you're excused, Mr. Bentley, if there's nothing more.

(Witness excused.)

MR. ANDERSON: Your Honor, the government calls as its next witness Mr. Charles McCullough.

CHARLES H. MCCULLOUGH, FBI

a witness called by and on behalf of the government for examination, having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION BY MR. ANDERSON

Q Good afternoon, Mr. McCullough. Can you tell the jury where you live?

A At the present time Baltimore, Maryland.

Q And with whom are you employed?

A With the FBI.

Q And what is your capacity with the FBI?

A Special agent.

Q And how long have you been with the FBI?

A Approximately six years.

Q And going back to the month of July, 1970, where was your duty station?

A In Minneapolis.

Q And how long did you -- how long had you been in Minneapolis as a duty station

in July of '70?

A Approximately four years.

Q Now I'd like to take your -- have you tried to take your memory back to the 11th of July, 1970 which is the -day after the events that we have been talking about so far, and ask you if on that day you had occasion to go to Little Falls?

A Yes, Sir, I did.

Q And did you go along or was someone with you?

A I proceeded to Little Falls, Minnesota with Special Agent Lais of the FBI.

Q Had you been in Little Falls the night before?

A Yes, Sir, I had.

Q And had you been present at the time of the arrest of Mr. Kroncke and Mr. Therriault?

A Yes, Sir, I had.

Q But you say that you went back the next day with Mr. Lais?

A Yes, Sir.

Q And for what purpose did you return to Little Falls the next day?

A To search the car of Mr. Kroncke.

Q And pursuant to what instructions or authority did you search that car?

A With a search warrant issued by the U. S. Commissioner in St. Paul.

Q And what did you find -- did you search the car pursuant to that search warrant?

A Yes, Sir, we did.

Q And where did you find the car in order to search it?

A It was in the custody of the Little Falls Police Department.

Q And do you remember what you found, if anything, in connection with that search?

A I recall that we found four letters addressed to the news media. One letter to the newspaper in Little Falls and as I recall three separate letters to the news media here in Minneapolis.

Q And what did you do with those letters when you found them?

A We removed them from the car.

Q And what did you do with them after that?

A We opened them, read them and kept them in our custody. Brought them back to Minneapolis.

(Whereupon, Government's Exhibits 37, 38, 39 and 40 marked for identification.)

BY MR. ANDERSON:

Q Mr. McCullough, I will hand you -- handing you two documents paper-clipped together which have been jointly marked as Exhibit 37 for identification, and I would ask what

A Yes, Sir, the envelope and the letter contain my initials and the date.

Q And have you read the letter?

A Yes, Sir, I have read the letter.

Q And on your reading of it does it appear to relate to the events of the night before?

A It pertains to the destruction of draft records.

MR. ANDERSON: The government would offer Exhibit 37 in evidence.

(Whereupon, Government's Exhibit 37 offered into evidence.)

MR. TILSEN: We have no objection to Exhibit 37.

DEFENDANT KRONCKE: Then I will have no objection also.

THE COURT: All right. There being it would make it easier to go on to the next item of business, make it more easily understood.

BY MR. ANDERSON:

Q Mr. McCullough, would you read that letter, please?

A Yes, Sir.

"Attention all draft age men of Morrison County:

"We, the Minnesota Conspiracy to Save Lives, have destroyed all the I-A files for your county. In effect, what we are trying to communicate by our action is: do you want your life? - if you do then use this opportunity to take control of it. If you don't want your life, then go down to the Morrison County Draft Board and give it back to the Selective

Service System so that the government can use your body and life as a tool to make the rich richer and the poor poorer.

"The rich comprise .5% of the population of the U.S., yet they control the key decision making positions throughout the country. They are the elite few who have something to gain from a war which their sons and husbands do not have to fight.

"It is the draft age men of the middle and especially the lower classes which have everything to lose (their lives) and nothing to gain from cooperating with the participatory totalitarian regime of the U.S. that has no second thoughts about sacrificing *your* life for *their* benefit.

Think about it.

"We invite you to take control of your own life and thus become a member of the Minnesota Conspiracy to Save Lives. We've done our part to give you back your life. The rest is up to you. "Say NO to DEATH - say YES to LIFE!

The Minnesota Conspiracy to Save Lives."

MR. ANDERSON: Yes, the court just asked if it had been received in evidence.

THE COURT: Yes, Exhibit 37, there being no objection, was received in evidence.

MR. TILSEN: Would the envelope be read too?

THE WITNESS: The envelope?

MR. TILSEN: Yes. Would you read the envelope?

THE WITNESS: "Editor, Little Falls Transcript, Little Falls, Minnesota."

BY MR. ANDERSON:

Q Mr. McCullough, I'm showing you now Defendant's Exhibits 38, 39 and 40 --

THE COURT: Plaintiff's.

MR. ANDERSON: Excuse me, Plaintiff's Exhibits 38, 39 and 40 for identification and I will ask you what they are?

A 38 an envelope addressed to "Associated Press, 426 Portland, Minneapolis, Minnesota". The envelope contained a letter, typewritten letter. 39, an envelope

addressed to "Minneapolis Star and Tribune, City Editor, Fourth and Portland, Minneapolis, Minnesota". The envelope contained a typewritten letter. Number 40 addressed to "United Press International, 416 Portland, Minneapolis, Minnesota". The envelope contained a typewritten letter.

Q And can you ascertain from those letters if they are the ones found in the car?

A Yes, Sir, they are. Each -- both the envelope and the letters contain my initials and the dates.

MR. ANDERSON: The government offers Plaintiff's Exhibits 38, 39 and 40.

(Whereupon, Government's Exhibits 38, 39 and 40 offered into evidence.)

MR. TILSEN: We have no objection.

DEFENDANT KRONCKE: No objection.

THE COURT: Well, there being no objection Exhibits 38, 39 and 40 are received in evidence.

(Whereupon, Government's Exhibits 38, 39 and 40 received into evidence.)

MR. ANDERSON: I have no further questions.

MR. TILSEN: I just have a couple.

CROSS-EXAMINATION BY MR. TILSEN

Q Exhibit 37 begins: "We, the Minnesota Conspiracy to Save Lives, have destroyed all the 1-A files for your county".

Depending on your point of view, that's a little over-optimistic. The files of 1-A -- the 1-A files of Morrison County were not destroyed, were they?

A No, Sir.

Q As a matter of fact none of them were destroyed?

A Not to my knowledge, Sir.

MR. TILSEN: I have no further questions.

DEFENDANT KRONCKE: I have just a few.

CROSS-EXAMINATION BY DEFENDANT KRONCKE

Q I don't know what number it is, but the letters, are they all there?

THE COURT: They're all there.

BY DEFENDANT KRONCKE:

Q And this one letter, Government Exhibit Number 37 in which you read, does say as you mentioned before, the first line, "We, the Minnesota Conspiracy to Save Lives", is that correct?

A Correct.

Q Is the phrase "Conspiracy to Save Lives" a familiar one to you?

A Not particularly.

Q Is it familiar at all to the organization called the FBI?

A I'm sure it is, yes.

Q Are you familiar at all with the mention of a group called the East Coast Conspiracy to Save Lives?

A I have heard of it, yes.

Q Is it true then as in this copy of a newspaper clipping from a magazine called *The National Catholic Reporter* as of December 11, 1970, with headlines about J. Edgar Hoover that J. Edgar Hoover makes special reference to a group called the East Coast Conspiracy to Save Lives?

MR. ANDERSON: I would object, irrelevant.

DEFENDANT KRONCKE: It's to establish connection between the two Conspiracies.

MR. ANDERSON: I can see no relationship to any comments that J. Edgar Hoover might have made about anything to this case.

DEFENDANT KRONCKE: Well, I think it is very relevant and there has been no --

THE COURT: Well, let me see what it is before I can --

DEFENDANT KRONCKE: Well, there's a whole series of things here. That paper and Newsweek, about the conspiracy of clerks, the police plot, East Coast conspiracy to

Save Lives as being a national organization of Roman Catholics whose main purpose is to protest the war through attacks on the draft system. That is the East Coast conspiracy to Save Lives and this is the Minnesota Conspiracy. I was going to question him if he feels there is a relationship or knows of a relationship.

Are you familiar, Your Honor, maybe without reading through all of them, that J. Edgar Hoover took it on his own to appear before a Senate subcommittee --

MR. ANDERSON: I would object to counsel's testifying.

DEFENDANT KRONCKE: I'm explaining - I will explain quietly then.

MR. ANDERSON: Your Honor, the government's position would be there's no charge of conspiracy here. It wouldn't matter if there was a relationship.

DEFENDANT KRONCKE: It's the name. We are not talking about a conspiracy.

THE COURT: Well, would you gentlemen come up here a minute?

(Discussion at the bench between court and counsel, off the record, not within the hearing of the jury.)

(The following was had in open court.)

THE COURT: All right. After .a conference at the bench, counsel and Mr. Kroncke have agreed that for the time being at least they will withdraw the questioning that was transpiring. I do not mean to imply by that that you forever are abandoning it.

DEFENDANT KRONCKE: That's correct.

BY DEFENDANT KRONCKE:

Q Just one question then: you drove the car on the way back to the cities, is that right?

A That is, correct.

Q Would you also state that at least two of us -- I don't remember talking to you very much -- but that there was in the course of the hour and a half or however long it took us to get back, just some general, casual conversation, friendly conversation

between the agents and myself?

A There could have been some talk. I don't recall.

Q As you say, I was driving and paying attention to my driving.

DEFENDANT KRONCKE: I thank you. No further questions.

MR. ANDERSON: I have no further questions, Your Honor.

THE COURT: All right. I guess you're excused,

(Witness excused.)

MR. ANDERSON: Your Honor, the government next calls Colonel Robert P. Knight.

Colonel ROBERT P. KNIGHT, Minnesota State Director of Selective Service System

a witness called by and on behalf of the government for examination, having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION BY MR. ANDERSON

Q Good afternoon. Where do you live, Colonel Knight?

A I live in White Bear Lake, Minnesota.

Q And what is your occupation?

A I am the State Director of Selective Service for Minnesota.

Q And roughly what is the function of the State Director of Selective Service in Minnesota?

A Well, directly under the control of the Director of Selective Service, Dr. Tarr. I administer the Selective Service program in the state. I have technical custody of all of the records, things of that nature.

Q In connection with your duties as Executive Secretary, what is your relationship with the local Boards throughout the State of Minnesota?

A Well, I coordinate activities of local Boards. I see that their administrative

practices are uniform, that the procedures employed in the local Boards are proper, uniform and legal.

Q And in your capacity as Executive Director are you familiar with the records that are supposed to be kept by each local Board?

A Yes, I am.

Q And are you familiar generally with the function that these records serve in the Selective Service system?

A Yes, I am.

Q And are you familiar in your capacity with the duties of the Local Board and what its function is in the Selective Service system?

A I think I am, yes.

Q And in part are your duties supervision of local Boards to see that various regulations and policies are followed in each Board?

A Yes. That is true.

Q Now could you tell us, Colonel Knight, what the primary function or job of a local Board such as, for instance the Morrison County local Board in Little Falls, Minnesota, is?

A The primary function, I think I would have to say there are probably three or four parts to it; first, of course, it's to register those male citizens that are required to be registered for Selective Service. Then to classify the registrants, to spread induction calls as received from my headquarters and to maintain records, statistical records associated with these three items that I have mentioned.

Q Now in connection with classification, how many Classifications are there? Do you know?

A There are eighteen classifications in the lot at the present time.

Q And who actually makes the classification of a registrant?

A Members of the local Board, subject to appeal, of course.

Q And could you give us an example of some of these classifications? I guess we all know that 1-A -- what that is, but maybe you could give us an example of some other

typical classifications that a registrant might have?

A Student classification, 2-A. Other types of college students. 2-S, hardship deferments. 3-A, Conscientious Objector. 1-0, occupational deferment are also labeled 2-A. A man who has been in the service, 4-A or 5-A depending upon his age.

Q And do these classifications relate to the availability of an individual for the draft under the law?

A Yes, they do.

Q Now what is the first duty or contact with the Selective Service system or the Selective Service law imposes on a citizen?

A The first duty the citizen has is that at age eighteen or within five days thereafter to register for Selective -- register for the draft.

Q And where does the prospective registrant typically go to register?

A Usually to the local Draft Board in the county.

Q Now when he registers, is a record made of that registration?

A Yes.

Q And do you have a sample with you of the blank card or form upon which that registration is made?

A Yes. I brought such a card with me.

Q Would you describe to the jury what occurs with reference to that card when the young, eighteen year old presents himself for registration?

A The Executive Secretary or clerical assistant employed by the local Board generally puts this card into the typewriter and asks the young man the questions as they appear on the card; such things as name, date of birth, place of birth, residence, mailing address, physical description, occupation or what he is doing at the present time and really completes this card, at the conclusion of which he asks the young man to look it over and if it is accurate to sign and date the card. She does not at that time give the card a Selective Service number which is included amongst the various items here. She does not do that at the time the man registers, normally.

Q Well then is the signing of that card the actual act of registration?

A Yes. The completion of the card culminating in the signing of the card is registration, yes.

Q So would it be a fair statement that that card is the primary evidence of registration?

A Initially it is the only evidence of registration.

Q Well in that connection you stated that everything is filled out except the Selective Service number. When is that done?

A On the tenth day of the month following the registration, one of the employees, either the Executive Secretary or the clerical assistant arranges these cards for the previous month in chronological order by birthday and numbers them on the tenth day of each month.

Q Well then is it true that from the time the registrant comes in, to that day there is no Selective Service number for the registrant?

A The man does not get his number until the tenth of the following month.

Q Well after the registrant fills out that card then what is the next thing that happens in regard to the registrant?

A Well, perhaps I should say the card is what I think the printers call a fanfold card. It is two cards really put together on a hinge at the top with carbon paper inserted between and the original of this card is the one and only card that is signed. The other card does not have the information on the back. Only the original card is signed. Now is that –

Q What happens to that second copy?

A It's retained in the Draft Board, the second copy, until numbering day, the tenth of the month. Then after some other administrative chores these two cards are separated, torn apart and the second copy is sent to state headquarters in St. Paul. The original is retained in the local Board and filed alphabetically with all the rest of them and the little piece of carbon, of course, is thrown away.

Q And so if a registrant would register on, for instance, the tenth of the month it would be the tenth of the following month before the state headquarters had any

evidence at all of his registration?

A That is correct. We would not get this second card until the tenth of the following month when the numbers are applied.

Q Colonel Knight, does anything else happen on numbering day on the tenth of the month following registration when a Selective Service number is assigned to that card? Is anything else done in respect to the registrant?

A Yes. Actually before the two cards are separated and one mailed to St. Paul, the employee completes an individual cover sheet file or record jacket on each man using the information from the cards to start an initial, individual file. Following that an entry is made in what we call the Master Ledger. It's a numbered ledger form.

This entry consists in this case simply of a man's lottery number, his Selective Service number, his name and then a space for a chronology or running record of the man's classifications as and if they change, or whatever the situation, so there are two records made from the card; the individual cover sheet file, the record jacket and then this Master Ledger card.

Now you have mentioned that a cover sheet file is made up. What function does the cover sheet file serve?

A The file really becomes a folder that contains all of the correspondence -- copies of all the correspondence which the local Boards send to the registrant and any correspondence it receives from the registrant.

It also has a series of minutes of action, you could say, as the young man is classified or reclassified. This is his individual file used by the Draft Board in determining his classification. It's all the facts.

If the man takes a physical the results of that physical are recorded in this records jacket, for example.

If the man applies for a conscientious objector classification, the application form is normally contained in that records jacket, and so forth.

Q Now I was going to ask you next what the function of this cover sheet file does perform.

A It is the basis on which the local Board determines the availability of the registrant, on which they classify the registrant.

Now if something would happen prior to numbering day to the registration cards which you have described as being filled out by the registrant when he registers, would this hinder the preparation of the cover sheet file?

A Yes, it certainly would.

Q And why?

A The data gathered on the card is used in order to open up or to begin the cover sheet file, the individual file and without the card there would be no information upon which to start the file.

Q And is there any other function that this registration card performs in the daily operation of the local Board other than that of using as a base starting point for making a cover sheet file?

A After the cover sheet file and the ledger entries have been made, then the card is filed alphabetically at the Draft Board and becomes a locator and any correspondence or inquiry that's received, the first step is to go to the alphabetical locator card which is what these become, and find the man's Selective Service number. This is the first step in locating a file or replying or taking action on any correspondence or inquiry.

Q Now if it should happen that a cover sheet file was missing or destroyed, would this hinder the classification process?

A Without a cover sheet file the local Board would be unable to classify or reclassify a registrant.

Q Now I'm showing you an item that's previously been marked as Plaintiff's Exhibit 18, and of course it's a box and I'd like you to look in the box and see what you find?

A These are registration cards of the nature that we have been talking about, and by the number I see that it is for local Board 73 at Little Falls, Minnesota. Some of these cards are a little different version than we use now.

Here's one that dates back to 1922 for a date of birth, but still this is the -- serves essentially the same purpose. These are the registration cards for the Morrison County

Draft Board.

Q And does the whole box appear to be full of them?

A It is full of cards, this I see, and appears that they are all from local Board number 73 at Morrison County.

Q Are those the cards then that you were speaking of earlier as the cards used when the citizen registers?

A Yes. Yes.

Q Colonel Knight, you mentioned that a ledger book is kept. Does that ledger book have any other name?

A It's technically called the Selective Service Form 102 and is known as the classification record of each individual.

Q And I believe you testified that it's -- that the entry is made there the same as on numbering day.

A The initial entry of the name, the lottery number, the Selective Service number is made on numbering day, yes.

Q And where does the information -- from where does the information come to make the entry on this Ledger Book 102?

A The source of the --

Q Yes.

A Is from the card again.

Q What is the function of that book?

A It enables us to find a man's classification at any given time. You see, these record cards are -- after they have served their beginning purpose become locator cards. Our files are basically by classification and of course the individual classification changes are not recorded on the card but they are recorded on the Master Ledger, so once the Executive Secretary knows the man's number, then she can turn to the ledger or classification record book and see whether this man is in any given classification, 2-A for example, and then go to the 2-A drawer and find this man's record -- his individual record.

It's also the -- I might mention -- the public record. This ledger book is the public record to which individuals are entitled to look in order to determine a man's classification at any given time.

Q Then, Colonel Knight, what records if any must the local Board have in order to classify a registrant?

A Well, really it's a sequence of records. Basically the individual file.

Q Right, and what record, if any, is necessary either to make up the cover sheet file or to find the files that one must have on a registrant?

A The registration card is the initial record that is required.

Q And what record would constitute the public record of the status of each individual?

A The Master Ledger book is available to the Public.

There, not only is the classification shown but the date on which each succeeding classification or reclassification was given.

We also indicate on that record whether the individual has had a physical examination, whether he has submitted certain classification information in a "remarks" column.

And if any or all of these files that we have talked about were destroyed or missing, would the Board be able to perform its function normally?

A Not normally. Without the records the sequence of events that's necessary is disrupted and the Board would not be able to operate until the records were restored.

MR. ANDERSON: I have no further questions, Your Honor.

CROSS-EXAMINATION BY MR. TILSEN

Q Colonel Knight, you have been Director of the Selective Service for the State of Minnesota for how long?

A Six years, approximately.

Q And prior to that what were you?

A I was a civil service employee of the state of Minnesota for fifteen years, I believe.

Q What does the "Colonel" refer to?

A Under the law and regulations each state will have director who may be from the military or may serve in a civilian capacity, and when I was first nominated by then Governor Rolvaag, I elected the military capacity. Certain retirement benefits and so on.

Q Some states are directed by civilians and some by people in a military affiliation. Well, you are a colonel in the United States Army? Is that --

A I happen to be Air Force, but yes, I am a colonel in the Air Force.

Q And in Minnesota at least second in command in the State of Minnesota is a Major Abrahamson, I believe, is that correct?

A That's correct.

Q I believe his title is Director of Personnel.

A His title is Deputy Director, Sir.

Q Deputy Director?

A Yes.

Q Deputy Director for the State of Minnesota?

A For the State of Minnesota, yes, Sir.

Q And he is a major in what branch of the military, Sir?

A He is Army.

Q And are there -- who is the next in command in the Selective Service System in the State of Minnesota?

A Well I don't know that we designated it just that way. I would say Mr. Vern Christianson was probably the --

Q What is his --

A He is a civilian -- federal civilian employee in the GS rating.

Q Now you state that the primary function of the local Board, in answer to Mr. Anderson's questions, were to conduct certain registrations, classifications, etc.

Would it also be true to say that the primary function of the local Board is to attend to a -
- their part in obtaining people into the armed forces of the United States?

A The third function, as I related -- as I recall, was to when called upon by my office to spread an induction call.

Q Yes. Isn't it true that -- spreading an induction call is sort of an abstraction -- isn't it true that spreading an induction call and all other functions of the local Board actually relate to obtaining people for the armed services?

A Yes.

Q So that the description of -- that you have been giving is a description of how the local Board, as viewed from your office, works in obtaining persons into the armed forces of the United States?

A Through this medium of classification as to availability, examination and ultimately to spread the induction call amongst those citizens that are available under the Law.

Q Now do you keep records in your office and under Tour control of the number of persons inducted into the military through the Selective Service System in each calendar year?

A Yes, I do.

Q And do you -- within the exact figures, that is to the person, are not necessarily relevant if we are -- if we have figures that are reasonably accurate in rounded numbers, could you tell me for instance in the calendar year 1970 the number of persons inducted in Minnesota?

A In Minnesota?

Q Yes.

A Four thousand nineteen.

Q I take it from that figure it's an exact, not an estimate?

A Yes, Sir. That's exact.

Q And the immediate prior year, '69?

A Just six thousand --

Q Plus --

A Two or three.

Q And in the year '68, which is the last year?

A '68 we were in the neighborhood of four thousand again. '69 was slightly higher for our state.

Q Do you maintain in the state of Minnesota records of what happens to the persons who are inducted, these four thousand or six thousand persons from year to year?

A Once a man is inducted we classify him 1-C and there he remains until he is discharged and we do not have the responsibility, nor really the authority to follow the individual within his military service. Is that what you're --

Q That's my question, so that you would have no record per se in the state of Minnesota in your office of how many men of these four thousand are aware? This is not a record?

A No.

Q Do you maintain however upon their discharge, they then once again enter the Selective Service System and are again classified and given a new classification.

A Yes.

Q And that classification I think you described as either 4-A or 5-A?

A Yes.

Q Depending on their age. Of course you also maintain records then of those people who are killed in military service, do you not?

A When a man -- when we are notified by the Department of Defense of a casualty for any reason in service or otherwise, we do indicate the individual is deceased. This is true, whether it is -- whether he is in the military or ailed or dies a natural death unrelated to the military.

Q In connection with your keeping of the records of individuals who are deceased in Minnesota, who had been classified prior thereto, do you maintain any separate record

if the number of Minnesotans who had been classified, inducted into the military service during any given period and then deceased?

A No. We do not. -

Q Specifically do you maintain a record of the number if Minnesotans killed in action?

A No. We do not.

Q So specifically you do not maintain a record -- an exact record of the number of Minnesotans drafted in any given year or period of time who serve, for instance, in Southeast Asia?

A We do not do that.

Q And nor do you maintain a record of the numbers who were killed in Southeast Asia during any given period of time?

A No.

Q Do you maintain -- I take it then you would not maintain a record of the numbers injured during any period of time?

A No.

Q Now on prior occasions I have had occasion, have I not, to call your attention to a certain study conducted by Mr. Glass of the National Journal concerning the Selective Service System and what happens to draftees, is that correct?

MR. ANDERSON: I would object to the question on the grounds that whatever the answer is, it's irrelevant to the lawsuit. There could be no possible relation between the charge in this case and any study connected -- or any reading that Colonel Knight might have done of any study.

THE COURT: Well, it's five o'clock and I suggest we excuse the jury and then I'd like to know what you have in mind and in the absence of the jury we can talk about it, and unless you just had one more question or something --

MR. TILSEN: No. I haven't. He's going to have to come back anyway.

DEFENDANT KRONCKE: I have got questions too.

THE COURT: Yes. I understand. Mr. Tilsen, I do have two criminal matters on in, the morning and some petitions for admission, but it's thought we could convene at 9:30. Mr. Anderson?

MR. ANDERSON: Fine with the government.

THE COURT: Would that inconvenience anybody on the jury, if we convene at 9:30 in the morning? All right. The jury may retire and we will be prepared to start at 9:30 in the morning.

(Whereupon, the jury was excused from the courtroom.)

THE COURT: All right, I guess you're excused, Colonel Knight, until tomorrow morning at 9:30.

Do you want this on the record or do you want it off the record?

MR. TILSEN: It doesn't have to be on the record.

(Discussion off the record.)

THE COURT: All right. We stand in recess.

(Whereupon, a recess was taken until 3:30 o'clock a.m., January 13, 1971.)

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