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Excerpts From Transcript of Testimony

TIMES, FRIDAY, MAY 25, 1973

Before Senate's Committee on Watergate

Special to The New York Times

WASHINGTON, May 24—Following are excerpts from a transcript of testimony today in the fifth day of hearings on the Watergate case by the Senate Select Committee on Presidential Campaign activities:

MORNING SESSION

Gerald Alch

MR. DASH. Could you again tell us, you indicated what fee you received from Mr. McCord? What was that fee?

MR. ALCH. $25,000 plus expenses, which expenses have not been received yet.

Q. Could you tell us in what form you received that money? A. Periodic payments in cash, with the exception of the last two installments, which were in the form of cashier's checks in relatively smaller amounts of $1,700. The bulk of the money received was in cash in $100 bills.

Q. Did you have any knowledge or information or belief as to where the money was coming from? A. No, sir.

Q. Now as to Mr. McCord's first complaint that you suggested he use C.I.A. involvement as a defense, it is true, is it not, that the question, at least of C.I.A. involvement, was the subject of discussion between you and Mr. McCord on two occasions in December, one at the Monocle Restaurant and another time in your office in Boston?

A. I specifically asked him whether or not there was any factual basis to the contention that the C.I.A. was involved.

Q. Did you on either occasion show Mr. McCord a statement from a D.C. Police officer, Gary Bittenbender, indicating that Mr. McCord told Bittenbender that Watergate was a C.I.A. operation?

A. Yes sir. That statement had been provided to me pursuant to my discovery motions filed in the case, by the Government. It was a report in which it quoted a District of Columbia policeman, Mr. Bittenbender, by name, as saying that at the time of Mr. McCord's arrest, I believe at the District of Columbia Jail, Mr. McCord said, referring to the other four men who had been arrested with him, "These are all good men, ex-C.I.A. men." I naturally called that to my client's attention because there loomed a distinct possibility that that statement might be introduced against him at trial. In fact it was not.

Q. All right. Now, Mr. Alch, in the statement that you submitted to the committee, as you read it, that was not included in that statement, is that true? A. It was not, sir. I believe I mentioned it when I met with you the night before my testimony.

Author of Book on C.I.A.

Q. Did you ever mention during either of the two meetings at the Monocle Restaurant and in your office in Boston when you asked Mr. McCord about the C.I.A. involvement—did you ever mention during either of these meetings the name Victor Marchetti who might be witness on C.I.A. training?

A. I did mention the name Victor Marchetti, not in the context of his being a witness. It came up this way: In the course of discussing Mr. McCord's background with the C.I.A., I mentioned to him that I had recently heard that a man by that name had come out with a book about the C.I.A. I mentioned that to Mr. McCord. He said to me words to the effect that Mr. Marchetti was not in good grace with the C.I.A. or any ex-members of the C.I.A. He said he did not think highly of the man and that was the extent of the conversation.

Q. Now, after your meeting of December, 1972, at the Monocle Restaurant with Mr. McCord, did you call your partner, Mr. Bailey, and raise the question of the C.I.A. defense?

A. I would constantly keep Mr. Bailey advised of the development of all cases that I was working on.

Mr. Bailey told me that unless Mr. McCord or anyone else could come up with any factual evidence of any C.I.A. involvement, that if Mr. McCord wished to pursue that defense without any such factual evidence, that I was to withdraw from the case and that I was to tell that to Mr. McCord.

When Mr. McCord met with me in Boston at our next meeting, he initiated the conversation by saying to me, there is no C.I.A. involvement and I will have no part of anything that is going to put the blame on the C.I.A. That rendered my withdrawal direction from Mr. Bailey moot.

Q. In your statement on Page 10, you say during the meeting with defendants in December, and prior to your Monocle meeting with Mr. McCord, "the question arose as to whether the C.I.A. was involved." Would you tell us how the question arose, who raised it? Do you know how that was raised, this quesion? Who raised it?

A. I am not sure. It may have been Mr. Bittman. I cannot be positive.

Q. Are you aware Mr. McCord sent Mr. John Caufield a note complaining of a White House effort to blame the C.I.A. for Watergate and threatening "that all the trees in the forest would fall if this effort continued." Were you aware of this? A. I was not.

Q. So it is no fiction, really, that Mr. McCord was deeply concerned over what he believed was a conspiracy to have him implicate the C.I.A. in the Watergate case? A. I have no knowledge to contradict that statement by Mr. McCord.

Q. Actually according to

your own statement, when you first raised the C.I.A. involvement with Mr. McCord in the Monocle Restaurant, you said he did not really respond to it, but launched into a complaint about how the White House was treating the C.I.A. I think that was your statement. A. That is correct.

Q. Therefore, Mr. Alch, when you raised the question of C.I.A. involvement with him for the very first time after the meeting with Mr. Bittman and the other lawyers, it is likely, is it not, taking into consideration the entire circumstances of Mr. McCord's concern, that Mr. McCord could have concluded that you had joined in the conspiracy he honestly believed existed to blame the C.I.A. in the Watergate case.

A. In my judgment, that would be giving him the benefit of a doubt to which I do not believe he is entitled, for this reason: I suppose, hypothetically speaking, that it is possible for a man to misinterpret a question put to him as to whether or not the C.I.A. was involved, on the one hand, and a suggestion that it was, on the other. That is a point of discrepancy, in answer to a hypothetical question—could possibly be the subject of a misinterpretation.

However, on his allegation that I said to him words to the effect that I could cause his personnel records to be doctored and that the director of the C.I.A. would go along with it, it escapes me how that type of allegation can be a misunderstanding. I did not say it.

Q. It is true, though, is it not, that you did go to the office of Mr. Bittman, Mr. Hunt's lawyer, with Mr. McCord on Jan. 8, the first day of the trial? A. Yes, sir.

Q. And after that meeting, or at the conclusion of it, I understand from your statement that Mr. Bittman told you to tell Mr. McCord that he would receive a telephone call from a friend that night? A. That is correct.

Surmise About Caller

Q. Did you ask Mr. Bittman who would call your client or what the message would be? A. I did not.

Q. Why not? A. I felt it was of no importance to me. I surmised in my mind that this call was in connection with Mr. McCord's fears that his co-defendants were plotting against him. If I had to guess that who I thought was going to call, I thought it may have come from Mr. Bittman's client, Mr. Hunt.

Q. Now, this committee has already received evidence, actually just prior to your testimony, that a call, in fact, was made and was received by Mr. McCord, and that it originated from Mr. Dean in the White House to Mr. John Caulfield, to Tony Ulasewicz, and set the stage for a meeting on the George Washington Parkway between Caulfield and McCord in which Caulfield extended an offer of executive clemency to McCord "from the highest levels of the White House." That testimony has come before the committee. A. Yes, sir.

Q. Did you know of that call or that meeting. A. I did not.

Q. Then, therefore, since it was you, Mr. McCord's lawyer, who transmitted to Mr. McCord his first notice of a telephone call he was to receive on the night of Jan. 8, and that Mr. McCord knew you were conveying a message from Mr. Bittman, and it was that call which ultimately resulted in a meeting where an offer of executive clemency was made to your client, presented as coming from the highest levels of the White House—really, was it so unreasonable for Mr. McCord to conclude that you were involved in setting him up for such an offer of executive clemency?

A. If he made that conclusion it was factually false. But let us suppose he did make that conclusion. This was in a period of time, as the trial was just about to commence, where I enjoyed with him what I considered to be a very fine relationship. Why should he not have come up to me and asked me about it or told me something to the effect that, pursuant to your message to me, I got a call last night. That never happened.

Doubts He Was Distrusted

Q. Well, at that time perhaps he had begun to distrust you, Mr. Alch, that he needed you as counsel for his trial but after that call perhaps he had lost confidence in you.

A. In response to that, Mr. Dash, from what I know of Mr. McCord, it would seem to me rather or highly unlikely that he would go to trial with a lawyer whom he did not trust.

When Mr. McCord told me that he had received a call from a man named Caldwell, and specifically refused to tell me who he was or what the nature of the conversation was, what I did was to see whether or not there would develop any tampering or modification or interference with my advice to Mr. McCord as his counsel.

Mr. McCord was free to see whomever he pleased but at no time did indications come to me that either Mr. McCord of his own doing, or potentially as a result of being talked to by others, was either disregarding my advice, modifying my advice or introducing a new approach to the trial. That never happened.

Q. Now, Mr. Caulfield, in his testimony before this committee, stated that at one of the meetings that he had wih Mr. Dean during the time he was making offers of executive clemency to Mr. McCord, that Mr. Dean told him, Mr. Caulfield, that Mr. McCord was "not cooperating with his attorney." Could Mr. Dean have referred to or been referring to anyone other than you?

A. Well, the fact is that I was Mr. McCord's attorney at that time, to my knowledge, and the only reason I add that caveat is this: I was informed that, when—I was not informed—when I read a transcript of, I believe, Mr. Caulfield's testimony, I believe he said that in one of his meetings with Mr. McCord prior to the completion of trial, that the subject of bail came up, and Mr. Caulfield stated, "Maybe your lawyer Alch can handle it," or words to that effect, to which, according to Mr. Caulfield, Mr. McCord replied, "Well, I am negotiating with another lawyer. Maybe he can handle it."

Cooperation Emphasized

If that statement about "I am not cooperating with your attorney" or "get close to your attorney" was directed toward me, I can't explain it because, as I have explained to the committee yesterday, Mr. McCord was cooperating with me every day.

Q. And you have no other explanation of why Mr. Dean might have made that statement? A. I do not. As I told the committee yesterday, I had never met the man nor spoken to him in my life.

MR. THOMPSON. Did [McCord] indicate whether or not he placed the calls to [the Chilean and Israeli embassies] specifically for that [dismissal] purpose? A. He did.

Q. I believe you stated he

also furnished you materials concerning the Mafia and the D.N.C., Israel and the Mafia, Jack Anderson and Government contracts, these matters. Did he indicate that these could possibly be used as a defense for him or could help his defense in any way?

Offensive Steps Urged

A. When he gave me that material, he said, let us get on the offensive, let us make the Democrats, put the Democrats on the defense. He said, let us stir up something.

Q. When Bittman said that he would receive a call from a friend, didn't you ask who that friend was? A. I did not.

Q. Didn't it concern you as a criminal defense lawyer when anybody else is making a contact with you lawyer, whether it is another lawyer, a third party, another defendant, isn't that something that concerns a defense lawyer in the trial of a case? A. Mr. Thompson, as I say, in the context of that remark, my assumption was that it could very well have been a call from Mr. Hunt or some of the other co-defendants. I don't know.

SENATOR ERVIN. Yes. Now, there was a meeting of most of these lawyers and it had been pointed out in the press that Mr. Sturgis had apparently CIA connections issued in the name of Mr. Martin, I believe. A. Yes, sir.

Q. It was also apparent that it came out in the press that other members of those of the group who broke into the Watergate had false credentials? A. That is correct, sir.

Q. And the press had suggested since McCord had been involved in the Watergate—I mean in the C.I.A.—and Hunt had worked for the C.I.A.—and Barker had been in the Bay of Pigs operations, C.I.A. and possibly others, that perhaps there was a C.I.A. involvement. Was that not speculated in the press? A. In the press, yes, sir.

Q. And at this meeting, of course, the first thing a lawyer tried to find out from his client is what kind of defense, if any, he has got, is that not true? A. Of course.

Q. So the lawyers would be discussing at that time what possible defense they had, and it was suggested by one of the other counsel that perhaps they could have—get evidence that would sustain a defense that would lay this break-in on the C.I.A., was it not, at the meeting with lawyers?

A. Yes, sir. But, Senator, I do not mean to split hairs but I do wish again to point out that it did not come out in the sense that "let us make this a C.I.A. defense." It did not come out that way. It was not presented that way. The way it was presented was, could this be a C.I.A. defense because of all of these things? Let us go back and as our client. That is the way it happened.

Q. Well, the only way the lawyers can find out whether their clients have a defense is to discuss matters like this. A. Ask them.

Q. And try to investigate it. A. Of course.

Q. And it was suggested in this meeting of lawyers by some attorney other than yourself? A. Yes, sir.

Q. That the lawyers involved should try to ascertain from their clients whether the C.I.A. was involved, whether they had any knowledge enough to implicate C.I.A., was it not? A. That is right.

Q. And immediately after that you went in and talked to Mr. McCord about it, did you not? A. Yes, sir.

Q. Did Mr. McCord ever mention the President to you at any time in any conversation he ever had with you? A. No, sir. No, sir.

Q. And Mr. McCord was not present, so far as you know, and did not overhear any of the phone conversations between you and Mr. Fensterwald on that point? A. Not to my knowledge, but my record—

Q. So far as it appears down to this day, there is no evidence that Mr. McCord ever mentioned the President of the United States except he said that Mr. Caulfield mentioned the President of the United States in a conversation with him.

Now, Mr. McCord says, someone, I believe he said you, suggested that if they changed the record at the C.I.A. to show he had been called back to duty, there might be a chance to have a defense of that kind. You say you never said that?

A. Mr. McCord said such strong words than that, Senator. He said I told him that I would effectuate the forgery of his C.I.A. records with the cooperation of the C.I.A. director. That is pretty strong talk.

Q. I do not believe that is the testimony Mr. McCord gave this committee. My recollection, and I do not guarantee—but my recolletion is that he said you, or somebody, said that by letting the record of the C.I.A. show—wait a minute now, here is McCord's statement. He said "if so," that is you, "my personnel records at C.I.A. could be doctored to reflect such a recall." He stated Schlesinger, the new director of C.I.A., whose new appointment had just been announced, could

Figures in Senate Inquiry

Special to The New York Times

WASHINGTON, May 24—Following are the names of individuals who figured today in hearings by the Senate select committee on the Watergate case:

COMMITTEE MEMBERS

Sam J. Ervin Jr., Democrat of North Carolina, chairman.

Herman E. Talmadge, Democrat of Georgia.

Daniel K. Inouye, Democrat of Hawaii.

Joseph M. Montoya, Democrat of New Mexico.

Howard H. Baker Jr., Republican of Tennessee.

Edward J. Gurney, Republican of Florida.

Lowell P. Weicker Jr., Republican of Connecticut.

COMMITTEE COUNSEL

Samuel Dash, chief counsel and staff director.
James Hamilton, assistant counsel.
Fred D. Thompson, chief minority counsel.

WITNESSES

Gerald Alch, attorney for James W. McCord Jr.

Bernard L. Barker, pleaded guilty as Watergate spy; in jail.

Alfred C. Baldwin 3d, former agent of Federal Bureau of Investigation.

PERSONS NAMED IN TESTIMONY

James W. McCord Jr., convicted participant in Watergate break-in; free on $100,000 bail while awaiting sentence.

John N. Mitchell, former Attorney General.

John W. Dean 3d, former counsel to the President.

G. Gordon Liddy, former White House aide, convicted of conspiracy, burglary and wiretapping in the Watergate case; in jail.

E. Howard Hunt Jr., former Central Intelligence Agency agent and White House consultant; pleaded guilty to spying in the Watergate case; in jail.

William O. Bittman, attorney for E. Howard Hunt Jr.

Bernard Shankman, attorney for James W. McCord Jr.

James R. Schlesinger, Director of Central Intelligence, nominee as Secretary of Defense.

Cary Bittenbinder, of the Washington Metropolitan Police Department.

Victor L. Marchetti, former C.I.A. agent.

F. Lee Bailey, Boston lawyer.

Bernard Fensterwald, attorney for James W. McCord Jr.

Henry B. Rothblatt, attorney for the four Miami defendants who pleaded guilty in Watergate case.

John J. Caulfield, former employe of the Committee for the Re-election of the President.

Paul O'Brien, attorney for the Committee for the Re-election of the President.

be subpoenated and would go along with it.

Compliment Is Rejected

Q. He did not accuse you of anything except saying that the records, that you advocate that. You were just expressing a surmise? A. Well, Senator, perhaps through a lawyer's, and an experienced lawyer's eyes, looking at it really close, dissecting it, that conclusion might be proper. But not to the average person who reads it on the street.

Q. And I would not criticize you a bit if you recommended a plea of guilty because you had a client who was caught red-handed at the burglary and the defense was on very precarious grounds at best, and so if he did say that you urged him to plead guilty, I think it would be a compliment to your intelligence as a lawyer rather than a reflection on it.

A. With all due respect I reject the compliment, for this reason, Senator: First of all, because he specifically said to you I never suggested that he enter a plea of guilty. The reason when this proposition was put to me, or this offer was put to me by the Government—I practice this way. I do not—that is too important a decision for me to make, I simply take it back to the client and say, here it is, What do you say? He said, no.

Clemency Issue Raised

Q. Let us go to executive clemency. You did attend a meeting with Mr. Bittman? A. Yes, sir.

Q. Now, Mr. Bittman was representing Hunt? A. Yes, sir.

Q. Hunt—you knew that Hunt had been a consultant in the White House or the Executive Office? A. I honestly was not sure of what Mr. Hunt's position was.

Q. You knew he had been working for the Committee to Re-elect the President, didn't you? A. That I did.

Q. And you do not know what contacts were—had been—Mr. Hunt and any of his former associates in the Committee to Re-elect the President or between his counsel and any of those people? A. No sir.

Q. You participated in the trial and heard the evidence. A. Yes, sir.

Q. And you know that it was proved on trial, as shown on the trial, or at least evidence tended to show that the notebook of Mr. Hunt, which was introduced into evidence, had the White House phone number on it, didn't you? A. If it was I certainly don't recall.

Q. You don't recall it? A. Because Mr. Hunt's local counsel—I don't recall.

Q. You discussed the question of executive privilege with Mr. McCord, didn't you? A. I didn't discuss the question, I relayed to him the conversation I had with Mr. Bittman.

Q. Yes, and you relayed the conversation in which Bittman had said, in effect, that you can never tell, Christmas time rolls around and there could be executive clemency. A. I did with a singular addition of my own.

Q. Yes, and you said it was absurd to expect executive clemency, the President wouldn't touch it with a 10-foot pole or something like that. A. That is what I said.

Q. And McCord agreed with you? A. He did.

Q. Now, you on one occasion you told Mr. McCord that Mr. Bittman—rather Mr. Bittman told you in one of these meetings of the lawyers, that Mr. McCord was going to receive a message, a telephone call. A. Yes, sir.

McCord's Apprehensions

Q. And didn't you ask Mr. Bittman what business other people had—you had been talking about the case, hadn't you? A. At that particular point we had been talking about my client's apprehension that his co-defendants were conspiring against him.

Q. Anyway, he told you your client—somebody else was going to communicate by telephone with your client? A. Yes, sir.

Q. And it was a short time after that, according to the evidence, your client did receive a telephone call and had three conferences with Mr. Caulfield. A. Not to my knowledge.

Q. Don't you think it is reasonable now, he got a call, and you told him in advance that he is going to get the call, and then you receive a call and had some negotiations or conversations at least about executive privilege—don't you think Mr. McCord is liable, because in his mind he associated those conversations he had pursuant to this telephone call with you—can't you see where he would reasonably draw a deduction that the telephone call which resulted in this indicated that you knew something about executive clemency?

A. No, for this reason. I again reiterate how close we were in our contact and I what we would tell each other. If he thought, and he was now labeled this as improper conduct on my part—the question I keep asking myself is, in that, if he did make the surmise and conclude that I was engaged in improper conduct—this was before the trial began, or was it before the trial began or whenever it happened—why wouldn't the man come up to me and confront me with it? That is what I don't understand.

Q. Well, you go and tell him that he is going to receive a phone call. A. Yes, sir.

Q. And he does receive a phone call. A. Yes, sir.

Q. And as a result of receiving a phone call he has an offer of executive clemency made to him. A. Yes, sir.

Q. And you say that it wasn't reasonable for him to infer from those facts that you knew about the offer of executive clemency? A. I say it was not reasonable for him to infer or assume and later allege that that was in any way the basis of improper conduct on my part.

Q. Well, I don't infer it was, Mr. Alch. A. What, sir?

Plans to Write Book

Q. I used to be a trial lawyer. I was always interested when I had a client, especially one who had no defense—I was always glad of the prospect of getting any kind of clemency. I do not see that it reflects on you. It might be a glory to your competence as a lawyer or to your judgment as a counsel to try to do so. It is no reflection on you. It is to your credit.

Just one question about the book. The Scriptures say, much study is a weariness to the flesh and of making books there is no end. It seems that everybody who gets into jail today wants to write a book about it.

Not withstanding the fact that he was paying your fee, you did not suspect he might be in pecuniary circumstances?

A. That is a possibility.

Q. I might say if Mr. McCord wanted to write a book about Watergate, he could

make A. Conan Doyle turn green with envy.

SENATOR BAKER. There is a conflict between your testimony and that of Mr. McCord. Do you have any suggestions as to how this committee can reconcile that apparently irreconcilable difference in proof and give us some indication of where the truth lies? A. Two.

Q. Tell us.

A. One, speak to the third party who was there, Mr. Bernard Shankman.

I suggest that Both Mr. McCord and I, if he is willing, submit to a polygraph test conducted by a competent examiner, accredited by the American Polygraph Association. I state my willingness to do.

Q. Moving then to another subject, it would appear to me a material conflict between your testimony and the statements of Mr. Fensterwald, given publicly after our hearings on yesterday, may produce for this committee a similar dilemma. Would you now tell us what method you could suggest to bring the testimony of other witnesses to bear or other circumstantial evidence or any evidence, to try to find who is telling the truth in that respect?

A. Polygraph.

Q. Did the U. S. Attorney's office, did the Justice Department or anyone else contact you to try to induce or even to discuss the matter of your client pleading guilty? A. Yes, sir. As reflected in my statement, there were two times.

Advice on Grand Jury

Q. Were there any suggestions of excutive clemency? A. No, sir. The only other, and I do not want to characterize it as an offer—it was not an offer. But as a result of a meeting in chambers with Chief Judge Sirica during the trial. I came out and advised my client that it was not too late to go before the grand jury.

Q. Mr. Alch, you have previously stated that the way you practice law, the decision whether to plead innocent or guilty is too important for you to decide; it must be left to your client. I admire your rectitude in that respect, but I doubt your judgment. And I really wonder—and I put this to you in a very blunt and in a very, very cruel way—I really wonder if there is not a balancing judgment to be made in the minds of the expert retained as counsel to advise him on the trial of his rights, on the one hand the likelihood of prosecution and conviction, and on the other hand, advantages of pleading guilty on one or four counts of the indictment.

A. Senator, I was not moot on that point at all. My discussion—in my discussions with Mr. McCord, as we were talking about the defense which we ultimately used, I pointed out to him that, No. 1, it was the only possible legally recognizable defense I could think of; and also told him that in my opinion, the chances of success were less than 50-50.

Q. All right. At that point, what was Mr. McCord's reply? A. I want to go to trial on that defense.

A. Now, you are a lawyer, you are a member of the bar of the District of Columbia? A. No, sir.

Q. Of the state of Massachusetts? A. Yes, sir.

Q. Do you understand your obligations as an officer of the court? A. Of course.

Ellsberg Case Cited

Q. Did you have the impression that your client was trying to manufacture and contrive a method by which the Government would be required to dismiss this case, notwithstanding his guilt or innocence? A. No, sir. I did not take this to be a frivolous attempt or action on his part. When he told me that these calls were relative to the case, at my client's instruction, I presented the motion.

Q. I have here a letter styled "Dear Gerald." The letter is signed "Jim" in pen.

"This case of Russo and Ellsberg v. Byrne was filed about an hour before I picked it up at the Supreme Court today. It appeared directly on target for us so made a copy.

"Petitioners are making a pitch of course for Government dismissal of the case, rather than disclose the Chilean Embassy foreign wiretap, in which Boudin's conversations were recorded.

"Petitioner's reasons for granting the writ are directly relevant to our situation in that they are arguing that:

"1. On constitutional grounds, the determination of the relevance of wiretapped conversations be made in adversary proceedings, rather than in camera.

"2. The refusal of the lower court to compel discovery and to conduct an adversary hearing is in conflict with the provisions of the two wiretapping statutes—the Omnibus Crime Control and Safe Streets Act of 1968 and the Org. Crime Control Act of 1970.

"3. Wiretaps for foreign intelligence purposes — and their constitutionality without a court order—are at issue and their legality needs to be determined by the Supreme Court in its October session, in order to set this case to rest one way or another.

"Though Justice Douglas is in the minority, his comments set forth in the appendix are a pretty fair summary of the thinking of the Court as expressed in its two recent decisions (June 19 and

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June 26 of this year) on the wiretapping issue.

"In any case, I would bet my last dollar that the Supreme Court will rule that A) the determination of the relevance of wiretapped conversations be made in adversary proceedings, rather than in camera, and the identity of the person or organization on whose phone the tap was made be made known to the defense and B) the refusal of the lower court in the Ellsberg case to compel discovery and to conduct an adversary hearing is in conflict with the two wiretapping statutes cited above.

"In my own case there are three possibilities relevant to the above:

"I. In the spring of this year, telephone calls were made from my office phone from a young Chilean employe of mile, to the Chilean military attache's residence in D. C.; and calls were received from Chile (from members of his family), to him at my office phone at night. As an employe of mine, he would appear to stand in somewhat the same situation as the petitioner's consultants in the Ellsberg case (page 3 jurisdiction), if those calls were tapped on national security grounds by the Government.

"2. If taps were placed on my home and/or office phones by the Government on the authority of the Attorney General, without court order, during the first week after my arrest on June 17, they would be illegal according to the Supreme Court decision of June 26 in the case of U.S. v. U.S. District Court of Eastern Michigan. There is a fair

chance that there were such taps during that period on my phone because at that time, the stories in the press, and the bond hearings, were full of innuendo that the Watergate operation may have been a Latin-American or anti-Castro operation out of some type, a tap on domestic security grounds on the Attorney General's authorization only (now illegal) would be a fair likelihood.

"3. Any calls by me, subsequent to June 17, to any organization on whom there was a national security wiretap, could, on motion, have to be disclosed to the defense if any of the three arguments set forth in the Ellsberg writ, under reasons for granting the writ, prove successful before the Supreme Court. If not disclosed, then prosecution would have to be dropped

Held Relative to Case

"The two slip opinions in the Celbard case (June 19) and the U.S. v. U.S. District Court of Eastern Michigan (June 26) were mailed to you about three weeks ago. I'll be copying the rest of the appendix to the Ellsberg writ to cert. tomorrow and mail to you. Hope you find some encouragement in this."

There are two things about that, Mr. Alch, if I may. It is an extraordinarily thorough legal document. Would you admit that?

A. If it came from a layman, yes, sir.

Q. Did you then or do you now think of that as an effort to contrive a defense?

A. No, sir. Because I asked him if these calls were relative to the case. He told me that they were.

SENATOR TALMADGE. Mr. Chairman, it is perfectly obvious, of course, to all members of the committee that the testimony of Mr. Alch varies significantly from that of Mr. McCord in any number of instances. I want all witnesses to be put on notice that at an appropriate time, wherever there is any evidence of perjury, I expect to ask the staff of this committee to submit a transcript of that possible perjury to the appropriate prosecuting attorney for action as the situation may arise.

Now, did Mr. McCord ever tell you at any time that he thought he was acting legally in this matter because of the involvement of Mr. Mitchell or Mr. Dean?

A. No, sir.

Q. In a statement that you gave to the members of the staff of our committee on May 22, 1973, in the presence of Mr. Sam Dash, Mr. Thompson, Mr. Silverstein, Mr. Sure, Mr. Hamilton, Mr. Edmiston, I read the following: "As the trial progressed a decision began to loom as to whether McCord would take the stand. I asked him what he could testify to. At that point he said that the Watergate operation had been approved by John Mitchell. I asked him how he knew this and he said Liddy told him."

A. Yes, sir.

Q. How do you explain that discrepancy in your evidence?

A. I respectfully submit it is not a discrepancy. When he told me that, he did not tell me that in any way implying that that justified the operation and made it legal. He never told me that, because Liddy told him that Mr. Mitchell was involved, that it was legal. He merely told me that that is what Liddy told him. At no time when he told me that was it in the context of his saying to me "and, therefore, I think it is legal."

Q. As a good lawyer did you not pursue that question at that time, as to whether or not Mr. Mitchell was involved? And if it had been approved by him it would have been legal, would it not?

A. Because—I do not know. Because from the very beginning I had specifically asked Mr. McCord in discussing the defense we ultimately arrived upon, whether or not he had acknowledged the facts that he knew he was breaking the law when he did. He said he did understand he was breaking the law.

Q. Now, does the Attorney General have authority to authorize wiretaps? A. I believe he does through appropriate court order.

Q. Does he have to have a court order? A. I believe he does.

Q. I do not believe it required one at that time. I think if the Attorney General had authorized the wiretap and had directed Mr. McCord to carry it out, I think it actually would have been legal. I think the authority for authorizing the wiretap also carries with it the authority of breaking and entering. You did not further investigate that point that Mr. McCord suggested to you at that time, did you?

A. No, sir, because, as I say, when he did give me that information, it was not, in the context of his saying what I did was legal.

The New York Times/Mike Lien

Gerald Alch, left, attorney for James W. McCord Jr. during the latter's trial, testifying yesterday before the Senate select committee. McCord is at right, in striped tie, behind his counsel, Bernard Fensterwald. Center, in light suit, is Alfred C. Baldwin 3d, ex-F.B.I. agent, a witness.

United Press International

James W. McCord Jr., right, convicted Watergate conspirator, after Senator Sam J. Ervin Jr., background left, refused his request to testify on a charge by Gerald Alch, who had represented him earlier this year during trial. His present lawyer, Bernard Fensterwald, is at center.