

VOLUME IV

Testimony of:

Professor Arthur H. Westing, ecological report on impact of
herbicides in Viet Nam

Andrew J. Glass, journalist, 80% of injured and killed in Viet Nam
are draftees

Marv Davidov, founder of "The Honeywell Project," and long-time non-
violent activist and teacher

Daniel Ellsberg, former high ranking government official, who had
"The Pentagon Papers" in his valise

Michael D. Therriault, one of the "Minnesota 8," his personal paper
encapsulates the arguments of the draft raiders

ARTHUR H. WESTING	4
DIRECT EXAMINATION BY MR. TILSEN	4
CROSS-EXAMINATION BY DEFENDANT KRONCKE	13
ANDREW J. GLASS	15
DIRECT EXAMINATION BY MR. TILSEN	15
CROSS EXAMINATION BY DEFENDANT KRONCKE	23
MARV DAVIDOV	24
DIRECT EXAMINATION [Continued] BY MR. TILSEN	24
DIRECT EXAMINATION BY MR. KRONCKE	27
DANIEL ELLSBERG	38
DIRECT EXAMINATION BY MR. TILSEN	39
DIRECT EXAMINATION BY DEFENDANT KRONCKE	56
MARV DAVIDOV (2)	62
DIRECT EXAMINATION (cont'd) BY DEFENDANT KRONCKE	62
MICHAEL THERRIAULT	71
DIRECT EXAMINATION BY MR. TILSEN	71
MICHAEL THERRIAULT'S STATEMENT	84

VOLUME IV
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FIFTH DIVISION

United States of America,
Plaintiff,

vs.

5-70 Criminal 19

Francis Xavier Kroncke and Michael Duane Therriault,
Defendants.

The above-entitled matter came on for trial before the Honorable Phillip 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 14, 1971.

APPEARANCES:

Thorvald Anderson, Assistant U.S. Attorney, and Stephen Palmer, Assistant U. S. Attorney, appearing for the Government.

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

Defendant Kroncke also appearing pro se.

INDEX

<i>Witnesses</i>	<i>Direct</i>	<i>Cross</i>	<i>Redirect</i>	<i>Recross</i>
Arthur H. Westing	2	(Tilsen)		
21 (Kroncke)				
Andrew J. Glass	25	(Tilsen)		
43 (Kroncke)				
Mary Davidov	45	(Tilsen-cont'd)		
52 (Kroncke)				
123 (Kroncke-cont'd)				
Daniel Ellsberg	77	(Tilsen)		
109 (Kroncke)				
Michael Therriault	140	(Tilsen)		

EXHIBITS

<i>Defendants'</i>	<i>Offered</i>	<i>Received</i>	<i>Description</i>
2 and 3	148		Photographs
4	164	165	Paper authored by Defendant Therriault

January 14, 1971 10:25 o'clock a.m.,

THE COURT:

Mr. Tilsen.

MR. TILSEN: The defendants call Dr. Arthur H.

Westing.

Whereupon,

ARTHUR H. WESTING

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

DIRECT EXAMINATION BY MR. TILSEN

Q Do you prefer Mr. Westing or Dr. Westing?

A Mister, I guess.

Q What is your age, sir?

A I am 42.

Q Where do you live?

A In Putney, Vermont.

Q What is your profession?

A I am a professor of biology.

Q At what school?

A Windom College.

Q Is that in Putney?

A Yes.

Q How long have you been a professor of biology at Windom?

A For five years.

Q What did you do prior to that?

A I taught Forestry for four years at Purdue University, and I have also worked for a little over a year for the United States Forest Service.

Q What is your education and educational training for your position?

A I have a Bachelor of Arts Degree with honors from Columbia University, majoring in botany. I have a Master of Forestry Degree, majoring in forest ecology from Yale University. I have a Doctor of Philosophy Degree from Yale University in plant physiology, and I have one post-doctoral year of study and research at Harvard University.

Q Have you published and lectured widely in your field?

A I don't know what you mean by "widely," but I have published about 40 scientific and technical articles and monographs.

Q Are you acquainted with or are you a member of the American Association for the Advancement of Science?

A I have been a member of that association since 1959 and I was

elected to the grade of Fellow last year.

Q Are you also a member of other honorary and professional societies related to your fields of ecology, forest ecology and plant biology?

A I belong to a number of societies, the Botanical Society of America, the Society of American Foresters, the Society of the Sigma Psi, which is an honorary scientific society

Q Did the American Association for the Advancement of Science authorize a scientific study of the effects of military use of chemical herbicides in Viet Nam?

A Not military use. I think that's a little -

Q Perhaps you can describe what happened in your own words.

A Yes. The American Association for the Advancement of Science, which is the largest scientific association in the country, having about 130,000 members, commissioned a study of the ecology effects of the military's use of herbicides in South Viet Nam. They did this at their annual meeting in December, 1969.

Q How did you relate to that study?

A I was appointed director of it.

Q When were you appointed director of the study?

A I can't remember whether it was late January or early February of 1970. I believe it was late January.

Q In connection with that study, did you engage in various preparatory work and finally go along with other scientists to Viet Nam to make a field trip?

A Yes. I worked full time from the end of January until the middle of September on this study, reviewing the literature, the published literature, having many conference with United States Department of Agriculture people, United States Department of State people, United States Department of Defense people in Washington and elsewhere.

I had many lengthy discussions and interviews with people who had been in Viet Nam who were in a position to have observed some of the effects. I organized a meeting of 23 experts in June, which met for a week. These were people with various scientific and other technical backgrounds, half of whom, approximately half of whom had spent considerable time in Viet Nam. We spent a week at Woods Hole, Massachusetts, discussing the ramifications of the program and what should be studied, and so on.

This was followed by a month-long trip to Viet Nam in August. The group consisted of Matthew Messelson, a biochemist at Harvard university, John Constable, a physician and professor of surgery at Harvard Medical School Robert Cook, a young ecologist from

Yale University, a graduate student there, and myself.

Q Were the results of the study then made public for the first time approximately a week or ten days ago at the last meeting of the American Association for the Advancement of Science?

A That's correct. We prepared our report and annual meeting of this association. The final written report will come out very shortly.

Q In connection with this report, did you personally take slides of areas that had been sprayed with various herbicides or defilements?

A Yes, that is right.

Q Have you a short selection of those slides prepared for showing at this time?

A Yes, I do.

Q Would it be best to show the slides and explain what they are, and perhaps then we could return to a few questions about the scope and effect of the herbicide program.

MR. ANDERSON: Well, I would object to the showing of the slides. First of all, I would like for the record to object to the introduction in evidence any reference to the report to which the foundation has just been laid on the grounds that the ecological effects, if any, are irrelevant to the crime charged in the indictment. Even if that objection were overruled, I would specifically object to the introduction of slide pictures, because as I understand it, they violate the guidelines we discussed in connection with the conduct of this type of examination and the introduction of this type of evidence and testimony.

THE COURT: It is certain, and as I have indicated to the jury and commented to counsel, we are a long ways from Little Falls on July 10th.

I want to be as fair and impartial as I can as the judge to let you present what you feel is important. You are a defendant here and you are entitled to present your case, and I am trying to be as lenient as I can.

I must say that it is hard for me to see how defilation in Viet Nam has anything to do with what happened on the night of July 10th at Little Falls. But I have expressed that view before, and I say again to the jury that as to this evidence, the Court has not resolved that it is relevant necessarily at all.

Yet, a defendant on trial for something of this nature ought to have a right to present what he feels is his case, and I just hesitate, Mr. Anderson, to cut off everything the way you ask, and yet I don't want you to feel or the jury to feel that by

admitting it, I am necessarily adding weight to it or saying it is something that has relevance to what happened in Little Falls on the night of July 10th and 11th.

MR. ANDERSON: Your Honor, I wanted the record to show that it's the Government's position that as a matter of law, none of this could possibly be a defense to the crime.

THE COURT: I understand, and I have not ruled that it is, and yet, in fairness, and I said this in chambers to you, I dislike to cut off everything. I will overrule the objection.

I don't know what these slides are. I may have on occasion to interrupt and ask you or the jury to disregard some of them if they are of that sort of a character, because --

MR. TILSEN: I am sure they are all in keeping with what I told the Court.

THE COURT: I regard the Government of having a standing objection, as I indicated yesterday, and if I think, without his getting up for every question or every slide, or continually doing that, when I think it is something that if he did do that, I would rule it out, I shall do so.

MR. TILSEN: Thank you, Your Honor.

BY MR. TILSEN:

Dr. Westing, perhaps you could come to the counsel table where the slide projector is set up and the microphone is here.

For the record, Dr. Westing, you are showing us some slides, and perhaps you could show slide No. 1 and explain it and then move right through the slides.

A This slide, by way of introduction, we were there Viet Nam. The Ambassador supplied us with a full time vehicle and chauffeur, and also, very important, supplied us with one of his three personal helicopters for our use whenever we needed it.

This is a slide illustrating unsprayed jungle, unsprayed Vietnamese forest, of which there are some 25 million acres, You will notice there are other damages in evidence. These are bomb craters about 40 feet across and 40 feet deep.

MR. TILSEN: Excuse me a minute. I wonder if the last jurors can see. If not, would it be possible, Your Honor, for the jurors in the seats there to come and stand while the slides are being shown, or perhaps they could sit here.

THE COURT: Can you see there at the end?

A JUROR: Not very good.

THE COURT: This won't take very long, Why don't you stand inside the box there at the end, if you can.

THE WITNESS: Our mission in Viet Nam was not to assess the military role of the impact of the war, but an

ecological one, and we could not help but being impressed by a number of ways in which the military country.

One of these factors was these bomb craters which are a permanent scene on the landscape.

Another one, this fits into this whole program, the Armed Forces there have denial of cover and sanctuary. This is a picture of a highway with about a thousand yards cleared by bulldozers on either side. This is how it looks on the ground. This is taken from the roadside off to the edge of the forest.

Also, there are large contiguous areas, many thousands of acres which are cleared by bulldozing.

This has not much to do with the herbicide program, except in this way, that after these thousands of acres are bulldozed, they are kept open with herbicides. So the herbicides are used here subsequent to the bulldozing. Some 500,000, half a million acres have now been bulldozed.

This is a picture of healthy upland tropical hardwood forest, untouched, unsprayed. This is healthy and normal.

This is a picture illustrating how the spraying is done. This was not taken by myself, but by a friend of mine. C-123 aircrafts are used with thousand gallon tanks. They usually go out in groups of four, five onto about 300 acres. The result is in herbicide dosage about ten times as high as the maximum recommended in this country.

This is the result of one such spraying. This picture was taken perhaps a year or two after the spraying. You can see that a significant portion of the trees have been killed.

The large timber species, valuable timber species, I don't know how many, but my guess there is perhaps 10 to 20 percent of the trees that have been killed. Some five million acres look like this.

Viet Nam happens to be just the size of New England. The sprayed area looks like this. It is about the size of the Commonwealth of Massachusetts.

This is another such picture, and the lower left-hand corner has been unsprayed and the uppermost of the picture is sprayed. All of the trees are dead, and the green that you see there is a weed replacement, bamboo shrubs, six or eight or ten feet tall, which are economically worthless.

This is a more open forest in which all the trees have been killed by previous spraying. The most heavily hit areas have been sprayed more than once.

This is a picture in war zone C about 50 miles north and west of Saigon. This area has been sprayed twice or perhaps three times. Virtually everything is dead. There are over a million

acres that look like this.

This is all upland hardwood forest. This happens to be a rubber plantation. This is the most important cash crop in Viet Nam, their major source of hard currency in the world, and although not much rubber has been sprayed, some has. I show you this because it's normal untouched healthy rubber.

The next slide is a small swamp that was actually, in this case, sprayed by mistake in 1967. It's about 200 yards wide and a thousand yards long. what I want to show you here is not only the dead rubber trees from this mistaken spraying, but also, the fact that a grass called Cogon comes in as a weed and prevents all subsequent regrowth. This is a very pernicious weed, the worst weed problem in the entire Southeast Asia. This is the normal, and this is just 100 yards down the road.

This is another upland forest picture with all the trees dead, probably sprayed twice, and the green that you see is entirely replacement by worthless bamboo. These are not bamboo trees, but bamboo shrubs, bushes. This is just to show you that the timber is really merchantable. This is actual salvage timber from herbicide-killed logs. They are able to salvage a little destroyed, and this is a conservative Government estimate, not my estimate but a U. S. Forest Service estimate, we have destroyed six and a half billion board feet of the prime tropical timber.

Another major use of the forest that we have destroyed is for firewood and charcoal. In fact, in terms of wood volume, more wood for firewood and charcoal has been destroyed than timber, and what you see in the picture behind the lady with the bow saw, is a little charcoal kiln.

We turn now to another aspect of this spray program. Before, you have seen all upland hardwood tropical forest. Now we get into the coastal mangrove forests which are swamp forests. This is healthy coastal forest here. There are about a million acres of mangrove forests. This is how it looks at high tide, untouched, unsprayed. This is how it looks after spraying. The mangrove forests, the brown areas, are dead. This is all from quite high up, so you can't see that too well. This is from flying 3500, 4,000 feet.

This is all enemy territory, free-fire zones. The brown areas are the dead parts. This is how it looks unsprayed. This is how it looks sprayed. About a quarter of it has been sprayed, of all the pilot dipped down just on the edge between sprayed and unsprayed, and, of course, again, you see the endless bomb craters, those B-52 craters about 40 feet across.

We were lucky in having been able to take a four-hour river patrol boat ride along with a small crew. This is

actually not a Navy boat but a Marine Corps boat. They have a daily patrol run. It's a 31-foot patrol boat, and we convinced the Marine captain to take us aboard on one of his tours.

This is how the mangrove looks when it is healthy, except for the edge. This was sprayed from a boat, by a Navy fire boat. It was sprayed in from the shore, but behind it you see the healthy mangrove. It's used for firewood and charcoal and some construction.

This is how the brown areas look that you saw from the air. This area was sprayed three or four years ago. Some of the bigger stuff has been salvaged for firewood, but it is totally dead. This is a close-up. This is how it looks now.

Again, the following is not my estimate, although I corroborate it, it's a United States Department of Agriculture estimate, that for this' to recover in any sense, it will take at least 20 to 25 years. All indicate there will be many decades when hundreds of thousands of acres of mangrove will look like this.

This is at low tide. This is another type of vegetation, nika palm, which is used in enormous amounts for building roofs and sides of houses. This is how it looks after spraying.

Finally, a few slides on a different aspect of the program. Everything you saw until now was involved in the denial of cover and sanctuary for the enemy. That which you have seen up till now covers about five million acres.

What you see on the screen now is a different aspect of the program. This is the crop destruction program which involves the so-called resource denial program, in which we attempt to deny food to the enemy. We have sprayed about 600,000 acres of rice crops. This particular mission is in the same province that My Lai was in, in other words, way up in the northern part of the country. This represents a spray mission that occurred just twelve days before we flew over it, and as I say, about 600,000 acres have been sprayed. The spray we use here is an arsenical compound, and we have just put it down.

Here is a slight close-up. We couldn't you see nothing but bomb craters everywhere. The actual effect of this mission hasn't took hold yet. Just the main swaths are brown. The others are green but will turn brown shortly. This is just twelve days old.

Here is a slightly closer view. You can see the rice paddies being destroyed all in the middle of the picture, and all of it has been killed.

I think there are only two more slides.

The food denial program denies food, specifically rice, and I might mention that we have destroyed' in terms of rice we

have destroyed 125,000 tons now of milled rice or 250,000 tons of unmilled harvested rice. But once you mill it, you lose quite a bit. Now, the forest program. The forest program also kills crops, and so on. This is not part of the crop destruction program. This was a forest destruction part, but here somebody's jackfruit trees were killed. This is a particularly sensitive tree. It's the most important fruit in Southeast Asia.

It's the same as the African breadnut, In Southeast Asia it's called jackfruit. They are killed to a large extent just incidentally to the forest destruction.

This is the last picture, and this shows another instance of food destruction, inadvertent, after the spray mission, the fruits have all aborted and are unusable. Custard apple is another important fruit there.

That is the extent of the slides, but I have a few more comments.

Q Thank you. Would you return to the witness chair. One question for clarification, please. These pictures were taken in South Viet Nam?

A Yes, that is correct.

Q Will you proceed.

A I was just going to mention a few things now that you have seen the slides --

MR. ANDERSON: May I ask, Your Honor, that the testimony be in the nature of questions and answers?

THE COURT: Yes.

MR. TILSEN: I will do that.

THE COURT: This witness is not here to attempt to give a lecture, but to answer questions.

THE WITNESS: All right.

BY MR. TILSEN:

Q Do the slides show the full scale of the destruction?

A Yes and no.

Q Perhaps you can explain the extent to which they do not show the full scale.

A The slides, of course, are examples of the type of destruction. The magnitude of it you can't possibly get from the slides. The partly destroyed upland forest represents four million and some acres. The totally destroyed upland forest represents one million acres. The totally destroyed mangrove represents a quarter of a million to half a million acres. The food destruction represents about 600,000 acres, or 125,000 tons of rice, and that requires a little elaboration. 125,000 tons of rice in terms of what this does --

THE COURT: I believe you have already told us that and it is just

repetition.

THE WITNESS: Excuse me.

BY MR. TILSEN:

Q Could you tell me this, in terms of the amount of rice, what does that represent in terms of the amount of food for the numbers of people, that is, how many people would that much rice feed in ecological terms?

A Translating that into --

MR. ANDERSON: Excuse me. I might object. I don't think there is any foundation for this witness as to whether he would know the number of people that rice would feed, nor if that was within the scope of his study.

THE COURT: I will sustain that objection.

BY MR. TILSEN:

Was the question of the effect of this on people within the scope of the study conducted by the American Association for the Advancement of Science?

A Yes, it was.

Q I would re-ask the question again, simply, what were the numbers of people that would be affected?

THE COURT: The objection is sustained

BY MR, TILSEN:

Q In addition to the immediate destruction of the forests, you have indicated that the forest damage lasts for some time.

Were there secondary ecological results that were within the scope of the scientific study of the destruction?

A Yes. We made a great effort to attempt to determine not only the current scope of the damage, but also the recoverability of it or how long it would be damaged, and conservatively, we feel that full recovery, a return to ecological conditions prior to herbicide damage would take a minimum of several decades.

Q Was the effect of this on the life of the people part of the study?

A Yes, it was.

Q What was the effect of the destruction of this extensive amount of forest and crops as you have described on the people?

A The extent of effect on the people was enormous, particularly certain types of people. The main group of people that were affected were the primitive hill tribes, perhaps as many as a half a million of them had their social life disrupted. Also, of course, the economic effect of six and a half billion board feet of tropical hardwoods, the loss of charcoal and firewood, the depletion of the productivity of the land, the loss of food crops, and so on,

should be considered.

Q There were other aspects of this study that we are not going to get into today.

Just name the other aspects of the study so that we understand what the study included.

A Well, our mission was to assess the effect on the land and people, ecological effect, economic effect, health effect, medical effect, social effect.

Q Did you get into these other areas then, the medical effect of the spray on the people?

A Yes, we did. The medical effects were worked on, but have no concrete conclusions yet.

THE COURT: You said that we are not going to get into this, but you asked about it. The objection is sustained.

MR. TILSEN: I just want the jury to know that they worked in those areas.

BY MR. TILSEN:

Q Were there other areas where work has been and is continuing? Is this a continuing study?

A No, it is not for our group. We are just wrapping it up, writing a final report, doing a few more chemical analyses, and that's it.

I have no further questions. Thank you, Doctor.

DEFENDANT KRONCKE: I have some questions.

CROSS-EXAMINATION BY DEFENDANT KRONCKE

The study of natural history in college, ecology, formation of land, I would like a little knowledge of what land devastation does. I would like you to explain it. Isn't it fair to say that the type of land that Viet Nam had before the war, it took millions of years to build up the type of soil, the type of plants to grow, and it takes a long time for land to regenerate, isn't that true?

A In a sense it is true, but our study indicates that the upland forests will recover their nutrient capacity in, let's say, a minimum of 15 years, perhaps 20 years, the mangroves perhaps in 25 years, and they will not look the same for 600 years, but then, again, they won't be destroyed.

Q The Viet Nam population, as you observed it, was basically agrarian, basically rice farmers, or what are they?

A Well, there is 18 million Vietnamese, and maybe three or four million people live in the big cities and another three million are

refugees, and all the rest are subsistence farmers, peasants.

Q Isn't it possible that with some of the vast land destruction, that when the land does regenerate or come back, it won't come back as the same type of land as it was when it was destroyed?

In other words, there will be different types of plants like the Congo weed, and stuff like that?

A Yes, on at least a million acres the bamboo will stay there for 50 or 60 years.

Q So ecologically, the effect is that the people may have to change their whole way of life?

A Some people certainly will.

Q Millions, a vast amount, is that correct?

A I can't make a guess on how many.

Q Fine. Okay. You talked about programs like food denial programs and the forest destruction program, as we observed the slides, that these techniques were necessary to prevent the enemy from doing something? What does the term "the enemy" actually mean in Viet Nam?

THE COURT: I am going to sustain the objection to that. He is not an expert on that. He is an expert on biology and forestry.

BY DEFENDANT KRONCKE:

Q Is it safe to say --

THE COURT: You see, as soon as you say, "Is it safe to say," then you are leading the witness. If you were an attorney, the objection would be made that that is a leading question.

DEFENDANT KRONCKE: All right. I am trying to get at the human situation. I don't know how to use cold objective terms.

THE COURT: I recognize that you are not a lawyer and I try to be patient with you.

DEFENDANT KRONCKE: Do you recognize that I am a theologian?

BY DEFENDANT KRONCKE:

Q What is your religion, sir?

MR. ANDERSON: I would object to that.

DEFENDANT KRONCKE: I am asking a biographical question.

THE COURT: Objection sustained.

BY DEFENDANT KRONCKE:

Q Are you familiar with, in your own personal life, the event in the Catholic Church called Vatican Council II?

MR. ANDERSON: I object to that. I think it is beyond the scope of anything that is relevant to the case, or in particular,

anything that this witness has been qualified to discuss.

THE COURT: The objection is sustained This man is not called as a religious witness or a theological witness.

DEFENDANT KRONCKE: He is called as a human being. May I ask his opinion on something, is that valid?

THE COURT: You can only ask his opinion on something he has testified to, and not on some strange subject that is brought up. By "strange," I mean something that he didn't testify to.

DEFENDANT KRONCRCE: I can't pursue the questions the way I want to on the testimony that he has given, so I have no other questions at this time.

THE COURT: Do you have anything, Mr. Anderson?

MR. ANDERSON; Your Honor, on the theory that the subject matter is irrelevant to the case, we have no cross-examination, and for the record, move that the material testified to by the witness be stricken and the jury instructed to disregard it.

THE COURT: All right. That motion will be kept under advisement. In the meantime, you are excused, Dr. Westing.

THE WITNESS: Thank you. May I leave?

THE COURT: You may. Thank you. (Witness excused.)

MR. TILSEN: Defendants call Mr. Andrew Glass.

Whereupon,

ANDREW J. GLASS

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

DIRECT EXAMINATION BY MR. TILSEN

Q How old are you, sir?

A I am 35.

Q Where do you live?

A Washington, D. C.

Q What is your occupation?

A I am a journalist.

Q What educational background do you have?

A I have a Bachelor of Arts from Yale University.

Q As a journalist, what -- perhaps you can tell us where you have worked as a journalist?

A I was city editor of the New Haven Journal Courier for two years. I was with the New York Herald Tribune for seven years. From 1962 to 1966, I was with the New York Herald Tribune Washington Bureau, and for much of that time I was the chief Congressional correspondent

of the New York Herald Tribune.

The New York Herald Tribune ceased publication in 1966. At that time, I became the national affairs reporter for the Washington Post in Washington, and most recently and presently I am employed as Congressional correspondent of the National Journal.

Q What is the National Journal?

A The National Journal is a weekly publication published in Washington. It is a non-partisan publication devoted to coverage of public questions and Federal Government issues.

The subscription on an annual basis is \$450 a year, which leads to a limited circulation. Its mostly used as a research tool by other newspapers, by the Government and by corporate entities and libraries, and so forth.

Q It's not the kind of thing we can go down to the likely?

A No, sir.

Q But it is publicly printed in the sense that if we wanted it, we could find it at the library or we could purchase copies by writing to the appropriate office?

A That's correct.

Q Did the National Journal, and more particularly, did you as the Congressional editor of the National Journal conduct a study on the relationship between draftees and the burden that they shared in the fighting and dying in Viet Nam?

A I did.

Q And when was that study conducted?

A It was conducted in July and August of last year.

Q July and August of 1970?

A Yes.

Q And published under your name where and when?

A It was published in the National Journal in the issue dated August 15, 1970.

Q And has it appeared as a part of the Congressional Journal?

A I believe it has.

MR. ANDERSON: Your Honor, I would object to any further testimony on this subject, not only for the usual reason, but it's not appropriate to the defense said it was, they could not possibly have relied on it and it could not have played any part in motivation or otherwise to this particular crime.

MR. TILSEN: If I could respond, Your Honor, the fact that the data showing the relationship between the number of draftees who go to Viet Nam was not published is not relevant; the fact is, that people

knew that a large portion of the draftees went to Viet Nam, and this witness' testimony will show exactly what the percentages were and what percentage the draft played of the fighting men in Viet Nam. Obviously, the publication date is not as important as the facts. The facts to which he is testifying will cover the entire period of 1970 and other years and shows the relationship between the draft and the war.

THE COURT: Well, your theory is, as I understand as you are trying to develop it, if it is a theory that your client was activated by some feelings. This he couldn't have known about, could he, because it wasn't published, except general impressions?

MR. TILSEN: Well, the position we have taken, to simplify it, Your Honor, is that my client acted out of the observed necessity to bring an end to the war in Viet Nam and to relate to the draft system which fundamentally system sent people to Viet Nam, the only thing that the witness is going to supply are the numbers and percentages and will show the exact relationship between the draft. The fact he didn't know the exact relationship shows more insight into the situation.

THE COURT: Of course, I guess we all know and knew that draftees went to Viet Nam.

MR. TILSEN: I agree. The essential point is that without knowing the extent to which they went to Viet Nam, the jury is in the dark in its knowledge of the relationship between the draft and --

MR. ANDERSON: Well, my point is that prior to this report, there is no showing that anybody knew the extent, and the report was after the crime and couldn't be relied upon, so the extent cannot be a factor, if the whole thing is a factor.

MR. TILSEN: That is not reasonable to say, that just because we didn't have the exact figures, we couldn't have acted upon it. That is not reasonable nor rational. All it is is an argument because we didn't have the exact statistics.

THE COURT: All right. Let's not argue about it any further. Go ahead and answer.

BY MR. TILSEN:

Q The question, then, that I would ask you, is this: You have all the statistics and I take it this took an accumulation of statistics and computers and statisticians and a team, sort of, to a degree?

A Yes.

Q And based upon all that --

A Yes, that is correct.

Q Based upon all that, you Concluded, did you reach a conclusion as to a draftee's chances of going to Viet Nam in the year 1970?

A More in 1969 and the early part of 1970.

Q What were the draftees' chance of going to Viet Nam?

A May I explain that?

Q Yes.

A The Pentagon keeps no statistics on the chances of a draftee serving in Viet Nam during the two years in the Army. So our method --

Q I think it probably would be better, because of an objection, if you answered the question, and then we can go on, if appropriate, because we may get into an area where counsel will want to object.

A The chances of a draftee serving in Viet Nam are between 50 and 80 percent.

Q At the current time, what is the draftee's chances of going to Viet Nam?

A As of the publication of this article, 80 percent.

Q As of August of 1970, a draftee's chances were 80 percent?

A Yes.

Q Can you tell us what that was based upon?

A That was based on a study of two factors. The first factor was the monthly conscription call by the Selective Service, which is a public record, and the other factor was the levies for Viet Nam. The period of service in Viet Nam is limited to 12 months, and therefore, there is a continual rotation of troops, and the number of troop that are sent to Viet Nam is a figure which we obtained, and we were able to, working with both those figures and with the Pentagon and the Defense Department, come to the conclusion that 50 to 80 percent of the draftees were serving one year of their two years in the Army in Viet Nam.

Q All right. Did you arrive at any conclusions about the extent to which draftees composed or made up the infantry in Viet Nam?

A Yes, we did.

Q What conclusion did you arrive at?

A The infantry --

MR. ANDERSON: I object. I think the

appropriate way would he to first tell us how he arrived at the conclusion, Your Honor, to see if there is any basis for it, because at the present time I don't think there is any foundation.

THE COURT: Yes. I will sustain

the objection.

BY MR. TILSSEN

Q How did you arrive at the conclusion as to the number, the extent to which the infantry is made up of draftees?

A With the cooperation of the Army General Staff, and particularly with the Deputy Chief of Staff of Personnel, and we studied the computer reports on the various Army M.O.S.'s, and that is Military Occupational Specialties, and 11 Bravo, in particular, is an infantry specialty.

Q And this study was conducted by your staff of the National Journal, together with the Pentagon officials and this is the conclusion that you reached?

A Yes, and it was confirmed to us by the Pentagon as accurate.

Q What was that figure?

A It was 88 percent.

Q That is, 88 percent of the infantry in Viet Nam are draftees?

A As of the publication date of article, that is correct.

Q Did you also study the draftee's chances of being killed in Viet Nam as compared to a non-draftee?

A Yes, we did.

Q How was that study conducted?

A It was conducted with the aid of statisticians, and, again, with Pentagon figures. The statistical theory is similar to that of flipping a coin, how many times it will come up heads, chances of being killed in a month or captured, and roughly, the same mathematical formula.

Q Once having given --

MR. ANDERSON: May I cross examine Your Honor, just on foundation here?

THE COURT: You may.

MR. ANDERSON: Mr. Glass, are then any statistics kept by the Armed Forces on the chance of a draftee being killed in Viet Nam?

THE WITNESS: Yes, there are.

MR. ANDERSON: Why didn't you rely on that instead of the flipping of a coin technique?

THE WITNESS: I was simply explaining how the Army and how we independently do, with the same figures

that the Army came up with, we came to the conclusions that we did.

MR. ANDERSON: I see. But in other words, the statistics are not counted statistics, they are interpolated and arrived at by some theory which, in the minds of the people developing the theory, will come up with an accurate estimate?

THE WITNESS: That is correct.

MR. ANDERSON: So what you are giving us is, really, a guess?

THE WITNESS: No, sir, it is not.

MR. ANDERSON: Well, it's not the actual numbers because you say they don't keep that, isn't that true?

THE WITNESS: There are actual numbers as to the number of draftees in Viet Nam and there are actual numbers as to the number of draftees killed in Viet Nam.

MR. ANDERSON: You said a moment ago that the Army does not keep statistics as to the number of draftees in Viet Nam, did you not?

THE WITNESS: Yes, it does. If I said so, I misspoke myself.

MR. TILSEN: He didn't say that.

THE WITNESS: I don't believe I die

MR. ANDERSON: In any event, the numbers you are giving us are numbers interpolated from some formula which would arrive at the figure, is that correct?

THE WITNESS: Yes. There is no dispute about the formula. If you have the number of people who are killed in any given period and you have the number of people who are there in any given period, then it is a relatively simple matter of mathematical projection to figure out what the chances of being killed in a year.

MR. ANDERSON: In other words, your theory is that if 80 percent of the people there are draftees, 80 percent of the people killed will be draftees:

THE WITNESS: No, it's not that simple. If for any given --

MR. TILSEN: Perhaps I could lay, and I don't want to interrupt the witness' thoughts, hut perhaps I can make my question clearer.

MR. ANDERSON: I have finished.

BY MR. TILSEN:

Q As I understand it, you have the actual number of draftees killed in Viet Name in any given month?

A In any given month, that's right.

Q And you have the actual number of draftees that were present in Viet Nam during that same period?

A That is correct.

Q So by simply putting one figure over the other, you get a person's chances of being killed? Hypothetically if for any given month there were 500,000 draftees and if there were a thousand persons killed, the chances would be one over 500,000?

A That is correct, for that one month, but the caveat is that a draftee serves 12 months so that he exposes himself to risk for 12 months.

Q Having taken care of the problem of 12 months, did you then do the same thing for the non-draftees?

A That is correct.

Q And the actual figures on which the calculations are made are kept?

A Yes.

Q And you then compared the two ratios?

A That is correct.

Q And upon comparing the two ratios, what did you discover?

THE COURT: I am going to sustain the objection to that. I guess we all know that people are killed in Viet Nam, and we see the reports from time to time. The question of the numbers doesn't relate to what -

MR. TILSEN: I didn't ask the actual numbers, Your Honor, nor even the rate of death. I was asking him to compare the rate of death of draftees as compared with the rate of death of non-draftees. That is, although I have the actual figures and the actual numbers and the actual rates, it was the comparison of the two rates, Your Honor, and I think it is important to this Jury.

THE COURT: The objection is sustained.

BY MR. TILSEN:

Q Returning then, to the question of the infantry being made up of approximately 88 percent draftees, has this figure fluctuated over the years that you studied it?

A Yes, it has.

Q And within what levels has it fluctuated?

A In the early part of the Viet Nam War, our reporting indicated that there was a higher proportion of so-called elite troops in Viet Nam, and by "elite" I mean volunteer groups such as paratroops and airborne divisions, and so on, and while draftees serve in such divisions and brigades, they serve voluntarily. Consequently, a higher proportion of volunteers in the early phases of the war, 1965-1966, were non-draftees. In the latter phases of the war, more currently, a higher proportion of draftees have been serving in the so-called basic infantry skills, armour artillery and infantry, basic combat skills.

Q With respect to the draftee's chances of going to Viet Nam, which you testified that on the date of publication were about 80 percent, has that figure varied over the last several years?

A Between 50 and 80 percent, as I said.

Q When you say between 50 and 80 percent, you mean it has varied regularly or irregularly? How has it varied during that period? I guess that is my question.

A The two variables are the size of the draft calls and the size of the levy. The third variable is the percentage of total draftees as a percentage of the total Army.

Q Well, has it fluctuated up and down in the chances of between roughly 50 and 80 percent?

A That's correct.

Q I see.

MR. TILSEN: Your Honor, I am mindful of the Court's last ruling on which I questioned him about the ratio on deaths.

As I understand, the witness has also conducted a study of the ratio of casualties, casualties other than deaths. My question to the Court is whether or not the Court feels for some reason that the ratio of casualties, Selective Service draftee casualties as compared to non-draftee casualties is also irrelevant?
THE COURT: I think it is.

BY MR. TILSEN:

Q Is there a difference between a draftee's chance of survival in Viet Nam and a non-draftee's?

A Yes.

Q What is that difference?

A Draftees --

MR. ANDERSON: I object because I

think this is in the spirit of what the Court --

THE COURT: The objection is sustained.

BY MR. TILSEN:

Is a draftee's chances of survival in Viet Nam greater or less than a non-draftee's?

MR. ANDERSON: I think that counsel is playing games with the Court.

MR. TILSEN: I am not. The Court doesn't want the exact figures --

MR. ANDERSON: I object, Your Honor.

THE COURT: Objection sustained.

BY MR. TILSEN:

Q I take it that there is also a difference as to a draftee's

chances of being killed -- pardon me, not killed -- being wounded in Viet Nam as against a non-draftee's?

A Yes.

Q And apparently there is going to be an objection so hold your answer. Is a draftee's chances of being wounded in Viet Nam greater or less than a non-draftee's?

MR. ANDERSON: I object, Your Honor
THE COURT: Same ruling. The objection is sustained.

MR. TILSEN: I have no other questions of this witness.

THE COURT: Mr. Kroncke.

CROSS EXAMINATION BY DEFENDANT KRONCKE

Q A man experienced with working with people or statisticians, people working with numbers --

MR. TILSEN: Excuse me. Your Honor -- well, that is all right. Go ahead. I am sorry to interrupt. Go ahead.

BY DEFENDANT KRONCKE:

Q You are a professional journalist? Is that what you are?
A Yes.

Q You are familiar and you work with people, statisticians and people who work with numbers?

A Basically, I am a journalist, but where necessary, we have statistical support.

Q Is it typical for most people to read statistics with feeling?

MR. ANDERSON: I object, Your Honor.

THE COURT: That is argumentative. I will sustain the objection.

DEFENDANT KRONCKE: I have no more questions.

MR. ANDERSON: Your Honor, on the same theory as before, that the matter is irrelevant, the Government would have no questions on cross examination.

For the record, I would move that the testimony be stricken and the Jury instructed to disregard it.

THE COURT: The motion will be kept under advisement, and, Mr. Glass, you are excused.

MR. TILSEN: Thank you, Mr. Glass.
[Witness excused.]

THE COURT: We will take our morning recess.

[Recess taken.]

MR. TILSEN: The defendants would recall Mr.

Davidov who was withdrawn from the stand at the end of the testimony yesterday.

Whereupon,

MARV DAVIDOV

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

DIRECT EXAMINATION [Continued] BY MR. TILSEN

Q Briefly, Mr. Davidov, is it fair to say that for a period of at least approximately 14 years or 15 years since your discharge from the United States Army, that you have been actively engaged in political activity, both electoral activity and non-electoral activity in a fashion which has brought you to some attention locally and on occasion nationally?

A That is certainly fair to say, yes.

Q What are you doing currently?

A Currently I am teaching a class on non--violence in the Experimental College at the University of Minnesota; continuing to involve myself with others against the production of anti-personnel weapons at Honeywell; working on a peace treaty which people hopefully will make in this country with the people of Viet Nam so that people-to people we may possibly end this war and bring our troops home and stop the slaughter.

Q All right. Now, with respect to your teaching non-violence, this has been, as I understand your testimony yesterday, a major theme of your actions and lectures that you have described at over 100 universities and different kinds of civic organizations?

A That is correct.

Q Can you briefly tell us the scope of that nonviolent efforts to bring change, in a general sense, that is, without relating it necessarily to any particular problem, except perhaps, by way of example?

MR. ANDERSON: Your Honor, I would object to the question. I don't think that the questioning of this witness has particularly set him apart from anybody else as one that can give an opinion as to the scope of non-violence; entirely aside from the fact that whatever the scope of non violence is, it's irrelevant.

MR. TILSEN: well, if the objection Your Honor, is that I have not laid a sufficient foundation with this witness for his expertise as a person who has dealt 15 years in marches and other activity aimed at nonviolence, change in governmental policy, I will expand upon the foundation. I did get the impression yesterday that perhaps we were going too far in laying a foundation for this.

I would ask one or two additional questions, then.

THE COURT: Will you gentlemen step

up here a minute, please?

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

[The following proceedings were in open Court.]

BY MR. TILSEN:

Q Mr. Davidov, do you have an opinion as to the effectiveness of non-violent direct action in bringing about change in America at this time?

A Yes.

Q All right. Would you state that opinion, and in so doing, you might explain a little bit about what non-violence is, because there might be some confusion in the Jury's mind about violence and non-violence.

A Yes. Non-violence is the art and science of the attempt to solve human conflict without using murder, exploitation or brutality, either physically or spiritually or psychologically. Anyone involved in the process of non-violence or believes in the philosophy of non-violence has philosophy non-violence has to go through certain stages in an attempt to solve any conflict.

One has to discover, first, if, in fact, there is a conflict. One has to discover if there is an injustice, because the philosophy of non-violence can only work in just situations. You can't use non-violence to defend injustice. Having discovered there is a conflict, that there is injustice present, one goes through various stages in the development and the use of the technique and philosophy.

Q Now, returning then, to the specific question, do you have an opinion as to the effectiveness of nonviolence in bringing about change in America at this time, at which point you might comment about other means of bringing about change, such as elections, etc.

A Yes, if I understand you correctly, and relating back to the process, one writes letters to the editor as means of bringing to the attention of he people what the problem is. One attempts to negotiate with the people that you think are responsible for having created the problem, keeping the doors of communication always open. One engages in peaceful demonstrations. Even in electoral politics , you attempt to present your view through the structure, always working within the structure until, or if you discover that the vehicles, the doors of communication are closed and the injustice persists, then someone who believes in non-violence must use civil disobedience in order to raise the problem in a very profound way and bring it to the attention of people.

Q Does this have an effect upon bringing about change in the social situation?

A It certainly does, or it can.

Q What effect has it had, for example, from your personal experiences in bringing about change?

A Well, the kind of civil disobedience, for example, which has been used by young men subject to the draft has certainly raised the issue of the draft and what it has done to draftees, to the American public, of refusing the draft as an act of civil disobedience. Has civil disobedience or non-violent protest had a role, for instance, in bringing about change in legislation, such as the Civil Rights Act?

A It definitely has.

MR. ANDERSON: Your Honor, I object.

THE COURT: I will sustain the objection to that. The Civil Rights Act goes back to 1871, and there is no sense in talking about it.

MR. TILSEN: I meant within the experience of the witness, Your Honor.

THE COURT: No, objection sustained.

BY MR. TILSEN:

Within your personal experience OURT: And 1983, 42 U.S.C., Mr. Tilsen.

BY MR. TILSEN:

Q Within your personal experience, has nonviolent protest, or as you have used the term which hasn't been used before, civil disobedience been an effective mean of bringing about changes that you have experienced and observed?

A Definitely.

Q And, for example, you have given one, the draft resistance?

A Yes.

Q Would you give others?

A Well, in our experience -- I related earlier that I and 4,000 or 5,000 other people were involved in a demonstration in Washington called the Assembly of Unrepresented People, where we attempted to make peace with the people of Viet Nam and attempted to do this by conducting the demonstration at the Capitol Building itself in Washington at that period.

When the Washington police would not allow us to hold the demonstration on the Capitol steps, we conducted an act of civil disobedience. 365 of us were arrested in a peaceful attempt to walk to the Capitol itself to hold our assembly.

Q Did this have an effect in bringing about a change in government programs, policies and practices?

A Well, at least it brought the problem to the attention of the citizens in the country, although the war persisted and continued to escalate.

Q Are there other examples where acts of nonviolent protest have produced some effect upon government programs, policies and practices, in your experience? We are not going to get into history at this time.

A Right. Well, I would have to say that the Draft Board raids have certainly deepened the question of the war and the draft, not only in the minds of young people throughout the country, but all over the world and certainly in the minds of government officials.

Q One last question. Is the act of entering a Draft Board and removing records a violent act or a nonviolent act, in your opinion?

MR. ANDERSON: I would object, Your Honor.

THE COURT: I will sustain the standing objection to that. That's a conclusion.

MR. TILSEN: I would ask it this way, Your Honor.

BY MR. TILSEN:

Q Does it fall within the tradition of non-violent acts of civil disobedience to which you have been testifying?

THE COURT: The objection is sustained, and don't answer that question. We have heard that evidence. We know all about how it happened. If that becomes important, we are here to judge it without the opinion of somebody on the witness stand as to what it is.

MPR. TILSEN: All right. Thank you.

Mr. Kroncke is going to question the witness in a different area, I believe.

DIRECT EXAMINATION BY MR. KRONCKE

Q To allay the fears of the prosecution, do we know one another?

A Yes, we know one another. we have worked together.

Q We have talked and had discussions and you know somewhat how I think and I sort of know how you think?

A Yes.

Q Yesterday when you were giving testimony you frequently referred to people who were involved with you as brothers and sisters?

A Yes.

Q Is this the normal way we talk with one another?

A That is precisely the way the people in the Movement talk to one another.

Q What does that mean to us?

A It means, I think, what it would mean in a normal family situation, that people look upon another with compassion, with understanding, with forgiveness, with joy. They live together and when they have conflict they may be passionate, but they attempt to argue their problems out, and at the same time relating to one another as members of a human family.

Q When we talk about non-violence, does it involve discussions of who we are as people and how we feel, our deepest feelings about life?

A Of course, it does.

Q Is it a common characteristic of people in a non-violent movement to spend time getting to know one another deeply?

A As deeply as we are able to.

Q Is it sort of known that people who are trying to become non-violent are willing to live and die for their brothers and sisters?

A Definitely. First, to live at all costs, to live on the basis of the life force that is in everyone. But to die, you know it's necessary.

Q But our style of relationship is that we want to do all this non-violently?

A Yes, all of it without injury physically or hopefully psychologically to any human being.

Q There are many people who call themselves nonviolent. There are variations upon what that exactly means, isn't that true?

A Yes, that is correct.

Q It's not just simply non-violence. People talk about it a lot and keep trying to understand what the term means in this particular situation, given this particular problem?

A That is right. No one has the answer. There is a great deal of difference among us.

Q Would it be fair to say, Marv, that it is essential to our style of life that we form new kinds of communities based upon commitment to one another?

A Yes, of course.

Q So, obviously, what happens in this trial to me, really happens to you, too?

A To me, yes, and I know in one sense or another to everyone in this room.

Q Most people have a very personal interest in what happens to Mike and I?

A Very deep, yes.

Q You mentioned when Mr. Tilsen was questioning you that you work for the Experimental College at the University of Minnesota, is that correct?

A Yes.

Now, this is actually part of the University? You just don't hold classes there, it's part of the University?

A That is right.

Q You are paid through monies raised by the citizens of the State of Minnesota, is that correct?

A Yes.

Could you explain a little bit about what the Experimental College is, when it was founded, why it arose, what type of people are in it?

A. Yes. It was founded the fall quarter --

Q Of this year?

A -- of this year. There are 96 students and 13 staff members who together are trying to create a study which is relevant to the community and to the world around us, although there are deep conflicts among us at the Experimental College, and those of us who are here would know that.

Q Do you have an advanced degree of any sort?

A No, I do not. My degrees have come in the movements in southern prisons and by experience of the world.

What you have done has qualified you in the eyes of the University of Minnesota, the state's highest institute of education, to be capable and responsible and knowledgeable enough to talk about non-violence and other areas that the Experimental College gets into, is that correct?

A In the eyes of at least some people at the University of Minnesota; not everyone, to be sure.

Q Last year at the University of Minnesota there was something called the Student-Faculty Strike, is that correct?

A Yes.

Q And this occurred over the issue of United States invasion, or however you want to phrase that, but for our terminology, invasion of Cambodia?

A Yes.

Q What were some of the educational tools that arose out of that strike which you related to?

A Well, the attempt --

MR. ANDERSON: Your Honor, I will object because I believe the educational tools that developed out of that is a little far afield even from the far afield area we were on.

DEFENDANT KRONCKE: Then it is incumbent upon me to explain the testimony. I am trying to establish through this witness the tradition out of which I come, the traditions and the style of action that has been taken, and therefore, it is speaking directly to our understanding of what is a necessity, necessity to act, and what we perceive to be evil and I am trying to lay foundation with Mr. Davidov among all the people in the Twin City area, and he is qualified about these things.

THE COURT: Well, we are not here to try the strike at the University and determine whether it was a good or bad thing.

DEFENDANT KRONCKE: I am not asking him that. I am trying to find out what kinds of things happened in our community, that these were pursuant to the July 10, 1970 date, that that date didn't occur in a vacuum.

THE COURT: All right. Objection overruled.

BY DEFENDANT KRONCKE:

Will you briefly state, then, the different things that arose as the students' response to the strike.

A In the first place, students, faculty and workers at the University of Minnesota tried to create a democratic participation whereby we could reach our decisions democratically and together. Then we went into the classes with the permission of the professors to talk about the American invasion of Cambodia, and means of withdrawing the troops.

Then many of us, at least a thousand students, faculty and workers at the University of Minnesota, went into our community, the area of Minneapolis and St. Paul, going door-to-door to talk with citizens of this community about the war and its implication for all of us.

Q what were those organizations called? Was there a University of Life Structure, and things like that?

A That is right. We created, also, the University of Life in which we attempted to relate to the very real problems that are going on in our community, like medical and housing problems.

Q Approximately how many students participated actively in that?

A I would say 10,000 of the 40,000 students participated very actively, and many others to other degrees.

Q was there an on-going structure set up which is still on the campus from the strike?

A Well, there is a campus speaker's organization which is

still active and there is a community organization and many other aspects which are still somewhat active.

Q You mentioned in testimony that you were one of what has been called the, by the press, Freedom Riders in relation to the Civil Rights struggle in this country, is that correct?

A That is right.

Q And you also mentioned that part of the purpose if the Freedom riders in what they were trying to do involve hem in breaking laws, is that correct?

A That is correct.

Q You also mentioned that upon returning to Minneapolis, You spoke widely about the style of protest that you involved yourself with, the conflict with the people, and stuff like that?

A Yes.

Q Even though you broke a law, were you heavily criticized in Minneapolis when you returned?

A There was some criticism, but we found a profound interest among the citizens of the State of 'Minnesota, because all of the six of us who went to the south were invited to sneak before the Rotary Clubs, the Women's club, high schools, many colleges. I made 70 speeches myself in the state in the following year.

Q At the University of Minnesota where you teach in the Experimental College, are there other aspects of the University which are not directly part of the University but which the students have created and in which you participate and teach courses through?

A There is a Free University.

Q And what is the scope, basically, of the type of courses that are given at the Free University?

A Well, the scope is very broad. There are people who are teaching classes on social change. There are many people teaching classes on the study of things that You tight not get within the University of Minnesota structure. but there are a number of people at the Free University, again, who are attempting to look at the problems of our :ommunit7, housing and medical problems, unemployment, inflation, and attempting to collectively to do something about these problems.

Q Would it be fair to say that almost - strike that. I will rephrase that.

Is it true that about 50 percent of the courses It the Free University are concerned with religious problems?

A Yes, definitely.

Q Okay. In the Experimental College, do you have chance -- you do teach and talk about non-violence, is that correct?

A That is right.

Q Could you bring forth the names of some of the types of people who are familiar to the general public who you use to teach non-violence?

A I use Martin Luther King, Jesus' Sermon on the Mount. Naturally, we study Gandhi, people like David Dellinger, Barbara Denning, Dr. Spock.

Q Okay.

A Dorothy Day, a Catholic worker.

Q You mentioned in your discussions, and I am summarizing here, I guess, that the non-violent actions you have been involved in included anywhere from five to 10,000 people participating, is that right?

A Well, five people to a million. I neglected to mention yesterday that we were involved in a demonstration --

MR. ANDERSON: Your Honor, I think somebody ought to ask a question rather than about anything he may have forgotten.

THE COURT: Yes.

BY DEFENDANT KPONCRE:

Q The last massive demonstration occurred when?

A November, 1969, at the Capitol in Washington, D.C.

Q How at that particular time did the President of the United States respond?

A There were --

MR. ANDERSON: I object to that because I don't think that is relevant.

THE COURT: Yes. Objection sustained.

BY DEFENDANT KRONCKE:

Q Is the major purpose --- what type of people is the non-violent movement trying to enlist as participants?

A It is trying to enlist anyone and everyone as participants, but People could be called, not in a dictionary sense religious, but people who relate to one another on the basis of compassion and forgiveness and Love.

Q So your movement just doesn't aim at influencing the leaders of the country?

A No. It aims in influencing citizens of the country to take direction over their lives and into their own hands.

Q Like members of the Jury, members of the audience, everyone present?

A Everyone present.

Q Including the Judge?

A Of course.

Q You mentioned, when I asked you about some of the source material you used in teaching your courses, you mentioned various people like Gandhi, an Indian, and Martin Luther King, an American. Is the non-violence peace movement in this country an outgrowth of the American experience or is it something we got from abroad?

A I would say that it's an outgrowth of the American experience, because one would have to say that Henry David Thoreau believed in non-violence and refused his taxes in opposition to slavery and the Mexican War and was imprisoned for that purpose, and all of us or many of us have read Henry David Thoreau in our classes. I would say the early history of the labor movement is a profound manifestation of non-violence. The sit-ins were developed by men and women in the labor movement. The early Quakers who came to the United States related to what other people thought were hostile Indians in Pennsylvania on the basis of non-violence, and it was curious that they were not attacked when others related with exploitation were attacked because the Indians defended themselves.

Q Would it be fair to say that practically every identifiable group of people in America, Blacks, red people women, poor people, have at one time or another used non-violence as a political technique to effect social change?

A Yes, either deliberately or because they had nothing else at their command to use because of overwhelming forces on the other side.

Q Specifically, the peace movement in this country has been -- can you give me a general date when it started in this century, recent history?

A Yes, one could go back to the beginning of the country because there's been objection to every war that the country has over fought, --

Q Recently?

A But recently, I think you would have to say that the peace movement as a manifestation of massive fictions began in the early 60's.

Q So it would almost maybe be like 10 or 15 years 'f non-violent struggle?

A That's right, 10 or 15 years of intensive struggle where thousands of people have demonstrated and thousands have gone to jail.

Q Do you know of any other period in America's history of such a sustained period of people attempting to affect social changes by non-violence?

MR. ANDERSON: Well, I will object, there

is no evidence that he has even read of such.

THE COURT: I will sustain the objection to that.

BY DEFENDANT KRONCKE:

Q Can you tell me some of the techniques that non-violent people use in order to communicate their ideas or the people they are trying to relate to on issues?

A Well, as I mentioned before, there is an entire process that one goes through in the attempt to communicate. Every, kind of action, including a demonstration, including civil disobedience, is an attempt to communicate to people about the profound necessity for social change, an end to war, an end to racial oppression, an end to labor exploitation.

Q Do they use things like picket signs and do they do street theater, and acting things to communicate to people?

A That is right. We demonstrate with our picket lines and we produce leaflets.

Q And do they use their body in any active way in order to get across their ideas, also?

A Yes, you take your body, your heart, your mind, your soul, into the action.

Q Give me an example from your experience. I don't know if the Judge would want that, but theoretically, what would happen to a person committed to a lifetime of non-violence to seeing one person brutally attacking another.

MR. ANDERSON: Well, I will object, your Honor, there is nothing in this trial indicating that anybody brutally attacked another.

THE COURT: Objection sustained.

BY DEFENDANT KRONCKE:

Q How do people use their bodies?

A They interpose their bodies in the way of the attacker and take the brunt of the punishment themselves rather than delivering it to anybody else.

Q Okay. Have you ever met with any members of or any participants in the Viet Nam War who are Vietnamese?

A Yes.

MR. ANDERSON: I would object to pursuing the conversations or impressions or ideas that he may have about those visits.

DEFENDANT KRONCKE: I am establishing the fact of his familiarity with them.

THE COURT: All right. He said yes.

BY DEFENDANT KRONCKE:

Q Could you tell me where and under what circum-

stances?

MR. ANDERSON: Your Honor --

THE COURT: I will sustain the objection to that.

DEFENDANT KRONCKE: I don't understand. Okay.

BY DEFENDANT KRONCKE:

In the peace movement you talked about, there were different variations, types of non--violence. Is there a group identifiable called Catholic Radicals?

A There definitely is. They are everywhere in the country.

Q what is their specific understanding of nonviolence?

MR. ANDERSON: I would object. There is no background that the gentleman is a Catholic Radical or knows anything about them.

THE COURT: "Catholic Radicals," is that the term?

DEFENDANT KRONCKE: Yes. His familiarity is already established, Your Honor. He teaches about the movement. He never met Gandhi or Jesus, but I am sure he teaches about them and he knows something about them.

THE COURT: Well, he said there is such a group and he said they are around the country.

DEFENDANT KRONCKE: I asked him their style of understanding of non-violence.

THE COURT: Well, unless he is one how would he know?

DEFENDANT KRONCKE: Well, he knows them, he knows of the movement, he has studied it and he teaches about it, the same way that Gandhi and Jesus and Martin Luther King had different approaches to non-violence and we are trying to enable the Jury to understand the non-violence is not just one explicit thing.

THE COURT: I understand. Objection sustained.

BY DEFENDANT KRONCKE:

Have you ever been involved in any international meetings with people concerned about non-violence?

A Yes.

Q Will you give me an example of all those meetings?

A I went to the Stockholm Conference on Viet Nam at the end of March, where over 500 delegates from 70 countries in the world met to see what we could do to end the American slaughter of Vietnamese.

Q This is an international non-violent movement?

A Yes.

Q At that time, were you able to pick up people involved in the Vietnamese struggle on the side of the Vietnamese?

A Yes.

Q Do you feel that you have a, relative perspective on the war?

A Yes, I think I do. 1

Q Would it be fair to say that non-violent people see and feel the world differently than other people who do not tend to have that sensitivity, for example, when they look at other people?

A Yes. In the midst of a very violent culture, it is extremely difficult for people to continue to maintain a belief in love and compassion.

Q You talked about draft resistance as a form of non-violence in this country, is that correct?

A Yes.

Q This would include, I presume, people who have, shall we say, left the country as their form of resistance, is that right?

A Yes, I think that is a form of resistance, a very painful form. It takes them from their families and their friends.

Q Are you familiar with Brother Robert Gard

A No.

Q Would it surprise you to know that --

MR. ANDERSON: Your Honor, I object.

THE COURT: Objection sustained. He is not familiar with him, so you can't ask him.

BY DEFENDANT KRONCKE

Q Are you familiar with the World Council of Churches?

A Yes.

Q Are you familiar with their concerns for peace?

A Yes.

Q Do you know their specific concerns for peace in reference to draft resistance in the flight to Canada?

A Yes, I know they are attempting to generate a move toward amnesty so that these men and families can return to the United States without suffering penalty of any kind, and I know, also, they have supported draft resisters and their families and urge an immediate end to American genocide in Viet Nam.

Q Okay. You talked before about the fact that people who are committed to non-violence, that a lot of them are trying to form new communities and relate to one another as brothers and

sisters and change their lives.

In the discussions you hold in class about nonviolence, is the war in Viet Nam irrelevant to a nonviolent peace struggle?

A It's absolutely the first thing that anyone who is in the least bit sensitive about human life, must discuss and keep in your heart and your mind every waking moment.

Q Have you had a chance in these courses of nonviolence to talk about the present American phenomenon of people who are called peace criminals?

A Yes, of course, because many of us are, aren't we?

Q Who would you say in the national consciousness would first come to mind as an example of a peace criminal?

THE COURT: Well, we are not trying someone else here. We are trying this case, and I am going to sustain the Government's standing objection to that sort of thing.

BY DEFENDANT KRONCKE:

Q The style of non-violence which you already testified to, the Catholic Radical peace movement, does that also earn them the title of peace criminals?

A Yes, definitely, and an inspiration to all of us.

Q Are most of these Catholic Radicals men who are in jail or run a risk of going to jail?

A They are men and women who are in jail or are on their way to jail.

Q From this visit to Stockholm where you were at this international meeting of people concerned about nonviolence, do you feel that other countries feel that America's leaders have lost their sense of morality?

THE COURT: I will sustain the objection to that. That is, obviously, a hearsay thing and an impression he gets from talking to other people who aren't here to be examined, to be cross examined. The objection is sustained.

DEFENDANT KRONCKE: Could I explain Your Honor, the only way that you can find out and understand morality is by meeting them and talking to them.

THE COURT: I understand.

DEFENDANT KRONCKE: There is no objective criteria for that. Is the objection still sustained?

THE COURT: The objection is sustained, yes.

DEFENDANT KRONCKE: Okay.

THE COURT: It's almost 12:30. If you have one or two more questions, or something like that, we can wait. If it is going to be longer --

DEFENDANT KRONCKE: As my witness, I would like to interrupt his testimony to allow some scheduled witnesses to

testify, so far as the transportation schedule is concerned, and make Mr. Davidov available when other witnesses are through.

I have about thirty or forty-five minutes, an hour left of Mr. Davidov.

MR. TILSEN: What he is suggesting, he is now being examined in his case rather than my case, and so at two o'clock, we will withdraw Mr. Davidov and present Mr. Ellsberg, who is here, and then upon the conclusion of Mr. Ellsberg's testimony, he will continue with Mr. Davidov in his case, because we are actually calling him in both cases separately right now.

MR. ANDERSON: Do I understand that Mr. Davidov is here to sort of fill in time as people come and go?

MR. TILSEN: No.

DEFENDANT KRONCKE: I think among other irrational statements, that is uncalled for. We are trying to present testimony with consideration for witnesses the have schedules. Mr. Davidov happens to have a more flexible set-up.

THE COURT: All right. The Jury may retire until two o'clock.

You will remain seated until the Jury retires.
[Whereupon, an adjournment was taken until 2:00 o'clock P.M., January 14, 1971.]

January 14, 1971
2:00 O'clock P.M.

MR. TILSEN: As indicated at the conclusion of the morning session, Mr. Davidov's testimony on behalf of Defendant Therriault is concluded, and he was being questioned by Defendant Kroncke.

For that reason, Defendant Therriault would withdraw the witness and call Dr. Daniel Ellsberg.

I might advise the Court that he will testify, first, as a witness for the Defendant Therriault and then as a witness for the Defendant Kroncke. He is being called in both matters.

THE COURT: You will have in mind that chambers conference that we had concerning his possible testimony.

MR. TILSEN: Yes, Your Honor.

Dr. Ellsberg.

WHEREUPON,

DANIEL ELLSBERG

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

DIRECT EXAMINATION BY MR. TILSEN

Q It is Doctor Ellsberg, is it not?

A I have a degree, yes.

Q Do you prefer to be referred to as Dr. Ellsberg or Mr. Ellsberg?

A. Whatever you prefer, Dan. Whatever you prefer.

Q Here in the Courtroom we will use Mr. Ellsberg. Mr. Ellsberg, how old are you?

A I am 39.

Q Where do you reside?

A Cambridge, Massachusetts.

Q And are you married?

A I am married.

Q Do you have any children?

A I have two children.

Q What is your present position?

A I am a senior research associate at the Center International Study, M.I.T., Massachusetts Institute of Technology in Cambridge.

Q In what department of M.I.T. are you located?

A The Center is a research center and not associate with any particular department.

Q It's called the Center for International Studies?

A Yes, sir.

Q In preparation for that position, I take it that you have had both professional and educational training, is hat correct?

A I prepared for the research that I am doing there by 16 years of my professional life.

Q And in the 16 years of your professional life, what field has your work taken you into?

A It's been entirely, up until I joined the Center in April of this year, been work for the President and Executive Branch of the United States Government, mainly in research, consultation and in participation on national defense matters, mostly classified, national security, except for three years that I spent in the Marine Corps, again working for the Executive Branch in that capacity.

Q Let's back up a bit. Where did you have your education, your first education, your high school education?

A High school in Bloomfield Hills, Michigan.

Q Your family home was in Michigan?

A Yes, Detroit.

Q Upon leaving high school, did you continue Your: education?

A I studied economics at Harvard College and had a

fellowship to Cambridge University.

Q Did you obtain a degree at Harvard?

A Yes, a B.A. in economics.

Q Following your education at Harvard, where did you then continue your education?

A Cambridge University.

Q Where is Cambridge?

A Cambridge, England.

And what did you study and do in Cambridge?

A Economics.

Q And did you obtain any degree?

A No, I did not. I returned to Harvard the following year, took my generals for the PhD and went into the Marine Corps immediately after taking my generals.

Q I see. How did you happen to -- when did you enter the Marine Corps?

A April, 1954.

Did you enlist in the Marine Corps?

A Everyone enlists in the Marine Corps.

Q In what capacity did you enlist in the Marine Corps?

A I went into the Officer Candidate School as an enlisted man and emerged as a Second Lieutenant.

Q Where did you serve in the United States Marines?

A In Quantico, Virginia, Camp Lajeune North Carolina, and I was in Puerto Rico and the Mediterranean.

Q And what kind of a unit were you with?

A I was a rifle platoon leader, assistant operations officer, and rifle company commander.

Q Was there anything particular that occasioned your entry into the United States Marines?

A I had been deferred educationally during the first three years of the Korean War, and therefore, I felt it was my duty to fulfill that obligation as soon as I had reached that stage of my education. I had to get medical approval to enter the Marine Corps since I had a broken knee, a medical disability.

Q Did you have more than a standard enlistment time in the Marines?

A I enlisted then for standard two-year tour in O.C.S. but I extended it for a year in 1956.

Q What was your duty in the Marines in connection with the Mediterranean?

A Well, my reason for extending was that I was due to get out in June, 1956, to go to Harvard to join the Society of Fellows. My battalion was due to go to the Mediterranean. We had been told that there would likely be war in the Middle East that summer

of 1956, and I applied to Harvard for a leave of absence so that I could accompany my battalion, on the grounds that it was likely to be in combat.

Q You did accompany your battalion, then, having volunteered for the extra year, into the Mediterranean area?

A Yes. I was Assistant Operations Officer of the battalion.

Q You indicated that you had applied for a leave from a fellowship as a Fellow at Harvard?

A I had already been awarded a fellowship, a three-year fellowship.

Q What is a fellowship at Harvard?

A The Society of Fellows is a unique fellowship meant as an alternative to the PhD program, originally, and is a three-year fellowship with the status or pay, I should say, of an assistant professor, to study, to do research of a free form, with no courses or thesis.

Q Did you, upon leaving the Marines, enter the fellowship at Harvard?

A Yes.

Q Would that have been in 1957?

A In 1957. I had lost a half year because of staying in the Marines, so I was-in it for two and a half years.

Q What areas of study did you continue at Harvard under the fellowship for two and a half years?

A Well, that gave me the opportunity to study more broadly than economics, so I studied political science, primarily, and psychology, this including decision theory. I ultimately wrote a PhD thesis in what is known as statistical decision theory or game theory.

Q During this time or thereafter, did you become associated in any way with the decision making process of the United States Government?

A That became my true professional life as I left the Society of Fellows. I had been a consultant at the Rand Corporation in 1958, and took up permanent employment at Rand as a researcher in June of 1959.

My duties there were entirely involved in the study of the decision process and in strategic matters.

Q What is the Rand Corporation and where is it located?

A The Rand Corporation is a private non-profit corporation doing research, the charter calls for it to do research in the public interest.

It's primary client has been the national government, and within that, that Defense Department, originally mainly the Air

Force, but now more broadly, the various parts of the Defense Department. My work was entirely in that period done for the Defense Department.

Q When you say, "in that period," this would include beginning in 1958 while still at Harvard, and then You moved in 1959 to where?

A In 1959 I moved to Santa Monica, California, where the Rand Corporation is located.

Q That period begins, then, in '58 and '59, and continued to when?

A It continued until August and September -- there was a transition stage there -- August and September of 1964 when I joined the Department of Defense.

Q Prior to joining the Department of Defense, what was your work at Rand, what did it consist of?

A I worked on problems of general nuclear war, and that was in the beginning, the era of the missile gap, and of great concern, that the Soviets were developing the capability to destroy our retaliatory capabilities. That seemed to me the most important problem in the world, as it did to most of the people I was working with at Rand, and we worked very long hours trying to avert that possibility.

Q How did your work at Rand relate to the Government, that is, what was the chain or relationship between the work at Rand and the Government?

A Well, initially, I did some ad hoc studies. I was on loan to the Commander in Chief in the Pacific in Hawaii during about nine months, and at one point doing study of command control under nuclear attack. I became acquainted with the problems of maintaining control of nuclear forces in nuclear war during that, and subsequently did consulting with the Defense Department, so I reported to the Defense Department and to the National Security Council on ways that the President could maintain control of such forces even in the event of a nuclear war.

Q Would it be fair to say that you reported to or did research and gave advice to the National Security Council?

A There was a variety of channels there. In some cases I reported directly to the Deputy Secretary of Defense, Mr. Kilpatrick. In other cases, I reported to the Assistant Secretary of Defense for International Security Affairs. There was a succession of those. In one case I reported on a study directly to McGeorge Bundy, the President's Special Assistant for National Security Affairs. In other cases, I simply wrote reports at Rand for general Government distribution.

Q What Government administration periods are we covering?

A In 1958, our President was, of course, President Eisenhower, and so I was working for the Eisenhower administration. Then I worked for the Kennedy administration. My last year with Rand was actually spent in Washington doing a study of crisis decision making processes and the way the crises arose and how they are resolved by the Government.

Q Were you still working for Rand, but you were in Washington?

A Yes.

Q With whom were you working?

A There was a special committee set up under Walt Rostow of the Policy Planning Council of the State Department for me to do a one-man study, with access to the various departments of the government involved, C.I.A., State, Defense. I had access to their files to do this study, particularly the Cuban missile crisis in which I had participated a year earlier. In fact, I had suggested the study of crisis decision making. I also studied the U-2 crisis, the Suez, and several others.

Q Following your year in Washington, and - that would be 1963, is that correct?

A That was '63-'64.

Q That was under the Kennedy administration at that time?

A Well, of course, President Kennedy died in November of '63.

Q So it would be Kennedy and Johnson?

A Yes, and I continued under Johnson.

Q You then left Rand and joined the Defense Department?

A I was given the opportunity in August of 1964 to, in effect, continue studying the process of decision making from the inside in the Defense Department, no I joined the Assistant Secretary of Defense for International Security Affairs.

Q What was your rank or rate in the Government?

A I took that job at a GS-18.

Q What is GS-18? Where does it fit on the level of a civilian employee of the Defense Department? You were a civil employee?

A Yes. That is the highest Civil Service rating in the Defense Department.

Q Is it fair to say that those higher than you were appointed by the President?

A That is correct to say.

Q That is correct to say?

A Yes.

Q During that year with the Defense Department, what was the nature of your duties and work?

A It was entirely work on decision making, on participation in decision making on Viet Nam. I say, "participation." I should say staff work supporting such decision making.

Q What decision on Viet Nam took place during that period of time in which you participated?

A Well, the crucial thing in which I personally had some role in some general small degree, I played a role in most of the decision making affecting the Department of Defense helping my boss, John MacNaughton, who spent most of his time on Viet Nam. I don't want to exaggerate the importance of my role at all, but the decisions that this involved during that particular period of time began with the Tonkin Gulf reprisal, and we spent all night in the Pentagon, and that was almost my first night on the job. Later, I was involved in a rather menial capacity in the control of covert operations affecting North Viet Nam of the sort that has now been revealed that led to the Tonkin Gulf episode, attacks on North Viet Nam.

Later, I was a member of the so-called William Bundy working group, a State Department working group analyzing alternative strategies for the President to consider in the fall of 1964. I was a Defense Department representative on that group.

I was involved and gave my attitude on many of these things. I was involved either as a critic or a participant in the writing of the State Department White Paper trying to justify our initiation of the bombing and in decisions relating to the bombing of North Viet Nam; then to the build-up of ground troops in North Viet Nam in the spring of 1965; and finally, to the President's decision in July of 1965 to undertake an open-ended troop commitment to Viet Nam, which initially was to involve mobilization.

In fact, I wrote the draft for the Secretary of Defense, a speech justifying and explaining the mobilization orders. Since the mobilization decision was not taken by the President at that time, the speech was not given; and after which I volunteered to go to Viet Nam.

Q And after your service in the Defense Department, you then left the Defense Department?

A Well, I explored ways in which I might take part in the effort in Viet Nam. I explored several ways, all of which involved leaving the Department of Defense, and which finally did lead me to join the Department of State.

So you left the Department of Defense for the Department of State in 1965 in order to go to Viet Nam? A Yes, that is right. The reason --

MR. ANDERSON: Your Honor, I would object as not responsive.

BY MR. TILSEN:

Now, in any event, what was your official rate or rank in the State Department upon joining the State Department in 1965?

A It was the equivalent of the State Department rank, which is FSR-I, Foreign Service Reserve Officer - I.

Q And in the State Department, the FSR-I, how does that rank compare with the ranks available in the State Department?

A That is, again, just below Presidential appointment or ambassador, and the equivalent rank in either case for protocol government purposes is between Major and Lieutenant General.

Q Was that the highest rank in the State Department as well as your former highest rank in the Defense Department?

A Yes.

Q And in both cases for protocol purposes, you were equivalent to a Major or Lieutenant General?

A That is right, although I must say that under the conditions of Viet Nam and given my job, protocol did not mean very much.

Now, what was your -- how long were you in Viet Nam?

A Two years.

Q '65 through '67?

A Yes.

Q What was your job in Viet Nam?

A I went there with retired Major General Edward Lansdale and a team of people assigned to the Ambassador to work on political development and political operations. However, I personally became more involved in the field evaluation of so-called pacification operations in the field for the Ambassador, the Deputy Ambassador. I ultimately became special assistant to the Deputy Ambassador for that purpose.

Q In that respect, within the State Department, to whom in the Government did you report?

A I reported directly, well, initially to my team leader, General Lansdale, and then on these missions to the Deputy Ambassador, William Porter who was then in charge of all civilian operations in Viet Nam, and then as a special assistant, of course, I reported to him. That involved reporting to the President, ultimately.

Q Did you during that period of time, then, make reports directly to the President?

A I, of course, did not myself. I drafted, for example, on one occasion, the first report on pacification Progress surrounding Saigon for the President.

Q Just generally, what were the conclusions of that report?

A In my draft, which, of course, was summarized and cut

down --

MR. ANDERSON: Your Honor, I object. I don't see that any relevance to that report has been established to this lawsuit.

MR. TILSEN: I think the relevance will become apparent as we continue, Your Honor. We are dealing with a witness whose position in Government was the most highest, and I do think --

MR. ANDERSON: Well, may I cross examine?

THE COURT: You may.

MR. ANDERSON: Under whose name did that report come out?

THE WITNESS: Actually, virtually everything that comes from the Embassy is sent under the name of the Ambassador, who was then Henry Cabot Lodge.

MR. ANDERSON: And those conclusion were really Henry Cabot Lodge's?

THE WITNESS: The conclusions he reported were Mr. Lodge's conclusions. The conclusions I reported to him were mine.

MR. ANDERSON: What did the report disclose, Your Honor, that is the question, and I would object that that is hearsay.

THE WITNESS: The question was, if I may say, what I reported to the Ambassador.

MR. TILSEN: Yes, I would ask what his report was.

MR. ANDERSON: Then I would object because it has no standing. It is nothing more than opinion.

THE COURT: Well, it's a report on what, progress being made in Viet Nam or criticism of Viet Nam?

MR. TILSEN: It's a report on the progress of the pacification and the program in Viet Nam at that time. It's just one very mild step in the process of attempting to explain here the situation that defendants found themselves in in 1970, and we are just trying in some fashion, at least, to hit some milepost along the way. Obviously, we could do more than hit the milepost, but in line with the Court's comments, I am just trying to select out some that stand out, in order that we have some continuity, some basis of forming judgments.

MR. ANDERSON: Well, the question asks for this man's political opinion, and that is irrelevant. If it asks for the report, why, then, it is hearsay, so on either grounds I object.

MR. TILSEN: He made the report, and it is not hearsay.

THE COURT: Well, it is perfectly obvious, I take it, that you wouldn't have called this witness except that

he ultimately has a conclusion that it critical of Viet Nam, I assume, or you wouldn't have called him, and I suppose it is obvious that reports he made will be that way.

MR. TILSEN: Well, that --

THE COURT: I will overrule the objection. Go ahead.

Again, the Government has a standing objection.

MR. TILSEN: So the Court understands, I might say, in anticipation, this witness did not leave the Government until April of 1970, so we are dealing with a witness who has been with the Government, and to the extent his reports were favorable or unfavorable, I don't think any of us can really prejudge that question at the present time. I think the Court's general conclusion is correct, but in any event, the Court has ruled.

BY MR. TILSEN:

Q Could you simply and briefly describe the conclusion of the report that you made concerning the pacification program in 1967?

A I can't refrain from registering a real feeling of some resentment at the suggestion that my recommendations' my report to the Ambassador has a professional --

MR. ANDERSON: That is not responsive to the question. I would object.

MR. TILSEN: I would think -

THE WITNESS: Was a political -

THE COURT: Well :-

THE WITNESS: At any rate, in answer to your question, the report that I gave to the Ambassador was no progress was to be expected in pacification in the year I was reporting, the year 1966. That report was validated later. It led to my later appointment because reports of that sort were not regarded as politically palatable within the administration, and I must say that I gained some reputation for objectivity professionally as a result of that and other reports. That led me to be assigned in other jobs to report on pacification, although it was not a welcome report for the President. The report was sent on to the President.

BY MR. TILSEN:

Q How long did your experience in Viet Nam last and why did it come to an end insofar as Viet Nam was concerned?

A It lasted two years. In the course of field work, I got hepatitis and continued there doing reporting in bed for a couple of months, but since it was clear that I would be kept out of the field, I asked to leave the service.

Upon leaving Viet Nam, where did you go?

A Back to the Rand Corporation.

Q In Santa Monica or Washington at this time?

A Well, I actually was based in Santa Monica, but I was working mainly in Washington.

Q What work were you doing for the Rand Corporation at that time?

A I became attached to a study group in the Department of Defense set up by Secretary of Defense McNamara to do an objective study of the decision making on Viet Nam going back to 1940 and going up to 1968.

Q Did you do that study?

A This was a very large study in which I participated. I did not do it by myself and I was not in charge of it. I wrote the major draft for one of the 30 volumes of the study which ran to 10,000 pages, and consulted on a great deal of the rest. I have read all of it.

Q Did you at that time have other duties, consulting duties with the United States Government in relation to the War in Viet Nam?

A Yes. Following, really, my participation in that study, which was fulltime for over six months, and then consulting thereafter, I was doing a study for the Department of Defense on the subject of lessons of Viet Nam; moreover, I was continuing to do consulting within the Department of Defense for the Assistant Secretary of Defense for International Security Affairs.

Q I am sorry, I didn't hear that last answer.

A In my line of work you get to rattling those things off. I was doing consulting for the Assistant Secretary of Defense for International Security Affairs.

Q How long did you continue -- this would be your second time at Rand, and how long did you continue at that?

A That was from June-July of 1967 to April of 1970, almost three years.

Q Is it fair, then, to say, as you said originally, that for almost since the inception of major American involvement in Viet Nam, you have been closely allied with that policy, either as a consultant to it, a participant from the inside of the Defense Department, executor of the policy with the State Department and a consultant and then a student of that policy right up through at least April of 1970?

A That is correct, and I have continued my study of that at MIT

Q That is, still at this point your involvement is that of a student of the policy rather than as a maker or participant?

A I have terminated any consulting relationship with the Executive Branch, and so I am entirely doing research on the problem.

Q When is the last time you consulted with the Executive

Branch of the Government in regard to the policy in Viet Nam?

A Well, my consultation for this administration was a confidential relationship, and I have kept that confidence for the last two years. It has come to my attention the last 24 hours that the person for whom I consulted, Henry Kissinger, the Special Assistant for National Security Affairs has just now given an on--the record interview describing my participation in it, so I feel free for the first time to answer your question.

The answer is, then, that I did consult for Henry Kissinger, starting in December, 1968, just before the administration actually took office, and that continued for about six or seven weeks in the spring of 1969.

Q And that is the present or so-called Nixon administration?

A That is right.

Q Henry Kissinger is whom, again?

A He is Special Assistant for National Security Affairs.

Q What was the nature of the consulting work you did at that time?

A If I may, I will not talk to the substance of my recommendations, but the nature of my work I can describe, which was to outline for the President and the National Security Council a set of alternative strategies or options to pursue on Viet Nam. This was the first presentation by Henry Kissinger to the National Security Council. Following that, I drafted a large set of questions to the Executive Branch of the Government on prospects in Viet Nam, which went out to really every agency of the national defense bureaucratic framework, and that resulted in about 3,000 pages of answers, so my six weeks later were spent in the Executive Office Building summarizing those, helping summarize those for the President as answers to the questions that he and Henry Kissinger had sent out.

Q What precipitated your leaving Rand at the time that you did? What precipitated your leaving Rand, if anything?

A I felt that it was essential at that point to be able to speak freely to the public, to write freely without currents from the Department of Defense, to testify before Congress. I have been invited at that point to testify before the Senate Foreign Relations Committee, and to be free to respond to invitations such as yours.

Q Did you, prior to leaving Rand and while still at Rand, take a step which publicly called attention to the position of yourself as a Rand analyst -- I guess that is a term that's been regularly used, is that a correct term to apply to yourself, Rand analyst?

A Yes.

Q -- in which you indicated support of yourself and other Rand

analysts for the position of unilateral American withdrawal from Viet Nam?

MR. ANDERSON: Your Honor, as a nearly GS-15 representative Assistant Attorney General for Criminal Affairs, I will object because that is a leading question.

MR. TILSEN: I can't help you if you can't make it up the ladder.

THE COURT: Well, objection over-ruled.

BY MR. TILSEN:

You may answer.

A Well, I would have to say -- I think your question is misleading. I will have to say, not as a Rand analyst, hut as a citizen, I and several other people who happened to he employed at Rand did address a letter to the New York Times which was published in the New York Times and the Washington Post our opinion which reflected both professional expertise, all of us had worked on Viet Nam and for the Government, but, of course, also political judgments, that the U.S. should adopt a policy of commitment to a total withdrawal from Viet Nam, a public commitment.

Q Have you made reports to the United States Government involving the question of ending the war in Viet Nam?

A Well, as I said, of course I participated in a great many analyses of policies, strategies, aims in Viet Nam, all of which bear ultimately on that question. If you are asking, was the policy that we as citizens recommended, had that any earlier been reflected in recommendations to either administration, the answer is yes, both to the Johnson administration and to the Kissinger administration, although I should say that I myself had not earlier made that particular recommendation. It was among the options which I drafted and participated in drafting for the President, but not one which I had earlier recommended.

It was not until September of 1969 that I came to join my other colleagues in believing that it remained as the essential strategy we should follow.

Q That essential strategy in a word, was what?

A That the President, as we put it, should make a public commitment that he would withdraw U.S. troops totally from Viet Nam within a short, relatively short but reasonable period, suggesting the time of 12 months. It corresponded to the suggestion made soon after that, or actually, soon before, it was while we were drafting it, by Senator Goodell which emphasized the Congressional commitment. We had emphasized the Presidential commitment

Q Is that present American policy?

A No, it is not.

MR. ANDERSON: I would move that answer be

stricken. I think that is a conclusion and opinion. Since he is no longer with the Government, he might not be in a position to make that statement.

THE COURT: Well, I assume that he is going to be asked to express some opinions about what is currently happening or not happening in regard to the Government policy concerning Viet Nam.

MR. TILSEN: That is correct, Your Honor.

THE COURT: I don't know, that gets off a long ways away from Little Falls on July 10th, but I will let him answer.

BY MR. TILSEN:

Q In connection with the description of the options that you have described available to the Government, can you describe from the reports by yourself to the Government, the major factors that go into making a decision such as withdrawing troops or the other decisions that you described that you participated in, the bombing or not to bomb, that is, non-military decision factors, Tonkin Bay, the other decisions that you described that you were a part of?

A well, of course, there are so many consideration and it is such a complex judgment that it would be hard to summarize or know where to begin.

But if I may, Your Honor, your own point suggests to me the point to begin, and that is, considerations of incidents such as happened in Minnesota of draft resistance or of civil disobedience, were very much a consideration from 1964, before they had really occurred very much, and 1965 on.

They were a predominant consideration in the year 1968, and certainly in 1969; very explicitly so, this affects matters which I read officially but which I participated in addressing to the President.

I myself reported in part on this consideration with respect to the bombing as early as the fall of 1964, drafting a Defense Department -- and my draft was used -- a Defense Department commentary on the bombing proposal, emphasizing that it would be regarded that the bombing would be regarded, and reasonably so, as unjustified, aggressive and immoral and would undoubtedly lead to great acts of resistance and that this would mean domestic political costs and international-political costs that far outweighed the effectiveness of bombing, which from my study of the strategic situation and my knowledge of estimates being presented by the intelligence agencies was likely to be zero.

I am referring to the effectiveness. It was highly unlikely that the early bombing would be effective. Thus, the administration would be led to, I predicted, would be led to

increase the bombing level rather than withdraw it to protect the prestige that had been invested in the early bombing; that this would lead to a process of escalation; that in the face of public and domestic protest to this, it was likely, I felt and reported, and this was accepted by this particular draft, that the bombing policy would eventually, having crossed innumerable lines, cost and destroyed much of the prestige of the U.S., be abandoned without ever having been successful, and that this posed an enormous strategic cost to the United States.

That is an example of what I am describing. In 1968 the same sort of things arose and again in 1969.

Q Is it fair, then, to say that persons in your position and other decision making positions in the Government took into account and assessed the effect of acts of what might be called resistance to the war, refusals to submit to induction, entries into Draft Boards, that these acts were taken into account in determining American foreign policy, vis-à-vis the Viet Nam War?

A They were taken into account steadily. Obviously, they were not regarded as a critical ruling factor since the decisions were made to go ahead. In fact, that was because of the counter argument if the bombings should succeed quickly, domestic unrest would be probably manageable," or acceptable.

On the other hand, I accepted the judgment of others and acted on this, that it was unlikely to be successful quickly, and therefore, the domestic unrest would quite likely be very large.

Now, in 1968, at the time when I participated as a consultant in the Department of Defense, in March of 1968, when the new Secretary of Defense, Mr. Clifford, was now reexamining our options anew and considering the recommendations, the requests rather, by the Joint Chiefs of Staff and by General Westmoreland to send an extra 206,001 men and to mobilize troops, a key argument that was raised at that time against that was that domestic unrest, and specifically, draft resistance, would be overwhelming.

Mr. Clifford was very impressed by this argument and accepted its logic. The later results of the spring showed that that was likely. Thus, the actual decision was considerably, at least as far as Mr. Clifford was concerned, was largely influenced, considerably I should say, influence. by an expectation of the acts such as we are considering today.

Is it fair to say that whereas the act of entry into one Draft Board as an isolated event may not have a profound effect on American foreign policy, as a totality of attitudes and acts multiplied many times and the anticipation of more acts or less acts, depending on the character of American foreign policy, that

foreign policy experts and decision makers then respond thereto?

A They entered in two different ways. I found in my own experience, and one is that even people who failed to sympathize with such acts or who do support the war, empirically have to expect them and to adapt to them in their policy recommendations as a probability and as a cost of carrying on the war. The second effect, however, is that such acts have the effect, I found in my own experience, and not always, but on some people do have the effect that they are intended to have, as I understand it, which is to speak directly to those officials, voters, Judges, press people, and so forth, and challenge them to change their own position and attitudes on the war. I know that it had that effect in my own case. Is the War in Viet Nam currently in the process of ending?

A I reached the conclusion and so reported that one of the -- the answer is no, but that was a conclusion that I reached while I was working for the Government, as a consultant to the Government. Among the options that I participated in presenting to the President in the spring of 1969 --

MR. ANDERSON: I object, Your Honor. The answer is no longer responsive. He answered the question, No.

THE COURT: Objection sustained.

BY MR. TILSEN:

Q Would you describe the options relative to the ending of the war that you participated in reporting to the President?

THE COURT: Hasn't he already done that?

THE WITNESS: No.

MR. TILSEN: Just that he did. He didn't state the options, I don't believe.

BY MR. TILSEN:

Q You may go ahead. There is no objection.

MR. ANDERSON: I fail to see on any theory how whatever options he may have started out, how that has any relevance to this lawsuit, any number of people could figure out one hundred different options, and I don't see how that has to do with criminal prosecution.

MR. TILSEN: If the Court wants arguments, my point is that the option of ending the war is to some extent dependent upon people's reaction to acts such as the events with which we are concerned here on July 10, 1970, and this witness' expert opinion after spending the greater part of his life as a---

THE COURT: You are trying to state what you expect he will state.

MR. TILSEN: That is my argument as to why it is relevant.

THE COURT: Well, he has already said that in his opinion draft resistance or domestic unrest is a

factor in determining foreign policy.

MR. TILSEN: I would like to ask him whether or not without domestic opposition to the war, if he has an opinion as to whether or not the war, as so reported to the Government, the effect of continuation of the war; that is whether or not the war would continue.

BY MR. TILSEN:

Q Would you respond to that?

A I have reported that conclusion informally to Mr. Kissinger and publicly in a paper, now that I am no longer employed by the Government, to the American Political science Association, this based upon both my own experience and my continuing study of the factors that had led us into the war and have continued the war, and I believe I conclude as a matter of research, my best prediction in that capacity would be, that the war is likely to continue. I believe the motives and I conclude in large part by rejecting other explanations in light of the evidence available to me, that the motives for continuing the war remain very strong in this administration as they have been in a succession of administrations, really starting with Harry Truman.

We have had five administrations, including this one, all of which I have studied with considerable inside access to information on all of them, and have found as a matter of research a very steady pattern of basic motivation, considerations that have kept the war going.

THE COURT: Well, now, I am going to sustain the objection to that on the theory that the government has a standing objection. You have given your opinion and you are just carrying on a lecture now.

THE WITNESS. I am sorry.

MR. TILSEN: All right.

BY MR. TILSEN:

Q Have acts of persons placing themselves in personal jeopardy, generally classified as resistance or disobedience, played any part in bringing you to the decision to leave Rand?

A They were critical in my determination to leave Rand.

Q How? Will you explain that?

THE COURT: Well, is it of any importance to us here why he left Rand?

MR. TILSEN: Yes, I believe it is, Your Honor, because I think it explains how the relationship between an act of somebody taking a step such as the defendants took in this case can and might possibly result in saving the lives of millions of people who are being killed as indicated by our other testimony.

THE COURT: I am going to sustain the objection.

BY MR. TILSEN:

Q Is it fair to say that in recent times you have shifted from a position supporting the war, actually volunteering to go to Viet Nam to be a part of it, to a position of opposition to the war?

MR. ANDERSON: Your Honor, I object leading.

MR. TILSEN: It's preliminary.

MR. ANDERSON; I object.

THE COURT: The objection is sustained.

First, it is leading, and second, he has already said so.

MR. TILSEN: I wasn't sure he said so, Your Honor.

BY MR. TILSEN:

Q Has your shift of position personally been to any extent related to the activities and examples of persons who have taken individual moral acts?

A Yes, both in Viet Nam and in the United States. Could you explain how those acts related to your shift in position?

THE COURT: That is the same question, again, and I am going to make the same ruling. The objection is sustained. If he is called as an expert, as you claim he is, as to what the Government's position is, his personal reactions are not of any concern.

THE WITNESS: Your Honor, I don't know if I am privileged to say anything at this time, but --

THE COURT: No, you are not. I am sorry, but you are not.

MR. TILSEN: I don't know if this is repetitious or not, Your Honor, and I don't intentionally mean it to be so.

BY MR. TILSEN:

Have you since leaving Rand been making public statements of your position, which statements have appeared in various places?

A Yes, in interviews, in statements in universities, in hearings before the Senate Foreign Relations Committee, and, of course, I addressed this one letter while I was employed by Rand, I addressed this letter along with others to the *New York Times*.

Q Is this your first public appearance since leaving the Government, your first public appearance in any trial?

A Yes, it is.

Q Did your leaving the Government, shifting your position and testifying here, have any personal -- strike that.

Did the shifting of your position in leaving the

Government have personal consequences to you?

MR. ANDERSON: Your Honor, I object.

THE COURT: Objection sustained.

MR. TILSEN: I have no further questions.

Mr. Kroncke, I believe, wishes to inquire of the witness on his behalf.

DIRECT EXAMINATION BY DEFENDANT KRONCKE

Q Do you consider yourself typical of men well informed upon policies in Viet Nam who are going through a process of re-evaluation of their views?

A I can only speak for myself. Many people are going through a period of reevaluation. Obviously, I am one of them.

Q But it is not an extraordinary thing?

A I have an unusual background which is why you have asked me here on Viet Nam, and I would say that it's unusual for someone with this degree of involvement with the policy to have been led to change perhaps as much as I have.

Q You mentioned that you voluntarily enlisted, as everyone has to to join the Marines, and you volunteered and tried to overcome even a medical deferment which you could have received to join the Marines, is that true?

A That is correct.

Q You also wanted to go to Viet Nam later on in your life, and you worked for the State Department in order to get some firsthand information about Viet Nam?

A And to observe the Government in that fashion. You mentioned that when you were in the Marines you asked for, you asked to stay on an extra year so you could stay with your platoon, infantry platoon, battalion, and go to the developing crisis in the Middle East? You volunteered to do that?

A Yes.

Q Why did you do that?

A Like most Marines, I regarded myself at that point, even though I hadn't been in too long, as a professional soldier, had been trained for combat, and was glad to have the chance to use that training while you were in Viet Nam during '65 to '67, you spent some time in Viet Nam?

A That is right.

Q You were a civilian then working for the State Department?

A Yes.

Q You involved yourself in becoming familiar then with combat also, is that true?

A I did in the process of observing and evaluating pacification, and in particular evaluating the prospects for the

use of American soldiers in the populated conditions of the Mekong Delta, and I became attached to an American combat battalion in the Delta and spent ten days in combat with them.

Q Reflecting upon your past, would you consider yourself a pacifist?

A Obviously not.

Q At this point in your life, has non-violence in a sense worked on you?

A The example of people who have committed themselves to non-violence and who have acted on it has had a great influence on me. It has led me to try to learn their motivations and thinking. I have studied books that they have given me, but most of all, I have been impressed by their actions and their characters, and that has had a very strong influence on my life since, in the last couple of years, the process during which I was trying to understand how we had gotten where we are and how I had come to be as involved as I was in the policy.

Q Have you ever taken any steps to attend meetings and meet nonviolent people directly, head on?

A Yes, after I became impressed, as I say, by, for example, the Gandhi student and the Indian girl, she invited me to attend a conference of pacifists. As I say, I did not consider myself a pacifist, and still don't, but I wanted to meet them and expose myself to their thinking and see what they had to say, people like you and the witness this morning.

Q What particular way, what was most compelling about the way they acted?

A What they had to say did not impress me so much as what I learned of some of their lives. In this particular meeting, I was especially impressed -- and this had an impact on my later relation with the Government and with the policy and what I am doing and why I am here, was Pastor Neumuller, a pastor in Berlin who was in protest against Hitler in prison between 1938 and 1945 in Berlin, and learning the thinking that had led, the events that had led him to be from a U Boat commander in the First World War to an objector and resister, political resistor, not a pacifist, and ultimately after the war to be a pacifist, and I found that very challenging, and his earlier background had not been like mine.

THE COURT: I am going to sustain the objection to anything about 1945 or 1955. We are involved here with an incident in 1970.

THE WITNESS: The other person was involved right now, and I was going to mention that, a man named Randall Keeler, whom I came to know, and in the course of this conference I found an extremely impressive, articulate, thoughtful person.

THE COURT: I am going to sustain the objection to that. He isn't here to be examined, to be cross examined, to be presented, and for you to tell us through your mouth what he believes or claims is hearsay.

BY DEFENDANT KPONCKE:

Q Is he an example of the type of people who did influence you?

A Well, he chose to go to prison --

THE COURT: I just sustained the objection to that and you go right ahead and ask him the question.

DEFENDANT KPONCKE: I didn't quite understand you.

THE COURT: The objection is sustained to talking about individuals, what they do and that he chose to do this. How does he know what he chose to do? He wasn't there.

DEFENDANT KRONCKE: We met him.

THE COURT: He wasn't there. He can't tell his mental processes. That is hearsay evidence. I will sustain the objection.

DEFENDANT KRONCKE: Your Honor, my approach is to bring up through the witnesses what is going on in the culture, changing attitudes, and the only way that can be done is by talking about people. If he met this man --

THE WITNESS: I was impressed by his actions, not by his mental process.

DEFENDANT KRONCKE: I would like you to articulate as to how this is irrelevant. I would like to proceed, but --

THE COURT: I don't want to be mean to you, but for a witness here on the stand to try and tell what some other witness believes or some other person who isn't on the stand, isn't here, can't be examined, we can't see him, and that he chose to do this, maybe he didn't chose at all, maybe he was required to by law or maybe he was convicted.

The witness is giving hearsay of what somebody else would say if he were here. Apart from the objection of relevancy, this is irrelevant because it is hearsay.

DEFENDANT KRONCKE: Okay. Fine.

BY DEFENDANT KRONCKE;

Q What was the year that you left the Rand Corporation?

A It was this last year, April, 1970.

Q Were acts of non-violence by some people a cause for your leaving Rand?

A Acts of non-violence as I interpreted them by my

friend Tran Ngoc Chau who was in prison in Viet Nam at that time, and by Randy Keeler who was in prison, led me to believe that I should myself consider changing my life in doing things that were outside the rules of my professional life earlier which had been involved entirely in speaking to the Executive Branch of the Government; I felt I had to abandon that career and speak of the public as the acts of those people had spoken to me.

Q While you did participate in making recommendations to the Government and while you participated in decision making, did you at any time during your official stay with the Government talk over with the top Government officials the alternative of non-violence or the principles of non-violence?

A When I was working for the Government I was quite ignorant, I would say, of the principles of nonviolence in an explicit way, however, as I came to understand them as important, the principle of non-inflicting injury on others, and the Gandhi an principle of acting truthfully, and it is the case by coincidence that a great deal of my analysis in the Government had come to revolve around the question of truthfulness and the consequences of deception of Congress and the public, although --

THE COURT: I am going to sustain the objection, as I indicated in advance, to any criticism of this administration or past administrations or Congress or anything else.

THE WITNESS: This wasn't criticism.

THE COURT: You can give your own views of what you think the situation is, and you have done so. I don't want to get into a discussion of what Congress should or should not have done or what the President should or should not have done.

The objection is sustained. I made that very clear in chambers, that we weren't going to get into that.

BY DEFENDANT KRONCKE:

Q Your whole background, as Mr. Tilsen elicited it, brought forth and seemed to indicate that you were a real establishment person, as the phrase goes, so that when you responded to these non-violent acts that people committed and you left Rand and the Government, ultimately, did this have personal consequences for you?

THE COURT: I am going to sustain the objection to that. That is the same question you have asked before.

DEFENDANT KRONCKE: In my context, it is

significant. I am asking for different things, as I understand the cultural background in men who are symbolic, cultural changes, and I think this gentleman has amply shown us that he is qualified.

THE COURT: Objection sustained.

BY DEFENDANT KRONCKE:

In your opinion, why are the people in power refusing to respond to the --

THE COURT: Now, I am going to sustain the objection to that.

BY DEFENDANT KRONCKE:

Among the many things as part of the Government that you were involved in, were you involved in decision making or recommendations to the Government about the Cambodia invasion?

A Oh, no.

Q Have you studied the effect?

A I had left Rand by that time.

Q Since then you have stated that you are still a professional student studying these matters for decision making?

A I testified before the Foreign Relations Committee during the time of the Cambodian crisis and I am still a student of these affairs. I am writing a book on these matters for the Center of International Studies.

Q Is the Government surprised at the domestic response to the Cambodia invasion, from your studies?

A Yes.

MR. ANDERSON: Your Honor --

THE WITNESS: I am sorry if I spoke too soon.

THE COURT: Objection sustained. The answer may be stricken.

BY DEFENDANT KRONCKE:

Q Can you give me a description of the matters that you did discuss before the Senate Foreign Relations Committee with reference to Cambodia?

MR. ANDERSON: Your Honor, I would object to the question as without foundation and irrelevant.

THE COURT: The objection will be sustained.

BY DEFENDANT KRONCKE:

Q It kind of surprised me in respect to the testimony that you previously gave about the effect of draft rates on the effect of Government decision making about the war. I didn't think that they were that influential, but it is good to know.

I lost my trend of thought, I am sorry.

Before, while you were still with the Government did you

make any recommendations about how they should respond to these draft protests and the draft resistance that was going on in the country? Was this part of your official recommendations?

A No, it was not.

Q Since you have left, have you made recommendation to the Government as a private researcher from the Center of International Studies?

A I have informally recommended to the --

THE COURT: I don't think that is a competent question, what this man recommends what he think should he done with people who are draft resistors, and so on.

THE WITNESS: I didn't recommend that.

THE COURT: I will sustain the objection.

BY DEFENDANT KRONCKE:

Q Mr. Ellsberg, do you believe that acts such as draft raids are necessary to bring an end to this war?

MR. ANDERSON: Your Honor --

THE WITNESS: I do have a professional opinion in the matter of --

THE COURT: I asked you not to answer, Dr. Ellsberg, when there's objection being made so that the Court can rule on it.

The answer may be stricken.

DEFENDANT KRONCKE: I will rephrase the question.

BY DEFENDANT KRONCKE:

Q I will ask another question.

Do you believe that actions of non-violent protest to the war have the possibility and the potentiality of ending the war?

A I have so reported that, yes, publicly, indeed, that I think they are necessary, not only that they have the potentiality; they are certainly not guaranteed to have that affect.

Q Why?

A Because I believe and I have concluded as a result of studying the decision making of the last 20 years that the only factor that would counteract the political considerations that impel successive administrations to continue the war, namely, to avoid the charge that they have failed or lost in Viet Nam, can only be counteracted by political acts by a great mass of people, voters, press, Congress, Judges acting within their legal rights and responsibilities I believe they will not be led to take such actions, which in many cases would go against their normal ways of life and their incentives unless they are morally challenged by the example of people I might say, such as yourself, although I

don't know many of the facts of your case, to consider the moral aspects of the war and what they demand of them as voters, as Congressmen, as Judges, as Jurors, and so forth.

Q I deeply appreciate your coming here. Thank you. No more questions.

MR. ANDERSON: Your Honor, because I believe that the testimony of Dr. Ellsberg, and this is not in derogation of him or his ability, but I believe the testimony was unrelated to this trial, and therefore, I won't cross examine, and I would, for the record, move that his testimony be stricken and the Jury be instructed to disregard it.

THE COURT: Well, the Court will reserve judgment on the motion. All right, Mr. Ellsberg, you are excused.

THE WITNESS: Thank you.

[The witness excused.]

THE COURT: It is now almost 3:30. We will take our afternoon recess.

[Recess taken.]

DEFENDANT KRONCKE: At this time, I would like to recall Mr. Mary Davidov.

THE COURT: Wouldn't it be better if he is going to be here, Mr. Kroncke, for Mr. Tilsen to finish up his presentation?

MR. TILSEN: I have no objection, Your Honor, if that makes more sense. I am going to have one additional witness tomorrow morning, in any event. Mr. Davidov's testimony has been interrupted by a day. If we even get it over in two days instead of having it cover three days, it might be preferable.

THE COURT: Well, the point is that it has been interrupted. I don't care. It's up to you. Do you want to come back now?

DEFENDANT KRONCKE: It would take a half hour, forty-five minutes, maybe less.

WITNESS DAVIDOV: I would prefer to come back now.

THE COURT: All right. You may not get a full half hour.

WHEREUPON,

MARV DAVIDOV (2)

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

DIRECT EXAMINATION (cont'd) BY DEFENDANT KRONCKE

Q As I recall, you were generally talking about the history of and the attitudes within what is vaguely called the peace

movement or non-violent community in the United States.

From your discussions and lectures at the University, and so on, and in discussions with people in the non-violent movement, specifically in Minneapolis, is Viet Nam creating, as we see it, a moral crisis among the American people?

A Definitely a moral crisis.

THE COURT: Excuse me. I have been coughing all day. I am going to have a cough drop.

DEFENDANT KRONCKE: I have no objection, Your Honor. That is probably the most highly relevant thing we have done all day.

THE COURT: I didn't want you to object.

BY DEFENDANT KRONCKE,

Q Would you comment upon how you teach this and how you talk about and discuss it, how non-violent people relate to destruction of property as opposed to the destruction of people?

A Yes. Non-violent people, I think, like many people, value human life over property, although I believe in many manifestations in our culture decision makers value property over human life; so to destroy papers is not comparable to destroying life.

THE COURT: Your opinion as to whether this was a good or bad thing is not what we are here for. I will sustain the objection to that.

BY DEFENDANT KRONCKE:

Q Would it be fair to say historically that the ecology movement which has been basically developed the last couple of years is an outgrowth of the non-violent tradition in America with respect to the land?

A Yes, I would definitely say that, and it develop also, out of the move against racism in the culture.

Q As indicated, you have been involved in the nonviolent movement for about ten years, fourteen years, and has it been your experience as a professional, teaching in this field, that the non-violent peace movement has forced American historians to correct and rewrite American history?

A Definitely.

Q Could you give a few examples of incidents that have been specifically of importance?

MR. ANDERSON: Your Honor, I would object. This man's discussion of what various historians have done seems to be without foundation. There is no testimony that he ever read the history. He hasn't qualified to discuss that. Furthermore, it is hearsay. The historian ought to be here. This man isn't a historian.

THE COURT: I will sustain the objection to that.

BY DEFENDANT KRONCKE:

Do the people in the non-violent movement, when they gather together to discuss how to respond to the American political situation, talk about the many new views towards American history which have arisen in the last ten years, let's say?

A Yes, they do.

Q In the scope of what they talk about, are they involved with the rising black consciousness in the country?

A Since our movement very directly relates to the rising of black consciousness and the manifestation of that, insurrections around the country, we certainly do.

Q Do they relate to the rising Indian consciousness, minority consciousness, in general?

A Especially since in Minneapolis there is the largest urban population in the country of people living in debilitating poverty.

Q So would it be fair to say that when we talk, we have a critical attitude toward what could be called the Establishment's view of what America's history is?

A Yes, we have a critical attitude, which is our private attitude, which we show publicly because there is no difference between our private and our public attitude. They are one.

Q The non-violent community in America, does it basically attract any group of people?

A It attracts many different kinds of people. I couldn't say that it attracts a special kind of person. It attracts men, women, people of all classes, working people, middle class people, and in some cases, if you, will, upper class people. It's not exclusionary in any sense whatsoever. One could say that it is a movement of people speaking truth to power.

Q Have you and I in particular --

A Or attempting to speak truth to power, at any rate.

Q Have we participated in educational seminars on peace movements at organizations like the Center for Urban Encounter?

A Yes, we have done that on at least five or six occasions.

Q And the type of people who are processed through the Center for Urban Encounter would be what types of people?

A It would be many different types of people. The directors of Pentown housing, for example, that was one group that both of us spoke to, a variety of different people belonging to various church denominations; student groups, many different kinds of groups.

Q We got paid for doing that, right?

A Very little, but we got paid. Occasionally, we get paid

financially.

Q In the non-violent community, in its development of its attitudes towards the American people, American history, what political document do you feel would be considered most significant in our consciousness?

A The immediate document that I think of is the Declaration of Independence which gives the American people the right to abolish or overthrow any government which is unresponsive or oppressive.

Q The Declaration also talks about inalienable rights, and is that a concept quite often talked about in the non-violent community?

A Yes, sir.

Q That means rights which nobody but God can take away from man?

A That is right.

Q Are they correctly the rights to life, liberty and the pursuit of happiness?

A Yes, rights which belong to all people, and when they are denied, we have the right from a moral and practical and a political point of view for each of us to take these rights and act upon them.

Q Do you feel it correct to say about the nonviolent movement that they are highly inspired by some of the rights and positions about man indicated in the Declaration of Independence?

A Very certainly. I think we are in the American tradition.

Q Especially in recent non-violent confrontations- with the Draft system, what specific parts of the Bill of Rights have been of significance to the peace movement?

A I think the First and Thirteenth Amendments. The entire Bill of Rights applies to the kind of thing which draft resistors and people involved in Draft Board raids have made.

Q What do those amendments specifically speak to?

A Well, the right of free speech, the right of free assembly, the right of petition, the right to bring one's very deeply felt moral *and* political views to not only people in power but to the people of this country so that they may act on them.

Q Have the events of July 10th ~~been~~ of discussion between you and I?

A Yes, many times.

Q Since July 10th?

A Since July 10th, yes.

Q It would be true to say that we might have talked about the principles and similar actions that have occurred in the non-violent movement, is that true?

A Yes, we have talked about them because Draft Board raids

have been going on for a number of years. The Berrigan brothers, and others, started them.

Q Is it fair to say that we have entered into criticism trying to understand whether these acts are really violent or non-violent acts?

A We have done that, because --

THE COURT: I am going to sustain the objection to that. The Jury has heard what transpired there, and it is for their judgment on that ultimately, and somebody's opinion as to what it is is not elucidative of the facts. The facts are as they are proved by the Government.

BY DEFENDANT KRONCKE:

Q Is it true to say that there are numerous periodicals in the United States which are specifically put out by peace groups and peace organizations, nonviolent groups from every aspect that we have talked about? Is that right?

A That is correct.

Q In these magazines, the type of non-violent activity called draft raid is discussed quite openly and is criticized and is in the consciousness of the people?

THE COURT: I will sustain the objection.

DEFENDANT KRONCKE: Okay.

THE WITNESS: Your Honor, I think he is talking about self-criticism.

THE COURT: Well, you are not to volunteer anything.

BY DEFENDANT KRONCKE:

Q Okay, Marv. That is okay.

Would it be fair to say, trying to describe the non-violent community in America, that there is a definite spiritual aspect to the non-violent movement, that people are conscious of the spiritual dimensions of their lives?

A Yes, many people are spiritually conscious. There are a great many people who are lay clergy and clergy who are involved, but one doesn't necessarily have to have a profoundly held religious view in the traditional sense in order to hold and adhere to the philosophy of non-violence. But it does imply spirituality, because you deny yourself the possibility of doing physical injury to anyone and the attempt is made to avoid psychological injury to anyone.

Q Would it then be proper to characterize nonviolent as an attempt to heal?

A The aspect of reconciliation is the fundamental aspect or one of the fundamental aspects of non-violence, but it is also speaking and

acting out profoundly against the injustice, no matter what the consequences to ones self, but holding open the possibility of reconciliation with the opponent.

Q From the non-violent community's point of view, how do they see the function of the military system in general in the United States as it affects the culture?

A They see militarism or the military aspect of the culture as being profoundly oppressive to the young men who are forced to go into the military, to society in general, to the further creation of whatever democracy might remain as a profoundly injurious reality to people who profess to believe in democracy.

Q Could you briefly state how people in a nonviolent movement look at the power structure in the United States, where the power lies?

THE COURT: I will sustain the objection to that. That is purely a political question.

DEFENDANT KRONCKE: I am trying to describe a specific sociological group and our community's attitude toward the culture, not necessarily saying it is correct, but asking him to describe the views.

THE COURT: I guess that under our Constitution, the power lies with Congress and with the Executive and with the Courts, doesn't it?

DEFENDANT KRONCKE: Well, people see things differently. I think that is tantamount to my defense. They may be wrong, but they relate, as we proved, to those documents and they may see the present situation very differently. Their view of reality may be illusionary to Your Honor, but nevertheless, it is their view of reality.

THE COURT: Well, that may be a matter, if you intend to be a witness, and I don't know whether you do or not, that you can give your views on.

I will sustain the objection.

BY DEFENDANT KRONCKE:

Q Is it a fair description of the non-violent communities to say that they believe that personal moral stances will change the world, not the acts of men in power, like the President, but acts of the ordinary person?

A Yes, one's personal moral understanding or perception of the world, when acted upon collectively with other people, can certainly change the world as we see it and know it, remove oppression and make a just society, but only if people themselves act to show very clearly what their very deeply felt understanding of the world is, and as powerfully as possible, because there is, a force

involved in non-violence.- It is not inactive or passive. It is a very active force.

Q That each person has?

A That each person has, that each of us in this room has.

Q Okay. Now, historically, in light of the nonviolent movement, would it be fair to say that there's been lots of discussion about what are termed a political revolution and a cultural revolution?

A Necessarily so, since it is sweeping the country

Q Would you set up briefly the distinction and what caused the change in understanding, the need for a cultural revolution?

A Well, I think that under the fundamental reasons for the development of what we were calling a cultural revolution is the gap in understanding between the old and the young in our country, although we certainly need the wisdom of our elders; the understanding of young people that the system does not operate as they have been taught; the understanding that there is incredible hypocrisy about what we say we are and what we actually do as manifested by the War in Viet Nam, by our relation to people who live in incredible poverty, by the kinds of medical care that are available, housing, working conditions.

Q Has the early political views of the peace movement changed in the last couple years to demand of the non-violent people that they change their own personal attitudes toward one another and toward the world at large?

A It's a demand for a constantly shifting evaluation of what reality is so that we may act in accordance with what we believe is reality and live up to the possibilities that all of us have for human growth, which is dynamic and is constantly changing; so we don't stagnate, that we are fresh and lively and interesting and lovable.

Q In the literature of the non-violent movement, is it not uncommon to find usage of Biblical categories, for instance, reference such as to Babylon to describe some people's attitudes in America?

A Well, there is a lot of literature which refers to Babylon. It is floating around the country like Eldridge Cleaver talking about colonial people while living in the United States being subjected to the worst that this culture has to offer, and the term Babylon would be used in referring to those people who make policy and have the power and are unresponsive to change, to the demands, the very just demands of many people of this country.

Q Would it be fair to say that these Biblical categories are basically the influence of the Catholic radical movement in the non-violent community?

A I would definitely say so.

Q When the non-violent community looks at the national scene, when you talk with people and teach this in non-violent courses, for instance, at the University, what do the terms Americanism and Communism usually mean to us?

A I am not quite sure what you mean, Frank, or what you are asking.

Q Is it not common for the non-violent community to find need to change the country they live in as well as countries they don't live in and their concern is just not to fight Communism but to help change the American society, too?

A We see ourselves as one human family which crosses international borders. There ought to be a family of nations and that is what we, in a sense, are attempting to create, without any borders that would inhibit travel or the free flow of ideas and human warmth.

Q In the discussions of the non-violent community, and as you teach it, what does community self-determination mean in describing our attitude?

A Community self-determination means that the people who live in any given community ought to have the power to determine the lives of the residents of that community economically, politically, socially and every other way. What it means is that people who live in the ghettos ought to have the right to determine their lives in the ghetto, that is, who owns that property --

THE COURT: We are not on trial with the ghettos here.

THE WITNESS: For Viet Nam, it means --

THE COURT: I will sustain the objection to anything further.

BY DEFENDANT KRONCKE:

Q I want to show you Exhibit Number 73, prosecution Exhibit Number 27, and if you will read the first paragraph, please.

A Yes. It says, "Attention all draft age men of Morrison County. We, the Minnesota Conspiracy to Save Lives, have destroyed all the 1-A files for your county. In effect, what we are trying to communicate by our action is, do you want your life? If you do, then use this opportunity to take control of it. If you don't want your life, then go down to the Morrison County Draft Board and give it back to the Selective Service System so that the Government can use your body and life as a tool to make the rich richer and the poor poorer."

Q Would it be fair to say that this expresses some of the non-violent community's attitudes towards community and personal self-determination?

A Yes.

MR. ANDERSON: Your Honor, I object because the exhibit and what it means is for the Jury to decide, and it speaks for itself.

THE COURT: Yes, I think it does.

DEFENDANT KRONCKE: I think it speaks for itself, too.

BY DEFENDANT KRONCKE:

Q A few final questions, Marv.

Is it right to describe the people who are committed to non-violence as people who are aware that they have a large element of risk in their lives? Would you explain what that means?

A Yes --

MR. ANDERSON: Your Honor, I object to the question. In the first place, of course, the Government thinks the whole line of inquiry is irrelevant, that we have a situation where this witness' status as a teacher of some course at the University is being used as an excuse to let him ramble on forever and ever about a whole series of political beliefs, and it has gone on for two days, and one man's political beliefs can have absolutely no relevance to anything that happened that night in Little Falls.

MR. TILSEN: I object to counsel making such an objection and arguing before the Jury and we would involve ourselves in a corresponding argument on the objection. I have refrained from arguing objections.

THE COURT: Well, it isn't as though you haven't argued some of your objections.

MR. TILSEN: I have tried to avoid it, Your Honor.

THE COURT: Well, I will sustain the objection because I think this witness has gone on at some length about his beliefs and what he is being asked is because he is a professed member of a non-violent group, what the non-violent group believes in, and I think you have pretty well exhausted that.

BY DEFENDANT KRONCKE:

Q Finally, then, Marv, do you feel non-violence is the only thing which will work to resolve the problems of human conflict?

A No, I don't. I would choose non-violence above any other form, but looking back at the injunctions which we have received down through the ages, I think people ought to resist injustice by any form whatsoever if they cannot accept non-violence. They ought to defend themselves and create justice, although I believe non-violence is the best way. However, if we are continually pressed and the vehicles of communication are constantly closed, more and more people are going to turn to violence, tragically.

Q Is that something that the non-violent community is working to avoid, the rise in violence in this country?

A It definitely is.

Q Okay. Thank you.

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

MR. ANDERSON: Your Honor, I will resist the temptation to cross examine, and will move that the testimony of this witness be stricken and the Jury instructed to disregard it on the grounds of irrelevancy.

THE COURT: Again, I will take the motion under advisement and will not rule on it at this time.

THE COURT: All right. You are excused, Mr. Davidov. [Witness excused.]

MR. TILSEN: The defendant calls the defendant, Michael Therriault, to the stand.

WHEREUPON,

MICHAEL THERRIAULT

a witness called in his own behalf, having-been first duly sworn, was examined and testified an-follows:-

DIRECT EXAMINATION BY MR. TILSEN

Q Will you, state your full name?

A Michael Duane Therriault.

Q Are you one of the two defendants in this, case?

A Yes.

Q How old are you?

A I am 21.

Q Where were you born?

A Minneapolis.

Q Where do you live now?

A Minneapolis.

Q How many brothers and sisters do you have?

A Six.

Q Seven of you all told?

A Yes.

Q Are your mother and four of your brothers and sisters sitting here in the Courtroom?

A Yes, they are.

Q Is that them in the second row on what would be the right hand side of the Courtroom as we face you?

A Right.

Q Mike, did you enter the Draft Board at Little Falls on July 10th with the intent to remove and destroy Selective Service records?

A Yes, I did.

Q Where were you educated?

A In Minneapolis, Minnesota.

Q What schools?

A I went to grade school at Whittier, Incarnation, Basilica of St. Mary, DeLaSalle, High School at DeLaSalle, Nazareth Hall, and I graduated from South High School.

Q What is Nazareth Hall?

A I went to Nazareth Hall in my sophomore year of high school preparatory to seminary training.

Q How long did you take seminar training?

A One year.

Upon graduating from high school, what did you do?

A I registered at the University of Minnesota and enrolled there the following fall quarter.

Q What year would that be?

A Fall of 1965.

Q How old were you then?

A I was 18.

Q What else did you do when you were 18?

A I registered for the Selective Service System.

Q Did you continue at the University of Minnesota?

A Yes, I did. I continued there for -- I finished up four years and obtained a Bachelor of Arts degree in psychology.

Q What kind of courses and material did you study in your four years at the University?

A I got around quite a bit. I started off in mechanical engineering and was into a math major for awhile. From there, I moved into an economics minor and finally settled on a psychology major with a sociology minor.

Q Concerning your registration with the Selective Service System, once you registered with the Selective Service System, there is no way that you discontinue registering, is there?

A No, there isn't.

Q So you are still registered with the Selective Service System?

A That's right.

Q Did you at any time take any steps with respect to voluntary or involuntary entry into the Armed Forces of the United States?

A Yes, I did. In January of 1966, having to face up to the idea of military service, I decided to take an Armed Forces physical to see if I qualified. I qualified, but the treatment at the Armed Forces Processing Station was such that I got turned off with the Army, I got alienated with it.

Q Did you continue at that time your efforts to enlist elsewhere?

A Yes, I did.

Q Where did you go next to pursue your efforts to enlist?

A In June of that year I took some tests for the Air Force to qualify as a trainee for the pilot's program.

Q What happened with your plans in that regard?

A Similar-type things happened that happened to me when I went to take tests for the Army physical, and in addition, I talked to one of the examining doctors at the Air Force Examining Station and he interrogated me as to why I wanted to be a pilot and discussed with me what a pilot would have to do, whereby I decided I didn't want to enter the Air Force.

Q Is it fair to say that in 1966, at least to the extent that you thought about it, you thought of yourself as a person who would enter the Armed Forces and Participate in the military and otherwise in the policies of our government?

A At what time was this?

Q In 1966.

A Well, I can't definitely say that I ever felt that I was going to enter the Armed Forces in any respect. I think what I was looking for was a way out so that I could, in effect, sort of dodge the so-called obligation to military service.

Q At that period of time, had you yet undertaken or did you subsequently undertake any studies involving the United States foreign policy, and more particularly, at that point our escalating involvement in Viet Nam?

A Yes. After I talked, as I mentioned before, with one of the examining doctors at the Air Force Processing Station, I started to investigate some allegations he made about the conduct of the war, and I became interested in various aspects of the United States foreign policy.

Up to this point, I had not paid much attention to it, and the draft, as far as I was concerned, was just sort of something that I had to face up to and that somehow I figured I would get around.

Q What kind of matters did you study at that time? You mentioned the policies of the war and the conduct of the war?

A Well, one of the matters, one of the most influential things I got into was a study of the International War Crimes Tribunal. Other things that I looked into were matters concerning Viet Nam history, but it was mostly peripheral.

While I was involved in the University I sort of just peripherally scanned what was happening in Viet Nam and kept abreast by reading the press.

Q Did there come a time when your personal relationship with

the Selective Service System did in fact change?

A Yes.

Q When was that?

A In the summer of 1969. I think it was late spring or early summer of 1969 that I became more familiar with the United States policies, and upon becoming aware of what was happening with the war and what Selective Service was doing to people, I decided that I was no longer going to cooperate with Selective Service.

Q What did you do when you made that decision? Did you just keep it to yourself or did you take some public step?

A Well, initially I originally had made up my mind, like about 1968, that when I was called for a physical I was not going to cooperate, that I wasn't going to cooperate any more with the Selective Service, and it wasn't until I was called for a physical that I made public steps to disassociate myself from Selective Service.

Q What did you do at that time?

A In June of 1969 I refused to show up for a Armed Forces Physical.

Q Did you take any step to bring your refusal particularly to the attention of the authorities, or what did you do?

A Well, I wrote them a brief statement as to why I was not showing up.

Q In other words, you just didn't let it pass? You advised them of your intention not to show up and stated your position in a letter that you wrote them of some sort?

A Yes. It was just a brief note, and -- I will wait until the next question .

Q All right. What was the next step that happened to you personally with respect to your draft Selective Service status?

A Well, I was called for a physical again in July of 1969 and I didn't show up for that one, and I didn't write them a note or anything. I figured I would ignore them.

Q What happened then?

A Well, subsequently, I was declared delinquent and called for induction in January.

Q January of when?

A 1970.

Q And did you show up for induction?

A Yes, I did. I showed up with the intention of refusing induction and also with the intention of making aware to the other people, young men down there who were being processed, some of the difficulties they might face if they were to allow themselves to be processed into the military.

Q Did you, in fact, refuse induction in January of 1970, then?

A Right.

Q What steps did you take to communicate your position both to the Selective Service officials and to the other young men who were there in January of 1970?

A One of the things I did was that I brought along with me some photographs from a November, 1969, Life Magazine of the My Lai Massacre.

Q Just a moment.

[Defendants' Exhibits 2 and 3 marked for identification.]

BY MR. TILSEN:

Q Showing you what have been marked for identification as Defendants' Exhibits 2 and 3, I will ask you if you can identify what these are?

A Yes, sir. These are the photographs I brought along with me to the Induction Center.

Q Did you show these photographs to the various people both in the Army running the Induction Center and also prospective inductees?

A Yes, I did. I made a display of these photographs and explained, tried to get into the details of what was facing the young men who would allow themselves to be inducted.

At this time, I had knowledge that 80 percent or four-fifths of the inductees would go to Viet Nam. This information came from one of the officers at the Induction station, and I explained that they would probably be involved in such activities, and that if they refused to obey orders could be Court-Martialed, and if they did obey orders, they could be tried for war crimes.

MR. TILSEN: We offer in evidence Defendants' Exhibits 2 and 3.

[Defendants' Exhibits 2 and 3 offered in evidence.]

MR. ANDERSON: Well, Your Honor, actually, of course, the whole examination, the whole inquiry as to what happened at the Armed Forces Induction Center when Mr. Therriault reported for his physical is really irrelevant to what happened on July 10, 1970, and since that inquiry is irrelevant, I am going to object to any pictures that he brought, whatever they might show, as also being irrelevant.

THE COURT: Well, let me see the pictures.

MR. TILSEN: I might say, Your Honor, this is the absolute heart of our argument, that his actions were reasonably necessary by the circumstances as he perceived them, and that the Jury would find it impossible to understand how he

perceived the circumstances unless the Jury has the good fortune to have a photographic memory and happens to have read Life Magazine and thereby knows what motivated Mr. Therriault in believing his acts were necessary.

The question of whether or not his belief was reasonable -

THE COURT: You were just criticizing Mr. Anderson for arguing to the Jury.

The objection is sustained. I don't think they are proper and they don't relate to what happened here on this occasion.

THE WITNESS: I might say my state of mind relates to what happened on July 10th.

THE COURT: I understand, and you have been allowed to tell about that.

BY MR. TILSEN:

Q Before or after your refusal to accept induction publicly and your presentation of pictures at the Induction Center, did you in any other way relate yourself publicly to the draft system?

A In the fall of 1969 I started to become active in a group on campus known as Students Against Selective Service, and I also became familiar with the Twin City Draft Information Center.

Q When did you become -- you say you became familiar with it?

A Yes. In the summer, my first contact with the Twin City Draft Information Center was in the summer of 1969, and after initially establishing contact, I started to read more and inform myself further as to what was a part of the United States Foreign Policy.

Q Did you, prior to this time, take any special steps to study the Selective Service System and its functioning, or did you subsequently do that?

A After becoming acquainted with the operations of the Twin City Draft Information Center, I started to work there in December of 1969 as a part time receptionist and trainee as a draft counselor.

Q What do you mean as a trainee? What does a trainee do?

A A trainee has to become familiar with the Selective Service Law before he is allowed to counsel anybody, and he has to sit in on a number of sessions with an experienced draft counselor.

Q I would take it, then, at the time you refused induction you were personally then involved in becoming a draft counselor but were not yet a draft counselor at that time?

A At the time I refused induction I was doing draft counseling.

Q You had at that time already studied the Selective Service System and its laws and regulations and function?

A That is right.

Q Did you continue that process of studying and working in and with the draft subsequent to your refusal to accept induction?

A I continued with my work at the Draft Information Center until about April of 1970.

Q Did you have any particular relationship not only with the Induction Center and the draft system, but any additional relationship with your Local Board, Selective Service System Board at or about that time?

A You mean around the time when I refused induction?

Q Yes.

A After I refused induction and tried to communicate to the inductees what their possible plight was, I went over to my Local Board and talked to my Clerk about the function of the Selective Service System and its relation to the war in Viet Nam.

Q Did you communicate to her that you had refused induction?

A Yes, I did.

Q You say you talked at the Induction Center and to your Local Board about the war in Viet Nam and its relationship to the Selective Service System?

A Yes.

Q What did you say?

A Well, basically what I said was that the war in Viet Nam would not be and could not be conducted without the Selective Service System to procure men to go over to Viet Nam to either kill or be killed themselves, put themselves in a position to be killed.

Q Did you talk about the nature of the war?

A Yes, I did. I talked about, that the nature of the war in Viet Nam was not a mistake or some aberration of United States Foreign Policy, but rather, it was just a culmination of the usual containment policies which are practiced by the United States around the world; that the Viet Nam War differed from containment policies in other third world countries such as Guatemala, Brazil, the Philippines, Mexico, only in the fact that the Vietnamese had such a high spirit or they had such a strong drive for independence that the United States was forced to muster a tremendous amount of technological power to break that spirit.

Q The Court has indicated that he does not want me to introduce into evidence these pictures. Perhaps the Court would -- and you should not answer this until there is an objection --

MR. TILSEN: Perhaps the Court would not

object to our describing the nature of the pictures that were displayed at that time, what the pictures are of and what they show.

MR. ANDERSON: Your Honor, on the same ground as I objected to the pictures, I would object to a description.

THE COURT: The objection is sustained.

BY MR. TILSEN:

Q Did you carry on conversation at the Induction Center with inductees and with the induction personnel at your Local Board concerning the effect of the war on the Vietnamese people?

A Yes, I did.

Q Was that a minor or major portion of the considerations that you discussed at that time?

A It was a major portion of the considerations, plus the effect of Selective Service upon the individual inductees themselves.

Q I take it that you were ordered to report as a delinquent for having turned in yourself for non-reporting or not taking your physical for induction earlier, is that correct?

A That is correct.

Q Were you ever indicted for failing to report for induction?

A No, I was not.

Q And do you know why?

A My case was dismissed on the *Gutknecht* Decision.

Q Because why?

A My case was dismissed under the *Gutknecht* Decision. Your induction had been speeded up pursuant to the delinquency regulations, is that correct?

A That is right.

Q When, as an earlier witness has testified, the delinquency regulations by which the Selective Service speeded up induction, were declared improper, then Your case was dropped?

A That's right.

Q Did you continue for sometime thereafter to serve as a draft counselor at the Twin City Draft Information Center?

A Yes, I continued until April of 1970.

Q Between January and April of 1970 as a draft counselor, I take it you met with registrants and did what?

A Basically, the function of a draft counselor was to provide the registrants with information concerning Selective Service and the individual problem that they might have or questions they might have concerning it.

Q You indicated that you left that function in April of 1970, is that correct?

A That's right.

Q Did anything take place in April of 1970 that occasioned your leaving?

A Well, one of the troubles I was having as a draft counselor was that I was sort of suffering an internal dilemma over whether or not I should encourage people to resist induction and move towards a stance of non-cooperation or whether I should provide them with the information and let them decide for themselves based upon the information. At that time I felt that the best thing to do was just provide them with information and let them make up their own minds.

Q There's been some testimony earlier in the trial, if we can remember back that far, about conscientious objection and different classifications under the System. Did you deal with that question then in advising registrants, dealing with their adapting themselves to the rules, regulations and functions of the Board under the classification system?

A Yes, when dealing with Selective Service, you have to consider the choices which it offers to young men that are registrants, and the choices which it offers are to either allow yourself to become inducted or to enlist, usually for fear of being inducted; secondly, to try to obtain some type of deferment or obtain a CO status, which, if obtained, grants legitimacy to Selective Service, access to the lives of other young men who are unable to obtain deferment and CO status, or else one could refuse to cooperate with the Selective Service System, and if one refused to cooperate with the Selective Service, one was put in the position of having to make a choice, again, because pursuant to non-cooperation, one would ordinarily be called, be indicted, and upon being indicted, the registrant would have to make a decision as to whether he was going to risk going to jail, flee the country or go underground.

So the choices overall which it offers the individual registrant, it's like no choice at all, really.

Q Is it fair, then, to say, and I guess you did say that as a result of this experience you became dissatisfied with your role there as a counselor?

A That is the basic reason why I became dissatisfied with my role as a draft counselor, yes. I might add that my experience at the Draft Information Center brought me into contact with many individuals who were very much psychologically damaged by the notion of Selective Service.

There were people who would come in and try to obtain physical deferments and do extreme damage to themselves, like fasting for weeks to get themselves underweight. There was one individual I had to talk to and convince him that he should not cut off his trigger finger. There was another individual who did puncture his eardrum, and thus obtained a deferment.

In regard to people who applied for CO, it caused a great amount of stress for these individuals to face up to the notion that their Local Board, which consists of 5, 3 to 7 individuals, was going to rule on whether or not he should be allowed to kill people. Usually the reason for denying somebody's application was the fact that the Board thought that he wasn't sincere, and --

MR. ANDERSON: I would object to that as a conclusion, Your Honor, as to why some Boards do not grant a CO classification.

BY MR. TILSEN:

Q As a matter of fact, if the Board denied a classification and you were working with the registrant, you had access to that file, did you not?

A That is right.

Q And if the Board chose to give a reason, that reason was available to you both from direct observation of the file, as stated by the Board, and as stated to you by the registrant as to what the Board's secretary may have told him?

A Ordinarily, that was true, yes.

Q You may proceed.

A In addition to people who tried to explain the type of psychological damage which the Selective Service System does to people, which ultimately leads to even physical damage in the case of physical deferment, people who decided they were no longer going to cooperate with the Selective Service System had to face up to undue pressures, usually from their families, friends, and inevitably face prosecution in a criminal Court.

Q Did your decision -- did your experiences that you have described and your decision lead you to do additional studying and thought about your role as an individual vis-à-vis the Selective Service System and the War in Viet Nam?

A Yes. I started to think about ways in which I could make my life effective, make my life an effective force for change.

Q What were some of the kinds of matters you studied at that time with respect to matters to make your life, to effect a

change in the situations that we have been talking about?

A Well, at the time that I terminated my draft counseling at the Draft Information Center, I started thinking about other actions which might be effective in alleviating somehow the psychological and physical damage which the Selective Service does to the individual registrant.

Q Had you prior to that time ever been involved in any acts generally called under the name of civil disobedience or an act of non-violent resistance other than your personal experiences that you have described relative to your own Selective Service situation?

A Would you rephrase the question?

Q My question was, before that, had you given any consideration or participated in any acts of civil disobedience or acts of non-violent resistance to the Selective Service System or to any situation other than the ones that related to you personally which you have already described?

A Well, I took part in October of 1969, in the march from the University to the Federal Building in Minneapolis. In November I went to Washington and marched with a million other people protesting the United States policies in Viet Nam.

Q Did you at this time begin to study the question of civil disobedience and non-violence with others?

A Well, yes, I began to discuss the questions of how one could be effective in a non-violent way and discussed these matters with friends and acquaintances that I had from the Draft Information Center, and the people like that.

Q There's been some testimony elicited from one witness, I believe, maybe two, concerning the general character of pacifism and non-violence. Did you at that time embrace those principles, as you understood them to be?

A Yes, I did.

Q Would you describe your embracing of non-violence and what it means to you?

A To me, to make my life an effective force for change and to act with respect to certain values, and those values are non-violence, the notion of life, non-violence and love.

Q Have you ever used a gun since you were a child?

A I vividly recall shooting a gun of my father's when I was younger, and maybe 12 years old, at some tin cans.

Q Would you strike a person in anger or otherwise?

A Well, I can't say what I would do in the future, but I never have and I don't think I have ever been involved in any fights.

Q Could you describe what it means to deal with a situation

non-violently and yet attempt to produce change?

A Well, what it means is that you are ultimately guided by the notion of life as being sacred, and that without life nothing is sacred, no amount of property is sacred.

Q Could you ever kill another human being or injure another human being?

A I don't believe so.

Q Have you ever killed or injured another human being?

A No.

Q Have you ever done damage to another human being intentionally or unintentionally, that you are aware of?

A No.

Q Now, you left the University when?

A The fall of 1969.

Q At this time, after leaving the Draft Information Center, what were you doing?

A After I left the Draft Information Center, I became involved in the student strike on campus over U.S. invasion into Cambodia.

Q Were you working at that time?

A I had to find a job for financial reasons.

Q Where were you working?

A At a parking lot.

Q Did you also during that time continue your studies with others on non-violence?

A Yes.

Q Where did these take place?

A Well, I didn't attend any courses, or anything. It was mostly casual discussions with people. Most of my development as far as non-violence goes was done on my own and through reading, and then subsequently talking over ideas that I had gathered from my reading with my friends.

Q Did you shortly before leaving the University submit a paper to the University of Minnesota concerned with the question of acting upon one's own life?

A Yes, I did. In November, 1969, I submitted a paper which discussed why I was no longer cooperating with the Selective Service System.

Q Is it fair to say that the ideas expressed even before you had refused induction bear a significant relationship to the ideas imperative in your acts of July 10, 1970?

A Yes, I think that my development as far as the evening of July 10th goes, that I have held those certain values since, I have

expressed those values at least since November, 1969.

MR. TILSEN: Will you mark this, please?

[Defendants' Exhibit 4 marked for identification.]

BY MR. TILSEN:

I show you what has been marked for identification as Defendants' Exhibit 4, and I would ask you to tell us what it is.

A It's a paper that I submitted to a humanities 54 class in the fall of 1969.

Q And are the ideas expressed therein central to the ideas that you were attempting to communicate by your actions of July 10, 1970?

A Very much so.

Q Would you read those, please?

A Should I read the paper?

Q Yes.

A "It is the basic" --

THE COURT: Shouldn't it be offered in evidence first?

MR. TILSEN: Yes, Your Honor. I would offer in evidence Defendants' Exhibit 4.

[Defendants' Exhibit 4 offered in evidence.]

MR. ANDERSON: It is objectionable, Your Honor, because whatever he may have written for a humanities class has no particular relevance to this lawsuit. If he has those views, he can tell us about them if they are relevant.

THE COURT: Let me see it.

MR. TILSEN: I would make this comment, that we maintain he acted out of necessity and his view of necessity and imperative necessities are used in this article seven months before July. The question of whether or not he acted on that view is for the Jury. The fact that he held the view before the event, not after the event, is a fact upon which this paper hears.

THE COURT: Do you gentlemen want to step up here?

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

[The following proceedings were in open Court.]

THE COURT: The Court will permit the witness to read Exhibit 4, and as some parts are deleted from it, will receive it in evidence, again without ruling on the ultimate question that we have talked about.

[Defendants' Exhibit 4 received in evidence.]

BY MR. TILSEN:

Q You may proceed, Mike.

MICHAEL THERRIAULT'S STATEMENT

A "It is a basic tenet of existentialism that in each man's self-actualization (that is his continuous becoming, searching, or throwing himself forward), he must seek out the irrational dangers that will disrupt and corrupt his life. Such is my position in regards to the Selective Service law of the U.S. My commitment to complete non-cooperation with the Selective Service System does not appear to be significant to others and is further construed by many as an irrational and impractical decision on my part. My actions are not really significant to others by the very nature of the fact that personal individual actions can only have true significance to that person who has committed himself to such actions. Some may view my behavior as irrational and impractical because I am breaking the law and will have to spend up to five years in prison. Many see such an outcome as unnecessary because they can't understand that it is the draft, and not just the Viet Nam War, which I object to. Others regard five years in prison as impractical because the draft to which I object only requires two years of my life. In any case my decision to completely cease cooperation with the S.S.S. is not irrational as it is based on reason; and if it is indeed impractical it is because it is necessarily impractical, that is, necessary because it is ethically imperative for me to follow my own flux or feelings.

Below I shall try to make clear why my resistance to the S.S.S. has significance for myself if not for others.

Other objections have been voiced against my commitment to the resistance movement. stating that Such a movement (and all that it entails) is futile in that it involves a commitment with no hope of success. Bearing in mind the sentiments of the majority of people in the U.S., I would tend to agree that the movement as a whole does seem quite futile at least in the immediate future. But because at the present the movement as a whole seems futile does it mean that individual commitments to brotherhood and love are likewise futile? I think not. Should one not follow his own internal flux because he is involved in a movement that has been futile, whether futile for only the immediate future or forever futile? I think not. Or should one in following his inner feelings use the only real tool that he has -- life -- and make for a better world by leading a better life whether or not laws permit it.

My commitment to the Resistance does indeed have significance and meaning for me because I believe that all men are brothers; and my commitment entails using my life in accordance with my inner feelings to make brotherhood a reality in the world. The best place to begin creating this better world is at home; and the first place for me to make a contribution to the goal of creating a

better world is in my own behavior and my own way of life. In choosing to serve an ideal of brotherhood and love I have at the same time necessarily refused to serve the contradictory master of the SSS and war. Therefore it was necessary (ethically imperative) for me to cease cooperation with the SSS and thus violate its laws.

I will now try to map out why it was necessary (ethically imperative) for me to return my draft cards to SSS and why such an action is significant for me. The draft operates on certain assumptions and by cooperating with the SSS one in effect accepts these assumptions. First of all any male between the ages of 18 and 35 who cooperates with the SSS accepts the assumption that his life is the possession of the state to do with as they please. Those who accept deferments that keep them out of the military do nothing more than recognize and legitimize the government's right, if not direct access to their own life, to the lives of those unable to obtain deferments. By accepting a deferment I would in effect put my seal of approval on the deaths of my brothers around the world. By non-cooperation and rejection of the above assumption I have repossessed my own life which is the first step in giving meaning to my life. The repossession of many more lives from the state is required if a society is every to be shaped by the meaning of lives.

Another assumption which cooperators of the SSS accept is that it is a necessary evil for our government and military to keep our brothers around the world (even our brothers in the U.S.) oppressed, and even from living, if it is deemed monetarily profitable by and for a few. In other words cooperation with the SSS means acceptance of the assumption that human values should be subjugated to money and property values. Rejection of this assumption again leads to a non-cooperation which is significant to me because it asserts my feeling that I am my brother's keeper and I must do with my life, if only by example, all that I can to prevent my brothers from suffering unnecessary evils.

I feel that it is important that others realize beyond the sense of power it gives me over the SSS. It is salient to me that the SSS' direct power over young men in the U.S., and thus indirect power over many of our brothers' and sisters' lives around the world, is dependent upon the acquiescence of the young men of the U.S. to the system; and our refusal to acquiesce exposes the System's acute vulnerability. However, if I and a few others were the only ones who refused to buy American totalitarianism then our power over the System would be nil. It is because my non-cooperation with the System is based primarily on necessity or ethical imperativeness in coordination with inner flux and feelings that such considerations as to my power or the Resistance's power over the SSS become insignificant in regards to my resistance.

It is significant to me that all I've got, just as any man, is life. With life as a tool I intend to use it to build the lives of my brothers and sisters. I owe my allegiance not to the flag, a set of political principles, or the people who expound those principles; rather I owe it to myself (my own inner feelings on what's right) and to the lives of my brothers and sisters around the world. So when the choice comes to either doing time in jail and living my life according to my feelings of brotherhood and love, or staying out of jail and denying my life for the go to jail.

Prison is dehumanizing. And it is not easy for me to accept that fact as a reality for myself in the near future. However so, it is less easy, I might say impossible for me to accept the notion of fear as the central fact and driving force in my life. The thought of a prison term becomes easier to accept as I recognize it to be nothing other than an extension and magnification of the driving force of fear which is incorporated in the draft.

I view both prison and the draft then as the two major weapons used by the elite of our plutocracy to channel my (and others) life in the way they see fit.

Life is all I have and I must use it in the way that I feel will give the most meaning to my existence. Fear is the major weapon, if not the only weapon, that the state or government has and can utilize to rob me of the meaning of my life. But the state can only rob me if I acquiesce. But I will not acquiesce, for I no longer can buy American totalitarianism, not even under the auspices of fear. All this is not to say that I'm not afraid, but it does mean that I will not allow myself because of fear to accept the injustices of the system under which I live. To do so would be an injustice to all mankind, especially myself."

MR. TILSEN: And the Court wants to block out that one section?

THE COURT: Yes, and I will rely on you for that.

It is five o'clock and we will be in adjournment until ten o'clock tomorrow morning.

MR. TILSEN: I have one last witness from out of town who will be here at ten. With the Court's permission, I would put him on at ten, and then as soon as he is through, I will put Mike back on the stand.

THE COURT: All right. The Jury may retire, and we will reconvene again at ten o'clock tomorrow morning. [Whereupon, an adjournment was taken until 10:00 o'clock A.M., January 15, 1971.]

UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA FOURTH DIVISION

United States of America,
Plaintiff,
vs.

4-70 Cr. 19

Francis Xavier Kroncke and
Michael Duane Therriault,
Defendants.

WITNESSES

VOLUME II

	<i>Direct</i>	<i>Cross</i>	<i>Redirect</i>	<i>Recross</i>
Raymond Williams	61(Anderson)	79(Tilsen) 82(Kroncke)		
James E. Bentley, Jr.	91(Anderson)	121(Tilsen) 127(Kroncke)		
Charles H. McCullough	138(Anderson)	145(Tilsen) 145(Kroncke)		
Colonel Robt. P. Knight	149 (Anderson)	160(Tilsen)		

VOLUME III

Cpl. Robt. P. Knight		2(Tilsen-cont'd) 17(Kroncke) 46(Tilsen)	50(Anderson)	51(Tilsen)
----------------------	--	---	--------------	------------

Jane L. Gedde	57(Anderson)	68(Kroncke)		
William G. Lois	70(Tilsen)	73(Kroncke)		
Dave Gutknecht	76(Tilsen)	90(Kroncke) 96(Anderson)		
Gordon S. Neilson	99(Tilsen)	112(Kroncke) 116(Anderson)		
Robert E. Anderson	118(Tilsen) 131(Tilsen)	128(Kroncke)		
Romeyn Taylor	132(Tilsen)	148(Kroncke) 159(Anderson)		
Marv Davidov	161(Tilsen)			

VOLUME IV

Arthur H. Westing	2(Tilsen)	21(Kroncke)		
Andrew J. Glass	25(Tilsen)	43(Kroncke)		
Marv Davidov	45 (Tilsen-cont'd)			
Daniel Ellsberg	77 (Tilsen)	109 (Kroncke)		
Michael Therriault	140 (Tilsen)			

VOLUME V

Michael Therriault	2 (Tilsen-cont/d) 16 (Kroncke)	23 (Anderson)	30(Tilsen)	33(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)

VOLUME VI

	<i>Direct</i>	<i>Cross</i>	<i>Redirect</i>	<i>Recross</i>
Francis X. Kroncke	2 (Kroncke)	80 (Anderson)	87 (Kroncke)	

EXHIBITS

<i>Government's</i>	<i>Offered</i>	<i>Received</i>	<i>Description</i>
Volume II			
1	102	102	Photograph
2	102	102	
3	103	103	
4	97	97	
5	100	100	
6	98	98	
7	98	98	
8	98	98	
9	100	100	
10	100	100	
11	102	102	
12	100	100	
13	99	99	
14	.99	99	
15	101	101	
16	101	101	
17	105	105	2 Plastic Bags
18	106	109	Box w/1-A Forms
19	110	110	Penlight
20	110	110	Hopkins House book match's
21	110	110	Pocket Knife
22	111	111	Gloves - brown leather
23	112	113	Gloves - Super Tiger
24	115	115	Charcoal Lighter
25	115	115	Tape and Tape Dispenser
26	115	115	Penlight
27	115	115	Pliers
28	115	115	Vise Grip
29	115	115	Glass Cutter
35	116	116	Knap Sack
34	117	118	Plastic Bag

32		120	120	Screw Driver
33		120	120	Claw Hammer
34		119	119	Nylon Jacket
35		120	120	Screw Driver
36		120	120	Crow Bar
37		141	141	Letter - Little Falls
38		144	144	Letter - Associated Pres.
39		144	144	Letter - Mpls. Star
40		144	144	Letter - United Press
<i>Defendants</i>				
1	(III)	--	--	Photograph
2	(IV)	148	--	Photograph
3	(IV)	148		Photograph
4	(IV)	164	165	Paper authored by Therriault
5	(V)			"The Christian Experience"
6	(V)	92	93	"The Documents of Vatican Council II"