

EXHIBIT 15

N. Y. C.

11-15-49

Testimony on
Motion for Return of
Property on Ground
of Illegal Arrest.

DIRECT EXAMINATION BY MR. PALMER:

Q How do you do, Mr. Lamphere. Mr. Lamphere, you are connected with the FBI? A That is right.

Q How long have you been connected with them?

A Since September, 1941.

Q Are you a lawyer? A Yes, sir.

Q Prior to March 4, 1949, did you prepare a decoy message, Defendant Coplon's Exhibit 1 for identification (showing to witness)?

MR. KELLEY: I object to the characterization at this time. The document speaks for itself.

MR. PALMER: How can it? There is no jury here.

THE COURT: It was prepared as a paper.

THE WITNESS: I prepared this memorandum dated January 27, 1949, from the Director to Mr. Peyton Ford, assistant to the Attorney General.

MR. PALMER: I ask that the "identification" be changed to "evidence".

THE COURT: Do you claim it is material?

MR. PALMER: Oh, yes.

THE COURT: All right, I will receive it in evidence.

(Marked Defendant Coplon's Exhibit 1 in evidence.)

Q This memorandum says "Strictly Confidential." Who told you to prepare this Exhibit 1? A No one.

Q This was a decoy, wasn't it? A No, sir.

Q What is it? A It is a memorandum prepared with two purposes.

Q What purposes? A The first purpose was to determine if Judith Coplon or anyone else would take the information contained in that memorandum outside of the Department of Justice. The second purpose of that memorandum --

Q And do what with it? A And give it to anyone.

Q Give it to anyone? A Let me finish my answer.

THE COURT: Yes. Now please, Mr. Witness, I will give the instructions. Go ahead. To determine whether Miss Coplon would take it from the office and give it to anyone? What was the second purpose?

THE WITNESS: The second purpose was that if the information contained in that memorandum was taken from the Department of Justice and was given to the Soviet Intelligence it would deceive the Soviet Intelligence Service.

Q In other words, this memorandum contained information which if the Soviet Intelligence got it it would deceive them because of the fact that it was untruthful, is that right?

A A portion of the top memorandum contains information which is fictitious.

Q Who told you to prepare this information that you say was partially fictitious?

THE COURT: How is that material?

MR. PALMER: All right.

THE COURT: It was prepared in the office.

MR. PALMER: All right.

Q Up to January 27th when this was prepared, will you kindly tell me did you ever hear of Judith Coplon?

A Yes, sir.

Q Did you ever hear of Mr. Gubitchev? A Yes, sir.

Q And in connection with Judith Coplon did you learn that this girl outside of working for the Government in New York and in Washington had ever received instructions of any kind or character towards espionage or towards surveillance of any kind or character or to avoid surveillance? Did you ever hear of that?

A No, sir.

Q When you got this particular memorandum up, were you familiar with the FARA, the Foreign Agent Registration Act?

THE COURT: How is that material?

MR . PALMER: All right.

Q Anyway, so far as this information is concerned--

THE COURT: You say "All right, all right." You mean you withdraw your question?

MR. PALMER: Yes. When I say "All right", I withdraw it. That is all I mean whenever I say "All right."

I am then taking that as a signal, and I am using --

THE COURT: You are withdrawing the question.

MR. PALMER: Yes, I am withdrawing it.

THE COURT: Ordinarily, Mr. Palmer, you are not required to take an exception to my ruling, but in view of your statement here and the manner in which you are conducting the examination, I suggest that where you object to my ruling, you note your exception on the record.

MR. PALMER: Yes; and will your Honor also say that when I don't object to it, I think I should stand by what your Honor is apparently saying, and I say, "All right, all right," I mean by that not to do anything else but withdraw the question.

THE COURT: All right.

Q Now, did you ever hear at any time before today that this particular memorandum was ever placed upon the desk of Miss Coplon or that she ever received it? I am talking about Exhibit 1? A No, sir.

Q Did you ever hear in any way, shape, manner or form that this particular memorandum and the fictitious information contained therein which was intended to fool the Soviet Intelligence Service had ever been received by them? Did you ever hear that? A I heard that the memorandum reached the Department of Justice, yes, sir.

Q I didn't ask that. The Department of Justice is not

the Soviet Intelligence, is it? A No, sir.

Q I am asking you did you ever hear that this particular fictitious creation, Defendant's Exhibit 1, had ever reached or was ever turned over in any way, shape, manner or form to any portion of the Soviet Government or its intelligence service? Did you ever hear that?

A I didn't hear that.

Q Did you ever hear from anybody that this girl ever took anything out of this particular memorandum and gave it to anybody? Did anyone tell you that? A No.

BY THE COURT:

Q Did anyone ever tell you that this defendant Coplon at any time had had access to this exhibit?

A I don't recall, your Honor. I believe they did tell me that it reached Miss Coplon, but I am not sure.

BY MR. PALMER:

Q And did they also tell you that upon this particular memorandum, Exhibit 1, it said -- can you read that please (indicating)? A "Foley, Give this immediate attention."

Q And Foley is the head of that department and she works under him? A That is correct.

Q And this information on here; Is that initialed J.H. Hoover? A It is initialed J.E.H.

Q Director of the FBI. To your knowledge did Mr.

Hoover have anything at all to do with or direct you in anywise to prepare this fictitious memorandum for the Soviet Intelligence?

3 A Mr. Hoover did not direct me to prepare that.

Q Did Mr. Ford do that? A No, sir.

Q But you have got the name on here of Mr. Peyton Ford, Assistant to the Attorney General, from J. Edgar Hoover, Director, FBI. It is on there, isn't it?

A Yes.

Q That is fictitious, isn't it? A No, sir.

Q All right. Did J. Edgar Hoover instruct anybody to your knowledge to give that to Mr. Peyton Ford under whom Mr. Whearty is employed? A I don't know.

Q Between January 27, 1949, when this fictitious creation came into existence, Exhibit 1 of the defendant, and March 3, 1949, did anyone tell you that they had seen this girl give any papers of any kind to Mr. Gubitchev? Did anyone ever tell you that? A No, sir.

Q Did anyone ever tell you that Mr. Gubitchev had ever met that girl between those dates?

A Between what dates again?

Q January 27th and March 4, 1949? A Yes, sir.

Q Who told you? A Mr. Fletcher.

Q That is your chief? A That is right.

Q Mr. Fletcher, your chief, didn't tell you, and if

I am in error, you will correct me, that Mr. Gubitchev had ever given Miss Coplon anything or that Miss Coplon had given anything to Mr. Gubitchev? Is that right?

A That is right.

Q Now, I call your attention to your testimony concerning March 3rd. Do you remember testifying in Washington?

A Yes, sir.

Q Do you recall testifying that in connection with this particular exhibit 2 for identification you were told to put in some national defense misinformation in there?

A No, sir.

Q What was said about national defense by you in connection with that second paper? A If I recall my testimony I testified that I was instructed to place in that memorandum information relating to the national defense.

Q Did you know that espionage or attempted espionage relates to national defense? A Yes, sir.

Q Who told you to put in this memorandum information concerning national defense, which would then bring it within the realm of national defense? Who told you that?

A Mr. Fletcher.

Q Did Mr. Fletcher tell you prior to preparing this memorandum -- by the way, you prepared it, didn't you (showing to witness)? A Yes, sir.

MR. PALMER: I offer it in evidence. I ask in

other words that Defendant's 2 for identification be changed to Defendant's 2.

(Defendant's Exhibit 2 for identification marked in evidence.)

Q About what time of night was it on March 3rd that you were told to prepare this matter, this decoy containing misinformation concerning national defense?

A I was told to prepare that particular memorandum on the day of March 3rd, 1949.

Q All right. About what time I said.

A I don't remember the exact time.

Q It was at night and you testified about 5.30?

A I didn't testify it was at night. I testified I gave the memorandum to Mr. Fletcher at about 5.30 p.m., after completing it.

Q When were you told to do it? A Sometime during the day. I imagine between 4 o'clock and 5.30.

Q Up to 4 o'clock had you been told by Mr. Fletcher or anyone else that this girl, Miss Coplon had ever attempted to deliver any paper of any kind to Mr. Gubitchev?

A No, sir.

Q Or that she actually had given any paper of any kind affecting national defense or anything else? Had you been told that by anybody? A No, sir.

Q Had you ever been told that Gubitchev had ever given

this girl anything of any kind or character or attempted to, regarding national defense or otherwise? Had you been told that? A No, sir.

Q Now I want to call your attention to this particular Exhibit 2, and I ask you -- do you see the name "Geophone" in there? A Yes, sir.

Q And that was prepared when? A On March 3, 1949.

Q That is the information concerning national defense, is that correct? A That is part of the information relating to national defense.

Q Now then did you on March 3, 1949, when you prepared this paper know what a geophone is? A When I prepared the paper, yes, sir.

Q Did you ever see a geophone in all your life?

A No, sir.

Q I read to you from Exhibit 2 of the defendant and I ask you whether the information contained upon this paper, Exhibit 2, was turned over to you by anybody?

A The memorandum was turned over by me to Mr. Fletcher.

Q To Mr. Fletcher? A Yes.

Q Do you know whom he turned it over to?

A Of my own knowledge, no, sir.

MR. PALMER: I don't mean this on the record, but I just wanted to talk to your Honor, as there is no jury here. I feel in that way we can save some time.

THE COURT: All right, you may do so.

MR. PALMER: Your Honor, the testimony in Washington that Mr. Whearty - and I don't want to say in any way that he has to testify again - was to the effect that --

THE COURT: It is up to you, Mr. Palmer, if you want to subpoena anybody.

MR. PALMER: I understand, but I mean I will take his word for it without his being sworn. I want to say that, your Honor, because there is no jury here and I don't say it because even if the jury were here - I see you smiling - I would take his word for it. I simply think he is over-zealous, but that is neither here nor there. Mr. Whearty testified that on the night of March 3rd while he was in the office with Mr. Ford and some others, that this particular Exhibit 2, that is, this message, decoy message of March 3, was delivered there and he was there when they sent for Mr. Foley and Mr. Foley who is going to be a witness here received it, and at that time there was written on there "Foley, Give this your immediate attention," and the information contained in this particular letter or communication was partially true and partially false, and I want Mr. Whearty if he will to agree upon the record that I have stated the facts with regard to that; that on that night after this message

was prepared, whether he, Mr. Whearty, was not present, and if his personal friend, Mr. Foley, didn't get this particular communication Exhibit 2 in his presence on the night of March 3rd?

MR. WHEARTY: We are willing to stipulate that this memorandum was delivered to Mr. Peyton Ford on the evening of March 3rd by Howard B. Fletcher of the Federal Bureau of Investigation. We are further willing to stipulate that I was present at the time; within a very few moments of that delivery Mr. Foley was summoned to Mr. Ford's office and appeared there. At that time in my presence Mr. Ford handed this memorandum, Exhibit 2 to Mr. Foley with instructions to see to it that it was delivered to the defendant Coplon.

MR. PALMER: And delivered to the defendant Coplon.

MR. WHEARTY: Now you made a further statement with respect to the truth or falsity of that. Do you want anything --

THE COURT: No. You concede that to be the fact?

MR. WHEARTY: It is partially true and partially false.

MR. PALMER: I will get that.

THE COURT: The Court may accept this statement as though sworn to by the witness.

MR. WHEARTY: Is that sufficiently full for you, Mr. Palmer?

MR. PALMER: Yes.

THE COURT: Now, gentlemen, what else?

MR. PALMER: According to Mr. Whearty's testimony, although Mr. Whearty has only thus far--

THE COURT: Never mind. Don't make comments. What do you want to say?

MR. PALMER: According to Mr. Whearty's testimony Mr. Whearty said that this paper was partially false and partially true, and it was partially false in the following particular: "as supplementary to my memorandum to you dated January 27, 1949, regarding the Amtorg Trading Corporation" --

THE COURT: How is that material?

MR. PALMER: It is very material, if your Honor please, because I want to show you, it is my argument that it was all false and even --

THE COURT: Assuming it was all false? Assuming that it was all false: for the purpose of this hearing how is it material? It is a matter for you to press on trial.

MR. PALMER: I beg your pardon?

THE COURT: That is a matter for you to press on trial.

MR. PALMER: All right.

THE COURT: I am not prepared to pass upon the guilt or innocence of these defendants in this hearing.

MR. PALMER: Very well.

BY MR. PALMER:

Q Now, in connection with the geophone, Mr. Lamphere, was the information contained in this letter Exhibit 2 by geophone a matter which you had prepared as affecting national defense? A Yes, sir.

Q Read from Exhibit 2, "I have previously furnished you information concerning the efforts of the Amtorg Trading Corporation to obtain equipment relative to atomic research development" --

THE COURT: Now how is that material?

MR. PALMER: It is very material, your Honor. This I tell your Honor is material.

THE COURT: All right. Go ahead.

Q (Continuing) "In this connection this Bureau has recently learned through an informant that the Amtorg Trading Corporation has been in contact with the Geophysical Research Corporation concerning geophones to measure blast pressures which this company manufactured in small quantities for the original bomb tests at Alamogordo. The fact that these geophones are used for the purpose of making blast measurements at Alamogordo and other testing points is highly restricted, but apparently the

Amtorg Trading Corporation must have some knowledge of the use of these instruments."

Now I call your attention to this magazine -- never mind about the others -- Journal of Scientific Industrial Research of May, 1949, printed in India by Hindus, and I call your attention to page 85 thereof with regard to --

THE COURT: I am reluctant to think that you are trifling with the Court.

MR. PALMER: Why should I trifle with the Court?

Q -- and I ask you to read this particular paragraph.

MR. PALMER: May I, if your Honor please, give you the case of United States v. Heine?

THE COURT: No, no. Go ahead.

Q -- and I ask you whether or not the information concerning geophones was generally known as blast measurements in mines throughout the entire civilized world?

MR. KELLEY: I object to it as wholly collateral to the issue.

THE COURT: I don't see how it is material. Objection sustained.

MR. PALMER: I take an exception.

Q In so far as the information that this letter contains concerning geophones, that is information which you say affects national defense, is that right?

A A portion of the information that you read a moment ago is information which reflected-- which has regard for the national defense.

Q So far as you are concerned you know then of your own knowledge that prior to that time that geophones were not advertised in magazines in this country and throughout the entire world, even though manufactured by this organization called the Geophysical Company of Arlington, Virginia?

MR. KELLEY: Same objection.

THE COURT: Overruled. We might as well let the question be asked and answered, because we will have it again if we don't.

A I don't know that, no.

Q You don't know it? Well, who told you then that the information contained in this letter containing this creation of yours, affected national defense and was unknown to the Soviet or to the entire world? Who told you that? A I caused that information to be secured from the Atomic Energy Commission.

Q Were you there? A No, sir.

Q Do you know the name of the person who gave it to the person that you sent over there?

THE COURT: Objection sustained.

MR. PALMER: Very good, that is all.

MR. KELLEY: No questions.

(Witness excused)

THE COURT: Next witness.

MR. PALMER: Just a moment. Now I ask, if your Honor please, that this particular magazine, the only one I have, be marked as an exhibit, the Journal of Scientific and Industrial Research, and under the case of U.S. v. Heine in our Circuit Court of Appeals, I ask that this particular magazine be marked in evidence.

THE COURT: Received in evidence. I fail to see the materiality of it but we will take it in evidence. (Marked Defendant Coplon's Exhibit 3 on the hearing.)

MR. PALMER: Under the decision of U.S. v. Heine.

THE COURT: I know the case.

MR. PALMER: I thought you would.

Is Mr. Murphy here?

MR. WHEARTY: I really don't know. I will see if we can locate him or not.

MR. PALMER: Will you find out, please.

MR. WHEARTY: I will be glad to inquire. However you just made that request just before we came in here.