

5-22-72

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

WILLIAM D. KELLER  
United States Attorney  
DAVID R. NISSEN  
Special Assistant U.S. Attorney  
1300 U.S. Court House  
312 North Spring Street  
Los Angeles, California 90012  
Telephone: 698-3338  
  
Attorneys for Plaintiff  
United States of America

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
ANTHONY JOSEPH BUSO, JR., et al.,  
  
Defendants.

No. 9373-1918-CD  
GOVERNMENT'S MOTION RE  
JURY SELECTION AND  
INSTRUCTIONS TO COUNSEL

Based upon the attached memorandum of points and authorities, plaintiff, United States of America, hereby files requests for:

- (1) Reading or summarization of the indictment to the jury panel;
- (2) Instructions to the jury panel;
- (3) Voir dire questions for the jury panel;
- (4) Instructions to counsel; and
- (5) Allowing the Government an equal number of peremptory challenges.

Respectfully submitted,  
  
WILLIAM D. KELLER  
United States Attorney

for DAVID R. NISSEN  
DAVID R. NISSEN  
MARION P. REDSE  
RICHARD J. BARRY  
  
Special Assistant U.S. Attorneys  
  
Attorneys for Plaintiff  
United States of America

LEN:fv

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

MEMORANDUM OF POINTS AND AUTHORITIES

Since defendants' offenses were discovered, they have engaged in an extensive campaign to persuade the public that they and their actions should be viewed with sympathy and favor and that the Government's prosecution of them should be loathed. Defendants Russo and Ellsberg have been assisted in this endeavor by outpourings from a substantial segment of the communications media which almost uniformly favor the defendants and disparage the Government.

The defendants have held, made, or attended numerous press conferences, interviews, television appearances, and public speeches. They and their counsel have been objects of adoration in many articles in nationally circulated publications. The following is a partial but representative list of such appearances and publications:

- 6-23-71 Ellsberg TV interview with Walter Cronkite.
- 6-24-71 Ellsberg TV interview with Walter Cronkite.
- 6-28-71 Ellsberg press conferences at U.S.  
Courthouse, Boston.
- 7-1-71 Ellsberg press conference, Cambridge, Mass.
- 7-2-71 Ellsberg appearance on TV "Today Show," Boston.
- 7-13-71 Ellsberg appearance on TV "Dick Cavett  
Show", New York.
- 7-15-71 Ellsberg press conference at U.S.  
Courthouse, Boston.
- 8-4-71 Ellsberg press conference, Cambridge, Mass.
- 8-5-71 Ellsberg interview by Boston Globe.
- 8-12-71 Ellsberg speech to Southern Christian  
Leadership Conference National Convention,  
New Orleans.
- 8-14-71 Ellsberg speech to SCLC Operation Bread-  
basket, Chicago.

- 1
- 2 8-16-71 Ellsberg press conference, U.S.  
3 Courthouse, Los Angeles.
- 4 8-18-71 Ellsberg appearance on TV Ralph Storey's  
5 A.M. Show, KABC-TV, Los Angeles.
- 6 8-18-71 Ellsberg TV appearance with Al Wiman,  
7 Channel 7, Los Angeles.
- 8 8-19-71 Ellsberg TV appearance with Al Wiman,  
9 KABC-TV, Los Angeles.
- 10 8-20-71 Ellsberg speech to National Students  
11 Association, Ft. Collins, Colorado.
- 12 9-2-71 Ellsberg appearance on TV, BBC "Late Night  
13 Line-Up" show.
- 14 9-13-71 Ellsberg speech at New School for Social  
15 Research, New York.
- 16 9-23-71 Ellsberg speech to Federal Employees for  
17 Peace, Washington, D. C.
- 18 10-1-71 Ellsberg press conference, U.S. Courthouse,  
19 Los Angeles.
- 20 10-1-71 Ellsberg TV appearance, Chicago.
- 21 10-1-71 Ellsberg speech to Business Executives  
22 Move for Peace, Chicago.
- 23 10-2-71 Ellsberg appearance on TV Ruppert Show,  
24 Chicago.
- 25 10-5-71 Ellsberg interview published in Look  
26 Magazine.
- 27 10-13-71 Ellsberg speech to Peace Action Coalition,  
28 Cambridge, Mass.
- 29 10-23-71 Ellsberg speech to Associated Press,  
30 Philadelphia, Pa.
- 31 10-29-71 Ellsberg speech at St. Joseph's College,  
32 Philadelphia, Pa.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

- 10-22-71 Ellsberg speech to Harvard class reunion,  
Cambridge, Mass.
- 10-25-71 Ellsberg speech at Columbia University,  
New York.
- 11-6-71 Ellsberg speech at Boston Common, Boston.
- 11-11-71 Ellsberg press conference, Los Angeles.
- 11-12-71 Ellsberg speech at Sports Arena, Los Angeles.
- 11-13-71 Ellsberg TV appearance, KNBC-TV, Los Angeles.
- 11-13-71 Ellsberg interview published in Saturday  
Review.
- 11-17-71 Ellsberg speech at Harvard University,  
Cambridge, Mass.
- 12-10-71 Ellsberg speech to National Emergency Civil  
Liberties Committee, New York City.
- 12-12-71 Ellsberg interviews published in New York  
Times Magazine.
- 12-17-71 Ellsberg speech to Atlanta Press Club.
- 12-17-71 Ellsberg speaks at Institute of Southern  
Studies, Atlanta.
- 12-17-71 Ellsberg speech to Georgia ACLU, Atlanta.
- 12-29-71 Ellsberg TV appearance "For Women Today,"  
Boston.
- 12-30-71 Ellsberg press conference at office of  
Charles Goodell, New York.
- 1-4-72 Ellsberg press conference at U.S. Courthouse,  
Los Angeles.
- 1-7-72 Ellsberg speech at Stanford University,  
Palo Alto, California.
- 1-30-72 Ellsberg speech at Great Neck High School,  
New Jersey.
- Feb. 1972 Ellsberg interview published in Harper's.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

8-4-71 Russo press conference at U.S. Courthouse,  
Los Angeles.

8-16-71 Russo press conference at U.S. Courthouse,  
Los Angeles.

8-18-71 Russo's lawyers' remarks published,  
Los Angeles.

9-10-71 Russo interview by Los Angeles Free Press  
published.

10-1-71 Russo press conference, U.S. Courthouse,  
Los Angeles.

10-1-71 Russo speech at DEM gathering, Chicago.

10-2-71 Russo TV appearance on Kuppinet Show, Chicago.

10-18-71 Russo press conference, U.S. Courthouse,  
Los Angeles.

12-30-71 Russo press conference, U.S. Courthouse,  
Los Angeles.

1-24-72 Russo radio interview, Los Angeles.

3-22-72 Russo press conference at Rand Corporation,  
Santa Monica, California.

March 1972 Russo interview published in Ramparts  
magazine.

4-8-72 Russo speech at First Unitarian Church,  
San Francisco.

4-8-72 Russo speech from sound truck, Palo Alto.

4-21-72 Russo speech at UCLA.

Public remarks by either defendant from any location are regularly disseminated nationwide by the communications media, and comments by their supporters which favor them or criticize the prosecution receive similar distribution. Defendants have thus been able to influence the attitudes of the public from which the jurors who will try the case must be chosen. The public has been

1  
2 presented with a heavily biased and misleading picture of what the  
3 prosecution of defendants Russo and Ellsberg involves. The  
4 attached Appendix contains a small portion of the published comments  
5 which have served as vehicles for this distortion. These create,  
6 among others, the false impressions that the case involves or  
7 relates to:

8 1. Newspaper publication of the stolen documents in the  
9 summer of 1971, freedom of the press, and the public's right to  
10 know;

11 2. Civil suits to enjoin newspaper publication in 1971,  
12 Government censorship and secrecy;

13 3. The morality, course and conduct of U. S. Military  
14 involvement in Vietnam;

15 4. Congress' right to, and demand for, the documents and  
16 the Executive's refusal to furnish them;

17 5. Abuses in the classification system, and Government  
18 declassification and publication of the documents after they were  
19 "leaked."

20 6. Discriminatory prosecution, and the misuse of inapplicable  
21 statutes;

22 7. "Leaked" disclosures of classified documents by other  
23 persons;

24 8. Defendants' motives, purposes and goals; and

25 9. Government motives and alleged investigative abuses.

26  
27 The published comments contained in the Appendix portray the  
28 defendants as: champions of a free press and a public and congress-  
29 sional "right to know"; supporters of the Constitution; moral giants  
30 who performed acts of conscience at great personal risk and sacrificed  
31 victims of racist attacks, Government mistreatment and harassment;  
32 and courageous patriots whose only motive was to achieve peace.

1  
2 In contrast, the Government is characterized as: secretive;  
3 abridging freedom of the press; concealing information from the  
4 public; opposing Congress' right to know; corrupt and inept in  
5 bringing the case; conducting abusive, harassing and illegal inves-  
6 tigations; and committed to pressing false charges.

7 If the trial is to be free from such bias, prejudice and  
8 irrelevant considerations, it will be necessary for the Court:  
9 1) to advise the jury at the outset of what the case is about by  
10 reading or summarizing the indictment; 2) to remove mistaken impres-  
11 sions of the jurors by advising them that certain matters are not  
12 involved in the case; 3) to conduct voir dire examination of the  
13 jurors to determine whether they have been influenced by published  
14 comments or are otherwise biased; 4) to instruct counsel that  
15 specified matters are irrelevant and are not to be presented or  
16 argued to the jury; and 5) to permit the Government equal partici-  
17 pation in the jury selection by allowing it the same number of  
18 peremptory challenges as the defendants.

19 Wherefore, the Government respectfully requests that the Court:

- 20 (1) Read the indictment or the attached summary thereof  
21 to the jury panel.  
22 (2) Instruct the jury panel in accordance with the attached  
23 proposed instructions.  
24 (3) Question the jury panel in accordance with the attached  
25 proposed questions.  
26 (4) Instruct counsel in accordance with the attached  
27 proposed instruction; and  
28 (5) Allow the Government the same number of peremptory chal-  
29 langes as the defendants. See Rule 24(b), Federal  
30 Rules of Criminal Procedure; United States v. El Mancho  
31 Adolphus Products, Inc., 140 F.Supp. 645 (D.C. Pa.  
32 1956); aff'd 243 F.2d 367; cert. den. 353 U.S. 976;  
United States v. Potts, 480 F.2d 964 (4th Cir. 1970).

1  
2 REQUESTED SUMMARY OF INDICTMENT  
3

4 COMME ONE

5 Commencing about March 1, 1969, and continuing to about  
6 September 30, 1970, defendants ANTHONY JOSEPH RUSSO and DANIEL  
7 ELLSBERG, and unindicted co-conspirators Vu Van Thai, Lynda Sinay,  
8 and others unknown to the grand jury, conspired together:

9 (1) to defraud the United States by obstructing its lawful  
10 governmental function of controlling the dissemination of classi-  
11 fied Government documents; and

12 (2) to commit offenses against the United States as follows:

13 (a) to embezzle, steal and knowingly convert, and without  
14 authority to dispose of classified Government documents which were  
15 property of the United States of a value in excess of \$100; and to  
16 receive, conceal, and retain said classified Government documents  
17 with intent to convert them to their own use and gain, knowing them  
18 to have been embezzled, stolen, and converted;

19 (b) to receive, obtain, and attempt to receive and obtain  
20 documents and writings connected with the national defense for the  
21 purpose of obtaining information respecting the national defense,  
22 and with knowledge and reason to believe that said documents and  
23 writings would be disposed of contrary to law, by their communi-  
24 cation, delivery and transmittal to persons not entitled to receive  
25 them;

26 (c) willfully to transmit and attempt to transmit documents  
27 and writings relating to the national defense, which defendants  
28 would have in their lawful and unauthorized possession, to persons  
29 not entitled to receive them;

30 (d) willfully to retain documents and writings relating to  
31 the national defense which would be in defendants' unauthorized  
32 possession, and to fail to deliver them to the officer or employee  
of the United States entitled to receive them.



1  
2 The objects of the conspiracy were to obtain and cause to be  
3 obtained, classified Government documents relating to the national  
4 defense, from Rand Corporation, Santa Monica, California, and  
5 Washington, D. C., and from other sources. The documents would be  
6 transmitted to defendants and others, none of whom would be autho-  
7 rized to receive them. Defendants and their co-conspirators would  
8 retain the documents, copy them, and communicate them to persons  
9 not entitled to receive them.

10 To effect the objects of the conspiracy, defendants committed  
11 various overt acts in the Central District of California, including  
12 the following:

13 1. On or about March 4, 1969, defendant ELLSBERG brought  
14 ten volumes of a 38-volume Department of Defense study entitled  
15 "UNITED STATES - VIETNAM RELATIONS 1945-1967" to Los Angeles County,  
16 California, from Rand Corporation, Washington, D. C.

17 2. On or about April 7, 1969, defendant ELLSBERG obtained  
18 from Rand Corporation, Santa Monica, California, Part II of a  
19 memorandum entitled "NEGOTIATIONS AND VIETNAM: A CASE STUDY OF  
20 THE 1954 GENEVA CONFERENCE."

21 3. On or about August 29, 1969, defendant ELLSBERG brought  
22 eight volumes of the aforementioned 38-volume Department of Defense  
23 study to Los Angeles County, California, from Rand Corporation,  
24 Washington, D. C.

25 4. On or about October 3, 1969, defendant ELLSBERG obtained  
26 from Rand Corporation, Santa Monica, California, a document consist-  
27 ing of certain pages of a memorandum dated 27 February 1968,  
28 entitled "REPORT OF CHALSIAN, JOS ON SITUATION IN VIETNAM AND MACV  
29 FORCE REQUIREMENTS."

30 5. On or about October 4, 1969, defendants ELLSBERG and  
31 FUSED, and co-conspirator Binsy operated a xerox copy machine at  
32 2101 Malrose Avenue, Los Angeles, California.

1  
2 6. On or about October 13, 1969, co-conspirator Vu Ven Thai  
3 possessed one volume of the 38-volume Department of Defense study.

4 7. During the period from about March 4, 1969, to about  
5 May 20, 1970, defendant RUSCO possessed the following:

6 (1) Nine volumes of the 38-volume Department of Defense  
7 study, and

8 (2) Certain pages of the aforementioned Joint Chiefs of  
9 Staff memoranda.

10 8. On or about October 1, 1969, co-conspirator Lynda Sinay  
11 possessed one volume of the 38-volume Department of Defense study.

12  
13 COUNT TWO

14 During the period from about March 4, 1969, to about May 20,  
15 1970, in Los Angeles County, within the Central District of  
16 California, defendant DANIEL ELLSBERG did embezzle, steal and  
17 knowingly convert to his use and the use of another, the following  
18 property of the United States, namely:

19 (1) Nine volumes of a 38-volume Department of Defense study  
20 entitled "UNITED STATES - VIETNAM RELATIONS 1945-1967";

21 (2) Certain pages of a memorandum dated 27 February 1968  
22 entitled "REPORT OF CHAIRMAN, JCS ON SITUATION IN VIETNAM AND MACV  
23 FORCE REQUIREMENTS"; and

24 (3) Part II of a memorandum entitled "NEGOTIATIONS AND  
25 VIETNAM: A CASE STUDY OF THE 1954 GENEVA CONFERENCE";

26 which things had a value in excess of \$100.

27  
28 COUNT THREE

29 During the period from about March 4, 1969, to about May 20,  
30 1970, in Los Angeles County, defendant DANIEL ELLSBERG did conceal  
31 and retain the following property of the United States, with intent  
32 to convert it to his own use and gain, knowing it to have been  
embezzled, stolen and converted:

1  
2 (1) Nine volumes of the aforementioned 38-volume Department  
3 of Defense study;

4 (2) Certain pages of the aforementioned Joint Chiefs of  
5 Staff memorandum; and

6 (3) Part II of the aforementioned memorandum on negotiations  
7 and Vietnam;  
8 which things had a value in excess of \$100.

9  
10 COUNT FOUR

11 During the period from about March 4, 1969, to about May 20,  
12 1970, in Los Angeles County, defendant DANIEL ELLSBERG, without  
13 authority, did knowingly convey to Anthony Joseph Russo, the  
14 following property of the United States:

15 (1) Nine volumes of the 38-volume Department of Defense  
16 study and

17 (2) Certain pages of the aforementioned Joint Chiefs of  
18 Staff memorandum;

19 which things had a value in excess of \$100.

20  
21 COUNT FIVE

22 During the period from about March 4, 1969, to about  
23 December 31, 1969, in Los Angeles County, defendant DANIEL ELLSBERG,  
24 without authority, did knowingly convey to Lynda Sincy the follow-  
25 ing property of the United States: one volume of the 38-volume  
26 Department of Defense study, which property had a value in excess  
27 of \$100.

28  
29 COUNT SIX

30 During the period from about August 29, 1969, to about  
31 May 20, 1970, in Los Angeles County, defendant DANIEL ELLSBERG,  
32 without authority, did knowingly convey to Vu Van Thai the following

1 property of the United States: one volume of the 38-volume  
2 Department of Defense study, which property had a value in excess  
3 of \$100.  
4

5  
6 COUNT SEVEN

7 During the period from about March 4, 1969, to about May 20,  
8 1970, in Los Angeles County, defendant ANTHONY JOSEPH RUSSO did  
9 receive the following property of the United States, with intent to  
10 convert it to his own use and gain, knowing it to have been  
11 embezzled, stolen and converted:

12 (1) Nine volumes of the 38-volume Department of Defense  
13 study, and

14 (2) Certain pages of the Joint Chiefs of Staff memorandum;  
15 which property had a value in excess of \$100.  
16

17 COUNT EIGHT

18 On or about April 7, 1969, in Los Angeles County, defendant  
19 DANIEL ELLSBERG, for the purpose of obtaining information respecting  
20 the national defense, received and obtained from Rand Corporation,  
21 Santa Monica, California, a document connected with the national  
22 defense consisting of: Part II of the aforementioned memorandum  
23 on negotiations and Vietnam, knowing and having reason to believe  
24 at the time he received and obtained it, that said document would  
25 be disposed of contrary to law.  
26

27 COUNT NINE

28 On or about October 3, 1969, in Los Angeles County,  
29 defendant DANIEL ELLSBERG, for the purpose of obtaining information  
30 respecting the national defense, received and obtained from Rand  
31 Corporation, Santa Monica, California, a document connected with  
32 the national defense consisting of certain pages of the afore-  
mentioned Joint Chiefs of Staff memorandum, knowing and having

1 reason to believe at the time he received and obtained it, that  
2 said document would be disposed of contrary to law.  
3

4 COURT TEN

5 During the period from about March 4, 1969, to about May 20,  
6 1970, in Los Angeles County, defendant ANTHONY JOSEPH RUSSO, for  
7 the purpose of obtaining information respecting the national  
8 defense, received and obtained from Daniel Ellsberg documents  
9 connected with the national defense, consisting of:

- 10 (1) Nine volumes of the 38-volume Department of Defense  
11 study, and  
12 (2) Certain pages of the Joint Chiefs of Staff memorandum,  
13 knowing and having reason to believe at the time he received and  
14 obtained them that said documents would be obtained and disposed  
15 of contrary to law.  
16

17 COURT ELEVEN

18 During the period from about March 4, 1969, to about May 20,  
19 1970, in Los Angeles County, defendant DANIEL ELLSBERG, having pos-  
20 session of, access to, and control over documents relating to  
21 the national defense, consisting of:

- 22 (1) Nine volumes of the 38-volume Department of Defense  
23 study, and  
24 (2) Certain pages of the Joint Chiefs of Staff memorandum;  
25 did willfully communicate, deliver and transmit said documents to  
26 Anthony Joseph Russo, a person not entitled to receive them.  
27

28 COURT TWELVE

29 During the period from about March 4, 1969, to about  
30 December 31, 1969, in Los Angeles County, defendant DANIEL ELLSBERG,  
31 having possession of, access to, and control over a document  
32 relating to the national defense, consisting of one volume of the

1  
2 38-volume Department of Defense study, did willfully communicate,  
3 deliver and transmit said document to Lynda Sinay, a person not  
4 entitled to receive it.

5  
6 COUNT THIRTEEN

7 During the period from about August 29, 1969, to about  
8 May 20, 1970, in Los Angeles County, defendant DANIEL ELLSBERG,  
9 having possession of, access to, and control over a document  
10 relating to the national defense, consisting of one volume of the  
11 38-volume Department of Defense study, did willfully communicate,  
12 deliver and transmit said document to Vu Van Thai, a person not  
13 entitled to receive it.

14  
15 COUNT FOURTEEN

16 During the period from about March 4, 1969, to about May 20,  
17 1970, in Los Angeles County, defendant DANIEL ELLSBERG, having  
18 unauthorized possession of, access to, and control over documents  
19 relating to the national defense, consisting of:

- 20 (1) Eighteen volumes of the 38-volume Department of  
21 Defense study;
- 22 (2) Certain pages of the Joint Chiefs of Staff memorandum;  
23 and
- 24 (3) Part II of the aforementioned memorandum on negotiations  
25 and Vietnam;
- 26 did willfully retain said documents and fail to deliver them to the  
27 officer or employee of the United States entitled to receive them.

28  
29 COUNT FIFTEEN

30 During the period from about March 4, 1969, to about May 20,  
31 1970, in Los Angeles County, defendant ANTHONY JOSEPH RUSSO, having  
32 unauthorized possession of, access to, and control over documents

1 relating to the national defense, consisting of:  
2

3 (1) Nine volumes of the 38-volume Department of Defense  
4 study, and

5 (2) Certain pages of the Joint Chiefs of Staff memorandum;  
6 did willfully retain said documents and fail to deliver them to the  
7 officer or employee of the United States entitled to receive them.  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

REQUESTED INSTRUCTIONS TO JURY PANEL

The trial of this case involves only the question of whether or not the defendants committed the offenses with which they are charged. They are not on trial for any offense not charged, nor is the Government or any other person on trial for anything. Because of the wide publicity given to the so-called "Pentagon Papers" affair, some of which would almost certainly have reached you, I want to dispel at the outset any mistaken impressions you may hold as to what this case is about. It involves only the charges in the indictment.

1. It does not involve policies concerning United States military involvement in the defense of South Vietnam.

2. It does not involve the newspaper publication of the "Pentagon Papers" which occurred in the summer of 1971, nor does it involve the Government's civil suits against certain of the newspapers, nor the Supreme Court's decision in those cases, nor anything connected therewith.

3. It does not involve publication of the "Pentagon Papers" by certain commercial publishers in 1971, nor Government declassification and publication of portions of those papers.

4. It does not involve the question of whether or not the Congress or the public was entitled to know what the "Pentagon Papers" contained, nor does it involve the question of whether Congress requested access to those papers or whether any such request was granted or refused.

5. It does not involve the question of whether or not other persons have committed offenses similar to the ones here charged, nor whether other persons have or have not been prosecuted for such offenses.

6. It does not involve the question of defendants' motives. As I said before, this trial is to determine whether or not the



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

defendants committed the offenses charged; not whether they did so with base or noble motives.

7. It does not involve the nature, motivation or conduct of the Government or grand jury investigation.

1  
2 REQUESTED YOUR DIRECT QUESTIONS

3 Preliminary Statement

4 Personal viewpoints of the Court, counsel, the defendants, or  
5 jurors are not issues in this case. However, some persons may hold  
6 such strong views on certain matters that they would be unable to  
7 consider this case impartially. While there may be nothing wrong  
8 with holding such views, it would be a serious wrong, in fact a  
9 crime, to fail to disclose them when called for by questions of the  
10 Court. I am going to ask you a series of questions designed to dis-  
11 close whether you hold such views. If your answer to a question  
12 is "no," you may remain silent. If your answer to any question is  
13 other than "no," you must raise your hand until I notice it and  
14 call upon you.

15 Questions

16 A. [Questions re the War in Southeast Asia]

- 17 1. Do you hold any opinion about United States military  
18 involvement in the defense of South Vietnam which would  
19 prevent you from acting, or would make it difficult for  
20 you to act, as a fair and impartial juror in this case?
- 21 2. Have you or any of your close friends or relatives  
22 attended or participated in any marches, demonstrations,  
23 meetings or other activities conducted to protest United  
24 States military involvement in the defense of South  
25 Vietnam?
- 26 3. Have you or any of your close friends or relatives ever  
27 advocated, or participated in any activities designed to  
28 cause obstruction of United States military involvement  
29 in the defense of South Vietnam?
- 30 4. Have you or any of your close friends or relatives ever  
31 belonged, or contributed financially, to any organization  
32 a purpose of which was to oppose, protest, or obstruct

1 United States military involvement in the defense of  
2 South Vietnam?

- 3
- 4 5. Have you or any of your close friends or relatives ever  
5 advocated, or participated in any activities designed to  
6 give aid to the Viet Cong or North Vietnamese?
- 7 6. Do you hold the belief that the use of military force to  
8 oppose communist conquest is wrong, or that the use of  
9 military force for any purpose is wrong?
- 10 7. Have you or any of your close friends or relatives been  
11 in the Armed Forces of the United States? If so, is  
12 there anything about that experience that would cause  
13 you to be prejudiced against the Government or against  
14 the defendants?
- 15 8. Have you or any of your close friends or relatives ever  
16 had any dispute or disagreement with the Selective Service  
17 System? If so, would that cause you to be prejudiced  
18 against the Government or against the defendants?
- 19 9. Do you hold any opinion about United States policies,  
20 foreign or domestic, which would tend to prevent you  
21 from acting as a fair and impartial juror in this case?

22  
23 B. [Questions re the Pentagon Papers]

- 24 1. Have you read any newspaper article or book purporting  
25 to contain portions of the "Pentagon Papers" or any  
26 commentary thereon? If so, what newspaper or book?
- 27 2. Do you subscribe to, or regularly read: the New York  
28 Times? the Washington Post? Saturday Review? Atlantic  
29 Monthly? Look Magazine? Harper's? Reports? Esquire?
- 30 3. Have you, or has any close friend or relative attended  
31 any meeting, class or group at which the "Pentagon Papers"  
32 was a subject of instruction, lecture or discussion?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

4. Have you or any of your close friends or relatives observed or heard any television or radio appearance of either defendant? If so, what defendant, and what programs were involved?
5. Have you read any newspaper or magazine articles, or seen any television program about either defendant or about any counsel? If so, what articles or programs, about which defendant or counsel?
6. Have you, or has any close friend or relative, attended any meeting, rally or function of any kind at which either defendant spoke? If so, when, where, and what meeting?
7. Have you, or has any close friend or relative, contributed, or been solicited to give, any money, or otherwise offered or given or been solicited to give any assistance, to anyone connected with the defense in this case?

C. [Views Connected With Charges in this Case]

1. Are you opposed to laws providing secrecy for documents relating to military, diplomatic or other matters relating to the national defense?
2. Would you tend to excuse or overlook offenses if you believed that they were committed for motives, reasons or purposes you favor or agree with?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

D. [Relationship To Parties, Attorneys, etc.]

1. Are you acquainted with either of the Defendants?

2. Are you acquainted with any of defendant Silsberg's attorneys?

Leonard Boudin

Charles Hesson

Charles Goodell

Arthur Berman

Gerald Uelman

Barry Litt

3. Are you acquainted with any of defendant Russo's attorneys?

Leonard Weinglass

Geoffrey Dupere

H. Peter Young

Michael Eslaban

Barry Portman

Joseph Ball

4. Are you acquainted with any of the Government's attorneys?

David Mussen

Warren Rocca

Richard Barry

5. Have you had any connection with the Rand Corporation?

6. Have you or any member of your family, or your close friends belonged or contributed to the American Civil Liberties Union?

E. [Employment, Education, and Residence]

1. Residence for last 10 years?

2. Employment for last 10 years?

3. Education

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

(a) College degrees, major field of study?

(b) Names and location of colleges attended?

F. [Impartiality, and Fidelity to Instructions]

1. Do you now state under oath that if selected as a juror you will decide the issues in this case solely upon the evidence and the instructions of law by the Court without regard to any feelings of your own for or against either side in this case?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

PROPOSED INSTRUCTIONS TO COUNSEL

Counsel shall not argue, mention or in any manner elicit, before the jury, without prior approval of the Court, the following subjects:

1. Newspaper publication of documents specified in the indictment, or any so-called public right to know.
2. Injunction suits against newspapers, including positions of the parties, materials used, remarks and arguments, and court decisions.
3. Any opinion, assessment, or evaluation of the morality or desirability of United States military involvement in the war in Vietnam, or of the responsibility or guilt of any individuals, groups, or nations in connection with such involvement.
4. Congressional requests for documents; Executive refusal of any such request, or any congressional right to know.
5. Post-offense declassification and publication of documents by the Government, and post-offense publication by private publishers.
6. Claims of discriminatory prosecution.
7. Leaked disclosures of other Government documents by other persons.
8. Defendants' motives and goals.
9. The Government's motivation in prosecuting.
10. Allegations of impropriety in the investigation, including issuance of search warrants, subpoenas, questioning of defendants' friends or relatives before the grand jury.