TONY MULLANEY, DON COTTON, JIM FOREST, BOB CUNNANE, JON HIGGINBOTHAM, BOB GRAF, BASIL O'LEARY, ALFRED JANICKE, JIM HARNEY, FRED OJILE, DOUG MARVY, LARRY ROSEBAUGH

ASSISTED BY ALLAN SAMSON AND HAROLD JACKSON (PROSECUTING ATTORNEYS) PLUS JUDGE CHARLES LARSON AND 12 JURORS

Milwaukee 14 Trial

MAY 12-26 + JUNE 6 1969 AD

EXTRACTS FROM TRANSCRIPT WITH A FEW CORRECTIONS + SOME DESCRIPTION

MORE OR LESS TYPED, WITH NEW IMPROVED ERRORS BY JIM FOREST

(These two days were almost entirely devoted to the interviewing of prospective jurors. The first day of the trial began, however, with Judge Charles Larson reading aloud a letter from Percy L. Julian, Jr., of Madison stating that he had received notice from the defendants "discharging us as attorneys for the Milwaukee 14...They have a Constitutional right to proceed without counsel which we recognize and which the Supreme Court has recognized as long ago as 1938..." Percy Julian indicated that he was speaking on behalf of himself, William Kunstler and Marc Stickgold in the acceptance of the dismissal. The court asked, "Can any one of you act as spokesman?" Doug Marvy responded, "There is no spokesman." From that time on the court simply asked that when defendants wished to speak, a hand be raised in order for the court to recognize the individual. The Court stated that it would be best if the defendants had professional legal counsel and indicated that the former attorney general for the state of Wisconsin, Stewart G. Honeck, had been asked to serve the defendants, had agreed, and was present in court. The defendants indicated that did not desire professional counsel, had carefully considered the handicap that was thus imposed on themselves, but felt they could better speak for themselves; appreciation was expressed to Judge Larson for his concern with the defendants' rights. Mr. Honeck was excused and the defendants allowed to act as their own counsel. Motion made that jury be invited to make a sentencing recommendation; denied. Motion made that jury not be sequestered -- defendants spoke of harmly pyschological aspects of such isolation denied. Motion made that there be no weapons on the persons of officers of the coutroom -- "We are nonviolent" ; motion denied. State attorneys move for individual interviewing of prospective witnesses; defendants respond it isn't necessary to so isolate them from each other -- "We believe that, if we are permitted the opportunity to explain all of the facts surrounding the Milwaukee 14 incident, we can talk to any 12 persons without fear." This motion is also denied -- a group voir dire is conducted. Of the various persons interviewed, the following 12 were finally selected and took part in the finding of guilt:)

DUDLEY J. MERZIAK (sometimes spelled Merzlak in the transcript) of 9528 West Orchard St., West Allis. He stated he had never expressed an opinion to anyone regarding the draft record burning in Milwaukee, that he worked in a brewery, had a boy of draft age, was Catholic, not opposed to the Vietnam war, had never thought about laws much, that he could have found participant in the Boston Tea Party guilty if he had been on a jury trying them, that judges are human and can "err" and that he, as a juror, would "go by the facts"

KENNETH GRAGES of 2849 West Juneau Ave., Milwaukee, an un-married, non-Catholic individual who had spent most of his life in Milwaukee. Not opposed to the war, nor against the draft; in fact endorses the war "strongly". "I am willing to listen to both pro and con."

MR. LAVERN J. SCHWISTER of 4071 N. 68th St., Milwaukee, 33, a supervisor at Cutter-Hammer, has a nephew who is a patrolman, Catholic, doesn't find it hard to keep up with changes in society, thinks a priest is "a man devoted" and that justice is "a fair shake".

MICHAEL O'TOOLE, 3244 S. Springfield Ave., Milwaukee, a moustached, youngish programmer for the Milwaukee Electric Tool Corporation, Catholic, thinks property destroyers have to be punished but that punishment should reflect the actors' intent; is in the Army reserves, thinks long hair okay "if that's your bag", against the war in Vietnam and would like to see it stopped if a solution could be found, thinks there are some "idiosyncracies in the draft" and initially related the Milwaukee draft-record burners to conscientious objectors.

ELMER L. BRENNAN of 1006 E. State St., Milwaukee, Catholic, retired, no strong feelings re war or the draft, like baseball, never reads the comics ("Do you like Peanuts?" "Planter's", is his response), and generally seems out of it. "Do you presume the innocence of these men?" the prosecutor asks. "Now?" "Yes." "No." (Under further questioning he says, oh yes, he does presume them innocent.)

DONALD R. STYS of 2443 S. 6th St., Milwaukee, supply clerk at Wood V.A, Hospital, once jaywalked, didn't read hardly anything about the Milwaukee 14, barely remembers them, Catholic, not married, around 40 years old, served in the "cold war", was drafted into the Army in 1954, didn't resent being drafted; the proximity of Vietnam war casualties in the hospital hasn't influenced his opinion of the war.

MRS. JEANNE O'DRISCOLL of 1469 S. 55 St., West Milwaukee, Catholic, not opposed to Vietnam war, can't imagine breaking the law, "supposes" the state could possibly be wrong, says "the law is the law", has 4 children, ages 10 through 1

MRS. MARGARET BECK of 7037 W. Wells St., Wauwautosa, not opposed to the Vietnam war, protestant, mother of two sons, neither of draft age, knows no one opposed to the war, thinks "anybody has a right to protest" and says that the purpose of law is to provide "some guidelines in which to live."

MRS. RUTH GROSCHEL (address not noted) works for the Credit Union of the Wisconsin Telephone Company. She is Catholic, says papers were burned of persons "who should have been drafted", is a Vietnam war supporter as well as a support of conscription though "it doesn't bother me very much."

RALPH W. NELSON of 5648 N. 65 St., Milwaukee, a protestant with no strong opinions regarding Vietnam, is a draft supporter, was himself drafted in World War II.

MRS. LEBERTHA SANDERS of 2013 N. Palmer, Milwaukee, separated, mother of three, oldest is nine; she is employed at Globe Union; she is a Baptist; no political orientation or involvements at all; she is black.

DOMINIC GULLO of 1538 N. Marshall St., Milwaukee, a press operator for Allis-Chalmers, native of Italy, not fluent in English but seems to understand the questions, got a "bad impression" when he saw the news reports on TV of the draft record burning, favors draft, has no position on the war, is the father of 5, ages 3 through 18.

(jurors were instructed not to discuss case or read or view information in regard to the trial; they were sequestered for the duration; after the two days of selection, court adjourned the 13th at 4:25 pm)

(note: in the course of the questioning of jurors there were many exchanges with the court regarding substantive questions to which either the prosecution or the court objected; as all of these were explored in greater depth later in the trial, no reference is made to them here. The kind of thing that was brought up, and successfully objected to by the prosecution, were questions related to international law, civil disobedience, etc.; Basil O'Leary, for example, was barred from asking questions about the 7th Nuremberg Principle under which the individual citizen cannot be presumed innocent of the war crimes co ted by his nation; instead he is to be held answerable for his conduct, with obedience being no defense per se. It was obvious that many questions went way ove the heads of the jurors. At one point, after Jim Forest has gotten too abstract in a question, Judge Larson commented, "Everybody isn't a philosopher, Mr. Forest. You have a doctor of philosophy degree, is that correct?" "I have no degree at all, Your Honor...I am a high school drop-out." But the typist agrees he had sounded like what the judge thought, or worse, at that particular point.)

Goodchild hearing, State of Wisconsin, Milwaukee County, Circuit Court, Branch 12, The Honorable Charles L. Larson, Judge of the Circuit Court presiding.

May 14

Mr Ojile: I'd just like to make a statement, whether or not Patrolman Grundy () shows up....The whole world could show up. I couldn't care less. I intend to say what happened that day. As far as I am concerned, you don't have to present any witnesses in this case. You will hear everything I did that day from me. So, it doesn't matter.

The Court: All right. Any other objections to this witness testifyin

Q And during the course of that (3:30 to 11:30 pm shift) (on September 24 1968) did you have occasion to go to the area of Wells, Second and Plankington Avenue, in the City and County of Milwaukee, and State of Wisconsin?
A Yes, I did.
Q What time
A At approximately 6:00 o'clock pm.
Q And what did you do when you got there?
A I made 14 arrests.

The Witness: I observed a fire, and I observed 14 men with their arms joined, standing around this fire. And, as I approached this group of men, Father Antony Mullaney made a statement to me....He stated that; "we have just broken into the Brumder Building; the second floor; the Selective Service Office. We have stolen all the 1-A Files, and we're burning them, here; in protest of the System."....I asked him words to this effect; "are you admitting to me that you broke into the Brumder Building, and you stole all of the 1-A files, and you're burning them here on the square,as a protest"? And he repested to me "yes". And I said, "were all of you involved, and all of the men standing with their arms locked." Each and everyone of them nodded their head; and their eyes were focused on me, to indicate to me that they were all involved....They had their arms around each other's shoulders. They were in one group aside from the other people who wer obviously spectators. They came closer together; grouping around me, and focusing their attention directly toward me...and all of them were arrested, at that time.

The Court: Does any other of you wish to ask a question, at this time, any of you Defendants? If so, raise your hand.
Mr. Ojile: I have one.
The Court: All right, Mr. Ojile.
Q Are you absolutely sure I nodded my head?
A Yes.
Q Which way did I nod it?
A (Witness nods head affirmatively.)
The Court: Now, the record cannot show how you nodded your head.
Mr. Samson: I was just -- if I may clarify the record, Your Honor, let the record show that the witness moved his head in a horizontal position -- in a horizontal manner, similar to that one would normally do in saying yes; the traditional way.
The Court: Would you say he made an affirmative nod?
Mr. Samson: He made an affirmative nod.

(laughter in court)

The Court: You'll have to remain -- not to demonstrate, rather. Don't demonstrate.

I believe the Court takes judicial notice of what an affirmative nod is and what a negative nod is, and the Court has observed that the witness made an affirmative nod.

Reverend Higginbotham: Your Honor, I have one other question.

Q You have stated that the 12 of us here all nodded our head yes, right? Affirmative nod?

A No, that's not correct.

Q All right. Did we all give an affirmative nod?

A Eleven gave an affirmative nod, and one can an answer of yes.

Q Okay. Who gave the answer of yes?

A Father Mullaney.

Q All right. Did you see me personally give an affirmative nod yes?

A Yes, I did

Reverend Higginbotham: Okay, thank you.

The Court: Mr. O'Leary?

By Mr O'Leary:

Q This question involves a statement, which I'm not sure if I can make, but it also has an implied question. I had asked to get into the patrol wagon, and if I were one of the nodders, I was wondering why I had to tap one of the officers on the shoulder and tell him that I'm with the group and may I get in the wagon too.

.....

The Court: I'll have to close the cross-examination, unless someone raises his hand and says that he has a question. No one has, so the Court rules that the examination of this witness has been completed. You may leave the stand.

The Witness: Thank you.

The Court: The Court will rule on whether --

Reverend Higginbotham: Before you rule, I'd like to take the stand.

The Court: All right, you may do so.

....

The Court.: Go right ahead, make a statement.

The Witness: Jim, would you like to question me?

The Court: Now, by Jim --

The Witness: Jim Forest.

Mr. Samson: If it please the Court, I have a request to make. Carrying on this trial will be difficult under the most ideal conditions. I implore the Court to ask the gallery to remain silent. It is very difficult to hear and keep track of what's going on.

The Court: Well, the --

Mr. Forest: Your Honor, could I comment on that first?

The Court: Yes.

Mr. Forest: I understand the request, but it just seems occasionally there are things that are very hard not to laugh at.

.....

By Mr Forest:

....

Patrolman Grundy has stated that he heard Father Mullaney make a statement regarding his responsibility for the burning of government records. Do you remember Father Mullaney making such a statement?

A: No, I do not.

Q Do you remember him inquiring as to whether the others present agreed?

A I do remember him inquiring as to that question.
Q What did he say, do you recall?
A His question was, "Are all of you in this together," if I remember correctly.
Q What did you do when he asked that question?
A I didn't say anything. I was already under arrest and he had not informed me of my rights, so I wasn't going to do anything whatsoever at all. Well, what I did was continue to sing, "We shall overcome," actually.

The Court: Any further questions from either side? You may step down
Mr Ojile: On the record, I want to warn the court that if Officer Grundy takes the stand and there's a jury present in here, there may very well be a mistrial on the basis that he's going to be proven in perjury.
The Court: There are sometimes differences in opinion, and people will see the same incident and come up with an all together different testimony in court, and no one is really guilty of perjury. I don't want to say at this time that anybody is guilty or will be guilty of perjury, nor can you say that.
Mr Ojile: Well, I want to be on the record that we gave the other side a fair shake.

(Whereupon at 4:35 pm, the jury entered the courtroom and was dismissed until 9 am May 15th 1969)

May 15, 1969 -

THE COURT: Before the state presents its case, I have a request from at least one Defendant and I believe from more than one Defendant. Did I state to the jury that it is customary in trials in court for bailiffs to be present, and in this case you see two of them, at this time, who are in uniform and are armed. This is not an unusual procedure to have bailiffs in court who are armed, and I do not wish the jury to construe it to mean -- rather, construe it to be a reflection against any of the Defendants, because it is definitely not a reflection against them, and they are not armed for any cause that would be presented by the Defendants. It is merely a custom. All right, Mr. Cotton?

Mr. COTTON: I'd like to ask the jury if they can hear with the fan going?

THE COURT: It's going to be hard to hear with that fan, isn't it? Turn it off. Court will come to order. You may proceed.

(Witness Michael J. Preuschel, draftsman in the City of Milwaukee's Bureau of Engineers, is called to testify; he has prepared a drawing of part of the second floor of the Brumder Bldg, which the prosecution is introducting as Prosecution Exhibit No. 1.)

MR. MARVY: I'm not quite sure of the procedure, whether or not this is proper, but if the question is going to his competency and that this is a correct reproduction of the drawing of the Brumder Building, we would stipulate to that in order to save time.

THE COURT: However, you may be stipulating to something that would not be in your best interests. The Court will require that he prove it up.

(drawing information gathered on the scene of the Brumder Bldg Nov 1--All Saints Day--1968)

QUESTIONS BY REV. HIGGINBOTHAM: ...you are testifying now as to the accuracy of this drawing because you are an expert?

A Yes.
Q Expert draftsman?
A Yes.
Q And because of the expertise you have, it would be much easier and more accurate for you to present this than it would for, say, the District Attorney to call and put men off the street or policemen or one of us or someone from his office, is this true?...in other words, you can do the job of testifying that you have done better than a nondraftsman could, better than, say, the District Attorney himself could do?
A Well, to my opinion, yes.
Q Okay, thank you.

...

THE COURT: Witness is excused.
MR. OJILE: I would like to commend the witness. He did a very good job.
THE COURT: Well, that isn't the usual procedure, but if you wish to commend him, we'll permit it.

(witness Margarethe Bauer, 770 N. Marshall St, Apt 709, employed at the Brumder Bldg from 4 to 9 pm as a cleaning lady...)

MR. SAMSON: Do you see a person in Court today who you know to be Mr. O'Leary?
A Unless he's hidden that I can't see him.
REVEREND HIGGINBOTHAM: Your Honor, I'd request that she be allowed to come down --
THE COURT: Come down and take a closer look.

MRS. BAUER: (Walking to the Defendants' table) I'm not very good at faces, I know. I don't think I see him.

THE COURT: Mrs. Bauer, what is your anser? Do you see Mr. O'Leary among the Defendant's seated over there?
Mrs. BAUER: Not over here.
THE COURT: You don't see him. All right.
MR. SAMSON: Now, is the --
MRS. BAUER: Oh, there he is. Right next to -- I'm sorry. Right there he is.

MR. SAMSON: ...what, if anything, did they say to you?
A They were not interested in the offices.
Q Did they say anything else?
A They wanted the records.
Q Do you know which one of them said we want the records?
A It was Father Rosebaugh.
Q And what was your answer, if any, to their request for records?
A "You're not getting them."
Q All right. And what, if anything, happened after you said "You're not getting them"?
A Mr. O'Leary reached into my pocket and took my keys out of my apron pocket.
Q All right. And what happened then?
A I told him I want my keys back. And they said, "You'll get them. Don't be afraid. We'll be glad to be identified."
Q And what, if anything, happened after that?
A I walked back and forth, and I still asked them for my keys. He says, "don't worry, you'll get them." I says, "I'm going to call the police."
Q What happened after you said you would call the police?
A I walked over to Board 49 and wanted to touch the telephone to pick up the telephone, and Father Rosebaugh put his hand on top the telephone and said, "You're not calling the police."
Q And what, if anything, happened then?
A Then a man came and said that he had -- was in a suit, like working suit -- and he was handed the keys.

(Doug MARVY is identified...)

Q ...Was there any conversation between Mr. Marvy and whoever handed him the keys?
A A little while later, he knocked on the glass door and said, "won't be long". That's all I heard.
Q Who said, "It won't be long"?
A I believe it was Mr. Marvy.
Q All right, And what, if anything, happened after that?
A Well, I saw a burlap bag lying on the desk of Board 48, which faces west.
Q All right.
A It was a screw driver.
Q Where was the screw driver?
A On top of the bag of 48.
Q All right. What did you do, if anything, when you saw the burlap bag and the screw driver?
A I picked it up, and I said, "To whom does this belong to?"
Q Did anyone answer you?
A And Father Rosebaugh said, "To me." I took the bag. I threw it in front of him and I said, "Get the hell out of here." Excuse my language.
Q What happened after you threw the bag down and asked them to leave?
A Well, then, they were told that they were through.
Q Pardon?
A Mr. Marvy knocked on the door and told them, "It's over." "Through."
Q What happened then?
A They turned around and went out.
.....

MR. SAMSON: ...Do you know what are contained in those offices?
A Draft records.
Q Can you tell the Court and Jury whether or not -- were there any file cabinets in those offices?
A Yes, sir.
.....
THE COURT: Now, do any of the Defendants wish to cross-examine? Father Rosebaugh?
FATHER ROSEBAUGH: Can I use the stand?
THE COURT: Can you use which?
FATHER ROSEBAUGH: This podium?
THE COURT: Yes, you may come up and ask questions concerning it and be near it when you question the witness.
Q I just have a couple of questions. Do you remember me as Father Rosebaugh?
A Yes, sir.
Q Do you remember in the way that Brother O'Leary and myself, when we entered your office, do you recall that we weere in any way resrespectful of you?
A No, sir, not one bit.
Q Okay. ... If you would remember, I did not say anything about asking you for the files, because we didn't want you to know we were coming after the files. We made up a story sayin --
THE COURT: You're arguing, Father Rosebaugh. You'll have to ask questions.
Q I'm not arguing, because I'm admitting what we have done, and so we aren't trying to hide anything. We did come into your offices, but the main thing was that I just wanted to make it clear, especially to the jurors, on our manner as far as being there.
A It was very respectful.
THE COURT: Any other of the Defendants wish to cross-examine this witness, ask any questions? Mr. Ojile?
BY MR. OJILE:
Q Mrs. Bauer --
A Yes, sir.
Q -- did you receive the flowers and candy we sent you?
A Yes, I did.
Q Thank you.
A Thank you very much.
MR. MARVY: We have no further questions.
....
THE COURT: Well, the Court must make this statement to the jury; the fact that they may or may not have sent candy to the witness, which she acknowledhes she got, and flowers, are not relevant to this case, and you are instructed to disregard that testimony....You may step down.
..... arguing to permit ther
(discussion re barring prosecution witness from court prior to appearance; defense
THE COURT: ...Father, your comments are shown. Mr. Graf? It was Father Harney who just spoke. I appreciate that the jury must become acquainted with the identity of all these people. I don't mean acquainted with them personally. They must learn to know who they are. They are being called upon to judge them, and in order to do that, they must know who they are...

(Witness Mrs. Pauline GAYDOS called; 5220 N 47 St, cleaning woman at the Brumder Bldg)
....
A Well, we have payday every week Tuesday, and that night I went to the boss's office and I asked for the check, and Mr. Rosen is my boss, so I ask him, and he says wait, I look for the check. So, he was moving from 8th floor on 6th floor, and he was looking for the checks. And I'm standing there, and he says t me, "Paulkine, you can look too." So, we was looking, and we couldn't find no checks. The secretary was gone already. So, he said to me, "Pauline, tell the girls no checks today.

(Gaydos contd)

So, I went down the first -- on second floor, by Margaret Bauer or what is her name. So, I come there, I don't see her. I see her basket and her dusting mop and anything she needs for cleaning. So, I looked in -- it's a glass door -- I don't see nobody there. So, I went around to the other side. I thought maybe she is on the other side and cleaning there, because sometime he tell her leave everything and clean this office, because we coming back. So, I went there, and I said Margaret -- no answer. So, I went back to that office where I see all her tools, and I look in. I don't see nothing, so I try the door, and door was locked. So, I take my keys out and I open the door, and maybe something happen to her. So, I walked in, I see that she was arguing with someone there, and I went closer, and she said to me, "Look, Pauline they want to check the record."

THE COURT: Just a moment. Just a moment. I don't think she should testify as to what Mrs. Bauer told her. Just say what you observed.

MRS. GAYDOS: All right.

THE COURT: Unless they were present.

MR. SAMSON: Well, at least two of them were present.

THE COURT: Well, then establish that.

MR. SAMSON: And it's under the res gestae exception of the hearsay rule. I would suggest that it's admissable.

REV. HIGGINBOTHAM: We have no objection, Your Honor.

THE COURT: Well, nevertheless, the Court wants you to establish that what she said was done in the presence of the Defendants.

MY MR. SAMSON:

Q All right. Mrs. Gaydos, when Mrs. Bauer started to talk to you, at that time, was anybody there?

A Yeah, I see two -- how I can explain it? -- priest and a father; and she says to me, "Pauline, look, they want to see the records. They want to check on the records." And I said, "How come?" Then I turned, look at them, and they introduc themselves by their name.

Q Do you remember what names?

A Well, I catch one name, and one I don't. One was Rose--

Q What name did you catch?

A Rosenbough or Rosenbaum or something.

Q And the other name you didn't remember?

A No. So then, after that, I turned by them and look at them, and I says they introduce themselves like priest and father --

Q I'm sorry, I didn't understand you. What did you say to them?

A I just -- oh, I said to them if they are priests and father, like they introduce themselves, I says they should have sense that the cleaning lady can do nothing for them, and I told them they should come in the morning, and they said no, they want it right now. So, then I no said nothing. I thought myself that something wrong here. So then -- I shouldn't mention Mrs. Bauer. I leave it out then.

THE COURT: Just don't say what Mrs. Bauer said, until the Court permits you to.

MRS. GAYDOS: Okay.

BY MR. SAMSON:

Q Go on.

A Then I walked -- then I go out the office. So then two of them walked with me and stand against the door, and I stood by the door, and I reached for the knob, and the priest said stay.

Q Do you know which priest?

A Yes.

(Father Antony Mullaney is identified....)

Q Mrs. Gaydos, what if anything happened after you tried to get out?

A So, I touched the knob, and the priest said stay. So, I don't know what to do.

(Gaydos cont...)

I stay. Then I told him, "Please can I go?" I said -- the second time I touched the knob, and I says, "Please can I go out." I says, "Maybe somebody looking for me already. I'm too long here." And he said, "Stay, that's it." So, I get mad, and I get my hand and I pushed him, and I went out -- I ran out.

Q All right.

A And then when I'm running, screaming for help, when somebody grab me behind, behind back by the neck, and my throat was real sore, so -- I keep on?

Q Sure, go ahead.

A Then I get scared. I don't know how I get in the pffice. Just I know I was in that Board 47. Then he puts his hand down, and he says to me, this way, he says, nothing's going to happen to you, if you stay quiet.

Q Do you know --

A So, I told him, I says nothing happened to me, you hurt me, my throat hurts me, and he said he is sorry.

Q All right. Mrs. Gaydos, do you see in this Court the person who you're talking about now?

(James Forest is identified....)

Q Mrs. Gaydos, the man you've identified, Mr. Forest, is he the man who talked to you in Board 47?

A Yes.

Q What was that conversation?

A Well, when -- when I told him that he hurt me, he said he is sorry, and then he says, "Well," he says, "I tell you what's -- is this all about." So he said to me, "Maybe I got brother of sister's husband or a son in Viet Nam." That's why he doing that. He don't want no one should be sent to Viet Nam, and that's all. Then he leave me standing there; and after while, couple minutes, he says, "You can go."

MR. SAMSON: That's all.

THE COURT: Just a moment, Mrs. Gaydos. Wait a moment.

THE WITNESS: Okay.

THE COURT: Do the Defendants wish to cross examine her?

MR. FOREST: I would like to, Your Homor.

THE GOURT: All right, Mr. Forest.

BY MR. FOREST:

Q What was your feeling when you saw Mrs. Bauer in the company of these other men that you mentioned?

A What was my feeling?

Q Yes.

A First, nothing; but then when I talked inside there, then my feeling was that is something wrong there.

Q Yes. Would you say that you gradually became afraid?

A Yes.

Q Did you become a little bit more afraid when they made it difficult for you to leave the office?

A Well, I was just glad to get out there.

Q When somebody stood in front of the door and asked you to stay, did you become a little bit more afraid because you were not allowed to --

A Well, I was set from the door.

Q I misunderstood. I'm not trying to trap you. I'm just trying to find out how your feelings evolved. What happened to your feelings?

A Well, I had the feeling that something wrong there what not was to be, and I get scared.

Q You mentioned that when you left the room, you ran and you were screaming?

A Yes.

Q This was because you were afraid?

A Yes.

(Mrs. Gaydos cont...)

Q Were you afraid that one of us might hurt you?
A Not that. I was screaming for help.
Q For help. After I brought you into Board 47, I take it -- I don't remember what board it was, but after I brought you into that room, were you still afraid at first?
A Yes, I was.
Q Can you recall what made you become not afraid?
A Because I -- like I said, I know something wrong there, and I going to get more hurt like I was hurt.
Q At what point did you feel you were not in danger?
A Repeat again?
Q At what point did you feel that you had nothing to worry about, nothing to fear?
A After you get me -- or I get in the Board 47, I don't know -- but then when you take your hands off me, so, I thought, well, it's all right now.
Q Okay. Do you recall saying anything to me in response to what I said to you?
A Repeat. I can't understand you.
THE COURT: Perhaps response to that may be difficult.
MR. FOREST: Yes.
Q You have mentioned that you recall me saying something to the effect that perhaps you had a son in Vietnam or perhaps you had a friend who had a son in Viet Nam or you knew people who were worrying that their son might be sent there and didn't want to go. After I said that, do you recall saying anything in response?
A No.
THE COURT: Not in response. Did you say anything after that was said?
MRS. GAYDOS: No. I just said not.
BY MR. FOREST:
Q Do you recall saying, "Why didn't you tell me that before?"
A What do you mean before?
Q Well, my recollection is that after I spoke to you, you stood there and looked at me and said, "Well, why didn't you say that to me before," do you remember that?
A (Witness nodded in the negative.)...No, I don't 'member that.
Q From that point onward, did you feel that you had nothing to worry about, that there was no threat to you?
A Well, after that was over, I went on to the seventh floor, and I don't want to see no more nothing, and then I went down, and they tell me on the seventh floor that he was -- see all the records are they burning outside. So I went out, and I even pick up the records from the street.
Q Did you receive the roses and candy, by the way?
A Yes, I did.
THE COURT: Mr. Forest, that is not relevant as to anybody sending her roses and candy. Jury is instructed that this is not part of the case, and they must disregard it.
MR. FOREST: Thank you, Mrs. Gaydos.

(Witness Larry HARTZHEIM, 19, Milwaukee resident, eye witness on street to the removal of sacks from the Brumder Building by various of the Defendants, which he identifies...)

MR. JACKSON: What, if anything, did you observe any of the Defendants do after the fire started?
A Well, they gathered between the flagpole and the fire, on this triangle, and they put their arms around each other and started singing.

(Witness Lynn HOWELL, Journal Company staff photographer, introduces into evidence photographs taken from a series of 81 by him at the Brumder Building scene at the time of the action; state's exhibits 2 through 10)
CROSS EXAMINATION BY MR. FOREST:

(Cross examination of Howell by Forest)

Q Mr. Howell, how did it happen that you were able to take these pictures? Were you just passing by the Brumder Building?
A No.
Q Would you describe to me how you happened to be there?
A I got it through ordinary, written-out assignment.
Q Pardon?
A I said it was an assignment from the newspaper.
Q It was an assignment. How did that assignment come to you, do you know?
A Assignment came to me through a photo order which I got approximately five o'clock, maybe quarter to five that day.
Q Who signed the order?
A I had two of them; one from the Journal and one from the Sentinel; both came from the picture desk.
Q Do you have any idea how they became aware that there would be something occurring that would require your services?
A I can't say for sure. I know that two reporters were contacted, and they were told that something was going to happen, but we were not told what.
Q I see, you were told that two reporters had been contacted by whom?
A I don't know.
....
Q Was it your impression that the people burning the draft records were surprised when news photographers arrived?
A I can't read their minds.

Q I'm just asking about your impression at the time.
THE COURT: I don't think that's relevant, Mr. Forest, what his impression is.
Q Do you recall the persons there whom you photographed making any attempt to leave the scene of the burning?
A No.
Q What did they do?
A Stood around and sung a song while the records were burning. There was no attemp made to leave or to flee the scene.
Q Do you recall the arrival of members of the Milwaukee Police Department?
A I do.
Q Did the persons burning the draft records make any attempt to leave when the police arrived.
A No, they didn't.
Q Did they in any way resist the police officers?
A No.
Q Would you describe their attitude as cooperative?
A I would.
. . . . .

(Witness Richard Edward Bentzler of the Milwaukee Police Department called, employed with them 13 years, recalls responding to "a possible holdup at the Brumder Building" at approximately 6 pm September 24, 1968; describes "pieces of paper strewn about the street, and the sidewalk, and they were being blown about by the wind"; he stood guard at the door of the Brumder Building, instructed to let no one enter or leave; recalls putting salvaged papers into sacks, sacks which were later weighed and locked in a room of the Safety Building.)

(Witness Jerome Neuman, a detective of the Milwaukee Police Department, testifies allowing Mr. Lippert and Major Lane of the Selective Service have access to the records stored in the Safety Building on September 30 and October 1, 1968; from these some were taken, and two small packets left with the Police and placed on Police Inventory; these are now presented as State's Exhibit No. 11 and 12; these are charred and water-damaged packets

containing a number of Selective Service files.)

CROSS EXAMINATION BY MR. GRAF:
Q Who owns those records? Whose property is that?
A The Selective Service Board.
Q Oh, okay.

(Witness Ruth Junge, married, executive secretary of Local Board 46, testifies that she returned to the Brumder Building at approximately 6:20 September 24 because an evening meeting was scheduled; she describes scene upon arrival, her difficulty gaining entrance to the building, the scene inside, screwdriver om a table in her office, the fact that she had given no one permission to have access to the office or files, fact that all the 1-A files were missing; also describes in detail the registration process; 871 1-A records missing from Board 46, she states; also testifies in regard to an efficiency study carried out May 1st; during the course of the questioning by Mr. Samson, the is an interruption by Mr. Marvy:)

MR. MARVY: May I ask, what is the relevancy of these questions?
THE COURT: Are you attempting to establish value?
MR. SAMSON: Yes, Your Honor.
THE COURT: There's a charge -- among the accounts and the information, Mr. Marvy, is one alleging that the property taken has a value of -- just a moment -- in excess of $100, as a break-off point, and there is an offense for taking something from another for the value less than One Hundred, and then the offense becomes greater, according to law, with the amount of property taken which exceeds $100 in value.
MR MARVY: Well, I object to this line of questioning, because I think the test being assumed for value is improper. The Wisconsin State statute describing value is very clear that draft records are worthless...
THE COURT: Where do you find a statement that draft records are worthless?
MR. MARVY: 943.20.
MR. SAMSON: If it please the Court, You Honor--
THE COURT: Yes?
MR. SAMSON: I would prefer to carry on this discussion in the absence of the jury.
THE COURT: Yes, well, if we are going to continue now, it would be wise to do that. Well, the Court cannot agree with you, Mr. Marvy, that there is such a statement.
MR. MARVY: I was being a bit facetious.
THE COURT: I see.
MR. MARVY: I'm referring to the fact that the statutes give several different tests and alternatives, and I disagree with the interpretation.
THE COURT: Well, the Court will permit counsel to continue this line of questioning for the purpose he has stated.
....
(objections are entered by Marvy, Higginbotham, Ojile, Graf, Forest, then objections are indicated from the rest of the Defendants by a show of hands)
.....
THE COURT: ...All right, the record shows that all the Defendants object to this line of testimony, and the Court rules that the objections are overruled. All right, now, you may proceed.
MR. SAMSON: Thank you, Your Honor. I believe I have no further questions of this witness, Your Honor.
THE COURT: Any cross-examination?
MR. MARVY: I have a few questions.
CROSS EXAMINATION BY MR. MARVY:
Q ...You testified...that 871 files were missing from your board, is that correct?
...you must have taken some kind of inventory?
A Yes.

(exchange regarding presentation of documentary evidence in regard to Mrs. Junge's testimony; testimony that none of the draft documents were computerized or on microfilm; testimony on the manner in which files are "reconstructed".)

MR. MARVY: You continued to mail out registration forms and ordered men to induction and so on?
A Yes.
Q What is the purpose of the draft file?
A Would you state the question again, please?
Q What is the purpose of a draft file?
MR. SAMSON: I'll object, Your Honor. It's not material.
MR. MARVY: It's very material.
THE COURT: Just a moment. Now, we are on the subject of Value, Mr. Marvy.
MR. MARVY: Yes, I understand.
THE COURT: And you believe it's relevant for that purpose?
MR. MARVY: Yes, I do.
THE COURT: Would you explain why or how?
MR. MARVY: The claim -- which while I object, the prosecution is arguing -- is that value is to be determined by replacement value, and the claim has been made that these files have been reconstructed; and in order to ascertain whether or not a file was, in fact, reconstructed, I'd have to know, One, what the purpose of a file was, and Two, whether or not the file could still serve that purpose.
THE COURT: Could be that that would be relevant. What is the purpose of a file?
THE WITNESS: Well, you work from your cover sheets, so you would need the information in it to order a man for a physical or for induction or to communicate with him.
BY MR. MARVY:
Q Do I understand correctly, then, that documents contained within a particular file are used to determine classification of that individual?
A Yes.
Q Do you have, in your office, any list of the contents of any particular file?
A No.
Q If a file has been removed -- damaged in any way, and you say you do not have a list of its contents, you is that you replace these contents?
A I said before, you mail them a questionnaire or -- classification questionnaire or regular questionnaire and ask them to complete it and told them that their file had been involved and ask them to submit any information that they wish to be on file. They may have submitted, previously, medical statements or studen status and so forth.
Q You're saying that a draft file can be used properly to determine classification of an individual, even while documents are missing from it?
MR. SAMSON: The question's objected to as outside the scope of the direct examination and immaterial.
MR. MARVY: I believe it's very relevant to the issue of value, whether or not the file can be actually reconstructed.
THE COURT: It may be. The Court will permit the witness to answer. What you want to know is, can you get along without these files and still operate...ask your question again (Mr. Marvy).
Q Can the draft file be used properly to determine the classification of an individual, if documents are missing from that file?
A No, but these were all classified. None of those were up for reclassification, at the time they were taken.
Q None of those were up for reclassification?
A Yes.
....
Q Is it true that an individual can appeal classification that Selective Service may put him in?

A Within thirty days after he's been mailed his 1-A or his classification, yes.
Q And if he appealed then, the relevancy of his classification would have to be determined on the basis of the documents within his file, is that correct?
MR. SAMSON: If Your Honor please, I object. That's immaterial. What he's asking now is not connected in any way with value or, in fact, with anything else to do with this trial.
THE COURT: The Court agrees. The objection's sustained.
MR. MARVY: Well, for the record, I'd like to state that a draft file, once tampered with, I would maintain, is improperly used and cannot be reconstructed. I'm trying to argue that once this has happened, they can no longer be reconstruct and you're arguing that that is their value, the value of their reconstruction...
THE COURT: I think you're trying to make a different point than the District Attorney was when he questioned this witness, and I think you're outside the scope of the direct examination. Now, Mr. Marvy, you must stay within it.

(Mr. Sampson asks permission of the Court, and receives it, to re-open direct examination of witness; he pulls from "a regular brown shopping bag...a number of partially burned and scorched pieces of paper" which are presented as State's Exhibit No. 11-A; this is a "cover sheet," Mrs. Junge testifies, from Board 47--one registrant's complete file; another cover sheet is introduced, from Board 46; this is marked State's Exhibit 12-A...)

CROSS-EXAMINATION BY MR. MARVY:
Q You stated that this file, this cover sheet you call it, could be used for the purposes of inducting an individual into the armed services, is that correct?
A Yes.
.....
Q And the contents, now...of that folder are documents used to determine the individual 's classification, is that correct?
A Yes.
(discussion of file's content: classification questionnaire, etc., and method of getting information of obtaining information with which to reconstruct file)
THE COURT: How do you replace the file that's missing. That's what we want to know.
Mrs. JUNGE: Take your serial list and make a new cover sheet with his name and address. You have his number from your 102, from his classification ledger, and you have his address, and you send him the new questionnaire. The ledger would show you what date he was classified and what his classification was.
BY MR. MARVY: ....
Q How long would you say it would take you to type up a new cover sheet, put a name and a number on it?
A About two, three minutes.
Q May I ask your wage scale?
A Seventy-two hundred a year.
Q You don't have an hourly wage?
A No.
MR. MARVY: I have no further questions right now.
THE COURT: Father Mullaney?
BY FATHER MULLANEY:
Q Yes. Mrs. Junge, as the files were being passed around, we noticed that at least one was very thick and the other one seemed very thin. Would this indicate that there is not equal access to all of the deferments provided under the law as far as young men of draft age are concerned?
A I don't understand.
MR. SAMSON: I object to the question on the grounds that the witness can't answer that. Equal access, that's a legal question.
THE COURT: This is out of the scope of the direct. It has nothing to do with

value. What you're seeking to establish, Father Mullaney, is that there is a difference in consideration given each person who is classified.

FATHER MULLANEY: I think that what is of great importance in this particular case, whereas the indictments cite specifically that Selective Service System records have been destroyed, is that the quality of these records should be obtained in as many different ways as possible, and that there material value is only one aspect of the quality of these records.

So I think that the jury, in order to be able to bring in an impartial verdict, would have to understand all the qualities of the Selective Service records and not just their material value.

MR. SAMSON: If it please the Court --

THE COURT: You may argue that, Father Mullaney, when you present your argument to the jury.

FATHER MULLANEY: Well, I have another question.

BY FATHER MULLANEY:

Q You mentioned that you take a young man from the very beginning and all the way through. Could you tell us the practice of the draft board in Milwaukee County under the Selective Service Act of 1967, with respect to the case of a young man who believes in conscience that he cannot participate in the Selective Service System, because he believes the Viet Nam war is immoral. What would be the practice of the draft board in this particular case? How would you bring this man through? Where is the end? I understand the beginning, but could you tell us what happens?

A You mean if he's classified 1-A?

MR. SAMSON: If it please the Court, I object to the question on the grounds that... it's immaterial...and it's beyond the scope of the direct examination, both direct and indirect.

REV. HIGGINBOTHAM: It's neither one. He asked earlier what she had to go through in order to build the file. He asked the specifics of how the file is built. Father Mullaney is asking also.

THE COURT: Father, the questions you have asked, however, I do believe the District Attorney has correctly stated the question is irrelevant, and it was not covered by the direct. It's not within the scope of the direct examination.

REV. HIGGINBOTHAM: It certainly was, Your Honor. That's what I just finished saying.

THE COURT: I can't agree with you, Rev. Higginbothan.

FATHER MULLANEY: I think it's very important that when we're discussing the value of the Selective Service records, I understand that the District Attorney is limiting his notion to -- the value question --

THE COURT: Replacement cost?

FATHER MULLANEY: Right, but I think in order for the jury to -- to comprehend really what's involved here in the question of replacement costs, that these other elements of value should be brought in. I think they're very relevant. I think it would be impossible to access correctly in full context the points raised by the District Attorney if these other elements of value were left out.

THE COURT: Well, Father Mullaney, if you have a witness who can testify as to the things that you want to bring out, you may bring such witness in. We'll see if what he has to say is relevant, and you may, in your summation, make an argument as you are making one, in effect, now.

FATHER MULLANEY: And would the State bear this expense if I should bring in an expert witness?

THE COURT: Well, the Court rules that you may have such a witness, but surely there are some people who are able to testify about this here in Milwaukee.

FATHER MULLANEY: All right.

BY FATHER MULLANEY:

Q All right. I have another question, Mrs. Junge. Could you explain the use

of the word "channeling" that is used in the 1965 memo from General Hershey? How does your board interpret the word "channeling"?

MR. SAMSON: If it please the Court, it's immaterial how her board interprets the word "channeling."

THE COURT: Objection sustained.

REV. HIGGINBOTHAM: May I ask a question?

THE COURT: Yes.

REV. HIGGINBOTHAM: I'm misunderstanding or something apparently. What questions may we ask the witness that the State will put up with? In other words, I'm hearing things like, "It's out of the scope of the direct."

THE COURT: Yes. You're restricted in your examination to asking questions on subject matter covered by the District Attorney in his direct examination; and even though that is the rule, there have been times when the Court has permitted questions when the questions were not within the scope of the direct.

REV. HIGGINBOTHAM: That's what Ithough it meant. Now, earlier the District Attorney asked her to run down the administration duties of her office, how she built the file, how she put one together, specific details...the administrative steps in it. As I understand it, it was exactly the same thing Father Mullaney asked with respect to a CO, which is one of the administrative steps; and yet you permitted the D.A. to ask the question. Well, he had the direct, yet Father Mullaney can't ask it, and it seems to me that was within the scope of the direct examination. You see what I mean?

THE COURT: I see what you're saying, Rev. Higginbotham, but I cannot concur in your opinion. If you have a question, you may present it, and the Court will rule on it.

BY FATHER CUNNANE:

Q You said when you build someone's file and you classify him, you take him all the way up to induction. Do you write anything in that file when someone is killed in Viet Nam.

MR JACKSON: Question is objected to as outside the scope of direct examination.

THE COURT: It is. The objection is sustained.

MR. JACKSON: Ask that it be strickem from the record and the jury be admonished to disregard the question.

MR. FOREST: I object.

FATHER MULLANEY: I object also.

THE COURT: The Court has ruled that it is not a relevant question, and the answer is stricken.

MR. OJILE: I would like to be on the record as objecting.

THE COURT: You object to the fact that the District Attorney objected?

MR. OJILE: To the fact thatyou overruled.

THE COURT: Well, whatever you wish. The Court will let the record show that you object to the ruling of the Court.

REV. HIGGINBOTHAM: I would like the record to show that I object both to the ruling of the Court and to the objection of the District Attorney.

THE COURT: Then if all of you want to and you will raise your hands, we will note an objection for all those who raise their hands.

Father Cunnane, Father Harney, Mr. Ojile, Mr. Forest, Mr. Cotton and Rev. Higginbotham and Rev. Janicke. Anymore? Mr. Forest?

MR. FOREST: Perhaps this is not an admissible question, but I'd like to ask it.

THE COURT: I want to advise the Defendants of this, the code of ethics which applies to lawyers is that you may not ask a question which you know is irrelevant or you know is not germaine, and you ask it so that the jury will be impressed even though it is not a proper question, and the rules of ethics don't permit that sort of thing.

MR. FOREST: I don't have that certainty, Your Honor. I think the question is highly relevant; I believe, however, in the light of some of this discussion, that I might be found out of order.

THE COURT: Ask your question.

MR. FOREST: In the question of value, does the draft board place any estimate on the value of human lifes that are symbolized by the individual files?
MR. SAMSON: I object to that question, Your Honor.
THE COURT: The objection is sustained. Now, that's the type of question I'm referring to, Mr. Forest. (Laughter in the court.) Please, no demonstrations. You may argue to the jury about these concepts, which you are advancing verbally at the present time; but the Court cannot permit you to ask questions like that, because nothing like that was brought out on the direct. It has nothing to do with the value of the file. That is not relevant. ....
(argument regarding what should be discussed in jury's presence, etc., followed)
BY MR. MARVY:
Q I just want to refresh my memory about something for a moment, Mrs. Junge. You said that it took around five weeks for you to finish all this work, but you didn't soend all your time on that, is that correct? You did continue during that five week period to reclassify people; induct them; and all the normal things that you dox.
A Yes.
MR. OJILE: What was your answer, ma'am? I didn't hear you.
THE WITNESS: Yes.
MR. MARVY: Did you enter the office on September 25th and begin normal work, or was the damage to such an extent that you couldn't carry on your normal work?
A No. We worked that night, the 24th. We held our bk board meeting as scheduled.
Q And then...the actual disruption was minor....you were still able to carry on your normal activities.
A Yes.
Q I see. Thank you very much.
.....
REV. HIGGINBOTHAM: Who owns the Selective Service files?
A Pardon?
Q Who owns the files in your board?
THE COURT: End? E*N*D?
BY REV. HIGGINBOTHAM:
Q Who owns the files?
A I have charge of them. I suppose they are owned by the government.
Q Okay. Do you represent the U. S. Government?
A Yes.
....
MR. MARVY: You testified earlier, that while these files...were in the process of reconstruction...that you continued to induct. Are you aware that that breaks the Selective Service regulations?
A If you had a volunteer, you could induct him.
Q Yes.
THE COURT: I'll ask -- is that relevant, Mr. Marvy? The fact that the matter you are now bringing up? If you think that the Selective Service office broke the law by continuing to operate, is that relevant?
MR. MARVY: Yeah.
THE COURT: Well, the Court disagrees, and the Court rules that you -- she need not answer that question.
MR. MARVY: I wonder if I could hear the record. I believe the witness did answer.
(Record read.)
THE COURT: Well, anyway, that line of questioning I'll have to rule it's not relevant, but the answer has been given, and the Jury has heard it, so it may stand. Any other questions?
(None--witness excused.)

(Witness Edward Lane, U.S. Army major on active duty, stationed at State Selective Service headquarters, Madison, as administrative officer; field is management of the personnel connected to the Selectice Servuce Boards throughout Wisconsin, and the maintenance of all records; testifies re time study survey of May 1st; state's exhibit No. 13 marked...)

MR. OJILE: Mr. Larson, I'd like to object to any questioning that has to go to replacement value on the basis that that's not the criterion used in Wisconsin Statutes for deciding whether or not a felony was committed, or a misdemeanor. It's either market value or replacement value, whichever is less. Obviously replacement value is higher than market value, and therefore market value has to be the criterion.

THE COURT: You mean, how much they can sell these for on the open market?

MR. OJILE: That's exactly what the Wisconsin Statute says. They have been revised in the late -- early 1960s. They threw out all the other cases of embezzlement, larceny --

MR. SAMSON: If the court please, I have to --

THE COURT: Let him finish the statement.

MR. SAMSON: Objection. I think it should be outside the jury.

THE COURT: Well, we'd have the Jury going in and out of the room quite a bit of the time. The matter of determining value is for the Jury.

MR. OJILE: It's clear in the Statutes. It is a matter for the Jury.

THE COURT: On the instructions given by the Court.

MR. OJILE: And it has to follow lines considered in Wisconsin Law that the value in this case that is to be market value or replacement value, whichever is less. And then, it's a matter for the Jury to decide. I don't want to --

THE COURT: The Court understands your point. You may argue this to the Jury, at the time that you make your summation.

MR. OJILE: This is prejudice against us. That's what I consider this stuff.

THE COURT: Prejudice against you?

MR. OJILE: Certainly. It's talking about replacement value over $100, which is irrelevant in this case. And if it's entered, I would consider that the Jury is hearing prejudicial material, and actually, declared a mistrial -- or --

THECOURT: That will all be taken in due course, Mr. Ojile. The Court understands your points. We will proceed.

MR. OJILE: What's your decision?

THE COURT: The matter of value will not be determined now. The District Attorney is going to continue to submit evidence, through this witness. That is what the assumption of the Court is, and when that is in, and other evidence is submitted, we will arrive at an instruction for the Jury, and they will, from the instruction and that evidence, determine valxue.

Father Harney?

FATHER HARNEY: In other words, you'll still let the prosecution still continue to prejudice the case.

THE COURT: They have a right to present their case, Father Harney.

MR. JACKSON: If the Court please, the Jury should not be allowed to hear this. This is --

THE COURT: Mr. Jackson, how is the Court going to know what Father Harney says? He raises his hand, and I recognize. And he makes a statement like that. You tell me.

MR. JACKSON: We've asked several times. Let them all have a turn, outside the presence of the Jury.

THE COURT: And then control it? It's very difficult to do. The trial will proceed.

.....

(Direct examination of Major Lane by Mr. Samson....)

Q Major Lane, have you been able to ascertain how much it costs Local Board

46 -- strike that. Have you been able to ascertain how much it cost Local Board 46 to register a registrant in the year of 1968?

A Yes, I have. It costs 98¢ per registration action, counting the time of the person conducting the registration only.

MR. MARVY: I object to these questions. They're irrelevant.

THE COURT: We are dealing with the cost of replacing the --

MR. MARVY: No, we're not.

THE COURT: Well, just a moment, how could this be relevant, Mr. Samson?

MR. SAMSON: I would be happy, Your Honor, to explain the State's theory of value in this case.

THE COURT: All right, have the jury -- out of the presence of the Jury. The Jury may retire to the Jury Room.

(Whereupon at 4:30 pm the jury left the courtroom.)

THE COURT: All right, Mr. Samson, you may proceed to explain. Mr. Samson, may I give you the Court's concept on this matter?

MR. SAMSON: Certainly.

THE COURT: ...The Court is, at this time, of the opinion that the cost we must arrive at, although it does not have to be a definite figure because the allegation is that the property taken exceeded $100 in value -- but what we are concerned about is how much did it cost over and above the original cost to replace these files.

MR. MARVY: That is not what the Statute says.

THE COURT: It isn't?

MR. MARVY: There is a very clear definition of value.

THE COURT: Mr. Marvy, let's take an industry in this community, any one -- Allis-Chalmers Corporation -- and let's say that someone broke into the place and destroyed files containing numerous orders from customers and jammed up the works there, so that nobody could operate until they managed to replace them through means of communication that they had. Their loss could be very high, but try to sell those records on the open market. You'd get nothing for them at all.

MR. MARVY: I'm quite sure that the law --

MR. OJILE: 943.20, Sub Paragraph 2, Section C, says value means the market value at the time of the theft or the cost to the victim of replacing the property within a reasonable time after the theft, whichever is less.

THE COURT: Just a moment, I had not turned to that page. 943.20?

MR. OJILE: Yes, sub---

THE COURT: What sub section?

MR. OJILE: I think Sub Section 2 and then Section C.

THE COURT: All right.

MR. OJILE: All that's the part that relates to this. The other part goes with property stolen which is a document evidencing a chosen action or other intangible rights, and tha t refers to deeds or I.O.U.'s and so on. And then it says value means either the market value of the chosen action -- and this goes into chosen action again -- or the intrinsic value of the document, whichever is greater, and that doesn't apply. The first part applies clearly in this case, the market value or replacement value, whichever is less.

THE COURT: I understand your argument. Now, Mr. Samson --

MR. OJILE: I'm not quite done, Mr. Larson. Could I finish?

THE COURT: Well, you're out of order, because the District Attorney has the first chance to argue, but I'll let you finish anyway. Go ahead.

MR. OJILE: That's all right. Iwant to be in order.

THE COURT: Mr. Samson?

MR. SAMSON: Your Honor, clearly the value of Selective Service records, although I think we can safely say that when the legislators were drafting the statutes, obviously they were not considering the destruction of Selective Service records -- however, one must read in a certain amount of common sense into

the statutes. They must be read so that they make sense.
THE COURT: The Court agrees.
REVEREND HIGGINBOTHAM: Is the District Attorney also willing to include that on the other statute?
THE COURT: Well, the Court isn't going to spend very much time on this matter of value, because in the Court's opinion, what would be the value to sell these records on the open market cannot be ascertained, but how are you going to go about proving it?
MR. SAMSON: Are you asking me?
THE COURT: Yes, I'm asking you. How are you going to prove it through this witness?
MR. SAMSON: We have alternative ways. The first way would be that we can prove that it cost the Selective Service System X number of dollars to take a registrant and have him register and classified once. Let's say that it cost a dollar --
THE COURT: Okay.
MR. SAMSON: -- for example. It doesn't happen to cost a dollar, but let's just say it did.
THE COURT: But Mr. Samson, what I'm getting at is this; that if this was done and it didn't cost anything at all to replace, that these girls worked overtime and did it for nothing, then tell me, where is the loss? Is that what they did?
THE WITNESS: No, sir, they worked overtime. Some free times too.
MR. OJILE: That's the question.
MR. SAMSON: I think it's obvious that they didn't work for nothing.
REV. HIGGINBOTHAM: I don't think it's obvious.
THE COURT: That's what you have to establish, Mr. Samson.
.....
(Prosecuting attorneys conduct an off-the-record discussion...)
.....
MR. SAMSON: ...The State proposes to prove the following: That it costs Ruth Junge -- that it takes Ruth Junge a certain amount of time to register and classify an individual. She gets paid a certain amount of dollars per year, Seventy Two Hundred she testified. By virtue of State's Exhibit No. 13, we know to the minute how much money -- pardon me -- how much time she spends registering and classifying people. It's a mere arithmetic problem to figure out how much money it cost to do this. That's the State's theory of value.
THE COURT: But Mr. Samson, if these files were taken and destroyed and had to be replaced, and Ruth Junge and the other stenographers, she said there's two, did all this work in their regular time at the office and were paid nothing more for it, then has the government sustained a monetary loss? I think the question here is, did they work overtime and were they paid for it and did the government have to pay extra to replace these files. I think that's the point.
MR. SAMSON: We have not been able to ask this witness enough questions to bring out the proof that the Court wants. It's sitting on the witness stand.
THE COURT: Well, call the jury back in, unless you have some --
MR. OJILE: We still have arguments to make.
THE COURT: Yes, Mr. Ojile?
MR. OJILE: Well, it seems to me the Court is ruling that a Thousand Dollars is less than zero, and I don't think the Court means that, do you, that more money is less than less money?
THE COURT: Go on, Mr. Ojile.
MR. OJILE: Well, according to the statute then, the criterion that must be used to decide value in a situation like this, which is indeed kind of mix

unique, must be market value or replacement value, whichever is less; and 44 Marquette Law Review, Page 253, the beginning of the article on the criminal statutes -- this is written I think in 1960, '61 -- and it has to do with the revision of the statutes where they removed much that had to do with what used to be called embezzlement, bail rights and so on, a few different kinds of larceny. What they were trying to do was simplify the statutes and put it in a model penal code. In the model penal code, they had one kind of criterion used for value, and it would have covered situations such as this. They decided that they did not want to use that kind of model penal code. And, in effect, when they put in a statute value meaning market value or replacement value, whichever less -- when they decided on that language, they, in fact, knew that there were situations which would involve a market value which was less than the replacement valie; which, in effect, might mean that there might be a major burglary or a major attempt at in which a lot of different kinds of files are stolen and yet it is not a felony, and, in fact, would be a misdemeanor. What thet means then is that this Court has nor jurisdiction over this crime, that, in fact, it's a misdemeanor and that we should go to a lower court.

Secondly, the reason we did this act was because we considered draft files precisely worthless; and if we thought they were worth anything at all, we would never have destroyed them, and that's why we did it, and that's why we thi that this is a very relevant statute, and that's why I think any material that they present is actually going to prejudice the jury to think that these files are worth money, and they are not. They're worth exactly nothing. Who would want a draft file?

MR. SAMSON: Without --

THE COURT: You don't have to reply. Mr. Marvy has a chance first, and then you may, if you want to reply....

MR. MARVY: For the moment, assuming the overruling of our position on this, the wrong test is being used. And even to go to the validity of their test, a study done in May, as to how much time was spent and how much it cost the State to register and reclassify individuals and so on, does not go to the issue of what it costs them to replace particular files that were removed, destroyed, whatever, damaged, in September, if no records are submitted which -- you see the point I am tryin g to make?

THE COURT: Well, that's what this witness is going to go into, I understand, Mr. Marvy.

MR. MARVY: The point I was trying to make with the clerk when the clerk was on the stand was that they didn't have to do any of that work, right? Even if the Court rules that replacement cost is relevant here, I think it must rule that it is minimum replacement cost which must be used. If somebody damages something of mine which functions -- say it's made out of plastic -- I don't think I could reasonably argue I should replace it with diamonds; and they have to argue -- they have to show that minimum cost was used in order to reconstruct those files; and in order for that purpose -- in order for a draft file to serve the purpose it is now serving -- in order for a file to serve the purpose that it was serving previous to their being damaged, all that was necessary for the Selective Service to do was to send out one letter and type up a manila envelope, and that's it.

THE COURT: Well, Mr. Marvy, you can ask this witness -- you can ask your witness whether this could be done.

MR. MARVY: All of this business of cutting corners off of burned records, I'm glad they had to do it, but it has nothing to do with the law.

THE COURT: Any more argument? Reverend Higginbotham?

REV. HIGGINBOTHAM: I'd like to know what a chosen action is.

THE COURT: Oh, for instance, a lawsuit that's pending that you would want to buy an interest in would be a chosen action.

REV. HIGGINBOTHAM: Oh, okay. So the way the law readsy is the value means the market value, as we have already gone through, and they give several ways of determining the market value if it's a document -- property stolen is a document evidencing a chosen action or other intangible right, which may well apply in this case. The val ue of the -- value means the market value of the chosen action or other right. Now, the State will grant that it's a human life at stake, then we could put a witness on to say what a human life is worth.

THE COURT: We could carry this argument on and on. Reverend Higginbotham and all the other Defendants, the Court is of a different opinion as to what criterion should be used to establish value. As of this time, the Court will permit the District Attorney to question this witness concerning his theory of value. I think we should get on with that.

FATHER JANICKE: May I ask, what's the Court's opinion as to value? Which opinion are you using?

THE COURT: I'm letting him establish now his theory through the witness. Now, if you want to bring in witnesses to establish a different theory, you can do that.

....

MR. OJILE: Could I see the source of law for this, please?

.....

THE COURT: The source of law for the Court's ruling?

MR. OJILE: Yes.

THE COURT: The Court must interpret -- and you correctly referred to the section which the Court uses as a guideline to value, but the Court goes along with the District Attorney's statement or is inclined to go along with it, that you have to blend common sense with what is said in the statute when one interprets it; and many times, statutes are subject to interpretation. That's what the Court is doing... but I will make a definite determination in that respect after you have had a chance to offer testimony....

MR. FOREST: I am just wondering, Your Honor, whether the essence of this witness testimony could either be synopsized by the prosecution, whether he might find out the most relevant factors here without the jury being presebt, because of what we consider x to be the highly prejudicial nature of what apparently the State's attempting here.

THE COURT: The jury must hear the evidence in this case, in order for it to make a determination of value.

MR. FOREST: We could establish the testimony to be relevant evidence in the case. Then the evidence could be presented in greater detail with the jury present.

THE COURT: Well, there's no need in taking any testimony if the jury isn't here, because the only reason he's on the stand here is to testify before the jury. Father Janicke?

FATHER JANICKE: Could the Court give an example of the first part of the statute where the market value would be enforced?

THE COURT: Where the market value would be? Well, I don't know if the Court has to give -- perhaps anything at all that is stolen has a certain market value and has a certain replacement value.

MR. MARVY: That's precisely the point.

THE COURT: It could be that an automobile, for instance -- I would assume in a case like that, if an automobile were stolen, that the replacement value and the market value would be pretty close to the same. It may be that the replacement value would be higher and, therefore, the market value would be selected.

FATHER JANICKE: All right, and in the case where you would have both the replacement value and the market value, according to this statute, the lesser of the two would be accepted?

THE COURT: That's right, Father Janicke.

MR. MARVY: Well, that's exactly what we're arguing.
THE COURT: I understand you are, but the Court cannot consider -- at least at this time the Court tends to believe that it is not proper to offer a draft record for ~~sale~~ sale in the open market to see what you could get for it and determine its value.
MR. MARVY: That means it has no market value. That means its market value is zero, which is less than a Hundred Dollars.
THE COURT: We will have to proceed, gentlemen. I don't see where we're getting. We're arguing the same point over and over. We've been at it now for a half hour.
(a small amount of further argument, similar in content...)
....
FATHER CUNNANE: Could we adjourn, Your Honor. It's awfully stuffy in here. We've been in here since 2:30.
....
(Whereupon at 4:55 pm, the jury was dismissed...)

May 16, 1969

(continuation of testimony by Witness Major Edward LANE)

BY MR. SAMSON:

....

Q Now, you employ Mrs. Ruth Junge, is that correct?
A That is correct.
Q And she is the executive secretary of Board 46?
A That is correct.
Q Is she paid, or does she work gratis?
A She is paid.
Q How much is she paid?
A Approximately $7200 per year.
Q All right. And that's based upon -- strike that. What is the basis of her pay?
A Based upon a 40 hour week.
Q If she works more than 40 hours, is she paid more?
A Yes. She would, either be paid overtime, or we would allow her to take compensatory time off at a future date, to equalize the extra work that she has done.
Q Does she have the choice of taking either the money or the time?
A She has the choice of taking the money, if I have it in my budget. But, if I don't have it in my budget, I would ask her to work a given number of hours, and then take next Friday, for example, off, and have a long weekend.

(further testimony: 98¢ clerk time in registration of one individual, $1.18 for each classification action; 765 cover sheets with contents, all 1*a, missing from Board 46, were recovered in various states of destruction; 871 had been taken, there check showed; 106 were entirely gone; he testifies that "the replacement of the file that was lost or destroyed would be considerably more expensive than creating the original file"...the reason being that "it would take quite a bit more to dig the information out that we needed from our other records"; $2.16 the "bare minimum" cost of replacement for each file; Ruth Junge is paid approximately $3.50 per hour; "She worked every day, and she was doing some recreating work on these, and I paid her for these days that she was doing this type of work".)

MR. MARVY: I don't believe the prosecution has established that any time has been spent recreating the files.
THE COURT: Well, Mrs. Junge testified that she worked in the evening and that other girls work in the evenings as well, if I remember.
FATHER CUNNANE: He also said she took some days off.
MR. GRAF: He also stated she made $7200, which is the normal fee for the year anyway.
FATHER CUNNANE: Yeah, that's right.

. . . .

(Cross-examination by Doug MARVY: reads SS regulation 1613.14, asking if "this is part of the procedure that you've called registration that would be included in your study as time spent for the clerk?"--answer "Yes"--and asks further questions about the precise content of registration and classification procedures; it is testified that damage to the cover sheet could not possibly damage the registration card, as the latter is in the registrant's possession; "Have you ever tried to sell a draft file?" "No." "Are you aware of a draft file having been sold?" "No." "Are you aware of any way in which a draft file could be sold, if someone desired to sell it?" But there is no answer, as prosecution objects--"It's speculative"--and the Court rules that the question is "immaterial".)

MR. MARVY: I let the prosecution go on with immaterial questioning throughout.

(The witness states that "I can't give an answer" to the question "Did I understand correctly...that no record whatsoever was kept of the clerk's time spent on the

recreation of files?"...."I do know that I ordered these girls to recreate these records, and that they did so. We also had to continue the normal day-to-day work of the board at the same time..."; discussion of the "normal" work follows in questioning by Marvy.)

Q Is part of the normal day-to-day work of the board the meeting of the induction call?
A Yes, that's one of thr primary reasons for the system being in existence.
Q You mean ny the statement you just made, that the ordinary day-to-day work of the board was carried on, that induction calls were being met, and...that the board was still operating?
A I didn't say that.
Q You did say that the normal day-to-day work of the board continued, and you did say that part of the normal day-to-day work of the board was the induction...Is that not true? You did say this?
A Well, we kept the boards operating, yes. We kept them running.
Q You kept them running, meaning you did continue to induct people?
A I didn't understand --
Q You're under oath.
A I didn't understand your question. Your last question. I didn't understand that.
Q You kept the board operating. Does that mean you continued to induct individuals from Local Board 46?
MR. SAMSON: I object to that, Your Honor. It's immaterial whether or not they continued to induct people.
MR. MARVY: It was brought up by him, not me.
THE COURT: What is the relevance of that question, Mr. Marvy?
MR. MARVY: It's relevance is that it's in violation of Selective Service Regulation 1631.7.
THE COURT: The Court would rule that this is not relevant.
MR. MARVY: Well, it's relevant. The guy's going to Vietnam who is getting drafted out of Local Board 46.
THE COURT: Yes, Mr. Marvy. It may be relevant to them, but that is not before this Court.

....
BY MR. OJILE:
....
I would like to know if you know, specifically, how much money was used for recreati of the files that were destroyed on September 24th by me and others?
A I can't give you an exact answer on that. I can tell you what it cost us to create the files to begin with, and I'm positive in my own mind that it cost at least that much to recreate it. To give you an exact breakdown, I can't you exactly.

(further testimony establishes that her salary --Mrs. Junge's-- was not in any way effected by the draft record destruction)

....
BY FATHER MULLANEY:
Q Mr. Lane, you mentioned in your testimony under examination by the District Attorney that one of the functions of the Selective Service System was induction, is that correct?
A I don't know whether I testified to that or not. However, one of the -- I would be willing to say now that one of the functions of the Selective Service System is to supply manpower to the armed forces.
Q Would you say that that was the most important function of the Selective Service System?
MR. SAMSON: Your Honor, I object. It's immaterial.

THE COURT: How would that be material, Father?
FATHER MULLANEY: Well, I think it's related again to the question of value, the value of the records we're talking about.
THE COURT: Court can't see how that would be -- how can you connect that up, Father?
FATHER MULLANEY: Determining the value of records, induction, the importance of induction would appear to be related to, say, the reconstruction of records. So I'm trying to ascertain, really, what criteria are used in assessing value to records.
THE COURT: Now, you asked that question. What criteria is used. Do you want him to answer that?
FATHER MULLANEY: Well, yes. That's a paraphrase of the original question, I think.
THE WITNESS: Well, I go back again to this work study, work measurement study, and we have it broken down in increments, time measurements as to what Mrs. Junge did for a given time during the month of May 1968 and that is how I would arrive at how much it costs us for her to conduct a registration and to do the necessary clerical work on a classification action.
Q Well, let's go back to the original question, then, with that in mind. You say, then, that induction is the primary purpose, say, of the Selective Service System?
THE COURT: Let him -- I'm going to let him answer.
THE WITNESS: Well, I would answer that the way I did a moment ago. Our job is to supply manpower to the armed forces of the United States.
FR. MULLANEY: All right. Now, do you believe that that answer just given jives with the 1965 memo from General Hershey generally referred to as "Channeling" in which states, and I'm paraphrasing, that providing manpower directly into the armed services is hardly the main purpose. Anybody can do that. It's hardly a complicated administration task.
MR. SAMSON: Well, your Honor, I object to that question.
THE COURT: Well, Father, you think this goes to value?
FR. MULLANEY: Well, again, Mr. Lane has presented information with respect to the monetary value of the Selective Service records. WhatI'm trying to ascertain, really, is how Congress....
THE COURT: He has stated what he believes the principal function of the Selective Service board and agencies is and are.
FR. MULLANEY: All right. Are you familiar with the memo the General Hershey that is referred to as "Channeling"?
MR. SAMSON: I object. It's immaterial whether he knows about General Hershey's memo.
THE COURT: The objection is sustained. Just a moment. Mr. Forest?
....
MR. FOREST: It's my understanding that he is testifying because he is competent to speak about matters concerning the Selective Service System, is that correct?
THE COURT: Well, he is a witness for the State, and the Court will not conclude concerning what their entire purpose is. I believe the record has to speak for itself, Mr. Forest.
MR, FOREST: I raise that question, Your Honor, because his answer describing the main purpose of the Selective Service System is in direct contradiction to the statement of the National Director of that organization; and I can't imagine how an expert on questions concerning the Selective Service System if his answer contradicts such an essential point, something stated and certainly available to all to all draft boards from the National Director of that organization.
THE COURT: Well, Mr. Forest, you are now presenting an argument, you see, and there is a time when you may sum up your case and argue it to the jury, and you may present that argument, if you wish....

(further cross-examination of Lane; volunteered during WW II; GRAF questioning, trying to relate value of records to value of human life...)

Q (The records are kept) Three years after any death?
A Yes.
Q So, for example, if the person -- let's say the two thousand five hundred casualties since January 1st of this year to March 15, those young men, my brother Americans who have died in Vietnam, those records are still on file; those approximately 2500 casualties...
MR, SAMSON: If it please the Court, I object to the question on the grounds that it not material and it's not relevant and it's inflammatory.
THE COURT: And it is inflammatory.
MR. SAMSON: No question about its being inflammatory.
MR. GRAF: I'm inflamed about the deaths.
THE COURT: I just advise you, you must not ask a question that is intended to inflame the jury on an issue that is entirely apart from the subject matter he is testifying on.
MR. GRAF: I think that's a point of view. To me the lives of my brothers killed in Vietnam is not apart from the Selective Service System.
THE COURT: None of us like to see this happen. It is most sad and unfortunate, and everybody in the jury and everybody in the courtroom agrees, but this is not the issue before the court.
MR. GRAF: It's my issue, and that's why I'm here in court. Those lives are my issue.

(cross-examination by Father CUNNANE establishes that there were no copies of the destroyed records, though it would be the usual procedure in other organizations to have duplicates of important records)

BY FATHER JANICKE:
Q You testified that to classify a person costs $1.18, is that correct?
A In Local Board 46 in May of 1968, that's correct.
Q In May of 1968. It would have been less in April of '68?
A A wouldn't have any way of knowing that. I didn't conduct a work study in that month, Father.
Q All right. Fine. A person classified 1-A with $1.18 attached, in May, to that type of classification could have been sent to Vietnam with that classification, is that correct?
MR. SAMSON: I object, Your Honor. That's immaterial.
THE COURT: Father Janicke, you may, if you wish to, try to explain how that's material.
FATHER JANICKE: Well, I think we're talking about value. Trying to specify the value of a file. And if a file has any value, it has value to the person whose file it is in relationship to -- the value of the person.
THE COURT: These files belong to the United States Government.
FATHER JANICKE: If they belong to the United States Government, what are we doing in this Court?
(Applause from the audience.)
THE COURT: The Court will advise that if there's any outburst like that again, the Courtroom will be cleared, and all those persons who have applauded, or in any way acted out, will not be permitted back in the Courtroom. If this happens once more, I instruct the Bailiffs, and if any of the Defendants wish to know, no why we have additional Bailiffs, they can observe...
REV. HIGGINBOTHAM: Why didn't you say that before, Your Honor? I object.
THE COURT: Let the record show that there was an outburst of applause in response to Father Janicke's statement. The Court will not answer your question, Rev. Higginbotham.
BY FATHER JANICKE:

Q On that basis then would you say that this is blood money?
MR. SAMSON: I object to that, Your Honor. That's highly inflammatory.
THE COURT: Objection sustained.
FATHER JANICKE: No more questions.
BY MR. GRAF:
Q Just a very simple question. Very simple question. I think it's part of what -- you know -- talking about value of property. Would you consider the value of pro to be more important than the value of human life?
MR. SAMSON: I object to that, Your Honor. That's also inflammatory.
THE COURT: Objection sustained.
MR. GRAF: I'm sorry. I thought that was to the point of value of property. That's the whole point of our questioning.
THE COURT: Mr. Graf, you heard my prior statement.
MR. GRAF: I'll wait until later.
.....
FATHER HARNEY:

Q ...earlier you testified to the fact that this would go a little beyond the the files that you've been talking about presently -- the fact that Selective Service does have on record some people who possibly might have died, is that correct?
A That is correct, yes.
Q All right. Does the Selective Service System, in evaluating the price or value of a particular cover sheet -- would that value go up or down if the person dies? Is it all the same when he's living, or not?
MR. SAMSON: I object, Your Honor.
THE COURT: Objection sustained.
FATHER HARNEY: Your Honor, I'm just trying to make it known to the Court that I'm trying to evaluate the value of a particular sheet. Now, I think the value of a particular document, for the most part, does have to do with supplying manpower into the arned forces. If a person is not alive, or if he is alive, it would have something to do with the value of the particular cover sheet...

(discussion re difference between 1-A and 1-Y cover sheets)

REDIRECT EXAMINATION

(By Mr. Samson; Lane makes $14,000 a year, paid by Army via SSS)
.....
MAJOR LANE: ...they had to pay for my room and board over here, so --
Q How much was that?
A That $17.00 a day.
Q For how many days?
A I was here two weeks.
Q Is that 14 days?
A Yes.
Q All right. How much money is that, sir?
....
A Looks like $238...
Q $238 you were paid for room and board for the two weeks you were here, while you were working on recreating the records that were lost or destroyed as a result of the incident on September 24, 1968, is that correct?
A Yes.
.....
RECROSS BY FATHER MULLANEY:
Q I'd just like to state for the record that I have difficulty comprehending the relevance, because -- you know...and I mean nothing personal here -- but if it takes $17.00 a day for room and board for Mr. Lane, that's kind of staggering

to my imagination. I don't know why that should be against us. That it takes $17.00 a day.

.....

MR. FOREST: I was just so flabbergasted at the price spent for room and board. I want to know if this was cheapest he could find?

THE COURT: Well, he's a Major in the Army. I suppose he stayed at a hotel downtown, but we'll ask him that. Is that the cheapest you could find?

MAJOR LANE: I stayed at a hotel downtown, Your Honor.

THE COURT: And does this $17.00 include your hotel room and meals?

MAJOR LANE: Yes, sir. That's correct.

.....

(witness excused) (decision to go into chambers as a consequence of defense objections to the receiving of State's Exhibit 13, the work study report)

MR. MARVY: ....I object to the submitting the evidence on the basis that a study in May of 1968 has nothing whatever to do with the value of Selective Service Records...The Court tempirarily ruled in Chambers previously that replacement value is the test of value in determining the value of files and this document goes to the average cost of the original registration and classification... It is totally irrelevant.

....

Mr. SAMSON: ...Defendant's argument goes to the weight of the document, not to its admissibility. It's a matter of argument to the Jury, how much value that is, in determining what the value of the records are.

THE COURT: The objection is overruled. The Exhibit is admitted into evidence.

....

(discussion of previously entered defense motion for dismissal)

.....

THE COURT: ...some of you were quite surprised about a cost of $17.00 a day for the Major's stay in Milwaukee while he was doing work on these records... That's not an unusual amount, gentlemen.

MR. MARVY: We are all living now, and have been for quite some time -- testifying from my own knowledge -- on one, two and three dollars a day.

THE COURT: Yes. Well, if you register in any of these -- the Wisconsin Hotel or the Schroeder Hotel of the Pfister or Holiday Inn...and have all of your meals in restaurants or at the hotel, $17.00 is not an exhorbitant figure...

MR. GRAF: I can't afford that.

THE COURT: Son, I'm merely answering the inquiry by several of the Defendants concerning the cost which they thought was exhorbitant.

MR. OJILE: This reason for the surprise -- I think this might as well be on the record also -- is that most of us live very well on Twenty or Thirty Dollars a month, and probably the reason is we see money as very much at the root of the problem in society, so we put it aside as criteria for judgment of living.

. . . .

(discussion of additional bailiffs; Judge Larson says he authorized the extra, but was not aware of how many were assigned...)

(Recall of Mrs. Ruth Junge)

(she testifies as to ammount of time she spent recreating files: 54 hours, approximately; she testifies that she got paid for overtime but then states that her salary is unchanged this year other than it reflects a raise; she goes into some details regarding the manner in which the files were recreated; spent 3 full-time working days, Oct. 1, 2 and 3, doing nothing but reconstruction)

....

(discussion of documentation followed)
MR. MARVY: Well, I'm willing to accept what the witness says, except I'm in a rather strange position of believing that yesterday when the witness was here, this would have been a very normal question to ask of her; and now, because of our apparent attack on this issue, it is my opinion that overnight something has been created, and I don't believe such records exist.
THE COURT: Mr. Lane, bring in those records I referred to, if you can, on Monday.
MR. LANE: Yes, Sir.
MR. MARVY: Railroading.
MR. SAMSON: I object to that, Your Honor. That's highly improper. First of all, he suggested that I manufactured evidence ovefnight, and then he's suggesting that the thing is a railroad. I object to that.
THE COURT: Mr. Samson, I don't think he meant that evidence was manufactured overnight.
MR. SAMSON: Oh, I think he did. I think he's nodding his head. That's exactly what he did mean.
MR. MARVY: That's my opinion.
THE COURT: That isn't what the Court believes that you meant. Nevertheless, the Court has made its request of Mr. Lane. Any other questions of this --
MR. MARVY: I still think it's relevant. I'd like to go back to check the testimony.
REV. HIGGINBOTHAM: Your Honor?
THE COURT Reverend Higginbotham.
REV. HIGGINBOTHAM: I don't think the District Attorney would falsify evidence. For the sake of my record, I'd like to strike that. I don't feel he would do it.
MR. SAMSON: Thank you.
THE COURT: Yes, Mr. Marvy? Do you want to go back in chambers to argue?
MR. MARVY: No. The question was raised when the witness first came on, as to whether or not she did this reconstruction at the exclusxion of her normal work, and she said yes, and what I would like to see is some evidence of that... I would like to see the proof...
....
BY REV. HIGGINBOTHAM:
Q Mrs. Junge, you said you were paid for this overtime work, is this correct?
A Uh-huh.
Q Were you paid in cash money, or were you paid inx time off...
....
A Time off.
.....
MR. MARVY: ...I think the discussion is somewhat confusing for the jury with the continued use of the word "overtime". It's been established that there was not a single minute extra worked as a result of the destruction of draft files, and that's not overtime.
THE COURT: Well, that's argument, Mr. Marvy. That's argument. Mr. Forest?
BY MR. FOREST:
Q On October 1st, 2nd and 3rd, you testified that you registered no one?
A Yes.
Q To your knowledge, did amy persons report to Board 46 on those dates for purposes of registration?
A Probably, yes.
Q To your knowledge, if they did so report, were they registered?
A Yes.
Q Then the registration doesn't have to be done by you personally?
A No.
Q There are other employees of the board?
A Yes.
MR. MARVY: Then one more question, in continuation with Mr. Forest. During the

period of the day from 8:30 to 4:30 -- is that when the office is open?
A 8:00 to 4:30.
Q 8:00 to 4:30. On the days September 25th to October 25th, 1968, to your knowledge, did everybody who came to that office to be registered get registered?
A Yes.
Q Thank you.

(Noon recess.)

(Witness Patrolman GARY GRUNDY called; testifies he was dispatched to a fire; that he there arrested 14 persons; he identifies the defendants as among these 14; that he observed that it was draft records that were burning in the fire.)

CROSS EXAMINATION BY FATHER MULLANEY:
Q Officer Grundy, did the Defendants wait around for arrest?
A Yes.
Q Would you say that from your experience on the police force that this is the usual thing for burglars, arsonists and thieves?
A Each arrest is individual. Can't generalize.
Q Have you ever had, say, experience in arresting a thief before?
MR. SAMSON: I object, Your Honor. That's not material.
FATHER MULLANEY: What can I say?
THE COURT: Well, Father, I have said this a number of times, but at the summation of your case and your argument to the jury, if in fact you and the other Defendants did not leave the scene, if you were there, you may say so to the jury.
FATHER MULLANEY: Then my intention is to determine whether Officer Grundy has had enough experience on the police force to make arrests. Is that grounds?
THE COURT: Well, he is a policeman, and I would believe that your assumption he makes arrests is correct.
FATHER MULLANEY: I find this frustrating, as you can well imagine.
Q Officer Grundy, did the Defendants resist arrest in any way?
A No, they did not.
Q Did they feel, for example, that you had to draw your weapons in order to make the arrest?
A No.
MR. SAMSON: I object to the form of the question whether he felt one way or another. It's immaterial.
THE COURT: How he felt is of no materiality, and the answer is stricken. The jury is instructed to disregard it.
EXT BY FATHER MULLANEY:
Q From your experience, would you say that this is the usual way for a policeman, then, to encounter 12 burglars, 12 arsonists and 12 thieves?
MR. SAMSON: I object, Your Honor. Whether it's the usual way or not is immaterial. The question is whether or not he did, in fact, encounter them.
THE COURT: He testified as he did, and his testimony stands, and whether or not it is the usual way is not material, and the Court so rules.
BY FATHER MULLANEY:
Q Is it isual for those who are being arrested, for whatever the reason, and let 's say being afrested for burglary, arson and thievery, is it usual for persons who are being arrested on these charges to point out innocent by-standers as being arrested instead of one of the Defendants?
MR. SAMSON: I object -- I'm sorry, Father, did you finish your question?
FATHER MULLANEY: I think I did, yes.
MR. SAMSON: I object to that question for the same ground. What is usual or not is immaterial.
THE COURT: The Court is required to sustain the objection and does.
BY FATHER MULLANEY:
Q Have you ever met any other burglars, arsonists or thieves who asked to be

placed in a police van when they were in danger of being overlooked by the officers?
MR. SAMSON: I object to the question. It's immaterial whether he had ever found one before.
THE COURT: Objection sustained.

(testimony resulting from question by Basil O'Leary to the effect that Fr. Mullaney "made a statement to me stating that he had broken into the Brumder Building, was burning the files, and was protesting...then I received an affirmative nod from the rest of the members who had their arms joined, and I placed them under arrest"; Rev. Higginbotham objects to the question and asks that question and response be stricken from his record; request denied.)

(Witness Peter LORENZEN called, police officer, Milwaukee; arrived and saw "large group of papers smoldering"; State's Exhibit No. 14 marked--a red, 5-gallon "militar type gas can" recovered from the triangle September 24...)
BY FATHER JANICKE:
Q The fluid that was in the cans, was it poured out?
A I didn't pour any out.
Q Is the fluid still contained in the other cans?
A Should be. I didn't disturb it in any way...
Q And at this time that fluid is still in those cans?
A As far as I know.
Q It's dangerous.
THE COURT: Father, that's not a question.
Q It's dangerous, isn't it?
A I wouldn't know.
Q If it's gasoline, it's dangerous?
THE COURT: Well, Father -- how is that relevant -- if the gasoline is dangerous?
FATHER JANICKE: Well, if it's contained someplace, I wouldn't want it to blow up.
THE COURT: Whoever has custody will take good care of it, I'm sure.
Q You say in two of the cans there was a substance, which was other than the gasoline, namely napalm, homemade napalm?
THE COURT: There is no evidence to that effect, Father Janicke.
Q As far as you know from the evidence that you have seen from smelling it, it could be home-made napalm, is that correct?
A I don't know anything about napalm.
Q It's home-made napalm in two of the cans.
(discussion as to whether the contents of the cans would burn the draft papers)
Q ...The substance contained in those cans, if it were poured on the materials there, present, and ignited, they would burn...is that correct?
MR. JACKSON: Object to that.
FATHER JANICKE: And gasoline burns.
MR. JACKSON: I don't think he's testified to that.
THE COURT: No, he hasn't. But I think it's quite conclusive, Father, that when gasoline is poured on something and ignited, it burns.
FATHER JANICKE: Then, would that be admissible?
THE COURT: The Court takes judicial notice of the fact that when gasoline is poured on something and ignited, it burns.
.....
(State's Exhibit No. 14 received, without defense objection, into evidence.)
.....
(Witness Thomas MULTGREN called; with Milwaukee Police Dept; interviewed people and recovered evidence from 2nd floor of Brumber Building; recovered seven screw

drivers, 14 inches in length; 5 burlap bags--hundred pound size with draw strings; State's Exhibit No. 15 and No, 16 marked; the former a screw driver, the latter a burlap sack; he testifies to having observed pry marks on cabinets in Board 46; finger print of Doug Marvy found on one screw-driver; exhibits accepted with defense objection; recess called; afterward a stipulation entered that the thumb print was in fact Doug Marvy's...)

THE COURT: Now, Douglas Ian Marvy?
MR. MARVY: Yes, sir?
THE COURT: You heard the (stipulation) statement by the District Attorney?
MR. MARVY: Yeah.
THE COURT: Do you stipulate?
MR. MARVY: Yeah. I would have preferred my own words, however.
THE COURT: Now, you may do it in your own way. The Court permits you to do that, of course. You have the right.
MR. MARVY: Well, the stipulation, as to the fact that those were my fingerprints, is fine with me. And just in the interests of speed, I intend, as a Defendant in this case, to describe my activities in the draft board, and so it makes no difference whether or not I argue the fact that my fingerprints were on the screwdriver.

I suppose, as long as I have the floor at this time, I can make a statement, a brief one, if you'll permit me...relative to some comments I made earlier today in court, that were made in anger, as I would like to apologize for what I said.
THE COURT: Court doesn't recall anything you said in anger.
MR. MARVY: Well, I recall the anger, and it's not the anger I'm apologizing for, it's for what I said that seemed to contain certain charges for which I have no proof. I think anger is appropriate in this courtroom. The important thing is to control it and channel it in the right directions, in the same way that I think I channeled my anger on September 24th.
THE COURT: Well, all right, Mr. Marvy. I think you know what he was referring to.
MR. SAMSON: I do. I have no --
THE COURT: I don't know if the jury does.
MR. SAMSON: But at any rate, with that stipulation, Your Honor, if it please the Court, the State will rest its case.

.....

(Opening statements invited by the Court, and motions)

MR. MARVY: I would like to make a motion at this time to dismiss the charges. First I want to reiterate my position that Statute 943.20 (2) (c) is very clear in stating which test of value should be used in evaluating the value of the Selective Service files in question in this case, and that test is market value. Major Lane testified under oath that a draft file has zero market value.

Further, if the Court thinks there is ambiguity to which test of value should be used, I think the law is clear that this ambiguity should be resolved in favor of the market value test. Assuming there is ambiguity in the law, which is the position taken in Article 44, Marquette Law Review 288, which I quot "The code's"--meaning the Wisconsin State Criminal Codes--"...definition of value does not treat...the problem created by the person who misappropriates property believing it is of greater or less value than it is in fact, or the person who maliciously misappropriates property which has an insignificant market value but is highly prized by the owner."

There is both statute and case law which would indicate that the market value test should be applied.

As I understand what little I've been able to learn about law in

a week, it is customary to consult common law when present statutes seem not to apply. That was indicated in Court by the prosecution when they stated that the Wisconsin State Statutes did not seem to have draft files in mind. (interruption by the Court, inquiring if this is not the same argument that was made in chambers during the morning; Marvy responds there are additions, that the argument is not identical, and that it could not be abbreviated with the addition of insertions; returning to the custom of consulting common law when statute does npt seem to apply...)

In fact, there are Wisconsin State Statutes to this effect. 939.1...reads, "Common Law crimes are abolished. The Common Law rules of criminal law not in conflict with criminal code are preserved."

Paine versus the People, Six John's 103, the following was said, "To steal another's letter which has no value is not larceny." I might add that even if th letter was important to the individual from which it was stolen, and he felt he had to rewrite it at great expense to himself, it would still not have been larceny...One is able to take suit to Civil Court.

In State Versus James, 58, New Hampshire 67, it was stated, "A printed list of names and dates is a chattel, but it is not a writing containing evidence of any existing debt, and cannot be the subject of larceny, because it has no value. Its value is what it is capable of being sold for a fairly conducted sale."

In Common Law versus Riggs 77 American Decisions 333, it says, "Things of no value are not subject of larceny." Also, from discussion with attorneys and some reading I've done recently, I understand it is customary in cases of ambiguity to consult other State Statutes and State Laws for assistance in making rulings.

In consulting Michigan Statutes, ...I found that Michigan's old Statutes had no value definition involving the common law. In 3 Michigan Criminal Digest, Section 18, it was stated, "The value of property which is the subject of larceny is the market value fixed by the rates prevailing at the time and place the theft was committed."

Quoting from a decision in People versus Gilbert 163 Michigan 511, "The special value of property to the owner is not the proper basis for proving value, and the testimony of the owner as to what the property was worth to her is immaterial."

Michigan Statutes were revised in 1957. One hundred dollars is now the line drawn between felony and disdemeanor, the same as in Wisconsin, and the definition of value has remained the same.

Further, there is case law in Wisconsin to indicate that the tentative ruling made in this Court yesterday as to the need for a "common sense interpretation" is an incorrect ruling. This case law I refer to is about the strict construction of criminal statutes in favor of the Defendants.

In Walter W. Ofling, Inc. versus The State, 177 Wisconsin 394, a 1922 case, it was stated, "If there is any doubt as to whether the act charged is embraced in the prohibition, that doubt is to be resolved in favor of the accused.

In State versus Columbia National Life Insurance Cp., 141 Wisconsin 557, the following was stated, "Statutes imposing penalties must be strictly construed, and will not be extended by implication. Doubtful questions thereunder are to be resolved favorably to those from whom the penalties are sought to be recovered."

The penal Statute, which is open to construction, is to be limited rather than extended. This is a quote from Miller versus Wisconsin,133 Wisconsin 183, "A penal statute which is open to construction is to be limited rather than extended, thereby in favor of the person saught to be penalized; so

that in a case of fair doubt as to which of two reasonable meanings readable out of the law were intended, that one should be adopted which is most favorable to the accusedd."

In State versus Belinski, 156 Wisconsin 78, the following was stated, "If the legislative purpose of a penal Statute is uncertain and the words used may be one thing or another according to the intent with which they were used, they should be used to minimize rather than extend penal character."

Further, if the Court persists in its rulings that market value is not the appropriate test, then it must be conscious at this time of the weakness of the State's case.

While I would need more time to study the transcripts of today's proceeding the followings things are now clear:

There has been no evidence produced that would a single penny was expended above and beyond normal expenditures in order to reconstruct the damaged files.

Furthermore, normal activities have carried on uninterrupted.

Two, not a single document has been placed into evidence which would substantiate in any way whatsoever what the two witnesses from Selective Service have speculated about; that there has been a considerable amount of speculation on the part of these witnesses is clear. Not only has there been speculation, but I would charge that I have been denied certain rights regarding the examination of these witnesses.

I was cut-off from a line of questioning on May 15, yesterday, when I asked for documents to show time spent on re-constructing files. I ceased questioning when the Court stated, and I quote, "This Court requests the District Attorney to provide evidence concerning the records of time which this lady and others put into reconstructing these files." The District Attorney stated that his next witness was going to do that. On that assurance I ceased my questioning along the lines I had begun. Prosecution's next witness, then, testified to certain studies not material to the Court's request, and not going to the reconstruction of files, but to previous registration and classification. The inconsistencies and vagueness of the testimony concerning the amount of moneys spent on the reconstruction of files attests directly to the State's inability to prove beyond reasonable doubt that the value of the files was in excess of $100.

Since the State was unable to prove this, I ask that the charge of arson and theft be dropped. Further, since the burglary statutes under which we are charged contains the statement, "with the intent to commit a felony," and since the theft charge would be a misdemeanor and the arson charge dropped carries no penalty, and since we were very aware that draft files have no value, we could not possibly have intended to commit a felony.

I therefore move, in addition to dismissing the charges of arson and theft, that the Court also dismiss the burglary charge.

It seems very clear that because, in the nature of this case, that there may be some pressure to rule unfavorably in this motion, though the law seems clear enough to me in this matter on the determination of the appropriate test for value, I think it will take some courage as well as a common sense interpretation of the law. Thank you.

THE COURT: Any other motion, at this time? Or does the District Attorney want to answer it?

MR. SAMSON: We have no response, Your Honor, except to say that the State believes it has established a prima facia case against each and every Defendant on each of the three charges in the information.

....

(All Defendants join in the motion presented by Doug Marvy) (motion denied)

Rev. Higginbotham: I would also like to renew a motion I made earlier, I believe, or if I did not make it earlier, I would now make it, that the charges be

dismissed because it is not possible that I get a fair trial in this courtroom at this time, because of Your Honor's positions as stated throughout the trial.

THE COURT: Because of the rulings that the Court has made along the way, Reverend Higginbotham?

REV. HIGGINBOTHAM: Yes, sir.

THE COURT: Any response to that?

MR. SAMSON: None.

THE COURT: Do you oppose it?

MR. SAMSON: Certainly. My no-response possibly was mis-read. I feel it is not worthy of a response. It has no merit.

THE COURT: The Court denies the motion. The Court believes that you have had as fair a trial as it could possibly give you.

.....

(Opening statements by Father Harney, Father Janicke, Mr. Ojile, Rev. Higginbotham, Mr. Marvy and Father Mullaney.)

.....

(further remarks from the Couty to spectators in regard to applause--"If you think you are helping the Defendants, you may not be helping them at all. The jury may judge them harshly for what you have done..."; court adjourned at 4:40 pm for the weekend.)

MAY 19 ,1969

(in chambers conference: Judge Larson re applause during opening statements, stating that if further "outbursts" occur, "then the Court will be obliged to clear the courtroom.)

MR. O'LEARY: I am the first Defendant, and I will go on the stand and be questioned by Father Mullaney.

....

(Court, at request of Prosecution, requires narrative presentation)

....

MR. O'LEARY: My name is Basil O'Leary. I'm 48 years old. I'm a member of a religious congregation called the Christian Brothers. We have seven colleges in the United States, ranging from Manhattan in New York to St. Mary's College in San Francisco. We have a hundred or so high schools. Accordingly, my name is sometimes Brother O'Leary.

I teach at St. Mary's College in Winona, Minnesota. I've been there for some 17 years, teaching economics and moral theology. My educational background consisted of a master's degree in philosophy from Loyola University in Chicago, a master's degree in economics, University of Chicago, and a Ph.D. Degree in economics from the University of Notre Dame. I have been more or less accustomed to the peace of academic life over the past several years, but increasingly it seems to me that the doctrine or knowledge of the classroom is irrelevant, in a way, to the situation which we find ourselves in the United States, a situation which many people have characterized as being a sick society.

THE COURT: Now, just a moment. Court feels that you are going afield from the issues in this case, Mr. O'Leary, and ask that if you have defense for what occurred that you relate it.

MR. O'LEARY: I have identified myself, Your Honor, as to how I find myself and why I've freely chosen to be in this courtroom today ...All that I wanted to add to that is that the time seemed to be come to get out of the classroom and out of the monastery and into the streets, into the world of political activity in a way that would be adequate to the objective that I had in mind, the objectives being significant politically.

The basis for my defense today lies in Wisconsin Statute 939.45, which is called the Defensive Privilege. The relevant paragraphs of this Statute read, first of all, that the actor's conduct is privileged, although otherwise criminal, (in certain situations). The defense of privilege can be claimed under any of the following circumstances...when the actor's conduct is in defense of persons or property under any of the circumstances described in Statute 939.48 or 939.49.

Now, in 939.48, entitled Self Defense and Defense of Others, the Statute reads, "A person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what he reasonably believes to be an unlawful interference with his person by such other person. The actor may intentionally use only such force or threats thereof as he reasonably believes is necessary to prevent or terminate the interference. He may not intentionally use force which is intended or likely to cause death or great bodily harm, unless he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself."

THE COURT: Just a moment. Where are you reading from, from what section?

MR. O'LEARY: 939. 48 No. 1. In the same paragraph, Number 4, it reads, "A person is privileged to defend a third person from real or apparant unlawful interefence by another, under the same conditions and by the same means as those under and by which he is privileged to defend himself from real or apparent interference... provided that he reasonably believes...that his intervention is necessary for protection of the third person."

The way I read these statutes is that the act that took place...was an effort to forestall injury to third persons, third persons being people who may be drafted into a war of doubtful legality. I think what factually has to be established is that such a threat does exist, a threat suggested by the statute... that people are being drafted to kill...in a war of demontrable illegality and/or immorality. The statute is clear here that the threat merely has to be experienced by the actor or, in this case, the Defendant, and that whether the threat is real or not is of secondary consideration. What is important is that the threat was experienced by the actor, and that, secondly, he has grounds for reasonably believing that an unlawful interference is being made into the lives of people.

So, what I think that I would have to prove in this defense is that I reasonably believe the facts are such that a serious threat is being made to the life of a third party, this third party being people who are being drafted by the files that were burned on September the 24th.

The way I understand the statute is that this is a factual issue. The factual issue again is whether such a threat exists, and secondlt, whether or not I can give proof of a reasonable belief that the facts are such, that a threat exists. I think it's for the jury to determine whether this threat was apparent, not apparent in the sense of not being unreal, but in the consciousness of myself and the other Defendants that it is true, that there is a war in Vietnam, and that there is some question about its legality and morality; and secondly, what evidence do I have for doubt regarding its legality or morality.

The jury, it seems, must also decide whether or not I can reasonably believe this, and Ix intend to adduce evidence purely from the point of law, that there is reasonable belief that injury was seriously being threatened to people...because of the draft and the war that is being fought...

(makes reference to State versus Kenzelburger, 28 Wisc 2nd, page 652, a jury instruction regarding the Privilege statute...) (Prosecution objects on the grounds O'Leary is presenting argument, not testimony; Court agrees...)

MR. O'LEAHRY: What I would want to do is to situate the act that took place on September 24th in a context -- in a legal context, I think, which would make it understandable and not be subject to what Mr. Ojile characterized as a truth of a fanatic, the one who has total knowledge of a partial truth. I think the question of what happened on September 24th can be separated from the realm of morality, that the questions of morality have little relevance to the immediate context of this courtroom, and that we can abstract from the question of morality, as far as I'm concerned. That is, whatever a person's motivations are, I don't think they're much of a plea in court, as to what he does.

It is my belief that I can say that within the context of the legal system of the United States, there is evidence...that would justify the kind of conduct that took place on September 24th...besides (it) being looked at from the standpoint of burglary, arson and theft, (it) can also be looked at under the context of civil disobedience, and there's considerable writing on the notion of civil disobedience in our country. And I'd like to submit evidence of the kind which is an academic kind, and this presentation is more academic, I suppose, than legal, and it is unredeemed by good pedagogical procedure; but for the sake of the record and for the sake of information to the jury, I would like to make reference to an article, Volume 43, New York University Law Review, March 1968, entitled "Civil Disobedience and the Political Question Doctrine" by Graham Hughes; here he sets forth some criteria for this kind of act, which I would like to call symbolic; political disobedience instead of the traditional kind of civil disobedience, as written about by Thoreau and others, that this symbolic political disobedience has the aspect of taking initiative, in this case the initiative to prevent harm to a third person.

In the course of this article, Hughes writes down four conditions for this kind of activity. The first condition...is that the Defendant had the purpose not

of disobeying the law, but of demonstrating its unconstitutional character. Here, the character of the law lies not so much in the pieces of paper burned, but that these happen to be Selective Service Records. Secondly, that there was legitimate doubt about the constitutionality of the law as perhaps evidenced by expert testimony about the state of professional opinion.

(Proecution renews objection that O'Leahry is arguing, not testifying; Court agrees, asks witness to save the arguments for the closing; O'Leahry responds that he is simply trying to indicate the reasonableness of the belief that motivated him to destroy draft records, a demonstration on his part that is a prerequisite to his being protected by the Privilege Statute..."All that I want to establish is that (supportive) scholarly opinion is available to me...All I'm saying is that in the (professional and legal) literature...there is evidence which would establish that...a person could reasonably do what happened on September 24th..."; he proceeds with the Hughes article...)

MR. O'LEAHRY: (Hughes) further points out that there is no way, short of disobedience, by which the Defendant could have obtained a determination of the validity of the law; (and) finally, that the disobedience was nonviolent. I would also point out, along this line of verification of scholarly and legal opinion on the matter...in an article called "Direct Action, Civil Disobedience and the Constitution" Archibald Cox, former Solicitor General of the United States, has made some statements about this ... kind of action and its role in the United States...He says ...in a book called Civil Rights...edited by himself (and published by the) Harvard University Press, 1967... he says, "Nevertheless, when the cause is just, when there is urgency and when other channels are closed, we should defend the social and moral right to disobey a law that one sincerely believes will be held unconstitutional, even though he turns out to be wrong. Whatever harm is done to the principal of consent is balanced by the need to conform to the law to the demands of conscience." And on page 23, "Social protest and even civil disobedience serve a law's need for growth. Ideally, reform would come according to reason and justice without self-help in disturbing almost violent forms of protest."

(Court: Just a mement. There is no particular objection at this time, Mr. O'Leahry, although the Court questions the relevance of what you're reading, but you're reading it too fast.)

MR. O'LEAHRY: Going back, Archibald Cox is saying, "Ideally, reform would come according to reason and justice without self-help in disturbing, almost violent forms of protest. Still candor compells one here again to acknowledge the gap between the reality, partly on the stimulus of protest.

In the Encyclopedia of Social Sciences, Christian Bay has an article on civil disobedience indicating that he is accepted as an authority on this sort of thing...

In a book called Political Theory and Social Change...by David Spitz....he makes this remark (on page 175), "At such times public witness by way of disobedient acts may be the only way to convey to the average citizen an awareness of the existence...of dissent. At times of hero worship, resistance to higher patriotic sentiments must perhaps be heroically bold in order to be visible, unless the average citizen be not aware of the dissent..."

Now the next step in the argument, I think, is to indicate that in the United States, and even more so in the world forum, there is considerable writing that the war that is being fought in Vietnam is of doubtful legal --

MR. SAMSON: I object, Your Honor. It's immaterial.
THE COURT: Objection sustained.
MR. GRAF: On what grounds, Judge?
THE COURT: The legality -- did you say the legality?
MR. O'LEAHRY: Yes.
THE COURT: -- of the Vietnam war is immaterial, that is the grounds.

REV. HIGGINBOTHAM: Not immaterial to 939.45 -- perhaps (it's immaterial) to burglary, theft and arson -- but it wouldn't be immaterial to our reasonable belief that we were acting to save one of us.

THE COURT: You may so state --

REV. HIGGINBOTHAM: -- when you argue to the jury, but as far as presenting evidence. Court must rule that it is irrelevant on that issue.

MR. O'LEAHRY: Judge --

THE COURT: Father Mullaney wants to be heard.

FR. MULLANEY: I was wondering if, Br other O'Leahry, ...this refers...not so much t your establishing legality or illegality, or whether this testimony is being used to establish your intent; and if so, then I would say that this is very relevant, and in order for you to establish intent, in order for you to establish reasonablemess of belief under 939.45, you would have to give us a basis...for the conclusions you arrived at. Is this what you are saying?

MR. O'LEAHRY: That's the purpose of this line of argument...merely to give evidence ...that in the journals of law there is considerable opinion as to the (Vietnam war's) doubtful legality. That is taking place in the political arena, and all I want to refer to is that...there is scholarly opinion, not adversery opinion, that is, objective opinion , that would lead one to reasonably believe that I had reason so to act on September 24th, 1968, and be able to appeal to Statute 939.45.

THE COURT: Well, you made your statement about -- you haven't said you did anything yet, but you've been giving a lot of reasons why one would do whatever is done, and you don't have to say what you did, Mr. O'Lea ry.

MR. O'LEARY: Yes. I think this is in conformity with the statutes, that evidence has to be given (regarding the reasonableness of the Defendant's action)...That is, not what I would reasonably believe, but some hyp othetical, reasonable citizen...and all the jury has to decide is whether a hypothetical, third person would have reason for so acting.

THE COURT: Well, the jury will make a determination. The difficulty is that there has been an objection as to the relevance of the morality or legality of the Vietnam war.

MR. O'LEARY: And I would agree with them all together. The point I am making is I'm referring to written evidence in scholarly journals that there is some question about the legality of the war, and I'm citing this as evidence required by the statute that a citizen could so act as people did on September the 24th. See, I'm not arguing substantively. I'm merely alerting the jury and the Court to the literature.

THE COURT: Well, you have gone quite far on that subject, Mr. O'Leary.

MR. O'LEARY: I'd like to introduce --

THE COURT: I must make a ruling --

MR. FOREST: Judge, before you make that ruling could I -- Basil has a paper of mine which I have to refer to before the Court makes a ruling.

THE COURT: Yes.

MR. FOREST: Basil, in his attempt to explain the reasons that he undertook actions which he apparently intends to describe...has made reference to certain state statutes, and has, in fact, quoted from that part of the statute on defense of privilege that makes reference to the reasonable belief that certain actions were necessary (in order) to prevent an unlawful interference...with another person or persons. I realize that we may not be following the most classic means...the best means of logically bringing (relevant information) into evidence...but it seems to me that, if we are to carry out this defense, it seems appropriate (that we be able to express the) grounds for our reasonable belief that there was an unlawful interference with another person or persons; we'll have to speak to the question of whether the interference we speak of was lawful or unlawful.

THE COURT: There is a point along the way when the Court must rule, and I must rule at this time that he has stated that one of the reasons that something happened on the 24th of September, although he has not stated specifically what his involvement was, if any, is because the Vietnam War is illegal.

MR. OJILE: That's not what he said. He said the war is of doubtful legality.

THE COURT: All right, the war is of doubtful legality. I believe that's what he did say. He has made that statement. It is in the record and may stay there, but to go on from there and describe...what his sentiments are or beliefs are concerning that contention, the Court cannot permit.

MR. O'LEARY: I think, Your Honor, that I did not say that the war is illegal or of doubtful legality. I think that would be irrelevant to the issue at hand. What I'm asserting is that there is evidence in the United States, a particular kind of opinion, scholarly opinion, that there is some question about the legality of the war in Vietnam.

MR. SAMSON: And I submit, Your Honor, it's immaterial no matter who thinks the war is of doubtful legality or morality or what have you.

THE COURT: Yes. That is correct. The statement made by the District Attorney is correct, and the Court must sustain his objection to any further testimony on that matter.

MR. O'LEARY: Which matter, Your Honor?

THE COURT: The matter of the possible illegality of the war in Vietnam.

MR. O'LEARY: Could I introduce testimony which I believe is as real as screwdriver

THE COURT: You may proceed.

MR. O'LEARY: I'd like to give -- this sounds academic -- some references which I think have been important in shaping my mind, my opinion. These are references to scholarly journals which I'd like to put in the record simply as evidence without comment.

MR. SAMSON: If it please the Court, if Mr. O'Leary is going to refer to certain journals or books or what have you, and summarize them, I believe that before he does that, we would have the right to peruse them in order to see them first.

THE COURT: What do you have?

MR. O'LEARY: I have a few references.

THE COURT: Mr. O'LEARY has handed to the Judge of the Court two volumes of the American Journal of International Law dated October 1966, the other July 1967; and will you point out to the Court...what it is you want to read into the record or introduce into the record?

MR. O'LEARY: I'm just introducing the fact into the record that there is an article in the American Journal of International Law, October, 1966, ...by Quincy Wright of the University of Chicago on legal aspects of the Vietnam situation, and he argues the question that I have suggested in a --

MR. SAMSON: Excuse me, Mr. O'Leary or Brother O'Leary, I object to any characterization whatsoever of what that gentleman in that article said on the grounds that it's merely -- it is irrelevant.

THE COURT: It is clearly irrelevant, Mr. O'Leary.

MR. O'LEARY: Clarity is not so evident to me, Your Honor, and I would go along with the District Attorney that in terms of what I'm trying to testify to is simply the title of the article, "Legal Aspects of the Vietnamese Situation," pages 750 through 769.

THE COURT: Court rules you cannot introduce it. And now I show you the one the one published in 1967. What is that? What does it contain that you wish to introduce?

MR. O'LEARY: It's a note and comment by Wolfgang Freedmond on law and politics in the Vietnam War, American Journal of International Law, 1967.

THE COURT: And the theme of it...

MR. O'LEARY: Raises the issue as to the legality of the war in Vietnam in terms of international grievances.

THE COURT: Court must rule that the District Attorney's objection is proper.

REV. HIGGINBOTHAM: District Attorney didn't object to that, Your Honor.

THE COURT: Did you cover that in your objection?

MR. SAMSON: Well, if I did not, just to be absolutely clear, I object to the introduction into evidence of any evidence whatsoever concerning the state of the war in Vietnam, including the article by --

THE COURT: Objection sustained.

MR. O'LEARY: Again --

MR. MARVY: Excuse me, I think there's a great misunderstanding here. There's issues being brought up and rulings being made on issues that haven't been brought up. As I understand what's happening, Basil is trying to testify to his reasonable belief, and what he wants to introduce into evidence is the existence of these articles and not necessarily their content. All he's trying to place before the Court is that such articles exist.

THE COURT: I don't think that's correct, Mr. Marvy. Did you want to produce these articles to testify to your reasonable belief, or that the articles do exist?

MR. O'LEARY: The latter, Your Honor.

THE COURT: Well, even that is not relevant.

MR. SAMSON: That they exist is wholly immaterial.

MR. MARVY: Do you understand where it says reasonable belief?

THE COURT: Court so rules. Father Mullaney?

FR. MULLANEY: May I ask what...type of evidence the Court would admit in order to establish reasonable belief? Isn't it important for the Court to understand what...set of variables are in operation that led to the reasonable belief that Brother O'Leary is raising? I think this is critical.

THE COURT: When there are laws in this country which are, in the opinion of some people, improper, there is a system used whereby those laws are changed if a majority of the people believe they are improper.

MR. GRAF: That's irrelevant.

THE COURT: The Constitution, in the Bill of Rights, sets forth that there is a process whereby all persons may petition their government for a redress of grievances. That's exactly what the law says, and that's the procedure that's used.

FR. MULLANEY: Basil O'Leary is trying to point out that civil disobedience is part of due process.

MR. SAMSON: Your Honor, excuse me. I'm not objecting to the substance of what's being said at this time. I'm only asking that if we're going to carry on this argument, I would ask that we do it outside the presence of the jury.

REV. HIGGINBOTHAM: I think that's something the jury should know, frankly. I think things are being suppressed in this courtroom. I think the truth is being oppressed.

MR. OJILE: In response to what you just said about due process that's available in this country, we would also put into evidence during the process of our defense that this was the only means available that we had, and we would like to prove that to you with all due honesty; and so it seems to me that we have a right to put that into evidence, and we would like to show the Court why we did this act and did not petition our congressmen or vote. This is part of our evidence as to reasonable belief as to what we did.

THE COURT: Mr. O'Leary has already testified at considerable length why certain people did certain--

MR. OJILE: He has not.

MR. GRAF: He has not stated my reason.

THE COURT: In the opinion of this court --

FR. CUNNANE: Willfully or reasonably, in the Supreme Court decisions I have here -- United States versus Murdock, 290, Court states -- "Willfully means act done without justice, stubbornly, obstinately --." Spise versus United States, 317, 429, 495, 979 pages, went on to say that willfully means not merely voluntarily, but with...an evil intent without justification or excuse. The same point was made in Scuse versus the United States, 325, (that) "evil motive (is necessary) to accomplish that which the statute condemns as a constiguent element of the crime."

THE COURT: Father Cunnane, may a husband shoot an unfaithful wife?

MR. OJILE: That's not the issue at hand.

THE COURT: Proceed.

MR. O'LEARY: I'd like to introduce some factual data, Your Honor, along the direction that you suggested...and that was that there are channels of due process available to us in the United States if we feel that that justice is not being realized. The fact is that the Supreme Court has repeatedly refuse to review cases coming from Circuit Court and lower courts in which the legalit of the Vietnam War has been in issue. There are two of these cases, Moore versus MacNamara --

MR. SAMSON: Excuse me, I object to this line of testimony on the ground that it's not material what other courts have done with regard to the materiality of certain -- we don't know what's contained in those cases, in other words. That's not part of the record of this case.

THE COURT: May I see what you're reading from, Mr. O'Leary?

MR. O'LEARY: Well, there are different things.

THE COURT: Well, the Court would believe that in this land where their is freedom to speak one's mind, and to write one's thoughts, that there must be a great deal of literature on various subjects that are of interest to the general public. But only those things that are relevant can be introduced at this trial, and the Court doesn't believe that that's relevant, and so rules.

MR. GRAF: Is he trying to produce something from the Supreme Court ruling, and you're saying that's not relevant?

THE COURT: There are cases which are relevant, if they apply directly to the issues of the Court. The Court doesn't see how they would apply.

MR. OJILE: If we are to establish with evidence whether or not that was one of the only means available that could put an end to something which would cause death, then this is relevant. We want to show that the Court has not considered it -- that voting did no good, though it is part of due process; petitioning did no good; marching did no good; and therefore we did this. And w have to prove that. It's part of our obligation under the State Statutes. But you won't let us.

THE COURT: Well, Mr. Ojile, the Court must proceed as it believes the law to be.

THE WITNESS: Again, Your Honor, I am not arguing the political question doctrine as to what motivations the Supreme Court might have in refusing to review what cases have come to it from the lower courts. I'm merely pointin g to this in the real world...of the American system. I am also pointing to facts in legal journals, that legal theorists are very upset about the inability, the unwillingness of the Supreme Court to adjudicate these decisions...if the Supreme Court were acting on these cases, I don't think I would be here today. It's the faltering of the legal system.

THE COURT: Mr. O'Leary, in a democracy, where people are able to speak out, there are alwa ys spoken differences about matters. We, however, must be bound by law. That is why we are proceeding at this trial today. Because of this

charge, certain laws were violated. You gentlemen are on trial by reason of having violated them. The question is, did you do it, or didn't you do it. And because there is the matter of intent, the Court is permitting you to state, if you did participate, why you did.

Mr. Forest?

MR. FOREST: Judge Larson, let me make sure that I understand what you're saying--that the issue is whether or not we broke the laws that we're charged with breaking?

THE COURT: That's right.

MR. FOREST: It seems to me that that is part of the issue. It is also part of the issue whether -- if, in fact, the acts we're charged with committing were committed by us--they were privileged acts under the statute of privilege. If, as we are doing, we attempt to argue that we could reasonably believe that the only means of preventing bodily harm to others was to undertake these actions, then it seens to me they are clearly privileged under the statutes; same as --

THE COURT: Now, Mr. Forest, let's stop here. Let's have the Jury leave the Courtroom, while we discuss several points.

(at 10:19 am, the jury left the Courtroom)

THE COURT: ...Go on, Mr. Forest.

MR. SAMSON: Excuse me, Your Honor. May I ask the Court for a very short recess.

(Samson was feeling obvious bladder distress.)

MR. FOREST: We would join with you in making that motion.

THE COURT: I want to say, before we have the recess, Mr. Samson, that Mr. O'Leary stated that they believe such actions as were committed on the 24th of September were privileged...

(Judge Larson proceeds to read from the statutes directly and at length, with Mr. Samson in pain, trying to grim and bear it...)

THE COURT: ...Well, Mr. Samson or Mr. Jackson, what is your position relative to that defense?

MR. FOREST: I think that Mr. Samson has his good reasons for wanting a recess at this particular moment. It might clarify his ability to answer that particular question.

(flash of understanding on Larson's face)

THE COURT: All right. We'll take a recess then.

(Whereupon, a short recess was held.)

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MR. FOREST: I've lost track somewhat, Your Honor, but I do recall that I was in the midst of making a general statement in regard to the necessity of your allowing certain kinds of evidence to be admitted in this case. I allowed Mr. Samson to respond to a question you raised, but I did want to note that I hadn't finished making a statement. And before you rule, I hope you will allow me to finish.

THE COURT: Well, I believe at the time I read the parts of Section 939.45, which were pointed out by Mr. O'Leary, you were commenting on that, Mr. Forest, is that correct?

MR. FOREST: That is correct, Your Homor.

THE COURT: Well, I raised certain questions. I asked the District Attorney's position on it, but I won't ask him to reply at this time. Wait until Mr. Forest has finished his statement.

MR. SAMSON: Fine.

THE COURT: Mr. Forest?

MR. FOREST: I'd like to read a memo that we have worked out, in the preparation

of our case, which in some detail speaks to the question of privilege in the matter of the charges against us. I'd like to point out that our entire defense on a reasonable belief...that these actions were necessary. I realize that it not going to be easy for us to prove that a certain person's life or health was definite preserved by our doing what we did, but I think it is possible for us to believe that our action was necessary, and that we should therefore be acquitted.

THE COURT: Mr. Forest. I want to ask you a question. Do you recall that at the conclusion of the Civil War that John Wilkes Booth, believing that for the welfare of the Confederacy, he had to eliminate Abraham Lincoln? That he shot and killed Abraham Lincoln? Was this justified?

MR. FOREST: I realize, Your Honor, that there are people that could say, "because I reasonably believe that Abraham Lincoln is a mad-man and a danger to the nation, it is appropriate to kill him."

THE COURT: And he said so.

MR. FOREST: I'm sure he did. In response to that, I would simply point out, one, that the only charges against us are related to property damage -- damage to property, not to persons -- and that in fact we were trying prevent people from getting killed -- we were not killing anyone. So the direction is the opposite. And, two, I'm not saying that the jury should and must find us innocent. I'm simply hoping that the Court will allow us to try to demonstrate the reasonableness of our belief in order for the jury to decide for themselves whether, in fact, it was reasonable. (In the examination of prospective jurors) it's already been demonstrated, I think, that a number of them, in fact, disagree with us on the war question, at least at the time they were impaneled. The third key point I'd like to make is that the threat which the Statute speaks of does not have to really be there in the objective sense, but it must really be apparent to us, which in turn would be based upon the under-pinnings, assumptions and reasons for our reasonable belief. The importance of all this is that it is a factual issue. The Jury must determine whether the threat was apparent. The Jury must determine whether we could reasonably believe as we do. Therefore, all the evidence relevant to establishing either one of these points, we believe, must be admitted into evidence, so that the Jury can decide these points. It is our hope in this matter that would be merely to determine whether or not to instruct the Jury as to the legal theories that we are operating within. If there is a reasonable ground for the Jury to consider the defense, that is if we have entered relevant evidence into the record, then we hope and expect that you will give the instruction.

Re: the Role of the Court

In Brooke versus State 21, Wisconsin 2nd, 32, 1963 --

THE COURT: Give me that citation again.

MR. FOREST: Brooke versus State (etc)...I'd like to make a comment on that referenc The Judge feels that there is no relevant evidence on the record. He does not have to instruct the Jury on the Defense's theory, in this case Privilege.

(further legal references are cited, all recent Wisconsin cases)

...The Court stated that it uses the objective, not the subjective test. That is, would a reasonable person, a person ordinarily constituted under the circumstances, have believed or done what was believed or done. This does not change the fact, however, that the Jury should make the determination. In fact, what more reasonable cross-section to decide?

To go back to the...Weston versus State case; the Court allowed evidence to be introduced under 939.48, self defense. It then gave an instruction to the Jury explaining (the Privilege) theory. That is all we ask in our case: that the evidence go to the Jury.

THE COURT: Just a moment. Would the Bailiff bring me that volume?

MR. FOREST: The reference (is) 135 Northwest-- NW 2nd 820, 28 Wisconsin 2nd 136.

THE COURT: Bring me that book. You'll find it in my chambers.

MR. FOREST: Would you like me to continue, or would you like me to --
THE COURT: I want to read this case, but you may continue, Mr. Forest.

MR. FOREST: We foresee the possibility of it being questioned whether or not the threat of bodily harm or death that we speak of (was actually) imminent in this case. In that regard, I'd like to make another reference to 40 American Law Report, 2nd Series 911, in which it is stated, "The question of what acts are sufficient to constitute a coersion or durress is a matter for the determination of the Jury." End quote....

(numerous cases from many parts of the country and covering a wide span of years are cited...)

....The case of State versus Kentzlberger, 28 Wisconsin 2nd (etc)..., plus the Wisconsin case cited earlier, establish that the way a Judge deals with a defense that he feels is not meritorious is to refuse to instruct the Jury about the defense, or to instruct them in a way so as to present what he, the Judge, feels is the correct statement of the law. His remedy is not to prevent the taking of legitimate evidence on these points.

In the famed landmark case of Iva Iku ko Toguri D'Aquino versus State 192 F 2nd 383 Court of Appeals for the 9th Circuit, 1951, the Defandant, called Orphan Annie, was accused of treason for conducting broadcasts for the Japanese (Government) during World War II. She was an American citizen at the time. She stated in her defense that she was under duress and coersion and threat to her life if she refused to do as told. The Court allowed the following evidence to demonstrate whether this wask the fact: information concerning surveillance of the Defendant; war crime atrocities practiced on prison grounds; all the circumstances o her background that led her...to come under durress; evidence that she was regularly required to report to the Japanese police. We would, perhaps, read that as the Selective Service System. The points in contention on appeal were whether the Judge had given the proper instruction for the Jury about the defense of coersion. Her conviction was upheld, but the key point is that the evidence was allowed in, and the jury decided whether it was coersion or not. We would like to remind the Court that the Wisconsin Statute allows us to act because of a reasonable belief that another -- a third person -- is in danger. It does not have to relate solely to a threat to ourselves -- to myself, personally.

THE COURT: You mean, acting within the law itself, carrying on the program sponsored by the Federal Government, that the action which you gentlemen decided to take (part in), to the exclusion of all regulations, (that) I should rule that testimony be permitted which would permit the Jury to find that that was a proper procedure to take?

MR. FOREST: We would like the Jury to have the opportunity to decide whether or not it was reasonable for us to believe that there was no other recourse to us, (other than) to actually interfer with the operation of the Selective Service System.

THE COURT: Mr. Forest, why have you assumed the heavy burden of making that determination?

MR. FOREST: I think I stand on fairly good ground in American tradition, although I admit that there are many who would question whether I'm right...It may well be the Jury will decide I was wrong. I am prepared for that. But it seems to me that many times in the history of this nation, minorities have had to act. I think that history demonstrates, for example, that it was only a small minorit first sought to establish these United States. It was only a small minority, at first, that believed slavery was wrong -- in fact, even the framers of the Const itution were not of one mind on that...It is presently a contested view in this society as to whether the involuntary servitude of Selective Service

is right or wrong. We think that it is wrong. We think we have reasonable grounds to believe that it is wrong. We think that we can demonstrate that we went through all the legitimate channels of this society to bring that finding about by ordinary means and that, as has happened before in American society, the only recorse left to us was to do an act of civil disobedience, and to bring ourselves before the public, asking them to judge and decide our future--what should happen to us.

THE COURT: You call this civil disobedience, Mr. Forest?

MR. FOREST: Yes, Your Honor, in the same sense that I would call it civil disobedience in the 1850s for a person to help a slave, despite the Supreme Court's ruling that slaves were property and were to be returned to their owners.

THE COURT: Have you finished?
MR. FOREST: Yes,your Honor.

....

REV. HIGGINBOTHAM: I'd like to raise a couple of hypothetical cases. I noticed one in the paper the other day, which had brought out the point that a fireman, when he is called to the scene of a fire...is not charged with breaking and entering if he has to enter the building. And the reason he isn't, of course, is that the motives with which he breaks down a door with his axe are strong enough for him to believe...that it would be better for all concerned that he break down this door and put out the fire. So, in the unlikely event that he were brought to trial in Wisconsin for breaking and entering,...his only defense would be (the reason) he went through the door. In other words, if he were to say he went in hoping to put out a fire, the State would say that that is totally irrelevant--the fact (is) that he broke down the door.

FR. MULLANEY: Your Honor, from a number of your remarks, I believe that you have some concern about the issue of law, and whether a person can violate a law, when he has all so many other methods of recourse. I think that if the testimony of Brother O'Leary is allowed to continue, then it will be shown that this incident of September 24th is very much a part of the legal tradition in the United States. That it is really part of due process. So, far from being a threat to the meaning of law, it enhances law. It puts law in context; and especially at this moment in history, if law is too narrowly conceived, then we're missing out on the very important method we have to redress serious greivances. So, we're not operating against law. We are operating very much within the framework of due process, and I think we can demonstrate that. So that, far from being a threat to the values of a free society, not to have done what we did would constitute a far greater threat.

THE COURT: You've said that, Father; several times. The Court appreciates your position. Mr. Ojile?

MR. OJILE: You made a remark about Wilkes Booth who killed Abraham Lincoln. Would you consider it reasonable (if in fact he was a madman)? Can a madman be reasonable? That really doesn't apply....(no more than in a case where a policeman is on trial for hitting a person) and he proves that it was the only means available to him for dealing with that person in that situation... the Judge isn't going to say it's irrelevant because (he) could have shot him.

THE COURT: Well, Mr. Ojile, is that what you wanted to say?
MR. OJILE: (Nods head in the affirmative.)

.....

(State's response....)

MR. SAMSON: If it please the Court, the State's position on this matter is this; that in order for the defense of privilege to apply, the Defendants must prove that there was an unlawful interference with person of the Defendant or, in this case, a third person.

THE COURT: Which was imminent.

MR. SAMSON: Which was imminent. In my opinion, the Court could rule and should rule now, as a matter of law, that -- which I believe would end the discussion, that the Selective Service System is not an unlawful interference into the life of another person. As a matter of fact, what the Defendants, in effect, are saying is not that it was not unlawful, but that it was lawful and should have been unlawful.

MR. OJILE: That's not what I was saying.

MR. SAMSON: At least --

THE COURT: You may reply.

MR. SAMSON: -- that's what I understand them to be saying, but that's really -- even that is not material. The point of the matter is that the Selective Servic System is not an unlawful interference into the life of another person, such that would allow the privilege of this defense to exist. This Court, moreover, I respectfully submit, would not have the power to say that the Selective Service System is unlawful, even if it so desired.

THE COURT: ...Mr. Samson, what do you think the Court should do about their statemen that they want to have an instruction to the Jury on the matter of privilege?

MR. SAMSON: Well, we'll oppose it on the ground that the evidence doesn't warrant it. Now with respect to one of Mr. Forest's statements...that the remedy for not allowing the defense is not to exclude the evidence but to instruct the jury, I would suggest to the Court that in this case, it would be so prejudicial for the evidence to go in...that it would be clear error...

(he suggests an offer of proof be made, for record purposes in there should be an appeal, outside the presence of the jury)

...therefore, the evidence would be on the recird, and then of course the Court would have all the benefit of all the evidence that the defense has, and it could rule, at the end of that offer of proof, as x to its relevance and materiality and whether or not it could be re-introduced in front of the Jury.

THE COURT: Well -- Mr. Ojile?...

MR. OJILE: To the point of unlawful, I think the statute is very clear that what he reasonably believes to be an unlawful interference with his person or another person, and that we should like to put into evidence such evidence that would prove that there can be reasonable belief as to the unlawfulness of the Selective Service System, as to the illegality of the war, and so on, and that's well within our rights under the statute. In fact we do reasonably believe that the Selective Servuce System is, in fact, illegal, and there's much proof to that effect, at least enough to show that it can be reasonably thought to be illegal.

In fact, Iwould suggest that perhaps many lawyers that serve this Court think that the Selective Service System is illegal, and that's the point to make, not whether or not it is unlawful, whether or not we can reasonably believe that it is unlawful, and I think that's why we want to offer proof in the first place.

THE COURT: Mr. Forest was next.

MR. FOREST: I just have a couple of points, Your Honor. I don't mean to suggest that Mr. Samson is a man of no conscience or sensitivity. I believe the opposite is probably the case. But when he said that the institution of the Selective Service System is not an unlawful interference with the life of another, I wondered if he would not realize and the Court realize that hardly more than a century ago very distinguished men stood up in court for the prosecution and ... prosecuted Quakers and others with such words as, "The institution of slavery is not unlawful interference with the life of another." And not only could that statement be made, but the citation of

the Supreme Court decision could be read to the Judge. Nonetheless, judges permitted -- whatever there personal opinions were, nobody knows I suppose -- permitted the Defendant to tell the jury that he believed and thought that he had reasonable ground to do what he did in helping escaped slaves because --despite the Supreme Court's ruling--he was convinced that slavery was unlawful

We don't -- we are not infallible. We haven't made popes of ourselves. We are ready to go to jail, if that is the decision of the jury in this court. All we would like to do is to have the opportunity to let the jury know somethin of what our reasonable belief is and let them make the judgment as to whether they agree that it was reasonable or whether they think we were mad.

One other comment, Your Honor, and that is this: We take an oath when we testify -- I think Basil has taken that oath -- that the individual affirms or swears he will tell the truth, the whole truth, and nothing but the truth. I tell you that for me to take that oath and not to be able to testify to what I believe to be the whole truth would be a defamation of my conscience. I cannot possibly tell any of the truth without attempting, in good conscience, to tell all of it. I think that Brother Basil is attempting to do the same. I hope that the Court will allow some latitude in the expression of what we clearly believe to be the truth and to grant the jury the dignity of deciding for itself whether or not there is reasonable grounds for us to believe the truth, as we state it.

(cont'd)

THE COURT: Father Harney?
FR. HARNEY: As you well know, our case is built up on the fact that...we (were) preventing imminent danger to people, trying to save lives.
THE COURT: We have gone over that.
FR. HARNEY: I'll reiterate it again, because it's very important...With that in mind, I would just like to ask the Court if just for a moment -- just for a mome it could move outside of this courtroom and listen to some of the young people in our country and ask them how much violence the draft is doing to them, violating their consciences, and once again forcing them to die much against their will in an immoral war...
(The Court disagrees that Americans in significant numbers hold these opinions, pointing out that none of the 50 prospective jurirs indicated such opinions and that these were "a good cross section of human beings...)
REV. HIGGINBOTHAM: No teenagers were on that jury, Your Honor.
THE COURT: We have to abide by the rules and have people brought here who --
FR. HARNEY: The point I was trying to make is that a great deal of harm is being done to the young in our country, and you know that fact. You know it ver well, and that's just what I'm trying to tell you, that there's a great deal of harm, and if you take violence in terms of just people dying, we are really not looking at the term violence in its real power, in the real defamation of it. It's when there is a great deal of harm being done to consciences and forcin people into situations that are very inhuman, and that's all we ask the Court to recognize.
THE COURT: Father, I read in the newspaper every day of the loss of young men --
FR. HARNEY: That's what I mean.
THE COURT: -- through death in Vietnam. It causes my heart to ache. I have a son who returned a few years ago from service in the armed forces and this Vietnam war. I have another son who is -- who possibly may get into the service and then may not, I don't know that. He is engaged in a certain profession, at this time, profession which prevents his being drafted, or at least he hasn't been, but he stands ready to go at any time, and one did go and serve two years. And we took very heavy heart about this, but we haven't gone out and done what you practically admit you have done.
FR. HARNEY: Maybe you should have.
THE COURT: And the great majority of mankind has to abide by the law, and let due process change in its manner.
MR. OJILE: Due process is not changing, Your Honor.
THE COURT: These personal things have nothing to do with this case at all. The jury isn't here, so it doesn't make any difference, but if you did this, Father, and the rest did, then the jury will have to consider that you did and find you either guilty or not guilty of what you did.
FR. HARNEY: Right. All I'm asking the Court, Judge, is that you treat the jury in a very responsible way. You don't treat the jury as children. You present evidence before the jury. Let's give the jury the possibility to decide.
THE COURT: Father --
FR. HARNEY: Don't cut people up. But that's just what the Court is doing. It's not permitting me to tell my full story, and once again somebody mentioned the whole truth, Judge, and that's what you're trying to find.
THE COURT: Well, you have to be tried according to the rules, Father. One may rebel in America, but then he must face the consequences when he does.
FR. HARNEY: We are willing to acknowledge that, but provided the story is told, the whole truth, and that's what we are asking the Court, to permit the jury to see the evidence that we are trying to put before them and don't treat them as children. They are mature people. They can decide for the good of democracy and not to the detriment of it, and that's what the Court's not willing to allow. The Court is willing to think that the jury's going to

make a detrimental decision by that evidence being put before them, but it's not the case...

THE COURT: Father Harney, the Court has a duty.

FR. HARNEY: I know that.

THE COURT: It must permit the evidence to be submitted in accordance with law. The rules of evidence, to me, in this particular respect, are clear, and I must enforce them.

MR. FOREST: Let me just --

THE COURT: As I said a moment ago -- well, we won't go into that.

MR. FOREST: I just wanted to clarify that I have no disagreement with what Father Harney said, but I want to make it clear once again that we are not asking the Court to ignore the law or the rules. We think that the statutes of the State of Wisconsin, in this issue, are perfectly reasonable, and we are simply pointing out the precedences that we believe make it possible for you to respond favorably to our request that we present evidence regarding the reasonableness of our belief that we were preventing an unlawful interference with other persons and that we were saving life and [illegible] preventing bodily harm.

THE COURT: Well now, Father Mullaney?

FR. MULLANEY: Yes. I'll be very brief, and I'd simply like to comment on the District Attorney's interpretation of the statute. He said that we must prove unlawful interference with third persons which is imminent.

THE COURT: Or yourself.

FR. MULLANEY: Right. That is not what the statute says, however. In other words, the key point to the statute is: Is it reasonable for us to believe that we were doing this. That's the critical element of the statute. And in order for us to demonstrate this, we must go into such material as Brother Basil has adduced at this point.

....

REV. HIGGINBOTHAM: I wanted to make one point, and that is this: you know "the law is the law is the law" is a very narrow concept. We [illegible] were not apprehended running pell mell down the street or attempting to hide. As a matter of fact, we were just standing there and submitted to arrest. Several of us had to insi on being arrested and had to request to be put into the wagon. We are not tryin to run from any responsibility. We are actually [illegible] trying to --

THE COURT: The Court is aware of that...

....

(Mr. Samson indicates no further response to argument: "the State's position was as we stated".)

THE COURT: The Court stated in chambers earlier...that you may--all of you, if you desire to do so--testify; and may, in your testimony, state why, if you did participate in this act or these acts, you did. But thereafter, the Court will permit no testimony concerning the morality, immorality, legality or illegality of the war in Vietnam, nor about any of the inequities or unfairness or legali of the draft.

(further objections to court's ru ling, response from prosecution, etc.)

THE COURT: Well, (if the Court has made an adverse ruling and) if you...have an adv verdict...then on appeal it would be considered by the Supreme Court.

MR. OJILE: That doesn't do anything for me, Mr. Larson. I would be in Waupun. If you were to be in jail with me, then I think your rulings would be a little bit different.

THE COURT: Mr. Ojile, as I said before, when you do things such as you practically admitted that you did, you have to face the law as it exists.

MR. FOREST: We would like to.

FR. MULLANEY: We have no fear of that, Your Honor. We want to face the law.

MR. FOREST: If we were afraid of the law, we would not have waited for the police.

It was not necessary for us to do what we did at that hour of the day. It has been testified that screwdrivers were adequate means to break into those offices. We could have entered that building late at night, destroyed those files, and been far, far distant before anybody began looking. The point is that we were not afraid of the law, and all we are asking, begging and pleading of this Court is that we be given permission to tell the jury why we believe it is that our act was reasonable and lawful under the statutes of this state.

Now, I realize that the circumstances of this case are unusual. That's apparent on the face. I'm not stating that there is a precedent for this kind of case in this state or elsewhere. All I'm saying is the fact that this hasn't happened before shouldn't prevent us (from applying the statute), it shouldn't prevent us because this isn't literally the case of someone running a red light in order to get to the hospital. I think the analogy can be extended to far more serious, far more lethal situations. This package is filled (holds up manila envelope) with the Congressional Record containing nothing but the names of boys who have died in Vietnam. I know from the course of experience that people have died there who are morally opposed to the war.

THE COURT: Mr. Forest, we are all of a common mind in that regard.

MR. OJILE: You are not of my mind, Mr. Larson. I would not allow you to say you a

THE COURT: Mr. Ojile, the Court has made a statement. You can't want it say that it is not in sympathy with persons who have suffered losses in Vietnam.

....

MR. OJILE: That doesn't make you of the same mind as me, Mr. Larson.

THE COURT: You've said so. It's in the record.

MR. FOREST: I would like to say that not only are we not afraid of the law, but despite the fact that the jury may not be ideally representative of the community, I think that we are, nonetheless, prepared to put our futures in their hands. We know that most of them are ill disposed to our particular view of the world. Nonetheless, we would like the opportunity to let them decide with all the facts before them and not just the facts that doors were opened, papers removed and files burned....(as to) the question regarding whether or not (there was a threat of imminent bodily harm). I realize again that we're on untrod paths as far as legal precedent is concerned, but it seems to me that when boys are literally dying every hour, American boys, Vietnamese soldiers and civilians, women, children, the old, the young, but certainly American boys, there is no question about that--that it is certainly imminent peril that we are speaking of, and you don't have to be standing in front of a train that is traveling at a hundred miles an hour to be in imminent peril. Again, we would like the jury to decide whether the peril of these boys is imminent or not.

THE COURT: Would this apply during World War II, during the time when that draft was going on?

MR. FOREST: In that case, again, I think most of us -- I'm too young to have babyhood memories of that -- but the question would be to present whatever we can muster in our defense and let the jury decide. I think if there is no jury to decide, it was unreasonable for us to act on our opinion....Regarding World War II, boys in this country used to go to Canada in order to get into that war because the United States hadn't declared war. Today boys of this country go to Canada to escape the war, not because they are cowards, but because they believe this war is illegal and immoral, an opinion that has been reinforced by the Chairman of the Senate Foreign Relation Committee, the Secretary-General of the United Nations, the Pope of the Roman Catholic Church and millions of citizens who attempted to elect Senator McCarthy to the presidency last year.

THE COURT: Mr. O'Leary wanted to say something a moment ago.

MR. O'LEARY: I get lost here. The prosecution on one a occasion was quite well aware that Selective Service records were burned, and was particularly interested in demonstrating the economic cost of replacing them. They do forget, however, that these were 1-A files, and 1-A files are sort of tickets or passports to Vietnam. There is considerable likelihood of death. Now, the thrust of my defense here was not, as Mr. Samson said, that the Selective Service System is illegal, nor was I philosophizing ... The point that I'm trying to make is that, as the law says, our purpose was the prevention or termination of what we reasonably believed to be an unlawful intereference with persons by other persons. In this area of reasonable belief, I'm trying to point out that there is a sector of public opinion which has doubt about the legality of the war and of the Selective Service System operation, and this is sort of a privileged segment of public opinion. This --

THE COURT: Mr. O'Leary --

MR. O'LEARY: Excuse me, I wasn't finished. This privileged segment of public opinion regarding the war was not introduced here to prove whether the war is illegal or not. I'm not proving the illegality of the war, but the fact that there is doubt about the legality of the war, which would give me legal motivation to act as we did on September 24th.

(Mr. Samson responds that the question is whether a reasonable person could say that--by such action--lives were saved; the court indicates that this is the "right approach")

REV. HIGGINBOTHAM: That's the one we're trying to take. The jury assumedly is made up of reasonable people, and we want to put it before them and let them decide.

MR. SAMSON: The issue must be made very carefully. The issue is not about the war. The issue is whether or not a reasonable and prudent man could believe that by burning a couple of draft records, you could save a life. That's the issue.

MR. MARVY: Would the prosecution be willing to stipulate to the fact that men who are drafted (might end up in Vietnam--)?

MR. SAMSON: I'm willing to state -- whether or not that is the case, that is not what this statute goes to. This statute goes in terms of immediacy, in terms of a direct confrontation to save the life of another person right at this moment.

THE COURT: May I ask you, Mr. Marvy, isn't it true that anybody who crosses the street right here on Kilbourn Avenue runs the chance of being run down by an automobile? Of course. Do you believe you could stand out there and prevent people from losing their lives?

MR. MARVY: I could, in fact, subpoena records in the Pentagon to show that men who are drafted -- that it is reasonable to believe that men who are drafted go to Vietnam, and it is a reasonable belief that men who go to Vietnam may die, and I would ask this prosecution --

MR. SAMSON: That's just too remote.

THE COURT: This discussion has been going on for 55 minutes. It's going to be reconvened.

....

MR. MARVY: I don't think it's very remote, but I think we could produce numbers and figures, if we could be allowed to have the records of thePentagon. The fact that men who are drafted die -- I find that not very remote....

....

FR. JANICKE: I'll go along with Mr. Samson's argument, and to me the reasonableness of it is very good, and if we destroyed all the Selective Service System's files in the United States, no one would be in danger of dying. It seems very obvious that that's your argument...

MR. OJILE:

MR. OJILE: ...in terms of direct confrontation or immediacy. I would say that immediacy is something that's very hard to grasp. Because it isn't geographically close to you has nothing to do with immediacy. A person can be ten thousand miles away and have napalm poured on him and burn to death, just as my son could have a teapot fall on his head and be burned to death; and if I could prevent either of those things from happening, I would. The reason we have a war like we do and the reason it isn't being stopped is because people think it's remote. We want to stop that war, and to stop that war, we have to start assuming responsibility for it. In other words, take it on directly in relation to our daily lives; and I would say it's the most immediate thing facing the world today, and the thing we're perpetuating at this time, and if we don't stop it pretty soon, we're going to be considered in history in the same way as the Nazi Germans who killed Jews because nobody had enough guts to burn down those gas ovens which destroyed those people. That's pretty much all I wanted to say.

THE COURT: Father Cunnane?

FR. CUNNANE: That's the same type of thing I was going to say. You could use this, you know, this example. There were a few Christians in Germany who destroyed the Jewish conscription lists. There were just a few...there were just a few among the millions that cooperated. But I mean you could say the same thing, that the deaths were not imminent. I really want to know what this imminency means. You know -- "imminent" -- whether the law means immediate confrontation...to stop one person from dying right here and now, or could you have, say, a general idea of not only stopping persons from dying, but also from persons killing other people. I really don't know whether this is imminent or not....

FR. MULLANEY: I believe the question of imminence belongs to the jury to decide...

THE COURT: The Court must make the determination...Anybody else?

....

MR. O'LEARY: I think the prosecution is looking at the matter--again in its habit--from a rather narrow point of view...I think it can be proved that this is a political act, and this is what the term symbolic political disobedience mean It's in the order of the acts of citizens. It's intended to be constructive to the American public to create a sense of urgency...(incoherent rendering in transcript)...through...promulgation through television and newspapers (it helps) to awaken the American citizenry....I don't think this dimension can be ignored.

.....

MR. GRAF: ....I think I can prove my own life was in imminent danger and those lives of other people around me.

FR. HARNEY: It seems to me...that...if the jury has to make its decisions according to the guidelines...given by the Court, leaving out the question of the war, leaving out the question that people are literally dying as a result of the draft, that the action that I took part in on September 24th would be sheer lunacy; and what you're telling the jury is to judge me as a complete lunatic. If you forget about the war, if you forget about the fact that over 47 percent of the men fighting Vietnam are draftees, (then the whole thing has) got to be taken outside the context of what is happening in the world. This courtroom seems to be remote from the world and what's happening, and you're asking the jury to judge me as a lunatic, just running in there randomly and just destroyin draft records -- and that just isn't the case, and you know that, Judge...

....

MR. FOREST: I hope this will be my final contribution to this particular discussion I just want to point out that there is a question of lawfulness raised in the sta on privilege. I welcome what Mr. Samson said most recently in regard to the relevancy of this statute, and I think that what he says is helpful. There is in both 939.48 and in 939.48 (4) reference to the question of

whether or not what we are impeding or attempting to impede is lawful or unlawful; and while we are not attempting to prove or disprove the war's illegality...we can, rather easily it seems to me, point out that it is reasonable to believe ...that the war is illegal and immoral...and that danger is imminent to conscripts.

I would just raise an analogy, something that's already been suggested, and that is the situation of a Jew in Germany during the reign of the Nazis. It doesn't seem to me that he had to be walking to the ovens to be in danger. He was in danger if he was a Jew and could be found. That's all the authorities had to know in order for him to be in imminent danger.

THE COURT: It's not an analogous situation.

MR. FOREST: It is analogous, because all that was necessary for a Jew in that period of history...was for the authorities to know where to find him and that he was a Jew. After he was in their hands, it didn't matter whether it took one or six months, he would be dead. Almost no question of that fact. Six million, in fact, died. We're saying that for the Selective Service System to know where to find people who--because they're afraid to go to prison, who will instead go into the war in Vietnam--for them to find these unwilling but malleable people is to place them in imminent danger. I'm not saying that the Court must believe this. I'm not saying that the jury must believe it. All I'm asking is that the jury be allowed to decide for themselves whether there is reasonable belief of this imminent danger.

.....

MR. SAMSON: If it please the Court, I feel it is most unacceptable to compare our situation in the United States with regard to people who are subjected to the draft to the Jewish people who were subjected not to the draft, but to extermination in Nazi Germany.

MR. MARVY: Mr. Samson can stand up and speak politics with no objection. We'd be glad to participate.

THE COURT: ...Father Rosebaugh, do you wish to be heard?

FR. ROSEBAUGH: The only thing I would have to say right now is, maybe one of the main reasons I don't say as much as the others have is because here in Milwaukee there are things going on, and there are people who are not being cared for--who nobody seems to be at all interested in--who continually knock at our door at hours like two and three and four in the morning--who want a place to stay, who want a little justice as far as welfare is concerned, as far as their family is concerned. Coming to our door as saying, "I need help now." To me, this is where life is, and if I'm exhausted and don't have t much to say as far as being able to defend myself, as far as what I did, I'm not concerned, because these others are immediate to me, and I feel that even though I'm putting the burden on these 11 others sitting at this table, (then that's okay, they can) make sense of what we did better than I can. This is why I have been quiet....

....

MR. COTTON: ...I think the other defendants have expressed what I feel is true. I find myself hindered in this courtroom, expressing what I really believe, because evidently it seems clear the law is the law. Seems like the jury should make the decision, and yet, they're not being allowed to make that decision. And I don't know how to express what I feel at this point. I would say that it affirms many of the ideas that I have experienced.

(Basil makes a detailed statement arguing the legal foundation, established by precedent in recent Wisconsin decisions, that the jury be given "sufficient latitude to consider all of the motivating factors at the time and the place" of the offense charged"; he states that he thinks it "would be an extraordinary departure from common sense simply to consider the facts that existed at Plankinton and Wells"; "State versus Kentzlberger asks us to consider all the motivating factors at the time and place, besides the application of napalm and

match to materials on September the 24th.")

Fr. MULLANEY: I'd just like to -- and this will be my final remark -- to address myself to a ...phrase that you've used several times when we've raised what issues we'd like to address to the jury. You've mentioned..."Yes, but it must be according to the rules."

Now, just two things on this. One, a present Supreme Court Justice has stated recently that law, to its own detriment, will fail to permit problems on the periphery of developing law to be aired in the Courts. In other words, it is to enhance the dignity of law that you allow problems on the periphery of developing law to enter the Coyrtroom. That's one.

Secondly, what you're saying is that we must pay attention to process. And I, too, am a man who has spent many, many years being faithful to process. Perhaps too faithful. The point I want to make, though, is that process, to narrowly conceived, is harmful. And that procedural areas or procedural rights are secondary to substantive areas; to substantive rights. And therefore, it again being detrimental to the Court to allow a too narrow notion of process to operate here. Procedural rights are secondary to substantive rights, and included under substantive rights are the right to life, for example; and this is what the whole case is about. And, also, the right to freedom....

....

THE COURT: ...At this time, the Court will rule that section 939.45, sub-section 2, regarding privilege, is not applicable in this case.

REV. HIGGINBOTHAM: Jesus Christ.

THE COURT: Well now, Rev. Higginbotham, do you think that's proper?

MR. GRAF: Can I say that frustration...I don't mean this as a threat, either -- but here we come to Court trying to work within the law. We take the Wisconsin statutes; we do some research; we do some reading; we try to prove our beliefs within the law, and we're frustrated by the Court. Not by the Jury's decision, but by the Court's decision. And I think this is the frustration felt by many young people today, who are not going to come to these courtrooms anymore to air their beliefs. We're trying to make one great attempt here to come and work within the law and try to represent, in a reasonable argumentative fashion, what we believe. And here you're frustrating our attempts. You're forcing us out of the Coyrtroom. You're forcing us into breaking the law. That's what society, the Courts, are doing to many, many young people across this country today. And I don't mean that as a threat, but just an explanation of how I feel at this moment.

THE COURT: Your statement is in the record, Mr. Graf. Perhaps had you given this some thought prior to September 24th, you wouldn't be here today.

MR. OJILE: Mr. Larson, perhaps if there wasn't such a concern (with the record) and instead we were heard as people, including you, it would be less difficult communicating ideas. I would suggest that if we start listening to one another, and start breaking down terminology, there would be an opportunity for even you to, perhaps, have a change of heart. And I don't give a damn whether anything is on the record. It makes no difference whatsoever to me. It's whether or not we can communicate, and I don't see it happening.

(discussion whether a privilege argument could later be presented to jury; brief and inconclusive...)

....

FR. MULLANEY: I'd like to move that we break for lunch...

THE COURT: Father, we've been breaking and recessing so much, we've barely got started...we'll be here forever.

MR. GRAF: Until justice comes. That's how long we'll be here.

THE COURT: I think the Court has been patient in permitting you to argue for an hour and 17 minutes.

REV. HIGGINBOTHAM: We're facing 18 years of our lives, Your Honor. It's not that we're here -- crap. Forget it.

MR. O'LEARY: May I suggest that we're quitting 12 minutes before 12:00, that we could come back 12 minutes earlier this afternoon.

(Court recesses till 1:20 pm.)

(afternoon)

(Mr. Forest speaks re a screening for the court and jury of WTMJ TV footage of the record burning; approved for the following afternoon at the television station studios)

THE COURT: All right, then we'll resume. Court is in order. Mr. O'Leary, you were on the stand at the time.

MR. OLEARY: We ought to have a jury.

THE COURT: Excuse me.

(Whereupon the jury was returned to the courtroom at 1:35 pm.)

(Basil attempts in his testimony to return to statute 939.45 on privilege "in which it is asked of the defendant that he be able to give evidence that what he reasonabl believes to be an unlawful interference with the freedom or life of another person--

MR. JACKSON: ...the State again objects...

THE COURT: ...you may not offer such evidence.

(Further argument about the applicability of the Court's ruling; Basil said he did r understand the Court to have barred all reference to the statute; prosecution reiterates its objection; court instructs Basil to refer himself to what he actually did)

(extracts from testimony of BASIL O'LEARY:)

...In my life, as an instructor of moral theology, (one factor) was a growing awareness of the question of war, of the unjustness of war, particularly as the mode of warfare have changed rather radically in the last 25 years. Reading the works of people like Thomas Merton...led me to see rather clearly that I was being an implicit conspirator in an unjust action of this nation...And being something of an academic person, I have been overwhelmed at the number of articles in scholarly periodicals by people from universities such as Yale and Princeton, New York University, questioning the legality of my country's activity in Vietnam...

(objection by Mr. Jackson that this testimony does not bear upon Basil's state of mind and is irrelevant as to his intent; objection sustained)

...Well, the state of mind always seems to me, Mr. Jackson, to have some kind of content to it, somehow or other. Living on a college campus, the state of my mind is largely filled with booklore, booklore which I consider to be somewhat significant in the sense that it is the result of objective scholarship; and forming my state of mind, my conscience, my pervading sense of consciousness that is the room in which I live -- the mental room in which I live is this testimony of distinguished scholars about the quality of life in the United States, particularly this rather dramatic and decisive thing of carrying on a war for which the data at my disposal indicates there's not a shred of legality or morality about it.

THE COURT: You're getting pretty far afield again, Mr. O'Leary.

MR. JACKSON: ... it's the State's position that Mr. O'Leary may say what his state of mind was, but...he may not list or attempt to buttress his own opinion by citing the fact that several distinguished people...held that idea...

THE COURT: I think that's quite clear. Mr. O'Leary, isn't that clear?

Basil: Yes, it is, and I would say part of my state of mind would be a sort of sense of

outrage that the American people have never really been consulted about the acts of their government, which makes use of these papers which were...burned September 24th...laws at the very heart of our society have been ignored by the executive branch of the government and by apathy of the legislative branch of our government.

So that as I looked at the plight of a citizen in this country, in view of the faltering efforts of the judiciary and the failure of electoral politics last fall, there was no other alternative than to seek some action which would be dramatic enough to raise this issue before the American public in the various media which would take notice of it.

I think this terminates what I have to say. Perhaps some of my co-counsel have a question.

(discussion of cross examination procedures...)

FR. MULLANEY: Frankly, I'm speechless. I've done a little bit of work in general semantics, and the violations against the rules of human communication that I've experienced so far are so innumerable that I find it very difficult to even formulate a question, but let me put --

THE COURT: Now, you're expressing an opinion again, Father.

FR. MULLANEY: Well...somehow it has to be communicated. I don't know how you do it legally, but anyway, apparently --

THE COURT: It may be, Father, that you can't communicate it legally.

FR. MULLANEY: Oh, I think we can, and I think the record should so note the opinion expressed.

Q ...you did use the word "outrage" yourself. I think fear is also a state of mind...(as a result of your reading and talking with students), did these play a role in leading you up to the events of September 24th?

...

A Most of my emotions are somewhat rationally sanctioned, and the urgency with which I approached September the 24th, I suppose, with fear of the complete collapse of the legal system in the United States, (although this was certainly a secondary consideration to the fact that thousands of people are being killed every year in a way that is not sanctioned), (yes this did contribute to my state of mind).

MR. FOREST: Basil, had you attempted, through any means at all that would be more ordinary to the legal process, to affect the draft or the war?

A Outside of voting and attending Democratic Party precinct meetings...no, (though) in the academic arena, I participated in many discussions, student demonstrations, and so forth. It (became) quite obvious these there had been co-opted by the society, in the sense that they no longer had any effect. The people are taking them for granted...the time has come for a more direct entry into peoples' minds.

MR. SAMSON: Mr. O'Leary...you did not discuss in any detail at all...your activities on the 24th of September, 1968. Do you prefer not to tell the jury what you did?

A I don't think it's my role for me to do so. I'd like to limit myself to what I think is significant, and people's states of mind I think are significant. The meaning of events is important, and I tried to address myself as best I could to the meaning of events of September the 24th.

Q Where were you about a quarter to 6:00 on the evening of September 24th?

A Having English muffins and coffee with Doug Marvy at a restaurant on Wells Street, I think.

(testimony proceeds with the details of Basil's contribution to the draft raid)

MR. SAMSON: ...Who did you ask for permission?

A I happen to be a citizen of the United States who is aware of its traditions and practices. I'm also aware of the state of the law in this country, at the ineptitude of the judiciary, and I realize my rights as a citizen...sometimes... to take the law into my own hands.

Q I see. In other words, you state that you gave yourself permission to go in the is that what your position is, sir? That you just said to yourself, "Okay, Basil, you can go in there today," is that what you're telling the jury?

A Well, Basil usually doesn't operate that way. He operates more in a reflective way in which he likes to know all the relevant factors in a situation. He weighs the consequenves of an act and then he decides. Now some of the relevant factors I would have liked to explain to you in much more detail today, but I didn't have the opportunity, so you may know how Basil operates.

FR. HARNEY: (Basil, could you elaborate on how you got permission to enter the boards)?

A I think it's one of the longstanding values in a democracy that when a citizen sees the law being violated in an extraordinary, pervasive and, indeed, threaten manner, he has occasion, it seems to me, to take lesser laws into his own hands to prevent far greater evils....(while) it doesn't often times occur, it sometimes occurs in the life of a citizen where he has to take the risk of making a judgment that in breaking a particular law he may be securing the long-term good of the country. It's not a matter of getting permission. It's a matter of staying alive as a citizen or simply being dead, or even worse, in terms of the Nuremberg Trials, of being a conspirator --

MR. SAMSON: I object to the reference of the Nuremberg Trial, Your Honor.

....

A I think the question asked where I got permission for this, and International Treaties are the law of the land.

FR. HARNEY: Basil, were you concerned about protecting civil liberties?

A That would be one way of putting it, that the people who are the object of these files certainly are not having their civil liberties taken care of by the existing judicial and legal system.

....

(questions not allowed re selective conscientious objection--objection to involvement in particular wars; Harney explains to Court that any person who says "I believe that the Vietnam is immoral but I would have fought in World War II" has no legal sanctuary within the Selective Service framework..)

MR. FOREST: Basil, could you define your intention in doing what you have described, the removal of these files and being present at their burning? What was the purpose of that? Why did you take part in that?

A I suppose basically why I took part in this action was that I couldn't find any reason for not doing so; that the urgency of the situation in a country that is fighting an undeclared war, the incidents of death which are the consequence of this, led me to think that something ought to be done; and one thing that had some plausibility was that this kind of action might have the effect of awakening some people, and I think it has had that effect of awakening some people...

Q Were you aware that there is such a crime as burglary?

A Yes. I had heard of this crime.

Q And do you have any understanding of what that word means?

A Yes, I do.

Q Was it your intention to commit burglary?

A No. It was not my intent to commit burglary.

Q You've heard of arson?

A Yes.

Q Do you understand what that means?

A Yes.
Q You were present where government draft records were burned?
A Yes.
Q Was it your intent to be party of the crime of arson?
A No, it wasn't.
Q And you've heard of theft? You know what theft is?
A Yes.
Q You say you removed government draft records?
A Yes.
Q And you say that it was not your intent to commit the crime of theft?
A No. It was to force out a much larger crime, the abuse of executive authority in this country, to awaken people to this.
Q What was your expectation regarding the consequences of this action?
A Well, it might well have had an immediate effect on people whose draft files may have beeh in those manila folders--they might not have been drafted as soon as they might otherwise have been. This was evil warded off from them. But far more important in my mind was the symbolic effect on the political re that there are people who takes these pieces of paper seriously and don't consider their value to be limited in economic terms; but these pieces of paper have to deal with a war to which there is considerable doubt as to the legality or the morality of it.
Q Did it cross your mind that you could do these things and possibly escape arrest
A No, it didn't.
Q Did you attempt to escape arrest?
A No, I didn't. I had hoped to get into this court and to be able to put this act in its proper dimensions and perspectives.
Q Are you sorry you did what you did?
THE COURT: That would be immaterial...I cannot permit that to be answered...

.....

FR. MULLANEY: ...We would like to call Howard Zinn to the stand, please...
....
(Zinn identifies himself as a resident of Boston, Massachusetts, where he is a professor of government at Boston University; he did his undergraduate work at New York University, Masters work at Columbia University (History), Ph.D work at Columbia (History and Political Science), post-doctoral work at Harvard (Center for East Asian Studies); has carried out teaching, research and writing "mostly in American history and the history of American thought in political theory, in the history of American social movements, particulary the history of movements of protest, in the history of the civil rights movement, the anti-war movements, and movements of civil disobedience.."; describes his observer presence in the South from 1956 to 1963 in reference to sit-ins, freedom rides and other civil rights movement activities,during which time he was based in Atlanta..)

(prosecution objection to question asking for a method whereby acts of civil disobedience might be distinguished from other acts against the law; objection sustained; more discussion of similar question objected to...)

Q Dr. Zinn, you've mentioned that in the course of your studies, you've studied American history; could you say from your study of American history that there is a tradition of civil disobedience in this nation?
A There's a very long tradition of civil disobedience in this nation, going back to the Colonial period, reaching a height in the American Revolution, enunciated by the Fathers of our country, written into the Declaration of Independence, carried on in the movement to end slavery in the United States,

carried on in a movement to win decent conditions for laboring people in the United States, carried on in a movement to win equality for black people in the United States, and carried on by people who have opposed the various wars of the United States in the belief that these wars were wrong. The tradition of Civil Disobedience goes as far back as Thomas Jefferson, and it comes right up to people today, distinguished in the field of law and philosophy, who recognize that there's a vast difference between a person who commits an ordinary crime and a person who commirs an act which is technicall a crime, but which is a social act.

THE COURT: Just a moment.

THE WITNESS: Social act designed to make a statement --

THE COURT: I must stop you. There was an objection to that very -- now, if someone demonstrates (clapping for the witness' answer), you heard what the Cour said earlier this morning. Did someone cry out back there?

FR. MULLANEY: The whole American people are crying out, Your Homor.

REV. HIGGINBOTHAM: You said the people wish to hear the truth, Your Homor.

THE COURT: The Court could answer all those questions, but it would not be proper here. The District Attorney objected to the very question which he has now made a long discourse on. The Court rules it's immaterial. All of the the matters that he related just now. And the Jury is admonished to disregard his statement concerning the history of civil disobedience in this country.

THE WITNESS: Your Honor, may I ask you a question? May I ask if I may testify that a person may hold a reasonable belief about the value of an act of civil disobedience in the light of American history?

THE COURT: Mr. Witness, the issues before this Court are not concerned with the matter which you bring up.

THE WITNESS: If that's the case, then, an I.B.M. machine could make the decisior in this Court.

THE COURT: Not at all.

THE WITNESS: This is supposed to be a Court of Justice, not just a Court of Law.

MR. SAMSON: Excuse me.

THE COURT: You are not counsel for these men.

THE WITNESS: I swore to tell the truth, Your Honor.

THE COURT: If you were asked questions, yes. You're not a Defendant here, either. You're not accorded the same provileges that the Defendants are in relating what they wish to relate.

FR. MULLANEY: With reference to the notion of intent, which is very important as far as the prosecution's case is concerned...would you say that intent in cases of civil disobedience is the same as intent in ordinary crime?

A Vast difference.

MR. SAMSON: Excuse me, Mr. Zinn.

THE WITNESS: Yes.

MR. SAMSON: I object to the question...this person is not competent to te stify about various intents...and...it's immaterial.

THECOURT: ...it's repetitious as well...The Court sustains the objection.

FR. MULLANEY: Mr. Zinn, could you give us some examples of how there may be social value in certain acts which technically may be criminal?

A Well, the obvious social value in the acts which violated the Fugitive Slave Laws of 1850 --

THE COURT: We are not here considering the Fugitive Laws, and the Court admonishes you not to consider that statement. It's inflammatory and intended to --

THE WITNESS: I was asked if there were any examples in history, and I tried to answer that question, Your Honor.

MR. JACKSON: Well, let the record show that he was asked if there were any examp and he could have answered yes.

THE COURT: You may answer it yes or no.
THE WITNESS: Yes.

FR. MULLANEY: Yes. Could you give us some examples then?
A Yes. I think --
MR. SAMSON: I object to the question. It's calling for an answer which is going to be deliberately inflammatory.
FR. HARNEY: Is our history inflammatory? The very fact that at one time in our history there were people who stood for rights? Is that inflammatory?
MR. SAMSON: Excuse me, your Honor.
FR. HARNEY: Is that inflammatory?
MR. SAMSON: Excuse me, Father Harney. If we are going to discuss the matter, I would ask, please, that we discuss it not in the presence of the Jury.
MR. FOREST: I think we should advise the Court that we have decided the jurors are adults, and there is no discussion which we will take part in during the remainder of this trial when the jury is not present, and that goes for all circumstances we have been able to imagine. When the jury is absent, and this Court is in session, we shall be in silence.
THE COURT: I wish the Defendants to know...that there are certain rules of procedure...In order to get those rules squared around, sometimes we have discussions in the absence of the jury...
FR. MULLANEY: Your Honor, just to refresh a few memories, it just seems incredible that the jury is the only group of participants in this trial which is asked to believe that the sole issues at stake here are burglary, arson and theft. There an enormous amount of evidence that everyone else concerned considers to be quite obvious --
THE COURT: "Everybody else concerned". Who do you mean by that?
FR. MULLANEY: The prosecution, the Judge, the participants here, the Defendants, the press, statements by the Judiciary when the incidents happened, statements by the U.S. Commissioner in Milwaukee, the bail set at nearly a half a million dollars -- you know. I just think the facts are so clear that to ask the Jury to consider the issues to be purely burglary, arson and theft is really to insult their intelligence.
THE COURT: Father, you know...the nature of the three charges against you... you may have witnesses testify as to the events of that day and such others matt as are peryinent.
FR. MULLANEY: May I respond to that? I intehd to say on the witness stand that I intended to take part in an act of civil disobedience, and I think it's very importabt that there be more than myself who would appear on the witness stand to clarify what civil disobedience is, to show that there's a long history of it, that we should have no fear of it, that it is a part of due process, that in a viable democracy civil disobedience contains distinct social value; but I want those who have studied about it far more than I... to say this... that the jury may better understand my intent. And there's no other purpose in my mind.
THE COURT: You can state your intent, Father. Court has stated you may. You're seeking to have this witness justify the event of September 24th.
FR. MULLANEY: No, Your Homor, we are not seeking him to justify anything. We are asking him to explain to the jury a very important variable surrounding the events of September 24th, events described by the State indictment as burglary, arson and theft. If that description is the only one to be used, the we are missing the whole context in which these events transpired. For me, one of the most important of these contexts is the notion of civil disobedience, so that my intent can't be properly communicated to the jury if I don't have the assistance of somebody more expert than I in this area of civil disobedience.
THE COURT: Well, you have explained your point thoroughly, and much of this should not be discussed in the presence of the jury, but it is. Mr. Forest?
MR. FOREST: You said before, Your Honor, that our concern in this trial has a

great deal to do with our respect for American tradition. I was reminded, listening to the remarks of Father Mullaney, that it was hardly more than a year ago that the United States Government and Congress authorized the printing of a stamp honoring Henry David Thoreau. You may recall seeing his image on pos age stamps. The reason that he is respected in this country --

THE COURT: Now, just a moment, Mr. Forest, the Court will not permit why Thoreau is respected in America, because again, an effort is being made...to influence the jury, and this is not proper.

MR. FOREST: I'm just trying to say that the reason that we brought this witness here from Boston is because we thought it relevant to our case to relate to the public, especially the jury who is judging us and our intentions, that we stand on the foundation of this society, that is such men as Thoreau who has just been honored by the government and the Congress, a man whose name is synonymous with civil disobedience, that we are here today.

THE COURT: Mr. O'Leary?

MR. O'LEARY: I'm wondering if instances of draft record burning and the burning of draft cards has generated in our country...some general disrespect for all laws?

A I don't think --

MR. SAMSON: I object. It's immaterial.

THE COURT: Objection sustained.

(argument regarding questions attempting to evaluate social impact of acts of civil disobedience)

(suppression of question re whether acts of civil disobedience tend to lessen the amount of violence in a society...)

....

MR. GRAF: ...do you consider acts of civil disobedience to be a contribution to the democratic process of this country?

MR. SAMSON: Object to that question on the grounds that the purpose of the question is to inflame passion rather than to obtain evidence.

MR. OJILE: How do you know? How do you know that was his purpose? That's ridiculous.

THE COURT: The objection is sustained. It's an improper question.

....

MR. GRAF: ...are acts of civil disobedience, in your mind and your study, essential to the democratic process?

A I think it is. I think the United States has made whatever progress it has made, in trying to eliminate the evils it has encountered along the way, due to the fact that some people had the courage to commit acts of civil disobedience. If those acts had just been considered as ordinary crimes, than this country would be far worse off than we are today.

THE COURT: Now, the Court has permitted an answer to a question which it believes was improper, but it's in the record. I ask that you stay within the rules.

MR. O'LEARY: As a social historian, Mr. Zinn, do you think it's possible for some societies to take law too seriously?

A Well --

THE COURT: Well, wait a minute, take law too seriously? You obey it or you don't obey it.

MR. O'LEARY: That's right.

THE WITNESS: May I answer the question, Your Honor?

THE COURT: No.

MR. OJILE: You answered it, Mr. Larson. If you can answer it, why can't he?
THE COURT: Court has stated and the Court shall state, we are a country of law --
FR. CUNNANE: We were founded against the law. If we were a country of law, we'd still be England.
THE COURT: We are a government of laws, Father Cunnane, and not a government of men.
FR. CUNNANE: That's heresy.
THE COURT: (Father Harney)?
FR. HARNEY: Does civil disobedience protect the law?
MR. SAMSON: I object to that question.
THE COURT: Objection sustained.
MR. SAMSON: It's immaterial.
THE COURT: Objection sustained.
Q Are the civil liberties of people protected, at any time, as a result of civil disobedience?
MR. SAMSON: Same objection.
THE COURT: Objection sustained.
....
(Fr Harney tries to explain that he is seeking testimony that "there are civil liberties of young persons in this country that are at stake" and that an important aspect of the September 24th event was to protect those neglected civil liberties)

THE COURT: Father, we have been over this so many times. Why repeat it?

FR. CUNNANE: Mr. Zinn, in your expertise, could you give us some examples perhaps, ...where laws have been broken and yet great social progress has been made as a consequence?
A Well, there --
(objection; sustained)
The COURT: ...the Court has ruled that the questions which you wish to ask... are not proper questions...
THE WITNESS: Your Honor, is it all right for me to discuss the principles of the American tradition on which these men presumably were reared?
THE COURT: No, it's not. You will answer questions when the Court rules that the questions are proper. Mr. Marvy?
MR. MARVY: ...have you done any work studying the role of the courts?
THE WITNESS: I've written --
(Objection; sustained....)
MR. MARVY: ...could you evaluate the courts' responses to...acts of civil disobedience which you've studied?
MR. SAMSON: Well, I object to that. What his evaluation is...is immater ial.
REV. HIGGINBOTHAM: Not if he's an expert witness.
THE COURT: The objection's sustained.
MR. MARVY: Would you say, as an expert, that throughout American history, the courts have always lagged behind, so to speak, social progress?
(Objection; sustained)
FR. MULLANEY: ...Could you again...describe to us the creative role of the courts during the depression with respect to the interstate commerce laws.
(Objection; sustained)
MR. O'LEARY: ...I'm wondering about the relationship between law and the courtroom and justice...is justice a different notion than law? And if it is different, how is that difference resolved in the activity of courts?
(Objection; sustained.)
(brief recess)
MR. MARVY: Mr. Zinn, in establishing your expertise in various fields, we neglected to ask you what if anything you have written in the areas to which you have testified. Could you relate (these)?

A ...I've written a number of books...."The LaGuardias in Congress"...."The Southern Mystique"...."The Student Nonviolent Coordinating Committee"...."Vietnam: the Logic of Withdrawal"....one about protest during the New Deal period... and most recently...a book...called "Obedience and Democracy," the point of which was that disobedience was --

THE COURT: Just a moment. I've permitted you to go far beyond what is permitted in response to the question...what the book contains and why he wrote it is npt relevant here.

MR. MARVY: In your studies, have you had occasion to study the biographies or autobiographies of any men --political men -- important to the history of this country?

A Oh yes.

Q Have you had opportunity to study...men who have engaged in acts of civil disobedience through the history of this country?

(Objection; sustained)

....

(extended argument over the admissability of questions that would further establish the witness' expertise...)

Q (Have you had opportunity to study the lives of American leaders who have engaged in acts of civil dosobedience)?

A Yes.

Q Is this one man or several men of which you speak?

A Well, the founding fathers all fit into that category.

THE COURT: If the Revolutionary War had been lost, you might as well go into that and say what happened to them.

THE WITNESS: (Witness nods affirmatively.) Would you like me to?

MR. OJILE: Go ahead.

MR. MARVY: If the Revolutionary War had been lost, what do you think would have happened --

THE COURT: Speculation.

MR. SAMSON: I object to that question.

THE COURT: Sustained.....

....

Q MR MARVY: In your opinion and through the study of these men, would you say many of these men have been reasonable men?

A Yes.

(Objection; sustained; answer stricken; jury admonished to disregard)

....

MR. MARVY: Through your study of history, do you know of any instance in American history where someone has burned a public document and later been praised for it?

A Yes.

THE COURT: Just a moment. Do you want to make a statement?

THE WITNESS: Yes.

MR. OJILE: Is this proper judicial proced ure for the judge and the prosecuting attorney to decide together whether or not --

THE COURT: I told you in chambers one day, the Judge is more than a referee. The judge has to see to it that the truth is revealed in court and in accordance with the rules.

MR. SAMSON: ...I withdraw my objection.

MR. MARVY: (Mr. Zinn,) would you describe the instance?

A Yes.

MR. SAMSON: I object to this on the grounds that it's immaterial.

THE COURT: Objection sustained.

MR. SAMSON: That person is not on trial.

THE COURT: Objection sustained. That's a good comment. That person is not on trial.

THE COURT: That's a good comment. That person is not on trial.
MR. OJILE: That's right. Who is on trial?
THE COURT: Quite obvious.
MR. OJILE: That's right.

MR. MARVY: Do you know through your studies of history of Thomas Jefferson ever defending breaking the law?
A Yes.
MR. SAMSON: I object to that on the grounds that it is immaterial.
THE COURT: Objection sustained.
MR. MARVY: You say you've studied the origins of this country. Do you see any connection between the Declaration of Independence and the act which has brought us 12 defendants here today?
A Oh yes.
MR. SAMSON: I object to that. It's a highly improper question. As a matter of fact, for the record, I object to his entire line of questioning on the grounds that they are all immaterial, that Mr. Marvy knows they are immaterial, and that he is asking them to inflame the jury.
THE COURT: The objection is sustained.
MR. MARVY: As far as the prosecution knowing what I know, I find that kind of a disgusting comment that he is able to read my mind. I'm not asking the questions because I believe they're immaterial. I am asking them because they are the purpose I am in court today. They are the most material thing I can think of. Burglary, arson and theft are immaterial. The court has ruled that screwdrivers are relevant and dead bodies aren't. What the hell--
MR. JACKSON: I don't think we have to be disposed to Mr. Marvy's beliefs. If we can conduct the trial--
MR. MARVY: My personal beliefs are what is on trial.
.....
FR. MULLANEY: Mr. Zinn, have you done much lecturing around the country?
A Yes.
Q Have you lectured before what we might describe as general audiences?
A Yes. I've lectured all over the country to all sorts of audiences.
Q ....with those audiences which have heard of the Milwaukee 14 event, has it been your experience that these audiences have regarded the act as simply burglary, arson and theft?
A No.
(Objection; sustained)

MR. FOREST: Mr. Zinn, you mentioned that you made a particular study of the foundation of the United States, is that true?
A Yes.
Q In connection with that study, did you make any particular inquiry into the destruction of British property known as the Boston Tea Party?
MR. SAMSON: I object to that.
THE COURT: Objection sustained.

MR. OJILE: I'm sorry, Mr. Zinn. Thank you for your attempts to answer questions.
THE COURT: Any cross examination.
MR. SAMSON: None on the part of the state.

THE WITNESS: May I ask the Court why I was brought here?
THE COURT: Court didn't bring you here.
THE WITNESS: Well, why I'm allowed to testify if I'm not allowed to testify on anything important?
THE COURT: Mr. Zinn, I just ask you not to comment openly before the jury on your opinion concerning matters--

THE WITNESS: That means the jury can't hear anything important. All the jury can hear is did these men do it or didn't they.
THE COURT: If you persist, I'm going to have you arrested and put into the proper place for people who are in contempt.
THE WITNESS: I'm just trying to express my opinion, Your Honor.
THE COURT: Well, don't say anymore.
MR. OJILE: Thank you, Mr. Zinn.
FR. MULLANEY: Thank you very much, Mr. Zinn, for coming.

MR. MARVY: Thank you. I'll be the next witness. I just want to get a drink of water.

(Doug walks over the water cooler next to the jury box, drinks two cups and goes up to the witness stand; is sworn in...)

MR. MARVY: My name is Douglas Marvy, and it's -- please excuse me if I'm a little tense. I'm just -- I've just been told that if you say anything important you might go to jail for it. I'll be rather brief.

My intent...in coming to Milwaukee for the event that occurred on September 24th, and the reason we're in court today, is two-fold.

First of all, there's a symbolic ...intent...I have tried to say to everybody around the country, by participating in this act, that this act and similar acts must go on as a form of communication; and that the openness of the act, the awaiting arrest, is very important for many, many reas I've been allowed thereby, to speak about it for seven and a half months; and it's important also for the reason of coming to court today. If I had walked away, which I certainly could have, I wouldn't be in court today; and one of the purposes of coming to court today is not only to present myself as a kind of focal point for argument, but also to expose to all my friends out there the complicity of the court system in this country in the war effort.

If only you, the jury, could have been in before lunch...you would have known what I meant. I was faced with a Judge and prosecution that sounde like Adolph Eichmann.

MR. JACKSON: State objects to Mr. Marvy's--
THE COURT: Mr. Marvy, do not make reference to something that occurred out of the presence of the jury...

M: The Court has ruled in your presence...that gasoline cans, screwdrivers and bags are relevant, but 33,000 dead men are not; and I won't say much more about that here, but I hope in my closing remarks to talk at length about...what I would consider that...sick state of mind.

The other intent...was...to act in such a way --

THE COURT: Mr. Marvy, would you mind sitting down?
MR. MARVY: Sure.
THE COURT: ...when you argue to the jury, that's when you stand.

M: I just can't see everybody.

The other intent in going to Milwaukee was the actual intent, which itself was two-fold; one of which was to shut down all nine Selective Service offices in Milwaukee County, and the other, which was to do so in such a way that no one would be hurt.

In order to avoid, I hope, some of what I consider annoying cross examination, I'll describe what I did. If you look at the pictures that have been placed into evidence, you find that not only was I 15 or 20 pounds lighter at the time, but I was dressed quite differently from the others... Actually, I was in gray working man's clothing, so to speak, and that was because my role in the destruction of these files...was to act as a janitor.

I never went into any of the offices. I had the keys and opened all the doors and distributed the screwdrivers and the bags into each of the rooms...The intent was to close down all nine boards...in which we estimated there were around 20,000 1-A files....(I also) patrolled the halls while other people were in the rooms; and Mrs. Gaydos...testified that she came down to give Mrs. Bauer some message when I saw her as an unexpected visitor, so to speak, and thought that something might arise (with) conditions we hadn't known about. I knocked on all the doors and said, "Let's leave."

I then walked down the stairs. My second role was act as signal man; to walk across the street to this grassy triangle you've heard about so much, and to wait there and watch traffic, to signal the other people out of the doors, so they could come with the bags. I walked across the street; turned around; looked at the traffic so nobody would get hurt carrying the bags across the street -- this, by the way, is contrary to the prosecution's evidence which has said I was carrying the bags. When I saw the traffic was all right, (I signalled the people with this hand motion) (demonstrates)...and the people came with the bags. Then -- we had a truck -- as soon as the truck pulled up alongside of the triangle, I helped unload the gasoline, poured the gasoline on the bags that were there, and lit a match. And then, joined by the kind of men that you'd have to scour the country to find -- great men -- we sang a little bit, and waited for the arrest.

At some point or other, I realized I still had the keys in my pocket. I finally convinced one of the police officers on the scene to take the keys and see if he could return them to the cleaning lady. I was put into the wagon, and that's...about what I remember....

...

MR. FOREST: Could you say a little bit more about your background...?

A Sure. I'm 27 years old...I have spent four years in the University of Minnesota to get a Bachelor's Degree, a year studying economics at Yale University, two years studying mathematics at the University of Minnesota and teaching there. I spent quite a great deal of time doing experimental work with cirriculum studies in new science, writing teachers' manuals for grade school mathmatics...I taught experimental high school courses. I'm a Navy veteran. I was in the Navy in 1960, 1961, and spent 13 months on voluntary duty in the South Pole. My background up through just a little over a year ago was strictly academic, with just a minor degree of activity in what is called, generally, the peace movement. Somewhere around April, I began to get more and more involved; began to meet and become friends with a number of the...younger people...who have voluntarily non-cooperated with the draft. Having been actually moved by these people, I found my activity increasing at a very rapid rate...I declined to renew my contract with the University of Minnesota, decided to work full-time doing what Icould, speaking, doing research for the peace movement in this country, gradually bringing me up to September 24th.

Q You mentioned that one of your intentions was to close down the nine (Milwaukee) Selective Service Boards...the involuntary service boards. What was the purpose of closing down those boards? Your intention doesn't seem to explain itself. Why did you want to close down draft boards?

A Well, to me, it explains itself very clearly. (Then) they could not operate, could not induct men into the armed services. This is one small county in one large country. To link up the actual intent -- what I call the actual intent -- with the symbolic intent of other individuals raised the possibility that others might be similarly motivated; that was all the better...perhaps other individuals could close down other Selective Service offices in other small counties in a large country, and perhaps the country might wake up.

Q What do you mean by the "country wake up"? Wake up to what?
A It's a big question. I think, primarily, to wake up to the fact that the decisions in this country are not made by the people in this country. We're engaged in a war in which the people really had no choice. To wake up to the fact that problems don't solve themselves, and that individuals in the country have to pay personal responsibility for the problems that they see, and have to do something about them....

MR. JACKSON: I take it from your comments and your testimony that you're not happy being in this courtroom today, is that correct?...
A No. That's not correct.
Q Well, let me ask this. You've stated that you hoped pthers would follow your example.
A No. I said I hoped that others who were similarly motivated might.
Q Well, is it your opinion that...if they followed your example, (it) would be a good thing?

....
A If individuals in this country would take personal responsibility for the problems we face, I think that would be a good thing.

.....

MR. O'LEARY: Why are you happy to be here today? Why are you not unhappy?
THE COURT: He didn't say he was happy or unhappy.
THE WITNESS: Yes, I did.
THE COURT: All right. Let him abswer the question. Why is he not unhappy?
THE WITNESS: I guess I just get a certain amount of satisfaction of having predictions come true. I knew this Court would fail to respond to anything meaningful, and that's what's happening. It's kind of a mixture of happiness and unhappiness. I would like to have seen something meanigful happen in the Courtroom, but it isn't; and I knew it wouldn't; and I'm here -- I just -- I'm happy that all my friends can see the Courtroom not responding...Maybe it will advance the state of knowledge, how to deal with this country.

.....
(other questions--such as what he hoped to accomplish--are successfully objected to)

.....
(Doug excused; FATHER CUNNANE called to testify)

.....
FATHER CUNNANE: My name is Robert Cunnabe, and talking about my intentions, of course, is a very difficult task. I was a very conservative seminarian in Rome when I read a book -- the author is now a fr iend of mine -- called "German Catholics and Hitler's Wars"...by Gordon Zahn; that was in 1956, I believe, when I was a student. The book talked about the Catholic Chunch's full cooperation with Hitler for the most part...

MR. SAMSON: Excuse me. What Mr. Zahn's book contained is not relevant to this case.
THE WITNESS: It had a great bearing upon me.
THE COURT: ...it would be more proper if you would explain...your reasons for doing what you did, if you didx anything.
THE WITNESS: But, I mean, this was the beginning, really ,for me. I'd never be here without that book...
THE COURT: You're going back a far way, Father.
THE WITNESS: I know. But that's where it started.
THE COURT: Well, proceed.

THE WITNESS: And I began to question very much...in the book, as he says, SS troops used to go out after Mass, ...go out afterward and collect Jews. I began to realize that there were a lot of doubts in my mind about the Church.

And in Rome, I also studied with students who were German students, who also served in the Amry. The Nazi Army...and I found them to be individuals just like myself. Was there really so much difference between us? We had long conversations. We were good friends, and I wondered an awful lot about what makes this situation. Later on in my life, I met a German couple in New York and we talked over and over again of how Hitler could happen, how the whole Jewish extermination thing could happen. Six million Jews.

(Mr. Jackson objects...witness "may not attempt to influence the jury with highly prejudicial and inflammatory remarks as to how he got to the positions that he holds"; court aggrees the objection is proper and "requires" Cunnane not "to delve into these matters about which you have been verbalizing".)

THE WITNESS: Inflammatory? I don't --
THE COURT: Yes.
THE WITNESS: I don't really know what to say about my state of mind, then. I mean, it's impossible to talk about one's state of mind without talking about one's state of mind, and I can't think of any other way of talking about it unless I talk about the great influence these things had upon me. If it influences or inflames the jury, I'm sorry. I don't know how else I can talk about it.
THE COURT:...Hitler's treatment of the Jewish people during World War II and the books written about it are not relevant here.
THE WITNESS: But they're awfully relevant, Your Honor. This is why I'm here. I wouldn't be here without those books.
THE COURT:...you'll have to go on, if you want to, in a different vein.

THE WITNESS: Okay. Then -- well, it's hard to trace it, then. I was a priest in a parish and doing ordinary duties...being very limited my whole life, visiting the sick -- this sort of thing. And then, into the scene came the civil rights movement...I began to realize that a lot of things were not quite right in the South, and --

THE COURT: Now we are in the South. We just left Germany.
THE WITNESS: This is the way I went. This is the way my mind --
THE COURT: I've asked you before to give your reasons, if you wish to do that...
THE WITNESS: But these are the reasons, Your Honor. I can't really give you any others. I'm trying to be as honest as I can. I'm not trying to inflame the jury. I'm not trying to play on their sympathies.

....
MR. MARVY: (Your limitations on the witness seem very unreasonable.) If I were to ask you why you were a judge, would you say because you walked in the door or because you went to law school for several years?
THE COURT: That's a different matter, Mr. Marvy.
FR. CUNNANE: Without the southern experience in civil rights, I wouldn't be here.
MR. OJILE: Just go on, Bob.
THE COURT: All right, proceed.

FR. CUNNANE: So I began to realize that in Boston the same thing was happening, and again I began to question the whole business that I went through in Rome. I began to see my own people, my own friends and relatives and things, get a little upset, my marching...and the general feeling was that something was not right. They were ordinary good people, just like the German students for the priesthood that I went to school with...but something didn't seem to jive with the whole thing, and I realized something was wrong, and it made me questic my own life, which I felt was some sort of an ambulance service: it was serving people who came to me because they were in trouble or something happened to them. I went to visit ½ people in prisons and all the rest -- but I began to realize that...if I was going to have something to say, I'd have to say it at the center of my life rather than at the fringes. I was tired of sort of

picking up people from the gutter and sending them back to get broken limbs again, and so I began to think along the lines, of course, of demonstrating and various things like that, of civil disobedience...I was very frightened of breaking the law. As I say, I had a Roman education -- Roman Catholic. I don't think I ever broke a rule in the seminary. That sounds strange to say it now but -- very law conscious. But, as I say, all these circumstances around me had a great play upon my sense of what was right and what was wrong, and the war came up, of course, right at this time...The day the bombing of North Vietnam began, I remember saying there was something wrong with this. But I had vefy little factual data on hand...I remember writing a telegram to the President saying that I didn't like what was going on. But I really didn't have very much factual data...It was a very unpopular opinion to defend at that time. In fact, it was more unpopular to be against the bombing of the North, at that time, then it was to burn draft records later.

I began to read everything I could get my hands on, regarding Vietnam. I remember studying two big volumes on the history of Vietnam and the situation. I began to try and defend myself...I began to study the Catholic Church...and I began to study the Catholic Church in Vietnam and its part in...supporting the French; and I began to realize that most of the Catholics were on the side of the French and...their loyalties were very much against their own people, and I began to wonder an awful lot about that.

....

(interruption from Court regarding relevance of testimony...)

.....

FR. CUNNANE: Well, I then became highly questionable about the history of the war in Vietnam, about our giving the French 75, 80 percent of the money for them to fight the war against the Vietnamese people, and I began then to take on an energetic kind of political feeling, which I'd never done before. I was very naive about politics. I began to support certain peopke who were against the war .

I remember working for Senator Brookes and received a letter of congratulations for working for him for senator...at that time, he said he was against the bombing of the North; and I began to have meetings with congressmen and senators, and I also -- well, I better not mention that, might not be well here -- but there is a relative of mine that is in congress, and I began to hear the inside on the workings of government, and I began to visit people... one of the worst sessions I had was with Senator Ted Kennedy.

I had a private conference with him, and I suppose it's unfair to divulge whatthe private conference was about, but I remember saying at the end, which I think was perhaps significant, I said -- he had just come back from Vietnam, his brother was alive then, this was about three years ago -- "Senator, you're wprse off than I am; as a matter of fact, I can demonstrate, you can't"; and he said, "Yes." So I began to realize that the legal system that we live under...voting to change laws...was almost impossible; and it was not my own sort of judgment. It was given to me by those people who were very powerful people, I thought, at that time. That had a great influence on me.

I went back to Scripture. I don't know, I suppose I can't talk about Scripture being relevant, but it's very relevant to me...I went back to the stories of Jesus, which really made a lot of sense in this context, especially the Good Samaritan, which talks about the men in the ditch judging the world. ...It's the man who is worst off who makes the judgment on the people who are rich; you know, he's in the ditch, and the peopke pass by, and because they don't respond to him, they're judged; and the final man is the hated Samaritan, didn't belong to the group, who finally becomes the one who receives the good judgment, in a sense, the judgment of mercy. And a number of stories like the story of the rich man and Lazarus where, for example, it's the rich man, who would run by Lazarus every day and kick dirt in his face...;

and I began to say, you know, about my own sort of Christian Church, that it really wasn't listening to the poor people of the world. It really wasn't listening to anyone who was sort of voiceless or inarticulate...it was listening more to heads of government, siding with heads of government, all the way along. So this had a sort of influence upon me, and I began to listen to the poor people, in some sense --

THE COURT: Father Cunnane, can you connect all this up to if you participated on the 24th of September?

FR. CUNNANE: Yes, I can.

THE COURT: Do that, Father.

FR. CUNNANE: So, in listening to the poor people, I began to realize...Last year, after the March on Washington...I came home and one of the radio stations in Boston started off its announcement with, "Guess how much the Poor Peoples' March on Washington cost you, the taxpayer?" And I began to realize that there was a great prejudice against the poor, I began getting interested in welfare, and became aware that the poor people themselves were generally against the war...because it was taking so much money away from them. So there were a number of things that led me to say that there were very few avenues left open for me, and the one thing that I wanted to do was to sort of say something directly in some sort of stumbling way that I want no part of this war -- although I'm still very much a part of it, even if I buy an ice cream outside, because of the taxes and things. But to say, in some little way, that I want no part of this war, and that I want people to know this, and that I want to encourage others as well to kind of say in their own way -- not that ours was a model...but that other people might use their own creative imaginations as well, and that they might struggle and realize that they're individuals who have a responsibility for this society. This is what I wanted to say.

I was very impressed by the fact that Phil Berrigan, who was a personal friend, who went to Holy Cross with my brother, poured blood on some draft files in Baltimore and received six years in prison for that. I said to myself, wow, this country is really bad when a priest goes and pours some blood on some files and gets six years in prison. So I said, something must be done.

And then there was the Catonsville incident, where draft files were burned, and the idea of doing it in a nonviolent way, doing it so that no one was hurt, partaking of an act like this, kind of stirred me; so did the harsh response that they got from some people; and also there were the people I knew who got a great hope from the Catonsville kind of thing -- this took me to Milwaukee to do somewhat the same thing.

...I don't know how the District Attorney wants its clarified, but I went into the building, took some files out, took them over and dropped them. I didn't burn them, but I participated in the burning...this, you know, had something to say, which was of great hope; and the response has been, as far as I can see, something tremendous from other people I've talked to in churches every Sunday and in synogogues on Friday night. The response has been something tremendous. I'm just happy to be here with you. Not too happy, maybe, for the conclusion, but that's it.

FR. MULLANEY: I was wondering, were you active in any peace groups prior to the September 24th incident?

A You know, I really don't know quite what you mean by peace group. I mean, anything could be a peace group. You know, a teacher who teaches good mathmatics is a peacemaker...I've been at peace demonstrations, and I'm with an ecumenical center -- Christian-Jewish Center -- which is a peaceful thing... I was in various marches and things, but every time we had a march, the war escalated more...I've been to congress...three times...I know some of

the Congressmen personally. I've talked about it. They were more frustrated than I was. That's what led me here.

.....

MR. FOREST: I (am) concerned about your intent. You say that you did take draft records and --

A Oh, yeah.

Q -- burn them?

A ...Really, as far as I'm concerned, it was kind of a happy thing...People, if they wanted to be in, could sign up. What I was trying to do was to give a chance to a lot of these people who sort of groaned and complained to me that they have no choices, especially the young people. I don't think anybody has been hurt by it, personally.

Q Was it your belief that this action might save lives?

A Oh, yes.

FR. RISEBAUGH: ...When you met with congressmen, you saw a certain frustration in them...Will you explain what kind...?

A ...one very influential senator, you know, said to me that Rusk and Rothstile (phonetic) were running the whole show. That's what he said, and I said, "You mean Senator Mansfield's report" --

(Objection; sustained) (discussion of what is meant by state of mind; nebulous response from the Court)

MR. FOREST: You say that not only did you take part in these actions, but that you were present for arrest. Did you stand around and wait for the police to arrive?

A Yes.

Q Could you --

A There was a strange incident. The policeman that arrested me tried to arrest the man next to me, and the policeman looked at me and said, "Was he one of you?" and the man said "No", and he said, "Okay, you can go."

Q Why did you wait arrest?

A ...not so much to be here, although, as I say, I have no regrets about being here, but to say concretely to people what I think about the situation, you know, which got through a lot more. I got to speak in a lot more places because of this than I ever would have got before.

Q Were you aware that people might consider you an arsonist, as a consequence?

A No. I never expected to be tried by the state, you know. The federal trial June 9th is all I expected.

MR. JACKSON: ...are you telling the Court and the jury that you are frustrated in some way?

A No. I really am not frustrated. I think it's well to clarify. In a sense, you know, I think the war is such a horrible thing...I've talked with men who have lived with the refugees...

Q I hate to cut you off, but if you can answer it yes or no, and shortly and simply.

....

Q Did you do what you did out of a sense of hopelessness?

A No.

Q You stated also you though that you might save many lives, is that correct?

A Yes.

Q Were you aware of the fact that there were hundreds of other draft boards around the country still operating, at this time?
A Oh, yeah. You know, I just want to men--
Q I wish you could just --
A Okay, sorry.
Q Thank you.
A Oh, yeah.
Q And you referred also to a great hope that you held out for others who might be motivated in a somewhat consistent fashion. What is the great hope?
A Well, you know, I've been telling people what to do all my life, in a sense, and I think very unjustly, so I'm not telling people what to do now. You know, freedom of conscience has at least somewhat registered in my own mind; but there is a great hope that people will take the initiative. I think, as Doug was saying, there are just a few people calling all the shots. I would hope that people would realize this and --
Q Take the initiative to do what?
A Take the initiative to be a democracy, to run the country.

....

Q What do you hope people will learn from your activity on September 24th, 1968?
A To take more responsibility into their own hands and sense for their own lives. you're not really asking someone to go out and burn a file or something like that. It's just that you hope they will take on a sort of new spirit, for example, as the civil rights movement gave.
Q Isn't that the spirit of lawlessness?
A That Dr. King had?
Q I'm talking about the spirit you had, not Dr. King.
A I don't think it's a spirit of lawlessness at all.
Q How do you reconcile what you --
A Most of the people didn't think so either.
Q How do you reconcile what you did with the spirit of lawfulness?
A Well, I think you would know if Dr. Zinn was able to testify...

....

A I think it's the same story about people not hearing a voice, in a sense, who are lawless. It's the killing of thousands of innocent people. It's the 4,000,000 refugees in Vietnam, mostly from our bombs. I personally think this is the lawlessness. My sort of conduct did not hurt anybody -- burning papers which we're having an awful lot of trouble finding worth a hundred dollars.
Q What do you advise them to do if you don't advise them to do anything?...Relate them to your democratic process?
A I talk an awful lot about the Declaration of Independence. I talk an awful lot about what Mr. Zinn could mention, of the Constitution and the American revolutionists...I think I would try to talk very much somewhat like Dr. King would talk. I've tried to read everything that he's written. I've also tried to read everything on Gandhi. So I've tried to follow that line.

MR. JACKSON: No further questions. Thank you.

(discussion of arrangements for following day's viewing at WTMJ stidios of the film made of the draft record burning)

(Whereupon at 4:40 pm...the hearing adjourned until 9:00 am, May 20th, 1969.)

(an assistant, Tom Smitt, is permitted to sit at the Defendants' table)

THE COURT: All right. We will resume. Who is the next defendant who wishes to make a statement...?

MR. FOREST: I would like to, Your Honor.
Good morning, jurors.

THE COURT: Mr. James Hendrickson Forest.

THE CLERK: Would you like to swear or affirm?

MR. FOREST: Affirm.

(he affirms the oath)

MR. FOREST: Through all that ceremony, Your Honor, I left my notes on the table. May I go back and get them?

THE COURT: You may.

MR. FOREST: Must be 5,000 pages here, all but the one I needed most.

My name is James Hendrickson Forest, and I live in New York City at 250 East 105th Street, which is that part of New York City known as East Harlem.

I would like to state in advance what I'm attempting to do in presenting my testimony this morning. Iwant to say enough about my background so that you know who I am. I would like to describe the intentions -- in brief -- which led to my taking part in the action here in Milwaukee which has already been described. I would like to describe in some detail what, in fact, I did in regard to that action, and finally, I would like to submit into evidence those documents which, in my case, most influenced me to take part in the action.

To begin with,the personal background: I'm 27 years old. I was born in Salt Lake City, Utah, where my father was a labor organizer. I was raised in New Jersey, in a rural farming area. In fact, I was about the only white kid -- my brother and I -- for some miles. It was almost entirely a poor black farming area. I went to public schools. I didn't have a religious up-bringing. I was a fairly good student, interested in most of the ordinary things -- comic books and astronomy and radio and television, things like that. When I reached high school, however, some things began to happen to me. I went up into the mountains of California for a summer, where I worked as a cook and dishwasher and sign painter; and when I returned to high school, I found myself terribly bored for the first time. I found the atmosphere of school very confining. And although I continued to study, I reached the decision that I was going to leave school, although at the time I was the vice president of the school Honor Society, editor of the school annual and had various other positions which indicated some success in that environment.

After six months living around the country, I decided to join the Navy. Again, I gave myself to that with as much enthusiasm as I could. After going through boot training, serving as the Intelligence Officer, so called, of my training company, I was sent to the Naval Weather School at Lakehurst, New Jersey.

Because I was told that if I did well in my studies, I'd have a better chance of being sent where I wanted to, and because I wanted to go to sea and see the world, I kind of out-foxed myself and did too well in my studies, so they sent me to the Weather Bureau in Washington.

There I did the rest of my duty. It was during this period, training at the Naval Weather Station, that I happened to be very much influenced by a movie, a movie called "The Nun's Story."

I had never known anything about religion before; up to that time, I was what you might call an agnostic. But, in seeing this movie, I was very influenced by the idea of people devoting themselves to lives of service. I

decided to become a Christian and started reading everything I could about Christianity, beginning with the New Testament, going back through the history of the Church, and so forth.

I had a very considerable amount of spare time, because our shifts were 12 hours at the Weather Station, so that we only worked two days and then had three off: 12 hours on, 12 hours off, 12 hours on, 72 hours off. So, I had these big, 72-hour spaces, and I began to use them working at a home for emotionally disturbed children, run by the Episcopal Church in Washington, D.C. And then I began working at Blessed Sacrament Church in Washington, D.C. I didn't have any political interest at all.

It wasn't until 1961, when the United States invaded Cuba, that I felt there was something wrong about that, and joined a number of people in a fast and vigil. They were fasting and vigiling for ten days in front of the Central Intelligence Agency in Washington. After work every day, if it was possible, I would go down and join in that vigil, in my civilian clothes, without telling anybody I was in the Navy. I was discovered, nonetheless, by the Naval Intelligence Service, and after some frightening examination by them, with lots of threats, I decided I had been kidding myself about trying to stay in the Navy and be a Christian, trying to put conscience above regulations, if necessary.

So I filed for a discharge on the grounds of conscientious objection. I was very lucky at that time. These applications were few, in that we weren't involved in any major conflict. There was a professor at Catholic University who helped, and I was able to get that discharge.

I went to New York City to join the staff of the Catholic Worker movement. This is a movement of lay Christians, mostly, who try to carry out what are called the works of mercy -- to feed the hungry, clothe the naked, etc.

In the course of time, because I had had some experience with journalism while in high school, I began to work on the newspaper that they published, so I was both distributing clothes to the men on the Bowery certain days of the week, and working on the Catholic Worker newspaper certain days. My ideas began to become a little clearer, but my main concern was not so much political as religious.

In 1962, I was married. Because we didn't get any salary on the Catholic Worker staff -- just a place to stay and food to eat -- I found it necessary to get a job, and I started working for Catholic Relief Services. Catholic Relief Services is an official agency of the Roman Catholic Bishops of the United States, which carries out the distribution of surplus food and clothing, I would say, in about 80 countries...I worked out of the New York headquarters located in the chancery office of the Archdiocese on Madison Avenue. After a time, because I was wearing a peace buttom, I found that I wasn't particularly welcome there. A number of things were said to me by other people on the staff, higher up, to indicate that if I wanted to continue working for Catholic Relief Services, I shouldn't wear a peace button. It seemed to me that peace and relief were pretty much the same, and I felt that if they didn't want my peace button, they didn want me.

So I got a job working for a New York magazine. Then I got a job working for another magazine, one published by the nonviolent movement, called "Liberation". Then I got a job working for a New York City daily paper, The Staten Island Advance, which I stayed with for a year.

That year I had the opportunity to go to Europe, to the Vatican, with a number of theologians and priests. So -- during my vacation, of course -- I accepted that grant, and I did go to Rome. During the course of that stay we had meetings with representatives of the Vatican Secretariat for Christian Unity.

During that time, a number of people, including myself, decided to organize something called the Catholic Peace Fellowship, which would be a body of Catholics working in conjunction with non-Catholics, with Protestant Christians, with Jews and humanists, in the same spirit as the Vatican Secretariat for Christian Unity.

I came back to the United Stated, continued to wrk for that newspaper. But, in my spare time, I helped to organize the Catholic Peace Fellowship. One of the purposes was to counsel Catholics who were concerned about the draft, regarding what their legal options were. In January, 1965, it became enough of a responsibili for some people to offer money to pay a small salary for myself and rent an office in New York City. And ever since that time, I've been on the staff of the Catholic Peace Fellowship.

Now, a lot could be said about that, but to save the Court's time, I would just like to generalize about what that work has meant.

It has meant a lot of draft counselling. One of the immediate consequences of this is that I wrote a booklet which has subsequently been widely used in the United States, both officially and unofficially. It's a booklet entitled "Catholics and Conscientious Objection"...and has what is called an imprimatur, which is a license from the bishop of the diocese for it to be published, and which is a declaration that it contains no moral error. This imprimatur was signed by the Archbishop of New York, Terrance Cook. And it has been used by the United States Catholic Conference and many chancery offices all over the United States in helping Catholics...(better understand) the options they have as Catholics faced with the draft.

It has also meant some travelling around the country. For example, we brought the Archbish op of Bombay, who is a Jesuit and who is an expert on war and peace questions, for a speaking trip across the country, to allow Catholics to hear some opinions and experiences from a member of the hierarchy on the subject of poverty in India, for example, amd the problems of peace.

The last important project that I was engaged in before deciding to take part in the September 24th action was what we called the Brothers Project. This was a project to provide medical assistance for use in all parts of Vietnam. We had become aware that a great many civilian casualties were being created in Vietnam, both North and South. We were in contact with the International Red Cross. More importantly, we were in contact with the Vatican relief agency, Caritas Internationalis. This is the Pope's relief agency. When he makes a decision to, for example, help flood victims stricken

486 (page missing from transcript / see page 3a, attached)

background to specify what it seems to me are the six principal intentions that came out of this life experience which led me to take part in the September 24th action, which I will next describe.

The first was a very simple intention: the very simple intention to try to save lives...to try to make it easier for people to save their own lives by being, at least for a period of time, invisible to the Selective Service people. It seemed to me possible that there would be people whose files were destroyed who didn't believe they could, in good conscience, take part in the war in Vietnam, but were afraid of the consequences of their inclination, were afraid of the possibility of going to prison for five years, or were afraid of what their parents might think, afraid that people might think they weren't patriotic--and yet who were very deeply troubled about participating in the war in Vietnam. We thought this might make it possible for them to follow their consciences without being embarrassed by their consciences, and in turn, possibly, save their lives; also, there was the more remote possibility of saving the lives of some Vietnamese who might have been affected by their being drafted.

Secondly there was -- and it may seem strange -- the idea that our action would not add to an atmosphere of lawlessness in this country, but--on the contrary--help to restore law and order in our society. You've heard it said, and it was my belief at the time as it is today, that our public officials were failing to take proper cognicance of the Constitution of this country, and the

law of the land. Our leaders were paying a great deal of attention to small laws, but overlooking the very big laws which are the most important ones to this country and its future.

I should add, in this regard, that of special relevance to my coming to that belief ...was a book by Marvin Gettelman; and another book in large measure done by Professor John Fried on the question of international law.

So we were concerned about challenging the lawlessness of public officials and trying to regain a spirit of respect for law -- and especially important law -- in this society.

Third, we were very concerned about a renewal of the democratic process of this society. Through the course of my experience in the peace movement, I was especially aware that time and time again in our society it's been necessary for citizens to undertake certain acts of what's been called civil disobedience, in order to renew the conscience of the country and to create a sense of crisis about certain moral issues. So there was that concern to carry on...the tradition of the Boston Tea Party, with the one exception that we felt it important that not only that certain acts be done, but that we take personal responsibility for them, and place our futures in the hands of the community.

Fourth, my work as a draft counselor had led me to very much want to particularly protest the Selective Service System, which ackowledges the conscience of only those opposed to all war, and will not acknowledge the consciences of those who are opposed to particular wars. We believe that the rights of conscience should be respected by any society, no matter whether it's democratic or whatever, but especially by a democratic society, and so I wished to protest the Selective Service System in some effective and democratic way.

My fifth concern was to re-open the possibility of protest being nonviolent in this society. Many people had said -- and the words were being very frequently said by people in the New Left, for example, last September 24th -- that "when Martin Luther King died, nonviolence died", and we didn't believe that. We wanted to keep open the doors of people undertaking their protest in a context of nonviolence, of respect for life, of respect for the possibility of communication and change; and to keep people from becoming so frustrated that protest would simply become destructive frustration.

Finally, it was my hope that day -- and this perhaps is the hardest thing to describe, it hasn't been raised yet in this trial -- it was my hope to encourage in this movement for renewal in our society not only something we call nonviolence, but a style of action which could be called celebrative, coming out of the word "to celebrate" -- for we believed that action should be a kind of celebration, that it should speak not only to the heads of other people but to their heart as well; we believed that imagination should be involved.

You'll see this afternoon, when we go to the television studio, that when those files were burned, we were not sad. We were joyful. We stood arm-in-arm around that fire singing and reading from the Gospels and praying.

It was our hope that -- as symbolic an action as this was -- that people would see not just the names but see our joy and see that in a kind of very obvious way this was a celebration of life and perhaps a new style of protest activity -- not a model, not something for others to do, to follow, to imitate like echos, but a qualitative sort of thing where people put their lives on the line, not sadly and not in mourning, but in hope. I think you will see that hope in our faces.

Now, I would like to describe what exactly I did on that day. I went to the Brumder Building and went to a board on the second floor. I think it was Board 47, I'm not sure. It was a board on the right side of the building, as you face it, about half way down the corridor. And in that room, which was open when I reached it, there were the burlap sacks and a screwdriver. I was able to force open a file cabinet that was in there and to remove from that some of the registration records. There was a large book in there...that had the

name, serial number...address and a classification history, and to take those records and put them in the sack, and then went over to the 1-A section and took out four drawers of 1*A files. I didn't take the other files, because these were not people who were potentially eligible to be drafted. I also took some other files that were in a drawer marked "Delinquent"--people who had refused to report or were in some other way in trouble with the Selective Service System.

I then took these sacks with the others down to the front of the building, and when the streets were ckear, we ran across the street, and I helped a couple of other guys to pull sacks into the center area...We knew that the fire was a slight danger to other people, and some of us were working to make sure nobody was anyplace nearby, and others were bringing the sacks together, and I helped to bring the sacks into the center of the square where the gasoline was poured on them and they were lit on fire.

Now I should add that while I was in the building, as you've already heard in testimony, filling the sacks, I heard screaming in the hallway, and I ran out and saw Mrs. Gaydos running down the hallway.

I would just like to clarify that my reason for stopping her was not to silence her from screaming, but because she was in a state of terror at the time, and my hope was that she would understand what was happening here, because she had nothing to be afraid of; and I walked her backward into a room with one hand around her belly and the other hand around her cheek. She was rigid with terror...As she remembers it now, when she came into the room, I let go of her immediately and started talking to her. What, in fact, I did was start talking to her while I was still holding her. I don't remember exactly what I said, but it's along the lines that she recalls, that perhaps she had a son who was in Vietnam, or perhaps she had neighbors who had their sons in Vietnam, or perhaps she had friends whose sons might go to Vietnam and their parents were afraid --

THE COURT: Well, Mr. Forest, this is all conjecture.

MR. FOREST: This is the testimony I gave her at the time, to the best of my recollection.

THE COURT: Well, what you thought she was concerned about really would be improper.

MR. FOREST. Yes. Well, I was concerned about her fear. I was speaking very softly to her when I felt her body just relaxed in the most beautiful way. It was like an iron bar turning into a pillow. The relaxed feeling just poured out of her. It was a very wonderful feeling. I let go of her immediately, and she st ood there and looked at me and she said --

THE COURT: Now, just a minute, gentlemen, is this proper?

MR. FOREST: I'm just telling what happened.

THE COURT: Yes, but --

MR. FOREST: Well, it's almost over. Anyway, she said, "Why didn't you tell me that." We talked for a while longer, and then there was the knock on the door, which you heard about, and I went outside, and I've told the rest of the story.

Now, finally -- I'm not sure exactly how to present something into evidence, but I've tried to collect those books which, in one way or another, have had an important impact on me and which, insofar as books have played a role in my life, led me to take part in the action on September 24th.

The most important is the New Testament, which I don't have to talk about.

On the question of law and democracy, there is Professor Fruend's "Vietnam and International Law", subtitled, "The Illegality of the United States' Military Involvement in Vietnam."

MR. JACKSON: If the Court please, State would ask for some time to confer with Mr. Forest to show him the right way to do what he's attempting to do.

We don't agree the material is proper...but he has every right for one of us to tell him at least how to introduce them.

(court recessed; at resumption Defendant Forest's Exhibits are numbered 1 through 14)

MR. FOREST: My intention in intrńducing these as Defendant's Exhibits regards ...the way each contributed to my state of mind in the latter part of the afternoon of September the 24th.

The first exhibit I am introducing is the New Testament. This particular edition is "The New Testament in Modern English". It's translated by J.B. Phillips and is published by the Macmillan Company.

Its contribution to my state of mind very simply relates to my intention to save life and to renew life, which I think are the central themes of the New Testament; and because it encourahed me insofar as the story of Jesus' raid on the temple grounds in Jerusalem seemed to me a kind of precedent for what we were doing.

The second exhibit is entitled "Vietnam and International Law"... published in 1967...by...the Lawyers' Committee on American Policy Towards Vietnam. The principal member of the staff that prepared this is identified as Professor John H. E. Fried. In my intentions as I listed them, I mentioned my concern to renew a regard for law and respect for law in this society. One of the reasons that I was concerned for that renewal was because I believed, largely because of this volume, that the war in Vietnam was in violation of national and international commitments to which we are a party.

THE COURT: Hand it to me.

MR. FOREST: Yes, Your Honor.

The third book is entitled "Vietnam: History, Documents and Opinions on a Major World Crisis", edited and with an introduction by Marvin E. Gettleman... containing principal historical documents such as the Geneva Agreements of 1954, statements by President Johnson, Vietnamese officials, material relevant to our treaty obligations such as the Southeast Treaty Organization, correspondence between the South Vietnamese government and President Eisenhower, the program of the National Liberation Front, and other material of that kind. This is a book I purchased when it first appeared in 1965, and carried with me. This isn't the copy I then carried in my back pocket for many months reading and re-reading it. It contributed very much to my mentality on September 24th, both in regard to the question of law in our soc iety and our commitment to law and the restoration of central democratic values in this society, that is, insofar as I believed on that day that the American people have never really been consulted about whether we should be in Vietnam or not. I believe that the average American couldn't write 25 or 50 words on the subject of Vietnam with any confidence, and that in a democratic society -- we should know pretty much what's in a book like this before we can, as a people, take part in a war anyplace in the world and specifically in Vietnam.

Exhibit Four is entitled "In the Name of America" and sub-titled "The Record of U.S. Military Behavior in Vietnam Compared with the Laws of War Which are Binding on All Americans." It's a stidy commissioned to be presented to the President of the United States and published by an organization called Clergy and Laymen Concerned about Vietnam, specifically commissioned by Dr. Martin Luther King....Fr. Robert Drinan, dead of the Boston College Law School, Dr. Edwin Dahlberg, former president of the National Council of Churches, Bishop William Crittendon, Rabbi Abraham Heschel...Bishop John Lord of the Diocese of Washington...Bishop John V. Kilmer Meyers of the Diocese of California, Father John Sheerin, editor of The Catholic World,

Dr. Douglass V. Steere...(and a number of others).

I mentioned before how I had been involved in a program of raising medical supplies for the civilian casualties in both North and South Vietnam, to be channeled through...Caritas in Rome on September 24th. ... I was still concerned with the problem of civilian casualties as before, in large measure because of the incredibly conclusive evidence that is contained in this volume culled from The New York Times, the major broadcasting facilit in this country, other journals considered to be objective by the general public -- that the overwhelming evidence is that the principal casualties in the Vietnam war were not military but civilian.

The fifth book is entitled "Nonviolence in America: A Documentary History" edited by Staughton Lynd...who at that time was with Yale University in the Department of History.

I mention the importance of this book because,again, one of the intentions of September 24th was to preserve and renew the democratic heritage of this country, the nonviolent and civil disobedient part of which is described in historical documents contained in this volume, beginning with the pre-Revolutionary War period, going through the Anti-Slavery Movement, the Labor Movement, the Women's Rights and Women's Vote Movement, the Peace Movement and the Civil Rights Movement.

Exhibit Six is"Vietnam: Lotus in a Sea of Fire" subtitled "A Buddhist Proposal for Peace in Viet Nam" and with a foreward by Father Thomas Merton, Trappist monk of the Abbey of Gethsemani...

This book was particularly important to me because I spen three months last year travelling with the author of this book to campuses throughout this country. The author is the founder of Van Hanh University in Saigon and also of the Buddhist Youth for Social Service movement, which in this country would be something like a blending of the Red Cross and the Southern Christian Leadership Conference -- that is, it undertakes both the works of mercy and is involved in nonviolent methods of change and resistance instead of war. He's worked very closely with Christians in Vietnam and has helped to restore a peaceful atmosphere between Christians and Buddhists which had been absent for many, many decades. He's also beeh a lecturer in the United States at Princeton and Columbia...

The influence of this book is also the influence of this man, a feeling that he created in me,that no book could ever have created in me, for the culture, for the history of Vietnam; and he inspired in me the realization that we were destroying a people, that we were destroying a culture, and that it was a culture far older and in many respects more beautiful, more serene, than our own.

Now the remaining exhibits are all government documents. Perhaps the order could be a little bit better, I'm not sure.

The first one was published by the 90th Congress of the House of Representatives...It's document No. 75. It's title is "Message from the President of the United States", transmitting recommendations for extending draf authority, lowering the age for drafting, correcting deferment inequities, devel oping a fair and impartial Selective Service System; it is dated March 1967...

This document was important to me...because in the President's own words, he found it necessary for us to continue to involuntarily, as he says on page 5, "conscript men into the armed forces."

Exhibit Eight is a Senate document from the second session of the 90th Congress..."How Can the United States Best Maintain Manpower for an Effective Defense System"...a collection of excerpts and a bibliography relating to the National High School Debate Topic, 1968-69, compiled by the Legislative Service of the Library of Congress...most of the evidence contained herein indicated that high school students felt that there should not be conscription

in this society.

Exhibit Nine is a review of the administration and operation of the Selective Service System, a reports of hearings before the Committee on Ammed Services, House of Representatives, 89th Congress, Second Session, June 22 through 30, 1966...

I studied this booklet shortly after it was published and again in the latter part of September. It's contribution is hard to describe. It's a document that made me feel very heavy abput the future of this society, very worried, because although this booklet was full of arguments against the Selective Service System, which seemed to me to be very good arguments indeed, the conclusion of these hearings was to approve the continuation of conscription in our society.

Exhibit Ten is a report of the Civilian Advisory Panel on Military Manpower Procurement, a report to the Committee on Armed Forces, House of Representatives, 90th Congress, First Session, February 28th, 1967, a document which again takes note of the unpopularity of conscription in the country, but finds that there is no other way to compel people to fight in the wars that the United States is presently a party to.

(next holds up a large sheif of ring-bound sheets)

This is probably, of all these documents, the one I am most familiar with. It's the regulations of the Selective Service System as published by the United States Government Printing Office. This is Exhibit No. Eleven. There must be a title page, although I don't recall ever seeing any. The present cover sheet on it is just an updating from the Selective Service System of what revisions are made to these pages effective April 15, 1968.

As I mentioned before, I've been a draft counselor constantly since I got out of the Navy, right up to the present time, except for that period that I was in jail here in Milwaukee. These contributed to my state of mind on September 24th, because I knew so well how specifically and in what detail the Selective Service System maintains that the conscience of the individual is irrelevant and immaterial to how he should be classified, and that the only grounds for him to be classified a conscientious objector are that he be opposed to all war, every war, every single war without exception. This seemed to me to violate the principles on which this society was founded, most specifically the inalienable right to life, liberty a the persuit of happiness.

Exhibit Twelve is published by the 90th Congress, First Session of the House of Representatives...It's entitled "Military Selective Service Act of 1967..."...it's a reportcoming under the signature of the chairman of the Committee on Armed Services, Mr. Rivers, and...it contributed to my state of mind on that date because, in the words of our own government officials -- incidentally, few of them elected --it knocked down all the arguments for freedom of choice and conscience and democratic participation in this society - on the basis that democracy won't work. People have no freedom to decide how to use their lives.

THE COURT: Did you say it was 12?

MR. FOREST: That's 12.

And this is 13.

This was published by the National Headquarters of the Selective Service System, and it's a compilation of all the memoranda sent to the local boards under the signature of General Hershey.

Again, being a draft counselor, I was familiar with the contents of these memoranda, the way in which casualties in the war were to be treated by their draft boards once they received the information of such a casualty, further information on the illegality of a person's conscientious objection to a particular war, whatever its basis.

And, finally, Exhibit 14.

This is a report of the National Advisory Commission to the President of the United States on the subject of Selective Service entitled "In Persuit of Equity: Who Serves When Not All Serve?" This was prepared by Burk Marshall, chairman of the commission and vice president and general counsel, at that time, of the International Business Machines Corporation; he was assisted by Kingman Brewster, president of Yale University, Thomas S. Gates of the board of directors of the Morgan Trust Company, Oveta Culp, copy editor and chairman of the board of The Houston Post..., Hannah Hoffman, president of the Hannah Rosenbergs Association, Paul J. Jennings of the Machine Workers Union of the AFL-CIO, John H. Johnston, president of the Johnston Publishing Company...(and many others, including various business figures, a Jesuit theologian, educators, a retired general of the Marine Corps, a judge and so forth).

...Of particular interest and influence...was my awareness that one member of the panel, Father John Courtney Murray, professor of theology at Woodstock College, who is now dead, had tried desperately to get the commission to reach accord on the idea that men shouldd not be coerced to serve --

MR. JACKSON: I object to this. I think the statement should relate to Mr. Forest's intentions.

THE COURT: The gentleman is deceased and cannot be brought here to testify whether he did make such a statement.

MR. FOREST: It's here in a footnote. I can find it if you like.

THE COURT: You need not.

MR. FOREST: I think that explains it. That's allI had sought to introduce into evidence.

THE COURT: You offer Exhibits One through Fourteen?

MR. FOREST: The New Testament through the Commission Report.

MR. JACKSON: If it please the Court, the State's position is as follows: The State opposes the introduction of these materials into evidence all of them, with the exception, obviously, of the New Testament. The State's position is that the New Testament certainly can be admitted and that the Defendants can do anything they like with it. It appears to be one of the few books that has no markings on it whatsoever...We would oppose the other books on the basis that they are not relevant except as to his intention... I believe they have no further relevance whatsoever and that it would be improper to allow the jury to go in and attempt to read them in the time that they would have to deliberate.

....

MR. FOREST: ...it seems to me that these documents, many of which are official, give considerable credence to the reasonableness of my belief that the intentions I listed before were, in fact, objectively justifiable intentions...

(further argument from Mr. Jackson that the only relevance of the documents is to the formation of Mr. Forest's intention; they are not relevant beyond that point; the jury is now aware the documents exist and has seen them from a distance)

THE COURT: The Court denies admission into evidence of Exhibits 2 through 14, inclusive.

Concerning Exhibit No. 1, the New Testament, the Court finds that to receive it into evidence -- and all persons who follow the Christian religion are guided in their daily action by the New Testament. The Court finds that to admit it into evidence may create substantial danger of undue prejudice or of confusing the issues or of misleading the Jury.

MR. FOREST: Is that regards the New Testament?
THE COURT: Yes.
MR. OJILE: That's beautiful.
THE COURT: And feels that for those reasons that it should not be admitted, and therefore denies this admission into evidence.
MR. JACKSON: ...I wish the record to show that as far as what's happened today the State could have opposed, obviously on some legal grounds, the New Testament, but the State certainly did not, and at this time still just says, if this is something that the Jury wants to consider, the State would believe that they could.
THE COURT: I think they have to apply the New Testament, and the Old Testament for that matter, in their judgment. To permit it to go into the Jury Room by one side, and not having you introduce the New Testament also, may create what I stated before.
MR. FOREST: We'd be willing for them to admit the New Testament.
THE COURT: The Court's position is stated into the record; and its ruling. All right.
MR. OJILE: Excuse me. I'm not quite sure what your position is. That the New Testament is irrelevant?
THE COURT: I have stated it in the record. The record may be read back to you Mr. Ojile. Now, do you want it read back now?
MR. OJILE: I'd like to understand this before we continue.
THE COURT: It's not relevant as to whether after I made the ruling in Mr. Forest's case, unless you think --
MR. OJILE: I think it will affect my case; the New Testament, or any --
THE COURT: Read back to him the ruling of the Court.

(reading of the Court's ruling)

(recess called)

THE COURT: Court will come to order...I'll ask whether any of the Defendants have a question or questions of Mr. Forest.
MR. MARVY: I've never had a good friend under oath before, but I'll pass up the opportunity.

....

(Cross examination by Mr. Samson re further details of September 24 event plus times of having functioned as a draft counselor in Milwaukee)

MR. SAMSON: Mr. Forest, how did it happen...that you came to Milwaukee to take and burn draft records?
A Well, that's not easy to answer. All of us are friends, and have been friends for sometime with at least a few of the others. Father Cunnane and I first met, for example, in the summer of 1965 when we went to the Trappist monastery of Gethsemani to take part in a conference with Thomas Merton on the subject of the spiritual roots of protest. We've been friends ever since. I have known Bob Graf from earlier visits to Milwaukee for purposes that I've already described.
THE COURT: Mr. Forest. Can you answer the question?
MR. FOREST: Yes.
In any event, I knew a number of these people as friends...all of us have been tied together through friendship. There are people here that Bob had friendships withthat I did not. Through discussions among ourselves we came to the conclusion that we, as a community, wanted to involve ourselves together in this kind of action. I think the main reason we came to Milwaukee was because more of us were from Milwaukee than any other place.

Q How is it you all came on the same day?
A Is it possible -- I fear that there might be some possibility of additional charges, such as conspiracy, coming out of a trial of this kind. I don't want to give evidence that would bring forward further charges. Is it possible for me to say I'd just like to leave that to your imagination? It seems self-evident to me.
MR. JACKSON: If the Court please, both Mr. Samson and myself are of the opinio we will ask no further questions in this line, involving his group actions. It may be what he says is true.
.....
MR. SAMSON: ...you've detailed to some degree your activities over the last several years. Have you ever worked on voter registration?
A I was in Tennessee in 1962 as a staff member of the Committee for Nonviolent Action, in which I was involved particularly in Nashville with Reverend Larson and a number of people with the Southern Christian Leadership Conference. The question of voter registration was in its early stages then, and I had no direct role in it, except to take part in discussions which later led to voter registration programs.
Q Mr. Forest, you testified earlier that you were willing to place your future in the hands of the community.
A Yes.
Q That means, I presume, that you're willing to have the Jury find you guilty of burglary, arson and theft?
A Yes.
Q That's all.

MR. OJILE: ...what do you mean when you say you would be willing to allow the jury to find you guilty of arson, burglary and theft?
A I think the Jury is a representative of the community, that I have undertaken an action which affects that community, and as representatives of that community, they have the right to decide whether or not I was justified in doing what I did, and whether I should be punished or not punished.
Q Would you be willing to allow the Jury to find you not guilty of arson, burglary and theft?
A I would be delighted.
Q Why?
A Because I think...it would indicate a new beginning in this country for nonviolent forms of activity. Again, I emphasize, not necessarily the kind of activity that I took part in, but nonviolent activities founded in a respect for life.
Q What do you mean by nonviolent?
A Actions which are intended to keep people alive and to keep them growing in their lives. Actions which prohibit anything which could bring harm -- psychological or physical or spiritual harm -- to another person.
....
Q You mentioned Thomas Merton in your revelation of yourself...has Thomas Merton been part of your state of mind and to what extent?
A As you may know, Thomas Merton dedicated one of his last books, Faith and Violence, to myself and Father Philip Berrigan, which I think indicate in a very moving way how important the relationship was to both of us. We were very close friends. A number of times I visited at his hermitage in Kentucky. It was a very deep and important relationship to me, from 1961, when I first came to know him as a consequence of editing some of his writings for the Catholic Worker newspaper, to the time that he died in Southeast Asia last December.

(Forest excused)

MR. FOREST: I'd like to call Professor John Fried. He will be examined by Brother O'Leary, Your Honor.

....

THE WITNESS: I am John H. E. Fried. I live in New York City, 55 East 87th Street, New York 10028. I am at present Professor of Political Science at the City University of New York College, and I am a member of the Graduate Faculty of the City University of New York. I have training in law and political science. My first Doctor's Degree, I obtained at the University of Vienna, and my second Ph.D Degree at Columbia University in New York City... the latter in comparitive government...

Apart from teaching, I have been an expert on international law at the United Nations, and in 1947 I was invited to be Consultant to the United States Secretary of War to go to the Nuremberg War Crimes Tribunals. There I had the honor of being chosen by the Judges of the Nuremberg War Crimes Tribunals -- they were all American Judges -- to be their special leading consultant...a special consultant on international law.

That was from 1947 until 1949. From March, 1949, until the end of 1950, I was expert at the Advocate General's Office, U.S. Department of the Army, at the Pentagon. My job there was to prepare, as the Representative of the American Judges, the official publication of the 12 American Nuremberg Trials. Since they were very heavy, I brought only one with me, and I do not wish to burden you, Your Honor. This, I assume, will not go into the record.

(he hands Judge Larson a large, heavy, impressively bound volume)

I wanted to show that I did that.

In 1946, the United Nations sent me as United Nations Advisor on International Law to the government of Napal where I remained until early 1966.

When I returned from Asia in 1966, a number of international law experts met to discuss the ever-growing concern of professional international lawyers regarding Vietnam. We formed an informal group composed of 12 or so experts... which we called the Consultative Council. The larger committee, the Lawyers' Committee on American Policy Toward Vietnam, who are practicing lawyers but do not claim to be experts on international law, asked us to write a more fully documented study on the illegality or not of the American intervention in Vietnam.

THE COURT: Now, the book that you're referring to, Doctor, isn't that a duplicate of one that you offered, Mr. Forest, and which was not permitted in evidence?

MR. FOREST: That's the copy that was up here. I only introduced it as it related to my state of mind, not as an item of evidence beyond that.

THE WITNESS: Your Honor, if it is permissible, since the quality of an expert is, I think, partly deducted from his standing among his peers, may I say that this group consisted, among others, of Professor Quincy Wright (phonetic)

MR. JACKSON: Just one minute. I don't want anyone to misunderstand. I admit that he's qualified as an expert. His credentials are not only in good order, but they exceed my wildest expectations, and I -- there's no challenge as to his expertise. And if that's what the question is about, we concede and we are prepared to proceed --

THE COURT: All right, he's an expert on international affairs.

THE WITNESS: On international law.

THE COURT: International law. So stipulated.

MR. O'LEARY: You're aware, sir, that the case at hand deals with the burning of Selective Service records; that the Defendants are accused of burning a number of (such records)?

A Yes.

Q You are aware that these Selective Service records are used in drafting young men to participate presently in the war in Vietnam?

THE COURT: You can answer that.

A Yes.

Q These men who are drafted and do fight are furnished with United States Field Manuals. Could you tell us if there is any relevant information about international law in these field manuals that soldiers are furnished with?

MR. JACKSON: I object to that. I don't see how the witness can physically answer the question, unless some sort of foundation is layed.

....

(discussion of the sustained objection)

....

Q Is it a fact that all citizens are bound by the treaties that the United States enters into with foreign nations?

A Yes. That is one of the major principles not only of international law but, in particular, of American constitutional law. It is now absolutely settled practice, not only that international treaties such as the United Nations Charter are binding upon those governments that have ratified them, such as the United States of America, but that international law is also binding upon individuals. The United States Department of the Army Field Manual 2710 of 1956 --

MR. JACKSON: I'm sorry to interrupt --

THE WITNESS: That was my answer to the question, which I understand was permitted.

MR. JACKSON: ...the question was something that could have been answered yes or no, and then the state obviously would have objected to this explanation on the grounds of relevance...

THE COURT: The objection is sustained. The statement, in addition to his affirmative answer...is stricken from the record, and the Jury instructed to disregard it.

MR. MARVY: ...the purpose of an expert witness on international law is to attempt to show that...no laws were broken (except in response to a more binding obligation, insofar as the treaty commitments are joined to the U.S. Constitution and thus are more binding that state statutes)... the crimes of burglary, arson and theft are secondary...and we must be given a chance to prove it.

....

MR. FOREST: In itemizing my intentions, I sought to tell the Jury that... very high on my list...was my desire to be lawful, and that it was my conviction that to be lawful meant to be obedient to the Constitution, and that the constitution contains in it the obligation that citizens, as individuals, as well as the state itself, be obedient to these internation commitments to which we are a party. I am not an expert on these questions, and it seemed to me important, and to the rest of us, that an expert on these questions of the highest credential possible be able to --

THE COURT: The Court permitted you to state your reasons, and the enumerated six of them, in addition to going into great detail concerning your background, Mr. Forest, which all of -- which the Court considered proper, but to ask this witness questions on a subject which the Court does not believe is relevant to what occurred on the 24th of September, the Court believes must be excluded.

MR. FOREST: Your Honor, we are saying that there is a hierarchy of law and that if the United States Constitution differs from a local law, that the Constitution is to be obeyed;...to prove that we are attempting to be obedient to the Constitution, we have brought here, at our own expense, one of the top experts in the world today on the subject of international law, and especially on the constitutional law of this country.

....

FR. CUNNANE: It seemed to me, in my questioning by the District Attorney yesterday, that I was supposed to be sort of a lawless citizen, and this seemed to me to be very prejudicial...I would...have this expert witness say something to this, because I can say I'm not lawless, but it really doesn't mean much. But I think an expert witness would add an awful lot to what the District Attorney raised in my case -- in my cross-examination.

THE COURT: That may be, Father, but if what he testifies to is not proper, according to the rules of evidence, it must be excluded. Mr. Ojile?

MR. OJILE: Yes. To speak to the issue that Mr. Jackson raised about the relevance of arson, burglary and theft to his expertise on international law and his explanation...of some of these aspects, I think we should keep in mind -- and this is the point at hand -- that there is a direct relationship between international law, in other words constitutional law, and arson, burglary and theft; just as it was a direct relationship between people in a situation where it was deemed international law was violated..by a nation, and the people within that nation broke domestic laws in order to follow international law. A good instance of that was during World War II when Germany was declared condemned by international law --

THE COURT: Now, you're making a speech, Mr. Ojile.

MR. OJILE: I'm speaking to the relevance question. During World War II, Germa was declared against international law and individuals within that society broke domestic law in order to follow international law, and the ones that did not, they were taken to court and were found guilty of breaking international law, although they followed domestic law. The same is exactly analogous to our situation here, where we have broken laws prohibitting burglary, arson and theft in order to follow international and constitutional law in our society. The relevance is -- it seems to me -- so clear that it's unreasonable to question it any further.

MR, MARVY: Not only this, but prosecution yesterday brought up this point.

FR. CUNNANE: Yes, it was his point.

MR. MARVY: I read from yesterday's transcript when Mr. Jackson questioned Father Cunnane, he asked him --

MR. JACKSON: I don't think this should be done in the presence of the jury.

MR. MARVY: The jury was here before.

FR. CUNNANE: The jury was here when he questioned me.

MR. JACKSON: This is argument...I don't think the jury should be exposed to this...

(the jury, however, does stay)

....

FR. MULLANEY: Is it reasonable to admit that the United States Government could be reasonably unwilling for steps to be taken to hinder it from participating in international crime?

(Court orders that the question must be re-phrased)

FR. MULLANEY: I will withdraw the question at this time, in order to re-phrase it.

.....

MR. O'LEARY: Mr. Fried, are there some elements -- some laws to which the United States is part, relative to the war in Vietnam, that are relevant for the American citizen to be aware of?

A The answer is yes.

Q Could you mention some of these laws that have specific relevance to the citizen of the United States.

A The most important treaty in the world today, of which the United States has been the main architect, is the Charter of the United Nations. After the first war in history using nuclear weapons, the peoples wanted to get rid of war. Indeed --

THE COURT: Now, just a moment, your conclusion that the people wanted to get rid of war is surely a proper one.

THE WITNESS: Thank you.

THE COURT: But you have answered the question, Dr. Fried, and you need not go any further.

MR. O'LEARY: He was further asked whether there were some specific laws that have relevance to the American citizen, and I think he was beginning to specify some specific international -

THE COURT: Did you ask him what they were?

MR. O'LEARY: Yes.

THE COURT: It may be that you did.

THE WITNESS: Your Honor, it seems that we are now at the very core of the matter; namely, what does the United Nations Charter say about war. With your permission, I would only quote from the Charter of the United Nations. Is that --

THE COURT: Now, just a moment.

THE WITNESS: -- admitted?

THE COURT: ...what is the State's position on the Charter of the United Nation

MR. JACKSON: Frankly, Your Honor, the State thinks that the Charter is irrelevant, but there's a sense of frustration everywhere; so, knowing that it's irrelevant, I think he should be allowed to read it.

THE COURT: He should be allowed to read it?

MR. JACKSON: He can read the Charter. I think it's irrelevant, and I've gone on the record saying so, but let him read.

(the Court is destressed with the prosecution's position, long discussion re irrelevancy)

MR. MARVY: It is not our position that we intend to show that the United State is in violation of any particular agreements. What we are going to is the matter of criminal intent...whether or not we, as defendants in this case, had reason to believe that we were acting lawfully in what we did. The State must prove criminal intent. It is the purpose of calling an expert witness to show that we had such reason to believe. We are not asking the jury to believe the war in Vietnam is legal or illegal. We are asking an expert witness whether or not we had a reason to believe what we did was in accord with law, that's all.

MR. JACKSON: I believe Mr. Marvy's attempting to funnel...testimony in (that has already been discussed at length, ruled upon and barred in regard to their desire to apply the Privilege Statute to themselves).

MR. OJILE: It doesn't have to be through that (statute). It can be just through the whole concept of criminal intent, which has to be part of any crime that anyone commits, and we would like to be able to show that we had no criminal intent, particularly in light of the fact that we thought we were actually saving ourselves from breaking criminal law.

THE COURT: That has been said over and over again, Mr. Ojile.

MR. OJILE: Well, it will continue to be said until it's understood by the Court.

THE COURT: Well, the Court has made its ruling.

(discussion, initiated by Forest, of reference that the Judge had made, at a bench conference, to an article in Newsweek magazine indicating Ho Chi Minh would kill many thousands of Vietnamese were the US to withdraw from Vietnam; Larson says his reference to the article is no basis by which to infer that he holds the war to be legal...)

MR. O'LEARY: Just what relationship does a private citizen of the United States have to international law?

THE WITNESS: Your Honor, it seems to me that logically we would first have to establish what the United Nations Charter does say...(To accpmplish that foundation, I would propose to read two essential provisions from the Charter); it would then be logical to answer the second question, namely, the individual's relation to those provisions of the United Nations Charter. With your permission, then --

THE COURT: Well, if it's relevant, just a moment...

(another prolonged argument on relevancy; finally agreement is reached that Dr. Fried may read the Charter sections...)

DR. FRIED: Well, the Charter says in Article 2, paragraph 4, "All members shall refrain in their international relations from the threat or use of forve against the territorial integrity or political independence of any state or in any other manner inconsistent with the purposes of the United Nations". That is the basic prohibition in principle... Then article 15: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations"..."until the Security Council has taken the measures necessary to maintain international peace and sedurity."

....

MR. MARVY: In your opinion, would you say that the United States has violated the article that you have just read to us?

THE COURT: Just a moment. You've heard the question?

MR. JACKSON: Yes. I've heard the question. I've already stated that I think it's immaterial.

MR. OJILE: It is not.

THE COURT: The Court rules that -- you want your objection to follow through on all of these questions?

MR. JACKSON: No, not as to this question. If he want to say it, I think --

THE COURT: In view of the fact that I asked you and you did not object before I did, the Court will permit the answer.

MR. JACKSON: Thank you.

THE WITNESS: Your Honor, I say with a very grave heart and after very, very careful study, that the United States military intervention in Vietnam does violate those essential and basic provisions of the United Nations Charter, and that this is not an isolated opinion of myself.

MR. JACKSON: I object.

THE COURT: Just a moment. You have been permitted by the Court to give your opinion. However, you may not go beyond that, Doctor. We will take a recess at this time until 1:30.

(Whereupon at 12:05...the hearing was adjourned until 1:30 o'clock, this same day.)

(court returns from lunch recess...)

MR. LEARY: Mr. Fried, earlier this morning you stated that the intervention of the United States in the Vietnam conflict was in violation of the United Nations Charter. Is this an isolated opinion of your own, or do others share it?

A This is not --

THE COURT: Just a moment, I'll have to myself interject here. Court cannot see the relevance of what some other people might think about the Vietnamese war.

MR. O'LEARY: This depends on who these other people are, Your Honor. There is a realm of professional opinion about this among international lawyers, (and we would like to establish that) this is not a personal idiosyncrasy of the witness...

THE COURT: Mr. O'Leary, you've already stated what your reasons were for participating as you did. The jury has heard that. I don't think you should be entitled to bring in opinions of other people. You must stand or fall on what happened and your reasons for doing so, as you stated them.

MR. FOREST: Your Honor, the only reason that we would like to hear his answe r to this question is because we are convinced that we are reasonable people, and we believe that he is a reasonable man. We'd like to find out if there are any other eminent persons of legal competence in this country who share in his opinion regarding the illegality of the war in Vietnam.

MR. JACKSON: Well, again, the State would respond this way. For purposes of this hearing, the State is willing to admit that the United States may or may not be in a legal position which is inconsistent in terms of legality or illegality on the war. We think that's irrelevant in terms of the crimes of burglary, theft and arson, and we again state that Mr. Fried's respected opinion in that regard does not affect the finding of this court.

THE COURT: ...what the District Attorney has just stated is the only ruling that the Court can make in this case on the subject that you're asking questions about.

(argument on the notion of criminal intent....)

REV. HIGGINBOTHAM: (Responding to Mr. Jackson.) You're arguing in a circle for me. The point is was it an act of burglary, theft and arson, or was the act something else...

MR. MARVY: It'a an attempt to define the act within a broader context. I'll agree that it is the intent to do the act which is important. What we are dealing with is definition of the act, whether or not this act, in and of itself, may be carrying out obligations that we feel are under other agreements and different laws.

THE COURT: You may proceed.

MR. O'LEARY: This morning, Dr. Fried, you read some pages from the United Nations Charter. Could you explain how these provisions apply to states that are represented in the United Nations?

A Very, very briefly, Your Honor, there are two basic principles included in the provisions I read. One is that not only the use, even the threat of force is forbidden in principle, in international affairs, which means tha the makers of the Charter, including in particular Senator Vandenberg (phonetic), who was very active in the formation --

THE COURT: ...don't comment on certain individuals who did a certain thing. Just say what is contained.

THE WITNESS: Pardon me. Pardon me. (The makers of the Charter) deliberately avoided the term war, so that countries could not say -- as for example the Japanese said in Manchuria -- that this is not a war, and therefore the prohibition of war does not apply; and that is why the United Nations Charter goes much further and really, it's not only war but any use of force, thereby cutting off any difficulty or complication about whether a particular act of force constitutes war or not.

Now, the only exception to this general prohibition of the use of force is self-defense, either on behalf of your own country or on behalf of another member of the United Nations, if an armed attack occurs; that is to say, if there is no other way but the instinctive and self-evident right to defend one's self or a friend if an armored attack actually occurred, and that is the only exception. Otherwise the use of force is, in principle, forbidden by the United Nations Charter.

That is, very briefly, the meaning of those two provisions.

(questions re other international treaties and the "law of war" and war crimes successfully objected to...)

MR. OJILE: Especially in terms of war crimes, my intent in doing this act was to avoid committing war crimes, and now it's not relevant that this be spoken to.

....

MR. O'LEARY: (Are citizens of individual states) bound by these (treaty) obligations?

(Objection; sustained)

....

MR. O'LEARY: In a sense, no man ever acts as an individual. He belongs to a larger community, and he shares the values and the attitudes and the belief of this larger community; and what we are trying to do in this courtroom, it seems to me, is to identify the nature of the act as burglary, theft and arson. What we are trying to do is identify, in another context, which is relevant, since we are the people acting there, and this context is that of being a citizen of the United States. And with the help of expert testimony, we were trying to bring to the attention of the jury that there is some reasonableness about this belief of being a citizen of the United States.

(more argument regarding proposed questions to the witness....)

MR. JACKSON: (The State's position is that) Dr. Fried is qualified -- extremely well qualified, to articulate a point of view relating to international law. The State has no qualms about that and will admit that he's perhaps the leading authority in this area. What's important to the trial is the intent of the defendants, at the time they committed the acts, if they committed them. Therefore, they are allowed, we would believe, to take the stand and say exactly what their intent was.

Therefore, Dr. Fried's testimony takes on no larger proportion than the books that they submitted this morning, because he is a source of ideas that led to intention, the same as the books are; and his qualifications, though extremely large, don't necessarily reflect on the minds of the individuals who formed the intent any more of an impetus or less than what they will admit in open court.

FR. MULLANEY: May we respond to that?

THE COURT: Court agrees.

FR. MULLANEY: He used the word necessarily. Well, we may admit to that, but how are we going to discern that if Dr. Fried doesn't testify?

MR. OJILE: Secondly, he's not only an expert in international law. I think he's shown in the beginning that he's also an expert in the Nuremberg trials and the Nuremberg principles; and I consider my state of mind, at the time of that action, very much related to the Nuremberg principles... (If that's) not allowed...it's a travesty of justice.

THE COURT: That's your opinion.

MR. OJILE: I rule that that's so.

MR. O'LEARY: Yesterday in his cross-examination, Mr. Jackson used the expression, which we have appealed to before, "a theory of lawfulness." And I think this is rather insightful, in the sense that oftentimes, in explaining ourselves, we are inarticulate, and we often times need the help of experts who can put things in a larger context and in a more ration order, to make clearer what occurs to us in a confused and incoherent fashion at times.

Now, the prosecution has made use of experts in the outlining of the floor plan of the Bruder Building. Doubtlessly, they have enough drawing skill to do it themselves, but to make it more clear for the jury, they have engaged an expert. I think our role here is to get an expert to articulate our feelings about a theory of lawfulness, which would explain the concept far more coherently than we would be able to do for ourselves.

THE COURT: Well, you've said that before, Mr. O'Leary, and others have said it, and the Court made its ruling.

MR. MARVY: I would like to ask a few more questions of the witness.

Q I'd like to backtrack just a bit. A brief while ago you explained the meaning of Articles 2 and 51 of the U.N. Charter...; and you said earlier today that, in your opinion, the United States was in violation of these articles, is that correct?

A I even said the United States continues to be in violation of them every day.

MR. JACKSON: We have objected to that several times.

THE COURT: Objection sustained.

....

Q In your opinion, would you say that a reasonable, responsible citizen, a layman, could believe that the war in Vietnam is illegal?

A Yes.

Q ...would you say this is an isolated opinion?

MR. JACKSON: I object to that question as to form. I don't think we are interested in his opinion of our opinion of someone else's opinion.

THE COURT: Well, he has stated his opinion, for whatever relevance that would be worth, and the Court questions that.

MR. MARVY: He is not only an exoert on international law...he is also an exper in the opinions of other international lawyers...

THE COURT: That may be...but whether that is relevant before this Court is the question.

(other questions -- on whether treaties apply to states during hostilities, on what legal responsibility an individual citizen of a UN member nation might have under Charter articles 2 and 51, whether criminal offenses might be treated as something other than that if the motive were politically honorable rather than for personal gain, whether acts committed against the military might be sanctioned by law, regarding how a government is held accountable for its acts, asking what procedures are available to the individua

citizen to bring his government to account if it violates its treaty obligation -- are objected to and objection are sustained by the court)

(Basil is ordered, after much discussion, to re-phrase a question...)

Q The question was, how is the United States to be held accountable for its acts when a citizen disagrees with the United States? I'm speaking now of acts of great magnitude -- that is, acts such as declaring war or pursuing war in violation of international treaties...what recourse does this citizen have?

MR. JACKSON: No objection. If he can answer that, God bless him.

THE WITNESS: Your Honor, I said, if you allow me to proceed, that his is the most delicate question, namely, that a citizen claims that there is a dilemma in his duties both legally and morally; one duty according to a law under his own country, and another law under the world order; and here I must quote the major principle of the Nuremberg Judgment. The International Tribunal, in which the United States was represented, stated that it is the moral choice of the individual if he feels that for him obedience to the higher, world order is more important; and he should feel that, and he can directly be punished. If he does not feel so, then he has to take the moral choice and do the things which he considers morally proper. That is the great ethical and moral method of Nuremberg.

(further question --"When a citizen exhausts ordinary means for expressing his disagreement with his government...what would international law have to say about a citizen who 'takes the law into his own hands' and... engages in symbolic, somewhat bizarre conduct (in order) to awaken his fellow citizens?"--is objected to; and argument ensues...)

(Mr. Jackson objects that it has not been demonstrated that the defendants have exhausted all legal remedies in the democratic process, and that the question is irrelevant...)

MR. JACKSON: ...There's been no showing, whatsoever, that that has been done, that they've attempted to do what other citizens who have been oppressed have done, and that is to go through the democratic process without violating any of the principles of burglary, theft and arson.

FR. MULLANEY: Your Honor, I'd like to point out two things. Number One, that this precisely would have (been responded to in) the testimony of Dr. Howard Zinn, had he been allowed to testify.

THE COURT: You can't say that before the Jury, Father.

FR. MULLANEY: My second point is that, among others, Father Cunnane -- and this is very clear in the Court record yesterday -- stated a number of routes that he had traveled over the past...four years in his attempts to seek redress through ordinary legal channels...this included spending a lot of money going to Washington...I soon will be on the record for myself stating exactly what I have done in this regard. The burning of Selective Service records was npt the first attempt by any of the defendants to stop this war. It is one phase in a long history of attempts...so (the question) is, I think, very much apropos of the present situation.

THE COURT: ...The Court is required to sustain (the prosecution's) objection, and does.

....

MR. OJILE: ...we argue with (the prosecution) about a point he's trying to make, and we show him he was wrong, and you say it doesn't matter what he said. I don't understand that. We just said there was something in the record that showed we had tried other legal channels, and you said that doesn't matter anyway.

THE COURT: The Court has made its ruling...

* paragraph garbled by court reporter; see Dr. Fried's letter, pages 168-169, Trials of the Resistance, Random House/ Vintage Books V-616, 1970

MR. MARVY: ...At Nuremberg, were the defendants there permitted to have expert witnesses testify in their behalf as to the reasonableness of their state of mind?

A Yes, indeed.

MR. JACKSON: That's objected to on the grounds of relevancy.

THE COURT: Objection sustained.

MR. JACKSON: We ask that the continual references to Nuremberg be stopped.

THE COURT: Yes.

MR. OJILE: I'm sorry, it won't be.

....

MR. O'LEARY: One who breaks a law in the State of Wisconsin might well be called an arsonist or just a common criminal. One who conspires with his government to commit a crime in violation of the United Nations Charter, I suppose, would be called a war criminal. In the perspective of international law, which would be the worse kind of criminal.

A The United Nations Charter does not give the rules for conduct during war time. These are found in other treaties, like the Hague Treaties of 1917, long preceding the Charter, or the Geneva Conventions of 1929 and 1949. In the hierarchy of law, international world order, as stipulated in treaties and general customary law of civilized peoples, is the highest. However, it is up to each state to declare the hierarchy of values according to its own legal system. If, then, a dichotomy develops between international law and domestic law, the delima for the government and for the individual is great; and in the international scene, the international law prevails, and in the domestic scene, the domestic law prevails.

.... (witness excused)

(recess called)

TESTIMONY OF FRED OJILE: My name is Fred Ojile. I'm 23 years old, and I'm from Minneapolis, where I live with my wife. We've only got about 8 or 9 minutes, so I think I can at least give my background...

I had been in the seminary for six years studying to be a Catholic priest. The last two years of that seminary training were at the Catholic University of America in Washington, D.C., where I received a Bachelor of Arts Degree in Philosophy. I left the seminary primarily because the director of the seminary told me that if I were to continue in peace activities, he would send me to Europe rather than keep me here in America. I told him at that time that I could no longer stay in the seminary if he wasn't going to follow the Christian principles.

So I left the seminary and entered law school the following fall. That was the fall of 1967. I spent one year at the University of Minnesota Law School. I left law school for primarily the same reason I left the seminary --

MR. JACKSON: I object to that, Your Honor. I think he's allowed to give his history, but as to why he did, no.

THE COURT: Try and confine yourself as to what you did, Mr. Ojile, rather than the --

In law school, hoping to receive course on debtor's rights, tenant's rights, city law, poverty, I instead received courses on creditor's rights, land lord's rights and real estate law. I left law school at that time.

After having studied Selective Service law on my own and having studied tenant's rights on my own after leaving law school, I became a draft counselor for the Twin Cities' Draft Information Center, an independent organization

of Minneapolis with 16 full-time workers, primarily between the ages of 18 and 25, working for a maximum of $80 a month, most of them working for absolutely nothing. As a draft counselor, I usually counsel between 10 and 15 young men each day between the ages of 18 and 25. Young men I counsel come to me in confusion --

MR. JACKSON: I'll object to that as to the witness' impression of the young men. I think he can tell what he did --

THE COURT: Restrict yourself to your background.

MR. JACKSON: As it relates to his intention...

THE COURT: That's right, and the Court will even permit you more latitude than that. You can tell about your background, even if it doesn't relate, but don't tell about your motives or your reasons for certain conduct in college.

MR. OJILE: What you say that again?

(Previous statement by the Court read.)

MR. OJILE: Would you mark that?

THE COURT: You see, we're not concerned about what you did in class, so much as the reasons you did participate in any acts you participated in.

THE WITNESS: After law school I became a draft counselor for Twin Cities' Draft Information Center, spent about a year draft counselling on an average of 12 and 15 young men a day between the ages of 18 and 25. I usually took one day a week off, worked six. During that time I alsp had an opportunnity to teach at the Free University of Minneapolis. I taught five course, all together, on philosophy, history and tactics of nonviolent action. These courses, which I taught, which are relevant to my life, I primarily based on the Gandhian principles of nonviolence, Martin Luther King 's principles of nonviolence, and a man named Jesus Christ's principles of nonviolence, and my own principles of nonviolence.

That period of my life had a great effect on my state of mind which I took with me to jail on September 24th. I'd like to get into my state of mind, if I may -- why I was one of those who burned draft files on September 24th. It was primarily because of the whole question of fear. My mentality at that time is what I would consider a resistance mentality.

I would like to explain what that is.

The resistance mentality, for me,...is based on two principles: First, it is the determination that fear will no longer control my life; and, secondly, the determination that my vision will no longer be limited by my sense of powerlessness, my sense of uselessness, my sense of not being able to do anything--that will no longer stop me from seeing ahead with foresight.

I'd like to explain both of these points as to what my state of mind was that day.

First of all, fear. For 23 years, including in my decisions to leave school and in taking on different tasks, fear had been the central criterion in my judgment. That is, most decisions I had made in my life were based on fear, fear of losing money, fear of not getting a degree, fear of someone saying something bad to me -- all these different kinds of fear.

Finally, after I was faced with induction -- the whole question of the draft hit me after leaving the seminary, as a seminarian, I had been exempt from the draft -- my first response was one of fear. How could I avoid the situation? And then I said that if I am to be human, the values which make me make decisions should be human values -- and not fear. For fear is basically a reactionary sentiment that comes about from not being human. In other words, I decided that I was going to make my decision about the draft in terms of those values which I could see logically and humanly as applying

to me. In other words, I would not go into the Army because I was afraid to get killed; that was no reason. I wasn't going to go to Canada out of fear of the draft. I decided that I had to have rational reasons and face this concretely.

At that time I noticed that the central criterion for almost every person that I met -- in terms of judgment and ~~xx~~ decisions -- was fear. And reflecting on that, I would like to offer this court, into evidence, as part of my testimony, the structure of this court -- the way it is built, the way the judge sits higher, the way the jury is set off to the side; it's a good example of how fear comes about, of how we're not able to relate to each other on a rational human basis: those we are supposed to fear are put up above us, and those whom we are not to respect are put behind us, and if that is put into evidence as --

MR. JACKSON: Let the record show an objection by the State to this characterization. We understand the defendant's statement about fear and his motivation. I don't believe he should continue. He's told us how it's effected him. He should now go into intent.

THE COURT: Yes. He has given a considerable background on that subject. Court will so rule. If you want to express your intent now, you may do so.

MR. OJILE: I'm not quite sure what the order was -- that I can't continue? Is that what you said?

THE COURT: You may resume your testimony.

MR. OJILE: I discovered and I brought this into my mind's state on September 24th: that when fear is the central criterion in our decisions, that is when we can't make decisions on what's going to happen to us. Our private gain is from common loss when we make decisions out of fear. It's very easy for us to lose sight of that part of the truth. When our decisions are made on the basis of fear, we somehow lose part of our vision; that is, we can very easily become fanatics -- we somehow get a total grasp of just part of the truth. And so when I started trying to put fear aside as a central criteria for my actions, I started seeing other elements of the world, and of decisions I had to make which had been blocked before. Fear had blocked things from my eyes. And so when I put fear aside, I discovered that not only was -- I don't know how to say this exactly without getting contempt of court.

THE COURT: Well, Mr. Ojile, at this particular point, considering that you are hesitating, it may be a good time for us to go to the television studio.

MR. OJILE: Good.

(a bit of discussion about the content of the film and the fact that the jurors ought not to cons ider the statement made by ((Mike Cullen, though he is not identified by name)) which the court described as "inflammatory"; and so off everyone goes to WTMJ for two runnings on color sets in the auditorium-- and there is much applause and joy at the end, though the jury is quickly hustled out of the auditorium...)

(which ends the day)

(validation of WTMJ film by Defense Witness Arthur L. Olszyk, WTMJ news editor; reception of a dub of the video tape into exidence: Defendant's Exhibit No. 15)

CONTINUATION OF TESTIMONY BY FRED OJILE: When I ended yesterday, I had spoken about my efforts to remove fear from my mind as a central criterion for making judgments -- that is, I was trying to make decisions that were not based on fear, trying to find something to replace fear in my decisions; and I replaced fear, to the extent that I have, with other values, values which were very much part of my state of mind on September 24th.

For instance, I replaced my fear of losing money and my fear of losing a job because of money. I think I replaced that fear with the value of whether or not the work was meaningful, whether or not I actually was completing myself in what I was doing, whether or not it brought me into complicity with this war, whether or not, in fact, I was helping to kill people by my work. That was especially clear to me when Ileft law school.

Leaving law school was a big event in my life, because the law was geared to the rich, and I intended to go to law school for the poor. So I left law school because all I was learning was about how rich men can get richer and how poor people are gotten poorer; and so I was looking for meaningful work, and that's what brought me into draft counseling, making absolutely nothing and living on whatever I could get hold of as far as food and sleep and so on go. So part of my state of mind on September 24th was meaningful work in place of a money criterion.

I also had a fear of power. This especially became clear in the last year or so, when I was between 22 and 23. What I brought in as a state of mind on September 24th was: how many decisions would I be able to make about the control of my own life which were not already made for me? Who really controled me? And it was rather strange to discover that symbolically about all the freedom most Americans have is what kind of car they want, what kind of house they're going to live in -- and they can't even make a decision as to whether or not they're going to take part in the war, whether or not they're going to be killed or to kill. It's not a decision they can make on their own.

I discovered that most poor people cannot make a decision as to who they want as a lawyer in a courtroom, that most poor people can't decide where they're going to buy food. And so I kind of felt strongly on September 24th that we should somehow retain or get hold of or renew a spirit that somehow has been in America, and that is the control of your own destiny rather than having someone from above make decisions that really relate to your life.

In the process of overcoming what I considered essential fears, I discovered that fear had blocked my way of seeing things; and so in my state of mind on September 24th, I was getting at the half truth which I yet to discover, and that is what is said is not done, that there's a credibility gap that's so wide that we can swim in it our whole lives and not even know it's there; and all of us have heard of credibility gaps.

That credibility gap became especially clear to me when we were told that the reason we were in Vietnam is to protect freedom, to save life; yet the number of people destroyed in Vietnam is beyond my imagination. It became clear to me when, after three years of civil rights struggle, laws were passed, and about the only good they did was make it harder for the poor whites in the South to lead a decent life, and hardly any good whatsoever for the black man. It became clear to me when I discovered that the 14th

Amendment was basically established for the black man, yet by the end of the 19th Century only corporations --

THE COURT: Just a moment. The Court has given you considerable latitude...but you're going far afield...

MR. OJILE: One fear that I have never been able to overcome, which was already part of my state of mind on September 24th -- and I think it's the only fear that I really have a rational basis for -- was the fear of nuclear war: the fact that America has enough bombs to over-kill the entire world at least three times, and that they're continuing to build nuclear bombs when it's already reached a point of insanity; so I did this act on September 24th with the intent of doing as much as I could to stop a little of the insanity that people were enforcing upon us, us -- the common people.

I had an intention of not becoming a criminal on September 24th -- by doing something that prevented me from being an international criminal. I considered myself an international criminal for many years because of my complicity with the war in Vietnam and the draft situation; and that complicity in fact, as far as I was concerned, stretched even to our involvement in South America where we had been working against the poor nations for so many, many years -- and, in fact, stopped rebellions in South America which, as far as I could understand, were only for the benefit of those nations; the desire to be free of complicity in war crimes was certainly a great reason why I did what I did.

MR. JACKSON: Let the record show that the State objects to the characterizati of war crimes and that this is very far fetched from his intention on Septembe 24th, 1968.

THE COURT: You have had quite a bit of time now to tell what you intended to do on the 24th, and you have so stated in the Court's opinion. Now, to go on and moralize on the intervention by the United States in South America and other matters...(isn't) related to the incident. The Court asks you not to continue in that line of testimony.

MR. OJILE: I would suggest to the jurors that only I know the state of my mind, and that neither Mr. Jackson, Mr. Samson nor Mr. Larson do, and that I will continue to present what my state of mind is, and what my intentions were, on September 24th. And unless they have a power that God only has, then they do not know what was on my mind that day.

MR. JACKSON: ...I believe this Court has the power to determine whether or not Mr. Ojile is testifying as the Court directs, and I believe the Court has the power to tell him to stop. I also believe the Court has the power to do something about it, if he doesn't.

THE COURT: If you have anything further to say about why you did what you did...you may do so, but you've had ample opportunity to do so, Mr. Ojile...

MR. OJILE: One of my purposes on September 24th was to do all I could to stop the war. That's not very much. There's very little that any of us can do to the war, but the problem is that most of us don't do anything to stop it -- whether we're judges, or jurors, or spectators, or defendants. In my attempt to stop the war, I had in mind the 33,000 young Americans -- at least that number -- that have been killed in this war. The at least four-and-a-half million displaced persobs in South Vietnam -- displaced because of our bombing of that nation. I had in mind the three-million tons of bombs dropped on Vietnam by the United States -- more than they dropped in all of World War II and Korea together.

THE COURT: The Court is going to state, at this time, that you have related

this perhaps in other words...and that what you are now placing on the record is repetitious. Unless you have something new, the Court must rule that you have now made your explanation.

MR. OJILE: I had an intent on September 24th, part of my reasoning for acting on that day, that came from the freedom and sensibility that came from being part of a community of 14 people, 12 of us here in this court today. It's one of the greatest privileges I've ever had an opportunity to be a part of. To be able to live with these people for any period of time.

THE COURT: That is not the reason why you entered into this activity...
MR. OJILE: How do you know?
THE COURT: Well, that isn't what the Court considers relevant; the fact that y worked with friendships for people --
MR. OJILE: That is not what I said.
THE COURT: Well, you may explain. The Court will permit that.

MR. OJILE: Excuse me. One of the reasons I did what I did on September 24th was because other people always want to say something for you. They want to tell you why you do something, how you do it, and so on. And I think it's time in this country that we, who have been told what to do long enough, start acting on our basic religious values, our basic humanistic values, and just our own common sense -- and stop allowing what I consider a very insane government from continuing to destroy our lives and the lives of the whole nation of Vietnam.

THE COURT: Now, have you stated your reason?

MR. OJILE: Perhaps the final reason why I was involved with my brothers on September 24th is because my wife and I are expecting a child -- and I was then hoping to be expecting a child -- and I do not want my children to think of me as one who avoided a situation where I could help to save others; I didn't want to be who could only make excuses for why he didn't. I want my children to be proud of me, as they grow up, and say, "he took a stand in a situation which is inhuman, and even though he's going to suffer for it, he's become an example for us".

THE COURT: That's the final answer?
MR. OJILE: No. That's one of the final reasons.
THE COURT: You said the final reason a moment ago. How many final reasons have you got?
MR. OJILE: About three or four.
THE COURT: Well, the Court is going to have to rule soon that you have stated your reasons for participating, if you did.

MR. OJILE: One of my intents on September 24th was education. I think the greatest tool of education is example. Not that I intend anyone to do what I did on that day, but just that they will start acting and put fear out of the minds. Put social status out of mind as a reason for judgment. Start making decisions rationally, based on what's happening. And the example that comes from our action, at least -- the intent I had in doing the action as far as it is an example for others -- was that it not be based on fear but based on conviction. We were willing to face the Courts, willing to face jail, and still are. We weren't telling people to do what we did, but just to do what they can in their lives to put an end to this war.

THE COURT: Mr. Ojile, you've said that before. Now, unless you have some new matter directly concerned with the reasons why you participated, if you did, the Court will have to uphold that you covered the whole situation.

(Fred gets up and starts to leave)

Are you leaving the stand?

THE COURT: Well, you have to subject yourself to cross-examination, if you wan to testify.
MR. OJILE: Well, I can't go on.
THE COURT: I mean, the district attorney has a right to question you.
MR. OJILE: You're cutting me off from what I had to say. I don't know -- I don't see why I should stay on the stand.
THE COURT: Mr. Ojile, there are rules of procedure. If you offer yourself as a witness, which you did voluntarily, then, you --
MR. OJILE: I'm very willing to let the prosecuting attorneys question me until I'm dead. And all my brothers. Anyone in the Court can question me. Bit if I can't --
THE COURT: You do that up here. Mr. Ojile, you have been going around and around in a circle.
MR. OJILE: I have not. I have been going directly to the reason I did what I did on September 24th.
THE COURT: In the Court's opinion, the Court has allowed you great latitude.
MR. OJILE: I have been allowing the Court great latitude, it seems to me. I've been extremely patient. It's very difficult to sit in a court all day and work all night to prepare something and get expert witnesses to make things simple so everyone can understand. But as soon as you do that, as soon as you say something of any value, you're struck down.
THE COURT: Mr. Ojile, you have been on the stand for 20 minutes or more today, and 15 minutes yesterday, reciting a narrative all of that time with some interruption, it's true. And the Court believes you have had ample opportunity to tell the reasons why you participated in what you did...Now, the Court holds that Mr. Ojile has given his testimony, and unless there's some new matter -- and if there's new matter brought out on examination from the other defendants, he may, of course, comment on it. Do any of the defendants have a question?
MR. OJILE: I'm sorry. I'm not done.
THE COURT: Well, I'll have to judge whether you're getting repititious or not. or...too remote...You said you have some new matter, Mr. Ojile?
MR. OJILE: Yes.
THE COURT: Let's hear the new matter.
MR. OJILE: Well, I'd like to offer into evidence the Congressional Record...

(Marked No. 16 & 17)

(viewed by prosecution attorneys)

MR. OJILE: ...I wish to offer into evidence Exhibit 16 and 17, the Congressional Record which lists by name the American war dead in Vietnam...
THE COURT: Well, you need not illuminate. What is the position of the State?
MR. SAMSON: ...what happened to Mr. Ojile was a subjective occurrence. He read certain things, and they had an affect on his particular mind...the effect on other people's minds, such as the jurors...would be immaterial..
MR. OJILE: That's not the reason I offer this into evidence. I offer it into evidence to certify that the number of American war dead had something to do with my intent on September 24th.
THE COURT: All right.
MR. OJILE: And the reason I offer this into evidence is to evidence that intent -- to show that actual people have died in Vietnam.
THE COURT: You said that a number of times.
MR. SAMSON: I'm sure, Mr. Ojile, that there's no one in this entire country, much less this courtroom, who doesn't believe that men have died in Vietnam.
THE COURT: ...Everybody regrets very deeply our involvement and regrets more deeply those unfortunate men who have lost their lives. But the

Court cannot permit these exhibits in evidence. They're not relevant as to the issue before this Court...

MR. OJILE: ...There's one area that I touched on yesterday, as far as my intent that I'd like to come back to now. I told you yesterday there were two prongs to it. One, to erase fear as my basis to reaching judgments, and the second one is the question of powerlessness that each of us feel. This action on September 24th had a lot to do with overcoming a sense of not being able to do anything about this war. To clarify: that means that there's a habit we all have of putting a thousand distinctions on our actions so that we have excuses excuses or buffers -- so that we don't take responsibility for those actions. Whereas, with our enemies or strangers, we put no distinctions up whatsoever; and so we may say, for instance, that all Africans have war dances; but we object very much if someone in Africa says all Americans smoke cigarettes.

(Court attempts to stop testimony)

And that this problem of distinction led me to want to act in a way that would clearly show that I took responsibility for those things which I was responsible for. It was an act that was extremely clear and not something peop could excuse away or say"I haven't got any power to judge it, I haven't got that power to change my mind, I haven't got that power to affect my own life."

THE COURT: That will be sufficient on that subject, Mr. Ojile. The Court must cut you off sometime, and I feel that you have had the opportunity to say what you desire to say.

MR. OJILE: I would just as soon be able to finish my reasons and cut myself off.

THE COURT: You could have stated your reasons in five minutes.

MR. OJILE: How do you know that?

THE COURT: Because that's what the Court has ruled.

MR. OJILE: The Court rules that it knows my mind?

THE COURT: The Court rules that whether it knows your mind or not, that five minutes would have been ample -- surely ten minutes -- to express (your) reasons...

MR. OJILE: I disagree highly. Highly disagree.

THE COURT: The Court cannot permit you to moralize.

MR. OJILE: Is something wrong with moralizing?

THE COURT: It's evidence that the Court is concerned about, and the Jury is, in making a determination.

MR. OJILE: This is evidence as to my intent on September 24th.

THE COURT: You've given it. You've given it in detail.

MR. JACKSON: If the Court please...I don't think this dialogue is fair to anyone in the courtroom...if it's going to continue -- if the witness is going to continue to talk back to the Court in that tone and attitude, at least the jury should be excused so that they don't get a chance to observe the demeanor.

MR. OJILE: Oh come on now, Mr. Jackson.

THE COURT: Court knows what is generally done in criminal cases, insofar as permitting a defendant to present his case. Court is fully aware of tha Court knows too that great latitude has been given this witness in presenting reasons for what took place, if he had anything to do with it.

MR. OJILE: The only reason I took the stand today -- by the way, I don't hav to; no criminal -- no person charged with a crime has to take the stand. In fact, he has a constitutional right not to. But I took the stand to give you reasons why I did what I did. And that's okay if he wants to rule such. Just makes a little less fair trial.

(Court comments that if it has erred, there is the appeal process to correct such error; asks if any of the defendants have questions...)

MR. OJILE: No, I intend to say what I did on September 24th.
THE COURT: Oh, you want to say what you did.
MR. OJILE: Yes.
THE COURT: You may.
MR. OJILE: Oh, I can do that, okay.
About seventeen minutes to 6:00 on September 24th, it was broad daylight in the middle of downtown Milwaukee. There were reasons for us to be there [illegible] during daylight. We didn't want to do anything that would seem like a terroristic act against anyone. We didn't want anyone to get hurt in the process.

I entered the Brumder Building, went up to the second floor, and I went into Board 46, which is the board that Ruth Junge is a clerk at, and she testified earlier. And I helped remove files from that board and took them out, went across the street with at least two bags -- they were kind of heavy - put them on the fire, or around the place where the fire was to be lit.

I had a great sense pf joy, of celebration for having taken a stance and considered myself in a position where I finally elected -- in a very direct and concrete [illegible] way -- to --

THE COURT: Mr. Ojile, that is not what you said you wanted to do. You said you were going to tell the part you had in what took place on the 24th of September.
MR. OJILE: That's what I'm doing.
THE COURT: Now, you're telling about your art and about your spirit and all such things as that. They are not part of what you did. So confine yourself to what you did, if you want to.
MR. OJILE: We stopped --
THE COURT: It's up to you.
MR. OJILE: We stopped 4,000 young men from being drafted into the Army... Then I waited for arrest with the others, spent a month in jail 'cause the bail was at a half million dollars, then finally was released when the bail got down to 95-thousand, and went home and continued my work in Minneapolis. That's what I did. I'd like to tell you why, but that's okay.

(cross examination re further details -- file cabinets, etc.)

MR. JACKSON: What did you do after you carried the bags down to the lobby?
A I...(crossed the street and carried) them over to right around this flagpole. The flagpole's a momument to World War I veterans, and that's why we chose it, because we figured this war had nothing to do with the reasons for World War I, so burned it in their honor...

....
Q Do you happen to know what office of the United States Government you got permission from?
A Yes, from the same people who wrote the Constitution...the same people th[illegible] say [illegible] freedom of religion, freedom of speech, freedom of life gave me permission to do what I did on September 24th.
Q Now, you say the same people?
A Right. The whole spirit of America gave me permission to do what I did on September 24th.

.....
(questions exploring Fred's sense of "powerlessness"...)
A ...The only sense of powerlessness I have now is not being able to say what's on my mind in Court.
Q ...you stated something to do with insane government --
A Would you like verification of that?

RE-DIRECT OF FRED

MR. FOREST: You've used the term powerlessness, which was of interest to the District Attorney. What do you mean by that term?

A Powerlessness means the sense people have when they feel they can do nothing to stop something they see is harmful. In other words, it's like when a Supreme Court Justice will say I can't do anything about this, I'm powerless; or like when Bob Cunnane said on the stand about Kennedy, "I can't do anything in this situation, I have no power." That's the sense of powerlessness, and we get rid of that by deciding first of all we are in control of ourselves.

.....

Q I would like to know at what point you felt that you no longer had the sense of powerlessness.

A That came about primarily when I started seeing myself as in control of my own life, to the extent that a person has control of his own life and acts on what he sees as the best reasons for acting -- and that came about through a series of events, one of them being September 24th.

Q Just one more question, Fred. Would you say that your participation in these events was due to frustration?

A No, not at all. It was due to a sense of liberation, a sense of freedom a sense of hope.

THE COURT: You've answered the question. The question could have been answere by a yes or no, and you answered it.

MR. FOREST: Thank you.

MR. OJILE: I'm really disturbed. I'm sick of this.

THE COURT: Aren't you going to stay here to answer any more questions?

MR. OJILE: No.

(Fred has already left the stand by his final response)

.....

TESTIMONY OF MARVIN GETTLEMAN: I live in New York City. I'm an Associate Professor of History at a university of New York called the Polytechnic Institute of Brooklyn. I have degrees from the City College of New York and from the John Hopkins University in Baltimore. There are two overlapping areas in which I do specialized work, writing and teaching. One is the history of American foreign policy with particular emphasis on U.S. policy in Asia, and the other area is in the history of democratic conviction in America, particularly that kind of conviction which takes the form of radical...activity.

I am completing a manuscript of a book on the Dorr Rebellion that took place in Rhode Island in 1842, in which a group of citizens of Rhode Island, protesting their exclusion from the vote, instituted on their own initiative a constitution and elected a state government that entered into considerable conflict and confrontation with the established authorities of the state. ...My first book was an analytical documentary history of Vietnam..."Vietnam: History, Documents and Opinions on a Major World Crisis", a copy of which was labeled Defendant's Exhibit No. 3 yesterday.

MR. MARVY: Mr. Gettleman, yesterday in Court Dr. Fried gave us a brief summary of...Article 2 and Article 51 of the United Nations Charter...(He indicated that) the only exception to (the) general prohibition of the use of force is self-defense either on behalf of your own country or on the behalf of the United Nations if an armed attack occurs...otherwise the use of force is...forbidden by the United Nations Charter...On the basis of your knowledge of history, was the United States ever attacked by the Republic of North Vietnam?

MR. JACKSON: I'm going to object to that question on the grounds of relevancy.
THE COURT: Objection sustained. Now, at this time the Court believes there should be a matter taken up out of the presence of the jury, and so the jury will retire, then we will discuss this matter.

(jury left courtroom at 10:10 a.m.)

THE COURT: Now, the Court would ask the Defendants -- are you prepared for my question? (The defendants have gone into a huddle, whispering)
MR. FOREST: Just one moment, Your Honor, if we might?
THE COURT: Now the Court inquires, Mr. Marvy....what is it you intend to prove from this witness? (explains the provision in law re offer of proof so that record may indicate what testimony would have been offered had a witness been allowed to testify)...Now then, I will ask you what it is...you intended to prove through this witness....?
....
MR. MARVY: Well, I have no reason whatsoever to speak outside the presence of the jury on any matter. I realize you have found an excuse and reasons for not letting jury hear important issues.
THE COURT:.,.Merely following the law...
MR. MARVY: I'm not interested in speaking to the Court.
THE COURT: It makes it difficult to proceed.
MR. MARVY: Yes, it does. You make it difficult to proceed.
THE COURT: I'm merely following the procedure which is outlined in the rules of evidence. I am employed in this and other courts in Wisconsin.
MR. MARVY: That's your problem.
THE COURT: Will you relate to the Court what you intend to prove through this witness?
MR. MARVY: I'll speak when the jury's in the room.
THE COURT: Does any defendant wish to say why this witness has been brought into the courtroom now that an objection has been made, and what they intend to prove through him? Anyone of you?
MR. SAMSON: May I ask, would the reporter please go back -- I have forgotten the first material question that was asked of the witness.
THE COURT: Of course, there are other reasons why the Court makes this request. There have been two other witnesses who were sworn, and we have labored long to make known the position of the Court and to enforce the rules; and if this can be avoided by having statement made concerning what is to be proven through this witness, we can then expedite this trial ...there is no need in laboring through testimony that can't be received in evidence. Will you make no statement, defendants?
MR. SAMSON: May the reporter please read back that question?
(Question read.)
THE COURT: Court must know. If you have counsel here, counsel will respond immediately and advise the Court. Let the record show this as well, that while these defendants are in Court without Counsel, time and again they have cited law, law which is very pertinent and relevant, law which requires a learned legal mind to ferret out and to prepare for presentation in Court. The Court, therefore, wants the record to show that undoubtedly, although it does not appear so in the courtroom, that they have received legal assistance and considerable --
REV. HIGGINBOTHAM: You're despicable.
MR. OJILE: I did that research. I had a year of law school, and I did every bit of research. I'm the one that did the research on that, and no one else.
MR. GRAF: Let him lie.

THE COURT: Mr. Forest, did you have any legal help in the citations you presented?
MR. FOREST: Your Honor, I went into considerable thought on my decision not to speak outside the presence of the jury.
THE COURT: In other words, you won't tell me if you had the help of a lawyer?
MR. FOREST: I would tell you in the presence of the jury, and I think the answer would be contrary to what you expect.
THE COURT: In any event, if you contend that you have not had legal help between sessions of this court, it is quite apparent to the Court that you have been very able, then, to run down the law applicable to some of the issues before the Court.
FR. MULLANEY: We are not ignorant people, Your Honor.
THE COURT: That's quite apparent.
MR. MARVY: Why is it any of your business whether we had any help?
THE COURT: That isn't the way you address a Court. Court has been extremely patient in the many remarks which have been made, but there is a limit to the patience of every judge.
We will take a recess at this time.

(Whereupon a brief recess was had.)

THE COURT: Court will come to order. I want to inform the defendants the following. (Statement on the offer of proof requirement) ...So, the Court again asks that one of the defendants...state what it is they intend to prove through this witness. Now, I'll ask will one of you please do that?...Basil Kenelm O'Leary, will you state what you intend to prove through the testimony of this witness?
MR. O'LEARY: I have nothing to say, Your Honor.
THE COURT: You must say it loud enough.
MR. O'LEARY: I have nothing to say, Your Honor.
THE COURT: Reverend Jon Hubert Higginbotham, will you state what you intend to prove through this witness?
(No response)
THE COURT: Do you refuse to answer, Rev. Higginbotham?
(No response)
THE COURT: Show that Rev. Higginbotham has not answered either of my questions, and has not faced the Court, although the Court is of the opinion that he has heard both questions.
Father Lawrence Rosebaugh, will you state what it is you intend to prove through the testimony of this witness?
FR. ROSEBAUGH: No.
THE COURT: Father Robert Francis Cunnane, will you state what it is you intend to prove through the testimony of this witness?
FR. CUNNANE: No, no.
THE COURT: James Hendrickson Forest, will you answer the question?
MR. FOREST: I'm sorry, Your Honor. I have nothing to say apart from the jury.
THE COURT: Father Antony Joseph Mullaney, will you state what you intend to prove through the testimony of this witness?
FR. MULLANEY: No, sir.
(etc etc, through all the defendants...)
THE COURT: Well, the Court has asked that question of all the defendants, and not one of them has offered to inform the Court concerning what they intend to prove through this witness. Therefore, the defendants leave the Court will no alternative. The Court rules that this witness may not testify under the circumstances. You may step down.
(Gettleman leaves stand)
THE COURT: The Jury may be called back.

(jury returned at 10:45 a.m.)

THE COURT: If any Defendant wishes to offer a witness or wishes to testify, he may do so, at this time.

FR. HARNEY: I'd like to call Marvin Gettleman to the stand, please.

THE COURT: Well, just a minute. You know, Father, that the Court has just made a ruling in that regard. The Court gave you an opportunity, and you refused to express yourself. Just a minute, Mr. Gettleman. Will you state outside the presence of the jury what you intend to prove through this witness?

REV. HIGGINBOTHAM: I don't intend to say to say anything outside the jury's presence.

THE COURT: I'm directing the question to Father Harney. Will you do that, Father?

FR. HARNEY: We'd like to just go with the procedure as it was done before, with our witnesses taking the stand and answering very concrete questions.

THE COURT: The Court understands what you'd like, but I'm asking you whether, before he comes back, whether you will state into the record, outside the presence of the jury, what you intend to prove by this witness

FR. HARNEY: No. We'd like to continue with the procedure of the trial as it was before...We're not asking anything new that you didn't do before, Judge.

THE COURT: That's correct. The Court permitted too much latitude prior to this.

MR. MARVY: Mr. Gettleman's an expert on Vietnam. His testimony is apparent --

THE COURT: The Court will not permit him to testify unless, out of the presence of the jury, you comply with the Court's request. You have all refused.

MR. GRAF: Judge, I have nothing to hide, nothing to fear from the jury. I would like them to hear what I say.

THE COURT: It's not what you fear or don't fear, it's what the rules are that I'm concerned about.

MR. FOREST: I've lived with rules as far back as infancy, and I think it's quite a long time since the juror was in kindergarten or occupying a sand box.

THE COURT: That's not relevant here, Mr. Forest. What's relevant here is the rules of evidence...

FR. MULLANEY: I believe you're putting procedural rights ahead of substantive rights.

THE COURT: If that's your opinion, it's stated in the record. All human rights are protected by law.

FR. MULLANEY: Let's let that operate. That's all we're asking. Let's let that operate in this courtroom.

MR. GRAF: We'd like our right to present evidence.

THE COURT: The Court is aware of what you'd like to do, but the Court must adhere to the rules, and is doing so, to the best of its ability.

MR. FOREST: Have you ever heard the word "idolatry", Your Honor? Are you aware that there is also a worship, an idolatry of the law, and rules. Because, Your Honor, we see here in this courtroom one of the most gross examples of idolatry that it has ever been my displeasure to witness. Your idolatry of rules above justice, law, life -- I have never seen such idolatry anyplace -- in New York City, in San Francisco, wherever I have lived.

THE COURT: The Court cannot answer your comment on its idolatry of anything. The Court must rule that it has to follow the rules of procedure.

MR. FOREST: All worship to the rules, Your Honor.

FR. ROSEBAUGH: I would agree with that, Your Honor.

THE COURT: Now, I've given you an opportunity to make your statements, and you

have refused. This is taking a lot of time. The court will not permit the gentleman to testify, except under the conditions stated...Father Harney?

FR. HARNEY: Never mind, Your Honor.

THE COURT: Any other witnesses? Does any of the defendants wish to testify?

MR. COTTON: I will testify.

THE TESTIMONY OF DONALD JOSEPH COTTEN: My name is Don Cotten. I was raised in the northern part of Connecticut, north of Hartford. It's farmland. I spent most of my summers working in the toba farms in that area. I went to public schools, participated in the normal, usual activities -- in class, in church groups and other such activities. At the end of high school, I went into the seminary of the Diocese of Hartford where I stayed for three years, studying for the Roman Catholic priesthood. In those years I sort of got the feeling that my commitment as a spiritual leader would be frustrated by what I saw the diocesan priests involved in -- the normal parish activities, such as running the schools, types of activity that were not what I felt a spiritual leader had to be involved with. After three years, I left the Diocese of Hartford and I joined a group that does missionary work in rural America -- in southern and western America -- a group called the Glenmary Missionaries.

The first year of my participation in that society was probably the most meaningful and intense year of my entire life, so far. That was '65 through '67. We began that year with the novice master...saying that we will not study Christianity as we have it today, but will begin by going back to the scriptures, going back to the early Christian Church, and develop our spirituality from its purified form. I didn't understand what that meant, at that time.

There I was, I suppose, an average youth for that time, with no strong convictions about anything, no strong desires to do anything, except I had a vague desire to serve people.

In the course of that year, I found out what it was to be a Christian -- t it was to take a position, to expose yourself, and to comment on social conditions. That was the role of Christ.

I was in favor of war and the draft at the time I entered the notiviate. But it became apparent through that year that the emphasis was on the ideals of love and of commitment to other people, and that war and violence was inconsistent with that.

I had to go through a lot of changes that year -- being very much a legalist in terms of the Catholic Church; in the Catholic Church there are a lot of laws.

And this was the time just after the Vatican Council, in which a major revision of attitude was accomplished in the Church. Adjusting to that, for me, was the major point of that year. I saw that law is not important, in terms of the church, but people are important.

The issue of birth control was probably the clearest example of conflict between law and the needs of people.

It was that year that I overcame my insistance on law and became concerned with people.

As I said before, I was not a pacifist when I began that year, but at the end of the year it became apparent that I could not kill anything and yet be a Christian.

I finished the year, taking the oath of the Society of Glenmary, after having had several beautiful experiences -- several weeks in a hospital for the mentally retarded, where we had an intensive training program, and several weeks in various missions we had in Kentucky and Tessessee, getting to know the rural area.

Glenmary is particularly interested in the Appalachian people of the mountain areas in Kentucky and Tessessee. I went there, from that novitiate, to spend the next year in the seminary. I spent my free time during this year--which altogether was my fifth in seminary--working with the Appalachian migrants in Chicago. This was in a white ghetto area of Chicago. We always think in terms of ghettos involving blacks, but there are large numbers of people equally deprived.

THE COURT: Mr. Cotton, if you could give the story of your background. What you describe is unfortunate, but --

MR. COTTON: I was describing the nature --

THE COURT: -- hardly relevant.

MR. COTTON: I was describing the nature of the work I was involved with. I was involved with people who, because of --

THE COURT: Continue, and stay within those rules as best you can.

MR. COTTEN: Yes, sir. One of the purposes of my work with the Appalachians of Chicago was to examine the services available to them from welfare groups and other social institutions in that area, to find out exactly what they were able to receive and what was claimed to have been given them in terms of aid.

It became apparent at the end of that year that my concern for people was being hindered by clerical busy work. As a cleric, one has a lot of other obligations, and I fel these hindered what I felt was important work to be done. People were starving. People had to be fed, clothed and taken care of, and this is not the time to be worrying about churches and schools, outside of public schools. So I felt it was important that I leave, and I left the seminary at that time.

I spent that summer -- summer of '67 -- in Chicago, continuing the work with the Appalachiabs, providing a place for those who came up without any money, and helping to provide employment. But I felt I needed more credentials I had not yet got my degree. So I left Chicago and went to St. Louis -- St. Louis University -- where I got my B.A. in psychology.

While I was there, I was involved in another area where I felt there was a need. That was in terms of student rights, seeing that students do not have the rights that a normal citizen has. A student is not able to listen to any speaker. There is a lot of censorship in schools. And so I worked with student groups during that year at St. Louis U. Then I spent the summer working in an urban studies program of the University, doing research on poor whites of the St. Louis area. About this time I was accepted into the Department of Urban Studies for graduate work. This was last September.

Throughout last year, I was involved with draft counseling, and continuing on in a commitment to make relevant and to make people aware of the issues of the war and the draft, which I saw firsthand. I saw the violence that the draft had done. You know, I was a senior in college, and seeing what emotional torture men were going through, knowing that they would be drafted, and their whole vocation interrupted. That summer I helped a lot of those with draft counseling and provided whatever I could -- seminars and forums on the issue of the draft and the war and what I thought the obligation of the Christian was at that time.

That's pretty much my background.

I'll go into my state of mind.

I speak very often about my frame of mind on September 24th, but when I do speak about it on the outside, I can't do it unless I speak for something like an hour or an hour-and-a-half; and I can't do it without bringing up testimony of other people. So I find this very restricting at this point, trying to give you, very briefly, the attitudes that I had on that day.

I came to that action as a person who had gone through five years in

in the seminary, a person who had seen the situation in our cities and rural areas. I had seen the exploitation of people. I'd seen what the draft does to college students. I'd seen the lack of freedom, the lack of intellectual encouragement, in colleges. I'd seen what the war was doing to a nation. And of course, of course from being in these areas of experience, my attitude at the time of September 24th was based on the philosophy of resistance; and th the model that I use, and it's on that model that I base every decision in my life.

A resistance philosophy is such that I'm concerned in four areas, four dimensions: myself, that I be a full human person, that I have integrity, that I be honest, that I be honest with myself; then secondly, social concern - I am a member of society and I have a responsibility to what goes on in society a responsibility to any form of injustice; the third and fourth dimension is what I do in relation to those first two -- it's not what I say, it's what I do, and I have two obligations: I have to negate all forms of injustice in myself and in society, all forms of dehumanization, all those factors that make me less a person. I have a responsibility to do that, and I also have a responsibility to affirm those things that make us human. I have to affirm what is human in me. I have to affirm what is human in others.

The resistance philosopjy has been well substantiated in others -- in Staughton Lynd, Tolstoi, Gandhi, the life of Christ.

When I went outside the Brumder Building on September 24th, that model was then very much operative. I had to make a statement. I had to negate the slavery of the draft system. I had to say that the system has no right to continue. And I had to stop it. I had to affirm the freedom of individuals to decide for themselves where they want to die and who they want to kill. I had to make a statement about the many injustices in society, of which the draft is just one. But I had to make a statement, and the draft was the most critical example I saw. Also, I had to make a statement that was effective. I had to effect negation and affirmation. I couldn't just give lip service to it.

Up to that time, nothing that I had done and nothing that I saw available could have such effect as what I could do on that day.

We have seen petitions and marches and participated in both of these, seen what the political nature of a society is, that the war and the draft continue despite what everybody and anybody say about them and despite what people try to do. So it was a responsibility that I felt to negate what was wrong and to affirm what was right, and that right was freedom.

There are many more motives, many more reasons why I did what I did, but I think we'll be getting into what they have been calling irrelevant material.

THE COURT: You may give other reasons, if you have some to state into the record.

DON COTTON: I will say one thing: that the action on September 24th expresses a commitment to ending oppression. It was a nonviolent action, an action which communicated, educated and testified to the simple, committed life. It communicated that every person has to take action with his responsibilities. It wasn't just words, and that's basically it.

Despite the testimony of one of the witnesses, my involvement in the action that day was to provide materials for burning those files -- destroying and thereby freeing the individuals whose lives were kept in those boards.

The panel truck you saw in the movie -- it was my responsibility to see that the panel truck was there, that the cans be carried out on the gree at the appropriate time, that the napalm that we had made according to

a recipe in the Special Forces Handbook, such as is used on civilians in Vietnam, be available for the draft files.

As far as evidence, I would like to say that I too would like to introduce the New Testamwnt, knowing that it has already been denied, but I can't think of a book that's been more relevant to my position or my life.

And I wish I could bring as evidence the many people I've met who are oppressed, who need to be liberated, so that you could see what this society has done to its various minority groups -- and indeed to itself.

....

FR. MULLANEY: Don,...you mentioned the notion of conscience...Does conscience operate all by itself? ...or does conscience bear some relationship to objective matters?

(Don is instructed to answer in terms of himself)

A ...(after the evolution from simple obedience to law that proceeded the Vatican Council, it became clear) that one has a responsibility to follow his conscience...I think that's really made clear in the New Testament when -- in the time when law involved every aspect of one's life -- it was Christ who said, forget the law and love your brother. As St. Augustine says, Love, and do what you will.

....

Q Would you say that your participation in the events of September 24th jives with conscience, as you have defined it?

A I think it's the best example of an act that I've ever done in my life to maintaining integrity with that principle.

....

TESTIMONY OF FATHER PHILLIP TRAYNOR:

THE COURT: Now, before this witness testifies, you offered in evidence the New Testament?

MR. COTTON: What is the position of the state on that offer?

MR. SAMSON: The position of the State, with regard to that, would be precisely as it was yesterday when it was offered as Defense Exhibit No. 1 by the defendant Forest.

MR. FOREST: I have that New Testament here, Your Honor. Don can resubmit it.

MR. COTTON: If you want it to be ecumenical, we have four versions.

THE COURT: The Court finds that the superlative value of the exhibit offered is outweighed by what may be undue prejudice or the conducting of issues or of misleading the jury and, therefore, denies it, and the Court is fully aware that all persons who follow religions based on the New Testament are guided by its principles. All right.

FATHER TRAYNOR: Iam Father Phillip Traynor. I live at St. Louis University and I am a church lawyer for the Archdiocese of St. Louis. I am also a theologian teaching at the University of St. Louis, and I'm a counselor there; perhaps that's one of my major roles at St. Louis University.

....

FATHER MULLANEY: Could you explain a little bit more in detail (your areas of expertise)?

A I would think my expertise, by academic background as well as teaching, would be in the area of theology, especially in the area of church law.

Q Does the notion of conscience come under this idea of law?

A I think it does. According to the teaching of the Catholic Church, as culled from the New Testament, it's the major issue that we're addressing ourselves to in the church today.

Q Could you explain, then, a little bit, what conscience is?
A I would be glad to. According to the teaching of the Catholic Church, man seeks unity with his fellow man, and by attaining that unity, attains unity with God. And yet we are guided by the moral law, which is very difficult to interpret, though it is interpretted by positive law or such written law as we have before us.

Such written law must be judged by an individual to see that it is in keeping with the moral law of God. To the extent that law is in keeping with the moral law of God, it is our obligation to follow it. To the extent it isn't, it's our obligation to obliterate it.

Now we're getting to the issue of conscience, because we come down an individual's conscience --

THE COURT: Just a moment. Let's go back to the question. Read the question.
(Question read.)
THE COURT: You may continue.

THE WITNESS: Conscience is a norm given to each one of us by our Creator by which we determine the morality or immorality of our actions. All of us are bound to follow conscience when it is certain -- and this is in accordance to the teaching of almost any religious group. If conscience --

MR. JACKSON: If the Court please...I think he's answered the question...
(sustained)
....
FR. MULLANEY: Should conscience be formed in a vacuum? Should conscience come solely from the internal workings of a person? Or should conscience be careful about the objective data that it uses in order to be formed?
(Objection; sustained)
Q Would you say that conscience can lead to anarchy?
(Objection; sustained)

(Jury excused at this point...)

(Repetition of the early silence of the defendants)

(recess called)

(Prosecution reiterates its support of the judge's approach; defendants continue silence despite various inquiries from the bench; the witness excused)

THE COURT: ...Any other witness that any of the Defendants wishes to call, or any of the defendants wish to testify?
MR. GRAF: The Jury isn't here, Your Honor. How can we go on?
THE COURT: Who isn't here?
MR. GRAF: The jury.
THE COURT: Anybody -- well, let's bring the jury back down.

(jury returned at 11:55)

THE TESTIMONY OF LARRY ROSEBAUGH:

THE COURT: Just a moment. What is your first name, Father?
A Larry.
THE COURT: Oh yes. That's right. Now you may state your name into the record.

THE WITNESS: My name is Larry Rosebaugh.

THE COURT: Now, it is 12:00 o'clock...We will recess...until 1:30....

(noon recess commenced)

(court resumed after noon recess at 1:30)

FATHER ROSEBAUGH: This isn't necessarily for the record, but I almost feel like this is the noon mass Sunday morning. I think a lot of people in the audience can appreciate it. It's one of the hardest masses to stay awake at, and also it's one of the hardest masses to preach at, or speak at. With this in mind, I will begin.

My frame of mind on September 24th can be explained quite easily. It shouldn't take too long.

When I went into this action, the main thing that was within me and and which directed me into this action was the human beings who were very much alive within me at the time, people who had influenced me in such a way that they had determined my values over the years. I don't think it's necessary to go into my past life the way Don has, only to say that the most important thing in my seminay training were those individuals with whom I trained and with whom I went to school, people who were able to see.

I was in seminary 8 or 10 years ago, when things were very restricted and very disciplined. I'm not saying this to criticize. This is just the way things have evolved, this is the way life has evolved, it seems like here in the Stares, and especially in the seminary. So, things were discipline and that which I feel that I got the most from in those years was from the people rather than the classrooms, from people rather than the restrictions that they felt were necessary to make a good seminarian into a good priest for ordination day.

And so it is from the values that I had gotten from these people -- by values I mean the whole concept that when a person walks up to you, maybe for the first time in your life, and says, "I would like to know something about you, rather than what you do, I would like to know something about what goes on inside of you, rather than what you do from day to day, as far as playing sports or reading the newspaper." These things are somewhat trivial, as far as values are concerned, but a person has to know more than just the exterior of you before he gets to know you, and before he gets to know how you would act in a given situation.

So what was important, I think, was what I had grasped from people as human beings -- the quality to be able to share what I was with another. Freddy mentioned this, and I think this is one of the biggest reasons why we went into the action, or the reason why I went into the action.

Fear goes away when you get to know another person thinks something of you, thinks that you are worth -- you know. Gives you recognition.

And if there's anything I got in seminary training, it was a response against -- and I see this so strongly now -- a response against a system that says, "Give a yes or no to this question, we will judge whether or not you get a passing grade, whether or not you're in chapel on time, whether or not you keep the rule." That's really all they knew about us.

I can give you testimony to the fact that there were homosexuals in the seminary where I was, but the authorities didn't know the person enough to know that -- all they knew was whether or not he got a decent grade. They knew the abstract thing about the person.

I think the only reason I stayed in seminary was because of the people who surrounded me, people who were talking about things out in the world and who made sense. They were asking: "What are you going to do to change the world, to help the world to work with people?"

I studied six years in a major seminary in Mississippi. I was there right when the sit-ins began to take place there. Nothing was done as far as we were concerned. They didn't teach anything about the race problem in the classroom, not in the six years that I was there training to work with people. Nothing about the problems that were facing the country. And I don't say

this, again, to be critical; this is just the way it was.

And so any values I got, I got from people.

Okay.

So, when I got to be ordained, it was this that I retained. I was interested in people because people had taught me to be interested in them.

I'm not saying that I've come very far. Just as the middle-class environment that I grew up in restricted me from being really concerned. Not that my folks weren't good people. They were excellent people, but their values were limited -- they were so take up with the material world and just getting us food on the table a house to live in -- this took all my folks' energy.

And so this is what I came into the action with -- with seeing what makes a human being most human. I didn't feel I was going to bring too much to middle-class people -- I didn't really feel that they would understand what I was doing. My own folks were quite upset at the beginning when they first realized that I might be doing something like this, but then, afterwards, it became quite apparent that they saw the meaning of what we were doing.

(instruction from the court not to bring in the expressions of other persons)

All right. I'll try not.

So again, in the weeks prior to the action, what surrounded me and what was most in my mind were people that I could identify with in a real way; and it was many of these people, who were really very close whom I had known quite well, that were probably testing me most, as to whether or not I should go into this action.

And I say this, with regard to my parents: The hurt and the pain that I knew I would be leaving my mom with, for example. The day prior to the action, I was home in St. Louis, and I left her at the Greyhound Station crying her eyes out. She didn't understand, and I told her, "Well, this is the way it is, and I hope you will understand maybe later."

But these people were with me -- the close friends, and especially those I felt I might hurt, as a result of doing this action.

On the other hand, the reason why I was able to do this action was not so much for my friends as friends that I knew from the past, but for the people that I had began to come in contact with during the six months prior to the action-- or maybe it was even a year. Even a few years. But mostly these were people that I found myself in close contact with during the summer of '68, when I was in Chicago. I lived in the black area. I lived with alcoholics off the street, off of skid row, and it was for the first time that I realized that these are the people that I would like to see life given to a little bit better. These are the people that have a lot of injustice given to them.

I had been in peace movements, and I had been in peace groups for the past six years -- but, reaaly, it was people that were crucial -- people themselves, and their minds and the feeling for them that came as a result of this close relationship with them.

This notion of sharing and loving another human being I had begun to understa in the seminary in community with human beings of my own status. Then, when I went into action and worked in the slums, all that I wanted to give these people was something that I had already received from other human beings. And when you live in a low income area, especially like the slums of Chicago and all, when you are really going to bed with the rats -- and I've seen that - and when you're eating food that is not good food and your stomach hurts a litt le --how can you possibly be human and reach the human standard that you would want to when you live in these conditions?

It's funny. At this time I had read a great deal on Vietnam, and a great deal on the poor, I had taught in high school for four and a half years, and I was constantly bring up the issues of Vietnam and Latin America and all in classroom discussions -- but none of these made any real sense to me until I began to feel a little bit of the hunger and began to identify with the poor in our own area.

And then, coming to Milwaukee in August, I joined Casa Maria, which is a hospitality house here in town which has its doors open 24 hours a day, practically to anyone who is in need, especially the poor in the city. And again I was able to identify with these people to such an extent that my mind was always able to project what was going on, on a big level or on the national scale.

Maybe this should be the last point: When you're confined to a ghetto, like let's say in Milwaukee, with most of your days spent within a radius of a few miles, you get a certain perspective. Okay. I could see the good that a house like Casa Maria was doing. I can see the good that the house we now have on State Street -- the Living Room -- is doing for a limited group of people. The difficulty is that you realize it is a limited good. When you look at the whole country, and you look at the poverty that exists throughout the land, and the war that is going on and destroying people in distant countrysides, in places where people live -- you begin to say, "Well, it's not enough just to do something in a limited area; you have to be able to speak out and project and say something now, because you know people are dying now." And you know people are not being fed at this time.

And so this was the reason why I felt that on September the 24th, even though I would continue the work that I was doing, that I must speak out, at this time, because of the things that I was seeing going on in these different lands -- speak out about how the United States is exploiting people, how it isn't concerned so much about the person but concerned about the dollar it can get out of those countries.

I won't say any more than that. This is where I was, at that time. I'm just going to leave it at that.

I have a couple of witnesses that I would like to take the stand, but if any of the guys would like to ask me questions, I'll be glad to answer.

MR. FOREST: Larry, would you like to talk about what you actually did on September 24th?

A Okay. I would just give a little prior history to what I did..., because this would make meaningful what my part played. I played the part of the person who was to enter the Brumder Building and to take the keys from the little old lady; and to see that those keys were passed on so the other doors could be opened. The reason I mention this was because I was chosen to do this job. It all came out of an incident -- kind of funny -- at Casa Maria, in which this very intoxicated man came in, looking for a room for the night, and he just sttod there for maybe an hour, just telling me his problems -- and somegne who observed that said they thought I looked pretty patient under those circumstances and that maybe I would be a good person to approach this elderly lady, that she wouldn't get upset in my presence. So I got the job of taking the keys away. So that was my role. We entered the building -- or I did; and I went to this room...I tried to talk nice enough; I got the keys from the lady -- the doors were opened; I spent the entire time just talking to the lady that testified here while the rest of the job was being performed just trying to keep her calm enough so that she wouldn't be sick over it and wouldn't be hurt in any way. This lasted about 20 minutes, and I stayed in the room until I saw the paper go up in flames, and then I left, crossed the street and joined the others in the psalms and ceremony there.

MR. GRAF: Larry, where do you live and work now?
A I've been living for quite a while on State Street...State Street is a place in which, more or less, the downcast or outcasts walk as far as Milwaukee is concerned. And we have an open store front in which these people can come for food, clothing, for a place to sleep....once you identify with the poor anywhere, it just broadens your mind to want to understand the poor everywhere...

...

FR. HARNEY : How long have you been an Oblate?
A Since I was 20. I'm 34 now.

....

(questions and answers regarding the attitude--and surprising support--Larry has found in his religious community)

.....

TESTIMONY OF NETTIE CULLEN: I am Annette Barbara Cullen. About three years ago Mike and I left the suburbs in Cedarburg and moved into the inner -- well, the near south side, and began a hospitality house called Casa Maria. That was the fall of '66, I believe. We were renting a house from the Archdiocese and working mainly with migrant worker families. This was a Spanish area, and as we opened the doors, we found that not only Spanish people needed a place to stay, but people from all backgrounds, all races, religions and so on. And so it became not only a Spanish or migrant halfway houese or whatever you'd call it -- it became a place for everyone who needed temporary shelter.

What we did was house people who had no place to stay, no money, until they were able to get a job or get fitted into some way of life that they wante It was just a temporary situation. And during the first winter, we had as many as 42 people in the house at a time. It was very crowded. And it was difficult. It was difficult to find jobs -- just the whole gamut of job opportunities seemed very restricted to people with their background. They had very little education and no training, and it was no easy thing to get them a job and then find housing. And after they did get a job, it was usually two weeks before they'd get a paycheck. So we were pretty crowded at the beginnin

At that time we weren't really very much opposed to the war. We hadn't really thought seriously about those issues. Mainly we saw a need and wanted to do something about it -- something about the emergency situations in the city.

As people started coming through the doors and as we met them, we of course helped them somewhat, but the education and the understanding that we gained was just a thousandfold , really. And through this, we became concerned about our fellow man, which eventually led us to thinking about other issues, such as the war and such as the magrant field in our own country, the kind of situation that's continued there.

Eventually we found another house on the north side. You see, with the first house, after we had started speaking out against the war, pressure was put on --

MR. JACKSON: Your Honor, I wish you could limit this...to background and what she did.
THE COURT: She --
THE WITNESS: We now have a --
THE COURT: -- has spoken for quite some time on her background. Is the witness to be an expert in some field.
FR. ROSEBAUGH: Very much so...If anyone is qualified to speak on the poverty and also on the destitute people here in Milwaukee, she would be. But the main reason I asked for her was because she is testifying to my

frame of mind of September 24th; being in the same house and working side by side with Nettie, I feel that she would be the one person that could do that.

THE COURT: You mean while observing you?

FR. ROSEBAUGH: Not by observing but by working with the different people that came in there, by talking with me, by discussing all these things that you would do within a household.

MR. MARVY: Also, I think often when a person's qualifications don't come from academic training, that it takes a great deal to describe them...

THE COURT: There's no question about that particular issue. Many people who are not college graduates are experts in numerous fields. However, Court is concerned about the relevance of her testimony....You, Father Rosebaugh, are the one who knows your state of mind. You are the one who can tell us, and you told us, the reasons why you acted in the manner you did on the 24th of September; and it is your intention that she's goi to in some way verify what you have said?

FR. ROSEBAUGH: Certainly. I mean, I don't want to get into a philosophical debate here, but to me, people help you come to see where you're going and what life is all about, and certainly she has done this, and so together we have come to see things, and that's all I'm saying. And she testifies to this by the work that she has done and the work that we are doing.

(Witness instructed to continue)

NETTIE: Okay. We now live on the north side, on 21st Street, between Highlan and Juneau. Our work is now mainly with families and women. Larry helps run the store front on State Street, which is dealing mainly with the men.

When Larry came to Casa Maria to work with us last summer, well, in working with him, I got to know Larry and we became good friends. We knew -- well, it was my understanding that he could see the same situation as I did, as far as the system is concerned, the war, the whole thing, and its relation to the people we were trying to work with, the less privileged than we were, and --

THE COURT: Is that it?

NETTIE: Yes.

THE COURT: Next question, Father, if you have one.

LARRY: ...One of the things I testified to was the destitution in Milwaukee, which let me see world destitution a little bit clearer, so maybe the question you could go into would be about some of the areas here in Milwaukee which you, along with me, have seen real needs as far as the poor are concerned, and how maybe this would relate to what you would see my action as being too?

MR. JACKSON: Well, the State would object to that. I think that I'm rather painfully aware of some of the social needs, and I don't think that it's relevant to this. I am willing to concede that there are painful social needs.

THE COURT: There surely are painful social needs, we all agree, Father, but how is that relevant to the issues before this Court, this Court has difficulty comprehending. I must rule that the objection should be sustained and is.

LARRY: I think this is all I have, Your Honor.

...

BOB GRAF: Nettie, have you been associated with the Catholic Worker movement for quite a while?...

A Approximately three years...we revived the Catholic Worker movement here in Milwaukee, and of course we keep links with the movement throughout

the country.

Q Could you explain how, in your own life and Larry's, the Catholic Worker movement relates to this case...the works of mercy and the works of peace?

MR. JACKSON: ....object...

THE COURT: ...sustained.

....

BOB GRAF: In your estimation, does the Catholic Worker movement, in which some of us have been involved, relate at all to this situation that we find ourselves in?

A Oh, very definitely. The people we are working with are the underprivileged, and the war is part of it. The money is being taken out of the poverty programs and that now goes into the war...the Catholic Worker movement is mainly concerned with nonviolence and trying to better the conditions.

....

MR. JACKSON: ...wouldn't it be your honest opinion that Father Rosebaugh is absolutely, 100 percent sincere in all the good works that he's done for poor people?

A Yes, of course.

MR. JACKSON: No further questions.

....

FRED OJILE: Nettie, aside from Larry being sincere, wouldn't you also say that he makes decisions based on the situation around him?

A Yes.

....

DOUG MARVY: Is it your opinion that others who have worked with the poor have concerns similar to those stated by Larry Rosebaugh?

A Yes, they do.

Q Would you say in your work with others who have worked with the poor, that the majority of people you have come across are very concerned with the war as well as the issue of poverty that you deal with?

MR. JACKSON: ...objected to.

THE COURT: ...immaterial...irrelevant....sustained.

....

DOUG: In your work with the poor, I imagine you've given a great deal of thought to those things in this country which create the poor. Could you describe for us your feelings on this as an expert?

MR. JACKSON: ...objected to....improper redirect examination or cross.

THE COURT: ...sustained.

BOB GRAF: Have any of the others that you testified that you have worked with done acts similar to that of Farther Rosebaugh on September 24th?

A Yes.

MR. JACKSON: ...objected to...relevancy.

THE COURT: ...irrelevant what other people have done...sustained.

....

(Nettie is excused)

TESTIMONY OF FATHER PATRICK FLOOD: I am Father Patrick Flood, a priest of the Archdiocese of Milwaukee, presently the executive director of the Council on Urban Life in Milwaukee, which is an archdiocesan branch of the Urban Affairs Agency...I did my graduate study at the University of Wisconsin-Milwaukee and with their Department of Urban Affairs in 1965 and '66....I'm in the process of obtaining an advanced degree in urban affairs at the University, finishing my thesis; all other course work has been completed....I'm on many committees and in organizations in the local area of Milwaukee as well as on the state level and on the national level...I

am on the Board of the National Task Force of the United States Catholic Conference of Bishops...(this) relates to the discussion of urban priorities within the nation.

TONY MULLANEY: How would you describe the work or function of the office of Urban Affairs of the Archdiocese?

A It functions as a research and...planning vehicle for poverty organizations and persons working in the poverty field. We try to obtain financial resources to help people address their immediate problems. This would be done primarily in the poverty areas on the north and south side of Milwaukee.

Q Based on the work of your own urban affairs office and also data that are available to you from your committee work on local, state and national committees, would you say that national priorities and goals affect the problems and the degree of poverty in this city?

A Yes, I would.

MR. SAMSON: I object to that question...national problems and the...local problems which they may or may not have impact on are immaterial...

The COURT: ...must sustain the objection.

FRED OJILE: That's not true. What happens on the national level affects this state or this city and has great relevance in this case.

THE COURT: The Court can't see how that's relevant, Mr. Ojile.

FRED: Well, for the same reason that we might be breaking international law has relevancy to the laws of this state; same reason that if the United States Government somehow makes people in Milwaukee suffer...

THE COURT: Your statement is on the record. You may proceed.

TONY: ...what are some of the things that you have found in the course of carrying out your duties with respect to...the situation of poverty?

(objection; sustained)

TONY: There's an enormous degree of relevance, Your Honor...if the witness is allowed to testify...he will show a very direct relationship between national priorities and the problems of the poor in this nation. The problem of the dispossessed, the problem of minority groups....these are very important to establishing both our intent as well as the reasonableness of our action; so that his studies, and we will be coming to specific data if we are allowed to proceed, will show the relationship.

THE COURT: You may show, all of you may, what your intent was on the day of the incident...but this is remote, Father. The Court must draw a line somewhere....(This witness' testimony) is too remote.

(a multitude of objections from the State to the effect that witness cannot substantiate the subjective state of mind of the defendant...)

....

LARRY: They keep saying that what Father Flood will be saying will be something subjective. What I testified to was not subjectiveness as such. I gathered my material from objective things that I see before my eyes, and this is all that I would like him to expand on. I can only testify to a limited degree on what I see happening about us, just because of the framework of this Court...

THE COURT: You are seeking evidence...which the Court must agree...is not relevant here.

JIM FOREST: Your Honor?

THE COURT: Mr. Forest.

JIM: One of the reasons that I was hopeful Father Flood would be permitted to testify is because all of us so far have stated, and I believe will continue to state, our belief that because of the war in Vietnam, there is hardly any war on poverty anymore. He is in an expert position to testify regarding the relationship, the dreadful relationship, that exists

betweem the war on poverty and the war in Vietnam; and that's all we're trying to find out here; at least that's the main thing I hope the Court will allow him to testify to... It was President Johnson's own argument, when he was President, that when the war in Vietnam ends, we can resume the war on poverty. This witness can testify to that in the President's own words.

THE COURT: That may be, Mr. Forest.

MR. JACKSON: If the Court please, even if we were to attempt -- admit that --

THE COURT: Yes, that the war is expensive.

MR. JACKSON: And that it's taking money away from projects, needed projects here in the city and in every city in the country, it's the State's positi that that has no relevancy to the charges which are before this Court. We are prepared to concede all the things which this gentleman could testify as just pronounced by Mr. Forest. Everyone knows it's a matter of common knowledge. You could take judicial note of the expense of the war and the fact that it takes money away from urban planning, but that's immaterial.

FRED OJILE: It's not immaterial.

THE COURT: Mr. District Attorney, to take judicial notice of something like that...would be giving dignity to their position, which I don't think should be done.

MR. SAMSON: The point is immaterial even though it does exist.

THE COURT: Father Harney?

JIM: It seems to me that if we decide...that the war is irrelevant, that the poverty in this country is irrelevant, that the thousands of men who are dying in Vietnam are irrelevant, you are, in a concrete way...asking the members of the jury to decide...that all of the men here are sheer lunatics.

THE COURT: You said that before, Father Harney.

FR. JIM: You're asking the jury to decide...that 12 men, without any cause whatsoever, just ran in and destroyed draft records. You're asking the jury to decide as though there were no war going on...that all we do is go around burning draft records, and that's our thing. (applause)

THE COURT: Did you see anybody applaud back there?

BALIFF: Yes.

THE COURT: Order that person out...that person is ordered out.

(several persons removed by bailiffs)

THE COURT: She may not return for the rest of the trial.

JIM FOREST: Maybe I misunderstood you, but I thought you said, just a few minutes ago, and I'd like the Court Reporter to read back your remark that sounded like you were saying "we do not want to hear this testimony because it will give dignity to these defendants, and the Court would not wish this."

THE COURT: Not dignity.

JIM: I'd like to hear that again, because I'm not sure I heard what you said.

(Statement read back.)

JIM: How can you be a judge in this courtroom and say a thing like that?

THE COURT: Well, the Court had best, then, explain what it meant was that it does not want to give dignity to an irrelevant defense.

DOUG: I don't think you should explain, I think you should resign.

JIM FOREST: Irrelevant defense, Your Honor? You have shown me a letter you have received from a priest (this was to the effect that they should throw the book at us, we were enemies of the Church). You have talked to me about your views on Vietnam. And you say this has nothing to do with that.

THE COURT: I have not spoken to you about the war in Vietnam. I have spoken to you about what I read in a magazine. Those are not my views. And I consider it improper for you, Mr. Forest, to make a statement like that which even you know is not correct.

JIM: Your Honor, your words speak better than I can speak.

THE COURT: Well, what the Court means by what it said is that it cannot permit a stipulation on a matter which it feels is irrelevant. Let's put it that way.

....

BOB GRAF: ...I don't want you harrassing the participants either. I think tha taking away my right to a public hearing.

THE COURT: You mean when people in the audience applaud? The Court has no right to maintain order?

REV. JON: I think order was restored extremely quickly...

THE COURT: Order was restpred extremely quickly.

ALFRED JANICKE: I'm not so sure I would say applauding is too far out of order. They do it in the Vatican when the Pope comes out in his great way and expresse his expressions.

THE COURT: This isn't the same situation.

TONY: I think this is very important, just to second that. The purpose of applause is not to show disrespect to the Court. Applause is a very human reaction, and it's one that is unpredictable. It's something that happens in a situation like this. It's not planned. And so I think the Court should take notice of the many motives that could operate for applause.

THE COURT: Father, this case must be decided upon the evidence...This is not a contest whereby people who are on trial have friends here who, in an effort to express their sentiments, applaud. That's not the way we weed out justice (sic, correct as typed from transcript) in America.... (Court reiterates its position further...)

....

BASIL: An aspect of what we have done, I think, which has not been brou into clarity, is that we are being tried as a collectivity as well as individually. That is, there's a unity to what we are doing. I think we're part of something much larger than the Milwaukee 14; that is, people use the short-hand expression. In the movement there are many aspects -- the aspects of race, poverty and the war. So that in trying to evidence intent, I think it's wise to bring in outsiders who can articulate the movement of which we are a part. And I would allege being this as part of the motivation of bringing in such people as Mrs. Cullen and Father Flood.

THE COURT:...you are saying what other persons have said...Court must agree that the objection is proper. Any further questions of Father Flood?

JIM FOREST: Father Flood, you mentioned what your present capacity is. I was too clear about how long you've been in this kind of work.

PAT FLOOD: I've been at work in Milwaukee since 1960; directly involved in this office two years...

Q Could you characterize how the work has progressed?

A We have difficulty progressing due to lack of finance in answering the need, so it's regressing, as I might analyze the situation.

....

TONY: Father Flood, you mentioned that over the last two years the work of your office has actually been regressing...that things have gotten worse..

A Yes. There's not the financial resources to take care of the housing due the limitation of housing in Milwaukee. Over 66 percent of the people kicked out of their homes or relocated came from the black community in

the last ten years. And there has been very little housing to replace this. Their are not the federal resources to build housing. In that sense, it is getting much worse.

.....

JIM FOREST: Father Flood, I believe you brought some exhibits with you for us. Do you have them?

A Yes, I do.

....

(Exhibits 18 through 25 marked for identification)

(recess called at 3 pm)

.....

(recess ended, exhibit 25 withdrawn by defendants)

(state opposes to exhibits: "We firmly believe that the demonstrable relationship between the exhibits and the criterion for judgment in this case is far t remote....(but) we do think (the defendants) have the right to simply relate the titles....so that it gets into the record.")

PAT FLOOD: (Re 18) The title of the paper is "National Priorities, Manpower Needs, and the Impact of Diminished Defense Purchases for Vietnam"... It is a paper presented before the Congress...from the Joint Economic Committee....the paper is directly related to priorities in this country, the twenty billion dollars presently involved in the expense in Vietnam and how they could be related to answering the needs in the cities and in the poverty areas....

....

(Re 19) It is the economic report of the President of the United States, transmitted to Congress January, 1967, together with the annual report of the Council of Economic Advisors...discussing the statement of President and his economic advisors so far as resources cannot be used in the area of urban problems until we get out of the war in Vietnam. It would have direct quotes from the President of the United States im this matter...

....

(Re 20) This is a book just recently published, "Federal Outlays and Cities" (for) fiscal year 1968, compiled for the Executive Office of the President by the Office of Economic Opportunity. Within this document, you would have the federal spending in all the cities of the state in whi I was interested...It would didcuss the large amount of money, 90-some million dollars spent in the area of defense in Milwaukee alone, compared to 15-million dollars spent in the area of health, education and welfare. Hence, the priorities as they would relate to federal spending within the City of Milwaukee would be documented...

....

(Re 21) It is an assessment of the nation's response to the crisis described by the National Advisory Commission on Civil Disorders -- or in other words, the Kerner Report. It is a one-year-late report...compil by Urban America, Inc., and the Urban Coalition...it contains...discussio of education, environment, violence, crime, city hall and the ghetto, black militancy, ghetto growth and so forth. It would conclude that ther has been no appreciable change but rather a regression in the country, in relationship to the urban crises, because of the lack of financial resources, based upon the recommendations of the Kerner Report a year earlier.

....

(Re 22) This is a book by a member of the cabinet of President Nixon, Daniel P. Maynihan...an expert on urban affairs...titled "Maximum Feasible Misunderstanding"...It's a book on community action programs in the war on poverty...Mr. Moynihan states...that these days will be counted as the ending and destruction of the war on poverty because

of funds diverted to the war in Vietnam...

....

(Re 23) This is the "Economic Opportunity Report", which is the independent weekly source of news of all economic opportunity programs throughout the country...(documenting) the gradual increase of budget to the war and the decrease...to health, education and welfare...

....

(Re 24) This is a newsletter from the Friends Committee on National Legislation...containing a breakdown of money voted by Congress in 1967...(it is the finding of this study that funds will not be available for the resultion of the urban cris until the war in Vietnam is ended)

....

The final exhibit is entitled "Legislative Fiscal Priorities and Goals", and it's main source is governmental records in the United States Library of Congress. This was prepared by our office (for use in the Archdiocese of Milwaukee in regard to priorit ies and lack of resources in the Milwaukee area).

MR. FOREST: Your Honor, I just want to comment very briefly, your having heard the reasons that we were entering a description of what is being offered...the main reason we are offering these is to attempt to show the reasonableness of our behavior, as stated in the intentions many times mentioned, that our action would make it easier to meet the domestic needs of the poor in this country.

THE COURT: Court understands. And now, does the District Attorney want to make any further comment?

MR. JACKSON: No, I believe we have stated our position...

THE COURT: The Court is of the opinion that the matters related in these exhibits are not relevant to the issues before the Court. Therefore, they are not admitted into evidence...Any further questions...?

TONY: Now, as an expert on this, then, from your analysis of these reports... is it possible to continue the prosecution of the war in Vietnam, and at the same time eliminate poverty and the other urban ills of our nation?

A No.

(Objection; sustained)

THE COURT: ...This matter of identifying and stating about all of these various causes which are being effected are not relevant, the Court has ruled, and yet the jury has heard all of this, and it isn't proper.

TONY: I don't think we would be here if those weren't relevant, Your Honor.

COURT: That's your opinion, Father Mullaney.

FRED: That's right, that's our opinion.

....

(short recess--defendants want to meet out of the court)

COURT: Defendants are all in court. I'll ask them if they have a question of this witness. Father Cunnane?

BOB CUNNANE: Yes, we feel that to sort of debate the relevancy of poverty in our own country, in respe t to our own action, is sort of -- well, dabate about this is almost beyond our imagination, so I guess we'll certainly say thank you, Father Flood, and there's really not much more to say about our convictions in that regard. It has direct relevancy to everything we have done and all we have lived for. Thanks very much.

(witness is excused)

TESTIMONY OF FATHER ALFRED LAWRENCE JANICKE: My names's Father Alfred Lawrence Janicke. I'm 33 years old, from the Archdiocese of St. Paul, Minneapolis, and what I would like to say this afternoon is based upon three specific situations that have developed in my

life, to which I have spoken in the opening statement and to which I would now like to refer and like to prove and demonstrate clearly beyond a doubt that what happened on September 24th happened in order that the freedoms guaranteed in our Constitution would be a reality in the life of people and not only words on paper.

In the opening statement, I said I was going to show that burglary, arson and theft are not the issues, but it's a way in which the state has of covering up the real issues. The real issues have already been expressed in terms of slavery, war, poverty and illegitimate authority.

To figure out why I would want to present myself this afternoon, to come as close as I possibly could to my frame of mind on September 24th, I opened th New Testament last night before I went to bed, and once again I read the words which I read the evening prior to September 24th, and they're from John. I'm a priest and I make no hesitation about that fact, and I'm proud of being a priest, and for me the number one book is the New Testament, regardless of how this Court would want to judge whether its relevant or not.

(He opens up New Testament and reads:)

"So Pilate asked him, 'Are you a king, then?' Jesus answered, 'You say that I am a king. I was born and came into the world for this one purpose --'"

MR. JACKSON: Your Honor, if it please the Court, we object.

AL: "' -- to speak about the truth.'"

THE COURT: Mr. Jackson?

MR. JACKSON: If the Court please, State objects to Father reading the Bible to the Jury. We understand that it's his right to testify as to what effect what he read had upon his state of mind as to his intent...but reading the Bible to the Jury has no relevance in this courtroom and to this Jury to decide this issue.

THE COURT: Yes, and the Court observes that you have been giving an argument, Father, rather than a presentation of your reasons...Court asks you to confine yourself...

AL: The words that struck me as far as my intentiob were the words which ask the question, "What is the truth?" Pilate asked these words -- a judge as you recall in another famous case.

MR. JACKSON: Let the record show an objection...(we ask) that the Court admonish the witness to stop the continual --

THE COURT: Father Janicke, don't continue in that vein comparing this Court to another Court that presuded at a prior trial. As I've stated, this Court is bound by rules and is doing the best it can under a horrible strain.

AL: Your Honor, I also am under a horrible strain. When we talk about truth, and I testify to the whole truth, if I am convinced that I cannot give the whole truth, then this is a phony situation.

THE COURT: Father, just continue and stay within the rules to the best of your ability.

AL: I am trying to do that.

COURT: You are preaching and you are moralizing...

AL: Another reason I participated on September 24th was a commandment which says, "Thou shalt not kill." It became very clear to me that if I am going to in any way consider myself to be a follower of Christ, it was absolutely essent to go all the way and not just halfway, not just be partial to what I would like the truth to be, but to express the truth, and not only in words but in action in order that this might be the Way rather than just words. So I took the commandment seriously which said, "Thou shalt not kill."

It seemed essential to get to the heart of the issue which would place

people in such a situation, ahd the heart of that issue was as has been testified by the prosecution, the Selective Service System files which were damaged, which were burnt, which were destroyed -- some of which gave freedom to people so that they didn't have to be in that kind of a situation. That's the intent of my mind, but it doesn't come out of a vacuum, but I feel whatever else I would have to say would be almost worthless; and the reason I say worthless is because, in the philosophy and life-style of nonviolence, there is one absolwte essential; and that absolute essential is that there is a hopefulness that the truth will be at the court the issue of justice; and if all the truth cannot be seen -- if it cannot reflect through a prism which reflects the various kinds of lights -- than the truth cannot be seen. I was intent at that time that the court would be a place where truth -- if anyplace in our society -- could be heard. That was my intention on September 24th. But that intention has been aborted within this room, and so I'm searching again --

(Objection; request from the Court that defendant refrain from such remarks "as you just made about the truth being aborted in this court")

AL:X I don't know if those were my exact words, but that was certainly the idea.

COURT: Court must request that you do not make reference to what would be considered the justice which this Court is seeking to administer... Iask you not to voice that opinion (of the Court) before the jury...

AL: I make no reference to an individual. I make reference to the system... (in which) the narrow concept is being followed. I make no reference to any individual, because that certainly is not within the life-style of someone who non-violently wants to present what is to be presented.

See, I believe -- very much -- that it's wrong in any way to put a person in a situation where their character is being demolished. See, there's different ways of killing people. Guns are not the only way of doing it. Another way of doing it is to be constantly in a situation where the truth will not be allowed to come forth. That also is a very violent kind of act, and based upon that premise, I do not in any way or sense of the word attavk any specific individual in this courtroom or anywhere.

COURT: All right, Father. You may explain.

AL: Another part of the intention, which is very much part of my life, was a m known as Pope John, who in his life interpreted the Gospels in an encyclical letter addressed to all people called "Pacem in Terris" to which I referred in the opening statement. I suppose I can't read from this either, is that right?

COURT: Do you have it with you?
AL: I have it right in front of me. I have the entire --
COURT: Let me have it.
AL: Sure.
(wants to read paragraph 61, as numbered; objection to this by prosecution; sustained)
....
AL: If Pope John is irrelevant, I don't know how relevant I am.
COURT: It isn't that Pope John is irrelevant, Father, but you're taking one paragraph out of context.
AL: Your Honor, I stated I would read whatever else the gentleman would want me to read if he feels that this is out of context; and if he would want me to read the entire encyclical, I would be happy to do it. I'm taking one specific paragraph which gets very much to the heart of what we're at here, and --

COURT: The Court has ruled...

...

AL: All right. I will abide by whatever you say, because I see very little hope in this type of a society, in this type of an institution. The greatest hope I have now is with the jury. I have no other statement to make except to the fact thay on September 24th I was very much involved. I was so much involved that my heart was bleeding that day because of these very paragraphs that the Pope had written that he had expected everybody to follow; but they weren't; and when we come to a situation where it's possible to follow it, we can't; and so as a result of that, in working through my entire priesthood within the situation I've tried to describe, I was late on the scene, and being late on the scene, I wasn't able to become part of some of the specifics going on before; but I did carry a bag out. I very proudly carried it across the street and I put it on the triangle dedicated to people who wanted freedom; and at that point I stepped back and allowed those slavery papers to go up in flames, saying that if this would happen all over the world, then the peace of the Gospels and of Pope John might become a reality; and the film showed exactly what happened from there on in. I was taken into the wagon and was in the county jail for the next month.

(excused without questions)

TESTIMONY OF REV. JON HUBERT HIGGINBOTHAM JR.:

JON (to Bailiff): Before you start, I would like you to loudly and clearly enunciate the oath I'm about to take. I wish to affirm...I want you to say it loud enough so I can hear what I will be saying.

CLERK: Do you affirm the testimony you give in this matter will be the truth, the whole truth, and nothing but the truth, under the pains and penalties of perjury?

JON: I don't think, in the situation in this courtroom, that I will be permitted to tell the whole truth. With that reservation, then I do so affirm.

COURT: Just a moment. The oath means, Rev. Higginbotham, that what you say is the truth, under the penalty of perjury. Is that what you understand?

JON: Right, right. It was the whole truth that I was getting to, Your Honor.

My name is Jon Hubert Higginbotham, Jr. I am originally from Charleston, West Virginia, part of the Appalachia, and I think the way I'd like to start is to present the specifics that the State needs for their conviction and then go to my state of mind.

On September 24th, at approximately quarter of six in the evening, I entered the Brumder Building from this area. I went up this staircase, around this hallway (pointing on the State's diagram of the building), into local Board No. 46, at which point I went in these three filing cabinets down here and emptied the four drawers that Mrs. Junge has commented on before. I'm extremely sorry that I missed the filings on the shelf. If I had noticed them and knew they were up for grabs that day, I would have taken them also. As soon as I emptied those file drawers, I came through this office dragging the bags with me, back out of -- this way, down this staircase, and I waited in this vestibule -- the staircase comes down there -- and I waited down here at the door until I was able to cross the street. Once I got across the street to the little triange, I was pretty excited, so I don't remember the specifics. I don't remember if I put the bag there or handed it to someone else. About all I remember was dancing up and down and singing, "Ding Dong the Witch is Dead."

(lauhs from spectators and defendants)

TESTIMONY OF TOM CORNELL:

Jim Forest: Your Honor, we would like to call Thomas C. Cornell...He is qualified to be a character witness for myself. He is also qualified to serve as an expert witness

Q Tom, Could you repeat...your name and where you live?
A My name is Thomas C. Cornell. I live at 153 Ridge Street, New York City.
Q Could you tell us what your present employment is?
A I'm employed by the Fellowship of Reconciliation, assigned to the job of co-secretary of the Catholic Peace Fellowship, with you, Jim.
Q Yes. Could you tell us something of your professional and educational background?
A I was graduated from Fairfield University, Connecticut, with an A.B. Degree in 1956, in Literature, and received a Masters Degree in Secondary Education from the University of Bridgeport. I taught high school in Brookfield, Connecticut, from 1959 to 1962. I served as managing editor of the Catholic Worker movement newspaper from 1962 to 1964. And, since then, I have been employed by the Fellowship of Reconciliation in this capacity as co-secretary of the Catholic Peace Fellowship.
Q Have you been connected to any publications?
A I have written for many publications.
Q Any books?
A I have co-edited a Catholic Worker anthology called "A Penny a Copy", published by the Macmillan Company in May of last year.
Q Have you had any relationship to the hierarchy of the church in your capacity, in effect, of lay theologian?
A I served at the Third World Congress of the Laity in Rome, at the Vatican; I was a delegate from the United States and was an International Expert on Peace.
Q How did it happen that you were able to take part in that assemblage?
A I was given the invitation by the International Secretariat of the Laity.
Q What is the International Secretariat of the Laity?
A It is a group in Rome, a Vatican commission, which institutionalizes the voice of the laity within the Church structure.
Q Is it an official body of the Roman Catholic Church?
A It is.
Q Were you one of a number of persons so summoned?
A I was one of 225 delegates and one of the three experts on peace.
Q Could you tell us the purpose of this assemblage? What importance was it that you should be present?
A The Congress of the Laity was summoned in order to bring the concerns of lay people, their knowledge and their expertise in all appropriate areas, to the decision-making mechanisms of the church in general.
Q Who summoned this convocation or congress?
A Pope Paul.
Q To change the terrain just a little bit, I mentioned to the judge that you're also qualified as a character witness; in terms of our relationship, I'd like to ask how long you have known me.
A Seven years.
Q And in what ways have you known me?
A We have worked together in different ways. Jim Forest was managing editor of the Catholic Worker when I first met him. He served in this capacity at the age of 19, I believe, which is a distinction. Since our original meeting, we served together toward the formation of the Ametican Pax Association, a lay group of Catholics and others interested in church

teaching on war and peace and its propogation; with the Committee for Nonviolent Action, a group of people of all backgrounds interested in the experimentation with forms of nonviolence and the employment of nonviolence through various experimental activities; and most specifically in the Catholic Peace Fellowship. Jim Forest layed much of the groundwork for the Catholic Peace Fellowship, and shortly after it was established, I joined him as co-secretary and co-chairman of the group.

Q To finish out the character aspect, do you feel qualified to make a general characterization of myself?

A I do.

Q What would this be?

A We have a large body of mutual friends in common, and the reputation of James Forest among our mutual friends is of the highest, in regard to his truth and veracity.

Q Have you been on the witness stand before?

A I have.

Q He should be asking the questions, I'm afraid.
Mr. Cornell, could you describe the position of the Roman Catholic Church in regard to the participation of individuals in war?

MR. JACKSON: That's objected to as being irrelevant.

COURT: Objection sustained.

JIM FOREST: Could I describe very briefly what the intent of my questioning is, Your Honor?

COURT: Well, the intent is obvious, Mr. Forest.

JIM: I'd just like to indicate that a Catholic is in a terrible quandry in this society because the church requires that he decide whether a war is just or unjust.

COURT: Well, I don't know if a Catholic is, Mr. Forest. You testified and I believe you said you were in this mental state, is that right?

JIM: That is correct, Your Honor.

COURT: And each individual must speak his own mind in that regard. This witness cannot testify as to the concept of other persons regarding war.

JIM: Well, the reason I raised this question, Your Honor, is because, when one is accepted into the Roman Catholic Church, there are certain commitments that are resultant upon the establishment of this relationshi

MR. JACKSON: We object to this argument, Your Honor. I believe it's attempti to establish --

THE COURT: It is not proper. The Court has made its ruling, Mr. Forest. Each individual must state for himself what his position is on that subject. Mr. Cornell, Court cannot permit you to testify on that subject because I have made a ruling.

FRED OJILE: Mr. Cornell, are there any guidelines put forth by the Catholic Church...that deal with a member of that organization's participation in or opposition to war?

A Yes.

MR. JACKSON: ...objection....I don't believe the witness is qualified as an international expert on peace...and I don't believe that the question can be properly answered by him even if he is.

COURT: Objection sustained.

JIM FOREST: Your Honor, I think that it has been demonstrated that the witness has been recognized bythe Vatican itself as an expert on peace from the United States, and that it was on that basis that, at their expense, he was brought to Rome.

COURT: His statement was that he and a hundred twenty-four others were delegates to a conference or what was it -- what was the name of it?
TOM CORNELL: The Third World Congress of the Laity.
COURT: Of the Laity. Does not necessarily qualify him as an expert on the subject of peace; and even if he were, the Court agrees that it is irrelevant.
JIM FOREST: Well, for the purpose of restoring the Court's memory a bit, I would point out that not only was he one of 125, but he was one of three from this country who was brought to the Vatican because of his credentials in the area of peace, a selection that was made by a secretary to the Vatican, not by ourselves; and I think the church is in an excellent position to decide which of its members are experts in this field.
COURT: Do you want to comment?
MR. JACKSON: Only slightly. I believe that the essence of what Mr. Forest is stating is that this witness's credentials is that he has been selected to appear before the Pope. I don't know what the basis of the selection was. I have no idea as to what criteria was used...and I don't believe that, even if it were so, that would qualify him, the question so asked.
COURT: Nor would the answer be relevant. The Court sustains the objection.
FRED OJILE: The answer would be relevant, Mr. Larson.
COURT: All right, you have so stated.

....

JIM FOREST: Your Honor, in the light of the Court's ruling, I think that the avenue we were hoping to travel upon with this witness is blocked, and we would ask that the Court allow him to return to his seat.

....

COURT: You may return to your chair.
(Tom leaves witness stand.)

(Court recessed at 4:50 pm, to reconvene the following morning.)

(9:25, jury entered courtroom)

TESTIMONY OF ROBERT GRAF: My name is Robert Edward Graf, Jr. And that's all. I hope today brings more joy than yesterday. I was supposed to take the stand yesterday afternoon, but after a long hanrd day, I was so frustrated and tired that I didn't. Frustrated at seeing my witnesses not allowed to speak in this court and --

(objection; sustained)

BOB: I just was stating that to show why I was tempted just to remain silent, not even try to testify for myself. Like I guess people who are forced to be criminals who are sometimes tempted just to give a guilty plea in order to lessen the burden on their minds and hearts.

I'll describe what I did on that day. And, in the context of describing what I did and didn't do, I think I can give my intentions and motivations.

One reason I want to present why I did it is because the district attorney has failed to do this. He's failed to present any witness to testify I was at the event. He has failed to produce any picture or photograph that would be incriminating againsst me. So I feel it's necessary for me to describe what I did and why I did it.

On September 24th I entered the Brumder Building, and I did so much much the same motivation that I've entered many stages through my life.

I entered the Society of Jesus religious order about eight years ago with very similar intentions: in order to be of service in some way to others. My myself and to others. Perhaps it was much more spiritualistic at that time: the intention to save souls or to save my own soul; but I think it was basically the same heartfelt motivation which which I entered the Brumder Building September 24th.

Recently I entered the married state, hoping that that also would free me to serve others better.

I entered that building to be of service to man; and I entered it to stop burglary from being committed in this society. You know, I've grown increasingly conscious, as my life expanded, of how I was a part of burglary -- the exploiting of many many people across the world, the exploiting of the poor in my own country - the poor that I've lived and worked with. And I've been exploited by others. And I want to stop the system or structure of that dehumaization process: the de-humanization process of people waiting long, long hours to receive basic welfare rights, theirs by being human. And I've been a part of that system. And I wanted to stop that burglarizing of other people. And I've wanted to stop arson. I've seen our country literally burn people alive -- destroy them in fire -- and it's not just a pictureI've seen. I've felt it inside of me. I wanted to stop that from happening as Iwanted to stop the theft, the stealing from other people what is theirs.

I wanted to increase sharing as I tried to live my life style, sharing what little I do have with others.

So, I quickly went up the stairs.

When you're doing something that you really believe in, and when you have some type of a spirit to it, the pain of going up stairs on such a mission is very slight; and it was so quick that I can only dimly remember that event. I just remember a very quick burst of energy, and then finding myself on the second floor, and then entering one of the boards.

It was Board 47.

The reason I remember precisely what Board I entered is because that was the Board with my draft record. My draft record was contained among many other draft files held by Board 47 -- the draft files of my brothers in the neighborhood in which I've spent most of my life.

I come from Milwaukee. I grew up in Milwaukee not too far from here. And so the records in Board 47 pertain to many of my friends and relatives, people thatI've known and loved, including myself.

At that time I had reached the point of not cooperating at all with the Selective Service System. I didn't think my file was with the ones burned because I had given my draft card back to the government last May. I sent it back. I had decided I could not cooperate in any form -- some of my friends had died in Vietnam and others were serving time in jail for doing what they believed was right and resisting the draft.

I had gone into the Board about a week earlier to check on my draft status, because I had just recently left the Society of Jesus and wanting to see what my present status was, and to see if there was any report in my file about my not cooperating. When I saw my file, the lady was very disturbed by the fact that I didn't have my little card -- I guess that's really important to have, that little piece of property -- and so she wouldn't let me see my file when I was there earlier in the month. But after I checked on my legal rights I found that I had the right to see them, a guaranteed right, so I went back and told her and she finally let me see my file. I discovered that they had made tremendous mistakes and that they had no record of the fact that I was in Milwaukee for the last year...

(objection; sustained)

BOB: ...The day after the action, September 25th as I was waiting in the district attorney's office in regard to the charges that XM I'm now facing, someone from the community house in which I lived brought me my mail, and in it was a notice from the Selective Service System that I had been re-classified 1*A on September 24th.

So, to relate back, I'm inside the board now, and I'm taking the files which I believe to be those of my brothers and neighbors, but not my own. But the next day I discovered I was defending my own life too.

So, one of my intentions was not to defend my own life, but to defend the lives of others who were in great danger -- of being destroyed by this war, mentally and physically -- but I was saving my own life too, because one of the files that I was taking was my own.

The only sensation that I can remember that day in particular was at the moment when I was actually taking out the files: I remember my arm being extremely tired as I was trying to do as much as possible to get as many people freed as I could. And in this act of liberation my arm was just getting tired, and I had this senation, that I very distinctly remember, I'm not sure how to describe it -- except to say that I really felt with my whole, total person -- my mind, my body, my heart -- that I was really saving a life.

I guess it's like the stories you hear when someone is drowning and someone runs out to save him -- his arm, his body, his whole person gets tired by this act of saving the drowning person. That's how I felt -- my arm, my body was at its full extent of physical exertion in order to get those records out. I really felt within myself that I was forming a small and simple but free act of liberation.

I guess it's something you normally don't have when you watch the war on TV each night. Sometimes we see napalmed children, and we hear about countries being exploited, we hear about how rich we are, and how poor many, many others are.

Sometimes I think it takes actual experience to feel it, to touch it with your life.

The war was really brought home to me, I was doing my active service that day. It wasn't very abstract and far away; it was something very immediate, something very simple -- pieces of paper that would free a great majority of my neighbors and brothers, people I love.

So that was about the only feeling I had of any significance. The rest of the time I felt is was very simple and very ordinary, a routine sort of event.

So I took a bag or two, I can't remember, dragged them down the stairs and out across the street to where the flagpole is in memorial to those who died in the service of their country, and I laid the bags down... (objection; sustained)

...to continue with my story. I stood with my brothers, as you saw in the pictures, quite joyfully; and those so-called inflammatory words you heard in the movie I think did express our intent -- that we were out there to save lives... Men have offered their lives for people like myself in the Second World War, and I thought this was least we could do, to offer ourselves to the public and stand there and wait and say, you know, that we have nonviolently, creatively destroyed property that stands in the way of human life, records which a friend of mine earlier called technological garbage, which I think is an appropriate phrase; valueless things, in fact with a minus value, since they were taking life.

So I sttod and waited for arrest.

It's not the first time I've been arrested. When I took a stand against racism at Marquette, as a reward for my stand I was arrested; that was about a year ago. At one time when I was in church, I saw some police action take place at the altar which I could not stand, and I went to do something about it; as a reward for that I was arrested...Judge Larson was the judge in that case --

(objection; sustained)

(Bob testifies about incidents of police mistreatment of people and the relationship of his life since the September 24th incident to that incident; stream of objections, all sustained; court observes that it is "very difficult to keep Mr. Graf within the bounds"...Bob responding that he finds there is so much he can't say that he can't describe what he is able to say as the truth because it is so incomplete....more objections...)

BOB: Okay. Then I'm not able to go on, in other words, because my intent of that day and that action was not spontaneously lit that moment...it was a growing intent...maybe it was an honor that I have been accused of burglary arson and theft if that's the only way the court will allow me to express myself today; but I had no intention of committing those acts. If the court is going to force this upon me, let them do it. Thank you. (he gets up and starts to leave)

COURT: Just a minute, Mr. Graf, you must wait up here for a few moments... If there is anything else about your intent...

BOB: Well, the incident is a very simple event in my life, very ordinar feeling except for that one feeling in the draft board. Only way I can relate in my intent is expand my consciousness. I am being cut off from doing that.

COURT: (You must confine yourself to the incident.) Do you feel now that you have had an adequate opportunity to express your intent and how you arrived at it?

BOB: Do I feel that I have had one?

COURT: Yes.

BOB: I feel that since the beginning of this trial none of us has been allowed to have a full opportunity. We have constantly had our witnesses put down and our intentions objected to.

COURT: ...is that all you have to say...?

BOB: Yes, that's all I have to say for now.

....

JIM FOREST: How long had you been a Jesuit before you left last summer?

BOB: ...Seven years.

JIM: Could you say something explaining what you did as a Jesuit?

BOB: ...I spent four years in Minnesota, two years in a novitiate where I worked actively in hospitals and Indian missions...I also had intense training in the spiritual life...two more years studying...mostly English literature and languages, and...two years studying philosophy at St. Louis University

at which time I also began my advanced studies in sociology which I continued ...at Marquette....(Finally) I found myself going in a direction in which (it was mutually agreed that it would be better if I were no longer a member of the Society of Jesus).

....

(cross examination by Mr. Jackson...details of his participation--the fact that he is pictured in several photos the state had entered as evidence

....

(Bob asks court's permission to add some biographica; information about himself: "went to grade school...in Milwaukee, St. Thomas Aquina...went to Marquette High School...graduated in 1961...entered the Society of Jesus...in St. Louis I was in on of the first groups (of Jesuits) to live among the poor in the inner city...I (would have) a very healthy experience (in the philosophy classroom) abstracting one day and the next day be standing in the welfare line with someone....at Marquett as a graduate student....I had the intention...of going on to theology, which I still hope to do someday...(a) theology of the streets, of everyday human activity.. (in order to combine the great principles with daily practice)...because I was in jail September 24th, I didn't finished the last course in theprogram for my Masters Degree in sociology...Since September 24th I have continued in this line of direction. I want to merge intellectual, abstract understanding of life with very concrete, day-to-day events in life...")

BOB: Thank you. Thank you, members of the jury.

TESTIMONY OF FATHER ANTONY MULLANEY: My name is Antony Joseph Mullaney. I'm a Bene dictine monk of St. Anselm's Abbey and also a priest. I'll begin the data on my state of mind at a much later date than the other I'm the second oldest in the group, and if I went back too far, it would be very tedious, I'm sure...so I'll try to be as brief as I can, yet as honest as I can.

As far as my states of mind are concerned, there were three in particular that I think are important.

The first of these is what I'm referring to as responsibility -- a really felt need to be responsible.

I'd like to tie that responsibility into the fact of being a monk because there there are three things I think that define a monk that are connected to responsibili and the first of these is being a Benedictine monk with 1400 years of tradition.

The motto of the order has always been "Peace", and that motto has played an important part in my life. It's a devotion to the work of peace that very much defines a monk.

The second thing about the monk's life that I would like to mention is that the vows of the monk can be summed up as a single vow to set up the conditions whereby man can be fully human; and this is what the whole purpose of the monastic life is -- to try to create the conditions whereby a person can live as fully a human life as possible.

The third characteristic of the monastic life that traditionally has defined it down through the ages is that the monk is supposed to be a sign of hope. In other words, he's supposed to be a sign that history can be moved in the direction layed down in the Gospels, and therefore a sign that we are responsible for history and for the direction that history takes. / Now, I'm summarizing a great deal here, but that, in a nutshell, is what the monastic life is all about, and therefore the notion of responsibility that I felt on September 24th I think arose, at least in part, out of that.

The second frame of mind or state of mind that was very important is anger -- not that anger which stems from frustration, but that anger that stems fro correct assessment of a present moment in history.

And perhaps this is as good a time as any to bring up the notion of priesthood because I think this is apropos at this point.

Prior to the Vatican Council, many of the writings about the role of the priest had them pretty much confined to the sanctuary. The role of the priest was defined in what we call "cultic" terms -- worship terms, so to speak; but then the writings of Vatican Two make ot very clear that the priest is defined more in ministerial terms. He's a minister. He's a servant. He's one who takes his cues from those in need. This is what is meant by the servant church -- the servant priest, the servant Christian. And it's also very clear from the Vatican documents that the cues -- the primary source of one's cues as a priest -- are the oppressed; and the loudness of the cries of the oppressed determine the type of response that is expected of a servant, or a minister, and this was the way Jesus was.

Now, the idea of anger comes out of two places, especially where I acted as priest. One was the college scene, and the second was the urban scene.

In college, I had a number of roles. For one, I was the director of guidance at St. Anselm's College. I was the director of guidance there, and in fact the only one in the guidance office for nearly 1400 students. In addition to that, I was also teaching nearly a full load; and in addition was counsellor in the dormitories at night, so that I had a full day of meeting college students. As far as teaching was concerned, I taught in both the Theology and the Psychology Departments. In the Theology Department, my main course concerned the layman, the church and the world; whereas, in the Psychology Department, the course that most defined my interests, and I think too, my skills, was the course entitled "Psychological Factors in Contemporary Social Issues." We took up such things, for example, as the social issu say, of racism and what happens, say, to a small --

(Mr. Jackson objects: testimony too remote -- "far fetched"; court agrees)

In addition to teaching, I was also a moderator of a group known as Y.C.S. -- Young Christian Students -- which was a group of students who were very interested in social issues and what is to be done about them. I also served as a draft counselor, and within this context, had many experiences that certainly are concerned very directly with my presence in Milwaukee on September 24th and my participation in the burning of draft records. I counseled young men, for example, Catholic young men, who were not given conscientious objector status...because an all-Catholic draft board simply wouldn't believe that a Catholic young man could be a conscientious objector, even after evidence was presented that 2500 bishops in Rome said he could.

The final thing with reference to the guidance is a letter that I received on the very day that I left for Milwaukee -- I was in a hurry and read the letter on the plane -- and it was from a young man whom I had counseled in college and who went into the servuce terribly confused, and I'll just quote one line from that letter. It said --

(objection from Mr.Jackson; sustained...)

To sum up, then, my experiences in the guidance office, in the dormitories, in the classroom, in the coffee shops and elsewhere, my anger on September 24th was very definitely based on firsthand evidence that I had that the draft was doing violence to the consciences of young men, and that it also was doing real psychological damage to young men.

I also saw, as a guidance director, how it was channeling careers. Young men who did not want to go into certain careers were choosing them anyway only to avoid the draft. I saw that it was causing young men to be dishonest, and I saw the psychological effects of this dishonesty; and, of course, I also saw very clearly that the present draft law is formally opposed to the teachings of the Catholic Church...

MR JACKSON: ...objection...I don't know what the foundation is for (that statement) I'm not going to challenge it. I simply object to it. I don't believe it's a correct statement.

COURT: Yes. Well, there is no documentation as to the position of the Catholic Church in regard to the matter that Father Mullaney relates (as to whether it) is authentic Gospel.

TONY: ...I intend to enter into evidence the documents of Vatican Two at the end of this testimony.

COURT: Now, you're speaking of course about what motivated you on the 24th day of September.

TONY: Right...

COURT: The objection is noted on the record, but the statement has been made and you can't very well take it off.

MR. JACKSON: I understand.

TONY: The second place that was very important in my life, in terms of my intent on September 24th and why I was present in Milwaukee and participated in the burning of draft records, was the fact that two years ago I was granted a leave from St. Anselm's in order to go into the city -- historically, this is very common in the history of monasticism. In other words, there are many historical examples when monks have left monasteries and have gone into the city, in times of social crisis and, well, there are just many examples that I could cite.

Now, I went to that section of Boston that is known as Roxbury. It's known as the inner city, the core city. It's that section of the city where poverty is perhaps at its worst. It's very important ,at least in my own thinking, that I explain to you some of the experiences of Roxbury, or just relate them, because if I hadn't gone to Roxbury, I would not have been in Milwaukee on September 24th.

At St. Anselm's, with my books, I could and did build up an elaborate system of defenses that kept me from responding to the enormous injustices. In Roxbury, that's no longer useful. Your defenses are shattered the day you arrive there; and I just like to mention a few things in this regard that helped me to break down defenses that had been unduly influencing my life up to that point.

MR. JACKSON: ...I understand Father's motivation and his great feelings toward the incidents to which he now refers. I believe they could be objected to on the grounds of relevance -- I'm sure they can. If he feels that he must state them, and if the Court is so inclined, I would ask him simply not to state them as to their factual content but simply to state what effect they had on him as it affected his intentions.

COURT: That's a good guideline...Would you follow it?

...

TONY: All right. In the area of education, I have been involved in a number of attempts of parents to gain some say in the running of schools in the community of Roxbury....

(Tony goes on to try to relate an incident involving a 7-year-old black child taken to an auto museum; objection from the court requiring that specific incidents not be related but rather whatever "did cause you to have the intent you did on the day in question"; Tony expresses confusion; court reiterates--"You can relate what the incident is, not a descriptive story; Tony: "I'm confused, I really am."; Fred: "So is he"; Mr. Jackson tries to further explain: "For example, if he has seen starving by a group of people, he simply could say "I have seen starving..." instead of saying "I saw Joe Jones who was 6-years-old, and he didn't have an food to eat and he didn't have any steak and he didn't have any other things, and I knew where he lived...' because the principle is his motivation and why"; court says that's what it meant...)

TONY: Well, I feel, in all honesty, it's better to discontinue. I don't think I can do -- I can't talk about poverty in general or starvation in general. I've never seen it in general, and I mean no respect by that remark. I just have never seen it in general.

(Mr. Jackson explains that all he is asking of the witness is that he be "as fair and nom-prejudicial as possible, and I'll withdraw my objection and let him go ahead"; Court has difficulty going along with what seems to be argument instead of evidential testimony; Mr. Jackson says he is anxious not "to stifle anyone to the point of frustration ... I will object (if his testimony becomes) argument... Court states that the matter of intent should be "related into the record in a lesser period of time than Father has taken...Mr. Forest?")

JIM FOREST: You have on the stand, as defendant, a professional, highly trained psychologist who has a doctorate, I believe, from Boston College...Seems to me he is really equipped to discuss -- and do so in a fair and objective manner, as Mr. Jackson says -- how his intention was formed and do so without extraneous information.

COURT: Continue.

TONY: As far as variables, then, in education are concerned, and again this is very much related to my intent on September 24th, this young black child of seven years, who was taken to an automobile museum as part of his education experience, was shown an automobile that belonged to Adolph Hitler, and the young child asked of his teacher, "Was Hitler a Negro?"

The second great set of events were a whole series of young black people who were dropping out of an incredibly bad school system, only to be drafted...

Again, three brief experiences: the Vasquez home where there is no furniture; the Taylor home where there are no windows that open up and his rebt is $110 a month; and the Kilkenny home that was burned down and two children died and the landlord couldn't be found.

I'm tempted to moralize here, but I'll go on.

Alcoholism: we have a number of men who come to our house every day -- these are men who die in their 30s.

Jobs: so many times jobs bring a man to the employment office and he begins to shake so much from fear, from his fears of his own inadequacies, that he cannot enter the door.

I'd just like to describe two sets of brochures that were sent out in the Boston area recent from the same company in the midwest. One ser of brochures was sent into the Roxbury area, where the poor are...The same brochure was sent into the Boston suburbs, but the prices were entirely different. The people in Roxbury were supposed to pay $150, say, for a TV, the people in the suburbs $130.

COURT: Do you have these advertisements with you?

TONY: No. But they could be subpoenaed from Boston. This was made public by a local television station when it was brought to their attention...

...

TONY: ...I want to avoid moralizing.

The third state of mind that I think was very important in my case was...what can only be described in inadequate terms as fear...a fear that grows again out of both the campus experience and the Roxbury experience. This fear, again, can be placed in two categories: one, the experiences on the campus, and I include many campuses -- I've gone to a number of them -- many campuses, and Roxbury.

These experiences have convinced me...of a very deep and a very pervasive polarization that's going on in the United States; and by polarization, I mean that we are a nation that is very seriously divided. The Kerner Report, among other government documents, makes this very clear. It's not only black-white, but it's also rich-poor, it's young-old, and so forth. The polarization is pervasive and it's very very deep.

Now, this polarization we've sought to highlight by every known legal means at our disposal, beginning back in 1965. We've tried every known legal method to highlight this polarization, and from the theory of conflict and

conflict management, conflict resolution, we know that polarization never goes away. It doesn't disappear. It must be resolved. It must be resolved.

Now, there are four reasons which give, I think, rise to this -- this particular fear that grew out of the realization of the nation's polarized condition, and I'll be very rapid, very brief here in explaining them.

Number one, the ineffectiveness of speech in American life.

Secondly, the growing gap between the powerful and the powerless. This is polarizing them.

Also, the growing priority of things over people.

And finally, the distorted priorities that are highlighted especially in Father Flood's testimony yesterday -- the Vietnam War versus the City.

Second, in addition to my fear related to the process of polarization is the fear that I have is that nonviolent methods of civil disobedience won't resolve this polarization. That is a fear based on a massive amount of evidence. We ask, "Well, what can we do here?" -- in the face of this polarization, in the face of the inadequacy of means up to this time to handle it. How can you come up with the means that will, in fact, be effective, and means that would be as importar as the end itself? The end being, and my intent, to affirm life, to affirm persons over things.

I had to come up with means that contained that end, that were, in fact, the end in the process of becoming; means that really embodied the end. And it's very hard these days to do that, to come up with those kind of means.

And so, on September 24th, I participated in the burning of draft records as my attempt to say something about the polarization, which if it is not checked, is going to lead to great disaster in this nation.

I participated in what I considered a very beautiful liturgy, and this is a wor of the monk.

That's moralizing -- I'm sorry.

Now, I'm not going to say very much about Vietnam. My experiences have been similar to Mr. Forest and Father Cunnane. I wrote my first letter in opposition to the war in 1965, and I went on from letter writing to petition signing to visits with congressmen to placard carrying to draftOcard turn-ins to draft resistance sanctuaries -- and, in order to maintain my stance as a public speaker in a free society, to participation in the Milwaukee 14 incident.

And I might say that I , too, have heard congressmen say that they are power-less to effect change. I have even heard one say that the war in Vietnam is really not his business.

Now, through my participation, I intended the following:

One: I intended to show, in a society where speech is in such danger of being stifled and being deemed unworthy of response, that man as a public speaker is still alive. I acted to affirm that the full and open discussion of national policy is really what a free society is all about.

And secondly, I intended to show, in a society where the inadequacies of legal channels for redressing injustice are apparent, that civil disobedience is part of due process in that society. I acted to affirm that law in a free society compels obedience only when it furthers the justice that enables man to lead a more fully human life.

And third, I intended to show, in a society whose structures are becoming so rigid, whose leaders are so intransigent, that social crises are not being confronted in a way proportionate to their magnitude; that organized, controlled nonviolent civil disobedience is still capable of providing a safety valve, still capable of effecting change in policy; and so I acted to affirm my belief in nonviolence.

Fourthly, I intended to show, in a society where so many leaders act as though law and order are independent of justice, that the best way to enhance and give dignity to the distinction between the legal and the illegal is to witness to the even more important distinction between the just and the unjust. I acted to affirm

my respect for law.

Fifthly, I intended to show, in a society where participation in the critical decisions which effect one's life becomes less and less, that there must be an incre in the signs of hope, in one's power to make what ought to be a reality; and so I acted to affirm my belief in the power of the present.

Sixthly, I intended to affirm that I was as concerned as are those who are in prison today for reasons of conscience, especially those young men who have dialogued with me at the time of sermons, or dialogued with me at the end of class, or dialogued with me in terms of reading the same books. In other words, I acted to affirm how much I have learned from other people. It's not easy to be a public speaker today, and it's not easy to create situations of nonviolent disobedience which effect change. It's not easy to be a sign of hope. And the price one must pay in order to be such a speaker and actor and a sign of hope is very high. I wish letter writing were sufficient...

COURT: Father, are you still giving reasons why you participated...?

TONY: I'll go to my last reason. What I intended finally is contained in a stateme which was written by all of us prior to the burning and which was given out to the press at the time of the burning and which sums up my intent, I think, quite well. I'd like to read that statement:

(during the reading of the statement there are a number of interruptions ; the court admonishes members of the audience not to indicate their response by head motions to what is being read; Fred Ojile, Jon Higginbotham and Larry Rosebaugh note that Judge Larson's reactions were quite apparent on his face -- "frowns and so on"; the judge states that isn't so; later the court objects that the statement does not relate to Ton's motivations but is an oration on social matters; Jim Forest responds that the statement is not ordinary testimony but is in effect a confession that was released by the group simultaneous with the record destruction.. "Is our own confession from September 24th irrelevant because you don't agree with its contents?; court responds that part of it, constituting a confession, may be relevant, but that it "goes far beyond a confession"; Forest: "You would like to edit our confession, Your Honor. Is that the idea?"; Court: Well..we could go on in this vein. A confession could be a very, very brief statement"; "I'm sorry we didn't think of that that day, Your Honor. We x thought it necessary to explain to the people of this country why we acted"; court asks how much longer the statemer is, learns it is three-fourths of a page; court asks Mr. Jackson what he thinks; Mr. Jackson says he thinks its argument, not testimony, but that Tony might as well finish as he's almost done; the court decides to let Tony finish)

(The statement without note of the place of interruptions is as follows:

(see next pages...numbered 9a, 9b, etc)

TONY: That's the end of the statement.

....

JIM FOREST: I just wanted to point out for the record that all of us are signers of this statement and our names appeared at the bottom when it was delivered to the press on September 24th.

.....

FRED OJILE: Father Mullaney, how long have you been a Benedictine monk?

A For 19 years.

Q How long have you been a clinical psychologist?

A Six years.

Q What is the foundation for the statement you made that the draft is formally opposed to the teachings of the Roman Catholic Church?

COURT: Just a moment. Well, this goes to intent, and would be irrelevant for any other purpose, Father. But you may answer the question.

A Well, there are a number of arguments that could be adduced to substantiate that statement, and a number of elements in the draft law that coukd be cited; but to zero in on that aspect that I think brings it out most clearly, and which so strongly effected my intent, is the fact that a young man who in conscience believes that he cannot participate in the Vietnam war is in a situation in which only one thing can happen: namely, jail. If he wants to remain faithful to his conscience...A young man who has been brought up in Catholic tradition believes that he must follow a certain conscience, and yet, if he does, he is sent to jail.

Fred: Thank you.

....

JIM FOREST: In describing your evolution from letter writing in 1965 to draft-recor burning in 1968, you mentioned, along the way, your taking part in something called sanctuaries. What are sanctuaries?

A A sanctuary was one further technique that was developed within the resistance movement as an effort to say "no" to the war. As an effort to change national policy. The sanctuary is a physical place...generally..in a church...within a church sanctuary. And a young man who in conscience believes --

(objection--prolonged discussion--finally court permits a continuation after the comp etion of the answer has been whispered to the judge)

TONY: A sanctuary really doesn't take place until you have a young man or a group of young men whom for reasons of conscience, cannot participate in the war. Yet they are being pursued by federal agents, the FBI, for their conscientious objection to the war. So, the young man come to a community of people who gather around them in the sanctuary of the church and the federal agents have to walk through this community of people. In other words, there's an attempt to block the federal agent. It just is a sign that there is a communit of people who symbolically want to show that those men of conscience are a part of the human family, and symbolically want to show that the protest ...the invasion of a person's conscience.

(brief recess)

(question of Jim Forest re why Tony felt speech was being stifled in the US -- "I think many of us often think of this society (having) more latitude of speech than any other. Could you explain why you meant?"; objection; much discussion; objection sustained)

JIM FOREST: You referred to the act of September 24th as a liturgy. As I understand it, that is a technical religious term. What did you mean by "liturgy" in regard to that action?

TONY: Well, liturgy, which is very important in the life of the monk...(and) comes very close to defining...what monasticism is all about...comes from two words that mean public work; in other words, a work on behalf of the public -- a work for the people, a work for the city -- and...it refers to a human being's awareness that the divinity, whoever that divinity might be, has somehow entered into the life of the person on the city in such a way as to effect the lives of the persons there and their awareness of them causes them to respon and say something about what they believe the divinity has done; so that in Catholic liturgy, for example --

(Mr. Jackson objects...answer irrelevant (and) at least for the purposes of the question has been sufficiently answered; the court so rules)

(one minute recess for Judge Larson)

JIM FOREST: Just for finishing off my question, Tony; you've defined liturgy; I'd also be interested in your explaining specifically how that was relevant to the act of September 24th?

TONY: Well, once you accept the fact that ...

MR. JACKSON: I'm sorry, may I hear that question again?

(question read)

JIM: In terms of your intention.

TONY: Right. When a person believes that the divinity has entered his life, and in my case I believe that Jesus Christ has entered my life, the divinity enters into one's life in a way -- he does so by telling you something about what human life is; and Catholic doctrine is Jesus is the man, so that we know what humanity is, we know the values surrounding humanity from the life-style of Jesus. So once you accept that you have a responsibility of doing something for the city, for the public order, so to speak,that communicat your acceptance of Jesus. So that what we did on September 24th, the burning of those files, affirmed my acceptance of Jesis as man, my acceptance of persons over things.

....

Fred OJILE: Could you tell us the relevance, if there is any, of course, between your profession as a clinical psychologist and your action on September 24th?

TONY: Well, I think there's an enormous connection.

COURT: As to intent, Father.

TONY: Yes. Even as to intent, because, as I said, my area of chief concern...is the area of psychological factors in contempirary social issues, and I think th is a growing list of data that would suggest that much of what is going on in present society...is bordering on lunacy. In other words, if you take certain statements of public officials, I would cite, for example, some of the statements --

MR. JACKSON: I object...I believe he's going a little far afield.

COURT: ...Father, you have a tendency to go well beyond...what's responsive to the question.

(Rev. Higginbotham comments that Major Lane's failure to provide yes or no answers was defended by the court..."you said the witness was answering to the best of his ability. I would like the same courtesy to extend to us"; court responds it's memory isn't good enough to recall what happened during Major Lane's testimony but that it is doing the best it can.)

FRED: I have one more question. Dr. Mullaney, are you saying that your act of September 24th was an attempt to put an end to some of the lunacy -- is that correct?

COURT: That's a very leading question.

....

FRED: Okay, I'll rephrase it. Dr. Mullaney, is there a connection between lunacy on the part of the government or public officials and your act of September 24

MR. JACKSON: I object to that. I'm not sure --
COURT: Called for a conclusion on his part that there is lunacy in the federal gove ment.
FRED: He said in his testimony, and speaking as a clinical psychologist --
COURT: The Court did permit things into the record again and again . We would have to read back to know if he used that exact term.
FRED: He did.
COURT: Did you, Father?
TONY: I used the term ,yes. I forget the context myself now.
COURT: Well, nevertheless, there has been no evidence here that there are lunatics who are holding office in the federal government and dictating policy of the federal government, if that is what you mean.
FRED: No, I didn't mean just the federal governments. I meant all public offices.
COURT: Court rules that for him to state there is lunacy in the federal and state governments is a conclusion on his part and unsubstantiated; and therefore he cannot testify to it.
FRED: Do you have any foundation for that judgment, Father Mullaney?
TONY: Yes. My judgment is, if this is permitted here, that there have been statements made by public officials which, if made by the private citizen, woul be grounds for questioning that person's contact with reality. Now --
COURT: That answers the question, Father.
FRED: So, Father, you're taking -- or Doctor, doesn't matter, does it? You're taking --
COURT: Mr. Ojile, the jury, of course, doesn't want to be confused, the court doesn want them to be confused; but for five days of last week and now the fourth day of this week, we have called him Father Mullaney. We know he has a doctora Identify him as Father Mullaney, if you will.
FRED: Tony, on September 24th...I'd like to get to this issue of your intent to somehow control sanity. You mentioned something about that, I would like to have your foundation for it.
MR. JACKSON: I object to what might be a question on the grounds it's irreleva
COURT: Objection sustained.
(further efforts to question, over objections and interventions by the court; Tony is then permitted to state the following;)

TONY: The statements and behavior of a number of public officials have caused me to come to the conclusion, as a psychologist, that their statements do not indicate a contact with reality.
FRED: Thank you.
TONY: Now, this is the simplest definition of psychosis...it's not fully accurate or fully elaborated. I would have to expatiate on it; but lack contact with reality is the single most important criterion of severe mental disorder.
FRED: Thank you.

....

CROSS BY MR. JACKSON:

Q Father, in the statement you read...it says something about popular political control. Let me ask this: Do you believe in popular political control? I'll ask you to restrict your answer to yes or no, if you can.
A Could you point out...what the context is; what page that is?
Q Sure...it's on page two..."The world's wealthiest, most heavily armed people, inheritors of a nation born in genocide against the Indians and built in great measure on the toil of slaves, suffocates beneath myths od freedom and popular political control." I want to know whether you believe in popular political control?
A Yes.
Q What do you define as popular political control?

A I would define it as the people of a nation having adequate say in the decisions that effect their lives at the deepest levels; especially, therefore, those decisions which refer to life, liberty and the pursuit of happiness.

Q May I have that answer read back slowly, please.

(Answer read.)

Q Thank you.
In your document...you state some property has no right to exist, is that correct?

A That's right.

Q I would ask, who is to determine what property is to be destroyed?

A I would say any person whose conscience has been formed by those documents which serve as the foundation for his inclusion in a political community, those documents which serve as the foundation for his inclusion in a spiritual community, that person, whose conscience is so formed -- that person, in other words, whose response is shaped by the very objective environment in which he lives...whose conscience is attuned to the values that are enunciated in his political and spiritual documents -- that person has a right, in a free society, to so choose. Therefore, a person in Germany who was Christian and democratic would have had a right to destroy--

MR. JACKSON: I object to a person in Germany. I asked who, and I object to the characterization as to the person in Germany, etc.

COURT: We are in the United States of America, Father Mullaney.

TONY: Yes, all right --

....

May I finish my answer tothat now?

COURT: ...you have gone far off on a tangent...(but) go ahead.

TONY: I am a very verbose person, I admit. I would say that that person also has the right to determine...whether some property has the right to exist if he is willing to come before the same people --

(more interjections from prosecution and court)

....

Q Who is to determine what property is to be destroyed?

A Right. Now, the second part of my answer is, that person has the right to so determine if he is willing and if he is allowed to present to his peers, in both his political and spiritual community, the reasons for his judgment that this property should be destroyed. If a person is given the reasonable opportunity to explain why this property should be destroyed, and therefore has no right to exist, than I say that person...has that right, provided (he comes before his peers and explains the objective basis of his conclusion and the action it produced) -- the conclusion that this property has no right to exist because it is no longer related to the human scene, it no longer bears any relationship to the enhancement of those values which the political and spiritual community have affirmed.

Q ...how would the determination of the destruction of property be made under the system that you have just described when people disagree?

A Um-hum. Well, are we playing a numbers game -- are you talking about 51% versus 49 or something?

Q I've asked you who is to determine what property is to be destroyed.

A Right.

Q I'm now asking you how is this to be accomplished when people disagree as to what property is to be destroyed?

A The criterion is not the sincerety of the person who destroys the property, I state that very affirmatively. You must go beyond sincerety; you must also look at the values, the values that are inherent in the destruction of given property.

Q Yes; I say physically how are you going to determine what property is to be destroyed?

...

A ...how physically determined?

Q Yes.

A One way would certainly be a dialogue in the community, and this is why, for example, we were quite willing and are still quite willing to come before our peers...and explain the reasons why; in other words, we view the court as a place where this type of dialogue should be able to take place...

....

Q ...Maybe he doesn't understand what I'm getting at. (Is property destruction to) be voted upon, will it be declared, what will happen?

(long discussion...Doug comments that it is striking that expert witnesses were not permitted to comment on these points, as they were then ruled irrelevant; court indicated that the question is in order that and Father Mullaney is permitted and obliged to proceed with the answers...)

JIM FOREST: Your Honor, I just want to clarify: we are not saying that he shouldn't ask the questions. I welcome these questions. I think they're wonderful questions. I'm glad the witness is going to have a chance to answer them. We're just trying to bring to the court's attention something which appears to us to be a double standard.

COURT: We'll continue...Can you answer that question, Father?

A Yes. It will be agreed upon by members of the political and spiritual community that the said act was in no way a threat to the values and other affirmations that enabled these people in the first place to form a community, so that we would say, for example --

MR. JACKSON: Father, my question presupposed --

COURT: Father, that's not responsive to the question.

MR. JACKSON: My question presupposes a disagreement as to the basic values. How do you resolve the disagreement as to basic values?

A By exactly what's going on in this courtroom, we hope. We hope. Because our point is that there is no basic disagreement in values, and that if we are allowed to say what the reasons --

Q I've heard your answer, Father. Let me ask the question --

COURT: It is now about five minutes after 12:00. We'll continue at 1:30. Court is in recess.

(at 1:45, ury returned to courtroom; defendants' exhibits 27, 28a, 28b, 29, 30, 31, 32 and 33 had been marked for identification upon their arrival)

....

MR. JACKSON: I believe I was asking you to describe the physical process by which i would be determined what property was to be destroyed where there was a disagre ment among those present in society.

A What physical process?

Q Yes. How would you resolve the conflict or the disagreement?

A I see. Well, I'm glad that it is framed in terms of conflict resolution. If I can just preface my remarks by stating that the current terminology used by social psychologists is conflict management rather than conflict resolution, and there's a whole history as to why the second phrase is more appropriate than the first. Conflict management --

Q Father, I realize what you're attempting to say, perhaps, but I have to insist that my question be answered in my terms.

COURT: The question is not difficult or involved.

DOUG: It's an especially complex question.

TONY: I personally find it complicated, very much so ; could I be allowed to

introduce my answer by some preamble?
MR. JACKSON: I'll withdraw the question then, Your Honor.
TONY: No, I very much want to answer that.
MR. JACKSON: I would understand that, but I don't think we can agree on an effort that is, to me, answering the question. I don't think you can answer it fairly to yourself in my terms, and I don't think that I can agree with your answer to my question in your terms.
TONY: Let me answer the question simply then.
COURT: (Mr. District Attorney?)
MR. JACKSON: Yes. I withdraw it.
COURT: All right.
TONY: We might be missing a golden opportunity here.
....
Q Let me ask you this: ink the system that you have described, in determining who is to determine what property is to be destroyed, wouldn't the determination first have to be made as to what property is to be destroyed before the property were actually destroyed?
A No.
Q Okay.
A May I elaborate?
Q No, thank you.
FRED: Excuse me, could you read that question back, please?
(Question read.)
MR. JACKSON: Let me say this -- if you would like to elaborate, when it becomes your colleagues turn to ask you questions, I think you can somehow arrange it with them to ask it
....
(question from Doug to Tony re whether the people in the Roxbury ghetto have a choice in what property in Roxbury is destroyed; objection--irrelevant; sustained; much discussion re relevance issue...)

DOUG: How does the fact that the people who live in the Roxbury ghetto where you live do not have a choice in what property is destroyed in Roxbury (such as in "urban renewal") connect with your intent in destroying draft files, if it does?
A There's a very real connection there, and it pertains to the fact that each person under the Constitution has certain rights in these regards, and the whole story of the Roxbury and South End communities contiguous has been the fact that thousands of people have been displaced against their wishes -- against their wishes -- and so, for example, a fire commissioner takes over a whole parking lot that was formerly made up of housing dwellings -- and sure enough, the exit of the freeway just happens to come out at this new property that he has acquired, and it becomes a very, very wealth-producing parking lot. Meanwhile, many thousands of people have been dislocated. They can't even be found. The re-location program was months and months behind the demolition program, so these people have had no say in what property is being destroyed. The same would be true, for example, in a case where a single individual, because he wanted a townhouse, displaced 18 poor people -- who again were lost in the city.
MR. JACKSON: If the court please, may we have the question read back?
(question read.)
MR. JACKSON: And the answer.
(Answer read.)
MR. JACKSON: If the court please, that's the kind of answer I object to.
....
JIM FOREST: At this time, I wish to comment, but I didn't want to interrupt the questions that were being asked by Mr. Marvy. I didn't write down Mr. Jackson's questions, but my impression is that they were hypothetical in

nature. They didn't relate specifically to the act on September 24th. They had to do with general principles, regarding law and due process and so forth, which Father Mullaney attempted to answer. We are going on in the same vein and not attempting to open up other areas.

COURT: Mr. Forest, so that we may clarify this, Father Mullaney did make a statement regarding principles of government, and so he was cross-examined, as is the custom in matters like this...

DOUG: That's not a correct statement, Your Honor...The principles of government matter was in response to questions --

COURT: He was in his rights to cross-examine on that subject.

DOUG: We are not questioning that.

COURT: And anything new that was brought out by the district attorney, as a result of the answers given by the witness, Father Mullaney, you may ask questions about.

DOUG: What I'm questioning is the entire course of this trial, which is the prosecution insisting that this is burglary, arson and theft except when they want to talk about morality and politics. As soon as we open our mouths about what we think the case is about, we can't say a word.

COURT: Mr. Marvy, you have been given many opportunities to say what you wanted to.

DOUG: I get to listen to your politics and his politics. The jury gets to listen to that, but they can't listen to ours.

COURT: Mr. Marvy, I don't know if I make myself clear.

DOUG: Very very clear.

COURT: What the district attorney was doing was cross examining on certain matters, testified to by this witness on direct examination.

JIM FOREST: Your Honor, I think we don't need to talk about the double standard any further. I just would ask that --

COURT: Mr. Forest, when you make a statement like that, it is just the same as testifying on the stand. You're making a statement in the presence of the jury, which is improper. The court does not believe that there is a double standard here. The court is proceeding in accordance with law.

JIM: I don't say that you say there is a double standard. I say it seems to be apparent. All I want to ask is that what has been said in this courtroom be left open, so that those who read it afterward will know what we have said, and can judge its relevance for themselves.

....

(court corrects the defendant's misimpression that its earlier ruling striking Tony's answer re property destruction in Roxbury does not mean it won't be in the record)

.....

DOUG: Tony, in your answer to what popular political control meant to you, you used the phrase, "political and spiritual communities". I wonder if you could tell us what such communities you feel you are a member of.

(Mr. Jackson asks that the answer be relevant to his intent on September 24th and says that this request can be viewed as an objection to the question;)

DOUG: Well, he's just discussed his participation in the destruction of certain property. On cross-examination he was asked how he justified that in an abstra theoretical way. His answer had to do with man belonging to certain communities...Now, I'm asking what those communities are?...

MR. JACKSON: Objection withdrawn. Let him answer.

...

TONY: ...I am a member of this national community. I'm a member of the world community. Therefore I have responsibilities not only within the State of Wisconsin and not only within the United States but also to brother Guatemalans, brother Vietnamese and so forth. And that's by law. The United States law requires me to do this.

Q Do you feel that these communities that you are a part of have popular

politica lcontrol?

A I think there's a great deal of evidence that they don't have popular political control, and again, by reason of United States' documents that put a burden of responsibility upon them (to excercise such control).

Q Would you say the fact that these communities you feel a part of don't have popular political control (was a fact that related to) your intent in destroying draft files?

A Very much so.

.....

FRED: ...The prosecution put to you, Tony, or Reverend Doctor, a question about the determination of who determines the destruction of property...In relationsh to that question and your answer...when does the question of who determines destruction of property...become a pertinent question in the decision-making process?...

A Well, I think so. The decision to destroy property has to be confronted whenever the person has reasonably concluded that there is no longer any relationship between that property and the enhancement of those values to which he is committed, through his membership in various communities -- such as the American community, the family of nations and so forth. When he is reasonably convinced that the relationship no longer exists or that it never did exist -- in other words, when property no longer enhances the dignity of the human person -- then that property no longer has a right to exist. Property makes sense only insofar as it is related to the human scene. It is an instrument. It does not have substantive value. It has instrumental value.

Q Are you so convinced?

A Yes, I am.

Q Why are you so convinced?

A I have submitted my name to a number of documents that we have submitted for evidence (Tony picks up the exhibits earlier marked for identification). Included here are the New Testament, the United Nations Charter on Human Rights, the Constitution, the Billof Rights, and Vatican documents...I can cite a whole stream of documents which I am reasonably certain that my peers in this community, including my peers on the jury, would also affirm; and it upon the truth contained in these documents that I based my decision -- my conclusions. It doesn't come from out of no where. It does not come out of a vacuum. It comes out of what I've read, what I've seen, what I've felt, what I've tasted, what I've touched.

Q ...That made sense. The prosecution brought up a question about popular political control...they read to you from a statement (referring to the "myth of popukar political control"). Why do you use that word, "myth"?

A Well, because I am of the opinion -- and, again, I think I can cite studies or statistics to demonstrate this -- that the very large decisions in American life are now outside of the hands of the people. The people are no longer participating in an effective way, in a way that's based on the Constitution, in these critical decisions.

A Well who, then, is making these decisions?

A ...this is one of the most complicated questions...(in) John Kenneth Gailbraith's book, "The New Industrial Society" --

MR. JACKSON: ...I don't think this is in the witness' competency to answer who's making political decisions...

COURT: The objection is sustained.

(Doug comments that the expert witnesses brought in to testify on these matters were "thrown off the stand" but when we try to testify "we're stopped" because "we are not competent"; court responds discussion of the issue would be improper in the jury's presence but can "merely state that we are operating in accordance with

the rules"; "That's a long way of saying you're doing what you want to do," Doug comments; court says that sort of remark is improper and that it takes "a man of great patience not to comment"; Bob Graf says the judge's sincerety isn't being questioned but rather his interpretations of the law; Judge Larson says that if he is wrong, "you have the right to appeal"; Jim Harney says he would like to note that he believes many caustic remarks have been made against the defendants, the nation's poor, the Vietnamese, and that these caustic remarks are far more serious than any that may have been directed to th court.)

COURT: Now, are there any more questions of Father Mullaney...? (Any more rebuttal questions, Mr. District Attorney?)

MR. JACKSON: No, Your Honor. But there's something that we perhaps should discuss, and I would like to do it outside the presence of the jury...

(jury excused at 2:30 pm)

....

MR. JACKSON: I'm sorry to take the court's time, but Mr. Samson and myself have conferred, and we would like to make this request of the court, and we do it in all humbleness and humility, and we stand as men like anyone else...

(off the record discussion briefly occurs at the bench)

MR. JACKSON: If the court please, the state at this time requests that an instructi be given to the jury regarding the court's evidentiary rulings up to this point. It's the position of the state that the defendants, for whatever reasons they choose, and we just have no comment on why, have chosen to argue the relevancy of evidence in front of the jury continually. This has meant that the state must stand before the jury arguing that poverty in Amerika, the was in Vietnam, the number of people who have been killed there, civil disobedience the Boston Tea Party, the Nuremberg war trials, and other things are irrelevant The state obviously does not feel that they are, in and of themselves, irrelevant, and I am very much put out by being in the position of having to argue in front of 12 intelligent people that they are irrelevant per se.

COURT: Please. It isn't proper to engage in laughter when the district attorney is making a comment...(instructs bailiffs to remove anyone determined to be responsible)

MR. JACKSON: Ordinarily, the argument as to relevancy of any question or piece of evidence...is argued outside of the presence of the jury, the ruling is made, and the evidence either goes in or stays out. In this case, there has been continual reference by the defendants that the rulings were foolish, irrelevant biased...and suppressive of free speech. This ordinarily is outside the presence of the jury. The state is very much opposed to the position it finds itself in because, obviously, both counsel for the state do not think that the war in Vietnam is irrelevant in and of itself. We find it to be irrelevant in terms of the act for which we are prosecuting. We therefore...request the court to instruct the jury as to the legal reasons why certain evidence is not admissible. We request a full explanation....It is impossible for the state, represented by two human beings, to sit here any longer having it said that they believe, in and of themselves, that poverty is irrelevant. I just can't take it.

....

JON HIGGINBOTHAM: (he states that the case should not be in a state court in the first place)...I do not think, by any stretch of the wildest imagination, that this state has any business in this matter. That's my feelings on it. And, if you're going to instruct the jury with some fanciful expressions of some legal gobbledygook, whatever it turns out to be, it will not effect my

position whatsoever. I will continue to argue in front of the jurors because I feel it is one of my American rights...That jury is going to decide on 18 years of my life, and they are going to have my feelings before they do.

COURT: (indicates appreciation of the frustration Mr. Jackson has spoken of, agrees they have defined a real problem and says that he is nonetheless trying to be extremely fair..."I will do what I can, Mr. Jackson, but it is rather difficult to go over all the rules of evidence and explain them all to the jury.")

...

DOUG MARVY: What (Mr. Jackson) said to me sounded like a long way of saying that our point is getting across and he's mad. He's put out, and I think it's just plain tough. We tried to put into evidence a list of war deaths, and t reason that this list is here is because of individuals who follow rules at the expense of individuals' lives; and that's what we're here about; and I think it's tough if it's really hard on them. He says he doesn't know what to do, and I see four doors in this room, and that's a perfectly reasonable choice for hin and yourself. You can quit any time.

FRED OJILE: One of my intentions, I think, in the process of this trial (has been to let it serve as) an educational forum, and I think it's starting to work -- that each one of us in this courtroom are starting to feel very deeply the issues which we have brought up. Whether or not they think they are relevant or not, people have a little more sense what it means to be dead or poor or coerced. I think Mr. Jackson's legal way of saying that he's been touched is appreciated by all of us.

....

COURT: (The prosecuting attorneys) have adhered to the rules very strictly, and the are both, I must say, good attorneys. They are doing a good job for the state.

FRED: No doubt. I think you're probably a good judge.

COURT: That is very appreciated. (applause) I suppose, Mr. Ojile, I suppose the court should suspend the admonition about applause to that remark.

FRED: The problem, I think --

COURT: The jury isn't here, so the court isn't going to --

FRED: The difficulty that comes up with two good lawyers and perhaps a very good judge is that the 12 defendants consider this a very poor decision.

COURT: The 12 defendants have been doing quite well, as well as they can wi the situation that they are confronted with.

FRED: That's what I was trying to say. Thank you.

COURT: Call the jury back.

(at 2:55, jury returned)

(off the record discussion about the proposed exhibits of Tony's)

(on the record discussion of the requested admittance into evidence of the statement Tony had read; admission is denied; Forest comments that the statement "is an important element" and that it surprises him that it wasn't "presented by the prosecution in the case against us. In the same spirit that we wanted the jury to see the films that were taken of the action and hear and see it in a more real way, we wanted them to see the statement that we issued as a group at that time"; court responds that the film was only permitted over reservations he had; he hads that id the jurors wish to hear parts of the records as a consequence of difficulties in their deliberations, the judge will then read them the necessary passages from the transcript, including the portion containing tha group's statement if they so request as jurors)

(re other exhibits: Tony says that the relevant portion of the Constitution is Amendment 13, Section 1, prohibited involuntary servitude; Tony says the document relate to the matter of popular political control raised by the DA during the

morning session; as does a clipping from the New York Times, a popular opinion poll conducted in August, 1968, demonstrating the public's preference for Eugene McCarthy over Humphrey, a preference which was demonstrated in primaries as well, and which was completely ignored at the Democratic convention -- thus demonstrating the complete breakdown of the normal political pr ocess in the US; Jim Forest comments, responding to objection from the prosecution, that "public opinion, for all effects and purposes, was burned"; the court rules all the exhibits inadmissable

(short recess)

(jury returned at 3:30)

TONY: I'd like to call Father John White.

(Father JOHN WHITE identifies himself as a priest of St. Philip's Parish, Roxbury, Mass., living at No. 1 Warwick Street; he is a member of the executive committee of the Association of Boston Urban Priests, a member of the Loyola University Institute of Pastoral Studies in Chicago, and chairman of the Interim Committee on Urban Affairs for the Priests Senate of the Archdiocese of Boston; also a member of United Neighborhoods of Lower Roxbury and the Lower Roxbury Community Operation; he explains several of these as well as his contacts in other cities; describes Warwick House as " acrossroads in the community for people who are interested in the problems of the city"; Tony, he testifies, is a member of the parish's team ministry; he states that the climate in Roxbury and the poverty areas of the city is one of "deteriorating hope" and "a dangerous lavk of hope" as every effort to change the situation in a significant way seems to have failed; prosecution objects to the line of testimony on the basis of relevancy..."We've never challenged the credibility of what Father said. We challenge the relevance. And we concede the credibility and his hard work and his feeling"; court agrees, sustaining the onjection of the prosecution)

BOB CUNNANE: Thanks a lot, John. I'd like to call Mr. Joel Wilkerson to the stand, please.

(JOEL WILKERSON, 17, of Boston, a black student in the 11th grade, active in various Roxbury organizations, discusses the powerlessness of the people; not allowed to respond to questions re the draft or the relationship between his involvement in the Roxbury community and the Milwaukee 14 incident.)

(ART MELVILLE is called next. He testifies that he lives in San Francisco and that he spent nine years in the seminary of the Catholic Foreign Mission Society of America, was ordained in 1961, then sent to Guatamala where he spent 7 years work in the Cuchamatanes Mountains with poor peasant people. There he tried to assist "the oppressed people...in their effort...to attain...a dignified life." He concentrated on credit unions, agricultural cooperatives, marketing cooperatives, transportation, labor unions and land reform, trying to "help the people -- the poor again --bring their cases of oppression into the judicial system of that country.)

(At this point the court stopped the witness and excused the jury; however, before the jury is out of the room Jon Higginbotham has said, "You kniw, if you excuse the jury, we're not going to talk, so why don't you just excuse the witness now?"; court responds that "A statement like that is intended for a purpose, other than to clarify the issue"; the earlier ritual of remaining silent is repeated, except a few brief explanatory comments are made--"I feek you're denying me free sppech and..due process of law...my rights under the 1st and Amebdments" (Jon Higginbotham), "I feel duty bound in conscience to conduct my defen in the presence of the jury" (Jim Forest), "I want to present my intentions to the jury" (Bob Graf), "I have nothing to say outside the presence of the jury"(Don Cotton), "I would like the record to show that this witness was not stopped by an

objection from the state" (Doug Marvy); prosecution reiterates its earlier request to the jury that the bench explain the rules of evidence in plain language and as they apply to the decisions made in this case; court doesn't comment on the prosecution's request but does dismiss the witness.)

(at 4:15, the jury returns)

(it is decided that, instead of Jim Harney now testifying, there should be a meeting in order for the judge to work out his instructions to the jury)

(jury excused at 4:20 pm)

(court indicates that it is allowing 6 hours of argument to both sides; won't continue the trial over the weekend)

(jurors brought back at 4:22 pm -- early dismissal explained -- and sent back out at 4:25, at which time the proceedings were adjourned.)

(end of day)

THE COURT: .,.The opening argument will be by the State. Mr. Samson.

MR. SAMSON: If it please the Court, good afternoon, ladies and gentlemen. ... I think it's eight days ago, after three days of picking a jury, that I stated that the State was going to commence a relatively simple case of proving up the offenses of arson, burglary and theft against the 12 defendants.

(the meaning of the charges and the evidence is summarized, up through the video tape...)

...(there couldn't be much doubt in your mind as to whether there was a fire.

There's been a lot of evidence out into this trial concerning the intent of the actors...I think that something has been lost sight of during the defense of this case. They key intent...is whether or not these acts were done with the intent to carry them out; ...it's very important that the Defendants intentionally took the materials out of the board, intentionally burned them... that they didn't do this by accident or happenstance or neglect... The law doesn't recognize other intents and other motives. All the evidence that was put before you by the defendants themselves with regard to what brought them to Milwaukee is immaterial. What is important is that they did come here, that they did enter the boards, they did steal the records, and they did set them on fire. Whether or not they had higher motives, whether they acted o of religious beliefs, whether they were carrying out a protest of the Vietnam war, whether or not they were carrying out an act of civil disobedience -- none of these things provide a defense to these crimes...that's what I meant when I said last Thursday that this was an easy case.

These men obviously did what they did intentionally, and their defense is that they did it out of high moral conviction, which in the eyes of the law is immaterial...you took an oath to decide this case on the facts as presented in court and on the law given you by the judge. The Court will instruct you that these motives and these intents are not material, they do not provide a defense. Certainly without any question, poverty, the war in Vietnam, the problems of our society are not irrelevant per se. I would hardly stand before you or anyone and say that. None of you would, I'm sure. Those are very vexing problems. The point is to protest the war in Vietnam by breaking a valid law is illegal, and that is exactly what these defendants did. Every single one of them took the stand and gave what's known in the Law as a judicial confession. That's a confession in court. Several of them gave testimony which makes obvious that this was well planned....

There is no doubt that these defendants planned and intended to do what they did, they told you that...and their motives and religious convictions do not provide a defense for that...

(goes into the meaning of "party to a crime" aspect of the indictments...how a person doesn't actually have to strike the match to be a party to arson, etc)

(admonishment from Judge Larson to spectators not to demonstrate their feelings...)

MR. SAMSON: The defense called a man who is ...possibly the world's most outstanding authority on international law, Professor Freid. State admitted his qualifications quite dramatically, I believe, by Mr. Jackson's comment...(Now) I would like to read you one of (Professor Freid's comments) because I believe that it states in very clear words what the supposed conflict between international law and local law is.

He said..."However, it is up to each state to declare the hierarchy of values according to its own legal system. If, then, a dichotomy develops between international law and domestic law, the dilemma for the government and the individual is great, and in the international scene, international law prevails, and on the domestic scene, domestic law prevails." End quote...

This event occurred on the local scene, the domestic scene, occurred right here, six blocks from this courtroom. The State of Wisconsin has promulgated laws against people breaking into other people's property and taking property and burning it. That is exactly what the defendants did. It is against the law in the State of Wisconsin to do that, and in the words of their own expert, it is our law, the law of the State of Wisconsin, which must control this case.

The defendants spoke of the growing frustration and the growing concern they had for the state of the world, yet we cannot live in a society where, if people become frustrated or if their candidates lose elections, they just go out into the streets. Our society will not survive ...if men are allowed to take the law into their own hands.

Father Mullaney testified that some property has no right to exist, and he testified that an individual can make the determination as long as afterwards he faces his peers. I suggest to you that there is a classic flaw in that and that is that it's a fait accompli; he has made the decision for society. He has destroyed the records. If it is true that some records, some oroperty, does not have the right to exist because of the context in which it is used, then maybe it should be destroyed; but no one man, no one group of men, self-constituted and self-ordained, has the right to make that decision for the majority. The basic tenet in our country is that the will of the majority of the people must prevail.

It's true that each one of us has been aggrieved at one time or another by the fact that the majority doesn't agree with us. Not that it's particularly relevant, but I myself don't like the war. I supported peace candidates. But...that does not mean that I or anyone has the right to go into the streets and decide for the majority. Our society...cannot tolerate that behavior.

(raps about taking part in the regular electoral process, getting your man into office, etc.)

Any rational man who looks at the act of these defendants and can say that it did one thing for any poor citizen, any black citizen, any Vietnamese person or any other person, is looking at these acts through rose-colored glasses. There is no right to protest by violating valid laws or by destroying government property. There is no such right. It does not exist no matter what the motivations of the actors are. Their

motivations were never questioned by the State. I don't think that any one of the defendants got on the stand and testified falsely; the facts are as they are. They did what they did and they must pay the price.

They have mentioned the late Dr. Martin Luther King. They have mebtioned Mohandas Gandhi. They have mentioned some of the greatest menxx who have lived in our world. None of these men, none of them, would have carried on the kind of actions that these men carried on. Civil disobedience has its place in our society. When laws are inequitably enforced, when they're enforced only against the minority, it is the duty of the minority to openly and peacefully disobey those laws. Those are the words of Dr. King. You cannot use the motive of civil disobedience to give yourself a cloak of immunity from breaking valid laws, and that's exactly what these defendants did, and that is exactly why they are guilty.

State, therefore, asks you to return a verdict of guilty on all of the counts against xx all of the men that are on trial here today. They are guilty of burglary, they are guilty of theft, and they are guilty of arson just as sure as we're all in this courtroom today. And the only verdict, the only verdict which can be substantiated by the facts and the law in this case x is a verdict of guilty. To return any other verdict would be to disregard the solemn oath which you took when you undertook to judge this case.

Thank you.

MR. MARVY: Well, it's been a long two weeks. The tendency is great to respond to prosecution's many remarks, but I have 11 brothers to back me up and I xx will say what I have prepared.

In my opening remarks I said that I would try to prove to you that I was justified in doing what I did, and in my testimony I said that I would argue the basis for my morality, and my politics with you in my closing argument.

By the way, I think that morality and politics are the same thing, and that is what I xxx would have argued, but the course that this trial has taken has changed my mind, and I've decided in the last couple of days to say something different.

What's happened here in the last couple of weeks has been at times just utterly confusing to me, and I've been familiar with this case for eight months, and travelled around speaking about it. I've also been familiar with the court for a while. So you'll excuse me if I do underestimate you a bit and presume that some of what has happened here might also confuse you. But I presume that, and with that in mind, I would like to summarize a little bit of what I have seen happen in this courtroom in two weeks. I'd like to summarize it in the context of my life.

I don't remember if, in my testimony, it came out what my occupation was, but for the last couple of years I have been a mathematician and actually specialized in logic. But today I'd like to try something a little bit new, a little bit new in the way I usually speak. I'd like to try to summarize the trial I've seen and a little xxxx bit of my life in the form of a parable.

For the last seven or eight years of my life, I've been hearing about a lake, a lake that is very deep and x dangerous

and in which even advanced swimmers were drowning.

It was also a lake that somehow everyone seemed drawn toward, and within the last four years I feel like I've been walking along a kind of winding road, with many folks on it, going toward that lake myself. I feel that I've been kind of drawn to it because this lake, I think, needs to have a fence built around it; and I feel like I would like to help in that.

Occasionally, as I've walked along this road, I've heard what I thought were faint screams coming from that direction, the direction I thought the lake was in, and when I heard those screams, I sometimes walked faster, occasionally I'd go into short spurts of running; and as I came to forks in the riad, it was difficult to make the choice; it was more difficult and more important at the same time. Sometimes -- one time last fall, I don't know exactly when, sometime before September 24th -- I thought what I heard was a very loud scream coming from the direction I thought the lake was in, and I ran up to the top of a hill. And I thought I could see the lake. It was quite a ways off. And I thought I could see someone drowning.

There was a fence with a locked gate alongside where I was standing, so I broke that fence, and I went in, and I stole a bicycle; I tried to get to the lake faster. I still didn't know whether or not I was on the road that would go to the lake, or whether or not I might not get there a little faster if I went a little further down the road and took a different fork.

I was arrested on the way, and I was brought to trial for burglary and theft.

The prosecution presented its case saying that the only relevant issues in this case were whether or not I broke the lock and whether or not I stole the bicycle.

In my opening remarks, I tried to say what I heard, what I felt, and what I saw as relevant to what I had done.

Prosecution objected to this, and the judge sustained those objections, telling me, "Mr. Marvy, you can tell the court, if you want, that you stole the bike to take a ride, but you cannot tell the court where you intended to go on that ride." In other words, the court said, "Please confess, we don't have much time here."

I called expert witnesses.

The first was Howard Zinn, the man who came here to tell us about past events, about times when individuals have broken gates trampled some new sod on the way to getting where they were going that they thought was important.

He also would have told us about times when individuals would have broken through gates to steal whole fleets of Cadillacs in order to get where they thought it was important to be.

He came to discuss the meaning of these things, and in particular he came to tell us that a country that considers its gates more important than its citizens is in serious danger.

You were not allowed to hear Mr. Zinn's testimony. The prosecution objected to the fact that I was trying to make the law, and this court in particular, into something living by putting my act into historical context. The objections were sustained by the judge. He told us in his distinctly

patient way, "Children, let's pretend that we are removed and distant from the world and all its problems so we can get on with this trial."

My next witness was John Freid, an expert on international law.. He was the man who spent his life on the Water Safety Commission. He was on duty at the time of day that I had taken this bicycle and had been watching the lake through binoculars. And he said he saw someone dra drowning. He knew that a lot of his neighbors, many of whom had great experience in watching this lake, had also seen someone drowning. But he was not allowed to say that.

The prosecution's position on Mr. Freid's testimony was, "So what? Someone may or may not have been drowning." And in fact, they were quite willing to af admit that because of Mr. Freid's great eyesight, he might be right; "butit has nothing to do with the matters before this court."

The judge's position -- he was obviously upset at the time that the prosecution was not objecting more than it did -- was, "We are all an upset when people drown, but please let's not talk about any drownings, as they don't have anything to do with this case."

My next witness was Marvin Gettleman, a historian, a man who, through his research, had found that someone had been seen one block from the lake shortly before I stole the bike. Shortly after the first sighting, this same person had been seen just several feet from the shore, and shortly after that he had been seen swimming. Through his research he had found that no one could be found who had seen that person come out of the lake.

His testimony was not allowed before this court. The prosecution objected, and the judge sustained him, ruling that since the drowning itself was irrelevant, no evidence as to the reasonableness of the fact that a drowning might have happened was also irrelevant.

The next witness was Nettie Cullen, a woman who had recently been caring for the brothers and sisters of someone who had drowned. The prosecution again objected, saying, "So what?" The judge ruled that her testimony was irrelevant, saying that the fact that brothers and sisters were in mourning was not evidence that someone had drowned.

There were many more witnesses, and there was similar refusal by the Court to admit their testimony.

So we now come to the closing arguments, and the prosecution has now revealed a bit about what they think the case is really about.

He has just told me, "Well, you could have run through the woods to get to the lake. Or you could have hired a helicopter to get to the lake." But his strongest argument, by his presence in this courtroom and by what is said, is, "Mr. Marvy, you could have turned your back and plugged your ears and walked away and you wouldn't be in all this trouble."

If -- if I were a juror in this case, I could do nothing other than find Not Guilty.

The job for the jury is not to decide whether or not I actually heard a scream. It is not to decide whether or not there was actually someone drowning. And it is not to decide

whether or not the way I chose to go to the lake, the road I was on, actually would have got me there. Those decisions are much too difficult, I think. The job of the jury in part is to decide whether or not my act was justified, and this is an easy decision because the evidence has not been allowed in Court and therefore there is still reasonable doubt.

This trial has not even started, and I have to be presumed innocent until proven guilty.

Thank you.

FATHER CUNNANE: This trial is always described to you by the prosecution as a very simple trial, but as you well know, it hasn't been very simple at all in that two weeks that we've struggled. And my tendency too, a bit like Doug, is to respond to the sort of things that were said by the prosecutor towards the end, about Dr. King and Mohandas Gandhi. But it's enough to say to you, I guess, that we too know a bit about what these men said. Just maybe to cut down on the seriousness of the situation, let me tell you of how I met an old follower of Gandhi's recently, and I said to him how many people were upset at us because we destroyed property. And he said to me, "Think nothing of it. The Mahatma and I pushed over many fences."

The confusion in the trial is like the confusion in me and the confusion in the country. It's a very difficult time.

It's already been mentioned by someone else, how the physical arrangements of the court at the present time are a little distorted because here we are, really twelve to twelve, although you people should be up there, because you're deciding; kind of unfair to put you down here and the judge up there; because it's your case, it's up to you.

You have to say that, without a reasonable doubt, I am a burglar, an arsonist and a thief. This is a bit beyond my imagination, but anyway, let's first of all try to look a bit. I don't have perhaps the imagination of Doug Marvy. Let's look a bit at what the law requires.

I'm not asking you really to say the war is wrong or say the draft is wrong or anything else. Let's just look at what has happened in this courtroom, at the evidence, as they say. I don't like to do it this way, but I am kind of forced into it.

There are a number of things that have been said about criminal intention and what it means...

In the United States versus Murdock...the Supreme Court stated that an act done with a bad purpose, without justifiable excuse, stubbornly, obstinately, perversely is criminal in intent. The word is also employed to characterize a thing done without ground for believing it is lawful, or conduct marked by a callous disregard for whether one has the right, or not, to so act.

In Spies versus United States, 317 US 492, the Supreme Court went on to say that willfully means not merely voluntarily but with a bad purpose and with evil intent without justification or excuse.

I think you could see in the movie, and from listening and seeing us in this courtroom, that we are far from wild men in the

streets. I don't know if that was the prosecution's implication, but the whole thing was conducted strictly on a level of no one getting hurt. It was a very controlled situation. We were not wildly destroying property. It had definite intent to it, and part of that was that no one get hurt.

Then there is the fact of the $100, you know. You have to decide whether we damaged over $100 worth of property. I'm not a lawyer, so maybe it's very difficult for me, but, really, I tried to listen to the district attorney again, and I have not yet heard any money that I can grab hold of.

If you remember, I asked Major Lane, their expert witness from the Selective Service System who was going to prove that this $100 was spent. Remember, we had a big fight over Mrs. Junge there for a while, and they said Major Lane was really going to bring definite proof. I asked Major Lane, did he think an ordinary business would have duplicate files, and his answer was yes, certainly an ordinary business would have duplicate files. Does the Selective Service System have duplicate files? No. So, in other words, we're being charged over $100 for an in absentia...We're really being tried here because the Selective Service System does not run their business correctly by Major Lane's own sort of admission.

Then there is the question of the standards that are being applied. For example, if I take a picture album from somebody, and that picture album has a picture of his cousin from Takoma, Washington, his aunt from Portland, Maine, another relative living in Tokyo, Japan, another relative who is living in Rome, Italy, and I take these four pictures, so he goes around the world to take those pictures again, the crime will probably be a $10,000 value if we use the judgments we have had here. I would be in jail for about 25 years.

Do you really believe that? It doesn't make any sense, doesn't make any sense to me.

We heard about all the hours Mrs. Junge worked and everything like that, and the simple question we asked Mrs. Junge was, Did you get paid more salary? She said, No. Her salary is $7200. Did you get any money for doing this? And the prosecution started talking about money, and it was very confused. Then finally the last question comes across to Mrs. Junge: How were you paid? And she said in days off. We don't even know how many days off she got. Nothing was said about this in court. Could have been part of her sick leave. I mean these facts weren't even mentioned.

And then finally we learned that Major Lane stayed at the Steraton-Schroeder, is that it? $17 a day. What has this got to do with replacing files? You know, we've been called remote in this kind of stuff, but this seems to me to be so remote it has no connection. I don't know how many days Mrs. Junge had off. We have no recird of that, or how she was paid. Major Lane stayed at the Sheraton. And the district attorney brought up his salary. Same salary he always got. He didn't get a raise in salary. Same money. So we are faced with a very curious kind of thing here. Hardly any money mentioned. Everybody sort of presumes great damage was done.

If you want to go into that strict kind of legal situation, we have to consider this very rigid legal situation we x consider in court. In other words, if you have reasonable doubt, we aren't guilty. But say you find us guilty because Major Lane and Mrs. Junge got something -- we don't know what that something is -- say because Major Lane stayed at the Sheraton instead of the YMCA, we're going to be in jail for 18 years. This is the strangest kind of logix I've ever heard. This has nothing to do with my opposition to the war or anything else. It's the basic kind of legal structures that they are in. It's beyond my imagination.

It was very curious to me what happened when we tried to bring in witnesses to talk about civil disobedience. We brought in Professor Fried to talk about international law and its relationship to human beings living in this society, and he was judged out of the question, as was Dr. Zinn. Then we came to this fight over the $100, and they can commoh sense prevails, you just can't take the statute at face value, you have to apply it somewhat. Seems very strange to me.

Well, these comments are still on strictly legal terms, but the case is much broader than this, as you well know. I agreed very much with Jim Harney the other day when he said if we were simply being tried for burglary, arson and theft, you really shouldn't find us guilty, you should ask that we be locked up in a mental institution.

If you remember the film you saw and think all that was contained in that film was the fact that people committeed burglary, arson and theft, as I say, really, you know, we're lunatics. We have no contact with reality, as our psychologist Tony would say; we've lost it.

Of course this isn't the case at all, because it's much bigger than this courtroom. The prosecution would like to really keep it in here -- just as might have happened had those who took part in the Boston Tea Party stayed around for arrest; the Crown would have liked to keep it at a low level; but it was a much bigger issue. They would have liked to keep the abolitionists in my home town, too, on a much smaller kind of scale. Those who opposed slavery at that time were considered mad. Elijah Lovejoy was killed in 1858, and the attorney general of Massachusetts said, "Good." Anybody who was against the good law of slavery, you know, deserves death.

I think in a certain sense it was summed up very well by the judge the other day when he said we are a nation of laws, not men. I'm not trying to get into petty criticisms here, but I must say I did yell out at that time. I was very angry and upset. I've calmed down since then.

As I said in my opening statement, if you go and say you are a nation of laws, not men, Commander Bucher, the commander of the Pueblo, the ship captured by the North Koreans, would be in prison today. There would be no way out for him. How come he isn't if we are a nation of laws, not men?

I came to Milwaukee to communicate, to say something to people. According to Mr. Samson, we didn't say very much. But I guess he hasn't had the same experiences I have since September 24th.

This is something that I hadn't said before because words have lost their meaning.

Everyone is for peace, no one likes the war. Premier Kosygin, President Nixon, Ho Chi Minh, Mao Tse-tung -- everybody is against the war in Vietnam. But there is no facing up to the issue.

I am proud of the people who went before me, especially the people who burned draft records in Catonsville, Maryland, who faced only a federal trial. (They never had to face the state trial. The state of Maryland was not as rigid as the state of Wisconsin; and of course, we face a federal trial in two weeks for the same thing.)

If the issue here is burglary, arson and theft, then I am cut up as a human being, I am no longer whole, I am no longer human.

And the way I see the mood in this country, it's a strange one. Far from being out front, I was behind. The young people I met, many of them said to me that the act you did was foolish, not because you broke the law, but because you had not used violence

The President of Amhurst College recently said if the war is not over in two years, we have lost the youth of our nation.

As Dr. Fried said when he said good-bye to me, "America will not listen to you people, to its own doom."

I ask you to find me innocent -- legally, for such reasons as I have stated, morally, or whatever way you want. They're all valid in this case. I'm not making a plea of conscience, I'm not telling you to go out and demonstrate against the war; I'm asking you first of all to look at the narrow legal facts of the case. Also I'm asking you to look much broader. I'm asking each one of you to look at yourselves, your own human life, and see what life is all about.

We are a government of men, not laws, and before you make your verdict, I would like you to do just one favor for me, if you would. I would like you to look at your hand, to look at it with the life pulsating through it, to look at it and know that it is alive, and to say again to yourself, we are a government of laws, not men, and then smile.

Thank you.

(prosecution asks for removal of jury from the room, then states that Cunnane's reference to the 18-maximum possible sentence and the details of the prosecution situation for the Catonsville Nine are grounds for a declaration of mistrial; the court is asked to instruct the defendants to make no such references again...long discussion....)

THE COURT: ...Father, while the jury is out, statement by the court that we are a government of laws, not men, is one that goes back into the history of our country. Have you not seen it before?

FR. CUNNANE: I've seen it interpreted, but the way that it came out that day was --

THE COURT: Where you saw it interpreted?

FR. CUNNANE: I mean Thomas Paine said the same thing.

THE COURT: Thomas Paine was one of the great liberals in the history of our country.

FR. CUNNANE: He interpreted it a little differently, I think.

THE COURT: You think. What do you know about this man's thinking?

FR. CUNNANE: In the context used.

THE COURT: We are a government of laws, the law is there, we know what it is. It is not a government in which each individual may for himself determine what the law is and act accordingly...it means a government whereby we all know what the law is and live within it.

MR. FOREST: Your Honor, if that is the case, how is it we are fighting in Vietnam without a declaration of war from the Congress of this country...?

THE COURT: Well, Mr. Forest, that argument could be continued for a long, long time.

MR. FOREST: I am really interested in your answer.

THE COURT: We are not here to argue that particular issue, Mr. Forest. But Father Cunnane brought up the general statement, and he himself said that Thomas Paine, a truly great liberal made that statement, and I make it too.

MR. OJILE: Another great liberal, Jesus Christ, said that law is made for man and not man for law.

THE COURT: All right. Now we're going around and around. I wanted to say that to Father Cunnane so he would understand the Court's position.

(Further argument about the prosecution's objections to the content of Cunnane's argument...)

MR. MARVY: Look, wait, here you've got Grandfather Larson sitting up there and being very nice and the jury sitting there thinking maybe 30 days -- you know, nice war protesters, read in the paper about them for years, get a little thirty-day thing, you know. Juries in England refused to bring that verdict against 12-year-old pick-pockets because they knew the kids would get murdered. They knew there was a death penalty. If they thought it was five days, it would have been a little different.

THE COURT: We have to proceed in accordance with rules. One of the rules is that you don't mention the sentence you face.

(brief recess at defendants' request...)

REVEREND HIGGINBOTHAM: Well, to quote the district attorney, here I am in my rose-colored glasses, because that is the way I do see the world.

Suppose for a moment I were to grant some validity to the district attorney's argument that what is at stake here is the law and only the law. Then my first question would be, under strict

law, what is the State of Wisconsin doing even prosecuting this. Our attack was on the Selective Service System of the United States of America, not at the Stateof Wisconsin. What we destroyed was property of the United States government, not of the State of Wisconsin. What we broke into were offices of the United States government, not of the State of Wisconsin...The State of Wisconsin has no business in this case...

What the prosecutor is asking you to do is to be strict under the laws that he considers relevant. Now, again, if we're staying strictly under the laws, the laws of this land sat specifically that it is the power of the jury to find the defendant not guilty even if the evidence of guilt is overwhelming or conclusive. The laws of this land permit and specify that you may and must judge according or following the prejudices of your affections and your passions. You'll hear the judge tell you that you cannot do it. If you prefer, as soon as this trial is over, look it up in a law book, or have a lawyer look it up and show you that, under the law of this land, you can judge beyond the facts of the case and the laws of the case, that you are to judge us as human beings.

The third thing brings up the concept of what a fact is. You're to judge us by facts and law, you're told. Is a fact only a fact if the judge of this court says it is a fact or if the district attorney says it is a fact, or is it conceivable that the 12 of us have some access to facts also; in other words, is the war in Vietnam, poverty, the racism in this country, the inequities of our Selective Service System -- are these all non-facts merely because the court has declared them to be non-facts? I don't think any of you are that foolish.

What I ask you to do is judge me according to your prejudices and your biases, judge me from your conscience, if you want to put it that way -- from your religious backgrounds, from all the training that has gone into you to make you what you are today. I'm asking you not to let this court turn you into an IBM machine or a slot in a gog wheel. You are still a human being.

The law of this land states the jury must not be reduced to the position of a mere ministering agent by the direction of their very thoughts, thereby withholding of a vital right due them.

Thank you.

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CLOSING STATEMENT OF JAMES FOREST: There is a ritual phrase with which such statements as this begin: "Ladies and gentlemen of the jury". And it is true -- you are ladies and gentlemen. I feel that that is so even though I have not met any of you personally. But it is rather as people of conscience that I would wish to address my final statement of this trial.

By "people of conscience", I mean people in touch with the spirit that is contained by no borders and no political frontiers whatsoever.

There is a great deal that I wish we could share that is not caught in the net of words. And, of course, there have been so many words already in this trial that no one could wish more than I that there were a way of communicating what we feel to be important and crucial without having to find the words that fit best. But a few more words are needed.

My only hope, my only justification for these words is the belief that perhaps these can deepen a bond between us as human beings, fellow human beings, people doing our very best -- all of you, and us too, and the judge and the prosecutors -- to be human beings and to meet the needs that we know of as best we can.

I do believe, and I'd like to express my hope, that there are things which are gotten across in this courtroom which have nothing to do with statistics, nothing to do with regulations and rules, nothing to do with the number of minutes that have passed, nothing to do with what you have been allowed to see and hear and talk about during these last two weeks. I am thinking of eyes, and I am thinking of ears, and of the possibility that these days together have not been wasted, the possibility that every one of us will see and hear better as a consequence of these days, better than we have ever seen or heard before in our lives -- beginning now, and from now on; it's a hope that this has been an indelible experience which will affect all of us the rest of our lives -- I believe for the better -- no matter what your judgment may be as to our guilt or innocence.

To see and to hear, however, I believe takes enormous courage and almost outrageous hope. To the extent that we have courage and hope, it seems to me possible that we can in fact see and hear, for seeing and hearing are more than just faculties we are born with, they are renewing miracles, and that they are miracles renewed by courage and they are miracles renewed by hope. Or to use the Christian word which I think sums it up: to <u>commune</u>: to be in communion with others, more and more others; to be in communion with life and with the source of life.

But it does take courage, incredible courage -- courage to see not just flaming draft records and slavery papers, but to see human flesh on fire, courage to look into the eyes of those made homeless, made refugees by the bombs that we, without even thinking about it, helped to buy; courage to look into the eyes of those victims; courage to watch the Asian mother picking through the soil trying to find ~~f~~ seeds -- grain that might have fallen from the railroad train as it passed over the ties, trying to fill her hand with enough to keep her children alive

for just one more day. (That is a scene we witnessed in a documentary film while we were in the Milwaukee County Jail , a documentary on famine in Asia.)

It also takes courage to listen to the crackle of flames as they consume live human beings, that crackling that happens every day. It takes courage to listen to it, and it takes courage to watch livelihoods being destroyed by fire, and homes burned.

It takes courage to listen to the heart beat -- if we had a stethoscope to do so -- to listen to the heart beat of almost any young man as he finds a letter in the mail box from the Selective Service System, to listen to the anguished pounding of that heart as he wonders what is in that envelope, if this means the end of everything he hopes, believes in, prays for.

It takes more than courage. It also takes hope.

If anything, hope is more important.

I believe courage is not possible unless we believe something better is possible, that the future can be made worthy of human occupation, that the nonviolent struggle against violence and slavery can be completed, that it can be won, that the lines drawn across continents will no longer symbolize or occasion bloodshed, but simply be the symbols of a diversity within the human family which we are now free to celebrate.

But beyond this expression of hope that something has happened in this courtroom that cannot be written down, there are three final thoughts which I would like to share with you.

First, no matter how complicated it may have seemed as arguments raged and tempers were strained, as witnesses were called and dismissed, as court rulings and the meaning of law were debated, no matter how complicated it seemed, I believe it is really very simple: We are men who believe in life, in liberty, in community and in the possibility of human happiness. That is the most important thing, that is a fact -- far weightier, it seems to me, than any screwdrivers or sacks or cans that you will see in this courtroom.

We all know firsthand that many innocent people are dying, how many since we came into this courtroom, God only knows, but many needless deaths. We all know firsthand how many resources and how many human lives have been poured into what I can only call the sewer of war -- not the cause, not the triumph -- but the sewer of war.

We all know firsthand that the problems in which war and hatred are rooted don't come out of thin air -- but they are being ignored and put off. We've even been able to give you some testimony to that effect from people whose credentials, I think, are beyond question.

We all know that boys are being made to do what they neither believe in nor understand but which they do because they are afraid to do otherwise -- afraid -- and it's not an unjustified fear, because the prisons are there and the draft resisters are in them. Not everybody goes to Canada.

We all know from firsthand that they people aren't being asked. The prosecutor has pointed out that rightly, ideally, the law should operate in this society, a society of the people.

It seems to me very clear that the people should be asked in this kind of society; but we haven't been asked, we've been pushed. We find ourselves at war with a country we never heard of until it was too late and the coffins were flowing home and politicians, safe in their legislative chairs, were talking about not wanting to lose face. We've all heard those speeches.

To stop the madness, to save lives, to restore sanity, to renew a respect for law in this society, to deal with real problems that keep getting worse but can be solved, we tried everything we could think of, from writing letters and organizing the vote to visiting congressmen and counseling the draft-eligible.

The war went on. That deadly rain of napalm kept falling. And the dead and damaged bodies kept coming home, and they keep coming home. And so we took our futures out of the safety box and decided to make it harder for the warriors to steal -- not ourselves, most of us either being veterans or too old, not ourselves -- but to make it harder for the warriors to steal our friends and neighbors without their consent.

To put it very simply, and, I think, very literally, we attempted to give freedom back to the people.

And we think that's in the American tradition.

Let the prosecution tell you that it was burglary, theft and arson. I'd just like to point out, and I don't think it's any stretch of the truth whatsoever, that similar words could be and probably were applied to Jesus when he raided the temple grounds in Jerusalem. I don't think it was an unjust law he was violating. He was protesting the corruption of values that I think we continue to hold dear, not whether it was legal or not to set up tables or to make change for money.

Charges similar to those against us could have been brought against the participants in the Boston Tea Party. I don't think there is any question about that. The British Crown unsuccessfully sought to recover damages for that raid; unsuccessfully; they have never been paid.

What we are really talking about here, it seems to me, is nothing less than an effort to save lives and restore sanity.

The second thing I would like to ask you to remember is that more is at issue here than the futures of twelve men, myself and the eleven, and more at stake than the future of our families.

I would say that because the question in this world is not whether change will come but how change will come: will it be violent, or will it be nonviolent? Will it mean guerrilla war, will it mean occupied ghettos?-- as we have already had and still have some. Will it mean more innocent dead? Will it mean tear and blister gas, as it's been used this day and this past week in the city of Berkeley? Or is there another way?

As you search your hearts, I'd like you to try and remember-- for reasons I do not know -- that it so happens, in God's providence, a tremendous thing has been placed in your hands. It's more than deciding whether or not we went into the Brumder Building and burned papers. You're casting a tremendous vote with this decision; it's going to have repercussions in this country, and it's going to have repercussions in other countries, because it is going to help people decide the question, whether

nonviolence is worth tryingx any longer. We say, yes. But if our actions and our hopes fall on deaf ears, it's going to be harder for other people to believe our arguments.

I confess that from my point of view, at least, yours is a terrible and frightening responsibility, much more important in its consequences than the number of years or months or whatever it might be that we would spend in jail.

In that regard, because I believe so deeply in the importance of your decision as it affects the tactics and the attitudes xf tha others may form, I think it is very possible that your decision could be much more important than our act of last September 24th -- much more hope-inspiring, much more liberating, far more important.

Third, and finally, I would like to talk about idolatry, a word I used in court the other day. Idolatry is the concern of the First Commandment and the Third. There you see a portrait behind the judge of Moses with the commandment tablets. It's not only the first, obviously, but the most difficult prohibition. Thou shalt not worship or be subject to anything less than God. In other words, it is in man's best interest not to worship things, no thing, not to worship customs, not to worship rituals, and not to worship law. Thou shalt not worship yourself or your reputation or your opinions -- that's idolatry. Thou shalt not worship a few at the expense of the majority. Thou shalt not worship the lines men draw on maps, the lines that we happen to live within.

And, as it applies to this courtroom, thou shalt not worship rules. Rules are not to be worshipped, they are to be used.

When a car stops working, if it's not worth the expense to fix it, we get rid of it; or if it's not designed to go up a particularly steep hill, we use another vehicle and save the first vehicle for a more appropriate occasion. This has been a great issue in this courtroom. The two prosecutors and the judge, in my opinion, are unusual men, of great patience and sincerety -- I do believe that -- men by no means blind to the problems we have attempted to raise in this trial.

Nonetheless, these three feel walled in to their rules, just as finally and solemnly as a prisoner is walled into his cell. From the bars of those rx rules they seem able to find no escape.

But we believe it is legal to impede the illegal. And even if we may not be able to argue this as fully as we would like to in your presence, at least you've been able to hear us attempt to define our state of mind on September 24th -- which is something like asking Pope John to squeeze into a telephone booth, or asking Queen Victoria to slip into a mini skirt. Perhaps she could get a leg in, perhaps Pope John could reach the dial -- and perhaps, despite the exclusion of most of the expery testimony we would like you to have heard, you have heard enough to use your own minds to consider our own defense for yourselves.

And if you do understand, if you have achieved an insight, or if you do achieve an inside understanding, I think, I pray it will be expressed in what I consider to be, in most instances, and in this instance, a holy, a sacred, a redeeming phrase: Not guilty.

Remember that, no matter what the judge and prosecutors

may tell you, no matter how strictly they may admonish you, no matter how many oaths they may wave in front of your eyes, there are oaths which go deeper and mean more. For many of you it goes back to baptism. For some of you it is simply the dignity of being a human being. You are your own persons, you are no one's property, and no one can tell you what to do although they like to make you think so. You are your own judges, you have your own consciences, you have your own eyes, you have your own ears, you have your own hearts, and I think it would be a kind of blasphemy for you to desert them at any time in your life, most especially at a time and place like this.

It is still our hope that the judge and the prosecutors may transcend and rise above their entrapment in rules, but for us it is crucial that you do so; and again I say not just for us, because I think many of us can deal very creatively with prison and the needs of prisoners we find there, but for a world which is trying to decide an enormous question about the means of change.

I hope and pray you will act and think in the largest arena that you can imagine, thinking in terms of much more than the rules would hold you to, thinking in terms of the frightened soldiers and despairing parents, thinking in terms of a future in which war and needless suffering will be as dim a memory as the era of black slavery is to us today.

So I want to sum up very briefly.

I hope you will be brave.

I hope you will be imaginative.

I hope you will remain loving and human.

I hope you will never forget that, as you decide our particular futures, that the reason we are here is because we are trying to save lives and because we believe property should serve life and not the other way around.

I hope you will, in saying Not Guilty, help to make it possible for nonviolence to be the way of the future.

I hope you will respect the rules but not worship them and not allow them to blind your eyes or to silence your consciences.

I think, if you can do these things, you stand in the company of the founders of this nation and in the company of the founders, not just of Christianity, but of all the worlds great religions.

Thank you.

(at 5:10 pm jury left, at 5:12 pm court adjourned for the weekend; to resume 9:00 am, May 26.)

(Court begins with Judge Larson stating that he will not "tolerate demonstrations"; "there were occasions when a number of persons applauded, there were other demonstrations such as rising (when the defendants entered the court) and holding up a clenched fist, at times people would talk rather loudX, there were sighs and groans and sometimes there was genuine laughter"; he says if there are any further demonstrations or applause, persons responsible will be summarily considered for contempt of court; "I realize we have reached a point in the trial where emotions are pitched high (and that) many of you have a definite feeling about this case"..."however...you are required to conduct yourself in accordance with courtroom decorum as outlined by the court.)

(Jury brought in.)

CLOSING STATEMENT OF FATHER ALFRED JANICKE: Good morning, ladies and gentlemen of the jury. I want to begin with the evidence that has been presented here over these past two weeks. In order that we might really take a look at the evidence as it has been given and ask some very serious questions as to whether the evidence as it has been given in any way proves beyond a doubt the specific crimes of burglary, arson and theft, which, as you know from my own testimony, is a way in which the State has covered up the real issues of slavery, poverty, war and illegitimate authority.

Well, let's take a look at the evidence, and let's ask some questions which have to do with each on of these specific crimes.

First of all, as defined on paper, let's talk about burglary. It says "intentionally entering a building without the owner's consent." The district attorney, in his closing argument, said we didn't have anyone's consent. Well, he didn't ask me that, and so it could not be conclusive that we did not have consent as to the overall of all of us. He never asked me that.

In terms of theft, on the paper it says "removed personal property." On May 16th, when the prosecution's witness Major Lane was on the stand and we were talking about value, trying to specify the value of a file -- and if a file has any value, it has value to the person it refers to, it gets down to the personal aspect -- the Court stated that these files belonged to the United States Government, which immediately takes it out of the personal and puts it within the category of government, which means that the specific charge of theft of <u>personal</u> property doesn't apply; and if it doesn't apply, than we cannot be charged with that.

And it says the value must be over $100. We've had all kinds of testimony trying to figure out exactly what amount of money was really involved, and no one came up with a specific figure as to the exact amount that was spent on replacing those files in any manner or shape or form of the word.

We've heard such prejudicial terms as "over-time", though through testimony we saw that there was no over-time; there was time-off and, of course, we all get time off when we do our work; and we get vacations.

Well, let me go beyond beyond that and get to the specific aspect of money. The major testified that for $17 a day, he stayed in Milwaukee. I would ask you: is it not possible that, in coming to Milwaukee, he <u>saved</u> the government money? Because how do we know that his room bill in Madison isn't $18 a day? We don't know. And if we don't know that, we can't take that $17 into consideration when we talk about the exact value of the files.

Over and beyond that, we can talk about the market value, and you know

that if we took one of the screwdrivers that was placed in evidence here, we would get more of a market price for that than we would for one file; a screwdriver is worth more on the open market than a draft file.

So when we talk about money, we have to be very clear in our minds about that, because when we start monkeying around and trying to figure out how a few dollars become hundreds of dollars, than we get into a very difficult realm. But there is no testimony of an exact amount. Not even $100. It's nothing, zero, zero point zero zero -- that's how much these files are worth on the open market.

In Mr. Samson's closing statement, he said there are ways to protest which are legitimate. He gave such examples as marching, sit-ins, but what he forgot to say is that once upon a time they were not legitimate, once upon a time people were brought into courts because they marched and sat-in. So when we talk about this being a way of protest, we're talking about 1969 -- go back to 1958 and 1960 and it wasn't.

We talk about the vote, the way to change any kind of system in the United States being the vote. Well, I ask you, have we changed through the vote? I ask you, when we vote for different people -- have we moved away from specific areas, especially the Vietnam war, or have we covered it up again?

How is it that 12,000 U.S. soldiers have been killed since the peace talks began in Paris up to the present time? Isn't this just a cover up? Not that the vote can't mean anything. It can. But it can only mean something if it is in the hands of the person who sees it within the area of <u>doing</u> something.

Your vote in this courtroom can do something. It's your vote in this courtroom which can, in a real way, move this society from violence to nonviolence as a way of life.

There's two ways we can look at votes. We can say that we are 12 people who will put our rubber stamp on what the judge gives us to consider, or we can say, all right, there are the rules, the regulations that are within the narrow confines of the law; but I also have a vote, and I don't have to rubber stamp. See, that rubber-stamping is what's happened to our vote in the United States. It's been only a rubber-stamp approval of those who are in some kind of authority.

But I'm considering with you this morning that you have a specific vote in this courtroom, that you are not just 12 people who duplicate the judge, but that you bring into the courtroom all that you are, all that you have been, all that you have derived from life; but to put a rubber stamp on what another person hands down only makes you a duplicate; it doesn't bring out your true identity as a person.

I want you to consider that very seriously, and it is in this realm that the district attorney brought up of the vote having specific value. I say, yes it does, in this courtroom, if you use it. Because it's yours.

I tried to put into evidence the New Testament, and it was declared that the New Testament would cause or create undue prejudice, it would confuse the issues, and it would mislead the jury. And when that was being said, I looked up at that picture (in back of the judge) of Moses with the tablets, the law of the Old Testament; and here we come to a very paradoxical situation -- we say one thing, yet we clutter up the room with such words as "justice", such pictures as this; and this is what the people are revolting against in society, saying if we say one thing, then let's stick by it. If we view the situation in one way, let's not be phony, let's stand up that way. And within this whole realm of this protest, within this whole realm of what's going on in society today, the people who aren't your generation or mine, but the ones coming up, are saying we're phony, they're saying, "You say one thing and do another; you put up your words of justice and your pictures of the law, and then you move straight away from it."

So what I'm suggesting is that neither you nor I can move away from these words, from that picture, but we have to take into consideration what those words mean, and we have to put into our own hearts what it means when it says "Thou shalt not kill."

I looked at the pictures that were taken of the moon by our latest astronauts. When this trial is over and you look at those pictures, look at them and think what napalm does to the human body, for that's what the moon pictures reminded me of -- napalm causes craters -- the craters caused by napalm in the human body can never be filled. And the napalm keeps burning.

I said that the specific act of September 24th was nonviolent and that if we move within the nonviolent realm we have a possibility of this nation getting back to its roots and the Constitution and the Bill of Rights and the Declaration of Independence; but keep in mind that the people are coming up are no longer asking what do people say, they're asking what are people doing.

Now, all of us are against war; we've heard this time and time and time again. Yet I challenge you and myself: what have we done with that statement? Have we said we cannot do something because it might mean a charge of burglary, arson and theft? When human beings and lives are just going down in defeat day after day after day while people sit around peace conference tables and say this is the way to work? Or are we in a real way going to get involved?

I'm speaking this way because today you can become very much involved. In a real sense, you are privileged. What you will do within the next 24 hours or 48 or 72 or whatever the time element will be, you can help to move the destiny of our entire nation. It's a frightening thought. In a way what you do will be much more important than what happened September 24th, or has happened in this courtroom up to this time. It is a tremendous burden you have on your shoulders because it might well be that the way in which you move, the way in which you vote, will show the way in which the nation continues in the realm of violence or within the realm of nonviolen

I want to argue for a moment that our action on September 24th -- the burning of Selective Service System files -- was a nonviolent action, and that if all these actions would take place across the nation, there would be no batter way to keep men from dying, within the realm of nonviolent action. We don't talk about something that is passive -- sitting down and letting the world go by. We talk about something which is very active. Nonviolence is an active way of moving, a life-style which says, "I am responsible for what happens; I don't just sit around and wait for someone else to move, but within the realm that I am able to move, I move there." It also says that nonviolence is not interested in defeating the opponent; it's interested in winning the opponent to friendship. It's a kind of new thought; it's a new thought because whenever someone disagrees with us, most often we move away from that person, we say he has to be taken out of our lives, rather than say, "Come, let's learn together, let's see where perhaps mistakes have been made, let's see where sometimes we might have to use the eraser that's placed at the opposite end of the pencil, let's see what this is all about -- this wanting in us to win friends." Because there is something in life which says that human life is much more important than any material thing, and that material in itself must serve man, and if it doesn't, then it does violence to man.

That brings us to the third point, that it is the person who is important and that while all a people in a certain way do evil, yet it is not the person who does the evil that we attack but it's the evil that is done; and there is something we can do about this, you see. It's not a matter of saying "I can't do anything about it because it's not me that's doing it." We can do something about other people's actions, and we can move within the realm

of what other people are doing and we can move outside of the person to see what that person is doing, and then go after that and say, "This is not right, you must be responsible for that."

And then -- another point which Gandhi talked about, Gandhi and Martin Luther King (I hope the district attorneys read more than what they spoke about because there is much more that they could read to understand the mind of Gandhi and to understand Martin Luther King) -- Gandhi said that things of fundamental importance to people are not secured by reason alone, but have to be purchased with suffering. All of us here, in different ways, having been suffering through this -- the weary, the fatigue, the trying to keep your mind on what's really going on, to move away from the surface things of arson, burglary and theft and get to the real issues at hand. It takes concentration, it takes a real suffering, if you will; and Gandhi goes on, sayi that suffering is infinitely more powerful than the law of the jungle for converting the opponent and opening his ears which would otherwise be closed to the voice of reason.

We might also add to the list of Gandhi and King the name Jesus. He came before these two men and he led a revolt, a nonviolent revolt; and for that revolt, we know what happened to him.

Think about that. When we talk about nonviolence, we have to talk about what's inside a man, not only what's outside of him. We must talk about the kind of peace and serenity that have to be within. As you viewed those films down at the tv studio, you saw a kind of jubilation, a kind of peace, a kind of joy which said, "We can destroy that which is destroying man, and we must, we don't have a choice." It's not a choice of saying should we or shouldn't we it's a matter of coming to a point in life where we understand how much more important is human life thant the things which are used to destroy human life.

And then there's one final aspect to nonviolence, and this we can't forget the aspect that says that the universe is on the side of justice. You see, whe violence happens, when there is destruction -- there is despair -- but within that whole life-style whose basis is nonviolence, there is a hope that arises, and it's something I hope arises from the 12 of you. It won't be anything new, to say guilty, but it will be something dynamically important to say not guilty; and the reason it will be dynamically important is because you will have taken a position on the side of nonviolence -- away from horror, away from terror, away from the destruction of human life and the violence of our society. Think about that.

Let me go to September 24th, to move into the second aspect of the argument. On September 24th, it was Selective Service System files that were destroyed, not human beings; it took away no one's freedom, it took away no one's opportunity to join a branch of the armed forces. What it did was to give the individual a choice, a real choice. You see, men today have no choice. But the only choice you have is to do what the government says or go to jail -- the choice of what kind of suit you will wear. There is no choice of any consequence -- the real choices have long been taken by those in a position to sit behind a table stamping someone else's death certificate.

On September 24th, there was no stamp placed on anyone's death; the stamp that was placed was one of liberation, was one which went to the pledge of allegiance -- we've said it often in school or at civic ceremonies, with its ending, "liberty and justice for all." You would think that if the big order of the day was law and order, we ought to end up our pledge of allegiance with law and order, but there can be no law and order unless there is the reality of those final words of the pledge, "liberty and justice for all." I suggest that we see September 24th's destruction of draft files as a carrying out of what we've often said in our classrooms when we were children, in our commities when we participated as citizens, of granting that liberty and justice for all. Just think about it and see if within your own minds this doesn't really make sense.

I believe in this country. If I didn't, I would never have stood around, I would have taken off and run. But I believe that if this country at this important time in history faces up to the specific issues before us, than we can make a nation for all people. But if we're constantly going to run, if we're constantly going to leave behind us the blood of other people, then we can only run so far before it catches up with us. You and I can only run so far before we lose our wind. You and I can only run so far until the opposition catches us -- and it might be through someone in our own families dragged down by poverty, or it might be someone in our community who is one of those 33,000 killed GIs in Vietnam, or it might be ourselves tried by our consciences and found guilty.

So whatever this may now mean to you, however you may see what has happened here these last two weeks, there should be a hope within us -- you casting the vote of judgment and us trying to explain as best we can what is happening in our country and how.

There may well be another path to success, and in a real way you and I can share in that, or you and I can move away. I hope we can share. I hope that what has happened has been in the educational realm. Let's not be bribed by looking at the print on paper which says burglary, arson and theft. Let's see through that, yes, let's put on those rose-colored glasses, because maybe it's through those glasses alone that that we can understand that man is not only a mind -- but also a soul -- and that these things have to be fully combined.

This will be the last time you will hear from me, and I hope it's the time when I have best expressed the specific issues at hand. The one who will have the final world will not be us. We didn't have the opening words, and we will not have the final words. It always seems to be that way. The opening came from the district attorney and his will be the closing words -- and the will be words trying to bring your thoughts back to the narrowest possible realm.

But whatever you do, whatever happens within your own minds and hearts, whatever happens within your own persons -- take a look at the facts and take a look at the kind of evidence that was given -- on which none of us could be convicted had we not taken the stand to set it right...

Let no one, no one, try to put you in a pigeon hole and try to say, "This is how you must think." You must think as you are and you must express the specific way in which you see everything that has happened in this courtroom, in the United States, and within the world.

"If any government does not acknowledge the rights of man, or violates them, it not only fails in its duty, but it orders completely lack judicial force." In other words, when man becomes a thing, and when the material thing takes the place of man, then we have turned everything upside down and then we have said things are more important than people; and when this happens, we're in a mess. You can really begin to help in a very important way to turn around our priorities and make man the center of the universe and not things.

That quote -- "If any government does not acknowledge the rights of man, or violates them, ...it orders completely lack judicial force" -- was from one who spent his entire life trying to bring peace. He also was not allowed in this courtroom. He also was said to be irrelevant.

His name was Pope John.

You're not irrelevant. You're very relevant. Become even more relevant.

Thank you.

CLOSING ARGUMENT OF BOB GRAF: Good morning. I hope that the closing of this case will be the beginning of a new type of justice that I have been searching fo, a justice built on law that serves not itself but men, a justice that respects human dignity more than it respects judicial honors and glory, a justice that guarantees not a government of laws but a government of men.

In my opening statement to you and in my testimony, Igave a very personal account of my life as reflects on the incident of September 24th. Some of my friends and fellow defendants have given a more legal, moral or political justification of their innocence, but recent events in my life and my recent work and activity have led me to take this much more personal approach -- an appeal to your humanity -- to affirm my innocence.

Making this style of appeal to you is probably somewhat more natural for me than the others since you are representatives of the city in which my family raised me. You are members of the community in which I now live and work. You are the conscience of Milwaukee that must now judge me.

I've been tried by the state before for defending human rights, but that was before judges, not before men and women like yourselves -- persons whom this time I have hope and confidence will listen to the cry for human rights.

Mr. Samson made the remark in his closing argument that any rational man who looks at the acts of these persons and can say they helped any one black person, any one poor person, or any one Vietnamese, is looking at these acts through rose-colored glasses. I'm wondering if he is ignoring the many young men, my friends and people in this city, who have thanked us for liberating them from the slavery of the draft. I'm wondering if he is ignoring the many thousands of people in this city and across the nation who have signed statements of support for our statement of September 24th. He is ignoring the young men and women who have renewed their hopes in nonviol social change in this country as a result of our action, who have voluntarily chosen lives identifying with the poor and suppressed of our own city after having been inspired by the action of September 24th. He's ignoring the testimony of a young black man, a friend of mine, who just returned from Vietnam, digusted with the ways of life he's encountered in America and Vietnam, and glad to know the 12 of us, glad to meet us and know us, and proud of our action.

The district attorney's best evidence against was our own evidence. What he's testified to in his summation comes not from what he proved in his case but from our own voluntary statements to you regarding what we did on September 24th, testimony we gave because we were proud to be part of that act of liberation, and we wanted you to hear the whole story and the whole truth. This part of the evidence was allowed where others parts sometimes were suppressed, though all we were trying to do was give the rest of the truth.

The event of September 24th,which now you must judge us for, was what you might call an act of creative destruction; yes, we destroyed some draft records, but I say creative because it was in order to create an opening for life, to allow young men in this city to determine their own lives.

I say creative because no life was destroyed by our act -- no destruction of life as we have seen in our nation at large recently, and as we have seen during the past week on a couple of college campuses. For violence has taken much more precedence over nonviolence.

On the contrary, a few dollars worth of paper was destroyed. And by that act of creative destruction, a new value was given to individual life and liberty in this nation; and new value to the right to life.

There's a story of creative destruction in the New Testament, a book that has been outlawed in this courtroom:

Jesus came upon a man one time who was possessed by evil spirits. This man came from the caves. People in the town had tried to chain him and lock him up, but unsuccessfully -- the spirits were so strong in this man that they were unable to control him. This man came begging for mercy to Jesus. But as Jesus was attempting to drive the spirits out, because the attempt was destroying him. When Jesus asked the name of the spirits, he said they were called Mrboram, for they were him; and the spirits in this man then asked to be driven into a herd of pigs nearby. In order to save this one life, to liberate this one man's soul and person, at the man's request the spirits were driven into a herd of 2,000 pigs on a hillside nearby -- 2000 pigs, which in modern economic terms are worth over $100,000 -- private property, this was, owned by nearby farmers and herders -- and the herd was driven into a lake and they pigs all drowned; and it was our Lord who was responsible for destroying over $100,000 worth of private property in order to liberate this one man. The rest of the people in the town, and the owners of the pigs, were quite glad to see the man liberated but sort of surprised in the way it was done -- the act of property destruction. So they gently asked Jesus to leave the country. They didn't throw him in jail, though.

To dismiss the "evil spirits" that were controlling my life -- the Selective Service System -- and controlling the lives of my neighbors, I entered the Selective Service System draft boards and burned a few dollars' worth of private property and destroyed the death records that were controlling so many lives, including my own.

I come into this courtroom today recently married. I've spent many long hours recently being available to the needs of teenagers in the neighborhood in which I live, responding to the men on Dtate Street where I live, visiting institutions like reform schools, jails, hospitals, listening to youth explain why they ran away from home, why they stole, and sometimes this work and activity become very tiresome and hopeless; seems like all I'm doing each day is bandaging wounds, seeing this person, helping that person, making the best of a lousy situation; and that the children I meet are doomed to poverty and crime no matter what I do. Then something happens like the incident of September 24th, which in a small way strikes at the causes of so many of our social dilemmas, which tries to assert life over property, sacrifice over selfishness, and personal responsibility over collective guilt; and my life and work is again renewed and I go about much more vigorously, as I have since September 24th.

I hope to leave this courtroom today and return to my work and activities a free man, liberated to do this. I hope to return renewed by the faith and confidence that 12 men and women, namely yourselves, have given in responding to our cry and finding us innocent.

(brief recess)

CLOSING ARGUMENT OF BASIL O'LEARY: Ladies and gentlemen of the jury: In choosing this particular form of political communication -- that is, the burning of draft files -- I fully intended and hoped that I would end up in the courtroom, but hardly this courtroom. Doubtlessly we are participating in an historic moment when one of the states undertakes to defend the federal government, especially when the federal government has laws that govern this kind of activity -- that is, laws that protect Selective Service records.

The State of Wisconsin seemed headlong bent on having a hand in the defense of the federal government. We ran into this in other courts and bail hearings and other motions of removal; bail was set at thevery punitive rate of $30,000 for each of us. We also ran into decision-making

which had inadequate formulation; that is, we expected principled decision-making and received very arbitrary decisions. So if we find ourselves in this place, it is quite understandable that tempers are frayed and that there are elements of impatience in this courtroom and sometimes incivility.

As I see it, the state is saying, let's play a game; let's for the fun of it go through with this bizarre action. Games are for fun, that's what makes a game a game, I suppose; if there is something absolutely trivial at stake -- nothing important, like putting a golf ball in a hole, a basketball in the basket, or puck over the net -- loads of fun doing it. All the rules of the game are made simply to enhance the fun. The kind of game we are playing here has one very peculiar rule: it is the Empty Mind Rule. And it would make totally non-understandable many of the conventional games we know.

For example, in baseball it is not an uncommon play for a player to bunt the ball to advance the runner. He's not bunting for its own sake but to advance the runner to win the game. But the State looks on in incomprehension because of the Empty Mind Rule.

The same thing occurs in football where it would be totally incomprehensible why a team might lose yardage in order to advance the ball to the center of the field rather than be along the sidelines because from the center position they might be able to maneuver a drop kick. As the State has pointed out, intent means intent to carry out a specific act. In our act of September 24th, the fact that napalm was used, the fact that a statement was issued to the press explaining the act, the fact that people were singing - all this is excluded under the Empty Mind Rule. For, as the district attorney has pointed out, intent is to carry out the act you carried out; the thing is to do what you do.

Coming back to the hearing now, I happen to think this is not a game. I think it's fitting that at the other ends of the courtroom, we had the word Justice emblazoned over the door; it seems to be in a polar situation to what occurs up here ... In this particular case, it is crucial that you jurors be able to judge both laws and facts, and yet the prosecution has said that we have an easy case here, that justice really is irrelevant, and that all you really have to do is act something like a mail clerk separating letters into their slots.

In presenting its "easy case", the state has used pictures to identify the actors in this little drama -- pictures they would not have had unless we had made provisions for their getting them. In their "easy case", too, they made a big point about the value of Selective Service records. As Father Janicke pointed out, taking the state's unusual measure of value, if we wanted to know their value, we would have to know something about Major Lane's living expenses back home in Madison! As Judge Larson pointed out, after all, he is a major; and his living expenses in Madison might well be more than the $17 he allegedly spent here. Of course we have no evidence of his expense account, no receipts of hotel bills and the like, but it is a very curious measure of value, one which the law does not necessarily saction. The law can be read quite differently, and I think more realistically.

Let's consider Major Lane's tastes in living style were much more fancy than he admitted to -- let's say it cost him $100 a day to live here in Milwaukee; if he stayed here 14 days, than the cost of replacing the files would be $1400. If he had much more modest tastes and stayed at the YMCA at $5 a day, then the value of the records would have been $70. If he had been even more frugal, he could have stayed here at the Amry radar station -- it would have cost him nothing and the records would have cost the state Zero.

Then there is the evidence of Mrs. Junge, the time she took to replace the records, the days she was inconvenienced to work overtime -- three particular occasions, as I recall. Overall, if you look at the period

of a month or two after the destruction of the draft records, it seems as though Mrs. Junge actually worked less than she usually did, got the same pay, and the board carried on its usual, normal activities. It seems to me very difficylt to estimate, yet it is crucial to this case to estimate precisely mg what the value of the property was that was destroyed.

Another unwarranted assumption. perhaps the greatest in the case, is that the United States government had legitimate title to the property. It seems to be something that the State has taken for granted... I think that is a very pointed issue. In the procedures provided by the Constitution, to which I will refer later, there is no ef evidence that the United States has followed all the procedures for legitimizing this kind of property.

In this "easy case", too, we have had testimony from Dr. Fried, an internationally famous lawyer and professor of international law -- whose testimony was indeed abbreviated, but nonetheless appealed to by the State. At one point in his testimony, before he was cut off, Mr. Fried distinguished the domain of international law from that of domestic law, and he pointed out that each is autonomous in its own domain. State maintained that, "Look, here we are in Wisconsin; domestic law is what's relevant; international law is irrelevant." But, in the context of whan Dr. Fried's remarks, he was posing the dilemma that exists for the citizen of the United States, particular one acting in Wisconsin, when he meets the intersection of these obligations, obligations imposed on him by the Constitution, those obligations which his government has accepted with regard to foreign countries, and which have accordingly become the law of the land. What Dr. Fried was making evident, it seems to me, was that this is a very complex question and that the citizen is forced into a dilemma. The state, however, says only one pole is relevant, that od domestic law. This was not the burden of Dr. Fried's testimony. It is complex.

The state would like to tell you that your job is to fit round pegs into round holes and square pegs into square holes. Very simple. They want to pretend they look like that. Yet I think it is quite clear that we argued, despite a barrage of objections, a line of reasoning which did in fact place round pegs in round holes and x square pegs in square holes. Further, we wished to give the jury the opportunity for making the decision, for being thoughtful about the issues xy that are at hand.

Possibly both of us, the jury and the defendants, are in the xxxx courtroo for the first time. Easy enough to be intimidated by people who have experienc and learning in the procedures of law; but nonetheless, I have always suspected people who tell me, "Keep these thoughts out of mind, these are thoughts which you cannot think, this is evidence to which you cannot appeal"; or they say, "Don't look at these particular facts, only look at these other facts."

I think it's clear that we're qunize all quite human and fallible people, that there are different interpretations of the law. What you have heard here in the court from eminent authorities could be refuted by other equally eminent authorities; a demand is thus made on us here not to act as robots but as thoughtful, conscientious people.

One way to see ourselves out of this maze, it seems to me, might be in ter of a parable -- the parable of the good neighbor and the good constable:

Consider a fellow getting up early to jog around his neighborhood. Next door he finds smoke coming out of the roof of his neighbor's house, and, liking the people there, being good friends for a long time, he breaks the windows to arouse his neighbor and his family so that they will not be burned to death. However, the local constable is a very conscientious person xx and he's very upset about the broken windows. He believes in a society structured on law and xxx orderly processes; so, supporting himself with various incantations such as "No one can take the law into his own hands", which you heard repeatedly last Friday, or "No one can make decisions for the

majority", he is able to make quite a case against the breaker of the window. He performs a ritual of measuring the size of the window, locating the window in a scale drawing, getting expert testimony that there were footprints near the window, and so on -- an elaborate and impression demonstration.

The good neighbor, however, maintains that he really did see smoke coming from the building. He felt it was reasonable to believe there was a fire, and he thought it reasonable to believe someone might get injured. His intent in breaking windows was to break windows, indeed. Not being limited by the Empty Mind Rule, he had in mind breaking the windows in order to arouse the sleepers and secure their lives. He alleges, too, that there was no other way of getting into the building, the doors being locked; also he felt that he was not gaining personally in any way -- he was simply interested in the lives of his friends.

The constable, however, being a no-nonsense person, quite clear always about what's what and what isn't, applied the Empty Mind Rule and said the motives of the window-breaker were irrelevant, far fetched and remote from the case. The fact there might be people sleeping in upper rooms of the house and that might be in considerable danger was irrelevant. He also maintained that, in the case of broken windows, there was no place in the law to argue it was for the defense of third persons against injury -- although the good neighbor said that the law certainly read that way; but that defense was ruled out. If you are simple minded enough, clear minded enough, empty minded enough, you have to put out of your mind the fact that good people might be injured.

The good neighbor protested that the door was locked, and the good constable said, "Yes, it was locked, and you did not have permission and you cannot give yourself permission to break the windows; you must continue knocking on the door, kicking on it, using your fists, even though, if you don't get in, people may well die."

Finally the good constable maintained, "We don't particularly care whether peoples' lives are saved. We have a nation of law and order and windows must not be broken." He further maintains that his business as constable is making sure that common criminals are shown for what they are, that is, they are burglars, arsonists and thieves.

It is easy enough to take seriously, it seems to me, the lives of our friends and our relatives and our neighbors, but it is quite difficult oftentimes, to imagine the well-being of people who are thousands of miles removed from us; and I think that's the plight of a person living in the central United States. We're not quite aware of what it means to see thousands of people dying if they are quite distant from us. This is the whole point of having laws and a Constitution, pieces of paper which prescribe procedures to be followed when there are conflicts to be resolved that involve the use of force. One of these pieces of paper is the United Nations Charter. As Professor Fried observed in his testimony, it's quite as clear as it is sad that the United States has violated the provisions of the United Nations Charter by entering into a purely domestic conflict in a foreign country.

It is quite clear, it seems to me, that there is evidence that the United States' morality and legality is at stake here. You look at a very impartial, objective source -- I am not speaking of a partisan point of view relative to the morality or legality of the war in Vietnam -- but the point of view of the objective scholar who is not an adversary but simply an objective seeker after the truth.

Here are instances:

In the Stanford Law Review, Columbia University Law Review, the New York University Law Review, American Bar Association Review, and quite a few others

there are serious articles questioning the legality of the United States' participation in the war in Vietnam. There are other rebutting that position. You should know, there are many legal scholars you think that the United States participation in the war in Vietnam is quite legal; but the point is that there is considerable legal doubt; and from the way that I view the evidence, it is rather clear that the procedures, particularly as described in Article 51 of the United Nations Charter, for undertaking armed intervention in a foreign country have not been observed. There's also the Geneva Accords of 1954 in which it was agreed that elections would be held in Vietnam; they were never held; and it was agreed there would be no foreign military invasion of Vietnam -- but this is not the place to go int othe details of the argument against the war and the United States' participation in it.

The Constitution is also quite clear as to what steps the executive should take in declaring a war, and this is much more a mute point than the internatio agreements that we have agreed to, but nonetheless it is questionable that the President has followed the procedure of the Constitution providing for declaring the momentous event of war.

Our fight is far worse than that.

There have been cases brought to the attention of the Supreme Court, particularly two of them, by people who feel that the war is illegal and want a Supreme Court decision in this matter.

One of them is a fellow by the name of Mora, and in the case of Mora versus MacNamara, which the Supreme Court refused to review. This began in the lower courts, went through Circuit Court of Appeals and finally to the Supreme Court. At all levels there were no reasons given by the court for refusing the Plaintiff's request. What he was asking was this: Is the war in Vietnam legal or is it illegal? And, if it is illegal, can I be sent to Vietnam? The Supreme Court refused to review it.

The same thing happened in another case, Mitchell versus the United States

Now what is happening in these instances, if I can go back to the games analogy, is as it would be in a football game. The captain of one team appeals to the referee and says somebody was off sides on the other team. Instead of making a decision, the referee says, "I will not decide whether it was an off-side play here or not because tempers are high and whichever way I rule, there might be a fight."

So the Supreme Court, instead of answering the question, is the war in Vietnam legal or is it illegal, and if it is illegal, am I forced to fight in it, instead raises another question: "Can we or will we answer your question as to the legality of the war?" And the answer is, "We will not answer" or "We cannot".

This occurred back in 1965, went to the Supreme Court in 1967, and the only way we get any evidence about it is from the dissenting judges, Justices Potters and Douglass. This leaves quite a dilemma for the citizen of the United States who takes seriously the Constitution and the United Nations Charter and tries to go through the legal processes of submitting the cases through the judicial system and is frustrated by the silence, and by the courts' inability to protect, or its disregard of, basic human rights of human human beings as well as the citizens of this country.

Another dimension in this dilemma, made clear by the Nuremberg Trials, is the problem of becoming an accomplice in a war crime; by being party to a crime against peace, one commits a war crime. This is part of the dilemma that Professor Fried was talking about, and we have some instances of people who have been very beautifully obedient, Adolph Eichmann being the most notable example. Eichmann followed higher orders. We know what world opinion has to say about him.

Accordingly, it seems to me, it's very difficult to be a responsible

citizen, to be a responsible juror, particularly when people in power and prestige tell you to turn your back on these difficult questions, narrow your vision and consider what's what only in terms of obeying the Empty Mind Rule, and lead a comfortable life.

The other part of this position is that x dissenters is that dissenters are labeled anarchists and it is proposed they be punished summarily before the corruption spreads. I don't think it's that way at all. Dissent is not the same as lawlessness. Some simple-minded considerations that get to the heart of this often-times lie in this direction, and this has been presented by the state, that disobedience is morally justified, yes, but it cannot be legally justified. There is a moral reason for breaking the law, but it cannot be justified legally; and from this they erroneously conclude, it seems to me, that the law must be enforced; in other words, there is a position to be recognized that one can act illegally yet not be convicted for such action if it is seen in a large and profound enough context.

Another position the prosecution puts forth is that society will not endure if it tolerates all disobedience and then they immediately conclude society will collapse if it tolerates some disobedience. It doesn't follow. There is presently no evidence that society is collapsing. If it were on the verge of collapse, this might be far more news worthy than minor acts of dissent.

I think there is an intermediary position between between "every man is his own judge" and "every case of law breaking requires a conviction".

This is a point, it seems to me, by which a jury that takes its oath seriously and comprehensively can help society mediate a period of change -- for the law is complex, and the obligations imposed upon citizens -- world citizens, United States citizens, Wisconsin citizens -- are not always easily discerned.

So I think that the jurors have a very difficult position -- the very difficult task of establishing, beyond all reasonable doubt as the law requires, that the people who acted on September the 24th were or criminal intent in what they did.

Thank you.

CLOSING ARGUMENT OF FATHER LAWRENCE ROSEBAUGH: It's kind of hard to know where to start. In a way it is But in another way it's kind of simple for me to talk and for the other eleven to talk, I believe. Because I think, at this point as far as the 12 of us are concerned, that regardless whether your decision is guilty or not guilty, we have already found our freedom and we are free, free men. I really believe this.

And so you've got the burden of all this. It's not us any more. We did something which we were convinced of, which we believed in, and now you have to decide. I even feel that the burden is more on the people outside of the 12 within this this "communion rail" and in the judge's seat, and not so much on the people who are sitting out there in the audience. Most of those people are of our conviction, and they already know why we have done what we have done; so in a sense they are also free people insofar as they have done what they feel they have to do for society. But you've really been put on the bench insofar as you didn't decide where you are this morning. So this is hard.

A thought that comes to me, and I don't want to get overly pious about this whole thing, but yesterday did happen to be the feast of Pentecost, and even though I think the meaning of this feast has gotten misrepresented -- we've been told that these people standing around outside the upper room began to understand one another despite the language barriers -- bit if we would go a little bit deeper, it was much more than just people happening to

come together from various different countries and not being able to understand each other. Pentecost really meant that the spirit of this man who had lived with them, that his spirit was now descending on these people and for the first time since this man had left the earth, these people understood what his message was, not so much their language that was spoken -- but they understood the message that this man had. And therefore it seemed as if they were drunk with wine because they were overjoyed with the message that finally came to them. Even the disciples themselves, they were people that just didn't comprehend, in the short time they had followed this almost fanatical leader of theirs, they couldn't quite put it all together. So he died. He was put on a cross. And he left them for a little while to get the spirit of his to sink in. And then all of a sudden, it hit them what this man had been doing, what he had been talking about. So what did they do? They ran out into the streets and they were no longer fearful because they had been released of their fear, and they were full of a message that was unbelievable, a message that did not tolerate anything but help your neighbor, consider him, understand him to the point that you will not do violence to his person; you won't do violence to him.

In the last two weeks we've been here -- and I relate this to the 12 of us -- I've been thinking how it takes a certain amount of time for a person to become free in his own way, to kind of know that he is doing what is right. In the first week when we were coming here, even the 12 of us, I'm sure, were not really relevant to one another because we, too, were still tied up with things that weren't really important, I mean insofar as what we wanted to see. You and I went through the whole crazy process of picking a jury, and somehow we got caught up with issues, we got mad at one another, we just weren't ourselves; but as soon as the week of testimony came, at least as far as our 12 were concerned, we began to relax because we began to hear the person that we knew and that we were in this action with, we began to speak with something that was within and to speak with real conviction; as far as I'm concerned, it was such a beautiful thing for us. During the 30 days in jail, it was only in the evenings when we began to talk about our own lives, give our autobiographies to one another, that we began to come close and understand why we would do such an action; and again it took maybe a whole week before we began to feel one another and began to see again that what we did was really a group concensus for going in and speaking out and saying this had to be done.

And so we come to this day -- and again, like somebody already mentioned this morning, there's going to be suffering, there's going to be suffering to the extent that, whether or not we're found guilty, in order to move into the world and say something to it, whether we're in jail or out makes little difference insofar as there's always going to be the pressure on us to be men of truth and to be men of inner conviction.

I think you could say a lot about the suffering that's already been caused, especially in the families of the 12, but I think they are free because they went into it as a family and not just as single men would go into a thing.

So I would just like to conclude with some words that seem to make a lot of sense as I opened this book this morning.

"When they had finished breakfast, Jesus said to Peter Simon, 'Simon, son of John, do you love me more than these?' And he said to him, 'Yes, Lord you know that I love you.' And he said to him, 'Feed my lambs.'

"A second time he said to him, 'Simon, son of John, do you love me?' He said to him, 'Yes, Lord, you know that I love you.' He said to him, 'Tend to my sheep.'

"He said to him the third time, 'Simon, son of John, do you love me?' Peter was grieved because he was asking a third time. And he said to Jesus

'Lord, you know everything, you know that I love you.' Jesus said, 'Feed my sheep.'

"'Truly, truly, I say to you, when you were young you girded yourself and walked where you would, but when you mame are old you will stretch out your hands, and another will gird you and carry you where you do not wish to go.' T he said to show by what death he was to glorify God, and after this, he said to him, 'Follow me.'"

CLOSING ARGUMENT OF FATHER JAMES HARNEY: Excuse me while I get a drink of water.

I tend to speak rather loud so I'll move this stand way back. Well, I think I'm the tenth person to address the jury, but x bear with me; I notice it is hard to stay with these arguments.

COURT: The ninth, Father.

JIM: Oh, am I the ninth? Thank you.

You know, it's become a cliche to say this is a very significant trial; in fact, the jury will have a very vital part in deciding whether that really is the case.

Twelve people, yourselves, will decide whether this is going to be something more than burglary, arson and theft.

You know, when you come down to it, juries throughout American history have played a very important part in shaping the destiny of this country.

You're not just twelve people; you're twelve very, very important people.

You know, we have people here in this court right now from the press.

We have somebody from the New York Times covering this trial. There are others from the Sentinal and the Journal, and others covering this specific tri

And you know something? The people of the press would not be able to be here if it were not for twelve people, twelve jurors, who had a very vital decision a long time ago that has helped to shape the destiny of this country.

Just to refresh your memory, in the 18th Century, a very significant trial took place. There happened x to be a printer by the name of John Peter Zenger, a very young man who put out a paper called the New York Weekly. He had views in strong opposition to the governor of New York, for which he was finally arrested and charged with seditious libel.

Them man had two lawyers who questioned whether the specific court in which John Peter Zenger was being tried had jurisdiction. The two lawyers were disbarred -- taken off the lawyer's guild, if you want to call it that, just because they raised that issue.

Hence John Peter Zenger didn't have a lawyer. And then something happened From the midst of the courtroom a young Philadelphian lawyer by the name of John Hamilton rose and said that he would take the case, and he did, and he did something that was very unusual.

He admitted to the fact that John Peter Mangd Zenger did commit the crime defined as seditious libel -- that he had, in fact, published his views in opposition to the governor.

And then he said he wanted to do one thing, he wanted to prove to the court that what John Peter Zenger had said in his Weekly was, in fact, supported by the truth. In other words, he wanted to go over the particular papers to show the jury and the court that what he said was actually true.

The judge at the time, however, said that that was not the issue at stake; the issue wasn't whether what was printed was true or not, he said, the issue was whether or x not the man was guilty of seditious libel.

Doesn't that remind you of this trial?

So John Hamilton was caught in a dilemma. What he did was to bring the case to the jury. He asked to jurors to see with their own eyes, to hear

with their own ears, to judge with their own consciences -- and they did.

They found John Peter Zenger Not guilty.

They did this despite the fact that John Hamilton had admitted that his client had done those acts with which he was charged.

The jury said he was not guilty.

It is just like us admitting that we went into the Brumder Building.

And it is because of these twelve people that we have freedom of the press today.

So don't think of yourselves as powerless in terms of governing the destiny of this country. All throughout our history the jury has been able to decide both the law and the facts of a particular case. It runs right thro our history.

Now, I'd like to share with you a couple of quotes from very prominent people in our country.

Back in 1771, in reference to the marvelous power that the jury had, John Adams said this: "It is not only the juror's right but his duty to find the verdict according to his best understanding, his best judgment and conscience, though it be in direct opposition to the direction of the court."

Imagine now John Peter Zenger's trial, where the jury went in direct opposition to the court. And that's why we have the press here today. The jurors knew what was at stake. They knew.

In 1804, John Hamilton came out once ag ain and said, "A jury in a criminal case" -- and we're being tried in a criminal case -- "is duty bound to acquit despite the judgment of the court if, in excercising their judgment" -- and this is the beautiful part -- "if, excercising their judgment with descretion and honesty, they have a clear conviction that the charge of the court is wrong."

"...with descretion and honesty." Not randomly saying the court is wrong, but using your descretion and honesty.

Up until 1835, in this country, federal courts in this country came out and advised jurors that they, the jury, were both judges of law and fact in criminal cases and that thet were not bound by the opinion of the court. Very, very powerful. Once again showing the trust in democracy, showi the trust in the people, to move this nation forward, showing that Americans did know where they were going, that jurors were men and women capable of governing and deciding both law and fact in a criminal case.

That's a tremendous responsibility, a very tremendous responsibility...

There's one particular judge in 1879, a judge of the Supreme Court of Pennsylvania, who came out and once again sustained the right of the jury to b judges of the law, just as the jurors in the Peter Zenger case were judges of the law. He said, "The power of the jury to be the judge of the law in a criminal case is one of the most valuable guarantees of the Bill of Rights."..

It's all in the hands of the jury. It's just thrilling, thrilling to know that juries are there to protect people, to protect the accused when the given circumstances dictate that. Very powerful. And this was the case in our own country prior to Civil War days. The whole question of the Fugitive Slave Law came up, you know, where black people were smuggled into the North and into Canada in order that they might attain freedom. There were jurors in the North, people like yourselves -- and mind you, the Fugitive Slave Law was perfectly good law, the law of the land, said people who smuggled black people out of the South were criminals -- people like yourselves acquitted people who smuggled black people out of the South. Once again, jurors were judges both of law and fact.

A very clear violation of the law had taken place. A man was caught smuggling a black person; he was brought to court, all the evidence was given; the case was presented to the jury and the jury said -- Not Guilty! Not guilty. And isn't it amazing that the underground railroad in our

country is on of the proudest events in the history of this land, that people had the humanity to break the law in order to save people.

In 1957 one court in the land, the United States District Court in Washington, D.C., that this to say -- this is really powerful: "An inherent feature of the common law trial by jury accorded by the Constitution of the United States to all defendants in criminal cases ... (is) the power of the jury to find the defendant not guilty even if the evidence of guilt is overwhelming or conclusive...a defendant may not be deprived of that right."

I would like to say that we here are, in many respects, in the situation of the John Peter Zenger trial as well of the trials of those persons who managed the underground railroad. Why do I say that? In the John Peter Zenger case a man was brought up for seditious libel, and Hamilton openly sought to demonstrate the truth despite the judge's opposition to his efforts. Now here we are, brought to you and asking you whether we are arsonists, burglars and thieves. We don't say we are. We have tried to show why we are not. Though it has been denied you, we have tried to bring the best testimony we know of; just as in the Zenger trial the jurors were not able to hear testimony regarding the truth of the accounts published in Zenger's newspaper.

We come before you in very much the same way -- very much the way as people who helped black people escape from slavery and were tried with the evidence overwhelmingly demonstrating guilt -- yet the jurors found them not guilty.

Why were they not guilty -- the Zengers and the conductors of the underground railroad? Because they were standing on the best that this country has to offer. They were standing on the spirit of the founding fathers, they were stading on the spirit of protecting the poor.

Now there is a horrible war going on. It's working havoc not only on the Vietnamese, but on our own country. It's causing psychological harm to all those young people who don't want to fight in Vietnam and yet are being forced to; it's causing some of our best people to leave the country, to go to Canada, probably never to return again.

At one time we welcomed to our country those who didn't wish to be drafted in their homelands. Now we're forcing some of the best of our country to leave.

The draft is channeling the lives of our young men, cataloging their lives and as soon as you start cataloging a man, that's an occasion for despair.

Well, once again I could say that this is a very unique moment. It's becoming a truism to say that, but maybe a few more times won't hurt. Because it's a great moment in your lives, a time when your hearts and minds and consciences can do a great thing. If you find we're innocent, it would seem that the best in our tradition is being affirmed because we are standing for the freedom of people, and because we are standing against involuntary servitude.

If we are found guilty, then what does that say about our tradition?

Let me make my last quote something that Ann Franke said when she and her family, because they were Jews, were hiding in Germany in 1943 in an effort to stay alive: "As I look up into the heavens, I still believe that people are good at heart and that peace and tranquility will come."

I still have that hope that she did. And I believe that if you twelve people, following in the tradition of those jurors in the past who have stood up for freedom and liberty, if you twelve find us not guilty, the history books in years to come will say that in Milwaukee in the year 1969, there was a great day: from the depths of their hearts, from the very power of their being, twelve people said they believed in the traditions of this country, that they believed in the inner spirit of nonviolence and truth, that they believed in man; and, above all, they believed man is more precious than property. Thank you. I think I went too long.

(brief recess)

TESTIMONY OF DON COTTON (CLOSING ARGUMENT): Knowing that I would be speaking near the end of the line, I found it rather difficult to think of something to say at this point that hadn't been said before and repeated time and time again. I think our position is clear. And it gets very difficult to sit through all this. I was thinking about this yesterday and I thought I'd go out for a movie, relax a little bit before I gave this more consideration.

I went to a love story, thinking that would be a good movie to relax at. The movie was "Romeo and Juliet". However, it was far from relaxing.

It's Shakespeare's story, and I think it was very well done in the movie -- two lovers in a community, a community of strife, their two families traditionally enemies, traditiobally battling it out between themselves.

What Shakespeare did was show the contrast -- the lovers, Romeo and Juliet with a commitment to each other. And Shakespeare shows what that love meant with the society in which they found themselves -- a society of violence a society of hate.

It was the people of that society who were unable to handle the concept of love, unable to handle the concept of commitment that made it impossible for that love to survive. The love of Romeo and Juliet turned into tragedy and their lives were destroyed. Although they committed that act themselves, it was actually the responsibility of the community in which they lived, it was the responsibility of those people who were unable to love, who were unable to have a place in their world view or in their society for love; it was their society that made it impossible for those two to live.

That responsibility was not overt. People were just going about their business concerned about what their lives meant to them, concerned with their own pleasures, concerned with their own simplistic world view -- that life was simple, that there were good guys and bad guys, that you spend your time with good guys and for recreation you fought with the bad guys. It was that simplistic world view that destroyed those two lovers. It was easier to hate than to love.

And I think there's a parallel in our own society.

We have a society in which there are two young lovers, and they are young lovers. We have the young men who are looking for the truth, looking for freedom and humanity. Somebody tells them to go over to Vietnam; and with the filial trust of someone like Isaac, the young men are going over to Vietna

They are lovers, the love freedom, they love humanity, and they love truths.

The other lover is the people who feel that freedom, truth and humanity can be found in different ways, people who, because of their conscien feel that they cannot participate in what the elders of the community have stirred up, and they refuse to go over there.

What has happened is that both these lovers--the obedient and the disobedient--are being destroyed. We have 33,000 men killed in Vietnam so far, and how do you count the figures of those injured psychologically as well as physically? And how do you count all those who are doing work other than they would wish to? The other lover--the disobedien ones--finds himself either thrown into exile or in jail or finding sanctuary somewhere -- leaving his family, leaving his friends and community -- trying to find a place where he can be at integrity with his conscience.

Both of those acts are self destructive, both result from a commitment of love, from a commitment to give themselves for freedom, for man, for truth.

And here again, I think we can say to the community that it isn't the lovers who are responsible for the destruction -- it's the community, a commun interested in itself and interested in a very simplistic way of life, that

doesn't go into issues with the depth and understanding that life demands. The community isn't concerned. The politicians, the big businessmen look at the violence and all they say is, "Oh, sure, it's a shame, it's terrible; but that's the way things are, nothing you can do about it."

Yet individuals in this society are playing games, they're becoming bigger businessmen, they're becoming more noted politicians -- at the expense of the young people of the society.

What is needed to bring this all to an end? What does one have to do to stop this? Does every young person in this country either have to be killed over in Vietnam or destroyed in the prisons here at home or driven off to another country? What is necessary to bring this violence, this waste to an end?

Perhaps every young person in this society would have to immolate himself in order to make the point. Maybe our society, like the families in Romeo and Juliet, are only concerned when there has been an act of tragedy and will never do anything until something has hit so hard that a response is forced. Like with safety standards -- we don't have them until after there has been a tragedy. We've seen that in mining, you know, when a mine collapses. Then there are better standards set.

What type of tragedy is needed to make us aware that there already is a tragedy -- that young people are dying, that their love is bringing them to a position in which they must be sacrificed? It is not only the young American that is being involved in this tragedy. There are the Vietnamese people, the Latin Americans, the poor people all over the world. Real violence is being done, though it isn't obvious to every American, even though he has to pay for it with his taxes, with his children, with the life-style that is forced upon him. What will it take?

Hopefully people can correct injustices by being aware of them. How do you make them aware? We know that the war is going on. We know it is unjust. We know people are starving. What do you do? Do you continue as you are?

Hopefully we would say that an act of nonviolent civil protest would bring up the issues, that people will then see them and see the tendency that is developing, see the sacrifice of young Americans that is made inevitable; and than a change will occur.

But what type of act will do this? Petition writing? Analysis? Marching Even a campaign for a peace candidate has been ignored. Does the world have to be blown up before we realize that violence is not the way?

It seems that our society has become automated. We have systems in our society such that the world might view our society like a cigarette machine. You push a button, and you get the product.

The war in Vietnam is like that. Someone pushed the button a long time ago and the product is coming out automatically. Once the process is initiated, there's no way, it seems, of stopping it; there is no point along the way where someone can say a mistake has been made. With a cigarette machine the same thing happens -- if you push the wrong buttom, there's no way not to get the wrong pack of cigarettes. There is nothing you can do. Once the choice has been made, the consequences are automatic. It's really iro that our world will probably end cigarette-machine style: someone will push a button and there won't be anyway to stop the irreversible process.

In many ways this trial is an example of such a process. Somebody thought that burglary, arson and theft were appropriate charges, and they pushed that button, the wrote out the indictment, and the process grinds on. There is no way one can stop it. The prosecutors must prosecute. The judge must describe and limit the case to the charges. There is only one factor that isn't automatic, one variable, and that's the jury. But you're being asked to be a part of that system -- they want you to keep within the indictment.

But what we are saying is that you are not an automatic part of that system, that you have a choice, that you aren't controlled, that you are a

check and balance to the system. It's only you who can stop this system from operating, from mechanically producing what was initiated by the indictment.

We have tried to show that we are human, that our act was human, that you are human, though you're going to have to decide about your own humanity. We defended ourselves because we wanted to present ourselves as people and not as legal objects, and because we didn't want to be confined to what we felt was wrong, and because we couldn't confine this trial to the borders set up by the indictment.

It's been difficult. It's not efficient. Bit it is human. We've gotten mad, our conduct has been -- well, not typical of courtrooms; but it has been real, it's been human. And so what we are asking, what we are saying, is that we are humans and we would like to be judged as humans. We are not a system. And we feel that it is your responsibility at this point, as people of the community, to make a decision and to help stop some of the mechanical processes that have begun in our society.

It is only you who can decide about the war at this point, and about the draft. Only you can make that statement. You can point out to society that there's been some wrong, that people cab take a position of opposition and be justified.

Thank you.

CLOSING ARGUMENT OF FRED OJILE: Much has been said about the importance of this case, but I have kind of a different view. I consider myself a little guy who did a little thing, and that there is just a little thing involved in this case right now, just a little honesty perhaps. There is not much more than that as far as I'm concerned. I don't mean to be contrary to any of my brothers. But there's not much involved in this beyond just a little simple honesty, that's all I'm really concerned about right now.

I think we'll all learn by the end of this trial, after Mr. Larson's instructions to the jury, if I interpret rightly, the court will order you to follow the law; and if you have, in your eyes, conclusively decided that we have committed an act of entering a building, taking out files and burning them, he will tell you you should find us guilty of arson, burglary and theft. And that's very simple for any of you; in fact, I would suggest that if that's what you intend to do, there's no reason to leave the courtroom. We can just sit here and you can just raise your hands and say guilty and there will be no reason at all to do otherwise because we did, in fact, go into the Brumder Building, we did, in fact, take the files, and we did, in fact, burn them; and that's what happened, and we are guilty.

But there seems to be some confusion because, though it has not yet been recognized by this courtroom, there's more of substance here than meets the eyes. And I would suggest that that which is of substance but does not meet the eye is just one simple question that we should have been considering all during this trial and that all of us have failed to accept far various moments, various golden moments, and that question is: What can we do to solve the problems that we're all a part of -- all of us -- the people out there -- Karen, our reporter -- Bob, our clerk -- Mr. Larson, our judge -- Mr. Samson and Mr. Jackson and their detective and you jurors, us twelve; what can we do to solve the problems that we are in the midst of?

And, frankly, I don't know. But what I said in the beginning, in the opening statement, and what I would like to repeat now, is that I consider myself part of an experiment; and, in fact, this courtroom is part of that experiment.

I was hoping when I entered this courtroom a couple of weeks ago, May 12th, that we could take part in a forum for education, that it could

become a learning experience for each of us -- and by no means just us twelve or you jurors -- I mean each person; not as a reporter, not as a judge, not as DA's, not as defendant, not as juror -- but as individuals. Because it is as individuals that we can learn.

And I think we have failed miserably. Those barriers have not been broken down except at various golden moments.

In this learning process, though, I have learned something, and it has happened during those rare moments. I would like to share with you what I have learned. I have learned that Mr. Larson, who represents the court, and Mr. Jackson and Mr. Samson, who represent the state, are -- in my mind -- so confused, so misled, so absolutely limited by their guide, the law, that they are blinded to the fact, the relevance, the connection between burning draft records and what has happened in Vietnam, blinded to the connection between burning draft records and international law, blinded to the connection between burning draft records and the fear I have of taking part in genocide, the same type of genocide that destroyed six million Jews in Naxi Germany, and which is now destroying millions of people in Vietnam and destroying a whole culture.

I no longer want to be a part of that Nazi liberalism; I want to disaffili with that. The connection between burning draft records and the starving poor in this country who have no food because of this war, the poor of the world who have no food because we are building another bomb -- ten million die each year of starvation -- I understand that connection.

The connection between burning draft records and the lunacy of nuclear warfare buildup....

The connection between burning draft records and big government, big corporations-- big business -- making important and vital decisions for you and me, the common man, the one that doesn't know where to turn, the one who hasn't got answers about what we should do about the problems we face....

The connection between burning draft records and the draft itself, the draft which takes away from each young man a right more personal than his right to marriage -- I would much rather have the state decide for me who I am going to live with than who I am going to kill.....

There are all things that have been considered irrelevant.

I have learned one other piece of data. I have learned that Mr. Larson, M Jackson, Mr. Samson, Karen and Bob, our bailiffs, and everyone in this courtroo especially you, have been extremely patient.

I'm not patient anymore. I've been patient too long. I've blown up almost every day in this courtroom. I couldn't take it. Patience is not one of my virtues. That's probably why I was involved on September 24th.

I have learned a little bit about patience, what it means. It's helped me a lot. I've learned to keep my ears open a little more and not cut off a person. I've cut off Mr. Larson, Mr. Samson and Mr. Jackson many times. I didn't consider them as individuals, I considered them as roles -- as a judge whom I despised and as two lawyers whom I wished would resign.

I have learned a little bit about patience. I have learned it does no goo to try to treat you jurors as people, no good whatsoever. You have been treate since the first day in this courtroom, as children, and now you are expected to act as computers.

I would make two suggestions:

One is that I didn't come into this courtroom with any hope whatsoever tha the virdict would be not guilty. I came in here for the educational experience, for the attempted experience, the attempted breakdown of barriers in the most structured system a person could be in. But I learned through this trial something I didn't know beforehand -- that, of all the institution within our society, the court is the only one left where the common man has any voice whatsoever.

Look at big government. What decision do you make as far as where your money is spent? Even though the man with between $5,000 and $15,000 a year salary is the one that pays for the brunt of what happens in this society, what do you say about that decision? Not much. What about big business? Who decided Lake Michigan or Lake Erie would be polluted? Did you decide? That was big business. Who decided Milwaukee becomes an unlivable city? Who decided that in New York and Chicago, during certain times of the year, that the air pollution would be so bad that a man with heart trouble shouldn't go into the streets? Did you make that decision? I doubt it. You have too much common sense. That was big business acting without your consent.

In the courtroom structure you still have a right to make a decision. They tried, and still try, to destroy that right by making you children, sequestering you, cutting off certain information, making sure you can't ask questions during the trial even though I personally wanted you to ask many, many questions, because, if you are anything like me, you had questions and still do.

Towards the end now, you're going to be told to act as computers -- to try to span over and cover up your own personal decision-making process by making you look into certain slots and then come up with a decision, like a punched card.

Well, as far as the institutions of our society are concerned, this is the only one left where the common man can have a voice. And when you make your decision, I'm not saying which way you should make it, but keep in mind that this is the only institution left where you have a voice. I learned that during this trial; I didn't believe that before I came in here. I didn't have any more hope in the courts than I had in big business as far as the common man have a chance to have a say in the decisions that affect his life.

I have also learned, more than before I came into this courtroom, how arson burglary and theft have been defined. Before I came into this courtroom, I thought I was an arsonist, a burglar and a thief -- but the prosecutors and the judge have convinced me I am not, through what's been presented here; and I'm convinced now, and I want you to listen to this because I think it's important to your decision. I am not an arsonist, I am no burglar, and I'm not a thief; and I'm absolutely convinced of that just because of what's happened in this courtroom. Under no circumstances, under no set of rules that we can at all call reasonable, am I guilty of the charges put forth.

One element that I think would be important for you to consider -- not just you jurors -- is that there's no order, there's no rule, there's no oath that is more sacred, more faithful, that's more important than your own conscience -- a conscience formed by all the facts that have been presented in this courtroom, formed by all that has happened here and by all that is going on winside your own souls. Nothing is more sacred than that, nothing more faithful, nothing more important.

And I have learned something else. I have learned, well, the reason I've learned so much is because the 11 others expressed themselves in so many ways I never heard them express themselves before -- and I've got a new, well, perspective on who they are. I've never heard them on a witness stand -- this situation has made them a little more precise. I have learned that none of us, as far as I can see, pick and choose laws to follow. I never believed this before. But obviously, according to what's been said, I've never met 11 people who have more respect for God, man, and law, in that order. If what they have to say is true, and I have no reason to doubt it isn't, I never knew they had that much respect for God or for man or for law. I thought they had a little, but if what they say is true, they have much more than I expected, and I have greater confidence in them because of that.

I don't think I have any more respect for God, man or law than I did

before. I have less respect for law because of what's happened in this courtroom. I don't know who God is anymore. I try to pray once in a while, bu it doesn't do much good. And my consideration that man is absolute, that my criteria for all actions is still man -- that is still part of me; I don't think that has been enhanced because of this courtroom -- in fact, because of my lack of patience, I think I have become less respectful of people.

I've learned that people can act very sanely, very rationally, and still be idolatrous -- still really worship something other than God. And I didn't think that was possible. I thought that anyone who would be an idolator would have to run around with his clothes off and flap his wings or something, but I find out that it is very much a part of established order.

I've also discovered that Mr. Samson knows very little about Gandhi or Martin Luther King.

There's one request I have, and it has to do with why we are in this courtroom. One of the reasons we we did what we did on September 24th is because we were trying not to ignore what was right in front of us, and so I ask you not to ignore what is in front of you -- ourselves; do not ignore our intent, do not i; do not ignore the issues which we have attempted to form, which we have tried to bring up, which are part of our lives; please do not ignore the suffering of people that has moved us to take a stand; do not ignore anything that has happened in these past two weeks. We're merely asking you to consider everything. We're not trying to tell you which way to decide. Just consider all, keep an open mind; that's all we can expect from an educational forum. In education, a person isn't told what to think. A person has to decide for hinself what to do with what he observes and discovers. I will in no way try to coerce you in to deciding us not guilty. If that were my intent, you shoukd find us guilty.

There is someting I haven't learned quite yet, but I think I will be learning by the end of this day, and which becomes quite a shock for me, and that is I'm afraid I don't want to grow up. I'd like to explain why.

I'm a young person and have not had the experience of any of you jurors. Most of you are many years older than I am. I'm only 23, and so perhaps for you the experience of many more years of living in sight of nuclear war does not make it seem so shocking, so terrifying, so insane, so incredible and perhaps because of your many years of experience, the mistreatment of black peoples, red peoples, Asian peoples, Spanish peoples does not seem such a sin, does not strike at your hearts; and perhaps because of your many years of experience, someone starving in front of you while others spend money neurotically is not so shameful; and perhaps because of your years, the killin of an entire nation like Vietnam by your own nation is not so evil; and perhap because of your years, the charges of arson, burglary and thefy seem well considered in the light of what we have done. And, if that is so, I hope I never grow up, because for me it would be dying very young. And I would like to say proudly again and again and with a real sense of joy and a real sense of sadness that I did destroy Selective Service Records with the finest group of men I have ever met in my whole life. And again I say, with all honesty and humility, I did not commit arson, I am no burglar, and I would never steal anything from anyone. I am no criminal. I consider myself less a criminal than most Americans, and I conside myself no more a criminal than any of you.

I would like to repeat again one thing I asked you to remember, because when I was trying to think of things to say toward the end, I tried to remember when I first wrote it down what it was and I couldn't remember, so I figured you probably couldn't either, so I would like to repeat it: No order, no rule, no oath, is more sacred, more faithful, more relevant to your verdict than your own conscience, formed by all that

has happened in this courtroom and all that has happened within yourselves.

And again I'd like to repeat that this is not an important decision in terms of what's going on outside these walls. Most things never are. Things are of importance only to those people who are in contact with them. So this is only of importance to you jurors and to us 12 and to the people in this courtroom; and it seems to me that's the most important thing going on in your lives right now. Doesn't matter whether or not it is in history books, whether or not the judge is raised to the Supreme Court from this, whether these lawyers make federal district attorneys -- nothing else matters. What matters is what is going on right here.

And if there was a verdict of acquittal, which, by the way, I really do not expect, it would give me hope again in one institution which I thought was quite dead a few years ago -- and that's the courts. And those kinds of shocks I'd like to receive once in a while. There's still hope for something that's taken many years to build and which seemed to have truncated.

Again I would like to say, although you can't do it, I would really like to know what you people are thinking in your minds -- even after the verdict, no matter what the verdict is. Any real questions people have of what's going on in this courtroom, anything people are thinking. We could all get together at Highland Methodist Church, which is at 21st and Highland -- you'd certainly be welcome there no matter whether it is guilty or not guilty. I don't think the education has stopped yet. We still have some questions to consider.

Thank you.

(noon recess)

CLOSING ARGUMENT OF FATHER ANTONY MULLANEY: My brothers and sisters of the jury: Every year that I taught, I had a class that began immediately after lunch and it did me no good to see large numbers of students nodding affirmatively out of fatigue rather than agreement with what I was saying; and I know this is a particularly rough time of day for all of us. But I would like to quote the phrase of a German psychologist describing creative listening -- the idea that the listening of the person really brings out of the speaker the best that is in him. He had a problem with English and he really didn't know how to put it, but it ended up like this: "You must enter entirely into your ear." I think that's kind of a nice way of putting it -- the way the total person has to be the listener, especially, I think, in a trial.

First of all, I was very interested in Mr. Samson's closing arguments. As you no doubt realize, we all were: so much of his arguments were devoted really to topics that you weren't allowed to hear testimony regarding. No documents of ours, for example, except for the film, were allowed into evidence. Yet much of his speach on the very issues that were highlighted in these documents.

Mr. Samson quoted Dr. Fried, a quote that did a lot of violence to Dr. Fried's thought; for his whole point was the crises we are in because of domestic law are not being interpreted within the demands of the family of nations. I'd like to to recall what Dr. Fried said to Father Cunnane, "America will prosecute you to its own doom."

And then Gandhi. Gandhi had an enormous influence in my life and to hear him disposed of as not agreeing with what we

did -- the Gandhi who broke down fences in his nonviolent attempts to gain freedom for his people.

And Martin Luther King. This again hurts because it's simply not true. In fact Dr. King was in communication with Father Phillip Berrigan and both supported and approved the destruction of draft files.

Now, let's look at some of the other statements made by Mr. Samson.

He said at one point there was a fatal flaw in our argument, namely, that the citizens hadn't agreed prior to the burning of the records that this kind of property can be destroyed. I disagree with that, and in order to bring it out I would like to return to Doug Marvy's parable.

You recall his parable of the child in the lake, the child who drowned while a number of officials and citizens debated as to the proper means of reaching this child. Doug's story might continue with the reaction of the man whose gate was broken and whose bicycle was taken. It might go something like this:

"And the owner complained we should have agreed first that some property has a right to be damaged and taken without the owner's consent; and the people said to him, but we did agree. When we decided it was more important to be a free people than an oppressed people, we agreed and so declared to our oppressors that the right to life and liberty and the pursuit of happiness would be primary and that all laws were to be directed to guaranteeing those rights. 'We are sorry, sir, that we did not foresee the case when your gate would be broken and your bicycle stolen, and we are sorry, indeed, as a people that the shorter routes to the water weren't taken sooner. Then your gate and your bicycle would have been spared. But did you not agree with us, as a member of our political community, that the life of the child comes first?' And then the eyes of the speaker communicated a sort of facetious grin, and he said, "Besides, your gate isn't even worth $100 even though you imported lumber from California to repair it instead of using lumber in your own back yard. And considering what you have done with your bicycle in the past, think about it -- has your bicycle ever been put to better use?"'

Returning to this case, do you think the owner has a right to be angry and really wants to prosecute? We think not. And the State has not proved otherwise. Let's look at this, because we think it's a very, very important point. The critical phrase in the definition of burglary and theft, and indirectly of arson, is <u>not</u> simply "removing and destroying property without the owner's consent." There is a key word missing here, but a word accepted in every theory of law which we construe as appropriate to a free society; and that word is "without the owner's <u>reasonable</u> consent."

For example, if a person was seriously ill and the only way to save him was to commandeer a car which was parked and drive him to the hospital, then the courts would pay no heed to an angry car owner who wanted to prosecute the driver of the car for car theft. The courts would say, one, the law governing the theft of automobiles is a good one, but, two, the law governing the theft of automobiles does not apply in this instanc because it is unreasonable for the owner to place his automobile

above the saving of human life. Property is an instrument; its purpose is to enhance the dignity of the person. It has no meani apart from the relationship that it bears to human beings.

My brothers and sisters of the jury, ultimately you and I are the owners of these Selective Service System files; we have entrusted their use to a government agency; that agency is only our instrument. It gets all of its authority from us. Now, for a number of years many of us have asked our government not to destroy these files, despite our belief that they are a continuat of slavery and despite our belief that they allow our government to carry on a war in Vietnam which, according to competent international lawyers, is a crime against the family of nations. We have not asked our government to do this. We have asked our government merely to take the time to debate and argue as a free people whether or not the law justifying these files is constitutional and whether or not our involvement in Vietnam is constitutional.

I say "debate and argue." That is, debate and argument that would be honest, debate and argument which is truly related to the formation of foreign policy. Is that too much for a free people to ask of their government? Our government has been unresponsive, however, unresponsive to everything from petition signing to the electoral process to the draft resistance movement

Now, what is more ominous in a free society -- our act, or the government's indifference to public opinion? I entered the Brumder Building, I removed Selective Service files, and I burned them because I cannot believe that a government of free men can b reasonably unwilling to discover whether it is acting in a crimin fashion. I refused to believe that, after exhausting every conceivable legal method to open the gate, a government of free people can reasonably withhold its consent. A government of free people should want its citizens to do that which can extricate it from crimi nality. The government, in fact, as a right to expect this from the citizens. I admit that it is unfortunate that files should have to be seized and burned in order for free men to hope for debate and argument, but if such an action is unfortunate, it is unfortunately appropriate due to an unresponsive national leadership. And what is more harmful? Wouldn't it be rather not to ask the government to debate or argue? So we did not remove and destroy property without the owner's reasonable consent; and, if not, then there is no crime of burglary, no crime of arson, no crime of theft.

We are also glad that Mr. Samson spoke of civil disobedience We are very, very anxious to hear his thoughts on these matters. We would have also liked to hear the thoughts of Dr. Howard Zinn, but Mr. Samson objected at that time. We believe that civil disobedience is a very key issue in this case, or, if you will, symbolic political disobedience.

First of all, and I think this is very important, civil disobedience is a declaration, by breaking the law, that the relationship which should exist between law and human values either no longer exists or has, in fact, never existed.

A second part: when the legal channels for correcting the opposition between law and human values are either inadequate or not present, the citizenry of a free society not only can but is obliged to engage in such

disobedience; in other words, under certain conditions -- and we believe we have sho that these conditions exist in our case -- civil disobedience is a necessary part of due process. Far from being a threat to law, it enhances law; it gives dignity to law because it restores to law its necessary relationship to human values.

You see, then, that there is no undermining of public order here at all -- just the opposite.

Another point: civil disobedience becomes necessary in a free society when gre social crises face the society. We believe ours is facing great crises, and I think we adduced enough evidence to indicate this. In this case then, when the executive and legislative arms of government fail to respond to the crises, then the citizenry must ask the courts to broaden the base of the First Amendment -- that is, the rig to free speech, the right to assembly -- so that the social crises of today can be met without the further pulverization that can only mean violence.

The courts can begin to do for war, poverty and tacism what the executive and legislative have not done up to this time... The courts have the power to do this. That is why you, the jury, are so important; and today we are asking this court to assume responsibility for the import of the remark of John F. Kennedy, "Those who make peaceful revolution impossible make violent revolution inevitable." We invite this count to be the separate power it is supposed to be.

Let's return again to Doug Marvy's parable of the child in the lake and the difficult time his brothers and sisters had trying to reach him. His parable could go on in this way:

"There is a growing number of brothers and sisters who are hard at work to prevent more drownings. They are angry at the man with the bicycle because he put his gate and his bicycle before the life of the child. They are also angry because the man blames them for breaking his gate and taking his bicycle. It is not their fault, they say, that the bicycle was the only way to save the child. After all, they used to believe the men at the various forks in the road -- some of them clergymen, some of them leaders; they said go down this road or go down that road, and it will lead you to the lake. But these roads never led to the lake at all. And by the time the people discovered this, it was too late, the child was dead, and not even the bicycle was sufficient."

And so our apologies for the disruption on September 24th, but it was the gentlest act we could perform that could still highlight the tension and polarization in our society. Nothing else had convinced the national leadership of the tension and polarization, not even their own lengthy reports. No nation has ever so thoroughly documented its own oppression as has our own. And it will be to its own peril if it continues to search for law and order without first grasping and responding to the division among our people. It will be to its own peril if it gets hung up on bicycles rather than on drowning children. The times require an act which will highlight the division and polarization that is already there in fact. Our action does not cause unrest, it spotlights the unrest, however humbly.

Another point about civil disobed ience: Historically the kind of disobedience we are talking about has not only been to unjust laws. For example, the Fugitive Slave Act would be such an unjust law. Whar we are talking about also includes disobeying a reasonable law when this is the only way in which an unjust situation can be fought. How wrong, then, is Mr. Samson when he saus that civil disobedience can't be used to break valid laws. Aren't valid laws broken when mothers block a street in order to prevent trucks from running over their children? Of course.

Mr. Samson also said that we cannot give ourselves permission to disobey certai valid laws -- in other words, taking the law into your own hands, deciding which laws you will obey, which ones you will disobey.

We admit that you cannot lightly do so without an anormous amount of thought

and reflection, without serious attempts to do so by legal channels, and without a constant checking of your reflections with solid objective data such as the Scriptur and our own nation's public documents. But to take Mr. Samson literally would be to reject what a free society is all about. In a free society, the people will judge constantly and critically what laws it will permit to exist and what laws it will permit to effect the nation's life -- and civil disobedience becomes part of due process in such a free society when the value at stake is a fundamental one, such as life and freedom, and when the government is unresponsive to the legal channels. Civil disobedience thus becomes part of due process, part of the very legal system.

Let's return to the parable once again and to some of the officials at the forks in the road which led toward the lake:

"These officuals differed in their powers. There were some who could not only open the gates to the bicycle -- they knew even shorter and quicker ways to the drowning child. These are the ones to fear. They are the ones with the powe but who, in the face of the most compelling reasons, in terms of the suffering cause by their policies, refuse to use this power to correct injustice. These are the ones to fear because their insensitivity polarizes and divides the nation more and more."

So we say that civil disobedience is the best support of law in these circumstances. There is no breakdown of law and order.

To acquit us, to say not guilty, is not to say that burglary is permissible, or arson or theft.

In our parable, for example, all of the people in that community would rejoice that the gate was broken and the bicycle taken, for the child would have been saved. And if the owner of the gate and the bicycle was angered and wanted to prosecute, the people would say no, because the child's life is more important. They would say that since law has its basis in the values we affirm as a community, then we don't consider the breaking of the gate and the taking of the bicycle to be burglary and theft or violations of the law. They would say to the owner, "You are unreasonable in your unwillingness to accept the broken gate and the use of the bicycle. In our community everything comes second to life itself."

I believe, as a member of a community of 12 men, that given the present crisis in Americam life, our action does not constitute a threat to society. On the contrary, it contains a distinct social value. It is for the benefit of society -- for our action affirms the priority of human life. The real threat to society would be to refuse to act.

The burning of draft records is an unfortunately appropriate critique of the present over-concern for things in American society, espedially insofar as this over-concern is epitomized in the Selective Service System. And, if this be true, then we would hope that our fellow citizens, especially those on this jury, would serve to relate the laws of burglary, arson and theft to the issues of justice which we, in all honesty, think we have raised.

The indictment speaks of our acts as being against the peace and dignity of the State of Wisconsin. Are they really? Well, we ask that the severity of the grievances which we have highlighted in our testimony -- the severity or the magnitude of the injustices that we believe to be present in American society -- that these be weighed against the amount of disruption that we may have caused in Milwaukee on September 24th. We ask that the specific acts alleged -- burglary, arson, theft -- be seen in the total context of an inhuman priority of values operating in this nation, in the context of the suffering of the Vietnamese, or the lack of respobse on the part of the government to the wishes of the people.

Yes, dissent is disruptive, and we apologize for that, but who has raised the cost of dissent, who has made it more disruptive? A government which no lonher listens to its people. Ours is not an attack on law. Civil disobedience is

protest beyond the law, not against it. However, ours is an attack on the growing insensitivity to what the priority of human life demands of our national leaders. And when the so-called rule of law does not support the achievement of human values such as life, liberty and the pursuit of happiness, then the law does not compel obedience -- far from it. And the existence of a democracy depends first of all upo our being fully aware of this fact and, secondly and more importantly, upon our williness to act on this awareness.

A law is one of the means whereby human values are guaranteed and protected, an when it is no longer an instrument of that end, it no longer forces obedience. The end is the important thing -- life, freedom, happiness.

I respect totally the distinction between legal and illegal. I have spent a whole lifetime respecting this distinction, but at this time I respect even more the distinction between just and unjust.

Let's return again to the parable of the child. The owner of the bicycle refus to hear the brothers and sisters of the drowning child. The child drowns. What the In other words, what if even the bicycle is inadequate? Then the brothers and sisters will say we go by another route and by another means. Perhaps all the bicycle owners will be troubled then -- and they may say, "Look, take my bicycle to go to the lake." And others will say, "Take mine and mine." But the brothers and sisters will be forced to say at that point, "No, it's too late, too late even for the bicycles."

District Attorney Samson used the phrase, "taking to the street", in reference to the file burning. It's a phrase used to conger up images of chaos and riots and disruption. If I were a lawyer, I would say it's an inflammatory remark; but the whole point of our case is that we didn't take to the streets. Ours was a controlled, organized, gentle act, and we took not to the streets but to a war memorial park in well-regulated surroundings and we waited for arrest. This is the classical way -- or at least a classical form -- of nonviolent civil disobedience. District Attorney Samson performsx no service when he uses the phrase, "Taking to the streets." Our act clearly indicates that we are very much concerned about order but the act highlights the fact that order will come only after justice -- order follows only from social justice, it cannot precede it. Civil disobedience is the result of social unrest. It does not cause it.

The real enemies of law and order are not those who engage in civil disobedienc but those who insist on order without justice; and this is to insist on the impossib

The real enemies of law and order are those who, within the very hearing the cries of the oppressed, insist on carrying out business as usual.

These are the enemies of law and order.

We are a nation today that fears it young and that fears its poor.

Well, we should not fear the young or the poor -- we should rather fear those who have the power to remove the injustices which shackle the young and the poor and who yet refuse to use this power. They are the enemies of law and order.

Our legal system, after all, in order to operate successfully, requires more a sense of justice than strict obedience to the law. The concern for justice is the best guarantee of keeping a nation under law. The rule of law has no intrinsic value apart from the people that law effects.

District Attormey Samson again inferred that we had other channels when he stated"I worked for the peace candidate." Well, so did I; but the peace candidate never made it at Chicago -- and, among others things, the irregularities concerning the selection of delegates saw to that; and what Mr. Samson failed to mention is the effect of Chicago on so many young people.

I spent election eve with a number of young people from all parts of Massachusetts who worked for Senator McCarthy but who, after Chicago, drew up what they called a "freedom ballot". They had many names of this ballot, not just the two selected at the convention, and what frightened me, as they went or counting their own ballots through the night, was that they never once listened to t

so-called official election returns. Is this because they are rebels? No, rather it is because, in their eyes, state and national leaders violated due process; and this is what I fear; and it is this kind of polarization that we sought to highlight by the destruction of draft files.

And we are not alone in this judgment. The president of Amhurst warns that in two years, our youth may be lost to us as a nation. And George Bundy has made a complete turn-about in his position on Vietnam -- once a leading supporter of the war, he now urges that we get out of Vietnam now. His reason, as he puts it, is "The cost is plainly unacceptable." He goes on, "A major cost is the increasing bitterness and polarization of our people. There is a special pain in the growing alienation of a generation which is the best we have ever had, so we must not go on as we are going." Mr. Bundy makes it very clear, I think, that the resistance efforts of the young and their supporters is what has convinced him, in a way that t desolation of a people and its culture has not. He urges decision-makers to take note of the civil disobedience before it is too late, before we have lost our youth.

It would be nice if letter-writing and so forth could effect such a change in M Bundy and other leaders -- but the reception of letters is not a cost which is "plainly unacceptable" to the decision-makers.

Don Cotton this morning asked what it will take to allow the young lovers to return, what will it take to remove from our young people the terrible alternatives of jail or fleeing the country, what will it take in this country of ours to which hundreds of thousands of immigrants once came in order to escape the draft in the countries of Europe?

The district attorneys have insisted all along that we are sincere men, and in this judgment, at least, we have no disagreement; but that is not enough. Sincere men can either undermine the values of a society or establish them further. That is the basic question-- values, not sincerety.

And so the question for each juror to answer is: Do the defendants highlight what I, too, consider to be grave social disorders? Do they do it in a way that is proportionate to the unwillingness of those in power to come to grips with the oppression being suffered by so many here and around the world?

If you can answer yes, then there is no crime because the values out of which the laws regarding burglary, theft and arson emerge remain quite intact.

Others in our community have addressed you quite directly, and in closing, I would like to do so too.

First of all, studies in psychology indicate that the feeling of personal responsibility gets less and less as the person believes he can pass the buck; but when the person believes that he is alone, then the likelihood of his assuming responsibility increases dramatically. In other words, he says to himself, the buck stops here.

An American jury can be a classic example of individual responsibility within a community. Each listens intently to the others in their deliberations, each needs the other in order to clarify his own views, but each must end up with an opinion that is his own even if no one else shares it, even if all share it, even if some share it; and the critical thing for each juror to remember is that even one of you can bring it about, that we be not judged guilty.

In arriving at your decision, we ask that you do not perform the disservice to law of isolating three Wisconsin statutes from the Constitution which is the grounds of these statutes.

We ask you to reflect upon the frightening implications of Mr. Samson's remark that, in this case, there is no higher law than the law of the state of Wisconsin.

We ask you rather to pay close attention to the judge in his instructions. He will say to you as a jury that just as we expect the government to be bound by all laws, so each individual, therefore each jouror in his deliberations, is bound b all of the laws under the Constitution. It is this statement which provides the context for any instructions he may give you on the three Wisconsin statutes referri to burglary, arson and theft.

We also ask you to pay close attention to his instructions on reasonable doubt. You must decide whether this case is as simple as Mr. Samson says it is or as complex as Mr. Samson indicates it is by his questioning of you in jury selection and in his closing remarks. Recall that the indictments speak of removing draft files and of burning draft files. You must decide not whether we entered the Brumder Building and removed draft files and burned them; we proved that better than the prosecution did; but whether entering the Brumder Building, removing draft files and burning draft files is a crime.

The district attorney must prove it is a crime, and he has not done so. We, of course, would say, "How can he?" For what we have done is a service to the nations.

Does that sound too certain? Well, perhaps it is.

We ask only that you consider that there may indeed be a reasonable doubt as to whether destroying draft records is a crime, and therefore reasonable doubt that we are burglars, arsonists and thieves.

To acquit us is not to risk lawlessness, just as it is no threat to the law against breaking and entering to find not guilty the man who breaks down a door in order to warn others of fire, just as it is no threat to the law against obstructing a public through-way to find not guilty the mother who blocks a street in order to protect her children from trucks, just as it is no threat to the law against assault to find not guilty the man who pushes the person from the path of the automobile, just as it is no threat to spped laws to find not guilty the man who rushes an injured person to the hospital.

So also it is no threat to the laws against burglary, arson and theft to find n guilty 12 men who petitioned the government to reassess policy and to save life in t method of petition. We are not burglars, arsonists, thieves because what we have do shows that we share the values out of which the laws of burglary, arson and theft emerge. You cannot judge us as burglars, arsonists abd thieves and at the same time admit that we are not threats to the values of a free society.

To find us not guilty would be to make a statement about our national prioritie and policies such as has not been made before. It would be a statement coming from the core that we should be about the business of ending what is truly arson, what is truly burglary, what is truly theft.

In Vietnam it could mean the eventual end of that burglary which is the enterin of village huts in order to search and destroy, that arson which is the napalming of peasant villages and little children, that theft which is the stealing of ~~ex~~ crop through the use of herbicides and the stealing of the greenery of life through defoliation -- and then perhaps, it is only a perhaps, we could turn as a people to bringing about the end of that burglary which is the wrecking crane demolishing the homes of the poor, against the arson which is the loss of children's lives in tenement fires, that theft which is the higher prices for food and drugs and furniture and everything else just because you are poor.

To find us not guilty would demonstrate to the national leadership, in a way far more powerful than anything yet conceived in the movement for peace, that the citizenry demands -- and rightfully -- an honest reappraisal.

To find us not guilty would be to permit our structures to cope with the anguish of the oppressed -- and this is to use law creatively, the way it was used to resolve the Commander Bucher case.

To acquit us is not to say that burglary, arson and theft is all right, but in this case they are not the laws that are operative.

Judge us indeed according to law -- the state and federal law that requires we must have a criminal intent before being guilty of crime; the federal law that binds us to obey the United Nations Charter; the Constitution which rules involuntary servitude illegal; the Declaration of Independence which states the government derives its just powers from the consent of the people.

Judge us according to the law which says, if you have a reasonable doubt

that a crime was committed, you must free the defendants.

In my opening statement, I mentioned that we came to this court looking for judgment. I mentioned that it is one of a long list of places where each of us has gone, raising the issues that are now referred to as burglary, arson and theft. In my own case, I think it might be accurate to say I have been on pilgrimage. In olden times, the monk would accompany a group of those who were seeking justice - he would accompany them to the king, and he would be holding a cross.

Well, times have changed. I started my pilgrimage holding petitions. I didn't hear the cry of the child too clearly at that time. That was 1965. But at a certain point in the road where the cry of the child became louder, I took placards into my hands. I thought surely the decision-makers would be willing to discuss my sign, which read, "They are our brothers whom we kill." But they weren't willing. And as the pilgrimage continued, the cry kept getting louder, and became more sure of the necessity to be heard. So I took draft cards into my hands, not my own because I was too old and too protected as a clergyman, but the cards of young men whose values and attitudes this nation so desparately needs. This surely would convince the leadership of the need to change, I thought. The sight of young men willing to face five years in prison rather than to participate in a war which violated their consciences; surely the leadership would listen to that. But I was wrong.

And I saw that holding draft cards and presenting them to the Justice Department didn't reach the leadership. And yet the cry kept becoming louder and louder and louder.

Four years had passed. Hundreds of thousands of Vietnamese had died. 33,000 young Americans had died. Should I stop the pilgrimage, should I decide that when one exhausts the legal methods of inducing debate and argument, the most responsible thing for him to do is to do nothing? But then Pope Paul kept saying, we are responsible for our times and our brothers. He kept repeating that.

So this was the critical point in the road. The pilgrimage had to continue if I were to remain responsible. And yet to choose appropriate means became more and more difficult.

Through my belief in nonviolence, I had to choose means that met two requiremer one, the means must share in the complexity of the ends; if the end is very difficul to be attained, then adequate means are harder to come by. What would I take up int my hands? And so it makes no sense, for example, to say I hate war and I wrote a letter to prove it. I think we have made it clear what our goal was: put simply, to affirm life over death, to affirm the priority of persons over things -- and that is not easy to do.

Secondly, I required of myself that the means chosen somehow embody the very goal that I was seeking to affirm. They must even be end-creating. They are, in a sense, the end in the process of becoming.

And so we burned draft records in what our statement called "a service to life."

It was indeed a critical point because I believe -- in terms of nonviolence -- that we are at a point where only the tragic and the comic could combine in liturgy to illustrate human dangers.

Do you recall the prophet Jeremiah running through the streets with a yoke around his neck? He was quite a sight.

Well, we took up what was ostensibly the burglar's tools -- a screwdriver and burlap bags, tools which, in their unneatness, in their somewhat frightening characteristics, in their somewhat comic characteristics when applied to an establishment clergyman -- and participated, in some small way, in what Jeremiah's yoke meant to the leadership of that time.

To those who say this is going too far, I say: What do you propose I carry?

And to district attorneys who say they had legal channels open to them, I say, "Name one."

And when social usefulness so outweighs the minimum of disruption we caused on September 24th, I say, "Free us."

Thank you for your patience.

(Synopsis of MR. JACKSON'S closing argument)

Excuse some things about the way I talk to groups of people....I'm a former teacher, I tend to be pedagogical, somewhat like the defendants. I appreciate some of their problems. I tend to lecture instead of speaking to you as fellow human beings, but it is with a spirit of hope and a sense of knowledge in seeking to find out the truth...

...I don't intend to review the evidence for you again in total...there aren't any contests, seriously, about the evidence whatsoever. The state proved the crimes of burglary, theft and arson were committed...

...It is a mouth that has more than tw o sides that's coming from the defendants' table...they tellyou that they know what they did...that they had good reasons; they also tell you that we didn't prove value in excess of $100; they are perturbed about $17 a day...

....nothing so eloquent and so tough as a man standing before you, pleading his own case...without a lawyer on the other side, the state's case takes the form of a monkey wrench tightening on a throat; the tighter it got, the more pathetic the cry, and there you were listening to it...the state constantly and monotonously (objecting) on the grounds of relevance....

...this is an easy case in terms of the evidence, it just is...you watched the crime in living color and sound...the ultimate form of judicial proof...

...they tell you about the state of the law in 1750 and...1850, when jurors passed their judgments on both the law and the facts. That isn't done anymore regardless of what they say, it just isn't done. You took an oath...

...back in the old days...juries decided and did and were allowed to decide..the law is not insensitive...(but today to be protected in the way these examples of the defendants illustrated, one) must show that someone's life was in imminent peril...If they came anywhere near it, you would have been instructed to that effect You're not going to be instructed to that effect,much to the disappointment of some of the defendants who admittedly didn't consider that (defense) at the time thay they did this, but who in one voice stand up and argue legal defenses while in another voice call the judge names that people don't ordinarily use...

....I ask you to be fair. The question is fair to whom?...I've heard their stpry before and it's not as novel as it sounds...I tell you that this isn't the last great nonviolent act because it isn't nonviolent. This is the first great violent act...

(hisses and other such sounds from the people; admonishment from the court)

...Take a look at that table. Do you see Martin Luther King there? Do you see Gandhi?...When (people like Fred Ojile) tell me he couldn't take injustice for a few years, I tell him that my pepple waited over a hundred years. There's a little bit of difference there. I can tell you that I'm attached to the American way of li with a fervor that makes me want toc ry sometimes, because I don't think it's all right, I don't think it's all wrong, I'm in the middle. But I play each situation according to the rules...It's not that I don't question them as I go along...

...They're attempting to litigate in this court...all of the evils of society in one fell swoop. Don't like poverty. Stop the war. We'll get rid of it. Ask our expert, He'll tell you...

...near the end when you saw me throw my pencil down and say let them say it, let them say anything, but let's get on with it, that was a breakdown. I'd had enough...I asked (myself), how in heaven's name can we ask the jury to convict Father Antony Mullahey of the crimes of burglary, arson and theft...(but) he did

the crimes...they've told you so.

...the answer is not to acquit them, and it obviously isn't funny. The education, the experience, the love of mankind sitting at that table has somehow got misplaced. it tried hard, but it failed...they destroyed property, they knew whose it was, they knew they had no permission. Let's not play games...they did. What's society's answer?...shouldn't be any different for these men (than) it would be for anyone else...they're guilty

...(goes over the money evidence)...

...I say you can't (ignore the judges instructions like these men have been suggesting) and call youself a responsible member of society...This is no brand new baby, this legal system. It's been worked at, it's rigid and it's formal, but it works where it's supposed to work...

,,,if they used the energy and the time and the thought to organize politically and the manpower of all their friends, they could have done far more...could have been awfully effective, it would have worked ...they chose not to... when I decided to join the DAs office...I didn't tell them I'd only prosecute the easy ones...we say three times 12 is 36 crimes over there...I can't say look at the villains; they aren't. They just happen to be a very classy part of society. They are educated, they try to think and make the best decision they can...I simply tell you they made the wrong decision, a decision that jeopardized the whole stability of society, I mean that. You want to acquit them, you go ahead...and then see what happens when you get home and have to face the community...

...they acted first and wanted to discuss it later, and that's not the way it' done...What they did, much to my anger and you can sense, was polarize the entire contry...you couldn't even discuss the issues...because if you had the nerve to say that you might be opposed to the war, automatically you were classified with burglar arsonists and thieves. That's their nonviolent reaction. I hope I'm not around when they decide to do a violent one...

...the law doesn't recognize political, religious or moral convictions as justifications for the commission of a crime...

...you're going to be told that you shouldn't consider international law...

...you're not to be swayed by sympathy, prejudice or passion...that's atough one... If I were a citizen in this court as a juror and saw some of the antics that went on, I don't know what I'd do...I'd say I've had it...(but) you chose to stay in...

(five minute recess at Mr. Jackson's request)

(jury back in at 3:30, 11 minutes later)

MR. JACKSON: .....he who is found party to a crime is as guilty as if he had committed the entire crime by himself. Each of the 12...aided and abetted the commission of each crime...(uses Larry Rosebaigh as an example of how this applies, even though he didn't actually take any records and wasn't at the site of the fire till after it had been lit)...

.....I want you to know why I think they failed in their judgment...I find five in the category (of having an unrealistic attitude)...Fr. Mullahey, Fr. Cunnane, Fr. Harney, Fr. Janicke and Brother Bail O'Leary...It's the problems a man faces when he is protected from society, when he decides to...withdraw, to study, to remove himself, to think, and that's what they did...what happened? Somebody stayed too long away from society and when these men returned, they weren't mentally equipped to face the problems that they saw...They simply couldn't take it. They lost the elasticity of personality and the day-to-day guttiness of decision-making.

They couldn't face it, and so they became unrealistic...how in heaven's name would you attempt to stop poverty, war and the problems of society by burning draft records?...it's unrealistic...

...don't let your animosity to me effect how you treat them....

.....if I were to come into your place of business where you worked, and if I were expected to make an important decision, you'd expect someone to instruct me as to wh to do and to explain my role...You're here, out of your natural habitat, to perform a fact-finding function, and the community's representative is going to tell you what law to apply and what facts you may find and what standard to use to find the facts...

....it's absolutely reasonable, absolutely reasonable...it shouldn't take long to decidefind them guilty as charged...it's a civic duty, and I'm sorry the case really took so lomg.

Thank you.

COURT: (asks that no one leave courtroom during the time instructions are being read)

...And now, so that you can get some of this restlessness out of your system, because we've all been sitting for quite a while again, let's all stand up, and not leave your place.

Now I ask you all to be quiet.

....

Members of the Jury....(instructions follow in abbreviated form:)

...

...it is your duty...to take the law as given in the judge's instructions and to apply the law to the facts in the case which are properly proven by evidence, and therefrom arrive at verdict...exclude from consideration everything except the evidence received on this trial, and the law given by these instructions.

...if I have given...an impression of my opinion concerning the guilt or innocence of the defendants...disregard such impression entirely...you, the jury, are the sole judges of the facts, and the court is the judge of the law only...

...the first count charges...the said defendants did feliniously and burglariou intentionally enter...the offices of United States Government Selective Service System...135 West Wells Street...Milwaukee...without consent of the persons in lawful possession of said offices, and with intent to steal therein, contrary to sections 943.10 (e) and 939.05 of the statutes, and against the peace and dignity of the state of Wisconsin...

....Burglary...is committed by one who intentionally enters a room within a building without the consent of the person in lawful possession and with intent to steal... (each aspect--the elements--intention, without consent, etc., are explained)...inten ...must be found, if found at all, from their acts and their words and statements, if any, bearing upon their intent...You cannot look into a man's mind to find out his intent..

....If you are satisfied beyond a reasonable doubt...that the defendants intentional entered a room, that the entry...was without consent of the person in lawful possession, that the defendants entered the room with intent to steal, than you should find the defendants guilty of burglary as charged in the information...

...the intent to steal...does not require that the defendants intended to steal anything of any particular value...

...it is no defense that a defendant...also had one or more other intentions, reaons, purposes, or motives such as to make a protest against the Vietnam war

or that he acted from religious motives or that he believed that his intent was justified by some higher law...

...if you are not so satisfied, then you must find the defendants not guilty of burglary.

...the second count of the information...charges that...the said defendants did feloniously intentionally take and carry away property of another, to-wit: Selective Service records, the property of the United State Government...with the intent of the said Selective Service System, and with intent to permanently deprive the said owner of possession of such property, contrary to sections 943.20 (1)(a) and (3)(b); and 939.05 of the statutes, and against the peace and dignity of the state of Wisconsin.

...the crime of theft...is also known as larceny...

(definition of the various elements, similar to definitions of elements applied under the previous count--intentionality, etc.)...the law presumes that a reasonable person intends all of the natural, probable and usual consequences of his deliberate acts...

...If you are satisfied beyond a reasonable doubt from the evidence in this case that the defendants intentionally took and carried away movable property of another without its consent, that the defendants knew that such property belonged to another from whom he had no right to take it, that the defendants intended to deprive the owner permanently of possession of such property, then you should find the defendants guilty of theft...as charged...

...you should find whether the value of the property exceeds $100 or is $100 or less...you may consider the cost or value...of the labor necessary to restore the records...you have heard the testimony as to the length of time spent by the witnesses Mrs. Ruth Junge and Major Edward Lane and what their salaries and expenses were and what other costs were in restoring those records...

...The third count in the information...charges that...the said defendants did feloniously by means of fire intentionally damage property, to-wit: Selective Service System records, valued in excess of $100, the property of the United States Government...with...consent...contrary to section 943.03 and 939.05 o the statutes and against the peace and dignity of the state of Wisconsin.

...(definition of the elements)...

...Section 939.05 of the Wisconsin Statutes defines parties to a crime...whoever is concerned in the commission of a crime is a principal and may be charged and convicted of the commission of a crime although he did not actually commit it and although the person who directly committed it has not been convicted...a person is concerned in the commission of a crime if he...intentionally aids and abets the commission of it; or is a party to a conspiracy with another to commit it...If you find the defendants a party to a crime or crimes as alleged in the information...who should find that defendant guilty...

...you should scrutinize the evidence with the utmost care and caution...with all the judgment, reason, prudence and discrimination you possess. If, after this scrutiny of all the evidence, you have a reasonable doubt of the guilt of all or any of the defendants, you must find them or him not guilty...

...the law presumes every person charged with the commission of an offense to be innocent. This presumption attends all of the defendants throughout the trial and it prevails at its close unless overcome (by the jury's finding of guilt)... the defendants are not required to prove their innocence...

...the term "reasonable doubt" means a doubt based upon reason or common sense... a doubt for which reason can be given, arising from a fair and rational consideration of the evidence... not merely fanciful or speculative...

...you are not to search for doubt. You are to search for the truth...

...you are to disregard entirely any question to which an objection was sustained by the court. You are not to speculate regarding what the witness's answer might have been...you are to disregard all stricken testimony...you are not to consider as evidence any exhibit which was marked for identification but not received in evidence...you are not to consider...statements or remarks of cousel or of the defendants...you are the sole judges of the credibility of the several witnesses and of the weight and credit to be given to their testimony...(guidelines in determining the credit to be given a witness' testimony)...closing arguments...are not to be considered...as evidence...

...proof of motive to commit a crime is not essential or indispensible to a convicti ..the state is not required to prove motive...

...you may take into account matters of common knowledge, and your observations and experience in the affairs of life...

...the defendants...are directly interested in the result of the trial...it is prope for you to take such interest into consideration...give...their testimony just such weight as you think it is entitled to, no more, no less...

...with respect to certain general principles of law...(all) are bound by a set of laws which have been adopted in a prescribed manner...the law does not recognize political, religious, moral convictions, or some higher law, as justification for the commission of a crime, no matter how good the motive may be. A person may not select the laws which he is willing to obey and those which he is not willing to obe according to those beliefs.

People who believe that the Vietnam war is illegal or unconstitutional, or morally wrong, have the right to protest in various ways.

But they have no right to protest by violating valid laws. The motive of "civil disobedience" does not confer immunity from prosecution or conviction for the violation of a valid law.

The protestor may be motivated by the highest moral principles. He may be passionately inspired. These are not controlling in the case which is before you for decision.

Just as we expect the government to be bound by all laws, so each individual is bound by all the laws under the Constitution.

You are instructed not to consider international law in determining the guilt or innocence of the defendants. You are to consider whether the defendants committed the offenses set forth in the information which recites three counts of violations of the laws of the State of Wisconsin.

You are not to consider the Vietnam war nor its morality, nor its legality in determining the guilt or innocence of the Defendants to the charges against them.

...The time has come when the great burden of reaching a just, fair and conscientiou decision of this case is to be thrown wholly upon you...you will not be swayed by sympathy, prejudice or passion. You will be very careful...as upright citizens.. render a just and true verdict...

(explanation of various findings that could be made)...

...verdicts must be reached unanimously...

Let your first duty upon retiring to your jury room be the selection of a foreman or forelady to preside over your deliberations. When you have agreed upon your verdict, have it signed and dated by your foreman or forelady, and all of you return with it to this courtroom... (jury retired from courtroom at 4:25 pm)

(defendants are allowed to leave the courtroom while the jury meets)

(at 6:35 pm, the jury returned into the courtroom)

COURT: Ladies and gentlemen of the jury, have you agreed upon a verdict?
MRS. O'DRISCOLL: We have.
COURT: Would the foreman or forelady hand the verdict to the bailiff.
I'll ask the clerk to read the verdicts.
CLERK: We, the jury, find the defendant, Jon Hubert Higginbotham, Jr., guilty of burglary as charged in the information. Signed: Jeanne O'Driscoll, foreman.
We the jury find the defendant, Jon Hubert Higginbotham, Jr., guilty of theft as charged in the information and find the value of the property taken to exceed $100. Signed: Jeanne O'Driscoll.
We the jury find the defendant, Jon Hubert Higginbotham, Jr., guilty of damaging property other than a building of another without his consent of the value of $100 or more by means of fire as charged in the information. Singed, Jeanne O'Driscoll.

(same text repeated for all of the defendants)

COURT: Would you hand the verdicts to the court?
Clerk: Yes.
COURT: At this time...the court will poll the jury...
...Jeanne O'Driscoll, do you find Jon Hubert Higgonbotham, Jr., Alfred Lawrence Janicke, Donald Joseph Cotten, Robert Francis Cunnane, James Hendrickson Forest, Robert Edward Graf, James William Harney, Douglas Ian Marvy, Frederick John Ojile, Antony Joseph Mullaney, Basil Kenelm O'Leary and Lawrence E. Rosebaugh guilty of burglary as charged in the information, theft of property the value of which exceeded $100 as charged in the information, and arson as charged in the information?
MRS. O'DRISCOLL: Yes, Your Honor.

(the same question, with similar responses, is asked of each of the jurors: Dudley Merziak, Kenneth Grages, Lavern Schwister, Donald Stys, Ralph W. Nelson, Margaret Beck, Labertha Sanders, Michael O'Toole, Dominic Gullo, Elmer Brennan and Ruth Groschel)

MR. SAMSON: Please the court, the jury being polled, the state would move for judgments on all of the verdicts of guilty.
COURT: Jon Hubert Higginbotham, Jr., would you rise? Court finds you, Jon Hubert Higginbotham, Jr., guilty of burglary as charged in the information, guilty of theft of prpperty the value of which is in excess of $100 as charged in the information, and guilty of arson as charged in the information, on the verdict of the jury. You may be seated.
Alfred Lawrence Janicke...(text repeated).
FATHER JANICKE: Thank you.
COURT: I believe it is unnecessary for the Court to retain the jury further while these findings are made. Before the jury is excused, the court wishes to commend it for meeting its responsibility in the manner that it did. You have done a courageous job, particularly in the face of a courtroom filled with persons who were partisan to the defense and who at times gave evidence of their feelings. You have kept your heads and done your duty as good citizens. You are excused.
A SPECTATOR: Your Honor, I dissent from that. Could I speak to the court?
COURT: Now, young man, it doesn't make much difference. Everybody dissents about something or other in this life. The fact that you dissent is of no consequenc
A SPECTATOR: You're speaking of us. We have been here two weeks. I would like to speak to it, since the verdicts are in.
COURT: You have been here two weeks, that's correct. I have no comment to make about your being here for two weeks.

A SPECTATOR: I think that in the trial we've seen so far...
COURT: I'm sorry, young man, I have to go ahead.
A SPECTATOR: I challenge all of you to give up your jobs --
COURT: Remove him from the courtroom. (Several guards remove him.)
ANOTHER SPECTATOR: Your Honor, if my brothers are guilty, I am guilty of the same charge.
COURT: Remove him from the courtroom. (He similarly is removed.)
ANOTHER: Your Honor, if they are guilty, I am too. I'm a draft resister from this day forward.
COURT: I must advise you if this continues the court will have to bring you up here and punish you for contempt of court. You must leave the courtroom. I must proceed with the business of the court.
ANOTHER SPECTATOR: If the business of the court is to prosecute men who live and work and are willing to die for freedom -- guilty of the same.
COURT: While this is going on -- SPECTATOR: --we are willing to say we are.
SPECTATOR: (Sister Joanne Malone) I want to thank you, men and women of the jury, for finding Jesus Christ guilty again.
(applause, which quickly grows louder, involving nearly the entire crowded courtroom, and which become rhythmic...)
COURT: Remove that -- did you all applaud?
ALL SPECTATORS: We did.
COURT: Clear the courtroom. Members of the jury, you may go, you are excused.

(they file from the jury box through the defendants, who are now clustered and on their feet between the judge's bench and the spectator bar; the jury is silent; several of the defendants speak briefly to the jurors as they pass, but there is no response; Jeanne O'Driscoll is first in line, in her Navy jumper blouse with a miniature First Class Petty Officer's patch on the sleeves)

Just a moment. (applause fades some.) Will all of you face me, please. I don't like to punish you for contempt. You are young, very young. I understand your sympathies. I don't want to send you to jail. If you don't leave peacefully now, I will have to do that. You understand.

(some of the spectators have either come forward to stand with the defendants or been brought by guards...for description of the scene, which isn't ad quately described within the court transcript, see such articles as Linda Forest's in Commonweal or that contained in The Milwaukee Kaleidoscope -- which photographed this part of the trial; people were largely dragged or carried from the coutroom, refusing to leave voluntarily. Some were kicked or hit; somewhere in the early part of the process Judge Larson, standing, said something like, "My God, we've got to have more sheriffs, this is getting out of control"; all that appears in the transcript of this entire process, at least ten minutes in duration, is the parenthetical note: "Whereupon, the courtroom was cleared of spectator")

COURT: Donald Joseph Cotton, on the verdict of the jury, the court finds you guilty
(the earlier formula of formal finding of guilt is reapeated for each of the defendants; there responses, for those who did verbally respond and whose response was noted in the record, are as follows:
JIM FOREST: Your Honor, to be found guilty under the rules you worship dearly is an honor and a privilege.
TONY MULLANEY: Your Honor, I'd just like to say I pity the nation and fear what is coming. (note: could have been, "I pity the nation that fears its young"; check with Tony)

JIM HARNEY: Judge, you just lost your authority, whether you know it or not.

COURT: Father Harney, please. Whether or not represented by counsel, in this case there were occasions during the trial when several defendants acted in such a contemptuous manner that for the court to overlook their conduct may be considered license to others who observed them and lessen respect for the orderly administration of justice. The educational background of those defendants who will now be punished for criminal contempt indicated to this court they knew better and could and should have exercised necessary controls during the trial.

JIM HARNEY: I say amen to that, Judge; they certainly did know better.

COURT: Mr. Ojile, on your own admission, you had great difficulty controlling yourself throughout the trial. On Friday you made a motion in which you moved for dismissal of all three counts on the grounds of incompetency, among others, of this court. You asked the court to pass on its own competency. The court considers this motion to have been frivilous, to have been insolent, disrespectful, and it did impair the respect due to the authority of this court. I want you to know that this is not a personal matter, for were it such, I could have found you guilty at the time, but I wished to think the matter over, and I feel I must make this finding. Therefore, the court finds you, Frederick John Ojile, guilty of contempt. Now, it is a simple matter --

MRS. OJILE: I plead guilty to contempt myself. Charge me also, please, with my husband.

COURT: It's simple for a judge to sentence you to a term in the county jail for this, but what I shall do is give you an alternative. It is the sentence of this court that you pay a fine of $50 or be confined to the county jail for a period of ten days.

AL JANICKE: Am I in contempt on anything?

COURT: Please,Father.

AL: Because, if I am no, I will take Fred's place since he is a husband.

COURT: I'm sorry.

AL: I am not sorry.

COURT: Father, don't make this more difficult. Would you wait until I am completed

AL: Am I on the contempt --

COURT: You are not. Don't work that way, Father.
Douglas Ian Marvy...will you stand? Douglas Ian Marvy...the Court observes that throughout the trial when court was opened and the bailiff asked that everybody rise, you among others refused to do so.

JIM HARNEY: That's right. We did refuse to do so. Hope we make it quite evident to you, Judge, if you don't learn now, I don't know when you ever will.

COURT: Court is still in session, Father Harney.

JIM: I didn't know that. I never though this was any court worthy of the name. I hope that was contempt.

COURT: You make it difficult for me not to find you guilty of contempt.
(a couple of the guys are trying to cool Jim)

JIM: Is that right? I'm sorry.

COURT: ...One at a time. Douglas Ian Marvy, you, in a loud voice, told the court that the judge of this court should resign. One time you referred to the court, all while the court was in session, as Grandfather Larson. These things impair the respect due the Court's authority. In addition to this...you failed to rise, but I shall not consider that in making this finding. You were insolent on many occasions throughout the trial. The court finds you guilty of contempt and sentences you to pay a fine of $50. In the event this fine is not paid, you will be confined to the county jail for ten days.

DOUG: There is the matter of a federal trial on June 9th. Since I'm indigent, I certainly can't pay the $50. I find that jail term preceding trial date

a denial of due process. It will be impossible for some of us in jail and some of us out of jail --

COURT: Court will see you are in federal court on time.

DOUG: Not a matter of being in court, a matter of preparing a trial. We have to all meet together since we are being tried together. To have some in jail, and some out --

COURT: I'm giving you an opportunity to pay the $50.

DOUG: I have already been declared indigent by this court. That would make it impossible to prepare trial. I find that is a clear denial of my rights. You are telling me to go to court without having prepared my defense.

COURT: Mr. Marvy, you should have thought of that during the time --

JIM HARNEY: Why didn't you do it, why didn't you declare it to him at the time he said it; were you afraid or what?

COURT: Father Harney.

JIM: Good luck to you.

COURT: I hereby sentence you to a fine of $50 or --

JIM: Keep quiet.

COURT: I find you guilty of contempt --

JIM: Is that right? Good luck to you.

COURT: And I hereby give you an opportunity to pay a fine of $50 which I hereby assess against you. In the event the fine isn't paid, you will serve ten days the county jail.

(while this has been going on there have been renewed efforts by several of the defendants to calm Jim)

JIM: Thank you.

COURT: Jon Hubert Higginbotham, Jr., one one occasion during the trial you uttered the name of the son of God in a loud voice.

JIM HARNEY: Is that wrong?

COURT: Father Harney, do you want to be found guilty of contempt once more?

JIM: Is that wrong?

COURT: You also called the judge of this court, in a loud voice, "despicable". The court does not consider your contempt as serious as the others. Court finds you guilty of contempt, sentences you to pay a fine of $25 or five days in the county jail.

JON: Your Honor, if --

COURT: Now comes the matter of bond. What is it?

JON: Do we have to pay this immediately or do we have some time on it?

COURT: Court will consider this matter tomorrow, whether they can have time. Now comes the matter of their release pending sentencing. The Court hereby orders the Milwaukee County Department of Adult Probation and the Wisconsin Department of Health and Social Services to make a pre-sentence investigation and report to this court. These cases will be disposed of on Friday afternoon, June 6th, at 2 pm. You are all ordered to be here at that time.

Now, on the matter of bail, there is usually a requirement that the bail bond company extend its coverage of these defendants until disposition of the case, after there's been a finding of guilty.

MR. SAMSON: If it please the court, the bondsman is in the court at this time.

...

COURT: ...will your company continue to cover the defendants that are freed on bon

BONDSMAN: Yes, Your Honor...

LARRY ROSEBAUGH: I would like to be dropped, Your Honor. I don't want to be out on bail.

COURT: You make your arrangements with your bonding company. Tell them to take yo off, Father, but I am releasing you because you are still covered and he said so on the record.

COURT: ...anything further at this time, Mr. District Attorney?
MR. SAMSON: Not at this time, Your Honor.
COURT: Father?
AL JANICKE: Yes. What about what I said in terms of myself as far as Fred and as far as Doug here are concerned? They 're married people. I can serve that time.
COURT: I'm sorry, Father, but you can't do that.
AL: Why?
COURT: I've given --
AL: If you want someone to serve time because of this --
COURT: Father, this is strain enough without having to go over a matter which you cannot do.
AL: Well, maybe we can make a precedent.
MR. SAMSON: May I? The state has not interjected itself in the matter of contempt. State feels that this is a matter between the court and the defendants. As an officer of the court, since you did find them and sentence them, in the alternative, the court might consider a 24-hour stay. They probably could raise the money.
COURT: Court will -- are you asking I do that?
MR. SAMSON: Yes.
COURT: Court grants their request. They are each granted 24-hours within which
9 to raise the money.
AL: If they can't, can I take their place?
COURT: Oh, Father, please. I've answered you on that. Advise the defendants where to report.
CLERK: (says to be at the Safety Building at 9 am the next morning at the Adult Probation Department in order for the pre-sentence investigation to begin)

(proceedings adjourned to June 6th, 1969...)

SENTENCING

COURT: Just one moment. The Court will come to order....
Mr. Forest, you wished to speak to the Court?

JIM FOREST: Yes. I just wanted to ask...if we might be informed in some manner...how it is some people were admitted to the audience and others were not. May be perfectly legitimate. I would like to know.

COURT: In view of the disorder that occurred at the conclusion of the trial, the sheriff informed the judge of this court and he deemed it advisable that a number of persons representing his department be permitted to sit in the spectator area, and the court felt there was a great precedent for expecting another uprising and felt that this was a necessity.

JIM FOREST: So these, the people that were seated prior to the spectators outside being permitted an opportunity to sit here, are all from the sheriff's department?

COURT: No...there are others who were permitted in. You have to talk to the sheriff about that.

JIM FOREST: I asked, but the sheriff refused to see me.

COURT: Then you can see the sheriff later on this. This is not a matter of great moment, Mr. Forest. Who witnesses the trial is not what the court is concerned about. Court is concerned about justice being done.

BOB GRAF: Judge, some of those people standing outside have come from very long distances to be with us.

COURT:, Are they members of your family?

BOB GRAF: We're all brothers and sisters in Christ. They've come from very long distances to be here today, they've been standing outside that door for hours waiting to get in, and then they are not allowed in because people have been let in back doors to take up the seats.

COURT: Mr. Graf, I cannot --

BOB GRAF: Are you going to pay for their expenses?

COURT: I cannot answer for the sheriff. If some of you have relatives in a different sense than being brothers in Christ -- I mean by...consanguinity established by law...I will ask the sheriff to admit that person...

BOB CUNNANE: We would like to see the pre-sentence reports.

COURT: You may not see the pre-sentence reports at this time.

BOB GRAF: Why is that?

COURT: It's the ruling of the Court.

JIM HARNEY: Why is that?

COURT: No explanation more than that will be given at this time.

AL JANICKE: At what time may we see that?

COURT: Court will rule on that later on.

DOUG MARVY: Very likely there is some false material contained in those reports. (Before commenting, I would like to first read over what has been said about me.)

COURT: Well, Mr. Marvy, the Court is assessing a penalty in accordance with what it believes is fair. The probation department did not make a finding of guilty, the jury did.

JIM FOREST: All we're asking for, Your Honor, is opportunity to make any correction in fact which might be necessary and thereby might influence the decision you make in regard to the sentence. Is any opportunity going to be afforded to us, Your Honor, for us to make any correction before you pass sentence...?

BOB GRAF: I was informed by my probation officer that I had the right to read his recommendation before I was sentenced.

COURT: You will be given opportunity to see these reports, and if you believe something contained therein was unfair or that the judge was influenced, you can do this if you appeal to the Supreme Court, and it will be made a part of your record....The Court believes the information contained in these reports does not reflect unfairly on any of you.

(Jon Higginbotham moves that, the sentencing being a "critical stage" of the judgment process, he has a right at this time to secure counsel; the Court is not pleased with the motion but, precedent and the state in unity with the request, it is granted)

(Motions made: for a new trial due to 1) court's ruling that the privilege statute, 939.45 etc, did not apply in this case 2) test of value ruling made by the court 3) prejudicial statements re defendants and elements of the case and evidence by the court in the presence of the jury 4) certain evidence not being admitted that was relevant to the defense 5) inability to have in our possession daily transcripts throughout the trial, each of us and 6) other reasons that will be itemized on appeal)

(prolonged discussion re the transcript availability issue)

(inquiry whether a transcript would be available to each of us for appeal purposes)

COURT: The law will permit you a transcript...if you are indigent.

JIM FOREST: You already declared us indigent.

COURT: I know, but since I declared you indigent, I find several of you -- it seems the indigence suddenly disappeared -- following day the fines were paid.

FRED OJILE: I didn't pay my fine, someone else paid for me.

JIM FOREST: Am I to understand, Your Honor, when you levied those

fines against us, you assumed we were too poor to pay the fines; in fact, though a fine was offered, you expected, because of our poverty, we would in fact serve our sentence?

COURT: My expectation (regarded) this large fund from which you have been bringing people from Boston, Washington, New York and other places would be available for the fines also; that was my assumption.

JIM FOREST: You just addressed your comments to our indigency.

COURT: I am addressing my comments to you in reply to your remarks.

JIM FOREST: I think it is apparent on the face of what you said as I heard it, you believe in fact we are not indigent.

COURT: Not at all, Mr. Forest. This is diametrically opposed to the facts. I assessed a fine against, not you, but...others because I did not want to see you or the others, I should say, incarcerated for any period of time if it could be avoided...your conclusions are erroneous.

.....

MR SAMSON: (After saying that transcripts will be available to each of the 12 for appeal purposes if the Supreme Court determines indigency...) With regard to the sentencing, Your Honor, the State has no comment.

....

COURT: Court wishes to make this statement; it is the court's opinion because of the circumstances in these cases, the nature of the offenses, their seriousness, the need to provide a deterent for the defendants as well as to others who may be inclined to act similarly, that a period of incarceration be imposed --

FRED OJILE: Don't we have rights to pre-sentence remarks?...
COURT: Mr. Ojile, did you want to make a statement?
FRED: Surely, surely.

....

COURT: You may...

....

FRED: ...Ladies and gentlemen: After Mr. Larson ordered --
COURT: Just a moment. Are you addressing your remarks to the Court...or are you putting on a theatrical performance?
FRED: Well, I don't know what your judgment of that is, Mr. Larson. I intend to speak to the Court.
COURT: Face the Court.
FRED: I am facing the Court.
COURT: You are now, but a moment ago you were speaking to the audience.
FRED: After Mr. Larson ordered my verdict, he told me I was in criminal contempt of court for making motion for dismissal on the basis of incompetence of the court and prosecuting attorneys. He said I was being frivilous. I would like to talk to you a few minutes about what I understood incompetence to mean.

COURT: The court is not concerned...Let's not go into something extraneous.

.....

FRED: The incompetence of the so-called decision makers in our country is at the root of the ironic irresponsibility concerning the death of America and much of the world that this country touches. First of all, I don't suggest it means stupidity. Only by cunning, strategy and sophisticated manipulation do certain institutions and their leaders possess such power. Secondly, I don't suggest this incompetence implies conscious malice. These leaders may be fine people to play cards with. And daily they verbalize in the most eloquest language. They find outstandingly conguous American international interests and religious ideals.

I would like to give five examples of incompetent decision makers, that is, people who possess power but who have no competence to wield such power.

Firstly, draft board members are incompetent, not because the wrong men are draft board members, but because no man has the competence to make the decision for another whether or not he is going to kill.

(Court questions the relevancy of these remarks)

Secondly, city planners are incompetent. No person or group of persons have competence to say for the city that pollution of air and water can continue and become worse because corporations and factories will suffer if there is a real effort to clear the elements of obnoxious waste. No person or group of persons have the competence to decide for the whole community within a city that they are to be renewed -- that their homes are to be destroyed and they are to be relocated in strange and "more livable" places than they were in before.

Thirdly, the boards of directors of the universities are incompetent. No person or group of persons whose primary interests and capabilities are of the corporate-military structure, no such men have the right or the competence to make decisions concerning curriculum, discipline, requirements and goals for the students of universities.

Fourtly, the joint chiefs of staff and all other leaders of military institutions are incompetent. No person or group of persons has the competence or the right to make decisions concernin military involvement or expenditures of any sort when all that is ever asked of anyone is how to win, how to be involved, and not onc is the question asked whether or not any involvement at all should take place, nor do they allow the question of whether or not to be posed to the people of this country who pay the taxes, the bodies and the spirits for such military involvement and expenditure.

And fifthly, the courts are incompetent. No person or group of persons have the competence to squeeze out of a person his years of life, searching, pain, conviction and joy, and then decide that this almost dead corpse, the defendant, should be free, locked up, or put to death, on the basis of his ability to defend himself against the weapons of absolute laws extracted from a world of incredible complexity. / I would suggest that this incompetenc y of the so-called decision makers is no mistake

Firstly, the draft is not just a mistake that a free society has made. The draft is an effective educational and operational tool which erodes, at prime age, man's ability to make important decisions with his own mind and with his own sense of responsibility. The draft is the most effective tool used by the

state to decide which civilian or military vocation a young man will fill because of his fear.

Secondly, cities haven't accidently become the most unlivable places on earth; they are the inevitable outcome of decision making based on haste, efficiency of production and the sacred principle of the profit motive, which is no more than private gain and common loss.

Thirdly, it is no mistake that universities and colleges in this country are quickly becoming factories in which the students are being used as raw materials to be formed into resources to fit a prefabricated society. For what else could happen when educatoms and those to be educated are controlled by directors and regents whose only competence lies in corporate management and successful stability.

(Court again questions relevancy of these remarks to the sentencing ...are these reasons why you should not be sentenced today...?

FRED: Oh, yes, definitely. But especially clear is the last.

For what board of directors, for what director of a board, for what regent, is there any difference between training and learn any difference between creativity and a thousand persons in a classroom.

Fourthly, no accident has caused the American military to wiel more power than any other agency in the world and at the same time allow so little control to those whose bodies, spirits and money continue its growth. For what people with common sense would allow a military to automatically produce enough nuclear power to blow up the world three times over? Who would decide that America should have 6,000 foreign bases, or permit millions of Americans and Vietnamese to be killed and maimed in the most unpopular war we have ever experienced? The military could not survive at its present strength, much less grow, if anyone but the corporate-military leaders had the power to make policy decisions. In the name of security, this world could very well be obliterated; and the decision would be made by a handful of people.

Fifthly, it is no mere accident that the court's been unable to make decisions concerning such things as the legality of the war or the constitutionality of the draft or, on much smaller scale, taking the full consideration, the whole person being tried in any criminal case. For what would happen if courts found individuals not guilty of theft because his family did not have enough clothes, not guilty of assault because his boss called him a nigger, not guilty of burglary because the loan office screwed his family for 15 years, not guilty of refusing induction or refusing to go to Vietnam because the defendant excercised his right to decide whether or not he would kill. Yes, and even not guilty of arson, burglary and theft because we are not in complicity with the genocide of this nation.

If such happened, stability could not stand for such unpredictable activity, for the courts would no longer be making decisions which measured with the decisions of other major institutions and their decision-makers.

And so we, Mr. Larson, the prosecuting attorneys and all of us present, find ourselves in a state whose ideals are the highest,

we all claim allegiance to them; but whose institutions and "decision-makers" are so incompetent that, if we ask them to just reconsider what they are doing, the institutions and their "decision-makers" respond -- with a sense of unabashed dignity -- and say, "I must do what I am doing for I am bound not to do otherwise."

Thus the great irony of all statism is coming to an end. Those who make life and death decisions for you and me without our consent have neither the competence to do or not to do what they are doing.

So it comes down to the very last of all questions: What can I do to steal back my own life and put an end to this madness? And, frankly, I don't know. The least I can do, I have decided, is to risk as much and struggle as hard as my Vietnamese brothers in the struggle against incompetence and against this insanity -- these brothers who aren't even responsible for this murderous nation which is my home. On the basis of incompetence, I again ask this court, I ask the prosecuting attorneys, to make a decision which they consider themselves bound not to make.

COURT: Mr. Ojile, have you made your full statement?

FRED: Yes.

COURT: Then stay here, Mr. Ojile, just remain right there.... The Court has carefully considered several alternatives and believes the penalty about to be imposed will be in the best interest of the defendants and each of them and will best serve society. This is a very difficult duty, a hard one for this Court to undertake, but nevertheless one which is incumbent upon it.

Frederick John Ojile, for the crime of larceny to property valued in excess of $100 contrary to Sections 943.21 (a) and (3)(b) and 939.05 of the statutes, the court sentences you to two years confinement in the Wisconsin State Prison; for the offense of arson as recited in the information, the court sentences you to two years in the Wisconsin State Prison, the sentences to be served concurrently; for the offense of burglary, which is the first count of the information, the court sentences you to four years in Wisconsin State prisons, but in accordance with section 57.01 (1) the court stays execution of the sentence for burglary of four years just imposed and places you on probation, the period of probation to commence after you have served the two-year concurrent terms for the charges on which you have been sentenced.

(discussion of federal trial, which is scheduled to begin in three days; judge says he has not been officially informed of it; consequently, no stay of execution will be granted)

...take him away.

....

(further argument re the need to have legal resources etc over weekend to prepare for federal trial; no interest in these problems on the court's part; bail motion rejected

COURT: ...Mr. Cotton, do you have anything to say concerning why you should not be sentenced at this time?

MR. COTTON: I feel that there is very little that could be -- that I could say that would be heard by this Court.
COURT: Is that all you want to say?
DON: That's all.

(Same sentence in all details)

COURT: Father Alfred Lawtence Janicke...do you have anything to say why a sentence should not be imposed?
AL: Yes, Judge, I just have a few very brief remarks, and I would like to do it in this way. I don't consider myself a burglar nor an arsonist nor a thief, no more than I would consider someone who would come in to this courtroom, break into this courtroom, a burglar if he came in here because he thought someone was strangling you. I would consider it very inopportune not to have someone come in and be of assistance. It's beyond belief that in the United States we are strangling our youth. And when someone comes in to break down the door to say, "Don't strangle," the verdict is guilty of burglary, arson and theft. It's on that basis that I say, we have to go beyond what the law says, not against it, but beyond it, and I would ask you as a judge, and as Mr. Larson, a person, to join the nonviolent movement away from what's happening in the strangling of our nation and to join us as we stand for nonviolence as opposed to violence.
COURT: Have you made your statement?
AL: I have made it, and I would hope that you have heard it.
COURT: (Repetition of sentence)

COURT: Father Mullaney, you have been a true gentleman from the beginning of the trial to the end.
TONY: But also one of my group among my brothers; I would like to be known as that too, Your Honor.
COURT: Do you wish to make a statement as to why you shouldn't be sentenced?
(Judge Larson is choked up and has difficulty speaking or being heard)
TONY: No, I do not.
THE COURT: On the second count in the information, that of
(he begins to weep)
theft of property
(covers face with hand)
over the value of $100 --
(not able to continue)
DON COTTON: Your Honor, would it be convenient to take recess now?
COURT: No, finish this now --
(trying to regain composure) -- Court sentences you to two years in the State Prisons. (with difficulty he completes the same sentencing imposed on the others)

COURT: Robert Edward Graf...(he imposes sentence)....Im sorry, Mr. Graf, I didn't give you an opportunity to make a statement.
BOB GRAF: I have nothing to say now.
COURT: Would you have preferred to say something?
BOB: No.

COURT: Basil Kenelm O'Leary, whose conduct has been exemplary throughout the trial, do you wish to make a statement?
BASIL: Yes, I do, Your Honor.
COURT: Would you step over here, Mr. O'Leary.
BASIL: On this strange, ironic occasion of being convicted by the State of Wisconsin for burning pieces of paper of undetermined vale and of

doubtful legal ownership, I think one of the memorable statements of the prosecution, that of prosecutor Jackson, is, "They did and they knew they did it"; it is worth recalling. The prosecution also was aware and they said that they proved that our acts were not done out of negligence or ignorance; even going beyond that, they said our acts were not done of greed or malice.

Another irony: I think I am somewhat grateful to this court for the opportunity of having had a chance to say to say why we acted -- beyond it not being greedy or malicious -- even tough many of our attempts have been interrupted or rather limited and sometimes misrepresented.

I would like to think of the court as the institution of society for mediating the conflicts and ills of the society. This court seems to have limited itself to the symptons of sickness instead of looking for the cause of illness; for example, fever, which is not but a symptom of infection.

My only objection is that there is a radical illness in our society - and that a symptom of this is that, while there certainly is responsible opinion that the present war is illegal and immoral, the Supreme Court will not consider legal motions moving up from the lower courts.

I would like to consider our act as one of political drama, one in which we would have communicated hope. I think it is hopeful, the fact that we have remained here, brought ourselves to the court and hope to keep this issue in the minds of the American people.

Our kind of activity is certainly morally justified in terms of conscience. I don't think it is legally justified. I do think, however, that within the limited context of the legal system, there is provision for the kind of thing we have attempted to do; and if my liberty is curtailed, I think I am proud, at least, that I have come down inside of broadness rather than narrowness, of constitutional provisions rather than parochial legalism.

And, in conclusion, I suppose I would say that our act was not one of frustration or anger or resentment. At best, I can say it was addressed to my fellow citizens, citizens of the United States, citizens of the world, that this question, the question of the legality of the war has to be kept before our minds. Our act might be a small gesture in that respect. At least from a personal standpoint, my act was a gesture of announcing I am not an accomplice in a crime against humanity.

Thank you.

(Sentenced pronounced; the same)

COURT: ...Mr. Forest, do you have a statement...?

JIM FOREST: I've thought of a number of things, Your Honor. I'd just as soon not try to influence your opinion on my sentence. I find at this point in the trial more than any other, I wish that I were able to talk to you as if we were alone. Again, not to influence your opinion but to try to state, in perhaps a way that I couldn't state when I am in front of a lot of people, that I most deeply hope that after this experience is over for you, you will be able to overcome and forgive us some of our transgressions against you in the course of this trial, for our own anger. I should speak for myself --

COURT: Well, Mr. Forest, the Court understands all the defendants were under extreme pressure, being tried for your liberty, being subjected to a possible penalty of 18 years is no small thing; and if a person at times should not be completely in accord with courtroom decorum or with respect for the court, while this court does not believe it proper, yet I think

you have observed this court has considered that throughout the trial.

JIM FOREST: I just hope that you can do that, and that things have happened in this courtroom which will have a meaning for you, as they have for us, that transcends the emotions that are generated. That's really all I have to say, Mr. Larson.

(Sentence imposed without further comment; permission given, at defendant's request, to have various books while in jail in order to prepare for federal trial)

COURT: Douglas Ian Marvy.
DOUG: You haven't been interested in listening all along, there is no reason to say anything now.

(discussion of whether the court can can stay sentence to an indefinite period .... court will not respond to inquiries other than to refer defendant to counsel; Doug charges that the court's ruling on motions having to do with preparation of defense for the federal trial Monday is "clear denial of constitutional right to adequate counsel"...)

COURT: Father Lawrence Edward Rosebaugh...do you have any statement to make?
LARRY: I don't think so.
COURT: Do you have any motions to make?
LARRY: I got a sack of books that might help me for the federal trial, so I'd like to take them along. (Court: So ordered.)

(Note: Despite Court's ruling, all books were removed by the sheriff's department with the comment that "Judge Larson doesn't run this place.'

(Sentence imposed.)

COURT: Father Robert Francis Cunnane, also a gentleman.
BOB: I guess I just -- I didn't really plan to say anything, but I just would like to say, although a lot of young people are yelling out there,

(chanting in the hallways has become very loud; it is also possible to hear what sound like arrests and bullhorn orders; there are bright lights visible out there; flas bulbs going off; some of the reporters leave the jury box of the tiny courtroom--they've all been given the jury box as their section...)

almost seems a lot of times the support comes from young people, also comes from a lot of people I know in society, I know who are not young anymore; and in conversations, also, even judges are split on this matter. In my conversations with three judges recently, one a famous federal judge (note: Judge Tuttle), others local judges, it seems that in a certain sense they see what I did, and why I did it; a state judge in Massachusetts the other evening, in talking to a bunch of poor, young people, used us as an example of controlled nonviolence -- far from putting us down, he used us as an example for those people. Now, as we go to jail, I feel rather sad. I don't know what this judge is going to sat to these young people now or again. I don't know what else to say.

COURT: This is a heavy duty, Father, as it is in all cases, but I think the record may show that I have received a number of letters, stirring letters, in which the writers pleaed in behalf of you. I have received no such letters in volume for any other defendant, but I have for you. However, the Court cannot be influenced by these letters, Father. The court must hew the line and administer justice as it feels it must be administered...(Sentence is imposed.)
BOB: Thank you.

COURT: Father James William Harney...do you wish to make a statement...?

JIM: Yes, I do, Your Honor. I spent long hours last night preparing something on paper that I was going to say, but I don't believe I can say what I wrote last night. I can say this , though, that while this proceeding was taking place, the court heard a number of young people outside singing "We Shall Overcome", singing to the fact they were alive, and being permitted to live in this moment of history, confronting injustice.

The Court mentioned earlier that the sentenced being leveled on the men here today are going to be sentences that will deter other people from moving for the cause of man. I beg to differ. People will still move, in spite of the fact that this court has been blind to the human tragedy taking place in this world, in spite of the fact that people are being exterminated. These are people who listen to the spirit of the gospel, though it has been convicted by this court; they will listen to the spirit of Pope John, which also has condemned this court as irrelevant which is probably the most blasphempus remark anybody could apply to what we did.

Yes, people will continue to resist, the kind of people that this court has thrown out, and they will move forward into a future that is worthy of man and look forward to a law that will encompass the poor and that will be flexible and fit the needs of a revolutionary world. This court isn't going to stop that process. It will continue.

In a sense I find it an honor to be condemned by this Court, given its will and its view of the law and its view of man.

I indeed find it an honor to be found guilty.

COURT: Anything more?

JIM: No. Thank you very much for the opportunity to say it. Please don't get the idea that I have bad feelings against you and prosecution, I don't

COURT: Well, Father Harney --

JIM: And it is precisely because of that I had to say this.

COURT: There were times during the trial when you were particularly, I would say, contemptuous of the court.

JIM: That might be the case.

COURT: I don't know whether you consider that, Father, to be the example which a man of the cloth should set for others. There were many young people in the courtroom who heard you. You may have your own opinion about the conduct of a priest in the courtroom. The Court has an opinion about this, too.

JIM: Well, I feel that, you know, the contempt of court thrust upon the poor in the world, the court's declaration that 33,000 dead Americans is irrelevant, deserved that bit of rage that I thrust upon the court.

COURT: Is that all you have to say?

JIM: Sure.

(Sentence imposed.)

JIM: Thank you.

(Jon Higginbotham told to be in court, instead of Saturday as originally planned, Monday at 8:00 a.m., an hour before the federal trial is scheduled to begin)

(the bondsman, Gerald A. Kahn, vice president of the United Bonding Insurance Company, is discharged of his obligation, except in the case of Jon, in which the bond is continued; Jon later received the same sentence).

(end of transcript)