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Justice Defies Federal Court On Transcript for Ellsberg Pal

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LOS ANGELES, Oct. 18—

The government defied a federal court order today in refusing to guarantee a transcript of grand jury testimony to Anthony J. Russo Jr., a friend of Daniel Ellsberg.

Russo, a former colleague of Ellsberg's at the Rand Corporation, was released from prison last week after serving 47 days in civil contempt for having refused to testify on Ellsberg's activities regarding the Pentagon Papers.

Russo agreed to testify, but only if he was provided a transcript of his testimony and permitted to make it public. U.S. District Judge Warren Ferguson granted the unprecedented condition and ordered the government to provide the transcripts.

Today, Russo arrived at the grand jury room to give testimony, but was told by Justice Department attorney David Nissen that the government would refuse to obey the court order.

The scene then shifted back to Judge Ferguson's court, where Nissen claimed that the court lacked authority to make such an order. "If we are forced to give transcripts, the person under investigation would have as much as we do, and it would impair the grand jury function," said Nissen.

Judge Ferguson countered

that the question of a secrecy was not at issue, since Russo could divulge on his own what he says before the grand jury. "Isn't it better for accuracy's sake to have a transcript?"

"It might be for Mr. Russo's purposes, but for us it (the precedent) would be devastating," Nissen responded.

Judge Ferguson took the issue under submission for

later judgment. Later, Russo told reporters, "Mr. Nissen has set himself up as a judge. The Justice Department now openly, blatantly defied the law."

Russo, who fasted for three weeks while in the federal prison at Terminal Island, adjacent to Los Angeles Harbor, was slim and cheerful during his appearance today.