

United States District Court
For The District of Columbia

File

FILED

FEB 13 1973

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

JAMES F. DAVEY, Clerk

Criminal No. 1827-72

TRANSCRIPT OF PROCEEDINGS

Tuesday, January 2, 1973

(In-Chambers)

COPY FOR: Court File

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Tuesday, January 2, 1973

The above-entitled cause came on for a hearing in chambers at 3:00 o'clock p.m., before THE HONORABLE CHIEF JUDGE JOHN J. SIRICA.

APPEARANCES:

DONALD CAMPBELL, Ass't. U.S. Attorney
AUSTIN MITTLER, Esq.
HERBERT J. MILLER, Esq.
TIMOTHY DYK, Esq.

Also present:

Todd Christoferson, Law Clerk
Richard Azzaro, Law Clerk

P R O C E E D I N G S

THE COURT: I thought we would get together and go over this order signed by Mr. Silbert.

The lawyer from Connecticut, Mr. Mittler signed it; Mr. Dyk, Mr. Miller and Mr. Silbert, and these other two people signed the copy -- only two names.

We want to go over the order so I am sure I understand you c orrectly. This last sentence covers it well:

"The Court will hold said transcript pending further order of the Court."

We are to first play the tapes, the complete record transcription. And am I correct in this, the voices --that is the attorneys, or Mr. Nelson and Mr. Ostrow. And it is left up to me when to turn this material over if I deem it is necessary. I have to first listen to the tape and compare it with the published story or statement of Mr. Baldwin and I suppose I have to listen to any cross examination on the grand jury testimony if I feel there is anything of an impeaching nature, then turn it over to the defense. Is that the understanding?

I am not going to turn it over to the defense now. Mr. Mittler, you are the liaison counsel. Is that your understanding?

MR. MITTLER: That is my understanding, Your Honor.

THE COURT: That is the reason I want you here so there is no misunderstanding.

MR. MITTLER: One thing, as far as excising it, it was my understanding the only thing excised would be voices of attorneys representing Mr. Baldwin and insofar as any questions posed to Mr. Baldwin by either Mr. Ostrow or the other reporter, Mr. Nelson, that if and when Your Honor decided that material would be turned over we certainly would get the questions as well.

THE COURT: I think you have to have the questions, because suppose a question now asking for an explanation of how do you reconcile this with something you said, you have to have the question to get what Mr. Baldwin said in the proper context. Am I right?

MR. MILLER: I would agree with that, Your Honor, while originally I felt all voices should be excised. I agree if the answer could be misinterpreted absent the question, so that in signing this order I had assumed that the voice of Mr. Nelson relevant to the question he was putting, in other words, if he makes some off-the-record asides, certainly the question to which the answer --

THE COURT: --the question of timing, when should I listen to these tapes, number one? If I listen to them this week I think it would be a good idea to have Mr. Dyk here and Mr. Miller. They probably know what is in the tapes.

MR. DYK: I never listened to them, Your Honor.

THE COURT: You certainly have a right to listen to them, you represent the paper.

MR. MITTLER: I have no objection.

THE COURT: You have no objection. You can speak, I take it, for the other defendants because you are permitted to enter into these agreements. Why don't we make some arrangement to hear them this week? How long do you think it will take?

MR. MILLER: I think five hours, Your Honor.

MR. DYK: I wonder, Your Honor, if it would be easier to have them transcribed?

(At this point was an off-the-record discussion.)

MR. MITTLER: Does Your Honor contemplate turning this over after Baldwin testifies?

THE COURT: I haven't made up my mind. I have to decide when I have to turn it over if at all. I am going to be looking for some statements in the tapes that might tend to contradict Baldwin, that is the purpose of it, if there are any in there. I might turn it over after he is cross examined, after I compare it with the published story, take into consideration the grand jury testimony, I just don't know. That is one of the reasons I called you down here.

The last sentence is, "the Court will hold said transcript pending further order of the Court." It is pretty broad. It is discretionary when I do it.

MR. MITTLER: We thought Your Honor might possibly

consider turning over to the defense at the same time the grand jury material will be turned over to us which I believe under prior order of this Court would be this Friday and certainly it would be very helpful to us considering the voluminous amount of material we have got to digest here if this material could be made available as far in advance as possible.

THE COURT: Mr. Campbell, what do you say?

MR. CAMPBELL: We have no objections, Your Honor.

THE COURT: The government has no objections. What do you say, Mr. Miller?

MR. MILLER: If the Court please, not having heard the tapes, I take no position and can have no position on what Mr. Mittler says. I will, however, if they are going to be transcribed, like the opportunity to quickly review them before turning them over.

THE COURT: I think you should, and also can help me in deciding what can be excised so far as voices are concerned.

MR. CAMPBELL: Your Honor, in connection with that, anything on the tape which is Mr. Baldwin relating any privileged conversations that he overheard, it is our position that they also should be deleted.

THE COURT: Now give me an example.

MR. CAMPBELL: Husband and wife.

THE COURT: Husband and wife talking over the telephone

that they picked up, appears on the logs, that shouldn't be disclosed. You are not looking for that kind of evidence -- some secretary talking about going out with the boss or anything like that, if that is over the wire.

MR. MILLER: Not if I were the boss.

MR. DYK: Your Honor, as you know it has been our position that once Mr. Baldwin consented to the release of this material that we felt there was no further confidentiality in it, but I would just suggest in a kind of theoretical way the practice you suggested at first of making it available only after Mr. Baldwin had testified might be a preferable practice and when you would have the opportunity to compare it with his actual testimony.

THE COURT: That is something I would like to think about, leave open, what I might wind up doing, frankly.

Now, maybe if I can get you gentlemen to sign this order here, the one that contains Mr. Baldwin's signature, I don't know why they didn't sign that.

MR. DYK: I believe it was done that way, Your Honor, so we could get it to you on Friday. We had to send a messenger to Connecticut.

THE COURT: I will sign the order now. This is the 2nd day of January.

(Court signed the document and counsel also signed the document.)

THE COURT: Can you gentlemen think of anything else? I think we have a pretty clear understanding how we are going to handle this matter.

Mr. Campbell, any questions?

MR. CAMPBELL: No, Your Honor.

THE COURT: Mr. Dyk?

MR. DYK: No, Your Honor.

THE COURT: I appreciate you all coming down.

Is it agreeable to all present in connection with this matter that the sealed envelope which was turned over to me in open court by Mr. Dyk which contains the tapes can now be unsealed and then the tapes released to the reporter? Or do you wish to keep them sealed until you actually get the tape recorder?

MR. MILLER: I have no objection to it being unsealed and turned over to the reporter now with the understanding of course the reporter will keep it confidential.

THE COURT: Out of an abundance of caution suppose we leave them in the safe as they are. They are locked up in a safe. Let's leave them as they are now until we actually get the tape recorder.

MR. MILLER: I have to look at them, Your Honor, to see what kind they are.

MR. DYK: They are cassette tapes. Aren't they all the same?

MR. MILLER: If they are I have a machine which will play them.

MR. CHRISTOFERSON: I think there are two sizes.

THE COURT: Would you look at them now? It might save time. Tell Mr. Capitanio to get the sealed envelope, break the seal, let them look at it and then put it back in the envelope and reseal it and put it back in the safe. All right.

* * * (3:20 p.m.)

CERTIFICATE

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


NICHOLAS SOKAL
Official Reporter