

McCord Cites Tapes In Pushing New Trial

8/10/73

By Kenneth Bredemeier
Washington Post Staff Writer

Convicted Watergate conspirator James W. McCord claimed yesterday that continuing Watergate revelations at the Senate hearings, such as the existence of tape recordings of President Nixon's office and telephone conversations, lend new credence to his request for a new trial.

"One of the major grounds for acquittal or new trial . . . is the wrongful withholding of potentially exculpatory evidence," McCord's lawyer, Bernard Fensterwald, said in a legal brief filed in U. S. District Court.

"It is now McCord's contention that the continuous recordings of presidential phone conversations and other conversations from sometime in 1970 until the present probably contains information bearing directly on McCord's guilt or innocence," the brief said.

For instance, McCord's brief said, the tapes would show the truth or falsity of Watergate conspirator G. Gordon Liddy's alleged remark to former Assistant Attorney General Robert C. Mardian that the Watergate operation "had the express approval of the President."

If the statement is true, McCord contended, it "would have a direct bearing on McCord's defense of color of law and on a lack of criminal intent on his part."

McCord also said the tapes would reveal the "true nature of the offers of clemency continually made to him by (former White House aide) John Caulfield during the (Watergate) trial" earlier this year.

"Were the offers made by Caulfield on the authority

of the President," McCord asked, "or were they merely an invention of (former presidential counsel) John Dean and hence fraudulent."

McCord, the security director for the Committee for the Re-election of the President until he was arrested inside the Democratic National Committee's Watergate headquarters on June 17, 1972, also claimed that the "ineffectiveness" of his former lawyer, Gerald Alch, warranted a new trial.

In a separate affidavit filed with the court, McCord claimed that Alch told him during the first week in October last year that "nobody is going to get up on that (witness) stand" during the Watergate trial, a reference to the seven defendants. He said Alch also told him that "executive clemency, family support while in prison, and 'rehabilitation' after prison was going to be promised the defendants."

McCord also claimed that a law associate of Alch, well-known defense attorney F. Lee Bailey, called former Attorney General and Nixon campaign chief John N. Mitchell on July 1, 1972, to discuss McCord's case.

"Alch stated that the Bailey contact with Mitchell was initiated 'in McCord's best interests.' It now appears to defendant McCord that the contact initiated at that time was not in McCord's interests but rather those of John Mitchell, F. Lee Bailey and Gerald Alch," the affidavit stated. There was no elaboration on the claim.

Neither Bailey nor Alch could be reached for comment.