

# Mitchell Concedes In Not Reporting

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# He Failed Duties Cover-up to Nixon

By Lawrence Meyer and Peter Osnos  
Washington Post Staff Writers

Sen. Lowell P. Weicker Jr. (R-Conn.) strongly attacked the Senate Watergate testimony of John N. Mitchell yesterday, forcing him to concede that he had failed his legal responsibilities both as a lawyer and former U.S. Attorney General in not reporting his knowledge of the Watergate cover-up and other extralegal activities involving the White House.

Mitchell, who had been a symbol of law and order as Attorney General, admitted under hard questioning by Weicker that he had not met the obligation of a lawyer, as an officer of the court, to report his knowledge of apparent crimes to the proper authorities.

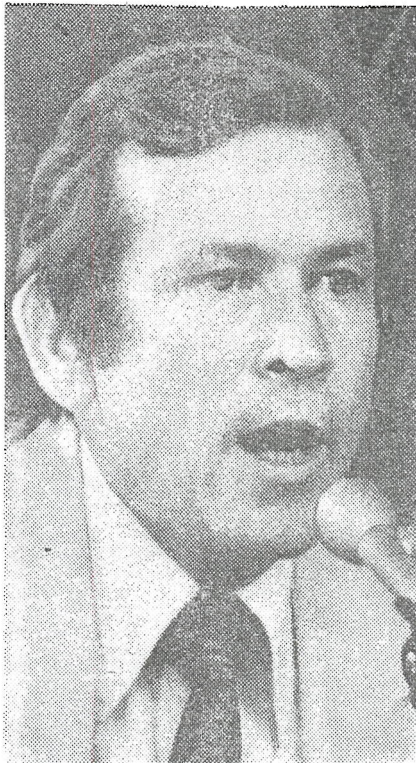
Weicker and other members of the Senate select Watergate committee also exposed some apparent contradictions between Mitchell's testimony now and a sworn legal statement he made last year concerning what he knew about the planning and execution of the bugging of the Democrats' Watergate headquarters both before and after the June 17, 1972, arrests there.

After affecting an air of boredom throughout much of his second day of testifying, Mitchell changed his demeanor markedly during Weicker's interrogation. Mitchell yawned as Weicker began his questions, but later became hostile, giving curt answers in a choked voice and finally ending the day's testimony by caustically muttering, "It's a great trial they're conducting up here, isn't it?"

Throughout the day, Mitchell was asked time and again why, as President Nixon's close friend, adviser and confidant, he had failed to tell Mr. Nixon about the Watergate cover-up and other clandestine activities conducted by the White House staff.

At one point, Mitchell testified that after June 20, 1972, the President never asked him about what he knew of the Watergate affair, despite revelations that were appearing almost daily in the press.

On the one occasion when the President did ask, on June 20, just three days after the Watergate break-in arrests, Mitchell said he knew only "very little" about it. After he learned more—including the involvement of White House and re-election committee officials, and especially such other "White House horror stories" as the burglary of the office of Daniel Ellsberg's psychiatrist—Mitchell said he deter-



SEN. HOWARD BAKER

"... that was a mistake."

mined that telling Mr. Nixon these things would hurt his chances for re-election.

"Aren't you dead sure in your mind," asked Sen. Howard H. Baker Jr. (R-Tenn.), "that that was a mistake, not telling the President?"

"Senator," Mitchell replied, "I am not certain that that is the case, because we were talking about the weeks of June in 1972, where I still believe that the most important thing to this country was the re-election of Richard Nixon. And I was not about to countenance anything that would stand in the way of that re-election."

"Anything at all?" Baker asked.

"I am sure if it had to involve treason and other high crimes and misdemeanors that were directly related to the office, that there would be a very definite breaking point," Mitchell responded.

After the election, Mitchell said in response to a question by committee chairman Sam J. Ervin Jr. (D-N.C.),

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### HEARING, From A1

that he still did not tell Mr. Nixon what he knew about the Watergate affair because "it wasn't my responsibility to do so."

"Did the President at any time ask you what you knew about Watergate?" Ervin asked.

"Not after that first discussion that we had on the telephone, I believe it was on June 20."

"Well," Ervin replied, "if the cat hadn't had any more curiosity than that, it would still be enjoying its nine lives, all of them."

Mitchell also conceded under questioning by Ervin that allowing former deputy Nixon campaign manager Jeb Stuart Magruder to give perjured testimony to the federal Watergate grand jury was a "very expedient" course of action.

Mitchell observed that sole subjects related to Watergate that he discussed with Mr. Nixon at a meeting March 22, 1973, were matters of executive privilege and the appointment of someone to serve as White House liaison with the Senate Watergate committee.

Weicker noted that President Nixon, according to his statement of April 17, ordered "intensive new inquiries into the whole matter" on March 21, the day before the White House meeting.

"So in effect," said Weicker, "no inquiry—even though the President stated new inquiries were being made—no inquiry was being made of you by this particular group of gentlemen, either the President, or Mr. Haldeman, or Mr. Ehrlichman, or Mr. Dean in that room at that time?"

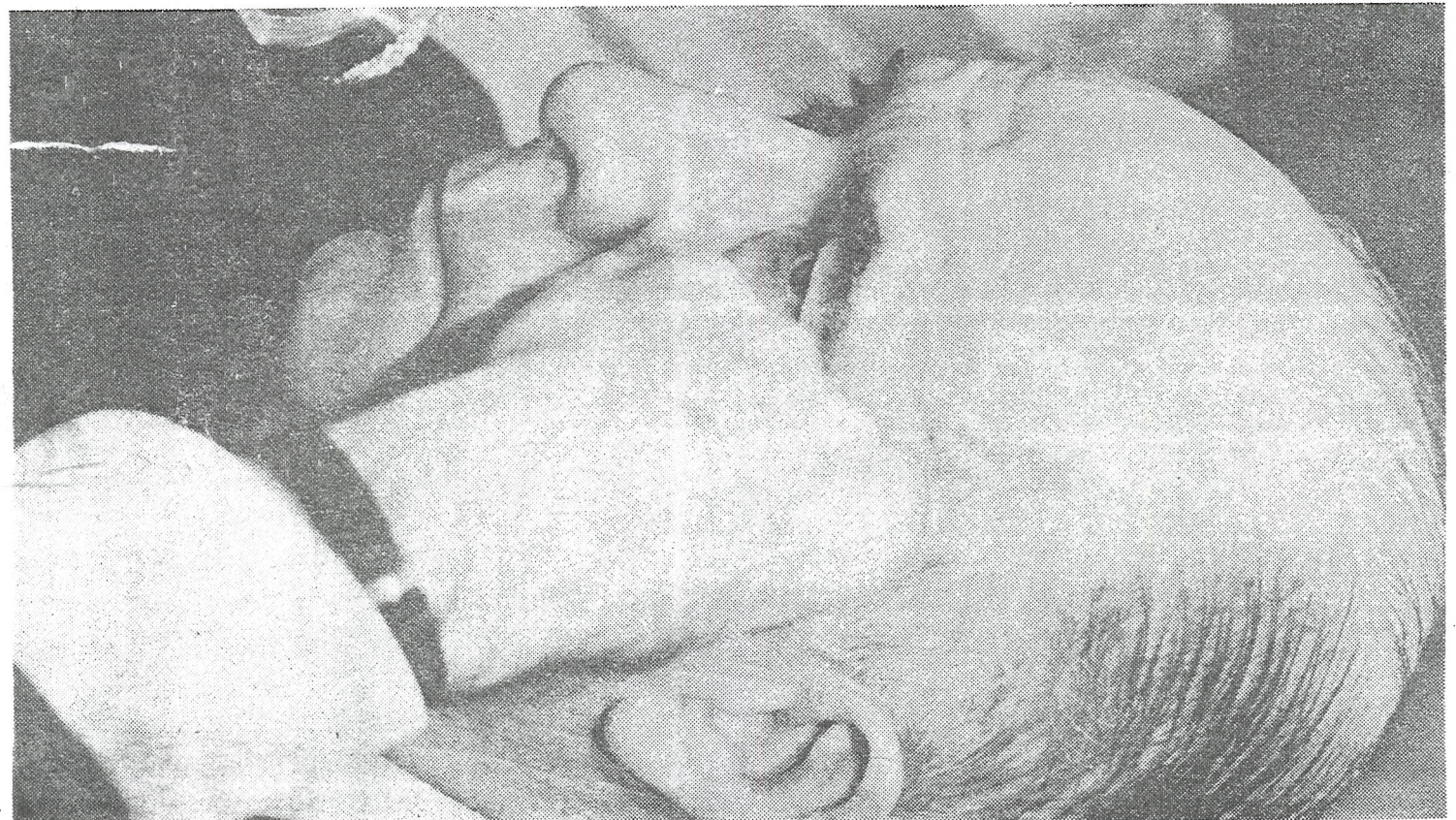
"There was no such discussion," Mitchell replied.

"... Do you find this rather surprising?" Weicker asked.

"I do not," Mitchell said.



Associated Press



By Douglas Chevalier—The Washington Post

Under questioning by Sen. Lowell P. Weicker (left), John N. Mitchell admitted he violated his responsibility.





By Douglas Chevalier—The Washington Post

John Mitchell (right) confers with his attorney, William Hundley, briefly while at the witness table yesterday.

It was also under questioning by Weicker that Mitchell admitted that his failure to inform others of what he knew was not simply a case of bad judgment but a violation of a lawyer's responsibility as an officer of the court to report knowledge of a crime.

Mitchell has testified that he learned after June 17, 1972, that Watergate conspirators G. Gordon Liddy and E. Howard Hunt Jr. also participated in the September, 1971, break-in at the offices of Daniel Ellsberg's psychiatrist.

Weicker asked Mitchell if he brought the break-in to anyone's attention. "I notified no one about the break-in," Mitchell replied.

"As an officer of the court, as a former Attorney General, you were content to remain silent . . . even though you knew that your silence might possibly convict an American citizen by means of illegal conduct," Weicker said.

"That break-in produced nothing whatsoever," Mitchell responded. "No material was obtained or used."

Weicker: It is not really a question of what they found, is it, Mr. Mitchell?

Mitchell: In answer to your question, it is. Your question was whether or not American citizens could have been convicted because of this act, and I am saying that, as I understood the story as it was related to me, there was no material obtained or used. Since it

hadn't been obtained, it couldn't have been used.

Weicker: You didn't know that at the time he committed the act?

Mitchell: I don't know at the time they committed the act. I had heard it when I was advised of the nature of the break-in.

Weicker: What I am saying to you is that you had no way of knowing at the time that if you remained silent, this man (Ellsberg) might not have been convicted through information, through information, that you knew had been illegally obtained.

Mitchell: What I am saying is that as these stories dribbled out and were embellished upon, it became known to me that their entry was unsuccessful in obtaining any information out of the doctor's office.

Weicker: Is there anything in this country, aside from the President of the United States that puts you into awe, Mr. Mitchell?

Mitchell: To put me where?

Weicker: That puts you in awe?

Mitchell: There are very, very many things.

Weicker: Do the courts put you in awe?

Mitchell: Very much so.

Weicker: Does your oath as an attor-



ney, does that put you into awe?

Mitchell: Very much so.

Weicker: Do you feel as an officer of the court you did the right thing?

Mitchell: In connection with the Ellsberg matter?

Weicker: When you did not notify the prosecution or you did not notify rather (U.S. District) Judge Byrne of the information that you had in your possession?

Mitchell: I think in retrospect, it probably would have been the right thing to do.

Weicker: I have no further questions at this time.

Mitchell, as the hearing ended: It's a great trial they're conducting up here, isn't it?

Following this exchange, the committee recessed until 10 a.m. today, when Mitchell is scheduled to resume testifying.

During yesterday's interrogation of Mitchell, the committee exposed a number of apparent flaws in Mitchell's testimony, compared to what he said on Tuesday and also in prior sworn statements he has made.

While giving a statement under oath last Sept. 5, in connection with the Democratic Party's civil suit against Nixon re-election committee officials as a result of the June 17 Watergate break-in, Mitchell was asked if re-election officials Robert Mardian or Frederick C. LaRue had reported to him a conversation they had had with Liddy. "No," Mitchell replied, "only to the extent that his services had been terminated (from the re-election committee) in whatever way it was."

Mitchell testified before the Senate committee Tuesday and yesterday, however, that on June 21, four days after the Watergate arrests, Mardian and LaRue briefed him on a session they had had with Liddy in which he spelled out his activities in connection with the Watergate bugging, the Ellsberg break-in and other "White House horrors," as Mitchell referred to them.

In addition to that apparent contradiction between his deposition in the civil suit and his testimony before the Senate committee, Mitchell also said in his deposition that he had not discussed bugging the Democrats' Watergate headquarters.

"Was there every any discussion," Mitchell was asked on Sept. 5, "at which you were present, or about which you heard when you were campaign director, concerning having any form of surveillance on the Democratic National Committee headquarters?"

"No, sir," Mitchell replied, "I can't imagine a less productive activity than that."

Mitchell testified before the committee, however, that on Jan. 27, Feb. 4 and March 30, 1972, he discussed plans to bug the Democrats, although Mitchell insists he rejected the operation.

When Weicker pointed out this apparent contradiction to Mitchell yesterday, Mitchell said that his statement in the deposition "refers to the activities of the (re-election committee) security group the question was asked with respect to."

"You felt that you answered the question truthfully?" Weicker asked.

"I did," Mitchell replied.

Mitchell also said yesterday, in answer to a question by Ervin, that he had learned about the Watergate break-in involvement of James W. McCord Jr., security director for the re-election committee, in a newspaper.

Mitchell testified on Tuesday, however, that he learned about McCord's involvement on June 17 from his aides while he was in California.

Mitchell also has testified before the committee that on March 30, when Magruder raised the Watergate bugging plan with him for a third time, Mitchell flatly rejected it.

"Now," Weicker said, "Mr. LaRue states that on March 30, 1972, when Mr. Magruder presented the Liddy plan to you in Mr. LaRue's presence, that rather than rejecting it, you merely told Mr. Magruder that it did not have to be decided at that time. Is there any way that you can relate to Mr. LaRue's testimony as to what occurred at that moment in time?"

"No," Mitchell replied, "my recollection is very distinctly as to what I testified on yesterday (Tuesday), that the matter was rejected and it was rejected on the basis that I was tired of hearing of these things and did not want to hear about them again."

During questioning by Sen. Edward J. Gurney (R-Fla.) on Tuesday, Mitchell also discussed logs that he had turned over to the committee covering all meetings and telephone calls he had from January through September, 1972.

"Nobody made a telephone call in or out without them being recorded," Mitchell said on Tuesday, "and it (the log) records whether the call came in or out, whether you talked, or where the call was placed."

Yesterday, however, Mitchell conceded under questioning by Weicker, who was using White House logs submitted to the Senate committee, that at least one call in June and five in July from Mr. Nixon to Mitchell did not appear on Mitchell's logs.

A persistent theme throughout yesterday's questioning of Mitchell, in his capacity as former Attorney General, was whether he believed that President Nixon had a constitutional right to refuse to respond to the committee's inquiries to him or to refuse

to furnish the committee with copies of presidential papers relating to the Watergate affair.

President Nixon formally notified the committee on July 7 that under no circumstances would he testify before it or open his papers to committee inspection.

"Isn't it a rule of evidence," Ervin asked Mitchell, "that when a person refuses to produce evidence within his power to produce that an inference may be drawn that the reason he does not produce it is because he knows it to be unfavorable to him?"

"This I believe is a rule of evidence in the courts of law," Mitchell replied. "When you are dealing with the separation of powers involving the President, I think it has to be looked at perhaps in a different light."

"Well," Ervin responded, "isn't that a rule that applies just as much to the search for truth as it does in courts of law? It is a rule of logic, it seems to me."

"I would agree with you with respect to the search for truth," Mitchell said. "There is no question about it. But as I say, there is another factor involved here and that has to do with the separation of powers."

"Well," Ervin said, "I don't believe there is anything in the Constitution that says the powers of the presidency should be separated from the truth. At least, I have never seen it."

"I would have thought that the founding fathers who wrote the Constitution might have left that out by design," Mitchell said.

"Well," Ervin replied, "I don't think it ever occurred to them that a President wouldn't be willing to do just exactly like President Nixon said we ought to all do, and that is to seek the truth, to find the truth, to speak the truth and live the truth."

The same line of questioning, using a somewhat different approach, was pursued by Baker and by Sen. Daniel K. Inouye (D-Hawaii) both of whom explored with Mitchell what authority the President had over his papers and how the committee might gain access to them.

The committee is expected to discuss President Nixon's refusal to give it access to his papers or to testify when it meets this morning in executive session before the hearings resume.

One committee staff member, asked if the committee was exploring a way to end the constitutional impasse, said, "I think it is a reasonable inference that the committee is making some overtures to the White House publicly." Referring to the senators' questions of Mitchell, he said, "This is the way it's done. Some of it will float across the way."

A draft brief, prepared by the committee staff, supports the position that the doctrine of executive privilege does not extend to the presidential papers involving the Watergate affair.

A persistent theme of the questioning yesterday was whether Mitchell believed he was right in his decision in late June, 1972, and again after the election in November, not to tell Mr. Nixon what he knew about the Watergate break-in and the "White House horror stories," all the while countenancing the cover-up that emerged.

On Tuesday, Mitchell had testified before the Senate committee that he did not tell Mr. Nixon about the Watergate and the illegal or unethical activities of White House aides so the President "could go on through the campaign without being involved."

Yesterday, Mitchell again said that on June 21 or 22 he had been briefed on the Watergate break-in and the White House activities by LaRue and Mardian, campaign aide and a former assistant attorney general.

"At that moment," Sen. Baker asked, "in retrospect, aren't you certain now that the country could have been better served and the President would have been better served by calling to account every single person in the administration who even allegedly had anything to do with it and to express to the President personally what happened?"

Mitchell: Senator, if it could have been assured at that time that the President would have been re-elected, I would agree with you wholeheartedly.

Baker: You understand, I am sure, what an enormous premium, then you put on success? I suppose all politicians put a great premium on success. But do you care to weigh that any further and tell me that the concealment from the President of facts such as you have described as . . . the White House horrors and the break-in to the Watergate on June 17, that all of these things were inferior in importance to the ultimate re-election of the President?

Mitchell: I had no doubt about it at the time and I have no doubt about it now.

Mitchell again asserted that his own silence was intended to spare the President the need to disclose all that had gone on and perhaps suffer consequences at the polls. "This would have been a derivative rub-off on something that was, would have been absolutely unfair and unjustified," Mitchell said.

"Isn't it unfair," Baker retorted, "that he is now undergoing the hostility and the suspicion of a nation in this respect with the allegations of cover-up, with the lingering suspicion about



what he knew? Isn't that greatly, isn't that far more unfair?"

"That is a statement I am not prepared to accept," said Mitchell, "I do not believe that the nation feels that way . . ."

Mitchell did concede, however, that considering what has happened since June, 1972, "it might even have been better, Senator, as you say, take them out on the White House lawn; it would have been simpler to have shot them all and would have been less of a problem that has developed in the meantime."

Baker at first said he agreed and then backed off, "for fear it would appear that I am advocating the commission of a felony."

"Senator," said Mitchell, "I am delighted that you at least joined in the delightful thought regardless of whether or not you countenanced it."

Questioned as to why he didn't tell Mr. Nixon about the Watergate affair and related matters after the election, when Mr. Nixon's second term was assured, Mitchell told Sen. Inouye:

"Well there are different types of obligations, Senator, and I think in my particular case I have always looked upon it as my obligation being that which was in the interests of the President, and I did not believe or feel at that particular time that it was necessary that he be so advised that these matters come out to the detriment of his second term. It was my full belief that he was going to take care of the reorientation of the White House and the matter would be taken care of by itself."

But in an exchange with Sen. Ervin later, Mitchell conceded that he was probably mistaken in not going to the President after the election:

Ervin: Now is your explanation that you were afraid that the revelation of the White House horrors prior to Nov. 6 might have some disastrous effect on the election. But when the 7th came, that danger was past and why didn't you tell the President, knowing that one of his chief duties under the Constitution is to take care that the laws be faithfully executed, on the day after the election or sometime after, about what you knew about this?

Mitchell: I would repeat what I said previously, Senator, that it wasn't my responsibility to do so. There were other people involved. They were changing the guard, so to speak, at the White House, and the fond hope was that the presidency would not be hurt by the activities of others that were carried on in the White House . . .

"In retrospect, Mr. Chairman, Mitchell added a moment later, "after the election was over, I probably should have done so (gone to the President). I didn't and it was probably a mistake."

"Well, as a matter of ethics," Ervin went on, "don't you think you should have advised him about these matters just as soon as you learned about them?"

"Well," said Mitchell, "that is a much more difficult question, because as I have said many times here in the last two days, I had the feeling that it would affect his re-election and I thought that was paramount."

Ervin, pursuing his penchant for historical references and comparing past statements with later actions, recalled a theme of Richard Nixon's 1968 campaign expressed, according to Ervin in these words:



Sen. Joseph M. Montoya (D-N.M.) ponders question for Mitchell.

"America is in trouble today not because her people have failed but because her leaders have failed. Let us begin by committing ourselves to the truth, to see it like it is, and to tell it like it is, to find the truth, to speak the truth, and to live the truth."

"Now do you have any reason to think that between that time and 1972," Ervin continued, "that President Nixon changed his position, his fidelity to the truth?"

Mitchell: I have no doubt whatsoever that his fidelity to the truth is the same as it was in 1968.

Ervin: And yet, he said that the way to save America in 1968 was to "find the truth, to speak the truth and to live the truth." And yet, when 1972 came and these White House horrors became known to you, you did not take the advice that President Nixon gave us all in 1968, did you?

Mitchell: Not under that particular guideline, I assure you.

Ervin: In other words, not only was it true in your case, but it was true in the case of Mr. Mardian, Mr. LaRue, Mr. Magruder, Mr. Dean and Mr. Ehrlichman, was it not?

There was a tone of morality to much of yesterday's questioning, focusing more on the propriety of his actions rather than on the details, at least until Weicker bore down at day's end.

Sen. Inouye, (D-Hawaii) asked whether Mitchell ever considered it was "fair to the members of the opposition party or fair to the American people to conspire to keep them from the true facts of the matter?"

"Yes," said Mitchell, "I am sure that that subject matter has crossed my mind many many times. But I do not believe now, I did not believe then that the President should be charged with the transgressions of others. And it is just as simple as that."

Baker asked Mitchell by what authority he took it upon himself to make a decision that was "presidential grade"—a decision that Baker said that would "significantly affect not only (Mr. Nixon's) election prospects and chances, but his presidency if he is re-elected."

Mitchell said he knew of no authority in the Constitution for "arrogating" unto himself a presidential decision.

"Then," asked Baker, "what authority is there?"

Mitchell: What authority? There is a matter of judgment you make in connection with these areas.

Baker: There are many judgments, some of them legal, some of them illegal.

Mitchell: Some of them in hindsight are quite improper obviously.

Baker: How do we protect against the necessity of viewing the world in hindsight?

Ervin and Mitchell differed over what would have been the consequences had Mitchell told Mr. Nixon what was going on and the President had made a full public disclosure and fired those responsible. Mitchell said that disclosure would cost Mr. Nixon votes; Ervin said he doubted that.

"Well," said Ervin, "I have a higher opinion of the American people than that. I think if the President had lowered the boom, if you had told the President and the President had lowered the boom and come out in the performance of his constitutional duties to take care that the laws be faithfully executed, I think he would have made his election more sure than ever."

Throughout his testimony, Mitchell took every opportunity to speak out on behalf of the President, praising Mr. Nixon's integrity as well as his actions as President. "I think," Mitchell told Inouye, "the good name of the President is going to be protected by the facts and by the President himself . . ."

Mitchell was not, however, beyond criticizing one of Mr. Nixon's present aides, J. Fred Buzhardt, the White House special counsel for Watergate matters, who bore the brunt of several Mitchell swipes Tuesday and yesterday.

Buzhardt was the author of a memorandum supplied by the White House to the committee for the cross-examination of Dean two weeks ago. That memorandum implied that, as Dean's "patron," Mitchell surely knew of the bugging. The memorandum was disavowed a day later by White House spokesmen as not reflecting the official White House position.

Tuesday, Mitchell referred to Buzhardt's memorandum and said, "I thought (it) was quite important as far as I was concerned, too, but I think we found out what the distinction was there." Yesterday, Mitchell again took the opportunity to say he did not accept Buzhardt's "premises."