

# Shift by McCord Is Linked to Advice of Former Counsel to Senate Inquiries

By CHRISTOPHER LYDON

Special to The New York Times

WASHINGTON, March 27 — Bernard Fensterwald, a maverick lawyer and periodic batter against the secret machinery of Federal law enforcement, began advising James W. McCord Jr. about three weeks ago and apparently provided the tinder that has touched off the new explosion of Watergate charges.

It was in Mr. Fensterwald's plush offices here over the weekend that McCord, the convicted former security chief of the Nixon re-election campaign, told Senate investigators that high White House and campaign officials had advance knowledge of the Watergate bugging.

In brief interviews yesterday and today, Mr. Fensterwald said he had only been sitting in for Gerald Alch, McCord's court counsel, who was out of town.

But Mr. Alch's partners in the Boston firm headed by F. Lee Bailey said today that Mr. Fensterwald had entered the case without their knowledge or invitation and that they had been "completely surprised" by the sudden shift in McCord's behavior in the five days since Mr. Fensterwald got involved. Mr. Fensterwald got involved, Mr. Bailey remarked this afternoon, "We didn't know Fensterwald was in the case until we read it in the papers."

## Aided Senate Inquiries

Mr. Fensterwald, 52 years old, is an independently wealthy son of a clothing merchant in Nashville. He established an intensely controversial reputation more than a decade ago as a counsel to a number of Senate inquiries — first into

price fixing, later into the drug industry and finally into wiretapping by Government investigators.

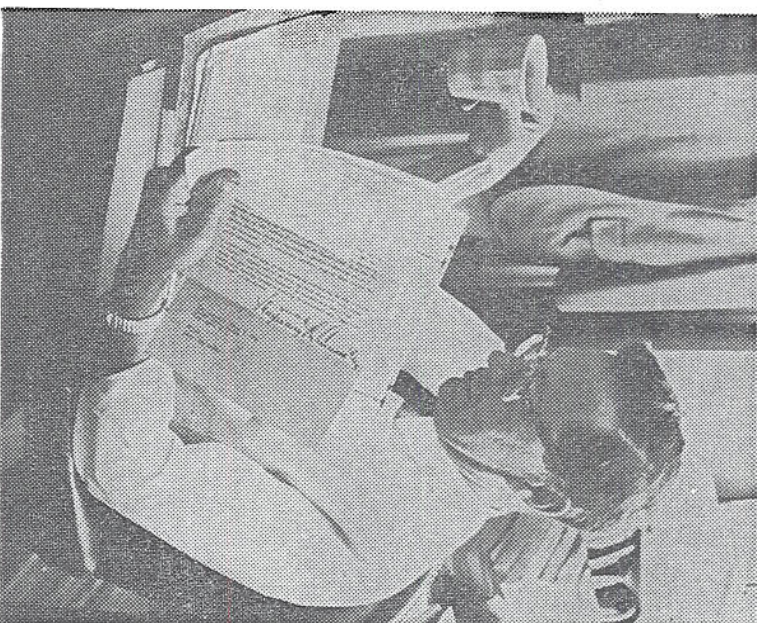
The last set of hearings — "the ones that did us all in," he has said — sought to establish that the Government used illegal wiretaps to collect evidence against James R. Hoffa, the teamsters' union president, among others.

The hearings led to new legislation restricting electronic surveillance, but they also prompted disclosures that the late Senator Edward V. Long of Missouri, chairman of the subcommittee for which Mr. Fensterwald worked, had split legal fees with one of Hoffa's lawyers. The disclosures helped defeat Senator Long in 1968 and hastened the end of Mr. Fensterwald's government service.

In recent years Mr. Fensterwald former and directed the Committee to Investigate Assassinations, specially those of John F. and Robert F. Kennedy and the Rev. Dr. Martin Luther King Jr. For the last year Mr. Fensterwald has been counsel of record for James Earl Ray, and he is currently representing Ray in a habeas corpus proceeding to free him from jail in Tennessee.

Mr. Fensterwald explained today that he had been following the Watergate case for months. He first became directly involved, he said, in January, after McCord was convicted for burglary, unrelating and conspiracy, and Judge John J. Sirica set McCord's bail at \$100,000.

"I got into the case originally at the request of one of Mr. McCord's friends who



Bernard Fensterwald at work in Washington

The New York Times

thought I could assist McCord and Gerry Alch in getting bail reduced," he said.

Those efforts were unavailing, but Mr. Fensterwald said he then helped raise the cash that freed McCord on March 7. According to governmental sources, McCord and his family put together \$60,000 on their own and Mr. Fensterwald put up the \$40,000 remainder.

Mr. Fensterwald would not confirm those figures or that he contributed his own money.

pressure and perjury in the Watergate trial and reopening the search for high-level managers of the raid on Democratic headquarters here last June.

Mr. Fensterwald said he went to court last Friday morning to observe the sentencing. When Judge Sirica read the letter from McCord, Mr. Fensterwald said, "I was just as surprised as Gerry Alch and everybody else in the courtroom."

Shortly thereafter, in or near the courthouse, Mr. Fensterwald says McCord asked him to help in the approach to investigators from the special Senate committee examining the Watergate affair.

Mr. Fensterwald insists he was repeatedly in touch with Mr. Alch on the case, but he acknowledged today that unless McCord told Mr. Alch of the plan to talk with the Senate investigators, Mr. Alch would not have known about it.

Mr. Alch has a vivid recollection of talking with McCord outside the courthouse early Friday afternoon. As Mr. Alch

prepared to leave for a week-end in Florida, he says he arranged to represent McCord before Judge Sirica again the following Thursday and bade his client farewell.

But Mr. Alch evidently had no warning that in the meantime that McCord would name John W. Dean 3d, counsel to President Nixon, and Jeb Stuart Magruder, deputy director of the Nixon campaign, in taped recorded interviews with lawyers for the Senate Watergate committee.

Mr. Fensterwald said today that there was no deep mystery or grand strategy in his advice to McCord. He wants simply, he said, to help his new client respond to Judge Sirica's admonition that all the Watergate defendants help the Senate and a new grand jury get to the bottom of the case — presumably in hope of getting their sentences reduced.

Mr. Fensterwald said he had urged McCord "to take the judge's words to heart." But he says it was McCord's idea, not his own, to tell his story to the Senate investigators.



# COURT RESTRICTS TAXES ON INDIANS

## Bars State Income Levy on Reservation Workers

By WARREN WEAVER Jr.

*Special to The New York Times*  
**WASHINGTON, March 27**—The Supreme Court ruled today that states cannot impose income taxes on Indians who live and work on a reservation but that they may tax the gross receipts of any business the Indians operate elsewhere.

The court decided unanimously that Rosalind McClanahan, a resident of the Navajo reservation in Arizona, was entitled to reclaim \$16,200 the state withheld from her income in 1967 because it had no power to tax an Indian whose income was all earned on the reservation.

Citing her special status as an Indian and the source of her income, Justice Thurgood Marshall wrote, "Her activity is totally within the sphere which the relevant treaties and

# House Panel Asks Dean to Testify on Executive Privilege Only

By JAMES M. NAUGHTON

*Special to The New York Times*  
**WASHINGTON, March 27**—

Bipartisan leaders of a House subcommittee offered today to forgo questioning of John W. Dean 3d about the Watergate conspiracy if Mr. Dean, the White House legal counsel, would testify on the issue of executive privilege.

Representatives William S. Moorhead, Democrat of Pennsylvania, and John N. Erlenborn, Republican of Illinois, made public the text of a letter in which they urged President Nixon to allow Mr. Dean to give "limited testimony" to the subcommittee on Foreign Operations and Government Information.

Mr. Moorhead, the subcommittee chairman, said that Mr. Dean's testimony was "essential" to consideration of a bill to restrict the use of executive privilege to deny information to Congress. Mr. Erlenborn and six other Republicans sponsored the bill.

The President has refused to allow Mr. Dean to appear before either the Senate Judiciary Committee or the Select Senate committee investigating the break-in and bugging of the Democratic headquarters at the Watergate complex. Mr. Nixon contends that Mr. Dean is immune from Congressional examination by virtue of his position on the White House staff.

The White House, under growing pressure from Senate Republicans as well as Demo-

crats to have Mr. Dean clarify his relationship to the Watergate conspiracy, made no immediate response today to the more limited request from the House subcommittee.

A White House spokesman said, "We are studying the request carefully, as we study all such requests."

Mr. Moorhead and Mr. Erlenborn issued copies of a study by the Library of Congress that contradicted President Nixon's statement March 12 on executive privilege. The rarely invoked doctrine of executive privilege protects the confidentiality of communications within the executive branch if disclosure would impair the ordering of government.

Mr. Nixon said in the formal statement that he invoked the privilege only three times in four years, but the Library of Congress report cited 19 occasions on which the Nixon Administration refused to give information to Congressional committees.

The 19 instances included four in which Mr. Nixon expressly invoked the tradition of executive privilege and 15 occasions when documents or testimony were withheld without formally invoking the privilege.

As the White House lawyer, Mr. Dean is responsible for deciding when to declare executive privilege. Accordingly, Mr. Erlenborn and Mr. Moorhead said, Mr. Dean's testimony would be "of such a unique nature" that the subcommittee was willing to limit the scope of its questions.

The two Congressmen stipulated in their letter to the President that Mr. Dean's testimony would be limited to executive privilege and "matters related to his key role in the handling of requests for the invocation of the privilege."

They also said that "no questions would be put to Mr. Dean that would in any way impinge on his confidential relationship with Mr. Nixon and that "no questions would be put to Mr. Dean that would relate to his role in the investigation of possible involvement of White House personnel in the Watergate incident."

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