

10/ CR 1827-72
GEORGE GORDON LIDDY ETAL

TRANSCRIPT OF IN
CAMERA PROCEEDINGS
OF JAN. 17, 1973 (FILED
(ORIGINAL AND 2 COPIES) JAN 17, 1973)

ORDERED SEALED UNTIL
FURTHER ORDER OF COURT

United States Court of Appeals
for the District of Columbia Circuit

FILED

JAN 18 1973

73-1020

HUGH E. KLINE
CLERK

SIRICA, J.

205 (A)

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for evidence

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of 7/27/73 - RAB

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

GEORGE GORDON LIDDY, et al.

Criminal Case No. 1827-72

ORDER

Upon consideration of the Motion Re Release of Grand Jury Minutes and Sealed Portions of the Trial Transcript filed by the United States on February 14, 1973, and the letter of March 13, 1973, addressed to the Court by Senator Sam J. Ervin, Jr. and filed on March 15, 1973, it is by the Court this 12th day of April, 1973,

ORDERED that the above-cited Motion, insofar as it relates to the release of grand jury minutes, be, and the same hereby is, dismissed as moot; and it is

FURTHER ORDERED that the above-cited Motion, insofar as it relates to the release of sealed portions of the trial transcript, be, and the same hereby is, granted so that all sealed portions of the trial transcript, with the exception of those portions sealed at the direction of the United States Court of Appeals for the District of Columbia Circuit, shall be made available to the Senate Select Committee on Presidential Campaign Activities for use by said Committee and its staff, but not for purposes of public disclosure.

John F. Sullivan
Chief Judge

By James P. Capitano

FILED

APR 12 1973

JAMES F. DAVEY, Clerk

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

vs

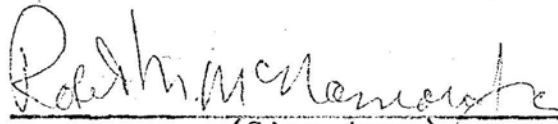
GEORGE GORDON LIDDY ET AL

CRIMINAL CASE NO. 1827-72

R E C E I P T

Receipt is acknowledged, this date, of the following
named documents from James P. Capitanio, Deputy Clerk, in the
above captioned case:

- (1) Copy of transcript of proceedings held in chambers
on Tuesday, January 9, 1973, pages 1-8, inclusive.
- (2) Copy of transcript of proceedings held in conference
room in rear of Ceremonial Court Room on January 11,
1973 (pages 133-155-B, inclusive.
- (3) Copy of transcript of proceedings of Friday, January 12,
1973, pages 302-318, inclusive.
- (4) Copy of transcript of proceedings of Friday,
January 12, 1973, pages 319-352, inclusive.
- (5) Copy of transcript of proceedings of Friday,
January 26, 1973, held in chambers of Chief
Judge Sirica, pages 1676-1689 (1690).
- (6) Copy of transcript of proceedings of Wednesday,
January 24, 1973, held in chambers of Chief
Judge Sirica, pages 1490-1500-G, incl.
- (6) Copy of transcript of proceedings held after
recess, Tuesday, January 27, 1973, pages 1466-1467,
incl.


(Signature)

Robert M McNamara, Jr

(Name Typed)

Research Assistant to Chief Counsel
of the Senate Select Committee on
Presidential Campaign Activities
Room 1418 (New Senate Office Building,
Washington, DC (Phone 225-1453)

April 24, 1973

FILED

APR 25 1973

JAMES F. DAVEY, Cle

PROCEEDINGS - 5:30 p.m.

(In Camera Hearing.)

MR. SILBERT: Your Honor, before we proceed, I would like to introduce the Court to Mr. Paul Friedman who is -

THE COURT: Mr. who?

MR. SILBERT: Mr. Paul Friedman.

THE COURT: Paul Friedman. We are glad to have you with us.

MR. SILBERT: He is an Assistant U. S. Attorney, and he also worked with myself on the appeal, unsuccessful appeal.

THE COURT: All right. Now, who is going to speak first? Are you ready?

MR. GLANZER: Yes, Your Honor. What the Government would expect to elicit is as follows: I propose to ask Excuse me before I forget. Maybe this reporter doesn't know.

THE COURT: As I understand it, these proceedings, this stenographic record, et cetera, is supposed to be sealed, isn't it?

MR. GLANZER: I believe so.

THE COURT: As I understand it. I may be wrong. Isn't that correct?

MR. MORGAN: Yes, that is correct.

THE COURT: And in case it has to go back before the Court of Appeals. Mr. Reporter, you understand that, and

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JAMES F. DAVEY, Clerk

the clerk, that all of this will have to be sealed. All right.

MR. GLANZER: I was going to ask Mr. Baldwin if he would be able to tell us based on his monitoring of the phone the identities of any individuals that he was able to determine, and I expect that he would say that he would.

THE COURT: Did you want to stand back a little bit so everybody can hear you? Take the microphone, and I think everybody can hear you.

MR. GLANZER: I would expect Mr. Baldwin to say he was able to determine that there was [REDACTED]

These are the people that he was able to identify as the users of the phone.

I would ask him to describe in general the kinds of conversations he overheard. He I expect would have said that [REDACTED]

THE COURT: [REDACTED]

MR. GLANZER: That is correct, Your Honor. And then I was going to ask him, "Can you tell us just in a general way the subjects were of the calls [REDACTED]

[REDACTED] He wouldn't say anything like that -- just as general as I have said, as I have stated here, Your Honor.

He would say that some of the calls dealt with [REDACTED]

[REDACTED]

Then we would go on and ask, "Did these calls ..."

THE COURT: Excuse me a minute. Will you?

MR. GLANZER: Yes, sir.

(Short interruption.)

THE COURT: Go ahead. Excuse me, Mr. Glanzer.

MR. GLANZER: Yes, Your Honor. Then we were going to ask, "Did these conversations that were overheard that related to [REDACTED] were these of matters which Mr. Baldwin was aware of before he overheard the calls?" And he would say that, no, he was unaware of the contents of those before he overheard them, and because they were [REDACTED]

[REDACTED]

Then we were going to get into the question of the calls about [REDACTED] and what subjects they dealt with, and the subjects as the witness classified them would be [REDACTED]

which

I believe Mr. Spence Oliver would be willing to testify to on any occasion at any place.

And then we were going to ask, "Did Mr. McCord express an interest in certain kinds of calls?" And the

witness would say, "Yes." Then "And what types?" And he would say, [REDACTED]

MR. GLANZER: Yes, Your Honor, [REDACTED] and that I think would cover the entire testimony that we propose to elicit on this subject of calls on direct.

THE COURT: What would he say? Do you know what the substance of his testimony would be?

MR. GLANZER: He would answer as I told Your Honor. If I asked him what types, for example, if I asked him, "You mentioned that conversations were of a [REDACTED] and what did they deal with?" he would then go and say that, well, they were calls that dealt with [REDACTED] participants in the conversation.

He might even say [REDACTED]

THE COURT: Would he mention any names and the places the people were going to or --

MR. GLANZER: No, he wouldn't. We have asked them to eliminate that.

THE COURT: All right.

MR. GLANZER: But he does know the [REDACTED]

[REDACTED]

THE COURT: These conversations were over Mr. Oliver's phone?

MR. GLANZER: Yes, Your Honor, this is one phone Mr. Oliver's phone. Various people are using the phone. Mr. Oliver's secretary is using it. [REDACTED]

[REDACTED]

THE COURT: You have Mr. Oliver under subpoena.

MR. GLANZER: Yes, Your Honor.

THE COURT: And his secretary.

MR. GLANZER: Ida Maxine Wells, and Your Honor recalls when we were dealing with Government Exhibit 5, and we had the layout, the floor plan of the Democratic National Committee.

We have the offices marked as to the occupants of the offices. Do you recall that, Your Honor, and Miss Well's office is marked on there, and Mr. Oliver's office is marked on the floor plan.

THE COURT: I remember.

MR. GLANZER: You see, and that phone was located, Your Honor, in ... let's see --

THE COURT: Will somebody help him on that?

MR. GLANZER: I am sorry. I will take it out here, Your Honor, so everyone else can see.

(At this point Mr. Glanzer places drawing on a

stand for those in the courtroom to see.)

MR. GLANZER: Your Honor recalls when we introduced the Government Exhibit 5. Mr. Jaffee then indicated that he furnished the information as to location of the offices. Well, the phone we are talking about is located in this office, the director of the Office of State Chairman, Mr. Oliver.

This is his secretary, Miss Wells, Ida M. Wells. The M stands for Maxine, and her nickname is Maxie.

THE COURT: Under which counts do you claim this type of evidence is admissible under? Under the eight count?

MR. GLANZER: Under the eight count, and under the first count, conspiracy count, under the two ... Section 2511 counts that we have in the indictment.

THE COURT: Endeavor to intercept?

MR. GLANZER: Intercept, right, or all communications are wire communications.

THE COURT: All right. I think --

MR. GLANZER: And that also comes in under the burglary count where was an intent to intercept.

THE COURT: I think I understand. Let me hear from Mr. Maroulis.

MR. GLANZER: I want to make it clear, Your Honor, that was as far as we intended to go in terms of detail, just deal with it in terms of general classification of the subject matter and drop it right there.

MR. MORGAN: May it please the Court ... Your Honor, for the purpose and solely for the purpose of this in camera hearing, which is under seal, I would like to offer into evidence for Your Honor as Exhibit A for the movements the Los Angeles Times interview of witness Baldwin, which you provided us last evening, as Exhibit B, and for the same purposes I would like to offer into evidence the grand jury testimony of the witness Baldwin and as Exhibit C the form 302 Jencks Act Statement, each of the latter two of which were provided to us last night also.

And I move the admission of such documents into evidence to be sealed and remain with the transcript.

MR. SILBERT: No objection, Your Honor.

THE COURT: They will be admitted and be a part of the record.

MR. MORGAN: Your Honor, we have no desire to interrupt the trial as it proceeds. There are only as I understand representations made in the Court of Appeals and elsewhere to three witnesses remaining to go into contents at all in this case for prosecution.

I know of none for the defense, and perhaps they could advise us if there are some.

The other two witnesses are two of the witnesses were mentioned, Mr. Oliver and Miss Wells.

It seems to me that an orderly procedure so that

we could dispose of this matter in one appeal might be for the prosecution, reasonably assure it could do so, and probably would have no objection to state at this time what it intends to prove from Mr. Oliver, what it intends to prove from Miss Wells, and the trial won't be disrupted thereafter because the entire matter of contents can be disposed of in one ruling by you, and one ruling by the Court of Appeals if necessary.

MR. SILBERT: If Your Honor please, we were unable to do that because we were interviewing Mr. Oliver, and he declined to go forward with the interview when we did want to go into certain aspects of the contents of the communications, and he is out of the country now for about a week.

On Miss Wells, after the litigation was filed, we did not interview.

THE COURT: I am having trouble hearing you. Would you get behind the microphone? It is very difficult to hear.

MR. SILBERT: If the Court please, we are unable at this time to make a proffer to Your Honor in detail as to what we expect the questions to Mr. Oliver to be, although in general they would be to confirm, and support, and corroborate the testimony of Mr. Baldwin, and the reason for this is when we called Mr. Oliver down for pretrial interview and asked him, or started to prepare him for trial, he declined to go forward

with the interview and stated he wanted to think about it and perhaps consult counsel, and, in fact, we encouraged him to do so in view of the difficulties he was having, and we have adopted a similar attitude with respect to Miss Wells.

And since the inception of this litigation, we have made no attempt to contact him at all.

MR. MORGAN: Your Honor, I was provided earlier, copies of the grand jury testimony of both [REDACTED]

[REDACTED] as well as the produceable under the Jencks Act statements that they had made, and I was provided that very courteously by the prosecution.

At the time of that provision a general outline as has just been made by Mr. Glanzer was also made of their testimony. Of course, it will be available whenever those witnesses come up, but I did think it was an orderly disposition of the case.

THE COURT: Do you suggest that they be placed on the stand and questions be propounded to these witnesses to make the record?

MR. MORGAN: No, I think we can make a record adequately, Your Honor, without that with respect to any of the three of them.

THE COURT: Well, do they object to saying anything as to what they talked about over the telephone?

MR. MORGAN: Oh, yes, sir. For instance, in the

statement that I read last night that Mr. Baldwin with respect to his testimony he had [REDACTED]

THE COURT: I take it the Government is not going to try to offer that?

MR. MORGAN: But, you see, my problem now is that I would like to state my procedure, and I think it is orderly.

After the defense, which certainly has a Sixth Amendment right of confrontation to cross-examination, and has been provided the three exhibits that were just introduced into evidence last night, discusses its cross-examination which we are also subject to, and they also being party, and both defense, prosecution, and the movements having a right to an appeal as I understand.

THE COURT: I am not going to decide this question tonight. I will think about it.

MR. MORGAN: Yes.

THE COURT: It just seems to me frankly that it is going to be difficult for the Government to prove the corpus delicti of this case.

How do you expect the Government to prove the essential elements of the offense or the body of the crime? You people come in now and object, and the Democratic Committee has been most vociferous in criticizing these people for what they did.

Apparently all up and down the country, across the country, Senator McGovern got on the air and called them burglars and everything like that.

It would seem to me frankly, and this may not be a legal stage, but it would seem to me that you people, the Democratic Party, all of the screaming you have been doing all over the country, locally, and nationally, and it would seem to me you would want to let the chips fall the way and bring the facts out instead of trying to hide them.

What difference does it make if the testimony comes in and if these conversations are related to [REDACTED]

or

something like that, and also the [REDACTED]

What difference does it make when you come right down to it?

All right. Let's just take the fourth count, for example. I have already read this to the jury. I think I have.

Now take the elements of the offense which the Government must prove beyond a reasonable doubt as to the fourth count.

One, there must be a wilful interception to find as the oral acquisition of the contents of any oral communication through the use of any electronic, mechanical, or other

device.

Two, the oral communication must be uttered by a person exhibiting an expectation that such communication is not subject to interception. It is very important.

Well, in order to show intent and motive for going into these premises, isn't it only fair that the Government should find out or so the jury should learn the substance of the conversations, what the conversations were to determine for example, in this case, whether or not this was solely for political espionage or spying on the Democrats to find out what they were going to do in California in connection with the primary, things like that?

What harm has been done? It seems to me that instead of helping this kind of a situation that your group is probably trying to impede the prosecution here, and here all you have heard is criticism, criticism, criticism, and now when we are right down to the trial, we are trying to get the facts in this case, everything is being done to keep anything out about conversations.

Now I can't understand it frankly.

MR. MORGAN: Well, sir, I will try to explain it to you as best I can. In the first place we think as far as conversations are concerned that has been proved. Mr. Baldwin proved it we think a few minutes ago when he testified.

THE COURT: He said what?

MR. MORGAN: He testified that he listened to the conversations, that the conversations as I recall it, I am uncertain of this, but I think he said that he had permission to do it. That is enough.

THE COURT: All right. Now take the definition again, the oral communication must be uttered by a person exhibiting an expectation that such communication is not subject to interception. All they have to do is Mr. Oliver get on the stand and say, of course, I don't expect this kind of a conversation to be intercepted.

MR. MORGAN: Sir, he could testify that I didn't expect any of my conversations to be intercepted just like any American citizen, you and I included, tonight.

THE COURT: Why should the Government be denied the right to show a motive for going into these premises? They don't have to prove a motive. It is not necessary, but if there is a motive, they certainly should have the right to prove it.

MR. MORGAN: Well, sir, perhaps I could address that if the Government would in its proffer of proof tell us what motive it intends to show.

THE COURT: I don't know whether they can or not.

MR. MORGAN: I might address --

THE COURT: You have heard their opening statement. They indicated there might be several motives.

MR. MORGAN: Yes, sir, but in order to show the developments of any of these contents, I should think that they should make a proffer with respect to the motive they intend to prove here.

MR. GLANZER: Well, Your Honor, I think Mr. Silbert stated it succinctly on two occasions, once before trial before Your Honor opened Court, and once here before the jury in his opening statement.

We intend to rely on a myriad of motives. Well now we only have two defendants left, but we intend to rely on various motives for these defendants as a basis for what they did.

Now one of the motives, and I say one of the motives would be political espionage, and that, of course, would include the fact that any espionage operation of that kind it is important to get personal information about various people.

That is one of the ways you compromise people in an espionage situation, and so it is important to show that the defendants McCord, Liddy, and others were seeking to develop information of a personal nature about the people using the phone for the purpose of compromising these people and for the purpose of exploiting that for political ends.

And that I think would describe it adequately I suppose. I think it does.

THE COURT: How about the business phone?

MR. GLANZER: Pardon me?

THE COURT: While you are at it, how about the business phones?

MR. GLANZER: Well, Your Honor, the acquisition that any information they picked up about the people who were using the phone, whether it was business, personal, or political, would be useful in monitoring that person and maintaining a surveillance over him for purposes they intended to use this information for.

And that is to compromise the individuals who were using that phone, and that is the way we see the evidence in this case.

In addition to that, Your Honor, of course --

THE COURT: Go ahead.

MR. GLANZER: It stands to reason that they also wanted to gain the wire intelligence information that they were developing just by the calls, information that they would learn about the inner workings of the Democratic National Committee, and the Party, and the Party politics, down to the local level, which, of course, would be valuable, and which we are able to show was of a non-public nature.

To sum it up then, the objective was political espionage, and to obtain information about this party and all its workings and all its entitles, and any people they could

ascertain were engaged in any kind of sensitive function in that political organization.

Now one could use his imagination and say they intended to use this information, that is, the conspirators intended to use it for their own personal aggrandizement, that is, to better themselves, or perhaps even to sell the information, but that is something that a jury can draw the inferences from.

THE COURT: All right. Does anybody else want to argue this point?

MR. ALCH: I think in order for me to voice any objections or state my objections, the defense wants to ... Briefly, Your Honor, just on behalf of Mr. McCord, I contend that it is not necessary for the Government to prove any one of the counts in this indictment beyond a reasonable doubt to establish what the contents of the monitored calls were.

Every count in this indictment with the exception of the last count refers to the word endeavor, the attempt to monitor. They have already established that.

In fact, they have gone beyond that. Not only have they established the endeavor, the attempt, but they have already established the fact that monitoring did take place.

Even with regard to the last count, the count cites or alleges that the defendants did intercept, but it also alleges that they endeavored to intercept, and I respectfully

submit that even under the last count the mere fact of endeavoring is sufficient, but under no count in the indictment is it necessary in order for the Government to make out their prima facie case and go to the jury. At no place is it necessary for the Government to bring in the contents of the call. They have already established that there was an interception. That is all that is alleged.

I believe, Judge, that the instruction you are referring to was merely a definition of the words oral communication as distinguished from the necessary element of a successful prosecution. Now Your Honor has made reference to the conversations, contents being relevant to motive, and from the beginning I have respectfully taken issue with that on the theory that not only is it not necessary for this indictment, but also what may have been overheard does not reflect what was intended to overhear, so without belaboring those points, I would join with Mr. Morgan in moving that no reference be made in any general terms whatsoever to the contents of the communication in view of the fact that the Government has already established that interceptions were, in fact, made, which is sufficient for this indictment in its entirety.

THE COURT: All right.

MR. MAROULIS: Your Honor, it is my position that the prosecution would be unable to sustain its burden and prove

the essential elements of the crimes charged against my client if the contents of the conversations are not gone into.

THE COURT: In other words, your position is diametrically opposed to Mr. Alch's position?

MR. MAROULIS: That is correct, Your Honor. And I might point out, for example, that in the conspiracy charge, Paragraph 10, it says that defendants unlawfully, wilfully, and knowingly did agree, combine, and conspire with each other among themselves to commit various acts against the United States, that is by various illegal and unlawful methods and means to obtain and use illegal information from the offices and headquarters, et cetera.

I would submit to the Court that the Government would have to prove that. I also believe that the burglary intent, namely, the intent to commit a crime therein directed to burglary requires proof of what the crime is, and certainly the last count requires proof of what the conversations were.

It would be intollerably unfair to the defendant Liddy for the prosecution to dangle the beginning of a conversation before the jury and say that that is enough to demonstrate that the charges alleged in the indictment have been committed.

That is not right, and that is not fair. I realize that there are conflicting constitutional issues at hand.

You have the First and Fourth Amendment issues that are being urged on behalf of Mr. Morgan's clients, and you have the Fifth and Sixth Amendment issues that I am urging on behalf of my client, and my position is very simply this, Your Honor, that if Mr. Oliver and Miss Wells, and Mr. Allen feel that they have been aggrieved, and they want their day in Court, and they want to try and convict my client of having committed certain crimes, then they have got to come in and lay it bare on the table.

THE COURT: I couldn't agree with you more. That is precisely the way I feel about it.

Now let me read you part of this opinion I got out. It apparently didn't convince the majority of the Court of Appeals, because we wouldn't be here tonight if it did.

If the movements meaning you are right, and absolutely no disclosure can be permitted, we have the following paradox: persons who have allegedly violated the statute by intercepting communication cannot be prosecuted because the same statute prohibits the Government from disclosing evidence of the unlawful interception.

The Court cannot believe that Congress intended Title 3 of the Omnibus Crime Control Safe Streets Act of 1968 to be self-emasculated. This view is reinforced by language in the Senate Report on the Act which has been cited by the

Government.

Discussing where and when the use of disclosure of intercepted communications might properly be authorized, the report states that this might be considered as legislative history. It states neither paragraphs 1 or 2 of Section 2517 are limited to evidence intercepted in accordance with the provisions of the proposed chapter, since in certain limited situations disclosure and use of illegally intercepted communications would be appropriate to the proper performance of the officers' duties.

For example, such use and disclosures would be necessary in the investigation and prosecution of an illegal wiretapper, citing United States versus Gris, 146 Fed Sup, 293, Southern District of New York, decided in 1956, and affirmed in 247 Fed 2nd, 860., Second Circuit Court of Appeals decided in 1957.

This language is found in the Senate Report, No. 1097, 90th Congress, second session, on pages 99 and 100.

Here we have one man arguing for us, Mr. LaRowe, whose position I think is sound.

I think he in effect agrees with me. If you are going to accuse somebody of this interception, let it come in. Find out what the facts are.

I mean I think the jury is entitled to know it.

Now the other side, the other co-defendant, doesn't

agree with it, Mr. McCord through his attorney. You have a difference of opinion.

I don't think it ever was the intent of Congress frankly to just say in a situation like this, "Put on the person whose telephone was bugged. That is all you have to show is that there was some kind of conversation over the telephone. That is all." I don't think that was the intent of this Act. I really don't.

MR. MORGAN: Well, sir, there is one more if I might. I believe the Court has copies of the documents I was surrendered last night, but I will provide these to the clerk, Exhibits A, B, and C, right now.

THE COURT: Oh, yes, surely.

MR. MORGAN: I want to address a question to you for the defense if I might, Your Honor, in just a moment.

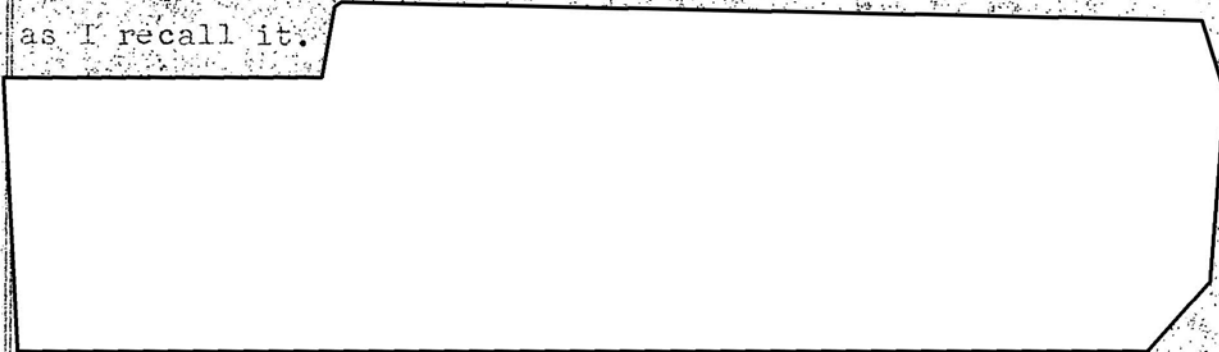
Your Honor, based on the exhibits, there is a great deal of personal matter both in contents and Mr. Baldwin's interview with the Los Angeles Times, Exhibit A, and there is also civil matter contents, specifically identity of parties both in the FBI statement [REDACTED]

I would like to just state for the record, if I might, Your Honor, a number of areas of those contents for the purposes of this hearing only.

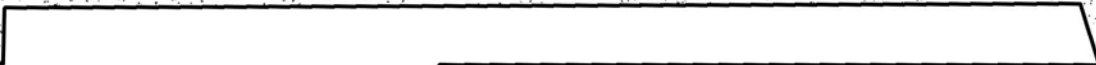
THE COURT: Very well.

MR. MORGAN: [REDACTED]

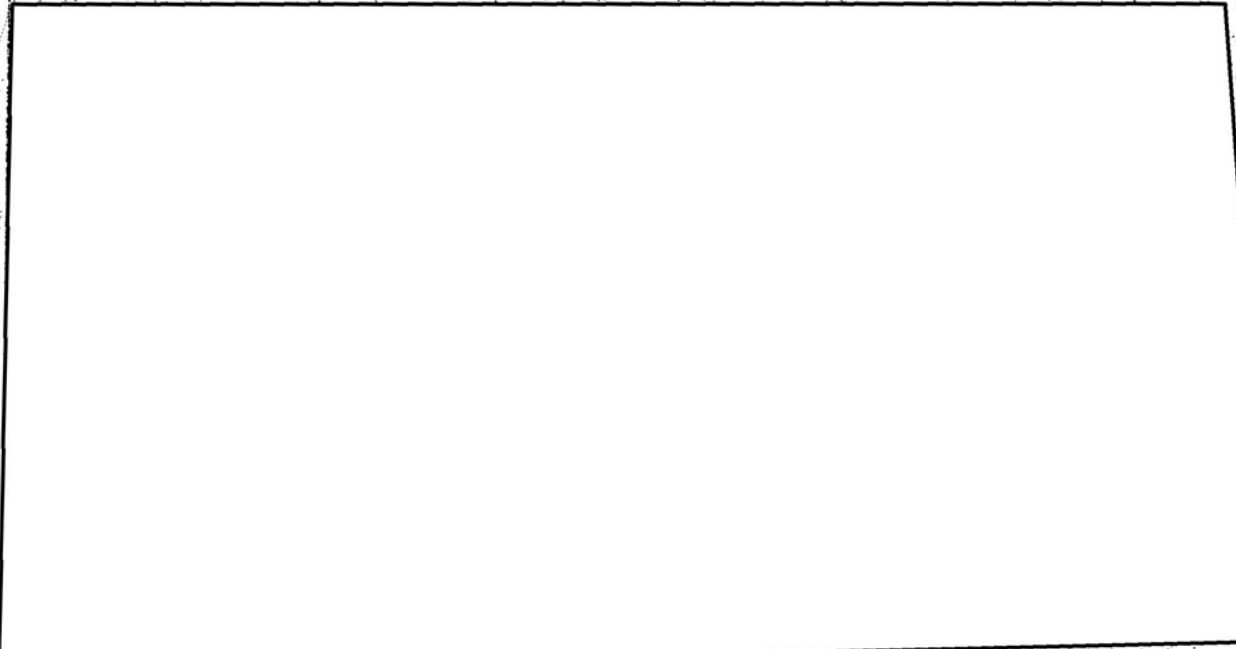
as I recall it.



We go over to that very short portion of the
FBI statement that I was provided and find the following
names,



and a copy of the document that
I received, Your Honor, was a Xerox, and I couldn't quite
make out some of it, appeared to be stricken through the name



Now I believe, Your Honor, based on that, and
based on the contents, I believe in violation of law by
Mr. Baldwin of the Los Angeles Times that we have here a
great deal of matter into which defense counsel can go as
well as prosecution regarding cross-examination, and I would

like for Your Honor so that I will know whether to object or not, or what to do, to address the question to defense counsel to make a proffer as to what their intentions are since they have been provided with that information last evening.

THE COURT: Well, I will address that question to defense counsel if you wish to answer.

BY MR. MORGAN: This, of course, presupposes, Your Honor, rules the prosecution can go into. I don't mean for them to waive any.

THE COURT: Not to waive any rights, of course.

MR. MAROULIS: Your Honor, the only way I know how to answer the question as I understand it is this: that if the prosecution comes in with peaks of icebergs, which I feel that in the interest of my client and in accordance with the rights that he has under the Fifth and Sixth Amendments to the United States Constitution would serve his defense best by delving into them, and getting right to the very bottom of everything that is suggested by the peak of that iceberg, I intend to get it all out, and I cannot at this time say what I intend to prove until I hear what it is that the Government is putting in.

I would say this to the Court. I don't see any reason in the world why the defendant Liddy has to be satisfied with a conclusion by the witness Baldwin that this was [REDACTED], or that what he overheard was a



I don't see how we can be bound by that, and I don't intend to be bound by that, and I will vigorously pursue any remedy that is available on behalf of my client to try and avoid being bound by that.

THE COURT: Well, you have stated your position very forcefully.

MR. ALCH: Your Honor, my position is this: I don't know, Mr. Maroulis is making reference to what his reaction would be if Mr. Baldwin were allowed to categorize the conversations. My position is that he should not even be able to categorize the conversations.

I think that his testimony should cease where it rests right now, that is, there was an interception.

I don't think he should be even allowed to categorize. If through this Court's ruling and whatever may happen in the Court of Appeals, if the witness is allowed to categorize and/or go into details, I can't tell you in all honesty what my cross-examination would be, number one, in view of my opposition to that area being broached, and, number two, I don't know what the testimony would be. Naturally, I would react to the best interests of my clients, whatever seemed appropriate to me at the time, but, of course, I agree with Mr. Maroulis that if the categories he referred to in a general way that allows defense counsel if they choose to follow up on proper proof, but my position is that it should stop where it is and not even the general categories be given to the Jury because it is simply not a necessary element of the Government's case, and it doesn't pertain to motive. It is unnecessary from the Government's point of view and prejudices my client, and I oppose even a general classification.

THE COURT: Well, Mr. Silbert, I think your

assistant there, the young man --

MR. SILBERT: I will answer.

THE COURT: All right.

MR. SILBERT: If the Court please, as Your Honor noted in His opinion, you were willing to assume that the parties have standing to object, and if directing your attention back to a week ago Friday, to the time that Mr. Morgan first filed his motion, if you recall we agreed to waive our rights to file a written response, and, in fact, advised Your Honor that we were willing to argue the next day, and, in fact, we did, and our argument related solely to the merits of the claim.

We did not go into standing. However, just so that Your Honor is brought up to date, in the Court of Appeals once we had a little more time to reflect and to study the statute, we took the position that Mr. Morgan representing the movers in this case has no standing either in this Court or in the Court above.

And we based our position, and I am only bringing it out at this time, if the Court please, so that should this litigation go back to the Court of Appeals, that we will not in any way be considered to have waived our position, and our position is very clearly now that the only persons that have standing to make an objection to the admission of evidence in a criminal case are the parties to that criminal case, and

we rely for that, if the Court please, on Section U.S.C. 18, U.S. Code 2518, Subsection 10, Subsection A.

THE COURT: Title 18 U.S. Code, Section --

MR. SILBERT: Subsection 10, Subsection A.

THE COURT: What Section?

MR. SILBERT: Well, it is 2518, Subsection 10 in Subsection A, if the Court please.

THE COURT: 2518. All right. All right.

MR. MORGAN: Your Honor, may I voice an objection?

THE COURT: Just a minute, wait a minute. Let him finish first.

MR. SILBERT: If the Court please, it says, that any aggrieved person in any trial, hearing, or proceedings in or before any Court may move to suppress the contents of an intercepted wire or oral communication, and, if the Court please, again referring to the legislative history defining that Section, or with respect to that Section, there is a provision that we consider to be particularly appropriate; the provision must of course, be read in light of Section 25-18, 10A, discussed below, which defines the class and title to make a motion to suppress. It largely reflects existing law.

Now I was reading from the Senate Committee Report that Your Honor cited His opinion, Page 96, and there is no law that we know of, if the Court please, that permits any party other than the prosecution or the defense in a criminal

case to intervene and make a motion for any purpose whatsoever, and for that reason, if the Court please, we believe that though these persons are aggrieved in the sense that they were parties to the communications that were intercepted, they do not have a remedy under the statute to file a motion, and interfere and intervene in a criminal prosecution.

Our position is that whatever rights they may have in that sense, and in this case they will be protected because Your Honor has the ironic position before Him where the position is that the position of the defendant McCord coincides with the position of the victims of the crime.

Your Honor indicated in Your own remark how unusual an effect that was that both the victims and the alleged perpetrators of the crime want to conceal the truth from the Jury so that the crimes alleged in the indictment cannot be properly proved, so we submit that whatever rights they have are going to be protected in this case by the defendant McCord and his attorney, and by Your Honor because Your Honor must always make a determination and an evaluation as to whether or not evidence is relevant, probative, and material to the charge, and even if it is relevant and probative, Your Honor can always make the determination that if prejudicial value in some way outweighs probative value and not allow it in. But that is a determination for the trial judge to make based on whatever representations are made before by the parties to the case and his own

individual discretion.

So simply, if the Court please, so that our position is not waived, and I think it is perfectly clear from the Court of Appeals order that they stated that the complex issues in this litigation were not being resolved, and we simply want to make it very clear to you, Your Honor, that we are in no way waiving the position of the United States that Mr. Morgan and the parties he represents have no standing as a third party to intervene before Your Honor.

THE COURT: All right.

MR. SILBERT: Now, if the Court please, going on. As Judge McKinnon noted in the course of the oral argument, the Government cannot necessarily be satisfied if the Court please, with proving a bare bones case.

Ours as a heavy burden. It is a burden to establish guilt beyond a reasonable doubt, and I find it somewhat ironic that counsel for McCord should advise you or say that he doesn't want us to go into the contents of the communications.

It is not necessary. All we have to do is show that there was an interception. We have to do more than that. The basis for the interception is basically a witness, Mr. Baldwin.

I believe in his supposed instructions to you, counsel for McCord suggested an instruction relating to the testimony of an accomplice, that it is to be received with great care and caution.

We have to corroborate Mr. Baldwin, and certainly as to whether or not he is telling the truth. It is highly relevant to his credibility for the Jury to know whether or not he heard conversations, the parties, the general nature of the conversations as proffered to you by Mr. Glanzer, and then from Mr. Oliver and Miss Wells to get on the stand and testify, and if they corroborate Mr. Baldwin, that happens to establish his credibility, which is vital for the Government's heavy burden of proof of establishing the guilt of any defendant beyond a reasonable doubt.

So, if the Court please, for that reason, for the reason we don't think the parties have standing, and also, if the Court please, for the reasons very well articulated by Mr. Glanzer, that is, we consider this evidence highly relevant, highly probative to motive and intent for the conspiracy count, for the eighth count in particular, but for all other counts in general, which are all specific-intent crimes for which the Government has a burden of proving a willful action on the part of these two defendants, so for those two reasons the political espionage, the interest of the defendants in personal conversations of whether they were personal or of a political nature, and we think that evidence ought to be there so that these Ladies and Gentlemen can draw the appropriate inferences in arriving at a just verdict.

THE COURT: Let me say this. Just a minute,

Mr. Morgan. I think I have serious doubts whether or not the movants have standing, frankly, and I don't think this is inconsistent.

I stated on Page 2 of my opinion for the purpose of this ruling, which I made last week, the Court has assumed that the movers have standing to make their claims. They, meaning the movants, are to have standing as aggrieved persons cited in provisions of U.S.C. 18, U.S. Code 25-18, Subsection 10, Subsection A, which you have just cited.

The Court is not wholly convinced that the Section as noted sustains the movants' claims, but nevertheless passes to the merits.

I felt we should get the merits.

Now I am going to suggest this: This young man over there with the glasses on, his name again?

MR. SILBERT: Mr. Friedman, if the Court please.

THE COURT: He has probably been doing a lot of work on this. I hate to have him work tonight. Maybe he has already got the memorandum.

Let me have a memorandum by early tomorrow morning on this, and then, Mr. Maroulis, if you wish to submit something, I will consider yours also, and also Mr. Alch.

MR. SILBERT: If the Court please, so far as the standing argument is concerned, so far as the merit argument is concerned, we have already prepared a memorandum or brief

that was filed in the Court of Appeals which we have made available to Your Honor, and also we have provided Your Honor with a petition for re-hearing which the Government filed, and which was denied, which has one paragraph relating to the standing argument.

That really in effect sets forth our full position both with respect to standing and with respect to the merits of our position.

So far as the motives are concerned, I think that has been stated, you know, as clearly as possible by Mr. Glanzer.

Political espionage, the motive and the inferences, and political information, just knowledge, intelligence, perfectly clear as to what we believe that the Jury ought to know, the defendants are alleged to have been interested in.

THE COURT: All right.

MR. SILBERT: I think actually in those pleadings, if the Court please, you will find a full exposition of the Government's position, something we were unable to provide, Your Honor, because of the short notice, but which we have submitted to the Court of Appeals, a copy of which has been provided you.

THE COURT: Well, I will try to find it tonight. My secretary has left.

MR. SILBERT: Your Honor, I have an extra copy right here.

THE COURT: You have?

ME. SILBERT: I can make it available.

THE COURT: The law clerk has it. I will take it home with me tonight and read it. I haven't had a chance.

So --

MR. MORGAN: Your Honor --

THE COURT: All right, Mr. Morgan.

MR. MORGAN: Yes, Your Honor. First it was my understanding that the sole purpose of this hearing was to proper proof and the in-camera proceedings and objections, if any, to be stated, and the making of the record on the objections, and Your Honor to rule, and then for us to take it if desired, and I doubt seriously that arguments with respect to standing at this point were in the Court of Appeals, of course, and I understand it that its order is entered pursuant to its jurisdiction, and I think it was a waiver, it can't be recaptured now. And if there was no waiver, then still there is no waiver, but as far as Mr. Silbert's argument on that subject, I think that subject has been gone over and made in the Court of Appeals, and I just wanted to mention that to you.

THE COURT: Yes, I understand.

MR. MORGAN: Secondly, Your Honor, you asked a question earlier, and I didn't get an opportunity to answer it, regarding the Democracts, the association of State Democratic Chairmen which I represent, and its members.

We are interested, of course, in justice being done.

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We are not in the prosecution of any particular party or parties

We are interested in the same things that I am sure the system of justice is interested in. We are not interested in standing in anybody's way, and we haven't tried to.

What we have attempted to do at every opportunity is to protect the constitutional and statutory rights of the people who talked on the telephone. That was the association's telephone.

The reason that we desire to do that, Your Honor, is that we believe that the disclosure of those contents are unlawful.

We believe that they unlawful and in violation of the statute if made in Court, no matter who made by, the protection of the basic rights of privacy.

We think that is guaranteed by the statute.

THE COURT: Well, if this is a precedent in connection with a prior case, anybody can come in to a criminal trial and think they are aggrieved by a trial judge like you came in, and I recognized you as filing your motion. Anybody can come in and say that this testimony that is coming out is going to damage me.

You are in the middle of a criminal trial now, and going to the Court of Appeals and get a ruling, and this is what I think this decision means.

MR. MORGAN: Certainly you understand.

THE COURT: And this is the reason why I concur so wholeheartedly in what Judge McKinnon said, and I have great respect and I know Judge Bazalon personally, and I admire him. I like him the same as Judge Wright, but I don't have to agree with him all the time, and they don't agree with me all the time.

That doesn't get away from the fact that I respect them and like them, but I have a position that I have taken in this case.

I think the Government is right. I think Mr. Liddy has to have protection.

I think his attorney is right. That is how I feel about it.

MR. MORGAN: All right, Sir. Very briefly, and then I will state my objections to the introduction of any contents into evidence by any party on either side with respect to --

THE COURT: All right. Now the situation is . . . The question has been briefed very well. I am sure that the three judges know the issue and how important it is, not only in this trial, maybe in every other case. But I do say it, and this is not with any disrespect whatsoever to anyone of those judges, and I think it is a dangerous, dangerous precedent to set to let somebody come in to a trial, in a criminal case, and before it is over, before it is submitted to the Jury, and in effect say that we are going to tell you how to try your case, Judge Sirca, and that is what it amounts to. We are

going to tell you what rulings to make.

And instead of waiting until after the trial when you take your appeal, then argue these things, it is now being done in the middle of the trial.

MR. MORGAN: If I may voice my objection, and then I will respond to that, Your Honor.

THE COURT: I have no feeling against you, and I admire you for the fight you are putting up, and I admire Mr. Maroulis, and Mr. Liddy, and all of these people here. They have certain rights, and my mind is open in this case.

I have made rulings against them and for them, but I am certainly on the side of Mr. Maroulis in this issue, on this issue, and Government counsel.

I think it is a dangerous, dangerous precedent to set to allow somebody to come in. What is going to stop somebody else from coming in if their name is mentioned and say that we want to stop the proceedings now and get a ruling from the Court of Appeals?

Why, we would never terminate this case.

MR. MORGAN: Yes, Sir.

THE COURT: I hope this case gets in the Supreme Court of the United States and fast, really.

MR. MORGAN: Yes, Sir. Let me just state my objections, and then I will respond to all of that, Your Honor, and I think it ties generally to the objections.

THE COURT: Then we will send the record back up

to the Court of Appeals and let them unravel it.

MR. MORGAN: Yes, Sir.

THE COURT: All right.

MR. MORGAN: We object to the admission of the contents of any of the conversations on the grounds of rights to privacy and the right of privacy to personal and political speech under the First, Fourth, Fifth, and Ninth Amendment of the Constitution of the United States.

We secondly object to the admission of any contents under the Omnibus Criminal Control and Safe Streets Act of 1968.

We thirdly and more specifically Section 25-15 and other sections with which Your Honor is familiar and we briefed thoroughly to this Court.

THE COURT: Let's see where we stand. I already ruled in favor of the --

MR. MORGAN: On the third ground that its introduction is irrelevant to any proper prosecution purpose.

The fourth ground that it is irrelevant to any necessary prosecution purpose.

The fifth and sixth grounds that it is irrelevant to any proper defense purpose, the sixth ground irrelevant for a necessary defense purpose, the seventh that the defendants do not have standing to use the results of illegal wire taps in any way in Court proceeding.

If I can get the Court reporter to tell me the number there, Your Honor, I had two more I came up with that I didn't have on my list.

[At the request of Mr. Morgan the reporter repeated as follows: "The seventh ground that the defendants do not have standing to use the results of illegal wire taps in any way in Court proceeding."]

MR. MORGAN: We have also objected on the grounds that the prosecutor must adopt the less drastic alternative method of proof when sensitive constitutional rights of witnesses are at issue, as in this case; and, Your Honor, we also would like to now respond to your statement earlier.

The Democrats' position that Your Honor asked me about, we want justice done for the prosecution. We don't want to interfere with anybody's prosecution.

We are not just anybody, and we don't think that anybody should be allowed to interfere in any way with the criminal prosecution.

We are the people whose phone is tapped. We are aggrieved persons under the statute.

As aggrieved persons under the statute as for many years under Rule 41-E, aggrieved persons whether they are parties to the case or not can come in to the case, and they can at that point move to suppress evidence, and having suppressed in some instances, of course, have it returned to them.

Your Honor has ruled. The Court of Appeals has not. We are totally in this proceeding not at the mercy as Mr. Silbert says of Mr. Alch, Mr. Maroulis, Mr. Silbert. We don't feel that we have to be at anybody's mercy in this case.

We simply want to keep out private personal conversations that can well be understood by Your Honor as destructive totally of the very life of the people who were involved and injured by the wire tap.

Now with respect to that, Your Honor, with respect to that, certain crimes were talked about in this Court, and the last time we argued the crime of rape, an essential element of the crime of rape is penetration. And no essential element of this crime was involved in contents.

The second thing about that is that the crime of rape, the injury occurs at the time of the act. In this context and in this case the injury to the individuals whose lives will be irreparably harmed by the invasion of their privacy by the prosecution, and by one of the defendants, would occur at the trial and not at night in Howard Johnson's.

Now, Your Honor, one of the things that Mr. Silbert referred to, and I want to raise one other question, and I have read about the Los Angeles Times interview last night, and I was intrigued by it because throughout that Los Angeles Times interview, and throughout this case, I have been operating under the assumption that there was a non-Governmental

wire tap.

I don't see any evidence of that. What I do see in the Los Angeles Times interview is mention of the Central Intelligence Agency, mentioned by Mr. Baldwin apparently who he thought he was working for.

It seems clear to me that Mr. Baldwin thought he was working for someone other than just some private party out gathering information.

He said he had a gun with him, and he carried that gun with him because he was given a car, or he wasn't given a car. He talked back and forth repeatedly about the CIA, Mr. Mitchell who was the, or as I understand it, resigned about March the first, and had been Attorney General.

Shortly after the wire taps in this casw were discovered at the Watergate within a week, the United States Supreme Court entered its order in the United States vs. United States District Court and ruled on that case that domestic wire taps for national-security purposes have to be proved in abeyance by the Court.

These wire taps allegedly occurred prior to that ruling.

Now, Your Honor, in the Court of Appeals and here throughout this proceeding Mr. Silbert has asserted that the wire taps were not Governmental.

Certain questions have arisen, I think, in the Court

with respect to those who pleaded guilty and questions with respect to the evidence and the defense yesterday of duress, and, as I understand it, and self-defense apparently of the Republic on behavior of the defendant McCord, and I wonder, Your Honor, and move that the prosecution be put to the burden of proof of showing that they were not Governmental wire taps.

THE COURT: I don't think that is an issue in the case, is it? I have never heard that before.

MR. SILBERT: If the Court please, I wonder what standing this party has to make such a motion.

Number one, I would deny it absolutely on the record. As Mr. Glanzer explained to you at the Bench earlier this morning, the language CIA in the transcript was a misprint and should have been CRP, Committee to re-elect the President.

THE COURT: All right. I think, gentlemen, we have heard enough arguments.

MR. MORGAN: Well, Sir, all right. But I --

THE COURT: Now I would suggest Government counsel prepare an order this evening setting forth my views on the matter and submit it to me in the morning, and you can appeal from that order.

Now do you have enough evidence to . . . I mean other witnesses to go ahead with before the Court of Appeals decides this matter?

MR. SILBERT: Your Honor, you know, Mr. Baldwin's

testimony which is obviously as we have indicated to you, he is a key Government witness, and is now standing right in the middle. Just as Your Honor . . . We have a great deal of trouble with the nature of the Court of Appeals' ruling providing for a series of perhaps interlocutory interim appeals to an appellate court, but it is very hard for us to put on other witnesses or other matter which would interrupt the logical chain of proof which we would be offering at this time, even prior to the cross-examination of Mr. Baldwin.

THE COURT: Well, get me the order real early in the morning, and I will look at over, and if I think it is proper, we will try to get a hearing tomorrow before the Court of Appeals sometime during the day, and I imagine they will do it for you if you ask them to expedite it or request it.

MR. MORGAN: That I respond for the record to that.

THE COURT: Yes.

MR. MORGAN: Just for the record I want . . . Of course, we were quite willing to consolidate everything so there would be no interruption, but I do want to point out 50 or perhaps 60 witnesses have been subpoenaed to the trial and have been subpoenaed to testify here, and I certainly hope that Mr. Silbert is not going to put the Court of Appeals, and we are quite willing to move as rapidly as possible, put a time limit on this.

THE COURT: Let me ask you a question.

MR. GLANZER: I would --

THE COURT: I don't like to keep this Jury inactive. They get nervous when they are sitting back in the jury room, or else in their rooms upstairs. I don't think it is fair frankly to just stop the wheels of justice and just leave it status quo until we get an appeal.

Suppose they don't hear it upstairs for a week. Then what?

MR. GLANZER: Well, Your Honor, I want to address myself to one position Mr. Morgan advanced and attributed to Mr. Silbert.

Mr. Silbert is not trying to do anything with respect to the Court of Appeals. Mr. Silbert is trying to present the Government's case in a coherent fashion and to have this case presented in a disjointed manner in which there are interruptions in the flow of proof so that a Jury which is getting evidence in a piece-meal fashion anyway, bits and pieces as the witnesses testify, will be further bewildered by proof that is scattered and disjointed and discursive and not focussed on the central issue.

We think it is detrimental to the interests of justice in this case.

THE COURT: Why don't you gentlemen go upstairs in mass, why don't all of you go upstairs and plead with the Court of Appeals to hear this thing in the morning? It is

urgent. We can't put on our case I mean logically in sequence without a ruling.

If the Court of Appeals tells me to go ahead and affirm what they did before, we will just go ahead. That is all. All right.

MR. MAROULIS: Your Honor, I ask for some authority for me. The two cases that I can quickly refer the Court to that I am relying on are Alford -- A-l-f-o-r-d vs. United States 282 U.S. 687. That is a 1931 case.

THE COURT: That is the famous plea case, isn't it? Alford? Did you ever hear of the Alford plea?

MR. MAROULIS: I am not familiar with that.

THE COURT: I think it is. All right.

MR. MAROULIS: McConnell -- M-c-C-o-n-n-e-l-l, 393 Federal 2nd 404. That is a 5th Circuit 1968.

THE COURT: All right. Well, I think we can probably . . . Maybe we get a decision tomorrow on this.

MR. MORGAN: May I make an inquiry for the practice on the sealed transcript? Your Honor, will counsel be provided a sealed copy of the sealed transcript to use in the Court of Appeals?

THE COURT: Well, I don't know about that. The Court of Appeals said, "Sealed." I mean can you get this transcript ready tonight, Mr. Reporter?

THE REPORTER: I will do my very best.

THE COURT: Will you try to get the record ready?

THE CLERK: Well, first thing in the morning when he brings it down I will file it and seal it.

THE COURT: I think we better follow the Court of Appeals order and seal everything, and send it out.

I think we better get back here in the morning at 9:30, and let's stand around. They might argue this case.

MR. SILBERT: Your Honor, I have a proposed order to Your Honor by 9 o'clock tomorrow morning.

THE COURT: All right. Give the counsel a copy.

MR. SILBERT: Yes, Your Honor.

THE COURT: All right. Thank you.

THE MARSHAL: All right. All right. The Honorable Court is adjourned until tomorrow morning at 9:30.

[Whereupon, the Court was recessed until Thursday, January 18, 1973, at 9:30 o'clock A.M.]

REPORTER'S CERTIFICATE

I, Eugene Olsen, C.S.R., do hereby certify that I am a duly appointed Official Reporter for the United District Court for the District of Columbia and was acting in that official capacity on the 21st day of October, 1972, during the hearing of the foregoing cause.

I further certify that the proceedings were taken down by me in stenotype and thereafter reduced to typewriting by me or under my direct supervision.

IN WITNESS WHEREOF, I have hereunto set my hand in the City of Washington, D.C., this 18th day of January, 1973.

M. Eugene Olsen
Official Court Reporter