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June 1, 2022

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Dear Counselor:

In Re: Complaint of Geoffrey Shepard (10/3/21)

This nineth letter is submitted in furtherance of my Complaint of Attorney Misconduct, which was filed electronically on October 3, 2021.

DOJ prosecutors' suppression of exculpatory evidence regarding dramatic changes in testimony by their two lead witnesses.

Documentary evidence shows WSPF attorneys were fully aware of changes in the testimony of their two lead witnesses, John Dean and Jeb Magruder, that they chose not to share with defense counsel prior to the Cover-up Trial.

John Dean

- As his cover-up collapsed, Dean or his criminal defense counsel spoke or met with career prosecutors -- Earl Silbert, Seymour Glanzer and Donald Campbell – a dozen times during April, 1973. WSPF attorneys later worried these career prosecutors might have inadvertently given Dean implied immunity during one or more of those conversations. This was particularly important since Dean had become the government's lead witness against his former colleagues in the Cover-up Trial.
- WSPF attorneys thus conducted formal interviews with them, in anticipation of formalizing Dean's plea agreement. Silbert was interviewed separately. WSPF attorneys Peter Rient and Judy Denny interviewed Glanzer and

Campbell together on two occasions – September 18 and October 10 -- which were memorialized in a single memo dated November 15, 1973. Their approach was to review each and every meeting, walking the career attorneys through Dean's disclosures.

- It is this November 15 memo -- https://shepardonwatergate.com/documents/RN004-U.pdf -- which is the focus of my immediate concern, because it documents a series of disturbing changes in Dean's testimony, as he sought immunity from those career prosecutors. Here are the interesting parts:

    - 4/6/73 [first extensive meeting with Shaffer]: **"Shaffer talked only of Dean's knowledge regarding Mitchell and Magruder. There was nothing said about Ehrlichman, Haldeman, Colson, or Nixon."** p. 5
    - 4/8/73 [first face-to-face meeting with Dean]:
        - **"President had not been told everything yet." p. 6**
        - **"Dean told about the January and February meetings in Mitchell's office, but did not tell about [his] hiring of Liddy or talking with Liddy before the January meeting."** p. 6
        - **"Dean did not mention his subsequent meeting with Haldeman at this time. He gave no information at all about Haldeman or Ehrlichman." p. 7**
        - **"Dean admitted cross examining Magruder for his grand jury appearances and suggesting weaknesses in Magruder's testimony." p. 7**
    - 4/9/73 [second extensive meeting with Dean]:
        - **"Dean did not mention cover-up until later, so prosecutors didn't understand Dean's references to money other than that money was to pay Hunt's requests conveyed by O'Brien."** p. 7
        - **"Shaffer said Dean had "nibbled" on the $15,900 that Howard and Strachan had given him, having taken about $4,000 for his honeymoon and put a check in the safe."** p. 14
        - **"At this point, the prosecutors had begun to think of Dean as a defendant rather than as a witness. . ."** p. 14
    - 4/15/73: **"Glanzer thinks Dean discussed receiving 302's from Gray "to keep abreast of the news leaks." Dean did not mention**

that he had previously requested 302's from Petersen and Kleindienst and had been turned down." pp. 15-16

- Meeting of 4/9/73 [second extensive meeting with Dean]:
  - **"Dean never acknowledged a cover-up or conspiracy or paying the defendants for silence until after he was fired (April 30, 1973)."** p. 10
  - "Dean said that at some point Parkinson and LaRue had come to Dean's office with a sheet of paper with money requests from Hunt on it, **but Dean never said that the money was for Hunt's silence**." p. 12
  - Campbell remembers that Dean told of the March 21 meeting where Dean attempted to tell the President about the situation, **but that the President didn't understand**." p. 13
- "May 1: By the end of April, Dean had become much more antagonistic toward Haldeman and Ehrlichman in his discussions with the prosecutors and also in public, issuing the "scapegoat" statement. **Before that, the impression he gave of Haldeman was of a "great devoted public servant," clean and hard working. He had been restrained in his praise of Ehrlichman**." p. 17
- [Here is that same entry, from handwritten notes, presumably taken by Judy Denny. Note the startling changes!] 5/2-5/3, 1973: "Situation in state of flux because of Senate Committee & Cox after 4/15**. Dean becomes antagonistic to Ehrlichman & Haldeman whereas before he had given impression that H was clean & was restrained as to E's involvement.** This was around time of 'scapegoat' statement by Dean." p. 1
- "On May 3, **Dean began focusing on Presidential involvement, thus dramatically changing his previous stance**. Glanzer and Campbell agree with Silbert's account of Dean's statements about the President." p. 23

These observations, made from notes taken by the career prosecutors who first interviewed Dean, shows material changes in his story that would have enabled defense counsel to seriously undermine Dean's credibility as the government's lead witness.

- It seems readily apparent the Glanzer/Campbell interviews were not consultive in nature – and did not constitute attorney work product. Indeed,

Glanzer and Campbell were treated as witnesses and their disclosures were highly relevant to the credibility of Dean's expected trial testimony.

- Simple, inadvertent oversight of this key memo is highly unlikely for at least two additional reasons:

    - Lead trial prosecutor James Neal became concerned on the first day of trial that the defense would seek to bring out changes in Dean's testimony and instructed his associate, Larry Iason, to prepare a memo in response. https://shepardonwatergate.com/documents/RN004-V.pdf
    - The memo's two authors – Rient and Denny – were two of the six attorneys who signed WSPF's brief in response to defendants' appeal of their Cover-up convictions, specifically re-asserting that they had provided all materials required to be shared with defense counsel under Brady.

What is so telling about this suppressed memo is that it not only detailed changes in John Dean's testimony which were not shared with defense counsel, but that Dean did not even begin to accuse Nixon, Haldeman or Ehrlichman until a month after he began meeting with prosecutors – and after he'd been fired from his position as counsel to the President.

WSPF prosecutors' failure to share this information is an egregious violation of prosecutorial ethics which undermines any idea that Watergate defendants received the due process of law guaranteed by our Fifth and Sixth Amendments.

Jeb Magruder

So, too, with Jeb Magruder, prosecutors' second most important witness. Nixon's lead defense counsel, Fred Buzhardt, told me back in 1974 that James Neal had said they were not at all sure they could put Magruder on the stand in good conscience as a government witness, since his testimony had changed so frequently.

I later uncovered confirmation of such concerns in WSPF files in the form of a 45-page guide, apparently designed for use in conducting Magruder's direct

examination in the Cover-up Trial. It is set forth at https://shepardonwatergate.com/wp-content/uploads/2015/06/AD-7-7.compressed.pdf. It seems that Magruder had appeared five times before the grand jury and interviewed in depth in fourteen meetings with WSPF prosecutors. Eager for any sort of plea deal, Magruder seemed willing to recall events in ways he hoped would please prosecutors.

The guide, presumably prepared by Jill Wine-Volner, highlights some four dozen instances where Magruder's expected testimony will be inconsistent with his prior sworn testimony or that of other prosecution witnesses.

Volner echoes these points in her recent book, *The Watergate Girl* (Henry Holt and Company, 2020) in her chapter about Magruder, titled "The Watergate Boy." Here are some excerpts:

- "I was used to sexist assumptions. What I wasn't used to was Magruder's utter amorality. He had lied and lied and lied. To the FBI, to Justice Department investigators, to a federal grand jury, to Judge Sirica." (p. 27)
- Lying was as natural to him as breathing." (p. 27)
- You might think lying was part of Magruder's DNA." (p. 28)
- "No witness in my experience had affected me the way Magruder did. I was stunned by the ease with which he dissembled, even as he tried to clear himself. He was a slippery confabulator, and, I came to the conclusion, based on our many hours of conversation, that he had no moral center." (p. 30)
- "I detected a slight smirk on his face and felt he was just telling me what he thought I wanted to hear." (p. 30)

In spite of these doubts, WSPF prosecutors chose both to go ahead with Magruder as a lead witness – and not to share evidence of their doubts as to his veracity with defense counsel. Volner offers the following explanation:

> "Magruder wasn't telling us the *whole* truth. Still, we needed him badly. He was the only key figure in the planning of the break-in and the early development of the cover-up whom we were likely to secure as a witness, and he was the bedrock of any case against his former boss, John Mitchell." (p. 30)

Conclusion

I submit that these actions and non-actions by DOJ attorneys constitute the suppression of exculpatory evidence and violate ethical standards, resulting in a denial of the due process guaranteed to Watergate defendants by the Fifth and Sixth Amendments to our Constitution.

It seems clear these materials showed material changes in testimony that were required to be shared with defense counsel under standards set by Brady v Maryland. This is particularly true since it was the much more liberal standard enunciated in the DC Circuit's holding in U.S. v Agurs, while later overturned by the Supreme Court, was in effect for the for much of the unfolding of the Watergate scandal.

Please allow me to conclude by pointing out that I have yet to receive anything other than a boilerplate electronic response to my original Complaint of Attorney Misconduct, filed over seven months ago. This is particularly troublesome in light of my continued requests to appear in person to discuss in detail the evidence of flagrant due process violations of WSPF attorneys that my research has uncovered.

Respectfully submitted

Geoffrey C Shepard