

FILED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

U.S. DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
BY [Signature] CLERK

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
V.)
)
TIMOTHY JOSEPH MELLEN,)
ELIZABETH ANN LENTSCH,)
LENA S. FELDMANN, and)
MARY ELINOR ADAMS,)
)
Defendants.)

No. 3:02-CR-47
SHIRLEY

ORDER

The parties and their attorney's came before the Court on June 14, 2002, for a motion hearing with regard to numerous pretrial motions pending before the Court including:

1. Defendant Feldmann's Motion to Adopt and Incorporate Motions of Co-Defendant's. [Doc. 14].
2. Defendant Feldmann's Motion for Disclosure of Material Witnesses. [Doc. 15].
3. Defendant Feldmann's Motion for Disclosure of 404(b) Evidence. [Doc. 16].
4. Defendant Feldmann's Motion for Disclosure of Statements the Government Seeks to Attribute to Defendant Feldmann. [Doc. 17].
5. Defendant Feldmann's Motion for Trial Pretrial Production of Witness Statements. [Doc. 18].
6. Defendant Mellen's Motion to Adopt All Other Motions. [Doc. 20].
7. Defendant Mellen's Motion to Dismiss Information.

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- [Doc. 23].
8. Defendant Adams' Motion to Adopt Motions of Co-Defendant's. [Doc. 25].
 9. Defendant Lentsch's Motion to Adopt Motions of Co-Defendant's. [Doc. 26].
 10. The government's Motion to Preclude Defendant's From Introducing Evidence in Support of Certain Justification Defenses. [Doc. 27].

All motions were ruled on in open Court, with written order (i.e. this Order) to follow.

With regard to defendant Feldmann's motions, the Court notes that Ms. Feldmann entered a change of plea and entered a plea of guilty on June 11, 2002. Accordingly, defendant's motions, documents 14, 15, 16, 17 and 18 are **DENIED** as moot.

With regard to defendant Mellen's Motion to Adopt all other Motions [doc. 20], and defendant Adams Motion to Adopt Motions of Co-Defendant's [doc. 25] and defendant Lentsch's Motion to Adopt Motion of Co-Defendants. [doc. 26], these motion were at the hearing, and are hereby, **GRANTED**.

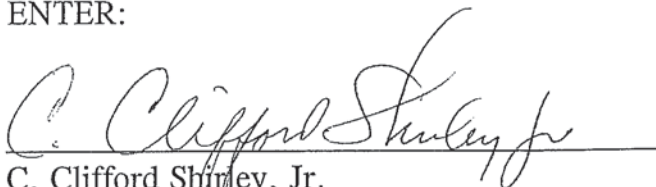
With regard to defendant's Mellen's Motion to Dismiss Information [doc. 23], and parenthetically the same motions of defendant's Adams and Lentsch to dismiss the information (by virtue of their joinder in defendant Mellen's motion), and the government's Motion to Preclude Defendant from Introducing Evidence in Support of Certain Justification Defenses [doc. 27], the undersigned rendered a comprehensive oral

decision which necessarily resulted in a ruling on both of these motions. That oral ruling has been transcribed and filed and is adopted herein as if set out verbatim. The ruling in the oral decision delivered by the undersigned at the motion hearing, and the ruling herein, results in the defendant's Motion to Dismiss the Information [doc. 23] being **DENIED** and the government's Motion to Preclude Defendant's from Introducing Evidence in Support of Certain Justification Defenses [doc. 27] being **GRANTED**.

Following the conclusion of the hearing, the defendant Mellen made an oral Motion in Limine to exclude testimony or statements by counsel as to the events of September 11th or mention of terrorism. Argument was heard on both sides regarding this Motion in Limine at that time. However, the motion was at that hearing, and hereby is, deemed premature and accordingly, was and is **DENIED** and held to be a subject more properly to be addressed at trial.

IT IS SO ORDERED.

ENTER:


C. Clifford Shirley, Jr.
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT-
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE, TENNESSEE

UNITED STATES OF AMERICA, :
 :
 PLAINTIFF, :
 :
 VS. :
 :
 TIMOTHY MELLEN, ELIZABETH :
 LENSTCH, MARY ADAMS, :
 :
 DEFENDANTS. :

Bales
NO. 3:02-CR-47
RULING ON MOTIONS

TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE C. CLIFFORD
SHIRLEY, JR., UNITED STATES MAGISTRATE JUDGE, ON JUNE 14TH, 2002.

APPEARANCES:

ON BEHALF OF THE PLAINTIFF:

HARRY MATTICE, JR., ESQ.
JEFFREY THEODORE, ESQ.
U.S. ATTORNEY'S OFFICE
KNOXVILLE, TENNESSEE

ON BEHALF OF THE DEFENDANTS:

MIKE WHALEN, ESQ.
KNOXVILLE, TENNESSEE

JOHN ELDRIDGE, ESQ.
KNOXVILLE, TENNESSEE

KIM A. TOLLISON, ESQ.
FEDERAL DEFENDER SERVICES, INC.
KNOXVILLE, TENNESSEE

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DEFENDANT ADAMS' APPEARANCE WAIVED: 3

DEFENDANTS' MOTIONS – ADOPT ALL MOTIONS: 3

COURT'S RULING – DEFENDANTS' MOTIONS TO DISMISS: 4, 21

COURT'S RULING – MENS REA ARGUMENT: 21

PLAINTIFF'S MOTION TO STRIKE CERTAIN DEFENSES: 21

1 (WHEREUPON, FRIDAY, JUNE 14TH, 2002, COURT CONVENEED IN THE
2 FOLLOWING MATTER AT 1:37 P.M.)

3 COURTROOM DEPUTY: CRIMINAL 3:02-47, UNITED STATES OF
4 AMERICA VS. TIMOTHY MELLEN, ELIZABETH LENSTCH AND MARY ADAMS.
5 JEFF THEODORE AND HARRY MATTICE ARE REPRESENTING THE
6 GOVERNMENT; MIKE WHALEN IS REPRESENTING DEFENDANT MELLEN, JOHN
7 ELDRIDGE, DEFENDANT LENSTCH; KIM TOLLISON, DEFENDANT MARY ADAMS.
8 IS THE GOVERNMENT PRESENT AND READY TO PROCEED?

9 MR. MATTICE: WE ARE.

10 COURTROOM DEPUTY: ARE THE DEFENDANTS PRESENT AND
11 READY TO PROCEED?

12 MR. WHALEN: PRESENT AND READY, YOUR HONOR.

13 MR. TOLLISON: JUDGE, MS. ADAMS IS NOT PRESENT, BUT WE
14 WOULD WAIVE HER APPEARANCE IF WE COULD. I DON'T KNOW WHERE SHE IS.
15 WE SAW HER ON THE STREET TWO HOURS AGO.

16 COURT: ALL RIGHT. THERE IS A HOUSEKEEPING MATTER, AND
17 EVENTUALLY WE'RE GOING TO ADDRESS HOPEFULLY ALL THE MOTIONS
18 PENDING TODAY. BUT BEFORE WE BEGIN WITH THE PRIMARY MOTION, WITH
19 REGARD TO MOTIONS BY DEFENDANT MELLEN TO ADOPT ALL OTHER
20 MOTIONS, THAT WILL BE GRANTED; A MOTION BY MARY ELEANOR ADAMS TO
21 ADOPT ALL OTHER MOTIONS, THAT WILL BE GRANTED; AND THE MOTION BY
22 DEFENDANT ELIZABETH ANN LENSTCH TO ADOPT ALL OTHER MOTIONS, THAT
23 WILL BE GRANTED. THOSE ARE DOCUMENTS 20, 25 AND 26. I THINK I HAD
24 PROBABLY INDICATED THAT AS MUCH IN OUR DISCUSSIONS, BUT I DID NOT
25 FORMALLY RULE ON THOSE MOTIONS.

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1 IN THIS CASE, THE DEFENDANTS HAVE FILED MOTIONS SEEKING TO
2 DISMISS THE INFORMATION BASED ON THE FOLLOWING GROUNDS: THAT THE
3 STATUTORY CHARGES VIOLATE THE U.S. CONSTITUTION. SECOND, THAT THE
4 PROSECUTION VIOLATES FUNDAMENTAL PRINCIPLES OF INTERNATIONAL
5 LAW; AND, THIRD, THAT THE DEFENDANTS DID NOT HAVE THE NECESSARY
6 MENS REA AS A MATTER OF LAW.

7 TO THIS MOTION, THE GOVERNMENT HAS RESPONDED. THE
8 GOVERNMENT HAS ALSO FILED ITS OWN MOTION SEEKING TO PRECLUDE THE
9 DEFENDANTS FROM INTRODUCING EVIDENCE IN SUPPORT OF CERTAIN
10 JUSTIFICATION DEFENSES, INCLUDING THE NECESSITY DEFENSE, THE
11 INTERNATIONAL LAW DEFENSE, THE NUREMBERG DEFENSE, FIRST
12 AMENDMENT RIGHTS DEFENSES, THE MORALITY DEFENSE AND A RELIGIOUS
13 OR POLITICAL DEFENSE. TO THIS MOTION THE DEFENDANTS HAVE FILED
14 RESPONSIVE BRIEFS.

15 OBVIOUSLY, THESE OVERLAP IN SOME LARGE DEGREE, SO IN
16 ADDRESSING THEM BY TOPIC IT WILL NECESSARILY RESULT THAT I AM
17 RULING ON BOTH SETS OF MOTIONS AT THIS TIME.

18 IN MAKING THIS DECISION AND IN RENDERING THIS RULING, I HAVE
19 RELIED ON ALL THE DOCUMENTS FILED BY THE DEFENDANTS, THE TREATIES,
20 OPINIONS OF THE INTERNATIONAL COURT OF LAW, THE NUREMBERG
21 PRINCIPLES, AND I HAVE RELIED ON THE FOLLOWING CASES AND HAVE
22 ACTUALLY QUOTED FROM SOME OF THEM IN THIS OPINION. THOSE INCLUDE:

23 THE PAQUETE HABANA, U.S. V. MAXWELL, 254 F3D 21, A FIRST CIRCUIT
24 CASE; U.S. V. ALLEN, 760 F2D 447, A SECOND CIRCUIT CASE; U.S. V. CASSIDY, 616
25 F2D 101, A FOURTH CIRCUIT CASE; U.S. V. NEWCOMB, 6 F3D 1129, A SIXTH

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1 CIRCUIT CASE; U.S. V. QUILTY, 741 F2D 1031, A SEVENTH CIRCUIT CASE; U.S. V.
2 KRONCKE, K-R-O-N-C-K-E, 459 F2D 697, AN EIGHTH CIRCUIT CASE; AND U.S. V.
3 LOWE, 654 F2D 562; AND U.S. V. SCHOON, S-C-H-O-O-N, 971 F2D 193; AND U.S. V.
4 DORRELL, D-O-R-R-E-L-L, 758 F2D 427, ALL NINTH CIRCUIT CASES.

5 U.S. V. SEWARD, 687 F2D 1270, A TENTH CIRCUIT CASE; AND U.S. V.
6 MONTGOMERY, 772 F2D 733, AN ELEVENTH CIRCUIT CASE. IN ADDITION, THE
7 COURT HAS ALSO RELIED ON U.S. V. KABAT, 797 F2D 580; AND U.S. V.
8 MAXWELL-ANTHONY, 129 FED. SUPP. 2D 101.

9 NOW, THE DEFENDANTS' ARGUMENT THAT THE STATUTORY CHARGES
10 VIOLATE THE CONSTITUTION IS BASED ON THE ARGUMENT THAT ARTICLE SIX
11 OF THE CONSTITUTION PROVIDES THAT THE CONSTITUTION, THE LAWS OF THE
12 UNITED STATES, AND ALL THE TREATIES MADE UNDER THE AUTHORITY OF
13 THE UNITED STATES, CONSTITUTE THE SUPREME LAW IN THE LAND. THEY
14 ARGUE THAT VARIOUS TREATIES ENTERED INTO BY THE UNITED STATES
15 MAKE THE USE OR THREAT OF USE OF NUCLEAR BOMBS ILLEGAL.

16 DEFENDANTS ARGUE THAT Y-12'S MANUFACTURE AND POSSESSION OF
17 SUCH NUCLEAR WEAPONS VIOLATE THESE TREATIES. DEFENDANTS THEN
18 ARGUE THAT THEY THEREFORE HAD A RIGHT AND OBLIGATION TO STOP THE
19 PRODUCTION AND MANUFACTURE OF THESE ALLEGEDLY ILLEGAL WEAPONS.

20 DEFENDANTS' INTERNATIONAL LAW ARGUMENT IS SIMILAR, ARGUING
21 THAT INTERNATIONAL LAW MAKES THE USE OR THREAT OF USE OF NUCLEAR
22 WEAPONS ILLEGAL, AND RELYING PRIMARILY ON AN ADVISORY OPINION OF
23 THE INTERNATIONAL COURT OF JUSTICE FOR THAT PROPOSITION,
24 DEFENDANTS ALSO ARGUE THAT THIS INTERNATIONAL LAW BINDS US ALL.

25 DEFENDANTS FURTHER ARGUE THAT THE NUREMBERG PRINCIPLES

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1 PROVIDE APPLICATION BOTH TO COUNTRIES AND TO INDIVIDUALS AND MAKE
2 INDIVIDUALS CULPABLE FOR COMPLICITY. DEFENDANTS ARGUE THAT THESE
3 ACTIONS IN THIS CASE WERE DONE TO AVOID COMPLICITY.

4 DEFENDANTS FURTHER ARGUE THAT THEY MEET THE NECESSITY
5 DEFENSE CRITERIA, ARGUING THAT THEY WERE FACED WITH A CHOICE OF
6 EVILS AND CHOSE THE LESSER EVIL; SECOND, THAT THEY ACTED TO PREVENT
7 IMMINENT HARM; THIRD, THAT THEY REASONABLY ANTICIPATED A DIRECT
8 CAUSAL RELATIONSHIP BETWEEN THEIR ACTS AND THE HARM TO BE
9 AVERTED; AND, FOURTH, THAT THEY HAD NO LEGAL ALTERNATIVE BUT TO
10 VIOLATE THE LAW.

11 A HEARING WAS HELD IN THE NATURE OF A PROFFER OR AN OFFER OF
12 PROOF WITH THE THREE REMAINING DEFENDANTS TESTIFYING, THE
13 DEFENDANT FELDMAN HAVING PLED GUILTY TO THE CHARGES, AND SHE WAS
14 AND IS NO LONGER A DEFENDANT FOR TRIAL PURPOSES.

15 THE DEFENDANT, SISTER MARY DENNIS LENSTCH, TESTIFIED FIRST,
16 REGARDING HER INFORMATION ABOUT Y-12 AND ITS MANUFACTURE,
17 MAINTENANCE AND REFURBISHING OF NUCLEAR WARHEADS. SHE TESTIFIED
18 SHE BELIEVED THESE ACTIONS VIOLATED INTERNATIONAL LAW, CITING THE
19 NUCLEAR NONPROLIFERATION TREATY WHICH REQUIRED PURSUIT OF
20 NEGOTIATIONS IN GOOD FAITH TO DISARM.

21 SHE ALSO CITED AND RELIED UPON THE NUREMBERG PRINCIPLES. SHE
22 TESTIFIED REGARDING THE NECESSITY DEFENSE CRITERIA, INDICATING THAT
23 THE EVILS PRESENTED FOR CROSSING A LINE ON THE ONE HAND VERSUS
24 TRYING TO STOP NUCLEAR PRODUCTION ON THE OTHER, AND SHE CHOSE THE
25 LESSER OF THESE, CROSSING THE LINE. SECOND, THAT SHE WAS ACTING TO

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1 PREVENT IMMINENT HARM, BECAUSE Y-12'S POSSESSION OF NUCLEAR
2 WEAPONS CONSTITUTED A THREAT, AND ALTHOUGH SHE DID ADMIT SHE
3 COULD NOT SAY THEY WERE GOING TO BE USED RIGHT AWAY OR THAT THEY
4 WEREN'T.

5 THIRD, THAT THE CAUSAL RELATIONSHIP OF HER ACT WAS TO STOP THE
6 BOMB PRODUCTION ALBEIT FOR A BRIEF TIME; FOURTH, THAT SHE HAD NO
7 LEGAL ALTERNATIVE BECAUSE SHE HAD ATTEMPTED THOSE IN THE PAST
8 WITHOUT SUCCESS.

9 SHE TESTIFIED THAT SHE HAD THE NEED AND OBLIGATION TO SPEAK
10 THE TRUTH REGARDING HER CLAIM THAT Y-12 WAS VIOLATING
11 INTERNATIONAL LAW. SHE TESTIFIED THAT HER UNDERSTANDING OF THE
12 NUREMBERG PRINCIPLES OBLIGATED HER TO ENFORCE INTERNATIONAL LAW
13 AND THAT -- AND TO AVOID THE NUREMBERG PRINCIPLE OF COMPLICITY.

14 WITH REGARD TO HER INTENT, SHE INDICATED SHE WANTED TO
15 ENGAGE OTHERS INSIDE Y-12 TO MAKE SURE THEY KNEW WHAT WAS
16 HAPPENING, TO MAKE SURE THEY KNEW ABOUT THE INTERNATIONAL LAW
17 VIOLATIONS AND TO APPEAL TO THEIR CONSCIENCE. SHE TESTIFIED SHE WAS
18 ATTEMPTING TO MAKE AN IMPACT BY BRINGING ATTENTION TO THE
19 SITUATION AND TO BRING THIS MATTER BEFORE A JUDGE SO IT COULD BE
20 LAWFULLY ADDRESSED.

21 SHE ACKNOWLEDGED SHE WAS ENGAGING IN SOCIAL PROTEST, BUT
22 THAT SHE HAD TO ACT THE TRUTH, INVOKING THE NAME OF MARTIN LUTHER
23 KING. SHE ACKNOWLEDGED SHE HAD WRITTEN LETTERS, BEEN INVOLVED IN
24 PETITIONS, HAD MARCHED AND HAD ATTENDED AND SPOKEN AT
25 DEPARTMENT OF ENERGY HEARINGS, AMONG OTHER ACTIONS, ALL WITHOUT

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1 SUCCESS.

2 ON CROSS-EXAMINATION, SHE TACITLY ACKNOWLEDGED SHE KNEW
3 SHE WAS BREAKING THE LAW AND COULD BE PUNISHED. SHE ADMITTED TO
4 THE LITANY OF PRIOR ARRESTS AND CONVICTIONS FOR SIMILAR ACTS OF
5 TRESPASSING AT THE SAME PLACE. SHE ACKNOWLEDGED SHE KNEW THAT
6 WHAT SHE WAS DOING WAS UNLAWFUL AND THAT SHE WOULD LIKELY BE
7 CHARGED.

8 SHE FELT BEING ARRESTED, THOUGH, WAS A MORE EFFECTIVE
9 STATEMENT. SHE REITERATED HER GOAL TO BRING THESE ALLEGED
10 UNLAWFUL FACTS TO A LAWFUL COURT.

11 SHE ADMITTED THAT SHE CROSSED THIS BARRIER VOLUNTARILY AND
12 ADMITTED THAT IN THIS AND OTHER PROTESTS SHE HAD NOT BEEN
13 PREVENTED FROM ANY ACTIVITY OF PROTEST EXCEPT CROSSING A BLUE LINE
14 AND TRESPASSING. SHE ALSO ADMITTED THE OTHER ACTIVITIES AND
15 PROTESTS THAT DAY WERE EFFECTIVE MEANS OF PROTEST AS WELL, AS THEY
16 DREW ATTENTION TO THE VIOLATIONS OF INTERNATIONAL LAW AS WELL.

17 SHE FELT THAT IF SHE DID NOT TRESPASS SHE WOULD BE COMPLICIT IN
18 VIOLATING INTERNATIONAL LAW UNDER THE NUREMBERG PRINCIPLES, BUT
19 COULD NOT STATE WHAT SANCTIONS SHE FACED, IF ANY, FOR SUCH
20 VIOLATIONS OR IF ANYONE HAD EVER BEEN SANCTIONED UNDER THEM.

21 SHE ACKNOWLEDGED SHE WAS AWARE OF THE YELLOW "NO
22 TRESPASSING" SIGNS AND THE OFFICIAL'S OUT THERE THAT DAY SPECIFIC
23 WARNINGS ABOUT NO TRESPASSING.

24 DEFENDANT, TIM MELLEN, TESTIFIED AND ADOPTED MS. LENSTCH'S
25 DEFENSES. HE ALSO TESTIFIED REGARDING HIS UNDERSTANDING AS TO THE

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1 MANUFACTURE, REFURBISHING AND STORAGE OF NUCLEAR WEAPONS AT Y-
2 12. HE EXPRESSED HIS OPINION THAT THIS CONSTITUTED PROLIFERATION
3 VERSUS NON PROLIFERATION. HE TESTIFIED REGARDING SHIFT CHANGES AND
4 THAT THIS INCIDENT OCCURRED AT OR ABOUT A SHIFT CHANGE AND THAT NO
5 VEHICLES CAME IN OR OUT WHILE THE BARRICADES WERE UP.

6 ON CROSS-EXAMINATION, HE ACKNOWLEDGED HE KNEW HE WOULD BE
7 CHARGED WITH TRESPASSING, BUT HE FELT HE HAD A LAWFUL AUTHORITY
8 BASED ON INTERNATIONAL LAW. HE ACKNOWLEDGED WILLFULLY CROSSING
9 THE LINE AND UNDERSTOOD THIS VIOLATED FEDERAL LAW.

10 FINALLY, DEFENDANT, MARY ADAMS, TESTIFIED AND ALSO ADOPTED
11 THE OTHER DEFENSES. SHE INDICATED THAT ON THE DATE OF THE INCIDENT
12 SHE WAS TRYING TO BUILD AWARENESS IN EAST TENNESSEE AND BEYOND AS
13 TO WHAT WAS GOING ON AND TO EDUCATE OTHERS REGARDING THE
14 DANGERS OF BUILDING NUCLEAR WEAPONS. SHE FELT SHE HAD
15 ACCOMPLISHED THE BUILDING AWARENESS GOAL.

16 SHE NOTED IN THE PAST THAT SHE HAD MARCHED AT PEACE WALKS,
17 WRITTEN LETTERS TO THE EDITOR, WRITTEN ELECTED OFFICIALS, WRITTEN
18 COLUMNS AND DEBATED THE NUCLEAR ISSUE, ALL WITHOUT SUCCESS. SHE
19 TESTIFIED SHE FELT HER ACTS WERE NECESSARY AND THAT SHE HAD NO
20 REASONABLE ALTERNATIVE BUT TO TRESPASS.

21 ON CROSS-EXAMINATION SHE TACITLY ADMITTED KNOWING SHE WAS
22 VIOLATING FEDERAL LAW, BUT FELT SHE WANTED TO STOP Y-12 FROM
23 PRODUCING BOMBS AND FELT SHE WAS BEING CALLED TO BE OBEDIENT.

24 TURNING TO THE LAW, THE DEFENDANTS' INTERNATIONAL DEFENSE
25 ARGUMENT RELIES ON VARIOUS INTERNATIONAL LAWS AND TREATIES, BUT

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1 PRIMARILY REFERENCES AND RELIES ON THE INTERNATIONAL COURT OF
2 JUSTICE'S DECISION AND THE NUREMBERG PRINCIPLES. ACCORDINGLY, I
3 WILL ADDRESS THOSE IN DETAIL.

4 DEFENDANTS CONTEND THAT THE INTERNATIONAL COURT OF JUSTICE
5 HELD THE USE OR THREAT OF USE OF NUCLEAR WEAPONS VIOLATED
6 INTERNATIONAL LAW AND THAT THEY, THE DEFENDANTS WERE OBLIGATED
7 TO ENFORCE SUCH INTERNATIONAL LAW TO AVOID COMPLICITY UNDER THE
8 NUREMBERG PRINCIPLES.

9 I HAVE REVIEWED ENTIRELY THE DECISION OF THE INTERNATIONAL
10 COURT OF JUSTICE IN DETAIL, AND I HAVE FOUND THE FOLLOWING: FIRST, AT
11 PARAGRAPH 18, THE COURT NOTES THAT IT CANNOT AND IS NOT IN THIS
12 DECISION LEGISLATING, AND THAT IS, MAKING ANY LAW. SECOND, IN
13 PARAGRAPH 15, THE COURT INDICATES IT IS MERELY EXERCISING AN
14 ADVISORY FUNCTION. IT GOES ON TO EXPLAIN THAT IT IS NOT SETTLING ANY
15 DISPUTE, BUT MERELY OFFERING LEGAL ADVICE TO ITS PARENT ORGAN, THE
16 UNITED NATIONS, WHO REQUESTED AN OPINION. ACCORDINGLY, IT IS
17 MERELY AN ANALYSIS AND RECOMMENDATION TO ITS PARENT
18 ORGANIZATION AND DOES NOT CARRY WITH IT THE RULE OF LAW, NOR CAN
19 AN ARGUMENT BE MADE THAT THE VIOLATION OF IT IS A VIOLATION OF ANY
20 LAW.

21 MORE PARTICULARLY, IN PARAGRAPH 30, WITH REGARD TO
22 DISCUSSIONS REGARDING ENVIRONMENTAL TREATIES, THE COURT NOTED IT
23 DID NOT CONSIDER SUCH TREATIES WERE INTENDED TO DEPRIVE A STATE OR
24 A COUNTRY FROM THE EXERCISE OF SELF-DEFENSE UNDER INTERNATIONAL
25 LAW.

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1 PARAGRAPH 38, THE COURT NOTED THAT THERE ARE LAWFUL AND
2 UNLAWFUL USES OF FORCE AND THAT EACH HAS TO BE MEASURED BY
3 CONFORMITY WITH OTHER ARTICLES OF THE U.N. CHARTER. ACCORDINGLY,
4 THERE IS NO BLANKET PROHIBITION EVEN ON THE USE OF FORCE.

5 THE COURT WENT ON TO NOTE, IN PARAGRAPH 39, THAT THE CHARTER
6 OF THE U.N. NEITHER EXPRESSLY PROHIBITED NOR PERMITTED THE USE OF
7 ANY SPECIFIC WEAPONS, INCLUDED NUCLEAR WEAPONS, THEREFORE, IT
8 INDICATES THERE IS NO EXPRESS PROHIBITION FOR NUCLEAR WEAPONS,
9 INCLUDING THE POSSESSION AND MANUFACTURE THEREOF.

10 IN PARAGRAPHS 40 THROUGH 48 THE COURT ADDRESSES A COUNTRY'S
11 ENTITLEMENT TO RESORT TO SELF-DEFENSE AND CERTAIN LIMITATIONS ON
12 THAT RIGHT. IT ALSO DISCUSSES THE POSSESSION OF SUCH WEAPONS AS A
13 MEANS OF SELF-DEFENSE IN THE NATURE OF DETERRENCE IN ORDER TO
14 REDUCE THE RISK OF ATTACK.

15 THE COURT GOES ON TO NOTE, WHETHER AN INTENT TO USE FORCE
16 CONSTITUTES A THREAT TO USE FORCE WILL DEPEND ON VARIOUS FACTORS,
17 MANY OF WHICH IT SETS OUT. THEREFORE, IT HOLDS THERE IS NO BLANKET
18 PROHIBITION OR ILLEGALITY, BUT IT DEPENDS ON A JUDICIAL CONSTRUCTION
19 OF THE ACTUAL ACTS.

20 PARAGRAPH 56 DISCUSSES THE HAGUE CONVENTION, WHICH WAS CITED
21 BY THE DEFENDANTS, AND THE INTERNATIONAL COURT FOUND THAT IT DOES
22 NOT SPECIFICALLY PROHIBIT EVEN THE USE OF NUCLEAR WEAPONS.

23 PARAGRAPH 57, THE COURT DISCUSSED OTHER TREATIES, PRIMARILY
24 THOSE INVOLVING THE ILLEGALITY OF WEAPONS OF MASS DESTRUCTION;
25 THAT IS, BIOLOGICAL AND POISON GAS AND THINGS OF THAT NATURE. EVEN

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1 HERE THE COURT FOUND THERE IS NO PROHIBITION OF RECOURSE TO
2 NUCLEAR WEAPONS IN SUCH TREATIES THAT PROHIBIT WEAPONS OF MASS
3 DESTRUCTION.

4 IN PARAGRAPH 62 THE COURT NOTED TREATIES DEALING WITH THE
5 ACQUISITION, MANUFACTURE, POSSESSION, DEPLOYMENT AND TESTING OF
6 NUCLEAR WEAPONS, MORE ALONG THE LINES WE HAVE HERE. THE COURT
7 NOTED THAT WHILE THESE CASES MAY FORESHADOW A FUTURE PROHIBITION
8 ON THEIR USE, THEY DO NOT CONSTITUTE SUCH A PROHIBITION BY
9 THEMSELVES. THEREFORE, THE MERE MANUFACTURING AND POSSESSION OF
10 NUCLEAR WEAPONS ARE NOT PROHIBITED BY INTERNATIONAL LAW OR
11 TREATIES ACCORDING TO THE INTERNATIONAL COURT.

12 PARAGRAPH 63 THEN LISTS NUMEROUS OTHER TREATIES. IT FINDS
13 THAT THEY, HOWEVER, DO NOT AMOUNT TO A COMPREHENSIVE, UNIVERSAL
14 PROHIBITION ON USE OR EVEN THREAT OF USE OF SUCH WEAPONS, LET ALONE
15 MERE POSSESSION.

16 PARAGRAPH 74, THE COURT NOTES THAT IT HAD NOT FOUND A
17 CONVENTIONAL RULE OF GENERAL SCOPE, NOR A CUSTOMARY RULE OF
18 INTERNATIONAL LAW, SPECIFICALLY PROSCRIBING THE THREAT OF NUCLEAR
19 WEAPONS PER SE.

20 PARAGRAPH 95, THE COURT, AFTER DISCUSSING ADDITIONAL
21 INTERNATIONAL LAW AND HUMANITARIAN LAW, NOTED IT COULD NOT MAKE
22 A DETERMINATION THAT THE RECOURSE TO NUCLEAR WEAPONS WOULD BE
23 ILLEGAL IN ANY CIRCUMSTANCE AND THAT THE COURT COULD NOT
24 CONCLUDE THAT EVEN THE USE OF NUCLEAR WEAPONS WOULD NECESSARILY
25 BE AT VARIANCE WITH THE PRINCIPLES AND RULES OF LAW APPLICABLE TO

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1 ARMED CONFLICT IN ALL CIRCUMSTANCES.

2 IN PARAGRAPH 96 THE COURT WENT ON TO NOTE AND REITERATE THE
3 FUNDAMENTAL RIGHT OF EVERY STATE AND COUNTRY TO ITS OWN SURVIVAL
4 AND ITS RIGHT TO SELF-DEFENSE WHEN ITS SURVIVAL IS AT STAKE. IN
5 PARAGRAPH 97 THE COURT FOUND, IN VIEW OF THE STATE OF INTERNATIONAL
6 LAW, VIEWED AS A WHOLE, IT COULD NOT REACH A DEFINITE CONCLUSION AS
7 TO THE LEGALITY OR ILLEGALITY OF THE ACTUAL USE OF NUCLEAR
8 WEAPONS IN CIRCUMSTANCES OF SELF-DEFENSE.

9 FINALLY, THE COURT NOTED THAT THE ACTUAL DECISION OF THE
10 COURT, DECISION TWO-B, IN AN 11 TO THREE VOTE, THE COURT HELD THERE IS
11 IN NEITHER CUSTOMARY NOR CONVENTIONAL INTERNATIONAL LAW ANY
12 COMPREHENSIVE AND UNIVERSAL PROHIBITION OF THE THREAT OR USE OF
13 NUCLEAR WEAPONS. AND IN A UNANIMOUS DECISION, DECISION D, THE
14 COURT HELD THAT A THREAT OR USE OF NUCLEAR WEAPONS SHOULD BE
15 COMPATIBLE WITH THE REQUIREMENTS OF INTERNATIONAL LAW APPLICABLE
16 TO ARMED CONFLICT AND THE PRINCIPLE OF INTERNATIONAL
17 HUMANITARIAN LAW AND TREATIES SPECIFICALLY DEALING WITH SUCH
18 NUCLEAR WEAPONS.

19 THEREFORE, I INTERPRET THIS TO MEAN THAT THE INTERNATIONAL
20 COURT OF LAW CERTAINLY DID NOT MAKE, NOR EVEN OPINE, THAT THE
21 MANUFACTURE, REFURBISHING OR POSSESSION OF NUCLEAR WEAPONS WAS A
22 VIOLATION OF INTERNATIONAL LAW AND THAT THERE IS CERTAINLY NO
23 CUSTOMARY INTERNATIONAL LAW THAT WAS VIOLATED.

24 I BELIEVE THAT THE DEFENDANTS ARE AND WERE MISTAKEN IN THEIR
25 BELIEF THAT Y-12 WAS IN VIOLATION OF INTERNATIONAL LAW OR GUILTY OF

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1 ANY INTERNATIONAL CRIME AND THAT THE DEFENDANTS ARE MISTAKEN IN
2 THEIR BELIEF THAT THIS RULING GAVE THEM LAWFUL AUTHORITY TO
3 TRESPASS.

4 THIS SAME DECISION IS REACHED WITH REGARD TO THE OTHER
5 INTERNATIONAL LAW CONTENTIONS OF THE DEFENDANT, MANY OF WHICH
6 INVOLVE TREATIES WHICH ONLY APPLY TO WAR-RELATED ACTIONS, NOT
7 APPLICABLE HERE, AND OTHER OBJECTIONS TO FEDERAL LAW OR
8 GOVERNMENTAL POLICIES, WHICH DO NOT PROVIDE A DEFENSE FOR
9 DEFENDANTS IN THIS CASE.

10 FURTHERMORE, EVEN IF THE UNITED STATES WERE TO BE DEEMED IN
11 TECHNICAL VIOLATION OF AN INTERNATIONAL LAW, IT DOES NOT FOLLOW
12 THAT SUCH VIOLATION AUTHORIZES THE DEFENDANTS OR ANYONE ELSE TO
13 THEN BREAK OTHER LAWS. THIS COURT IS NOT AWARE OF ANY
14 INTERNATIONAL LAW THAT EVEN SUGGESTS THAT AN INDIVIDUAL HAS A
15 RESPONSIBILITY TO CORRECT A PERCEIVED VIOLATION OF INTERNATIONAL
16 LAW BY TRESPASSING ON GOVERNMENT PROPERTY.

17 AND DESPITE THE DEFENDANTS' INTENT TO BRING INTERNATIONAL
18 LAW INTO THIS COURTROOM TO ADDRESS AN ALLEGED ILLEGALITY BY THE
19 U.S. GOVERNMENT, AND ALTHOUGH I HAVE EXPRESSED MY BELIEFS ON THAT
20 INTERNATIONAL LAW, THIS COURT DOES NOT RENDER JUDGMENTS ON THE
21 LEGALITY OF THE CONDUCT OF THIS GOVERNMENT MERELY BECAUSE A
22 PERSON REQUESTS IT OR HAPPENS TO THINK THAT SOME GOVERNMENT
23 ACTION IS WRONG. RATHER, THEY MUST, LIKE ALL LITIGANTS, SHOW SOME
24 DIRECT HARM TO THEMSELVES, NOT JUST SOME THEORETICAL FUTURE HARM
25 TO ALL OF US THAT MAY OR MAY NOT OCCUR.

Attch Page #17

1 MANY PEOPLE LIKE THE DEFENDANTS OPPOSE THE NUCLEAR WEAPONS
2 PROGRAM; MANY PEOPLE, ON THE OTHER HAND, BELIEVE OUR NUCLEAR
3 WEAPONS PROGRAM IS A MEANS OF PREVENTING NUCLEAR WAR THROUGH A
4 POLICY OF DETERRENCE AND ARE NECESSARY FOR NATIONAL SECURITY. THE
5 DEFENDANTS, OBVIOUSLY, DO NOT SHARE THAT BELIEF.

6 HOWEVER, THERE ARE TWO SIDES TO THIS DEBATE, AND WHILE BOTH
7 HAVE AS THEIR ULTIMATE CONCERN PEACE, THEY DISAGREE ON HOW TO
8 ACCOMPLISH IT. THIS IS THE VERY TYPE OF ISSUE DESIGNED FOR POLITICAL
9 DEBATE AND JUDGMENT.

10 THE SAME CONSTITUTION WHICH PROVIDES THE TREATY LANGUAGE
11 CITED BY THE DEFENDANTS ALSO PROVIDES THAT CONGRESS SHALL PROVIDE
12 FOR THE COMMON DEFENSE OF THE UNITED STATES. NOW WHAT
13 INTERNATIONAL OBLIGATIONS THIS COUNTRY ENTERS INTO, RECOGNIZES OR
14 CHOOSES TO ENFORCE, ARE MATTERS PROPERLY ENTRUSTED TO THE
15 EXECUTIVE AND THE LEGISLATIVE BRANCH OF THIS GOVERNMENT.
16 THEREFORE, SUCH CHALLENGES TO U.S. DEFENSE POLICY IN THIS CASE ARE IN
17 FACT BEYOND THE JURISDICTION OF THIS COURT.

18 FURTHERMORE, THIS COURT BELIEVES DEFENDANT WOULD NOT HAVE
19 STANDING UNDER THESE FACTS TO HAVE BROUGHT A DIRECT ACTION AS
20 PLAINTIFFS CHALLENGING THE NUCLEAR WEAPONS PROGRAM AS SUCH.

21 ACCORDINGLY, THEY CANNOT SKIRT THE STANDING REQUIREMENT BY
22 INTENTIONALLY BREAKING AN UNRELATED LAW IN ORDER TO CAST
23 THEMSELVES AS DEFENDANTS RATHER THAN PLAINTIFFS. FURTHERMORE,
24 EVEN IF THE DEFENDANTS HAVE VERY SINCERE BELIEFS, THE DEPTH OF THEIR
25 SINCERITY DOES NOT NECESSARILY MAKE IT A VALID BELIEF, NOR DOES

Attch Page #18

1 SINCERITY ALLOW ACTIONS BASED ON WHAT THEY BELIEVE THE LAW
2 SHOULD BE. TO PERMIT SUCH WOULD SIMPLY LEAD TO CHAOS AND,
3 ULTIMATELY, ANARCHY.

4 THE LAWS OF THIS COUNTRY IMPOSE BURDENS AND BENEFITS. THE
5 BURDEN IS, YOU HAVE TO COMPLY; THE BENEFIT IS, YOU CAN EXPECT OTHERS
6 TO COMPLY. YOU CAN'T TRESPASS ON GOVERNMENT PROPERTY AT A
7 NUCLEAR WEAPONS FACILITY, BUT NEITHER CAN A TERRORIST. YOU CAN'T
8 GO ON GOVERNMENT PROPERTY WITHOUT LEGAL RIGHT, BUT NEITHER CAN
9 THE GOVERNMENT COME INTO YOUR HOME WITHOUT LEGAL RIGHT.

10 OURS IS A NATION OF LAWS, NOT OF MEN. NO ONE CAN TAKE THE LAW
11 INTO THEIR OWN HANDS UNLESS THEY DEPRIVE EVERYONE ELSE OF THE
12 EFFECTIVE PROTECTION OF THE LAW.

13 FINALLY, ON THIS ISSUE, AS A PRAGMATIC MATTER, THIS COURT
14 BELIEVES WE SHOULD NOT TEACH PEOPLE THAT THE PROPER RESPONSE TO
15 ONE PERSON'S VIOLATING OF THE LAW IS TO GO AND DO LIKEWISE. SUCH A
16 NOTION IS NOT ONLY CONTRARY TO ANY NOTION OF LAW OR RELIGION OR
17 MORALITY, BUT IT IS ALSO VIOLATIVE OF THE KINDERGARTEN RULE THAT
18 TWO WRONGS DON'T MAKE A RIGHT.

19 WITH REGARD TO THE NUREMBERG PRINCIPLES, THE COURT RECALLS
20 HISTORICALLY THAT THE NUREMBERG DEFENDANTS UNDERTOOK ACTS
21 REQUIRED BY THEIR DOMESTIC LAW, BUT WHICH VIOLATED INTERNATIONAL
22 LAW IN THE ACTUAL WAR CRIMES COMMITTED AGAINST HUMAN BEINGS. THE
23 PRINCIPLES PROVIDE THEN A PRIVILEGE TO NOT ADHERE TO SUCH A
24 REQUIRED LAW IN SUCH AN INSTANCE. HERE, HOWEVER, THERE WAS NO
25 SUCH COMPULSION. NO ONE REQUIRED THESE DEFENDANTS TO TRESPASS.

Attch Page #19

1 FURTHERMORE, IN THE NUREMBERG PRINCIPLES' INTRODUCTORY
2 NOTE, IT INDICATES THAT IT EXPRESSES NO APPRECIATION AS TO WHAT, IF
3 ANY, EXTENT ITS OWN PRINCIPLES CONSTITUTE ANY INTERNATIONAL LAW.
4 IN MY OPINION, THIS DOCUMENT DID NOT OBLIGATE NOR ALLOW THE
5 DEFENDANTS TO TRESPASS ON Y-12 PROPERTY.

6 I INDICATE THAT BECAUSE PRINCIPLE SIX DOES NOT APPLY BECAUSE
7 THERE IS NO PROOF OF ANY CRIME AGAINST PEACE, NOR IS THERE ANY PROOF
8 OF ANY PLANNING OR PREPARATION OR WAGING OF WAR IN VIOLATION OF
9 ANY INTERNATIONAL LAW OR TREATIES. AS PREVIOUSLY NOTED, THERE IS
10 NONE.

11 EVEN IF THERE WAS A VIOLATION BY THE UNITED STATES
12 GOVERNMENT, THIS VERY SAME DOCUMENT PROVIDES THAT THE ALLEGED
13 VIOLATOR, THAT IS, THE GOVERNMENT, HAS THE RIGHT TO A FAIR TRIAL ON
14 THOSE CHARGES. IN THIS CASE, HOWEVER, THE DEFENDANTS IN ESSENCE
15 PURPORT TO ACT AS PROSECUTOR, JUDGE AND JURY OF THE GOVERNMENT
16 AND THUS VIOLATE NOT ONLY U.S. LAW, BUT THE VERY INTERNATIONAL LAW
17 THEY CONTEND COMPELLED THEM TO ACT.

18 WITH REGARD TO THE ARGUMENTS OF COMPLICITY, I FIND THAT THAT
19 TERM MEANS AND IMPLIES BEING AN ACTUAL ACCOMPLICE OR CONSPIRATOR
20 OR AIDER AND ABETTOR. IT REQUIRES SOME CRIMINAL COMPLICITY.

21 THE SUPREME COURT HAS DEFINED IT AS ONE WHO IS AN ACCOMPLICE
22 IN THE COMMISSION OF A CRIME, WHO PROMOTES THE CRIME, COMMANDS,
23 REQUESTS OR ENCOURAGES OTHERS TO COMMIT THE CRIME, AIDS OR AGREES
24 TO AID SUCH PERSON IN COMMITTING IT, WHILE KNOWING THE OTHER
25 PERSON IS COMMITTING A CRIME.

Attch Page #20

1 TO ADOPT DEFENDANTS' ARGUMENT, THAT COMPLICITY MEANS
2 ANYONE WHO DID NOT TRESPASS, WOULD MAKE MERE CITIZENSHIP IN THE
3 UNITED STATES A CRIME AND EVERYONE EXCEPT THE DEFENDANTS AN
4 INTERNATIONAL CRIMINAL. SIMPLY STATED, THE DEFENDANTS, HAD THEY
5 NOT TRESPASSED, WOULD NOT HAVE BEEN DEEMED COMPLICIT UNDER ANY
6 PRINCIPLES.

7 THE DEFENDANTS' ARGUMENT IS UNREALISTIC, AND IT IS APPARENT
8 THAT THERE IS NEITHER AN INTENT IN THE DOCUMENT ITSELF NOR ANY
9 LEGAL AUTHORITY THAT HOLDS TO THE CONTRARY, AND NEITHER DO I.
10 WERE I TO HOLD OTHERWISE, ANY INDIVIDUAL IN THIS COUNTRY WOULD
11 GAIN THE PRIVILEGE OF VIOLATING DOMESTIC LAW SIMPLY BY BEING A
12 CITIZEN OF A NATION THAT POSSESSES NUCLEAR WEAPONS.

13 THIS QUANTUM LEAP IN LOGIC IS BEYOND WHAT THE NUREMBERG
14 PRINCIPLES EVER INTENDED, STATE, OR THE U.S. LAWS ALLOW.
15 FURTHERMORE, THE U.S. DISTRICT COURTS AND COURTS OF APPEALS WHICH
16 HAVE ADDRESSED THIS SPECIFIC DEFENSE IN THIS PARTICULAR TYPE OF CASE
17 HAVE REPEATEDLY HELD THAT WHERE DEFENDANTS ARE UNDER NO
18 COMPULSION TO VIOLATE INTERNATIONAL LAW, AS HERE, AN ATTEMPT TO
19 CLOAK THEMSELVES IN THE NUREMBERG MANTLE MUST FAIL.

20 WITH REGARD TO THE NECESSITY DEFENSE, THE COURT NEED NOT
21 ADDRESS THE CHOICE OF EVILS. THE COURT WILL ADDRESS THE OTHER
22 ELEMENTS THE DEFENDANTS ARE REQUIRED TO SHOW IN ORDER TO BE
23 ENTITLED TO SUCH A DEFENSE.

24 FIRST, WITH REGARD TO WHETHER THE DEFENDANTS ACTED TO
25 PREVENT IMMINENT HARM. THE TERM "IMMINENT HARM" HAS BEEN DEFINED

Attch Page #21

1 AS A REAL EMERGENCY, A CRISIS INVOLVING IMMEDIATE DANGER TO ONE'S
2 SELF OR OTHERS. HERE, THERE HAS BEEN NO EVIDENCE THAT THE HARM
3 DEFENDANTS FEARED WAS IMMINENT.

4 THE MERE POSSESSION OR MANUFACTURE OF NUCLEAR WEAPONS
5 WITHOUT ANY REALISTIC IMMINENT THREAT OF USE OR DETONATION DOES
6 NOT ESTABLISH IMMINENT HARM. THE DEFENDANTS HAVE SHOWN NO
7 ACTUAL HARM TO THEMSELVES, BUT ONLY A THEORETICAL AND FUTURE
8 HARM POSSIBLY TO EVERYONE, AND THE MERE EXISTENCE OF A
9 GOVERNMENT POLICY DOES NOT CONSTITUTE A LEGALLY COGNIZABLE
10 HARM.

11 THE DEFENDANTS' TESTIMONY, AND PARTICULARLY THAT OF MS.
12 LENSTCH, ESSENTIALLY CONCEDED THAT THE HARM WAS NOT IMMINENT.
13 ACCORDINGLY, THE DEFENDANTS' PROOF FAILS AS TO THIS ELEMENT.

14 WITH REGARD TO REASONABLE ANTICIPATION THAT THERE WOULD BE
15 A DIRECT CAUSAL RELATIONSHIP BETWEEN THEIR ACTS AND THE HARM THEY
16 SOUGHT TO AVERT, I FIND THE DEFENDANTS' PROOF ON THIS ELEMENT FAILS
17 AS WELL. A DEFENDANT MUST DEMONSTRATE A CAUSE AND EFFECT
18 BETWEEN AN ACT OF PROTEST AND THE ACHIEVEMENT OF THE GOAL THE
19 PROTEST SEEKS AND MUST DO SO BY COMPETENT EVIDENCE.

20 THE DEFENDANTS CANNOT "WILL" A CAUSAL RELATIONSHIP INTO
21 BEING SIMPLY BY THE SINCERITY OF THEIR CONVICTIONS, NO MATTER HOW
22 SINCERELY THEY ARE HELD. I FIND THAT THE DEFENDANTS COULD NOT
23 REASONABLY BELIEVE THAT THEIR TRESPASSING WOULD SIGNIFICANTLY
24 DISRUPT OR ALTER THE ACTIVITIES AT Y-12 OR AFFECT THE PRODUCTION OF
25 NUCLEAR WEAPONS, NOR WOULD SUCH TRESPASSING BRING ABOUT ANY

Attch Page #22

1 NUCLEAR DISARMAMENT, NOR LEAD TO THE TERMINATION OF NUCLEAR
2 PRODUCTION.

3 I FIND NOTHING TO INDICATE THAT THE WORK AT Y-12 WOULD BE OR
4 WAS REALISTICALLY INFLUENCED BY THE TEMPORARY DISRUPTION IN THIS
5 CASE. THEREFORE, THE DEFENDANTS COULD NOT REASONABLY HAVE
6 ANTICIPATED THEIR ACTS TO TRESPASS WOULD AVERT THE HARM THEY
7 PROFESSED TO FEAR.

8 FINALLY, THE DEFENDANTS ARE UNABLE TO SHOW THEY HAD NO
9 LEGAL ALTERNATIVE OTHER THAN VIOLATING THE LAW. THE COURTS
10 THROUGHOUT THE YEARS HAVE NOTED THE THOUSANDS OF OPPORTUNITIES
11 FOR PROPAGATION OF ANTI-NUCLEAR MESSAGES, FROM ELECTIONS, TO
12 SPEAKING, TO WRITING, TO ATTENDING MEETINGS AND USING THE MEDIA.
13 INDEED, THE TESTIMONY OF THE DEFENDANTS IN THIS CASE CLEARLY
14 DEMONSTRATE THE BREADTH OF ALL THE LEGAL OPTIONS THEY HAVE
15 AVAILABLE TO THEM FOR ADVANCING THEIR POLITICAL, SOCIAL, RELIGIOUS
16 GOALS AND BELIEFS.

17 THE FACT THAT THE DEFENDANTS HAVE TO DATE BEEN UNABLE TO
18 EFFECT THE CHANGE DESIRED THROUGH LEGAL ALTERNATIVES DOES NOT
19 MEAN THAT THOSE ALTERNATIVES DON'T EXIST, NOR ARE THEY, THE
20 DEFENDANTS, OR ANY OF US, LEGALLY JUSTIFIED IN COMMITTING CRIMES
21 SIMPLY BECAUSE OUR MESSAGE GOES UNHEEDED.

22 THOSE WHO WISH TO PROTEST IN AN UNLAWFUL MANNER ARE OFTEN
23 IMPATIENT WITH LESS VISIBLE AND MORE TIME-CONSUMING ALTERNATIVES.
24 HOWEVER, THIS IMPATIENCE DOES NOT CONSTITUTE THE NECESSITY THAT
25 THE DEFENSE OF NECESSITY REQUIRES. IT DOES NOT ARISE WHEN

Attch Page #23

1 DEFENDANTS HAVE A CHOICE OF SEVERAL SOURCES OF ACTION, SOME LEGAL
2 AND SOME NOT, BUT FROM AN EMERGENCY OR AN EMERGENT CRISIS OR AS A
3 PRACTICAL MATTER ALL OTHER OPTIONS ARE PRECLUDED.

4 IN OTHER WORDS, IN THE NECESSITY DEFENSE, THE DEFENDANTS' ACTS
5 MUST BE NECESSARY, NOT MERELY DESIRABLE. FOR ALL THESE REASONS,
6 THE COURT HOLDS THAT THE DEFENDANTS MAY NOT RELY ON THE
7 NECESSITY DEFENSE.

8 WITH REGARD TO THE MENS REA ARGUMENT, I DO NOT FIND THAT THE
9 DEFENDANTS HAVE PROVEN A LACK OF MENS REA AS A MATTER OF LAW.
10 FURTHER, THIS IS A MATTER MORE PROPERLY TO BE DETERMINED FROM THE
11 FACTS DEVELOPED AT THE TRIAL. I THEREFORE FIND AGAINST THE
12 DEFENDANTS ON THIS PORTION OF THEIR MOTION.

13 WITH REGARD TO THE JUSTIFICATION DEFENSES THAT THE
14 GOVERNMENT HAS MADE A MOTION TO PRECLUDE, BY MY RULING THIS
15 AFTERNOON I HAVE AND DO GRANT THE GOVERNMENT'S MOTION AS TO THE
16 NECESSITY DEFENSE, THE INTERNATIONAL LAW DEFENSE, THE NUREMBERG
17 DEFENSE, FOR THE REASONS SO STATED.

18 THE REMAINING JUSTIFICATION DEFENSES HAVE NOT BEEN ADDRESSED
19 BY THE DEFENDANTS, NOR WERE THEY SPECIFICALLY RAISED BY THEM IN
20 BRIEFS, MOTIONS, IN THE MOTION ARGUMENTS OR AT THE PROFFER HEARING.
21 NONETHELESS, I HAVE CONSIDERED THEM ALL, AND I FIND, THOUGH, IN
22 FAVOR OF THE GOVERNMENT ON EACH OF THEM AND GRANT THE MOTION
23 THEREFORE IN ITS ENTIRETY. I ALSO THEREFORE DENY THE DEFENDANTS'
24 MOTION TO DISMISS IN ITS ENTIRETY.

25 ACCORDINGLY, THIS CASE WILL CONTINUE AND BE TRIED ON THE

Attch Page #24

1 INFORMATION AND ON THE STATUTES CHARGED. ARE THERE ANY QUESTIONS
2 WITH REGARD TO MY RULING ON THOSE MOTIONS?

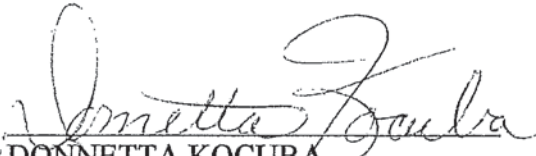
3 MR. WHALEN: NO, YOUR HONOR.

4 MR. MATTICE: NO, YOUR HONOR.

5 (COURT'S RULINGS CONCLUDED; ADDITIONAL MATTERS DISCUSSED.)

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS AN ACCURATE TRANSCRIPT OF THE
RECORD OF PROCEEDINGS IN THE TITLED MATTER.


DONNETTA KOCUBA
OFFICIAL COURT REPORTER
U.S. DISTRICT COURT
KNOXVILLE, TENNESSEE

6/17/02
DATE