

Excerpts From Testimony Before Senate

END NEW LEDE PU TYPE

Special to The New York Times

WASHINGTON, May 23—Following are excerpts from a transcript of testimony by John J. Caulfield and Anthony T. Ulasewicz in the fourth day of hearings on the Watergate case by the Senate Select Committee on Presidential Campaign Activities; and excerpts from a prepared statement to the committee by Gerald Alch, along with transcripts of his reading of certain documents that he interpolated into his statement:

MORNING SESSION

John J. Caulfield

MR. DASH. Although you state that you made no mention of the President to Mr. McCord during the meeting, you do know, do you not, that the President is the only person in this country who can grant executive clemency in a Federal criminal matter?

MR. CAULFIELD. Yes, sir, I do.

Q. Did you understand when you were speaking with Mr. Dean that Mr. Dean wanted you to transmit the message to Mr. McCord that the offer of executive clemency was made with the proper authority? A. Yes, sir.

Q. Was it your intention during your meetings with Mr. McCord to leave him with the clear understanding that persons with authority to make such a representation as to executive clemency were in fact extending this offer to him?

A. Yes, sir. But, of course, I have not and did not at that time have any direct knowledge that the President had made such an offer, endorsed such an offer, or in any way was involved in that offer.

Q. And was it your understanding, especially with the discussions you had with Mr. Dean, that there was serious concern at the White House, at least Mr. Dean was conveying to you, involving a possible scandal—that there was a real effort to get Mr. McCord to accept this offer because of the concern or trouble that probably he might be able to raise in the Watergate case?

A. That was my clear impression, Mr. Dash, yes, sir.

MR. THOMPSON. As you were talking to [McCord] about the possibility of executive clemency and he was responding to you, what would you say, according to what he told you, his primary interest was?

A. Very frankly, sir, as I reflect back upon the conversation, it is very clear in my mind that Jim McCord was concerned about his freedom and was taking the steps that he believed to gain that freedom totally. He was uninterested in any deals of a year is a long time or other statements like that.

THURSDAY, MAY 24, 1973

Panel Investigating

Watergate Case

Q. In other words, he was not necessarily disinterested in any deals, but he was not interested in any deals that would not produce his freedom. Is that a correct statement? A. That is correct.

Ties to Ehrlichman

Q. Let me ask you about your relationship with Mr. Ehrlichman for just a few moments. How long did you work for Mr. Ehrlichman when he was counsel for the President?

A. From the day that I arrived at the White House on April 8, 1969, formally, through July, '70, when Mr. Ehrlichman moved over to the Domestic Council, and then on an informal basis from that time until the time I worked at the White House.

Q. Then after Mr. Ehrlich-

man left the office of counsel for the President, Mr. Dean was his successor, is that correct? A. Yes sir.

Q. You remained, then, under Mr. Dean, is that correct? A. That is right.

Q. Did you have any contact or any continuing relationship with Mr. Ehrlichman after Mr. Ehrlichman left to go to the office of domestic affairs? A. Well, only on rare peripheral matters relative to the investigations that I indicated in my statement.

Q. And while you were working for Mr. Ehrlichman directly, as I understand it, you had possibly more than one function, with one of those to carry out certain investigations? A. Yes, I had many other functions, sir, but that was one small part of my duties at the White House.

Q. And you continued to do some of these matters for him pursuant to his directions after you left that office? A. On very rare occasions, sir.

Q. Would you on some occasions act as an intermediary between Mr. Ehrlichman and Tony Ulasewicz, for jobs which Mr. Ulasewicz would do? A. Yes sir.

Q. Would you say that would be on frequent occasions? A. That would be infrequent after July of 1970.

Q. Occasionally. A. Oh, yes; yes sir.

Q. Now, Mr. Caulfield, in your statement here, you state that you were guessing that Mr. Dean probably was referring to Mr. Ehrlichman when he referred to high White House sources? A. Yes, that was my guess.

Q. What would you say was the relationship between Mr. Dean and Mr. Ehrlichman during this period of time? Did Mr. Dean in many matters, in effect, report to Mr. Ehrlichman? A. Yes, sir.

Q. Or answer to Mr. Ehrlichman? A. Yes, sir, on many matters having to do with Mr. Dean's work as well.

Q. Did you ever talk with Mr. Ehrlichman about this matter, this business of possible executive clemency for Mr. McCord with anyone? A. No, sir.

Q. Did you ever talk to anyone there at the White House besides Mr. Dean? A. Absolutely no one but Mr. John Dean.

SENATOR MONTOYA. Did you ever get paid from the President's attorney? A. No, sir.

Q. Were you working or being paid from the payroll attributable to the Department of the Treasury or to the White House? A. The White House payroll, sir.

Haldeman Assignments

Q. Did Mr. Haldeman assign things to you? A. On only one or two occasions that I could recall, Senator. Very rarely; in fact, almost never.

Q. Let me read an extended text. On Page 9: "about 10 o'clock A.M. on Thursday, Jan. 25, 1973, in a meeting lasting until about 12:30 A.M., we drove in his car toward Warrenton, Va., and returned and a conversation ensued which repeated the offers of executive clemency and financial support while in prison and rehabilitation later. I refused to discuss it. He stated that I was fouling up the game plan. I made a few comments about the game plan." You recall that?

A. No sir, I do not. As I indicated in my statement, this trip here was one of friendly conversation between two friends. I have no recollection of offering him executive clemency on that

In the general discussion that followed, the question arose as to whether or not the C.I.A. could have been involved. It was pointed by others that all of the individuals apprehended in the Watergate complex had some prior connection with the C.I.A. and that one of the Cuban-Americans had been in possession of what appeared to be C.I.A.-forged documents.

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 C.I.A. involvement. When the meeting terminated, I telephoned Mr. McCord at his office and asked him to meet with me and local counsel, Mr. Shankman, at the Monocle Restaurant for lunch. During lunch, which lasted for approximately 45 minutes, I asked Mr. McCord whether, to his knowledge, the C.I.A. was in any way involved with the Watergate venture.

He did not directly respond to this specific question, but did become quite upset at what he believed to be the antagonism of the White House against the C.I.A. He cited the dismissal of Helms as C.I.A. director and the appointment of Schlesinger in his place, as an attempted "hatchet job" by the Administration against the C.I.A. He did venture his observation that if any C.I.A. officials were subpoenaed that they would not and could not comply with said subpoena.

Meeting in Boston

Because of the brevity of the luncheon and because of the obvious need for more detailed pretrial preparation meetings, I asked Mr. McCord to come to Boston in a few days, which he agreed to do.

On or about Dec. 26, 1972, Mr. McCord came to Boston and initiated our conversation by stating that the C.I.A. was not involved and that he would have no part of any attempt to involve that agency. He asked that I relay this position to other defense counsel at our next meeting, which I agreed to do, and in fact did.

I did not, after advising other defense counsel of Mr. McCord's denial of C. I.A.

involvement, engage with other counsel in any further conversation of any potential defense involving the C.I.A. At no time did I suggest to Mr. McCord that the so-called C.I.A. defense be utilized, for the defense of "duress" had already been agreed upon, but I merely asked him whether or not there was a factual basis for this contention.

Mr. McCord's allegation that I announced my ability* to forge his C.I.A. personal records with the cooperation of then Acting C.I.A. Director Schlesinger is absurd and completely untrue. I have never had the privilege of meeting Mr. Schlesinger and no such statement was ever made. My local counsel, Bernard Shankman, who was present at the Monocle, can corroborate this.

Mr. Shankman, Mr. McCord, and I hailed a cab and at the last minute, co-defendant Barker asked if he could ride in the cab with us. Why Mr. Barker was going to Mr. Bittman's office, I do not know. There was no significant conversation with Mr. Barker in the cab.

Mr. McCord has alleged that I told him that the purpose of going to Bittman's office was that Mr. Bittman wanted to talk with him about "whose word he would trust regarding a White House offer of executive clemency" and that Mr. Bittman wanted to talk to Mr. Barker as well.

Discussion of Hunt Plea

This is not true. I merely said to Mr. McCord that prior to the scheduled daily post-court meeting between he, Mr. Shankman and myself, that we would stop at Mr. Bittman's office, for I wanted to discuss with him the ramifications and details of Mr. Hunt's proposed change of plea.

When we arrived at Mr. Bittman's office, Mr. McCord has alleged that I sensed his anger at Mr. Barker's presence, and therefore delayed going up to Mr. Bittman's office for approximately 30 minutes. The simple truth is that I suggested that we three have a cocktail and Mr. McCord, Mr. Shankman and I went into a restaurant directly across the street from Mr. Bittman's office for just that purpose.

When we arrived at Mr. Bittman's office, I went with Mr. McCord and Mr. Shankman to the firm's library and went back to Mr. Bittman's office to see if he was there. I had a discussion with him in which he confirmed the judge's refusal to entertain any change of plea by Mr. Hunt until after opening statements. At this point, I mentioned to Mr. Bittman that I felt my client was becoming a bit paranoid, that he felt he was being made the "patsy" or "fall guy."

I mentioned it at that time since in my mind, that allegation seemed inconsistent with Mr. Hunt's desire to plead guilty. After I mentioned Mr. McCord's apprehension, my recollection is that Mr. Bittman said in words or substance, "Tell McCord he will receive a call from a friend of his." Mr. Bittman did not mention the "White House" as alleged by Mr. McCord. 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 fears that his co-defendants were turning against him, and that the caller could very well be Mr. Bittman's client, Mr. Hunt.

I considered this possibility in view of the context of the conversation immediately preceding Mr. Bittman's remark, that is, my statement in accordance with Mr. McCord's request, of his apprehension with regard to his co-defendants. I subsequently told Mr. McCord just what Mr. Bittman had told me, that he would receive a call from a friend. I did not mention the words "The White House" because Mr. Bittman did not mention

those words to me. Mr. McCord nodded, said, "O.K." and had no further response to my statement.

McCord's Letter Cited

Sometime later — the trial was in progress — Mr. McCord told me that he had been in contact with a man by the name of Caldwell. He specifically stated that he did not wish to tell me who this man was or the subject matter of his conversation with him. In response, I told Mr. McCord that that was his prerogative.

In this regard, I respectfully invite the attention of this honorable committee to Mr. McCord's letter to Chief Judge Sirica of March 19, 1973, of which I had no prior knowledge. I respectfully refer to the next to the last paragraph on Page 2 of this letter in which Mr. McCord, after alleging such things as political pressure applied to the defendants to plead guilty and remain silent, stated, and I quote, "I have not discussed the above with my attorneys as a matter of protection for them."

Mr. McCord has alleged that the subject of executive clemency was discussed on this day, Jan. 8, 1973.

This is not true. In late 1972, during one of the pre-trial 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, Christmas time 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 which I characterize as "lawyer's 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 up into one, but in my opinion, the President wouldn't touch this with a 10-foot pole." Mr. McCord laughed and agreed with me.

That was the only occasion that the words "executive clemency" were ever mentioned by me to my client. I have neither met John Dean nor spoken to him in my life. I have neither met John Caulfield nor spoken to him in my life.

Move Rejected by Judge

During the trial, I presented to Chief Judge Sirica my contemplated defense theory of "duress" supported by a memorandum of law. Several days later, after receiving a written response giving a written response from the Government, the court ruled as a matter of law that this defense did not apply to this case, thereby precluding me from presenting evidence in support thereof and from relying upon it in closing argument.



The New York Times/George Tames

Howard H. Baker Jr., ranking minority member of the Senate Watergate committee, and Sam J. Ervin Jr., chairman, listening to the testimony of John J. Caulfield, former employe of Committee for the Re-election of the President.

After opening statements, Mr. Hunt pleaded guilty, the four Cuban-Americans pleaded guilty at which time I filed a motion for mistrial which was denied.

When this happened, I explained to Mr. McCord that the only possible remaining defense was the general defense of "lack of criminal intent" but advised him in my opinion, it had little or no legal merit for it was asking the jury to believe that he did not know he was breaking the law when he broke into the Watergate complex and that this, to say the least, was not very "salable."

Mr. McCord indicated his understanding of our position, told me that he was, nevertheless, most pleased with my exerting my best efforts with regard to the proposed theory of "duress" and asked whether or not the judge's ruling could be a point of appeal in the event of conviction. I told him that

it could and would be, that the record had been in that regard, and he indicated his complete satisfaction with the then existing situation.

As the trial approached the completion of the Government's case, I conferred with Mr. McCord at one of our daily post-trial meetings and told him that a decision would have to be made regarding whether or not he would take the stand. I explained to him that if he elected to testify, it would be his obligation to answer any and all relevant questions. It was at this time that Mr. McCord told me that he had evidence to the effect that the Watergate operation had been approved by John Mitchell.

I asked him the nature of the evidence and he told me he had been so advised by Mr. Liddy. I asked him if he had any other corroborative evidence and he told me he did not. I told him that although this was technically hearsay, it would be admissible as a declaration by one co-conspirator to another and told him to understand beyond any doubt, that should be take the stand, that question would in my opinion be asked and an answer required.

I told him that if he elected to take the stand, full disclosure would be necessary; that I was with him all the way, but that this crucial decision of whether or not to testify could only be his. I did advise him, however, to resolve this question as soon as possible and not advise me of his decision at the last minute, thereby precluding adequate time for preparation of direct and cross-examination.

Praise for Work Recalled

What I am now about to relate is not for the purpose of self-commendation, but is stated to show and emphasize the relationship that existed between Mr. McCord and I from the beginning to the end of the trial. There was not a day of trial that passed without Mr. McCord shaking my hand at the end of each day and telling me what a superlative job I had done. He used adjectives such as "terrific," "outstanding," etc., and expressed his total and unequivocal satisfaction and appreciation for my efforts.

I remember the day of final argument when present in the courtroom were Mr. McCord's wife, his son, his daughter, and his parents. After my final argument, they all came up to me and profusely thanked me for the words I had uttered on Mr. McCord's behalf. They said they were proud of my description of Mr. McCord and that they were "thrilled to sit there and hear it."

To further demonstrate the status of my relationship with my client, I have provided this honorable committee with a copy of my letter to Mr. McCord, date Feb. 6, 1973, while he was incarcerated at the District of Columbia Jail. I specifically refer the attention of this honorable committee to the third paragraph thereof which reads as follows:

[In his testimony, Mr. Alch at this point read the following paragraph into the record.]

"I again reiterate to you that I shall continue to do everything possible on your behalf and shall stay with you in all that may lie ahead. Having a client convicted can never be a source of gratification to an attorney. I will, however, always remember your vote of confidence in me before, during and after trial."

[Mr. Alch then resumed reading his statement.]

I immediately commenced my efforts to effectuate Mr. McCord's release on bail. I remember his expressing dissatisfaction at being placed in a maximum security area. I immediately spoke to the prison superintendent and asked if anything could be done. No commitment was made, but I was told that my request would be given every consideration.

I recall my first visit to

Mr. McCord at the jail. When he first saw me, he was approximately 20 feet away. He broke out into a wide smile, extended his hand and accelerated his pace. He told me how glad he was to see me so that he might again express his gratitude for my efforts in his behalf. I remember him telling me how as his attorney and he again re-emphasized his belief that my job for him was beyond reproach.

He told me that his wife was contacting friends with regard to bail, but he specifically asked that I call a man by the name of Bernard Fensterwald, whom he said might be very helpful in raising bail. [1] called him from the pay phone at the jail, immediately after leaving Mr. McCord.

Prospects 'Looked Good'

He told me that he thought he could arrange to meet the bail requirements within a matter of days; that he had "friends" with whom he was in contact; that these friends stated that things "looked good" and that I should stay in daily contact with him. I immediately related this hopeful news to Mrs. McCord and she was understandably overjoyed at the prospect of her husband's imminent release. Daily phone calls were made to Mr. Fensterwald. I was not always able to reach him directly, but when I did, he would tell me that his friends were still working on it and to keep in daily contact.

Several days passed. The word from Mr. Fensterwald was still inconclusive, i.e., he was still waiting word from other people. Then, during one of my telephone calls, he told me that these other contacts had fallen through, but that he was ready, willing and able to personally borrow the full amount of \$100,000 and that he could do so by "just going down to the bank and signing the note."

He told me that his motive for so acting was that he was "outraged" at the high bond set by Chief Judge Sirica and felt this to be a gross injustice, which he was taking upon himself to rectify. This was, I believe, in February of 1973. I told him I would call him the following day. When I did so, he told me that he had been refused by the bank, but that he was looking to "another source" for funds. He did tell me, however, to ascertain from Mrs. McCord, how much she could raise through friends and relatives so that he could attempt to come up with the balance.

I again visited Mr. McCord and advised him of the progress. He told me that when I spoke to Mr. Fensterwald again, I was to be sure to relate to him his, [Mr. McCord's] gratitude. I left Mr. McCord, went to the phone booth in the jail, called Mr. Fensterwald and related Mr. McCord's thanks. 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. Mrs. McCord subsequently advised that she was able to raise \$60,000. I related this to Mr. Fensterwald who said he would be able to produce the remaining \$40,000. This was shortly thereafter accomplished and Mr. McCord was out on bail awaiting sentencing.

When the date of sentencing arrived, I was engaged in trial in Federal court in Chicago, Ill. I was asked for, and received permission to adjourn the trial for the day of sentencing, so that I might be present with Mr. McCord in court.

This was the day when Chief Judge Sirica read in open court Mr. McCord's letter of 3/19/73 of which I had no prior knowledge.

When Chief Judge Sirica called a 20-minute recess immediately following his reading of the letter, I sat with Mr. McCord at the counsel table and asked him why he had not informed me of his intentions. He apologized for so doing and again repeated that he had not advised me of his allegations as a matter of my own protection. Is asked him what he wanted me to do. He told me he wished to speak privately, with me being present, to Chief Judge Sirica regarding the allegations of his letter and asked that I advise the court of this request.

A Meeting in Courtroom

During this conversation, 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." Mr. McCord nodded and I asked Mr. McCord who this man was. Mr. McCord identified the individual and introduced him to me as Bernard Fensterwald.

This was the first time I had met the man with whom I had had so much telephone contact pertaining to bail. 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."

Subsequently, Mr. McCord

called me and said that since I was away on trial and that since things were "breaking so quickly" didn't I think it was a good idea for him to retain local Washington counsel. I said, yes, I thought it was a good idea. He asked me if I had any objection to Mr. Fensterwald, I said I had none, and Mr. McCord advised me this would be done. My next contact with Mr. McCord was when he, I, and Mr. Fensterwald met the night before our last court appearance before Chief Judge Sirica at which time the sentencing was continued until June 15, 1973.

Mr. McCord was extremely upset what he believed to be unfair newspaper coverage of his disclosures. He kept smashing his fist on my suitcase. At this point, Mr. Fensterwald said to Mr. McCord, "The reporters have been asking me whether or not you or I had ever had any past relationship. I told him that we had."

At this point, Mr. McCord looked up with a surprised expression. Mr. Fensterwald said, "Well, after all, you have in the past submitted to me checks which were donations to the Committee for the Investigation of the Assassination of the President." Mr. McCord smiled and said, "Oh, yeah, that's right."

[Next] morning, in court, I asked for and received a continuance of sentencing to June 15, 1973. I advised the court of Mr. McCord's desire to cooperate fully with both the grand jury and Senate committee and further advised of Mr. McCord's preference to first testify before the Senate committee.

Subsequently, while I was still on trial in Chicago, I did receive several phone calls from Mr. Fensterwald and I recall that in one telephone conversation he said to me, "What do you think of all that is going on?" referring to the disclosures being made by Mr. McCord. To this I replied, "Whatever is right for Jim McCord is all right with me."

Mr. Fensterwald replied, "We're going after the President of the United States." I replied that 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."

During another telephone conversation with Mr. Fensterwald, he stated that he was most displeased with the reaction of the Republican members of this honorable committee, to Mr. McCord's submitted memoranda and further stated that "I'll submit memoranda but I don't want the Republicans to see them."

Explanation Is Sought

Subsequently my contact with Mr. McCord and Mr. Fensterwald diminished. On May 8, 1973, my secretary gave me a message reflecting a call from The Los Angeles Times in regard to a four-page memorandum of Mr. McCord, involving the C.I.A., that was about to be published the following morning.

I called Mr. McCord that night, was told by his wife that he was not in, and I left a message for him to call me. He never did. The following day, The New York Times published a memorandum by Mr. McCord, alleging that I had stated that I could obtain forged C.I.A. documents with the cooperation of the director of the C.I.A.

At approximately 5:30 P.M. on May 8, 1973, I contacted Mr. Fensterwald by telephone 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 had no further contact from Mr. McCord.

Mr. McCord has accused me of exerting pressure upon him, but I respectfully request this honorable committee to take note of the following facts:

1. Mr. McCord did not plead guilty.

2. He admitted, under oath, in response to a question put to him by Senator Ervin, that I never urged him to enter a plea of guilty.

2000
SERIAL
TEXT
OF
MEMO
2002

3. In his letter of March 19, 1973, to Chief Judge Sirica, in referring to his allegations of improprieties, including but not limited to political pressure, stated, "I have not discussed the above with my attorneys as a matter of protection for them."

4. Mr. McCord proceeded to trial defense based upon what he told me to be the truth.

I have done nothing wrong and am, therefore, not afraid, but am upset as a practicing criminal trial lawyer.

How can a lawyer effectively represent his client when faced with the possibility that the man for whom he is working night and day is constantly making a record of privileged conversations with the intent of subsequently violating this privilege by making false accusations and by selectively extracting statements out of context and twisting them into untruths?



The New York Times

Samuel Dash, left, chief counsel, conferring with Senate Watergate committee member Herman E. Talmadge.

occasion. I have no recollection about stating that I was fouling up the game plan.

Q. Now, you mentioned that Mr. Dean had instructed you to say that it comes from way up at the top. A. Yes, sir.

Q. What did you conceive that to be at the time? A. Well, sir, in my mind I believed that he was talking about the President. Although—

Q. How would you have interpreted that without any further explanation? The same way? A. I do not understand, Senator.

Q. You mentioned that it was your impression that it must have come from the President. Now, did you, when you reached that impression, question Mr. Dean any further about it? A. No, sir.

SENATOR WEICKER. Mr. Chairman, I just have two or three brief questions; then I will yield.

Mr. Caulfield, turn to Page 19 of your testimony. You state there, "I have been asked by the U. S. Attorney's office and by Senator investigators and am trying as best I can to recall what impressions I had at this particular point in time. As best as these impressions can be stated, I believed that I was going back to see Mr. McCord to again extend an offer of executive clemency and that by my doing so I was doing a great service for the President of the United States in a very sensitive matter."

My first question to you, very simply, is this: Using your words, I would like you to comment and explain to me why it is—why it is—that you thought that you were doing a great service for the President of the United States?

President's staff. I felt very strongly about the President, extremely strongly about the President. I was very loyal to his people that I worked for, I place a high value upon loyalty.

Now, out of the blue, I am injected into this scandal. I am being asked by one of my former superiors to deliver a message that I know to be executive clemency. I tried to avoid it, as my statement indicates. I imposed upon my friend to do it, hoping that all parties would be satisfied. I was not successful.

I was brought back in again to it, now being asked to see Mr. McCord directly. I did go to see him.

Now I am becoming further implicated into this matter. I had this conversation with John Dean, who was the counsel to the President. I had been there 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, to become 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 U.S., and I did it, sir.

Q. Mr. Caulfield, You have lived a life dedicated to the law. In the very beginning of your statement, you cite a career, a very fine career, one that was recognized time and time again. Let me ask you this question: As one of the conflicts—let me be more specific.

I read on page 24 of your testimony, where you are talking to McCord and where you have given a friendly piece of advice, and you say, "Jim, I have worked with these people and I know them to be as tough-minded as you and I. When you make your statement, don't underestimate them. If I were in your shoes, I would probably do the same thing."

Values Loyalty Highly

A. Well, sir, to go back a little bit, it was a great honor for me to serve as a member of the President's staff. I had come from a rather humble background, a police officer. I did receive this great opportunity to serve on the

I read that, and you tell me if I am wrong, as a man who is in conflict. On the one hand delivering a message to a friend; on the other hand, a man whose whole career has been dedicated to honesty and seeing the truth come out. Would that be a fair description of a conflict that was occurring within you at that time?

A. There was a definite conflict, Senator. You are absolutely right. I know when wrongdoing is occurring. 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.

Q. So actually, there was a conflict between your loyalties and it is interesting that you used the very word that I had in a question here written before you made your statement. Did you feel that, at this moment in time, a conflict between your loyalties to the President and a life dedicated to law and the pursuit of truth? A. Yes sir. That is correct. And also that I was hopefully being able to help a friend.

Q. Then, lastly, Mr. Caulfield, on Page 25, you state "that I realize that at the time of my first conversation in January that I was involved in questionable activity but I felt that it was important for me to carry this message for the good of the President." Was there a conflict in your mind between doing an act for the good of the President and an act that would be for the good of the country?

A. That is a tough question, Senator. All I can say is that I did what I did for the reasons that I have stated.

SENATOR INOUE. On Page 34, this is one sentence that puzzles me. It says, "When you make your statement, don't underestimate them." A. Not to underestimate the tough-mindedness of all the players in this game.

Misinterpretation Seen

Q. What did you think that the other side would do to Mr. McCord?

A. I had no idea. It is apparent that Mr. McCord apparently has misinterpreted that, looking at his statement, but that was not the intention. I would say that to a friend that was about to make a major decision that would be tough, and I did.

SENATOR GURNEY. Referring to the previous testimony by Mr. McCord, at Page 320 of the record, he had this to say about his conversations and meeting with you: "Caulfield stated that he was carrying the message of executive clemency to me from the very highest levels of the White House. He stated that the President of the United States was in Key Biscayne, Fla., that weekend," referring to the weekend following Jan. 8, "following meetings that we were in then, and that the President had been told of

the results of the meeting.

Did you ever learn that the President had learned of the results of any of your meetings with Mr. McCord?

A. Absolutely not, sir.

Q. He also stated this further on in the testimony on the next page. Mr. McCord: "He," meaning you, "further stated 'I may have a message to you at our next meeting from the President.'" Did

you ever tell him that? A. No, sir.

Q. Did you ever have any communication with the President of the United States with regard to this so-called executive clemency offer to Mr. McCord? A. None whatsoever, sir.

Q. Did you ever hear Mr. Dean in any of your conversations with Mr. Dean ever refer to the fact that he had informed the President of these meetings? A. No, sir.

Q. Did Mr. Dean ever say to you: "The President has instructed me to make this offer of executive clemency to McCord through you," or through anybody else as far as that is concerned? A. Absolutely not, sir.

Q. Did you ever apply any pressure to Mr. McCord in any of these meetings for him to do anything in regard to this upcoming trial? A. No, sir.

Did you ever urge him or advise him to plead guilty? A. Never.

SENATOR TALMADGE. Mr. Caulfield, are you still on the Federal payroll? A. Yes, sir.

Q. Did you call Mr. John Ehrlichman immediately after the break-in at the Watergate on June 17? A. Yes, sir.

Q. What did he say?

A. Well, I received a telephone call on the afternoon of June 17, about 3 or 4 P.M., as I recall, from a gentleman I worked with in the United States Secret Service, Mr. Patrick Boggs, and he called me and he said, "Do you know Jim McCord," and I said, "Yes, I know Jim McCord."

Report of Break-in

He said, "Well, we have received a report that there is a break-in at the Democratic National Committee. We are concerned because of our protective capabilities or responsibilities, rather in that area. We have some agents checking into it. Some of the people appear not to have given their correct names and we are getting a report that one of those not giving the correct name is Jim McCord."

He said, "Now, do you want to call John Ehrlichman or should I call him?"

After I had recovered from the shock I indicated, "Well, you go ahead and try and reach him and I will try to reach him as well."

And I called the White House board and I was told that he was en route to his residence. By the time that I did reach him Mr. Boggs had already contacted him. And 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 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." I said, "I think that would be very appropriate."

SENATOR ERVIN. Now, when you performed this mission for John Dean on these three occasions, what did you expect or, rather, what did you understand was expected of McCord in return for executive clemency? Did you infer from your conversation with Dean that under Dean's statements, McCord was expected to plead guilty,

keep silent, receive a short sentence, and then receive clemency?

A. If he accepted the offer, that would be the way I

Anthony T. Ulasewicz

SENATOR INOUE. According to Mr. Caulfield's testimony you were a member of a "private security entity in Washington, D. C., providing investigative support for the White House." Is that correct? A. That is correct.

Q. You worked under Mr. Caulfield but were on the payroll of Mr. Kalmbach? A. That is correct.

Q. Will you describe some of your duties. One of the newspapers described you as the super spy. Is that a correct statement?

A. The newspapers have painted quite a few pictures of me recently, but I was no spy, of course, of any kind. I did investigative work in support of whatever Mr. Caulfield related to me. I did no slanderous spying as the newspapers' allegations, etc. I would best put in its category is probably supporting anybody who is conducting legitimate investigations. I used no wiretaps, I never use any surveillance, etc.

SENATOR BAKER. You think your wiremen [in the New York Police Department] were better than McCord's wiremen? A. I will tell you, any old retired man in the New York City Police Department who would become involved in a thing like that, he thought he had to for whatever reason it was, he would not have walked in with any army, that is for sure.

Q. How could you have

gained the information that Mr. McCord obviously or apparently was seeking?

A. If it is a question of obtaining information from the Democratic party, Republican party or anybody else, the easiest way is to write a postal card asking them to mail you all their leaflets. They will put you on their mailing list and you will have everything.

AFTERNOON SESSION

Gerald Alch

MR. ALCH. Mr. McCord has made allegations concerning my conduct in the defense of his liberty. These allegations are, in some instances, completely false and, in other instances, have been twisted out of context into untruths, presumably to serve his present purpose, whatever that may be, but which impugn my personal standards of ethical and legal behavior.

On a Saturday morning [in July] I met with him for the first time. He identified himself as one of those arrested in the Watergate building on June 17, 1972. He told me that he had taken a calculated risk in doing what he did and was prepared to face the consequences. Within that framework, however, he indicated he wanted the most effective legal representation possible.

I asked Mr. McCord to give me specific details attending the Watergate break-in, but he specifically declined so to do except to state his personal motivation, i.e., the protection of others. I explained to him that since he had been physically apprehended in the Watergate complex, he could obviously not deny

Continued on Following Page

Continued from Preceding Page

that fact and inquired as to his motivation in so acting.

He told me that as chief of security for the Committee to Re-elect the President, he had received information to the effect that various antiwar demonstrations by groups which he described as "radical" were being planned for the upcoming Presidential election and that these demonstrations had, in the past and would invariably in the future, lead to violence or the threat thereof to various prominent Republican officials, including, but not limited to members of the Committee to Re-elect the President of the United States. I told him that I would explore whether or not this motivation could, in any way, be embraced by a recognized legal defense.

Memorandum From McCord

He would, almost daily, send to me clippings from various newspapers published throughout the country, reflecting reports of antiwar groups, activities which in some instances involved violence. In fact, at one point, he sent to me a typed memorandum reflecting this alleged motivation for his conduct which memorandum included various legal citations of law, which he believed to be in support of the defense he wished me to present. I have made available to this honorable committee copies of three such memorandums, accompanied by a hand-written note from Mr. McCord which reads as follows:

[In his testimony, Mr. Alch at this point read the following note into the record:

"Gerald, I well understand that it is your job and not mine to work up a defense. Nevertheless, I have been putting together some ideas and collecting every newspaper clipping I can find which may be of help later. I am strongly oriented toward the grounds of self-defense and defense of others and of property as my defense. I believe we can make the strongest defense on these grounds. We both of course have to talk this out at length and you have the final say in this matter. With best regards,
Jim."

[Mr. Alch then resumed reading his statement.]

I do this to emphasize this fact: that Mr. McCord was from the beginning in complete agreement with the defense ultimately presented in his behalf. At no time 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, the counsel to the President, or anyone else. Mr. McCord 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.

I advised that the law of "duress" allowed for the perpetrator to possess criminal intent, that is, to know that he was breaking the law and that therefore, based upon what he had told me with regard to his own motivation, this defense was not only compatible therewith, but in my opinion, constituted the only defense available. Mr. McCord wholeheartedly agreed. And I commenced to prepare the case on this basis.

I also received from Mr. McCord an outline of a proposed book he was in the process of writing entitled "Counter Espionage Agent for the Republicans — The True Story of the Watergate Case." Copies of this outline have also been provided to this honorable committee.

[In his testimony, Mr. Alch at this point read the following into the record:]

It was an outline listing such chapters [as] "The Beginnings," "The Committee to Re-elect the President," "Background to Violence and Political Espionage," "Jack Anderson, the Man Who Brought You the Eagleton Case," "The Political Opposition," "The Watergate Incident, the True Story," "The Defendants," "The Grand Jury," "The Lawyer," "The Investigators," "The Congressional Committees," "The October Phase," "The News Media," "The Final Story," with a prologue, as the book goes to print, "If the Democrats Had Had Alarms and Guards."

[Mr. Alch then resumed reading his statement.]

There were other memoranda that I received from time to time from Mr. McCord which suggested for consideration other potential defense material which I rejected. One such memorandum, copies of which have been provided to this honorable committee, listed and discussed such topics as "The Mafia and Democratic National Committee Funds and Personnel," "Flying Tigers and Anna Chennault," "Israel and the Mafia."

On several occasions, Mr. McCord told me that he was convinced there existed a concerted effort on the part of his co-defendants and their counsel to make him the "fall guy" of the Watergate operation. On one particular occasion, he mailed to me a memorandum, copies of which have been provided, reflecting his belief. Said

memorandum reads as follows:

[In his testimony, Mr. Alch at this point read the following memorandum into the record.]

Dated Oct. 17, 1972, subject, "Shift of the Focus of Publicity."

"Gerry, about a week ago, Newsweek reporters told my men that the F.B.I. had been leaking information to them relative to my case and some of the material would appear in the next two issues. Last week, one item appeared regarding an office of mine rented on K Street, D. C. This week's issue, Oct. 23 date, carries for the first time an allegation that I was the 'ringleader' of the Watergate operation. Instead of being fourth down the ladder from Liddy, Hunt, and Barker, I am now the 'ringleader,' according to the F.B.I. This had been predicted, that I would try to be made the focus in order to draw the attention away from the W.H. men, Liddy and Hunt. I could see it comin' gas early as August and more particularly, two weeks ago, when you and I talked. hTe F.B.I. leaks to Newsweek are no accident. It is as predicted. Jim."

[Mr. Alch then resumed reading his statement.]

I advised Mr. McCord that I had kept abreast of newspaper coverage of the Watergate incident and that, in all honesty, could discern no effort on anyone's part to foist upon him prime responsibility for the offenses charged. He disagreed with me and I told him that I would subsequently discuss the matter with other defense counsel.

At another time prior to January, 1973, Mr. McCord advised that he had made telephone calls to the Israeli Embassy on Sept. 19, 1972, and to the Chilean Embassy on Oct. 10, 1972. He did not divulge the contents of these telephone conversations.

His theory was that the Government, rather than reveal such activity, would dismiss the cases against him.

Surveillance Alleged

I received a letter from him dated Aug. 23 reflecting these thoughts, copies of which I have made available to this honorable committee.

It is interesting to note the last paragraph of this memorandum which reads as follows:

"Enjoyed the visit with you and appreciated your advice. I have got a great lawyer and am well aware of that fact. With best regards, Jim."

In addition, I have provided this honorable committee with copies of undated memorandum from Mr. McCord, reflecting four telephone calls: One from Chile to McCord's office; another from Mr. McCord's office to the Chilean military attaché; a call to the Israeli Embassy from Mr. McCord's home and a similar call to the Chilean Embassy. As a result thereof, I made an appropriate motion for disclosure of any Government electronic surveillance in any way pertaining to Mr. McCord. Mr. Silbert's response was that he had no knowledge of any such surveillance.

Again, at my client's insistence, I made a second similar motion at the bench during trial, explaining to Chief Judge Sirica that I was doing so at my client's insistence that such calls had, in fact, been made and had been electronically intercepted.

The Government again stated its total lack of knowledge of any such activity and, accordingly, no action was taken on my motion.

With regard to opportunities presented to Mr. McCord to tell all that he knew with regard to the Watergate operation, I state the following:

On or about Oct. 25, 1972, the Government conveyed to local counsel, Bernard Shankman and my associate, Mr. Johnson, an offer to accept from Mr. McCord a plea of guilty to one substantive count of the indictment and in return for his testimony as a Government witness, a recommendation of leniency would be made to the court. The Government indicated, however, that it could not and would not recommend any type of sentence which would allow Mr. McCord to remain at liberty. This offer was transmitted to Mr. McCord and was unequivocally rejected.

On November of 1972, a second plea offer was received from the prosecutors. At this time, the offer was essentially similar to the first offer, except that Mr. McCord would have to plead to three counts of the indictment instead of one. The explanation for this change of position was that the Government's case had grown considerably stronger. This offer, which also involved Mr. McCord's testifying as a Government witness, was related to and again rejected by Mr. McCord.

A Third Rejection

I advised Mr. McCord after an in-camera session with Chief Judge Sirica, that there still existed an opportunity for him to appear before the grand jury, even at that stage of the trial, to make full disclosure. I have been informed that the committee has been provided with a transcript of that in-camera proceeding and therefore will not attempt to paraphrase the words of Chief Judge

Sirica. This third opportunity was turned down by Mr. McCord.

I take the liberty of bringing these three instances to the attention of this honorable committee since, in my opinion, Mr. McCord, in portions of his testimony before you on May 18, 1973, implied that I had pressured him to plead guilty and remain silent. I state to you that this is not so, and refer you to the question asked of Mr. McCord by Senator Ervin on May 18, and I quote, question: "Now, did your lawyer urge you to enter a plea of guilty? I am talking about Mr. Gerald Alch." Answer: "I do not recall that, no sir." That portion, at least, of Mr. McCord's testimony, is accurate.

With regard to the allegations of Mr. McCord to the effect that I suggested that the C.I.A. be brought into the case in a defense posture, I state the following:

As heretofore explained, I had decided to base Mr. McCord's defense on the theory of "duress" for two basic reasons. (1) It was the only legally recognized defense that I felt was supportable. (2) More importantly, it appeared to be the factual truth, based upon Mr. McCord's explanation of his own motive.

In December of 1972, I attended one of several meetings of defense counsel, the purpose of which was to discuss various aspects of trial strategy. I proceeded to explain the defense that I was contemplating. A discussion ensued wherein some of the other defense attorneys reasoned that this "security motive" would be applicable only to McCord, in view of his position as chief of security for the Committee to Re-elect the President.