

CR 1827-72

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CR 1827-72

US v GEORGE GORDON LIDDY ETAL

THIS ENVELOPE CONTAINS TRANSCRIPT
OF THE PROCEEDINGS HELD IN CHIEF
JUDGE SIRICA'S CHAMBERS ON TUESDAY,
JULY 24, 1973 (COURT'S COPY ONLY)

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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 25 1973

JAMES F. DAVEY, Clerk

TRANSCRIPT OF PROCEEDINGS

(ORDERED SEALED BY THE COURT)

Tuesday, July 24, 1973

(IN CHAMBERS)

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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

Tuesday, July 24, 1973

The following is a transcript of proceedings re the
above-entitled cause held in chambers of Chief Judge John J.
Sirica at approximately 2:00 p.m.

APPEARANCES:

JAMES VORENBERG, Assist. Special Prosecutor

RICHARD BEN-VENISTE, Senate Select Committee

DANIEL E. SCHULTZ, Esq.

RICHARD AZZARO, Law Clerk

P R O C E E D I N G S

THE COURT: Do you want to start, Mr. Vorenberg?

Before you start, Mr. Schultz would prefer that this proceeding at this time be held in chambers. Do counsel agree?

MR. VORENBERG: I think one of the issues that we will want to talk about is the question of disclosure of this material to counsel for the other defendants and that may affect that judgment.

THE COURT: Very well, I'll hear you.

MR. VORENBERG: In any event, on July 12th, Henry Rothblatt who was the former counsel for Messers. Barker, Gonzalez, Martinez, and Sturgis executed a document which in effect waived on a limited basis the attorney-client privilege for the purpose of enabling Mr. Rothblatt to report to the Special Prosecutor his version of the circumstances leading to the pleas of guilty by those four individuals and I have here a copy of that document --the waiver.

Following that, the execution of that document by the four defendants that I mentioned, and by Mr. Schultz, Mr. Rothblatt and by Mr. Ben-Veniste for Mr. Cox, Mr. Rothblatt gave an interview which was transcribed at which Mr. Schultz, Mr. Ben-Veniste and I and Mr. Goldman, who is also on our staff, were present. I will not try to summarize the whole transcript but the core of it is Mr. Rothblatt's statement that Mr. Barker told him that he and the other three were pleading guilty because Mr. Hunt had

put pressure on them to do so. The pressure consisting of a statement that he was going to do it, that they and their families would be taken care of through the payment of a stipend of a \$1000 per month per family, the assurance that they would be rehabilitated, which in context appears to me that they would have jobs found for them. I guess that is the core of it. And of course that they would receive executive clemency.

We pressed Mr. Rothblatt for details and the transcript includes his version of basically his view of the matter. It is our plan, subject to Your Honor's approval, to dig into this more deeply; specifically we would propose to [REDACTED]

[REDACTED] and perhaps others. But we feel an obligation to try to pursue this even though we have some considerable information to the contrary. Nonetheless, we do feel an obligation to pursue it.

We are here because we thought Your Honor should know about this. As a matter of fact, Mr. Cox and Mr. Ben-Veniste, I think, came to your chambers the next day to report to you.

THE COURT: I think he came by himself.


MR. BEN-VENISTE: That is right, Your Honor.

THE COURT: He didn't go into any detail; he said he wanted to come to see me sometime.

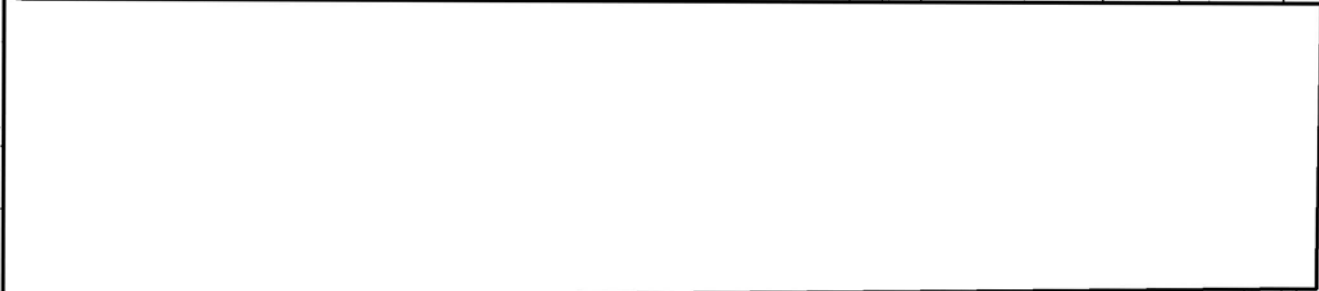
MR. VORENBERG: That is right; came largely for the purpose of us making this report.

MR. BEN-VENISTE: There was some press publicity, I think, attributed to Mr. Cox wanting to assure the Court what our intentions were. The publicity did not come from our office, of course.

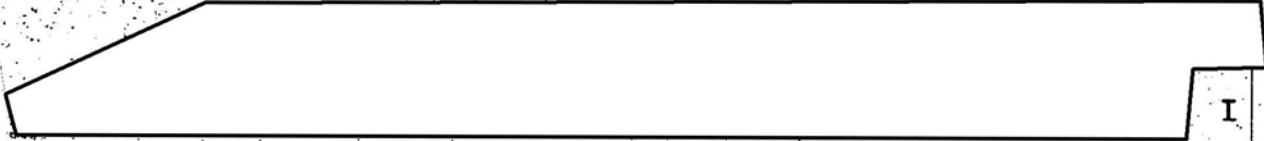
THE COURT: It comes down to this as I understand it:



MR. SCHULTZ: Your Honor, in the discussions I have had with Mr. Cox's staff --Mr. Neal, Mr. Vorenberg-- and at the time



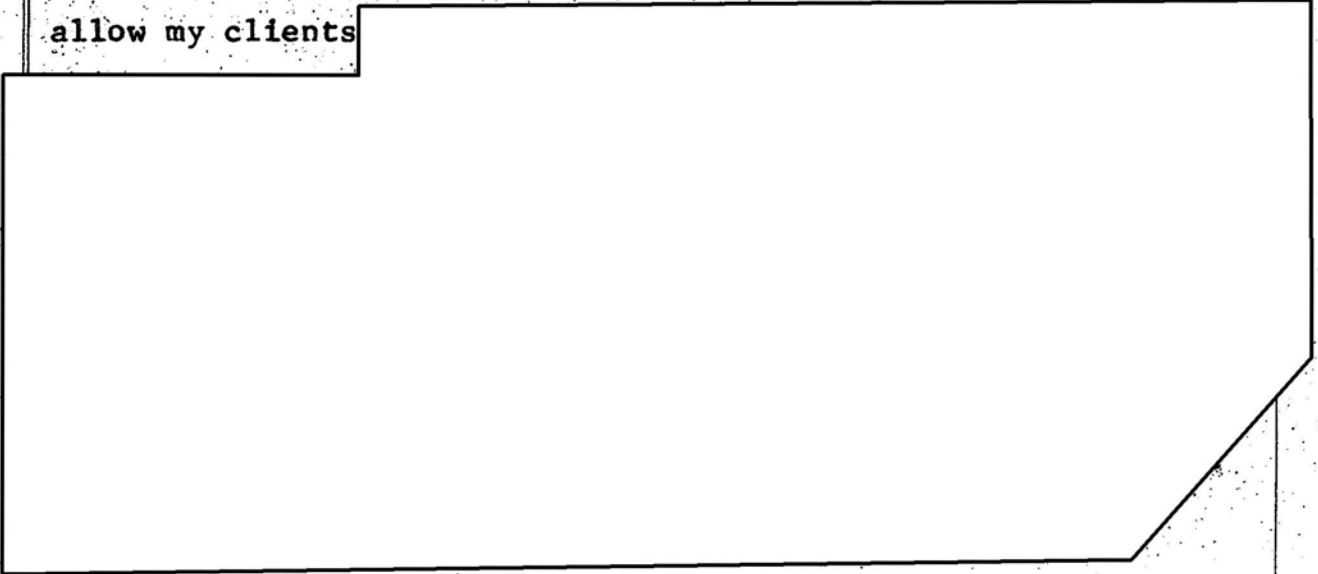
I had suggested that it would be appropriate, I thought, to wait as far as a report to you until such time as they had been brought back before the grand jury.



I have been informed on the one hand that it is what they are interested in is informational analysis in order to make as intelligent evaluation as they can as to whether or not their other countervailing information is correct or Mr. Rothblatt is correct.

THE COURT: I don't follow you. Who is interested in what?

MR. SCHULTZ: I was informed Mr. Cox is interested in it for this purpose, not interested in pursuing further charges against them, but at the same time expressed some reluctance to allow my clients



My problem with what has transpired, Your Honor, as far as the Court is concerned, I did have objections to, in effect, this transcript coming over to the Court at this point --the report being made to the Court-- not for reasons of keeping the information from the Court, but for two reasons: one, we were assured at the time my clients initially appeared before the grand jury and in subsequent appearances, that there would be a full report given to the Court viz-a-viz my four clients' cooperation with the government in terms of answering questions. To me this was extremely important. I was assured this would be done.

Likewise, I was assured by the Senate Select Committee

this would be done as well. The objection I had to the presentation to the Court is this: that it presents one isolated thing out of context without a report to the Court of the other countervailing evidence that the government apparently has that would weigh against what Mr. Rothblatt testified to. It is reported to the Court out of the context of the events that lead up to Mr. Rothblatt's interview which specifically includes complete cooperation on the part of my clients; their willingness to execute the waiver so Mr. Rothblatt could be interviewed, would cooperate with Mr. Cox's staff so as not to be delayed in pursuing the investigation they want to, not being faced with litigating the attorney-client issue on appeal, [REDACTED]

In short, I feared an over-emphasis and possibly a distortion of this one thing in the presentation to the Court. I felt the time had come, particularly since I had understood that the report had come back from the Federal Bureau of Prisons, that the time for the report to the Court as far as my clients' cooperation was in order.

THE COURT: Report from whom? You mean the Senate Committee or Mr. Cox?

MR. SCHULTZ: Mr. Cox.

THE COURT: I have not received any formal report or recommendation, or suggestion as to whether or not these four men have cooperated or not. I have not received anything from

the Select Committee or from your group other than what is presented here today.

MR. BEN-VENISTE: Correct.

MR. VORENBERG: There was nothing received from Mr. Silbert on that before we came into the case.

THE COURT: I might mention the other day, Mr. Schultz, you called I believe and talked to Mr. Azzaro and I think you wanted to know two things: when you could come down and look at the report from the Bureau of Prisons --

MR. SCHULTZ: --correct, Your Honor.

THE COURT: --which you knew was here. I think it was in the papers. And what was the other question?

MR. SCHULTZ: If I could have some general ideas.

THE COURT: And I dictated a statement and Richard typed it up and it was read over the phone. When I got ready to answer those two questions I would do it in open court is the substance of what he told you, correct?

MR. SCHULTZ: That is correct.

THE COURT: All right. Where are we now at this point? What is the question?

MR. SCHULTZ: Well, I don't know if there is actually a question, Your Honor. I wanted to be present at the time this was presented in order to voice to the Court my observations and my feelings as to how it would be more appropriately handled, that it wasn't my decision, and that a full report isn't being given

to the Court at this time. [REDACTED]

[REDACTED] I don't have any objection to it. I think it would be appropriate, but again, the initial decision by Mr. Cox's office would have to be made whether they are talking about [REDACTED]

THE COURT: I don't know.

MR. BEN-VENISTE: I can answer that, I think, Your Honor.

Our position is that [REDACTED]

[REDACTED] for the simple reason although Mr. Schultz has indicated to us that his clients have not, on the basis of Mr. Rothblatt's statements, and indeed Mr. Rothblatt's opportunity to interview them for about an hour and indicate to them what he was about to tell us changed their minds, or changed their view of the events from that which they have previously testified to.

Although this is Mr. Schultz's position it is quite possible that his clients will change their minds at some point and seize on the opportunity to make a motion to withdraw their plea on the basis of some inducement [REDACTED] the government will be unable to prosecute them for any fraud on the Court, or perjury which was previously committed. In essence they will be [REDACTED] through this process.

So this is, for the Court's benefit, our present thinking on the matter.

THE COURT: All right. Well, I have not read that entire -- I skimmed through one page, I think, so I have not read the transcript of the statement of Mr. Rothblatt. I had it in my hand when you came in and I was looking at one page of it.

Now, the way I feel about it is this, frankly, whatever transpires here naturally you have a right and you should tell your clients about what is going on here, you understand, both as their lawyer and as an officer of the court. I feel that any discussion about this matter, [REDACTED]

[REDACTED] all ought to be talked about in open court because I may want to question them. I would rather put the questions to them in open court as I did when they pleaded guilty. I don't think you were their lawyer when they pleaded guilty.

MR. SCHULTZ: No, sir.

THE COURT: But the record is clear. You read it, undoubtedly.

I think this ought to be done. It could be done this week or next week, or if you don't want to do it that way, it doesn't make any difference, but any questions I am going to ask them, [REDACTED]

in open court. That is how I feel about it.

MR. BEN-VENISTE: Your Honor, to answer Mr. Schultz's previous question I think Mr. Vorenberg indicated in his opening remarks that we did have countervailing information from that of

Mr. Rothblatt and I think in fairness we had intended to present this to the Court at least in summary fashion so that the Court has the full picture of the present information of the government on this issue. That basically consists of the denials under oath of the four defendants that such inducement took place.

In addition to that, the statement by Mrs. Moffett, Mr. Barker's daughter, that Mr. Rothblatt is incorrect in his present statement.

THE COURT: I don't know whether this is correct or not. I have forgotten, I don't recall I asked them to take an oath when I questioned them upstairs in the ceremonial courtroom. Do you recall, Richard?

MR. AZZARO: I believe the oath was not administered at that time. You referred to the grand jury oath, I believe.

MR. BEN-VENISTE: They were questioned under oath as to inducement in the grand jury.

THE COURT: Then you know what the answers were.

MR. BEN-VENISTE: Finally, Mr. Hunt's denial of inducing these defendants. [REDACTED]

[REDACTED] and Mr. Rothblatt as it stands now is the only one who has information to the contrary who has communicated that information to our office.

I should point out to the Court as is indicated in the statement that Mr. Rothblatt had these conversations with the defendants prior to the time they entered their pleas.

THE COURT: Has he seen them since the entry of the pleas?

MR. BEN-VENISTE: He has. As indicated in the statement, he saw them while they were incarcerated shortly after their guilty plea in connection with a civil matter and then again we afforded him the opportunity to meet with them approximately an hour in our offices at the time that he appeared and gave his statement. Mr. Schultz was present on that occasion alone with the defendants and Mr. Rothblatt.

THE COURT: Well?

MR. VORENBERG: Just so I can be clear on what you said, Your Honor, that you would propose with respect to the four defendants that any questioning on this matter would be by you in open court?

THE COURT: Or by counsel on either side.

MR. VORENBERG: But it would/ ^{be} before you in open court?

THE COURT: It should be done in open court.

MR. VORENBERG: I take it it would still be appropriate for us to bring as a full proceeding before you?

THE COURT: I would rather have Mr. Rothblatt make a statement in open court in the presence of the defendants where they would have an opportunity to do so if they wish to do so, to deny what he has to say, you understand.

MR. BEN-VENISTE: Would that stop us from proceeding the grand jury route in connection with our greater investigation of the cover-up in general, Your Honor? I think we'd have an

obligation to present that evidence to a grand jury.

THE COURT: That is up to you folks, I don't want to decide that question. I don't think that should come before me.

MR. BEN-VENISTE: Right.

Did Your Honor propose a hearing on this matter? Was that intended to be in connection with the sentencing or prior to?

THE COURT: If the defendants are claiming through their counsel that they now wish to state that pressure was put on them, that the plea was not voluntarily made, or no basis for the acceptance of the plea, whatever they want to say it ought to be done by the attorney with their consent by the proper motion, you understand. You have a right then to answer that motion, for example, a motion to withdraw the plea, we'll say, of guilty, and we will have a hearing on it in open court.

MR. VORENBERG: I don't understand that to be Mr. Schultz's position.

MR. SCHULTZ: Your Honor, maybe I should clarify something. The suggestion there might be a change in testimony did not come from me. My four clients have given me no indication at all of any change in their testimony that they have given before. They have said that Mr. Rothblatt, in terms of reporting this point on a single conversation with Mr. Barker is incorrect. They are not intending to file a motion to withdraw their guilty pleas on the basis of pressure or coercion.

THE COURT: That is not before me then?

MR. SCHULTZ: Correct, Your Honor. We will not be presenting anything to Your Honor that will require a court hearing.

THE COURT: All right. I thought they were leading up to trying to withdraw their pleas of guilty, which happens sometimes.

MR. SCHULTZ: No, Your Honor. Their concern and my concern in terms of this further now pursual of this one subject is the possibility of some more delay, substantial delay in terms of their final sentencing.

THE COURT: First of all, I can't advise you gentlemen on either side what to do insofar as the grand jury is concerned. I don't think that is before me properly. As long as they don't want to withdraw their plea of guilty you gentlemen have to do what you think is right.

MR. VORENBERG: So in other words, in light of what Mr. Schultz just said, perhaps it makes more sense for us to proceed basically to [REDACTED] with these matters rather than doing it in open court. I must say I can sympathize with Mr. Schultz that with only one allegation -- Mr. Rothblatt's allegation-- the feeling he was making too much of it to have a full hearing in open court.

THE COURT: You gentlemen have to work that out, what you think is right.

Now, while you are here, Mr. Schultz and government counsel, Mr. LaRue appeared before me in open court and I questioned him whether or not the plea was voluntarily made, you remember recently?

MR. SCHULTZ: Yes, sir.

THE COURT: Then went and entered into an agreement, if you want to call it that, that he was willing to wait until after a case, or cases in which he might be involved, we'll say, are mentioned. There has been a lot of talk about indictments being forthcoming. One of your associates made a statement -- Mr. Heymann-- assuming there is going to be more than one indictment in the near future, he would be willing to wait until one or more of those cases is tried in which he is probably involved. You understand. This would give me a better chance, or opportunity to get the entire picture of what the defendant did or didn't do in connection with this sentence.

Frankly, I haven't gotten all the information I would like to get from the Bureau of Prisons, or the Probation Officer, because maybe it wasn't available to them, I don't know. I am not criticizing them, but I would like to do this in this case. You could talk to your clients. I would like to wait on the question of final sentencing of the four defendants and also Mr. Hunt. He is not before me today by counsel, so I can't give this message to him formally. I would like to wait and have the same arrangement with the four defendants with the consent of

their attorney, you, Mr. Schultz, and ask them to wait until, we'll say, this so-called obstruction of justice indictment has been disposed of where maybe the whole story will come out. I assume it will, which will involve their participation, if any, you understand. Then I will be in a better position, I think, to impose a proper sentence. Do you follow me?

MR. SCHULTZ: Yes, I do, Your Honor.

THE COURT: The same situation we had with respect to Mr. LaRue, I should think ought to apply to them.

MR. SCHULTZ: What would happen in the interim, Your Honor, insofar as their continued incarceration?

THE COURT: They are getting credit for the time they are serving. Maybe the government counsel can give us some general idea about when you might be ready to, say ask for any indictments? Is that date still open?

MR. VORENBERG: I think we are not in a position to be very specific on that, but the problem I think that is more open-ended is it is very hard for us in this case to give any clear assurance as to when the trial will begin or be concluded because of a number of issues that Your Honor is aware of. So the timetable is not easy.

MR. SCHULTZ: Your Honor, I would like to say this: I do not think my clients, and I know myself, would have any objection to waiting until after any trials that are forthcoming on indictments that might be returned. I have made requests that

their grand jury testimony be made available to Your Honor. I made the request to the Senate Committee that they be apprised of testimony before Your Honor in order to assist you in a full evaluation of their full testimony. My problem is to have a situation where there is absolutely no way of knowing with any assurance when we are going to be at a point where trials of indictments yet to be completed, or returned, will be completed. But I have four clients who have for the past seven months now been incarcerated not knowing what their fate is. In all candor, my hope is that sentencing will be sometime soon and that sentencing will be such that we do not have a substantial minimum time period in terms of incarceration to the point where they would still be in jail waiting till the end of trial that might take place a year from now or next spring. I have no objection to waiting for final sentencing if in the meantime they are not incarcerated and have the time, the seven months plus the months from last year -- these men have already spent nine months in jail-- have that time available for credit.

THE COURT: Before I sentence them I would like to have the benefit --and I indicated this in my sentencing remarks-- if they did cooperate with the Select Committee and the government that that would be taken into consideration. I have forgotten my exact language, but it is a matter of record. I would like to have any statement that Mr. Cox's group, or you gentlemen, would like to make and also the Select Committee. I have gotten neither.

MR. SCHULTZ: I learned from the papers the report had been made. I have a meeting with them on Thursday and hope to have an answer from them furnishing such a statement.

THE COURT: I don't know what [REDACTED] grand jury. Whatever they said, I have no idea. Frankly, I don't care to know. If they want to put that in the report it is up to them, what position they took or anything else.

MR. SCHULTZ: I realize there may be difficulties with the grand jury. I thought with the Senate Committee there possibly would be no resistance or have any legal barriers to the furnishing the secret testimony to Your Honor for your own perusal. I think if I could couple my request with an indication to the Committee that Your Honor would be interested in having those transcripts available they would give more weight to my request.

THE COURT: You have those transcripts?

MR. VORENBERG: We don't have the secret transcripts, but the public transcripts.

MR. SCHULTZ: Mr. Barker testified in public and that wasn't in depth in many areas.

MR. BEN-VENISTE: If Mr. Schultz has no objection to disclosure of [REDACTED] to the Court, or summary of that testimony, I don't think we would be reluctant to do that.

THE COURT: I don't want to get into [REDACTED]

[REDACTED] They want to come

in open court is different.

MR. SCHULTZ: Could I indicate to the Select Committee that Your Honor would be interested in seeing the transcripts of their testimony before the Committee?

THE COURT: They can put in a report to me the substance of what they said. I don't know why I should have to read the report. I would be interested in knowing what they think about the defendants.

MR. VORENBERG: One more related issue, Your Honor, and that is we have had the sense that this transcript probably ought to be made available to counsel for the other defendants.

THE COURT: You mean the transcript of today's proceeding?

MR. VORENBERG: No, the transcript of what Mr. Rothblatt has said. We are a little puzzled by it but it seems to us that an argument could be made at some point in the future that it has a bearing on McCord's motions and I guess our inclination was we should do that, but before doing it we thought we should consult with you.

THE COURT: I don't want to have to put the stamp of approval on everything you do, it is entirely up to you to make a judgment.

MR. SHULTZ: I would like to say, Your Honor, because of the nature of the waiver, the attorney-client privilege, the

agreement entered into was a limited waiver about certain areas and a limited waiver of certain proceedings. In effect what the government is saying they feel obligated now to violate that agreement and provide the information to Mr. McCord who is represented by Mr. Rothblatt, who gave the statement. I don't understand the logic of that. Mr. McCord is represented by Mr. Rothblatt and Mr. Fensterwald.

THE COURT: Still?

MR. SCHULTZ: If not in the criminal case he is probably representing him in the civil.

THE COURT: I feel sure Mr. Fensterwald is representing him in the criminal matter. Anyway, it is a matter of record whatever the facts are. I don't want to be in a position of advising either of you what to do about this transcript.

MR. VORENBERG: We will have to make that judgment ourselves, Your Honor.

THE COURT: If you gentlemen want to put in the report what you think the cooperation was of any of these four men, the Select Committee wants to do it, they are welcome to do it. And as I said, if you are reluctant to wait until a case is over with in which their participation is going to be evaluated I will just have to go ahead and sentence them at the proper time.

MR. SCHULTZ: Your Honor, I have no reluctance to waiting as I am sure Your Honor would have the perspective of

these men and would also seek the participation, but in terms of their continuing to be incarcerated while waiting for indictments not yet returned and not knowing their fate --

THE COURT: --I will wait until I get this report.

Are you going to talk to somebody in the Select Committee?

MR. SCHULTZ: Yes, I will.

THE COURT: Soon as I get the report from Mr. Cox's group, you or whoever is going to prepare it in the Senate Select Committee, I will read it and tell you when sentencing will take place, unless I have some other ideas.

MR. VORENBERG: It is my understanding, Your Honor, that our having described the proceeding with Mr. Rothblatt that you are not requesting that we furnish a copy of either the waiver or the transcript at this time?

THE COURT: Any objection to that, Mr. Schultz?

MR. SCHULTZ: No, Your Honor.

THE COURT: It is my understanding you have a copy of the waiver?

MR. SCHULTZ: I have a copy of the waiver and was just given a copy of the transcript. I don't have any objections in furnishing a copy of the transcript at this point.

THE COURT: I don't think I care to look at it at this time. Maybe sometime in the future but not now. All right.

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(2:50 pm.)

C E R T I F I C A T E

It is certified the foregoing is the official transcript of proceedings indicated, reported and transcribed by the undersigned.

Nicholas Sokal

NICHOLAS SOKAL
Official Reporter