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IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 04-659M
	)	January 5, 2006
AHMAD ABDUL SALAAM AS-SADIQ,	)	
	)	
Defendant.	)	
	)	
	)	

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JUDGE PECHMAN  
UNITED STATES DISTRICT JUDGE

SUSAN A. ZIELIE, RMR, FCRR  
Official Court Reporter  
sazieliel@gmail.com

Proceedings Recorded by Computer-aided Stenography.

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APPEARANCES:

For the USA: WILLIAM H. REDKEY, AUSA  
US Attorneys Office

For the Defendant: TIM KOSSNOFF, ESQ.

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SEATTLE, WASHINGTON; THURSDAY, JANUARY 5, 2006

CASE MANAGER: 04-659P, United States v. Ahmad Abdul Salaam As-Sadiq. Counsel, please make your appearances.

MR. REDKEY: Good afternoon, Your Honor. William Redkey appearing on behalf of the United States. And with me is Special Agent Richard Konet, K-o-n-e-t, FBI.

MR. KOSSNOFF: Good afternoon, Your Honor. Tim Kossnoff on behalf of the defendant, Mr. As-Sadiq.

THE COURT: Counsel, thank you so much for being available. The reason I wanted to have this hearing is that the defendant pled guilty over a year ago and still has not been sentenced, and the Court hasn't been offered any explanation as to why that is or why the sentencing should not go forward, and I think this is way too long. And as I understand the sentencing manual, the effectiveness of any sentence that the Court might impose with the Act is so far removed from the sentencing date itself.

MR. REDKEY: Your Honor, I think I'll pull the microphone over here, since at least the request for any delay is initiated by us. Because although it is agreed to by the defense, it is really a mutually-agreed request.

Mr. As-Sadiq did plead guilty about a year ago, but I wanted to assure the Court it has not been idle time, it has not been wasted time. In fact, we think the time has been very well

1 spent, and we're asking for more time so he can continue his  
2 work.

3 First of all, we appreciate the fact that the Court has  
4 requested the other people wait for this hearing to be over since  
5 what I'm about to say, and maybe some of the things that counsel  
6 is about to say, are matters of some confidentiality that we  
7 wouldn't necessarily want bystanders to hear who had no interest  
8 in this case. Having said that, Mr. As-Sadiq has been working  
9 undercover for the FBI for the last year. He's been in four  
10 cities, all around the country. I don't want to name the cities,  
11 but he's been working with the FBI on cases of the highest  
12 national security. He's been very effective in what he's been  
13 doing, as far as what I understand. There are three cases active  
14 now, again, of national security level that he is working on. We  
15 expect to have more if he's allowed to continue to work. And we  
16 feel that, in this particular instance, although clearly the  
17 defendant has a right to a speedy sentencing, if not legally, at  
18 least equitably -- he has the right to have the other shoe drop  
19 eventually. We understand the Court's concerns about bringing  
20 this matter to a conclusion, and we share those concerns.

21 On the other hand, we're doing a balancing analysis  
22 here, and we feel that the benefit of allowing Mr. As-Sadiq to  
23 continue to work far outweighs any of those other interests. Of  
24 course, that's our perspective. But we're delighted that Mr.  
25 As-Sadiq has volunteered to do this and has been so effective at

1 what he's been doing. I don't want to speak for the defense,  
2 but, clearly, when the time comes for the Court to impose  
3 sentence on Mr. As-Sadiq, I'm sure he's going to want to be in a  
4 position where he can say that he has done a lot of good work in  
5 the interest of national security, and that that would influence  
6 the Court on what kind of sentence he's to get, not to mention  
7 the assurance it would have on the prosecutor in terms of what  
8 recommendation we make. So in a sense, the reason that the  
9 defense is joining us in this motion to continue is that every  
10 case that he can make, with every effective use of his time he  
11 can present to the Court and to us, improves his chances of  
12 getting mitigation at sentencing.

13 So I don't know whether the Court has more questions.

14 THE COURT: Well, one of the questions I have is -- I'm  
15 sorry, I have the docket in front of me, but it doesn't reveal  
16 what the underlying charge is.

17 MR. REDKEY: Felon in possession of a firearm.

18 If I could put this in context for the Court. A little  
19 over a year ago, the FBI wrapped up a two-year investigation,  
20 which was a joint terrorism-traffic force investigation. Several  
21 suspects were targeted. And again, started out as a case that  
22 had suspicion of terrorism concerns. As it turns out, although  
23 there were some residual concerns about terrorism, the charges  
24 ultimately against defendant were charges relating to or  
25 untrafficking. That was one leg of the stool. That was my leg of

1 the stool. Mr. As-Sadiq is the last of those -- the last of  
2 those to be sentenced.

3 Mr. Shomberg is a late case, which I think is assigned  
4 to this Court, who just pled guilty a week or two ago. And so  
5 he's still pending as well. But the other ones are taken care  
6 of.

7 There is another leg of the stool, which was a bank  
8 fraud leg of the stool, which appeared to be motivated by  
9 attempts to earn money fraudulently for terrorism, to support  
10 terrorism abroad and at home.

11 The first leg was an illegal documentation case the  
12 Gampiens were running up in the central district to obtain forged  
13 or falsified or counterfeited travel documents that would permit  
14 people to come and go under false names, or people to come and go  
15 who are in not entitled to come and go freely.

16 So there are three legs of the stool. All three legs  
17 have been satisfied, with the exception of this case and Mr.  
18 Shomberg.

19 And I would say, again, that although no terrorism  
20 charges ever came out of this or are material to support more  
21 terrorism abroad, the cases were considered very serious. It was  
22 considered a successful operation in terms of interdicting what  
23 could have been a massive terrorism cell within this country.

24 Now, Mr. As-Sadiq -- because, in an undercover capacity,  
25 we had an informant who -- and you're going to have to correct me

1 if I'm mistaken -- but we found a gun at his residence when we  
2 executed the search warrant.

3 SPECIAL AGENT KONET: That's correct.

4 MR. REDKEY: And he's a convicted felon, so he's looking  
5 at some prison time. I don't recall what the guideline range or  
6 the estimated guideline range was. But he immediately, in the  
7 first interview -- which I actually sat in on -- admitted his  
8 crimes and agreed to help the FBI. And so they put him to work  
9 almost immediately, and he has been working for them almost ever  
10 since. So he is motivated for his own reasons. We're motivated  
11 for the reasons I have stated to allow him to continue to work.

12 THE COURT: And is there an end point in sight?

13 MR. REDKEY: I can't speak for the defense.

14 I think I may just see if the FBI -- it may be that we  
15 don't have a cutoff date. We don't have an arbitrary cutoff  
16 date. We want to have one that's dictated by the circumstances,  
17 but let me see.

18 [DISCUSSION HELD OFF THE RECORD]

19 MR. REDKEY: As I suspected, Your Honor, I am told that  
20 there really is not a cutoff date. But the cases that he's  
21 working on now are actually cases that have been ongoing for a  
22 number of years. I don't think that we can fairly say that this  
23 is a date when the investigations will culminate in indictments  
24 and arrests. I know that --

25 THE COURT: So you expect no cutoff; indefinitely?

1 MR. REDKEY: If there were no other factors to consider,  
2 that would be our answer, because we want to have Mr. As-Sadiq  
3 working as long as we possibly can in order to continue our  
4 efforts to project the national security. We realize, of course,  
5 that there are other --

6 THE COURT: You realize, Mr. Redkey, you're very vague  
7 about what is national security. I mean, lots of things get  
8 justified in the name of national security, and I don't  
9 necessarily, when people simply say national security, rear back  
10 and say: Oh, it's hands-off. You haven't given me any fact or  
11 circumstances.

12 MR. REDKEY: That's been intentional at this point,  
13 because I know this is going into the public record and it's not  
14 something that we're necessarily excited to see in the public  
15 record. But if the Court would like more clarification, we can  
16 do that. We can do it now.

17 THE COURT: You're asking me -- I mean, basically, what  
18 I have is a public offense, felon in possession, that we assume  
19 the public is very concerned to have people who have pled guilty  
20 to those crimes receive their sentence or be removed from the  
21 street. And if I don't have a countervailing reason why that  
22 shouldn't happen, I think that the public has an interest in  
23 getting people sentenced. And, in particular, if you're not  
24 going to give me an end date. I understand that the defendant  
25 wants credit for cooperating; but, certainly, even after people

1 are convicted, they get removed from prison to come testify.

2 MR. REDKEY: Well, it may not offer any assurance to the  
3 Court, but based on my experience of many years of doing drug  
4 cases, there are times when we've waited one or two years to  
5 sentence somebody if they're still working. There is precedent  
6 in the Rassam case, which was two or three years.

7 THE COURT: And that didn't turn out so well.

8 MR. REDKEY: That depends on the point of view, I guess.  
9 We're not satisfied with the result, and I don't think anybody  
10 was, really. But that's completely different circumstances.  
11 Here, we don't have a man sitting in isolation in prison for two  
12 to three years at a time and suffering a mental exhaustion that  
13 apparently Mr. Rassam felt. So I would say that -- if I can  
14 consult one more time and see whether -- we're going to have to  
15 do a risk benefit analysis and see if it's worth going public  
16 about what he's doing, to satisfy the Court. If I may?

17 THE COURT: Yes.

18 [DISCUSSION HELD OFF THE RECORD]

19 MR. REDKEY: Would the Court be willing to hear from  
20 Special Agent Konet?

21 THE COURT: I'm willing to hear anything that you have  
22 to offer, but I'm unwilling to simply accept what you think is  
23 more important than what I think I'm doing, which is sentencing  
24 people.

25 MR. REDKEY: It's my hope that he will be able to give

1 you sufficient information for you to feel comfortable making  
2 that call, or at least that you're not making it in a vacuum.

3 Special Agent Konet.

4 SPECIAL AGENT KONET: Thank you for the opportunity,  
5 Your Honor.

6 Although it doesn't get a lot of attention in the media,  
7 an important part of what the FBI does concerning national  
8 security has to do with indigenous groups that are radical Islam  
9 fundamentalists, that whose relationship with sponsors of  
10 terrorism and groups is under investigation. Mr. As-Sadiq is an  
11 ideal candidate to be taken into the confidence of the leaders of  
12 some of these groups nationally. They're not going to always  
13 necessarily result in prosecution.

14 To predict an end, a timely end to the benefit of his  
15 assistance, is difficult to do. I know that there are groups I'm  
16 sure you've never heard of -- they have strange sounding names.  
17 They consist primarily of American converts to Islam, and they  
18 have very radical agendas. They are preoccupied with the  
19 possession of firearms. And Mr. As-Sadiq has been able to travel  
20 to other cities where these groups are priority -- I should say,  
21 the leaders of these groups are the subjects of priority  
22 investigations, and he's very quickly ingratiated himself, to the  
23 point that he's a confidant of at least three such individuals.  
24 And the other FBI field officers for who he's worked are very  
25 grateful, and hope that the relationship can help them answer

1 questions they have for the long term. Obviously, if he was in  
2 prison, he would no longer be able to assist us.

3 And even if, once he's sentenced, to be able to explain  
4 why he didn't go to prison would be a difficult thing, and still  
5 be able to maintain his credibility as well. So we're trying to  
6 get out as much as his willingness of his working for us as we  
7 can before that date comes.

8 THE COURT: All right. Are there any trials where he's  
9 waiting to testify?

10 SPECIAL AGENT KONET: No, Your Honor. But I would add  
11 that it's the nature of these investigations, is to uncover the  
12 foreign connection. And the policy of the FBI at this point is  
13 not to preempt an investigation that has that kind of  
14 intelligence-gathering potential by indictments.

15 THE COURT: So these are not crimes you're  
16 investigating; you are using him as a gatherer of perspective  
17 information?

18 SPECIAL AGENT KONET: If you mean perspective in terms  
19 of --

20 THE COURT: In other words --

21 SPECIAL AGENT KONET: -- of possible nature?

22 THE COURT: Meaning, is there a crime that you're  
23 investigating, or are you simply using him to gather information?

24 SPECIAL AGENT KONET: No, Your Honor. That are definite  
25 crimes. I mean, material support for terrorism would be one

1 obvious charge, not to mention the same kind of charges that he  
2 was convicted of.

3 THE COURT: Is there a grand jury that has been looking  
4 into these offenses that you're working on?

5 SPECIAL AGENT KONET: At this point, Your Honor, they  
6 are all classified investigations, and nothing's been a grand  
7 jury.

8 THE COURT: So there's nothing before a grand jury,  
9 there's no charges at this point, and no indictment?

10 SPECIAL AGENT KONET: Individual members have been  
11 charged, much like we did here in the investigation that Mr.  
12 Redkey recounted. But no major disruptions by means of criminal  
13 process at this point.

14 THE COURT: And why is it that the government can't use  
15 other operatives who aren't facing prison time? In other words,  
16 why do you have to use this particular individual as opposed to  
17 any other of your own investigators or officers to go undercover?

18 SPECIAL AGENT KONET: We don't have officers or agents  
19 who can go undercover with these kind of perpetrators. These are  
20 American, primarily African-American converts. Now, whereas FBI  
21 has been in a hurry to hire agents with Muslim background and has  
22 hired a few, they were raised as Muslims because their parents  
23 were born in Muslim countries for the most part, and they don't  
24 fit his profile.

25 THE COURT: When is the last time you used him on a

1 project?

2 SPECIAL AGENT KONET: He just got back from a trip to  
3 Los Angeles to meet a subject from the East Coast who was  
4 speaking there on Christmas day.

5 THE COURT: Okay. And are there any additional plans  
6 for him to travel?

7 SPECIAL AGENT KONET: Yes, Your Honor.

8 THE COURT: When?

9 SPECIAL AGENT KONET: Before the end of January.  
10 He's traveled to some other cities in the United States  
11 at least once a month for me in the past year.

12 THE COURT: Okay. But you can't give me any end time  
13 for when it is that you believe your investigation will yield an  
14 indictment?

15 SPECIAL AGENT KONET: Well, they are not my  
16 investigations, first of all. I'm not the case agent on those  
17 cases. I'm the case agent directing his activity, but I'm doing  
18 it at the request of the agent directing the investigation in  
19 these other cities.

20 THE COURT: So I have no idea how big this is or when it  
21 will end.

22 SPECIAL AGENT KONET: I do. I do have an idea how big  
23 they are. I don't have an idea when they'll end. That's partly  
24 a consequence of the FBI's policy about these kind of  
25 investigations these days, that intelligence gathering is

1 important; and if there is a port hole on a foreign terrorism  
2 connection, to take advantage of it. To look for it and take  
3 advantage of it.

4 THE COURT: Okay. Anything else you'd like to tell me?

5 SPECIAL AGENT KONET: No, ma'am.

6 THE COURT: All right.

7 Anything the defense would like to say?

8 MR. KOSSNOFF: May I have just a moment, Your Honor?

9 [DISCUSSION HELD OFF THE RECORD WITH COUNSEL]

10 MR. KOSSNOFF: It's difficult to assess the extent of my  
11 client's assistance to the government, although it's my  
12 understanding from conversations I've had with both Mr. Redkey  
13 and Special Agent Konet that the assistance has been substantial  
14 -- more than substantial. And a case could be made that, on the  
15 basis of the assistance that he has provided to date, he would  
16 stand in a very favorable position in the eyes of the government  
17 and in the eyes of the Court.

18 THE COURT: What's he going to do in the next few months  
19 that he hasn't already done that is going to have such a great  
20 benefit to him?

21 MR. KOSSNOFF: He is going to do whatever Mr. Redkey and  
22 Mr. Konet want him to do, that they feel is necessary for them to  
23 make the kind of decision that we are hoping that they'll make in  
24 this case.

25 THE COURT: I'm not quite understanding. You've got to

1 help me evaluate this. Because he certainly has given  
2 substantial assistance. Mr. Redkey has said so. Certainly, that  
3 is something that Mr. Redkey will say at the time of sentencing.  
4 How much more do you have to do? In other words, what's likely  
5 to make a difference as to how long a period of time he until  
6 goes into custody?

7 MR. KOSSNOFF: Unfortunately, as defense counsel, I'm  
8 not the person that gets to evaluate and make that decision, and  
9 I'm not privy to the same kind of information that Mr. Redkey is.  
10 And so this is in our system an extraordinary amount of trust  
11 that the defense often must place in the integrity of the  
12 prosecutor that they're dealing with. And when the prosecutor  
13 makes representations to you that something is possible but they  
14 want another six months -- and I also wanted to indicate to the  
15 Court that your point is well taken. That he has, from our point  
16 of view, perhaps done everything that the Court would consider  
17 possible. But we're looking for more than just leniency in  
18 sentencing in this case because of the nature of the assistance  
19 that he's provided, and I would go so far as to indicate that  
20 it's our plan to file a motion to withdraw the guilty plea at  
21 an appropriate time. And that appropriate time, we believe,  
22 had been in May or June of this year. And when we filed that  
23 motion --

24 THE COURT: In other words, you think the case is going  
25 to go away?

1 MR. KOSSNOFF: I don't think it. We hope that it will.  
2 But no representations have been made to us definitively that it  
3 will.

4 THE COURT: Well, Mr. Redkey's got the power to do that  
5 right now.

6 MR. KOSSNOFF: He does. But he tells me that he  
7 believes, notwithstanding my client's representations to him and  
8 his opinion that Special Agent Konet is more than just his FBI  
9 handler, he's his friend, and that he will continue to assist his  
10 friend in this whether he has a criminal indictment and/or  
11 sentencing hanging over his head or not, because he's committed.

12 THE COURT: Your client believes that the FBI agent is  
13 his friend?

14 MR. KOSSNOFF: Yes. He believes that they have  
15 developed a rapport over the last year and a half, and that he's  
16 expressed intent to me to want to assist the agent in the future,  
17 at great risk to himself.

18 THE COURT: So your client intends to cooperate whether  
19 or not there's a case?

20 MR. KOSSNOFF: Yes.

21 THE COURT: So what do you need me for? In other words,  
22 why don't you cut your deal and why are we going through this  
23 charade of holding this case over his head, if in fact the  
24 bargain has been completed?

25 MR. KOSSNOFF: Well, Mr. Redkey doesn't believe it's

1     been completed. He's talking to somebody from Missouri. He  
2     wants another six months of "show me" before he's willing to make  
3     that decision, as I understand it.

4             THE COURT: Okay. All right. Thank you.

5             MR. REDKEY: Perhaps I could answer that question, since  
6     it's inquiring about what I think.

7             First of all, I want to make sure that the Court has  
8     enough information to fully comprehend that this kind of  
9     cooperator is not a dime a dozen. We don't run across these  
10    informants every day, who can actually infiltrate these  
11    organizations that espouse radical Islamic law as to Jihad and  
12    acts of terrorism. We don't have FBI agents who can go in and do  
13    that. We don't have many criminal defendants who essentially  
14    change their ways, change their views, see the light, if you  
15    will, and can infiltrate these groups effectively. This is a  
16    rare bird we have here.

17            Sorry to describe you that way.

18            But if he's not unique, he's pretty close to that. So  
19    he's a valuable asset to the FBI. Those kinds of people don't  
20    come along every day.

21            With respect to the nature of the investigations, I have  
22    found that it is true that since 9/11, the FBI is focused almost  
23    entirely on prevention, not so much prosecution. We've only had  
24    one or two real terrorism cases in this district. And there are  
25    very few, and you hear about them when they happen.

1 THE COURT: Very few?

2 MR. REDKEY: A very few.

3 And that's because the FBI is focusing less on  
4 prosecution than on prevention. A lot of the work -- most of the  
5 FBI agents these days are working on anti-terrorism. Very few of  
6 those cases filter up to prosecution. So what they're working on  
7 is prevention, infiltration, gaining intelligence, in the hope  
8 that they can detur acts of terrorism and keep the nation safe.

9 So when I hear the Court ask about are there indictments  
10 and are there pending charges and so forth, I would just ure you  
11 to consider that that may not be the sole criteria in terms of  
12 one's success. It might be -- or it certainly is a criteria in  
13 determining an end date to everything, because when you've got a  
14 date, you can say that trial is such and such a date, should be  
15 through by such and such a date. Here, it's a new ball game.

16 THE COURT: Well, I guess, Mr. Redkey, that may be your  
17 ball game. I don't think that's my ball game. In other words,  
18 the judiciary doesn't have any -- I don't know of any part of our  
19 mission that is designed to do intelligence gathering. In other  
20 words, my job is to process the cases that have been brought and  
21 ensure that justice is done and in the sentences that are handed  
22 out. If you want to do spy work, there are whole arms of  
23 government that can do that.

24 MR. REDKEY: We don't want to do it without the  
25 cooperation of the Court, Your Honor. And we have a separation

1 of powers. We're doing what we think we need to do in our  
2 branch, the executive branch, and we obviously can't dictate to  
3 the courts what you think is important.

4 THE COURT: Well, you have it within your power to  
5 dismiss the case and continue to use him, if that's what you wish  
6 to do.

7 MR. REDKEY: Well, and we may be able to do that, Your  
8 Honor. But again, I would urge the Court to consider what it's  
9 like out on the street with the criminal justice system. And  
10 that is, right now -- and I have no doubt about Mr. As-Sadiq's  
11 sincerity. I also have not doubt that they've established a  
12 rapport between the agent and the informant, which is also not  
13 that unusual, in spite of what the Court may think.

14 THE COURT: Well, I don't think it's unusual for  
15 somebody to want to cultivate the appearance of a friendship, but  
16 I don't know too many FBI agents that are hanging out with felons  
17 in possession of firearms as a social endeavor.

18 MR. REDKEY: Well, to call it a friendship and a social  
19 endeavor may be a stretch, but it's a professional relationship  
20 of trust, mutual trust and respect. And I don't think that's  
21 that unusual. It is a relationship of convenience, for sure, for  
22 both parties, but that doesn't make it any less genuine or any  
23 less profitable.

24 I guess what I'm saying is that, yes, we could have  
25 moved to dismiss without prejudice the charges in this case. I'm

1 not sure the Court would grant it without prejudice after today.  
2 I'm not sure. I don't have control over that. But I also know  
3 that -- I mean, none of us was born yesterday. Maybe farther  
4 back than the Court, I'm not sure. But right now, even though we  
5 have this relationship of mutual respect and mutual convenience,  
6 what got Mr. As-Sadiq to work for the government was that he knew  
7 that we had federal charges pending over him. And if those  
8 federal charges are no longer pending, then his motive, if you  
9 will, for cooperating might change and we won't have -- and I'm  
10 not going to mince words: We want to have control over him. And  
11 as long as we've got charges pending over him, we have some  
12 measure of control. As long as he's effective at what he's  
13 doing, he has control over us. I mean, we're making decisions  
14 about when to sentence, when to dismiss, based on what he's  
15 doing. So there's a mutuality of control here that is beneficial  
16 to both parties.

17           If we dismiss the charges, then it could be that, if Mr.  
18 As-Sadiq has had a true changing of heart, he would continue to  
19 work for the FBI and do as they request. If we dismiss the  
20 charges, he could decide, well, I don't really need to do this  
21 anymore, this is risky, and as much as I believe in the case, I'm  
22 not going to risk any more, and decide not to cooperate. Or he  
23 will change the delicate balance of control or controlee in the  
24 relationship between Special Agent Konet and Mr. As-Sadiq, which  
25 so far is working. And if it ain't broke, don't fix it, I guess

1 is the FBI's point of view. Let's keep the relationship as it  
2 is.

3 Now, again, we don't want to continue this forever. And  
4 we don't want to control Mr. As-Sadiq's behavior forever. But  
5 we've had a year. We would like more time to avail ourselves of  
6 his services and improve his position at sentencing.

7 Again, I've had cases that have gone a couple or two and  
8 a half years pending sentencing, and it's been beneficial to both  
9 parties in every instance that I've seen it. And we would ask  
10 the Court to consider that as well.

11 Is there anything more I can say to the Court to  
12 persuade you of the virtue of our position here?

13 THE COURT: Well, I think I understand what your  
14 position is. I just don't know whether or not it's proper to use  
15 the Court's docket as a hammer in order to get compliance.

16 MR. REDKEY: We do it every day, every time we charge  
17 anybody, Your Honor.

18 THE COURT: Well, but you also have to make cost  
19 assessments in order to carry out your work.

20 But you've asked for multiple continuances. It's now 13  
21 months into it. He pled 13 months ago. And at some point, the  
22 Court needs to get on with it. Because the public expects that  
23 if I've got a felon in possession of firearms, that I'm supposed  
24 to do something about it.

25 MR. REDKEY: Well, sure.

1           THE COURT: What does it look like for the Court to  
2 basically say, oh, gee, I delayed sentencing this person for  
3 years on end, when there's nothing that's ever been presented  
4 until today as to what the rationale is?

5           MR. REDKEY: Well, I don't have a crystal ball, but I  
6 would be -- if I were a betting man, I bet if we walked out on  
7 the street today and said here's our situation, we have somebody  
8 who's helping to infiltrate people we think are a threat to our  
9 national security and we think is doing a good job, and all we're  
10 trying is possession -- and, true, he was a felon in possession  
11 of a firearm and potential risk, but we certainly see him less as  
12 a potential risk now than that -- he's under the FBI control, to  
13 some extent, and he's doing valuable work for the United States  
14 in terms of the war on terrorism, what do you think, Mr. and Ms.  
15 John Q. Public, if we wait to sentence him another year?

16          THE COURT: But that's something that's within your control.  
17 You don't have to charge people who you do. You have within your  
18 control as the executive office to decide who to charge, when to  
19 charge, how much to charge, how much to bargain for. I don't  
20 have any of those obligations, and I don't have any of that  
21 power.

22          MR. REDKEY: Neither is there a speedy sentencing rule  
23 that the Court is bound by. I think you have some latitude to  
24 make a judgment call on a case-by-case basis. This is not  
25 something that we'd ask the Court to do every day or even every

1 year. I don't know how many requests of this kind have been made  
2 to the Court here, but it's not something that is a matter of  
3 routine or anything that I would hope the Court would think that  
4 we abuse on a regular basis. It's an extraordinary situation.

5 THE COURT: Mr. Redkey, you've got 90 days to finish it  
6 up, and then he's going to be sentenced.

7 MR. REDKEY: Or dismissed.

8 THE COURT: Or dismissed. I mean, that's obviously up  
9 to you.

10 MR. REDKEY: Of course, if he's sentenced, he wouldn't  
11 be where he's effective for us.

12 But we understand the Court's ruling, and we'll abide by  
13 it, of course.

14 THE COURT: You know, using criminal defendants to do  
15 your intelligence gathering isn't necessarily -- I don't know of  
16 any statute that basically says that's what a judge is supposed  
17 to consider when one, basically, effectively and efficiently is  
18 processing cases. And you've had a long time, when I've let you  
19 go 13 months without any explanation whatsoever, and now it's  
20 time to get it done.

21 MR. REDKEY: I understand.

22 THE COURT: So that's my agenda. I've told you we're  
23 going to give you a date 90 days out. I'm assuming he has not  
24 has a pretrial services -- I mean, a Probation workup for a  
25 presentence report, or has he?

1 MR. KOSSNOFF: He has.

2 THE COURT: So if that's already been done, then you've  
3 got 90 days to finish up what you want to do or decide -- which  
4 is certainly within your power -- that you're not going to  
5 continue to pursue it.

6 MR. REDKEY: Very well, Your Honor. Do we have a date  
7 and time in mind?

8 THE CLERK: April 7th at 9:00.

9 MR. KOSSNOFF: April 7th.

10 THE COURT: Will that work, Mr. Redkey?

11 MR. REDKEY: It will, Your Honor.

12 What time was that again?

13 THE CLERK: 9:00.

14 MR. REDKEY: We'll be here to explain why not, Your  
15 Honor.

16 THE COURT: I'm assuming that the defendant is sitting  
17 here, agreeing.

18 But I don't know that anybody asked you, sir, whether  
19 that's acceptable to you?

20 THE DEFENDANT: Yes, it is.

21 Your Honor, could I have a chance to tell you something?

22 THE COURT: Sure.

23 THE DEFENDANT: I definitely can see your point.

24 Thirteen months ago, I never thought I'd be friends with an FBI  
25 agent neither, so I can understand how you would see that. But I

1 think it's more just I really respect him and what he's doing.  
2 I'm positive now -- at fist, I wasn't -- I'm positive now, he's  
3 not out on a witch hunt. He's actually looking for some terrible  
4 people. And these missions that I'm going on, you know, they're  
5 with some dangerous people. And I know it doesn't seem much of  
6 an intelligence gathering, but it does help. There are some  
7 people that -- they want to hurt Americans for no reasons, just  
8 because of their beliefs. And so, you know, that's what we're  
9 doing. And I just wanted to let you know that I'm not just out  
10 here running around, playing games or whatever, and I do have  
11 respect for him and his mission. I mean, we don't hang out  
12 together, obviously. But you know, I have a lot of respect for  
13 him.

14 THE COURT: Well, I certainly understand the  
15 relationship that gets developed, but I think friendship is a  
16 very odd term to apply in this business relationship that you've  
17 got. You know, there are lots of great books that are written  
18 about the relationships between informants and their handlers.  
19 Great TV shows too.

20 But my point is, I'm not the CIA, I'm not the FBI. I'm  
21 a judge who is supposed to process cases and also do what is best  
22 for you in terms of making sure that the punishment fits the  
23 crime and is meted out in a fair and timely manner. I'm also  
24 very aware that you put yourself at risk. And then I question  
25 what for, just how much are you expected to do. But that's also

1 not my concern because that's not my job. My job is to basically  
2 make sure that crimes get processed and that crimes get punished.  
3 I don't doubt the effectiveness or the reason or rationale that  
4 the agent wants to work with you, but being an intelligence arm  
5 of the government is not what the judiciary is about.

6 THE DEFENDANT: I'm at the Court's mercy. And I want to  
7 satisfy Mr. Redkey as well as the Court, so I agree to whatever  
8 you want to do here today.

9 THE COURT: All right. Well, we'll see you on April 7th  
10 then. That should give you time to finish up what you're going  
11 to do or offer me some other alternative. But you've been at  
12 this for quite some time now.

13 THE DEFENDANT: Okay. Thank you, ma'am.

14 THE COURT: Okay. Thank you.

15 We'll be at recess.

16 [4:12 p.m., proceedings concluded.]

17

18 CERTIFICATE

19

20

21 I, Susan A. Zielie, Official Court Reporter, do hereby  
22 certify that the foregoing transcript is transcribed from paper  
23 notes to the best of my ability.

24

25

/S/ Susan A. Zielie, FCRR

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Susan A. Zielie, FCRR