

# Nixon, Clemency Tied; Richardson Confirmed

## Caulfield Sure Offer Was Valid

572473  
By Lawrence Meyer  
and Peter Osnos  
Washington Post Staff Writers

Former White House aide John J. Caulfield testified at the Senate hearings yesterday that he believed President Nixon "probably did know" that executive clemency was being offered through Caulfield to Watergate conspirator James W. McCord Jr.

"I had this conversation with John Dean, who was counsel to the President," Caulfield said, recalling the White House meeting at which Dean directed him to make the clemency offer to McCord. "I had been there (in the White House) three years. I know what the relations are and how they exist. I make certain judgments based upon those relationships. In my mind, I felt that the President probably did know about it.

"Now, I am going out the door (of Dean's office), to be come more specific, and it crossed my mind that this

conceivably was for the President. I believed it. I had to think about that. And based upon all of that background, I believed I was doing something for the President of the United States, and I did it, sir."

Caulfield, a former New York City policeman who worked as an investigator and security expert for presidential assistant John D. Ehrlichman and Dean in the White House, conceded yesterday, his second day of testifying before the Senate select committee investigating the Watergate affair, that he knew his transmittal of the offer of executive clemency from Dean to McCord was "wrong."

"I know when wrongdoing is occurring," Caulfield said in answer to a question from Sen. Lowell P. Weicker Jr. (R-Conn.). "I have indicated here that I knew that the offer of executive clemency in this matter was wrong, yes sir, I knew that. But what I am saying to you, sir, is that my loyalties, and especially to the President of the United States, overrode those considerations."

See HEARING, A11, Col. 1

### HEARING, From A1

In the afternoon sessions, McCord's former lawyer, Gerald Alch (angrily disputed much of McCord's earlier testimony about how Alch represented him at the Watergate burglary trial. Alch confirmed, however, that he had passed a message on Jan. 8, the first day of the trial, to McCord from Wil-

liam O. Bittman, the lawyer for Watergate conspirator E. Howard Hunt Jr., that McCord "will receive a call from a friend of his."

Alch said Bittman did not, as McCord testified, say that the call would be from a friend at the White House. "Mr. Bittman did not mention the 'White House' as alleged by Mr. McCord," Alch told the Senate committee. "The identity of this friend was not made known to me, nor did I make inquiry in this matter. I considered the possibility, without actually knowing, that the purpose of this call was to allay Mr. McCord's fear that his codefendants were turning against him, and that the caller could very well be Mr. Bittman's client, Mr. Hunt. . . . I did not mention the words 'White House' (to McCord) because Mr. Bittman did not mention those words to me."

McCord subsequently did receive a phone call the night of Jan. 8 from Anthony Ulasewicz, a former New York City policeman and friend of Caulfield who confirmed in testimony yesterday morning that he called McCord at Caulfield's request. It was in that phone call and in subsequent personal meetings between Caulfield and McCord—meetings ordered by Dean—that executive clemency for McCord was discussed.

In a telephone interview yesterday, Bittman refused to discuss his conversation with Alch, but said he expected to issue a statement at the conclusion of Alch's testimony before the Senate committee. Bittman said he had sent a letter to the Senate committee requesting a chance to testify. In addition, he said, he has talked on the telephone with Samuel Dash, the committee's chief investigator.

Bittman is a one-time Jus-

tice Department lawyer who successfully prosecuted Robert G. (Bobby) Baker, former secretary to the Democratic majority in the Senate and a confidante of President Johnson. Bittman also prosecuted one of the cases against ex-Teamster President James Hoffa. Bittman is now a partner in the prestigious Washington law firm of Hogan and Hartson.

Alch, who appeared before the committee and network television cameras wearing makeup, read his 28-page statement in a slow, deliberate voice with a strong Boston accent. In his statement, Alch denied that he ever suggested to his client that McCord's employment records with the CIA could be altered to support a defense that the Watergate bugging and break-in was a CIA operation.

Alch also told the committee that had discussed executive clemency with McCord only once and in this context:

"In late 1972, during one of the pretrial meetings of defense lawyers in Washington, I had an occasion to say to Mr. Bittman, 'Bill, what do you think our clients will receive as a sentence should they be convicted.'

"Mr. Bittman responded in substance, as if theorizing, 'You can never tell, Christmastime rolls around and

there could be executive clemency.'

"I scoffed at this notion and told Mr. Bittman that in my opinion, the President would not touch this case with a 10-foot pole, let alone exercise executive clemency. This subject had not been on any agenda, but arose in what I characterize as 'lawyers' talk.'

"Subsequently, but not on the same day, I mentioned this to Mr. McCord in a most skeptical manner, and said to him, 'Jim it can be Christmas, Easter and Thanksgiving all rolled into one but don't rely on any prospect of executive clemency.' Mr. McCord laughed and agreed with me."

Alch said that after McCord began talking to the Senate committee staff on March 24, Alch received a call in Chicago from McCord's new lawyer, Bernard Fensterwald.

Alch quoted Fensterwald as saying, "We're going after the President of the United States." Alch said he replied, "that I was not interested in any vendettas against the President but only in the best interest of my client; to which Mr. Fensterwald replied, 'Well, you'll see, that's who we're going after, the President.'"

Fensterwald, who sat poker-faced only a few feet behind Alch while he read his statement, denied after the hearing that he told Alch that McCord was going to "get the President." Fensterwald was joined during the hearings by McCord, who left the hearing room at one point — followed by a phalanx of reporters — only to return about 20 minutes later. Periodically, network television cameras moved away from Alch to show Fensterwald sitting behind him and to record the comings and goings of McCord.

In his testimony, Alch described the difficulties he had in formulating a defense for McCord, who was caught inside the Democratic National Committee's Watergate headquarters on June 17, wearing surgical gloves and with bugging equipment in his possession.

McCord, Alch said, "continuously insisted" during the many meetings they had after their first in July

"that his only purpose in participating in the Watergate break-in was to protect his employers the re-election committee and other Republican officials from threats of violence.

"At no time," Alch told the committee, alluding to McCord's earlier testimony, "did he ever state to me that he believed the Watergate operation to be legal as a result of the alleged involvement of the then-Attorney General (John N. Mitchell), the counsel to the president (Dean), or anyone else." Alch said he did not learn from McCord of Mitchell's alleged involvement until late in the trial.

Alch said he told McCord that the "defense of the protection of others required that the perpetrator not know he was breaking the law. I said to Mr. McCord, 'No jury will ever believe that a man with your background with the FBI and the CIA would not realize he was breaking the law in breaking into an office at night, wearing surgical gloves and armed with eavesdropping equipment.'"

A better defense, Alch said, would be to argue "duress, wherein the perpetrator felt compelled to break a law in order to prevent a greater evil. Mr. McCord had explained to me his belief of a direct relationship between these potentially violent antiwar groups and the Democratic Party and that his participation in the Watergate burglary was accomplished in the hope of obtaining advance evidence of planned potentially violent demonstrations."

Alch explained the "relatively unused theory" of the "law of duress" on Jan. 16 as holding, "If one is under reasonable apprehension, regardless of whether he is in fact correct, he is justified in breaking a law to avoid the greater harm — in this case violence directed at Republican officials up to and including the President."

Chief U.S. District Judge John J. Sirica, the presiding judge during the Watergate trial, refused to allow Alch to raise the issue of "duress" as a defense, however. Calling the theory as applied in the Watergate

trial "ridiculous," Sirica said McCord "elected to take the law into his own hands."

Although Alch told the senators yesterday that McCord was commending him daily for his conduct of the defense, Alch had said privately during the trial in January that he had virtually no defense for McCord and his attitude was "you do what you can."

Alch also told the committee yesterday that McCord informed him that he had called the Israeli and Chilean embassies, on the theory that the government was tapping their phones, would never admit it in court and would dismiss the charges against McCord if pressed to disclose the wiretaps. Alch said he followed McCord's requests to ask the government in court to disclose wiretaps.

On the matter asserting CIA involvement in the Watergate operation as a defense, Alch said that at a meeting of defense lawyers in 1972, "the question arose as to whether or not the CIA could have been involved." In addition to McCord, five of the remaining six Watergate burglary defendants had contact with the CIA at one time or another in their careers.

"Before the meeting went on to other topics, it was agreed that each lawyer would ask his respective client whether or not he had any knowledge of any CIA involvement," Alch testified.

Another participant in the meeting, who asked not to be identified, confirmed after yesterday's hearing that the subject did come up at the meeting as "lawyers' talk" about one of a number of possible approaches for the defense. This participant said the idea was later abandoned when it became "clear that McCord would not go along with it."

Alch said he raised the question with McCord at lunch directly after the meeting. "He (McCord) did not directly respond to the specific question, but did become quite upset at what he believed to be the antagonism of the White House against the CIA," Alch testified. At a subsequent meeting in Boston on Dec. 26,

Alch said, McCord told him "the CIA was not involved and that he (McCord) would have no part of any attempt to involve that agency."

At this point in his testimony, Alch gave the committee one of his strongest denials of a part of McCord's testimony. "Mr. McCord's allegation that I announced my ability to forge his CIA personnel records with the cooperation of then acting CIA Director (James) Schlesinger is absurd and completely untrue. I have never had the privilege of meeting Mr. Schlesinger and no such statement was ever made."

After that meeting, Alch said, his relations with McCord deteriorated for a while and McCord attempted to remove Alch as his lawyer—a move Judge Sirica rejected on the eve of the trial.

The meeting with Bittman on Jan. 8, Alch said, was not—as McCord testified—to

talk to McCord about "whose word he (McCord) would trust regarding a White House offer of executive clemency," but was arranged so Alch could discuss Hunt's intention to plead guilty.

Alch said he did mention to Bittman that McCord "was becoming a bit paranoid, that he felt he was being made the 'patsy' or 'fall guy.'" Alch testified that Bittman responded by saying: "Tell McCord he will receive a call from a friend of his."

McCord later told him, Alch said, that he had "been in contact with a man by the name of Caldwell" (actually Caulfield) but "that he (McCord) did not wish to tell me who this man was or the subject matter of his conversation with him." As result, Alch said, he was not aware of McCord's dealings with Caulfield on executive clemency.

Alch said that after McCord and G. Gordon Liddy were convicted on Jan. 30, he maintained contact with McCord in jail. At one point, Alch said, McCord asked him to call "a man by the name of Bernard Fensterwald, whom he said might be very helpful in raising bail."

Although Fensterwald was never successful in raising the \$100,000 bail for McCord by himself, Alch said, McCord asked that his gratitude be conveyed to Fensterwald. When he relayed the message, Alch said, "Mr. Fensterwald's reply was, 'I don't see how he can send his thanks to me because I never even met the man.' This seemed unusual to me to say the least, that a man would be doing what Mr. Fensterwald said he was trying to do for someone he had never met," Alch told the committee, "but I was not about to look a gift horse in the mouth."

Ultimately, Alch said, McCord's wife raised \$60,000 and Fensterwald produced the remaining \$40,000 and McCord was released.

Fensterwald, a former Senate investigator who has been active in private inquiries into political assassinations, said in an interview in March that he became involved in the Watergate case when an unnamed friend of McCord's approached him about raising bail money for McCord.

*more on Caulfield + Alch in copy from later edition under Alch*

According to Alch, his first face-to-face meeting with Fensterwald was on March 23—the day McCord and the other six Watergate defendants were to have been sentenced by Sirica. While he was talking to McCord, Alch said, "a man approached Mr. McCord and said in what I can best describe as a whispered or hushed manner, 'If you need an office, you can use mine right after court.'"

McCord then identified the man as Fensterwald, Alch said. "Mr. McCord said to Mr. Fensterwald, in my presence, 'The one thing I feel sorry about is keeping Gerry in the dark and pulling this on him.' Mr. Fensterwald replied, 'Sorry hell, let it all hang out.'" Alch told the Senate committee.

Subsequently, Alch said, McCord informed him that he was retaining Fensterwald as his local lawyer. Sometime after March 23—Alch gave no date—he said Fensterwald called him in Chicago and said, "We're going after the President." Alch said he told a private investigator who was in his hotel room at the time, "You won't believe what I'm hearing over this phone," and the investigator replied that it was "too bad" the conversation was not being recorded.

Alch said his contact with McCord and Fensterwald diminished, but that on May 8 Alch's secretary told him that a newspaper was about to publish a memo from McCord to the Senate committee about the alleged attempt to involve the CIA in the defense at the trial. The memo appeared in The New York Times on May 9.

Alch said he reached Fensterwald about 5:30 p.m. on May 8 and asked him to "explain these false allegations made by Mr. McCord." Mr. Fensterwald stated, "I can only hazard the guess that it is the result of Mr. McCord's faulty recollection." He added, "I can tell you one thing; It's a terrible cliché, but I think you will agree with it—that there is no zealot like a convert." "I had no further contact from Mr. McCord," Alch said.

"I have done nothing wrong and am, therefore, not afraid . . ." Alch said. "Mr. McCord has made accusations directed toward many men. I am in no position to judge his credibility

in that regard. I do, however, have first-hand knowledge of his relationship with me, and in regard to his accusations against me, he is not telling the truth."

Alch, who will be questioned today by the Senate committee, concluded his statement yesterday with a rhetorical question about McCord: "What kind of a man is this?"

Earlier, while Caulfield was testifying, he recalled that on June 17—the day McCord and four other men were arrested inside the Watergate—he had called John D. Ehrlichman, then the chief special assistant to the President for domestic affairs.

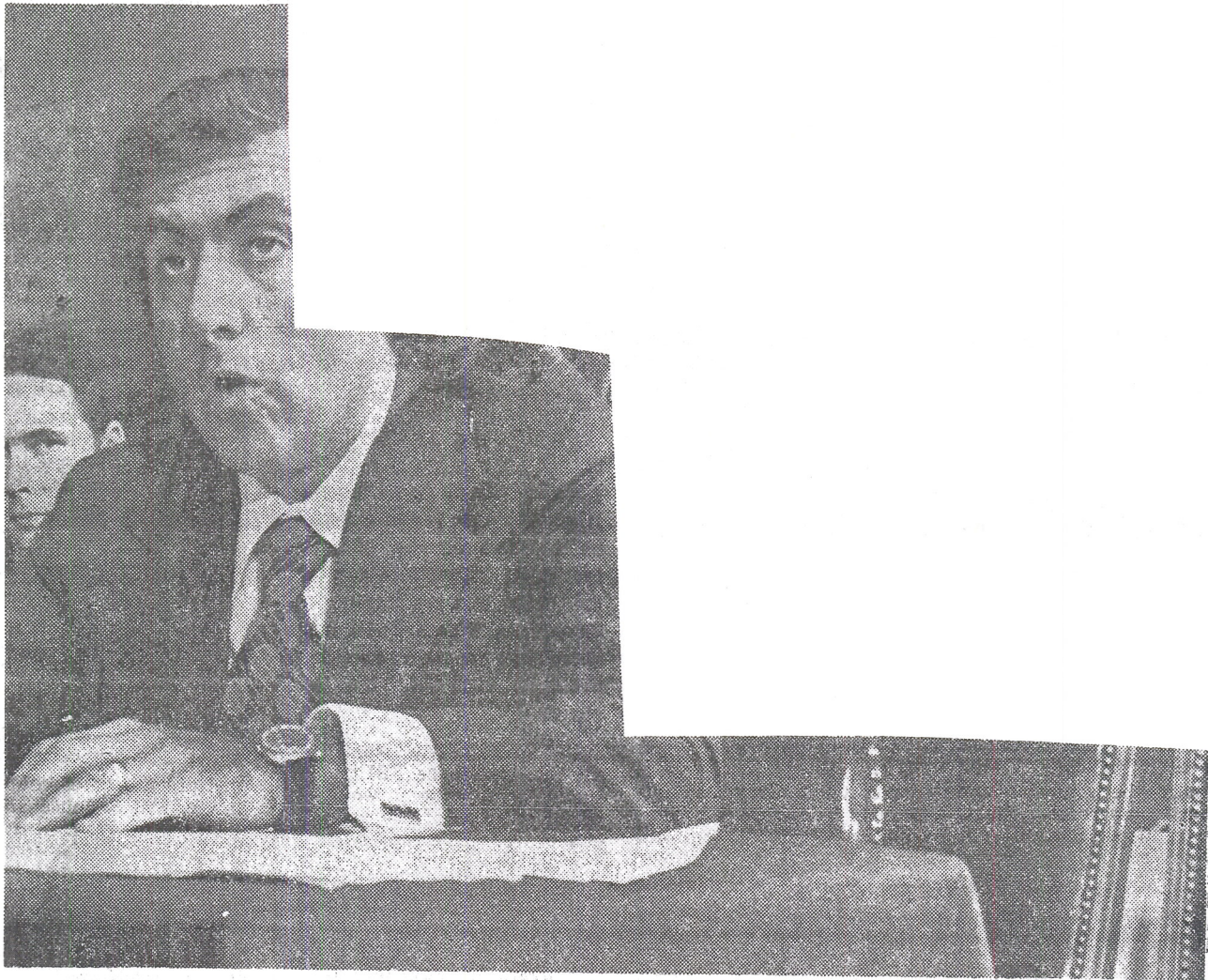
Caulfield said he called Ehrlichman after receiving a call from a Secret Service agent, Patrick Boggs, about the break-in and McCord's involvement.

"I said to Mr. Ehrlichman, I said, 'John, it sounds like there is a disaster of some type. Did you speak to Mr. Boggs?' He said, 'Yes, what is this all about?' I said, 'I haven't got the foggiest notion what it is all about but they are saying they believed Jim McCord, who works for the committee, has been arrested in a burglary at the Democratic National Committee.'

"He said, I forget what he said exactly. I think it was a long silence as I recall, and I said, 'My God, you know, I cannot believe it.' He said 'Well, I guess I had better place a call to John Mitchell (then the Nixon campaign director).' I said, 'I think that would be very appropriate.'" At that point yesterday in the Senate Caucus Room, where the select committee hearings are being held, the audience erupted in laughter.

In a civil deposition last August, former White House special counsel Charles W. Colson said he received a call from Ehrlichman the afternoon of June 17. Ehrlichman asked Colson if he knew the whereabouts of Hunt.

"There is a report of a break-in at the Watergate," Colson recalled Ehrlichman as saying, "and one of the people arrested had something in his possession with Howard Hunt's name on it."



Gerald Alch, left, former lawyer for James McCord, tells panel that McCord's present lawyer, Bernard Fensterwald, said, "We're going after the President of

the United States." Fensterwald, is at rear, center, and McCord at right.

United Press International



5/24/73 By Bob Burchette—The Washington Post  
Caulfield: "... doing something for the President."