

NY Times MAR 8 1974
**BUZHARDT TELLS
 VIEW ON ELLSBERG**

Against Trying Him but Not
 for Security Reasons

By SEYMOUR M. HERSH

Special to The New York Times

WASHINGTON, March 7—A White House aide, J. Fred Buzhardt Jr., acknowledged today that the Defense Department had objected to the Nixon Administration's decision to indict and try Dr. Daniel Ellsberg following publication of the Pentagon papers in June, 1971.

Mr. Buzhardt, who was serving as general counsel of the Pentagon at the time, told newsmen that he believed the case was "too complex" to be presented effectively, and that the subsequent risk of acquittal was too high. "My reasons were technical in nature and derived from the complexity of the case," he said.

Mr. Buzhardt specifically denied a report in today's New York Times that the Pentagon's objections had been based on national security factors. He added that he did not know "who made the final decision" to try the case.

Dr. Ellsberg's attorney, Charles R. Nesson, said that knowledge of the Pentagon's efforts to discourage prosecution of his client "would have been crucial to our motion that the Government chose to prosecute Ellsberg for political reasons—a selective prosecution."

Documents in Briefcase

Mr. Nesson, a professor at Harvard Law School, said in a telephone interview that prosecutors are normally given wide discretion in the cases they decide to bring.

"There are legitimate criteria the Government can take into account," he said, "but prosecuting an enemy for political reasons is not legitimate."

Dr. Ellsberg, who is currently on a national speaking tour, is known to be considering bringing a damage suit against the Government for filing the criminal case against him. The case was dismissed in Los Angeles in May, 1973, after disclosure of the Government's illegal activities against him.

Mr. Buzhardt talked with newsmen this afternoon following more than three hours of secret testimony before the Senate Armed Services Committee, which is investigating the unauthorized funneling of "eyes-only" documents from the White House to the Pentagon in 1971.

After Mr. Buzhardt's appearance, Senator Stuart Symington, Democrat of Missouri, said, "It's clear that there's much more work to be done." Other sources said that a number of

Senators were urging that John D. Ehrlichman, President Nixon's former domestic adviser who was indicted today for his role in the Ellsberg burglary, be summoned to testify.

Mr. Ehrlichman was in overall charge of the White House "plumbers" unit, which investigated the military snooping charges in December, 1971, and reportedly concluded that a Navy yeoman and an admiral assigned to the White House had pilfered and transferred documents.

Reliable sources have told The Times that President Nixon intervened too late that month to prevent the prosecution of the two men, who were quietly transferred out of the White House after their military liaison office had been shut down.

The Pentagon objected to the prosecution of the two military men on national security grounds, among others, and some Federal Watergate investigators are known to believe that President Nixon—by accepting the military's recommendation in the Ellsberg case and rejecting it later—was invoking national security for political purposes.

Disputing this view today, Mr. Buzhardt said that national security "didn't mater one way

or the other" in the Ellsberg case. And in the case of the military snooping, he added, national security was only one facet of his concern.

The evidence collected by Mr. Ehrlichman and other members of the plumbers group, he added, did not depict "a military spy ring" inside the White House. He described the case against Yeoman 1st Cl. Charles E. Radford and Adm. Robert O. Welander as circumstantial and, "on the basis of total evidence, not a prosecutable case."

Questioning Not Ended

The White House aide was guarded, however, in his general comments on the incident. He said that he did not know who in the White House had decided not to prosecute in the military snooping case. That decision, he said, had been relayed to him in late 1971 by Melvin R. Laird, then the Secretary of Defense.

Adm. Thomas H. Moorer, Chairman of the Joint Chiefs of Staffs, has told newsmen that he twice unsuccessfully

sought prosecution of Yeoman Radford in 1971. Admiral Moorer has also acknowledged receiving two batches of unauthorized documents funneled from the White House.

Officials of the special Watergate prosecution office are known to have tentatively concluded that Yeoman Radford and Admiral Welander could have been charged with the same offenses as was Dr. Ellsberg — illegal possession of classified documents and the unlawful conversion of them.

Senator John C. Stennis, chairman of the Armed Services Committee, told newsmen after today's hearing that the Senators had not completed their interrogation of Mr. Buzhardt. The Mississippi Demosible conflicts," but refused to say more.

No further hearings into the military snooping were announced.

Child Dies in Brooklyn Fire

Fire swept through a second-floor apartment at 40 Wyckoff Street in South Brooklyn Wednesday, and an 18-month-old girl found in the apartment was pronounced dead later at Kings County Hospital. The child was identified as Marisol Corteguera.