

1827-72

US v GEORGE GORDON (15) (100)

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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.

Robert M. McNamara, Jr.
(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

Memo for record - Apr. 22, 1974
A copy of this transcript
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James P. Capitanio
Deputy Clerk
(Judge Sirica's Court
Room Clerk)

(Excerpt of transcript of proceedings re Cr. No. 1827-72, U.S. vs George Gordon Liddy, et al, held in Chambers of Chief Judge John J. Sirica, 9:30 a.m., on Wednesday, January 24, 1973, ordered Sealed by the Court.)

PRESENT: The Honorable Chief Judge John J. Sirica
Earl Silbert, Seymoure Glanzer, and Donald Campbell, Ass't. U.S. Attorneys
Peter Maroulis, Esq., Gerald Alch, Esq., and Bernard Shankman, Esq.
Todd Christoferson, Richard Azzarro --Law Clerks
Nicholas Sokal, Official Reporter

* * *

THE COURT: I believe it has been stated in the record more than once whenever we have to have these conferences out of presence of the defendants that they have approved of it, or consented to it. I believe that is on the record somewhere along the line --the pretrial conferences, etc.

MR. MAROULIS: Yes, that is correct.

MR. ALCH: Yes, Your Honor.

THE COURT: Now, how much longer do you think you are going to take, Mr. Silbert, having in mind we are not going to sit tomorrow (Thursday) but we are going to sit a half day on Saturday --9:00 till 12:00. That will give you plenty of notice. That is one of the things I want to talk to you about. We have to move this case along. That will make up a half day since we lost a day, or will lose a day tomorrow. We will really be losing a half day.

MR. SILBERT: Your Honor, our problem is this: we have

about ten witnesses for today and ten for Friday, a number of whom are short and we were a little surprised by the total lack of virtually any cross examination, and what we thought would be considered at least with respect to defendant Liddy, major witnesses.

We could finish on Saturday morning except we have this one problem: for Saturday we have left over four witnesses, three of whom are readily available but there is one who is out of the country and works in the White House and won't be back until Monday morning.

THE COURT: That is all right.

MR. SILBERT: I am saying we don't really have anybody for Saturday morning outside of the four set for Monday morning and they are all kind of related, including this one from the White House. We will be all through by Friday, absent illness or something like that, you know with the flue we have been running into.

THE COURT: Suppose with the exception of the witnesses to be called Monday morning you should finish Friday afternoon even if we have to sit later?

MR. SILBERT: Right.

MR. GLANZER: If we could close Friday afternoon subject to the witnesses --

MR. SILBERT: No question about it, Your Honor. Those four witnesses would take probably an hour and a half altogether.

MR. GLANZER: So perhaps Your Honor could tell the

jury even despite the fact with the two days off they shouldn't feel it is being delayed.

THE COURT: We are sort of moving ahead of schedule. My prediction was about six weeks.

MR. GLANZER: You could tell them because of cooperation of counsel and the fact the Court moved the case along the government's case is closing much earlier.

THE COURT: Assuming you put on a defense how much time do you think it will take?

MR. ALCH: Your Honor, on behalf of Mr. McCord, before I can answer that I would respectfully ask the Court a question. As the Court knows in my memorandum of law, in addition to citing cases in support of my theory I also included a general, in substance proffer of what the defense' evidence would be should the Court allow me to go forward. I know the Court yesterday indicated that it would hear argument on that at the close of the government's case, but in order to avoid any delay and in order frankly, to enable me to more properly frame my defense I would respectfully request that argument on whether or not I can go forward with that be held Friday so at least I will have the weekend to formulate my defense based upon your ruling.

THE COURT: How can we hold it if they are going to take all day to put in their case?

MR. ALCH: Because, judge, I think whatever testimony they will bring in Friday has nothing to do with whether or not my suggested defense will be relevant --deemed relevant.

THE COURT: We will just have to wait till Friday to see how much time we have.

MR. GLANZER: I don't think we will go all day Friday, judge.

THE COURT: We can hear your argument subject to being renewed after all evidence is in.

MR. GLANZER: I think it is fair to say most witnesses put on now are what you might term mop-up witnesses, cleaning up certain loose ends --bank tellers or people that were working at the Democratic Committee and that kind of thing, judge.

THE COURT: All right, we will adjourn at the close of Friday's session until Monday morning.

MR. ALCH: Your Honor, may I ask one more question?

What I am trying to do is obviate being put in this position. I don't know, naturally, what Your Honor's ruling is going to be but what I am trying to avoid is any ruling put to me that would in effect say as of now the answer is no, should your client take the stand the answer might be yes. That was my purpose in submitting to Your Honor a proffer as to whether or not the --what the defense would be, so that if I could get a ruling from Your Honor Friday irrespective of whether or not my client would take the stand, that would much more enable me to properly make the decision.

THE COURT: I am working on it now. We are working on what the law is, your memorandums and all that.

All right, we can't do anything till Friday.

I said somewhere along the line during the case that if I learned of anybody that I thought should be mentioned with having in mind maybe calling them back before the grand jury I would give you the name.

The names I am going to give to the government now came from either the tapes from that transcript of the tape recording, you understand -- now I am not indicating whether these people are involved or not, I don't know, because as you know I have not read the testimony before the grand jury. Only two names that I can think of of people that might know something about this matter. One of them has been discussed freely in court and one of them has not been mentioned. One of them that was discussed even yesterday is [REDACTED] - is that how you pronounce it? (phonetic spelling)

Somewhere in that transcript as I read, as I heard the tapes the FBI agents were trying to find out from Mr. Baldwin the name of someone he might have turned these logs over to at the Committee to Re-elect the President. You remember that part, and they were throwing out different names and he indicated one time it sounded like a [REDACTED]

I don't know whether he has been before the grand jury.

MR. SILBERT: He has not, Your Honor.

THE COURT: I think possibly maybe you want to consider calling him before the grand jury or getting the FBI to make a

further investigation to see whether or not [REDACTED] is involved. I think I mentioned his name to you the other day, didn't I?

MR. GLANZER: That is correct, Your Honor, when we were talking about the tapes.

THE COURT: That is right. Those are the only two names I can think of other than the people I am going to mention now who testified.

MR. SILBERT: Your Honor, for the Court's information --

THE COURT: --I got those out of the transcript or the tapes, I have forgotten which.

MR. GLANZER: It is in the tapes and in the transcript.

THE COURT: Because I had my law clerk Christoferson jotting down things that were not quite clear. You have seen those notes, haven't you? There is a lot of scrambling in that thing, that is the reason for those dashes.

MR. SILBERT: Your Honor, I was going to say with respect to [REDACTED], he has been interviewed by the FBI and has been before the grand jury at least on two separate occasions and has been thoroughly questioned, particularly in regard to the very matter brought up by Your Honor.

THE COURT: Well, if [REDACTED] has not been questioned as long as his name appears in the tapes or transcript it might not be a bad idea at sometime to bring him before the grand jury and question him because [REDACTED]

[REDACTED] is one thing. If he is not, it is another.

I will prefase my remarks again. I am very careful. I am not accusing any of these people of wrong-doing, simply giving names now.

Now, frankly I am not entirely satisfied with the testimony so far of [REDACTED]

I don't know whether he knew about them or not, whether they were a surprise to you or not, I don't know. I am talking about the government. But I have a feeling, maybe a hunch, that maybe

[REDACTED] knows more about this whole problem than he has told.

It is just a hunch, you understand. How far he would go if he were brought back before the grand jury I don't know. I think serious consideration should be given to bringing [REDACTED] before the grand jury again before or after the trial.

Frankly, I don't know where I heard this --I think you said it in open court that he will go before the grand jury and say there are no further higher-ups to his knowledge involved in the Watergate case.

MR. SILBERT: Your Honor, I represented to Your Honor that Mr. Bittman, Mr. Hunt's attorney, with respect to the issue of whether or not we would be willing to accept the plea to the three counts that Your Honor is fully familiar with, we did ask him that question and he advised us that at that time Mr. Hunt would be willing to state to Your Honor in open court or to a grand jury that he had no personal knowledge of any higher-ups involved in this so-called Watergate incident. That statement, however, would in no way affect our present intention after the

case is concluded and after Your Honor imposes whatever sentence Your Honor decides is appropriate to bring each and everyone of the defendants in this case before the grand jury.

THE COURT: That is all right.

Now, I have a hunch, or feeling --and I have been very careful as you know-- everytime I question a witness I do it out of presence of the jury, which I have a right to do in the interest of seeing that all the facts are brought out. Some lawyer might not think of a certain question, I might not; I don't like to do it in presence of the jury because the jury looks at a judge as you know and they wonder why he asked that question, he must feel that the defendant may be guilty, or may be innocent. You understand. So I try to get into the habit as much as I can to send the jury out. So I see no harm in it being done.

I am not entirely certain in my own mind if I were on that jury, I believe there is a probability [] knows a lot more about this case than he said [] that might possibly involve other people.

Now I am not making any accusations whether they are guilty or not. He mentioned some people. He mentioned Mr. Magruder; I think [] has been mentioned. Has [] been before the grand jury?

MR. SILBERT: He testified before Your Honor yesterday and he has been before the grand jury extensively -- about three times.

THE COURT: How about []

MR. SILBERT: Probably four times before the grand jury.

THE COURT: I would certainly like to see [redacted]
called back and questioned carefully on this [redacted]
Does that ring a bell with him? He sort of vasclitated in that
interview.

MR. CAMPBELL: Your Honor, a lot of the names Mr.
Baldwin mentioned like that we went over an entire roster of
everybody that worked for the Committee to Re-elect the President
and we would go name-by-name and he would look at it and try to
determine, and these are names that were hard, he couldn't spell
them. This is why these names came up more than any other reason.

THE COURT: He mentioned [redacted]
[redacted] and Mr. Mitchell. I think Mr. Sloan mentioned them.

MR. SILBERT: Yes; both of them have either been deposed
under oath and their testimony submitted to the grand jury, which
was the case with [redacted] and former Attorney General.

THE COURT: He indicated both of them knew about the
\$199,000.

MR. SILBERT: I think if Your Honor recalls his testimony
what he said was that they said if Mr. Magruder authorized it
then they would authorize it. I don't think Mr. Sloan said in
his testimony that he knew the specific purpose for which the
\$199,000 was intended.

THE COURT: Anyway, I would get [redacted] back and
these other witnesses back and explore that and any other witness
you think might be important.

Now I am not saying this for the purpose of a threat to Mr. Liddy or Mr. McCord or anything like that, it isn't meant this way. They have a right to a fair trial and I think they are getting it. They stand accused of many serious crimes as you know, both of you, Mr. Maroulis and Mr. Alch. If they know anything about this case and if they want to talk before that grand jury it is not too late yet, you understand. That is up to them. I mean I always operate under the theory that the truth never hurts anybody. If they wait and if they are convicted then they decide to talk, well, I can't say anything about that. But I think if they are going to do it, or if there is anything in their minds along those lines the time for them to do it is during the trial if they want to do it without any promises on my part or intimation on my part that they might get a lesser sentence if they are convicted or anything like that.

It is something maybe that they have been thinking about, I don't know. It happened in the Ammidown case right in the middle of that brutal murder trial when I wouldn't accept the second degree murder plea, being put under a lot of pressure by the government when I refused to take it.

Anyway, Ammidown agreed to take it, went before the grand jury and on his testimony the co-defendant was indicted -- a man by the name of Lee was convicted and sentenced to the chair and the Supreme Court outlawed that as you know. Anyway, he did what he thought was right.

In this case I am simply saying if the two defendants want to appear before the grand jury voluntarily and tell everything they know about this case, to tell the truth about it if they know anything about it, they may not know anything about it, it is not too late, without any promises on my part so far as any leniency that might be imposed or anything else.

I think there is a precedent for that kind of situation. That is all I have got to say about it. I am going to order that this part of the record be sealed and if it has to be unsealed at some later date for any purpose I can look into the matter at that time.

MR. SILBERT: Your Honor, could I make one statement to you with respect to Mr. Sloan?

Your Honor stated that based on his testimony you didn't know whether or not we were surprised by anything that he said. I just wish to advise Your Honor now so that you know and I don't mind defense counsel knowing, there were absolutely no surprises in his testimony. He had testified before the grand jury. His testimony yesterday was almost identical with almost no variation at all from his testimony before the grand jury. It has been consistent that way ever since we talked with him in our office and whatever he has said previously has been naturally followed up by both the FBI and by our office through the grand jury. We certainly have no objection and can call him back to that.

THE COURT: Did he ever tell you it was primarily for the reason regarding the Watergate case that he resigned?

MR. SILBERT: Your Honor, I think that came out a little differently and if I may explain that. He himself has told us repeatedly that he never had any concern about himself so far as the Watergate case itself was concerned. What bothered him was this: he concluded that as a result of the intensive investigation which was going on because of the Watergate case and because of [REDACTED]

[REDACTED] the FBI, that there was an examination going to be made of the financing at the Committee and he became concerned because as treasurer he might have committed an unknown technical violation of the new federal campaign Act and that was his concern throughout. As he testified on the stand yesterday, he is not a lawyer, he has never had any formal training in accounting and it appeared to us and we made a hard assessment of Mr. Sloan that he was really in over his head with respect to all the financial dealings that he was handling at the Committee and that he had a genuine concern not because of any involvement in the Watergate case, that we are --I must say "we"-- Mr. Glanzer, Mr. Campbell, and myself, are completely satisfied that he had no knowledge direct or indirect of that, but that he thought as a result of the investigation possible alleged violations involving the campaign act would be uncovered and that he might as a result find himself in trouble. And that is what was his primary area of concern.

But in response to Your Honor's question, he said one of the things that precipitated his resignation was the Watergate

and that is correct, because if the Watergate hadn't come along the investigation into the financing might not have developed. So his answer to Your Honor was really, I believe a truthful, accurate one.

MR. GLANZER: Judge, under the Federal Election Campaign Act of 1972 the person who was charged with responsibility to file these reports, these disclosure reports, is the treasurer. It would have been Mr. Sloan. He is charged with the responsibility for doing that.

Now the offense is a misdemeanor and it really doesn't involve even *mense rea*. It is one of these almost absolute liability statutes, if you don't file reports and they are not accurate, that is it, you are tagged. It was that that he was concerned with from the start.

If you look at the 302, Your Honor, you will see that is what he is concerned with.

Now Mr. Maroulis stated at the bench yesterday, and quite properly so, that he didn't want the business about the discussions that went on with Mr. Sloan about what was his understanding of the relationship and the arrangement which elicited his testimony, his cooperation with the government, you remember that, judge, at the bench and Mr. Maroulis said I don't want that to come out because Mr. Liddy was the lawyer who was supposed to be advising about these violations, you see, and that is another source of Mr. Sloan's concern.

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As Your Honor knows, after this trial began the Department of Justice did file charges against the Committee for the Re-election of the President for three violations of the Campaign Act --the Federal Election Campaign Act. They didn't name Mr. Sloan because he was a government witness here obviously, and so forth, and because of this arrangement we had with him, but Your Honor, those two things are separate and apart. You know, Your Honor, when you go through an investigation many times, and you are looking for, let's say, a mail fraud violation, suddenly you find some technical violation, let's say, like a man has a gun on him when he gets arrested for mail fraud but has nothing to do with mail fraud and the act was in a sense very loosely related to this.

Your

Honor, and we turned over the Jencks material to the defense counsel and they saw it. Nothing could be plainer than that.

THE COURT: Now let me ask Mr. Alch: do you have any idea in your mind what I have said regarding your client is in the nature of a threat or anything like that?

MR. ALCH: Absolutely not.

THE COURT: Because it is not meant that way.

MR. ALCH: I don't take it as such.

THE COURT: Because I didn't mean it that way. It is something you may want to consider, maybe he has considered, I

don't know. I realize his position. He is a member of the Bar --I mean Mr. Liddy is. Your client has a very fine background apparently from this resume which I only glanced through quickly; he has a lot at stake. So does Mr. Liddy. He is a member of the Bar and if sustained on appeal he stands to be disbarred. He has a great stake --both of them. Both good prior records apparently, but what I said, I don't indicate they are guilty or not guilty, but I don't want this opportunity to go by without stating my position.

If they want to do it voluntarily. I don't want them to implicate any innocent person, but if they want to do it on their own volition and tell the truth like Mr. Ammidown said from the stand when we had this secret hearing upstairs, he said, whatever his wife's name was, she would want me to do this. I questioned him carefully on that. It is in the record.

So anyway, I thought we ought to have this on the record so that they can never say that: well, I never thought of that, my attorney never discussed it with me.

They have a right to go right through to the conclusion, I mean whether they are found innocent or guilty doesn't make any difference.

MR. GLANZER: Your Honor, when asking defense counsel about the expected length of time of the defense you just asked Mr. Alch about it. I wonder if Mr. Maroulis had any plans?

MR. MAROULIS: Your Honor, I discussed with Mr. Alch the order of presentation of the defense as Your Honor had requested

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that the defense counsel discuss that and give a proposal as to the manner in which the defense was to be presented. Mr. Alch and I have agreed that his defense is to go in first and mine will follow. My defense I anticipate ought not to exceed two days.

MR. ALCH: Regardless whether or not Mr. McCord elects to take the stand I would say that my defense could conceivably be terminated in one day, certainly no more than two.

THE COURT: There might be a chance we could conclude the case by the end of next week or the following week.

MR. ALCH: My best estimate, judge, definitely the end of next week.

THE COURT: I might tell the jury that my first prediction was roughly six weeks, I think, and we are a little ahead of schedule, that there is a possibility the case might be concluded by the end of next week or maybe the earlier part of the following week. Next week will be the fourth week. We are in the third week now. I might tell them that in case they are wondering how long this case will last, without any promises.

All right. These people I mentioned -

and anybody else

you might think that ought to be called to give any explanation or any testimony that you think is important.

MR. SILBERT: Yes. As Your Honor knows, we had requested that this grand jury that had been initially hearing the Watergate

case even though it was sworn in as long ago as June of '72, that it be kept intact and active.

THE COURT: I understand it is active. You can call them in the middle of this trial if necessary.

MR. SILBERT: We could, Your Honor.

Your Honor, could I ask: you asked Mr. Alch based on comments you made if he felt in any way intimidated or threatened by what you said could you address a similar inquiry to Mr. Maroulis?

THE COURT: Do you feel anything I said was in the nature of a threat or veiled threat indicating that if your client does not go before the grand jury and he should go say after he is convicted, if he is convicted, or that I might give him a stiffer sentence if he doesn't tell the truth, anything I said indicate anything like that? Is there anything I said that indicates anything like that?

MR. MAROULIS: Your Honor, I interpreted your remarks to be an inquiry as to whether or not my client would consider doing that and I don't consider what you said as a threat. I think it is simply an inquiry, Your Honor has raised some questions in your mind as to the scope of the Watergate affair and I think --well, to answer your question specifically, I think what Your Honor was trying to do was to offer an opportunity to the defendants to appear before the grand jury if they so desired.

THE COURT: Voluntarily without any promises or anything like that. Don't you construe my remark as that?

MR. ALCH: Absolutely, Judge.

MR. MAROULIS: That is so.

MR. ALCH: One more thing, judge. I would wish the Court would note to the alleged agreement referred to by Mr. Maroulis as to who goes first, I don't want to be bound to that. I want some more conversations with Mr. Maroulis.

THE COURT: You work it out with Mr. Maroulis.

THE COURT: Mr. Reporter, will you seal this?

Gentlemen, can you think of anything else we haven't covered? All instructions to be in by Monday morning. I hope to give you the entire instructions before we start discussing them.

MR. ALCH: Judge, in that regard, does the Court construe my memorandum of law to be equivalent to a request for instructions or do you wish specific instructions?

THE COURT: I think we can construe it that way -- request for instructions on your theory, I believe so.

We will have argument on that. Thank you for coming.

* * * (10:00 a.m.)

CERTIFICATE

It is certified the foregoing is the official transcript of proceedings indicated.

Nicholas Sokal
NICHOLAS SOKAL
Official Reporter