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FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

January 4, 1977

Honorable Edward H. Levi
Attorney General of the United States
Department of Justice, Room #5111
Washington, D.C. 20530

Dear Mr. Attorney General:

The enclosed report of General Counsel John G. Murphy, Jr. in MUR 298(76) dated December 21, 1976, deals with apparent violations of the confidentiality provisions of 2 U.S.C. §437g in connection with the Commission's investigation of a complaint relating to the U.S. Senatorial election in Tennessee.

The report summarizes an investigation which was conducted by General Counsel Murphy and the Commission's Chief Investigator, Mr. Michael Hershman. During the course of this investigation it developed that the Commission's Chairman, Vernon W. Thomson, may have been involved, among others. As you will appreciate, this has presented the Commission with a problem of great delicacy and difficulty.

The report was considered by the Commission on December 22, 1976, and again today, January 4, 1977, with Chairman Thomson absenting himself on both occasions. The five Commissioners participating have now unanimously concluded that it would not be appropriate for the Commission to handle this matter further. We are accordingly referring the report to you as Attorney General.

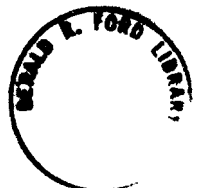
A copy of all statements taken during the investigation of MUR 298 will be supplied to you as soon as duplication is completed.

Copies of this letter and of General Counsel Murphy's report are being transmitted to the Chairmen of the Senate Rules and House Administration Committees, and will become part of the public record.

Yours very truly,

Thomas E. Harris

THOMAS E. HARRIS
Vice Chairman



1-4-77

BY TIM WYNGAARD

SCRIPPS-HOWARD STAFF WRITER

WASHINGTON, Jan. 4 - The Federal Election Commission (FEC) is probing charges that its own chairman leaked a story designed to help a Republican senator in deep trouble in last fall's election.

Sources involved in the probe say FEC investigators are conducting an inquiry into allegations that former Republican Rep. Vernon W. Thomson, Wis., leaked a story damaging to Democrat James Sasser, who two weeks later beat GOP Sen. William E. Brock in the Tennessee election.

Thomson, unavailable for comment, allegedly told former Defense Secretary Melvin R. Laird, a Republican, that the FEC was demanding Sasser's campaign finance records.

And Laird, who would not comment, passed the information through associates to Brock's staff in an effort to boost Brock's sagging campaign in the closing days of the race, according to the sources.

Under federal law, it is illegal for FEC members and employes to make public information regarding continuing agency investigations of federal elections. Penalties, under two separate sections of the law, involve fines of up to \$5,000.

The story received widespread newspaper and television coverage in Tennessee and while it did not defeat Sasser, was widely used by Brock's forces in the closing days of the race.

An FEC spokesman said yesterday (Monday) that Thomson - who served in Congress with Laird when both were members of Wisconsin's delegation - was forbidden by law from discussing any aspect of an on-going investigation. And an internal probe of how any such story leaked from the FEC would be considered an "extension" of the original investigation and cannot be commented upon, said FEC spokesman David H. Fiske.

Sasser was under FEC investigation as a result of charges by an unsuccessful primary opponent that Sasser's campaign obtained improper loans and illegally used corporate aircraft. Sasser has denied those charges.

The original story broke in Tennessee last Oct. 25 - one week before the general election. It reported that the FEC had acted days before to require Sasser to produce his campaign finance records. The story also contained confirmation from a Sasser aide that the material had been "officially requested" by the agency.

The sources familiar with the investigation of the leak said Thomson had told Laird of the Sasser inquiry. Laird then reportedly passed the information to a former aide, Carl S. Wallace, now a Washington lobbyist.

Wallace, the sources said, then told former Tennessee Republican Rep. Dan H. Kuykendall, who also is now a Washington lobbyist. Kuykendall relayed the information about the FEC inquiry into Sasser's records to Brock's campaign manager, Thomas Bell.

Less than 72 hours after Bell received it, the story received major treatment from Tennessee newspapers and television.

None of the parties involved in the investigation, however, charge that Brock - a contender for election as Republican national chairman later this month - was directly involved in the transmission of the story.

-MORE-

Citywire



WYNGAARD 2

"NOR HAS IT BEEN CHARGED DIRECTLY THAT THOMSON KNOWINGLY PASSED THE INFORMATION FOR OVERTLY PARTISAN REASONS. WILLFULLY DIVULGING SUCH INFORMATION COULD BRING AN FEC FINE OF UP TO \$5,000 WHILE FINES FOR SIMPLY MAKING INFORMATION PUBLIC DURING AN INVESTIGATION ARE LIMITED TO \$2,000.

THOMSON WAS NAMED TO THE SIX-MEMBER FEC - WHICH OVERSEES COMPLIANCE WITH FEDERAL ELECTION LAWS - BY PRESIDENT FORD AFTER BEING DEFEATED IN 1974 FOR AN EIGHTH TERM IN THE HOUSE.

SHNS





FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

January 4, 1977
2:00 P. M.

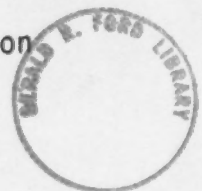
COMMISSION ACTION

It was moved by Vice Chairman Harris that:

The Federal Election Commission refer the General Counsel's report in the matter of MUR 298 (76) to the Attorney General of the United States, that the report be transmitted without recommendation, and that a copy of the report and the letter of transmittal to the Attorney General be sent to the President of the United States; Senator Howard Cannon, Chairman of the Senate Rules Committee; and the Honorable Frank Thompson, Chairman of the House Committee on Administration; and that each of the aforementioned be contacted immediately by telephone informing them that the report is being transmitted and that they are asked to withhold judgment on the matter until they have had an opportunity to receive the report, and that Vernon W. Thomson, Chairman of the Federal Election Commission, be personally informed of the above action at the same time the other parties are contacted.

The vote on the motion carried unanimously. (5-0).

Marjorie W. Emmons
Secretary to the Commission



FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S REPORT

In Re An Unknown Respondent
MUR 298(76)

I. Preface

MUR 298(76) was opened by the Commission on Wednesday, October 27, 1976 with a finding of reason to believe that an unnamed respondent had violated the confidentiality provisions of 2 U.S.C. §437g in connection with the Commission's investigation of MUR 216(76), which involved the Democratic Senatorial Campaign in Tennessee. Evidence supporting the finding of reason to believe had been supplied by an article appearing in the October 25, 1976 edition of The Nashville Banner, in which it was reported that the Commission had subpoenaed records of the Democratic senatorial candidate in that state. Because of the importance and sensitivity of the apparent breach of confidentiality reflected by that article, and because the article had wholly arbitrarily and improperly injected the Commission into a close senatorial race, the General Counsel personally conducted the ensuing investigation with the assistance of the Commission's Chief Investigator, Mr. Michael Hershman. During the course of investigation 65 depositions were taken, 14 other interviews conducted, and six subpoenas were served, five for records and one for personal appearance. The results of that investigation to date are set forth below.

II. Facts

On August 3, 1976, a formal complaint was filed against Democratic senatorial primary candidate James Sasser of Tennessee by a Democratic opponent, Harry Sadler, who alleged, inter alia, that Mr. Sasser had received illegal bank loans and was also benefiting from improper arrangements for the use of corporate aircraft. The Commission notified Mr. Sasser of the complaint in due course. Ensuing communications between the Sasser campaign and the Commission failed to produce information adequate to resolve the allegations in the Sadler complaint. By mid-October 1976, the Commission staff felt that the Commission should tolerate no further delay in the production of requested data and should therefore issue subpoenas.

On October 19, 1976, the Commission, acting in Executive Session, voted unanimously (with Commissioner Staebler absent) to issue three subpoenas in connection with the Sadler complaint, which at that time was styled MUR 216(76).¹ One subpoena was for certain records maintained by the Sasser campaign treasurer, Mr. Gary Blackburn. The other two subpoenas were addressed respectively to the United American Bank of Nashville Tennessee, and the First National Bank of Tracy City, Tennessee, which allegedly made illegal loans to the Sasser campaign. The subpoenaed parties were directed to

^{1/} - A similar complaint styled MUR 239(76), and involving the same issues, was filed by a C.D. Hopkins on September 23, 1976, and was consolidated with MUR 216(76).



produce the described information by October 26 and 27, 1976. The Commission adjourned at approximately 1:00 p.m. on October 19, 1976.

At approximately 5:30 p.m., October 19, 1976, Federal Election Commission Chairman Vernon W. Thomson attended a reception at the University Club for Mr. Robert Spitzer, a long-time Wisconsin acquaintance. He states that he remained at the reception for a relatively brief time, since he had a dinner to attend. At one point he was approached by Mr. Melvin Laird. Both Mr. Thomson and Mr. Laird have testified that Mr. Laird addressed Thomson very aggressively from the outset, and that the subject matter of their discussion was whether the Commission was acting with adequate expedition in compliance matters. Mr. Thomson vigorously defended the Commission against Laird's challenge that the Commission was not acting effectively. Both men stated, prior to deposition, that Thomson may have "over reacted" to Laird's attack. Laird specifically referred to Commission postponement of action on complaints regarding illegal bank loans to candidates and, in this context, he testified to the best of his recollection that the states of Tennessee, Minnesota and Maryland were mentioned.^{1/} Laird testified that Thomson used the terminology "investigation of the records" in connection with "these complaints"^{2/} Mr. Thomson does not agree that this terminology was used.^{3/}

^{1/} Laird Tr. p.9.

^{2/} Laird Tr. pp 15-16.

^{3/} Both the Laird and Thomson transcripts of depositions are attached hereto and should be read in toto.



Melvin Laird testifies emphatically that Thomson was the only person with whom he spoke about the Tennessee matter until the following Friday, October 22, 1976, and that he had no other source for the information regarding Tennessee.^{1/} He states that his conversation at the University Club with Thomson lasted approximately five to ten minutes. He testified that since late Spring he has had an interest in a possible article about various campaign law abuses, including loan abuses. And he had earlier stated that he was aware from general discussion on Capitol Hill that Mr. Sasser's Democratic opponent in the primary had complained that Mr. Sasser has been the beneficiary of an improper campaign loan.

After Mr. Laird left the University Club at approximately 6:30 p.m. on October 19, 1976, he went home. On Wednesday, October 20 he testifies that he was in his office all day. On Thursday, October 21, his schedule was as follows:

He attended the inauguration of the new American University President in the morning, then went to a George Washington University Board of Trustees luncheon about noon, after which the Board met. He went from the Board meeting to the Airport. At 3:30 p.m. he took Northwest Airlines flight 375 to Milwaukee. He flew on to Green Bay, Wisconsin that same evening, and stayed at a motel in Appleton. The purpose of his trip to Wisconsin was largely political; he made several appearances on behalf of the Ford Committee through the course of the weekend, and also appeared with a local Republican candidate.

^{1/} Laird Tr. pp 20, 28, 43.



He states that while in Wisconsin, he heard allegations that improper campaign loans were involved in Republican candidate Harold Froehlich's campaign,^{1/} and that this, as well as perhaps just preparing for political appearances,^{2/} recalled for him his conversation with Thomson. On Friday morning, October 22, he telephoned his secretary, Laurie Hawley in Washington, D.C. to arrange, among other things, for some upcoming appointments in New York. He said to her, in what he characterizes as an afterthought, that he had a "rumor" which "might be of interest to our friends in Tennessee" and that she should attempt to get the information to Carl Wallace who might know someone in the Brock campaign. He told her that his information was to the effect that the Commission had taken or was about to take action to obtain records from the Sasser campaign. He stated that he does not recall using the word "subpoenas".^{3/} He does not recall receiving specific information from Mr. Thomson about a Commission vote, such as a unanimous vote, but in a pre-deposition interview he did say Thomson gave him the impression that the Commission was "working together" effectively on a number of cases.

Laurie Hawley, Laird's Executive Secretary, has been associated with him for ten years, including time with him in the Congress, at the Pentagon, and now at the Readers Digest.

^{1/} The investigators have confirmed that there had been such an allegation regarding Mr. Froehlich's campaign.

^{2/} Laird Tr. pp. 24, 25, 29

^{3/} Neither does Ms. Hawley. Hawley tr. p.5.



Upon receiving the above information she called Carl Wallace, who has also worked for years with Melvin Laird, both in the legislature and executive branch, and who is now a Vice President of the Purolator Corporation, with offices in Washington, D.C. She found Mr. Wallace on the golf course at the Burning Tree Country Club and in a brief conversation told him that Laird had asked her to pass on to him the rumor that the Commission was investigating Sasser's campaign records.^{1/} She indicated that Laird wanted Mr. Wallace to pass the information on to the Brock people and have them investigate it.^{2/} She testifies that Laird did not ask that Wallace get back to her or Laird with any form of confirmation of the rumor.^{3/}

Early on the evening of October 22, 1976, Mr. Wallace looked up the home telephone number of Mr. Dan Kuykendall, a Republican ex-Congressman from Tennessee who currently does consulting work in Washington, D.C. He called Mr. Kuykendall at home at approximately 6:30 p.m. and related the information which Ms. Hawley had given him. Kuykendall testifies Wallace told him of a rumor that the Commission had unanimously voted to issue subpoenas for Sasser's records within the last couple of days and that Kuykendall should attempt to have the Brock campaign people "check it out."^{4/}

Mr. Kuykendall then called his Executive Secretary, Elizabeth Powell, at her home, and asked that she obtain a phone number for Thomas Bell, Brock's campaign manager in Nashville. Miss Powell telephoned Senator Brock's Senate

^{1/} Hawley Tr. pp 7-8.

^{2/} Hawley Tr. pp 8-9.

^{3/} Wallace testified that Kuykendall was the only person to whom he spoke about this matter within the relevant time frame. Wallace Tr. p.8.

^{4/} Wallace confirms only that he told kuykendall that subpoenas had been issued and that should be checked out, but not that the vote was unanimous or recent. Wallace Tr. pp 5-7.



office around 7:00 p.m. and obtained Bell's Tennessee phone number from Senator Brock's secretary. She called Bell in Nashville and told him that he should call Mr. Kuykendall who had some information for the Brock campaign. Later in the evening she telephoned Mr. Kuykendall to satisfy her curiosity as to what the information was. Mr. Kuykendall told her at that time that the Commission had voted to issue subpoenas for Sasser's records. She does not recall whether Mr. Kuykendall said the vote was unanimous but she gleaned from the conversation that the vote was "for sure."

Thomas Bell formerly worked as Senator Brock's Administrative Assistant in the Senate, and became the Senator's Campaign Manager in February of 1976, at which time he moved to Nashville. He testified that he spoke by telephone with Kuykendall on the evening of Friday, October 22, 1976. In that conversation he states that Kuykendall told him the Commission had voted unanimously to issue subpoenas for Sasser's records.^{1/} Bell testified that Kuykendall indicated that his source was a person named "Carl", but Bell was unable under deposition to recall Carl's last name. Bell testified that Kuykendall represented that this information was a matter of public record and had been found by "Carl" in the course of doing some research at the Commission. Bell states that he told Kuykendall he did not know the procedures for confirming this information

^{1/} In an informal re-examination on December 15, 1976 Kuykendall reaffirmed that Wallace had told him the vote for subpoenas was unanimous. He pointed out that he had told Bell this within 30 minutes of having heard it from Wallace.



and asked for advice as to how he should proceed. Kuykendall recalls nothing of this portion of the conversation. Wallace has never done any research at the Commission.

It is unclear whether Bell was able to transmit the information further on the evening of Friday, October 22, 1976. It is unequivocally clear that he did transmit it at approximately 5:00 p.m. on Saturday, October 23, 1976, when he gave it by telephone to Mr. Robert Perkins, the Executive Director of the Tennessee Republican Party, and at that time, a half-time worker for the Brock campaign. Perkins had been on Senator Brock's Washington staff until the summer of 1976, when he moved to Nashville to assume his new post with the Tennessee Republicans, and to aid the Senator's re-election campaign. Prior to that move, Perkins had worked extensively on the Federal Election Campaign Act amendments of 1976, was thoroughly familiar with the law, and had come to know many Commission staff people.

Perkins had spent the day of Saturday, October 23, 1976 in Tunica, Mississippi and was on his way to a Brock fundraiser in Jackson, Tennessee, when he stopped at a gas station outside of Memphis and telephoned the Nashville campaign headquarters to determine if there were any messages for him. He was informed by Nancy Roberts, his secretary, that Bell wanted to speak with him and would call him right back. Bell did telephone him right back and told him that there was information that the Commission had subpoenaed Sasser's records. He states that Bell told him that the



Commission action was apparently a matter of public record and Bell wanted him to check it out.

Perkins then made a series of credit card telephone calls from that same phone booth to Washington, D.C. He attempted to reach William Loughrey, Executive Assistant to the Commission's Chairman. He called Loughrey's home and left word with Loughrey's roommate, Thomas Gilboy, that it was "extremely important" or "urgent" that he talk to Loughrey. Loughrey was not available.

Perkins reached Commissioner Joan Aikens at her home. According to all testimony, after a few courteous preliminaries, Perkins said that he had heard that the Commission had voted in open session to subpoena records in the Sasser campaign; Ms. Aikens replied that the Commission had not done so, that she was not at liberty to discuss compliance matters, and that Perkins should talk to Dave Fiske, the Commission's Press Officer, who handles all compliance inquiries. This telephone conversation lasted approximately three minutes.^{1/}

Perkins also attempted to call Jan Baran, Counsel to the Republican Congressional Committee in Washington, D.C. He did not succeed. He attempted to reach Miss Victoria Tigwell, a Commission employee, but also failed to reach

^{1/} It should be noted for the record that on Monday, October 25, 1976 at approximately 1:00 p.m the General Counsel was contacted in person by Commissioner Joan Aikens who related to him the phone call she had received Saturday evening from Bob Perkins at her home. The following day Commissioner Aikens provide a written rendition of that phone call for this file.



her. As he was now behind schedule to reach Jackson, Tennessee by 7:00 p.m. that evening, Perkins called his wife, Beth Perkins, in Nashville, relayed to her the salient information, and asked that she attempt to contact the individuals he had failed to reach.

Shortly thereafter, Beth Perkins did make contact with Jan Baran and Victoria Tigwell, although the order in which this occurred is not clear. She reached Baran at his home in Washington, D.C. Their testimony coincides on the basic point that she informed him she had heard the Commission had taken certain action in the Sasser case and that she wanted to know if Baran knew anything about it. Baran indicated that he did not, that he was sure it was confidential and that he would be unable to find anything out about it. Subpoenaed telephone records reflected that this call was under three minutes in duration.

Mrs. Perkins reached Victoria Tigwell at the Perkins' house at 1100 Maryland Avenue, N.E., Washington, D.C., which Miss Tigwell occupied as a tenant. Miss Tigwell has known the Perkins since 1974 when they worked together in behalf of the Republican candidate for the Senate from Iowa. Miss Tigwell came to Washington, D.C. in the Spring of 1976 and rented the Perkins' house early that summer when the Perkins moved to Nashville. Bob Perkins had been of assistance in referring her to the Commission for employment possibilities. Miss Tigwell was first employed as a Commission auditor and then in the summer became a member



of the Commission's Ten Day Non-Filer Team, which monitors failures to file required pre-election reports. A co-worker on the Ten Day Non-Filer Team testifies that Miss Tigwell recurrently talked openly of the Tennessee Senatorial race and expressed a clear preference for Senator Brock. The co-worker similarly testified that Miss Tigwell was aware that a Democratic opponent had filed a complaint against Sasser. Since the Perkins' departure for Nashville, Miss Tigwell testifies that she has been in regular telephone communication with them on a whole range of matters, notably including on-going problems having to do with the restoration of the Perkins' Capitol Hill property.

When Beth Perkins telephoned her on the evening of Saturday, October 23, 1976, Miss Tigwell recalls that Mrs. Perkins stated that they had heard in Tennessee that the Commission had subpoenaed Sasser's campaign records. Mrs. Perkins asked whether Miss Tigwell knew anything about it. Miss Tigwell states that she told Mrs. Perkins she knew nothing about it. In the course of this conversation Mrs. Perkins learned that Miss Tigwell would be out that evening for dinner with Daniel Reese, the Executive Assistant to the Commission's Staff Director. However, Mrs. Perkins denied that she suggested that Miss Tigwell question Mr. Reese with respect to the subpoenas.^{1/}

^{1/} Bob Perkins testified, with regard to this point: "I think Beth indicated [to her husband] she had asked Vicky to find out what she could." Bob Perkins Tr. p.82.



Miss Tigwell's parents were visiting Washington at the time and she went with them to dinner in the company of Mr. Daniel Reese, with whom she had developed a close social relationship. After dinner she and Reese returned her parents to the Maryland Avenue, N.E. residence and then went on to continue the evening elsewhere. In transit in Reese's automobile, Miss Tigwell said that she had heard that the Commission had subpoenaed Sasser's records. She may have preceeded this by saying that Beth Perkins had called her with this information. In any event Reese knew that the Perkins had made this inquiry because, whether she offered the information at the outset or only in response to his later question, there is no doubt Miss Tigwell told him that the question had been posed by the Perkins.

Reese confirmed that the Commission had in fact issued subpoenas against Sasser. In later reviewing his deposition and in response to a question, Reese said that he "may have" said something about a unanimous vote. Reese testified that he warned her in the car that she should not talk about the matter. In any event Miss Tigwell had been thoroughly warned on numerous earlier occasions with regard to the confidentiality requirement of the Federal election laws. According to Mr. Reese, this portion of their conversation that evening was very brief, and the Sasser matter was not adverted to again after the exchange in Reese's automobile.

At approximately 9:00 a.m. the morning of Sunday, October 24, 1976, Miss Tigwell telephone Bob Perkins from



her Maryland Avenue, N.E. residence. Perkins was at his home in Nashville. In a conversation which lasted four minutes and thirty seconds, she confirmed that the Commission had issued subpoenas for Sasser's records. Perkins, under close questioning, testified that he must have received the information regarding the 6-0 vote from her that Sunday morning.^{1/}

The state of the record regarding contact between Perkins and Bell on this subject that Sunday, October 24th, is somewhat confused. Bell and Perkins do agree that they were together at Bell's home that evening, along with other Brock campaign staffers for the regular weekly meeting at which campaign activity was reviewed, and that during that meeting Bell and Perkins spoke in a separate room by telephone to Tom Ingram of The Nashville Banner. Ingram is the reporter whose by-line appeared on The Banner story of October 25, 1976 regarding the Commission's subpoena action.

In variant terms, Bell's and Perkins' testimony is in agreement on the point that at least one of them discussed subpoenas with Ingram in the telephone conversation with him that Sunday evening; but only Perkins is strong on the point that either he or Bell told Ingram that the vote was 6-0; Bell's recollection of this is very hazy.

^{1/} Bob Perkins Tr. p. 84. Perkins did not recall whether Tigwell indicated during this phone call that Reese was the source. He does say Reese was discussed by Tigwell and him at the Thursday morning breakfast, October 28, 1976.



During this same conversation with Ingram, and pursuant to discussion they had previously had with each other, either Bell or Perkins suggested to Ingram that one way for the reporter to proceed would be to call Sasser's campaign staff and ask for a simple affirmation of the fact that the subpoenas had been issued. Very early the following morning, October 25, 1976, Ingram did just that. He first called Jerry Grant, Sasser's Campaign Manager, and said that he had learned that the Commission had issued subpoenas which were to be returned during the coming week. Grant was noncommittal since he was totally ignorant of the facts. Ingram then called Gary Blackburn, Sasser's Campaign Treasurer, and found him at breakfast. Blackburn was accurately quoted in The Banner story that appeared later in the day. He fairly successfully evaded the question of whether subpoenas had been issued, managing to characterize the Federal Election Commission's communication as no more than a request for additional records which would be supplied in the ordinary course.

Ingram then called David Fiske in Washington, D.C. at Fiske's home. Fiske is accurately quoted in the October 25, 1976 story as saying that there could be no comment on a compliance matter. Ingram then went with the story in the early edition of The Banner, which is Nashville's afternoon newspaper.^{1/}

^{1/} Parenthetically, it should be noted for the record that on Sunday, October 24, 1976, at approximately noon (after Tigwell's call to Perkins that morning), William Loughrey Executive Assistant to the Commission's Chairman, came to the Commission and there encountered Miss Tigwell.



and another member of the Ten Day Non-Filer Team, Miss Suzanne Callahan. Miss Tigwell indicated to Mr. Loughrey that Bob Perkins was looking for him or "wanted to talk to you about the Sasser case." Loughrey testified that at that point he responded by saying "yeh, it must be about the subpoenas" or he may have said "yeh, do you think it's about the subpoenas?" In any event he indicated that he needed a phone number from Mr. Perkins. Miss Tigwell gave him one. Loughrey subsequently tried that number and found it was incorrect, although the party at the other end indicated that Bob Perkins had once lived there. Loughrey's and Perkins' testimony is in accord on the point that Perkins never was re-contacted by Loughrey.



III. The Investigatory Process

Following preliminary discussion of the article in The Banner at its Tuesday, October 26, 1976 Executive Session, the Commission met in special Executive Session on Wednesday, October 27, 1976 and there authorized the Commission's General Counsel to proceed with an inquiry into the apparent breach of confidentiality reflected by that article. The initial procedure approved was to take the testimony of all Commission staff who had been present at the October 19th Executive Session, as well as the testimony of any other employees identified as possibly possessing knowledge of details of Commission actions in the Sasser case.

On October 29, 1976, the first staff depositions were taken, including those of Victoria Tigwell and Daniel Reese. Among other things to which Miss Tigwell testified, she stated she had had a breakfast meeting with Bob Perkins on Thursday morning, October 28th at the Hyatt Regency Hotel in Washington, D.C., at which time her pending deposition was discussed. During Perkins' deposition, he stated that at that breakfast meeting they had made passing reference to her phone call to Perkins on Sunday morning, October 24, 1976. Neither Miss Tigwell nor Mr. Perkins proved willing to describe the details of that breakfast conversation with any great specificity. Under deposition Tigwell was not adequately questioned with respect to her conversation with Daniel Reese on the evening of Saturday, October 23, 1976; the only details she divulged with regard to it were



that she told Reese that Beth Perkins had called and that she had relayed to Reese what Beth Perkins had said about subpoenas. The additional details were supplied subsequently by Reese's testimony. Tigwell failed, in response to questioning, to admit the telephone conversation she had had with Perkins on the morning of Sunday, October 24, 1976.^{1/}

On Saturday, October 30, 1976, all of the voting Commissioners were deposed. During the ensuing week of November 1, 1976 further depositions were taken of staff personnel identified as having attended the October 19, 1976 Executive Session, or as otherwise having familiarity with the Sasser matter.

On November 10, 1976, the General Counsel and Mr. Hershman travelled to Nashville, Tennessee, and during the course of the following morning, November 11, 1976, interviewed a number of individuals connected with the Sasser compliance matter. These included George Barrett, Mr. Sasser's attorney; Gary Blackburn, the Sasser Campaign Treasurer; representatives of the First National Bank of Tracy City, Tennessee and the United American Bank of Nashville, Tennessee; and an attorney associated with the firm serving the United American Bank. Their responses to close questioning strongly support the proposition that the breach of confidentiality at issue here was not occasioned by careless talk on the part of persons

^{1/} Tigwell 10/21/76 TR. p. 18.



associated with the subpoenaed banks or the Sasser campaign. The fact that the subpoenas had issued was very closely held, on instructions by George Barrett. The fact that The Banner story did not mention the bank subpoenas makes it relatively clear that the banks were not the source of any leakage of information; had Ingram known of the additional subpoenas, he surely would have included that detail in his article. Within the Sasser campaign, only Barrett, Blackburn and eventually Sasser's campaign chairman knew that the subpoenas had issued (Jerry Grant, the Campaign Manager, did not know this as a fact but had only heard it on the morning of October 25, 1976 from Ingram). It was the investigators judgement that, except for what Blackburn told Ingram during the early morning conversation of October 25, 1976, there had been no leakage of information from the Sasser structure. Moreover, no one in the Sasser campaign or at either of the banks could have been aware of what the Commission's vote was and accordingly could not have supplied that detail for The Banner article.^{1/}

During the afternoon of November 11, 1976, both Robert Perkins and Beth Perkins, accompanied by Counsel, were deposed. The depositions commenced at 2:00 p.m. with Mr. Perkins. His deposition was interrupted to take that

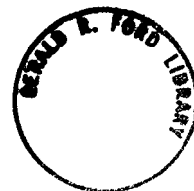
^{1/} It should be remembered that The Banner article was in error on the vote.



of Mrs. Perkins in order that she could make an airplane that day. Mr. Perkins deposition was resumed at approximately 5:00 p.m. in the afternoon and concluded at approximately 6:45 p.m. It was during the course of these depositions that Thomas Bell, Brock's Campaign Manager, was first identified as having participated in the chain of communication. Both Bob and Beth Perkins testified unequivocally that Bell had never given them his source.

On November 17, 1976, Thomas Bell accompanied by Counsel was deposed in the Office of General Counsel at the Federal Election Commission. During this deposition, Dan Kuykendall was first identified as having participated in the chain of communication. Bell also identified "Carl" as Kuykendall's source but could not further describe him except to characterize him as perhaps a "lawyer--lobbyist friend" of Kuykendall.

On November 18, 1976 at 10:00 a.m. the General Counsel and Mr. Hershman interviewed Mr. Kuykendall at his 16th street office in Washington, D.C. Mr. Kuykendall stated (and later reaffirmed under deposition) that he had received a phone call at his home one evening late in the week of October 18th. The caller, whom Mr. Kuykendall would not identify during the course of this interview, told him that within the last few days the Federal Election Commission had taken a unanimous vote to subpoena records of the Sasser campaign. He described his source as a prominent person,



one who had served in the legislature, although not in an elective capacity, and who had also served with the executive branch of government, although not for the last four years. He indicated that he was unwilling to identify the source until the source had given him clearance to do so. It was agreed that he would attempt to reach his source that day and that he would be back in contact during the course of the afternoon. He indicated that if his source asked him not to cooperate, he would resist a subpoena. The interview terminated.

In the late afternoon of November 18, 1976, Mr. Kuykendall telephoned the General Counsel to state that he had been unable to contact his source and that that person would be unavailable until Monday, November 22. While this statement was received by the investigators with skepticism, and while they assumed that the intervening weekend would be used by Mr. Kuykendall and other to consult with regard to the investigation, it was decided not to issue a subpoena to Mr. Kuykendall at that time.

Within the following 24 hours, using the information supplied by Bell and Kuykendall with respect to "Carl," and drawing on informal sources, the investigators conditionally identified Kuykendall's contact as Carl S. Wallace, Vice President of the Puralator Corporation. It was nonetheless decided to await Mr. Kuykendall's telephone call on Monday,



That call was received at approximately 10:00 a.m. on the 22nd. Mr. Kuykendall identified his source as Carl S. Wallace and indicated that Mr. Wallace was expecting to hear from the Commission.^{1/}

Mr. Wallace was immediately telephoned and an interview was granted forthwith at Mr. Wallace's office in downtown Washington, D.C. Mr. Wallace stated that he had received a telephone call at the Burning Tree Country Club on Friday, October 22, 1976 from Ms. Laurie Hawley, secretary to Melvin Laird. He stated (and has reaffirmed under oath) that Ms. Hawley had indicated to him that Laird had called her and asked to see if Wallace knew anyone in the Brock campaign; that Laird had told her that the Commission was issuing subpoenas for the records of Brock's opponent; and that this information should be "checked out."^{2/} Wallace then stated that he passed the information on to Kuykendall at Kuykendall's home that evening.

Laird's office was then telephoned by the investigators from the first floor of Wallace's office building. A secretary took the message and said that she would be back in touch. Ms. Hawley called the General Counsel during the afternoon of November 22, 1976 stating that Laird was indisposed that day, and would be out of town November 23, but would be available for a meeting at 10:00 a.m. November 24, 1976.

^{1/} Kuykendall testifies that to this day, he has not learned the identify of Wallace's source.

^{2/} Wallace's Powell's and Kuykendall's testimony makes it plain that they all understood that the information was to be put to political use.



On November 24th the investigators met with Melvin Laird at his office on Rhode Island Avenue in Washington, D.C. Present at that meeting was Ms. Laurie Hawley. A key detail of this interview was Melvin Laird's representation that some time toward the end of October he had received information in Washington, which he characterized as rumor, that the Commission had acted or was about to act to obtain records in connection with the Sasser investigation. He declined at this time to identify his source. He deprecated the value of the information he had received. He indicated that he had learned as early as September, from friends on Capitol Hill, that campaign loans were at issue in the Tennessee Senatorial race, and this had interested him because he had been considering an article on abuse of the campaign laws, specifically with respect to campaign loans and personal expenditures by candidates. He set out the Readers Digest policy against revealing the identity of confidential news sources, although he stopped short of invoking a newsman's privilege. He represented that he had the impression that the rumor he had received was public knowledge, since it was his impression that everything the Commission did was done publicly. Notwithstanding these impressions, he did not think the Readers Digest policy regarding confidentiality could be breached. He indicated a willingness to cooperate if there was some way that the investigators could assure that he and the Readers Digest would remain unidentified. Several alternatives were discussed, to none of which was he particularly responsive.



On several occasions he declined to state that his source was not within the Commission. The interview terminated after approximately an hour with the understanding that Laird would consult with the Digest Counsel as to whether or not he should answer the questions of 1) who gave him the information, 2) when and where it was given, and 3) who else, if anyone, was involved.

It is now clear that either on Thursday, November 18, or relatively early Friday, November 19, Kuykendall was in fact in contact with Wallace, and that Wallace was immediately in contact with Laird. In short, these three figures had in some fashion consulted prior to the morning of Monday, November 22, 1976 when Mr. Kuykendall called the General Counsel to identify Mr. Wallace. It is also now clear that some time between Wallace's contact with Laird on November 18th or 19th and the investigators' interview of Laird on November 24th, Laird telephoned Vernon Thomson. The investigators did not learn at this telephone conversation until December 4, 1976.

Because of the intervention of the long Thanksgiving Day weekend following the Laird interview, nothing further was done with respect to the investigation until the week of November 29, 1976. On November 30, 1976, the General Counsel spoke with Laird by telephone. The conversation was largely an abbreviated replication of the contents of the November 24th interview. Mr. Laird was informed that,



given the state of the record before the investigators at that time, a recommendation would be made to the Commission that formal depositions be taken. He indicated that he would resist such a procedure. He nonetheless indicated that he would talk further with his Counsel.

Several subsequent efforts to reach Laird again prior to the Commission's December 2, 1976 meeting failed. At that Commission meeting the General Counsel sought and received from the Commission subpoenas for Laird, Hawley, Wallace, Powell and Kuykendall, as well as for the passenger lists of several Northwest Airlines flights to Milwaukee on October 21, 1976.^{1/} At approximately 10:00 a.m. in the morning of December 3, 1976, telephone contact with Laird was resumed. In the early stages of that conversation, it appeared

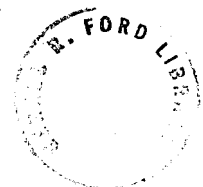
^{1/} Immediately prior to the December 2nd Commission meeting the General Counsel, accompanied by Mr. Hershman approached Chairman Thomson in the Commission's 5th floor reception area. Counsel told the Chairman that the investigators had tracked the leak back to Melvin Laird and that Counsel was about to request a subpoena for certain airline passenger lists for flights to Milwaukee which Laird may have taken on Thursday, October 21, 1976. The Chairman expressed no surprise or other emotion at the mention of Laird's name. Counsel stated that as a matter of courtesy he wished to inform the Chairman of this imminent request because of the chance that, October 22nd - 25th having been a long holiday weekend, the Chairman, a Wisconsinite, might also have been on one of the flights. The Chairman expressed no concern whatsoever at the time and indicated that he normally flew to Wisconsin only on Tuesdays, to attend certain Board meetings.



that Laird's position had not changed whatsoever since the last contact. He was then informed that the Commission had authorized subpoenas for him and other persons. He expressed extraordinary concern over this development. This conversation ended with the understanding that he would be in touch with his counsel, and at some point would probably be back in touch with the investigators. He called back at approximately 11:15 a.m. that same morning and expressed great interest in the possibility that some arrangement could be worked out whereby anonymity could be preserved. It was tentatively agreed that he would meet with the investigators the following Monday morning, December 6, 1976 at 11:00 a.m. at his office. Laird then went to lunch with his counsel and this matter was discussed. It is now clear that sometime during that same day Laird called Vernon Thomson and, at the very least, indicated disappointment that Mr. Thomson had voted for a subpoena for information which Thomson already had.^{1/}

On Saturday morning December 4, 1976 at 9:30 a.m. the General Counsel received a telephone call at his residence from Marilyn Early, Vernon Thomson's secretary. Ms. Early indicated that the Chairman wished to speak with the Counsel and requested that Counsel call. In the ensuing telephone

^{1/} Laird Tr. p. 38. In his December 7th interview with the investigators Mr. Laird had expressed himself rather more forcefully on this point.



call, the Chairman told the Counsel that he was disturbed about their brief conversation prior to the Commission meeting of Thursday, December 2, 1976, and by the Counsel's presentation to the full Commission in Executive Session later that day, in which Laird had been identified as part of the chain of communication. The Chairman indicated that he would like to meet with the Counsel sometime during the weekend. It was agreed that Counsel would meet at the Chairman's home later that afternoon.

That meeting commenced approximately 4:15 p.m. The Chairman indicated that he had reviewed his deposition and that in view of the Counsel's presentation to the Commission on December 2, 1976 and Laird's apparent involvement, there was an additional matter of which the Counsel should be informed. The Chairman then recounted his meeting with Laird at the University Club on the evening of October 19, 1976. He stated that at that cocktail reception for Robert Spitzer he had been aggressively approached by Laird who had berated the Commission for not acting expeditiously on complaints and for apparently pursuing a policy of postponing compliance actions until after the election. The Chairman said that he may have overreacted to Laird's attack. He stated that he had defended the Commission's action by vehemently replying that the charge of inaction was completely false and that the Commission was moving forward on all matters and was acting very vigorously.



The Chairman said he did not say anything about the Sasser case or Brock, nor did he mention subpoenas. In response to a question, the Chairman said that Laird may have said something about the Commission improperly permitting bank loans to candidates. The Chairman was emphatic that he had not said anything specific about any investigation but had merely spoken in generalities in defense of the Commission's position.

Counsel asked the Chairman whether Laird had been in touch with him since the October 19, 1976 reception. The Chairman stated that Laird had called him several weeks ago to ask who Mr. Murphy was and why Murphy was seeking an appointment with Laird. The Chairman stated that he explained to Laird that the Commission had authorized an investigation and that the Counsel was doing his duty in carrying it out. Counsel asked whether during this telephone conversation the Chairman and Laird had spoken about their previous exchange at the University Club on October 19, 1976. The Chairman said that that conversation did not come up. The Chairman did not inform the Counsel of Laird's telephone call of December 3, 1976.

Apart from Robert Spitzer, the Chairman identified Hyde Murray as having been present at the University Club that evening^{1/} but was unable to recall who else may have been present.

^{1/} Hyde Murray was interviewed by the investigators on December 9, 1976 at his office at the House Committee on Agriculture. Murray recalls having attended the University Club function, and saw Laird and the Chairman there, but did not overhear the contents of their conversation.



Counsel recommended to the Chairman that he search his memory for the identity of additional persons who may have heard his exchange with Laird on October 19, 1976. It was also agreed that the Chairman should in some way supplement the existing record in this investigation. The interview terminated shortly before 5:15 p.m. Counsel immediately dictated a memorandum of the interview from a public telephone booth at the intersection of Kirby Road and Route 123 in McLean.^{1/} Later that evening the Counsel telephoned Mr. Hershman and described the interview in detail.

On Monday, December 6, 1976 the investigators met at 11:00 a.m. with Mr. Laird, and Mr. Timothy May, the Readers Digest local counsel. At several points during the course of this discussion, Mr. May expressed displeasure over the fact that Federal law might be applied to a situation in which one had ascertained certain information during the course of a cocktail party conversation, or that Federal investigations should ensue in the wake of comments having been made in the heat of provocation. He strongly indicated that the Readers Digest would resist the subpoena if it issued. This interview terminated with the agreement that Mr. Laird would talk to his source and seek permission to give the investigators the requested information.

At approximately 1:30 the investigators met with the Chairman who indicated that he had spoken with Laird around noon. After a limited discussion, the Counsel asked if

^{1/} A copy of that memorandum is attached hereto.



the Chairman would telephone Mr. Laird and grant permission to him to talk to the investigators. The Chairman agreed that he would, and thereafter at approximately 2:00 p.m. he notified Counsel that permission had been granted. Counsel was unable to arrange for a further meeting with Mr. Laird that day, but an appointment was made for 10:00 a.m. the following morning, December 7, 1976.

At that December 7th meeting, accompanied by Mr. May, Laird indicated that he had approached Mr. Thomson aggressively at the October 19 University Club function and had needled him about the Commissioners' failure to act on compliance matters. He said that at that time he had specifically mentioned loan problems in Tennessee, Minnesota and Maryland. He recalled that the Chairman had said that the Commission was acting to investigate records in these campaigns. He could not recall that either he or the Chairman had used the word subpoena nor did he have any recollection of receiving information about a specific Commission vote. He indicated that he did receive a strong impression that the Commission was acting vigorously and currently in these cases. He did not recall whether the name Sasser came up, but was certain that the name Brock had not been mentioned.

He recalled thereafter calling the Chairman, sometime between November 19, and November 23, to inquire about Mr. Murphy and why the latter was seeking an appointment with him. He stated he wanted to know what was going on. He stated that during that phone call the October 19th



University Club meeting was probably mentioned and that he had told the Chairman that the Chairman was the only one with whom he had discussed the Tennessee matter. He stated further that upon receiving notice on December 3, 1976 from Mr. Murphy that the Commission had issued a subpoena, he had called the Chairman to ask why the Chairman voted for a subpoena when the Chairman was fully informed of the relevant facts.^{1/}

On December 15, 1976, Mr. Laird was deposed. Under oath, he showed great reluctance to be as specific as he had been in informal meetings. The transcript of that deposition is attached hereto and should, as earlier suggested, be read in its entirety. Pages 5-16 and 25-45 are particularly relevant.

During the course of the deposition (pp. 48-49) the investigators first learned that Mr. Thomson was apparently represented by an attorney named Jerris Leonard, who earlier that week had talked to Carl Wallace and to two assistants in Laird's office. Through each of these individuals Mr. Leonard sought to obtain an appointment to see Mr. Laird prior to Laird's deposition (Tr. p.48), but Laird had referred him to Mr. May, the Digest counsel, and never did talk to him. Leonard had asked Wallace what Wallace had told the investigators; Wallace told him.

^{1/} Again, this December 3rd telephone call was not mentioned by the Chairman when he met the General Counsel at his McLean home the next day, Saturday December 4th.



After returning to the Commission from this deposition, the General Counsel informed the Chairman of the Leonard reference during the deposition, and the Chairman confirmed that Leonard was representing him. Counsel indicated that perhaps Mr. Leonard should be present during the Chairman's upcoming re-deposition. The Chairman indicated that Counsel should talk to Leonard about that and provided Counsel with Leonard's telephone numbers. The General Counsel talked with Leonard late that afternoon and an appointment at Leonard's office was arranged for 2:00 p.m. Thursday, December 16th.

At that meeting, the investigators spoke candidly and at length with Mr. Leonard about the state of the record in this case. There was prolonged discussion of what further developments in the case might conceivably be, from referral for criminal prosecution at one end of the spectrum, to informal internal reprimand on the other. By the close of the conversation, the investigators had identified, and Mr. Leonard had duly noted, six significant discrepancies or omissions on the record which bore on the Chairman's credibility. These were:

1. The Chairman's failure to disclose to the Commission or the staff, prior to December 2, the telephone call from Mr. Laird that came in sometime between November 19 and 23.

2. The failure of the Chairman to disclose the October 19, 1976 meeting with Mr. Laird and the initial Laird telephone conversation, once the General Counsel had made a



presentation identifying Mr. Laird at the December 2, 1976 Commission meeting, a meeting at which Commissioner Harris had promptly stated that he had met with Mr. Laird sometime around October 19 at the Hay Adams Hotel.

3. The failure of the Chairman to disclose the October 19, 1976 meeting with Laird and the initial Laird telephone conversation until thirty-six hours after the December 2, 1976 Commission meeting, when disclosure was finally made to the General Counsel at the Chairman's home in McLean, Virginia.

4. The Chairman's statement during the December 4, 1976 meeting at his home with the General Counsel that in the course of Laird's initial telephone conversation, the University Club meeting of October 19, 1976 "did not come up"; Mr. Laird had informed the investigators on December 7, 1976 that that October 19, 1976 meeting probably was discussed in the first telephone conversation, and the Chairman now testifies that it was mentioned.

5. The failure of the Chairman to disclose in his Saturday, December 4, 1976 meeting with the General Counsel that the October 19, 1976 meeting at the University Club had included specific reference to the Tennessee, Minnesota and Maryland loan complaint situations. The General Counsel pointed out to Mr. Leonard that in the December 4, 1976 meeting with the Chairman, the Chairman had stated that he defended the Commission against Mr. Laird in very general terms and had in no way been specific. Mr. Laird, of course, had informed the investigators on December 7, 1976



that Tennessee had in fact been mentioned on October 19, 1976.

6. The failure of the Chairman to disclose at his Saturday, December 4, 1976 meeting with the General Counsel that Mr. Laird had telephoned him the day before, December 3rd.

Mr. Leonard met with Mr. Thomson at 10:00 a.m. on Friday, December 17, 1976. At noon on that day, Mr. Leonard telephoned the General Counsel and the Chairman's re-deposition was arranged for 9:30 a.m. on Monday, December 20th at Mr. Leonard's office.

On December 20, under deposition, Mr. Thomson stated:

1. That he had told the General Counsel at the Saturday, December 4th meeting that Tennessee, Minnesota and Maryland had been mentioned in the conversation with Laird on October 19;

2. That he had told the General Counsel at the meeting of Saturday, December 4th that Laird had called him not once but twice;

3. That in the initial telephone conversation with Laird sometime between November 19 and November 23, the University Club conversation had been mentioned in some fashion;

4. That he had been "struck like a thunderclap" by the General Counsel's presentation of December 2, 1976 to the full Commission regarding Laird's involvement, and that after he had pondered over the General Counsel's presentation, it came to him that he should correct his deposition and thus call the General Counsel in a timely fashion on Saturday morning, December 4th.

5. That Commissioner Harris' prompt declaration during the meeting of December 2nd that Harris had met with Laird around October 19 should be viewed as involving



"different circumstances." The implication of this statement by the Chairman was that Harris' December 2 declaration did not bear on the Chairman's silence at that same meeting with regard to his own contact with Laird.

Due to the pressures of time, this report at this juncture does not purport to fully review either Mr. Laird's or Chairman Thomson's deposition. It is recommended that both be thoroughly read. Suffice it to say that Chairman Thomson's testimony completely and unequivocally denies that in his conversation with Mr. Laird on October 19, 1976 he did more than defend the Commission in general terms, although certain States were indeed mentioned; that he gave Mr. Laird the specifics of any complaint; or that he gave Mr. Laird any information regarding any Commission vote on a compliance matter.

At the close of the deposition, Mr. Leonard expressed the hope that he would be able to meet with the General Counsel prior to the time when the latter made his report to the Commission. The General Counsel was noncommittal.

III. Possible Further Investigatory Steps

Two additional classes of persons who arguably maybe able to supply an additional relevant information have not been interviewed. First class is comprised of the approximately 50-75 persons who attended the University Club function on October 19, 1976. The investigators do not have the names of these individuals but could probably obtain them.



The second class is comprised of the Brock campaign staff people other than Perkins and Bell, who attended the staff meeting at Thomas Bell's home in Nashville on October 24, 1976.

It is the Counsel's current recommendation that further interviews of persons present at the University Club not be held; it would appear that no one overheard the conversation between Mr. Laird and Chairman Thomson. Nor does there seem to be great merit to proceeding with interviews of persons present at Bell's home on October 24, 1976; the relevant conversation with Tom Ingram took place in a room apart from the room in which the main staff gathering occurred. And there is no indication on the present record that the Commission's action was a subject of discussion except among Bell, Perkins and Ingram. Nonetheless, the Commission may wish to examine the option of having these people examined.



IV. Legal Analysis

The first issue is to what extent 2 U.S.C. §437g is applicable to the conduct of various individuals involved in the above-described chain of communication. In relevant portion, that section states:

2 U.S.C. §437g(a)(1)....

(2) the Commission upon receiving any complaint under paragraph (1), and if it has reason to believe any person has committed a violation of this Act or of Chapter 95 or Chapter 96 of the Internal Revenue Code of 1954, or, if the Commission on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities, has reason to believe that such a violation has occurred, shall notify the person involved of such alleged violation and shall make an investigation of such alleged violation in accordance with the provisions of this section.

(3)(A) Any investigation under paragraph (2) shall be conducted expeditiously and shall include an investigation, conducted in accordance with the provisions of this section of reports and statements filed by any complainant under this title, if such complainant is a candidate.

(B) Any notification or investigation made under paragraph (2) shall not be made public by the Commission or by any person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made.

....

(c) any member of the Commission, any employee of the Commission or any other person who violates the provisions of subsection (a)(3)(B) shall be fined not more than \$3,000. Any such member, employee, or other person who knowingly and willfully violates the provisions of subsection (a)(3)(B) shall be fined not more \$5,000. (Emphasis supplied.)



The above quoted language §437g(a)(3)(B), to the effect that "any notification or investigation made under paragraph 2 shall not be made public" has not been formally construed by the Commission, nor, of course, by any court. The legislative history of the 1976 amendments to the Federal Election Campaign Act is not helpful as to the meaning of the phrase "made public"; the only indication there is that Congress meant "disclosure." S. Rep. No 1237, 93rd Congress 2nd Sess. 94 (1974). There has been no judicial review of the constitutional permissibility of imposing a confidentiality requirement upon persons other than Commission employees. That that confidentiality requirement may appropriately be imposed upon Commission employees would appear at least inferentially to be the lesson of cases such as Swaley v. U. S. 376 F.2d 857 180 Ct. Cl. (1967) and Iantiarelli v. Morton, 327 F. Supp. 873 (E.D. Penn. 1971), remanded on other grounds, 463 F.2d 179.

A. Commission Personnel

It is the General Counsel's recommendation that the Commission interpret the statutory language regarding making investigations public in the following manner: Whenever a Commission employee communicates information, other than in the ordinary course of an investigation, to any person not officially employed with the Commission, a violation of the confidentiality requirements of 2 U.S.C. §437g may be found if the communication directly results in knowledge on the part of the recipient of the information.



that the Commission is conducting an investigation with respect to a specific individual, committee, or other organization or group.^{1/}

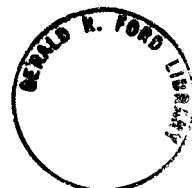
So interpreted, the concept of making a matter public would not encompass communications between Commission employees regarding specific Commission compliance activity. Applying this interpretation to the actions of Commission personnel involved in this case leads to the following conclusions:

1. Victoria Ann Tigwell

The evidence is clear that Miss Tigwell on Sunday, October 24, 1976, "made public" the Commission's investigation of the Senatorial campaign of James Sasser of Tennessee by specifically communicating to an individual in the private sector, namely Robert Perkins, a part-time aide in the campaign of incumbent Senator William Brock, the fact that the Commission had subpoenaed Sasser Committee records.

RECOMMENDATION: The Staff Director placed Miss Tigwell on administrative leave with pay on November 29, 1976. I recommend that the Staff Director now initiate appropriate procedures to terminate Miss Tigwell's employment with the Commission, Such procedures may appropriately include a provision for argument by her Counsel before the Commission that a personnel sanction short of dismissal be imposed. In the meantime, I recommend that the Commission find reason to believe that Miss Tigwell violated the confidentiality requirement of 2 U.S.C. §437g(a)(3)(B). Conciliation

^{1/} This statement of the test is not exhaustive. There may be cases where the Commission is about to investigate, or has concluded an investigation, where the matter is not yet properly public. Such instances would be subject to variant wording of the cited proposition.



agreement negotiations with Miss Tigwell's attorney are ongoing and may well result in a settlement, as well as a waiver by her of further formal Commission findings to which she would otherwise be entitled.

2. Daniel Reese and William Loughrey

The foregoing recommended interpretation of the "made public" language of 2 U.S.C. §437g does not cover the communications of Reese to Tigwell on the evening of Saturday, October 23, 1976 nor of Loughrey to Tigwell on Sunday, October 24, 1976. Both communications were Commission employee to Commission employee. Accordingly, there is no reason to believe that either Reese or Loughrey violated §437g(a)(3)(B). I am of the view, however, that Mr. Reese's October 23rd confirmation to Miss Tigwell that Sasser subpoenas had issued, at a time when Reese knew that Brock supporters, i.e. the Perkins in Tennessee, had asked about this subject, amounted to an extraordinarily serious error of judgement. Severe disciplinary action is indicated, in my judgement. I say this notwithstanding my appreciation of the fact that Mr. Reese, during his deposition, was forthcoming with regard to his confirmatory statement to Miss Tigwell that Saturday evening.

With respect to Mr. Loughrey, both his remarks to Miss Tigwell during the afternoon of Sunday, October 24th and the context in which they were uttered, are somewhat unclear on this record. He would appear to have been careless offhand in indicating to Miss Tigwell that Perkins might be



checking out the subpoenas, but I have no recommendation as to what disciplinary action may be in order.

3. Vernon W. Thomson

The question of whether there is reason to believe Mr. Thomson "made public" a Commission investigation turns in part upon whether his recollection or that of Mr. Laird is better with regard to their conversation at the University Club on October 19, 1976. Mr. Thomson states emphatically that he said nothing specific to Laird, that "subpoenas," "Brock" and "Sasser" were not mentioned, and that he does not recall saying the Commission was "investigating the records" or "moving to obtain records" in compliance actions involving Tennessee and other named jurisdictions. Mr. Laird's best recollection under oath, on the other hand, is that Mr. Thomson had used the terminology "investigation of records," and had indicated "that these records or these complaints would be investigated, and that the Commission was going to pursue this matter and try to get answers."^{1/}

^{1/} Laird's testimony differs from Mr. Thomson's testimony in three additional salient respects:

- 1) Laird states that he and Thomson reviewed the contents of their October 19th conversation, probably on Friday, December 3rd; Thomson states that no such review occurred; (Laird Tr. p 44, Thomson tr. p. 18)
- 2) Thomson does not agree that Laird expressed disappointment to him on December 3rd that the Commission had issued subpoenas (Laird Tr. p. 38, Thomson Tr. p. 16)
- 3) Thomson does not agree that on December 3rd Laird "certainly did" tell him to tell the Commission staff of the October 19th conversation (Laird Tr. p. 4, Thomson Tr. p. 17)



At several points during the deposition, Laird made statements such as "I did get the impression that it was a very active matter, and that the Commission was pursuing these complaints vigorously; I got the impression that it was an immediate, ongoing matter, and that the Commission was pursuing the matter vigorously." This testimony conforms to earlier statements made by Laird to the investigators.

It is to be remembered that as the information makes its way toward Tennessee on October 22nd, its recipients grow increasingly specific as to its contents. Laird testified he told Hawley of a rumor that the Commission was investigating the records of Brock's opponent. Hawley testifies to the same effect. But Wallace was clear that Hawley had told him the records had been subpoenaed. And Kuykendall swears Wallace told him the rumor was that the Commission had voted unanimously to issue subpoenas that week. Bell testifies that Kuykendall told him of a unanimous subpoena vote and that Kuykendall had said "Carl" [Wallace] had said so to Kuykendall. Powell testifies to learning of a "sure" vote for "subpoenas." It should further be noted that each of these persons swore that they had only spoken about this matter with the individuals they identified on the record.

This increasing specificity lends credence to the idea that Mr. Laird's initial transmission to Hawley was even more



particularized than either one remembers. Unless something had been said by Mr. Thomson regarding Commission pursuit of "records" in the several campaigns, it would appear to have required an extraordinarily intuitive leap by Mr. Laird to put in motion information which Mr. Wallace clearly recalls as involving at least "subpoenas" for Brock's opponent. It may reasonably be inferred from the record as a whole, notwithstanding Mr. Thomson's belief, that he in fact told Mr. Laird at least that the Commission was acting in some fashion to obtain records in connection with Tennessee. The inference is reasonable notwithstanding the fact that Mr. Laird did not transmit information to Hawley until two and one-half days after the October 19th conversation, a gap that has not thus far been satisfactorily explained.

In the General Counsel's view, such an inference may properly be drawn at this time and should be. That something compromising may have been uttered by Mr. Thomson on October 19th is implicitly buttressed by his remarkable failure until December 4th to report to Commission staff that he had spoken by telephone with Mr. Laird about this investigation and the University Club conversation perhaps as early as November 19th and certainly not later than November 23rd.

The question then becomes whether a preliminary finding that Mr. Thomson was sufficiently specific in his October 19th discussion with Mr. Laird provides a basis for finding reason



to believe that he violated the Act. It is the General Counsel's view that the test set forth above is applicable to communications possessing the degree of specificity reflected by Laird's testimony and reasonable inference; in short, this record supports a preliminary finding that Mr. Thomson's communication on October 19th directly resulted in knowledge on the part of Mr. Laird that the Commission was conducting an investigation with respect to the Sasser campaign. Accordingly, it is recommended that the Commission find reason to believe that Vernon W. Thomson violated §437g(a)(3)(B) of the Act.

B. Application of §437g to Persons Not Officially Employed with the Commission

§437g(a)(3)(B) expressly states that non-Commission individuals have the same confidentiality obligation that Commission employees bear with respect to investigations. On the present state of this record, and given the exigencies attending the submission of this report, I am not at this time prepared to make a recommendation to the Commission as to whether it should seek to apply §437g to persons identified as having participated in the described chain of communication who are not officially employed with the Commission.

C. Referral to the Justice Department for Possible Perjury and Obstruction of Justice Investigation.

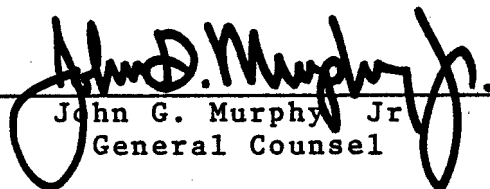
There is some evidence on this record that perjury may have been committed and obstruction of justice attempted in the course of this investigation. However, for the same reason that I noted in subsection B above, I am not at the time prepared to recommend to the Commission that it refer any aspect of this case to the Department of Justice for



aspect of this case to the Department of Justice for investigation of these potential charges.

V. Conclusion

Find reason to believe with respect to Victoria Ann Tigwell and Vernon W. Thomson; prepare appropriate transmittal letters; defer determinations regarding persons outside the Commission who participated in the described chain of communication; defer consideration of whether to refer any aspect of the case to the Attorney General.

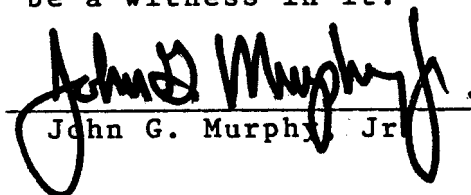


John G. Murphy Jr.
General Counsel

December 21, 1976

Addendum

As this report makes clear, Mr. Thomson's testimony of December 20, 1976 is, on a number of points, in direct and unequivocal conflict with the General Counsel's clear recollection of, and a contemporaneous memorandum made with regard to, their meeting at Mr. Thomson's home on Saturday, December 4, 1976. It also conflicts with an account of that meeting related orally by the General Counsel to Mr. Hershman later that same day. The General Counsel is accordingly of the view that the Commission may appropriately request that I relinquish control of this investigation, since I may be a witness in it.



John G. Murphy Jr.



December 4, 1976

MEMORANDUM TO: The File

FROM: John G. Murphy, Jr. *JM*

Saturday, December 4, 1976, 5:15 p.m., Intersection of Route 123 and Kirby Road, McLean, Virginia.

I have just spent approximately one hour with Vernon Thomson at his home at 6213 Kellogg Drive, McLean, Virginia. Marilyn Early telephoned me at 9:30 this morning and indicated the Chairman wanted me to call him. I telephoned him and he said that he would like to meet with me sometime this weekend because he was disturbed about our brief conversation prior to the Commission meeting, Thursday, December 2. At that time, accompanied by Mike Hershman, I had said to the Chairman that I was going to request the Commission to subpoena the passenger list of several Northwest Airlines flights from Washington to Milwaukee on October 21, 1976. I said that as a matter of courtesy I wanted to inform him of this imminent request because it seemed to me that there was a chance with the holiday weekend coming up he might have been on one of the flights. He expressed no concern whatsoever at that time and indicated that he normally flew to Wisconsin on Tuesday to attend Board meetings. I told him that I was subpoenaing the plane records because we had tracked the leak back to Melvin Laird who was on one of the airplanes for which I sought records. He expressed no surprise or any other emotion when I mentioned Laird's name.

During this morning's telephone conversation, I agreed to meet with him this afternoon and I went to his home at approximately 4:15 p.m. After some preliminaries with regard to last evening's staff party, he indicated that he had reviewed his deposition and thought there might be an omission of importance.

He said that on Tuesday, October 19, 1976, he had gone to a reception of Wisconsin people for an old friend of his, Bob Spitzer, at the University Club and during the course of his brief stay had run into Mel Laird. He said Laird came up to him with other people standing around and berated the Commission for not acting expeditiously on complaints. He said that he had felt somewhat provoked



He said he may have misremembered.
12/4 PM

and had vehemently replied that that was totally false, that the Commission was moving forward on all matters and was acting very aggressively. Thomson says he did not say anything about the Sasser case or Brock and that he did not mention the word subpoenas. In response to a question, he said that Laird may have said something about the Commission letting all those banks make those loans. Thomson's memory is not strong on this. He said that Laird's aggressive behavior was characteristic and he recounted another earlier unrelated episode in which Laird had behaved the same way.

12/6
Remember
he said
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this part of
conversation
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JMM

In phrase
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JMM

I asked him if he could remember who was at the party who could have heard this conversation. He was unable to give me a name. He had earlier mentioned a man named Hyde Murray as being present but he did not think Murray heard his exchange with Laird.

Thomson's manner throughout this interview somewhat puzzled me. I asked him whether Laird had been in touch with him since that reception. He said Laird had called him a couple of weeks ago to ask who Murphy was and why I had been calling Laird seeking an appointment. Thomson represents that he said to Laird that the Commission was investigating a matter, that I was authorized to act for the Commission, and that he, Thomson, did not know exactly what I was doing. I asked whether they had talked about their previous conversation at the University Club. Thomson said it did not come up. He could not relate any other details of this telephone conversation. It seems to me odd that Laird made this telephone call, as described, since the call was apparently made after I had tried to reach him and therefore well after he had already conferred with Wallace and probably Kuykendall about the fact that I was on the track.

We left it that he would probably submit a statement with respect to the University Club meeting, that he would pinpoint the exact date of the meeting and that he would search his memory for the name of any person at the University Club who may have heard his conversation with Laird. He also agreed to sign another subpoena for the Northwest Airlines flight we missed with a previous subpoena.



[Addendum 12/7 6:30 PM 2119 -] At beginning of this Sat. meeting, VT said he had grown disturbed since Thursday meeting, thinking about Laird involvement. Seeing Laird's name on chart I had drawn in exec session, and reflecting on my mention of his name that morning, VT ~~felt~~ thought it was all "incredible" and remembered his UC contact with Laird. But then later he says Laird called him a "a couple of weeks ago" about me - why didn't he call me in then?
Am



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

January 12, 1977

FCC

The Honorable Philip Buchen
Counsel to The President
THE WHITE HOUSE
Washington, D.C. 20500

Dear Mr. Buchen:

Enclosed are two of the deposition transcripts which I thought should be in the President's file. There are copies of all other depositions taken of Commissioners, staff, and others which are available in my office should you desire them.

If you have any further questions, please don't hesitate to call me.

Best regards.

Sincerely yours,

Joan D. Aikens,
Commissioner

JDA:jet

Enclosures a/s



ORIGINAL

Transcript of Proceedings

FEDERAL ELECTION COMMISSION

Depositions taken by the General Counsel
for the

Federal Election Commission MUR 298 (76)

DEPOSITION OF VERNON W. THOMSON

Washington, D. C.

Monday, 20 December 1976

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FEDERAL ELECTION COMMISSION

Depositions taken by the General Counsel
for the
Federal Election Commission MUR 298(76)

DEPOSITION OF VERNON W. THOMSON

Washington, D. C.
Monday, 20 December 1976

Deposition of VERNON W. THOMSON, called for examination
by General Counsel for the Federal Election Commission, at
1747 Pennsylvania Avenue, N. W., Suite 1111, Washington, D. C.
at 9:30 a.m., before Rebekah J. Johnson, a notary public in
and for the District of Columbia, when were present on
behalf of the respective parties:

JOHN G. MURPHY, JR., General Counsel, Federal Election
Commission, Washington, D. C.

MICHAEL HERSHMAN, Chief Investigator, Federal Election
Commission, Washington, D. C.

JERRIS LEONARD, Esq., Leonard, Cohen and Gettings,
1747 Pennsylvania Avenue, N. W., Washington, D. C.;
on behalf of the Deponent.



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C O N T E N T S

WITNESS:

EXAMINATION

Vernon W. Thomson

By Mr. Murphy
By Mr. Leonard

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P R O C E E D I N G S

Whereupon,

VERNON W. THOMSON

was called as a witness and, having been first duly sworn,
was examined and testified as follows:

EXAMINATION

BY MR. MURPHY:

Q. Mr. Chairman, this is your second deposition in
this proceeding. I would ask you to first state your full
name and home address and home telephone number, please.

A. Vernon W. Thomson, 6213 Kellogg Drive, McLean,
Virginia, 356-3644.

Q. And you continue to serve as Chairman of the
Federal Election Commission.

A. Yes, sir.

Q. Mr. Chairman, I direct your attention to a
meeting that you and I had at your home on December 4, 1976,
a Saturday, and I ask you whether you recall that at that
meeting you informed me that on October 19, 1976, you had
encountered Melvin Laird at the University Club.

A. That is correct.

Q. Would you state for the record what occurred



1 during that encounter on October 19th.

2 A. I called you Saturday morning, the 4th of
3 December, to suggest to you, in line with your transmittal
4 letter of November 29th of my original deposition, I might
5 want to suggest corrections, or to elaborate or explain it.
6 I called you to say I wanted to talk to you for that purpose.

7 You had asked me a question in the original
8 deposition if I had spoken to anyone outside of the
9 Commission with respect to MUR216, the Sasser investigation,
10 or any detail with respect thereto, and I said that I had
11 hardly thought of the matter at any time before October 19th,
12 or the period from the 19th to the 25th, or thereafter, that
13 I had met Melvin Laird on October 19th at the University
14 Club in Washington, that I had been invited by a long-time
15 Wisconsin friend, Bob Spitzer, and that I had a 6:30 dinner
16 engagement, so I was rushing to get to the University Club,
17 pay my respects to Spitzer, and get out of there so I could
18 make my 6:30 engagement.

19 Sometime after I arrived there, I met Melvin
20 Laird, and he more or less accosted me or challenged me by
21 saying something to the effect, "Why doesn't your commission
22 get busy and enforce the law?"

1 My reply was a general reply that the Commission
2 was carrying out its duties in accordance with the law,
3 and that we were enforcing the law.

4 Then he replied, "Well, why don't you do something
5 about the banks that are making loans to candidates like
6 those in Maryland, Tennessee, Minnesota, and maybe some
7 others?"

8 And I said, "There are no exceptions to the
9 enforcement policy of the FEC, we're carrying out our
10 duty, and it doesn't matter whether it's a bank or anybody
11 else. The Commission is doing its duty in enforcing the law."

12 Then he said, "Yes, but you're putting them all
13 over until after the election."

14 I said, "That's not true, that we have no policy
15 to put over anything until after the election; as a matter
16 of fact, the statute requires us to act expeditiously, and
17 we're doing our level best to carry out the intent and the
18 letter of the law, and you have got to know that we're doing
19 our job."

20 Well, that was about the extent of our
21 conversation. Mel turned and said something about, "Let's
22 try some of this food."



1 I said, "I have got a 6:30 engagement; I don't
2 want to eat because I'm going out to dinner."

3 Then that was about the extent of it, and I never
4 thought for a moment that I --

5 MR. LEONARD: That's the answer to the question,
6 it seems to me.

7 BY MR. MURPHY:

8 Q Did he mention Senator Brock?

9 A No, sir.

10 Q Did you mention Senator Brock?

11 A I did not.

12 Q Did you mention Mr. Sasser?

13 A No, sir.

14 Q Did he mention Mr. Sasser?

15 A No, he didn't.

16 Q Did you mention the word "subpoenas"?

17 A No, sir.

18 Q Did he ask about subpoenas?

19 A No, sir.

20 Q Did you say that the Commission was investigating
21 the records in these cases?

22 A No, I don't think I said "We're investigating the



1 records." I was very general, because I thought he was
2 talking about a policy of enforcement by the Commission, and
3 I simply said that we were doing our best to carry out our
4 statutory mandate, and do it expeditiously, as the law
5 required.

6 Q Did you say that the Commission was moving to
7 obtain records in Tennessee or in the other jurisdictions?

8 A I don't think I said that, Jack; I was just
9 trying to defend the Commission's activities as doing the
10 job that the statute required us to do. I wasn't getting
11 into any details.

12 Q How long was this conversation, Mr. Chairman?

13 A Well, I said it was very brief. I don't know
14 how many minutes I could assign to it other than to say
15 it was a brief conversation.

16 Q Five minutes?

17 A It didn't run that long, I don't think.

18 Q Would you characterize Mr. Laird's approach to
19 you as hostile?

20 A Well, I've told you about Mel Laird; he's
21 extremely aggressive and domineering; he's the "take-charge"
22 guy; he moves right in on you and you get the impression



1 that he is extremely aggressive.

2 Q Did you consider that he was seriously upset or
3 that he was needling you in a form of jest about the
4 Commission's inaction?

5 A Well, I would characterize it as ribbing me. I
6 think he used that term subsequent to that time, needling
7 me, sort of a provocative type of questions, which aren't
8 unusual for Mel Laird.

9 Q Did you say that the Commission was taking
10 action that very week?

11 A No, I think the extent of my reply was that we
12 were acting expeditiously, as the statute required us to
13 act.

14 Q Do you recall whether anyone was standing with
15 you when Mr. Laird approached you?

16 A Oh, Jack, I have thought about that for -- I
17 thought about it the other day when I was down at the
18 White House. I was getting bombarded by Congressmen down
19 there. If I had to say who was standing nearby, I couldn't
20 identify anybody that was standing nearby, although I knew
21 maybe 80 percent of the people there.

22 I don't know who was standing there, Jack. There



1 were a lot of people there, the room was filled; you could
2 hardly take a step before you encountered someone.

3 Q. On the question of whether or not you specifically
4 mentioned that the Commission was investigating records,
5 do I understand you to say you don't recall whether you
6 said that?

7 A. I said I don't think I said anything about
8 examining records; I said that we were trying to enforce
9 the law the way it was written and I don't think --

10 Q. Is the answer the same with respect to the use
11 of the words "obtaining records"?

12 A. I don't remember saying anything about records.
13 When somebody asks you a question involving two, or three,
14 or four areas where the same type of action might exist,
15 I wasn't about to identify any one of those that he
16 mentioned. As a matter of fact, I wasn't familiar with it
17 specifically. If somebody had said to me that day, naming
18 three or four places where this type of an action exists,
19 I don't think I could put it together without going to the
20 record to determine that.

21 Q. Did he ask you whether you were moving to
22 obtain records?



1 A. No, I don't think he asked whether we were
2 moving to obtain records.

3 Q. Did he ask any questions of that character
4 seeking information about what specifically the Commission
5 was doing?

6 A. No, I don't think -- he just seemed to be bearing
7 down on me in a general way over a wide geographical area
8 as to a policy the Commission was operating under.

9 Q. Did he demonstrate any familiarity with the loans
10 in these jurisdictions that were a question?

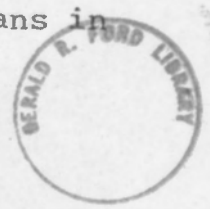
11 A. He didn't say anything about them except to
12 say there were loans in such places as Maryland, Tennessee,
13 Minnesota, I think he named another one, maybe two or
14 three others, but I think mentioning those names would
15 indicate some familiarity with something.

16 Q. Did he indicate he knew what size the loans in
17 question were?

18 A. No, there was no discussion of that.

19 Q. Did he indicate that he talked with someone else
20 about these loans or about these compliance actions?

21 A. Well, I didn't ask him; he didn't say anything.
22 He's a man with wide-ranging sources of information; I don't



1 know where he gets his information.

2 Q. Was this particular portion of the conversation
3 preceded by any kind of preliminaries, or did he simply
4 walk up and start in on this?

5 A. He just generally walks up to you and pokes
6 your chest with his finger.

7 Q. In this instance did he?

8 A. I don't think he did in this instance, but
9 that's an habitual approach of his. I don't recall that he
10 did this time. He has done it frequently to me.

11 Q. In this instance is it your recollection he
12 approached you rather more gently?

13 A. It was more gently than some of his approaches.

14 Q. Can you recall specifically what he said when
15 he walked up to you, apart from hello?

16 A. I think he said something to the effect, "Why
17 doesn't your commission, or you guys over at the Commission,
18 do something to enforce the law?"

19 Q. What was your response to that?

20 A. My response was that we were doing everything
21 we should do to enforce the law.

22 Q. Then what did he say?



1 A. Then he said something to the effect about,
2 "Why don't you do something about the banks that are
3 making loans to candidates," like they are doing in these
4 states he mentioend.

5 I replied to that. He came back with the
6 question, "But you're not doing anything until after the
7 election is over."

8 Q. At my meeting with you on December 4th at your
9 home, you said that you may have over-reacted to Mr. Laird;
10 would you continue to characterize your responses that way?

11 A. Well, I didn't think I was over-reacting, but
12 when I got all through talking to him, I just thought that
13 that was another meeting with Mel Laird, and that I had
14 given him the assurance that we were doing our duty, we
15 were doing it expeditiously, as the law required, and that
16 was the end of it.

17 Q. Did you discuss this conversation with Mr. Laird
18 with anyone else thereafter prior to the time you revealed
19 it to me?

20 A. Well, as I told in my home, I had had at that time
21 at the instigation of Mr. Laird two conversations; the first
22 time he called me he said something to the effect, "What's



1 that Murphy doing? He's pestering me; he's calling me."

2 I told him that the Commission had authorized
3 an investigation involving making public information that
4 the Commission should have confidential, and that you
5 probably wanted to talk to him about our conversation at
6 the Spitzer reception. That's when he said something to
7 the effect, "Oh, that time when I was ribbing you?"

8 I said, "Yes, the time when you were ribbing
9 me; that's probably what Murphy wants to talk to you about."

10 Q Do you recall, Mr. Chairman, that at your home
11 on December 4th I asked you with respect to that telephone
12 conversation you're describing whether the University
13 Club meeting had come up and you said it did not come up?

14 A No, he called me to find out what you were
15 pestering him about, and I must have told him that I
16 replied to him that it was at the Commission's direction
17 that you were authorized to do it, and that what you
18 probably wanted to talk to him about was the conversation,
19 but there wasn't any discussion about what the conversation
20 was about.

21 Q Now, we met, as we said, on the 4th of December;
22 at that time you described the details of your earlier



1 telephone conversation with Mr. Laird.

2 A. Both of them.

3 Q. At that time my records reflect you did not
4 reveal to me the conversation of December 3, 1976, the day
5 before we met; do you now recall that conversation?

6 A. My recollection is that I told you that he had
7 called me twice; the first time he wanted to know why you
8 were pestering him; the second time he wanted to know what
9 authority the Commission had to issue subpoenas.

10 I told him that it was a vote of the Commission
11 to issue the subpoenas, and you were lawfully in possession
12 of the subpoenas, and that they had been issued.

13 I told you, and you said to me, "What dates
14 did Laird call you?"

15 I said, "I don't have a record of the dates
16 on which he called me, but you, Mr. Chairman, would have
17 those dates, because you are --" excuse me, "Mr. Counsel,
18 you would have those dates because you were the individual
19 who was pestering Laird, and who was talking to him about
20 subpoenas."

21 I didn't know what dates you were talking with
22 him, and I didn't have any record, but I told you about



1 those two conversations at that December 4th meeting.

2 Q Our meeting of December 4th was one day after
3 the phone call from Mr. Laird to you with respect to the
4 subpoenas; you couldn't recall on the 4th of December
5 that you heard from him on the 3rd?

6 A I didn't have any log; I didn't remember what
7 the date was, but I told you -- I advised you of the tele-
8 phone call and told you that you should know better than I
9 did because I didn't know when you were pestering him, or
10 when you were talking to him about subpoenas. There isn't
11 any doubt in my mind but what I told you about both of
12 those conversations, just as I have told you about them
13 here today.

14 Q I would respectfully differ, but I don't want
15 to argue with the witness over a deposition. My recollection
16 distinctly is different, that you did not tell me of the
17 December 3rd conversation.

18 A Don't you remember that I told you about two
19 conversations, Jack?

20 Q No, sir, I do not.

21 A You asked me what were the dates for either of
22 them, and I didn't know the dates for either of them.



1 Q The record should reflect my disagreement with
2 the Chairman's information of December 4th on the
3 December 3rd phone call.

4 Would you tell me again what Mr. Laird said
5 to you at that time.

6 A He wanted to know how the Commission could issue
7 subpoenas and if it was lawful. I said the Commission
8 felt that we had the authority to issue subpoenas, that
9 the general counsel had recommended the issuance of
10 subpoenas; the Commission had voted to issue subpoenas,
11 and you were proceeding with the authority of the
12 Commission and not on your own.

13 Q Did he indicate to you his disappointment that
14 you had signed a subpoena for information which you already
15 possessed?

16 A No, I don't think he -- he said, "Well, your
17 agency is the only agency in government that doesn't
18 respect the privilege of a journalist."

19 Q Do you recall whether he asked you to disclose
20 the October 19th meeting with him to the Commission staff,
21 or specifically to me, that is, during this December 3rd
22 telephone call?



1 A. Would you repeat the question?

2 Q. Do you recall whether during the December 3rd
3 telephone call he asked you to reveal the October 19th
4 meeting with him to the staff or to me?

5 MR. LEONARD: I don't understand the question.
6 I don't know who you mean with all the "yous" you're using.

7 BY MR. MURPHY:

8 Q. Do you recall whether during the December 3rd
9 telephone conversation with Mr. Laird Mr. Laird indicated
10 or stated that you, Mr. Chairman, should disclose the fact
11 that you and he had met on October 19th at the University
12 Club reception?

13 A. Jack, I think the only discussion of disclosing
14 the conversation we had came on the next Monday, the 6th,
15 and when he called me, I immediately called you, and you
16 and Mike Hershman came up to my office and I told you
17 that Laird had called me and that I had intended to call him
18 and tell him that I had no objections, no objections at
19 all, to his discussing with you the conversation I had
20 with Mr. Laird on November 19th --

21 MR. LEONARD: October 19th.

22 THE WITNESS: October 19th, yes.



1 BY MR. MURPHY:

2 Q Do you recall at any time after October 19th
3 discussing with Mr. Laird the details of your conversations
4 of the 19th with him?

5 A No, I don't think -- I told him to respond to you,
6 to describe what was discussed there, but I don't have any
7 recollection of discussing the conversation that I had
8 with Laird with him, except to tell him that that was the
9 conversation that you probably wanted to talk to him about.

10 Q So, to the best of your recollection, you did
11 not discuss the details of that conversation with him
12 at any time except as you have described the conversation.

13 A That is correct.

14 Q Going back to the first telephone call you
15 received, which you characterized as one in which Mr. Laird
16 asked why Murphy was pestering him, do you recall whether
17 Mr. Laird said anything at that time about who he had
18 talked to other than you with regard to Commission compliance
19 matters?

20 A Well, I don't think we -- I don't think there
21 was any discussion of who else he had talked to.

22 Q Did he indicate that he had talked to no one else?

1 A. We didn't discuss it; I don't have any
2 recollection of that.

3 Q. On December 6th, which was the Monday following
4 our meeting at your home, you have referred to a conversation
5 you had with Mr. Laird by telephone later in the morning
6 after which you met with Mr. Hershman and myself; would you
7 state for the record what Mr. Laird said during that
8 conversation?

9 A. Well, Mr. Laird said that he had a policy as a
10 publisher, or writer, of not discussing with anyone any
11 conversations he had unless the other party to the
12 conversation gave approval to that, and he said that you
13 had been talking to him and requesting or demanding
14 that he disclose the conversations that he had had with
15 what you termed to be "his source."

16 I just said, "Mel, I have no objections to your
17 discussing with Murphy the conversation we had at the
18 Spitzer reception at all. You can tell Murphy that or I
19 will tell him." I said; "I will tell Murphy that I have
20 no objection to it," and I called you up to my office and
21 told you that I had no objection to it, and then I called
22 Mr. Laird immediately after you left and told him that I



1 had no objection to it.

2 Q Do you recall at any time in meetings with
3 Mr. Hershman and myself that you stated that you did not
4 know that Mr. Laird was a newsman?

5 A Well, I might have said I --

6 MR. LEONARD: Excuse me, I fail to see the
7 relevancy of that. The facts lie in the conversation;
8 whether the governor viewed Mr. Laird as a newsman or not
9 seems to me to bear little on the conversation of October 19th.
10 I guess my objection to the question is that it has little
11 relvancy to the investigation, but you can answer the
12 question.

13 THE WITNESS: I think I said to you that I
14 had read two or three articles that had Mel Laird's
15 byline, which surprised me a little as to him being an
16 author, but he is a vice president of Reader's Digest, and
17 he does produce articles under his byline.

18 Well, I have known Mel for many years; I know
19 he's written a book; I know he's written a few articles.
20 But -- what did you ask me, if I characterized him as a
21 author?

22



1 BY MR. MURPHY:

2 Q Do you recall saying to Mr. Hershman and to me
3 that you did not know that Mr. Laird was a newsman?

4 A Well, I didn't know he was an author. I wouldn't
5 call him a newsman.

6 Q Do you recall specifically using that word,
7 "newsman," that he was not a newsman?

8 A No, I don't recall using the word "newsman."
9 It's possible I did. What I was saying was that I was a
10 little bit amused that Mel Laird was in the business of
11 writing, but he is, and I said that as a humorous remark,
12 I suppose, based on my long observation of Mr. Laird.

13 Q During the week of December 6th, the 6th being
14 that Monday, at some later time, did you have occasion
15 to call Mr. Laird's office?

16 A Well, I called his office on December 6th.

17 Q Yes. Do you recall a later telephone call on
18 Wednesday?

19 A On the 8th?

20 Q The 8th of December.

21 A No.

22 Q Or on Thursday the 9th of December?



1 A. I don't have any recollection of talking to him
2 after I told him to go ahead and talk to you.

3 Q. At any time?

4 A. I just don't have any recollection of calling
5 him; I have no reason to call him.

6 Q. Are you saying, Mr. Chairman, that you have not
7 spoken with Mr. Laird since December 6th?

8 A. No, I'm not saying that; I met him at the White
9 House party, I think it was on the 9th, and I spoke to him,
10 but largely for the purpose of introducing the escort I
11 had at the White House affair.

12 Q. Has there been any other occasion since
13 December 6th, apart from the White House reception you
14 referred to, when you talked to Mr. Laird?

15 A. I don't recall any.

16 Q. Has there been any other occasion when you have
17 called Mr. Laird's office?

18 A. Well, I don't know why I would be calling. I
19 don't recall calling.

20 MR. MURPHY: We will take a short recess here.

21 (A brief recess was held.)

22 MR. MURPHY: Back on the record.



1 I just have one or two additional questions.

2 For the record, I might note that by agreement
3 with the witness's counsel, at the conclusion of these
4 questions, Mr. Leonard has been given the liberty to ask
5 the witness additional questions, if he feels the need to do
6 so. We're happy to accomodate Mr. Leonard in this respect.

7 BY MR. MURPHY:

8 Q. Mr. Chairman, I would like to direct your
9 attention once again to the conversation you had with
10 Mr. Laird by telephone when he was inquiring about my action
11 in seeking an appointment with him in which you explained
12 to him that I was pursuing the investigation authorized
13 by the Commission. I think you stated to me that he was
14 curious about what I was doing, and that you indicated
15 that I was authorized to pursue this matter, and you have
16 indicated that the subject of the University Club meeting
17 did come up; it was clear from what you knew, I gather,
18 that I was, in fact, investigating along a line that had
19 led me to Mr. Laird.

20 The question I have is why did you not report
21 this telephone call to me at sometime prior to December 4th?

22 A. Well, Jack, you were investigating; I didn't know



1 anything about who were you investigating except that you
2 were, as Laird said, perstering him. I didn't have any
3 reason to withhold any information from you or from anybody
4 else.

5 I didn't know that you were investigating
6 Mr. Laird for the purpose of identifying whoever he had
7 talked to until you said it in the December 2nd meeting
8 of the Commission, and I was just struck like a thunderclap
9 at that time, as I told you on December 4th when you came
10 to my house.

11 You stopped me on my way into the Commission
12 meeting to tell me you were going to ask for the Northwest
13 Airlines' flight to Wisconsin, and I said something about,
14 "For heaven's sake, what will that reveal?"

15 You said to me, "It will reveal whether you
16 were on the flight."

17 And I replied to that that if you wanted to know
18 about any flights I made, I would give them to you; further-
19 more, I hadn't been on a Thursday flight in two years, or
20 whatever I could remember.

21 I had nothing to withhold so far as your
22 investigation. I knew you were going to Laird; I didn't



1 care if you went to Laird, but I didn't know the significance
2 of it until long after Laird called me and said you were
3 pestering him. I told him you were pestering him because
4 you were investigating a matter of importance to the
5 Commission.

6 Q The record will reflect correctly, Mr. Chairman,
7 that when Mr. Hershman and I approached you on the morning
8 of December 2nd prior to the meeting, you did indeed tell
9 me that you flew to Wisconsin on Tuesday for the board
10 meeting.

11 A I went to a board meeting on Tuesday night, and
12 I said I hadn't made a Thursday flight as long as I could
13 remember.

14 Q That you were perfectly comfortable with the
15 notion that we would subpoena those airline flight
16 passenger records.

17 A I did. I said if you wanted my records, I'll
18 give them to you.

19 Q I don't recall that you said that. The record
20 should be clear you were perfectly comfortable with the
21 notion we would obtain records of a Thursday flight.

22 A Yes, I signed the subpoena, didn't I.



1 Q. A moment ago you characterized my December 2nd
2 presentation to the Commission on this matter as one which
3 left you thunderstruck; may I ask why you did not
4 disclose this information to me that afternoon?

5 A. Well, the only reason was the connection between
6 the flight to Wisconsin and the fact that you thought
7 Mel Laird was a critical person in there. I had never
8 considered that I had in any way violated the law, made
9 anything public except the policy of the Commission to do
10 its job.

11 But the more I thought about the connection
12 between those flight manifests and the fact that you were
13 identifying Laird as a critical person, I couldn't believe
14 that I had any involvement in it, and so I -- well, I went
15 to your farewell party and enjoyed your limericks, and
16 thinking this matter over; so, Saturday morning I called
17 you -- and I probably called you too early for a person that
18 had been to a farewell party -- but I called you at a
19 reasonably early hour Saturday morning so I could tell you
20 about it.

21 I couldn't believe it. All I had done was
22 defend the Commission; if it had been published in the



1 Washington Post, nobody would even remember it probably.

2 Q. Although you were thunderstruck by my presentation
3 on December 2nd, it did not lead you to discuss the
4 October 19th meeting that day.

5 A. You mean December 2nd?

6 Q. December 2nd; you were in the office on
7 December 3rd.

8 A. I was.

9 Q. May I ask why during the course of the day,
10 December 3rd, I was not contacted?

11 A. I just couldn't come to any belief that I was
12 involved in this matter. . . So I called you early on the
13 morning of December 4th.

14 Q. You called me at 9:30; that isn't early.

15 A. It seemed to be early under the circumstances.

16 Q. I had been up for several hours.

17 So that your statement with respect to December 3rd
18 is that you were mulling my presentation over, but the full
19 implications to it with respect to the October 19th meeting
20 did not come clear to you until Saturday morning, the 4th.

21 A. Well, I couldn't believe that I would be charged
22 with anything. If I was charged with anything, it should be



1 that I made public the fact that the Federal Election
2 Commission was doing its job regardless of who the parties
3 were. Now that might have been news, but that's all I
4 should have been charged with.

5 Q. You are familiar with the Commission policy
6 with respect to reporting external conversations having to
7 do with compliance matters.

8 A. Well, I insisted on drafting the ex-party rule
9 to that Commission, and I appointed Bill Springer to draw
10 them.

11 Q. At the point at which it was clear to you that
12 the investigation had reached Mr. Laird, did it occur to
13 you that at least the spirit of ex-party provisions
14 suggested that you make a record to the Commission staff
15 with regard to your contact with Mr. Laird on October 19th?

16 A. I didn't think there was anything ex-party
17 about it at all to insist that the Commission was doing its
18 job and doing it expeditiously, as the statute required.
19 It never occurred to me there was anything wrong.

20 Q. I'm not referring to the October 19th meeting.

21 A. Would you repeat the question?

22 Q. When Mr. Laird first telephoned you to indicate

1 I was seeking to interview him, you were aware that I was
2 conducting an investigation, and you told Mr. Laird that.
3 At that time did not at least the spirit of ex-party policy
4 suggest to you the desirability of entering that
5 conversation on the record?

6 A. No, I don't think so, he just asked me if you
7 had authority to conduct an investigation, and I told him
8 you did.

9 Q. Do you recall whether during that first conversation
10 he mentioned the name Carl Wallace?

11 A. No, I'm certain he didn't mention Carl Wallace.

12 Q. Dan Kuykendall?

13 A. I'm certain he didn't mention Dan Kuykendall.

14 Q. Did he mention anyone?

15 A. No, he just mentioned the states where he thought
16 we weren't carrying out our duty. The first I heard about
17 these names you mentioned --

18 Q. I don't mean during the conversation at the
19 University Club; I mean in the conversation on the telephone
20 with Mr. Laird about my involvement, did he mention Carl
21 Wallace?

22 A. No, he didn't mention anybody. He said you were

1 pestering him, and he wanted to know if it was a legitimate
2 activity of the Commission.

3 Q Can you recall what day of the week it was when
4 he called?

5 A Jack, I have told you, the day of the week or
6 the date, as I said to you on the 4th in my home, you have
7 the best evidence of when it was because you were in contact
8 with Laird. I don't keep any log.

9 Q Mr. Chairman, it seems clear to that I did
10 not know that you had met with Mr. Laird on the 19th until
11 you told me on the 4th; so, I would have no basis to know
12 when he made the call. I respectfully differ when you say
13 I have the best evidence.

14 A You were pestering Mr. Laird.

15 Q I object to that characterization.

16 A That's his characterization I am repeating, as
17 I have, that he characterized your phone calls to him as
18 "pestering" him. So, you were talking with him; whether you
19 knew about the October 19th meeting, you were talking with
20 Mr. Laird.

21 Q Do you know if at the time he called you that
22 first time I had seen him, or not?



1 A. I don't know; I don't remember whether you had
2 been in to see him, or whether you were talking to him
3 on the telephone. I don't think I asked him.

4 Q. Did you have an impression in one way or the
5 other I had been in direct communication with him as
6 distinct from an intermediary?

7 A. Well, he said, "Murphy is pertering me." I don't
8 know whether you pester people through intermediaries.

9 Q. He did not say I had spoken with him?

10 A. Well, I am telling you the best recollection that
11 I have, whether you spoke to him on the telephone or in
12 person, I don't know.

13 Q. Well, I just want the record to reflect that
14 exchange of a moment ago to the effect that at our meeting
15 December 4th, I learned for the first time of the October 19th
16 meeting between you and Mr. Laird, and there was no way I
17 could have conceivably known of the telephone conversation
18 you revealed to me at that time.

19 MR. LEONARD: If I might just for a moment, first,
20 Jack, I don't think that the governor has in any way
21 intimated or characterized what he's saying as an attack on
22 you at all. I think the point that he is trying to make



1 is that with respect to the first phone call that he had with
2 Laird, which is not on the record here today, but which you
3 have indicated to me and I have indicated to the governor,
4 would have taken place somewhere between November 18th and
5 November 22nd, that as far as establishing the date of
6 that phone call, the point he's making is that your records
7 of contact with Laird would be the best evidence of the
8 date of that, because he had, number one, no recollection
9 of the date, and number two, he has no record of the date,
10 therefore, if you kept a log -- and he's not suggesting, nor
11 am I, that you did -- but if you kept some kind of a
12 telephone log with Laird, it probably would have been a
13 day or two, or three or four, after you first contacted
14 Laird that Laird would have called the governor.

15 MR. MURPHY: I understand that, Mr. Leonard.

16 MR. LEONARD: That's the point he's making.

17 MR. MURPHY: The point I'm trying to make is that
18 the Chairman in the Saturday meeting on December 4th did not
19 make that statement to me, but I don't want to get into
20 a swearing match with the witness.

21 MR. LEONARD: You did not know about the
22 October 19th meeting at the University Club until December 4th.



1 MR. MURPHY: That is correct, I certainly did
2 not.

3 What I'm saying is that the Chairman did not
4 tell me on December 4th that I was the best source of a record
5 as to when the conversation by telephone occurred after the
6 October 19th meeting.

7 MR. LEONARD: Again, I don't know what the
8 materiality of the specific date is; he did reveal to you
9 that he had that conversation with Laird.

10 MR. MURPHY: That is correct.

11 MR. LEONARD: The "Murphy-is-pestering-me"
12 conversation.

13 MR. MURPHY: That is correct, he revealed that
14 phone call.

15 THE WITNESS: Jack, you keep saying that you
16 learned about my conversation of October 19th on December 4th;
17 but long before that you were asking Laird to sit down and
18 discuss this matter with you, and you didn't have to tell
19 me that Mel Laird was involved because you were already
20 talking to him, and I think that ought to be clear on the
21 record.

22 MR. MURPHY: I think it is.



1 I have no further questions as this time.

2 MR. LEONARD: I have just a few.

3 BY MR. LEONARD:

4 Q Governor, wouldn't it be more correct with
5 respect to -- strike that.

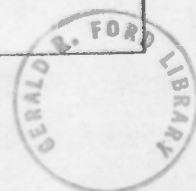
6 MR. MURPHY: Please don't lead the witness,
7 Mr. Leonard.

8 MR. LEONARD: I think you'll agree when I finish
9 the question it's an appropriate one.

10 BY MR. LEONARD:

11 Q With respect to your December 6th conversation
12 with Mr. Murphy and Mr. Hershman relative to the question
13 of Mr. Laird's newsman's privilege, you said that you were
14 amused that he was considering himself to be an author,
15 et cetera. Would it be more correct to characterize that
16 amusement as the fact that you were amused that he was
17 claiming a newsman's privilege in view of the fact you had
18 never considered him to be a newspaper man even while he
19 was with Reader's Digest?

20 A Well, I think that's true; I don't think Mel Laird
21 is a newspaper man; he's probably a publisher and maybe an
22 author.



1 Q With respect to your October 19, 1976,
2 conversation with Mr. Laird at the University Club at the
3 Spitzer party, did you at any time during that conversation
4 tell Mr. Laird that the FEC had voted unanimously to do
5 anything about anything?

6 A There was nothing in that conversation relating
7 to any action of the Commission except that we were doing
8 our statutory duty.

9 Q Did you during that conversation tell him that
10 you, the Commission, had voted to issue subpoenas in any
11 case?

12 A No.

13 Q Did you discuss with him in any way the specifics
14 of what was later to become known as MUR 216, the Sasser
15 bank loan case involved in the Sasser/Brock election?

16 A We didn't discuss anything in regard to the
17 details; the only discussion went to the general policy of
18 enforcement, which was being challenged by Mr. Laird.

19 Q Now, if counsel for the Commission will allow
20 me, I know that this is a litt bit leading, but --

21 MR. MURPHY: Let me hear it off the record first.

22 MR. LEONARD: All right.



1 (Discussion off the record.)

2 MR. MURPHY: Back on the record.

3 MR. LEONARD: That's all I have.

4 MR. MURPHY: Thank you very much.

5 THE WITNESS: Let me just add one thing, because
6 I think Mr. Murphy --

7 MR. MURPHY: Off the record.

8 THE WITNESS: I want it on the record; it does
9 have a relevancy to the factual question that you are
10 considering.

11 MR. MURPHY: All right.

12 THE WITNESS: In Mr. Murphy's conversation
13 with Jerris Leonard, he indicated that Commissioner Thomson
14 had failed to reveal on the meeting of December 2nd the
15 fact that he had had a conversation with Melvin Laird on
16 October 19th, whereas one of the other commissioners
17 stated that he had met with Melvin Laird at about that
18 time, and that that Commissioner had volunteered that he
19 had spoken to Laird, but the effect of the statement was
20 that he revealed the fact that he had spoken with Mr. Laird,
21 whereas Commissioner Thomson didn't volunteer that at the
22 meeting of December 2nd. I think that is correct, Mr. Murphy.



1 MR. MURPHY: That's correct.

2 THE WITNESS: I have explained to you why I
3 called you early -- or at 9:30, as you said, on December 4th,
4 when I realized from the talk about the airplane flight and
5 whether I was on it or not, I concluded that I better tell
6 you about it. I not only told you about it, but I told
7 Mel Laird to talk to you about it.

8 I have been just as open and frank with you as
9 I possibly can all the way, but I don't like the suggestion
10 that because one Commissioner, who did talk to Mel Laird also,
11 mentioned it in the Commission meeting on the 2nd, and I
12 didn't tell you until the 4th. I think there are different
13 circumstances involved in the matter.

14 MR. MURPHY: Thank you, Mr. Chairman.

15 Anything further, Mr. Leonard?

16 MR. LEONARD: No, Mr. Murphy.

17 MR. MURPHY: We will end this now, and I think you.

18 (Whereupon, at 10:30 a.m., the taking of the
19 deposition was concluded.)

20

21

22

(Signature waived.)

CERTIFICATE OF NOTARY PUBLIC AND REPORTER

I, Rebekah J. Johnson, the officer before whom

the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

Rebekah J. Johnson
Notary Public in and for the
District of Columbia

My commission expires 14 May 1981

