

CONTENTS
FILED

SEP 18 1973

JAMES F. DAVEY, Clerk

(THIS ENVELOPE CONTAINS THE ORIGINAL & TWO CARBON COPIES
OF THE TRANSCRIPT OF PROCEEDINGS HELD IN JUDGE SIRICA'S
CHAMBERS ON 9-17-73 FROM 1:30 PM to 2:00 PM (PAGES 1-14,
INCLUSIVE), RELATIVE TO DEFENDANTS #4, #5, #6, #7
(BARKER, STURGIS, GONZALEZ & MARTINEZ).
(REPORTER: NICHOLAS SOKAL)

(NOTES OF COURT REPORTER
NICHOLAS SOKAL ALSO ENCLOSED)

(CONTENTS ORDERED SEALED
UNTIL FURTHER ORDER OF
COURT) SIRICA, C.J.

(COUNSEL PRESENT - RICHARD BEN-VENISTE, JERRY GOLDMAN,
WILLIAM MERILL, CHARLES BEYER,
ALL FROM SPECIAL WATERGATE PROSECUTOR'S
OFFICE, PRESENT.)

(DANIEL SCHULTZ, ESQUIRE, PRESENT FOR
DEFENDANTS BARKER, STURGIS, MARTINEZ &
GONZALEZ)

James P. Capitanio
Deputy Clerk

362

C O N T E N T S

FILED

SEP 18 1973

JAMES F. DAVEY, Clerk

*Rec'd
9-18-73
J. J. Conner*

*Rec'd
9-18-73
J. J. Conner*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Criminal No. 1827-72

FILED
SEP 18 1973
JAMES F. DAVEY, Clerk

Monday, September 17, 1973

The following is a transcript of proceedings held in
the chambers of Chief Judge JOHN J. SIRICA, from 1:30 to 2:00
p.m., and ordered sealed by the Court.

APPEARANCES:

On Behalf of the Special Prosecutor:

RICHARD BEN-VENISTE
JERRY GOLDMAN
WILLIAM MERILL
CHARLES BEYER

On Behalf of Defendants Barker, Sturgis,
Gonzalez and Martinez:

DANIEL SCHULTZ, Esq.

Also Present:

GEORGE W. HOWARD, Probation Officer
FRANK E. SAUNDERS, Probation Officer
TODD CHRISTOFFERSON, Law Clerk

P R O C E E D I N G S

THE COURT: Around 11:30 this morning I received this memorandum from one of our probation officers --Mr. Frank E. Saunders-- which reads as follows:

"Re Bernard Barker - Criminal No. 1827-72

"Your Honor:

On Friday, September 14th I received a telephone call late in the afternoon from the daughter of the above-named defendant. She was quite distressed and asked that I go to the Montgomery County Detention Center to visit her father. She also asked that I take my tape recorder along with me to permit Mr. Barker to tape the interview giving you the information of what took place on the preceding evening.

Barker is apparently scheduled to appear before the grand jury on September 17 and they wanted Your Honor to have this information immediately. I consulted with the Chief U.S. Probation Officer, Mr. Howard, and he believed at that time no action should be taken.

Mrs. Moffett indicated that on Thursday three men from Mr. Cox's office visited with her father. This was the follow-up of a meeting that was initiated by Barker. Barker apparently had let it be known that he wanted to tell all regarding Ellsberg and clear the matter up entirely. He indicated that he had not lied to them but he had not told all that he knew. He now wanted to tell them every-

thing regarding this matter.

On Thursday, September 13 a Mr. James Neal, along with two other men from the office of Mr. Cox went to the detention center to visit with Barker. They had contacted Barker's attorney, Mr. Schultz, and he also was present. Apparently Schultz was very upset over the meeting and advised Barker that he shouldn't say anything because apparently there was a conflict between Neal and Cox. Neal was not in a position to really say anything and as Mr. Schultz anticipated, Neal got up and left shortly after the meeting got started. The other two men remained. Barker does not remember their names other than one was an older Italian-looking man and his name he thought was Goldman.

These two men interrogated Barker as if it was a criminal interrogation. Barker stopped the meeting and advised them he would say nothing further if they intended to use these police tactics. He was perfectly willing to discuss the affair with them but only with the understanding that he wanted the entire truth be known.

Maria indicates her father advised her that at the conclusion of the meeting these gentlemen told Barker if he would plead guilty they would guarantee that he received a light sentence in the Ellsberg case; and further, they would guarantee whatever sentence Your Honor gave him would run along with that sentence.

Barker indicated when they made these statements that

he felt that pressure was being placed on him and they were making statements that only Your Honor could give. Barker doubted very much that Your Honor would give anyone that type of authority to speak for him and therefore these gentlemen were using unethical tactics.

Barker is afraid he is scheduled to appear before the grand jury and now does not know what to do. His attorney is apparently extremely upset over the entire affair. It was further learned that Mr. Neal is a very close friend of Hunt's lawyer."

Who is the Mr. Neal he talks about?

MR. BEN-VENISTE: James Neal from our office.

THE COURT: I understand.

Mr. Schultz, first, do you waive the presence of your clients here at this conference?

MR. SCHULTZ: Yes, Your Honor.

THE COURT: You have the authority to do that.

MR. SCHULTZ: Yes, Your Honor.

THE COURT: First, were you present?

MR. SCHULTZ: Yes, I was.

THE COURT: I would like to hear your version of what happened.

MR. SCHULTZ: I would like to just preface my remarks, Judge, by saying that the men and their families are very distraught

THE COURT: You are talking about all four of them, not Mr. Hunt now?

MR. SCHULTZ: No, I am not speaking for Mr. Hunt but with respect to Barker, Sturgis, Martinez and Gonzalez. They are very upset and worried and concerned and their families are too.

I think what has happened here is because of the emotions involved, what has ended up being reported in this report has not been accurate.

I would also like to say as reported in there I was very upset and I am very concerned about what is happening now and at the conclusion of the Thursday meeting I could not rationally understand the attitude that was being displayed.

THE COURT: By whom?

MR. SCHULTZ: By representatives of Mr. Cox's office in terms of their decision specifically conveyed to us that they were going to go forward and indict Mr. Martinez and Barker. What was said to Barker by Mr. Merrill at the conclusion of the three-hour situation was suggestion to Mr. Barker to consider pleading guilty to the charges by the federal grand jury with respect to Dr. Fielding at least, that he should consider that, that if he were to do that, advantages as expressed by Mr. Merrill would be that he'd be in a position to receive sentencing by the same judge which would be Your Honor, sentencing at the same time as the sentencing with respect to the original Watergate

charges. And it was said by Mr. Merrill that his office, if that was the case, and if Mr. Barker would plead guilty, his office would recommend to the Court that the Court impose concurrent sentences and it was said to Mr. Barker that they believed that his plea to guilty would be of symbolic value to the government's case with respect to the Fielding office break-in.

It was never said in any way, shape or form that a sentence was being guaranteed. It was never said that they could guarantee a minimum sentence or anything of that nature. That has ended up, I think, because of the circumstances misreported, misinterpreted, or misconveyed by Barker's daughter.

THE COURT: Do you feel that anything Mr. Merrill or anyone said from Mr. Cox's office was improper under the circumstances?

MR. SCHULTZ: No, Your Honor, I don't consider it improper in terms of unethical or anything of that nature.

We met with Mr. Cox's office because we were told over the last few weeks that Mr. Barker, Mr. Martinez were being considered as defendants. We were told that Mr. Cox's office had not had opportunity to have any firsthand impression or hear Mr. Barker or Mr. Martinez's version firsthand with respect to their involvement in that matter, that they'd not be giving immunity for purposes of grand jury testimony. And what we did on Thursday, Your Honor, was open ourselves up to meet with the representatives of Mr. Cox's office and in order to give them

that opportunity in the hopes that would make an impression upon them such that they would reconsider their decision.

At the end of the long meeting it was specifically told that was not going to be the case and then the suggestion was made in terms of what alternatives Mr. Barker had. And that was the sum and substance of it.

THE COURT: I meant to include the name of Mr. Martinez. He is the other one might be indicted in this case. You also waive his appearance.

MR. SCHULTZ: Yes, Your Honor. In fact, he was not called down for any meeting on Thursday.

THE COURT: All right. Have you finished? Mr. Ben-Veniste.

MR. BEN-VENISTE: Your Honor, I would like to explain the circumstances of how this meeting came about and I think it would be of assistance to the Court.

Mr. Neal received a telephone call from Mrs. Moffett while he was still in Nashville a week ago.

(At this point Mr. Beyer entered the room.)

MR. BEN-VENISTE: In this conversation Mr. Neal indicated he would be in Washington last week and asked Mrs. Moffett if she had anything to bring up at that time, that he would be available. Last Tuesday, I guess it was --I don't have the date at hand-- but in any event, last Tuesday received a telephone call from Mrs. Moffett who said that in summary her

father wanted to tell the full story of the facts surrounding the Watergate break-in and subsequent events, including the circumstances surrounding his entry of the plea of guilty to those charges. She said that he had not told the full story theretofore, that there was substantial additional testimony or statements he would like to give which would indicate that he had been induced and pressured to plead guilty to those charges.

Mrs. Moffett indicated that she would prefer that I'd testify as initiating this meeting be kept confidential. In view of these proceedings I say parenthetically I don't believe confidentiality should bind us here.

Mr. Neal inquired of her --I was on the extension at this time. Mr. Neal inquired of her as to whether she had advised Mr. Barker's attorney of this as we would be very interested in having Mr. Barker represented by counsel at any meeting we might have with him at the Montgomery facility. Mrs. Moffett said she had not. We asked her if Mr. Barker specifically asked his attorney not be present and she said Mr. Barker had not made such a request. We told Mrs. Moffett we would inform Mr. Schultz that a request had been made to meet with Mr. Barker at the Montgomery facility and would make arrangements to see him on Thursday.

We were busy in the grand jury on Wednesday of last week and I believe on Wednesday he was to be interviewed by the probation people. Mrs. Moffett specifically requested that

representatives of the probation department be allowed to speak to Mr. Barker first and that Mr. Barker be allowed to make a statement to us at the Montgomery facility rather than being brought into town to which we agreed.

We started off the meeting talking about the Watergate and I will say in these closed proceedings because I understand Your Honor will seal this record --

THE COURT: --this record will be sealed.

MR. BEN-VENISTE: That very little of any factual nature was added by Mr. Barker during that conversation about the Watergate matter. He did put a new interpretation on facts about which he had already testified but did not add very much of new material.

Specifically one matter about a particular meeting which Mrs. Moffett stated he wished to change his testimony was gone into and his statement remained the same as it was theretofore --denying the incident Mrs. Moffett said he would now agree, or would state took place.

So with respect to the Watergate matter about which Mr. Goldman and I, and Mr. Neal very briefly because he had to leave to catch a plane, questioned him and he changed very little if any substance of his statement.

Mr. Merrill should discuss the other matter.

THE COURT: Is that what happened --Mr. Neal left to catch a plane, that is the reason he left the meeting?

MR. BEN-VENISTE: He left the meeting. He had a couple matters to discuss with Mr. Cox afterwards and he had to catch a plane to Nashville. We were out in Maryland and with the spectre of the rush-hour looming Mr. Neal thought he ought to leave.

THE COURT: All right. Is that substantially your recollection, Mr. Schultz?

MR. SCHULTZ: In terms of the areas covered, Your Honor.

What new information, or on that aspect, I wasn't present in the grand jury before the trial and wouldn't know if it was new.

THE COURT: What is the status of his appearance, is he appearing today before the grand jury?

MR. SCHULTZ: Yes, Your Honor, at 2:00 o'clock.

THE COURT: All right.

Mr. Saunders, do you want to add anything to what is in your statement?

MR. SAUNDERS: No, Your Honor.

THE COURT: You weren't there when Mr. Schultz was there?

MR. SAUNDERS: No.

THE COURT: What you have here, Mr. Saunders, is what Mrs. Moffett allegedly told you and this is the substance of it in this report which you submitted to me?

MR. SAUNDERS: Yes, Your Honor.

MR. SCHULTZ: Your Honor, Mrs. Moffett has been under an emotional strain. She is the only family member in this area and the only person her father can see and the other men can see, and she has taken the brunt of a great deal of anxiety at this point.

MR. MERILL: I would be glad to add anything Your Honor may want in view of the fact Mr. Schultz said anything I said wasn't improper or unethical and I might briefly say I went with the three gentlemen Mr. Ben-Veniste described because I was in charge of presenting the matters to the other grand jury relating to the Fielding break-in. Indeed, we have written to Mr. Schultz on the 20th of August indicating that Mr. Barker and Mr. Martinez were considered as potential defendants, advising him that, indicating if he wanted to testify before the grand jury we would welcome that, would obviously not call them if we were advised they would take the Fifth Amendment. I went to the meeting because it was my understanding Mr. Barker would say what we wanted to inquire about in connection with the Fielding break-in and we spent, I suppose, an hour discussing it and at the conclusion on the basis of what I knew up to that point in time and what he said there I did not see how I could not include him as one of the potential defendants in this particular matter. And I added, however, that if he on the basis of some of the things he said, felt that it was consistent with that, for him to enter a plea of guilty and that would obviously have to be up to

him and his attorney. And I didn't even expect him to respond at that point in time, he would obviously want to talk to his lawyer and think about it, but if he felt he could do so in view of what he told me I felt it would be helpful to the government's case I would recommend to Mr. Cox we so advise whoever was the sentencing judge and I am not sure I felt it would be Your Honor because if it was a new indictment it might not be before the same judge. In any event, whoever the judge was, would consider that matter --one or two judges perhaps, I would certainly indicate to Mr. Cox we should advise that judge that such a plea had been helpful and it would certainly be my recommendation that we recommend that no further penalty be imposed for the plea to that particular --

THE COURT: --I understand. It has been the practice recently anyway, and I am sure Mr. Howard and Mr. Saunders know this, that after I call upon the defendant and ask him whether he wishes to make a statement --some do and some don't-- I call upon the defense attorney --it is a regular routine-- we also include government counsel now, and they usually say anything they think in fairness should be said. They don't usually and I don't usually ask for a specific recommendation by way of a certain sentence or certain term or anything like that, but they make representations, I think, from time to time about cooperation given by the defendant and various other things that might be of interest to the Court. However, I don't see

anything has been done in this case that is unusual. As Mr. Schultz said, you have a situation where the daughter is very high-strung probably and emotional, and that is natural considering the circumstances the father finds himself in and all that.

I would be willing to listen to anything anybody has to say but I thought I better put this on the record soon after I got the memorandum as I possibly could so there would be no misunderstanding in the future.

But you understand, Mr. Merill, if you do make any recommendation whether I have this case or some other judge, I don't know what some other judge might say, but I never like to hear prosecutors say you ought to give this man ten years, or we recommend five years. To recommend leniency is something else. Other district courts might do it differently.

MR. MERILL: I am aware of that.

THE COURT: Do you have anything else, Mr. Schultz?

MR. SCHULTZ: No, Your Honor.

THE COURT: Are you satisfied with the meeting today?

MR. SCHULTZ: Yes.

THE COURT: And your client is going before the grand jury at 2:00 o'clock?

MR. SCHULTZ: Yes.

THE COURT: I have asked the government to file an answer to your motion. What time did we discuss this morning?

MR. BEN-VENISTE: Tentatively for next Monday, Your Honor.

THE COURT: I think that will give them time to file an answer. Any objection?

MR. SCHULTZ: No, Your Honor.

THE COURT: That is just a couple days more than the five-day period.

MR. SCHULTZ: I have no problem on that.

THE COURT: All right. If nothing further, we will adjourn.

*

*

*

(1:55 p.m.)

CERTIFICATE

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

Nicholas Sokal

NICHOLAS SOKAL
Official Reporter