

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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4 UNITED STATES OF AMERICA :
  
:
  
5 vs. \* : CR. 82-269-01-N
  
:
  
6 EDWARD JOHN HASBROUCK :
  
:
  
7 Defendant :
  
:
  
8 -----x

BEFORE: HON. DAVID S. NELSON,

District Judge, and Jury

Courtroom No. 6  
Federal Court House  
Boston, Massachusetts  
December 15, 1982

APPEARANCES:

FOR THE GOVERNMENT:

ROBERT S. MUELLER, III, ESQ.  
ASSISTANT UNITED STATES ATTORNEY

FOR THE DEFENDANT:

EDWARD JOHN HASBROUCK, Pro Se  
and BENJAMIN HILLER, ESQ.,  
Assistant Counsel to Defendant

I N D E XTestimony of:                      Direct**FOR THE GOVERNMENT:**

Lawrence Nivison	70
Robert Collings	73
Newton E. Crawford	79
David Cox	83
Laurie Stoffel	90
Richard Templar	92
	93

	<u>Page</u>
Motion for standby counsel	4
Motion for waiver of suspension of Rule 53 - Denied	5
Motion by defendant to stay proceedings - Denied	20
Lobby conference	21-35
Jury impanelment	36-57
 Opening statement in behalf of the Government by Mr. Mueller	 57
 Opening statement by the Defendant	 65
Government rests	93
Closing argument in behalf of the Defendant by the Defendant	94
Closing argument in behalf of the Government by Mr. Mueller	102
Judge's charge to the Jury	105

EXHIBITS IN EVIDENCE

<u>No.</u>	
1	71
2	72
3	76
4	80
5	81
6	84



1 THE DEFENDANT: I'm still requesting,  
2 and the motion is still before the Court, to appoint  
3 Mr. Hiller at Government expense as standby  
4 counsel, since I am indigent. And I have filed  
5 the necessary supporting financial affidavit,  
6 establishing my indigency with the Court.

7 THE COURT: As I understand the  
8 rule, however, the financial affidavit seems to  
9 be in order. And you say you signed it, and  
10 this is in all cases true. The rule is that you  
11 would be represented by the public defender's  
12 office.

13 Does the Government have any objection  
14 to the appointment of someone other than the  
15 public defender?

16 MR. MUELLER: Not really, your  
17 Honor. Although, as the Court pointed out, the  
18 public defender--

19 THE COURT: Okay. Then I'll allow  
20 the appointment of Mr. Benjamin Hiller under the  
21 circumstances, subject to all the limitations of  
22 fees and requirements for filing responses.

23 MR. HILLER: I understand.

24 THE COURT: Now the next motion  
25 that we have is a waiver for suspension of Rules

1 of Criminal Procedure, 53.

2 And I take it the defendant's wish is  
3 to be heard on that.

4 THE DEFENDANT: Yes.

5 THE COURT: I'll hear you.

6 THE DEFENDANT: I have already  
7 filed a memorandum of points and authorities in  
8 support of this motion with the Court, prepared  
9 with the assistance of counsel. I'm not going  
10 to reiterate that brief. I think it sets forth  
11 more clearly in greater length and in more  
12 precise legal language the argument than I could  
13 present it, not being a lawyer. I hope that you  
14 will look to the brief in ruling on this motion,  
15 and not hold against me whatever inability to  
16 answer detailed questions of legal  
17 particularities in this legal argument.

18 THE COURT: Well, you can have  
19 counsel at the side bar. Do you want to discuss  
20 it?

21 THE DEFENDANT: I have discussed  
22 it with my standby counsel in advance in  
23 preparing for the argument. I would prefer to  
24 speak for myself.

25 At this time I would like mainly to

1 stress to the Court the seriousness, both of  
2 this motion to me and to the Court and the  
3 system of justice, the underlying issues that it  
4 raises, the Court to take very seriously the  
5 question of openness of the trial, and have  
6 taken this to the point where that openness and  
7 whatever means can be used to facilitate that  
8 openness are presumed absent, a compelling  
9 interest or a competing constitutional right.

10 As we cited in the brief from United  
11 States v. Cianfrani, our law strongly favors the  
12 presumption that all adjudicated proceedings are  
13 open to the public. This presumption is rooted  
14 deeply in our common law heritage. The  
15 explanation from that heritage I think is amply  
16 given in Globe Newspapers and in Richmond. And,  
17 as we also cite in Richmond, there's a lengthy  
18 discussion in Richmond the essence of which is  
19 at the very foundation of the right of access  
20 recognized in Richmond Newspapers, namely the  
21 presumption of openness inheres in the very  
22 nature of a criminal trial under our system of  
23 justice, 448 U.S. at 573, being quoted favorably  
24 in the Globe Newspapers at 2622 in the Supreme  
25 Court.

1           The Courts take seriously the right of  
2           the defendant to a public trial to the point  
3           where prejudice is presumed where that right has  
4           been restricted, even without a specific showing  
5           of specific prejudice due to the violation of  
6           that right in a particular case. In the First  
7           Circuit case we cited in the brief, Martineau v.  
8           Perrin, prejudice to the defendant is implied  
9           whenever the trial judge lacks substantial  
10          justification for denying or limiting the  
11          Defendant's Sixth Amendment claim.

12                 This is a serious matter, I hope you  
13                 will take it seriously, and claims asserted by  
14                 the defendant under the Sixth Amendment of a  
15                 right to a public trial are not likely to be  
16                 dismissed.

17                 And the reason that it is taken seriously,  
18                 in the second point, is the fundamental  
19                 character of this right, and its integral  
20                 relationship as a fundamental right to the  
21                 defendant and its integral relationship to the  
22                 system of criminal justice and the jury trial.  
23                 The rights to a public trial, as it is explained  
24                 at length from the historical example in  
25                 Richmond and Globe newspapers, derives from the

1       notion of the citizenry out of which arises the  
2       jury trial. And this notion of openness at the  
3       trial and accessibility of the trial to all  
4       those members of the public to whom it can be  
5       made accessible without infringing other rights,  
6       arises from the same source and its development  
7       parallels the origins of the jury trial out of a  
8       system in which all of the body of citizenry in  
9       the community were regarded as jury, and were  
10      trials of fact. And I think the citations in the  
11      brief make it clear the importance of that right  
12      to, and that continued openness to guaranteeing  
13      that the jury trial continues to function in the  
14      manner it was intended, allowing the citizenry  
15      to function as jury.

16                 Quoting again from Richmond, at 2825,  
17      Supreme Court: "While media representatives"  
18      -- excuse me -- "Instead of acquiring  
19      information about trials by first hand  
20      information or by word of mouth from those who  
21      attended, people now acquire it chiefly through  
22      the print and electronic media. In a sense, this  
23      validates the media claim of functioning as  
24      surrogates for the public." A presumption of  
25      openness inheres in the very nature of a



1 criminal trial under our system of justice.

2 One of the demands of a democratic  
3 society is that the public should know what goes  
4 on in courts by being told by the press what  
5 happens there, to the end that the public may  
6 judge whether our system of criminal justice is  
7 fair and right. Instead of relying on personal  
8 observation or reports from neighbors as in the  
9 past, most people today receive information  
10 concerning trials through the media, which draws  
11 out the point that with the evolution of  
12 technology, a judicially recognized evolution in  
13 technology, and specifically electronic  
14 technology incorporated into the doctrine of the  
15 Supreme Court in Chandler v. Florida, the media  
16 now play, specifically the electronic media, an  
17 essential role in guaranteeing a defendant a  
18 public trial, in guaranteeing that the openness  
19 and accessibility of the trial serve the purpose  
20 and perform the role they are intended to play  
21 in a system of jury trial and in guaranteeing  
22 the fundamental rights of the defendant.

23 What I'm seeking in terms of the relief  
24 sought by this motion, it is entirely consistent  
25 with the judicial trend exemplified in the

1 Massachusetts Rules, cited in the brief,  
2 exemplified in Florida rules at issue in  
3 Chandler, exemplified in many other states which  
4 have permitted and do permit electronic coverage  
5 in various forms and to varying degrees of  
6 criminal trials, even where the defendant has  
7 objected, rather than as here -- and I think  
8 this distinguishes a large amount of the case  
9 law on the point -- that this is being  
10 asserted by me as my right as a defendant, and  
11 thus questions of objections of the defendant  
12 which were crucial in many of the adverse  
13 decisions on admission of electronic media to  
14 the courtroom are clearly distinguished from  
15 this one.

16 What I'm seeking is entirely consistent  
17 with the unrebutted, and the rebuttal would  
18 require a clear showing of a competing  
19 constitutional right or a compelling state  
20 interest, which could not otherwise be served  
21 without abridging my Sixth Amendment right to a  
22 public trial. The unrebutted presumption of the  
23 openness of a criminal trial -- and it is  
24 entirely consistent with the general principle  
25 articulated and I think given particular

1 expression in Chandler, and I think it's  
2 something also developed in other areas of law  
3 beside the question of trial openness -- that  
4 constitutional rights are to be interpreted in  
5 light of circumstances, and in particular in  
6 light of the current state of the technology  
7 which exists to further and to facilitate those  
8 rights.

9           There is authority for the Court to  
10 grant the relief sought. I think within Federal  
11 Rule Criminal Procedure 53 and local Rule 29  
12 there is authority for the Court to grant the  
13 relief sought within the inherent supervisory  
14 authority of the Court, which supervisory  
15 authority exists to safeguard precisely the sort  
16 of right I'm asserting here and which inherent  
17 supervisory authority of the Court serves as the  
18 source of authority for those rules themselves.  
19 I refer you particularly to United States ex  
20 rel. Bennett vs. Rundle, 419 F2d at 607,  
21 referring to the Pennsylvania Rules of Criminal  
22 Procedure, stating that the relevant language of  
23 those rules at the time of trial was identical.  
24 When application for relief is made a judge of  
25 the court shall hold the court hearing in the

1 presence of only the defendant, counsel for the  
2 parties and officers and necessary witnesses.  
3 And the Court decision of the Third Circuit  
4 comment on this, that the rule is framed in  
5 language apparently mandatory. But the evident  
6 purpose of the rule requiring the extradition of  
7 the public from the hearing is to protect the  
8 defendant. This can readily be accomplished by  
9 other means, without depriving the defendant  
10 from his right to a public trial on the claim  
11 that his protection requires this, despite his  
12 objection.

13 It has always been recognized that any  
14 claim or practical justification for a departure  
15 from the constitutional requirement from a  
16 public trial must be tested by a standard of  
17 strict and inescapable necessity. It is also  
18 clear and established law that where a statute  
19 or regulation can be construed constitutionally  
20 without requiring it to be invalidated as  
21 unconstitutional, it should be. And I think  
22 there is an available construction of the  
23 Federal Rules of Criminal Procedure and their  
24 source which gives the Court the authority to  
25 grant the relief sought. But, of course, if the

1 Court finds that the rules do not in fact allow  
2 for it, the discretion within them to grant the  
3 relief sought, to the extent this relief is my  
4 constitutional right, then I would think you  
5 would be obliged to find that those rules are  
6 themselves invalid as overbroad.

7 I'm not asking the Court to set a new  
8 course in uncharted waters. I think there is  
9 ample guidance, again in the Massachusetts Rules,  
10 in the Florida rules, and in the other precedents  
11 that we have, and a good deal of experience that  
12 we now have with electronic coverage at trials  
13 to guide the Court in structuring the relief in  
14 such a way as to preserve the  
15 underlying fairness of the trial, which is after  
16 all the reason that the public trial right exists.

17 Thank you.

18 THE COURT: I'll hear you.

19 MR. MUELLER: Well, your Honor,  
20 what Mr. Hasbrouck I believe is saying is that  
21 he wishes the Court to elevate to a  
22 constitutional right the right to have  
23 microphones and cameras in the courtroom. And  
24 quite clearly that is not a constitutional right,  
25 never has been, and I doubt whether it will be

1 in the future. But what Mr. Hasbrouck does  
2 have is a constitutional right to a public trial.  
3 And, for the record, I might point out to the  
4 Court that the press is here in ample numbers.  
5 In fact I count ten in the jury box. Anyone,  
6 I'm informed by the marshals, who wish to attend  
7 this trial, has been given a seat in the  
8 courtroom. Mr. Hasbrouck requests his  
9 constitutional right to a public trial. He is  
10 being given his constitutional right to a public  
11 trial. That does not include necessarily  
12 microphones and cameras. And what the rules  
13 state, the Federal Rules of Criminal Procedures  
14 and the local rule, is that microphones and  
15 cameras are the only two devices not allowed in  
16 the courtroom.

17 So, in summary, your Honor, I feel that  
18 the motion should be denied. Mr. Hasbrouck is  
19 entitled to a public trial and is indeed going  
20 to get one.

21 Thank you.

22 THE COURT: Do you have need  
23 for any rebuttal?

24 THE DEFENDANT: Just a few words.  
25 Essentially I think the response of the

1 Government ignores the root of the argument that  
2 I am making here. It does not attempt to deny  
3 or to rebut the essential presumption of openness  
4 and the extension of that presumption to all  
5 means which are available which can enhance the  
6 Sixth Amendment Right to a public trial without  
7 interfering with the orderly administration of  
8 justice. It attempts neither to rebut that  
9 presumption nor to deny that it exists.

10 The Government's argument also ignores,  
11 I think, the technological change, acknowledged  
12 in Chandler and in the state rules, permitting  
13 television coverage. It ignores that  
14 technological change which has made the  
15 participation of the people through the media  
16 essential to their participation, and their  
17 symbolic participation and access has made the  
18 media essential, given that state of technology,  
19 to the constitutional right itself. I think the  
20 Government has failed to deal with the arguments  
21 that I presented.

22 THE COURT: I am prepared to rule  
23 I want to say this in preface to my  
24 ruling.

25 First of all, of course, both counsel

1 -- both the defendant petitioner here and the  
2 Government -- has had an opportunity to argue  
3 this clearly in front of all here present. I  
4 note the presence of the media, and any of the  
5 media who wish to be here, whatever discipline  
6 they may come from -- electronic, TV, radio,  
7 newspapers. In fact I too note that at least  
8 ten representing the media are present, and two  
9 of them at least are taking pictures, and all  
10 the others seem to be taking notes.

11 THE DEFENDANT: Your Honor, lest  
12 there --

13 THE COURT: Let me just finish.

14 THE DEFENDANT: I was just going to  
15 say "sketches" rather than "pictures", to make  
16 it clearer on the record.

17 THE COURT: Well, "pictures" is  
18 what I said. And you can take exception to my  
19 findings.

20 And again, of course, notes. I also  
21 can point to the presence of a stenographer  
22 court reporter, who I hope is diligently taking  
23 down all matters presented to her. And indeed  
24 that she has a tape recorder available, so that  
25 all that is being said is also being taped. And



1 in this case I will make it clear that that tape  
2 is available to you, if necessary.

3 I note also that I ordered that we  
4 attempt to get a courtroom large enough to  
5 accommodate anybody who wished to come and view  
6 the trial, a very difficult thing to do because  
7 of the tight scheduling of trials here, but I  
8 was able to do that in this instance. And I know  
9 that there is space for others, if others wish  
10 to attend, this being the largest courtroom  
11 available, the largest courtroom in the building.

12 So I cannot honestly say that the media  
13 is so limited in its coverage as to give rise to  
14 any constitutional claim, indeed even to give  
15 rise to any question, substantive question at  
16 least, of indeed unfairness. I can only suggest  
17 that, mindful that as a citizen and interested  
18 party, I would personally be open to allowing  
19 electronic media with all its equipment and so  
20 forth in the courtroom under proper and  
21 appropriate guidelines, but I'm compelled, and  
22 correctly so, to deny your motion in light of  
23 local Rule 29, and the standards set down in  
24 local Rule 2, and, of course, Federal Rules of  
25 Criminal Procedure Rule 53.

1           I can't say honestly, therefore I would  
2 suggest that there is in my mind no element of  
3 unfairness, but for the lack of tape recorders  
4 and cameras in this courtroom. I don't know how  
5 it would enhance the truth that hopefully will  
6 be elicited from a trial on this particular  
7 issue. And in only a limited way will it affect  
8 people who are not in this courtroom, such that  
9 their opportunity to understand the issues and  
10 understand what's going on and what has gone on  
11 because, of course, there is apparently going to  
12 be wide enough coverage and other things  
13 available. So the absence of that doesn't give  
14 rise to any major restriction in the process of  
15 this trial. And, since the rules proscribe it,  
16 I will concede to the rules, and your motion is  
17 denied.

18           THE DEFENDANT: I would like to  
19 first put on the record the fact that still and  
20 videotape cameramen and people bearing  
21 electronic sound recording equipment were barred,  
22 and are being barred from the courtroom. And  
23 having put that on the record --

24           THE COURT: You're saying just the  
25 equipment is barred, not the people?

1 THE DEFENDANT: The equipment.

2 THE COURT: That's on the record  
3 and I certainly would find that as a fact; that  
4 nobody in this courtroom, other than the Court  
5 Reporter, has the opportunity or a right to have  
6 any electronic equipment for the purposes of  
7 taping or taking pictures of, or anything else.  
8 It is a violation of the rule. And if so I will  
9 eject them from the courtroom with their  
10 equipment and bar them, as well as their  
11 equipment, from coming into the courtroom.

12 THE DEFENDANT: I would also like  
13 to put on the record that the normal procedures  
14 of this District Court do not permit the sound  
15 recordings made by the court reporters, the  
16 electronic recordings, to be replayed publicly  
17 or broadcast or copied. That's my  
18 understanding.

19 THE COURT: They won't be used  
20 for that purpose. They will be used for the  
21 purposes of making sure that the record is in  
22 fact accurate and as correct as it possibly can  
23 be done. Only for that purposes, really. So  
24 you will have an opportunity to check to see if  
25 the record, the Court reporter's notes, are

1 correct when they are produced.

2 THE DEFENDANT: Having done that,  
3 I would ask the Court to acknowledge that this  
4 ruling is a final order, the ruling you just  
5 made is a final order within the meaning of U.S.  
6 Code 28 Section 1291 as interpreted in Cohen vs.  
7 Beneficial Industrial Loan Corporation, 69  
8 Supreme Court, 1221, and as that doctrine was  
9 applied to criminal cases by Abney vs. United  
10 States, 97 Supreme Court --

11 THE COURT: Well, the response to  
12 your request is denied.

13 THE DEFENDANT: Therefore, that  
14 request being denied, I would move the Court for  
15 a stay of these proceedings to permit a petition  
16 to the U.S. Court of Appeals for the First  
17 Circuit certifying this question as an  
18 appealable order within the meaning of 28 U.S.  
19 Code Section 1291, and the taking of an  
20 interlocutory appeal.

21 THE COURT: That motion is denied.  
22 No stay will be permitted.

23 All other rights will be saved though  
24 for appeal after the fact. If you are convicted,  
25 then that will be a matter for appeal. If you

1 are not convicted, I'll take the matter as moot.

2 Any other preliminary matters?

3 THE DEFENDANT: There was, I  
4 believe, a pretrial conference scheduled for  
5 this morning. I don't know whether you want to  
6 do that now in chambers --

7 THE COURT: Yes, I would like to  
8 do that now. And let me just make sure, for all  
9 those who may not understand, I suppose, is that  
10 in every single case, criminal or civil, it has  
11 been consistently every single time, without  
12 exception, my practice to attempt to have  
13 counsel and the parties discuss with me the  
14 proceedings that are to take place. And I am  
15 prepared to do that now in my chambers.

16 There being no objection thereto, we  
17 will recess to the chambers.

18

19 (There was a recess.)

20

21 (Lobby conference.)

22

23 THE COURT: First of all, is  
24 everybody ready?

25 THE DEFENDANT: Yes.

1 MR. MUELLER: Yes, your Honor.

2 THE COURT: And now, the real  
3 question is there's a jury ready, they are  
4 prepared. I want to ask this consideration. Is  
5 there any unlikelihood, put it that way, that  
6 the case won't be completed today?

7 THE DEFENDANT: I assume it will  
8 be done today.

9 MR. MUELLER: I would expect so.

10 THE COURT: Because, I tell you  
11 this. It will be very difficult for me, such  
12 that if we can't finish it today the only time  
13 we can resume is Monday.

14 THE DEFENDANT: Well, I don't know  
15 how long the jury will take on that. To me  
16 that's the only --

17 THE COURT: The only issue I want  
18 to make sure is that it gets to the jury.  
19 Whenever it gets to jury, from there on there is  
20 no problem.

21 THE DEFENDANT: It will get to the  
22 jury today, I think.

23 THE COURT: Let me go down the  
24 list of witnesses

25 I understand that the government has

1 six witnesses?

2 MR. MUELLER: We have --

3 THE COURT: Why is Magistrate

4 Collings --

5 MR. MUELLER: Mr. Hasbrouck, when  
6 Mr. Collings was still in the U. S. Attorney's  
7 office, Mr. Hasbrouck came in and saw Mr.  
8 Collings. And at that time he told him he did  
9 not register, would not register, and gave him  
10 also certain documents to be introduced into  
11 evidence.

12 THE COURT: Do you have any  
13 difficulty with that? My hope would be that it  
14 will not be necessary to have Magistrate  
15 Collings. But, if it is --

16 THE DEFENDANT: He is a material  
17 witness. But I hope that he will come in mufti  
18 and not judicial robes.

19 THE COURT: No problem. He's not a  
20 magistrate or a judge on the witness stand.

21 THE DEFENDANT: Fine.

22 THE COURT: Except, though,  
23 whatever is pertinent to the role he was playing  
24 at the time. But the issue is whether he did  
25 those ministerial things. You say there's an

1 issue of whether he did it or whether he had a  
2 right to do it, or something of that sort. Do  
3 you follow me?

4 THE DEFENDANT: He's a material  
5 witness to relevant facts to the case, which I  
6 think he's the only person to properly  
7 establish --

8 THE COURT: I know that. I know  
9 that. My --

10 MR. HILLER: May I have a moment?

11 THE COURT: Yes.

12 ( Attorney Hiller conferring with  
13 the defendant client.)

14 MR. MUELLER: If I could just  
15 explain for a second. Mr. Collings will testify  
16 as to certain statements made by Mr. Hasbrouck  
17 to him and to certain documents that Mr.  
18 Hasbrouck gave to him.

19 THE COURT: I understand all of  
20 that. My problem only was that would there be  
21 any denial on your part of what statements you  
22 made to him, or any conclusion that there were  
23 some statements made?

24 THE DEFENDANT: I think it's  
25 simply a question of the government's burden of



1 proof and obligation to satisfy it --

2 THE COURT: Here's what I'm after,  
3 and I just want to see whatever I can do to make  
4 the trial run smoothly.

5 Sometimes, for example, if the issue  
6 was whether there was a traffic light on the  
7 corner, sometimes the parties will agree there  
8 was a traffic light on the corner. The issue is  
9 whether or not it was red or green. So we don't  
10 need somebody to come in and testify that there  
11 was a traffic light on the corner. But I think  
12 we have to have the person to testify it was red  
13 or green, because I said it was red and he said  
14 it was green.

15 So the question to you is simply, do  
16 you have anything to contradict? Would you  
17 contradict anything that Mr. Collings would  
18 testify to?

19 THE DEFENDANT: I don't intend to  
20 present any defense at all. I don't intend to  
21 stipulate, if that's what you are saying --

22 THE COURT: Okay. That's what I  
23 want.

24 THE DEFENDANT: The Government will  
25 have to satisfy its burden.

1 THE COURT: Okay. No problem.

2 And now you need all of these witnesses.  
3 Do you need Lawrence Nivison?

4 MR. MUELLER: I don't really need  
5 Lawrence Nivison. He was going to put on a  
6 certified copy of the birth certificate and the  
7 motor vehicle license for establishing the date.  
8 And I was going to put him on because he's a  
9 person that will present them to the jury. He  
10 will not be testifying --

11 THE COURT: I don't know if you  
12 call that a stipulation or not. But if we can  
13 go through the mechanics of putting that in one  
14 way or the other.

15 MR. MUELLER: And save a witness.  
16 In other words, the birth record he's going to  
17 put in, apparently your birth record. Right?

18 THE DEFENDANT: Well, the point is  
19 one of the documents he was going to put in,  
20 furnished to me on mandatory discovery by the  
21 Government, there was at least one inaccurate  
22 statement about that document.

23 THE COURT: Well, he's not going  
24 to testify about the document, he's just going  
25 to put them in. So he won't be making any

1 description of the document?

2 MR. MUELLER: Just that he picked  
3 them up from the appropriate state agency.

4 THE DEFENDANT: I would like to  
5 see some evidence of where they came from.

6 THE COURT: Okay. And then you say  
7 Cox?

8 MR. MUELLER: Yes, your Honor.

9 THE COURT: How about Templer?

10 MR. MUELLER: Let me go to Edward  
11 Crawford, down the list. Edwin Crawford is from  
12 Selective Service in Washington. He was the one  
13 who remembered seeing the letter that was sent  
14 by Mr. Hasbrouck to the Government indicating he  
15 would not register. So he will testify as to  
16 that. He will also testify to a letter that was  
17 sent to Mr. Hasbrouck requesting that he do  
18 register.

19 Going down the list. Mr. Cox and Ms.  
20 Steffel and Mr. Templer are all from the  
21 computer records service of the Secret Service,  
22 and they will jointly testify. Mr. Cox will  
23 testify to the procedures for storing the records  
24 and Mr. Templer and Ms. Steffel will testify  
25 that they did a search and did not find Mr.

1 Hasbrouck's records within those computer records.

2 THE COURT: Okay. Now, do you have  
3 any witnesses?

4 THE DEFENDANT: No.

5 THE COURT: Do you intend to take  
6 the stand?

7 THE DEFENDANT: I don't intend to.  
8 I'm not entirely ruling it out, but I don't  
9 intend to.

10 THE COURT: All right.

11 MR. MUELLER: Can I mention one  
12 other matter as a preliminary matter?

13 As far as the exhibits are concerned, I  
14 have shown Mr. Hasbrouck the exhibits that we  
15 intend to introduce. I have, after talking with  
16 your clerk, lettered them A through G.

17 THE COURT: A through I.

18 MR. MUELLER: Well, I have a new  
19 list which is A through G. I left out a couple.

20 THE COURT: All right.

21 MR. MUELLER: And Mr. Hasbrouck  
22 did indicate to me in the pretrial conference  
23 that he would not oppose the admission into  
24 evidence of those exhibits, but was unwilling to  
25 stipulate that they go into evidence.

1           So I guess the best procedure, as far  
2 as the exhibits are concerned, is for me to  
3 introduce them in the course of the case and see  
4 what position Mr. Hasbrouck takes on them.

5           Is that a fair statement?

6           THE DEFENDANT: Yes.

7           THE COURT: Okay.

8           MR. MUELLER: I would like to  
9 also point out to the Court one matter relating  
10 to voir dire.

11          THE COURT: One moment.

12          Okay.

13          MR. MUELLER: I indicated in the  
14 pretrial statement I believe to the Court that  
15 Mr. Hasbrouck had had an opportunity to review  
16 the voir dire proposed by the Government, and  
17 that he had made suggestions as to how that  
18 might be better written. I did not mean to  
19 mislead the Court. Mr. Hasbrouck had seen one  
20 or two of the questions but did not have an  
21 opportunity to review all the Government's voir  
22 dire, and the suggestion was made only to one  
23 question only.

24          So, Mr. Hasbrouck, correct me if I'm  
25 wrong, has not had an opportunity to.

1 THE DEFENDANT: After you filed  
2 them I saw them. I haven't filed any objections  
3 to them, so I don't really think that's an issue.

4 THE COURT: Well, the question I  
5 have is -- Let me put it this way to you.

6 The only questions I can guarantee that  
7 I'll ask at this point in time are the ordinary  
8 and statutory questions dealing with bias and  
9 all that. Now the problem is that -- I mean  
10 the goal, as far as I'm concerned, is whether it  
11 is possible to obtain -- the goal is to obtain  
12 a jury that at least is, as best we can, without  
13 much to-do, determine that they have no reason,  
14 there is no reason for excluding them from  
15 sitting on the jury.

16 And so, I haven't studied all of these  
17 questions very carefully, but in a way I don't  
18 want to develop as it were partial jurors. I  
19 want to see impartial jurors. And so, as I go  
20 back over these I'll tell you which ones I will  
21 not include, or the converse, which ones I will  
22 include. Maybe there are some that might give  
23 me some difficulty.

24 What voir dire questions to you have?

25 THE DEFENDANT: None.

1 THE COURT: All right. The next  
2 thing is, since it's going to be a one day trial  
3 I propose to seat only twelve people in the box.  
4 I take it there is no reason, as far as I'm  
5 concerned, for an alternate juror.

6 MR. MUELLER: I would hate to  
7 have to go through it again, your Honor.

8 THE COURT: Perhaps if there  
9 are sufficient jurors to seat one additional,  
10 perhaps we could. If they are getting --

11 The biggest problem only is -- I  
12 mean to me the alternate jurors make some sense  
13 when the rule, as in the state court, for  
14 example, allows them to be used at a future time.  
15 But I'll decide that as we go along. We'll see.  
16 But at the present time I intend twelve jurors,  
17 but we'll see.

18 Any other pretrial matters?

19 THE DEFENDANT: One thing that I  
20 wanted to bring up, because I think it is a  
21 minor matter, and can better be dealt with here.  
22 I have a great deal of difficulty as a matter of  
23 conscience with standing for the judge when he  
24 or she comes into the courtroom --

25 THE COURT: Let me put it this way.

1       There are no rules right now, as far as that is  
2       concerned. You can stand or sit if you want to.  
3       The only rule that I have at the moment is one  
4       of civility, that's all.

5                   THE DEFENDANT: Thank you.

6                   THE COURT: And I don't want any  
7       other issues or unnecessary issues to be raised.  
8       It's not an issue in my mind. As far as I'm  
9       concerned you conducted yourself decently, and  
10      whether or not you stood or not, I don't know,  
11      but it went off well. I want to be able to do  
12      my thing without artificial pressures. That's  
13      what I want.

14                  MR. HILLER: I have one matter  
15      to raise and it is a little bit out of the  
16      ordinary, but I'm raising it as an officer of  
17      the court, not as his counsel. That is my  
18      concern that it is going forward, based on Judge  
19      Hatter's decision in California, which makes  
20      this proceeding improper. And I would raise  
21      that to the Court. If the Court would like a  
22      copy of Judge Hatter's decision --

23                  THE COURT: I know it. It is not a  
24      binding precedent.

25                  MR. HILLER: And it was as a



1 model, it was raised by me personally, not by  
2 Mr. Hasbrouck's counsel. And I want to make it  
3 clear, it isn't a motion.

4 THE COURT: I understand.

5 THE DEFENDANT: I think what Mr.  
6 Hiller is trying to point out as a  
7 jurisdictional question something of which the  
8 Court may take cognizance and acknowledge its  
9 lack of jurisdiction, based on the invalidity of  
10 the rule itself under which the charge is  
11 brought. The Court is required to take  
12 cognizance of whether or not there is a motion  
13 by the parties, unless the issue is before the  
14 Court, regardless of a motion by the parties.

15 THE COURT: Well, I take it that  
16 the issue isn't before me. But, in any event,  
17 even if it is I intend at least at this moment,  
18 until better schooled, advised, or convinced,  
19 then there is in my mind a presumption of the  
20 validity despite other rulings by another judge.  
21 The fact of the matter is that there were things  
22 presented to him out of context that may or may  
23 not differ from this, and this has not been  
24 fully represented to me. In any event, there is  
25 always the advantage of a trial and a post trial

1 proceeding, if that proves necessary.

2 In any event, I recognize that you have  
3 made as an attorney, citizen, as you call yourself,  
4 and interested party in that respect, you have  
5 made an attempt to bring the issue before me in  
6 this limited way.

7 MR. HILLER: And if you would  
8 like to have an extra copy of the judge's  
9 decision.

10 THE COURT: Okay. Great.

11 (Handed over.)

12 MR. MUELLER: One last question  
13 on the schedule today. We'll pick a jury now,  
14 and does the Court plan to take a lunch break?

15 THE COURT: Yes. As a matter of  
16 fact, I had something arranged, but I will drop  
17 it. If possible I would like to move along.

18 MR. MUELLER: I would like a  
19 little break to bring the witnesses up from  
20 our --

21 THE DEFENDANT: I think the most  
22 feasible thing is to have the lunch break occur  
23 once we have the jury chosen.

24 THE COURT: What I'm anxious  
25 about, you have all kinds of assistance to go

1 down there.

2 MR. MUELLER: I wish that was the  
3 case. And Mr. Collings asked, since he will be  
4 called, that perhaps he be alerted 15 minutes  
5 before.

6 THE COURT: Is he going to be the  
7 first witness?

8 MR. MUELLER: The second witness.

9 THE COURT: And the first one  
10 will be how long?

11 MR. MUELLER: Five minutes.

12 THE COURT: Maybe they can both  
13 come up.

14 MR. MUELLER: I would hope so.  
15 But I need a break to call him, because he's not  
16 at my beck and call --

17 THE COURT: Let's go and choose a  
18 jury and we'll work from there.

19 THE DEFENDANT: Thank you for your  
20 consideration

21 (End of lobby conference.)

22

23

IN OPEN COURT

24

25

(Jury panel entered the courtroom at

1 1130 a.m.)

2 THE COURT: Good morning, ladies  
3 and gentlemen.

4 All right. Good morning ladies and  
5 gentlemen.

6 ALL: Good morning.

7 THE COURT: Okay. Very good.  
8 There's a rule, I don't know if other judges  
9 abide by the rule, but I require that we have  
10 live jurors.

11 (Laughter)

12 THE COURT: And the other problem  
13 that I have is I am told that your job is to  
14 listen very carefully to the evidence and use  
15 your judgment and to abide by the rules, and all  
16 that sort of thing. And the first test of that  
17 is to see whether you are alive, and the second  
18 test is whether you will speak and the third  
19 test is whether you are listening. So when I  
20 say Hello or Good Morning, you be nice to me and  
21 respond.

22 So I believe I saw everyone respond to  
23 my questions, so therefore I find as a matter of  
24 fact that you are all qualified to serve, up to  
25 a point. And now we are going to be in the

1 process of trying to establish it and go beyond  
2 that point. That is, whether there is some  
3 reason why you shouldn't serve on a particular  
4 jury that we are now about, the trial that we  
5 are now about to begin.

6 I'm going to introduce a few things to  
7 you, and I'm going to tell you a little bit  
8 about this trial, very little about it, and I am  
9 going to put some questions to you. And the  
10 questions that I put to you are designed and  
11 based upon the information that I give and the  
12 information that you have to determine whether  
13 or not you are: (1) qualified to sit on this  
14 jury; or (2), that the parties and the Court are  
15 satisfied that it would be appropriate for you  
16 personally to be on this particular trial.

17 I beg you to understand something.  
18 That if you do not, if you are not chosen, or in  
19 fact you are originally selected and then you  
20 are asked to step down, you should not take this  
21 as a personal affront. Whatever the process is,  
22 and so it is designed simply to find twelve of  
23 you who are capable and willing and open to the  
24 rules, the laws of this Court and nation, to sit  
25 on this particular trial and decide very very

1 important issues in this trial, decide a very  
2 very important case.

3 It is a criminal case, and so, of  
4 course, we have to look at it very very  
5 seriously and attentively, and we have to look  
6 at it with utmost fairness and regard for the  
7 rules.

8 Now, this case is entitled the United  
9 States versus Edward J Hasbrouck. I believe  
10 that's spelled H-a-s-b-r-u-c-k. Mr. Hasbrouck  
11 is the gentleman that sits right there, to my  
12 left. He will be representing himself in part  
13 and he will be assisted by an attorney, Benjamin  
14 Hiller, the gentleman that just stood.

15 And Mr. Hiller is from Boston; is that  
16 correct?

17 MR. HILLER: Cambridge.

18 THE COURT: That's a good place.

19 And representing the Government here is  
20 Mr. Robert Mueller, spelled M-u-e-l-l-e-r, the  
21 third. And he is, of course, associated with  
22 the United States Attorney's office here in  
23 Boston.

24 My name by the way, because I know you  
25 want to know, is David Nelson. And I will be

1       presiding, of course, throughout the trial.

2               Now, this is a criminal matter which  
3       the Government brought and got an indictment  
4       against the defendant, Mr. Hasbrouck, and  
5       alleged simply that Mr. Hasbrouck failed to  
6       register with the Selective Service as they  
7       claim is a requirement of the law. If you sit  
8       on this jury you will have to determine whether  
9       as a matter of law and fact Mr. Hasbrouck has  
10      failed to register with the Selective Service  
11      and is guilty or is not guilty. The requirement  
12      of proof of that claim will be upon the  
13      Government. And I will be very careful to  
14      explain to you what that burden is and what the  
15      nature of that proof has to be in order for the  
16      Government to prevail.

17              Now, there will be several witnesses  
18      called during the course of it. Of course the  
19      allegation is that this offense was committed  
20      from July 27th, 1980 and continuing to the  
21      present. That is, since July 27th, when  
22      allegedly he was ordered to do so, in 1980 to  
23      the present, Mr. Hasbrouck has failed to do  
24      so and is in violation of the law. Again that's  
25      something that the Government has to prove to

1 you.

2 Some of the witnesses that may be  
3 called are one Special Agent Lawrence Nivison.

4 He's from where, please?

5 MR. MUELLER: I believe he's from  
6 this area; Boston.

7 THE COURT: Boston. All right.  
8 And one Edwin Crawford, a Selective Service  
9 agent --

10 MR. MUELLER: He's an  
11 administrator with the Selective Service System  
12 in Washington, D.C.

13 THE COURT: And one Robert B.  
14 Collings, who, at the time that this matter  
15 occurred, was a member of the United States  
16 Attorney's office, and now has a different  
17 capacity.

18 And then one David Cox, who is in the  
19 administrative division of the Selective Service  
20 in Washington, D.C. One Richard Templer,  
21 T-e-m-p-l-e-r, of the Selective Service in  
22 Chicago, Illinois. And one Laurie S-t-o-f-f-e-l,  
23 Stoffel, of the Selective Service Administration  
24 in Chicago, Illinois

25 Now, essentially I'm going to ask you



1 questions such as: Whether you know anybody  
2 involved in this case; do you know any of the  
3 lawyers; any of the parties. Do you know any of  
4 the witnesses; have you been associated with any  
5 one of them in any way, you, or any member of  
6 your family, any close relative, any close  
7 friend involved or friends of or associated with  
8 or at odds with any one of these witnesses or  
9 any of the parties involved, or any of the agents  
10 of particularly the Selective Service agency in  
11 this case? If your answer is no, then you need  
12 not respond at all, and I will take it that your  
13 answer is no. If the answer is yes, you simply  
14 have to raise your hand and I will recognize you  
15 and we will have a conference at what we call  
16 the bench or the side bar, or at least off to my  
17 left, and we will find out what information you  
18 have and then decide what to do about it. So  
19 you need not speak in front of everybody else,  
20 so that hopefully you won't be limited then in  
21 what you are willing to tell me to make sure  
22 that we could be satisfied that the information  
23 doesn't impel you to be dropped from the jury.

24 I'm going to ask you such questions as  
25 to whether or not you have had any involvement

1 in this area. Questions perhaps about your  
2 attitude, whether negative or positive, or do  
3 you have any at all in regard to the Selective  
4 Service or any particular law of the United  
5 States that's related to this. Have you had any  
6 experience this way. Anybody in your family  
7 have any such experience? Does any one of you  
8 have any of this pending?

9 Now none of those questions necessarily  
10 will remove you from the jury, but it's  
11 important for us to have knowledge of that so  
12 that we can make appropriate judgment about it.

13 I'm going to ask you such questions as  
14 do you have any ideological feelings about this  
15 situation one way or the other -- for the draft,  
16 against the draft, for Selective Service,  
17 against Selective Service -- or any other kind  
18 of thing that may be pro or anti-government as  
19 such that you think should be brought to my  
20 attention, and indeed especially if you think  
21 that it may in some way affect your judgment.

22 I'm going to ask you, therefore,  
23 essentially the questions. They all go to  
24 whether or not you are aware of any particular  
25 bias or prejudice that would affect your

1 judgment. When I ask you if you have any bias  
2 or prejudice, my question doesn't stop then. If  
3 you don't have any biases or prejudices then I  
4 don't want you sitting, because you won't have  
5 any judgment, I suppose. What I want to make  
6 sure about is that those biases, whatever they  
7 may be, or prejudices, whatever they may be,  
8 does not in any way interfere with the  
9 possibility of you being fair, open to the rules  
10 and to the evidence as presented to you.

11 Your job will be during the course of  
12 this trial is to listen very very carefully to  
13 the evidence, and I will fully explain where the  
14 evidence comes from, and based only on the  
15 evidence, not on anything that happens outside  
16 of this courtroom, not any of the other things  
17 that you may have thought about or believed in  
18 before, essentially, but on the evidence. And  
19 then you will decide the facts from that  
20 evidence, and you will decide the verdict in  
21 conformity with those facts and in conformity  
22 with the instructions of law that I give you.

23 The one essential responsibility that I  
24 have is to explain to you the law. But it  
25 doesn't begin to measure up to what your

1 responsibility is, and that is to decide fairly  
2 and squarely the facts and the verdict. So,  
3 since you have a heavy responsibility, I would  
4 ask you then to be very very frank and open and  
5 genuine in your responses to these questions.

6 Now, in a moment we are intending to  
7 choose only twelve. If I feel it necessary I  
8 will choose another one. I might offer this to  
9 you. That I don't know that the case will take  
10 more than one day. So, if that's a factor in  
11 your ability to serve, then you ought to have  
12 that in mind. So with this, I think we can --  
13 with this out of the way I think we can now  
14 begin to chose the jury.

15 JUROR: May I speak to you?

16 THE COURT: Give me a second. I  
17 want to hold you up for a moment until I see.

18 What I'm going to do is -- here's what  
19 we are going to try to do. We don't have much  
20 room in the courtroom and I don't think we need  
21 any more room if we all cooperate with this idea.  
22 I know it's a good idea because I thought it up

23 There are twelve of you who will be  
24 seated, so I believe if you go down 1, 2, 3, 4,  
25 5, 6, and 1, 2, 3, 4, 5, 6, those are the twelve

1 seats where the jurors that are chosen will sit.  
2 He's going to pull the names of twelve people  
3 out. When he has done that, then I want those  
4 twelve people to sit in those twelve seats and  
5 the others will have to do a little put of unmusical  
6 chairs to get to other spots. We'll see if we  
7 can do that. If it doesn't work we'll start  
8 over again.

9 THE CLERK: Seat one, juror 74;  
10 seat 2, juror 34; seat 3, juror 48; seat 4, 77;  
11 seat 5, juror No. 88; seat 6, juror No. 91; seat  
12 7, juror 86; seat 8, juror 85; seat 9, juror 84;  
13 seat 10, juror 83; seat 11, juror No. 82; and in  
14 seat No. 12 juror No. 81.

15 THE COURT: Now, if you are sitting  
16 in those twelve seats and your number wasn't  
17 called would you move out and just stand right  
18 over here. That's fine. Now will juror 74  
19 please sit at this seat right there, juror 34 in  
20 the next seat, juror 48, juror 77, juror 88,  
21 juror 91, juror 86, juror 85, juror 84, 83, 82,  
22 81.

23 Once more, the last one will be 81.  
24 Then 82. Okay. That's good.

25 I have 74, 34, 48, 77, 88, 91. Then I

1 have 86, 85, 84, 83, 82, 81.

2 Now, gentlemen can you all see the  
3 jurors, and I'm going to get them to respond to  
4 the questions.

5 Now to you twelve jurors /-BS and of  
6 course all the others will have an opportunity  
7 to listen so they can respond to the questions.

8 The first question: Does anyone have a  
9 need to ask me a question regarding this matter?  
10 Come to the side bar one at a time.

11 (Side bar discussion, as follows...

12 JUROR NO. 74: Marie Chiampa, No.  
13 74. I saw on the media last night I saw Mr.  
14 Hasbrouck. I don't know whether or not that  
15 would bias me or not. But I did see it on the  
16 news.

17 THE COURT: Well, I'll ask you the  
18 question. It's one thing to see it on the news  
19 and the other is whether or not as a result of  
20 that you would be unable to listen to the  
21 evidence and based only on the evidence  
22 determine the facts in a way that I explain it  
23 to you, the way that I explain the law to you?

24 JUROR 74: Okay. I am opposed to  
25 the draft and I think it would affect my

1 decision.

2 THE COURT: All right

3 Any problems about her stepping down?

4 MR. MUELLER: If she is for cause.

5 THE COURT: Okay. You may step  
6 down.

7 JUROR 84: Joseph Hanlon, No.  
8 84.

9 THE COURT: What's your question?

10 JUROR 84: I live in the same town  
11 as the defendant, and I think there could be  
12 mutual friends. I don't know him.

13 THE COURT: Do you know him or his  
14 friends?

15 JUROR 84: I do. I think there's a  
16 mutual friend.

17 THE COURT: Who is that?

18 JUROR 84: Mr. Clayton, I believe  
19 he knows.

20 THE COURT: Well, does that make  
21 any difference to you?

22 JUROR: It doesn't make any  
23 difference. I just wanted --

24 THE COURT: Would it effect your  
25 judgment in any way?

1 JUROR 84: No.

2 THE COURT: Would you be willing to  
3 listen to the evidence and based on the evidence  
4 and the law determine your verdict?

5 JUROR: Yes.

6 THE COURT: So you don't know of  
7 any other thing then to make it clear to us?

8 JUROR 84: Just that I live in the  
9 same town.

10 MR. MUELLER: May I ask one  
11 question. I ask the Court to ask the gentleman  
12 whether or not in his conversations with the  
13 mutual acquaintance Mr. Hasbrouck has come up,  
14 has been a topic of discussion?

15 JUROR 84: There was an article in  
16 the local newspaper that we did discuss.

17 THE COURT: And did you discuss pro  
18 and con about it?

19 JUROR: No, just that it was  
20 there.

21 THE COURT: Okay. I'll be asking  
22 other questions of the other jurors about media,  
23 so you can respond to those questions as  
24 necessary.

25 JUROR 86: Gregory Hills, No. 86.



1 THE COURT: What's your question?

2 JUROR 86: I have read about it in  
3 the paper and I have a biased opinion. I had  
4 applied for the Selective Service at the same  
5 time he did.

6 THE COURT: And?

7 JUROR 86: And I hold a biased  
8 opinion about the case. My feeling is about the  
9 Selective Service, complete opposite to him.

10 THE COURT: Does that affect your  
11 judgment as to what happens in this case?

12 Okay. All right. Any reason? I'll  
13 let him go if nobody objects.

14 THE DEFENDANT: No. I have no  
15 objection to people who register for the draft.  
16 I think people that registered for the draft are  
17 preeminently my peers.

18 THE COURT: Let me ask you another  
19 question. The process of the trial is that we  
20 try to pick jurors, not jurors in favor of or  
21 against or not for, but people who would be willing  
22 whatever their prejudices and biases, mindful  
23 that we all have prejudices and biases, is  
24 whether or not for this important exercise that  
25 you would listen carefully to the evidence, and

1 if the evidence establishes a certain fact to  
2 you then you would vote that way. After hearing  
3 all the facts and deciding on what the facts are  
4 with all the other members of the jury you would  
5 decide a particular verdict, you would be  
6 deciding on it based on the facts and you would  
7 be putting aside any prejudices or pros or cons  
8 before you came in the courtroom to see justice  
9 work. Much like what would happen I suppose in  
10 the military, you would follow the orders and  
11 try to do what's best under the circumstances,  
12 but using your own judgment and conscience in doing  
13 that. Do you understand that?

14 JUROR 86: Yes.

15 THE COURT: Do you think you could  
16 follow the rules in this case?

17 JUROR 86: My opinion that I have  
18 had --

19 MR. MUELLER: Your Honor, let me--

20 THE COURT: Do me a favor, please,  
21 I have to hear these people.

22 (Noise in courtroom.)

23 JUROR 86: I have the opinion for  
24 two years. It is fairly strong, I don't know if  
25 I could set it aside that easily. I don't think

1 it would be fair to them that it is that biased.

2 MR. MUELLER: Even if Mr.  
3 Hasbrouck does not move for his cause, I'll move  
4 for his exclusion for cause. It appears that he  
5 would not be fair to both sides.

6 THE COURT: All right. I'm going  
7 to let him go.

8 MR. MUELLER: Thank you.

9 JUROR 34: I don't know if it is  
10 the appropriate time. Carmen Lennington, Jr.  
11 No. 34

12 I do have a definite bias I think  
13 against the defendant, unless I could be  
14 persuaded otherwise. I just wanted to be frank  
15 about that.

16 THE COURT: Well, here's the  
17 process. The process is simple. Is that it is  
18 understood that people come in with prejudices  
19 and biases. You are a human being. The problem  
20 is one of which the question is if I tell you  
21 would you be capable and be willing to listen to  
22 the evidence, and if the evidence shows one  
23 thing and it may or may not be consistent with  
24 what your bias is, that you would find  
25 accordingly. Are you prepared to do that?

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JUROR 34: Yes.

THE COURT: Now she's expressed what she has to do. How do you feel to that?

THE DEFENDANT: I'm not objecting to any of jurors.

MR. MUELLER: I would like to ask one further question. She indicated a bias. Is it against the defendant personally --

THE COURT: No, just in principle.

MR. MUELLER: Thank you, your Honor. That's all.

IN OPEN COURT

THE CLERK: The following take seats Nos. 1 and 7. Seat 1 juror 78; seat 7 juror 37.

THE COURT: Now have either of you reason to see me?

Come up.

(Side bar discussion, as follows...

JUROR: John Autrey McGlynn, No. 37.

THE COURT: What's your question?

JUROR: My son is in the United

1 States Air Force.

2 THE COURT: So?

3 JUROR 37: I just thought that you  
4 should know this.

5 THE COURT: Does that make any  
6 difference to -- I'm going to explain to the  
7 jurors over and over again, and it's very  
8 important. The questions really go to  
9 determining the possibility and the willingness  
10 for each of the jurors to do this. That is  
11 whatever bias or prejudice or experience that  
12 you have had, the question really is whether you  
13 are willing for this purpose to put them aside,  
14 listen very carefully to the evidence and based  
15 on the evidence decide the facts in conformity  
16 with all the other members of the jury, and  
17 decide from the facts and the law as I tell it  
18 to you whether or not the defendant is guilty

19 Are you able to do that?

20 JUROR 37: Yes.

21 THE COURT: Okay

22 Any questions?

23

24

IN OPEN COURT

25

1 THE COURT: Now, the twelve of  
2 you -- of course I want all the others to  
3 listen very carefully so that if necessary you  
4 will be able to respond to the questions if  
5 called upon later on more easily.

6 I'm going to ask you now does anyone of  
7 the twelve of you have any reason or know of any  
8 reason why you should not serve on this  
9 particular jury? And the answers all appear to  
10 be no.

11 Any one of you know anybody involved in  
12 this case? You, or any member of your family,  
13 related to, associated with, work for, work  
14 against, anybody or any entity, anybody in this  
15 case? And the answers would appear to no.

16 Anyone of you seen any of this, this  
17 particular case or any case like it that comes  
18 quickly to mind regarding this subject matter or  
19 the defendant or the United States Government in  
20 this particular case? Anyone of you seen  
21 anything on the TV or news media about this?  
22 The answers, other than what is recorded, appear  
23 to be no.

24 Any one of you ever formed or expressed  
25 an opinion regarding this particular case? And

1 the answers would appear to be no

2 Any one of you ever have any strong or  
3 lasting opinion about Selective Service, the  
4 draft, the military, the defense, such that that  
5 opinion may obstruct or interfere with your  
6 ability to listen to the evidence, and based  
7 only on the evidence as it pertains to this  
8 particular case, determine a verdict based upon  
9 that evidence and on the law as I express it.  
10 Do any one of you have any particular difficulty  
11 about doing that? And the answers all appear to  
12 be no.

13 Any one of you had any member of your  
14 family that was subject to the laws of the  
15 Selective Service and the rules surrounding them  
16 and had any difficulty about that, or expressed  
17 any difficulty about that? And the answers  
18 would appear to be no.

19 Essentially what I'm attempting now to  
20 find out from you is whether by reason other  
21 than what will be presented to you in this  
22 courtroom you would have reason to believe that  
23 you would not be able to adequately serve and  
24 abide by the rules of law as I lay them out to  
25 you? The answers would appear to be no

1 I find that these jurors stand indifferent.

2 THE CLERK: Side bar

3

4 (Side bar discussion, as

5 follows...

6 THE CLERK: Any challenges, give

7 them to me.

8 THE DEFENDANT: I have none.

9 MR. MUELLER: I have none.

10 ... end of side bar discussion.)

11

12 THE COURT: Well, it appears that  
13 the rest of you wasted my time. We have a jury.  
14 I want to thank you very much for being in  
15 attendance, and hope that you get to serve  
16 another 50 days in the jury system. If you have  
17 any problems let me know. But I think you can  
18 go home now. Is that right?

19 (Remainer of jury venire left  
20 the courtroom.)

21

22 THE COURT: I chose not to have  
23 alternates because I would like to have all of  
24 you know and fully understand that you will be  
25 the ones that will sit on this jury. You will



1 have to be very attentive to all that you hear  
2 and very attentive to the law. I want you to  
3 know that the law requires a unanimous verdict,  
4 so I have to rely upon you for that kind of  
5 diligence and interest and care so that we can  
6 determine whether or not you can fully agree  
7 with each other on the facts and on the verdict.  
8 So you have several things to do, including  
9 listening very carefully, observing the rules  
10 and staying healthy so we won't lose anyone  
11 during the course of the trial.

12 Again, I think that we might be able to  
13 conclude it today. We'll try to make it as  
14 comfortable as possible.

15 I would like to give you some  
16 preliminary instructions right now and then we  
17 are going to take a break. Whether that break  
18 is for lunch or otherwise I'll let you know  
19 after I have conferred with counsel. But  
20 perhaps it may be wise to give you some  
21 preliminary instructions as to what is going to  
22 happen.

23 You heard me tell you what the basis of  
24 the allegations are. You will have with you in  
25 the jury room what we call an indictment. The

1 indictment will spell out more specifically what  
2 the charge is, and I will read that to you now.

3 it says, in part, that beginning on or  
4 about July 27th, 1980 and continuing to the date  
5 of return of this indictment within the District  
6 of Massachusetts -- and the return of this  
7 indictment I believe was October 6, 1982 --  
8 Edward J. Hasbrouck, the defendant herein, a  
9 male person required to present himself for and  
10 submit to registration pursuant to: (1) The  
11 Military Selective Service Act; (2), the rules  
12 and regulations adopted pursuant to that Act;  
13 and (3), Presidential Proclamation 4771 of July  
14 2nd, 1980, did knowingly and willfully fail,  
15 evade, and refuse to present himself for and  
16 submit to registration in violation of Title 50  
17 of the United States Code and the pertinent  
18 sections thereto.

19 So that's essentially then what the  
20 defendant is being charged with. And, as I said  
21 to you before, and this is very very important  
22 to the system of justice, is that once the  
23 Government makes that accusation it becomes the  
24 responsibility of the government to prove it.

25 Now, what's going to happen from here

1 on is the following. We are going to begin when  
2 we come back with an opening statement by the  
3 Government. That opening statement will be an  
4 explanation by him of the things that he intends  
5 to prove and the witnesses and the evidence he  
6 intends to produce to prove that there has been  
7 a violation of this act. And when he is  
8 finished with his opening statement the defense  
9 has an opportunity at that time, if it wishes to  
10 do so, to make an opening statement. It is  
11 after this opening statement or both these  
12 opening statements are made that the evidence  
13 will begin.

14 The evidence will be produced by the  
15 Government at first and the Government will put  
16 on evidence. And then, if the defense wishes to,  
17 the defense will have an opportunity, if he  
18 hasn't already, to make an opening statement.  
19 But if he has already made an opening statement  
20 will then begin with the production of any  
21 evidence the defense wishes to put on.

22 I will tell you again at the trial, of  
23 course, that the defendant has no responsibility  
24 of doing anything, certainly no responsibility  
25 of putting in evidence whatsoever, because the

1 defendant has no responsibility of proving his  
2 innocence. The Government at all times has the  
3 responsibility of proving the defendant's guilt  
4 to a standard that I will explain to you more  
5 carefully at the end of the trial.

6 Now, after the prosecution has put in  
7 its evidence and after the defense, if it wishes  
8 to, puts in its evidence, then the evidence will  
9 be closed, and each side will be given an  
10 opportunity to make closing statements, we call  
11 them closing arguments, or whatever, but in a  
12 sense it will be their round up, their summary,  
13 and they will attempt to persuade you as to what  
14 the evidence proved in this particular case or  
15 didn't prove.

16 After that is complete I will instruct  
17 you on the law. I will tell you what specific  
18 law applies to this particular case and you will  
19 be responsible for abiding by that law. You  
20 will then get that instruction, and then you  
21 will go out and have an opportunity to  
22 deliberate among yourselves in secrecy and  
23 determine whether or not the Government has  
24 proved its case as brought before you. And then  
25 once you have a verdict you will return that

1 verdict and we will abide and apply, of course,  
2 the verdict as you present it to us.

3 Now, I want you to know something very  
4 important. I want you to know that the only  
5 thing upon which you base your determination of  
6 facts and then ultimately your verdict will be  
7 derived or gotten from the evidence.

8 What is evidence? The evidence comes  
9 to us in several forms. Primarily the evidence  
10 will come in through witnesses. Witnesses will  
11 be sworn and they will take the stand over there  
12 and will testify in response to all the  
13 questions put both by the prosecution and the  
14 defense. The witness, of course, is sworn to  
15 tell the truth and is supposed to tell the truth.

16 You have two responsibilities. You  
17 must observe the witness as the witness  
18 testifies, and decide what of what that witness  
19 tells you you will believe. And two, you will  
20 decide how much weight or dependence you will  
21 place upon what a witness has told you and from  
22 that you will decide certain facts, based upon  
23 the witnesses' testimony. The law says that you  
24 may believe all of what a witness tells you, you  
25 may believe some of what a witness tells you, or

1 you may totally disbelieve a witness. And that  
2 is entirely, entirely up to you, and no one else.  
3 So it's very important for you to listen  
4 carefully and observe how a witness testifies.  
5 Indeed, here is where the law is brilliant in  
6 its making, in that it allows you to use your  
7 own commonsense, your own experiences, all that  
8 wherewithal that you have to make those  
9 decisions. So there is no magical way of doing  
10 it, except, of course, making sure that you are  
11 very attentive and very honest in your  
12 determination of what a person says to you.

13 Beyond that, you will have as evidence  
14 certain exhibits. Both sides have an  
15 opportunity to present exhibits. The Government  
16 will put on some exhibits and they will be  
17 marked. If they are marked with a number you  
18 know that it is in evidence. You will be able  
19 to take that piece of evidence back with you to  
20 the jury room and give it what weight, what  
21 regard, you think it deserves, and based upon  
22 that you may find certain facts, and based upon  
23 the exhibits and the testimony you may be able  
24 to find other facts.

25 And then you are allowed to draw what

1 we call reasonable inferences, based upon the  
2 evidence or any fact that you find to be so. So  
3 that here again is the law's expression of its  
4 appreciation for your intelligence and ability  
5 to think. You will be allowed to draw certain  
6 conclusions based upon the fact or facts as you  
7 come to know them. So, indeed, if someone  
8 testifies to fact A and you believe it, and  
9 somebody else perhaps testifies to fact B and  
10 you believe that to be so, and now since you  
11 know that fact A is true and fact B is so, then  
12 you are allowed, if it's a natural, reasonable  
13 inference that can be drawn from facts A and B  
14 you can draw fact C if fact C is supported by  
15 the existence of facts A and B, even though that  
16 may not be directly testified to.

17 So, with that, that constitutes all  
18 the evidence or the kinds of evidence that will  
19 be presented to you, and it constitutes all from  
20 in which you may draw any fact conclusions from.

21 Now what you cannot do, and it's very  
22 very important, what is not evidence is very  
23 very important. What is not evidence and what  
24 you cannot do is you cannot, for example, guess,  
25 speculate, surmise, conjecture about anything.

1 So when I was explaining to you about fact A and  
2 fact B, if in fact you knew A and didn't know B,  
3 and you say well, I guess B occurred, or I bet  
4 you it did, so therefore I can draw a conclusion  
5 as to C, that wouldn't be right. Because if  
6 whatever you need in order to be reasonably  
7 satisfied of the inference is lacking, then you  
8 may not draw that conclusion.

9 You may not fall back on any prejudice or  
10 bias that you had in order to make a certain  
11 determination. You may not regard anything else  
12 that's evidence. So when I say "anything else",  
13 I have already told you for example that you are  
14 going to hear opening statements, you are going  
15 to hear closing statements, you are going to  
16 hear instructions from me. None of those things  
17 is evidence. So even what I tell you, what  
18 expressions I use, what facial expressions I may  
19 have -- and hopefully they are not undesirable  
20 ones -- you are to draw no conclusions from  
21 that. They are not evidence and not to be used.  
22 What you may have heard outside or seen outside,  
23 you can't use that in any way. Just what I told  
24 you as far as the evidence is concerned.

25 There was in this case for example



1 something I just read -- an indictment. The  
2 indictment is not evidence, and therefore has no  
3 bearing on what the facts are. It is just a  
4 means of telling you, explaining to you what it  
5 is that you have to be able to establish beyond  
6 a reasonable doubt before you can find the  
7 defendant guilty. But that's not evidence, that  
8 the accusation was made. The fact that the  
9 defendant is brought before the Court and he's  
10 called a defendant, or sits in a certain  
11 position, or any of those other things, you may  
12 not regard. He claims his innocence, and it is  
13 not only a right but he's presumed to be  
14 innocent until such time as he's proved  
15 otherwise. That's something that I will be more  
16 clear to you about later. The idea, though, is  
17 that all those other things that I talked to you  
18 about, the indictment, to the fact of the  
19 presence of the claims made, none of those  
20 things you will use to decide his innocence or  
21 guilt.

22 Now, I think that brings you to where I  
23 want you. That is, the position to understand  
24 hopefully what you need to have in mind as you  
25 listen and observe the evidence.

1           There is one other thing that goes on  
2 some times that perhaps you will hear or not  
3 hear, and that is objections made. Objections  
4 are made for good reason. That is to make sure  
5 that whatever happens is consistent with the law.  
6 So they are asking me to make a ruling on the  
7 law, and I make rulings on the law, and I say  
8 Yes, you may have that in evidence, or No, you  
9 may not have that in evidence. Whatever I do  
10 about it or whatever I say about it is not  
11 something that you will consider. The only  
12 thing that you will consider is what I do in  
13 fact allow into evidence by placing it into  
14 evidence. If I make a mistake on that the  
15 system has a way of hopefully curing those  
16 errors on my part, and so that is none of your  
17 business and it's not important for us right now.  
18 But don't hold it against somebody because they  
19 object or there is a ruling against or for them.  
20 It's not a game played like that.

21           Now, I want you to abide by two other  
22 things. One is that it's important for you, I'm  
23 sure we need your attention, I'm sure there will  
24 be people talking about it, I'm sure that you  
25 may hear things in the corridor and what have

1 you. I'm going to ask you to try very very hard  
2 to avoid any such contact whatsoever. I'm going  
3 to ask you that if you in fact come in contact  
4 with anything in the media in the course of this  
5 trial, or anything said that clicks in your mind  
6 elsewhere, that when you come back you simply  
7 raise your hand and give me a chance to talk to  
8 you up here so that we can assure everybody  
9 there is no difficulty involved. That's part of  
10 your responsibility too, to have jurors anxious  
11 to do justice.

12 The other thing is that you shouldn't come  
13 to any conclusions about this case until it's  
14 all over, until I tell you now it's time for you  
15 to go out and deliberate. Up to that point in  
16 time you don't want to conclude to the innocence  
17 or guilt of the defendant, and you should be  
18 very careful to adhere to that rule.

19 Finally, you are not allowed to talk about  
20 this case whatsoever. So, don't talk about it  
21 with anybody who asks you any questions. If  
22 perchance when you go home or perchance you are  
23 out on the street or meet with anybody else, you  
24 are not to discuss this case in any way with  
25 anyone and you are to avoid any conversations

1 about it. That's important. And indeed you  
2 cannot and you may not talk about it among  
3 yourselves. So if you are on the elevator and  
4 you are talking together and you didn't hear  
5 something, and you say, Gee, I didn't get that  
6 question or answer, you don't ask the other what  
7 was said. Or I don't remember what he said, or  
8 that sort of business. No discussion about this  
9 case once you walk out of that jury box until I  
10 give you that instruction, and that it is indeed  
11 when you go out to deliberate to a verdict. And  
12 you'll be surprised how it works. Because if  
13 you haven't already sat on a jury you'll find  
14 that there's almost total recollection, if not  
15 indeed total recollection of all the evidence by  
16 discussing it at that point in time one with the  
17 other you'll see the magic of the system that  
18 allows for honest and accurate judgment.

19 So, with that in mind I'll excuse you,  
20 ladies and gentlemen of the jury. I'll ask you  
21 to go to the jury room right now and then I'll  
22 give you further instructions as to whether you  
23 should return here or go to lunch.

24 By the way, my practice is to choose a  
25 foreperson at the end. Is there any difficulty

1 with that?

2 MR. MUELLER: None, your Honor.

3 THE COURT: Okay. Thank you very  
4 much.

5 (The jury left the courtroom.)

6  
7 THE COURT: Do you want to do  
8 lunch now?

9 MR. MUELLER: I would think that  
10 the jurors may want to take a short break. I'm  
11 ready to go whenever the Court is ready to  
12 proceed. Maybe a short lunch break would be  
13 appropriate at this time.

14 THE COURT: What's your attitude?

15 THE DEFENDANT: It would seem to  
16 make sense to go to lunch now and then go right  
17 through.

18 THE COURT: How about one o'clock.  
19 1:05 to return. Is that all right?

20 MR. MUELLER: Fine.

21 THE COURT: All right.

22 Instruct the jurors for one o'clock.

23

24 (Lunch recess.)

25

P.M. SESSION

1  
2  
3 (The jury was seated.)  
4

5  
6 (Side bar discussion, as  
7 follows...  
8

9 THE DEFENDANT: I just wanted the  
10 record to show that I learned during the recess  
11 for lunch that at various points during the  
12 proceedings this morning there were more people  
13 seeking to attend to trial than could fit into  
14 the courtroom, and there was a line of people  
15 outside the courtroom waiting to get in who  
16 could not get in for want of space,  
17

18 ... end of side bar discussion.)  
19

20 IN OPEN COURT  
21

22 (Oath administered to the jury).  
23

24 THE COURT: All right.. Ladies and  
25 gentlemen, just as I explained to you before, we  
are now about to begin the trial, though not the  
evidence. You will now hear from counsel, Mr.  
Mueller, and he'll make an opening statement.

1 MR. MUELLER: Thank you, your  
2 Honor.

3 Good afternoon, ladies and gentlemen.  
4 As the Court has indicated to you, my name is  
5 Robert Mueller. I'm an assistant to the U. S.  
6 Attorney, with the U. S. Attorney's office in  
7 this building. It is my responsibility and duty  
8 today to present to you the evidence in the case  
9 of United States versus Edward J. Hasbrouck.

10 Now it is a common practice for  
11 attorneys at the outset in initially talking to  
12 a jury to discuss what an opening statement is  
13 and how this trial is going to proceed. The  
14 judge has already done that. I'm not going to  
15 spend any amount of time doing that.

16 It is also a common practice for  
17 attorneys in an opening statement to tell you  
18 how simple the case is, how uncomplicated and  
19 simple the case is. It may be a six month  
20 anti-trust case, it may be one of the most  
21 complicated cases that's ever been tried, but  
22 counsel generally stand up here and tell you  
23 that it is simple. Today's case is relatively  
24 simple. It is one of the few occasions where  
25 one can find himself in this position and tell

1 you in all truthfulness that this is a 'relatively  
2 simple case. By being a relatively simple case  
3 doesn't mean unnecessarily that it is an unimportant  
4 case. It is an important case because you have  
5 a defendant before you, Mr. Edward J. Hasbrouck,  
6 who faces charges that he must answer to in  
7 court before you. The charges -- and I'll  
8 briefly review the indictment -- are that Mr.  
9 Hasbrouck failed to register for the Selective  
10 Service system.

11 The balance of my opening statement is  
12 going to review for you what the Government must  
13 prove to you in order to prove the charges in  
14 the indictment.

15 There are basically three items that  
16 the Government has to prove to the jury to  
17 sustain a conviction of Mr. Hasbrouck on these  
18 charges. The first is that Mr. Hasbrouck had a  
19 duty to register, that he was required to  
20 register. The second element that the  
21 Government must prove is that Mr. Hasbrouck did  
22 not register, even though he had the duty. The  
23 third element which the Government must prove is  
24 that Mr. Hasbrouck's failure to register was  
25 knowingly and willfully done. Those are the



1 three items that the Government has to prove to  
2 you.

3 Now, now is the Government going to  
4 present the evidence in the form of testimony  
5 and witnesses to prove those three items? The  
6 first item, the fact that Mr. Hasbrouck had a  
7 duty to register.

8 Let us start back in 1980, specifically  
9 July 2nd, 1980, when then President Carter  
10 issued Proclamation 4771. In that proclamation  
11 President Carter, pursuant to the powers granted  
12 to him by the Constitution and Congress, stated  
13 that all men born on or after January 1st, 1960  
14 were required to register for the Selective  
15 Service. And I want to emphasize register for  
16 Selective Service, and want you to keep in your  
17 mind the distinction between registration and  
18 actually going in and serving. Register for  
19 Selective Service. That's what the proclamation  
20 dictated.

21 It also stated in that proclamation  
22 that those men born in calendar year of 1960  
23 were required to register between July 21 and  
24 July 26, 1980. Now over the period of years  
25 since July 2nd, 1980, the date of that

1 proclamation, there have been grace periods and  
2 the like, but the duty still remains. The duty  
3 is that those persons born in calendar year 1960  
4 were required to register between the dates of  
5 July 21 and July 26th, 1980, and if they did not  
6 do so they were required to register thereafter.

7 Now register; what does register mean  
8 in this context? Registration currently means  
9 that the registrant, in this case Mr. Hasbrouck,  
10 is required to go to his local post office, and  
11 at that post office fill out a form. That form  
12 would then be sent to the Selective Service  
13 system and a letter of acknowledgement would be  
14 sent to Mr. Hasbrouck. The full extent of his  
15 duty in response to this proclamation was to  
16 walk down to his local post office and fill out  
17 a form and then the post office would send it to  
18 Selective Service.

19 Now, proof of Mr. Hasbrouck's duty to  
20 register comes in basically two forms. The  
21 first is the birth certificate of Mr. Hasbrouck.  
22 It will be introduced by F.B.I. special Agent  
23 Lawrence Nivison. The birth certificate for Mr.  
24 Hasbrouck indicates that he was born on January  
25 11th, 1960. During the calendar year -- or he

1 has a birth date of the calendar year in which  
2 requires his registration. We will also  
3 introduce into evidence his application for a  
4 driver's license in the State of Massachusetts  
5 which also indicatess a birth date of January 11th,  
6 1980. So his birth date falls within that  
7 period which requires him to register.

8 Now the Government's proof will also  
9 show that Mr. Hasbrouck did not register. And  
10 we will show that in a number of ways. One of  
11 the first witnesses you will hear is a former  
12 Assistant U. S. Attorney Robert Collings who  
13 will testify as to a meeting that he had with  
14 Mr. Hasbrouck in the U. S. Attorney's offices in  
15 this building on March 1st, 1982. At that time  
16 Mr. Hasbrouck asked to see somebody in the  
17 office, and he was directed to Mr. Collings, who  
18 went out and talked to Mr. Hasbrouck. In the  
19 course of that meeting Mr. Hasbrouck indicated  
20 to Mr. Collings that he had not registered, and  
21 indeed did not intend to register. He also at  
22 that time gave Mr. Collings one document, and  
23 additional documents -- there will be one  
24 document that will be brought to your attention  
25 today -- which was a letter that was written

1 to a number of people in Washington,, D.C., in  
2 which Mr. Hasbrouck spells out the fact that he  
3 has not registered, will not register, and is  
4 aiding and abetting others to avoid registration,  
5 and indeed is part of a conspiracy to not  
6 register.

7 After Mr. Collings's testimony we will  
8 also produce the testimony of several persons  
9 from the Selective Service. One will be a Mr.  
10 Edward Crawford, who is an administrator with  
11 the Selective Service who remembers seeing the  
12 letter which Mr. Hasbrouck sent to the Selective  
13 Service, the same letter that Mr. Collings will  
14 testify to. He will also indicate that a form  
15 letter was sent out to Mr. Hasbrouck. Upon  
16 receipt of evidence that Mr. Hasbrouck had not  
17 registered a form letter was sent to Mr.  
18 Hasbrouck by Selective Service encouraging him  
19 to register.

20 Finally, the last three witnesses are  
21 what you might call record specialist. Mr.  
22 David Cox is in charge of the computer system  
23 for the Selective Service, and he will testify  
24 as to how the records are kept once the post  
25 office feeds the records to the Selective

1 Service system how they are put in either  
2 microfiche and/or computer files.

3 And the final two witnesses will be  
4 clerks, one a microfiche clerk who searched the  
5 microfiche records for the recordation of Mr.  
6 Hasbrouck's registration; and finally the  
7 computer technician who searched the computer  
8 files for Mr. Hasbrouck's registration. In both  
9 cases no registration was found.

10 That then is the Government's case  
11 before you. We believe that the letters that  
12 you will see, the statements made by Mr.  
13 Hasbrouck to Mr. Collings will paint a picture  
14 of an individual who has not registered, will  
15 not register, and takes some pride in the  
16 position he has taken.

17 Before I leave you and start putting on  
18 the evidence in the Government's case, and  
19 before Mr. Hasbrouck has an opportunity to talk  
20 to you, let me for a second discuss what is at  
21 issue here and what is not at issue here.

22 What is in issue in this courtroom  
23 today and before you as jurors called before  
24 this courtroom, is whether or not the facts  
25 presented to you are sufficient to make you

1 together reach the conclusion that Mr. Hasbrouck  
2 has violated the law beyond a reasonable doubt.  
3 That is what is in issue here today.

4 What is not in issue here today are a  
5 number of things. Whether the Selective Service  
6 law is valid, whether it is constitutional,  
7 whether it is even right. That is not in issue  
8 here today. What is in issue here today is the  
9 guilt or innocence of the young man to my left.

10 And I thank you for giving me your  
11 attention during my opening remarks and I would  
12 ask that you give the same attention to Mr.  
13 Hasbrouck not only in his opening remarks but  
14 throughout the trial of this case.

15 Thank you.

16 THE COURT: Do you care at this  
17 time, or counsel care at this time to make an  
18 opening statement?

19 THE DEFENDANT: Yes.

20 THE COURT: You may do so. Either  
21 or both of you.

22 THE DEFENDANT: I think Mr.  
23 Mueller has given you a rather accurate  
24 statement of what is legally at issue and  
25 legally not at issue here. It is precisely for

1 the reason that none of the issues that he has  
2 defined as legally relevant -- whether I knew  
3 that the Government wanted me to register,  
4 whether I registered -- there is no question  
5 about those those, I don't think, or any real  
6 dispute, and they are not at the heart of what I  
7 think you can see are the real issues of  
8 registration for the draft.

9 The things which Mr. Mueller has  
10 defined I think accurately as not being legally  
11 at issue here, not being legally relevant are  
12 precisely the real issues in the case being  
13 brought against the Government by those who have  
14 through non-registration avoided the draft.

15 The purpose of opening statements is  
16 supposed to give an idea of how the parties see  
17 the case. And I think I can best do it by  
18 reading to you very briefly the statement which  
19 I filed with the Court before this trial began  
20 of my view of the case.

21 The defendant, myself, charges that  
22 continuing to the present the Government did  
23 commit acts of patriarchy, war, and imperialism  
24 and did conspire to commit nuclear omnicide in  
25 violation of the peace and freedom and of the

1 rights to justice and survival of the people of  
2 the world. The defendant indicts the Government  
3 for these crimes by his statements and actions.  
4 These charges are before and should be publicly  
5 tried by the jury of defendant's peers, young  
6 men who are deciding whether to register for  
7 the draft. Their verdict is their decision  
8 whether or not to register. Those who do not  
9 register find the Government guilty and sentence  
10 it to irrelevance.

11 I think what goes on here will be  
12 entirely irrelevant to the real issues of  
13 registration in the draft. I think that nothing  
14 that goes on here, and I do expect and assume  
15 that I will be convicted so I certainly don't  
16 want that, but I realize that given what is  
17 defined as the illegally relevant that that's  
18 probably what is going to happen, whether I'm  
19 convicted, anything that goes on here. The parade  
20 of government witnesses you will here testifying  
21 to irrelevant matters not in dispute, such as I  
22 knew the Government wanted me to register and  
23 that I didn't register. That is going to have  
24 no effect on the real case. It's nothing to  
25 have no effect on the millions of other people



1 who have violated the Selective Service laws who  
2 cannot be prosecuted because they didn't write  
3 the Selective Service and tell them and make the  
4 case against themselves and publicly assume  
5 responsibility for what they were doing. What  
6 goes on here is irrelevant to the issues as I  
7 see them. I have no expectation that even if I  
8 tried to present them I would be permitted to.  
9 I think Mr. Mueller's characterization of what  
10 is legally relevant and admissible is quite  
11 accurate. And that is the reason why I'm not  
12 going to present a defense, I'm not going to  
13 contest what the Government says. I'm not going  
14 to have any further part in these proceedings.

15 Obviously I have to be here, the  
16 Government would have sent marshals to come and  
17 drag me into court if I hadn't shown up here.  
18 But I see a system of the courts as being  
19 integrally related with the system of the draft,  
20 and I feel no more obligation to present a  
21 defense here and prove that what I did was legal.  
22 And I feel an obligation to prove my sincerity  
23 to a draft board to be classified as a  
24 conscientious objector.

25 I don't know what else I can say. I

1 hope that you will understand and not be  
2 mystified by the fact that I'm not going to have  
3 anything more to do with this proceeding.

4 MR. MUELLER: Your Honor, I would  
5 have to, for the record, take exception to the  
6 remarkss as being outside the proper scope --

7 THE COURT: There are no  
8 exceptions taken, counselor.

9 MR. MUELLER: We are ready to  
10 proceed with the Government's case, your Honor.  
11 The first witness is Special Agent Lawrence  
12 Nivison.

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1                    LAWRENCE NIVISON, Government

2                    witness, being first duly sworn, testified as  
3                    follows:

4  
5                    DIRECT EXAMINATION BY MR. MUELLER:

6                    Q.        Now, Mr. Nivison, you are a special  
7                    agent with the federal Bureau of' investigation;  
8                    is that not true?

9                    A.        Yes.

10                    Q.        And as such you are were assigned as  
11                    the case agent to the investigation of the  
12                    alleged violations of Mr. Hasbrouck; is that not  
13                    correct?

14                    A.        That's true.

15                    Q.        In the course of your assignments as  
16                    the case agent, did you have occasion to obtain  
17                    the birth certificate for defendant Edward John  
18                    Hasbrouck?

19                    A.        I did.

20                    MR. MUELLER:    May I approach the  
21                    witness, your Honor? .

22                    THE COURT: Yes, you may. You will  
23                    not have to have permission to approach the  
24                    witness if you need to.

25                    MR. MUELLER:    Thank you.

1 Q. Showing you Government Exhibit A, could  
2 you identify that for the Court, please?

3 A. It's a certified copy of a birth  
4 certificate for the Commonwealth of  
5 Massachusetts.

6 MR. MUELLER: May I offer the  
7 exhibit into evidence, your Honor.

8 THE COURT: No objection. It may  
9 be admitted. That becomes Exhibit 1.

10 (Exhibit 1 in evidence.)

11 Q. Could you please, now that that exhibit  
12 is in evidence, Special Agent Nivison, that  
13 birth certificate is for what individual?

14 A. Edward John Hasbrouck.

15 Q. Is there a date on that birth  
16 certificate?

17 A. Birth date is January 11, 1960.

18 Q. Thank you. Let me show you Exhibit B.  
19 And would you please identify this exhibit?

20 A. It's a certified copy of a  
21 Massachusetts driver's license.

22 Q. In the name of whom?

23 A. Edward J. Hasbrouck.

24 MR. MUELLER: I offer B into  
25 evidence.

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THE COURT: Okay. No objection.

It may be admitted.

THE CLERK: Exhibit 2.

(Exhibit 2 in evidence.)

Q. Does that registration or that application for a registration also have a date?

A. Birth date is January 11, 1960.

Q. Thank you, I have no further questions.

THE COURT: Any questions?

There being no questions you may step down.

Next witness, please.

MR. MUELLER: Is Robert Collings.

1 ROBERT B. COLLINGS, Government  
2 witness, Sworn.

3 THE WITNESS: Robert B Collings.  
4 C-o-l-l-i-n-g-s.

5 DIRECT EXAMINATION BY MR. MUELLER:

6 Q. Mr. Collings, in March of this year how  
7 were you employed, sir?

8 A. In the early part of March I was an  
9 Assistant United States Attorney for the  
10 District of Massachusetts.

11 Q. On March 1st, 1982 did you have  
12 occasion to talk to a person by the name of  
13 Edward J. Hasbrouck?

14 A. Yes, I did.

15 Q. Where did that talk take place?

16 A. In the waiting room at the United  
17 States Attorney's office on the eleventh floor  
18 of this building.

19 Q. Did you see Mr. Hasbrouck in the Court  
20 today?

21 A. Yes. He's seated right there.  
22 (pointing)

23 MR. MUELLER: May the record  
24 reflect that the Mr. Collings identified the  
25 defendant Mr. Hasbrouck.

1 THE COURT: The jury will observe.

2 Q. How did it happen that you did have the  
3 meeting with Mr. Hasbrouck?

4 A. I believe I was requested to see him by  
5 Mr. Weld, the United States Attorney. Mr.  
6 Hasbrouck had come in to see Mr. Weld who was  
7 otherwise engaged, and asked me to speak to Mr.  
8 Hasbrouck.

9 Q. And where did you go to speak to him  
10 again?

11 A. In the waiting room at the United  
12 States Attorney's office on the eleventh floor  
13 of this building.

14 Q. What was the substance of your  
15 conversation?

16 A. Well, I went to see him. He was there  
17 with a few other people, maybe two or three, and  
18 I told him who I was, he told me who he was.  
19 And he told me that he wanted the United States  
20 Attorney's office and the Department of Justice  
21 to know that he had not registered for the draft  
22 during the grace period which was about to  
23 expire, or had just expired, and he wanted the  
24 Department of Justice and the United States  
25 Attorney's office to know that it was a

1 deliberate act on his part and that he was  
2 intentionally not registering. And he said that  
3 he didn't want the Department of Justice to  
4 think that he had neglected to do it or  
5 forgotten to do it or inadvertently not done it.

6 Q. Did he say anything about whether or  
7 not he was talking to other people about his  
8 decision not to register for the draft?

9 A. Yes, he did.

10 Q. What did he say in that regard?

11 A. He said that he also wanted the  
12 Department of Justice to know that he was  
13 encouraging, and the words he used were "aiding  
14 and abetting" others who were required to  
15 register for the draft not to, and that he was  
16 conspiring with other people to keep them from  
17 registering for the draft.

18 Q. Now at that meeting with Mr. Hasbrouck  
19 did he give you any document?

20 A. Yes, he did.

21 Q. Let me show you what has been marked as  
22 prosecution Exhibit C. Do you recognize this  
23 document, sir?

24 A. I recognize the letter.

25 Q. And if you could identify it for the



1 record. It's a letter of what date?

2 A. October; 3 October, 1981.

3 Q. From whom?

4 A. Edward John Hasbrouck.

5 MR. MUELLER: I offer Government  
6 Exhibit C in evidence, your Honor.

7 THE COURT: No objection. It may  
8 be marked Exhibit 3.

9 (Exhibit 3 in evidence).

10 Q. Now, was a copy of Exhibit 3 given to  
11 you at that meeting with Mr. Hasbrouck?

12 A. Yes.

13 Q. Now that is directed to whom?

14 A. Well, it's got nine addressees starting  
15 with William French Smith, Attorney General of  
16 the United States of America, and ending with  
17 Margaret Heckler representative of Congress.

18 MR. MUELLER: No further questions.

19 THE COURT: Does the defense have  
20 any questions?

21 If not, you may step down. Thank you  
22 very much.

23 MR. MUELLER: At this time I  
24 would like to read excerpts from government  
25 Exhibit 3.

1 THE COURT: You may.

2 MR. MUELLER: This letter to Mr.  
3 Smith and it's signed by Mr. Hasbrouck.

4 It states in part: "I was born in Cambridge,  
5 Massachusetts, on 11 January of 1960 and with  
6 those other men of my age whom you claim as your  
7 citizens, (subjects), in parens, was supposed to  
8 register on one of the six days, 21 through 26  
9 July 1980. On 17 July, 1980 at a press  
10 conference in Chicago, Illinois, I announced my  
11 intention not to register and urged others to do  
12 likewise. I continue to publicize my  
13 non-registration and to advocate  
14 non-registration at post offices in Chicago,  
15 Boston and Wellesley, Massachusetts, throughout  
16 the July 1980 and January 1981 mass registrations.  
17 Needless to say, I did not then nor have I since  
18 registered, and my statements to that effect  
19 have been published and broadcast throughout  
20 America. I have not registered, I have  
21 conspired not to, and I have conspired to aid  
22 and abet others not to".

23 Your Honor, the Government's next  
24 witness is Edwin Crawford.

25 THE COURT: He may be called.

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1                    NEWTON EDWIN CRAWFORD, Government  
2 witness, Sworn.

3                    THE WITNESS:    My name is Newton  
4 Edwin Crawford, C-r-a-w-f-o-r-d.

5 DIRECT EXAMINATION BY MR. MUELLER:

6                    Q.    Mr. Crawford, how are you currently  
7 employed?

8                    A.    I'm employed in the Selective Service  
9 system in national headquarters in Washington.

10                    Q.    What are your duties there, sir?

11                    A.    I'm a branch chief for program  
12 evaluation.

13                    Q.    Let me show you what has been marked as  
14 Government Exhibit D, which is a letter to a  
15 number of addressees, the top one being William  
16 French Smith, Attorney General, from Edward J.  
17 Hasbrouck.

18                    Do you recognize that letter, sir?

19                    A.    Yes, I do.

20                    Q.    And why do you recognize it?

21                    A.    Because I was in receipt of it in my  
22 previous capacity in the Selective Service  
23 system where I had the job dealing with  
24 registration compliance. And this letter was  
25 forwarded to me for processing.

1 Q. And that letter is from a Mr. Hasbrouck,  
2 and directed to, amongst others, William French  
3 Smith. Is that correct?

4 A. Yes, it is.

5 MR. MUELLER: I move into  
6 evidence Government Exhibit D.

7 THE COURT: No objections, it may  
8 be marked as government 4.

9 (Exhibit 4 in evidence.)

10 Q. Now the date on that exhibit is 3  
11 October, 1981, is that not correct?

12 A. Yes.

13 Q. And one of the addressees is James Bond,  
14 Acting Director of Selective Service? /

15 A. Yes.

16 Q. And there is also an envelope with that  
17 letter in that exhibit?

18 A. Yes.

19 Q. That is addressed to James Bond?

20 A. Yes.

21 Q. What is the return address on that?

22 A. 74 Elmwood, E-l-m-w-o-o-d, Wellesley,  
23 Massachusetts, 02181.

24 Q. Now as a part of your procedures, did  
25 the Selective Service upon receipt of that

1 letter send a letter in turn to Mr. Hasbrouck?

2 A. Yes, we did.

3 Q. Let me show you what is marked as  
4 Government Exhibit E, and ask you if this is  
5 such a letter?

6 A. Yes, this is the letter that we sent.

7 MR. MUELLER: I move into  
8 evidence Government Exhibit E.

9 THE COURT: It may be marked  
10 Exhibit 5.

11 (Exhibit 5 in evidence.).

12 Q. Now without reading the letter, sir,  
13 could you explain to the jury the substance of  
14 the letter?

15 A. Well, the purpose of the letter is to  
16 apprise the individuals whom we determine,  
17 because of information forwarded to us, as being  
18 potential non-registrants. The purpose of the  
19 letter is to apprise these individuals of their  
20 responsibilities and the penalty for not  
21 registering, and to give some procedures on how  
22 they can register. And it is sent to them by  
23 our general counsel of the Selective Service.

24 Q. And such a letter was sent to Mr.  
25 Hasbrouck?

1           A.    Yes, it was.

2                   MR. MUELLER:    I have no further  
3 questions.

4                   THE COURT: Any questions of the  
5 defense? There being none you may step down.  
6 Thanks.

7                   MR. MUELLER:    The next witness is  
8 David Cox.

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DAVID COX, Government

witness, Sworn.

A. David Cox, C-o-x.

DIRECT EXAMINATION BY MR. MUELLER:

Q. Mr. Cox, you're with the Selective Service System at this time?

A. Yes, I am.

Q. What are your duties with Selective Service?

A. I'm responsible for the registration records and all the data processing activities for the system.

Q. Were you involved in the setup of that particular system?

A. Yes, I was.

Q. Could you move closer and speak into the microphones, if you would.

Thank you.

Now, could you briefly describe to the jury the procedures by which the registration form is or comes to be filed with Selective Service? /

A. Yes, I would be glad to.

Q. Okay. And did you bring a chart today which would assist you in explaining to the jury



1 what that system is?

2 A. Yes.

3 MR. MUELLER: Your Honor, we have  
4 marked as Government Exhibit F the chart that  
5 Mr. Cox has brought today. I would ask if the  
6 Court would allow that he be allowed to approach  
7 closer to the jury box and explain the system to  
8 them.

9 THE COURT: Yes, provided that the  
10 defense can see the rendering.

11 (Witness in front of the jury with  
12 chart).

13 THE COURT: Perhaps if you show it  
14 to me, quickly.

15 Okay. Thank you very much.

16 Q. Now, Mr. Cox, again, would you explain  
17 to the jury exactly how the system works?

18 A. What this chart depicts is the basic  
19 process of registration with the Selective  
20 Service. There is three parts: what the  
21 registrant does, what the postal service does;  
22 and what Selective Service does.

23 The registrant is required to come to a  
24 post office and complete the Selective Service  
25 registration card, which is the Selective

1 Service Form 1.

2 Q. Let me show you what's been marked as  
3 Government Exhibit G. Is that such a form?

4 A. Yes, this is the registration form.

5 MR. MUELLER: I move into  
6 evidence Government Exhibit G.

7 THE COURT: There being no  
8 objection, it may be marked Exhibit G.

9 (Exhibit G in evidence.)

10 A. On that form we request their name,  
11 their address, phone number, sex, and date of  
12 birth, and have them sign the card.

13 Once the registrant has completed the  
14 registration card it is given to a postal clerk  
15 behind the counter who checks the card for  
16 completeness and asks to see the registrant's  
17 identification, if they have one, and checks  
18 that against the card to make sure that it is  
19 correct.

20 The post office collects the cards.  
21 And the small post offices, they mail them to us  
22 every four weeks. In large post offices they  
23 mail them to us every two weeks. And we receive  
24 them at the data management center in Chicago,  
25 Illinois.

1                   when we receive the cards we count  
2 everything that comes in, put them into batches  
3 or boxes of work, and number every card so we  
4 can account for every card which has come into  
5 the system.

6                   From there we key the information which  
7 is on the cards so that we can get it into a  
8 format that the computer can work with. This is  
9 called data entry. Very much like typing, type  
10 the information into the small computer.

11                   The second step is data verification.  
12 The same information is retyped and the small  
13 computer compares what was typed the first time  
14 with the second time so it can highlight any  
15 typographical errors. And if there is one the  
16 operator can correct it. So, if you were typing  
17 my name, C-o-x, and you typed it C-o-y the  
18 keyboard would lock and the operator can correct  
19 the typing error.

20                   The next step is to process the  
21 information through the IBM computers. And here  
22 we are editing for the correct date of birth,  
23 making sure of the correct year of birth, 1960,  
24 1961, 1962, 1963, 1964, looking for the correct  
25 sex, a complete social security number, valid

1 state, a completed phone number; things of this  
2 nature. If some of the information is wrong,  
3 such as date of birth or sex, the registration  
4 is moved to our error file and from there we  
5 either send a letter to the registrant asking  
6 him to correct the information if it is the  
7 error, or if it is a case where the address is  
8 the problem, missing the state, we provide it to  
9 our research clerk who phones the registrant to  
10 correct the error, and we also produce a  
11 microfilm listing of the contents of that error  
12 file, which is in alphabetical list for our  
13 research clerks to use as they work.

14           Once the error is corrected it is  
15 processed through the same system and re-edited  
16 to make sure that the corrections are done  
17 correctly. And if it passes it goes over to the  
18 good side of the house where we assign a  
19 Selective Service number. And it is at this  
20 point where you are registered with the  
21 Selective Service and put on the master list  
22 registrants.

23           We send out an acknowledgement letter  
24 to all the people who were assigned a Selective  
25 Service number and thank them for their

1 registration, ask them to check the information  
2 that we have on file, provides them a means to  
3 direct the information if anything is incorrect,  
4 and to notify us of any change of address in the  
5 future.

6 In addition, we also produce a  
7 alphabetical list on the microfilm of all the  
8 people on our registrant files, which is once  
9 again used by the research department.

10 Q. One question. If you were required to  
11 do a search under the name Hasbrouck, using the  
12 chart what files would you search and how would  
13 it be done?

14 A. The first thing we do is search the  
15 alphabet listing, the microfiche listing of the  
16 master file to see if he's there. If he's not  
17 there we check on the error file to see if it is  
18 perhaps somebody who is in the process of having  
19 corrections done. We produce these microfilm  
20 listings on a monthly basis. So we also go in  
21 and check the computer files to see if anybody  
22 has come on to the computer files in the last  
23 month since we published the computer list. And  
24 we would search here and here. (pointing)

25 Q. So you would make a search of the

1 computer files and also make a search of the  
2 microfiche files?

3 A. That's correct.

4 Q. Were you requested to do a search for  
5 the name of Edward J. Hasbrouck?

6 A. Yes, we were.

7 Q. And when was the last time a search was  
8 done under that name?

9 A. The search was conducted on December  
10 second of this year.

11 Q. And pursuant to your orders?

12 A. Yes.

13 Q. And what were the results of the search?

14 A. The results of the search showed that  
15 Edward Hasbrouck had not registered with  
16 Selective Service.

17 MR. MUELLER: You can resume your  
18 seat, sir.

19 I have no further questions.

20 THE COURT: Any questions? Okay.  
21 You may step down.

22 MR. MUELLER: The Government's  
23 next witness is Laurie Stoffel.

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1                    LAURIE STOFFEL, Government

2                    Witness, Sworn.

3                    THE WITNESS:     Laurie Stoffel.

4                    S-t-o-r-t-e-l.

5                    DIRECT EXAMINATION BY MR. MUELLER:

6                    Q.     Ms. Stoffel, you are an employee of the  
7                    Selective Service system?

8                    A.     Yes, I am.

9                    Q.     Where are you located?

10                    A.     Data Management Center at Great Lakes,  
11                    Illinois.

12                    Q.     What are your duties?

13                    A.     I'm a research clerk.

14                    Q.     And any particular type of research  
15                    clerk?

16                    A.     I research the microfiche files,  
17                    searching for people that have registered with  
18                    the Selective Service.

19                    Q.     Were you requested to make a search to  
20                    determine whether an Edward J. Hasbrouck had  
21                    indeed registered with the Selective Service?

22                    A.     Yes.

23                    Q.     When did you conduct that search?

24                    A.     The last one on December second.

25                    Q.     What were the results of that search?

1 A. I did not find him registered.

2 Q. Did you look both under the name of  
3 Edward J. Hasbrouck, as well as other names that  
4 may have been, had slightly different spellings?

5 A. Yes, sir, under different spellings.

6 Q. And you found no Edward J. Hasbrouck?

7 A. No, sir.

8 MR. MUELLER: No further  
9 questions.

10 THE COURT: Any questions? No  
11 questions. Thank you. You may step down.

12 MR. MUELLER: The Government  
13 calls Richard Templer.

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1                                    RICHARD D. TEMPLER, Government

2                                    witness, Sworn.

3                                    THE WITNESS:     Richard D, Templer,

4                                    T-e-m-p-l-e-r.

5                                    DIRECT EXAMINATION BY MR. MUELLER:

6                                    Q.     Mr. Templer, you are an employee of the  
7                                    Selective Service System?

8                                    A.     Yes.

9                                    Q.     Where are you located?

10                                    A.     Great Lakes.

11                                    Q.     Where. your responsibilities or duties  
12                                    with Selective Service?

13                                    A.     I'm a member of a group whose  
14                                    responsibility it is to write and maintain the  
15                                    series of programs that maintains the  
16                                    registration records on our computer system.

17                                    Q.     Do you have any training in programming?

18                                    A.     Yes, I do.

19                                    Q.     And could you briefly recite to us what  
20                                    that training is?

21                                    A.     I have been involved with data processing  
22                                    since 1965.

23                                    Q.     Now are part of or at least one part of  
24                                    your responsibility to do checks of the computer  
25                                    files to determine whether individuals have or

1 have not registered?

2 A. Yes.

3 Q. Were you asked to make a check of the  
4 computer files to determine whether one Edward  
5 J. Hasbrouck had registered?

6 A. Yes.

7 Q. When were you were you requested to do  
8 that check?

9 A. December 2, 1982.

10 Q. Did you do that check?

11 A. Yes, I did.

12 Q. What was the result of that check?

13 A. I did not find him in our registration  
14 records.

15 Q. Did you use various spellings of the  
16 name?

17 A. Yes.

18 MR. MUELLER: I have no further  
19 questions.

20 THE COURT: Does the defense have  
21 any questions? There being none, sir, you may  
22 step down. Thank you.

23 MR. MUELLER: The Government rests.

24 THE COURT: The Government rests. .

25 (Pause.)

1 THE COURT: Okay. Does the defense  
2 wish to present any evidence? .

3 THE DEFENDANT: No.

4 THE COURT: Counsel, you agree?

5 MR. HILLER: Yes.

6 THE COURT: All right.. Now,  
7 therefore the evidence is closed. There will be  
8 no rebuttal evidence, and therefore all the  
9 evidence, ladies and gentlemen of the jury that  
10 you will now regard has now been presented to  
11 you. We will proceed then to final statements  
12 by counsel. Do you wish to make a final  
13 statement?

14 THE DEFENDANT: I don't want to  
15 lend any replies, approval or legitimacy or  
16 dignify this trial by taking any more part in it  
17 than absolutely necessary. This trial would be  
18 silly were it not that I were possibly subject  
19 to criminal penalties on the basis of it. As it  
20 is and given that it is a rather sick joke. I  
21 don't think even Mr. Mueller would pretend that  
22 the evidence he has presented to you has  
23 anything to do with the issues of registration  
24 and the draft and the purposes for which  
25 registration was reinstated, and the reasons I'm

1 being prosecuted, and the purposes for which a  
2 draft was reinstated. But you are to decide on  
3 the evidence that's presented in this Court, and  
4 preparations for nuclear war are not in this  
5 Court and are not in evidence.

6 Obviously the case will be presented to  
7 you as a jury, because there is something for  
8 you to decide. If there were no issue and no  
9 decision for you to make the case would not be  
10 presented to you. When it is presented to you  
11 you will have an absolute and unquestionable  
12 right to make that decision. And if you choose  
13 to convict or if you choose to acquit that is  
14 your absolute right, and no Court will presume  
15 to pass judgment on or overturn your decision,  
16 if you chose to make it that I am on the facts  
17 charged guilty or that I am not guilty. That I  
18 am not guilty and deserving of punishment.  
19 Obviously what I did had nothing to do with the  
20 law. I would have done exactly what I did  
21 whether it was legal or illegal, though I  
22 continue to believe, as I believed all along,  
23 that registration and the draft are  
24 unconstitutional. But the question is not  
25 whether what I did was legal, whether I

1 registered, whether I knew that the Government  
2 wanted me to. And to pretend that those are the  
3 issues is I think ridiculous.

4 MR. MUELLER: Your Honor, if I  
5 could interrupt for a second on procedure.  
6 Generally the Government gets the opening  
7 argument and then the defense has argument and  
8 then we have rebuttal. Is the Court going to --

9 THE COURT: This is closing  
10 argument.

11 MR. MUELLER: Okay.

12 THE DEFENDANT: All you have to go  
13 on the jury is making your decision and you have  
14 a perfect right to acquit me. I hope that you  
15 will do that, I think that that will be  
16 appropriate, but I don't expect that. I realize  
17 that given what the Government has said to you  
18 and what is considered to be irrelevant, and  
19 given what the Government is probably going to  
20 tell you about the law you may not feel like you  
21 have much choice but to convict me. Although I  
22 repeat, that the issue would not go to you as a  
23 jury for a decision unless there was a real  
24 decision to to made. All you have to go on is  
25 the evidence. And I can read to you Exhibit 3

1 for the prosecution, some parts of which Mr.  
2 Mueller are read, because I think that all of it  
3 is important to you and I hope you will consider  
4 this in the jury room.

5 This is a letter from me Edward John  
6 Hasbrouck, 74 Elmwood Road, Wellesley,  
7 Massachusetts 02181. 3 October, 1981, on my  
8 letterhead, addressed to William French Smith  
9 Attorney General of the United States of America;  
10 James Bond, Acting Director of Selective  
11 Service; Warren Burger, Chief Justice of the  
12 Supreme Court; Ronald Reagan, President of the  
13 United States of America; George Bush, Vice-  
14 President, United States of America and  
15 President of the Senate; Thomas P O'Neill,  
16 Speaker of the House of Representatives; Edward  
17 M. Kennedy, United States Senator; Paul Tsongas,  
18 United States Senator; and Margaret Heckler  
19 Representative in Congress.

20 Addressed to these "Agents of the  
21 United States of America, and of the violence  
22 for which it stands.

23 "According to reports in the public  
24 press -- reports which I have neither reason nor  
25 inclination to doubt -- you are now preparing

1 to begin prosecuting some men who have not  
2 registered for the draft. I call to your  
3 attention the irrelevance of any such  
4 persecutions.

5 "Draft registration was instituted by  
6 President Jimmy Carter's proclamation of July  
7 2nd, 1980 and continues with the collusion of  
8 President Reagan, who has let stand Carter's  
9 proclamation, the Congress, which authorized  
10 registration and funded Selective Service, and  
11 the Supreme Court which approved registration.

12 " I was born in Cambridge,  
13 Massachusetts on the 11th of January 1960, and  
14 with those other men of my age, whom you claim  
15 as your citizens, subjects, was supposed to  
16 register one one of the six days, 21 through the  
17 26th of July, 1980. On the 17th of July, 1980,  
18 at a press conference in Chicago, Illinois, I  
19 announced my intention not to register and urged  
20 others to do likewise. I continue to publicize  
21 my non-registration, and advocate non-registration  
22 at post offices in Chicago, Boston, and  
23 Wellesley, Massachusetts, throughout July 1980  
24 and January 1981, mass registrations. Needless  
25 to say, I did not then nor have I since

1 registered, and my statements to that effect  
2 have been published and broadcast throughout  
3 America. I informed Brayton Harris, Assistant  
4 Director of the Selective Service of my intent  
5 not to register on the air in the studios of  
6 WBEH radio, Chicago, on the 22nd of July, 1980.

7 "The Selective Service, meanwhile,  
8 continues to evade the draft. Although  
9 legislation and a presidential commission report  
10 for a draft are pending, Selective Service  
11 propaganda given to all registrants states that,  
12 quote, "there are no plans at this time for a  
13 draft". A less obvious lie, and therefore a  
14 more intimidating one, is the Selective Service  
15 claim that non-registrants will be prosecuted.  
16 There are nearly a million non-registrants thus  
17 far, by Selective Service estimates. But neither  
18 the federal judicial system, now at capacity,  
19 40,000 cases per year, nor the federal prisons,  
20 also at capacity, 25,000 people will be  
21 multiplied 20 fold, nor will they be dedicated  
22 exclusively to registration resisters. Knowing  
23 this, the Selective Service knows that only a  
24 token fraction of those who don't register can  
25 or will ever be prosecuted.



1            "You are now preparing for just such  
2 token prosecutions of fewer than 200 selected  
3 non-registrants. This letter is an expression  
4 of my solidarity with all those who may be  
5 prosecuted. They are not alone. I shall place  
6 myself with them, and I pledge whatever  
7 non-violent action that solidarity may may  
8 require. In prosecuting any you prosecute all.  
9 And I shall act accordingly.

10            "I expect to be prosecuted for writing  
11 this letter. There are numerous constitutional  
12 legal administrative and procedural defects in  
13 the registration laws, proclamation and  
14 regulations, but I will offer no legal defenses.  
15 I do not expect rulemakers to follow their own  
16 rules. I have not registered, I have conspired  
17 not to, and I have conspired to aid and abet  
18 others not to. I owe you no apology. You are  
19 not my judges. Judgment in the end is inherently  
20 introspective. I would no more enforce my  
21 opinions on you than have you enforce yours on  
22 me. I can only hope you will judge yourselves  
23 by the test I apply to myself. Am I acting in  
24 the interest of survival? My life is being  
25 transformed by the realization that no life on

1 earth is likely to outlive what would have been  
2 my natural lifetime. There will be  
3 revolutionary change or there will to be nuclear  
4 annihilation.

5 "In the spirit of survival I urge to  
6 act as I hope I would act in your place, not to  
7 use your authority for better purposes, to  
8 redirect your violence, but to renounce your  
9 authority, to begin to organize anarchically.

10 "This is not to say that all draft  
11 resisters are anarchists or pacifists, or  
12 communists, or atheists. Nor is it to say that  
13 I advocate anarchy, chaos, or violence. Anarchy,  
14 the absence of authority, the illegitimacy of  
15 violence is a fact, a characteristic of reality.  
16 Our lives, in accepting authority, deny their  
17 nature, and in so doing have produced a chaotic  
18 and violently suicidal world. Realism demands  
19 non-violent, non-authoritative, cooperative, and  
20 loving.

21 "Join me. Renounce your authority,  
22 throw down your instruments of violence.  
23 Convert them to creative uses if you can.  
24 Destroy their potential for violence if you  
25 can't. Smash the doors of the jails, schools,

1 psychiatric prisons, and military bases, and  
2 live free anarchically.

3 "Yours in Peace, With Love, and  
4 For Revolution, Edward John Hasbrouck".

5  
6 (Applause from the audience.)

7 DEFENDANT: I have nothing further.

8 THE COURT: Nothing further. All  
9 right.

10 You may be heard.

11 MR. MUELLER: At the outset it  
12 should be clear that there is no doubt as to the  
13 facts in this case. The Government proved that  
14 Mr. Hasbrouck had a duty to register, failed to  
15 register, and did so willfully and knowingly.  
16 So there's really no point in spending much more  
17 time over the Government's proof or the charges  
18 in the indictment.

19 And, as I stated at the outset, what  
20 was in issue here or exactly that is the  
21 Government's proof, the Government's ability to  
22 prove beyond a reasonable doubt the guilt of the  
23 defendant. But it is hard to not discuss and  
24 perhaps put into perspective what Mr. Hasbrouck  
25 has raised. And I would like to do it and

1 discuss it in three parts.

2 The first one is sacrifice, the second  
3 one is freedom, and the third one is duty.  
4 Let's talk for a second about sacrifice.

5 What sacrifice is the Government asking  
6 Mr. Hasbrouck to make? They are not asking him  
7 to be inducted, they are not asking him to lay  
8 his life down any place. They are asking him to  
9 fill out and send in a little card, one of the  
10 exhibits that you will have.

11 (Laughter from audience.).

12  
13 MR. MUELLER: One of the exhibits  
14 that you will have in the jury room, a little  
15 card.

16 Now there are those, and a number of  
17 them, who have sacrificed tremendously,  
18 beginning with the War of Independence all the  
19 way up to world war II and Viet Nam. They have  
20 sacrificed far more than Mr. Hasbrouck is being  
21 asked to sacrifice. They have made major  
22 sacrifices over a period of time and they have  
23 made sacrifices just so we could have today what  
24 we have, which was a jury trial. And perhaps  
25 we ought to focus on a couple of terms that Mr.

1 Hasbrouck used earlier, a couple of terms such  
2 as silly, or a sick joke. Mr. Hasbrouck says  
3 that this is a silly thing, a silly operation, a  
4 silly charade, and a sick joke to bring in  
5 twelve citizens to pass on his guilt or  
6 innocence. On the other hand, the judge earlier  
7 on said this is the magic of the system. So the  
8 sacrifices over the years have been made just so  
9 we could have such a proceeding, just so the  
10 Government has to come into a courtroom such as  
11 this one and proof beyond a reasonable doubt the  
12 guilt of the defendant at the bar. Mr.  
13 Hasbrouck chooses to treat this as a charade.  
14 Mr. Hasbrouck tends to laugh at what the  
15 Government went through today. It seemed awfully  
16 quick. It seemed that the evidence took very  
17 little time to put in, but nonetheless the  
18 evidence is there.

19 And finally, a duty. Do we have a duty?  
20 What kind of duty is there? The Government puts  
21 on Mr. Hasbrouck and other young men the duty to  
22 fill out a card and register. Is that too much  
23 to ask someone? Is that too much? .

24 Now the judge will instruct you that  
25 what I have said right then, what Mr. Hasbrouck

1 has said earlier, is not in issue in this case.  
2 Mr. Hasbrouck's very strong feelings about the  
3 draft are no defense to the charges here. And  
4 it is one point that one could reflect on the  
5 fact that Mr. Hasbrouck does have very strong  
6 feelings. He's allowed to have very strong  
7 feelings. There is the freedom for him to  
8 express his very strong feelings against the  
9 draft. There is, however, not the freedom to  
10 break the law that you don't particularly  
11 believe in. That indeed is in error.

12 So I ask you as jurors to treat this  
13 proceeding as somewhat more than something silly,  
14 somewhat more than a sick joke. To do your duty  
15 as jurors, to evaluate the evidence, determine  
16 the guilt or innocence of Mr. Hasbrouck, and  
17 render the appropriate verdict.

18 Thank you for your kind attention.

19 THE COURT: Thank you.

20 Ladies and gentlemen, would you rise  
21 for a moment, please. I'm about to give you  
22 instructions on the law at this present time.  
23 And what I want at this moment in the  
24 proceedings is for you to stand for a simple  
25 purpose. And that is for you to recognize and

1 recall the oath that you took at the beginning  
2 of the trial. Simply, the oath asked you to  
3 render a verdict based squarely on the evidence  
4 and the law as I explain it to you and nothing  
5 more. And indeed if you do that you will be  
6 carrying out your oath, mindful that your  
7 verdict is one that we will stand by and that,  
8 of course, you must act within your conscience  
9 and within the framework of the law as best you  
10 can. So, that simple act of standing is for you  
11 to recall that and ask you now to sit down and  
12 let me explain to you the law in this particular  
13 case.

14 I read this to you before and I  
15 reiterate. The United States versus Edward J.  
16 Hasbrouck. The grand jury charges that  
17 beginning on or about July 27th, 1980 and  
18 continuing to the date of return of this  
19 indictment, which was October 6th, 1982, within  
20 the District of Massachusetts, Edward J.  
21 Hasbrouck, the defendant herein, a male person,  
22 requiring to present himself for and submit to  
23 registration pursuant to (1), the Military  
24 Selective Service Act; (2), the rules and  
25 regulations adopted pursuant to that Act;

1 and (3) Presidential Proclamation 4771 of July 2,  
2 1980, did knowingly and willfully fail, evade  
3 and refuse to present himself for and submit to  
4 registration in violation of Title 50, U.S. Code  
5 appended sections 453 and 462(a). Those are the  
6 charges.

7 It is for you now to determine whether  
8 or not the Government has established those  
9 charges sufficient for you to warrant a verdict  
10 of guilty. And if so you will return a verdict  
11 of guilt. And if not you will return a verdict  
12 of not guilty.

13 I told you what your responsibilities  
14 were primarily just a couple of hours ago.  
15 I'll take it that for the most part you have  
16 fully recalled them and you are prepared to  
17 abide by those rules.

18 I told you that your responsibilities  
19 is one to decide the facts, to put them together,  
20 taking all of your knowledge of those facts from  
21 the evidence as presented to you. I told you  
22 that you can give whatever credit you think that  
23 any of the evidence deserves. You may give it  
24 what weight you are willing to apply to the  
25 testimony and those exhibits that were issued to



1 you in the form of evidence. So, having in mind  
2 that, I hope that you will then decide the case  
3 upon the evidence.

4 Since the defendant has pleaded not  
5 guilty to the charge, has placed before you all  
6 the issues given rise to by the indictment.  
7 That is nothing has been proved, the defendant  
8 is not guilty at this moment in time, we stand  
9 ready to hear what the results are of your  
10 findings of what the facts are, and until then  
11 the defendant enjoys the same rights and  
12 privileges that we all have, and is to be deemed  
13 not guilty until proven otherwise.

14 As to the charges, it is charged in  
15 this indictment -- the indictment which I told  
16 you is not evidence at all, no proof, no  
17 inclination of guilt, simply a charge which  
18 remains unproved until such time as you are  
19 satisfied beyond a reasonable doubt as to each  
20 and every essential element of those charges.  
21 It is charged that beginning July 27th, 1980 and  
22 continuing right up to now Mr. Hasbrouck, who  
23 had the legal duty being a male person to appear  
24 for and submit to registration in accordance  
25 with the Presidential Proclamation 4771 and the

1 Military Selective Service Act together with its  
2 duly issued rules and regulations, did knowingly  
3 and willfully fail, evade and refuse to present  
4 himself for and submit to the registration.  
5 This conduct it is charged is a violation of the  
6 United States law.

7 So we have to go back now and attempt  
8 to describe, to define what each of those words,  
9 the essential elements of this indictment means,  
10 and whether or not there is proof sufficient to  
11 establish that there was a violation of the law  
12 and that violation was committed by the  
13 defendant himself.

14 You will note that the indictment  
15 charges that the offense committed was on or  
16 about a certain date. The proof need not be  
17 established with certainty the exact date of the  
18 alleged offense, it is sufficient if the  
19 evidence in the case establishes beyond a  
20 reasonable doubt that the offense was committed  
21 on a date reasonably near the date alleged. The  
22 statutes that are involved here, number one is  
23 of course Section 453 of Title 50, a number you  
24 did not remember, it is enough to know what the  
25 elements, substantially what that section of the

1 United States Code means.

2 In part it makes it the duty of every  
3 male citizen of the United States and every male  
4 person residing in the United States between the  
5 ages of 18 and 26 who has not otherwise  
6 expressly exempt by certain other provisions  
7 of the code to present himself for and submit to  
8 registration at the time, place, and in the  
9 manner determined by the presidential  
10 proclamation and by the rules and regulations  
11 issued under that title. President Carter, the  
12 evidence suggests, on July 2nd, 1980 in  
13 accordance with Section 453 set up the current  
14 Selective Service scheme which applies generally  
15 to male persons born on or after January 1st,  
16 1960. This proclamation details the times and  
17 places for Selective Service registration and  
18 provides for coordination and implementation of  
19 the program by the Selective Service system.

20 That code, and other sections thereof,  
21 prohibits in part the knowing and willful  
22 failure, evasion or refusal to register with the  
23 Selective Service system by a person having a  
24 legal duty to register. Let me then explain to  
25 you having recited the law in part, what the

1 essential elements of the offense charged here.  
2 There are three.

3 First: That the defendant, Mr.  
4 Hasbrouck, at the time charged in the indictment  
5 had a legal duty to register with Selective  
6 Service. That's an element that you must find  
7 proved beyond a reasonable doubt if he's to be  
8 convicted.

9 The second is that the defendant failed,  
10 evaded or refused to register and therefore did  
11 not perform that duty. This is another element  
12 to be proved beyond a reasonable doubt in order  
13 to establish guilt.

14 The third is this failure, evasion, or  
15 failure to register was knowing and willful.

16 So, as stated before, the burden is  
17 always upon the prosecution to prove each of  
18 these essential elements of the law charged.  
19 The law didn't impose any requirement upon the  
20 defendant to do so, and no need, as I told you,  
21 to call any witnesses or provide any  
22 documentation or proof that one or more of these  
23 elements has not been established.

24 One of the essential elements is, as I  
25 have said, that at the time charged in the

1 indictment the defendant had a legal duty to  
2 register with the Selective Service. It is  
3 generally the duty of every male citizen of the  
4 United States and every other person residing in  
5 the United States born after January 1st, 1960  
6 to present himself or submit to registration at  
7 the time and place in the manner prescribed by  
8 the presidential proclamation. Under that  
9 proclamation men born after January 1st, 1960  
10 have a duty to register. Those individuals born  
11 in the calendar year 1960 were to present  
12 themselves for registration on the date July 21  
13 through July 26, 1960.

14 The defendant, it is said, is a male  
15 person and is said to have a requirement to  
16 register with Selective Service being that he  
17 was born as it is alleged after January 1st,  
18 1960. And he is not expressly exempt from the  
19 registration by particular provision of the code.  
20 The defendant bears the burden of clearly  
21 establishing a right to any such exception. If  
22 defendant was born in the year 1960 then he was  
23 required to register with the Selective Service  
24 during the period beginning July 21 through July  
25 26, 1960.

1 Under that presidential proclamation an  
2 individual required to register with the  
3 Selective Service who was in the United States  
4 at the time fixed for his registration must  
5 present himself for registration before a duly  
6 designated employee in any classified United  
7 States post office.

8 The proclamation further provides that  
9 eligible males must comply with the registration  
10 procedures and other rules and regulations  
11 prescribed by the Director of the Selective  
12 Service. Under regulations duly issued by the  
13 director of the Selective Service, a person  
14 required to register under the Selective Service  
15 law must: (1), complete a registration card;  
16 and (2), submit the completed card to an  
17 authorized official together with proof of his  
18 identity. The vital information supplied on the  
19 registration card is then recorded in the master  
20 computer file of the Selective Service System at  
21 which time the registration is considered  
22 complete. According to that presidential  
23 proclamation male persons eligible for Selective  
24 Service who were born in 1960 were required to  
25 present themselves to submit to registration on

1 the dates between July 21 through July 26, 1980.

2 And that same Act requires that a  
3 person who continues to have the duty to  
4 register up until the time they become 26 years  
5 of age. Consequently failure to register is a  
6 continuing offense. If you find that at any  
7 time during the period covered by the indictment  
8 the defendant was under a legal obligation to  
9 register with the Selective Service, his failure  
10 to honor that obligation makes him guilty of a  
11 criminal offense if his failure was willing and  
12 willful.

13 Knowing and willful, essential elements  
14 of the crime charged. There must be actual  
15 knowledge by the defendant that he had a duty to  
16 register for the Selective Service in order for  
17 the offense to be proved. You may not find the  
18 defendant guilty unless you find that beyond a  
19 reasonable doubt he knew he had a duty to  
20 register. It is not sufficient to show that the  
21 defendant may have suspected or thought that he  
22 had such a duty. The fact of knowledge, however,  
23 may be established by direct or circumstantial  
24 evidence just as any other fact may be found in  
25 this particular case.

1           The crime charged in this case is a  
2 serious crime, which requires proof of a  
3 specific intent before the defendant can be  
4 convicted. Specific intent as the term implies  
5 means more than general intent to commit the act.  
6 To establish specific intent the Government must  
7 prove beyond a reasonable doubt that the  
8 defendant knowingly failed to do an act which  
9 the law requires, purposely intending to violate  
10 the law. Such intent may be determined from all  
11 the facts and circumstances surrounding the case.

12           An act or failure to act is knowingly  
13 done if done for untoward or intentionally and  
14 not because of mistake or accident or other  
15 innocent reason. Intent ordinarily may not be  
16 proved directly, because, of course, there is no  
17 way of fathoming or scrutinizing the operations  
18 of the human mind. We don't read into  
19 somebody's mind, we determine it from evidence  
20 as to what other evidence as to what is going on  
21 in a person's mind. You may infer the  
22 defendant's intent from the surrounding  
23 circumstances. You may consider any statements  
24 made, act done or omitted by the defendant and  
25 all other facts and circumstances in evidence



1 which would indicate his state of mind. You may  
2 consider it reasonable to draw the inference to  
3 find that the -- strike that. As I said, it  
4 is entirely up to you to decide what facts to  
5 find from the evidence.

6 Any omission or failure to act is  
7 knowingly done if done voluntarily and  
8 intentionally, and not because of mistake or  
9 accident or other innocent reason. The purpose  
10 of that adding the word "knowingly" is to ensure  
11 that no one would be convicted because of  
12 omission or failure to do an act due to mistake  
13 or accident or other innocent reason. An  
14 omission or failure to act is wilfully done if  
15 done voluntarily and intentionally with specific  
16 intent not to do something which the law  
17 required to be done, that is to say with bad  
18 purpose either to disobey or disregard the law.

19 Defendant's conduct is not wilful if he  
20 acted through negligence, inadvertence, mistake,  
21 or due to his good faith misunderstanding of the  
22 requirements of the law. It should be pointed  
23 out, however, that disagreement with the law is  
24 not a defense. It is the duty of all citizens  
25 to obey the law whether they agree with it or

1 not. A person may not decide for himself  
2 whether the law is good or bad, or feel that he  
3 is free to disobey it. One may not disobey a  
4 law even on the good faith that it is  
5 unconstitutional, and on that ground avoid the  
6 consequences of his act.

7 Now, I told you that those are the  
8 essential elements, those are really the  
9 substantive part of the charge. Those are the  
10 things that must be proved.

11 I have indicated to you that even to  
12 this moment, and until such time as you find  
13 otherwise, the defendant is considered innocent,  
14 that is not guilty of any crime unless it is  
15 established to you beyond a reasonable doubt  
16 that each and every essential element of the  
17 particular crime charged has been established to  
18 you. It is so that because he is presumed to be  
19 innocent that he is to be accorded all the rights  
20 and privileges, all the attention and  
21 preferences that one can have who, like you and  
22 I, are believed to stand innocent.

23 Now, this presumption of innocence is  
24 only overwhelmed, only overtaken by proof beyond  
25 a reasonable doubt, proffered by coming through

1 the evidence presented by the Government. The  
2 burden of proving this guilt is always upon the  
3 Government and despite what may or may not have  
4 occurred during the course of this trial, that  
5 burden doesn't shift to the defendant to do  
6 anything. It simply means and always means that  
7 the Government has this responsibility of  
8 proving the elements of the defense, and for one  
9 reason or another fails to do that then you must  
10 find the defendant not guilty.

11 A reasonable doubt, ladies and  
12 gentlemen, is a real doubt based upon reason and  
13 commonsense after a careful and impartial  
14 consideration of all the evidence in the case.  
15 A reasonable doubt does not mean beyond a all  
16 doubt, it means a doubt based upon good and  
17 sufficient reason.

18 Now, you in a moment, with one little  
19 hesitation in a moment so that I may talk to  
20 counsel and the defendant, you will be going out  
21 to deliberate. All of you will participate in  
22 the deliberations. I will choose the wisest  
23 among you to be the foreperson of the jury and  
24 you will then have certain special  
25 responsibilities. Your responsibilities as a

1 whole is to vote your own conscience and your  
2 own mind as to what the facts establish. The  
3 responsibility each of you individually is to  
4 establish what the evidence proves or does not  
5 prove, and then in compliance with the rules of  
6 law as I have told it to you decide whether or  
7 not the defendant has been proved guilty beyond  
8 a reasonable doubt. And if so you will vote  
9 that verdict. However, because there are twelve  
10 of you and because the rule is that it must be a  
11 unanimous verdict, if there is to be a verdict  
12 at all, it requires that you deliberate as well  
13 as you possibly can and as long as as it is  
14 necessary to see if you can have one mind in  
15 this subject. For a verdict is only a verdict  
16 if twelve of you say so. If ten of you say one  
17 thing and two of you say another thing, you do  
18 not have a verdict. And I will require you to  
19 continue to deliberate until such time as  
20 established firmly in my mind that it is  
21 impossible to come to a verdict or unlikely, or  
22 any other reason which would indicate that there  
23 is not much likelihood that you will have a  
24 verdict.

25 So, if you find the defendant not

1 guilty it must be by all of you. If you find  
2 the defendant guilty that too must be by all of  
3 you. And the way to do that, which has been  
4 done for many many years in the history of the  
5 jury system, is that jurors have worked together,  
6 strangers as they may be one to the other, not  
7 knowing each other's background and lives, and  
8 philosophies, all those things, nevertheless if  
9 you listen carefully to what others have to say,  
10 if you hear the recounting of the evidence as  
11 best one other remembers it and you put it  
12 together with your own recollection and so forth  
13 you will find that it is more likely than not  
14 that you will come to some agreement, an  
15 agreement that conforms with your own conscience  
16 of the evidence and you will be able to come to  
17 a verdict. So I ask you to work hard in doing  
18 that.

19 When I chose a foreperson of the jury  
20 his job will be simple. And that will be to  
21 help you to deliberate by making sure that  
22 everyone has an opportunity to speak and be  
23 heard. And from time to time if there is any  
24 question, you can decide upon that question and  
25 the foreperson can write it out and address it

1 to me and I'll respond to the question, in one  
2 manner or another, hopefully to clarify any  
3 difficulties that you may have as far as the law  
4 is. I will not be able to comment on what my  
5 version of the facts are. Indeed, I have no  
6 version of the facts, and you are to gather  
7 nothing from me as to where I stand or don't  
8 stand, or how I feel what the evidence warrants  
9 or doesn't warrant. That is for you to do that.  
10 That's your responsibility. So if you have a  
11 question you send it to me and I'll respond to  
12 it.

13 The foreperson will from time to time  
14 take a vote to see whether or not you have  
15 arrived at a unanimous verdict, and then that  
16 person will report the verdict in writing on a  
17 verdict form to be issued what that verdict is.  
18 And I will record it and you will have spoken in  
19 the performance of your duties.

20 So, if you will excuse me for one  
21 second I'll be right back.

22  
23 (Side bar discussion, as  
24 follows...

25 THE COURT: Okay. Any objections,

1 admissions, additions? .

2 There being none. Thank you very much.

3

4

(In open court.)

5

6

THE CLERK: Juror in seat 5,

7

Margaret Johns.

8

THE COURT: Will you be foreperson

9

of the jury? Thank you very much.

10

From now on you will take that seat up

11

front here, and you will report from that seat

12

after you go.

13

So I have told you what your

14

responsibilities are. I'll just remind you of

15

one thing. You have no greater right to be heard

16

or any greater right on a vote. It's your

17

responsibility simply to make sure that if there

18

are any difficulties that you can communicate

19

those to me. Other than that, I remind each one

20

of you that you have your own conscience to vote

21

your own recollection of the facts to be guided

22

by, but please pay attention to what all the

23

others have to say and you will help in that

24

respect.

25

So, you may now retire to the

1 deliberation room and when you are ready you can  
2 let me know.

3  
4 (The jury left the courtroom at  
5 2:43 p.m. to begin deliberations.)

6  
7 THE COURT: Would counsel please  
8 take a look at the exhibits to make sure that  
9 they are in order, and only those which were  
10 marked into evidence go with the jury. And then  
11 so certify it on the record.

12 MR. MUELLER: I'll certify on the  
13 record that the exhibits are in order. Exhibits  
14 1 through 6 are the ones in evidence and should  
15 go to the jury room.

16 THE DEFENDANT: So far as I know.

17 (There was a recess.)

18  
19 (The jury was seated - 3:00 p.m.)

20  
21 (Jury verdict of Guilty on Count 1  
22 returned by the jury.)

23  
24 THE COURT: Any question?

25 THE DEFENDANT: I would request



1 that the jury be polled.

2 THE COURT: They may be polled.

3 (The jury was polled and all agreed  
4 with the verdict.)

5 THE COURT: Any other question?  
6 Then the verdict may be recorded.

7 Sit down for a few seconds, please.

8 I just wanted to say that though this  
9 was not a long trial by any stretch of the  
10 imagination, that it moved along without  
11 contention substantially, nevertheless I think  
12 of it as a difficult one. And I just want to  
13 express my appreciation, not for your verdict,  
14 but for your willingness to serve. I find these  
15 cases difficult. I find all cases difficult.  
16 And I find this particular case difficult  
17 because it raises issues that are difficult in  
18 some milieu, some settings, to adequately  
19 respond to. I look at my job as to uphold the  
20 respect and dignity of the Court and the  
21 particular system and when I cannot do that I  
22 would suspect that it would be time for me to  
23 leave. And I look to others who participate in  
24 that to do likewise, and you were a participant.  
25 Whether you appreciate the draft law or you

1 don't appreciate the draft law, that wasn't the  
2 question put to you. The question put to you  
3 was was there a violation of that particular law?  
4 Now that doesn't satisfy me nor I'm sure does it  
5 satisfy you, because somehow or other the real  
6 issue for us is not whether or not Mr. Hasbrouck  
7 failed to obey the law and who should decide  
8 that issue. Well, I don't think that  
9 necessarily the Court is in the position to  
10 decide the issues based upon some personal  
11 predilections, so neither should the jury be.  
12 And it's an issue that I suppose has to be  
13 decided by others, whether by vote or by those  
14 in charge of the executive branch. But I  
15 suppose unless there is something  
16 unconstitutional, which I found there not to  
17 be, at least based on the issues that were  
18 simply placed before me, then I think it was  
19 your responsibility to listen to the evidence  
20 and based only on that evidence decide the facts.  
21 And if you have need to think otherwise about  
22 the law, then you take that up in a different  
23 forum and you are encouraged to take it up in a  
24 different forum, pro or con, or as indeed many  
25 people are, indifferent to that particular law.

1           Anyway, I don't have any speech other  
2 than to just really to say to you that I  
3 appreciate the responsibility that you had to  
4 share this afternoon. And I thought you were  
5 attentive, and I thought that you would give  
6 every fair shake to the defendant as well as to  
7 the government, that you would obey the rules.  
8 And so we can appreciate what you have done.  
9 Again, I would have respected any decision on  
10 your part except if I thought that you weren't  
11 acting within the confines of the law.

12           So, with that in mind you can have the  
13 rest of the day off, and just call in tonight at  
14 five o'clock to see if you are required tomorrow  
15 morning. And I hope you do have opportunity to  
16 sit on other juries. So at least with the Court's  
17 appreciation, you may go.

18           Thank you.

19  
20           (The jury left the courtroom at  
21 3:10 p.m.)

22  
23           THE COURT: All right. I propose  
24 for a date for disposition January 12th, 1983,  
25 at nine o'clock in the morning. Is there any

1 difficulty about that time and date?

2 MR. MUELLER: No, your Honor.

3 THE DEFENDANT: I would prefer a  
4 date later in the week, if that's possible.

5 THE COURT: I can make it later in  
6 the week. I can make it January 8th, that's  
7 later in the week. Which would you prefer? .

8 THE DEFENDANT: The 12th. If you  
9 can't --

10 THE COURT: January 14th, is that  
11 later in the week. We can make it on a Saturday  
12 if you want?

13 THE DEFENDANT: No, the 14th is  
14 all right. January 14th is all right.

15 THE COURT: January 14th is all  
16 right.

17 How about bail? Any problem with bail?

18 MR. MUELLER: No problem with  
19 bail, your Honor.

20 THE COURT: All right. I  
21 continue this matter to nine o'clock, January 14th.  
22 And you are on bail and you are subject to all  
23 the conditions of bail including good behavior  
24 and returning at the time and place designated  
25 by the Court or at such other time and place as

1 we may be in future be designated.

2 THE DEFENDANT: I'll give the  
3 Court notice at this time of my intent to appeal  
4 this.

5 THE COURT: Notice is entered and  
6 at the time the verdict is entered the notice  
7 will be given of your right to appeal again. .

8

9

\* \* \* \* \*

10

11

THE COURT: Let me call Mr.  
12 Hasbrouck again. And is the Government here?

13

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15

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Well, in any event you have a  
responsibility to report to the probation  
department. That's one of the conditions of  
your bail. But, in any event, the requirement  
for that and the need for that is to make sure  
that the Court is made perfectly aware of your  
background and circumstances and in order to  
assist the Court in making an appropriate  
sentence based upon all of the circumstances.  
Now if you fail to do that, I have given you  
notice of it, then of course you have to  
understand that I will be regarding what the  
probation department tells me what's in that

1 report with or without your contribution.

2 The idea is that that information is  
3 given, is confidential, and at least it is not  
4 available to the public, but it is information  
5 on which I rely in great measure for the  
6 imposition to be made in the case. And there is  
7 a requirement to do that. And at least failing  
8 to do so may at least waive any rights that you  
9 have in regard to what information is given to  
10 me on that probation report, with or without  
11 your assistance.

12 THE DEFENDANT: We can go over the  
13 outstanding personal recognizance release.

14 There was no condition about --

15 THE COURT: I'm telling you that  
16 that's part of the requirement. If you don't do  
17 it I want you to know that you will be waiving  
18 your rights to contesting the probation report  
19 that I will be using in order to satisfy myself  
20 as to how to view your sentence. You have an  
21 opportunity now to provide the probation  
22 department with any information you want, any  
23 background, anything that would help to assist  
24 me and perhaps mitigate for you the disposition.

25 And so you will -- it is my opinion

1 that you are wise to cooperate with that effort  
2 and to make sure that the probation department  
3 does not report to me anything or have in its  
4 report anything that may not be appropriate for  
5 me to review, or that's not correct or true.  
6 That's what the process is. And it has nothing  
7 to do with guilt or innocence or your position  
8 or political favor or anything else of the sort.

9 So in that respect at most it will be  
10 time spent and at best it will be something that  
11 may assist you considerably.


12 All right.

13 (Adjourned.)  
14  
15  
16  
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25

1 UNITED STATES OF AMERICA )  
2 DISTRICT OF MASSACHUSETTS ) ss.  
3 CITY OF BOSTON )

4  
5 I, Muriel F. James, Official Reporter,  
6 do hereby certify that at the time and place,  
7 aforesaid, I reported stenographically the  
8 proceedings had in Criminal Action 82-269-01-N  
9 United States of America versus Edward John  
10 Hasbrouck and that the foregoing transcript is a  
11 correct transcript of the proceedings taken  
12 therein, to the best of my skill and ability.

13 In Witness Whereof I have hereunto set  
14 my hand this 21st day of December, 1983.

15  
16  
17  
18   
19 \_\_\_\_\_  
20 Official Reporter  
21  
22  
23  
24  
25