

CR 1827-72

FILED

JUL 18 1973

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+ FILED US vs GEORGE GORDON
JUL 18 1973
JAMES F. DAVEY, Clerk

JAMES F. DAVEY, Clerk
LIDDY ET AL

FILED
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COPIES (ORIGINAL + TWO COPIES) OF THE
TRANSCRIPT OF PROCEEDINGS HELD IN
CHIEF JUDGE SIRICA'S CHAMBERS ON
TUESDAY, JULY 17, 1973, TOGETHER
WITH STENOTYPE NOTES OF NICHOLAS
SOKAL, COURT REPORTER.

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(14)

**United States District Court
For The District of Columbia**

UNITED STATES OF AMERICA)

vs)

GEORGE GORDON LIDDY, et al)

Criminal No. 1827-72

FILED
JUL 18 1973
JAMES F. DAVEY, Clerk

TRANSCRIPT OF PROCEEDINGS

Tuesday, July 17, 1973

(In Chambers)

SEALED BY ORDER OF THE COURT

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NICHOLAS SOKAL
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)
)
 vs)
)
 GEORGE GORDON LIDDY, et al)

Criminal No. 1827-72

FILED

JUL 18 1973

JAMES F. DAVEY, Clerk

Tuesday, July 17, 1973

The following is a transcript of proceedings in
Chambers, before THE HON. CHIEF JUDGE JOHN J. SIRICA from
2:30 p.m. to 3:15 p.m.

APPEARANCES:

ARCHIBALD COX, Special Prosecutor

ARTHUR S. MILLER, Chief Consultant to the Senate
Select Committee

DONALD G. SANDERS, Assistant Minority Counsel

RICHARD BEN-VENISTE, Assistant Special Prosecutor

GEORGE HOWARD, Chief Probation Officer

RICHARD AZZARO, Law Clerk

P R O C E E D I N G S

THE COURT: Last Friday afternoon just before I was ready to leave which was around 4:00 o'clock or a little after, my secretary, Mrs. Holley, informed me she had received a call, I believe from Mr. Norman A. Carlson's office --the Director of the Bureau of Prisons-- indicating and telling her in effect that the studies that I ordered from Danbury had been finished and they were sending them down, that they were being sent here by a messenger.

I didn't wait around as I had to go some place. Yesterday was the first opportunity I had to sort of glance through them, but not real carefully. So let me preface my remarks by saying this: the reason I called you gentlemen and asked you to come here --and I thank you very much for doing that-- is because of certain statements that have been made in here by Mr. Hunt. I will refer to his report first. The statements indicate that he might have some knowledge of other people that might have been involved, we'll say, in the White House.

I didn't want to conclude that you already knew this information although it is likely you know much more than I do about it, but I thought out of an abundance of caution I felt it my duty, particularly having tried the first case and being Chief Judge of the Court and having something to do with being in charge of the grand jury so to speak, I ought to at least inform you gentlemen and read you excerpts from this report.

The first thing that came to my mind was propriety, whether or not I should invite the attorneys, say Mr. Hunt's and the representative of the other four men from Miami.

I talked to Mr. Howard before lunch and my law clerk and I thought at this stage it is not necessary to invite Mr. Bittman and the attorney representing the other four defendants. Do you feel that way, Mr. Howard?

MR. HOWARD: Yes, sir.

THE COURT: Let me read this statement first of all, the covering letter from Mr. Carlson dated July 12 of this year regarding Everett Howard Hunt. The substance of the first paragraph states:

"Dear Judge Sirica:

We are enclosing two copies of the classification study prepared by our staff at the federal correctional institution at Danbury, Connecticut on Everett Hunt who was sentenced on March 23, 1973 for a period of study and observation under the provisions of Title 18 U.S. Code, Section 4208(b)."

Then it goes on and makes a few more statements and certain recommendations.

Now, the purpose of Title 18 USC Section 4208(b) is to permit the Court to set the maximum sentence permitted by law and thereafter to reduce it if the study indicates this is desirable. It was designed to give the Court an opportunity to have

an in-depth study of the defendant, allowing and facilitating modern concepts of individualizing punishment. The Court should and must have all pertinent information before it --citing U.S. vs Coffee, 415 F.2d 119, a 1969 case.

This interview and in-depth study commences after conviction and the guilt or innocence of the accused is not at stake. Therefore, the probation interview is not considered a proceeding at which guilt or innocence is determined but is a proceeding wherein the humane concern of the sentencing judge requires his consideration of circumstances not disclosed prior to conviction.

It was for these reasons that the courts have held these interviews not to be "critical stages" that require assistance of counsel. Citing 415 F.2d, page 121. Nor does the Court feel counsel for the defendant need be present when the Court in the exercise of its discretion discloses either part or all of the study in the performance of the Court's duties.

I felt after reading Mr. Hunt's evaluation and psychological report that if I ran across some things in there that indicated that he had said certain things that I didn't know about during the trial or at least the jury didn't know about it and is new evidence, it was my duty to inform you gentlemen and you could take any action you saw fit.

MR. COX: I appreciate it.

THE COURT: That was the reason for the call.

I think the best way for me to start is to take excerpts of the report. There is no use reading the whole report. And I think when you hear these excerpts or statements that he allegedly made to the man interviewing him then you can determine whether this is new evidence or something that you want to learn about, or something you want to do something about.

My only concern is to first be sure that I am doing the proper and the right thing. That was one of the reasons I called Mr. Howard up here to talk this situation over with you first.

Do any of you have any different ideas about the matter with that brief statement?

MR. COX: We certainly don't.

MR. HOWARD: Might I make one comment?

In connection with the 4208(b) study, the Probation Office furnished Danbury with copies of our pre-sentence reports. They use that as a basic document. It was a report that one of our probation officers prepared in these cases. So they had some information about all of the defendants and of course Chief Judge Sirica had seen the reports for his purposes too.

I thought I might mention that as a procedural point.

THE COURT: Now, as I said, this may be something you already know about, but as long as I know about it I feel I should put it in the proper hands.

MR. MILLER: For purposes of identification, who prepared the report?

THE COURT: Yes, as I go along I will give you different sections. When I come to a section I will read what information I have on who prepared it.

Now, first I will read from what they call the Staff Evaluation. Just so you get it in proper context I will read a few sentences here. The first statement is "Illegal Behavior".

"Mr. Hunt is a first offender. This being his first arrest and/or conviction of any kind. There are no known detainers or unclarified charges pending at this time. Involved in the commission of the offense with six co-defendants. Mr. Hunt has been outwardly quite candid in discussing details surrounding the Watergate issue. He acknowledges his role but insists he was acting essentially as a technician with orders coming to him from G. Gordon Liddy. While he may have had a voice in formulating policy the final decision came from a source higher than he."

Then under "Causal Factors":

"Mr. Hunt has always contended that his twenty years experience with the CIA involved as he was with a great many covert operations, had engendered an attitude of taking orders and never asking questions. This was an extension of the work done for that agency, and the question of illegality or moral taint never really crossed his mind. Directions

and orders were coming from highly placed government officials and he indicates he was acting for what he felt was the good of the nation."

That is on page 1 of the Staff Evaluation. Registration number is 25231-145B.

Now, we will go over to page 2, at the bottom of the page:

"While not denying his involvement at a fairly high level of operations Mr. Hunt insists it was not his role to determine policy. He was a technician who took orders from Liddy. Because of Mr. Hunt's past experiences with the CIA and because of his knowledge that orders were coming from sources at least very close to the President he was disinclined to ask questions. The question of illegality never entered his mind. This was an extension of work that he had previously done and the very nature of clandestine operations demands that material that is necessary be acquired by any and all available means."

We skip over to page 5 of the Evaluation Report Classification Study. Under "Current Findings, Character Traits":

"A psychological evaluation is attached to the Classification Study. It was conducted by the Danbury Federal Correctional Institution by Dr. Edwin Rautio, PhD. Please refer to this report for an in-depth comprehensive review of the subject's psychological profile."

The reason I mention his name is in case the Committee or Mr. Cox, or your assistants want to interview the Psychologist.

MR. HOWARD: Might I make a comment, Your Honor?

THE COURT: Yes.

MR. HOWARD: As I was looking at the psychological report I observed it was made by a different man.

THE COURT: I'll bring that in also.

Page 6, Burrell G. Kilmer, Chief U.S.P.O., District of Maryland. The next name is: completed by Paul P. Lefebvre, dated 6/25/73. So much for that.

MR. HOWARD: Your Honor, another comment?

I am somewhat more familiar with these reports than the judges. They put the name of the probation office, or officer to which a man might later return. Mr. Hunt's address is in Maryland and the Chief U.S. Probation Officer for the Maryland District is Mr. Kilmer.

I might, if you will, mention a little bit about the classification study and staff evaluation?

THE COURT: You know more about it.

MR. HOWARD: When they get a man at an institution for one of these studies or when they get a man there by regular commitment a number of people work on the case. There is a case worker assigned to it. The Chief, Classification and Parole is kind of a supervisory person. They may have a representative from the Educational Department; they have a doctor examine him

and they pool a great deal of information. The person who generally writes up the staff evidence is the case worker. I think Mr. Lefebvre was probably the case worker in this case.

I might say too that when the report gets to the Bureau of Prisons, the central office, it is reviewed there by their staff representatives again. They have a case management section; they have a medical section; they have two or three department heads and some of the officials too are involved in the final evaluation.

THE COURT: Thank you. That is very helpful.

Now, we will get over to the Psychological Report of June 12, 1973. I will read this in context so I think you will get the thinking.

"There were times, however, that what seemed to be annoyance emerged. This was especially so when he was asked about the dangerous position he placed himself during his years as a member of Intelligence both for the OSS and later for the CIA. To this he responded he was proud to work for our country. When asked whether he ever doubted his position he said he never questioned his superiors, he had more than 20 years of this kind of activity in which he received orders from people he respected and trusted and never felt that it was his job to question these kinds of things. He believed that in what he was doing and in the people he was working for. He talked about the Watergate operation and not questioning this as well. In this connection he mentioned that the orders were to investigate

the Democratic Headquarters because of some possible political contributions from foreign countries. He received his orders from very high White House officials and did not question the orders when he was told to do what he had to do. He did, however, question the means by which the operation took place and did not see the people in charge as really being as he called it, professionals in this business. At the present time he feels he has been betrayed by the people for whom he worked."

That last part seemed to me significant because I never could by questioning the four men from Miami in open court -- they apparently took the position there were no other people involved and I am sure if you read the record you remember my questioning, as I was trying to find out were any other people involved, any higher-ups, so to speak, and Mr. Hunt or nobody went this far in open court at least so far as I understand the record. When I read this part that is what got me thinking about whether or not to bother you people. As I said, you might know all this, you might know much more than this but here it is for what it is worth. I don't know what Mr. Hunt said before the grand jury or before the Committee up on the Hill, but it seems to me that this was information that all of you ought to have access to and that is the purpose of the meeting.

Any questions?

MR. MILLER: Do I take it, sir, that a copy of this can be made available?

THE COURT: What I am going to do is order the reporter, after you transcribe it, have it sealed so that nobody in the press gets it. I think I can pledge everybody here to secrecy because I don't want this to get out, you know how they might blow this up, because this is contrary to what we learned on the two sentencing occasions, that is, the questioning periods, put it that way. I don't know where this fits into the investigation, if at all, frankly.

MR. HOWARD: I am in a little bit of a dilemma perhaps. I know when my officers interview defendants having been found guilty, or having pleaded, we regard ourselves as representatives of the court and the information is for the court. When Chief Judge Sirica mentioned this to me I agreed with him that any information that Mr. Hunt or any of the other defendants might have disclosed that would be helpful should be disclosed. I would sort of hate to have the persons who interviewed Hunt subpoenaed or something of that sort unless it was absolutely necessary.

MR. COX: Well, I was rather happy, Judge Sirica, when you mentioned having this sealed because while it does seem to me proper that we should know in a general way that there may be more information to be obtained from Hunt it seemed to me that the whole function of the people who are making reports and the probation system depends on a degree of confidentiality and consequently while I think it strikes a happy medium if we are alerted that there may be more to be obtained from Hunt than we

realize, but as to quoting any of this or subpoenaing any of the people you mentioned I most certainly wouldn't do it.

THE COURT: For the present time wouldn't it be better to seal it? You have a pretty good idea from taking notes. If Mr. Dash, or Senator Ervin, or Senator Baker feels they need a copy, this is new information. As I said, it might be old information, I don't know.

MR. MILLER: Mr. Sanders, what do you think?

MR. SANDERS: My personal opinion coincides with that of Mr. Cox. I think we should not breach this philosophy of confidentiality of the work of the probation office. It might be something we should know for background information and keep in mind and maybe we don't need to interview or subpoena the persons who prepared this.

Your Honor, this remark about him saying he feels he has been betrayed by people for whom he worked, are there no supportive details?

THE COURT: I can't see any. You read it through, Mr. Howard, didn't you?

MR. HOWARD: I didn't see anything.

THE COURT: I didn't see anything that supports that. There is a lot of other things about his family life and how the death of his wife affected him. I don't know who he is referring to, of course.

MR. MILLER: Excuse me, Your Honor. I take it no names

were mentioned as far as what Mr. Sanders just asked you?

THE COURT: No names are mentioned of any higher ups or officials of the White House or anything like that other than Mr. Liddy. He mentions him.

MR. MILLER: He identifies them as high White House officials, is that the term?

THE COURT: "He talked about the Watergate operation, not questioning this as well. In this connection he mentioned the orders were to investigate the Democratic headquarters because of some possible political contributions from foreign countries. He received his orders from very high White House officials and did not question the orders when he was told to do what he had to do."

That is precisely what is in the report.

MR. MILLER: When you say "seal" it, sir, may I for purposes of advising or telling Senator Ervin means you will keep it in your office?

THE COURT: What we will do is we will call my courtroom clerk up here -- you got sealed parts before, I am sure your committee got them because I released them. The clerk will take it and put it in an envelope like this and seal it and put on the outside what it purports to be and put it in a safe downstairs and then it will be sealed until further orders of the Court. If I have grounds to unseal it by request, we'll say from the Committee or from Mr. Cox's office, I think the request should

be granted I can sign an order giving a copy to the Committee or copy to you, or both of you.

This brings me to another point. We might as well be thinking ahead on this. The newspapermen already have gotten wind apparently the report is in or is coming in. What I propose to do is this: If you read my sentencing procedure where I imposed this provisional sentence, rather long sentence on Mr. Liddy, what I want to do is this if I can do it. I shall do it, I think. Sometime in the future, depending on how long this present phase of the investigation of the so-called cover-up goes on -- you are in that phase now, aren't you?

MR. SANDERS: Yes, sir.

THE COURT: Let's assume it winds up by August 4th, then what I would like to have you gentlemen ready on is this: I have to have as much information as I can on these men from Miami and Mr. Hunt. I am not too much concerned with Mr. McCord because he has a motion for a new trial pending and we will have to hear that. Mr. Liddy is on appeal. He has been sentenced and the case is before the Court of Appeals. So as to these five defendants I have to do one of two things: either sentence them to a term in the penitentiary or do several things that I have the discretion of doing. Before I can do that, however, I am going to have to have a hearing in open court. I might have to question these defendants. For instance, if this information is different than what I got from the four defendants on

questioning them, it might go to their credibility: why didn't they tell me these things when they pleaded guilty? I have to have all these facts. I will have to call on government counsel, Mr. Cox's office, to tell me something about the evidence you feel is available or developed, what cooperation you got from these people, if any; the extent of their cooperation. We cited cases where you can take that into consideration. I want to know that from the Select Committee. I will notify Mr. Dash and hopefully he will send somebody up here or come himself and ask you people for a statement. So I am going to try to have this in open court. I don't think it should be in chambers or anything like that. He will be represented, or the defendants will be represented by their counsel and we will have a hearing in court. Then I may take it under advisement and then do what I want about the sentencing. Or, I visualize this situation: as I told you, I have not made up my mind, I don't know yet who is to be indicted or what time they will be indicted, or anything like that. At the proper time I am going to have to make up my mind whether I am going to be the trial judge or assign it to some other judge. I indicated that in open court recently. I have forgotten how it came out. Mr. Neal was there, I am sure.

Anyway, now it would seem to me if we could arrange with the attorneys and defendants at the proper time for them to do what Mr. LaRue has done --we have it in the record-- that Mr. LaRue has consented through his lawyers to wait until after

the trial of any criminal case in which he might be implicated --that is in the record.

I also received a letter which I filed in the record, of Fred Vinson, his lawyer. I asked him to send me a letter and it has been filed. Here it is, dated July 13, 1973. You have knowledge of this, Mr. Cox.

MR. COX: Yes.

THE COURT: Let me read it. My law clerk filed it July 16th, yesterday. It is addressed to me on the stationery of Reasoner, Davis and Vinson, U.S. vs LaRue, Cr. No. 556-73:

"Dear Judge Sirica:

"Mr. Howard, the Chief Probation Officer of the U.S. District Court called me today with reference to the Rule 50 plan adopted by the Court on April 4, 1973. Paragraph 11 of that plan calls for presentence reports to be furnished within one month of conviction. At the hearing at which Mr. LaRue's guilty plea to one count Information was accepted you deferred sentencing until certain trials are completed. Accordingly, this will advise that on behalf of Mr. LaRue I am waiving the aforesaid requirement contained in paragraph 11 when presentence reports are furnished within one month of conviction and I am sending a copy of this letter to Mr. Howard.

Sincerely,

/s/ Fred M. Vinson, Jr."

That saves the probation officer a lot of time.

MR. COX: I think I misspoke for the record when I said I know of it, but I am aware of it now.

THE COURT: You see, they won't have to go through a lot of trouble getting data, they will wait until the case is tried. I would like to be in the position of waiting for the purpose of sentencing these five men until I either hear all the evidence or learn about it after a trial in which they may be called upon to testify when I can have the advantage of all the circumstances, so at the proper time I would like to suggest that to counsel on both sides, also for the defendants and government counsel and Committee counsel. That is what I am going to try to effect if I can and then I will call upon you in open court, of course, to give me the benefit of any evidence you might be able to disclose, and if you can't I will understand that.

Let's see, I thought I would wait until the court hearing until after you conclude this present phase up there on the Hill. Do you have any idea about how long on what they are going through now might take before the recess which I understand is supposed to be August 4th, I think?

MR. MILLER: August 3d is the last date Congress is to be in session, sir, and there has been no decision made. I would venture a best guess on it that it will run another week and I think August 10th would be a good educated guess on that, sir.

THE COURT: About August 10th that they will be finished with this phase of it?

MR. MILLER: Yes, sir, I think so.

THE COURT: I thought I could put this on say between the 10th and 25th when I leave for the beach.

MR. MILLER: Your Honor, there has been no decision made by the Committee as yet.

THE COURT: I understand. I will be governed by when they wind up this part of the case.

Now, has anybody got any suggestions?

MR. COX: I would like to go back, if I might, to the matter of sealing the transcript, the information, just to make sure I understand it correctly.

As I understand it the arrangement which you have ordered is that we would not use the information to subpoena witnesses or for the purposes of impeaching Mr. Hunt? In other words, didn't you say to somebody at Danbury clearly we would not disclose the information outside the confines of this room? Really the only purpose for which it is available is sort of a general warning that Hunt perhaps can tell more, is that a fair summary?

THE COURT: I don't want to enter any agreement as to what you do with the information. Suppose he takes the position like some of those men from Miami that nobody else is involved in this thing except Mr. Liddy and people mentioned?

MR. COX: My understanding is I would come back to you and ask for an order unsealing it and unless I got that permission I would not be free to use it?

THE COURT: Well, I'm not going to try to tie your hands on it, I don't think I should. You are all good men of integrity and honesty.

Put it this way: if it becomes necessary that you feel that what you learned here if it is important in connection with your investigation either for the grand jury or during the trial or anything like that, or before the Committee on the Hill, I think you can come back and request and we can argue it out then, don't you see?

MR. COX: Right. That is what I attempted to state. But unless we came back we wouldn't reveal it.

THE COURT: I looked through the record, there were several questions I put to the people from Miami. Mr. Silbert made a very comprehensive opening statement as you probably learned and it was agreed that Mr. Hunt more or less adopted the substance of that statement so I didn't have to put a whole lot of questions as what did you do, whom did you meet, all that business. He at least gave me the basis for factual finding of what he was pleading guilty to. Don't you remember that Mr. Hunt was outside being interviewed by the press, I believe on television, or radio, Richard (law clerk), and made some sort of statement to the effect there were no others involved --something like that. It is all in the record.

MR. AZZARO: Yes, sir.

MR. BEN-VENISTE: Will Your Honor make some statement on the record soliciting information from the other defendants--

THE COURT: --you mean in open court?

MR. BEN-VENISTE: Yes, either that or letter?

THE COURT: I will get in touch with you by letter or invite you to come down and tell me any facts to help me in imposing sentence.

MR. BEN-VENISTE: My only area concerning Your Honor's statement was so far as evaluation of their cooperation might entail some evaluation of credibility and therefor recommend, or a statement as to the beliefs of either Congress or Mr. Cox's office that might prejudice defendants who may be indicted in the near future. I would think that might be something we should all take caution on.

THE COURT: That is something we will have to think about.

Now, here is a statement which I read when I accepted Mr. LaRue's plea and I was going to use this as a form as to any other persons who might want to plead guilty in the future. There has been some talk of other possible pleas, I am not sure whether they are coming through. I say something like this and I think this is in the record, you can get a copy of it:

"The Court understands that Mr. (blank) desires to enter a plea of guilty to an Information charging him with

conspiracy to obstruct justice."

That was as to Mr. LaRue.

"Pursuant to Rule 7 of the Federal Rules of Criminal Procedure he is entitled to waive indictment and proceed by way of Information. The matter I wish to discuss with counsel at this time is imposition of sentence which will follow acceptance of the plea if the plea is accepted by the Court. Rule 32 of the Federal Rules provide that sentence shall be imposed without unreasonable delay. As in the prior case involved Mr. Fred LaRue I want to tell counsel what I think sentencing without unreasonable delay means in this case.

"At a prior hearing Mr. Phillip Heymann, representing the Special Prosecutor, stated there will be an indictment, or indictments, forthcoming in what we call the Watergate matter. Presumably that indictment, or indictments, will include reference to activities in which Mr. (blank) has been involved. Is that correct?"

And they usually say yes.

"That being the case I believe it would not be unreasonable in the interest of arriving at a fair sentence for the Court to delay sentencing Mr. (blank) until after the disposition of those indictments, or indictment in which he might be involved. Then, whether this Court or some other judge who presides at that trial, I'll have the benefit of

evidence presented there for use in arriving at an appropriate sentence. Does anyone object to this procedure? In the meantime the case will be referred to the probation officer for preparation of the presentence report, again, presuming the Court accepts the plea."

Then I have waiver of indictment and all questions I ask him. We work out the question of the probation report.

Gentlemen, I don't know if I have given you any information that is important or not, at least I done what I thought was right.

MR. MILLER: I have one question: I assume, I think you said Mr. Vinson's letter is in the public record?

THE COURT: It is filed in this case and this case number --

MR. MILLER: --would it be out of order to ask for a copy of that, sir?

THE COURT: My law clerk will get you a copy of it. Did we send one to Mr. Cox's office?

MR. AZZARO: No, I don't believe so. We can have copies made within a matter of minutes.

MR. COX: I assume Fred Vinson sent us one but I hadn't actually seen it.

THE COURT: The only forwarding note he has got here is a copy to Mr. George W. Howard, Probation Officer.

We will get you one.

Now, are there any questions you want to ask me while we are here about this matter, or any other thing?

MR. SANDERS: Thank you very much, Your Honor.

MR. MILLER: We appreciate the opportunity to be here, sir.

THE COURT: Glad to meet all of you. Maybe next time I'll see you in court.

All right, gentlemen, thank you for coming.

* * * (3:10 p.m.)

CERTIFICATE

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

NICHOLAS SOKAL
Official Reporter