

Y4
Ar 5/3
D65/4
PT. 3

9344
Ar 5/3
D65/2
143

TRANSMITTAL OF DOCUMENTS FROM THE NATIONAL
SECURITY COUNCIL TO THE CHAIRMAN OF THE
JOINT CHIEFS OF STAFF

GOVERNMENT

Storage

DOCUMENTS

JUL 9 1974

THE LIBRARY
KANSAS STATE UNIVERSITY

HEARING
BEFORE THE
COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE
NINETY-THIRD CONGRESS

SECOND SESSION

PART 3

MARCH 7, 1974

Printed for the use of the Committee on Armed Services

KSU LIBRARIES

✓

111900 286434

4E4982 006117A



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1974

31-536

COMMITTEE ON ARMED SERVICES

JOHN C. STENNIS, Mississippi, *Chairman*

STUART SYMINGTON, Missouri

HENRY M. JACKSON, Washington

SAM J. ERVIN, Jr., North Carolina

HOWARD W. CANNON, Nevada

THOMAS J. MCINTYRE, New Hampshire

HARRY F. BYRD, Jr., Virginia

HAROLD E. HUGHES, Iowa

SAM NUNN, Georgia

STROM THURMOND, South Carolina

JOHN TOWER, Texas

PETER H. DOMINICK, Colorado

BARRY GOLDWATER, Arizona

WILLIAM L. SCOTT, Virginia

ROBERT TAFT, Jr., Ohio

T. EDWARD BRASWELL, Jr., *Chief Counsel and Staff Director*

JOHN T. TIGER, *Chief Clerk*

(II)



TRANSMITTAL OF DOCUMENTS FROM THE NATIONAL SECURITY COUNCIL TO THE CHAIRMAN OF THE JOINT CHIEFS OF STAFF

THURSDAY, MARCH 7, 1974

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 212, Richard B. Russell Senate Office Building, Hon. John C. Stennis [chairman].

Present: Senators Stennis (presiding), Symington, McIntyre, Hughes, Nunn, Thurmond, Tower, Goldwater, and Scott of Virginia.

Also present: T. Edward Braswell, Jr., chief counsel and staff director; John T. Ticer, chief clerk; W. Clark McFadden II, counsel; John A. Goldsmith, Edward B. Kenney, and Francis J. Sullivan, professional staff members.

The CHAIRMAN. We have with us today, members of the committee, Mr. J. Fred Buzhardt, formerly General Counsel to the Department of Defense and now Counsel to the President.

As the committee recalls we heard Yeoman Radford and Admiral Welander on the so-called spying issue, and the next logical witness on this matter, in my opinion, is Mr. Buzhardt.

As General Counsel to the Department of Defense he was the author—this is background information now, some of you, maybe all of you already know it, he was the author of the so-called Buzhardt investigative report to Secretary Laird on this matter.

Today he will discuss his report to the Secretary regarding the investigation of unauthorized disclosures of classified material to columnist Jack Anderson, and the use of unauthorized communication channels between the National Security Council staff and the Office of the Joint Chiefs of Staff.

Mr. Buzhardt will also discuss, and this at my request these items. He will also discuss the reasons why no formal charges were preferred against Yeoman Radford, and the admiral, too, Admiral Welander. You know I raised that point at the very beginning of this matter.

The chair would emphasize that Mr. Buzhardt is a key witness in this entire matter since he was, of course, not involved himself, but was a contemporary at the time that these incidents occurred. Most of the people mentioned so far have been those who were in some way involved, or connected with the incidents being covered.

I also observe Mr. Buzhardt has made available to me and to the committee, note this now, a copy of his investigative report to the Secretary. Because of the investigative nature of the report and its

sensitivity, Mr. Buzhardt has requested that the committee preserve the confidentiality of the report. As a matter of fact, I assured him—I have met several times with Mr. Buzhardt and I assured him—that as to this report it would not be published, that it would come to us on a confidential basis, that we would not move it beyond this room, those are the conditions under which we got him to bring it to us, this room or the adjunct rooms, and I not only request the members to review it in the committee room or the adjunct room but that is just the condition upon which it is given to us, and I want that fully understood.

So, we will proceed in a rather informal way.

Mr. Buzhardt, as you know, is a lawyer and he is accustomed to handling testimony, and so forth, and he has cooperated with us. When he got the authority he has moved in every instance, and it took some time, and I was planning, hoping to have him the first of the week. I have been urged by some of the members of the committee in good faith to hurry up, hurry up. Sometimes you can't hurry up and do thorough work, and the committee has a lot of these other matters carrying on at the same time.

So he was in court, he has been in court, as a witness, and he was tied up this week and couldn't get to us until Thursday.

Along with all the other witnesses we are going to ask you to be sworn now. You don't object?

Mr. BUZHARDT. No, sir.

The CHAIRMAN. Do you solemnly swear that your testimony in this hearing and all other hearings connected with this subject matter will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BUZHARDT. I do.

The CHAIRMAN. All right.

Senator HUGHES. Mr. Chairman, can I ask you a question before you begin the statement about the report that has been received and guaranteed, with the conditions you stated.

The CHAIRMAN. Yes, sir.

Senator HUGHES. Are there matters of national security in the report? Is that the reason for the security on it?

The CHAIRMAN. I haven't seen it, I haven't seen the report, Senator. I haven't read it. He has talked to me some about it and it is an investigative report in the bosom of the executive branch of the Government and that it contains relevant matter to our problem here. So, I promised him if he would bring the report he would be giving it to us on a confidential nature. We will go into this classified stuff but I would a whole lot rather have the report handed out to us than to sue for it a year and then lose the lawsuit.

So, as a practical matter, we take this shortcut and get at it.

Senator HUGHES. I accept the conditions of the chairman in relationship to seeing the report. But if in seeing that report there is nothing in it that involves national security then I for one do not accept the security arrangements on it. As far as my act to try to get it open, I am not going to reveal any of it outside of the committee room, but I certainly will make an effort within the committee structure to get it open if there is nothing in it that is going to affect the national security.

The CHAIRMAN. To get this thing started and get at it and get it, all of it, I made the promise for the committee, subject to the committee passing on it, of course, that we will just keep this thing confiden-

tial. We wouldn't, you know, we just wouldn't, give out the report and wouldn't let anybody see it, and that is the situation. That is not a perfect way of doing it but it is a way to get into it, and I don't think the security matter is in the report itself. There is going to be so much involved, Senator, the report, gentlemen.

Senator SYMINGTON?

Senator SYMINGTON. Mr. Chairman, last summer we had hearings, and last fall, which involved the Central Intelligence Agency. Senator Tower will well remember the witness who came before us who wrote an article in Harper's magazine about the Central Intelligence Agency which appeared to be an effort to destroy the character of Mr. Helms, and to hurt the institution. I have from high authority in the executive branch that General Haig suggested to other people, and have so reported to the chairman, that Haig wanted a Senator to attack the Central Intelligence Agency and Mr. Helms from the standpoint of their involvement in the Watergate or/and Ellsberg matters.

I have talked to Senator Baker and believe we have complete understanding. He asked if he could come to our hearings about the Harper's article. I told Senator Baker, at that time as acting chairman, we would be glad to have him. He then said he couldn't make it, could he send a representative. I said, "Fine, all we want are the facts."

I am not happy or satisfied about the nature of some of the accusations going around town about Helms and the CIA which newspaper people tell me come from the executive branch. I don't know naturally what Mr. Buzhardt's report has in it, but wouldn't want to be bound by anything read in that if it was something I already knew about. I knew Mr. Buzhardt when he was administrative assistant to Senator Thurmond. He was a classmate of my Governor at West Point; but I wouldn't want to be obligated not to talk about something I read in his report if I already knew about it.

With that summary, I would ask is this, in effect, the Young report made incident to the Welander situation?

Mr. BUZHARDT. No, sir.

Senator SYMINGTON. Or is it your own report?

Mr. BUZHARDT. No, sir, it is my own report.

Senator SYMINGTON. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. For the time being, I think we will just forget about the report and take it up later. I think it is highly desirable that the committee get the benefit of this report. I think—I haven't seen it but I talked to Mr. Buzhardt, and I think it follows largely the steps that we have developed here except that this is a competent investigator who interrogated a lot of witnesses, and it is purely an investigative report. But it came here under the conditions I have outlined, so we just bring it out, and let the committee vote on that, and it will be easier to understand after his testimony.

How is that going to leave you about your testimony, the report not here?

TESTIMONY OF J. FRED BUZHARDT, COUNSEL TO THE PRESIDENT

Mr. BUZHARDT. Mr. Chairman, I would be glad to answer any questions about the report, and I will try to summarize the investigation and the major conclusions of the report, and then answer any questions the committee has.

One of the problems of the report itself is that it was provided in a confidential relationship to the Secretary. No one else saw this report. It was an investigative report. There is always a problem with that type of report. You might have injury to someone's rights because there are summary conclusions in it.

Senator SYMINGTON. You said the Secretary. Secretary Laird?

Mr. BUZHARDT. Laird.

No other copy was kept of it. I obtained it from Secretary Laird with this understanding.

The CHAIRMAN. Can you give your testimony here without the report before you?

Mr. BUZHARDT. Yes, sir.

The CHAIRMAN. If you come to a part where you can't cover that point without the report, why we will let you retire to look at the report to refresh your memory, and so forth.

Mr. BUZHARDT. I have refreshed my memory considerably.

The CHAIRMAN. We have a chance—I want the committee to remember now, we have a chance to get this report, every word.

Mr. BUZHARDT. Yes, sir, you have the original report.

The CHAIRMAN. By just making—although I see there are some dark areas involved there for a person who has not seen it. I have talked to Mr. Buzhardt so much about it that I suppose I know.

This is an experienced lawyer and he is an experienced witness, too.

Mr. Buzhardt, we are glad to have you here and, as I say your roots go way back. You were one time administrative assistant here on the Hill, and I know you gave me a lot of trouble once in a hearing I was trying to conduct. [Laughter.]

Go ahead.

Mr. BUZHARDT. I am sorry about that, Mr. Chairman.

Mr. Chairman and members of the committee, if it is agreeable I will first try to summarize the investigation and the conclusions of the investigation and how it began, with some remarks about the character of the investigation, if I may.

In December 1971 an investigation was initiated by the Office of the Secretary of Defense into unauthorized disclosure of classified material to Columnist Jack Anderson.

As General Counsel of the Department of Defense, I was assigned responsibility to give general supervision to the investigation and to keep the Secretary of Defense informed on its progress. In early January 1972, I was asked by the Secretary of Defense to provide him with a report on both the unauthorized disclosures and also on the communications channels between the Joint Chiefs of Staff and the National Security Council staff. I completed and delivered to the Secretary of Defense such a report on January 10, 1972.

Before discussing the report itself, it would be useful to consider several factors bearing on the objectives and procedures of the investigation.

As I am sure members of the committee are aware, unauthorized disclosures of classified information are, unfortunately, not infrequent. In the 1971 period, there were an unusually large number of such instances, and the sensitivity of the materials involved gave cause for the most serious concern.

"Leak" investigations are, therefore, fairly frequent. Unfortunately, experience demonstrates that only too infrequently do they result in positive identification of the individual who is the source of the dis-

closure. This is a fairly well known fact. What is possibly not so widely recognized is the fact that even in those cases where the source of the disclosure is identified, there is rarely, if ever, a criminal prosecution. Administrative actions, at most, must usually be relied upon to prevent additional disclosures by the identified source.

There are several reasons for these circumstances. First, the identity of the sources of unauthorized disclosures are usually known only to the source and to the person to whom the disclosure is made, and neither has an interest in cooperating with the investigation. If the disclosure is broad enough, and the access to the information disclosed is sufficiently narrow, reasonable probabilities can usually be deduced as to the identity of the person responsible. At best, this usually provides a circumstantial case on which to base charges in access, but hardly enough for a prosecutable case. In addition, in cases of civilian jurisdiction in particular, the espionage laws are the only basis on which to prosecute; and the espionage laws were not drafted with a view to prosecution of cases involving unauthorized disclosures to the news media.

Even in those cases where the identity of the person making an unauthorized disclosure can be determined and legally proved, there is frequently a remaining barrier to prosecution. This barrier consists of two elements: first, the necessity to authenticate in the process of trial the information disclosed and second, the necessity of disclosing additional classified material to maintain the prosecution.

The combination of all these factors weigh heavily against a "leak" investigation being successful if it is judged from the prosecutorial standpoint. Indeed, I know of no case in which a person has been convicted for an unauthorized disclosure of classified information to a newsman.

Because of the realization of these factors, "leak" investigations are conducted with the primary objective of either discouraging further leaks or to narrow sufficiently the identities of the probable sources in order that administrative action, such as more restricted access, can be effectively taken. The first priority is to stop the unauthorized disclosures and prevent further damage to the national security.

Accordingly, "leak" investigations, while observing all legal rights of those investigated, do not necessarily use procedures primarily designed to sustain an ultimate prosecution. These factors had a direct bearing on the investigation of the unauthorized disclosures to Jack Anderson in December 1971.

The Defense Department investigation of the unauthorized disclosures to columnist Jack Anderson was commenced after his publication on December 14. Initially, and this was in the morning, the investigation was begun in a routine manner without any particular leads. Later, the day of December 14, Rear Adm. Robert O. Welander, who was assigned to the staff group of the Chairman, Joint Chiefs of Staff, and whose function is liaison between the Office of the Chairman and the National Security Council, reported that the information in the December 14 Anderson column came from a series of four documents, to all of which he believed only persons in his office had access. From that point on, the investigation concentrated on Admiral Welander's office. Within Admiral Welander's office, access to all of these documents was apparently available only to Admiral Welander, Yeoman Charles Radford, and Navy Chief Yeoman William R. Sessoms.

In addition to those orally interrogated, six persons, including Admiral Welander, Yeoman Radford, and Chief Yeoman Sessoms, were given polygraph examinations.

Columnist Anderson continued to publish classified information in his columns throughout December and into January.

The result of the investigation indicated the following:

1. That Yeoman Radford and Admiral Welander were the only persons that had access to all of the documents containing the information published by columnist Anderson.

2. That Yeoman Radford was acquainted and had personal contact with Anderson: that he was previously stationed in the Embassy at New Delhi and had there become acquainted with the parents of columnist Anderson; that Radford and Anderson belonged to and attended the same Mormon Church in Washington, D.C.; and that the wives of Radford and Anderson were close friends who had shopped together and shared an interest in genealogy.

Radford denied giving any classified material to Anderson. A polygraph examination of Radford provided a positive reaction when questions were asked relative to disclosures of materials in question by Radford to Anderson. Polygraph examinations of Admiral Welander and Navy Chief Yeoman Sessoms provided only negative reactions, as did the polygraph examinations of the other individuals so examined.

On December 16, Radford's access to classified material was terminated. Although classified material continued to be published by columnist Anderson until at least January 10, there appeared to be no classified material published by Anderson which derived from any document dated subsequent to December 15, 1971.

From the investigation, I concluded, as did other officials, that Yeoman Radford was most probably the source of the unauthorized disclosures to columnist Anderson. As early as December 16, the evidence was, in my opinion, adequate to support corrective administrative actions. Action was taken on that date to terminate Yeoman Radford's access to classified materials.

From the standpoint of legally admissible evidence, the case was entirely circumstantial since the results of the polygraph examination are not admissible for the purposes of prosecution. In addition, there were serious jurisdictional questions with respect to the case should it have been decided to pursue a prosecution. Since Radford was working at a civilian agency and the information which was disclosed was primarily from the National Security Council, it is possible that jurisdiction under the Uniform Code of Military Justice could have been successfully contested.

As I mentioned earlier, any prosecution in the Federal courts would have had to fall under 18 U.S.C. 793, the general espionage statute and under which the elements of proof are quite severe in any case, but particularly in the case of a disclosure of classified information to a newsman, rather than directly to a foreign power.

The investigation also revealed that Yeoman Radford had had access to the broadest range of classified materials in both the National Security Council staff and the office of the Chairman, Joint Chiefs of Staff. In addition, he had had access to very highly classified materials while on a trip with Dr. Kissinger to China and on several trips with General Haig to Southeast Asia. This fact created a serious

potential for additional unauthorized disclosures hazarding further damage to the national security and the national interest during the course of any trial of Yeoman Radford.

I advised the Secretary of Defense that, in my opinion, there was at best a circumstantial case against Yeoman Radford, that a prosecution would probably occasion additional disclosures of classified material, the extent and character of which could not be assessed in advance, and that this was not, in my opinion, an appropriate case for criminal prosecution.

I was subsequently advised that Yeoman Radford should be transferred out of Washington to a station as isolated as possible from contact with Columnist Anderson, and to a duty assignment which would involve no access to classified material. I then contacted the Secretary of Navy and the Chief of Naval Operations and Yeoman Radford was transferred to the Naval Reserve Training Center in Salem, Oreg.

During the course of the investigation, Yeoman Radford disclosed that he had surreptitiously obtained a number of documents which he had provided to Admiral Welander for his use. This matter also became a subject of the investigation and resulted in the request to me by the Secretary of Defense to examine the communication channels between the National Security Council staff and the office of the Chairman, Joint Chiefs of Staff.

With respect to the investigation of unauthorized disclosures to Columnist Anderson, I relied on the investigation conducted by investigators in the office of the Secretary of Defense. With respect to the matter of the communication channels between the National Security Council staff and the office of the Chairman, Joint Chiefs of Staff, I also interviewed Admiral Welander and Admiral Robinson, his predecessor, and I also discussed the matter with the Chairman of the Joint Chiefs of Staff. In addition I reviewed a number of documents relating to channels of communications between the Department of Defense and the National Security Council.

Yeoman Radford, during his first polygraph examination, stated that he had routinely secured information for Admiral Welander by surreptitious means from the National Security Council staff, which information Radford did not believe was independently available to Admiral Welander or to the Chairman of the Joint Chiefs of Staff.

In addition, Radford stated that he had surreptitiously obtained documents of a highly sensitive nature while traveling on Dr. Kissinger's first trip to China and on several of General Haig's trips to Southeast Asia. Radford specifically stated that he had never been directed or requested by Admiral Welander to obtain information by surreptitious methods, and that Admiral Welander's predecessor, Admiral Robinson, had only asked him to keep his eyes open. He stated that both Welander and Robinson had accepted the information without any rebuke to him.

Admiral Welander described his own access to materials at the National Security Council staff as extremely broad. He admitted he had received documents from Radford from time to time, which he used to prepare briefings for the chairman. In some instances, documents on more complicated subjects were provided to the chairman. With respect to the documents Radford obtained on his trips with Dr. Kissinger and General Haig, Admiral Welander agreed he would

probably not have been provided access to the documents in the form he obtained them from Radford. Welander stated he indexed the material obtained by Radford on the trips and provided them to the Chairman, Joint Chiefs of Staff, who kept them overnight with the exception of a Memorandum of Conversation. This document, according to Welander, was particularly sensitive, and was shown to the Chairman, then sealed in an envelope and placed in Welander's safe.

Welander acknowledged that he was aware of the method by which Radford had obtained the documents on the trips. Welander said he informed the Chairman of the Joint Chiefs of Staff generally of the way in which the documents from the trips were obtained.

Senator SUMNITON. What do you mean by that?

Mr. BUZHAGDT. That Radford had obtained them surreptitiously, that they had not been given to them.

Admiral Robinson, who came in shortly after Christmas to be interrogated, denied that Radford had provided any material to him to which he would not have had independent, authorized access.

Admiral Moorer advised me that he had assumed that he had authorized access to all of the information he had received through his liaison staff with the National Security Council staff. With respect to many of the matters which Yeoman Radford assumed that the Chairman, Joint Chiefs of Staff, would have not received but for Radford's surreptitious methods, Admiral Moorer informed me he had received the same information in direct discussions with members of the National Security Council staff. Admiral Moorer did recall the particular sensitivity of the one Memorandum of Conversation obtained by Radford on a trip with General Haig, but assured me he had already been informed generally on the information contained in the memorandum.

The relationships of the National Security Council staff and the Office of the Chairman had been the subject of interest by the Secretary of Defense and others, particularly in the formative stages of the reorganized National Security Council staff in 1969. A review of the correspondence on the subject indicated that while there were some differences on how the system should operate, it was the intention of the Assistant to the President for National Security Affairs, and presumably the President, that there would be direct access between the National Security Council staff and the Joint Chiefs of Staff.

In practice, that direct access between the National Security Council staff and the Chairman of the Joint Chiefs of Staff involved a free and full exchange of information. There is no evidence that any of the information obtained by the Chairman fell in any category to which his access was constrained by the President or the Assistant to the President for National Security Affairs.

With respect to the documents obtained by Radford on his trips with Dr. Kissinger and General Haig, I concluded in my report to the Secretary of Defense, that it was improbable that the Chairman would have been provided access, authorized access, to these documents.

I concluded in my report to the Secretary of Defense that from his perspective of what the lines of communications between the Chairman of the Joint Chiefs of Staff and the National Security Council staff should be, there were abuses and excesses.

I concluded further, that from any viewpoint of the authorized channels of those communications, there had also been abuses, and in this I was referring specifically to the documents obtained by Radford

on his trips. I should note, at this point, that with respect to the material provided to the Chairman other than the documents from the trips, there is no evidence that the Chairman had any reason to assume that the information he received was not directed to his attention by members of the National Security Council staff.

In recent weeks, I have had occasion to review the White House files with respect to this matter, including the report prepared by Mr. David Young for the President. The report, itself, consists of daily Memoranda for the Record summarizing Mr. Young's activities, discussions, and thoughts with respect to these matters.

Mr. Young had available almost precisely the same information from which I prepared my report for the Secretary of Defense. In most cases the material was actually addressed to me by investigators in the Department, and were copies of reports made to me. The differences derived from the fact that he proceeded from different interviews of Admirals Welander and Robinson. There was, however, no material substantive differences in the two sets of interviews.

In summary, I would like to offer two comments.

First, with respect to the decision not to undertake a criminal prosecution, given the circumstantial case and the potential for additional disclosures of classified material in the event of a trial, a contrary decision would have been most extraordinary, and indeed, inconsistent with practices which have pertained over a long period of time.

Second, with respect to the direct flow of information between the National Security Council staff and the Office of the Chairman, Joint Chiefs of Staff, there are, have been and will probably continue to be differences of opinion as to the degree to which specified channels of communication should be used or constrained. The precise relationship of the Joint Chiefs of Staff to the Secretary of Defense, the National Security Council staff and to the President is left far from unambiguous in the National Security Act.

One thing is clear from that act, however, and that is that the Joint Chiefs of Staff are the principal military advisors to the Commander in Chief. Consequently, those relationships develop in accord with Presidential preferences. The act provides the President with the flexibility, and certainly he has adequate executive authority to correct any substantial deviation from the procedures he has authorized.

That completes my overview, Mr. Chairman, and I will be glad to respond to any questions.

The CHAIRMAN. Let me ask you the question right now in this report, and gentlemen, those of you who have come in, this is Mr. Buzhardt, then General Counsel, as you will recall, of the Department of Defense, now Counsel to the White House. He has been referring here to the so-called Buzhardt report which was really an investigative memorandum or report of a kind to Secretary Laird as to what he found with reference to these witnesses. To that extent it doesn't have the official clothing of an ordinary report as we use that term. It represents your personal opinion on some of these matters, which is another reason why I think that we would have to specially handle it.

The proposal before the committee, and this is for your information, I have talked to Mr. Buzhardt many times about this whole matter, and I have appealed to him to make this report available to us, to get authority to make it available, and he has said, before some of you came in, that he is authorized to give it to us on a strictly confidential basis, and that, so on that idea, if the committee wanted to receive it on that basis, why I asked him to bring it along and with some copies.

We are getting into things from his statement and everybody will have a chance to ask questions.

I don't think the committee is surrendering anything to make this promise and I wouldn't favor the committee surrendering anything, except it is a way to get the benefit of this whole thing. We are closer to it right now than anybody else has been, and I will submit that to the committee though sometime later.

Let me say, too, that these witnesses now, the names that Mr. Radford gave and others about those who had access to these papers, they are all being contacted and talked to by Mr. McFadden of our staff, with an idea of bringing them in as witnesses. Whether they shed any new light or not, it will be a question of their access or not, did they do it, that is with reference to the Jack Anderson papers especially and what did they do. I meant to announce that sooner.

Have you given us all the reasons here that are in your report or that you had in your mind, that you made a recommendation to Mr. Laird not to proceed with what is ordinarily called criminal procedures or prosecution?

MR. BUZHARDT. Mr. Chairman, let me make clear that my report was a finding of fact, a report of facts developed by the investigation. There was no recommendation in the report itself of any kind.

THE CHAIRMAN. Yes.

MR. BUZHARDT. The statement is made that the evidence against Radford was circumstantial. So the report does not contain any recommendation. It was a factual report of what had been developed as a result of the investigation.

My recommendation was made to Mr. Laird orally in very extensive discussions of the matter. I probably did not—in answer to your question—I probably did not mention one of the factors discussed also.

In addition to the fact that the evidence was circumstantial, the jurisdictional problem, we discussed the fact that Yeoman Radford had shortly before this incident requested a transfer on the ground of hardship. He said that his marriage was about to break up. This has been denied him, which is some factor to be considered, but we discussed such factors as that.

So when you say have I discussed them all, there were a number of miscellaneous factors of that type that were also discussed.

THE CHAIRMAN. On this matter that Senator Hughes raised about the security—the national security matters—it is a good question to raise, in your so-called report that matter is not—you don't have anything in this report that you made to Mr. Laird about the security matters or you don't disclose anything?

MR. BUZHARDT. Mr. Chairman, the report itself, and I would want to read it again before making a summary statement—

THE CHAIRMAN. Yes.

Mr. BUZHARDT. I do not believe it contains material which would be—endanger the national security if released. It does contain quotations from a number of very private pieces of correspondence, memorandums back between the Secretary of Defense, to persons within the Department and within the White House itself. I was given access to these documents for the purpose of making the study, making the report, and I think these are quite sensitive. They deal with the actual workings of the NSC.

The CHAIRMAN. Yes.

Mr. BUZHARDT. This is one of the primary reasons.

The second reason is that, as I said, this is an investigative report. There were summary conclusions. It was not the basis for a trial but the basis for summary administrative action, in which action could be taken administratively and, as such, could be quite damaging to the individuals involved, particularly Yeoman Radford.

The CHAIRMAN. Yes; I was going to say you imputed to him not only the possibility but almost a probability of his having been guilty of this offense.

That is your idea on the evidence, but publication of this now, where would that leave you with reference to your responsibilities for the statement?

Mr. BUZHARDT. I don't know what privilege I will have, Mr. Chairman, but I think it would be libelous. Obviously—

The CHAIRMAN. You think the statement would be libelous?

Mr. BUZHARDT. Yes, sir; if disclosed, outside of a confidential relationship. As I say, it is based on evidence that is not admissible, to a very major extent it is based on polygraph examination which is not admissible in court, and I think, for that reason, any type of conclusion of this sort, which is very necessary at times for administrative action, should be protected.

The CHAIRMAN. I am not leading you at all and I couldn't if I would, I don't want to.

As I understand now these represented your opinions and your conclusions for the purpose of passing on to the Administrator, Laird, whatever benefit it was—

Mr. BUZHARDT. That is correct.

The CHAIRMAN. To him in deciding what his duty was.

Mr. BUZHARDT. That is correct, sir.

The CHAIRMAN. You feel that disclosure now, and I am thinking about it from your personal standpoint, could very well expose you to libel; is that right, now?

Mr. BUZHARDT. As I say, I have never looked into the point of privilege; and for myself, civil liability; but it was certainly prepared for confidential use, and I think the reasons which pertained at that time for keeping that type of report confidential still pertain.

The CHAIRMAN. I just want to be sure we understood your position.

Mr. BUZHARDT. Yes, sir.

The CHAIRMAN. As to this question of jurisdiction, you say that raised a question in your mind about the jurisdiction of these different courts as to Yeoman Radford.

Mr. BUZHARDT. Yes.

The CHAIRMAN. Why?

Mr. BUZHARDT. As the result of the *O'Callahan* opinion, Mr. Chairman, and I believe it was around 1968, 1969, I am sorry, I don't have the citation with me—

The CHAIRMAN. That is all right.

Mr. BUZHARDT. By the Supreme Court in which the Court for the first time drew a line between civil and military offenses and it has caused quite a bit of confusion ever since as to who has paramount jurisdiction. An offense, particularly committed within the United States, to be tried under the jurisdiction of the court-martial must be uniquely military or military oriented. Where you get beyond that point the case has left jurisdiction much open to question.

The CHAIRMAN. To what? To question.

Mr. BUZHARDT. We have had one subsequent case which, quite frankly, did not clarify the problem very much on the same subject.

The CHAIRMAN. I want to come rapidly now; this man was performing partly a civil function, is your idea when he was working as liaison to the National Security Council?

Mr. BUZHARDT. He was working for a civilian agency or working in a civilian agency with their authorization; and I am sure he could manage a case that if there was an offense it was committed in terms of the civil agency and not strictly a military function.

The CHAIRMAN. What about this security question—going back to that—what was there involved, if you know, and had learned by your investigation, what was involved in all these papers and matters that had to do with national security?

Mr. BUZHARDT. Senator, I could not tell you—for the simple reason I did not know then and I do not know until this day all of the matters as to which Yeoman Radford had access.

We do know that he had the broadest access. Apparently he had seen almost all of the materials dealing at that time with the war in Southeast Asia, dealing with, I believe in one instance, even the negotiations Dr. Kissinger was conducting in Paris which have since been disclosed.

The CHAIRMAN. With North Vietnam, you mean?

Mr. BUZHARDT. Yes.

Dealing with our negotiations and position with respect to almost every country in the world as well as with our military deployments, operational orders, postures with respect to almost every situation in the world. As you know he had access to materials which flowed from the Washington Special Action Group which is oriented to current situations and would be more perishable from a security standpoint.

But he also had access to materials growing out of the interdepartmental groups, undersecretary groups, which deal with more long-range problems, less perishable.

The CHAIRMAN. Let me interrupt you. What did that have to do with the prosecution of him? Why were you backing off on account of that if he did have access to all these matters?

Mr. BUZHARDT. Mr. Chairman, it is a logical defense, if he were being prosecuted for leaking particularized materials to a columnist or newspaperman to show that he had much broader access and, indeed, to much more tantalizing material than that which was published, to demonstrate the fact that he did not leak other materials

he had access to, because if you tried such a case it would be based largely on the fact that we tried to narrow the access and thereby make a case that he was the one circumstantially who must have leaked it.

So he would, I think, be permitted to show the degree of his access, both in the period before and after, to show that he had not done this type of thing.

The CHAIRMAN. You think that would be relevant now and logical and that a court would so hold?

Mr. BUZHARDT. I think it is most likely, yes, sir.

The CHAIRMAN. I stated that one of the things that looked bad to me was that no proceedings had been instituted against the admiral or the yeoman and, as these facts have developed and all, particularly the circumstantial evidence is not as strong as I thought it was in the beginning, because of the reports I heard, I have changed my mind somewhat about this.

Certainly it is not an open and shut case against Radford, as it seemed to be at one time, and I still question some of his testimony, but from the legal standpoint.

I have some other questions I want to ask you but I want to pass this around.

Senator THURMOND, may I call on you now for any questions you have.

Senator THURMOND. Thank you, Mr. Chairman.

Mr. Buzhardt, you made your investigation at the request of Secretary Laird.

Mr. BUZHARDT. Yes, sir.

Senator THURMOND. You made your report to him?

Mr. BUZHARDT. Yes, sir.

Senator THURMOND. Was this report for the purpose of Mr. Laird maybe taking administrative action and not for the purpose of a prosecution by military court martial?

Mr. BUZHARDT. This is correct. If there had been a decision to prosecute the investigation would have been, I guess, an article 31 investigation made by an investigating officer which would be military, and appointed by the convening authority as a military matter.

Senator THURMOND. If you had found open and shut evidence here against Yeoman Radford I presume you would have recommended to Secretary Laird that the case be investigated then from the standpoint of proceeding with a military court-martial.

Mr. BUZHARDT. Not necessarily, Senator Thurmond.

I have known of very open and shut cases where my judgment would have been, and those who made the decision did so judge, that it was inappropriate to prosecute. It depends on the circumstances.

Senator THURMOND. Even though there might have been evidence that would have warranted a military court-martial there may have been other circumstances that would have outweighed that, so to speak, out-balanced it?

Mr. BUZHARDT. We have had cases——

Senator THURMOND. In favor of following some other procedure?

Mr. BUZHARDT. We have had cases, not just leaks to newsmen, we have had cases of direct disclosures or attempted disclosures to foreign governments in which the decision was made not to prosecute and we had a very provable case.

Senator THURMOND. I guess in some cases, too, if prosecution should be instigated immediately on a court-martial it might inhibit the obtaining of additional information which might be valuable to show other people involved or show some serious crime that may have been involved in the matter.

Mr. BUZHARDT. That is possible, Senator Thurmond. But I don't think it was a factor in this case. I think we exhausted the investigative possibilities. We did use a polygraph, which is a shortcut and something you would not normally do if your primary objective was prosecution, for the simple reason that if a man does tell you something the very fact that you have used a polygraph would quite possibly prevent what he said being entered in evidence because a polygraph has been held in some cases to, in and of itself to, constitute pressure or coercion.

Senator THURMOND. He stated before this committee when he was here that he did take a polygraph test.

Mr. BUZHARDT. Yes, sir.

[Discussion off the record.]

Senator THURMOND. Mr. Buzhardt, from the investigation of this matter you determined, you recommended to Mr. Laird, that he not be prosecuted or not or did you make a recommendation?

Mr. BUZHARDT. I did make a recommendation to Mr. Laird or I am sure I advised him of my opinion, that I did not believe there was an appropriate case for prosecution.

Senator THURMOND. But you did feel like it was an appropriate case for administrative action and recommended that?

Mr. BUZHARDT. Yes, sir. That had been recommended much earlier. Indeed, 2 days after the investigation commenced we were sufficiently satisfied to make a recommendation that Yeoman Radford's access to classified information be terminated and I believe it was on the 16th of December—

Senator THURMOND. He was transferred some place else.

Mr. BUZHARDT. He was transferred.

Senator THURMOND. Was he given an assignment to another place out of Washington?

Mr. BUZHARDT. Yes, sir, he was assigned to the Naval Reserve Training Center at Salem, Oreg., as a yeoman clerk-typist in a circumstance that did not require any access to classified information to perform his duties.

Senator THURMOND. And his assignment now, it does not permit him to handle classified information?

Mr. BUZHARDT. Does not require him to handle classified information.

Senator THURMOND. Was that assignment made as a result of the facts disclosed in the investigation that you made?

Mr. BUZHARDT. Yes, sir.

It was made subsequent to my interim reports to the Secretary. I think the actual decision was made before I prepared my report and, indeed, I included the actions, summarized the actions, taken in the transfer of Yeoman Radford in my report.

Senator THURMOND. A good many people had not understood this was such a serious matter and if Yeoman Radford was so deeply involved, why the Defense Department had not prosecuted him, so I think you have cleared up that point for the record here.

Are there any other steps being planned against Yeoman Radford that you know of at this time?

Mr. BUZHARDT. Not that I know of.

Senator THURMOND. Is the investigation continuing about this matter or are there steps which have been taken to being put on guard to watch out, look out for any evidence that would turn up concerning him?

Mr. BUZHARDT. Senator, I do not know of any formal investigation that is continuing with relationship to this matter now. There may be one. I believe I read in the paper that Secretary Schlesinger at one point was looking into the matter but I don't know the degree to which it is being investigated.

Senator THURMOND. The Chairman of the Joint Chiefs of Staff stated that the information that he obtained here was available to him anyway and there was no effort there on his part to try to get information from Dr. Kissinger or somebody else that he already had access and I believe you confirmed that in your statement.

Mr. BUZHARDT. Yes, sir.

The Chairman had told me at the time that he assumed he had access to all of the material there and, indeed, in some of the cases, including for instance the one memorandum that stood out in everybody's memory distinctly that he had been previously informed of the contents of the subject matter, and I have seen nothing that would contradict that.

The CHAIRMAN. The Senator's time has run over.

Take another question if you need it.

Senator THURMOND. No, sir, that is all.

The CHAIRMAN. Senator Symington?

Senator SYMINGTON. Mr. Buzhardt, I have often wanted to talk to you about this, inasmuch as we knew each other before.

Senator Stennis said he talked to you many times. Have you told us anything this morning you did not discuss with him?

Mr. BUZHARDT. As he said, Senator Symington, we talked about it many times. I don't recall all of the details of all the conversations but I don't recall anything—

The CHAIRMAN. Senator, if you will yield to me on that, I negotiated with him more than I talked to him about the evidence because I have been interested in his report, getting his report. We talked over the telephone yesterday afternoon and I did not see him. I haven't talked to him since sometime last week.

Senator SYMINGTON. Have you talked to any other member of this committee about this problem?

Mr. BUZHARDT. I think I talked briefly to Senator Thurmond at lunch one day, in passing, that is all.

Senator SYMINGTON. Have you talked to any member of the staff about it?

Mr. BUZHARDT. Yes, sir, I have discussed it with Mr. Braswell, with Senator Stennis, he was present, and one other member of the staff was present yesterday.

The CHAIRMAN. McFadden is his name.

Mr. BUZHARDT. Mr. McFadden.

Senator SYMINGTON. Admiral Moorer testified that you told him higher authority did not want Yeoman Radford prosecuted, as I remember it. Later he said he estimated the information came from Mr. Ehrlichman.

Do you know if that is correct?

Mr. BUZHARDT. No, Senator Symington, I do not know of my own knowledge, and I didn't know at the time, where the decision was made. It was communicated to me by Mr. Laird. Mr. Ehrlichman was involved in the investigation, the Attorney General was involved, as I know now, the matter was discussed with the President. But where the decision was actually made I don't know.

Senator SYMINGTON. At one time in the Air Force we had a general officer who was accused of dishonesty. He made a desperate effort to be court-martialed, and not have the matter continued in the civil courts. In that way it appears he felt data would not come out that would be incriminating to him. I refused. Later he was sent to jail, through a civil court.

Why, if you had a secret court martial, would you be giving away national security secrets? In other words, why would Radford be in a position to possibly blackmail the Pentagon by threatening to disclose more if he was court martialled in a classified hearing?

Mr. BUZHARDT. I didn't mean to imply that Yeoman Radford attempted to blackmail anybody or ever suggested it. As far as I know no one discussed with him the consequences of a court-martial except during one of the investigations, I believe I recall the investigator asked him what did he think would happen if he were court-martialed, and he had a very dire view of it, but certainly I know of no instance in which he threatened to disclose anything further. In fact he denied emphatically that he had.

Second, however, there was far from a certainty that Yeoman Radford could have been tried successfully before a court-martial. I feel satisfied in my own mind he would have contested the jurisdiction and if he had a good lawyer I am quite sure he would have. It is clear that the probabilities of conviction before a court-martial would have been higher than they would have been in a civilian court based on the evidence that was available.

Senator SYMINGTON. Why would any of this affect national security. On that basis anybody who knows a lot about national security automatically is in position to get away with security leaks and not be punished for it.

Mr. BUZHARDT. And quite frankly that has happened, Senator Symington, and you have to make a judgment which historically has been made as to what interest prevails and has the priority.

Senator SYMINGTON. To get it straight, your decision was he should not be court-martialed because it might bring out more things affecting national security. So you so recommended to Secretary Laird, correct?

Mr. BUZHARDT. No, sir.

Senator SYMINGTON. Well then, you tell me. I want to be sure to understand your position.

Mr. BUZHARDT. You left out one very important factor, I don't know what my decision or what my recommendation would have been had it been otherwise. The case against Yeoman Radford was entirely circumstantial. Our conclusions were based, my conclusions were based, largely on the results of a polygraph examination. Otherwise we had at least one other person who had access to these documents. We were playing the law of probability. The probability was since they all went to the same newsman we were dealing with a single source. But that is far from legal proof because as to any given one

of these documents certainly more than Radford had access. It could have been a series of people.

Senator SYMINGTON. Isn't the reason for a trial to decide whether circumstantial evidence is accurate or not, based on cross-examination in front of a jury?

Mr. BUZHARDT. No, sir, no, sir. I can assure you that people are not tried because there are circumstances which lead to a strong suspicion. That is not the way it works.

Senator SYMINGTON. You mentioned that Admiral Welander told you, when he got this information, he knew it was surreptitiously obtained?

Mr. BUZHARDT. From the trip, yes, sir.

Senator SYMINGTON. Right.

Was there any reason for not or in some way reprimanding Admiral Welander for what he did?

Mr. BUZHARDT. He could certainly have been reprimanded and, frankly, I never made a recommendation on whether he should. I doubt seriously whether he could have been convicted in a court-martial. I don't know what we would try him for. Those who conveyed the information had appropriate security clearances. I think you could make a good case that they had, based on the evidence I now know, a right to the information, if not in that form, and you would have a very difficult time maintaining a criminal prosecution for that.

Senator SYMINGTON. Much of your training has been in the military, most of my training has been as a civilian; but the Secretary of State testified before this committee he was outraged. That was his word when he found out the military had been taking documents from his office surreptitiously and giving them to the Pentagon.

If true, shouldn't that affect a man's career? To me it is worse for an Admiral to do such a thing than a Yeoman. I don't mean by that one is not more serious than the other but in both cases you are violating your oath of office, are you not?

Mr. BUZHARDT. I wouldn't go that far to say he was violating his oath of office. I am not sure that that is correct. I think it was, and this is an individual judgment, a rather serious error in judgment, and I guess errors of judgment should be taken into consideration in looking at the career of the officer.

Senator SYMINGTON. You believe a military man, assigned to the Secretary of State or assistant to the President or whatever the title was Dr. Kissinger had at that time, has the right to take surreptitious information and pass it back to his superior.

Mr. BUZHARDT. Quite frankly and historically, Senator Symington, that is what a liaison officer does.

Senator SYMINGTON. Then you are in direct disagreement with Dr. Kissinger.

Mr. BUZHARDT. No, sir, not at all.

Senator SYMINGTON. He said he was outraged. You seem to think it all right.

Mr. BUZHARDT. Dr. Kissinger was outraged at the time about the procedures, as I understand it, but at the same time he said he would have given access and the chairman would have had independent authorized access to any of the material that he received.

Senator SYMINGTON. Let me ask you one more question: I was involved in this CIA business quite a little last summer. Do you know Mr. Thompson?

Mr. BUZHARDT. Yes, sir.

Senator SYMINGTON. Have you had any discussions with him with respect to the Central Intelligence Agency situation?

Mr. BUZHARDT. Very briefly, yes, sir.

Senator SYMINGTON. How long ago?

Mr. BUZHARDT. Senator Symington, I don't remember, several weeks ago. I probably have spoken to him on the phone once or twice since then. I spoke to him at Senator Baker's request, I had extended—

Senator HUGHES. If the Senator will yield, who is Mr. Thompson?

Senator SYMINGTON. He is the Minority Counsel of the Watergate Committee.

Do you know anything, in testifying before this committee, involving the patriotism or character of Director Helms that you consider negative?

Mr. BUZHARDT. No, sir.

Senator SYMINGTON. Thank you, Mr. Chairman.

My time is up.

The CHAIRMAN. Thank you very much.

Senator Scott, you have been here most of the morning, and I am sure Senator Goldwater is generous about that and I call upon you next.

Senator SCOTT. Mr. Chairman, I asked if I could yield to my senior colleague.

Senator GOLDWATER. I was not here and I will wait.

Senator SCOTT. Mr. Chairman, thank you for the opportunity of talking with Mr. Buzhardt.

We talk about this as being a serious matter. There was talk about disclosure of negotiations with North Vietnam and other things.

Mr. BUZHARDT. No, sir, I said Yeoman Radford had access to that type of material. I don't recall there was a disclosure relating to the negotiations in Paris to end this war.

Senator SCOTT. I understood you to say among the documents that were taken by someone, whether it was Yeoman Radford or one of the Admirals or someone else, that some of the material did relate to negotiations that were going on with North Vietnam.

Did I misunderstand you?

Mr. BUZHARDT. I believe so or I didn't state it clearly, Senator Scott.

Senator SCOTT. What was there that was of a serious nature in this material so that—

Mr. BUZHARDT. In the material that was disclosed to columnist Anderson, a major part of it was the minutes of the Washington Special Action Group meeting primarily in which the India-Pakistan war was discussed.

Senator SCOTT. What is the Washington Special Action Group?

Mr. BUZHARDT. That is a subcommittee of the National Security Council, and it was at these meetings that the position of the United States, our intentions, perhaps, were discussed as to the action we would take and the positions we would take.

Senator SCOTT. Was this disclosure of matters that were not public information?

Mr. BUZHARDT. Yes, sir, among other things, it is my understanding that intelligence sources were disclosed with serious repercussions.

In addition there were fleet movements disclosed.

Senator SCOTT. What do you mean by serious repercussions?

Mr. BUZHARDT. One of our intelligence sources was discovered and removed from his position to be of further use to us.

Senator SCOTT. Has any administrative action been taken against anyone involved here, I understand no court-martial, but anything other than the transfer of the yeoman transferred to other duties?

Mr. BUZHARDT. The entire liaison group was abolished, to start with, and most of the people within it were transferred. I am not aware of any other action that was taken, Mr. Scott.

Senator SCOTT. Are they enlisted men?

Mr. BUZHARDT. No, sir.

Admiral Welander was the only officer and there were at least two yeomen involved.

Senator SCOTT. Now you referred to, you used the phrase frequent leaks. How can we stop frequent leaks? Are any additional laws required?

Mr. BUZHARDT. Senator, I wish I knew the answer to that question. I think the espionage laws are very ill-suited as presently drafted, well, perhaps to try espionage cases, but certainly to try cases where the disclosures are to newsmen or even to, for commercial reasons, because the statutes are just not designed to cover that type of disclosure, and the elements of proof were almost impossible.

Senator SCOTT. You have been General Counsel of the Department of Defense. Would there be any way that we could write laws that would be helpful in preventing leaks, and would you have any suggestion as to any changes that we could make in the laws? Are you saying that we are just helpless to prevent leaks? Is there administrative action within the DOD or is there something we can do by way of lawmaking? Whatever has been done in this case is over with.

Mr. BUZHARDT. That is correct.

Senator SCOTT. But certainly we should not be a nation that is helpless to guard its military secrets. Do you have any suggestion, administratively or lawwise, so far as enactment of law?

Mr. BUZHARDT. Yes, sir, I think a number of changes have been made in the security system to better secure access.

Senator SCOTT. Administratively since this happened.

Mr. BUZHARDT. A number of changes have been made. There is a new Executive order out on security.

Senator SCOTT. What is the substance?

Mr. BUZHARDT. Executive Order 11652, I believe, is the new Executive order, and it treats the whole subject to classification. It hopefully constrains to the more important matters that which is classified and reduces the total volume of information classified thereby making it more easy to administer that which is.

I think that the procedures established under the Executive order and under the implementing regulations will improve the situation somewhat. I think we are no better off with respect to criminal

prosecutions with regard to these leaks than we were before. We have—it is very difficult to judge what type of statute would better improve the situation.

For instance, this case would have probably, if tried under the Federal statutes, would have fallen under 18 U.S.C. 793 which is a general espionage statute. We have a special espionage statute, 18 U.S.C. 798 which deals with cryptographic and communications intelligence materials, and which would apparently be much easier to prosecute under if that type of material is involved. But the statute, I believe, has been on the books for 23 years now and we have never had a successful prosecution.

Senator SCOTT. You are talking about a serious felony here. Is there any lesser law to keep people from pilfering the files this way? Might that be, might a person be charged with some lesser offense?

Mr. BUZHARDT. Conceivably you could try them for——

Senator SCOTT. Successfully?

Mr. BUZHARDT. You could try them for petty larceny but I think it is a very poor approach to the use of criminal justice. I do think statutes designed specifically to discourage this might be useful.

Senator SCOTT. Then in a broad general sense we might look into the possibility of some statutes.

Mr. BUZHARDT. Yes, sir.

Senator SCOTT. Mr. Chairman, that is all I have.

The CHAIRMAN. Thank you, Senator, you brought up an awful important subject. I have been surprised to see what I call the weakness of the espionage laws we have. I understand it was written in 1917, is that correct?

Mr. BUZHARDT. Yes, sir, basically.

The CHAIRMAN. That is what we rely on basically entirely.

Senator HUGHES, I call on you.

Senator HUGHES. Thank you, Mr. Chairman.

Senator McIntyre has offered to yield to me.

[Discussion of other committee business.]

The CHAIRMAN. Senator Hughes, we will start with you again. Thank you very much.

Senator HUGHES. Mr. Chairman, I thank you and I thank Senator McIntyre for yielding.

As I listened very carefully, Mr. Buzhardt, to your statement this morning, if I understand you and without repeating it all, in December of 1971 the investigation was initiated on December 14 in the morning, is that correct?

Mr. BUZHARDT. That is correct.

Senator HUGHES. On the 10th of January you provided a report to the Secretary of Defense.

Mr. BUZHARDT. A written report.

Senator HUGHES. Did you later supplement that report?

Mr. BUZHARDT. No, sir, not a written report.

Senator HUGHES. The report we have available to us is the report?

Mr. BUZHARDT. That is the only written report.

Senator HUGHES. It is a report of fact without recommendations, as I understand it.

Mr. BUZHARDT. That is correct.

Senator HUGHES. As I understand your testimony, you arrived at a conclusion that in your own mind at least, although you did not make

recommendations in the report, that the facts of the report were based primarily on circumstantial evidence that was supported primarily by the polygraph examination of Yeoman Radford.

Mr. BUZHARDT. That is correct.

Senator HUGHES. The seriousness of the question involved which was the leaking of classified and secret documents to the press was one item of your investigation.

Was another item of the investigation the transfer of those documents from the National Security Council to the Pentagon?

Mr. BUZHARDT. Not the same documents, but the transfer of documents, yes.

Senator HUGHES. The transfer of documents, That was all in the same investigation. I am trying to decide what you were investigating.

Were you just investigating the leak or were you investigating—

Mr. BUZHARDT. It began as an investigation for leaks, Senator Hughes. During the first polygraph examination of Yeoman Radford he interrupted the entire—he said, “I cannot answer that question without permission by Admiral Welander.” Admiral Welander was contacted by telephone, and he called Yeoman Radford during the examination and told him to testify freely and fully at which time Yeoman Radford then disclosed to the examiner, while denying he gave any documents to Mr. Anderson, that he had surreptitiously obtained documents which he gave to Admiral Welander for use in his official function of liaison.

Subsequently he was interrogated further. Based upon this information, therefore, we were asked to go into this subject also as well as the unauthorized disclosure of Jack Anderson, yes, sir.

Senator HUGHES. Admiral Welander testified that when he was being interrogated he questioned the right of the interrogators to question him on highly classified and secret documents, is that correct?

Mr. BUZHARDT. That is correct.

Senator HUGHES. And the interrogation of Admiral Welander stopped.

Mr. BUZHARDT. That was on the first interrogation by the investigators. Indeed this was one of the reasons I personally brought Admiral Welander in and interrogated him myself.

Senator HUGHES. You did.

Mr. BUZHARDT. Yes, sir.

Senator HUGHES. Well now, did Admiral Welander testify to that before this committee, does anyone recall?

I don't recall.

Senator NUNN. As to what, Harold?

Senator HUGHES. That he was called in by Mr. Buzhardt and interrogated. I don't recall that he gave us that testimony.

The CHAIRMAN. I don't remember.

Senator HUGHES. I will have to check the record on that. But anyway, while he was refusing to testify himself on classified and secret documents, he ordered Yeoman Radford to testify on classified and secret documents to the same interrogators, is that right?

Mr. BUZHARDT. He ordered him to or directed him to testify fully and truthfully.

Senator HUGHES. And where he felt that—

Senator THURMOND. Would the Senator yield at that point right there?

Senator HUGHES. Yes, I will yield.

Senator THURMOND. I was just wondering whether he directed and ordered him or gave him permission. What was the situation?

Mr. BUZHARDT. Yeoman Radford wanted permission which Admiral Welander gave and, I might say, Senator Hughes, that although Admiral Welander declined to talk, and I forget precisely at what point, to the investigators themselves, he did subsequently discuss the entire matter fully.

Senator HUGHES. With whom?

Mr. BUZHARDT. Certainly with me, certainly when he was interrogated by members of the White House staff.

Senator HUGHES. What I am trying to do is determine the comparability of the interrogation given to Yeoman Radford and Admiral Welander.

Mr. BUZHARDT. He was not interrogated fully about this matter while he was under polygraph examination, is my recollection, Senator Hughes, and I have to go back and check the record.

Senator HUGHES. You are referring to Admiral Wellander.

Mr. BUZHARDT. Yes, sir.

Senator HUGHES. Who did the interrogation of Yeoman Radford? He testified there were four men in the room. Who were they?

Mr. BUZHARDT. Senator Hughes, I really couldn't tell you. Let's see, Donald Stewart—

Senator HUGHES. Who is Mr. Stewart?

Mr. BUZHARDT. He was an investigator with what was then the Directorate of Inspection Services.

Senator HUGHES. Department of Defense?

Mr. BUZHARDT. In the Office of the Secretary of Defense.

Senator HUGHES. All right.

Mr. BUZHARDT. I think there was a man named Donahue in the office at the time, and I just don't remember the names of the other investigators.

Senator HUGHES. Was Mr. Young there?

Mr. BUZHARDT. Quite possibly he was, at least on one occasion.

Senator HUGHES. Was the FBI there?

Mr. BUZHARDT. No, sir.

Senator HUGHES. Who administered the polygraph?

Mr. BUZHARDT. I don't actually know, Senator. I did at the time but I do not know now.

Senator HUGHES. You believed the polygraph—

Mr. BUZHARDT. I believe it was a professional polygraph examiner, for purposes of administrative action.

Senator HUGHES. You believed the polygraph?

Mr. BUZHARDT. Yes, sir.

Senator HUGHES. Was it a competent professional polygraph firm? Who was it? I want to know for the record.

Mr. BUZHARDT. I don't know.

Senator HUGHES. Can you supply it for the record?

Mr. BUZHARDT. I will.

[The information follows:]

The polygraph examiner was Mr. Ray Wier of the National Security Agency.

Senator HUGHES. Are you aware of the circumstances that Yeoman Radford testified to, of the nature of his interrogation?

Mr. BUZHARDT. I know the nature of the interrogation because I went over it at the time.

Senator HUGHES. On what basis did you go over it? Was it taped?

Mr. BUZHARDT. No, from the questions and answers and the report of the polygraph examiner. He was actually, I believe, polygraphed four different times.

Senator HUGHES. On the same day?

Mr. BUZHARDT. I do not believe so. I think it was on more than one day.

Senator HUGHES. Were there three on one day and one on another day?

Mr. BUZHARDT. I believe so.

Senator HUGHES. Were you aware they cursed, swore and beat the table and intimidated him?

Mr. BUZHARDT. I was not aware of that.

Senator HUGHES. Were you aware of the fact he broke down and wept and cried and between the interrogation he would be taken in and put on the polygraph and then returned for more interrogation and then returned for another polygraph?

Mr. BUZHARDT. No.

Senator HUGHES. If you had known this, would this have affected the reaction on the polygraph in your mind as an attorney?

Mr. BUZHARDT. Possibly; yes, sir. It might have. I doubt it. I think—if I had known it at the time it would not have happened, Senator Hughes.

Senator HUGHES. You would have stopped it, you would not have allowed it to happen, if it is a fact.

Mr. BUZHARDT. If it is a fact. I don't know.

Senator HUGHES. Yeoman Radford had testified to this; we have not verified it, by witnesses.

Mr. BUZHARDT. May I say I know the investigators were not present during the polygraph examination.

Senator HUGHES. No; but wouldn't a man's emotional state be severely shocked by the fact that he was sworn at, cursed and the table beat, and had been weeping in the midst of questioning?

I am not trying to defend Yeoman Radford. I am simply trying to describe the circumstances of the interrogation.

Mr. BUZHARDT. Senator Hughes, let me say that I do not actually know what were the circumstances but it was certainly not reflected in the questions and answers which I saw from the interrogation or the interrogation reports that Yeoman Radford was that upset, nor was it from his other reactions to the matter.

Senator HUGHES. I believe in your statement, Mr. Buzhardt. You said that Yeoman Radford attended the same church in D.C. that Jack Anderson did; is that correct?

Mr. BUZHARDT. Yes; sir, that is correct.

Senator HUGHES. What do you mean by that statement?

The CHAIRMAN. Just a little louder, please.

Mr. BUZHARDT. The only reason that that statement is related is because it is one of the circumstances which provided possible access or contact between the two.

Senator HUGHES. Do you interpret being a member of the same church the same as attending the same church?

Mr. BUZHARDT. Well, let us say hopefully it——

Senator HUGHES. What I am trying to say I am a Methodist and there are 30 Methodist churches around here, and I go to one and every member of this committee could go to another and we never see each other.

Mr. BUZHARDT. I think they went to the same church.

Senator HUGHES. Yeoman Radford testified that they did not attend the same church, and they had never attended a worship service together.

Does that surprise you?

Mr. BUZHARDT. Yes, sir, it does surprise me.

Senator HUGHES. That he testified they were in different, I forget what he called them, precincts or whatever they have.

Senator SYMINGTON. Wards.

Senator HUGHES. Wards or something in the Mormon Church. I am not familiar with the structure there, never actually attended worship service together. He was questioned quite thoroughly on that. Now that being one of your conclusions, being members of the church or attending the same church has different meaning.

Mr. BUZHARDT. It could well be.

Senator HUGHES. Could I ask you, you said the Attorney General was involved in this investigation in response to, I believe, Senator Thurmond's question. How was he involved in it?

Mr. BUZHARDT. I do not know the degree of participation but I am aware that he was involved in discussions from my conversations.

Senator HUGHES. You mean Mr. Mitchell?

Mr. BUZHARDT. Yes.

Senator HUGHES. Was he involved in the investigation?

Mr. BUZHARDT. No, he was involved in the discussions of the matter and he could have participated in the decision.

Senator HUGHES. With whom was he involved?

Mr. BUZHARDT. With the other principals.

Senator HUGHES. Who were the principals, could you name them?

Mr. BUZHARDT. Certainly. Secretary Laird, the President, Mr. Ehrlichman.

Senator HUGHES. Mr. Erlichman, according to testimony given by Mr. Welander, Admiral Welander, tried to get Admiral Welander to sign a statement of fact which he interpreted to be a confession of wrong, which he refused to do.

Mr. Erlichman had the benefit of the investigation of Mr. Young, which you had the benefit of.

Mr. BUZHARDT. Not at that time, Senator.

Senator HUGHES. He didn't have it?

Mr. BUZHARDT. I did not have it—well, I didn't have any of Mr. Young's materials at that time.

Mr. Young had most of the materials I had at the time.

Senator HUGHES. Well, how do you——

Mr. BUZHARDT. Nothing official.

Senator HUGHES. Are you surprised Mr. Ehrlichman tried to get him to sign a confession when you found there was no wrong in what he had done?

Mr. BUZHARDT. Let me say two things: First, I do not believe I said that I found no wrong. I found certainly an error in judgment in what Admiral Welander did.

Senator HUGHES. Excuse me.

Mr. BUZHARDT. Second, I never made a recommendation at all with respect to Admiral Welander or his conduct.

Senator HUGHES. Or anyone else?

Mr. BUZHARDT. I recommended, I think in discussions with Mr. Larid, that as far as the Yeoman was concerned it was not an appropriate case for trial, and gave him the reasons therefor and I did make, I think you would call it, a recommendation.

I guess I am not surprised that, not particularly surprised that Mr. Ehrlichman would ask Admiral Welander to sign a statement. I am no more surprised that Admiral Welander refused.

Senator HUGHES. Well, did you ever make a request for and get or make a request for and have denied permission to make phone taps on anyone in relationship with this investigation?

Mr. BUZHARDT. I may have had request to make them which I would have refused and did refuse.

Senator HUGHES. Who made the requests?

Mr. BUZHARDT. I do not know, Senator Hughes.

I do not recall specifically in this case that we were requested. I know from time to time we were asked could we make phone taps and I consistently said no. We had no authority to make any phone taps whatsoever.

Senator HUGHES. There were discussions with the Attorney General. Could he have had the authority to make them?

Mr. BUZHARDT. Conceivably, yes, sir.

Senator HUGHES. If he had given the authority, would you have known about it?

Mr. BUZHARDT. No, sir.

I didn't know about it.

Senator HUGHES. Could he have given the authority without your knowledge and wiretaps had been made?

Mr. BUZHARDT. Absolutely.

Senator HUGHES. Would that have been incorporated as a part of your investigation or would you have had knowledge of it?

Mr. BUZHARDT. Not as a part of my investigation, no, sir.

Senator HUGHES. Were you ever involved in—you said you were involved in investigation of other news leaks, were you.

Mr. BUZHARDT. Yes, sir.

Senator HUGHES. Were you in the SALT talk leaks, for example, in July of 1971?

Mr. BUZHARDT. I am sure I was, at least in a peripheral sense. And when I say investigation, you must understand that we investigated internally in the DOD. We did not investigate outside of the DOD.

Senator HUGHES. I understand you were——

Mr. BUZHARDT. Ours were confined. We were primarily interested in whether some of our people were making disclosures, and I guess you might even say we were often very defensive about it, we wanted to get out and find out as best we can to protect ourselves against such an accusation if it was made. If it was justified then we wanted to be the first to find it.

The CHAIRMAN. Senator, I am sorry your time has run over. If you have another question or two you want to close on——

Senator HUGHES. With your permission, yes.

You said you interrogated Admiral Robinson.

Mr. BUZHARDT. Yes, sir.

Senator HUGHES. Do you have notes or memos or a tape of that interrogation?

Mr. BUZHARDT. No, sir.

I never made tapes of interrogations, and I do not any longer have any notes. I wrote the report and I have—if they exist I cannot find them, Senator.

I have been gone about a year.

Senator HUGHES. Your testimony on your investigation or report or whatever it is, apparently states that Admiral Robinson denied ever requesting Yeoman Radford to get any material by surreptitious means or any other means outside the normal channels of communication.

Mr. BUZHARDT. That is correct, yes, sir.

Senator HUGHES. Yeoman Radford states quite the opposite that Admiral Robinson was the man who initiated the request, requested him to keep his eyes open, get the information, his ears open, make notes, get copies of things, and so on. He was quite detailed on it.

Mr. BUZHARDT. Let me say that if he so testifies now, Yeoman Radford, he has gone beyond what he testified during the investigation because during the investigation he said that Admiral Robinson had asked him to keep his eyes open and help him keep informed but he had never asked him to obtain any documents surreptitiously.

He said when he, Radford, had obtained documents that he had provided them to him, that he had accepted them and he had not rebuked him.

Senator HUGHES. I want to make sure in the record that I point out that my memory may not be accurate on that, maybe I stretched the point, the record will speak for itself in his statement because it was within his own statement.

The CHAIRMAN. Thank you very much.

I recognize Senator Goldwater now.

Senator GOLDWATER. Is it possible for this committee to see the Young report?

The CHAIRMAN. Let me say this on that, Senator, if you will yield to me: I have said I negotiated with Mr. Buzhardt here on the so-called Buzhardt report, I have been negotiating with him too about the Young report, and there has been no finalization absolute on that but he is really working on it, and I think the chance is we will get the report. If you could hold that in abeyance now——

Senator GOLDWATER. I do not want to hold it in abeyance.

The CHAIRMAN. No, but I think it will help get the report.

Senator SYMINGTON. Will the Senator yield? I have written the chairman and suggested we get that report.

The CHAIRMAN. I have been trying to get it before them.

Senator GOLDWATER. Are you negotiating for the whole report?

The CHAIRMAN. Yes, that is what I asked for, Senator, the whole report.

Senator GOLDWATER. I am interested to know why we cannot see it.

The CHAIRMAN. He will talk to any of you. I think he needs a little more time now and ask him to finalize some things on it. I am sawing wood, I can assure you of that, and not going to put it off or anything. I want to get it and I want to get through with it.

Senator GOLDWATER. Would you say the chances are 50-50?

The CHAIRMAN. I think so.

I don't want to, I cannot, speak for him, though. He has got the situation about it that he has got to cope with. He is trying, I am satisfied with that. I thank you very much for your attitude about it. It just takes time, negotiations.

All right, gentlemen, shall we go vote?

[Short recess.]

Senator McINTYRE [presiding]. Let's come to order.

Mr. BUZHARDT, I am a little bit handicapped because I have had other duties this committee has to carry on, and if I do ask a question in duplication of what you already answered say you have answered it to save time.

How many polygraph tests were conducted as part of the DOD investigation?

Mr. BUZHARDT. Six.

I believe that is correct, and I checked it last night when I put together my notes. That is correct.

Senator McINTYRE. And who were the individuals tested?

Mr. BUZHARDT. Senator McIntyre, I cannot remember all the names but it was Admiral Welander, Yeoman Radford, Chief Yeoman Sessoms, there was an enlisted man named Hagar and two other enlisted men I believe that were in the Office of the Chairman of the Joint Chiefs of Staff, but I cannot—

Senator McINTYRE. Can you furnish those for the record?

Mr. BUZHARDT. I will furnish those for the record.

[The information follows:]

R/Adm. Robert O. Welander; YN 1 Norman R. Coleman; M/Sgr. Harvey A. Dennis, Jr.; NYC William R. Sessoms; SP5 Floyd G. Hagar; YN 1 Charles E. Radford.

Senator McINTYRE. So there were six in all.

[Discussion off the record.]

Senator McINTYRE. Was Yeoman Radford tested once on the polygraph?

Mr. BUZHARDT. I believe it was four times, Senator McIntyre. And I believe this was on the—

Senator McINTYRE. How many times was Admiral Welander tested?

Mr. BUZHARDT. Once, I believe.

Senator McINTYRE. And Sessom?

Mr. BUZHARDT. Once. All the rest, once, I believe.

Senator McINTYRE. So there were six tested, and of those six Radford was tested four, the rest tested once on the polygraph.

Mr. BUZHARDT. That is correct.

Senator McINTYRE. Thank you.

Did you have a staff of investigators working with you in the DOD investigation?

Mr. BUZHARDT. Yes, sir; and perhaps I should explain that, Senator.

Senator McINTYRE. If I make you go over the whole ground you can skip it.

Mr. BUZHARDT. I think it would be useful for you to know. When I say I supervised this investigation, first let me say I started about 3 days late. I do not know what else was preoccupying me at the time, but the investigation was actually underway when the Secretary asked me to keep an eye on it for him. The investigations in the DOD at that time were conducted by investigators in the Office of the Directorate of Inspection Services. It was an office that had been established in the early 1960's in the Office of the Assistant Secretary for Manpower and Reserve Affairs. There were four investigators assigned to the office, to the best of my recollection, at that time, and in a normal investigation when unauthorized disclosure was discovered, at that time it was given to them and such information as was available and told to investigate.

Let me correct that. It was in the Office of the Assistant Secretary of Defense for Administration, not Manpower and Reserve Affairs. That office was subsequently abolished but it was a small group of civilian investigators. The chief investigator was Mr. Donald Stewart.

They had commenced the investigation. When I worked on an investigation I normally left the actual interrogations in most instances to the professional investigators.

In this particular case, because of the rank and seniority of the people involved and at least some indication of reluctance in discussing the level of classified information involved with the investigators, I personally interrogated Admirals Welander and Robinson in my office.

I think I did have Mr. Stewart present to take notes at the time and to have someone else present.

Senator McINTYRE. The other civilian investigators were Donohue and Young?

Mr. BUZHARDT. No, sir, Mr. Young was a member of the White House staff.

Senator McINTYRE. I wish you would furnish for the record the names of Stewart, Donohue, and two others who were the investigators in DOD, the two names that are missing.

Mr. BUZHARDT. Yes, sir.

[The information follows:]

W. Donald Stewart, OSD; Joseph D. Donohue, OSD; Frank Schmitt, NIS; Raymond J. Weir, Jr., NSA; Charles E. Pratt, NSA.

Senator McINTYRE. What were the conclusions?

First of all, who did your investigators interview, who did they interview? Let me put it this way, who did they interview in addition to those who took a polygraph test?

Mr. BUZHARDT. Investigators from the DOD interviewed a number of people in the Office of the Chairman of the JCS and before, on the 14th, before we had Admiral Welander's information that he thought it was only people in his office had access to all of the material disclosed in the December 14 column, I believe they began by questioning Mr. Noyes, who was a Deputy Assistant Secretary of Defense, International Security Affairs, for the reason it concerned India and Pakistan. And I think they began with an interview of him on the morning of the 14th.

Senator McINTYRE. Were any wiretaps or tapes made during the course of the investigation, DOD investigation?

Mr. BUZHARDT. No, sir, not in the Defense investigation.

Senator McINTYRE. What were the conclusions reached by the DOD investigation? You remember what I said about repetition.

Mr. BUZHARDT. Yes, sir, I did cover it in my conclusions. I will be glad to go over them if you would like.

Senator McINTYRE. No.

I was interested though in that you said that among your recommendations to the Secretary of Defense were that you felt or it was your opinion that Admiral Welander had made an error of judgment.

Mr. BUZHARDT. No, sir. I did not. I do not believe I made that as a recommendation or advice. When asked by Senator Symington, I said I thought it was an error of judgment.

Senator McINTYRE. That is a personal observation.

Mr. BUZHARDT. That is a personal observation.

Senator McINTYRE. It was not included in the report?

Mr. BUZHARDT. No, sir, my report to the Secretary, my written report to the Secretary, was a factual report of what was found as a result of the investigation.

I reported the investigation and it did not contain any recommendations.

Senator McINTYRE. Will the committee have access to that report?

Mr. BUZHARDT. The committee does have it.

Senator McINTYRE. Is that the question before the House?

Mr. BUZHARDT. The committee does have a copy of that report.

The chairman addressed it this morning.

Senator McINTYRE. The committee will have a copy of the report and the question is, Will it be made public?

Senator HUGHES. We were talking about another report.

Senator McINTYRE. You do have Attorney Buzhardt's report as part of the record, am I right?

Senator HUGHES. No, it is not.

The CHAIRMAN [presiding]. Not yet, Senator. There has been—

Senator McINTYRE. Are you familiar with any other investigations conducted by any other agency or individual on this matter and, if you were, were you part of that investigation?

Mr. BUZHARDT. I am familiar with another investigation and, no, I was not a part, except to this extent, Senator McIntyre—

Senator McINTYRE. That was my next question, did you coordinate your efforts—all right, go ahead.

Mr. BUZHARDT. I think you could say that an investigation was conducted by the White House staff.

In making their investigation there was every indication they used substantial reliance on the reports that the investigators made to me, which Defense investigators made to me, the report of the polygraph examination, the interviews of witnesses and, frankly, we did all of the comparisons of the articles to trace the derivation of the material in them to specific documents.

Senator McINTYRE. The results of your investigation that were labeled DOD were made available to the other investigation?

Mr. BUZHARDT. That is correct.

Senator McINTYRE. And for their advice and counsel.

Mr. BUZHARDT. Yes, sir, but not the report. The report was made to the Secretary of Defense, no one else.

Senator McINTYRE. Not their report.

Well, would it be appropriate to say that your investigation was coordinated with that of the so-called "Plumbers"?

Mr. BUZHARDT. I think so, yes.

Senator McINTYRE. Were you or any member of your staff present during the interrogation of Yeoman Radford?

Mr. BUZHARDT. I was not present, no, sir.

Senator McINTYRE. Were you present during the interrogation of Admiral Welander?

Mr. BUZHARDT. I personally interrogated Admiral Welander but I was not present when he was interrogated by the investigators nor was I present when he was examined on the polygraph.

Senator McINTYRE. Would you say that Mr. Donald Stewart worked for you or rather that he worked for the DOD?

Mr. BUZHARDT. He worked for the Department of Defense. He did not work directly for me, although he was directed to address, after I got into the investigation, his reports to me and to coordinate his activities from thenceforth with me.

Senator McINTYRE. Did Mr. Stewart or any other member of this team of specialized investigators that operated under DOD produce any reports regarding the matter under discussion here, and specifically regarding the conduct of Admiral Welander, Admiral Moorer or Yeoman Radford?

Mr. BUZHARDT. Yes, Senator, they reported the results of their interviews with people they interviewed.

They never interviewed Admiral Moorer. They did interview, as I said, a number of people in the chairman's office from Admiral Welander down to the enlisted men. Prior to that, as I said, they interviewed Mr. Noyes. They made reports daily on the Anderson articles which continued to run well into January, and the material printed therein through various documents, classified documents from which it apparently was derived.

Senator McINTYRE. Were these reports incorporated into your report to the Secretary of Defense?

Mr. BUZHARDT. They were largely the basis of a portion of my report to the Secretary.

Senator McINTYRE. When did you first learn of the so-called unauthorized transmittal of information?

Mr. BUZHARDT. I do not recall it, Senator McIntyre.

Senator McINTYRE. Who brought—

Mr. BUZHARDT. You are talking about Jack Anderson?

Senator McINTYRE. It could be Anderson or any part of this whole picture, which is, Anderson is, only part of it.

Mr. BUZHARDT. It is possible that I heard about it on the 14th or the 15th.

Senator McINTYRE. Of what?

Mr. BUZHARDT. Of December.

Senator McINTYRE. December.

Mr. BUZHARDT. 1971.

Senator McINTYRE. Who brought it to your attention?

Mr. BUZHARDT. I do not recall, Senator McIntyre. I recall—let me explain this: I did not—although I was not asked to supervise this particular investigation other than in a very casual manner prior to its initiation, it was reported to me by someone that polygraph

examinations were being conducted. I think it was reported to the Secretary of Defense almost at the same time, and he called me immediately and I think that is the first indication I had that polygraph examinations were conducted and, as a general policy, the Secretary had asked me to examine the circumstances before polygraphs were used in the Department of Defense and this was an occasion I was not aware of until after the fact instead of before and that was the occasion, initial occasion, for my getting in to the case.

I learned, I am sure, very shortly thereafter, of the results of Yeoman Radford's interrogation and the incident in which he had asked for Admiral Welander's permission before discussing documents that he had provided to Admiral Welander, and from that point on just took over.

Senator McINTYRE. During the course of your investigation, did any knowledge come to your attention or was there any evidence that came to your attention that corroborated or tended to corroborate the testimony of Yeoman Radford?

Mr. BUZHARDT. Well, his testimony, I mean his answer to a number of questions, covered a lot of areas, some of which I had no doubt are accurate. As to the central question of his, in the two issues here, on the disclosures to Mr. Anderson, no. He denied it, and as time went on, his denial appeared quite improbable.

The CHAIRMAN. As to what?

Mr. BUZHARDT. Improbable. As to his statement that he had provided documents which he obtained by surreptitious means to Admiral Welander, yes, indeed there was corroborating evidence. Admiral Welander himself confirmed the fact that he had received documents from Radford.

On the other hand, Admiral Robinson denied that he had received anything from Radford to which he would not have had independent authorized access. So it depends on the specific issue as to whether there was corroboration. In some instances there was and in others there was not.

Senator McINTYRE. Does there seem to appear corroboration in the testimony that you have taken with reference to Admiral Welander and what Yeoman Radford said about Admiral Welander?

Mr. BUZHARDT. That is correct, Admiral Welander confirmed that he had received documents particularly from the trips and confirmed he had indexed them and provided them to the Chairman.

Senator McINTYRE. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Nunn, that brings us to you.

[Discussion off the record.]

Senator NUNN. The question on the instructions that Radford received from Welander and Robinson—first let me ask you this: What did Yeoman Radford state that he was instructed to do by Robinson?

Mr. BUZHARDT. He said that he was told by Robinson to keep his eyes open and to help keep him informed because it was, their duty as liaison was to advise the chairman.

Now he said in response to this he did obtain documents surreptitiously, that they were accepted when he handed them to Admiral Robinson and that he was never rebuked for them. He did not state that Admiral Robinson knew the derivation of them and he stated

there was much less of this during Admiral Robinson's tenure than there was subsequently. So that is generally, as to Admiral Robinson, what he said.

Senator NUNN. So his testimony—was his testimony under oath, Yeoman Radford? You would swear him in, I know in polygraph, tests it has to be under oath.

Mr. BUZHARDT. That is right.

I think the polygraph was, I would assume the other was, Senator Nunn, but I would have to go back and make sure.

Normally it is customary but I was not there and I would have to look and see if the record indicates he was.

Senator NUNN. So as far as Admiral Robinson is concerned, Yeoman Radford said Admiral Robinson instructed him to keep his eyes open and keep him informed, but he never did say that he had given him specific instructions to bring back any specific documents?

Mr. BUZHARDT. That is correct.

Senator NUNN. He never did say that his instructions were to bring back, to find any information surreptitiously.

Mr. BUZHARDT. That is right.

Senator NUNN. Admiral Robinson directly contradicted any testimony that Yeoman Radford had given about the delivery of documents?

I understand you said that Robinson said during his time there there never was any delivery of documents to him of a surreptitious nature.

Mr. BUZHARDT. No, sir. He said Radford delivered to him documents, some. What he said was that Radford never delivered to him any information to which he did not have independent authorized access. Those are his words precisely.

Senator NUNN. Did Admiral Robinson, did he go further and deny that he knew these were obtained surreptitiously, whether or not he had independent access?

Mr. BUZHARDT. He said they were not available to him surreptitiously.

Senator NUNN. He denied that.

So far as instructions from Admiral Welander exactly what did Yeoman Radford say about instructions from Welander?

Mr. BUZHARDT. Yeoman Radford said he had never any instructions even to keep his eyes open from Admiral Welander. He said when he went on one of the trips with General Haig, and that is the only thing about a request, he asked Admiral Welander, "Is there anything you are specifically interested in," and that Admiral Welander said "Yes, of course we are most interested in the troop level."

Senator NUNN. But Yeoman Radford said that Welander never did give him instructions to obtain material surreptitiously?

Mr. BUZHARDT. That is correct.

Senator NUNN. Or to in any way do anything outside what he was ordered to do by his superiors on the trips which would be General Haig and Secretary Kissinger.

Mr. BUZHARDT. That is correct. But he also added, so the record will be complete, that when he delivered documents to Admiral Welander none were refused and he was never rebuked.

Senator NUNN. My general line of questioning, Mr. Buzhardt, is leading to the point of whether Yeoman Radford has perjured himself either at the time of your investigation or in his appearance before this committee. As you read the testimony, I am sure you read it only from the paper or you may have read his testimony, do you have any opinion on this subject?

Mr. BUZHARDT. I think it would have to be examined in some detail, Senator Nunn, which I have not done. I have generally read the press report. I was aware that he was here and testified. I think he made a statement afterward, I have frankly not had a chance to read the detailed reports of the testimony that was released.

Senator NUNN. Had that conflict at least occurred to you, the possibility of a conflict?

Mr. BUZHARDT. Yes, it has, quite frankly, because, and maybe I shouldn't even say it, but it was a perception that his testimony may have been shaded somewhat to a different direction if not—and I would not want to say that he has said different facts, but I think his emphasis at least has shifted from what it was—

Senator NUNN. Would you say, based on your knowledge of the first interviews and the reading of the second that he has testified to here, that that point there would certainly be something that we should look into?

Mr. BUZHARDT. Yes, sir.

Senator NUNN. The other particular line of questioning I want to get into is the admission of surreptitious knowledge, call it knowledge of gaining the documents by surreptitious means by Admiral Robinson.

It is my understanding that Admiral Robinson's testimony was that he got documents that he did not know were surreptitiously obtained.

Mr. BUZHARDT. He said he had access to all the documents.

Senator NUNN. But those are two different things. It is one thing to have access—excuse me, I am sorry.

Mr. BUZHARDT. And let me say I am doing this from recall. Unfortunately I do not have notes of Admiral Robinson's interview, and I certainly would not want to misstate it, but it is my best recollection that he denies knowing they were surreptitiously obtained and even that opened the question as to how at the time Yeoman Radford explained the methods he used.

Senator NUNN. What about Admiral Welander. I understand, that based on your previous testimony, he admitted knowing that some of them were surreptitiously obtained.

Mr. BUZHARDT. That is correct, particularly on the trips.

Senator NUNN. Did you talk to Admiral Moorer about this matter?

Mr. BUZHARDT. Yes, Senator, I did.

Senator NUNN. Did you interview him as part of your investigation?

Mr. BUZHARDT. I had a discussion with him.

Senator NUNN. You did not label it an investigation?

Mr. BUZHARDT. I did not interrogate Admiral Moorer in the manner in which I interrogated Admiral Welander and Admiral Robinson.

Senator NUNN. Did you ever question Admiral Moorer whether he ever had any personal knowledge that any of this information he was getting was obtained surreptitiously?

Mr. BUZHARDT. I discussed the subject with him; yes, sir.

Senator NUNN. What was his reply to that line of inquiry?

Mr. BUZHARDT. I don't recall that he ever said specifically, and because of the way the information was given, and again I am doing this from recall, Admiral Moorer explained that he recalled some of the documents, having seen the documents, or having seen some of them. He recalled one of them specifically, a memorandum of conversation that was treated as especially sensitive. He did not specifically recall having ever been told how they were obtained. He also did not attach any particular significance to the information contained in the documents.

Senator NUNN. So your general impression was that he did not have knowledge that they were surreptitiously obtained?

Mr. BUZHARDT. That is correct.

Senator NUNN. That is a correct statement so far as your impression. I believe that you said that you did not feel that there was a criminal violation in obtaining information surreptitiously if you would otherwise have had access to that same information, is that correct?

Mr. BUZHARDT. That is correct, Senator.

Senator NUNN. You do not think there is any legal violation of any security law that is now on the books or was on the books at that time if you go into surreptitious method of obtaining information to which you would otherwise have had access.

Mr. BUZHARDT. Conceivable but most improbable.

Senator NUNN. In other words, if Yeoman Radford, instead of going on this trip and getting the information out of Secretary Kissinger's briefcase, if he had actually gone into Secretary Kissinger's office over at the State Department with the door open and slipped in there and lifted the whole briefcase and taken it over and dumped it on the Chief of Staff's desk and the Chief of Staff had other material that he—that material would otherwise have been delivered to him, he has committed no violation?

Mr. BUZHARDT. He had stolen the briefcase and you obviously would have a case of conversion of property, and I think you should conceivably make a case as to the briefcase itself.

Senator NUNN. How about the papers in it?

Mr. BUZHARDT. The papers themselves might have a value. I do not think you could successfully prosecute for it, Senator.

Senator SYMINGTON. Will you yield for a few seconds?

Mr. CHAIRMAN. I have to leave. I have a few questions here. No doubt Mr. Buzhardt has answered quite a few of them already. But I would have my counsel, after studying the record, look them over and then ask unanimous consent additional questions may be submitted.

The CHAIRMAN. All right. Let me make this statement. I was just trying to determine what the situation is, if you will yield. You mentioned Senator Hughes. We can well have an afternoon session if Mr. Buzhardt can be here and meet over at S-146 which is convenient to the Senator floor in case we have votes so I would want to know if there are other questions. You have already given your situation. Do you want to put certain questions into the record?

Senator SYMINGTON. Unfortunately I have to chair a hearing this afternoon, so switched this morning to this afternoon to be here. I would like to ask one question.

The CHAIRMAN. If the Senator would yield.

Senator NUNN. I have just about two more questions and I think I will be able to get through, but I will yield if you want to go ahead.

Senator SYMINGTON. I appreciate it.

Mr. Buzhardt, I want to get this straight. Admiral Welander, a man trained over a period of years in the Government service or he wouldn't be in his position, testified that in "normal times" what Yeoman Radford did would be considered treason. That is what he testified to under oath. Are you saying that under such circumstances, the best that can be expected in the way of a reprimand of that type and character of action is a transfer.

Mr. Buzhardt, No, Senator Symington, I am not saying that at all. In the first place, with all due respect to Admiral Welander, the offense that was committed was not treason. I think you couldn't make it out of that, not as it is legally defined.

In dealing with the leak situation, I think that the transfer was, at a minimum, essential in order to end the leaks and that was the primary objective of the investigation. I think in this case we had a poor circumstantial case. Indeed a leak investigation is rarely designed to produce a prosecution because of the improbability that it will so result, just from the circumstances.

Senator SYMINGTON. Obviously this whole business is damaging to the morale of the military. This I know because people in the military have talked to me about it. If it comes out that this man and the evidence is clearly in the papers against him, circumstantial and so forth, nevertheless you don't do anything about it, doesn't that increase the possibility of future comparable leaks? He was as experienced as anybody they could get for the job. I went over his record.

Mr. BUZHARDT. Senator, I certainly share your concern. But let me say, and it is not the first case I—or the first very highly publicized case—I have taken this position on.

I certainly don't think you come out better if you have a man tried and acquitted where the public has a reasonable conclusion that he did it and you can't convict him, and we have had those cases in some instances and they do irreparable harm to the whole security system.

Senator SYMINGTON. Thank you.

Thank you, Senator Nunn.

Thank you, Mr. Chairman.

The CHAIRMAN. Yes, sir.

Senator NUNN. Mr. Buzhardt, pursuing that line of questioning, a minute ago, as I understand it, you said there would be no law against it, in effect. We could carry it one step further: Admiral Moorer walking up and getting papers out of Secretary Kissinger's briefcase as long as when he got back to the office or when anybody investigated later on they found he would have otherwise been entitled to that.

Mr. BUZHARDT. Senator Nunn, I think we are talking about two things here. In each case it must be judged on the total circumstances.

You have several questions involved. One is whether it is an ungentlemanly and unprofessional thing to do and it reflects on a career. The second question is whether you technically have a criminal offense which you may have in some of these, and the third is what you have—whether you have a prosecutable case, which is a very different question.

Senator NUNN. Let's talk strictly criminal offense and let's talk about the second question and that analogy I gave you. You don't think that would be a technical violation of law aside from whether you could prosecute it successfully, assuming—

Mr. BUZHARDT. It possibly would be a technical violation of law. It would possibly be a case of larceny; I say that qualifiedly because larceny, you would have to prove the intent to permanently remove.

Senator NUNN. But it would not violate any security law or any law relating to classified information.

Mr. BUZHARDT. No, sir, I do not think it would if he gave it to a person who had authorized exposure, and let me say this is not an infrequent case. We have people repeatedly in the Department of Defense, Senator, who carry documents out and sometimes they come up and bring them to Members of the Senate and House. They are authorized to have them. You couldn't prosecute them under any circumstances; you have seen the case.

Senator NUNN. Isn't that somewhat of an analogy in civil law to someone going into a house and taking goods which would otherwise be adjudicated as burglary and then the victim testifying that these were, he would have given him the goods anyway and he could have had them. Wouldn't that be an analogy there?

Mr. BUZHARDT. No, sir, I don't believe so.

Senator NUNN. It certainly seems to me, I am not being facetious on that point, there is some degree of analogy here if you take documents or receive documents with intent of having access to those that you at that point in time don't know you have got access to and you are doing it in a surreptitious way, it certainly seems to me you violated some law relating to security aside from—

Mr. BUZHARDT. You may have technically violated some regulations if the regulations are actually in force. But when it comes to laws on security we have new laws, Senator Nunn. We have the chapter on espionage. In my opinion, it is totally inadequate. We have gone so far—I have had occasion to do extensive studies on it in connection with the reformation of the criminal code—participated in some efforts to draft more workable statutes. To date we have not succeeded. I hope eventually we will.

Senator NUNN. One other question, Mr. Buzhardt.

I recognize the difficulty of dealing with this and I know the law—I am not in any way blaming you for the state of the law but I do think we ought to take a close look at it because it is obvious there are some loopholes in it. But there is another line altogether.

Did Yeoman Radford admit to your investigators or to the DOD that Jack Anderson visited him at his home at 8 o'clock on December 20, 1971, and that he discussed with Anderson the DOD investigation of leaks?

Mr. BUZHARDT. Yes, sir, he did admit that in some detail.

The CHAIRMAN. He did what, describe it?

Mr. BUZHARDT. Yes, sir; he did describe it. But I am not sure of the date. I assume it is the correct date but I believe it was on an

evening; he said he had gone to bed, that Anderson and his wife came by, that Mr. Anderson came in to the bedroom and discussed with him the investigation.

Senator NUNN. On December 20. Was he under oath when that statement was made?

Mr. BUZHARDT. Again I assume so, Senator Nunn, but I would like to go back and check it.

Senator NUNN. Could you supply that testimony and isolate whatever part of the record it is, for this record?

Mr. BUZHARDT. Yes, sir.

Senator NUNN. Also a statement as to whether, when he made that disclosure, whether or not he had been sworn in and whether or not he was under oath.

[Mr. Buzhardt later advised the committee staff that none of the investigative statements were under oath.]

Senator NUNN. Mr. Chairman, at that point I have used my time but I would like to say that I would think we ought to check the record, but my recollection is that—and I believe counsel's note indicates that is his recollection—is that when Radford was here before this committee he stated he had seen Anderson on three occasions, one was at Anderson's home when he was invited there by Anderson's parents whom he had known in a foreign country. The second occasion he stated was at a restaurant in Washington, D.C., sometime in December when he and his wife joined Anderson and his wife. Third, at a speech in, I believe somewhere in California, maybe San Diego, where he did not personally communicate with Anderson but went to hear him speak.

It appears to me that on this point if Yeoman Radford was under oath, at the DOD investigation, and if he—and we know he was under oath here, and we went over that specific question over and over again, I recall that, and if my recollection of the record is correct, and then I submit that the committee certainly should refer this matter to the Justice Department for investigation of perjury, and I think also the point that originally I brought up in the early discussion, although it is much vaguer and I will admit it is much vaguer, but the question of what both Admiral Welander's and Admiral Robinson's instructions were to Radford as revealed to the DOD investigation as opposed to what was revealed here, certainly it warrants investigation.

I am not in any way assuming that either of these are actual perjury but I think it is certainly something we should refer to the proper authorities.

The CHAIRMAN. You want the record pursued on that, though, by counsel for the time being.

Senator NUNN. I would think it certainly merits further investigation.

The CHAIRMAN. I think so, too. My best recollection is that you stated correctly the three instances but that ought to be checked out by the record, and I call that to your attention, gentlemen. On the matter of referral, of course, that will be carried over.

Senator NUNN. I am just observing, Mr. Chairman, I just think, I am not asking for any action at this time, I just wanted to make it part of the record.

The CHAIRMAN. I understand. We are not ignoring it but we put it on the table here for the consideration of the committee later.

Senator NUNN. I also would like to observe if some disciplinary action is not taken against Admiral Welander, either in his career, administratively or some prosecution is not pursued, I have a very difficult time understanding how our committee or the Department of Defense or anyone else can expect the proper conduct from high-ranking officials.

The CHAIRMAN. Senator. Thank you very much.

Senator Hughes, there is no limitation on your time, but I understand—

Senator HUGHES. I can wind up within 5 minutes.

The CHAIRMAN. I will yield to you. I have a few questions.

Senator HUGHES. I want to concur in what Sam has said. It is just an impossibility that Yeoman Radford could have forgotten mentioning the visit to his home by Jack Anderson in the investigation and he did reveal that, I think, under very rigid cross-examination in this committee, and if that is true he obviously perjured himself, and I concur in Sam's request that the committee take it up in investigating the others, and I also concur about what he said about Admiral Welander and I think the observations are both right.

I would just like to ask a couple of questions by way of conclusion. Were you involved in Ellsberg's investigation, during this same period of time?

Mr. BUZHARDT. Yes, sir, I was.

Senator HUGHES. Reading the story of Sy Hersh's in the Morning Times over the weekend there is a clipping my staff had given to me, it seems to be sort of a dichotomy that you prosecuted in one case and did not in the other because both men had heavy access to what could be considered the most highly classified secrets of our Government.

Mr. BUZHARDT. That is right.

Senator HUGHES. Do you have any explanation for it, why you felt taking Radford to court in one instance would be bad and taking Ellsberg to court would not be?

Mr. BUZHARDT. I guess it is no great secret, let me explain.

After the Watergate investigation turned up any number of documents, and I would like this to be handled appropriately in the record, but I guess it is very much on record that I made the same recommendation in the *Ellsberg* case that I made in this one, not because of any doubt—

Senator HUGHES. I didn't know that.

Mr. BUZHARDT [continuing]. That Mr. Ellsberg had broken the law but the problem was the case was so complex I did not believe it could be successfully prosecuted. I thought there was some danger of additional disclosure of classified information and more importantly because of my belief that the case could not be successfully prosecuted primarily because of its complexity, and that the impact on the security system when the American people had the impression that the man had confessed and we could not convict him would be very detrimental and, accordingly, I made that recommendation.

Senator HUGHES. You were consistent in your recommendations on both, that is what I was trying to determine. When the decision was made on up the line you presented the statement of fact as you saw it and they made the decisions.

Mr. BUZHARDT. I had not participated. In the preparation for trial—

Senator HUGHES. As counsel you had done your job.

Mr. BUZHARDT. Then I did my best to prepare the U.S. attorney to try it. I ran a school for him 2 weeks on what was the case so he could prosecute if at all possible and be successful. He had a very difficult task.

Senator HUGHES. Now the next question, again as before I want you to qualify this because the testimony that Yeoman Radford gave here indicated, at least in my line of interrogation, that the interrogation practices used by the Pentagon investigators in his case were far beyond the bounds of decency in relationship to interrogation, now if, in fact, they were conducted in that way, and that was his testimony and it is uncontradicted by anyone else, I would like for you to investigate it or have someone do it over there.

Mr. BUZHARDT. Senator, let me respond to that in this way.

I, of course, have no knowledge about the specific interrogation.

Senator HUGHES. I would like to point out in your behalf at this point in the interrogation you had not even been brought into the case yet, is that right, as I understand the testimony?

Mr. BUZHARDT. That is right, yes.

Senator HUGHES. You said had you been aware, if it happened, you would have stopped that sort of interrogation.

Mr. BUZHARDT. That is correct.

Senator HUGHES. One final question, Mr. Chairman, if I may.

The CHAIRMAN. Certainly.

Senator HUGHES. Was there any negotiated deal between the White House and the Pentagon that you are aware of as some sort of a solution to this whole problem, pilfering and information gathering, to close the office of legislative liaison on behalf of the Pentagon with the National Security Council?

Mr. BUZHARDT. No, sir, I know of no negotiated agreement. I know the secretary told me he was adverse to the continuation of that office.

The CHAIRMAN. Which secretary?

Mr. BUZHARDT. The Secretary of Defense, Mr. Laird, and you have to understand that there was disagreement about, directly over the years about, the usefulness of this particular function, and I think at this time it probably was concurred in by all parties, including the chairman, that under the circumstances it would not serve a useful purpose any longer. It is a very difficult, and I might say having worked among the organizations, that is a very difficult function and it is a very difficult procedural problem to approach and solve.

Senator HUGHES. Mr. Chairman, I want to take this opportunity to thank Mr. Buzhardt for his directness in responding to questions and I think giving so far as his point of view is the recommendations of fact to the secretary on the internal security matter investigation.

I do want to point out to the chairman, if I can, that I believe in order for this investigation to be completed we still have a lot of information to be gathered and there is no point of my going into detail at this time, but this has further reinforced my belief that at least two or three other witnesses need to be called, among them Mr. Ehrlichman.

I am still deeply troubled by the fact that he apparently was trying to get an admiral to sign some sort of a statement of confession when he had the same information available to him apparently that Mr. Buzhardt had had available to him. Either he arrived at different conclusions or he had additional information that Mr. Buzhardt didn't have and a reconciliation of that to me would be important.

I want to restate my position on the investigative report which the Chair has already had under advisement that Mr. Buzhardt had presented free for reading, and I want to make a request, because of the nature of all our obligations can my staff man read that report and report to me, Mr. Stevenson, who reads all of the reports.

The CHAIRMAN. Senator, that report has not been received by the committee yet, if I may outline the situation here, and we don't have a quorum now, we will just have to carry it over.

Senator HUGHES. I want to state the request while we are in session, that is all. I am under a heavy burden, as you are, and to come over here and to read the report, when I have a man who does that on every other security matter that we get before this committee, I think it would be just as reasonable for him to read it and report to me on it, on this one.

Thank you very much, Mr. Chairman, and thank you, Mr. Buzhardt.

The CHAIRMAN. You don't have any additional questions now for Mr. Buzhardt?

Senator HUGHES. I am not going to present any additional. I think he has presented his viewpoint pretty clearly and I think the questions I now have relate to other witnesses.

The CHAIRMAN. We will get to this now as fast as we can. This is no simple matter dealing with these reports, and I will state for the information of the committee, including the Senator from Iowa, of course, that we got into this matter, I tried to get an outside attorney of experience who knew investigation and a judge of the law to take this matter and handle it, not that I was looking for anyone better than Mr. Braswell. I just felt the committee needs Mr. Braswell on other matters.

I was not able to get one, not readily anyway. I already had the man that I have the very highest regard for his knowledge of the law, his penetrating ability and fine background knowledge of things that pertain to the military, and that is our chief counsel and chief of staff, I will put him up against any of them, Mr. Braswell. So I asked him to take charge of this whole thing, and he is well assisted here by Mr. McFadden.

But other things had to be done, too, I mean of the committee, which Mr. Braswell was just absolutely essential. So the hurry-up nudging I have had, and I don't resent it because it is all in good faith, but it was necessary to take time on it, I would take time anyway, always you know when I am getting into things, and it just requires time.

I have been here since January 15, which is a week before we convened, and been working on this a great part of the time. Now, there are other witnesses, additional witnesses and we will keep on working on it. I just state that for the information of the committee.

I have a few questions here and we will not have an afternoon session, Mr. Buzhardt. This matter about the report will just have

to be carried over because we don't have the membership here now to make any decision.

So this report that you had with you, just take it back, I don't want to see a line of it, if you will take it back, and the copies thereof, too, that had been mentioned.

I have a few questions here that I am concerned about, this matter of this material getting into Jack Anderson's hands, how it got there.

Why I am concerned primarily with the fact that it did get there.

Mr. BUZHARDT. Yes, sir. It did enormous damage, Mr. Chairman.

The CHAIRMAN. Yes, of course it did. You can't carry on the affairs of this Government with these kinds of things happening, in my opinion. You can't carry them on with the National Security Council meetings appearing in the front page next morning of the New York Times.

Mr. BUZHARDT. Yes, sir.

The CHAIRMAN. As it was here about the same period of time, 1971, and I remember going down to the White House to see Mr. Kissinger about it, and told him, "If you can't stop this you ought to stop the meetings, not have any National Security Council meetings if you can't keep it from leaking out."

So my concern about this is not just recent. You have had other matters of leaks to this same man, Anderson, haven't you?

Mr. BUZHARDT. Yes, sir.

The CHAIRMAN. While you were at the Pentagon, I mean.

Mr. BUZHARDT. Yes, sir.

The CHAIRMAN. You followed up and all, and have you ever prosecuted them though? Have you ever got a case strong enough to prosecute? Tell us something about those matters.

Mr. BUZHARDT. Yes, sir. I think in one instance, in my opinion, we had a case strong enough to prosecute.

The CHAIRMAN. Yes.

Mr. BUZHARDT. Unfortunately in that particular—that particular case would have fallen under the special statute that applies to cryptographic material, 18 U.S. 798. Unfortunately, in that case, and this was given the most serious consideration, to have authenticated the material published in that case would have caused enormous harm.

The documents from which the material came were examined with the most intense care and an effort was made to see if we could isolate a portion of the material which could be authenticated and try to prosecute on that limited portion. I personally discussed it with the Attorney General of the United States, Mr. Mitchell at the time, because it was most serious.

This was in somewhat of a technical area and oftentimes we see the political information published and that catches the public eye, but I suspect that the most severe damage is done by the unauthorized disclosure of technical information. This was technical information.

We finally resolved it. We could not maintain the prosecution without authentication of the totality of the material that was published in his column and this would have caused an enormous amount of harm.

The CHAIRMAN. Harm?

Mr. BUZHARDT. Yes, sir.

There was, if you don't authenticate it, at least leaving a doubt that it is correct. If you authenticate it by prosecution, quite frankly, you authenticate the information and the other side knows that it is correct. I might say even when I——

The CHAIRMAN. You mean the adversaries like Soviet Russia would know from that move that it was correct?

Mr. BUZHARDT. Yes, sir; and we have indications—indeed I followed the practice myself when I worked here when there were what appeared to be leaks of classified information, one of the easiest methods to determine whether it is valid information is to see if you can determine if an investigation is being conducted. If an investigation is being conducted you are pretty sure that the information was valid and leaked.

So you have a real problem with this authentication problem.

One other case with Mr. Anderson, it went to the grand jury in the Eastern District of Virginia, I guess, and the case could not be made.

The CHAIRMAN. It could not be made?

Mr. BUZHARDT. Those are the specific cases.

We had another series of disclosures earlier in 1971 to Mr. Anderson. We did go back and check the access and frankly Yeoman Radford did have access to a major portion of that. We were able to ascertain by a quick check of those documents also, so it is a serious problem.

It is one we have not neglected, but the espionage laws unfortunately do not lend themselves to prosecution for a case of disclosure to a newsman. They just don't. There are too many elements of proof in the nature of intent of the person disclosing it and publishing it to prove in that particular case because of the intent. I don't think you could prove in court even by a preponderance of the evidence, much less by beyond a reasonable doubt, that Mr. Anderson had an intent to harm this country or to give aid to another country by publishing the material.

The CHAIRMAN. So you thought, you think, that the hill to climb is too steep there on this matter of intent?

Mr. BUZHARDT. Yes, sir.

The CHAIRMAN. The way the statute is drawn now?

Mr. BUZHARDT. Yes, sir.

The CHAIRMAN. And as I understand that dates back to 1917 or 1918.

Mr. BUZHARDT. Yes, sir.

The CHAIRMAN. At the time of World War I.

Mr. BUZHARDT. Yes, sir.

There is an additional problem, Senator, and I should mention this—it is rarely stated but constitutionally it is difficult to go too much further.

On section 978, if you read that statute literally, anyone who prints the type information described in that statute, which amounts to cryptographic information or communication intelligence information, if you can prove that they know it is such and they publish it they are guilty of the offense and it has severe penalties. Frankly, the Justice Department has seriously questioned the constitutionality of the statute if so applied, and I think that is largely responsible for the fact we have one of the two principal factors involved in the fact we have never had a successful prosecution under that statute despite

all these years. We have had one guilty plea, which was a plea bargaining case under that statute.

The CHAIRMAN. Yes.

Mr. BUZHARDT. In history.

The CHAIRMAN. Pardon me, I am not cutting you off but I have a question or two more. But in view of what you say here can you recommend anything that the committee could do with reference to Mr. Anderson himself? No man looks too big to me to be tackled, and Anderson or anyone else who is in this business of disseminating knowledge that is to our detriment.

Mr. BUZHARDT. I agree with your motives, Mr. Chairman. I certainly agree no one is too big. I would not want to give the implication that Mr. Anderson is the only one by any means.

The news media are very competitive.

I think, and this is a personal opinion rather long held, that it would be useful for Congress to undertake a serious study——

The CHAIRMAN. A what?

Mr. BUZHARDT [continuing]. A serious study that would be directed at possibly at least authenticating a classification system by statute. There is none now. Classifications are done by Executive order. If you have the executive and the legislative branches joining together in a position then you stand a lot better chance of having that position, even though it is stronger, upheld by the courts in the event of a prosecution. That was pointed out, I believe, in the case of United States against the New York Times, and the allied case of the Washington Post and the Justices themselves so said.

The CHAIRMAN. The New York Times was the Pentagon Papers.

Mr. BUZHARDT. Yes, sir. That if the Congress had statutorily authorized or directed the classification system, you possibly could have gotten even a prior restraint in that case. I think the espionage laws need to be revised, and I might note that there is serious consideration being given to that and to the reformation of the criminal code. I wouldn't want to say by that I think the direction of the reformation is one with which I would agree. I think it goes much too far, but with respect to the chapter on espionage I think a number of proposals have been submitted which are major improvements. These are draft statutes. They are now, I believe, being considered by the House Judiciary Committee. Some of these worked on myself in the Department of Defense and supervised the work. A great deal of effort has gone into it to try to arrive at effective measures which are nevertheless constitutional for enforcement and would stand up under review by the courts.

Mr. CHAIRMAN. A fair question to you, is that the proper committee to consider amendments to the law of espionage?

Mr. BUZHARDT. It is a part of the criminal code, Mr. Chairman.

The CHAIRMAN. Yes.

Mr. BUZHARDT. I think——

The CHAIRMAN. I can see where they have a very strong call on it. I would like for our committee to have some participation at some level.

What about this: under your matter here was the question of any charges against Admiral Welander ever considered? Now you might have covered that in part. I have been interrupted here several times this morning.

Mr. BUZHARDT. Not to my knowledge, Mr. Chairman, and let me explain how the circumstances developed.

The CHAIRMAN. All right.

Mr. BUZHARDT. As you know, Admiral Welander had not been on the job long, this particular job. It was a difficult job.

The CHAIRMAN. How long, about 5 or 6 months?

Mr. BUZHARDT. About 5 or 6 months, I believe, 5 to 6 months is my recollection.

Admiral Welander came in and really fingered the whole case himself when he read the column. He was most forthcoming. While he didn't want to talk to the investigators in one case, certainly with the senior personnel he disclosed fully. I have no doubt that he told us everything he knew. He admitted receiving the documents, whatever it took. He has a fine record. To the best of my knowledge, no charges were ever considered against Admiral Welander. Certainly I never made any recommendation. He was transferred.

The CHAIRMAN. Yes.

Did he ever say or admit, make any statement, along the line that he said things to Yeoman Radford of the classification of "Keep your eyes open" or "Get all you can" or anything like that?

Mr. BUZHARDT. No, sir. Nor did Yeoman Radford in his interrogation over there ever say that Admiral Welander asked him to get any information. He did say that he received it but he never alleged that Admiral Welander had asked him to obtain material surreptitiously.

The CHAIRMAN. Did he say that Robinson had asked him to do these things?

Mr. BUZHARDT. He said that Robinson had asked him to keep his eyes open and keep him informed but never instructions or serious instructions to obtain material surreptitiously.

The CHAIRMAN. Mr. Braswell, what is your recollection now as to what he said here, Yeoman Radford, about that, about the Admiral, Admiral Welander.

Mr. BRASWELL. I think it is just as—well, it is just as he told, as I recall Mr. Buzhardt said Radford never indicated that Welander said, "Get anything unauthorized." He just carried on the same system and received the information that was brought forward but there were no positive instructions from Welander. But he did say during the China trip in some way there were some words that, "Do a good job" or "Keep your eyes open," something to that effect. There were no instructions.

The CHAIRMAN. From Welander.

Mr. BRASWELL. From Welander, to get this document or that document. The record supports that.

The CHAIRMAN. I thought he said something about Welander. Check the record and state what he did say.

Do you have a recollection?

Senator HUGHES. I think primarily when Welander came in and discussed it it was just in general he wanted him, he asked, "Do you want to continue the same sort of service I gave Admiral Robinson."

He said, "Sure."

I don't remember the specifics. I think the implication was by other men, "Boy, you are doing a good job, Radford," but never—

The CHAIRMAN. I remember that good job.

Mr. BUZHARDT. I believe during the investigation Yeoman Radford said that, I believe it was Captain Knoizen in the Chairman's office, had told him, "Chuck, you do good work," and I believe that was the quote he used in the investigation.

The CHAIRMAN. Yes.

I have another question for you now, and let me read, though, from the record, page 16 of our printed record, part 2, Radford testifying he said:

I don't know how it came about, but I was approached about going on a trip with Dr. Henry Kissinger in July 1971, and I agreed to go. Admiral Welander told me he would be interested in anything that "I could get my hands on."

That is a direct statement there by the witness Radford attributed to Welander, and that, "Get my hands on" is in keeping with words that had been used before by the late Admiral Robinson.

In all your investigations here what kind of proof, if any, was there that tied Admiral Moorer, the Chairman, in with the wrongful receiving of any of this testimony or whether it was out of the scrap bag, or the burn bag, or whether it was out of, the fires or whether it was an onion skin copy or whatever it was.

Mr. BUZHARDT. Senator, to try to summarize it—

The CHAIRMAN. Yes.

Mr. BUZHARDT [continuing]. Admiral Welander stated that he used the information Radford obtained in the normal routine fashion to brief Admiral Moorer.

The CHAIRMAN. To what, brief?

Mr. BUZHARDT. Brief him. Occasionally he would include such a document in the papers attached to his briefing. As to those there is no indication that Admiral Moorer could have known they were obtained by anything except direct provision to him by the NCS staff. With respect to the material obtained on the trips, Admiral Welander stated he indexed this material, or some of it, and provided it to the Chairman for study overnight.

Now, whether the character of the material itself was such that it might have raised suspicions as to the ways it was obtained, I don't know the answer to that.

The CHAIRMAN. That was the China trip.

Mr. BUZHARDT. That was the China trip and the Haig trips.

With respect to Admiral Welander, he said he has generally informed the Chairman about how the material on the trip was acquired. Admiral Moorer said he didn't recall knowing how the material was acquired. He did remember the one specific document made an impression on him that came from one of the trips. This was a memorandum of conversation, but he also recalled that he had already been briefed on it.

The CHAIRMAN. Yes.

Mr. BUZHARDT. I think that has been borne out.

The CHAIRMAN. That is the way I remember it.

Mr. BUZHARDT. So Admiral Moorer stated he assumed he had the broadest of access to all of this information and I have yet to come across any information to indicate to the contrary. That is borne out by a memorandum from Mr. Kissinger to Mr. Laird on January 22, I believe, 1969, in which he said that he expected the NSC staff and the Office of the Chairman to have direct access to each other.

The CHAIRMAN. You talk about the message which was part of a conversation, that was the partial quote from Chou En-lai, wasn't it, and Moorer had testified that he had seen that in advance.

Mr. BUZHARDT. The one I was specifically referring to, Mr. Chairman, was a memorandum of a conversation between General Haig and President Thieu.

The CHAIRMAN. Yes.

Mr. BUZHARDT. And I think there is no question that Admiral Moorer was briefed on what the conversation would be before it was held and briefed immediately when he came back.

The CHAIRMAN. All right.

Senator Hughes, do you have any further questions?

Senator HUGHES. No, I don't think so, Mr. Chairman.

PREPARED QUESTIONS FROM SENATOR SYMINGTON

The CHAIRMAN. Senator Symington's request about additional questions that was for some he had made out and then he wanted some more, is that right?

Mr. BRASWELL. He was going to read the record and probably put more in, as I understood it. He took the questions with him.

The CHAIRMAN. We will have to keep this record moving though. I wanted to go on and get it back, well, we will just have to send the record on without it for the time being, put it in later.

Without objection those questions will be admitted.

[Questions submitted by Senator Symington. Answers supplied by Mr. Buzhardt.]

1. *Question.* When, if ever, did you discuss with Mr. John Ehrlichman matters having to do with the allegedly unauthorized or irregular transmission of information by the Military Liaison Office either to Jack Anderson or to the Pentagon?

Answer. During the course of this investigation, I recall talking once with Mr. Ehrlichman on the telephone, and the subject matter was polygraph examinations.

Question. If any such discussion occurred contemporaneously with the investigation in December 1971 or January 1972, would you comment on the views expressed regarding the need for two investigations?

Answer. There was no discussion of two investigations. There was actually only one investigation, parts of which were conducted by several elements of the government.

Question. Was this investigation the first time you became aware of the White House investigative unit known as the plumbers?

Answer. I was aware that Mr. David Young was performing the liaison function for the White House staff in connection with the investigation, I was not aware of any White House investigative unit.

2. *Question.* Did you discuss with Yeoman Radford any conditions for not taking disciplinary action? Did you or do you know if anyone else indicated to him circumstances under which disciplinary proceedings might be avoided?

Answer. I had no discussions with Yeoman Radford and I do not know of any discussions with him concerning avoidance of disciplinary proceedings.

3. *Question.* In mid-January of 1974, the press reported that Secretary of Defense, James R. Schlesinger, would undertake an informal investigation of the "military spy" case. Subsequently, the press reported that Schlesinger said that White House Counselor, J. Fred Buzhardt, Jr., had refused to make available the taped interrogation of Admiral Welander by David Young which had been requested by Secretary Schlesinger's aide. Is that report correct?

Answer. In response to an inquiry from Secretary Schlesinger's staff, I advised that I had no authority to release the White House documents in question to the Secretary.

Question. If so, would you explain to the Committee why the tape was refused and whether you were acting in your capacity as General Counsel to DOD or Special Counsel to the White House, or both?

Answer. My services as General Counsel of DOD terminated on January 4, 1974, when I was appointed Counsel to the President. It is my recollection that the inquiry was made after January 4, 1974.

4. *Question.* Would you tell this Committee whether or not the White House and Pentagon disposition of this matter was influenced in any way by any reluctance to disclose the possibility of surreptitious taking of documents and advertent receiving of such documents by the military because of the official reaction to the Ellsberg situation and the disclosure of the Pentagon Papers?

Answer. I do not know what considerations influenced the decision as to disposition of this matter, but my recommendations, as I explained in my testimony, were based on the circumstantial character of the evidence, the potential jurisdictional issues and the potential for further compromise of classified information in the event of a trial.

5. *Question.* Admiral Welander and Yeoman Radford have both testified as to the variety of channels used—some normal, some unusual, for the exchange of sensitive information between the Chairman of the Joint Chiefs and the then Special Assistant to the President for National Security Affairs, Henry Kissinger.

Based on your knowledge of this exchange, would you comment on whether and, if so—in what way—transmittal of such information infringed or might have infringed on the concept of civilian control of the military?

Answer. No.

6. *Question.* Is it your understanding that the value of a polygraph test can only be judged on the basis of the skill and professional capability of the person giving the test?

Answer. Although I am not an expert on polygraph examinations, it is my understanding that the reliability of such an examination depends significantly on the professional capability of the examiner.

Question. If you can, would you submit for the record who conducted the polygraph tests?

Answer. In this investigation, the polygraph examinations were conducted by Mr. Ray Weir of the National Security Agency.

Question. Is there a record of the questions asked and the professional opinion of the polygraph reader?

Answer. I am informed that there is no record of the questions asked on the polygraph examinations conducted.

7. *Question.* Turning only to the internal matter of the surreptitious taking of documents and their acceptance knowing them to have been taken in an irregular or unauthorized manner, did anyone recommend or was any consideration given to administrative actions other than the denial of access to Yeoman Radford, the transfers of the Yeoman and the Admiral and the closing of the Military Liaison Office?

Answer. I am not aware of any administrative actions considered other than those taken, but I would not necessarily be aware if other administrative actions were considered.

Question. Assume for example, that documents had not been classified and there had been no jurisdictional problem which you mentioned, hypothetically could you tell us if the internal conduct alleged in this case could be considered improper and subject the taker or the receivers either to reprimand or to punishment under the UCMJ?

Answer. Administrative reprimands are a matter of command judgment, for which there are no codified criteria. An officer, when tendered a reprimand which would become a part of his permanent record, probably could demand a trial under the UCMJ. I am not aware of any similar circumstances resulting in a trial under the UCMJ. While it is possible that charges could be drafted, based on the circumstances in this matter, in a way that would fit within some specific article, it would not follow that upon evaluation, the case would be prosecutable as a criminal offense. While the UCMJ is designed to have some functions as a disciplinary tool, it is fundamentally a criminal code for military personnel. In my judgment, the internal matters which came to light in the investigation did not involve criminality.

Senator HUGHES. Mr. Chairman, I would like to make a request while we are still on the record of Mr. Buzhardt. If this report of yours to the Secretary is not left available to the committee, as I thought it was going to be, and if the committee does not take action to let my staff read it, I would like permission to call you and read the

report because I feel as a member of the committee after your testimony I have a moral obligation to read the report which you said is available to us. If there is no other way I will get it I will read it.

The CHAIRMAN. He has not made it available to us, Senator. We will have to keep the record straight.

Senator HUGHES. I thought he had.

The CHAIRMAN. No, the provision was it would be kept confidential and not be given to the press, and those were the main points and that was brought up here this morning. I think you were here.

Senator HUGHES. I was sitting right here.

The CHAIRMAN. It never was passed on so I say we would move on. Senator Symington and you were the ones who spoke in a tone of not being satisfied with it so I just passed it by.

Senator HUGHES. I am not satisfied, John, but I am frequently not satisfied with a lot of things.

The CHAIRMAN. I think, and I stated, it is not the perfect—but it is something that we have that we could use. But we will just have to pass that by now because, I mean for this sitting because, there is no one here except you and me, the two of us, to pass on it, you see.

Senator HUGHES. I can ask him if he will let me read the report, whether the committee does or not. If he wants to deny me that he has that privilege.

The CHAIRMAN. I don't think frankly he ought to be put in the position of answering that question at this point. I still have contact with him about this report and about the Young report, too.

Mr. BUZHARDT. Let me say—

The CHAIRMAN. If he lets you read it he has to let everybody read it who asks for it, the committee members.

Senator HUGHES. I agree with it. I don't feel I am doing my job unless I read the report.

The CHAIRMAN. We just don't have the report, Senator. We just don't have it. I mean it is not before the committee for the reason I have given.

Senator HUGHES. OK, I will ask him after the hearing is closed then.

The CHAIRMAN. Anything else you want to say?

Mr. BUZHARDT. I would add with respect to the report to perhaps clarify it a little bit, Senator, I did not keep a report, Senator Hughes of this, a copy of this report when I wrote it. In fact I frequently did not—I very consciously did not—and I wanted to make sure it was not leaked to somebody else. The report was made to Secretary Laird. It was his report and I approached him to get the report from him on the basis that I would deal with the committee with respect to the report, and attempt to have it reach an understanding that it would be respected as an investigative report.

As you know, all investigative reports, hopefully, are treated this way because you can do serious damage to individuals by releasing investigative reports.

As you pointed out so well this morning, Yeoman Radford has denied one of the statements in the report and he may well be right, the report may be wrong. The report was not verified to the extent that you would do for a prosecution, and you do have substantial possibilities of doing harm to people and in violation of their rights by release of this type of report.

Senator HUGHES. Then if I understand you correctly what you are saying to me is that you had agreed with Secretary Laird it would be available to the committee and no one else.

Mr. BUZHARDT. Yes, sir, on a basis that it would not, as an investigative report, be publicly disclosed and I have tried for the benefit of the committee here this morning to cover the things in it, to alleviate my problem of the fact that the investigative report itself was not released, I told the chairman I would be glad to testify about the report.

Senator HUGHES. I think you have done a good job.

The CHAIRMAN. To be sure we understand now the situation is that the report itself is just not yet before the committee, and I hope that I will have a chance or if the committee—I will have a chance to confer further with Mr. Buzhardt about this report and the Young report but, frankly, I think if anybody tells the press about this now why it will just kill every chance to get anywhere with it. This is my opinion. If anyone mentions it I wish they would, if they go into it I hope they will make it clear the chairman was in favor of receiving the report this morning for the committee but in accordance with Mr. Buzhardt's request I think it is highly unwise to go into at all. It is a pending matter and it is not finished and, Mr. Buzhardt, I am going to ask you to continue to attend the committee if called.

Senator HUGHES. I want to make it clear I support you in that request. I think the Committee ought to have that report. I would go further than you have but nonetheless if it is the best we can do I will accept that condition.

The CHAIRMAN. I thank you for that and I am glad you feel that way about it but it is too late at this sitting to pass on it.

Senator HUGHES. I understand. I am not arguing against the committee not receiving the report. Don't misunderstand me.

The CHAIRMAN. I understand that but I am glad you expressed it.

Thank you for your attendance and those who attended it today most of the time.

[Whereupon, at 1:20 p.m., the committee adjourned, subject to call of the chair.]

...I think you have done a good job. The Committee is in a position to make a report to the Council on the progress of the work of the Committee. I think it is important that the Council should be kept informed of the progress of the work of the Committee. I think it is important that the Council should be kept informed of the progress of the work of the Committee.

...I think you have done a good job. The Committee is in a position to make a report to the Council on the progress of the work of the Committee. I think it is important that the Council should be kept informed of the progress of the work of the Committee. I think it is important that the Council should be kept informed of the progress of the work of the Committee.

...I think you have done a good job. The Committee is in a position to make a report to the Council on the progress of the work of the Committee. I think it is important that the Council should be kept informed of the progress of the work of the Committee. I think it is important that the Council should be kept informed of the progress of the work of the Committee.

...I think you have done a good job. The Committee is in a position to make a report to the Council on the progress of the work of the Committee. I think it is important that the Council should be kept informed of the progress of the work of the Committee. I think it is important that the Council should be kept informed of the progress of the work of the Committee.

...I think you have done a good job. The Committee is in a position to make a report to the Council on the progress of the work of the Committee. I think it is important that the Council should be kept informed of the progress of the work of the Committee. I think it is important that the Council should be kept informed of the progress of the work of the Committee.

...I think you have done a good job. The Committee is in a position to make a report to the Council on the progress of the work of the Committee. I think it is important that the Council should be kept informed of the progress of the work of the Committee. I think it is important that the Council should be kept informed of the progress of the work of the Committee.