

# McCord Lawyer Linked To False Statement in '65

## Sources Close to an Inquiry Then by a Senate Panel Say Fensterwald, Unit's Counsel, Misled Witness

By DENNY WALSH MAY 28 1973  
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LOS ANGELES, May 27—Bernard Fensterwald Jr., attorney for James W. McCord Jr., the convicted Watergate burglar and conspirator, made false statements and false implications during his questioning of a key witness while serving as counsel to a Senate subcommittee investigating electronic snooping in the mid-nineteen-sixties, sources close to that investigation said today.

The sources, some of whom are Government investigators with firsthand knowledge of the manner in which Mr. Fensterwald conducted the inquiry, also said he had helped to suppress evidence that had been available to the subcommittee and had been particularly relevant to the inquiry.

Mr. Fensterwald, in a telephone interview today, said he had no clear recollection of the matter.

### Highly Publicized Inquiry

Mr. Fensterwald, who appeared two months ago as Mr. McCord's counsel, is no stranger to the type of wiretapping activity that led to McCord's conviction last January in Federal District Court for conspiracy, burglary and eavesdropping in connection with the break-in last June at the offices of the Democratic National Committee in the Watergate complex.

Neither is he a stranger to the excitement of sensational Senate hearings like the one now being conducted by the Senate Watergate committee.

In the mid-nineteen-sixties, as counsel to the late Senator Edward V. Long's Subcommittee on Administrative Practice and Procedure, Mr. Fensterwald orchestrated a highly publicized inquiry into allegations of illegal electronic surveillance practiced by Government investigative agencies.

The subcommittee attempted, in a series of hearings, to demonstrate that the use of electronic snooping devices had produced widespread violations of citizens' privacy.

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tradicted the agent's testimony. In fact, the detective's statement corroborated what the agent said, according to the sources.

The detective, Basil Lee Randall, was never allowed to testify, although he made repeated efforts to appear, and his statement was never entered in the subcommittee's record, the sources said. Mr. Randall received a summons but, at the last minute, the subcommittee staff member who had taken his statement two months before notified him not to answer the summons.

The sources reported that the detective had been at his home in Kansas City watching the proceedings on television when he saw Mr. Fensterwald and Senator Long, a Missouri Democrat, try to develop what he later described as "untruthful evidence" involving him.

The sources said Mr. Randall had heard Mr. Fensterwald tell the agent, Everett W. Trost, that Mr. Randall was sick and unable to testify. However, when Mr. Randall tried to get in touch with the agent and assure him he was not sick and had earlier backed up the agent's testimony in a statement, Senator Long threatened the agent with a contempt citation if he returned Mr. Randall's telephone message.

### Senator Refused to Comment

The Senator, who died last November, was once asked by a reporter about the matter and replied:

"I don't think it would gain either one of us anything to discuss it any further."

The Kansas City hearings were built around the conviction for income tax evasion of William M. Canaday, former chief of operations for the Kansas City Police Department. At the time of the hearings, the case was on appeal before the United States of Appeals for the Eighth Circuit.

Among the assertions in the appeal was that the I.R.S. had obtained evidence through unlawful and unreasonable invasion of Canaday's privacy by the use of wiretapping. The appellate court, in January, 1966, upheld the conviction.

During the I.R.S. investigation of Canaday, Mr. Randall furnished information to Mr. Trost and other agents. Mr. Randall at one time investigated Canaday for a nongovernmental client.

"All of the information and

leads I furnished were from my personal observations," Mr. Randall later said in an affidavit. Randall later said in an affidavit-connection with an investigation of the handling of the Canaday case. At no time, according to the affidavit, did Mr. Randall furnish information about Canaday that had been obtained with wiretaps or "bugs."

"Because I have a knowledge of admissible evidence, I carefully avoided furnishing any such information I might have had to Trost or any other agent," Mr. Randall said in his affidavit.

"I don't have any clear recollection of it," Mr. Fensterwald said today. "I would have to go back and look at the files. I remember the Canaday case, I remember the hearings, and I remember Randall. But I'm afraid I can't help you any further than that. Randall was just one of hundreds of people contacted by the subcommittee. I don't remember the details. It was a long time ago."

After the Canaday investigation had been completed and the files had left the Kansas City I. R. S. intelligence unit and started up through channels, Mr. Randall did give Mr. Trost 10 tape recordings in connection with matters Mr. Randall was investigating, all of which were completely unrelated to the Canaday case.

"To my best knowledge and recollection none of these tapes related in any way to Canaday," Mr. Randall's affidavit said.

Mr. Trost testified to the Long subcommittee that he had acquired the tapes one year after he finished the Canaday inquiry and that they had played no part in that investigation.

Interrogation of Mr. Trost by Mr. Fensterwald on Oct. 19, 1965, went as follows:

MR. FENSTERWALD: Is it your sworn testimony here today that those tapes, to the best of your knowledge, either from talking to Randall or from listening, had nothing to do with the Canaday case?

MR. TROST: That is exactly right.

Q. And you didn't pay him for those tapes? A. Of course not.

Q. Well, unfortunately Mr. Randall is rather seriously ill. A. Is that right? I thought he was here.

Q. It's my information, as of this morning, that he is ill and may have to go back to the hospital, so I don't know whether we will be able to take sworn testimony from him or not. But I can tell you that

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the information that we have from him at this moment, not under oath, is radically different than the evidence that you are giving us now. I don't want to testify, in effect, for him. If he is not able to show, we might put someone else on the stand. But I just want to be sure that you are absolutely clear in your own mind that Randall did not call you up be-

cause these tapes related to William Canaday.

A. This is an absolute certainty.

An investigation of the handling of the Canaday case by the United States Attorney's office in Kansas City later established that Mr. Randall had not been sick but that three times while the Kansas City hearings were in progress Gordon Homme, the subcommittee staff member who had taken Mr. Randall's statement earlier, told the private detective not to respond to the subcommittee summons he had received.

#### 'We Don't Want You'

On the last such occasion, Mr. Randall got in touch with Mr. Homme and asked to be allowed to testify.

"No, we don't want you to come down," Mr. Homme said, according to Mr. Randall.

After the Kansas City hearings, Mr. Fensterwald began preparations for hearings in San Francisco, which were held in February, 1966. He interviewed several I.R.S. agents in Los Angeles, and was disappointed when he learned that no illegal eavesdropping had been conducted there, according to sources familiar with Mr. Fensterwald's interview.

He asked the agents for "sexy or sensational" material, the sources said. He told the agents that he was seeking evidence "with some publicity value," the sources said.

Mr. Fensterwald said today that he did not recall ever telling I.R.S. agents he was looking for "sensational" evidence.

"I can't help you if you can't identify these people. This has been eight years ago and it's impossible to remember some of these things," he said.

Mr. Fensterwald then interviewed a San Francisco agent of the old Alcohol and Tobacco Tax Division of the I.R.S., who began telling the subcommittee counsel about electronic surveillance he had carried out for Congressional committees. Mr. Fensterwald indicated that this was not the kind of information he wanted. The agent was not called as a witness.