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Fri. 11/27/87 Notes from recordings of conversation re PIO case 87-3085

Judge: Ms. Reich

Ms. Reich: Yes.

Judge: This is the Judge. I don't want to talk about the merits, but obviously you probably worked some yesterday.

Ms. Reich: Yes, yes I did.

Judge: Certainly the Court did. But I want to know if we can have a conference call between you and the other side, and could you set it up.

Ms. Reich: Certainly. What time would you like to set it up for?

Judge: Right now. I'm in my Chambers. My number is 535-3444.

Ms. Reich: OK. 535-3444?

Judge: Right.

Ms. Reich: OK, I will do that.

Judge: Alright. Thank you very much.

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Judge: Hello.

Ms. Reich: Judge, I just tried to reach plaintiff's counsel in New York and then local counsel here in D.C. and there is no answer either place. I spoke early this morning with Steve Shapiro who is the counsel in New York and I know he is going to be around because we're telefaxing our statement of facts to him, but, as of right now I called New York twice in fact and there just was no answer.

Judge: Oh goodness.

Ms. Reich: I can try again in half an hour or whenever you would like and -

Judge: If you would be kind enough Ms. Reich I would appreciate it.

Ms. Reich: I certainly will.

Judge: You are going to make your filing in another half hour or something?

Ms. Reich: Actually, I had just printed it off when you called and I was going to bring it down to the Courthouse and then have it telefaxed out to the plaintiff. So I can do that and then as soon as I'm done with that try to set up a call again if you would like.

Judge: I would. I'd be very grateful because I want to talk to you both. Thanks a million.

Ms. Reich: OK, thanks, bye.

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Judge: Hello.

Ms. Reich: Hi. Now I just need to connect them and Steve Shapiro, just one minute.

Judge: Alright. Thank you Ms. Reich.

Ms. Reich: Steve? OK - Judge - we are all on now.

Judge: Alright, you have Mr. Shapiro.

Mr. Shapiro: I'm here Judge.

Judge: Alright, thank you very much. I called Ms. Reich this morning to ask her to get a hold of you. I am going to record this conversation because I don't have a court reporter, just for your protection and mine. I didn't know until I read the papers over the weekend, that the decision of the Deputy Secretary may have involved some security matters, and Mr. Abu Abbas (is that the way you pronounce his name?)

Mr. Shapiro: Your guess is as good as mine.

Judge: Well, his name is in the papers. That raises two questions. One, I had to act in an official capacity with respect to the matter involving Abbas, which was a matter of notice in the newspapers when the Achille Lauro

was hijacked. To be very candid with both of you, I have no idea what those papers specifically disclosed, what was presented to me at the time, but as I recall it, the government did mention this in part of its papers in relying, in reaching, as a basis for its decision in this case. Secondly, there was also a suggestion someplace in these papers that the government decision here had been based on some security information and I don't know whether it related to that incident, or not. Can you comment on that Ms. Reich.

Ms. Reich: Judge, I wish that I could. As far as we're concerned, the government believes that it is sufficient for purposes of the present motion before the Court to rely solely on information that the plaintiffs have themselves provided.

Judge: That's correct, and I

Ms. Reich: Without reference to their classified information. As far as what the classified information contains,

Judge: You probably don't even know yourself.

Ms. Reich: I'm not in a position to comment at all.

Judge: Yes. Well,

Ms. Reich: As I understand what you're concerned with is that it might involve information relating to the Achille Lauro hijacking and Abu Abbas, is that it?

Judge: Yes. It's mentioned in your papers. I believe it's the government's papers, I'm not sure.

Ms. Reich: Yes, it is mentioned in the, it's actually mentioned in the Deputy Secretary's determination and reasons for --- the foreign mission and the subsequent action of closing the office ,

Judge: Well, I thought Mr. Steve Shapiro

Mr. Shapiro: Yes, Your Honor

Judge: I thought you should know this. It was a matter that was reported in the press even though it was under seal at the time and,

Mr. Shapiro: Let me just tell you my reactions of how this is - how the Court has had -----to this case that that presents a problem outside the record of this case that that is what we arranged with Judge Sporkin. I just don't know where that leads here.

Judge: Well, mine was - my mind is almost a blank, although I must tell you this came over the weekend, whenever that happened, I think it was a couple of years ago, and it was only in the form of affidavits submitted to me which are still under seal and how it ever got in the press I don't know, but I saw it myself and it was alleged that he, Mr. Abbas, was the mastermind of the Achille Lauro hijacking that resulted in Mr. Klinghoffer's death, and the arrest of the others which were apprehended in Italy. Mine was in connection with an official proceeding which would not be grounds for recusal anyhow. I haven't had any -- whether that's classified information, I don't know, I suppose it might be, but I'm telling you as an officer of the Court, and I wanted Ms. Reich to know, I certainly didn't know it on Friday when I saw you, until yesterday afternoon when I started to work on, and have been working continuously all morning, on this case and I thought about 11 o'clock that I'd better call you and let you know. If you desire, you can file a formal application for recusal, if you wish.

Mr. Shapiro: No, I'm obviously not anxious to have this case bounced around and am certainly sensitive of the time that Judge Sporkin has originally invested and you have put in as well, what I would like to do, if your Honor would indulge, is to discuss it with co-counsel for about 5 minutes and call you and Ms. Reich back and let you know our decision.

Judge: Alright, well it may be that the government -- there is a suggestion that defendant Whitehead, or somebody, may be it was in Redmond's press conference, that they had a record that they relied on. Now, for the purposes of the proceeding as it stands now, we may not have to get to that. I don't know, because I haven't finished my reading yet, or analysis.

Mr. Shapiro: But just so that I can be clear, your Honor, that is the best of your recollection, the only access,

Judge: Oh I know it is

Mr. Shapiro: the PLO or PIO - OK.

Judge: I don't know - I know that the PLO exists, Judges don't live in a vacuum, they read the newspapers, and I did have occasion to act, as I say, in an official manner as a Judge in connection with Mr. Abbas.

Mr. Shapiro: Your Honor, are you at liberty to tell us what that other official matter was, or is that all under seal,

Judge: It's under seal but it was reported in the press. As an officer of the Court -- is there anyone else on the telephone?

Mr. Shapiro: John Powell who's the legal director of the ACLU.

Judge: Alright. Mr. Powell, I'll tell you both, it has to do with an application for his arrest (Abas'), which was made in the United States telephonically and it was recorded, it was made during a weekend when I was the duty judge by then Assistant U.S. Attorney Lawrence Barcello, and then they came to my home the next day, that was Friday evening, whenever that incident took place, and memorialized it in writing with affidavits from a woman FBI agent and maybe someone else, and I issued the warrant. You will recall that right afterwards, the Craxi government fell. I know it was public information because one of my colleagues thereafter teased me about whether my Commission was different than his because he said when he issued an order for somebody to be brought up from the D.C. jail nothing ever happened whereas when I issued an order for the arrest of somebody in a foreign country, the whole government fell, and he was teasing me in front of all my colleagues, whether my Commission was different than his. Anyhow, I don't know any more about the PLO than Adam, but, except that it exists and its a matter of great controversy among many people in this country.

Mr. Shapiro: Alright, Your Honor,

Judge: But, if you put me under oath and ask me to tell you what those affidavits said, I couldn't tell you if I had to, and I don't know if the PLO was even mentioned, I presume it might have been, but honestly I couldn't tell you.

Mr. Shapiro: Is it alright with you, Judge if we call you back in 10 minutes after discussing it.

Judge: Well you said 5 minutes, do you want 10 minutes, I'll be glad to give it to you.

Mr. Shapiro: Alright thanks very much and I'll call you back, is that alright?

Ms. Reich: That's fine, and I'll set up a conference.

Judge: Well, while you are on the phone, I have from the government, thank goodness for it, their materials that were filed on time. Have you seen that yet?

Mr. Shapiro: Yes we have, your Honor.

Judge: I'm particularly interested in the first paragraph, as well as the rest of it, of course, the first paragraph. Is that agreeable to you, Mr.

Mr. Shapiro: Let me just look, its sitting in front of me, hold on just one second. You mean the introductory paragraph, your Honor?

Judge: Yes.

Mr. Shapiro: Well, I'll tell you what we are doing at the moment. We are submitting by 4 o'clock if you would ask, a counter statement. Our basic position here is that the government's --- we are submitting a more extensive -- counter statement of the facts if the government is agreeable - or if the government is not agreeable then I think we are -

Judge: Alright. Well I'll just to wait and see; I'll be waiting here. Frankly, Ms. Reich, without regard to that, because I didn't have the other side's yet, but trying to do what I have done, based on what seems to be undisputed in all these papers that both sides have submitted, whether that corresponds to your statement, I don't know.

Mr. Shapiro: We will get ours, we are going to - is there by any chance a telefax machine in the Courthouse your Honor, do you know that?

Judge: Well if there is, I don't think so but there may be; if there is I don't know it because unfortunately this is a Court holiday - there is a skeleton staff down in the Clerk's Office, but I wouldn't want to represent that we could have something like that operating.

Mr. Shapiro: What we were planning to do, and will do, is we can telefax our papers down to -- that's how we got hers, and then we will also telefax a copy to our Washington office and they will hand deliver it to your Chambers, so you and she should have all that stuff by 4 o'clock as scheduled and we will call back in 10 minutes.

Judge: Alright, thank you. It is now about twenty after two. Thank you both. Goodbye.

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Mr. Shapiro: Our position is that to be limited to the one encounter that you described and we now know is the case, we don't think that it requires your Honor --reserve though for the record the possibility of making a motion somewhere down the road if, but I do not anticipate, we have no objection to your continuing to sit on the matter.

end of tape.

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Judge: Where was I now?

Mr. Shapiro: You were just saying what I was doing was --

Judge: Oh, you want to have it both ways. As far as I can see now this is not an advisory opinion, I think it probably can be decided without regard to the Achille Lauro incident, or anything relating to that, and it wouldn't make any difference anyhow as I understand the Recusal Statute, 455 and 144, if you receive some information in an official capacity which it certainly was, then that does not require recusal.

Mr. Shapiro: We do not believe it does either, your Honor.

Judge: Well, and that's a fact. But I did think as a matter of professional, not judicial but professional courtesy, that I should tell you and the government since this was a matter of public information, since the press did report it widely, how they were able to discern it when it was so top secret, I don't know, but I thought you should know since I see it in the determination by the Deputy Secretary of State and throughout the government's papers.

Mr. Shapiro: As I say, your Honor, we appreciate the courtesy.

Judge: Well, that's all I know and therefore I don't see how that presents any problem. Let me ask you both this, since I have you both on the telephone, what kind of an entity is the Palestine Information Office. Is it an incorporated or an unincorporated association, what is it?

Mr. Shapiro: It is not incorporated to the best of my knowledge. I do not believe it is incorporated in the District of Columbia. It is certainly a registered agent.

Judge: That's correct. I know that, but you see there's nothing in any of the papers, to the best of my knowledge, and I've read them very carefully, that I can find which tells me specifically what kind of an entity and status the PIO is with any degree of precision at all. The only way it's defined is as a, to borrow a term, as an agent of the Palestine Liberation Organization.

Mr. Shapiro: Well I, to be quite candid with you your Honor, it is not clear -- doing business as the Palestine Information ---

Judge: Your inclination is that it's a Dr. Redman doing business as the PIO?

Mr. Shapiro: I think. It is either that I would think or an unincorporated association, but for those who really matter, it is a local --

Judge: Well, if it's an unincorporated association, they have no, as I recall it, right to sue or be sued.

Mr. Shapiro: See, and that's why I don't want to make any representations, I know that they are not unincorporated, I feel confident saying, and I know they are a registered agent, and certainly, it's the government's position that they --

Judge: Well, let me ask Ms. Reich then, can you respond to my inquiry on that point Ms. Reich?

Ms. Reich: Your Honor, given the short time constraints so far, it's not something that I have delved into to find out specifically how to characterize the Office beyond looking at the Foreign Missions Act and seeing that it should fall within the definition of entity that's used in the Act. Whether it's an unincorporated association or however, whatever other term could be used to formally identify it, I'm not really in a position right now to make an assessment, I think it is clear that -

Judge: Well, it could have a very substantial impact on this case. If you just take the plaintiff's argument as true for a moment. Supposing the statute - supposing the plaintiff's are right with respect to the statute, well that would end the case if they are right. On the other hand if they are not, and you get to the Constitutional questions, then what kind of an entity it is may have some very real bearing.

Mr. Shapiro: It is certainly not, it is simply not a membership association, I raise only you had raised the question of associational standing, it is not a membership association, it does seem to me, like Ms. Reich, and I apologize for this,

Judge: Don't apologize, either one of you.

Mr. Shapiro: There is some unclarity about it, it's exact status as a matter of local law, but the notion that the government closed an office and the name of the office is ---Palestine Information Office and Palestine Information Office cannot continue to exist - Palestine Information Office could not, in its own name, have any ability to contest that position, seems like an odd result to me.

Judge: Well, it might have an impact in terms of the impact of the statute and the Constitution. I don't know, but it may have an impact, and I sure as heck would like to know if you people would be kind enough to make an inquiry.

Ms. Reich: Your Honor I will look into that further.

Judge: Well I think it, well I wish you would Ms. Reich, but I also think the plaintiff's ought to look into it.

Mr. Shapiro: I will, your Honor, I know that Mr. Redman is travelling because I spoke to him about an hour ago and he was getting on an airplane, but I will be able, we now, I gather, have two extra days with the government and we will--

Judge: Yes, but I told you Friday, or what, Tuesday that I have a very full calendar on Monday. I'm so grateful to you Ms. Reich for getting your clients to agree to this extension. There's an awful lot of work to review all these statutes, the plaintiff has given me an awful lot of reading to do, and you have too.

Mr. Shapiro: As I said, Your Honor, as soon as I can get in touch with Mr. Redman I will make some inquiries and if I find out anything we will let you know as soon as we possibly can. In the meantime, we are still planning to get these papers down to you by 4 o'clock I hope.

Judge: Well I hope so and I'll let you go with this -- I may have to call you in before issuing the decision. If I have some other questions, but somehow or other could you get this to me by telephone or something before the close of the day. If it's just a group of citizens, like the individual plaintiff and whoever else works there, operating under the name of, that may bring about one result. I don't know, but we ought to know it seems to me what kind of an entity it is.

Mr. Shapiro: I do -- I will.

Judge: In a legal sense.

Mr. Shapiro: Yes, your Honor, I just know't know how to do that on my end since --

Judge: Well, if you get Dr. - is it Dr. or Mr. - Mr. Redman - Mr. Redman - if you can reach him after he gets off the plane, wherever that is,

Mr. Shapiro: Well, I will do my best. He told me he was getting on a plane at 3 o'clock so that's my problem. But I will try to track him down and, as I said, the moment I can reach him, I will get back in touch with you and Ms. Reich. Can I ask two other mundane questions?

Judge: Surely.

Mr. Shapiro: The first is, is the building open so that somebody can get in there with no problem.

Judge: Yes, unfortunately, I'm here and you just ask the guard at the old John Marshall Place entrance.

Mr. Shapiro: OK. And the second one is just a personal favor, if it's at all possible and that if it becomes, that is, if you decide it's necessary to see us again, I will be down in Washington --- for my own personal purposes if there is something that could be scheduled on Tuesday, that would be the best and I will do, obviously, whatever is most convenient to the Court, but I just wanted to let you know that.

Judge: Alright Steve. I will try to accomodate you and Sharon in every way I can. You certainly have been cooperative with the Court and I don't know how it got from Judge Sporkin to me, but, as I told you the other day, about 10 minutes before you saw me, I was told there was a whole group of lawyers in some other judges' courtroom down the hall, Pratt or Gasch's courtroom waiting to see me and I hadn't read one single paper or anything about the case, I had no idea what this case was about, so this has been a difficult Thanksgiving, if that's what it's supposed to be.

Mr. Shapiro: Well thank you Judge, we appreciate all your  
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Judge: Well, alright I am going to continue to work on it and I'll look forward to hearing from you. It's now about 3 o'clock.

Ms. Reich: Right.

Judge: Alright, thank you both. Goodbye.

Ms. Reich: OK, bye.

Ms. Reich: No. 525-3-3-3

Judge: Right.

Ms. Reich: OK, I will do that.

Judge: Alright. Thank you very much.

Judge: Hello.

Ms. Reich: Judge, I just tried to reach plaintiff's counsel in New York and their local counsel here in D.C. and there is no answer either. I spoke early this morning with my wife Sheryl who lives in New York and I know he is going to be around here. We're tele-faxing our statement of facts to him here, so right now I called New York three or four times and just was an answer.

Judge: I'll get back to you.

Ms. Reich: I'll call you again if I hear anything or whenever you call me.