

DEAR JIM,

5/19/73

When I saw you earlier this week I told you I wanted to write a letter to the editor about McCord. Having heard nothing and having formed a few impressions from his yesterday's testimony, I have written it rather than delay longer. A copy is enclosed.

You will remember that you told me Bud is considering filing a writ of *coram nobis* (?) and that you disagreed. My instinctive reaction then was that he should. After some thought I feel rather strongly that he should, and for multiple reasons.

As you know, I think of such legal matters more politically than legally.

If I were not confident that Bud would automatically oppose anything I suggest, I'd have written him about this. I wrote him about other things yesterday, copy also enclosed.

First of all, McCord yesterday took on a full set of powerful new enemies, not the least of whom are Bailey and Alch. Even if McCord resisted responding, Alch should have, in a sincere defense effort, sought to explore the line McCord has taken. From some of my experiences in the Garrison case I have had questions about these boys anyway. Next, McCord has laid it on him (them) and they are not the kind to take this in stride.

The judge has suddenly become a hero after a career as a hack. A hearing on an entrapment motion gives him another opportunity to be a genuine hero, to get to the bottom as he says he wants to. A whole new set of facts become relevant, and this reverses the position of the whitewashing prosecution. In fact, it would give Bud, who I suspect will not be fully equal, a chance to expose the prosecution's covering up.

I had all these things in mind before Martha Mitchell hit the tube last night. You will remember that I have felt from almost the first that Martha was liberating John in all she did, from the time she got jabbed in California. For I have also believed that from the time she returned from California, she has said nothing or just about nothing that John didn't want said. As I remember what she said last night, she said that John told her he was protecting "Mr. President". (And in using this phrase, I have never thought she was expressing reverence, for she has always known Tricky-Dirty as Dick and would ordinarily say "The President".)

So, if Bud files such a motion and can get a hearing, and Mitchell is the one who entrapped or was part of the entrapment, see what can follow?

Should Mitchell deny, then I have in my files a long record for him that is entirely consistent with what McCord alleges.

On the other hand, and separate from such a hearing, McCord is more vulnerable than yesterday's hearing and questioning shows. He handled himself remarkably well. But he got cream-puffs, not questions. The tough and to me obvious questions were not asked. In a hearing they will be because the prosecutor who will ask them will, in a real sense, be on trial himself.

There will, I anticipate, be another problem, if I understand McCord. He will face a conflict between his own interest and loyalties I think he feels sincerely. I think he will not easily see where the greater loyalty is owed, and I am not speaking of to himself or to his family, which is separate.

Bud was right to counsel as little as possible yesterday. There were, however, a few places where he should have and didn't.

And if he is at all apprehensive about his words of counsel being heard, then then can be without sophisticated equipment. I detected this by accident in listening to the part of the proceedings I missed from the phone call. The automatic volume control takes over with a whisper and amplifies the whisper when there is no other sound. If the mike picks it up at all, the feobs can make it out.

A hearing on an allegation of entrapment is going to take more time in preparation than Bud seems to have invested or being willing to invest. It will also require a lawyer with more courtroom experience and who thinks faster on his feet ready to jump in. Like Bill. After yesterday I think Bud made an even bigger mistake not to accept the offer I made through you several weeks ago...Have a good trip.

Route 8, Frederick, Md.
5/19/73

Editor, The Washington Post-

If we genuinely believe that justice should be tempered with mercy and that those who have committed crimes against society should do what they can to undo the harm they have done, then Judge Sirica should suspend whatever sentence he gives James McCord.

Without McCord the same crimes would have been committed anyway.

But without his taking Judge Sirica's plea to heart, without his willingness to subject himself and his family to such very public agony, without what came across as a very honest confession, and without his telling everything he was asked about all the details and other participants, the country would be much worse off and the possibility of reducing this kind of deep subversion would be much less likely.

He has done what he can to pay his debt to society.

With a lifetime in jail he could not atone or mitigate his crime as much as he has already.

I don't think anyone will ever have the opportunity to persuade others who have done wrong to do what they can to make it up to society that Judge Sirica now has.

We will all be the beneficiaries if he suspends McCord's sentence.

Sincerely,

Harold Weisberg