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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Misc. #64-73

In Re:)
) Grand Jury Original
WATERGATE INVESTIGATION)
Reference: Misc. #47-73

MOTION FOR A PROTECTIVE ORDER

The undersigned attorney, Peter M. Wolf, a member of the Bar of this Court and of the District of Columbia, respectfully moves this Court for a protective order hereinafter described.

The facts underlying and the grounds for this motion are as follows:

BACKGROUND FACTS

Late in the summer of 1972 I received a telephone call from a client I had represented in court in certain matters. He inquired whether he was in danger of violating any law if he had hidden in his possession approximately eight cardboard cartons containing, among other things, the contents of E. Howard Hunt's desk in the White House before the F.B.I. got there, including plans to "bug" the Watergate. During that same telephone conversation, in response to my urging that he turn over these documents to people conducting investigations of the Watergate matter, my client indicated a possible willingness to do so and authorized me to ascertain the possibility of obtaining compensation to offset any potential harm to him. I did undertake such investigatory steps and it was necessary, of course, to relate to several people the communication of facts my client had made to me.

Very shortly after this first telephone conversation, I telephoned Principal Assistant U.S. Attorney Earl J. Silbert

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and told him these facts and received an opinion from him that he did not think my client was committing any crime. We both specifically discussed in this context possible violation of 22 D.C.Code § 703 (1967). In light of the law and facts known to me, it is my judgment my client has done nothing unlawful in any way. The fact remains, however, that some of the information related above could be used as links in a chain which might tend to incriminate him.

As time progressed, additional facts became known to me through my client and were made known to other people for the purposes aforesaid. These included the facts that my client worked for the Committee for Re-election of the President, that he had been asked to pick up the cartons at the Executive Office Building on the Sunday after the Watergate break-in, that a pass would be waiting for him at the guard entrance, that no questions would be asked when the cartons were removed from the building, and none were.

My attempts to have my client disclose the documents he said were in his possession before the November, 1972 elections were to no avail. Shortly after the election my client informed me that the materials were no longer in his possession, had been turned back over to the Committee for Re-election of the President shortly before the election, and that some of the materials in my client's possession had apparently included the contributors' lists turned over by the Committee in the litigation instituted by Common Cause.

I have been urging my client to cooperate voluntarily with any Grand Jury or Congressional investigations, but without results.

THE CURRENT INVESTIGATION AS IT
RELATES TO THE UNDERSIGNED ATTORNEY

These facts have become known to the United States Attorney's Office. I have been informed that the office wishes to know the name of my client for purposes of the current Grand Jury investigation into the Watergate bugging and cover-up. I wish to be as cooperative with any pending criminal investigation as possible, but I also wish to be true to my professional integrity and to the ethics of my profession. The question whether the law is such that I am required to reveal the name of my client is by no means clear. The United States Attorney's Office has made available to me its memoranda in the case of Michael Douglas Caddy, No. 72-1658 in the United States Court of Appeals for the District of Columbia Circuit. In footnote 7 of the Motion to Compel Testimony of Grand Jury Witness Michael Douglas Caddy, filed in this Court, the Government concedes that one exception to the general rule that the attorney has no right to refuse to disclose the identity of his client is when the communication to the attorney has previously been revealed, and when revealing the identity of the client might therefore subject him to criminal prosecution. See e.g., Tillotson v. Boughner, 350 F.2d 663 (7th Cir. 1965); Baird v. Koerner, 279 F.2d 623 (9th Cir. 1960). This appears to be precisely the situation faced by the undersigned.

In seeking to be cooperative with the United States Attorney's Office and expressing my wish to reveal the identity of my client only if properly ordered to do so by the Court, I had suggested that I be taken into the Grand Jury, given the opportunity to

refuse to answer any questions impinging upon my attorney-client privilege, be taken before a Judge of this Court, and then answer questions before the Grand Jury only if ordered to do so by the Court after a proper hearing on the legal issues. I felt that this would most protect my professional integrity. However, on April 18, 1973 representatives of the United States Attorney's Office urged me simply to reveal the name of my client to them and stated that if I refused to answer some questions before the Grand Jury they might seek to have the Court hold me in contempt immediately without first being ordered by the Court to answer and returned to the Grand Jury for an opportunity to do so. It is for this reason that a protective order is sought so that I will not run the risk of being held in contempt of court without having given an opportunity to answer all proper questions only if ordered to do so.

The legal situation is further complicated by the uncertainty whether the attorney-client privilege exists at all in this case. It could be found that the communications to me were authorized to be communicated to third persons or were communicated to me during the commission and furtherance of a crime. See 97 C.J.S. Witnesses §§ 283 i, 285. The undersigned does not know enough about the current Watergate investigation to know whether his client was committing a crime or not and the undersigned has relied for many months on the opinion from the Principal Assistant United States Attorney referred to above. If this situation has changed, I am entitled to adequate time for study and reflection -- and indeed, to information -- in order to determine whether

the attorney-client privilege is applicable. This could not be done within the Grand Jury room or upon being shuttled between the Grand Jury room and a Judge of this Court with the imminent threat of being held in contempt of court for failure to answer questions.

PRAYER FOR RELIEF

WHEREFORE, the undersigned attorney requests this Court to order the United States Attorney not to move for contempt of court against the undersigned until he has been given an opportunity to answer all proper questions before the Grand Jury relating to his aforementioned client only after having been ordered to do so by a Judge of this Court after full and fair deliberation upon the legal issues of attorney-client privilege herein raised.

S/

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was personally served upon the Office of the United States Attorney, United States Courthouse, Washington, D.C., this 19th day of April, 1973.

S/

PETER H. WOLF