CR 1827-72

FILED
AUG 8 1973
JAMES F. DAVEY, Clerk

(#4, #5, #6 AND #7
US v. BERNARD BARKER,
EUGENIO R. MARTINEZ,
FRANK A. STURGIS AND
VIRGILIO R. GONZALEZ

CR 1827-72

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THIS ENVELOPE CONTAINS ORIGINAL + TWO CARBON COPIES OF TRANSCRIPT OF PROCEEDINGS HELD IN JUDGE SIRICA'S CHAMBERS ON WEDNESDAY, AUGUST 7, 1973, TOGETHER WITH STENOGRAPHIC NOTES OF NICHOLAS SOKAL, COURT REPORTER. (PAGES 1-21, INCL).

TRANSCRIPTS ORDERED SEALED UNTIL FURTHER ORDER OF COURT.

(HEARING IN CHAMBERS WAS HELD AT REQUEST OF DANIEL SCHULTZ ON BEHALF OF FOUR NAMED DEFENDANTS.

#344

(J P Capitanio
Courtroom Clerk)

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	
vs	)	Criminal No. 1827-72
	)	
GEORGE GORDON LIDDY, et al	)	

FILED
AUG 8 1973
JAMES F. DAVEY, Clerk

Tuesday, August 7, 1973

The above-entitled cause came on for hearing in Chambers of Chief Judge John J. Sirica at 2:30 p.m., and also at 4:20 p.m. This transcript ordered sealed by the Court.

APPEARANCES:

DANIEL SCHULTZ, ESQ.

JAMES VORENBERG, Assist. Special Prosecutor

GERALD GOLDMAN, Assist. Special Prosecutor

TODD CHRISTOFFERSON, Law Clerk to Judge Sirica

(COPY NO. 1 OF 3)

P R O C E E D I N G S

THE COURT: Mr. Schultz, do you want to start?

MR. SCHULTZ: Yes, Your Honor.

I was the one who asked for this meeting with Your Honor today. The purpose of the meeting was to follow up on my end to what I considered to be an indication by Your Honor the last time we met of a preference for possibly deferring final sentencing on my four clients, Mr. Martinez, Mr. Gonzales, Mr. Sturgis, and Mr. Barker until after the trials were held on the indictments that are expected to be returned by the Watergate grand jury.

THE COURT: Any indictments that might involve them. I didn't say all indictments, because there might be indictments for all I know they have no relation with. I am talking about this so-called cover-up, the part that you are working on now, you know. I would think if they are involved in anything that would be the one, I don't know. The government knows more about that than I do. All right.

MR. SCHULTZ: As I indicated to Your Honor at the last meeting, my initial reaction to that was that I would find no objection to it, I did not think my clients would in the sense of realizing that deferring final sentencing until t hat time would enable Your Honor to be in the best possible position to evaluate their roles, their participation, the reason for their participation in the events and also would in effect establish

as a matter of historical fact their continued cooperation with the government in terms of whatever trials may result from whatever indictment, if they are called upon to do so.

But the one problem I did see and one I consider to be a serious one was that if between now and some future date they would continue to be incarcerated. Since our meeting I have looked into what I thought might be the possibilities to overcome that and yet continue and meet Your Honor's preference as far as sentencing. I believe from what I have looked into it that there is a possible solution.

I have discussed this possible solution with all four of my clients, explained the rights that are involved, explained their options and they have given me their consent and authorizations to discuss this with Your Honor today, and I have in fact prepared a written statement which they have all signed in the event Your Honor finds this solution possible and does want to proceed on that so Your Honor will have it in writing as part of the record.

What I see as a possibility is that Your Honor could call my four clients back into court, lift the provisional sentence that Your Honor earlier imposed, continue final sentencir until some date in the future to be set by the Court, and release my four clients pending final sentencing, preferably or hopefully on personal recognizance with whatever conditions the Court would deem appropriate, or if Your Honor thought a monetary bond of

some sort would have to be imposed, that it be a minimum monetary bond allowing an appearance bond --allowing a 10% deposit that my clients could afford to meet. In short, structuring it to release pending final sentence.

THE COURT: I think I answered that question the last time when we were here, didn't I, in the negative? You were worrying that they would be serving time and probably get no credit for it, I suppose. I said they would be getting credit for any time they are serving. You remember that?

MR. SCHULTZ: I do, Your Honor, but I didn't think we had actually approached t he subject in terms of another solution that would involve their release at this point pending their final sentence.

THE COURT: Well, here is the way it looks to me, it is very simple to me: Number one, I am not going to release them at this time on bond. If they want to be sentenced I shall proceed to sentence them. No question about that. And I will impose what I think is a just sentence. Of course I would like to have that other information. I don't know what they said before the grand jury, I don't want to know. I made no attempt to find out but I reserve the right in open court to question each one carefully along the lines I questioned them before. I don't believe I got truthful answers from any of them, frankly. And I will conduct this hearing in open court regarding what they allegedly said before the grand jury, who got how much money,

where did it come from, and name names, you understand? This I will insist upon in open court even if the government objects, that doesn't make any difference. I want all the information I can get from these people, as to their participation, as to the alleged cover-up, and everything else. If I think I need more time to sentence them I can take a week or so to think it over, you understand. But I am not just going to sentence them in that courtroom without asking them any questions. I don't know if you made that clear to them or not. They have been before the grand jury, the government knows what they said, and then I will proceed to impose what I think is a fair sentence. I will do the same thing w ith Mr. Hunt. I will examine him carefully and I think this is a proper thing to do in view of their subsequent alleged activities after the break-in, you see. It goes to a lot of things that I don't have to explain at this time.

So I will give them their wish if they want to be sentenced, I will sentence them subject to those conditions. And I would expect the government when I ask them questions in open court to tell me just what their testimony is in substance regarding any of the questions I might ask them which might bear upon their question of mitigation of punishment or anything like that.

If they are concerned about this and I may as well be perfectly frank to you, this may be something in their mind, I don't think anyone of the five deserve probation. I am not going

to grant probation to any of them, frankly. I am not closing my mind on Mr. McCord because I shouldn't take him into account at this time because he has not argued his motion for a new trial, you understand, and many things may come up in connection with that motion, but I don't intend to grant probation to anyone of the four defendants from Miami, or Mr. Hunt. I don't know whether they have taken that into consideration or not. So I see no reason to release them.

Suppose indictments are returned within the next three or four months and suppose we have a trial before they have served, say a year, don't you see, what have they lost?

MR. SCHULTZ: Well, Your Honor, I understand that Your Honor is not inclined to grant probation --

THE COURT: --I don't think they expected it, as a matter of fact.

MR. SCHULTZ: It is something that is a realistic matter I have talked to them about, I don't think they did expect it. On the other hand my four clients have served approximately nine months in jail already and in all candor my hope has been that the ultimate sentence that would be imposed would be such that the time they have served would meet the minimum if there is a minimum sentence that is going to be imposed, or be such that they'd be hopefully immediately eligible for parole.

THE COURT: I am not expressing myself on that.

MR. SCHULTZ: I understand that. Now, my problem with deferring final sentencing now until sometime in the future is that for every day that we wait that means that there is, as a matter of fact, an established minimum sentence which will have to be imposed because they will already have served it. That is the first problem.

The second problem is that I have four clients who have not known what their fate would be now for some six or seven months and it is a very, and understandably, hard, emotional, psychological type of burden both on them and their families to not know what their fate is going to be.

Now I see many advantages to all four of my men for not having sentencing until after new indictments are returned, until after trial, until after Your Honor has the full information on their roles and the reasons for their participation, what happened afterwards, the amount of money they received, who they received it from, and to see that as had even started before we were first before the Court for sentencing, as had started even then, my four clients have been cooperating with the government.

THE COURT: I understand that.

MR. SCHULTZ: That I think would be something that would be very beneficial for the Cour to know as a fact. At the same time, to have that waiting period, be in the situation where they are incarcerated, to me the beneficial effects for

the Court to know, being absolutely sure of the men the Court is sentencing. In that respect we would already be talking about the, theoretically, a two year minimum sentence. My hope would be all these factors would weigh on the Court's mind so that would not be the sentence the Court would be imposing.

THE COURT: I don't anticipate it would be two years from the time they have been incarcerated till we have a trial in one of these cases.

MR. SCHULTZ: They have already served nine momths and no indictments have been returned and of course we have a trial to follow after that, and as a realistic matter we are talking about another six months or another year. In all honesty I thought, and I guess I misunderstood the Court in foreclosing that possibility to what I suggested today, I do think it would serve both the Court's interest and serve my clients' interests. Your Honor h as suggested and clearly suggested that you do wish to question my four clients in open court in order to obtain the factual information you want;that way, since you cannot wait until trial I have a serious problem with permitting my clients to answer those questions because it is not done with a cloak of immunity and indictments still have not been returned and I have clients who are going to be questioned about subjects for which they are potentially target defendants who may yet be named in another indictment, I don't know. But I have serious problems.

THE COURT: If you have objection to that what objection can you have to the government telling me what their testimony has been before the grand jury so that I can make up my mind as to what the proper sentence should be in the case?

MR. SCHULTZ: Your Honor, the problem that I have is a problem that I foresaw from the beginning, and that is a report to Your Honor with respect to what has been testified to before the grand jury, or an evaluation of that testimony, or comparison of that testimony with someone else's. In my mind it leaves the fate of my four clients in a very hazardous position that it is going to end up relying on someone outside of Your Honor's evaluation of the credibility in effect of whether or not my four clients have committed perjury, or whether they have been candid in their testimony.

The only way I can see for the Court to avoid that kind of evaluation is if the entire grand jury testimony was turned over to the Court so the Court could personally go through it and make its own determination.

THE COURT: That is one reason I think the suggestion I originally made is to let them wait if they will until I either hear all of the evidence myself, if I am the trial judge, or some other judge hears it, and it will be a matter of public record I assume if they testify. Have they indicated they will testify?

MR. VORENBERG: I don't think tye go to that point, Your Honor.

MR. SCHULTZ: Your Honor, I am in full agreement with the Court on that and again, in my mind, the advantages to the Court, the advantages to my clients are clear, and I think t he Court, and I would hope the Court would and I am sure the Court would be pleasantly surprised in a sense of seeing my four clients in the true roles in exactly what happened.

And I will give an example as opposed to all reports circulating, in the newspapers, the money testified as to coming out of the top, I have seen charts in Time Magazine which indicates so much money went to the four Watergate Cuban defendants. It is just not so. Maybe someone up there thinks that money went to them but they didn't receive it.

But at the same time the problems on our end are the two I mentioned and I would think from the government's standpoint, these men having put in, served already nine months, there have never been any kind of serious threats of flight, never any indication that is a problem, that their position from the government's standpoint is no different in that respect than Mr. LaRue's or anyone elses in that having put in, or served nine months, there being no prejudice of ultimate sentence.

THE COURT: They are in a different position from Mr. LaRue because he came in and pleaded guilty. These people had plead guilty too, that's right.

MR. SCHULTZ: That is correct. And they submitted to Your Honor pursuant to a request a statement prior to what we

thought was going to be sentencing that I think candidly was not a pro forma statement that indicated their participation in the events to which they participated, they indicated other events in terms of other targets besides the Watergate.

THE COURT: I don't think, frankly, and I said this in open court, I never shall believe your client Mr. Barker told me the truth in the courtroom when I questioned him from the bench where did you get the money from and he said in effect: I got it in a white envelope. What was it for? Where did it come from? I don't know. I don't know. The answers were all negative. I don't believe that statement. I told him in open court: I'm sorry, I don't believe you.

MR. SCHULTZ: That obviously disturbs me, Your Honor. I think if Your Honor were sentencing these men after the trial when indictments are returned, Your Honor would have a different impression of those answers and these men's roles. But again, my problem is on my end, hypothetically the Court could find itself at the end of these future trials in a situation where it believes that an appropriate sentence would not carry more than a year minimum, at least in terms of eligiblity for parole, but if that trial is another six months or year away they will have already served if they continue to be incarcerated, two years. From the Court's standpoint, if that is a feasible possibility or at least a theoretical possibility, and I would hope it remains so, then I would think that an answer might be that having served

nine months, having plead guilty, having no indication of any risk of flight, that the time might be appropriate at this point to say you have already put in nine months, you may put i n substantially more, you may put in a little more but I want to wait until after the trial, I want to wait until I have all the facts and that is the only feasible way I can, and in the meantime I will allow your release as other people have been released and are awaiting their sentence. To me that seems to me a viable alternative to the Court, that would satisfy the Court's interest, it would remove the objections I see from our interests, and I don't think it can prejudice the government, the men will be there to serve whatever additional time the Court might impose in the future and if, theoretically it turns out to be a fact the Court is impressed with the further facts about these men's roles, impressed with other evidence that would indicate that the Court's feeling about Mr. Barker's response wasn't in fact accurate, so we are not talking about a minimum two year sentence, that the Court at that time would be in a position to impose an appropriate sentence.

THE COURT: I think the best thing to do under the circumstance is, let's put the case done for sentencing. I will sentence them and the question will be settled then. That is about the only thing I can suggest. I will put it down for sentencing sometime maybe after the 1st of September and I will impose what I think is a fair sentence under all the circumstances. That is my decision. All right.

* * * (3:00 p.m.)

(The following is a transcript of proceedings held in the chambers of Chief Judge Sirica this same day, August 7, 1973, and ordered sealed by the Court. Appearances are the same as heretofore mentioned with the exception of Mr. Gerald Goldman.) (4:20 p.m.)

P R O C E E D I N G S

THE COURT: All right, Mr. Schultz.

MR. SCHULTZ: I am back to, in effect, further report to Your Honor that I have had a chance to meet with my clients.

They have asked me to come back to Your Honor to express for them their desire to cooperate in every way to make sure that Your Honor understands that is what they have been doing and want to continued to do. They have asked me to convey to Your Honor a williness on their part to have their final sentences continued for another six months, which would be through February, to give the government enough time to be bringing their indictments, hopefully, to be satisfying the Court's purposes for wanting the additional time if the Court can make arrangements so that they could spend this time at the federal facility at Eglin Air Force Base in northern Florida.

The reason for this is, No. 1: at the time of final sentencing with respect to any additional time that is to be served, their hope that their request would be made to the Bureau of Prisons and hopefully would be complied with.

Number two, that is where everyone's family is from. And if that could be arranged, and I realize that at least my

understanding is that the Court is not in a position to say yes, they will be in Eglin, but at the same time I think an expression by the Court that this would be preferred if it could be accomplished might be sufficient to have the Bureau of Prisons make an exception to the general rule and have that transfer put into effect.

THE COURT: On that, Mr. Schultz, I think in connection with the Danbury institution, maybe Todd will refresh my recollection, didn't I suggest some kind of an institution like that for not only Liddy because I said in open court, I think, I recommended Danbury?

MR. CHRISTOFFERSON: I think the main reason they were sent to Danbury was so this Bureau of Prison study could be completed. They have the facilities there.

THE COURT: I understand what you are driving at. I don't like to interfere with the administrative end of the Bureau of Prisons. I don't like to call up Mr. Carlson and say send these men to Florida. I have no objection. It is not up to me to say where the place of confinement should be. Where he wants to send them is up to him. I don't want to enter into that part of it. If he should transfer them, that is his affair.

MR. SCHULTZ: The problem, Your Honor, as I understand the rules, is that they would not be eligible to be transferred to Eglin until such time as there was final sentencing. Until that time the rules don't permit their being held down at Eglin.

In effect, as a result there would be no way that I could submit the request and have it honored. I think if possibly through Mr. Vorenberg's office a request or an inquiry was made whether or not that could be arranged that might suffice, but it clearly is not going to be done because I request it.

Again, the reason for it is simply because that is where the men's families are. Eglin is the only medium or minimum security place in that area where they could be held. The families have been able to visit them only once since they have been locked up in January except for Mr. Barker's family, his daughter has been living in the area.

THE COURT: You want to say anything?

MR. VORENBERG: I was up in the grand jury when this session was called and I have not had a chance to talk to Mr. Cox about it, but I think I c an say that we understand the special problems involved with respect to the sentencing of these four defendants. I think we clearly would not have any objection to this arrangement.

Again, I don't think we are in a position to tell the Bureau of Prisons what to do on this. I think we can certainly indicate that we understand the reason for the request. It is in connection with your desire, Your Honor, to have an opportunity to have somewhat greater information and understanding about the case at the time of sentencing.

THE COURT: Well, I think I will have to follow my policy, or practice, rather. I am not going to interfere with the Bureau of Prison's functions. If they want to transfer them they can, but I don't think I ought to get into that. And I have no idea when these indictments, if they are going to be returned, when they are going to be returned. As I said, I am perfectly willing and I would do this before September 1st before I take a short vacation, to bring them in and sentence them and give them the sentence I think they ought to get at this point. It doesn't make any difference. I don't want to put any time limit on the thing. I don't know what the government's plans are.

MR. SCHULTZ: Your Honor, the only reason the six months was suggested, I didn't mean to interrupt Your Honor, was simply on the one hand we are talking about who knows when in terms of trials, that type of thing, might occur, at least for purposes of approaching the Court at this point; putting some kind of a timeframe to the continuance I think would be in order. Six months would be beyond the time when the grand jury would cease to serve and thus one can expect indictments if they are going to be returned are going to be returned before then.

THE COURT: I would think so.

MR. SCHULTZ: So I think we'd be in a position to have that accomplished.

THE COURT: Are you talking about when the indictments might be returned now, because the trial date is something different?

MR. SCHULTZ: Your Honor, I was simply suggesting that with the six months it may be that they are not at that point at a trial, we'd definitely be at a point where if there are indictments they'd be returned and possibly we would be at a point of trial depending when indictments are returned.

I think it is clear as far as, for example, my four clients being there and appearing as government witnesses, there is very little question that is going to occur. The government is in a position where the immunity provisions are such they would appear and there is no reason to think at this stage they are going to for some strange reason refuse and subject themselves to contempt. So at least we would be in a position where possibly we would be past the trial. If not, we would definitely be in a position --

THE COURT: --Mr. Vorenberg, can you answer this if you can, I won't press you: do you expect indictments will be returned before the expiration of the grand jury?

MR. VORENBERG: The grand jury terminates sometime in December. Here I am speaking for myself, but I would say I would be very disappointed and surprised if they were not. I think the one major question mark that I see is the present issue concerning the tapes and whether Mr. Cox would feel that that issue had to be resolved, so that is one uncertainty.

As I said, when we met here two or three weeks ago, even more uncertain is the question of when the trial will begin or how long it will take.

THE COURT: I understand. Those are all things none of us can predict.

MR. CHRISTOFFERSON: A point of clarification for my benefit: was it your clients' wish at the end of six months they be sentenced, that being e ither before a trial or after?

MR. SCHULTZ: I don't mean to use the six months as a firm cut-off point that is being insisted upon, I was simply using that as some sort --as opposed to saying open ends and continues up until trial is over with because as Your Honor pointed out, we don't know, it could be any time. We could end up with a long, drawn out litigation of the tapes and Mr. Cox decides he doesn't want to do anything until that is resolved and we could be three years from now and still not have a trial.

I think for obvious reasons neither my clients nor myself would like to see them incarcerated three years from now awaiting sentence, or awaiting trial. What my clients wanted to do was to propse a reasonable --

MR. CHRISTOFFERSON: --reserve a chance to say let's go ahead with sentencing even though--

MR. SCHULTZ: --that's right.

THE COURT: You ought to have a letter or some kind of agreement drawn up authorizing you to state to the Court that they are willing to wait for a period at this time of, say not more than six months, depending on what happens in the meantime. If indictments are returned then we will have to look at the

situation at that time. Put a time limit. Say they have no objection for sentencing to be continued at this time to six months from this day. We ought to know something by that time.

MR. SCHULTZ: I will have that in writing for Your Honor.

THE COURT: I think it ought to be in writing and read into the record so there is no mistake about it and everybody will understand each other. Then my guess is we ought to know something and hopefully we ought to know something within six months as to when indictments are going to be returned, or they may be returned before six months.

Anyway, I will go along on that if they have no objection.

MR. SCHULTZ: Your Honor, my recollection is that -- and this is a pre-Bureau of Prison study-- if I recall right, with respect to Mr. Liddy originally, the request had been made that pending the developments at that point that he be incarcerated at Danbury. I think the request was made by his attorney for purposes to being able to communicate more easily with him and that recommendation was sent by Your Honor, or request, to the Bureau of Prisons and was followed.

Again, it is very important to my clients in terms of this additional waiting period which they are willing to do that the transfer to Eglin occur. It in some respects seems a small point but they are in a position where that is in their mind a substantial right in effect that they are giving up in terms of

deferring final sentencing because that is the request that would be made and I think they meet all criteria for being down there as for the fact they are not finally sentenced.

THE COURT: As I indicated I am not going to get into the policy of the Bureau of Prisons. I will not call up there and ask they do it. If they do it on their own accord, that is their business. I have my functions and they have theirs. I will not get i nto the transfer.

MR. SCHULTZ: Could I ask whether Mr. Vorenberg would be willing after conferring with Mr. Cox, willing to approach the subject with the Bureau of Prisons to see if they would be amenable to accommodate that request?

MR. VORENBERG: I would personally think it is a reasonable request. Mr. Cox's office is in a rather strange position, it is not a regular part, or usual part of the Department of Justice and I think all I can do on that is to say I will talk to Mr. Cox. It may be what you want to do is simply make the request directly and see if the Bureau of Prisons comes back to His Honor. I will raise it. I simply don't know whatthe relationship is. It is hard for us to say that we in our role as special prosecutor have an interest in having them there rather than somewhere else. It is not as though we are saying please have them nearby because we want to see them.

THE COURT: Here is another thing you have to consider: it is easier to get them from Danbury here than from Florida here.

MR. SCHULTZ: I think, Your Honor, they have been before the Senate Committee twice and before the grand jury a number of times. I don't think they will be transporting them back and forth.

THE COURT: Anyway, I think you understand my position.

MR. SCHULTZ: Yes, Your Honor. I think what we will have to do is defer coming back to Your Honor until we try to clarify this.

THE COURT: Verywell.

* * * (4:35 p.m.)

CERTIFICATE

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

Nicholas Sokal
NICHOLAS SOKAL
Official Reporter