

ATTACHMENT

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RE: IN CHAMBERS PROCEEDING

:
United States Courthouse
Brooklyn, New York

: April 15, 1993
9:30 o'clock a.m.

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TRANSCRIPT OF IN CHAMBERS PROCEEDING
BEFORE THE HONORABLE JACK B. WEINSTEIN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: MARY JO WHITE
United States Attorney
BY: JOHN GLEESON, and
GEORGE STAMBOULIDIS
Assistant United States Attorneys
225 Cadman Plaza East
Brooklyn, New York 11201

Court Reporter: Henry R. Shapiro
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Brooklyn, New York
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1 THE COURT: Is this a grand jury matter?

2 MR. GLEESON: Yes.

3 THE COURT: Is there another identification that you
4 can give?

5 MR. GLEESON: In re: Grand Jury proceeding, our
6 continuing Colombo Family investigation.

7 MR. GLEESON: John Gleeson.

8 Thank you for seeing us this morning.

9 We've asked to see you in connection with this grand
10 jury proceeding. I should first mention why we've asked to
11 see the Court. This relates to our continuing grand jury
12 investigation into the Colombo Family, and resulting
13 indictments have been before the Court, some indictments are
14 currently pending before the Court, and we're here
15 specifically-- basically to make a record with respect to a
16 proposed contact with a represented target of the
17 investigation, and in fact he's not only represented in
18 connection with the grand jury investigation, but there are
19 Sixth Amendment implications as well, because he has already
20 been arrested.

21 We're here before, your Honor, as opposed to the
22 miscellaneous judge or another judge, because the case, once
23 indicted, will be before the Court, unless the Court decides
24 otherwise, for there are a number of other indictments arising
25 out of the investigation.

1 Specifically, an individual by the name of Frank
2 Sporacco also known as "Frankie Blue Eyes" about whom the
3 Court has heard some testimony, not a lot. You may recall he
4 was arrested on April 4th, with Teddy Persico and with Carmine
5 Sessa. Sporacco has been arraigned on a complaint. He had
6 not been previously been indicted, although Sessa was a
7 fugitive. Sporacco and Persico were arraigned on a complaint,
8 and with the government's consent both Sporacco and Persico
9 have been released on conditions that include home detention.
10 In fact yesterday, Sporacco, who is represented in this period
11 where he-- there is a case pending against him, by an attorney
12 Michael Worshor. Sporacco -- the Court, by way of background,
13 there has been -- the phenomenon I'm about to describe is not
14 a new one to us, it's starting to occur more and more
15 frequently. There have been a number of people involved in
16 organized crime who have decided to cooperate with the
17 government-- Sporacco may be one of those, because yesterday
18 he reached out for FBI agents who are working with us, two of
19 those agents are in the Court's vestibule just in case the
20 Court wants to inquire of them.

21 Sporacco has reached out directly to the agents and
22 says that he wants to talk. We have reason to believe he
23 wants to talk about cooperation. Yesterday when we learned
24 this from the agents, we told them that we have both an
25 ethical obligation and an obligation that arises from the

1 Sixth Amendment, that precludes us under normal circumstances
2 from any contact with someone who has both been arrested and
3 represented by counsel, without the consent of their
4 attorney.

5 What we propose to do -- by the way, we have had
6 sufficient contact with Sporacco, we asked the agent to do
7 this, to ask him whether -- what the reason is, why he doesn't
8 want his attorney involved in his communications with the
9 government, and his reason, which is no surprise to us, and
10 it's a concern, and this is by no means to derogate Michael
11 Washor, which translation sends who the individual lawyer is,
12 but this prospective witness, he's currently a defendant, is
13 concerned if his attorney finds out, his alleged criminal
14 cohorts will find out and he may be -- he and his family may
15 be in some physical danger. We credit that concern.

16 We think there is a good faith basis for it and what
17 we're making a record about, and we'll of course abide by the
18 Court's guidance or direction, we intend to do what we've done
19 in the past with similarly situated individuals, that is we do
20 intend to meet with him to

21 A, in a very limited way, to do two things: One, to
22 confirm what the agents have told us he already said, which
23 he's afraid of talking to the government regarding
24 cooperation, and Mr. Washor finding out. If that is true, and
25 if he wants to negotiate with the government regarding

1 cooperating, we will tell him we can't deal with him in this
2 regard, but we can assist him in obtaining counsel, who he can
3 trust, to represent his interests in dealing with the
4 government.

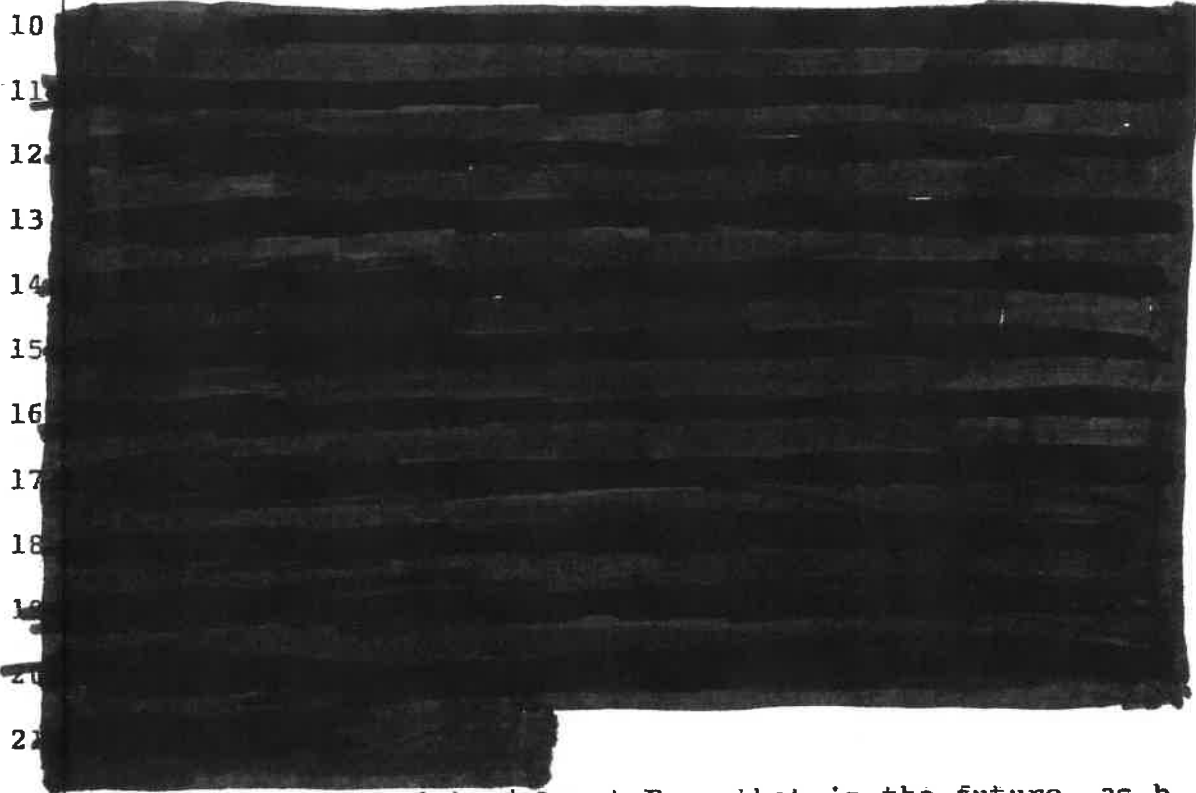
5 We don't purport to negotiate with him, we don't
6 purport to debrief him. But at this stage it's our judgment,
7 based on past experience, that if, for example, counsel were
8 to be appointed for him or we were to tell him that he must
9 come before the Court now, we're not certain that he will.
10 Because of the distrust of us and a distrust of the process
11 and because we're not exactly sure if cooperation is exactly
12 what he wants.

13 In any event, your Honor we would like to -- we
14 intend to, notwithstanding our recognition of our ethical
15 obligations, and of the Sixth Amendment, we think that this is
16 the type of instance in which it simply can't be the case--

17 We respectfully submit, it can't be the case that the
18 limited type of contact that we intend to have is precluded by
19 7104 or by Messiah and its subsequent cases, because this
20 is one of those instances, which there is, I think, and we
21 submit ample reason to believe that there is a need for
22 contact from the prospective of the arrested defendant. There
23 is a need for this limited contact in the absence of his
24 counsel's knowledge, if he were to fire his counsel now that
25 would send the same sort of signal sharing with counsel his

1 desire to -- his potential desire to cooperate would have and
2 we thought we'd make a record of that, because we recognize
3 that this is very delegate -- a very delegate issue,
4 implicating both ethical and legal concerns.

5 This is the way we have handled it in the past. We
6 think it's the correct way to go. Of course, if the Court
7 directs us not to, we won't do it. We nevertheless thought it
8 was appropriate before we did it to make the record and there
9 is one other thing.



22 We have advised Agent Favo that in the future, as h
23 brother agent did, when he hears from Sporacco to call us
24 before doing anything. We told him it's both imprudent and
25 potentially in violation of the person's rights and

1 potentially could cause an ethical problem for Mr.
2 Stamboulidis and I. He understands that. He'll not do it in
3 the future, but I thought it was appropriate, while we're
4 here, to make a record of that contact.

5 Finally, this is just by way of information to the
6 Court. Carmine Sessa, who is an indicted defendant, is
7 represented by counsel. We expect, if the Court is around
8 tomorrow, we expect to request the Court, provided we can have
9 the agreement executed and an information drafted, we expect
10 to ask the Court to entertain his request to enter a plea of
11 guilty tomorrow before he's taken away to another detention
12 facility. That is not part of our application now.

13 THE COURT: With respect to the second part, I hadn't
14 planned to come in tomorrow, but I can certainly if it will
15 convenience the government or take it later today. Whatever
16 you want.

17 MR. GLEESON: If we could contact chambers and see if
18 we get the lawyer, the agreement and the information.

19 THE COURT: I'll do whatever I can to assist the
20 government.

21 MR. GLEESON: Thank you.

22 THE COURT: With respect to the main point I think
23 you've operated properly.

24 You say he reached out. What do you mean "he reached
25 out"? How did he reach out?

1 MR. GLEESON: My understanding, he made a telephone
2 call from his home to the FBI offices.

3 THE COURT: And said what?

4 MR. GLEESON: Would you like us to bring the agent
5 in?

6 THE COURT: Bring the agent in. (Agents present.)

7 THE COURT: Good morning, gentlemen.

8 Why don't you sit down and make yourself
9 comfortable. Would you rise, please

10 C H R I S T O P H E R M. F A V O,


11 M I C H A E L D. J E N K I N S

12 having been first duly sworn, was examined
13 and testified as follows:

14 AGENT FAVO: Christopher M. Favo.

15 AGENT JENKINS: Michael D. Jenkins.

16 THE COURT: Would you like to make a brief breach
17 record in answer to the question I posed?

18 MR. GLEESON: The Court inquired as to the nature of
19 the contact. I've informed the Court of the contact that was
20 made by Frank Sporacco to the FBI, and also I have given a
21 description of the contact made yesterday with 

22 With respect to our intention to speak to Frank
23 Sporacco, the Court inquired of the nature of the
24 communication from Sporacco to the FBI that caused us to want
25 to speak to him.

1 MR. JENKINS: I believe that would best be addressed
2 by me.

3 MR. GLEESON: How did he contact you.

4 AGENT JENKINS: Telephone.

5 MR. GLEESON: When was this.

6 AGENT JENKINS: Yes, the day before and the latest
7 contact was early this morning.

8 THE COURT: He called you.

9 AGENT JENKINS: Yes, your Honor. Called me and on
10 one occasion beeped me and I returned the call.

11 THE COURT: Give me the conversation, what he said,
12 what you said beginning with the first.

13 AGENT JENKINS: To paraphrase or give you the gist of
14 the conversation, your Honor, Mr. Sporacco was interested in
15 speaking with me --

16 THE COURT: What did he say to you, how did he open
17 the conversation.

18 AGENT JENKINS: When are you going to be able to see
19 me and explain to me what is going on and that I might be able
20 to ask you some questions about my alternatives. He's
21 interested--

22 THE COURT: That was the first?

23 AGENT JENKINS: Yes, your Honor.

24 THE COURT: That was what the first occasion he
25 called you?

1 AGENT JENKINS: Yes.

2 THE COURT: What did you answer?

3 AGENT JENKINS: I told him that I would try to set up
4 a time and find out a time when myself, Agent Favo, and my
5 supervisor William DeVeccio could come to see him.

6 THE COURT: Was that the gist of the first
7 conversation?

8 AGENT JENKINS: Yes, your Honor.

9 THE COURT: The second conversation, he called you
10 again?

11 AGENT JENKINS: I don't recall if I called him at his
12 residence or he called me, your Honor.

13 THE COURT: What was said at that time?

14 AGENT JENKINS: I told him that we're planning on
15 having a meeting that day sometime, what was a good time for
16 him? That was yesterday.

17 THE COURT: What did he say?

18 AGENT JENKINS: He said he would try to find out when
19 his wife would not be present and let me know.

20 THE COURT: What was the third conversation?

21 AGENT JENKINS: Well in the meantime, your Honor, I
22 had become concerned about the Sixth Amendment consideration
23 that we're here to address, so I called him back and told him
24 it's a problem, I'm going to have to talk to the attorneys,
25 perhaps the judge, and get back with you. That was before

1 lunchtime. He beeped me, around one o'clock yesterday, and I
2 told him that we're going to have a hearing, such as this, and
3 asked him if he would call me this morning to find out what
4 the status of it was. That's the second contact which really
5 consisted of two or three contacts yesterday.

6 THE COURT: Well, did he mention at any point that he
7 didn't want his lawyer to know about this?

8 AGENT JENKINS: Yes, your Honor. In fact I
9 specifically asked him that.

10 THE COURT: What conversation was that?

11 AGENT JENKINS: That would have been the first
12 conversation yesterday, I believe, your Honor.

13 In any event it was yesterday.

14 THE COURT: Tell me what was said.

15 AGENT JENKINS: At that point I was aware that his
16 wife and/or other persons were present in the room where he
17 was talking, because I could hear background noise and I said,
18 I know that it's probably hard to talk, but one of the things
19 that I'm concerned about is the fact that you have a lawyer
20 and any contact that I have with you to discuss the charges
21 pending against you should be with the knowledge of your
22 lawyer.

23 I was in fact already aware at that time, your Honor,
24 that he would not want his lawyer to know and I asked him that
25 because I knew he was unable to talk.

1 Do you want your lawyer to know, you don't, do you?
2 No, I don't. You can't talk openly now, can you? No, I
3 can't.

4 I said, if you have any misunderstanding of what is
5 going on or you want to get together to talk about this some
6 other way, please let me know. I know you can't talk freely.
7 He said, no, I understand. If your lawyer is aware of such a
8 meeting, will that put you in partial jeopardy? Yes, sir, it
9 will. And that was --

10 THE COURT: You just stated a moment ago, you had
11 already known when you had this conversation that he didn't
12 want his lawyer to be present. How did you do that?

13 AGENT JENKINS: I suppose I didn't know it
14 specifically as to the circumstances, your Honor, but as a
15 general principle usually these people, these L C N people,
16 the lawyers represent more or less the whole family and not
17 just one individual, and we're concerned about anything that
18 the lawyer has knowledge of, perhaps the whole family has
19 knowledge of.

20 THE COURT: I understand.

21 I think I'd better talk to the lawyers. I don't
22 think I need you both here at the moment unless there is
23 something else that you want to put on the record?

24 MR. GLEESON: No, your Honor.

25 THE COURT: Just wait outside, please. Thank you

1 very much.

2 (Agents leave chambers).

3 THE COURT: Based on that testimony some lawyer
4 would, I think, have some justification arguing the
5 prospective witness was led into saying he didn't want to see
6 a lawyer. See United States with a Lawyer present.

7 I think that is the way it could be read, whether
8 accurately or not.

9 May I make this suggestion, for you to consider. And
10 maybe it's a way to deal with some of these problems. Ask him
11 to come in, if that is what he wants to do, would he come in
12 physically --

13 MR. STAMBOULIDIS: There is one problem. He's on an
14 electrically monitored bracelet. That is part of his home
15 detention. We'd need court approval to turn that off.

16 THE COURT: I'll give you that.

17 MR. STAMBOULIDIS: For a limited time to have him
18 come to the Court.

19 THE COURT: You can transmit that to the head of
20 probation. You don't have to give them any reasons, just say
21 that no one is to know about it, however, they accomplish it
22 and have it accomplished. I think we can do that.

23 MR. STAMBOULIDIS: Judge, there is only one other
24 operational barrier that might be in this person's mind, but
25 I'll be happy to abide by whatever suggestion the Court thinks

1 appropriate



7 It may be a problem that is solely his.

8 THE COURT: Have a probation officer go out and bring
9 him in for further information required in connection with
10 this program. I think that is the easiest way to do it. You
11 don't have to turn off anything, just have the chief of
12 Probation Services accomplish that. He's to be brought in to
13 give further information necessary for this program to have
14 everything checked, whether the bracelet, use whatever excuse
15 you wish.

16 I think then the best thing to do is to go before a
17 judge or a magistrate judge, in the first instance when he's
18 brought in, before he's involved in a conversation, and have
19 the magistrate judge put it to him on the record and you make
20 a firm record in an official way and there is no question
21 about it.

22 If he says that is what he wants, he goes down with
23 you and continues the discussion. If he says he doesn't want
24 it, he goes home.

25 MR. GLEESON: Very well.

HENRY SHAPIRO

OFFICIAL COURT REPORTER

1 THE COURT: If you think that is appropriate.

2 MR. GLEESON: We think that is fine.

3 THE COURT: Get up an order. Get the whole thing
4 drawn and I'll sign it and seal it.

5 MR. GLEESON: Can we confer with the agents about the
6 best scenario?

7 THE COURT: Use your own judgment.

8 MR. GLEESON: Maybe we'll bring him in on the ruse
9 it's a joint attorney-client meeting or something like that.

10 THE COURT: Do it anyway you wish.

11 MR. GLEESON: Very well.

12 THE COURT: You have my authority to go to the head
13 of probation.

14 MR. GLEESON: Do you want to see this witness?

15 THE COURT: You can bring him before me or the
16 magistrate judge. Who do you want to bring him before?

17 MR. GLEESON: We have no particular reference.

18 THE COURT: I'd rather have a magistrate judge see
19 him, because if I'm going to have anything to do with the
20 trial, the less I have to do with contact with witnesses the
21 better.

22 MR. GLEESON: That makes sense.

23 MR. STAMBOULIDIS: Thank you.

24 MR. GLEESON: Thank you.

25 THE COURT; Seal the record.

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