

Testimonies of:

- Michael Therriault, “Minnesota 8” defendant
- Staughton Lynd, Professor of American History, Quaker
- Alan Hooper, Professor of Biology, University of Minnesota
- Mark Jesenko, lay Roman Catholic Theologian
- Al Janicke, former Roman Catholic priest, member of “Milwaukee 14”
- Father William Hunt, Roman Catholic Priest, Vatican Council II *peritus*

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UNITED STATES DISTRICT COURT DISTRICT OF  
MINNESOTA FIFTH DIVISION

United States of America,

Plaintiff,

vs.

5-70 Cr. 19

Francis Xavier Kroncke and

Michael Duane Therriault,

VOLUME V

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 15, 1971.

APPEARANCES:

Thorvald Anderson, Assistant United States Attorney, and Stephen Palmer, Assistant United States Attorney, Appearing for the Government.

Kenneth Tilsen, Esq.,  
and Stuart Wells, III, Esq.,  
Appearing for Defendants;

Defendant Kroncke also appearing pro se.

| <i>Witnesses</i>      | <i>Direct Cross</i> | <i>Redirect</i> | <i>Recross</i>  |
|-----------------------|---------------------|-----------------|-----------------|
| Michael D. Therriault | 2 (Tilsen-cont)     |                 |                 |
|                       | 16 (Kroncke)        |                 |                 |
|                       |                     | 23 (Anderson)   |                 |
|                       |                     |                 | 30 (Tilsen)     |
|                       |                     |                 | 334 Anderson 35 |
|                       |                     |                 | (Tilsen)        |
| Staughton Lynd        | 36 (Tilsen)         |                 |                 |
|                       | 52 (Kroncke)        |                 |                 |
|                       |                     | 58 (Anderson)   |                 |
|                       |                     |                 | 59 (Tilsen)     |
| Alan Hooper           | 62 (Kroncke)        |                 |                 |
|                       |                     | 80 (Tilsen)     |                 |
| Mark Jesenko          | 82 (Kroncke)        |                 |                 |
|                       |                     | 108 (Anderson)  |                 |
|                       |                     |                 | 110 (Kroncke)   |
| Alfred Janicke        | 114 (Kroncke)       |                 |                 |
|                       |                     | 126 (Tilsen)    |                 |
|                       |                     |                 | 130 (Anderson)  |
| William C. Hunt       | 132 (Kroncke)       |                 |                 |

EXHIBITS

| <i>Defendant</i> | <i>Offered</i> | <i>Received</i> | <i>Description</i>  |
|------------------|----------------|-----------------|---|
| 5                |                |                 | "The Christian Experience and the Roman Catholic Theologies Tradition." |
| 6                |                |                 | "The Doctrines of Vatican II."  |
| 7                |                |                 | "Peace on Earth."   |

January 15, 1971

10:00 o'clock A.M.

MR. TILSEN: Mr. Therriault, will

you return to the stand.

WHEREUPON,

## **MICHAEL D. THERRIAULT**

having been previously sworn, resumed the stand and testified further as follows:

MR. TILSEN: I believe at the conclusion of Court yesterday the witness read Defendants' Exhibit 4 with the deletion.

We have now photocopied the page involved with the deletion blanked out. The other pages are the same. A new Page 3 for the exhibits has been substituted, and the new Page 3 is a photocopy of the original with that paragraph blanked out.

I then offer in evidence Defendants' Exhibit 4.

THE COURT: I think there was an objection to it, but the Court with that amendment overruled the objection, and it is received in evidence.

[Defendants' Exhibit 4 received in

evidence.]

### ***DIRECT EXAMINATION [Continued] BY MR. TILSEN***

Q Mike, in your actions and activities leading up to the events of July 10, 1970, were you motivated in part in acting upon the concepts and ideas of the ethical and imperative necessities set forth in Exhibit 4?

A I definitely was.

Q Which you read to the Jury?

A Yes.

Q You have described in part yesterday some of the process that brought you to the point of mind whereby you made determination to take the acts that you took.

I believe we have covered your work as a draft counselor and your personal experiences in resistance to the draft.

Were there other major areas of concern that moved you, that made you believe it was necessary to take the acts you

took?

A Well, there were two significant things which moved me to the act.

In relation to draft counseling, I became aware of the increasing resistance on the part of many young registrants, and the fact that because of their stance of non-cooperation, they were going to be forced to be criminals, in a sense, peace criminals. This is in addition to the other effects which I observed that the Selective Service had on individuals.

Q Did you become aware of the scope of the problem of resistance?

A Yes, I did. In January of 1970, I believe it was, 38 indictments were handed down for Selective Service violations.

Q And were there any or some of these persons known to you?

A Yes, there were.

Q And they faced various possibilities of prison terms, ranging generally up to five years?

A That is right.

Q Were you aware of any growing tendency on the part of the persons of your age to refuse to follow the Selective Service System in a steadily increasing number of persons who were entering the legal system as defendants in the Selective Service System?

A Yes, the number substantially increased from the time I started draft counseling until the time I finished up.

Q Did that play a role?

A It played a significant role, because these people, the people that could not accept the idea of the Selective Service possessing their lives for a certain amount of time had to break the law to repossess those lives.

Q You indicated that there were two additional areas other than those things we covered in our testimony yesterday. One you now indicate to be the growing number of persons who were forced to become criminals under our system by reason of their refusal to participate in the Selective Service System.

What was the other major matter that we did not cover in the testimony yesterday?

A The other area was my increasing knowledge of the effects of the war in Indo China, especially in Viet Nam, upon the people of the land Viet Nam, and I came to an increasing awareness of what was happening by my review-al of

the International War Crimes Tribunal held in 1967.

Q Specifically, what material or what kinds of information were you acting upon in believing it was necessary to take the steps that you took?

A Well, basically, the War Crimes Tribunal would hear evidence from all parties who were concerned about what was happening in Viet Nam, and the general purpose for the Tribunal was to investigate allegations that were made both in the American and in the world press about what was taking place in Viet Nam.

Specifically, they investigated whether or not the United States was involved in crimes of aggression, first of all; secondly, whether or not they were violating international laws by bombing purely civilian institutions and installations; whether or not they were using weapons which were in violation of laws, principles of laws set down in 1907 that stated that civilian populations should be immune to bombings and which proscribed weapons which caused useless suffering to populations.

Fourthly, they investigated the matter of the treatment of prisoners of war, and finally, it investigated whether or not the United States through its treatment of the civilian population by way of bombings of strategic life hamlets which were concluded by the Tribunal to be no more than concentration camps, that the United States was involved --

MR. ANDERSON: Your Honor, I object. This is beyond the scope of the question. The question was, what did they study, and now he is talking about --

BY MR. TILSEN:

Q Well, what were the conclusions you arrived at that motivated you in relationship to war crimes as you entered the Selective Service Board and that made you feel it was necessary to take the steps you took on July 10th?

MR. ANDERSON: I would object to that. The conclusions that he may have drawn from some hearings report are just irrelevant.

MR. TILSEN: Does the Court want an argument?

THE COURT: I will overrule the objection, but I don't purport by so doing to admit a long dialogue about what other people have said. He can describe his own feelings and views.

BY MR. TILSEN:

Q I will caution you to speak to the conclusions that you arrived at with respect to the subject matter under discussion, which

is the subject matter of war crimes.

What conclusions did you personally arrive at that played a part, along with the other matters you testified yesterday and today, in arriving at your conclusion that it was a necessity that you take the act that you did?

A Well, apart from the decision that my act was motivated by high regard for human life, it was also motivated by the fact that the United States was obviously breaking certain international laws to which it was a party, and it cannot ignore those international laws to which it is a party because they, in effect, become the supreme law of the land.

A few of the laws which they violated included the 1928 Kellogg-Briand Act, which forbids the use of force or the threat of force in international relations; the 1923 Hague which forbids bombing of purely civilian installations the 1907 Hague which forbids the use of weapons whose sole purpose is to cause useless suffering and which doesn't respect the immunity of the civilian population.

Also, the fact that the United States, although it did not find the 1954 Geneva Accords, pledged to respect by those accords by unilateral agreement which was made by Walter Smith, and there are numerous laws and I cannot recall all of them, which the United States has appeared to have broken in its involvement in South Viet Nam, and subsequently in North Viet Nam.

It tried to justify its involvement by saying -well, the 1954 Geneva Accords which they pledged to uphold provided a temporary and only provisional demarcation line be drawn between the North and the South of Viet Nam to facilitate a suspension of hostilities.

That also provided that there would be no reprisals as against former resisters to French colonialism. It further provided that there would be general elections held in 1956.

It also forbid the introduction into Viet Nam of any war materials from outside countries. In 1954, the United States began to introduce war materials under the guise of economic aid to --

MR. ANDERSON: Excuse me, Mr. Therriault. I would object, Your Honor. The witness is now testifying as to things that he alleges happened without any foundation that he would know, and it is not responsive to the question as to his conclusions.

THE COURT: Yes, I will sustain the objection.

MR. ANDERSON: I might say at this point, Your Honor, that from this point forward, I would appreciate it if Mr. Tilsen would not lead the witness as he has been. I have not objected so far, but from this point on, I would appreciate it if the questions would not be leading.

BY MR. TILSEN:

Q Returning now to the single question of war crimes and your conclusions thereto as they motivated you, did you arrive at any conclusion as to the general character of the war in Viet Nam as it related to the question of war crimes?

A Yes, the conclusion I arrived at was that our participation in the war in Viet Nam was illegal.

MR. ANDERSON: I would object, Your Honor, because he is giving a legal conclusion as to what the law might be, and he has no standing to do that.

THE WITNESS: Any type of knowledge of Viet Nam would show that we are illegally involved.

MR. ANDERSON: Excuse me, Mr. Therriault -

THE WITNESS: Excuse me.

THE COURT: Well, he was expressing his views and he is one of the defendants. I will let the answer stand.

BY MR. TILSEN:

Q You have expressed the opinion that it was illegal. Did you also arrive at any conclusions as to the character of the war itself?

A Well, the character of the war was definitely immoral by its effect upon the civilian population, and I would like to add a few comments upon why I feel, the factor from my point of view that the illegality of the war affected my decision to go into the Little Falls Draft Board.

It is not that laws should be the only thing that man considers when he decides whether or not he is going to do an act, but for government leaders to speak of a government of laws, it seems quite senseless that the government itself cannot be held accountable for the law. It seems that the United States is operating illegitimately within a framework which they accept by way of the Constitution, and if there is no legal recourse to bring the war to an end, then people have to resort to nonviolent extra

legal efforts based on morality and reason.

I think there is a distinct difference between the laws which I feel the United States Government has broken and the law which Frank and myself have broken, in that the United States Government is violating laws in spite of its consequences upon people in general, and especially upon civilians, both in Viet Nam and the United States, and the law which Frank and I broke was because of the consequences upon the people, especially the civilians.

Q Did your act in entering the Draft Board on July 10th endanger the life of any person?

A Definitely not.

Q Did it endanger the health or well-being, the moral, physical, spiritual or emotional welfare of any person?

A I would say the only way it endangered any of those things would have been if we would have hurt ourselves going into the building.

Q You testified yesterday of your efforts to bring evidence of the My Lai Massacre to the Induction Center upon your refusal to accept induction and of your efforts to bring evidence of the My Lai Massacre to your Draft Board upon advising them of your refusal to accept induction in January. Did you have in mind the My Lai Massacre matter when you entered the Draft Board on July 10th and the relationship testified to by witnesses during the course of this trial of the relationship between the Selective Service and the continuing war?

A Yes, one of the reasons for bring along photographs from "Establishment" magazines, such as Life was to indicate to the registrants that certain information had been made available and the fact that ordinarily it is hard to conduct what would be termed a brutal war of aggression in the name of an enlightened and informed citizenry that either certain democratic rights are going to have to be restricted, such as the rights to free discussion and information, either that or the war has to be terminated, and information was starting to be made available to the general American public.

My reason for bringing up the fact of the My Lai Massacre was to make it known to the registrants in case they hadn't known the type of activities that the U.S. Military and the Selective Service is providing men in the military and were carrying out in Viet Nam.

Q On July 10, 1970, were you aware of the relation ship between the Selective Service System and the war in Viet Nam as

testified to by witnesses in terms of an 80 percent chance of a draftee going to Viet Nam, the fact of 88 percent of the infantry men in Viet Nam being draftees?

A Yes, I became aware of this through, and this will probably be termed hearsay evidence, but it was from one of the recruiting officers down at the Induction Center who said that four out of five men inducted would go to Viet Nam.

Q We heard some testimony yesterday and saw some slides of the destruction of millions of acres of South Viet Nam. Were you aware in acting upon the information as to the nature of the herbicide defoliation programs and the programs of the United States Military in destroying the entire countryside of Viet Nam when you entered the Draft Board?

A Yes, I was, and I felt that the other people, that at the very least, knowledge of this compelled me to raise the level of awareness of other people to what was happening in Viet Nam, and that once they had such a level of consciousness that in some way it would raise their moral consciousness to the point where they would at least consider that participation in war was immoral and illegal and it confronted, personally confronted the consciences of those being inducted into the military, for they were the ones who had to carry out the policies.

I also confronted people whose tax payments were going to finance the war in Viet Nam and other people who in various methods support the Government's policies.

Q We heard testimony yesterday from a man whose entire life had been involved in decision-making relative to Viet Nam, who testified, in summary, that non-violence protest to the war has the possibility and potentiality of ending the war and is the only factor that would counter act the political considerations that impel successive administrations to continue the war; that this can only be counteracted by the acts of a great number of persons, voters, press, Congress, Judges, acting on moral matters, acting as a result of being morally challenged, to take steps to consider the moral aspects of the war.

Were you acting with those feelings and motivations in mind in entering the Draft Board on July 10th?

A Yes. I realized that there was personal jeopardy to myself in taking such an action, but I felt that I myself could no longer remain silent about what was happening in Viet Nam and that I had to communicate in a way that I felt was non-violent, as to just what was taking place, what was happening, the effects of the war, the forced criminalization of registrants who did not believe that their bodies belonged to the Selective Service System to use as

they wished, forced criminalization of those who accepted the notion of Selective Service and those type of people with that mentality will eventually enter the war and they would accept the idea that they owed their lives to Selective Service, that they could also accept the idea that a gook is a gook and not a human, that a hootch is a hootch and not a home.

Q Did you hope by your actions, then, to raise a moral challenge to all persons with whom you might come in contact as a result of your actions?

A Yes. I have an awareness of the notion of fear in men's lives and I can see how fear has made people blind and it has made them insensitive to crimes against humanity, in effect. This insensitivity has made them silent when they should be crying out.

It has made them silent when they see young sensitive men taken by the Selective Service System, sent to a military training post and made into hard insensitive and silent men so that they can better carry out the policies of murder.

It has also made people silent when they should cry out about the fact that 70 percent of their tax payments are spent for war materials and the construction of death-dealing machines and for the training of men to use those machines in carrying out murder against men, women, children and babies.

Q Do you hope to raise the moral challenge you spoke about in this Courtroom at this time?

A Definitely, that is what I am trying to communicate, that people can no longer remain silent, and that the crime of silence, in effect, allowed Hitler to slay six million Jews, and it is the crime of silence which I cannot allow myself to participate in.

Q Did you have that in mind when you wrote the letter introduced in evidence by the prosecution as Plaintiff's Exhibit 37, a letter that begins, "Attention all draft age of Morrison County," and which ends, "say no to death, say yes to life"?

A That was one of the major reasons for writing the statement, yes.

Q You did write it?

A Yes.

MR. TILSEN: That is all.

### ***DIRECT EXAMINATION BY DEFENDANT KRONCKE***

Q What has been said at this trial is a long way from July 10th, but here we are.

Mike, you and I have had a fair amount of time to talk about our ideas, and we know one another fairly well, is that

correct?

A That is true.

Q And even though I basically talk in theological terms and things like that, we basically have a compatible view towards what we are working for, the type of change we want in society?

A That is right. We both work through non-violence, direct action.

Q So our taking the acts that night both come out of an understanding of necessity, even though we might come out of different intellectual traditions or different family backgrounds, is that correct?

A True.

Q When you were in college did you participate in things like teach-ins.

A Usually I was on the receiving end of teach-ins.

Q That was during your college period that teach-ins were used on campuses, is that right?

A Yes.

Q And this would include an easy access to picture: and movies, presentations about the war, what goes on in the war, movies which depict both sides of the issue?

A Definitely. These are some of the specific things which had an effect in raising my level of awareness of what was happening.

Q These pictures and movies which are usually show: on university campuses are not the type that are usually shown at the Mann Theater, or something like that?

A True.

THE COURT: Let me interrupt just a moment. Mr. Tilsen, in effect, Mr. Kroncke is cross examining your client.

MR. TILSEN: That is correct.

THE COURT: If you have no objection to that, would you indicate that for the record?

MR. TILSEN: We have no objection, absolutely none, Your Honor. My client is perfectly willing to be cross examined by Mr. Kroncke and waives all rights thereto. It seems more logical for Mr. Kroncke to cross examine him that it does to remove him from the witness stand and have him recalled as a witness on matters that Mr. Kroncke wants to present through him

in his case.

THE COURT: Well, he is, in effect, now being a witness for Mr. Kroncke in Mr. Kroncke's case, is that correct?

MR. TILSEN: That is substantially correct.

THE COURT: And you have no objection to that?

MR. TILSEN: None whatsoever. I am sure the witness has none and can so indicate for the record.

THE WITNESS: I don't have any objection.  
THE COURT: All right. That doesn't mean that everything that is going to be asked is admissible, but I want to have the record straight so there is no argument about anything like that later.

DEFENDANT KRONCKE: Okay. Fine.

BY DEFENDANT KRONCKE:

Q You mentioned that you worked at the Twin City Draft Information Center. Did you have ample opportunity to talk to people who were veterans of the war, people our own age?

A Yes, and I have even lived with a veteran of the war in Viet Nam.

Q You mentioned yesterday that you do identify with the non-violent traditions which are developing in America, is that correct?

A That is true.

Q And this is a long standing tradition and not something that was thought up in the last ten years, is that correct?

A Yes.

Q Is it fair to say that a central characteristic of the non-violent movement is that people do criticize each other?

A Yes, and that a big part of it is self-criticism

Q And being non-violent is something you are always striving for?

A. Definitely.

Q It is not something that you just arrive at, that you say I am non-violent, but it is a continual process, re-examination of yourself and your acts?

A Yes, we are always in a continuation of non-violence.

Q Non-violence recognizes the need for change in people and an

openness to change?

A Yes.

Q And opens the possibility of criticizing your own acts?

A Definitely.

Q There was an objection to a visual introduction of material which would explain what the word "atrocities" means. Is it your belief that most Americans are not willing to face the human reality of the war?

A I think that generally that that could be said, and that even when we see pictures or films of atrocities, they rationalize it, they don't really have a feeling for it, because even though they see them, they are just statistics, they feel that, you know, war has atrocities and what do they give soldiers bullets for, things like this.

Q You are the oldest in your family, is that true?

A Yes.

Q Were the actions that you took on July 10<sup>th</sup> related to your concern for the future of your brothers in your family?

A Definitely so.

Q How many are there in your family? I have forgotten.

A Seven.

Q How many of them are boys?

A Four, including myself.

Q You identify with the general label, "protest movement" is that correct?

A Right.

Q Is it true that people of the protest movement are often accused of possibly bringing America into chaos and disorder?

A Yes, I think we are often accused of that.

Q Is it a commonly held belief in the non-violent community that we are presently, in view of the wholesale war going on and the 70 percent of the economy devoted to war materials, that we are presently in a disordered society and a society based on chaos?

A I think society is definitely based on chaos when it subjugates human values to property values.

Q So would it be fair to say that our venture together on July 10th was a venture to rediscover America?

A Well, I don't know what you mean by "rediscover

America."

Q Try to find the values of our tradition.

A Right. I don't think we were vandals who went into the Draft Board just for kicks, while we weren't merely concerned from protecting ourselves from committing an illegal or immoral act connected with the war, we were, in effect, concerned about bringing such acts to an end; and I think you could also say recognition that certain freedoms are basic freedoms while others are not, and that the freedom of one man to kill another is not a basic freedom, and for us to impose ourselves between the killer and the killed is not to violate the person of the killer in a fundamental fashion or those who recruit people to kill.

Q Is it true, as you understand it, that any death is a tragedy?  
A I feel that the death of any person is a tragedy and there is no amount of property which can justify the tremendous toll which the war has taken.

Q Is it common to see statistics published about the amount of deaths in Viet Nam?

A It sure is.

Q Do you feel that most people can't read statistics with feeling?

A I think what happens is that it becomes like a game, the weekly football game, or something, where statistics are looked at as the way of winning. They forget to realize that each individual statistic stands for a life and that this constant publication of statistics desensitizes people to the human factor involved.

Q Can you think of a greater evil than war?

A I can't think of a greater evil than war. To me to solve problems through violence seems rather senseless to me. It doesn't seem to be based on reason or morality. It is totally incomprehensible to me.

Q Do you plan to continue your life in this struggle for peace to America and to the world?

A Definitely so, and no amount of incarceration is going to change the way I feel about the world. I am going to live my life in a non-violent fashion, even if the laws don't permit that.

Q Okay, Mike. No further questions.

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

## **CROSS EXAMINATION BY MR. ANDERSON**

Q Mr. Therriault, as I understand your testimony, you admit that you were in the Draft Board office the night of July 10th in

Little Falls?

A That is correct.

Q And Mr. Kroncke was with you?

A True.

Q And you entered in the way that was described by the FBI agents who testified earlier?

A That was the only way to get in. We didn't have a key.

Q And had you not been apprehended, you would have removed those files that were in the bag that was found on the floor, is that correct?

A Yes, we would have removed them and sunk them to the bottom of the Mississippi River.

Q And you would have removed other files, as well, in addition to the ones that you had already loaded up, is that true?

A Yes, we would have removed the 1-A files.

Q Now, for how long had you and Mr. Kroncke intended to go to the Board at Little Falls?

A Oh, for at least a month.

Q And where was that decision made?

A The decision to specifically go to Little Falls:

Q Yes. Let me ask you this. When was the decision made to rip off a Draft Board?

A Generally, we had discussed the notion of entering Draft Boards.

Q For how long a period of time had you discussed that prior to the month before the raid when you said the decision was made?

A Oh, three months.

Q Where were these discussions held?

A At various --

MR. TILSEN: I don't see, Your Honor, how the place of the discussions could particularly be relevant. I would object to them.

MR. ANDERSON: Well, Your Honor, I am cross examining a defendant, and I think everything is relevant from the first glint in anybody's eye that this might be done.

MR. TILSEN: If the Court please, the defendant has taken the stand and admitted the acts claimed in the

Indictment. We raise the affirmative defense of justification and necessity. I would assume that the cross examination would go to the defensive matters our having admitted all the essential allegations of the Indictment.

I would think that he would be permitted to cross examine the defendant at any length concerning our defense, concerning the validity or invalidity of the beliefs and conclusions that the witness arrived at that made him feel that it was necessary and appropriate and reasonable to take the steps that he took. As to whether or not he took the steps, he said that he did in greater detail than the Indictment charged, I think, and in greater detail than the prosecution proved.

MR. ANDERSON: Your Honor, if that is the objection, I think these questions might relate to motive and reason, for that matter, as to the time the decisions were made.

THE COURT: I will overrule the objection so far as inquiring as to the time the decision was made. The details as to the place, I don't think that is important and I will sustain that.

MR. ANDERSON: Would you read the last question?

[The question was read.]

THE COURT: I have sustained that objection.

BY MR. ANDERSON:

Q You didn't want to get caught that night, did you?

A We weren't planning on it.

Q You didn't want to be apprehended, is that correct?

A That is true.

Q You testified that you couldn't remain silent any longer about the various views you had in connection with the Viet Nam War, is that right?

A That is correct.

Q You testified that in your mind, your deeply held ethical and moral questions were behind this inability to further remain silent, is that correct?

A True.

Q But you still didn't want to get caught, even with all these ethical beliefs, did you?

A Well, I didn't feel I should have to go to jail for violating the law which, to me, is unconstitutional, for a law which encourages young men to go into the war and commit war crimes, and I didn't think I could be effective in jail.

Q But you do believe that you are entitled to make that choice as to which laws you obey and which laws you don't, don't you?

A Well, I think man should be able to use reason to decide as to --

Q Please answer the question. Do you think you have that right?

MR. TILSEN: I object to counsel interrupting the witness in his effort to answer the question, Your Honor.

BY MR. ANDERSON:

Q Do you believe you have that right?

THE COURT: The objection is over-ruled. You may answer.

THE WITNESS: I believe every man has that right.

BY MR. ANDERSON:

Q You testified, I believe, that in response to an order of your Local Board, you went to take a physical examination for the Armed Forces, is that true?

A No. I refused to take a physical.

Q Didn't you testify that you went to the recruiting station with a view toward persuading others -

A That was --

Q That was at the time of induction?

A That is right.

Q You attempted to persuade others not to be inducted, correct?

A Basically, I guess that is what it was, yes.

Q Did anyone accept your advice?

A Yes, one other person did.

Q Did you know that person before you went there?

A I had just briefly encountered him once before.

Q Where?

A There were two other people. One of them I knew well, Don Olson, and the other I didn't know at all and I forget his name.

Q And have you ever discussed this case with Mr. Olson?

A What case?

Q The case we are trying right now.

A Of course I have.

THE COURT: I don't know what importance it has, but so the Court's notes are straight, I had it down here that in January of 1966 you took a physical exam and passed. Am I wrong on that?

THE WITNESS: January of 1966, right.

THE COURT: You did pass?

THE WITNESS: Yes, I volunteered to take a physical to see if I would pass.

BY MR. ANDERSON:

Q That was not a draft physical, was it?

A No, I wasn't called for a pre-induction physical or anything like that, not in 1966.

Q That was in connection with a proposed enlistment possibility, was it not?

A Yes.

Q This has been marked as Plaintiff's Exhibit 24. what was that for?

A An emergency measure. We decided if the files wouldn't sink into the river, we were going to burn them instead.

Q Where were you going to do that?

A It was kind of difficult to tell. If they weren't going to sink in the river, we would have to find out where they were going to lodge up on shore. I didn't bring the charcoal lighter fluid along.

Q Did Mr. Kroncke?

A Yes.

MR. ANDERSON: I have no further

questions.

MR. TILSEN: I have one or two questions on redirect.

### **REDIRECT EXAMINATION BY MR. TILSEN**

Q You testified at that time, Mr. Anderson asked you, you did not intend to be caught, it was not your plan?

A At that time, that's true.

Q Have you or were you aware and had you discussed the possibility of coming forward at other times?

A The possibility was discussed and was still being considered.

Q Had there been other events in this community testified to by witnesses for the prosecution, namely, circulated literature, spoke widely and took moral responsibility for the acts?

A Yes.

MR. ANDERSON: I would ask that that answer be stricken and the Jury instructed to disregard it, because it is irrelevant whether in other events that happened or not.

MR. TILSEN: The point is, Mr. Anderson argued because he wasn't going to get caught that night that the moral dimension is diminished. Our point is that on a prior occasion in this community on the event testified to in the prosecution, persons not caught came forward weeks later and took moral responsibility for the act of draft file destruction. I think that is a relevant fact tying directly into the cross examination.

THE COURT: The fact that others did I don't see how that is relevant. If this man intended to do that, that is a different thing.

MR. TILSEN: Well, the fact he discussed it and contemplated it, because it was a subject taking place in the community.

THE COURT: The objection is sustained.

BY MR. TILSEN:

Q In any event, the possibility or potentiality of coming forward at another point in time and attempting to communicate and explain your act to the public was a matter that you and Frank discussed?

MR. ANDERSON: That is a leading question and I will object to it.

THE COURT: Well, it is leading. I will overrule the objection. A lot of them have been leading.

THE WITNESS: It's a matter we discussed and it's a matter which, after seeing the communicative effect of our action, determining how well it communicated, we were going to make a decision upon it.

BY MR. TILSEN:

Q You were also questioned on cross examination about the question of choosing between laws. Would it be fair to say that you believe all men have the right to choose between good and evil?

A That is right, the argument that the law is the law, and that if men have the right to choose which laws they will obey, it will lead to chaos, and by the same argument, you can say that if men are forced to become consistently obedient to immoral and unjust laws, that obedience encourages others to obey the *same* laws.

Q Would it be fair to say that it was the purport of your direct examination that choices have been made by some people to disobey international laws, including laws against genocide and international treaties?

A Yes, in spite of their effects on civilian people.

Q One last question.

You were cross examined by Mr. Kroncke concerning statistics and the statistics of deaths from Viet Nam. You were also examined concerning your belief that every death is a tragedy. Have you heard it said that it is true that one death is a tragedy and a million deaths is a statistic?

A Yes, I have heard that said and I hold by that.

MR. TILSEN: You may cross examine.

THE COURT: Is there anything further?

## **RECROSS EXAMINATION BY MR. ANDERSON**

Q Do I understand your position then to be that if you feel strongly enough, then every man can choose the laws that he is going to break?

A Not if he just feels strongly enough, but if he uses reason and some set of values which are based upon non-violence

for bringing certain conflicts to an end.

Q And that would include laws that you support, he could break those laws as well?

A Based upon reason; if he came to the decision that those laws were unjust, then he could break those laws.

Q And then he is his own arbiter and own judge, I presume, as to whether he has used reason?

A No, that is not exactly the way people in a nonviolent movement operate. They are open to self-criticism and go through heavy discussions.

Q Oh, I see. You don't believe, then, that every man has the right, but just the people in your movement?

A No, I didn't say that.

Q Just the non-violent movement, right?

A Well, you said that he just operates on his own volition; but he has to consider the effects upon other people, and it is not just our own movement. If the effects are to increase violence, then he can make a distinction between what would bring more violence and what leads to a life of non-violence.

Q But if he is to disobey the law, he must follow your standards as to what he can obey and what he disobeys?

A The standards which I hold are standards of common sense and morality and respect for human life. If he doesn't hold those standards, if he holds standards that human life isn't sacred, well, then, --.

Q So people who agree with your philosophy have that right, is that correct?

A It's not my philosophy.

Q But you adhere to it?

A It is the way I feel.

MR. ANDERSON: I have nothing further.

## **REDIRECT EXAMINATION BY MR. TILSEN**

Q With respect to that last cross examination, if I understand correctly what you are saying, it is that there are certain fundamental human rights, and that if a person acts in accordance with these, provided he injure, no human values, he must and should make decisions between good and evil, is that correct?

A That's correct.

Q What you are saying, Mike, as in the words of the

Declaration of Independence --

THE COURT: Well, he isn't saying it, you are saying it.

BY MR. TILSEN:

Q I will ask you if there is in the foundation in the earliest documentation of this country, a statement of inalienable rights superior to all others?

A Yes, there is, the statement of the Declaration of Independence, which grants the right to life, liberty and the pursuit of happiness, and when the government no longer protects those rights, it gives the people the right to try to change it through the law, if possible, and if not possible, to overthrow it in some way, and to me that means in a non-violent way.

MR. TILSEN: You may cross examine.

MR. ANDERSON: No further questions.

MR. TILSEN: Thank you.

THE COURT: All right. You are excused.

[The witness excused.]

MR. TILSEN: Defendants call Dr. Staughton Lynd.

WHEREUPON,

## **STAUGHTON LYND**

a witness called by and on behalf of Defendant Therriault, having been first duly sworn, was examined and testified as follows:

THE COURT: Will you gentlemen come to the bench here, please?

[Discussion at the bench between Court and counsel, not within the hearing of the Jury.]

[The following proceedings were in Open Court.)

### ***DIRECT EXAMINATION BY MR. TILSEN***

Q Your name is Dr. Staughton Lynd?

A That is right.

Q How old are you, sir?

A I am 41.

Q Where do you live?

A Chicago, Illinois.

Q Are you married?

A Yes.

Q Do you have any children?

A Three.

Q What is your occupation?

A I am a historian.

Q Where are you presently employed?

A I am not.

Q What are you presently doing?

A I am a part time teacher at a school for community organizers, and with the other part of my time I am doing labor history in Gary, Indiana.

Q What is your educational background?

A I have a B.A. from Harvard College; M.A. and PH.D. from Columbia University.

Q In what area did you get your B.A. from Harvard?

A It was the liberal arts undergraduate program.

Q And when did you attend Columbia?

A From 1959 to 1961.

Q And in what area did you get your Ph.D.? A American history, with a specialty in the American Revolution.

Q Following your obtaining your doctor's degree in 1961, what did you then do professionally?

A I taught for three years at Spellman College in Atlanta, Georgia, and for three years at Yale University in New Haven, Connecticut.

Q What did you teach in Georgia?

A American history and various specialized courses within it, such as the history of the south.

Q What did you teach at Yale University? A The same.

Q When did you leave Yale?

A In 1967.

Q Have you written any articles and books?

A Yes.

Q What books and articles and on what subjects have you written?

A Well, just to stay with the books, Anthology on the

History of Non-violence in the United States, and a collection of articles on the question of slavery at the time of the American Revolution; a book on the intellectual History of American Radicalism; and I have been working during the past year and a half on a book on the Draft Resistance Movement to the War in Viet Nam.

Q Is that book in the process of being published now?

A It will be published in March by Beacon Press.

Q Have you completed it?

A Yes.

Q But it is not yet available?

A Right.

Q In addition to the major books, have you also published articles in periodicals?

A Yes.

Q Would you care to estimate the number of articles of yours that have been published?

A A couple dozen.

Q Have you lectured at universities throughout the United States?

A Yes.

Q Is it fair to say that the titles of the books that you have had accurately display your special interest, that is, the question of non-violence, the question of slavery, the American Revolution, the question of the American radical movement and its intellectual ideas, and the question of draft resistance in America?

A Yes.

Q These have been matters that you have studied on extensively and will continue to be your special interest, even subsequent to the date of the publication?

A Right.

Q As a historian and dealing with the subject matters of your special interest and competence on which you have written and published, have you dealt with specifically and written and published and lectured on the role of the acts and moral acts or possible illegal acts of individuals as it might relate to the question of government policies, practices or procedures in American society and history?

A I have been very much concerned with that question

all of my adult life.

Q Is it fair to say that the various books and articles of yours have consistently dealt with the question of the role of the individual and his individual acts in relationship to the practices, laws and policies of the Government and society?

A Yes, I think it is fair to say that.

THE COURT: Well, it is almost time for our morning recess.

As I have indicated to you, this witness is bound to be in part cumulative, it seems to me. I don't think we should have, and I say it so the witness can hear it, a history course of what happened. We are not involved with slavery. We are not involved with the American Revolution here. He has written a book currently, apparently, on draft resistance, and he may confine himself to such questions as relate to that.

The Jury may retire for a ten or fifteen minute recess.

[Recess taken.]

THE COURT: Mr. Tilsen.

BY MR. TILSEN:

Q Before turning to the question of your most recent book, could you just briefly describe to us what the role has been of individual acts of conscience or law violation in the American scene in the areas in which you have written and published in changing laws, practices of the Government and society?

MR. ANDERSON: Your Honor, I object. A person doesn't make himself an expert by writing books and then relying on it as authority.

THE COURT: The objection is overruled.

BY MR. TILSEN:

Q You may answer.

A There is a tradition which begins much earlier than American history, with Socrates, or in a different way with Jesus of Nazareth, of individuals defying orders of the state which they felt to be in contradiction to conscience or universal human rights.

In American history, this tradition begins very early. For example, in the Massachusetts Bay Colony in the 17th Century, members of the religious group to which I belong, the Quakers, insisted on witnessing to their religion despite orders of the state

to leave the colony, and in many cases were imprisoned, and in a few cases, executed.

The most dramatic examples of this kind of individual disobedience in American history until our own times were, I think, in the period of the American Revolution, and the period of the anti-slavery movement which led up to the Civil War.

In the American Revolution you had acts like the Boston Tea Party, in which --

THE COURT: This is exactly what I did not want to get into. It's a discussion of history. We are not trying the Boston Tea Party and we are not trying the Civil War. We are here about July 10th and two people that came into the Draft Board. I just don't see the relevance of this at all.

THE WITNESS: It is just, Your Honor --

THE COURT: No, you are not to comment. I am talking to your attorney.

MR. TILSEN: Your Honor, the witness doesn't intend, and I have instructed and suggested to him that he do not respond at any length on these, and to just mention them in passing, and we will get right to the matter that the Court has indicated we could question on. But I do think that each matter relates to matters before it, and the witness has passed very quickly from several thousand years of history, and it is obvious we are not going to dwell upon the subject.

I just think that we ought to be able to at least point out the individual acts, some which were in violation of law, and which had roles in our society before.

I would ask that the witness be permitted to answer the question, and then we will move to the question of the current political scene.

THE COURT: You move to the question of the current system now, please.

BY MR. TILSEN:

Q In the America of the 1960's and now, the '70's, has there developed any phenomena, historically recognized, of individual acts of moral dimension in violation of law in an effort to change the American political scene?

A Yes, both in the Civil Rights and peace movement. In the Civil Rights movement, one thinks first, naturally, of Dr. Martin Luther King,

whose birthday this is; of the students who sat-in at a lunch counter in Greensborough, North Carolina, in February, 1960, without having any way of knowing whether their action would be an action without echo, and an action which would fail to stimulate others to act likewise, or whether what would happen would be what did, in fact, happen, namely, that hundreds and thousands of others took up their example, so that their action proved to be historically significant.

These were actions often in defiance of law. They were actions which changed the conscience of the country so that the Supreme Court itself began --

MR. ANDERSON: I would object, Your Honor. We are about to get into a statement as to why the Supreme Court does things, and as a lawyer, I don't pretend to know that.

THE COURT: Objection sustained.

THE WITNESS: In the peace movement too, the war in Viet Nam is remarkable in American history in this sense; that in most wars in our history, there have been a handful of protestors, pacifists and others, at the time when the war began, but as the war proceeded, more and more people got caught up in the spirit of the war effort and tended to trickle out and become insignificant.

In the War in Viet Nam, and I say this as a historian, not as a person who has opposed the War in Viet Nam, which I have, in the War in Viet Nam, the process has been just the reverse; that in 1965 when the war escalated and the bombing of North Viet Nam began, despite the fact there was no declaration of war, I think it is fair to say that at that time, a majority of the people, perhaps even a majority of the young people in the United States, supported the war, and those who opposed it by individual acts of resistance, induction refusal, or otherwise, were often literally in danger of their lives from outraged crowds.

I think it is a simple historical fact that in the half decade since that first year of the escalated war, acts of resistance have the effect of changing the attitude of the majority of the people, or at least that the attitude of the majority of the people has changed, so that those who acted without knowing whether their acts would be historically affected in 1965 and 1966, can now look back, not with the satisfaction that the war has ended, but with the satisfaction that they have

at least contributed to the majority of their fellow citizens, changing their attitude about the war.

In particular, one can point to the spring of 1968. Up to that time, the war had been escalated stage by stage, and groups of American servicemen, 50,000 or so at the time had been added to the fighting force in Viet Nam, until their number had reached something like half a million. It was proposed by the military authorities in Viet Nam that spring that 260,000 more men be drafted, which would have sent draft calls far beyond the 30 or 40 thousand a month level which then prevailed.

We know that on a memorandum received by, and upon which he based himself, received by the former Air Force Under Secretary --

MR. ANDERSON: Excuse me, sir.

Your Honor, we are now getting into hearsay.

THE COURT: Objection sustained.

THE WITNESS: On the contrary -

THE COURT: Objection sustained.

MR. ANDERSON: I would suggest that maybe we are getting a little off the question --

THE COURT: Yes, we are.

MR. ANDERSON: And I would ask that we go back to the question and answer form of interrogation

THE COURT: Yes.

BY MR. TILSEN:

Q Has the fact of draft resistance affected American policy relative to the escalation of the war in Viet Nam?

MR. ANDERSON: That is a leading question, Your Honor.

MR. TILSEN: Has it, that is the question.

THE COURT: I know it is, but the objection is overruled.

BY MR. TILSEN:

Q You may answer.

A In an effort to avoid hearsay --

MR. ANDERSON: Your Honor, that is

not responsive.

THE COURT: It is not up to you, doctor, to determine hearsay. That is the Court's function. If you have an opinion on whether draft resistance has affected something, you may say so, but to quote what somebody else said in some report who isn't here and can't be examined, and we can't see him, that is hearsay.

Now, that is a legal rule and I will have to ask you to abide by that.

THE WITNESS: I apologize, Your Honor. I was proceeding in the manner of a historian. It is my opinion as a historian that draft resistance and the possibility of greater draft resistance if the war were further escalated was a significant contributing factor to the decision of the Federal Government to begin to de-escalate rather than further escalate the war in the spring of 1968.

BY MR. TILSEN:

Q Has draft resistance, as you put it, the possibility of greater and further draft resistance, continued to be a factor in Government policy Making relative to the conduct of the War in Viet Nam?

A I believe so. I believe there is an increasing tendency to rely upon fire power, such as bombing, and to attempt to avoid using American soldiers in the field.

Q How does that relate to the question of draft resistance?

A Because there is an increasing sentiment, especially among young people who oppose participation in this war.

Q By relying on bombing, the number of persons involved becomes significantly less?

A Right.

Q Has draft resistance continued in the same form in this country as the initial form when it first became reasonably widespread or at least publicly in 1965 and '66?

A No. There have been a number of different forms.

In 1965, a number of individuals burned their draft cards, but that has been much less common since that time. Since 1965, the most common form of resistance has been either induction refusal or for students who were protected by II-s deferments, the public act of returning their draft cards as a

way of saying that they did not wish to enjoy a privileged status and to be exempted from a confrontation with the draft as students while other young men who were not fortunate enough to be in college were fighting in Viet Nam.

So beginning with April, 1967, and for about two years thereafter, every six months or so there were occasions when across the country, groups of students returned their draft cards as a way of saying that they did not wish to be exempted.

Furthermore, when called for induction, as they expected to be called after returning their draft cards, they would then refuse induction.

The form of resistance being considered here began in October, 1967, when Father -

MR. ANDERSON: I object, Your Honor I believe he has gone a little beyond the question.

MR. TILSEN: I don't think so. He is concluding with what --

THE COURT: He may answer.

THE WITNESS: The form of resistance being considered here began in October, 1967, in Baltimore when Father Phillip Berrigan and three others entered the Baltimore Customs House and attempted to destroy draft files. The reasoning, as I understand it, behind this new form of resistance was that since the number of men in the draft pool was much larger than the number actually called by the Government, therefore, even for a significant minority to declare that they would refuse to go would not necessarily prevent the Government from procuring the manpower which it needed to fight the war, and therefore, the reasoning of Father Berrigan and those who have followed him was that if their objective was not simply to testify to the state of their own consciences and their own unwillingness to fight in this war, but if, indeed, they wished to do what they could do to prevent the Government from being able to wage the war, then it seemed to them that it was indicated for them to take a kind of action which would prevent the Government, so far as they could bring this result about, from drafting anyone at all.

Q Has that form of resistance, beginning, as you said, in October of 1967, continued to grow?

A Well, over a dozen major actions have been publicly reported, and I believe many more smaller actions which have not been reported.

Q Would it surprise you to know that Colonel Knight from the Selective Service Board of the State of Minnesota testified

that in the calendar year 1970 there were, I believe, nine draft raids on different boards, including one which involved ten or twelve offices in St. Paul and Minneapolis and the State office?

A That wouldn't surprise me at all.

Q And so in your calculations of major ones, you mean ones that received national publicity?

A That's right.

Q Has this had an effect upon the Government policies, vis-à-vis the War in Viet Nam?

A I think it may be too soon to say. I think it has had --

MR. ANDERSON: I object, Your Honor, on the grounds there is no reason for him to know as to that.

THE COURT: Objection sustained.

BY MR. TILSEN:

Q As a historian, does this kind of behavior hold out the possibility of an effect on Government policy?

A It's my judgment that it does.

Q That is all. Thank you.

MR. TILSEN: You may examine.

DEFENDANT KRONCKE: I guess I should make it clear to the Court that I am directly examining Professor Lynd as my own witness, also.

## **DIRECT EXAMINATION BY DEFENDANT KRONCKE**

Q Dr. Lynd, you wrote a book called The Intellectual Origins Of American Radicalism, is that correct?

A Yes.

Q Do you consider yourself to be within that tradition of American radicalism, also?

A Yes, I do.

Q You gave Mr. Tilsen a list of places you educated at, professorships that you have held, and in your field as a historian, is it fair to say that you represent a new school of historical criticism in America?

A I am one among many people who are practicing one among several kinds of new history.

Q You also mentioned in your testimony that you belonged to the Quaker religion, is that true?

A Yes.

Q And it is true that the Quaker religion has its own history within the history of America?

A Yes.

Q So it would be fair and honest to say that you have professional objectivity but also a personal interest in the field that you research?

A Very much so; that is, I have been a practitioner of acts of resistance and non-violent civil disobedience, although not the particular action under consideration in this Court.

Q As a professional, has this led your critics to disregard your works or have them been received as professionally acceptable?

A Well, that is a little awkward for me to testify to. I think the reactions have been mixed. It may be relevant that I was a candidate for president of the American Historical Association last year.

Q In your study of draft resistance, have you felt it common that in studying the legal cases of resisters, they have used the argument that the Thirteenth Amendment to the Constitution -- have they used the argument as a legal defense, pleading that their acts are protected under the Thirteenth Amendment to the Constitution?

A You mean that the Selective Service is a form of involuntary servitude?

Q Yes.

A Yes, that is a common argument.

Q Why would they do that?

A Well, feeling that conscription is a kind of enforced obedience comparable in kind, although not in degree, to the human slavery, human bondage which the Thirteenth Amendment had in view.

Q Within the present American radical tradition, is there much discussion among people comparing themselves to other periods in American history of people who have done like acts, such as the slavery period?

A Yes, I think there is a historical tradition, and --

THE COURT: I will sustain the objection to that. I did it before and I will do it again.

DEFENDANT KRONCKE: I am taking a different approach

with this witness, Your Honor, for my own purposes, to describe the tradition and the principles of the tradition from which I come and I think it is important and basic to my defense.

THE COURT: The objection is sustained.

BY DEFENDANT KRONCKE:

Q What American political documents does the present American radical community consider as basic to its understanding of how it should act in relationship to contemporary problems?

A I think especially the Declaration of Independence which enumerates human rights above statute law.

Q So would it be fair to say that the American radical community, for example, the peace community, considers the basic political documents of the American political system to be valid and meaningful today?

A I think especially the preamble to the Declaration of Independence.

Q In your study of the draft resistance movement, has there been much debate in the Courts and among the community itself in its own literature about the place of property rights and the rights of persons?

A Very much so.

Q Would you expand upon that a little bit?

A For example, in the second major action directed against draft files, which was in Catonsville, Maryland, in the spring of 1968, the statement which Father Phil Berrigan and Father Dan Berrigan and the others who participated wrote explaining what they did, used the expression, "some property has no right to exist," and they went on to say that, for example, that the ovens in which --

THE COURT: Now, I don't want to have a lot of testimony of what somebody else said. You are here to give your opinion based upon your history.

THE WITNESS: Right.

THE COURT: I am going to sustain

the objection to that.

THE WITNESS: Yes, that is a major theme of the people who have taken part in this sort of action.

BY DEFENDANT KRONCKE:

Q You made mention to a certain form of draft resistance witnessed by people, and you mentioned Catonsville, usually called the Draft Raid, is that correct?

A There are different terms; ultra resistance.

Q Did this specific form of draft resistance, draft raid, arise out of the peculiar religious tradition?

A Particular in the early actions most of the participants were Catholic. I believe that has been less true in the last year or year and a half.

Q Is it true that there is precedent, the fact of religious peoples identified as religious people or is it just minorities involving themselves in social and political actions in America to effect change?

A Very much so.

Q Had you read in the paper of the events of July 10, 1970, for which we are here concerned in this Court?

A I don't believe I had read of them in the paper. I heard of them through hearsay.

Q By radio or through friends?

A Yes.

Q Were you surprised that Americans were taking this form of action? Did this surprise you?

A No, it didn't.

Q So it didn't happen in a vacuum?

A No, because I knew of previous actions of the same kind.

Q There is a history of this going right back to the founding of this country, there is a history of resistance?

A Well, there is a tradition of resistance to conscription, going back to resistance to militia laws, for example, in different states in the 18th century; but this particular form of action, the destruction of draft files, so far as I know had no precedent before October, 1967.

Q Under the restrictions I am under, that is about all I have to ask you. Thank you very much.

MR. ANDERSON: Your Honor, before I cross examine, if I cross examine, I would like to for the record move that the testimony of the professor be stricken on the grounds that even if everything he says is true, it's not a defense to the lawsuit.

THE COURT: Well, as I have done in the

past, that motion will not be ruled upon by the Court at this moment.

### **CROSS EXAMINATION BY MR. ANDERSON**

Q Professor, you testified that you had taught at Yale until about 1967, is that correct?

A Right.

Q Isn't it true that you left Yale then because they weren't interested in having you return for the next year?

A I left Yale because I had been told in the spring of 1966 that for financial reasons, they would be appointing no new full professors in the history department for the next five years.

Q You were, in essence, fired, weren't you?

A I wasn't fired in any sense. I was not promoted, and there is the usual sort of controversy as to why.

Q Now, in connection with your practice of history as you described it, you have had occasion to visit Hanoi, have you?

A Not in occasion with my practice of history.

Q But you have visited it?

A Right.

Q Your visit was in connection with your feelings on the Viet Nam War?

A Correct.

MR.ANDERSON: I have no further questions.

MR. TILSEN: Q When did you visit Hanoi?

A. December, 1965.

Q. What was the occasion for your visiting Hanoi?

A I was attempting, on the model of a Quaker physician in the 18th century, named Dr. Benjamin Logan, to speak as attempting, on the model of a Quaker physician, to speak to the other side directly in an attempt to ascertain their negotiating position.

Q Was this well publicized in advance, your trip to Hanoi?

A Only well publicized after the event.

Q Did other Americans at or about that time make similar trips?

A Since then, several dozen, including the editor of the New York Times.

Q Have there been any rulings by Court as to the legality or illegality of your trip?

A Yes. As a matter of fact, my own trip, as it turned out, created a legal precedent. There was never any question of criminal prosecution, but the State Department had as an administrative action taken away my passport on my return because there was an administrative order restricting travel to five named countries. The United States Court of Appeals in the District of Columbia **held** that the State Department had acted illegally in taking my passport away. My passport was returned and it made it easier for Americans to travel anywhere in the world thereafter.

Q Was your own act, then, among other things, in addition to dealing with the war, an act of violation of what was then a practice of an American regulation or rule of the American Government?

A Yes. It was not a violation of law, so far as I knew at the time that I made the trip, but it was a violation of administrative order, which was subsequently held to be illegal.

Q And was it held to be illegal as a result of your actions?

A Yes.

MR. TILSEN: You may cross examine.

MR. ANDERSON: I have no further questions.

MR. TILSEN: Thank you for coming, Dr. Lynd.

THE COURT: All right. You are excused, doctor.

[Witness excused.]

MR. TILSEN: Your Honor, the

Defendant Therriault would rest at this time, and suggests it would be an appropriate time for a noon recess.

THE COURT: I take it that that means that Mr. Kroncke is to come on with his case?

MR. TILSEN: Yes.

THE COURT: Well, I suppose he would know better than you would.

Are you ready with your first witness?

DEFENDANT KRONCKE: We will only get to the biographical data.

Do you want to go for the next fifteen minutes? THE

COURT: Sure.

[Discussion at the bench  
between Court and counsel, not within the  
hearing of the Jury.]

[The following proceedings  
were in open Court.]

THE COURT: Members of the Jury, we will  
stand in recess. We will be in recess until quarter to two.

[Whereupon, an adjournment was taken until 1:45 o'clock  
P.M., January 15, 1971.]

January 15, 1971 1:45 o'clock P.M.

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

DEFENDANT KRONCKE: Yes.

For my first witness, I would like to call

**PROFESSOR ALAN HOOPER**

WHEREUPON, ALAN HOOPER, a witness called by and on  
behalf of Defendant Kroncke, having first been duly sworn, was  
examined and testified as follows:

***DIRECT EXAMINATION BY DEFENDANT KRONCKE***

Q Mr. Hooper, where do you live?

A Minneapolis.

Q How old are you?

A I am 33.

Q Are you married?

A No.

Q What is your present employment?

A I am a professor at the University of Minnesota.

Q In what field?

A The department is genetics and cell biology. My field is  
biochemistry and cell biology.

Q Do you have a doctorate in your field?

A Yes. I received my Ph.D. at Johns Hopkins University in biology with a specialty in genetics and in biochemistry.

Q In the course of your professional life, have you published in your field?

A Yes. I don't remember the number, maybe a dozen or fifteen publications.

Q On the University campus, what type of professional groups do you belong to?

A On the campus, specifically?

Q Yes.

A Well, I belong to the American Association for the Advancement of Science and the American Institute for Biological Sciences, American Association of Micro Biologist Sigma Psi, which is a scientific society. Those all have local branches. They are not themselves University professional societies.

Q Do you belong to any faculty and student groups at the University?

A There is one group which is called Faculty Action Committee which does actually consist primarily of scientists, although there are a good number of social scientists and people in the humanities. I wouldn't refer to that as strictly a professional group, though.

Q What type of courses do you teach at the University?

A Courses in cell biology, both at the graduate and undergraduate level; also a course called the biologist as scientist, citizen and educator which is a course for both graduate students and undergraduate students who are biology majors.

Q This course that you just mentioned, how long have you been teaching that course, the biologist as scientist, citizen and educator? How long have you been teaching that course?

A This is the first year that it has had that title, although I taught a course very similar to it last year and sort of a trial run.

Q Is this a new type of course that has been introduced at the University?

A Relatively new, yes. Certainly within the last, perhaps two or three years. There have been a number of similar courses

introduced into the science curricula of various departments. There are two or three others in some of the other biology departments. There are some even in some of the engineering departments of this nature.

Q How does a new course like this get introduced into the curricula of the University?

A It varies. I suppose what happens is that the students ask the departmental chairman and people, other faculty members in the department if they don't think then ought to be such a course. Sometimes it occurs to faculty members that there is a deficiency in the curriculum and sort of grows by common consent; and then, finally, someone says, "Well, someone ought to organize such a course and we ought to choose someone to teach it," and then it goes through a procedure of departmental committee and the! a college committee and then an all-University committee for final approval and inclusion in the catalog.

Q So this is a fully approved and accredited course?

A Yes.

Q Were you chosen to develop this new course?

A In the manner I just described. It was not that President Moos came to me and said for me to do it, but, yes, it was.

Q Have you written in this area concerning the biologist as scientist, citizen and educator?

A No, not professionally. There really hasn't been much professionally written about it because it is of relatively recent concern to the scientific community, at least at the level at which we are at.

Q Can you comment upon why this is of concern at this present time among the scientific community, especially at universities?

A Yes. I suppose it goes back quite a ways. Americans in particular, I think, have been very much interested in and in many ways dependent upon the products of science, the technology that we were able to develop to improve our lives based on more basic discoveries that were made by laboratory scientists.

This would include technology, and it would include biological discoveries which led to better health care, and so forth. It was hoped for example that the development of the harnessing of nuclear energy would ultimately enable us to have a

much better life, and this vision of things came into being in the late 40's after the war. There was a great growth of science.

As you remember in the post-Sputnik era, a great deal of money was put into science education, and, in fact, the whole University tended to be dominated by scientific departments, since at that time most people thought that this was the thing of greatest need for the society.

Over the past five to ten years, and especially in the past five years we have begun to realize that there are also some negative effects that have come with what seemed to be very useful things. We have seen that the technology, while improving our own lives, has some by-products which simultaneously are making our lives perhaps not as happy or even as healthy as they had been previously.

There are scientists who will say, and I share in this view, that it's quite possible that our standard of living is not, in fact, improving, but is, in fact, staying exactly the same or is perhaps getting worse, the point being that when we look at a standard of living we judge

it by the number of automobiles and the speed at which we can travel, while ignoring such important things such as whether we can breathe air, whether we are actually happy.

Maybe I'm going on a little too much, but the point is that scientists began to realize that they could not simply function in their own laboratories and ignore the uses to which their discoveries would be put.

Q When you discuss the place of the scientist in American culture, you discuss, then, that role of the scientist has changed both within the scientific community itself and within the community at large, that he has taken on responsibilities as a scientist and an educator?

A We discuss the fact that he has, in fact, taken on these responsibilities, and largely at the students' request. We discuss -- and I mean this, discuss, because it involves a real interchange of ideas. You can't ask professors, people who have been in the scientific community to really tell you objectively whether the scientific community is doing a healthy thing. They have a myopic view. We do discuss what the role of the scientist should be in the future.

Q Would you comment upon some of the crises which have caused the change of attitudes in the scientific community?

A Well, I think a very significant one has been the Viet

Nam War. Regardless of how a scientist views the war, whether it was something correct or not, it became apparent to the scientists that the tools that we have developed for carrying out the war were of such great efficiency, that it wasn't the kind of war that they predicted it was going to be, it wasn't the kind of war that other wars had been like. It was as if the technology, we were perhaps in some cases even using the technology when we didn't need to, when it wouldn't have a direct military value, but we had it, so we used it.

This is one thing that would lead a scientist to say, "Perhaps I should be saying a little bit more about what some of the uses will be for this technology, how it might get out of hand."

Q With this new interest on the campuses among the students, how does the scientist view how society will keep up with these changes that are occurring in our culture?

A The changes that are occurring, it simply reminds me of another reason for exceptional concern on the part of scientists at this time, and here, we do have to sort of talk about the biological history of-the world.

The point that has been made and that I will make is that the world is presently in a circumstance that it has never been in before. Man has never had to face the challenges, direct physical and geological changes that he does now.

If you look at the growth of the human population and if you could graph it, and I won't bother to draw it now, but --

MR. ANDERSON: Excuse me. May we approach the bench, Your Honor.

THE COURT: You may.

[Discussion at the bench between Court and counsel, not within the hearing of the Jury.]

[The following proceedings were in open Court.]

MR. ANDERSON: Your Honor, for the record I would like to object to the line of

questioning on the ground that it seems irrelevant to the crime charged in the Indictment.

THE COURT: Well the Court will have in mind, as the Court did with the testimony adduced by Mr. Tilsen on behalf of Mr. Therriault, that the Government has a standing objection to this, and as we just discussed at the bench here, and I shall rule on it from time to time if I think it becomes irrelevant for other reasons than the reason you are saying. Again, the fact that I receive it doesn't mean that I do or do not attach any weight to it.

You may proceed, Mr. Kroncke.

BY DEFENDANT KRONCKE:

Q I will try to summarize where we are. You were responding that the University in your course you are trying to develop the biologist as scientist, citizen and educator as a result of the crises outside the scientific field which the students brought to the professors, and asked them to develop a course dealing with the role of the scientist, specifically the biologist as scientist, citizen and educator.

The question I ask, with reference to these crises, how does the scientist view how society will keep up with these changes that are occurring?

A What I would like to do in answering that is to point out that the changes that society must cope with today are occurring at a much, much faster rate than they were occurring, let's say even a hundred years ago.

These are changes that are, in part, brought on by science and in part are -- well, I guess they are mostly and ultimately brought on by science. If you look at the number of people on earth and if you look at the number there were two thousand years ago, and we could make this a graph with increasing time coming towards me and an increasing number of people on the other axis and we started down there in the far corner two thousand years ago, the number of people on earth, even only about forty years ago, forty to one hundred years ago, would still only be here (indicating).

We have increased from the bottom of the blackboard right to here (indicating) in almost two thousand years. Then it looks something like that.

Now, this would be approximately the case if you looked at the number of people. It would be the case if you looked at the rate at which we are digging minerals from the earth and utilizing them. If you looked at the rate of utilization of power, and also, obviously, at the rate of production of waste products from these that inevitably go along, the point then is that whereas for thousands of years things have been changing but at a very slow rate, right now we are on the ascending part of a very rapidly changing world.

The reason I say that science is a part of that is that, obviously, our scientific developments have meant that we are making better automobiles and making them faster] and consuming them faster, and so forth.

Also, the products of medical science meant that people were having slightly better food and having longer lives and not dying as often as children, which accounts for the population growth, the increase in population growth; and again, with more people, you consume more automobiles, and so forth.

Again, the point is that the world is different now than it ever has been while man has lived on it.

So the question comes, are our traditions, our political traditions, culture traditions, economic traditions, are they able to change fast enough to keep up with this change in the physical earth, literally.

It is the opinion of many scientists, including myself, that there is a great danger, that perhaps we are not able to change our decisions that we make or change the institutions we have for making those decisions fast enough to keep up with this change.

Q In what ways have students, besides instituting your course on the campus, indicated their concern for handling these problems? What areas of new interest have they brought to bear on the scientific community, such as the ecology movement?

A Well, that's a very good example. It has been largely the student population or people of that age who organized the Earth Day last spring, and even before that, I think it was largely students who, I guess you could say, kept hammering on the doors of scientists, saying, "Look, come out of your labs and tell us about this situation."

It is on the University of Minnesota right now as it was in the entire State of Washington, it is the students who are attempting to organize a more permanent organization for the

study of environmental problems.

Q Would it be fair to say that the reason your course was instituted by the University was that the students in general do feel these crises very personally, not only the war, but the use of science on the land?

A Yes, I think so. Some of them have said that they are frightened.

Q Has this view of crises and need for change also had an impact on the American scientific community itself?

A Yes, I think so.

Q You are a member of the American Academy for the Advancement of Science?

A Yes, and I can refer to the past two national meetings for the American Association for the Advancement of Science. This one this year was in Chicago. The one the previous year was in Boston.

In the Boston meetings, a number of scientific sessions were interrupted by people of approximately graduate student age, who were, in fact, graduate students, and there may have been some professors there, also, or maybe undergraduates, I don't know, and they were interrupted and these people would say -- by and large they apparently were polite, but they would say, "Look, we think the scientific society should be concerning itself with things other than the details of a particular scientific experiment. They ought to be concerning themselves with what is happening to our world."

This was greeted, this was received relatively favorably; that is, in spite of what was in a real sense a violation of the rules of that meeting, these people were allowed to stand up and speak briefly on their points.

The result has been that this year's meeting has been devoted in very large part to discussions of the kind that they requested. There is almost that much of a direct connection. So there has been that effect.

Q Has this view of the crisis of science among the student community resulted in the type of research that young scientists are engaging in right now as opposed to the judicial type of research?

A Yes, definitely. In fact, it has had sort of two effects. It has led some young scientists to simply stop doing scientific research. Many of them have gone into purely teaching. There are Ph.D.'s that work perhaps a little while in science and then will go into elementary school teaching, as an example.

There are others who have said, 'Well, I will only work on things that have a very, very direct and obvious way of correcting some of the imbalances we have.'

Q What issue has been foremost in creating this crisis among graduate students?

A Well, I think it is fair to say that there have been two; one, the war, and the other our air and our water

Q Can you tell me, without getting into too many specifics, how the war affects the attitude of young people who are entering the study of science, the type of research that they are now doing?

A Well, there are physicists, for example, who do not realize that their work on infra-red detection, for example, while they are carrying it on themselves, it seems to have no direct use for the war, but they realize that is usually not true, that sooner or later it can be developed to be used for the war. So they choose to no longer participate in that way.

Q Does the title of the course, the biologist as scientist, citizen and educator, indicate that there are conflicts between these roles?

A Well, I guess I never quite thought of it in that way. There are conflicts. It wasn't intended that the title would indicate that, but to cite an example, a lot of research that is carried out in the United States, particularly in the physics area, and this is basic research without any apparent relationship to a military function, a great deal of that research, a grant is funded by the Department of Defense. They have a lot of money which they will pay to have basic research done, even though it is not developing a weapon, and so forth.

If a man is really involved in physics and if he enjoys what he is doing, if he thinks furthering that kind of knowledge is important, he is then quite dependent upon that department.

Here is where the conflict comes in. In the last Defense appropriation, a rider was tacked onto it saying that before a university is granted some of this money for carrying out basic research, the Congress will be informed of the extent of cooperation with, and, in fact, as it is phrased, it said the extent to which that university ignores or cooperates with the functions of the Defense Department.

This includes, and there is already an example of this sort of thing, this includes, for example, whether or not a university will allow recruiters to be on the campus, whether a university has an R.O.T.C. program, and so forth.

So the conflict comes when a professor, who may feel that he would prefer not to have recruiters on the campus, yet is dependent for his livelihood and for what he thinks is useful on the other hand from the Defense Department to support his research. What is he to do? That is the problem.

Q And do your classes deal with some of those problems, the influence of the military on the University?

A Those are among the many issues, yes.

Q Just a few more questions. In this course, do you discuss the techniques that some people in the field of scientific concern have used to bring to the public's awareness the real nature of the crises that was briefly described here, the techniques that are dramatic or extra legal?

A They occasionally come up. We don't have a lecture entitled techniques for dissemination of information but in discussing other things they occasionally come up. To give a recent example --

MR. ANDERSON: Excuse me, sir.

Your Honor, I think I would object to a relation of various things scientists may have done as they were discussed in his class. I think it is hearsay. Those item: may or may not have been done by anybody and I don't think the fact, apparently as high qualified as this gentleman is I don't think the fact that he teaches a course necessarily makes anything that happens in the class evidence.

THE COURT: I think I would have to

agree with that. I will sustain the objection.

BY DEFENDANT KRONCKE:

Q Do you belong to any professional groups concerned with the problem of ecology?

A I belong to the Minnesota Committee For Environmental Information.

Q Concerning the college movement, have you heard of someone called the Fox?

A I have read about someone in Chicago, I believe. There is a man of unknown identity who is called the Fox, and --

MR. ANDERSON: Excuse me, Professor

THE WITNESS: Yes.

MR. ANDERSON: Since apparently the professor's knowledge of the Fox is from a newspaper article in Chicago, I think I would object to a discussion of him.

THE COURT: Well, it is hard for me, Mr. Kroncke, to equate ecology with the Little Falls Draft Office and what occurred there on July 10th.

DEFENDANT KRONCKE: I am talking about crisis situations and techniques of communicating them to the public, that is all. I just have a few more questions.

THE COURT: Well, all right. If you just have a few more questions. However, I do not think it is appropriate for him to quote Mr. Fox, or whoever it is.

THE WITNESS: There is this way of communicating the crisis in ecology. If you look at the history of it, it began with teach-ins. It began with people, and it continues this way, people going to Kiwanis Clubs, and so forth, to try to communicate it, and it includes the more dramatic or theatrical actions such as this man, the Fox, who took some pollutant which was being dumped into Lake Michigan, took it directly from the exit part of a factory and took it into the main office and dumped it on the rug. So there are those various ways of doing it.

Another similar kind of thing is a group called the Eco Raiders in Florida, who will take dyes, colored solutions which are themselves harmless and will dump them into sewage treatment plants so that it is obvious to the entire community where sewage affluent goes, and I believe it was in the Miami area it was discovered that the water went right around to the beach.

I think it is very educational. There is nothing like a citizen being able to see it directly.

Q I guess at this point I have no further questions.

### **CROSS EXAMINATION BY MR. TILSEN**

Q I have one or two questions of you, Dr. Hooper.

Dr. Hooper, you indicated that you are acquainted and a member of the American Association for the Advancement of Science?

A Yes.

Q Are you familiar with a study commissioned by that association of the effects of the American herbicide program, military herbicide defoliation and crop destruction programs in Viet Nam?

A Yes.

Q Are you familiar with Dr. Westing who was commissioned and spent some substantial time in making that study?

A Yes, I am.

Q Has that study been a matter of concern to the University community and the various scientific fields in which you are working?

A Yes. The report of that commission, as I understand it, will be published in the magazine or the scientific journal, Science, the next issue. He has spoke at a goodly number of university campuses since that report was formulated.

Q Has he spoken at the University of Minnesota campus?

A Yes, this week.

Q Did he speak at a gathering of scientists? A He spoke once in St. Paul at the St. Paul campus.

Q To what group?

A Well, I know there were a great number of scientists there. It was not only scientists, however, and there was another group in Minneapolis, and likewise, I know there were very many scientists there.

Q Did he at that time present his report and show --

A To answer your question, there was quite a bit of interest as demonstrated by the many questions and the discussion that was held on the floor after his talk.

Q Thank you. I have no further questions.

MR. ANDERSON: Your Honor, on the theory that the matter testified to is irrelevant, the Government would move it be stricken, and the Government has no cross examination of Professor Hooper.

THE COURT: All right, Mr. Hooper, you are excused.

[The witness excused.]

DEFENDANT KRONCKE: I would like to call as my next witness, Mr. Mark Jesenko.

WHEREUPON,

**MARK L. JESENKO**

a witness called by and on behalf of Defendant Kroncke, having been first duly sworn, was examined and testified as follows:

***DIRECT EXAMINATION BY DEFENDANT KRONCKE***

Q Will you tell me where you live?

A 4815 Columbus Avenue South, Minneapolis.

Q How old are you?

A I am 30.

Q Are you married?

A Yes, I am.

Q Do you have a family?

A Not yet.

Q Will you tell me where you are employed?

A Yes, I am presently Director of Religious Education for St. Michael's Parish in Prior Lake, Minnesota.

Q How long have you been employed there?

A Two years.

Q Before that, where were you?

A Before that, I was a graduate student at the University of San Francisco.

Q Will you tell me where you were born?

A I was born in a very small town in southern Idaho, Caldwell.

Q Where did you pursue your education for high school and college?

A I attended high school in Boise, Idaho. I received my Bachelor of Arts in economics at the Seattle University in Seattle, Washington. I received my Bachelor of Arts in philosophy and general literature at the University of California, Berkeley, and received my Master of Arts in theology at the University of San Francisco.

Q Have you been in the seminary?

A Yes, I have. I was a member of the Dominican Order for approximately four years in California.

Q Is the Master's Degree the highest educational degree you have received?

A Yes.

Q When did you receive that?

A In 1969.

Q Do we know one another?

A Yes. We attended the University of San Francis together.

Q And we are good friends?

A Yes.

Q will you briefly describe the type of work you do as a religious educator for a parish?

A Yes. Generally, in cooperation with the pastor of this community, I am responsible for the religious education and formation of about 1200 adults and 800 children from the ages of 4 through 18.

My job is both administrative -- that is, I direct programs which are actually held within the school and outside the school; and I also engage in teaching activities directly, teacher formation, both in method and doctrinal content. Also in the summertime, I am on the faculty college of St. Catherine's in St. Paul, engaged in teaching theology. My area of specialty is sacred scripture.

Q Is it fair to say that sacred scripture means what is commonly referred to as study of the New Testament.

A Yes, primarily the New Testament.

Q Was your study in graduate school basically in the New Testament or what field?

A My concentration was in the New Testament, but we were required to take a certain number of courses in other areas. We were asked to broaden our perspectives in the area of theological competence. We studied science and methods, dogmatics, moral theology, liturgics, the traditions of the church, as well as sacred scripture.

Q You mentioned that you were four years at an Order called the Dominican. Does that mean that you are a Roman Catholic?

A Yes, I was a member of a Roman Catholic religious Order of men semi-cloistered, functioning under the so-called Evangelical vows, poverty, chastity and obedience.

Q Is it fair to say that you are presently described as what is called a lay theologian in the Catholic church?

A Some People would call it that, but I don't care particularly for the term.

Q Is this a relatively novel position in the church?

A Yes, in the Roman church it is. My function has been a

long-standing one in the reform church.

Q Why and how recently has this lay theologian arisen within your church?

A Well, I couldn't name the exact date on which it really got way. I know that Minneapolis-St. Paul, Boston and Dubuque, Iowa, are the only three geographical areas in this country where this type of work is being done and it has been engaged in for the last two or three years.

Q Has this been basically a response to what is called the depressed Vatican Council II?

A I would say generally speaking, yes.

Q Is the position of the lay theologian a recognized position within the church as a priesthood, as the ministry is recognized?

A It is a new ministry for the Roman church. It is recognized, and for example, my contract, the terms and which I function, are recognized by the Arch Diocese of Minneapolis and St. Paul.

Q Would it be fair to say that in working in a parish, you have a spiritual responsibility as well as an intellectual responsibility for the people you are working with?

A Very definitely. In fact, we don't separate the two.

Q I think it is common to everybody's understanding but we will bring it out, that there are many different traditions within what is called the Christian faith, is that right, different denominations?

A Yes.

Q Would it be correct to say that your education at the University of San Francisco made you familiar with all those different interpretations of Christianity, not just the Roman Catholic?

A I would say the dominant ones, not all of them.

Q So your approach in understanding Christianity in breadth, it's not particularized to one denomination? A I would hope so.

Q Are you aware of a particular group of people within the Catholic tradition called Catholic Radicals?

A Yes, I am.

Q Would you consider yourself a Catholic radical?

A No, I would not, as I understand that term. I am not

involved in direct political action, so I could not call myself a Catholic radical.

Q Have you at this point in your life ever -- strike that. Have we ever worked together professionally?

A Yes. Last summer we were teaching together at the College of St. Catharine.

Q Have we written together in the field towards the idea of publication of some work?

A Yes. We have written approximately five drafts of a document attempting to lay the theological foundation or justification for the action which you undertook on July the 10<sup>th</sup>.

Q Would you describe me as a Catholic radical?

A Yes.

Q So even though you do not describe yourself as a Catholic radical, we have worked together and have an intimate knowledge of one another's theological understandings?

A Yes.

Q Since I will be referring to this, do you recognize this as a copy of the paper which we put together

A Yes.

Q Okay.

[Defendants' Exhibit 5 marked for identification.]

BY DEFENDANT KRONCKE:

Q We have been referring to what is called now Defendants' Exhibit 5, which you identify as the paper which we worked on together, the title of which is, "The Christian Experience and the Roman Catholic Theological Tradition," and the sub-title, "Towards a Theology for a Radical Politic"?

A Yes.

Q And we have disseminated this paper quite vastly among theological circles of the Catholic Church in the United States, is that true?

A As far as I know, a couple hundred copies been sent around the country, yes.

Q Would you comment upon some of the underlying themes of this paper?

MR. ANDERSON: Excuse me.

Your Honor, I think this would be a good place for me to

put in an objection, because the statement was made that the paper to which they are referring and which has now been marked as Defendants' Exhibit 5, the purpose of it was to find a theological rationale for the acts on July 10th. I would object for the record to future reference to it or the subject matters discussed therein because the Government feels that it is the law that no religious doctrine or theory can be a defense to a crime.

I would like it understood that we would like continuing objection to reference to theological matters in the defense.

THE COURT: Do you wish him to attempt to relate the contents of it, Mr. Kroncke, or how long it took to put it together, or --

DEFENDANT KRONCKE: I am trying to evoke -- well, the whole thing is the problem of the method to be used in the Courtroom, some of the main ideas of the Christian tradition which are relevant to me and to the acts, and running around the mulberry bush, I don't know how to ask these questions in order to evoke a discussion.

THE COURT: Of course, the Government's objection goes not to the form of the question but to the substance of whether, whatever is adduced, is -

DEFENDANT KRONCKE: We know that.

THE COURT: -- that whatever is adduced is a defense to what occurred on July 10th.

DEFENDANT KRONCKE: It is obviously essential to my defense, to establish the traditions and --

THE COURT: Well, I will let you inquire of this man, not by reading excerpts from this, but as to his philosophy and whether he thinks you agree with it or not or how you differ from it.

You may do that.

BY DEFENDANT KRONCKE:

Q I will ask about some other religious tradition and themes which join together in this paper. It's from the New Testament, some of the main motives and how they apply.

A I will try to summarize this and be very brief

I believe that from the Christian perspective, the appearance of an individual named Jesus of Nazareth introduced a

radically new relationship, quality of relationship between man and God, which we normally refer to as a relationship of intimacy, a friendship.

The central regard and concern of that intimacy is the preservation, the development and protection of life itself. That is the first and final priority, life.

Within the tradition stemming from belief in this particular individual, certain methods and modes of expressing their understanding, that qualitative new relationship between God and man have been established. We call those sacraments, or they are signs or symbols which affect what they signify.

For example, I am sure most of us are aware of the Eucharist or Last Supper. Here we take the ordinary symbols of bread and wine as symbols of the sustaining of life itself, and we use them to express through consecrating the very preservation and continuance of life between man and God, which, by the way, we do not separate from life as we are living it at the present time, as we are living it here in this Courtroom.

Now, we also ask ourselves how many or what types of symbolic or sacramental actions can we actually derive, and we found that there really is no limit. We have to speak specifically of sacraments, first of all, in the sense of this individual Jesus of Nazareth, because in a most unique and perfect way he symbolized God's effective presence among man or with man in time and space. The continuance or that effective presence is achieved through the church, the second sacrament. Then we have what we call specific sacraments, a set of sacraments, specific sacraments, baptism, Eucharist penitence, etc., etc., but also, our everyday lives and actions in virtue of the **fact that we share in that divine life can also be sacramental.**

Q Could I ask you at this point to develop from the Catholic traditions the attitude of how does the life of Jesus affect the way that men look at other men and women? How do they see them, as other distinct individual or how from a Christian perspective do they see them?

A Well, a number of metaphors have been selected to express this relationship which obtains between Christi and Christian, between man and man.

One of the most prominent ones in the tradition within the New Testament and within the subsequent tradition is that of the body. We are all members of one another. Each of us have a specific function to perform with regard to one another. Yet, we constitute one single living entity.

Q Has this view of the intimacy that all people share with one another represented by the idea of the body affected they that Christians live their daily lives, their ideas on how they should construct their social relationships as witnessed even in the early New Testament?

A Sure. In the early church we saw and we have very direct evidence of the fact that a significant number of the early Christians sold their property, dispensed of their goods and shared their lives in common, in a manner reminiscent of contemporary monastic religious orders. They shared all things they had in common. They sustained one another, each with their particular gifts and talents.

Q Did the life of Jesus for the early Christian community give them a different way of looking at the meaning of man's life and the effect that his everyday acts have in the way that he looked at history?

A Well, as I tried to emphasize at the beginning, the chief priority for Christian life and value is life itself, the life which was created, which we believe was created and which we equally believe was redeemed or saved It is something which is precious beyond all value. There is nothing any more important than life itself, every man' life, your life, my life, everyone's life.

Q Could you as a theologian tell me the significance of the concept of the reality of what Christians call the spirit in the everyday life of a Christian?

A Well, the tradition of the spirit is as mysterious, probably, as everything else, but originally, the spirit was conceived of as simply God acting outside of himself on my behalf or on someone else's behalf, on behalf of man in history.

That very basic notion was radicalized in the experience that the early Christians had of this individual called Jesus of Nazareth. Through him and with him, and in a sense in him, they came to experience this life of intimacy with God and with one another, and they called the experience of intimacy the spirit. The spirit, in other words, is a shorthand way of saying the common life we live together in God.

Q You mentioned that you were director of religious education at St. Michael's Parish.

Is it true, then, that the Christian's belief has led them to create different forms of social structure than what normal society offers, this idea of the parish, what is that to the parish?

A Well, the parish is a social structure directly linked to feudal forms of agrarian society. It's nothing specifically religious in a parish. A parish is simply a way of organizing and

collecting society. I believe it is also a political term.

Q The effect is that Christians feel the need to get together and be with one another physically?

A Very much so. In fact, the primary symbolic communion of Christians is the Eucharist.

Q in the early history of our tradition, did this idea of community cause them to come into conflict with the predominant culture they were living in?

A Very much so. In fact, I am sure the Court is aware that Christian consciousness was formed initially for the first few centuries in the face of persecution from the state, primarily for two reasons; the first, the refusal on the part of Christians to participate in Roman imperialism, through its militaristic machine, it refused to participate actively in military life; secondly, it refused to participate in what we generally call emperor worship, in other words, giving honor and due to Caesar, which was due, in their conception, only to God.

Q Is one of the themes in the paper that we put out concerned about the price of this -- strike that.

Is one of the themes that we worked on in the paper the fact that Christians throughout our tradition have found themselves involved in Court proceedings because of their religious beliefs?

A A segment of that work was directed to that. I might comment that throughout the history of Christian existence, it seems to be a characteristic of that peculiar kind of life that we call Christianity that if it's authentically lived, sooner or later it will bring us before public magistrates, kings, princes and Courts.

In the New Testament, there is witness to this. There is a very strange tradition, a number of traditions which point to this explicitly, that Christians will be called into Courts and before Courts for attempting to an authentic Christian life.

There is also an element, curiously enough, in the writings of the Apostle Paul where he strongly criticizes his fellow Christians for attempting to bring one another into Court, and though this type of action is contrary, contradictory to the very nature and equality of Christian life.

In fact, he makes a curious comment that the reason --

THE COURT: Well, I don't think we should have comments from others. You are entitled to give your own opinion, I said, but to quote from others, I will sustain the

objection.

**BY DEFENDANT RRONCKE:**

Q The New Testament is the basic work, basic document, the main document that Christians throughout all ages have used to refer to in order to understand what it means to be a Christian, is that right?

A Yes, this is a normal standard of Christian **belief**.

Q And you have spent time professionally studying and concentrating specifically upon the New Testament, academically?

A Yes, I have.

Q Is there specific mention made in this main document about the relationship of Christians and the culture that they live in and consequently going into the Courts, specific passages?

A Yes, there are some.

Q If I gave you a New Testament, could you show me where?

A Yes.

DEFENDANT KRONCKE: This is the standard New Testament, if the Court will notice. It's standard, nothing special about it.

THE COURT: The Court has a familiarity with the New Testament.

DEFENDANT KRONCKE: I don't want you to think I am giving him a special document.

**BY DEFENDANT KRONCKE:**

Q Would you point out where all Christians through the ages might have read certain passages?

A Would you like a specific passage?

Q One of the main ones.

A Well, the passage I have particularly in mind and the one I have opened to is the 13th Chapter of St. Mark. The context or the passage, as I am sure many of you are aware, is the last or the final discourse that Jesus gives his disciples before he undergoes his own trial and subsequent death. He simply enjoins them to live the life to which they have been called, and is reported as saying the following words:

"Ye yourselves must keep your wits about you for men will hand you over to their councils and will beat you in their

synagogues. You will have to stand in front of rulers and kings for my sake to bear your witness to them, for before the end comes the Gospel must be proclaimed to all nations. But when they are taking you off to trial do not worry beforehand what you are going to say. Simply say the words you are given when the time comes, for it not really you who will speak but the Holy Spirit."

Q Would it be fair to say that in most Christian traditions that has indicated to Christians that they can expect from the basic beliefs of the Christian faith that they will come into conflicts with the cultures that they are going to live in?

A It would seem to me that they would have to. The reason I say that is because, as my understanding lead me to believe, every culture, social, political entity will we have known to date is in some sense constituted or based upon a legal structure which I would term as instinctual. It promotes a type or instinctual morality with which it associates certain types of taboos, punishments, and so on and so forth, for any infractions of that structure or system which might infringe upon its continued existence.

But from the Christian perspective, existence is characterized by a complete self-giving which far transcends any kind of instinctual morality.

To put it another way, conscience will often come into conflict with law when the law violates the higher religious or moral standards or values.

Q Is this motif of the conflict between the Christian way of life and the law, in theological terms between the law and Gospel, the main theme of the New Testament scriptures?

A I would say it played a significant part in the early development of the church. It plays a major role in the New Testament, along with many others.

Q From the many themes which we drug together in the paper, do we draw together the New Testament concept of the new man, the new creation?

A Yes, we do.

Q Would you explain a little bit how that concept functions and the Christian's self-understanding of himself and the world about the new man, new creation, centrality of person?

A well, the idea of a new man is obviously related to the old man. The old man was a rabbinic notion as well as the new man relating to the figure of Adam, the primordial man, who, because of his act of disobedience had become less than he had been called to be. Christ himself, this man Jesus of Nazareth, by virtue of his

disobedience, assumes the character of the dignity of the new man.

Paul joined his idea of this common body we spoke of, and what came out was an idea of this gigantic cosmic man which included all believing Christians, so united in one common life source, one common personality of cosmic dimension, not just simply of an ethical dimension but of a cosmic one.

Q would it be fair to say that the Christian experience entails a person gaining a totally new perspective on himself in relationship to the world and to other people?

A Yes. Our responsibility, our concern must be directed to the totality of this fear of life itself, not simply to my own particular well-being or the man immediately next to me, but that of all man.

Q You spoke somewhat to this question, but have these ideas of the Christians had actual response given to them by the state and did the states that the Christians lived in respond to these ideas and relate to the Christians for preaching those ideas?

A I am not sure I understand the question.

Q I will rephrase the question.

Does the message of the Christian scriptures, has it involved a response by the state, be that response either a positive or an affirmative or a negative response In brief, in theological terms, what is the relationship of the Christian to the culture?

A According to the New Testament, the Christian owes obedience to the leaders of the state inasmuch as those leaders and institutions maintain so-called good order which God himself established. Once the state itself violates that order, then the Christian is bound in conscience to contradict them.

Q As a director of religious education at St. Michael's, has the basic interpretation of this New Testament in recent years been followed by any specific council which has met in the church?

A Would you repeat that question, please?

Q As the director of religious education, how influential has the Vatican Council II been upon the past work, the practical work that you do in teaching people Christianity today?

A I would say that in general, the Fathers at Vatican Council II articulated the latest self-understanding that the church has, and for that reason, it becomes a good source for teaching, for trying to reflect upon the nature of the church, what its function is, what its direction is what its future is. It is by no means the

last word, but for the moment it is adequate.

[Defendants' Exhibits 6 and 7 marked  
for identification.]

BY DEFENDANT KRONCKE:

Q I have here two documents marked Defendants' Exhibits 6 and 7.

In response to the testimony you gave about the scriptural relationship of the Christian to a culture and the fact that the newest way of expressing this to the people has been through the pastoral council, specifically Vatican Council II, if you would read this paragraph, Page 51, called, "Peace on Earth," by Pope John, and would you tell me if that expresses in contemporary terms the relationship of the Christian to his culture?

A Paragraph 51 of the encyclical **Pacem in Terris** by Pope John the 23rd:

"Since the right to command is required by the moral order and has its source in God, it follows that if civil authorities legislate for or allow anything that is contrary to that order, and therefore contrary to the will of God, neither the laws made nor the authorizations granted can be binding on the consciences of the citizens since we must obey God rather than man; otherwise, authority breaks down completely and results in shameful abuse."

Q Would it be fair to say in your position both as a theologian and as a man involved in pastoral work in the church, this expresses the attitude that most everyday Catholics are supposed to have towards their understanding of how they relate their culture?

A I would say this, that the statement by Pope John, is, as far as my understanding leads me to believe, in keeping with Catholic tradition as I know it and it's also a summary or basic outline of the attitudes and the methods that we attempt to instill in our students in both our parochial and non-parochial education.

Q You mentioned before in your testimony that there are many different sects or different denominations in what is vastly called Christianity, and among them what we have been referring to as the Catholic Church.

Could you state as a theologian and in that tradition, what are some of the main principles which differentiate its perception of the Christian religion from other Christian traditions?

THE COURT: Well, do you think that is relevant?

DEFENDANT KRONCKE: I think it is relevant to the fact that

when we talk about the Catholic radical tradition which I come out of, that the particular way of interpreting --

THE COURT: Well, there are many differences, as I would understand, between Lutherans and Methodists and Catholics, Protestants, and the Jews and others --

DEFENDANT KRONCKE: Okay, I will be specific then.

BY DEFENDANT KRONCKE:

Q What would distinguish the Catholic concept of faith, what would some of the peculiar characteristics be of the Catholic concept of faith as it refers to the way a man must act in the world, which is also something we brought out in our paper?

A As distinguished from anything else?

Q I guess in general from other branches of Christianity, which we won't go into.

A I am not sure I understand the question.

Q There is an emphasis in the Catholic Church of faith and work?

A Generally speaking, yes.

Q And this has exhibited itself in documentation called the sacraments, is this true?

A Yes.

Q What additional slant or view does this give to a Catholic upon the way he should live in the world?

A Since the 18th century, religious systems in general seem to be inflicted with an idea that faith is primarily an intellectual content, assent, to reveal truth, propositional truth. Contemporary exegesis and historical studies have taught us to broaden our perspectives a bit, to the point where now we say that faith is not just simply intellectual content or assent to propositional truth, but is primarily a life style. Its not simply an attitude. It's a whole way of life, a life lived in obedience and love of God, of openness and love for one another.

Q Has this particular understanding been included in the main themes of the document coming out from Vatican II of the need for the Christian to act in the world?

A Very much so. In fact, this is not something which is just characteristic of Vatican II. It's characteristic of the Christian tradition in general.

I can put it this way, to be a Christian, you have to be both in Minneapolis -- limiting it to our particular experience -- you have to be in Minneapolis or in the world, and at the same time

you have to be, to use somebody else's phrase, in Christ. There is an unalterable tension involved here. To be simply in the world, to be completely secular, to be simply in Christ or in heaven would be to be in monasticism and both of them in spirit, it's not intended, contrary to Christianity. The very nature of the incarnation, man, God in the world entails that we live this kind of on-going continuous tension.

Q Would it be fair to say, without trying to say that this is something special that other people don't have, that Catholic Christians have a different way of looking at the world and a different way of understanding what it means to act and what their acts mean when they do act?

A Well, as I tried to indicate earlier, we tend to rationalize it or conceptualize it, vis-à-vis the idea of the sacrament or sacramentality, this live-faith experience.

Q So acts that Christians would do which other people would say could mean something different to the Christian community than it would be to someone else who doesn't relate to the Christian community?

A Very much so. In fact, what a Christian might do might seem like a crime to the state, where, in fact, to the Christian community it might seem like a good act.

Q Just a few more questions, Mark.

You mentioned before in answering some biographical questions that you have a position that is called that of a theologian in the church. Can you talk a little bit about what the responsibility of a theologian is, what his task is in the church, his function, what he should do?

A Very generally, attempting to do this in summary fashion, the task of the theologian, as I understand it, is to study and to reflect upon the origin and the tradition of our religious belief and practice and to articulate that meaning, the meaning of that tradition, to our own contemporary situation; in other words, something that is belief and the life of belief from a Christian perspective must be constantly appropriated each day. It's not something that we have at one time and then continue to have it from then on without further care and concern. It is something that we have to consciously engage in at all times. I would say that the theologian's task is primarily that.

DEFENDANT KRONCKE: I think at the present time I have no further questions. You may cross examine.

MR. TILSEN: I have no examination

Thank you, Mark.

THE COURT: Mr. Anderson?

MR. ANDERSON: Your Honor, I would on the same theory expressed previously, move that the witness' testimony be stricken and the Jury instructed to disregard it, and then I can decide whether I have cross examination.

THE COURT: Well, the Court won't act on the motion at this time, but will keep it under advisement.

### **CROSS EXAMINATION BY MR. ANDERSON**

Q Mr. Jesenko, you referred to a document that you assisted Mr. Kroncke in writing, and I believe it is now an exhibit for identification, Exhibit Number 5. When was work on this completed?

A If my memory serves me correctly, I believe it was about two months ago, generally speaking.

Q That would be in November, possibly?

A Yes. It was before Christmas.

Q Now, as I understand it, and you said this twice, you said that there is a tradition in the Catholic Church that when the state violates good order, man can then look to the law of God? That might not be exactly the words you used, but as I remember them, that was one theory you described, and then there was a statement from the Papal Encyclical which stated that if civil authority is beyond the law of God, and then I couldn't get the exact words, but it seems to me it says that one could obey the law of God. That was from the Encyclical. Is that in substance it?

A Yes.

Q Now, since that was an Encyclical, it would have some rather high status in the church, would it not?

A Yes. In fact, I would also indicate that then are many parallel statements within the document Vatican which is of even higher quality or status, as you say.

Q Is it not true that the institution of the Papacy and the Pope himself takes the position that when speaking from the Chair of Peter on matters of moral dogma he is miraculously preserved from error? Is that true?

A Yes, it is.

Q So doesn't the Pope when he writes an Encyclical, there have the advantage of being able to say that he decides what God's law is for purposes of the Encyclical?

A No.

Q You don't think he does?

A I know he doesn't.

Q Then you don't believe that when speaking from the Chair of St Peter on matters of moral dogma that he is miraculously preserved from error?

A Yes, I do.

Q Now, is it possible for two human beings to disagree on the question of what God's law is?

A Is it possible?

Q Yes.

A Sure, it's possible.

Q Is it possible that both of those people can be sincere?

A Yes.

Q And it can be possible that both of those men are wrong, that neither of them know what God's law is?

A That is also possible, yes.

Q And is it possible that two men can disagree on when civil authority has gone beyond the law of God?

A That also is possible.

MR. ANDERSON: I have no further questions.

### ***REDIRECT EXAMINATION BY DEFENDANT KRONCKE***

Q I have a few questions on redirect.

In the tradition in the formation of conscience what is the interplay between the concept of the community, sometimes better expressed in English under the term church, and the concept of the Holy Spirit, if you can briefly to about the role of the individual's relationship to what I called the Spirit and the individual's relationship to the church?

A I think there is one thing we should clear up first with regard to the nature of conscience itself. I would not generally accept the definition of conscience as a little black box or an interior voice accusing me of right or wrong. I prefer the definition of conscience as the very life process itself of an individual becoming what it ought to be, becoming what it ought to be by virtue of what it is. It's never possible for me to gain a very

clear understanding and appreciation of who I am without in fact also knowing you. In other words, you are absolutely necessary to my self-understanding, self-development and ultimately my religious self-giving. So when I speak of myself, I must also speak of us, and therefore, the community. Our consciences are formed according to the teaching of the church, not in the privacy of our own study or self, but in communication, in commerce with our community at large.

Q You mentioned in your description of what a theologian does his responsibility of studying the word of God, writing about it and then trying to do something about it. Would you say, in reference to this idea of conscience, that the theologian today has a special or a slightly different function and responsibility than the average church-going Catholic?

A Well, each one of us has special gifts and talents and we have to make use of those for the common good the best we can. I may have some competence in Biblical studies and that is my responsibility. The guy next to me might not have, and he doesn't, obviously. By virtue of my background and training and opportunities that I have been given, sure, I have that responsibility.

Q So when the Encyclicals and documents of Vatican II were being drawn up or when the Pope writes an Encyclical does he go to the theologian as people who should be spending time and their life trying to understand these issues?

A Yes. It is so very rare that the person of a pontiff will actually sit down and pen his own Encyclical He has a large team of consulting theologians, historians and on cases touching on other problems such as Pope Paul The Progress of People, he also had staffs of trained and competent political scientists, economists and so on and so forth, and they also have an editorial board, and thee people pool their talents, energies and understandings. They conceive and produce a document which he then finally judges to be in keeping with the Christian tradition and belief and practice and then signs his name to it and publishes it.

I should add that it is very seldom that a Pope will, and, in fact, to my knowledge it has never happened that a Pontiff has issued an Encyclical from what the prosecutor has called the Chair of Peter. That is a technical term which is not used in the production or the publication of the Encyclical.

Q One final question, then, on redirect. Even though it is obviously the task of all Christians to respond and to relate to one another, would it be proper to say that the task of the theologians

is an added responsibility to relate to these issues that are of importance to the church and to do things about them and to try to understand what is happening in the world and to articulate it and to get involved in it and to bring it to people's consciences?

A I would say very much so.

Q Thank you. That is all.

MR. ANDERSON: No further questions.

THE COURT: All right. You are excused.

[The witness excused.]

THE COURT: We will take our afternoon recess.

[Recess taken.]

DEFENDANT KRONCKE: For my next witness, I would like to call Alfred Janicke to the stand. WHEREUPON,

## **ALFRED JANICKE**

a witness called by and on behalf of Defendant Kroncke, having first duly affirmed, was examined and testified as follows:

### **DIRECT EXAMINATION BY DEFENDANT KRONCKE**

Q Father Janicke, would you tell me how old you are?

A I am 35.

Q And where do you live, Father?

A Pardon?

Q Where do you live?

A Minneapolis.

Q Are you a priest in the Roman Catholic Church?

A I am.

Q Where did you receive your education before ordination?

A At Nazareth Hall in St. Paul, St. Paul Major Seminary in St. Paul, and ordained February 19, 1961.

Q In your service to the church as a priest, have you served in various parishes?

A Yes, I served in three parishes, St. Timothy's in Maple Lake, Holy Name in Minneapolis and St. Phillip's in Minneapolis.

Q In the course of your time serving in these parishes, did the event of Vatican Council II occur?

A Yes, it did.

Q Was there at this time a major re-examination of all the

roles and functions within the church?

A Yes, there was.

Q Did this have quite an effect on the average parish life, effect on the role of the priest in the parish?

A It had an effect on the parish that I was in.

Q Did it have an effect on you?

A Yes, it has.

Q And in what particular way as a priest did you respond to some of the ideas of Vatican II?

A Well, in a very brief way, without going into detail with all the background in terms of other acts, on September 24, 1968, I was in Milwaukee, one of the Milwaukee 14, and burned files of the Selective Service System..

Q What happened pursuant to that act?

A Pursuant to that act, we were brought into Court, we stood trial, and as a result of that I was sent to prison.

Q How long did you serve in prison?

A Our sentence was a total of eight years, four of those years to be probation, and of the other four, two were to run concurrently and as a result of that, I served one year.

Q Do you consider yourself to be within what is termed in the newspapers the Catholic radical tradition?

A Yes.

Q What are the values that you find within that tradition as it related to specifically that act?

A Well, the basic value, of course, is the value that's been talked about during this whole trial, and this' is the basic value of life, life being of prime importance life being important not only to the individual who is on trial but to all the individuals in the United States as well as in the world.

If we deviate from that basic premise, then everything else begins to make sense, but if that becomes the basic premises upon which the Catholic radical tradition is founded, namely, that life is important, then everything else is secondary and all the material, all the files, all the different aspects of the Selective Service System in total does not equal one life.

Q In expressing yourself through this act were you responding to the values as put forth through the recent Papal Encyclicals and the theme concerned in Vatican II?

A Absolutely. Absolutely, Pope John XXIII was pleading with the world about peace, and I am pleading, today I am pleading and you will notice from my voice, I am pleading along with Pope John and in that tradition that human life is important. (\*Note: He boomed with prophetic resonance!)

Q Do you feel specifically as a priest that it your responsibility to bring this deep understanding of the value of life to people not only within the church but to all Christians at large?

A Yes.

Q All people at large in the world?

A Yes, I want to bring that value right into this Courtroom.

Q Is there a tradition for this in the Encyclical. of addressing these concerns to all men, not just to Christians?

A Yes, there is, because all people, whether Christian or not, are human, and as a member of the human society, people are important. In fact, they are so important that it's from the tradition that we come from that we have the stipulation that life, as such, is of basic importance.

Q Were there other men with you in this action that you referred to as the "Milwaukee 14"?

A That is correct. There were 14 of us, 5 priests, one Brother, one minister and 5, in religious terminology, lay people.

Q Did they all serve time in prison?

A Yes, they did.

Q And were they all, in general, equally motivated by some of the same values that you have articulated?

A Absolutely.

Q Has their type of action and the values which they tried to bring to the people's consciences been publicized nationally outside the confines of the church?

A Absolutely, through the newspapers and the news media.

Q Can you tell me in specific what, as a priest, made you respond in this way to the documents of Vatican II and what they had to say?

A Yes. As a priest I was not separated from being a human being. I am to be, according to the rite of ordination, a moral leader, and to be a moral leader, one must take a stand, and

to take a stand means risk to life, to one's own, not to another person's; and as a result of this type of risk, it seemed at the time of September 24, 1968, that from my own projection and perspective that we in the United States were becoming so isolated from being human and having a person-to-person relationship with others, that as a result I had to take this kind of action in order to highlight it.

Q Even though you broke the law of the land, did the church retain you as a fully ordained, full-time, full fledged minister or priest?

A Yes.

Q Has the issue and the acts that you have done actually been discussed among not only your fellow priest but among the parishioners and people you are serving at the time you did the action?

A Absolutely. They discussed them and this kind of discussion went on and on and on. In fact, this discussion is still going on. That is why we are in this Court room. If the discussion were over with, there would be n reason. Some day some Jury will have to find what we are talking about really makes sense, that life is important.

Q Is it fair to say that the issues of the war a well as other economic and political issues must be discussed in the church during their official ceremonies, that these are main issues that they discuss and talk about that these are within the consciousness of the Catholic church?

A Of course it is within the conscience of the Catholic Church when the basic documents that we have even cites in rills courtroom emanating from the rope anti are being discussed by the bishops.

Q Did the Arch Diocese at the time encourage the priests to become familiar with the doctrines of Vatican II and to implement them in their parish work?

A Yes.

Q And you did spend time with these documents trying to understand your role as a priest?

A That is correct.

Q Has the issue, specifically that of how to for a Christian conscience, been one that has come to the fore since the council has ended?

A Well, yes.

Q And have you found as part of your pastoral work with your parish work, the need to talk frequently about the consciences

of Christians?

A Absolutely. People usually do not want to do that, and that is part of the work of being a moral leader that we must form consciences regardless of where the individual may be. Our forum might be -- right now, I consider this a pulpit right here from which I am speaking to all the people in this Courtroom.

Q I want to show you, Father Janicke, what has been marked as Defendants' Exhibit Number 6. Do you recognize this as a standard copy of the official "Documents of Vatican Council Two"?

A That is correct.

Q I have excerpted from that a paragraph from Chapter 1, Paragraph 30, of the documents. Would you read that paragraph and the following paragraph as I have mark out? You can read it from the text here and then I want you to tell me if these are some of the guidelines that have motivated you in your pastoral work?

A "Let everyone consider it his sacred obligation to count social necessities among the primary duties of modern man and to pay heed to them. Christ, to be sure, gave his church no proper mission in the political, economic or social order. The purpose which he sets forth here is a religious one, but out of this religious mission itself becomes a function, a light and an energy which ca serve to structure and consolidate the human community according to divine law. Moreover, in virtue of her mission and nature, she is bound to no particular form of human culture nor to any political, economic or social system."

Q Would it be fair to say that the act which you took indicated a response to a passage and similar passage like in this document?

A Absolutely. The documents are full of those kinds of passages.

Q Do you find it necessary as part of your priesthood to try to bring your moral consciousness to the public eye?

A Yes. One of the problems with that kind of situation of documents in book form is that nobody reads anymore. Everybody, when they can read, watches television, and so on, so that as a result, we have a situation of an uninformed Christian, not only in terms of civil matters but in terms of religious matters.

Q From what we have read in the document, would it be fair to say that the teaching of the doctrine of the church, what

you are supposed to teach, is that the Christian is not bound to any particular political situation or any particular culture?

A That is correct, he is not bound.

Q But is it also correct to say that he is to involve himself in political situations and culture situations and he is to involve himself in the social situation?

A That is correct, because there is no such thing as being able to work outside the framework of politics.

Q So would it be fair to say that the Vatican II points out that a man who involves himself in social or political activity may be impelled to do so according to religious necessity?

A Absolutely.

Q Was your act an example of that type of religious necessity?

A The act of September 24, 1968, is exactly as you describe it.

Q Did you find within documents of Vatican II also the assurance that if you broke a law of the land, you could still be doing the will of God?

A Absolutely.

Q And before the time of that particular act, had you ever felt, prior to that time, the necessity to involve yourself in breaking a major law of the land?

A Well, it depends on what you mean by major, but I had broken other laws of the land, yes.

Q I mean an act like civil disobedience?

A Not in the sense that September 24th was. The reason I say that is because I feel that to be the act of civil disobedience of my life.

Q And is it true that the tradition which you were involved in at this time has continued as evidenced by what is going on this Courtroom?

A It has continued, that is correct.

Q One final question. Has there been anything particular about being a priest today in response to Vatican II that has distinguished that role as people understood it before Vatican II?

A Yes.

Q Will you construe that a little bit, the change that

occurred?

A Yes. The change that occurred was in the realm of whether one would just stand behind the pulpit and give out directives or whether one would become actively involved in what one was saying. It occurred to me that too often I was in a position of telling others what to do, but that I myself was not willing to do that, and in one specific instance, what we are talking about today, and it occurred to me that I could continue to talk about life being important, and yet, if I did not take a specific act which would prove that according to my own actions, then I was a tinkling cymbal, as Paul would say, as St. Paul would say, and as he would say, it doesn't depend upon what comes from the mouth of man, but it is whether or not his actions equate what he has said. As a result of that, my basic philosophy then was not changed in terms of what I believed, but it was given a new directive, a new direction. Vatican II did this by saying to get out of the pulpit and get out into the streets and begin to tell people by your actions what you really believe.

So as a result, I moved out of the pulpit, not because I wanted to but because I considered this a prolongation of what I would say. So that as a result of my actions, the relationship to September 24, 1968, burning draft files in Milwaukee County, I was saying at that time that not only would my words speak but that I considered human life to be so important that I myself was willing to undergo whatever kind of punishment I had to in order to speak this way to the public, to the people, and as a result of that, I have come to the conclusion that people are still not hearing, and my own conclusion, which, again, is my own situation developed from my own experience, that as long as Courts continue to give --

THE COURT: I don't want to hear any comments about the Courts. You are here to give factual evidence and not a sermon or a lecture or an opinion

MR. ANDERSON: I would object, also, Your Honor, that his answers are getting unresponsive, and in general, I think maybe it is time for another question, if there is another question.

THE COURT: Well, he said this was his final question.

DEFENDANT KRONCKE: I didn't expect my witness to be interrupted like that, however.

BY DEFENDANT KRONCKE:

Q Just in summary, what is the most marked contrast of what you perceived your world to be before Vatican II as you understood your role to be before Vatican II as you understood your role as a priest and after Vatican II?

MR. ANDERSON: I object to that, Your Honor. I think whatever the theory is, or as I understand the theory of the defendant, the roles of priests before and after Vatican II would have no bearing on even the religious theory offered by the defendant.

THE COURT: Well, apart from that, he has already indicated what the difference was before and afterwards, so it is repetitious. I will sustain the objection.

BY DEFENDANT KRONCKE:

Q Okay, Al, thank you very much.

## **CROSS EXAMINATION BY MR. TILSEN**

Q Father Janicke, I have a few questions. What did you do in Milwaukee in September of 1968?

THE COURT: I will sustain the objection to that. We have been over that. He told us what he did, burned files, and that he was in jail.

MR. TILSEN: Well, it's not clear -

THE COURT: It is perfectly clear, isn't it?

MR. TILSEN: I don't think it is clear, Your Honor, that they --

THE COURT: Objection sustained.

BY MR. TILSEN:

Q Were files burned in a building or outside a building or what?

MR. ANDERSON: I object, Your Honor.

THE COURT: Objection sustained. We are not trying that case. We have another case here.

MR. TILSEN: I think, however, on behalf of my client it is important to understand, and I will ask another question, Your Honor.

BY MR. TILSEN:

Q Was human life in any way conceivably injured or endangered by

any action you took?

MR. ANDERSON: Your Honor, that is a conclusion.

MR. TILSEN: Your Honor, if I am not permitted to bring out the fact, I must deal with a conclusion.

THE COURT: Objection sustained.

Now, shall I say it again? Objection sustained.

MR. TILSEN: May we approach the bench?

THE COURT: We are not trying that case.

MR. TILSEN: No, but I just want the Jury to know what happened.

THE COURT: They know. He has told them all about it.

MR. TILSEN: I suspect that he has not. I will move on, however.

BY MR. TILSEN:

Q In destroying the draft files --

MR. ANDERSON: I object. We are now talking about destroying draft files in that incident, and Your Honor has indicated that that is irrelevant.

MR. TILSEN: I haven't asked the question yet.

I might also say that insofar as my client, Mr. Therriault, is concerned, it is cross examination and I do object to the Court's limitation in not being permitted to show that no human life was involved in this kind of an act.

THE COURT: Nobody has said it was. MR.

TILSEN: There is that possible inference because they don't know what happened.

BY MR. TILSEN:

Q Mr. Janicke, you indicated that your act was out of necessity you believed, is that correct?

A That is correct.

Q Would it be fair to say that you acted upon certain evils that you perceived?

A That is correct.

Q What were those evils, in your perception that compelled or forced you to take the steps that you have described and for

which you went to prison?

MR. ANDERSON: Your Honor, I am going to object. What he did in September is not relevant to this case and his theories for doing so are not relevant to this case.

THE COURT: I think that is right. I do not think they are relevant.

MR. TILSEN: He has testified to certain matters, and on behalf of Mr. Therriault, I think the Jury ought to understand the relationship between these acts, if any there be, to the contentions that are being Presented here concerning the nature of certain problems and the probability that these acts would act to change them.

THE COURT: Objection sustained.

BY MR. TILSEN:

Q In your act of civil disobedience as described, to the extent you have described it, did that have an effect upon governmental policies and practices?

A Yes.

MR. ANDERSON: I would object to that question on the ground that there is no reason to believe he would know whether it did or did not, and I would move that his answer be stricken and that at this time the Jury be instructed to disregard it.

THE COURT: He has answered yes, and the answer may stand, but that is all. I won't let you get into a theory about what happened.

MR. TILSEN: Well, it's one of our contentions that acts of this sort do affect the government in conduct of the war, and we have had some testimony to it, and this man went to prison in order to establish that point.

I think that gives him some particular relevance in being able to tell us something, that not all of us have had the opportunity to go to prison, Your Honor.

THE COURT: Objection sustained.

MR. TILSEN: Thank you, Father

Janicke. No further questions.

## **CROSS EXAMINATION BY MR. ANDERSON**

Q What parish do you have now?

A I do not have a parish at the present time.

Q What are you doing?

A At the present time I am involved with the community for non-violent discipline and action.

Q You are single, I assume?

A I am not.

Q I see.

MR. ANDERSON: I have no further questions.

THE COURT: All right. You are excused, Father.

THE WITNESS: Thank you, Judge. [The witness excused.]

DEFENDANT KRONCKE: Call as my next witness, Father William Hunt.

## **FATHER WILLIAM C. HUNT**

I would appreciate it if the Reporter would record the oath that I am about to take.

THE CLERK: You do swear that the testimony you shall give in this case now on trial before the Court and Jury shall be the truth, the whole truth and nothing but the truth, so help you God?

FATHER WILLIAM C. HUNT: I do.

WHEREUPON, WILLIAM C. HUNT, a witness called by and on behalf of Defendant Kroncke, having been first duly sworn, was examined and testified as follows:

### ***DIRECT EXAMINATION BY DEFENDANT KRONCKE***

Q Father Hunt, before I delve into the biographical information, I would like to ask you why you did that. A Why I asked that the oath be recorded?

Q Yes.

A Basically because I think it affirms a relationship between the Court and the higher authority; that the Court itself sanctions the use of an oath as an authority which will protect the type of testimony that I am about to give. It appeals to a higher authority as a sanction or as a reason for believing that my testimony will be truthful.

Q Father Hunt, tell me how old you are?

A I am 35 years old.

Q And where do you live, sir?

A I live at 1701 University Avenue Southeast in Minneapolis. That is the Newman Center.

Q What is the Newman Center?

A The Newman Center is the Catholic student center on the campus of the University of Minnesota in Minneapolis

Q What is your position there?

A I am director of the Newman Center.

Q To backtrack a minute, what is the extent of your formal education?

A I graduated from Anoka High School. I attended St. John's University in Collegeville, Minnesota, and the St. Paul Seminary where I received my Bachelor of Arts Degree.

Subsequent to that, I studied for four years at the Gregorian University in Rome, where I received my license in theology, and we don't have any equivalent to that degree in America. That is the largest of the Catholic universities in Rome.

After that, between 1964 and 1966, I attended the Catholic University of America where I received my doctor's degree in sacred theology.

In addition to that, I have attended other universities, too.

Q How long have you been director at the Newman Center?

A I just assumed my duties on January 1st.

Q What were your duties before you were at the Newman Center?

A After my ordination I served for six months, one semester, as a teacher at Nazareth Hall Junior Seminary in Arden Hills. For two and a half years, I was secretary to Archbishop Leo Binz, Archbishop of St. Paul and Minneapolis. At that time, I attended the Second Vatican Council as a *peritus*, which means an official expert of the Second Vatican Council during the second session in 1963.

Subsequent to that, I went on to my studies at the Catholic University in Washington, D.C., and since January of 1967, I have been a professor of theology at the St. Paul Seminary which is a post-college seminary for the training of Roman Catholic priests.

Q Is there any specialty within the field of theology that you are teaching?

A I am generally considered to be specializing in systematic theology which is opposed to scriptural studies or historical theology; but I have also studied and taught those.

Q Are you on any professional -- perhaps professional isn't the right word -- are you on any professional organizations within the arch diocese?

A I belong to the American Catholic Theological Society and the American Association of University Professors. I also belong to the Presbytery by the fact that I am a priest of the diocese, and for the past year I have been chairman of the Theological Questions Committee of the Presbytery of the Arch Diocese of St. Paul and Minneapolis.

Q Is it common to your role as a theologian to lecture in the community besides teach?

A Yes, it is.

Q And what have you basically been involving yourself with in lecturing?

A I have lectured on a number of things, humanism, Christianity and humanism; original sin, and I have a great lecture on original sin, if it please the Court; theological topics; and I have lectured extensively on the subject of abortion.

Q Would you explain exactly what the position of an expert was in Vatican II, the extent of your familiarity that gave you that position, how the council was organized and arrived at its conclusions?

A Well, as an expert, theological expert, I had access to all of the documentation of the Vatican Council. I had access to the actual sessions, and also, I am conversant in the Latin language, and I can read and speak in Latin, and all the work of the Council was done in Latin.

I actually attended the sessions, and had all the documentation at my disposal and was able to examine things which hitherto have been strictly secret documentation and background for the decisions of the Vatican Council.

Q Is it fair to say that the Vatican Council was the first Council to be directly concerned with social, political and culture problems in dealing specifically, I guess, with social and political problems?

A No, I think some of the previous Councils did, but nothing to the extent that the Second Vatican Council did.

Q Is it true that the topic of war was an extremely central topic discussed among the various theological experts?

A Yes.

Q Did the Bishops of the Council, as far as you know from your meeting with them and discussions, intend these documents not only to guide the priests but all the peoples of the church in developing their lives in the future?

A Certainly.

Q Would it be fair to say that the bulk of the reaching in the seminaries now is based upon the documents of Vatican II?

A No question about that; yes, they are.

Q And has this, just in general, changed the understanding of the function of the priests and the theologians in their relationship to the world, affect what Christians call the world?

A I don't know if it's changed it significantly, but it has brought out what I think are the riches of the Christian tradition along these lines and has highlighted them in a way which has never been done before.

Q Has this involved some of the priests in that tradition in activities which have up to this time not actually been seen as priestly?

MR. ANDERSON: Excuse me, sir, before you answer.

Your Honor, I am going to object to that on the grounds that Mr. Kroncke apparently is not a priest, and whatever the theory is, how Vatican II changed priests, I just don't understand as being a part of even Mr. Kroncke' theory. Therefore, I wonder what its relevance is.

DEFENDANT KRONCKE: I will withdraw the question.

THE COURT: All right.

DEFENDANT KRONCKE: Would the Clerk find me the Court's copy of the Indictment, please?

BY DEFENDANT KRONCKE:

Q I would like to read to you a copy of the Indictment, which is entitled,

"United States of America

vs.

Francis Xavier Kroncke

Michael Duane Therriault

5-70 Cr. 19

The grand jury charges:

That on or about July 10, 1970 at the City of Little Falls, County of Morrison, State and District of Minnesota, Francis Xavier Kroncke and Michael Duane Therriault, the defendants herein, did willfully and knowingly attempt to hinder and interfere by force, violence and otherwise, with the administration of the Military Selective Service Act of 1967, and the rules and regulations made pursuant thereto by entering the Selective Service Headquarters for the County of Morrison, State of Minnesota, Local Board Number 73, situated at 122-123 East Broadway, Little Falls, Minnesota, to remove and destroy official records contained therein and thus disrupt the official activities at said location.

In violation of Title 50, Appendix, United States Code, Section 462 (a).

A True Bill

/a/ Thomas B. Tallakson

Foreman"

Are you familiar with the actions of July 10, 1970 as described therein?

A Just what I have read in the papers and the Indictment in general and casual conversation.

Q You know this is the matter at interest in the Court at the present time?

A Right.

Q Have there been symbolic acts in response to violent culture indicated in the scriptures of the Catholic faith?

A Yes, there have.

Q Would you expand on one or explain what you mean by that?

A The most notable one, of course, is our Jesus Christ's own act to expel the money changers from the temple which, significantly, is one of the few incidents in his life which is recorded by all four gospel writers, Mathew, Mark, Luke and John.

I think it is quite clear what he was trying to do by this. When they asked him to explain why he had ejected the money changers from the temple, why he had overturned their tables and disrupted the ordinary affairs of the Court of the Gentiles -- that's an area, not a legal court -- he explained, there are two traditions in Mathew, Mark and Luke, the so-called synoptic tradition, he says, "You have made my Father's House a robber's cave." The commentators who have tried to explain this, especially Charles Harold Dodd, one of the foremost Anglican scripture scholars and theologians, has pointed out that this was an explicit reference to violence; that the activities of the money changers in this most sacred area of the Hebrew life, namely, the temple itself, was doing violence to the orderly progress of worship and to the actual freedom of the Jewish people of that day to worship; and in protest to the violence that was going on in the temple, Jesus engaged in this symbolic activity, which brought it to the attention of the people.

In the tradition recorded in St. John's Gospel, the reason is slightly different. He objects because they have turned the temple into a marketplace. The same Greek word as we use for emporium is used there. In other words, in each case he has said that the violent and the people who were interested in what we might today call industry or mercantilism, or in other words, for violent and mercenary purposes, this type of activity was hindering the basic freedom of men in Jewish society in the most sacred place, namely, the temple itself.

When confronted with that, Jesus testified symbolically against that by his activities. It also has to be seen, of course, in the tradition of witnessing to the whole testimony of the prophets.

It's interesting here that the reaction to Jesus was precisely a reaction to a prophet who had arisen in their midst.

So I would say that this type of activity is symbolic activity, protesting violence and commercialism in the most sacred areas of human life, is part of the prophetic profession which was ratified by Jesus Christ himself.

Q Is it fair to say that there are occurring in the church, specifically in the Catholic tradition, such symbolic acts in response to violence that these Catholics see in the culture?

A Well, I can't judge the motives of everyone, but

certainly some of the people that I know who are doing this I am sure see that they are doing this in the same tradition.

Q You mentioned that you are an expert in Vatican II. Are you familiar with the fact that they issued a rather lengthy statement on the problem of war?

A Yes.

Q I show you what has been marked as Defendants' Exhibit Number 6. Do you recognize that as a fairly standard copy of the "Documents of Vatican Council II"?

A Yes.

Q I have excerpted a part here so it would be easier to read, Chapter 5, called, "The Fostering of Peace and the Promotion of a Community of Nations," the sub-title is Total War, Chapter 5, Paragraph 80, Page 294.

A This is of the "Constitution of the church in the modern world"?

Q That is correct. Would you read that, and then I would like to have you comment on why you felt this was an issue brought before the Council.

A The passage reads: "Any act of war aimed indiscriminately at the destruction of entire cities or of extensive areas along with their population is a crime against God and man himself. It merits unequivocal and unhesitating condemnation. The unique hazard of modern warfare consists in this, it provides those who possess modern scientific weapons with a kind of occasion for perpetrating just such abominations. moreover, through a certain chain of events, it can urge men on to the most atrocious decisions. That such in fact may never happen in the future, the Bishops of the whole world in unity assembled beg all military leaders to give unremitting thought to the awesome responsibility which is theirs before God and the entire human race."

Q Would you explain as an expert on the Vatican Council why such a passage would come forth at this time in the church's history? Why wasn't it concerned about talking explicitly about original sin or some other widely known doctrine?

A This is quite clear in the introduction to the particular document which we are reading, namely, the "Pastoral constitution of the church in the modern world," where it takes up a number of the crucial questions which are facing mankind today, and the very intent of this document, which was so thoroughly discussed over all

four sessions of the Council, was to try and face squarely problems that face the church and the world today, and it felt that one of the phenomenon of the 20th century was unquestionably the phenomenon of total warfare, and for the Council to go home without saying something about this would have been unthinkable.

Q Are these documents as drawn up by the Bishops expected to be read and understood by most of the Catholic people in the world? Is that their intent in publishing them?

A Yes, of course.

Q This is something that they would want every Catholic to be familiar with and respond to?

A Right.

Q The documents of Vatican II were written for the whole world not for any particular country or reception by any particular country, is that correct?

A Not quite. This particular document made a special attempt to enter into a dialogue with the whole human community. There are some documents of the Vatican Council which are more specifically attuned to particular groups within the Catholic Church, for example, the document on the clergy.

Q The probable goal was not to exclude American Catholics or make special reference to the Russian Catholic, or anything? It was intended for all Catholics?

A Right.

Q You mentioned that you were familiar with what is called the Catholic radical tradition. It is true, is it not, that members of the Catholic radical tradition include a vast number, or a good majority of them are Catholic priests, nuns and brothers still in the ministry?

A I would not be able to say whether it's a majority or not, but a significant number certainly are.

Q How in particular has the local arch diocese responded to the actions of the Catholic radical tradition?

A We have to distinguish, of course, between the Arch Diocese of St. Paul and Minneapolis, which is an area under the jurisdiction of the Arch Bishop, and the Presbytery of the Arch Diocese of St. Paul and Minneapolis which is an association and union of the priests of the arch diocese, which is slightly different.

On a number of occasions, the Presbytery through its

various committees and in full meeting has reacted to this question of war and peace. I, for example, was and still am the chairman of the Theological Questions Committee, and in December of 1968 we were given a mandate by the presbytery at large, in other words, the assembled bodies of priests, to study the whole question of non-violence and violence, especially as it applies to the question of modern warfare, and this was in reaction, of course, to the activities of one of our own members, Father Janicke, who was a member of the "Milwaukee 14."

Q You are familiar with the previous witness, Father Al Janicke?

A He is a classmate of mine.

Q What type of response did the local group of priests in the arch diocese make to Father Janicke's action? How did they feel as to their fellow priest?

A There was a good deal of controversy about it. I don't think I would be honest if I didn't say that the group was divided, but a majority of those present at the full session of the annual meeting of the Presbytery voted to commend our fellow priest for his conscientious act, for giving witness to his conscientious conviction, and then instructed the Theological Questions Committee to carry out a study of the question of violence and nonviolence in our society.

Q So you could say that his action did have an effect upon the consciousness of at least the priests as you are familiar with it?

A Yes.

Q To backtrack a minute, you mentioned that you have just assumed the role as director of Newman Center on the University of Minnesota campus, is that correct?

A That is correct.

Q Do we know one another?

A Yes.

Q Do we know one another more than on professional terms?

A Yes. Of course, I first knew of you as a roommate of my brother's at St. John's College at Collegeville, Minnesota, in about 1964, 1965, somewhere in there.

Q That is correct.

A And we have been acquainted, you taught at the alma mater of my sister at Rosary College in River Forrest, Illinois. I think my sister had graduated before you came there as an instructor; and then we have known each other, I would say as a

casual acquaintance in the last few years.

Q At the Newman Center while you were assuming your directorship, was it an occasion for the Newman Center to have me there as a preacher for --

A Yes, it was slightly before I took charge of Newman Center that you were there.

Q And the issues at hand have been discussed by myself as well as others about the theological significance of the act that we committed?

A Yes.

Q In valid churches before regular Catholic communities?

A Yes, I think you have appeared in at least two, and I am sure many more than that.

Q I have no further questions. Thank you.

MR. TILSEN: Father Hunt, I have no questions.

MR. ANDERSON: Your Honor, I have no questions, and I would move that the testimony of this witness be stricken on the grounds of irrelevancy.

THE COURT: Well, the Court will keep that motion under advisement.

You are excused, Father Hunt.

THE WITNESS: Thank you very much, Your Honor.

[The witness excused.]

DEFENDANT KRONCKE: I would like to ask the Court, there is the possibility that I may have one more witness on Monday. I notice now that it is 20 minutes to. The only other witness is myself. If you want me to begin and possibly interrupt myself as a witness, I will go ahead at this point, even though I sort of wasn't prepared to go on until Monday.

My preference is to wait until Monday, but it is up to the Court.

THE COURT: Do you gentlemen want to step up here a minute?

[Discussion at the bench between Court and counsel, not within the hearing of the Jury.]

[The following proceedings were in open

Court.]

THE COURT: In discussion with counsel, we have agreed to adjourn until nine o'clock Monday morning. Does nine o'clock make it difficult for anybody that comes a long ways, or anything like that?

Very well, the Jury may be excused, then, until nine o'clock Monday morning. Now, again, over the weekend I request and instruct you not to talk about the case or discuss it or have anything to do with it, and try to read as little as you can in the newspapers about it. That is a self-discipline that I can't enforce and wouldn't attempt to, but I would appreciate it if you are able to keep your minds clear for the evidence here.

All right. Nine o'clock Monday morning. The Jury may retire.

[Whereupon, an adjournment was taken until 9:00 A.M., January 18, 1971]