

CR 1827-72
US V G. GORDON
LIDDY ETAL

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THIS ENVELOPE CONTAINS THE ORIGINAL AND ONE CARBON COPY, TOGETHER WITH STENOTYPE NOTES OF COURT REPORTER NICHOLAS SOKAL, OF TRANSCRIPT OF PROCEEDINGS HELD IN JUDGE SIRICA'S CHAMBERS ON OCT. 16, 1973 (PAGES 1-7, INCL) IN RE MOTIONS OF DEFTS HUNT, BARKER, MARTINEZ + CONZALEZ, FOR RELEASE ON BAIL PENDING IMPOSITION OF FINAL SENTENCE.

J.P. Capitanio

TRANSCRIPTS ORDERED SEALED
UNTIL FURTHER ORDER OF COURT.

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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

OCT 17 1973

JAMES F. DAVEY, Clerk

Tuesday, October 16, 1973

The following is a transcript of proceedings held
in chambers of Chief Judge John J. Sirica, and ordered sealed
by the Court.

APPEARANCES:

Philip Lacovara
Gerald Goldman

Sidney S. Sachs
Henry Goldman

Daniel Schultz

Todd Christofferson
Richard Azzaro

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P R O C E E D I N G S - (11:40 a.m.)

THE COURT: Who wants to start off?

MR. LACOVARA: After we took the recess, Your Honor, I approached Mr. Sachs because I thought you had made a reference in the course of your questioning to the possibility of imposing sentence at this stage and then moving on to disposition of the motions to withdraw the guilty pleas and I raised the question both of Mr. Sachs and Mr. Schultz whether the defense would have any objection to that course and I said that the defense since that course might clear up some of the uncertainties that seemed to be plaguing the defendants, and I said that the government might not have any objection to prompt disposition of sentence under those circumstances.

THE COURT: Well, maybe I was in error when I said it but I will hear discussion about it.

MR. SCHULTZ: Your Honor, we don't have any objection at that at all. We are prepared to go ahead with final sentencing today.

THE COURT: I can't do it today, I can do it maybe this week.

MR. SCHULTZ: We are prepared to go ahead this week with it. We are prepared as I told Your Honor before, we are prepared to wait indefinitely. We would be happy to go forward with the final sentence.

THE COURT: What happens to the motion then?

MR. SCHULTZ: My understanding is the government is stipulating in its agreement that the fact we would go ahead with sentencing wouldn't make the motions academic, that they would still go ahead and be heard.

THE COURT: You mean if you are not satisfied with the sentence you might present your motions?

MR. SCHULTZ: The motion is already filed and it would be a matter of going forward with sentencing prior to determination of the motion instead of waiting until after determination of the motion.

THE COURT: You still want to argue the motion to withdraw your plea, I suppose?

I don't follow you. Lets hear what you have to say.

MR. SCHULTZ: If I could just finish before Mr. Sachs begins, it would at least do this much, judge: it would put the men in a position, (1) where they don't have this uncertainty; it would permit them, depending obviously on what the Court would do on sentencing, would put them in a position where they would be eligible for parole or working toward it. It would put them in position where the Bureau of Prisons can make determinations which it cant now as to where the men ought to be held.

As Your Honor knows on all my clients the indications were no security risk if there is going to be incarceration, a minimum security place such as Eglin would be the best place for them. At least put them in contact with their families,

leading to ultimate release. Those things at least would be eliminated as problems for us if we could go forward with sentencing.

THE COURT: Do you want to say something?

MR. SACHS: I think I better, judge.

I am a little bit in a quandary. I understand that the inference I guess we all drew, the possible inference from what you said was the possibility that in order to be really practical about this thing, what the thing to do might be was to have sentence imposed now.

I have been thinking in the last couple days I might try to provoke such a discussion and I didn't, but then Phil came up (Lacovara) and he suggested it, it was an idea that certainly has great interest for us, especially when it was coupled with the notion we would preserve our motion.

Now that really isn't such a great deal in my estimation because our motion at least is really a habeas corpus, it is a 2255, so the only thing we have to worry about would be having, if we did withdraw it that it was with the understanding of prejudice, so we would agree not giving up that right would be easily arrived at. But, judge, I have something a little more delicate troubling me and I have been debating whether to bring it up and I think I should. I really don't think Your Honor appreciates the terror that Hunt at least is in. I can only speak for Hunt. He really doesn't know that you are not going to

sentence him for 30 years, or 25, or 10, he really doesn't know that so we have been trying to figure out how to get you recused from this case, and we do have a possible argument and that is our contention, the contention that you had no right to indicate that your sentence would consider his cooperation; that is a wrong consideration.

So that is a point we have had in mind depending on the way things worked out we might one day present.

So now I find myself in a situation. I think this other suggestion is a very practical suggestion, really makes a lot of sense because there is a terrible burden on Hunt in trying to prove his motion. I mean it is a financial burden and I am not sure --

THE COURT: --now upon reflection, if I gave that impression I don't know, I really intended it that way. I believe in taking things in chronological order. The motion before me now is for bail, right?

MR. SACHS: Right.

THE COURT: You want to file a motion to disqualify me and affidavits filed, we will meet that issue at the proper time. It is too late now because I am in the middle of this proceeding.

MR. SACHS: We are not doing it now.

THE COURT: That is up to you. We will come to that at the proper time if you file such a motion.

I believe we should proceed as follows: I have heard the arguments, I have given both sides great latitude on the argument. I was working on my prepared statement while you gentlemen were outside. It is not going to be too long. I am going back on the bench, I am going to make my decision and give the reasons why I am not going to grant bail. Then if you wish, of course you may file an appeal with the Court of Appeals, you understand, which is your right.

Depending on what they do, or if they don't act we can set a date anyway for the hearing of this motion to withdraw the pleas.

MR. SACHS: It is now set for the 29th.

THE COURT: That is right. And both sides bring your witnesses in. So that is the way the Court will proceed as I originally intended. I think that is the fair way to do it.

MR. SACHS: Then what I would like to do in the same spirit which we have been talking, we would then expect to bring before Your Honor the fact that our motion for compliance with the Court's discovery order hasn't been ruled on and ask the Court to postpone, and I would really think indefinitely, at least until we get a ruling on the bond from the Court of Appeals.

THE COURT: I'll hear you on that later, you make your motion later on the record.

MR. SCHULTZ: Your Honor, I would like to point out so it is clear our position is not the same as that of Mr. Hunt's

attorney. We don't have such motions in the background. We are not only more than willing, we would be very interested in going forward with final sentencing today, this week, if the Court can do that. We don't have any other ancillary issues floating around of things we are going to do.

THE COURT: If the Court of Appeals directs me to impose final sentencing I will abide by the mandate at the proper time. The thing to do is keep the record straight. I will rule on the motion before me and you take whatever action you wish to take.

I am sorry I gave you that impression.

MR. SACHS: Judge, this is something in the background. I wouldn't be prepared to do today and I thought to be forthright about it--

THE COURT: --I understand. So I will be ready in about five or ten minutes to deliver my opinion.

All right.

We will seal this portion of the record.

* * * (11:50 a.m.)

CERTIFICATE

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

Nicholas Sokal
NICHOLAS SOKAL
Official Reporter