

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

-----  
RICHARD M. NIXON, Individually and  
as the former President of the  
United States,

Plaintiff,

vs.

Administrator of General Services,  
et al.,

Defendants.  
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No. 74-1852

Deposition of

RICHARD M. NIXON

VOLUME I

Deposition of Richard M. Nixon, plaintiff  
herein, called by Defendants in Intervention  
pursuant to Notice of Taking Deposition, on  
Friday, July 25, 1975, at San Clemente,  
California, before Joseph F. Weitzen, a  
notary public.



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I N D E X

1			
2	<u>WITNESS</u>	<u>EXAMINED BY</u>	<u>PAGE</u>
3	Richard M. Nixon	Mr. Dobrovir	3
4		Mr. Krulwich	113
5		Mr. Goldbloom	125
6		Mr. Mortenson	143
7		Mr. Dobrovir	156
8		Mr. Krulwich	161
9		Mr. Anderson	164
10			
11			
12	<u>QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER</u>		
13		<u>PAGE</u>	<u>LINE</u>
14		60	24
15		86	11
16		94	4
17		98	19
18		99	17
19		100	14
20		101	19
21		102	22
22		112	24
23			
24			
25			
26			
27			
28			



E X H I B I T S

DEFENDANTS' IN  
INTERVENTION  
EXHIBITS

DESCRIPTION

IDENTIFIED

A	A one-page document consisting of a memorandum for H. R. Haldeman from Gordon Strachan dated May 11, 1971, subject Timmons' Investigation of San Diego as 1972 Convention Site.	82
B	A document consisting of 124 pages listing names and contributions.	84
C	A six-page document consisting of a memorandum dated April 23, 1969 from Richard G. Kleindienst, Deputy Attorney General, to John Erlichman, Counsel to the President, Re: ITT--Canteen Merger.	86
D	A ten-page document consisting of a memorandum for Bud Krogh from John Dean dated July 20, 1971 with attachments.	87
E	A four-page document consisting of a memorandum from George Bell dated June 24, 1971, for John Dean, Jerry Warren and Van Shumway, entitled, Subject: Opponents List.	90
F	A three-page document consisting of a transcript of September 15, 1972 meeting.	92
G	A three-page document titled, "Donation of Personal Papers to the Richard Nixon Library," dated November 1972.	157

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VOLUME I

13 BE IT REMEMBERED THAT, pursuant to Notice of Taking  
14 Deposition, the deposition of Richard M. Nixon, plaintiff  
15 herein, was taken by Defendants in Intervention, before me,  
16 Joseph F. Weitzen, a notary public in and for the State of  
17 California, duly commissioned, qualified and acting, beginning  
18 at the hour of 9:00 a.m. on Friday, July 25, 1975, at the  
19 Coast Guard Station, in the City of San Clemente, County of  
20 Orange, State of California; Miller, Cassidy, Larroca and  
21 Lewin, by Herbert J. Miller, Jr., and R. Stan Mortenson,  
22 appearing on behalf of the plaintiff; William Dobrovir,  
23 Andrew S. Krulwich, Mark J. Spooner and Leonard B. Simon,  
24 appearing on behalf of Intervening Defendants; Irwin Goldbloom  
25 and David J. Anderson, of the U.S. Department of Justice,  
26 appearing on behalf of Defendant United States of America and  
27 Administrator of General Services; Kenneth S. Geller, Assistant  
28 Special Prosecutor, Watergate Special Prosecution Force,

1 appearing on behalf of Special Prosecutor, Intervenor; also in  
2 attendance, Andra Oakes; there being no other appearance; that  
3 said witness was by me first duly sworn to testify to the  
4 truth, the whole truth, and nothing but the truth in the  
5 testimony he was about to give; whereupon said witness was  
6 examined upon oral interrogatories propounded by counsel, and  
7 made answer thereto, under oath, as hereinafter contained; and  
8 the following proceedings were had:

9  
10 THE NOTARY: This is now the time and place for the  
11 taking of the deposition of Richard M. Nixon, plaintiff herein,  
12 called by Defendants in Intervention pursuant to Notice of  
13 Taking Deposition.  
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1 RICHARD M. NIXON,  
2 plaintiff herein, called by Defendants in Intervention, pursuant  
3 to Notice of Taking Deposition, and being first duly sworn,  
4 testifies as follows:  
5

6 EXAMINATION BY MR. DOBROVIR:

7 Q Good morning, Mr. Nixon.

8 You were President of the United States of America  
9 from January 20, 1969, to August 9, 1974?

10 A Yes.

11 Q And what other public offices have you held?

12 A Congressman for four years; Senator for two years;  
13 Vice President for eight years; Deputy City Attorney, Whittier,  
14 California, for three years.

15 Q And you are an attorney?

16 A No, I was. I resigned as <sup>a member</sup> ~~an attorney~~ of the Bar.

17 Q You practiced as an attorney in the past; is that  
18 correct?

19 A I have practiced law in the past.

20 Q As President of the United States, did you have  
21 familiarity with the various components of the Executive Office  
22 of the President?

23 A Yes.

24 Q Do you include in the materials which you claim in  
25 this lawsuit all of the documents created by the Executive  
26 Office of the President during your tenure in office?

27 A I think it is necessary for the record to distinguish  
28 between the Executive Office of the President and Office of the

1 President.

2 With the Executive Office of the President, I am  
3 talking about a very broad spectrum of the office. For example,  
4 the Bureau of Management and Budget, the Council of Economic  
5 Advisors, and other institutions which are called or designated  
6 as being part of the Executive Office of the President, whereas  
7 the Office of the President itself is more limited than that.

8 The Office of the President is limited to those,  
9 and I refer now to the materials that we use in our Complaint.  
10 The materials for the Office of the President are only those  
11 that are generated throughout the government but which are sent  
12 to the President for his use in carrying out his official or  
13 other duties.

14 Q When you refer to the Office of the President, are  
15 you referring to what is called the White House Office in the  
16 Official Organization Manual of the United States Government?  
17 The White House Office is the term used in the Organization  
18 Manual.

19 MR. MORTENSON: Excuse me, Counsel. Do you have a copy  
20 of the Manual so we can check that?

21 MR. DOBROVIR: I am afraid I didn't bring it with me.

22 THE WITNESS: I am not familiar with that term. I am  
23 sorry. I know what I consider the Office of the President to  
24 be, but I am not familiar with what the White House Office  
25 would be. I can describe it only in terms of its physical  
26 location and rooms that were used.

27  
28

1 BY MR. DOBROVIR:

2 Q Let me run through a list of components and see  
3 which of those you consider to be part of the Office of the  
4 President, for purpose of our claim for materials in this case.

5 The Office of Economic Opportunity?

6 A Go ahead.

7 Q I am asking you, do you claim, as part of this  
8 case, the materials of the Office of Economic Opportunity?

9 A No, only if materials were prepared by the Office  
10 of Economic Opportunity. *for the President.*

11 And so as to make your task easier, all of the  
12 other, and there are great numbers of offices of this type,  
13 the other offices, commissions, et cetera, et cetera, et cetera,  
14 which were set up, some of them were an independent role, some  
15 were quasi-independent role, but all of them at one time or  
16 another may have had the opportunity to assist the President  
17 in the carrying out of his duties.

18 What I consider to be the Office of the President  
19 involves only those materials that are prepared by, as far as  
20 government materials are concerned, that are prepared by  
21 whatever office it is, the Office of Economic Opportunity or  
22 the Council of Economic Advisors or the Environmental Products  
23 Agency. I think I have got your list. You don't need to show  
24 it to me.

25 Q Let me ask them one by one and if you could, just  
26 say "Yes" or "No," it would be helpful, as to whether or not  
27 you include within the materials claimed in this lawsuit the  
28 files of that component.



2 THE WITNESS: The same answer.

3  
4 BY MR. DOBROVIR:

5 Q The Office of Science and Technology?

6 A Let me explain. Where we are talking in each  
7 instance, talking about Federal agencies, Federal offices,  
8 the Office of Science and Technology, I think --

9 Q I was talking before of the Office of Science and  
10 Technology. That was a component of the Executive Office of  
11 the President?

12 A The same answer.

13 Q The Office of Management and Budget?

14 A The same.

15 Q The Office of Emergency Preparedness?

16 A The same answer.

17 Q And the National Security Council?

18 A The same answer.

19 Q The National Aeronautics and Space Council?

20 A The same answer.

21 Q The Domestic Council?

22 A Yes.

23 Q The same answer?

24 A Yes.

25 Q The Council on International Economic Policy?

26 A The same answer.

27 Q The Council on Environmental Quality?

28 A Yes.

1 Q The Council of Economic Advisors?

2 A The same.

3 Q Special Assistants to the President?

4 A Excuse me?

5 Q The Special Assistants to the President.

6 The budget shows that in fiscal year 1972 there  
7 were thirty-six individuals who had the title and filled  
8 positions entitled Special Assistants to the President. My  
9 question is: Are the files accumulated by those thirty-six  
10 individuals included within the materials that you claim in  
11 this lawsuit?

12 A Well, there would be a distinction there to the  
13 extent that such special assistants who had prepared materials  
14 in their own behalf, which they could do, and were not preparing  
15 materials for or at the direction of or for the use of the  
16 President, I would not consider those materials to be presiden-  
17 tial materials.

18 As a matter of fact, some of those that were  
19 assistants to the President and those that have since left  
20 government take materials with them, those materials they  
21 consider to be their own.

22 Then on the other hand, materials prepared in their  
23 capacity for the use of the President in carrying out his  
24 official duties or other duties, I would consider to be  
25 presidential materials.

26 Q A memorandum received by, let's say, Mr. Erlichman,  
27 from, let's say, the Attorney General of the United States  
28 dealing with antitrust policy stating this is what -- this is a



1 hypothetical question -- stating this is what we are planning  
2 to do with respect to development of antitrust policy, is that  
3 the kind of document that you include within the materials that  
4 you claim in this lawsuit?

5 A Well, in the case of -- I cannot speak for all  
6 administrations, I can only speak for my own.

7 Q That is all I am asking now.

8 A In the case of a memorandum prepared by the  
9 Attorney General for Mr. Erlichman, in effect he would be,  
10 in effect, preparing a memorandum review for Mr. Erlichman  
11 and for transmittal for review by me. I would consider a  
12 memorandum of that sort to be one of presidential material.

13 Q Even though it was directed to Mr. Erlichman and  
14 nothing shown on its face and nothing on it that it was intended  
15 for your eyes?

16 A Yes. I say that because Mr. Erlichman, and this  
17 would be true of others, presidential assistants, not only in  
18 this administration but others, would have no power of decision  
19 to act on such a memorandum on an antitrust matter. That power  
20 of decision would be mine as President or whoever happens to  
21 hold that office at this time or in the future.

22 Q Now, in addition to the offices which I have named,  
23 which by no means do I intend to be or know whether it is a  
24 complete list or not, were there not during your administration  
25 a large number of ad hoc committees and commissions and task  
26 forces that reported to the President?

27 A Yes. Too many.

28 Q Does the number two hundred fifty sound right?

1 A Yes. It could have been five hundred.

2 Q It could have been five hundred.

3 Now, do you include within the materials that you  
4 claim in this lawsuit the files of those committees, commissions  
5 and task forces?

6 A Only to the extent that the materials were prepared  
7 for me for the purpose of making a report to me, not materials  
8 that were prepared independently in terms of developing options  
9 for the committee and so forth and so on.

10 Q If the sole function of the committee or task force  
11 was to prepare a report for you, would you consider that all of  
12 the files that they accumulated in the <sup>course</sup> quest of that work are  
13 included in your presidential materials?

14 A If I had appointed a task force, talking now about  
15 one other than like the Council of Economic Advisors, et cetera,  
16 which, of course, we inherit from previous administrations and  
17 presidents and customs, but if I had appointed a task force to  
18 make a particular study for me, then I would consider those  
19 files to be part of the presidential materials.

20 For example, if I appointed a task force, as I did  
21 on Population Control, and this was considered, and I should  
22 point out a task force which was appointed not because con-  
23 gressional act required it but because I, within my own  
24 office, decided that one should be appointed in order to carry  
25 out my official duties more effectively, then of course such  
26 materials prepared by that task force, prepared for me alone  
27 as President, I would consider to be presidential materials.

28 Q How about the files of the 1969 and 1973

1 inaugural committees?

2 A The files of committees of that type I think  
3 throughout history have been considered, perhaps even more than  
4 any other files, as being particularly the materials which are  
5 the President's materials, because they have to do with his  
6 inauguration and they therefore are part of the materials that  
7 are made available to him.

8 Q Now, turning to what you described as the Office of  
9 the President. Approximately how many employees did that  
10 office have during your tenure as President?

11 A I wouldn't know.

12 Q Does the figure five hundred sound about right?

13 A It might be.

14 Q Now, how many of the employees of the Office of  
15 the President had regular access to you for purposes of  
16 performance of their and your official duties?

17 A I can't give you a number. I would say any of those  
18 who needed to have access had it.

19 Q Now, as President, can you estimate how much of your  
20 time was spent in preparing yourself written documents?

21 A . I cannot estimate it in terms of a percentage of  
22 time. I can, perhaps, estimate it in terms of comparison with  
23 previous Presidents in this century.

24 When the presidency, as you know, became a much  
25 more burdensome office, in terms of various duties to be  
26 carried out, as you know there was a time in our history when  
27 presidential speeches might be better because Presidents like  
28 Lincoln wrote their own, Jefferson and so forth. In this

1 century, I would say I have spent more of my time preparing my  
2 own speeches and other public statements than any President  
3 since Woodrow Wilson. I would say he probably spent, in this  
4 century, more time than any other President for that purpose,  
5 with the possible exception of Theodore Roosevelt. But I  
6 would suggest here again that it depends on the individual. It  
7 depends on what other duties he has.

8           When the country was younger, when the country  
9 didn't have the responsibilities that it has in the world today,  
10 when the government was much smaller, the President had the  
11 luxury of preparing speeches and materials and did so. I had  
12 always had the custom, before I became President, of doing  
13 virtually all of my own work. I carried on as much as I could  
14 on any important speeches; I did most of the preparation myself  
15 with very good assistance from staff suggestions. But when it  
16 came to the final drafts I had to do them myself.

17           I realize that I am not answering your question  
18 specifically. But I cannot at this time say I spent five percent  
19 of my time or a third of my time preparing speeches. I do say,  
20 however, that I spent a very great proportion of my time, more  
21 than any President in modern history, doing my own work, because  
22 it had been my custom. And I don't say that critically of  
23 previous Presidents, because it is very likely those who wrote  
24 speeches for them may have written better speeches than they  
25 would have for themselves.

26           Q     There were great demands on your time; isn't that  
27 so?

28           A     Pardon?

1 Q There were great demands on your time?

2 A That is true, great demands on a President's time in  
3 this period when the United States has reached the status of a  
4 full-fledged world power, particularly when other powers that  
5 used to be in that category, for example the European powers,  
6 no longer can carry their share of the load.

7 Q Were you required to spend as much as half of your  
8 time in meetings with other people or would it be more than  
9 half?

10 A I can't give you an exact amount.

11 Q Would you say that a large portion of your time was  
12 spent in meetings?

13 A Oh, yes. Yes.

14 Q More time than was spent in reviewing written  
15 documents or less?

16 A Oh, more. More.

17 Q More?

18 A Yes.

19 Q And more time than was spent in preparing your  
20 speeches and statements?

21 A Yes, although it depends on the period in which I  
22 was working. One month more would be spent in speeches and  
23 statements and another month more would be spent at meetings  
24 with people and so forth and so on.

25 Q All right. In addition to meetings and telephone  
26 conversations with other individuals and reviewing written  
27 documents that were transmitted to you and preparing written  
28 statements or statements for delivering by you, in addition



1 to those three things what other things did you spend your time  
2 on, and I am talking only, of course, about in performance of your  
3 official duties?

4 A I traveled some.

5 Q Anything else?

6 A You refer to other than meetings and preparing the  
7 speeches? I made the speeches.

8 Q You delivered the speeches?

9 A That is right. And I, of course, had the usual  
10 protocol responsibilities that falls upon a President, all of  
11 which are, of course, a matter of public record.

12 Q Right. Are you familiar with the Complaint in the  
13 action, sir, Mr. Nixon?

14 A Oh, yes.

15 Q Now, are you aware that your claim encompasses what  
16 is estimated to be in the neighborhood of 42 million documents?

17 A Yes.

18 Q Can you estimate what portion of those 42 million  
19 documents you have actually seen yourself?

20 A No. I am a relatively fast reader. I don't mean  
21 that I have taken a reading course, but I generally can look at  
22 a document and tell what needs to be read. I have never been  
23 one of those who insisted it almost all be on one page, because  
24 I wanted the full range of options and to see the kind of  
25 reasoning that the advisor had gone through in the reasoning  
26 process in order to reach conclusions.

27 I would say, without telling you how many of the  
28 42 million I have read, only a review of the file and indication

1 by checkmarks on them could tell you that. And here again it  
2 is the difference between Presidents. Some tend to prefer to  
3 spend more of their time in public meetings and private  
4 meetings, as what I call doing things, and I prefer to spend  
5 a higher degree of my time, to the extent possible, in thinking  
6 about problems. So consequently, in the many days that I spent  
7 at Camp David, in Florida, and on occasion even here in San  
8 Clemente, I read enormous amounts of material in addition to  
9 the day-to-day flow of materials that came across the desk.  
10 And that is one of the reasons that the number of documents  
11 is so enormous.

12 As you know, the number of documents in the Johnson  
13 Administration was approximately 32 million for the same period  
14 of time. This is 42 million. That doesn't mean that our  
15 administration was better than his, I am not contending that.  
16 It only means that it was my instructions to my own staff and  
17 others to give me the broadest range of options before I made  
18 an important decision and also because of their awareness of  
19 the fact and some of them were surprised when they came in the  
20 office and found that I had read what they had put in. Their  
21 awareness of the fact that I was one who had the habit of  
22 learning more from reading, because you can read about three  
23 times as fast as you can listen than just from what we call a  
24 bull session.

25 Q Would the number of documents that you, yourself  
26 saw be as many as one hundred thousand?

27 A Oh, at least, I would say.

28 Q At least. That would be approximately 50 per day

1 for the approximately two thousand days of your tenure in  
2 office?

3 A Right.

4 Q Does that sound about right?

5 A Well, I couldn't hold to the figure, but I would say  
6 that I would be surprised if it were less than that and I would  
7 be less surprised if it were far more than that.

8 Q Two hundred thousand?

9 A Yes.

10 Q Does that sound right?

11 A I can't answer that question. Obviously I haven't  
12 counted the number of documents.

13 Q Two <sup>hundred</sup> thousand would be one hundred a day.

14 A Could well be. Could be more.

15 Q Three hundred thousand?

16 A Let's stop at two hundred thousand.

17 Q All right. Now, we discussed a moment ago the  
18 fact that there were great demands on your time as there are  
19 on the time of any other President. Did you establish pro-  
20 cedures designed to insure that you only were presented with  
21 the documents that were essential for you to read?

22 A Oh, yes.

23 Q What were those procedures?

24 A Well, the procedures were to have advisors in  
25 various areas who would screen the flow of paper work coming  
26 into the President's Office or coming in for his, at least,  
27 consideration, and then to have those documents put into what  
28 I called my reading file. Some of them, of course, required



1 reading almost immediately. If, for example, a veto message  
2 was involved, something of that sort, where there was a time  
3 limit. Some of them might require -- didn't have the same  
4 urgency -- decision far down the line, and I asked for that  
5 too.

6 So in the field of foreign affairs I would rely  
7 on Dr. Kissinger to screen the great amount of material that  
8 came in from the various agencies who had interest in foreign  
9 affairs and that included others in the State Department, as  
10 you well know, and also from various private groups and private  
11 citizens who had views which I valued. I might not always  
12 accept them.

13 Mr. Erlichman, he was head of the Domestic Council,  
14 and Mr. Moynihan would screen the documents in that field and in  
15 the political area generally Mr. Haldeman might screen the  
16 documents. And I also had ways in which individuals who  
17 felt they couldn't get through the so-called Palace Guard could  
18 get to me directly. And a number of friends, former advisors,  
19 when I was a Senator, Congressman or Vice President or out of  
20 office and so forth, would send their materials to my personal  
21 secretary, Miss Woods. And a great amount of material came  
22 through her to me.

23 Q So that Dr. Kissinger was responsible for screening  
24 *foreign policy* documents, Mr. Moynihan and Mr. Erlichman were responsible for  
25 screening what we can call generally domestic materials, Mr.  
26 Haldeman was responsible for screening political materials and  
27 then Miss Woods was a channel for communications from personal  
28 friends and other associates?

1           A     But the communications would deal not only with  
2 personal matters, sometimes they would, quite often they would,  
3 and most often they would be intermixed with personal and  
4 public matters. These would be communications from individuals,  
5 as I said, who felt that they might not be heard.

6           Now, in addition to that I should say, however,  
7 that the documents that reached me were not limited to those  
8 individuals and the so-called screening process was not all  
9 that precise. For example, Mr. Ziegler, the Press Secretary,  
10 would bring in documents that, and he had the right to at any  
11 time, that had to do with relations with the press. Mr. Harlow  
12 and later Mr. Timmons often brought me documents directly that  
13 had to do with relations with Congress. Needless to say, if  
14 an independent agency were involved, like Dr. Arthur Burns, he  
15 always came in directly and he sent his things directly, not  
16 through anybody else, because of his justifiable concern about  
17 the independence of the Federal Reserve.

18           Various cabinet officers, including Secretary of  
19 the State Rogers, the Secretary of the Treasury, as well as  
20 heads of independent agencies often sent documents in directly  
21 to me. Sometimes they would send them through Miss Woods and  
22 sometimes they would come directly into the office and hand  
23 them to me. And the reason for this is that there is always  
24 a feeling in any administration that you can't break through  
25 this, what is called, Palace Guard. I felt very strongly that  
26 I wanted to be sure that I had all options in front of me.

27           Q     Of the documents which you saw, would you say that  
28 a large number of them or a small number of them were designated

1 of either specifically or de facto as "eyes only" documents?

2 MR. MILLER: Counsel, could you explain to me what you  
3 mean by "large or small," in the context of your question. I  
4 don't understand it.

5 MR. DOBROVIR: Let me try and ask it a different way,  
6 Mr. Miller.

7

8 BY MR. DOBROVIR:

9 Q Were not most of the documents which you saw seen  
10 either before you saw them or after you saw them by other  
11 members of your staff?

12 A Well, I thought I answered that question as far as  
13 to whether most of the documents were seen before by other  
14 members of the staff. I would say perhaps that was the case,  
15 but I would have to look at the various documents to be sure,  
16 because a great number of documents came directly to me and  
17 not through a member of the staff. Because when a document,  
18 for example, came through my personal secretary or when it was  
19 delivered to me personally, needless to say that document was  
20 not being reviewed by the personal secretary, that was not her  
21 job.

22 Q Now, Mr. Nixon, in your Affidavit you use a number  
23 of terms and I would like to ask you to define them for us so  
24 we have a bench mark for the rest of this examination.

25 In Paragraphs 9, 10 and 12 you use the term  
26 "political." Now, could you define the term "political" as  
27 used by you in your Affidavit.

28

A It is difficult to separate political from official

1 and even from private. But the term "political" as we use it or  
2 as I use it in this Affidavit, I would say would have to do with  
3 the President's responsibility as leader, first of his own  
4 political party and supporting the candidates of that party to  
5 the extent that he was able to do so. Also the President's  
6 responsibility, and here is where you get some mixture, in  
7 carrying out his official duties to discuss what would be  
8 termed rather crass political matters. For example, I was the  
9 first President, as you know, I think since perhaps one hundred  
10 years who came into office with both houses controlled by the  
11 other party. It was impossible to carry on my official duties  
12 without having a very cordial and at times cooperative arrange-  
13 ment with enough leaders and if not leaders people who had  
14 followers within the other party in order to get legislation  
15 through or a veto sustained.

16 I would say that my activities therefore in carrying  
17 out my official duties of getting approval for legislation or  
18 support on a veto, matters of that sort, that it would be  
19 necessary for me to talk what I would call politics with  
20 Democrats as well as Republicans. What I am indicating here,  
21 in effect, is when I use the term "political," I do not limit  
22 it to that being partisan Republican leader. If I had been only  
23 that none of the great initiatives which we accomplished during  
24 our administration could have come about.

25 Q In other words, are you saying that it is one of  
26 the normal activities of the President in performance of his  
27 official duties to take account of political considerations and  
28 made political judgments and in effect conduct politics?

1 A It certainly is or he isn't going to be an effective  
2 President.

3 That was the tragedy of Wilson in his last years.  
4 The first term was a good one. His second, apart from his  
5 illness, was unfortunate because it became too partisan, he  
6 did not recognize the necessity to work with both parties.

7 Q Would you define the word "personal," which you use  
8 in Paragraphs 10, 12, 13, 14, 16, 17, and 18.

9 A Well, here the word "personal" can to an extent  
10 overlap, needless to say, with political, because an individual  
11 who is interested in running for office may speak to a President  
12 with regard to his personal problems, with regard to the  
13 personal problems of his opponent and vulnerabilities thereof,  
14 and would present the matter, for example, to the President in  
15 somewhat personal terms.

16 I recall, for example, when certain members of  
17 Congress were trying to determine whether to retire or not.  
18 That, of course, is a political decision. They would be very  
19 candid and forthcoming in talking about their reasons for,  
20 with regard to their health, regard to family problems they  
21 had and with regard to financial problems they had and so  
22 forth. The latter part I would consider personal, the other  
23 I would consider political.

24 But as far as personal is concerned, generally  
25 speaking I am referring here to, needless to say, my family,  
26 to close personal friends, which include people within the  
27 administration, members of both parties, people in the Congress,  
28 representatives from all segments of American society, because



1 a President over the years before he becomes President,  
2 particularly while he is President, develops close personal  
3 associations and friendships with leaders of business and labor  
4 or religious leaders, educational leaders and many others of  
5 that type.

6 Q Anything else under the category of "personal"?

7 A I think I have given you a general idea of it but  
8 if there is anything specific I will be glad to respond.

9 Q I am just asking how you would define it, sir.

10 Another term which you use is the term "private,"  
11 in Paragraphs 11, 12, 18, and 26, and in particular in  
12 Paragraph 26 you refer to materials which you "consider to be  
13 so private and confidential that no one else should participate  
14 in the initial review."

15 Would you define the word "private" as you use it  
16 there.

17 A Well, private is encompassed in personal. The  
18 term "personal" is the broader term. Private would be, oh,  
19 conversations and communications that I would consider to be,  
20 that any President would consider to be totally confidential.  
21 Matters involving, for example, his own family, his wife and  
22 his children, his relatives, his very close friends and intimate  
23 friends. Needless to say, a private communication would be  
24 one involving those within individuals, an attorney when he  
25 makes up his will. A private communication would, needless to  
26 say, also involve any conversations he might have with his  
27 doctor, with his minister, areas of that type. But I would  
28 also categorize those as being personal as well as private.

1 I mean I am suggesting that private is somewhat a narrower, it  
2 is a part of personal but narrower in terms of the individuals  
3 that would be considered in the private category.

4 If I could point out, so that you can understand.  
5 I might have a conversation with possibly a political leader,  
6 a member of Congress, so forth, in which personal matters were  
7 discussed. Whether that would also be considered private would  
8 depend upon the nature of those matters.

9 Q So we have some documents and conversations which  
10 you have categorized as private, as you have defined it, and  
11 some that you have categorized as personal, as you have defined  
12 it, and some that you have categorized as political, as you  
13 have defined it.

14 Now, in addition to those three categories <sup>is</sup> everything  
15 else in the presidential materials which is not either political,  
16 as you have defined it, personal, as you have defined it, or  
17 private, as you have defined it, material that relates to the  
18 performance of your official duties?

19 MR. MILLER: Mr. Dobrovir, I would object to that  
20 question. I think you would have to go to the specific area  
21 that you are talking about and not try to block out some  
22 document that might exist in the 42 million documents that  
23 might fall in a different category. The question is so hypotheti-  
24 cal I have great difficulty in understanding how it could  
25 possibly be answered.

26 MR. DOBROVIR: Let me ask the witness.  
27  
28

1 BY MR. DOBROVIR:

2 Q In addition to the three categories, political,  
3 personal and private, <sup>and</sup> a fourth category I would call specifically  
4 governmental, unquestionably dealing with governmental matters,  
5 are there any other categories into which these documents might  
6 fall?

7 A I can think of none.

8 Q Thank you.

9 Now, into which of those categories would fall your  
10 conversation on June 23 with H. R. Haldeman, with respect to  
11 Mr. Gray and Mr. Walters, the FBI and the CIA and their  
12 relationship to the burglary of the Democratic National  
13 Headquarters of Watergate?

14 MR. MILLER: Can we have the conversation, please.

15 MR. DOBROVIR: Do you want to be off the record?

16 MR. MILLER: I don't have a copy of it before me.

17 MR. DOBROVIR: Oh. All right.

18 The conversation I am referring to, I have here  
19 Appendix III to the statement of Information Hearings Before  
20 the Committee on the Judiciary, House of Representatives,  
21 93rd Congress, Second Session, pursuant to House Resolution 803.  
22 I am not reading the rest of the title. A transcript of a  
23 tape recording on Page 39 of that volume, and I have reference  
24 to the conversation that begins towards the bottom of Page 40  
25 with the words "Now, on the investigation, you know, the  
26 Democratic break-in thing," and it goes on to Page 45 at the  
27 bottom with the word "Okay."

28 I am handing the volume to Mr. Miller.



1 MR. MILLER: What is the question, Mr. Dobrovir?

2 MR. DOBROVIR: Which of the four categories, political,  
3 personal, private or governmental, does that conversation fall  
4 in?

5 MR. MORTENSON: Let me interrupt, Counsel. You are using  
6 the term "governmental" and I don't think that is a term used  
7 in the plaintiff's Affidavit. I think if you are looking for  
8 the terms that he used in the Affidavit, in his definition, that  
9 the fourth category as you separate them is terms related to  
10 his official duties --

11 THE WITNESS: Presidential duties.

12 MR. MORTENSON: -- and not governmental duties.

13 MR. DOBROVIR: I will accept that amendment.

14 THE WITNESS: We will have the whole record show that,  
15 because I know Counsel wants the record to be accurate, --

16 MR. DOBROVIR: Yes, indeed. I know the witness does.

17 THE WITNESS: Because we don't have a tape, obviously  
18 and can only rely on what we have here.

19 I would categorize this as political and to an  
20 extent personal.

21  
22 BY MR. DOBROVIR:

23 Q And no way related to the performance of your  
24 official duties?

25 A This conversation?

26 Q Yes.

27 (At this time the plaintiff and plaintiff's counsel  
28 confer.)

1 THE WITNESS: Like all conversations, this one is inter-  
2 mixed, I see. I see here, for example, Senator Church is  
3 referred to and also Congressman Mills.

4 MR. DOBROVIR: What page is that on, where those two  
5 gentlemen are referred to?

6 THE WITNESS: Page 9.

7 MR. MILLER: Page 47.

8 MR. DOBROVIR: The conversation I specified begins on  
9 Page 40 and ends on Page 45 and ends with "Okay," on Page 45.

10 MR. MILLER: I don't see that in our document, Mr.  
11 Dobrovir. Would you care to examine it and point it out.

12 MR. DOBROVIR: Did I err?

13 MR. MILLER: It indicates "Okay," but then there is a  
14 question. Apparently that document contains a conversation  
15 that continues on past Page 45.

16 MR. DOBROVIR: The document contains some twenty more  
17 pages.

18 MR. MILLER: Are you taking two or three pages out of  
19 a conversation and ignoring the entire conversation? Is that  
20 it?

21 MR. DOBROVIR: I asked about that specific portion of  
22 the conversation. If the witness wishes to discuss other  
23 portions I have no objection.

24 MR. MILLER: All right.

25 MR. DOBROVIR: But is the witness' answer that the  
26 portion between 40 and 45, which I designated, was that personal  
27 and political?

28 MR. MORTENSON: If Counsel's question was limited to

26  
ter-  
1 those pages, I believe that the witness answered that as being  
2 political and personal. I think for clarity of the response,  
3 to say that the entire conversation looked at contains elements  
4 of all three.

5 MR. DOBROVIR: I understand.

6 THE WITNESS: The entire conversation was one about an  
7 hour. This is about five minutes. I think that is the problem  
8 we have.

9 MR. DOBROVIR: All right.

10 THE WITNESS: And I think the reason that Mr. Miller  
11 raised this point was the "okay" was not something you had  
12 marked "okay," but something that was in the file. There is  
13 no marking here.

14 MR. DOBROVIR: I didn't mark the page, I just asked you  
15 to --

16 THE WITNESS: No problem.

17 MR. DOBROVIR: Thank you very much..

18 THE WITNESS: I am not trying to expedite the matter.  
19

20 BY MR. DOBROVIR:

21 Q So that we have a complete set of bench marks here,  
22 you have defined for us political, personal and private and  
23 we have a fourth category I will call governmental, and which  
24 Mr. Mortenson corrected me to read as official. I wonder --

25 MR. MORTENSON: Let me correct the record again. I  
26 believe what I said in the Affidavit, the plaintiff has used  
27 four terms for categorizing the materials and one of which is  
28 materials related to official actions. I don't believe

1 anywhere in the Affidavit there is a reference to official  
2 materials.

3  
4 BY MR. DOBROVIR:

5 Q So the term is materials related to official action;  
6 is that correct?

7 THE WITNESS: I would insert in there, if I might,  
8 presidential materials related to official actions. Is that  
9 correct?

10 MR. MORTENSON: Yes.

11 THE WITNESS: That is the accurate description, I think.

12

13 BY MR. DOBROVIR:

14 Q Can we have a definition, Mr. Nixon, of that term  
15 "Presidential materials related to official action."

16 A As a matter of fact, that is what we have been  
17 discussing as to the questions that you have asked up to this  
18 point.

19 Q I wonder if you could give us a definition in the  
20 same way that you have defined the other terms.

21 A Presidential materials related to official action?

22 Q Yes.

23 A Well, this would cover all of the official actions  
24 of the President; those imposed upon him by the Constitution  
25 and particularly, for example, the preparation of the State of  
26 the Union message; reporting from time to time to the Congress;  
27 the recommendations to the Congress for legislation; obviously  
28 the veto of such legislation; appointments made by the President,

1 which cover, of course, his Cabinet. But I would say in  
2 constitutional terms, as I recall the Cabinet is not referred  
3 to but by precedent it has become, through one of our Presidents  
4 Madison, one of the official responsibilities and perhaps even  
5 more important where lawyers are concerned, appointments to  
6 the judiciary and in addition to all the appointments the  
7 President makes as Commander in Chief of the Armed Services.

8 Q And does it include those materials that relate to  
9 your general supervision of the administration of the Executive  
10 Branch of government?

11 A What do you mean by "general supervision"?

12 Q Well, you are the Chief Executive. As President  
13 you were the Chief Executive of the United States; isn't that  
14 right?

15 A Yes.

16 Q And in addition to appointing the Cabinet officers,  
17 you also were responsible, under the Constitution, to take care  
18 that the laws were faithfully executed, you were responsible for  
19 overseeing what all of these persons that you appointed did and  
20 how they carried out their duties; isn't that so?

21 A Well, it would be dependent upon what duties are  
22 involved.

23 As Counsel is quite aware, the Congress has moved  
24 into these areas in some instances and it has that certain  
25 duties shall be carried out by people in the Executive Branch  
26 independent of the President.

27 Q Aside from those specific matters in which Congress  
28 has done that, you do have supervisory responsibility for

1 Cabinet officers and other appointees; isn't that so?

2 A Yes, that is true. That is true.

3 Q Very well. Now then, included in the category of  
4 the presidential materials related to official actions, do we  
5 have documents that are prepared in or by an agency or a  
6 commission or a department with respect to its own functions,  
7 of which a copy is transmitted to the White House for the White  
8 House Staff and your information?

9 A Well, the situation here is that whether it would be  
10 a department or an independent agency or an ad hoc commission  
11 or special commission or what have you, except for those  
12 commissions that we delineated a moment ago, that are appointed  
13 directly for the President, for the purpose of reporting directly  
14 to him, that the records of those agencies are in those agencies  
15 and belong to those agencies. That is, when those agencies  
16 have recommendations to make to the President they, of course,  
17 come to him. But they, of course, retain in the agencies and  
18 they continue through other administrations as well.

19 Q So those documents which come from agencies to the  
20 Office of the President or go from the Office of the President  
21 to those agencies are not considered part of your presidential  
22 materials?

23 MR. MILLER: Would you repeat it.

24 THE WITNESS: I think I have answered that three, four  
25 times but I will do it again for the fifth time.

26 MR. DOBROVIR: No, once is enough.

27 THE WITNESS: At least four times is enough.

28 Now, I don't mean to haggle about it, because it is



1 a rather novel matter that hasn't been discussed before.

2           The way it happens, a specific department, the  
3 Secretary of Agriculture, the Agricultural Department, has a  
4 whole mass of paper work that is prepared in the Department.  
5 Very seldom does anything come to the President that has to do  
6 with the work of that Department unless it requires Presidential  
7 action or decision.

8           For example, a recommendation on the Food Stamp  
9 Program legislation, extension thereof increasing it, or when we  
10 initiated it, what kind of program should it be. That is a  
11 matter that would come to the President.

12           But as far as the Department papers are concerned,  
13 materials are concerned, those are in the Department. It is  
14 only when a department or an agency, an independent agency or  
15 other agency has a direct responsibility or relationship with  
16 the President in the carrying on of his official duties, that  
17 whatever is prepared then becomes not only, I would say acquires  
18 basically a dual personality, if we are going to distinguish in  
19 this instance, because needless to say each department also  
20 keeps its copy and the original comes to the President.

21  
22 BY MR. DOBROVIR:

23           Q     So is the copy in the department considered an  
24 ordinary agency document then?

25           A     It is not quite ordinary. No, the reason if it were  
26 ordinary it would not come to the President. If it comes to  
27 the President, it takes on a different aspect.

28           Q     But the copy that remains in the agency is an agency

1 document?

2 A The copy that remains in the agency? Oh, I would  
3 think so; yes.

4 Q Subject to all of the applicable Federal statutes?

5 A That have to --

6 MR. MORTENSON: Counsel, that calls for a legal conclusion  
7 that I don't think you have established that the witness has the  
8 background to answer that.

9 THE WITNESS: Counsel is well advised. If I knew I would  
10 answer.

11 MR. DOBROVIR: Very well.

12

13 BY MR. DOBROVIR:

14 Q Now, in your Affidavit, Mr. Nixon, you have  
15 specified certain interests that you are seeking to protect  
16 with regard to the materials that are the subject matter of  
17 this lawsuit and I find the following: The interest in non-  
18 disclosure of personal matters and private matters; the  
19 interest --

20 MR. MILLER: Would you give me a page on that, Mr.  
21 Dobrovir.

22 MR. DOBROVIR: I have Paragraphs 10 and 12 through 19.

23

24 BY MR. DOBROVIR:

25 Q Then we have nondisclosure of political matters,  
26 to which I have Paragraphs 9 and 10. We have confidentiality  
27 of -- let me get the right word -- matters related to official  
28 actions and for that I have Paragraphs 7, 8 and 20; and I have



1 interest in preparation by you of your memoirs, for which I  
2 have Paragraphs 22 and 23; and the last one I have is the  
3 creation of a presidential library and the preservation of these  
4 materials for the use of scholars, for which I have Paragraphs  
5 23, 24, 26 and 30.

6 Now, is there any other interest that is not listed  
7 in your Affidavit, which you are seeking to protect with regard  
8 to the materials.

9 MR. MILLER: Do I understand the question to mean is  
10 there any other interest other than what you have characterized  
11 the Affidavit as covering or the Affidavit itself, besides from  
12 your characterizations?

13  
14 BY MR. DOBROVIR:

15 Q Why don't we say any interest, other than those  
16 which I have specified, which is based on any interpretation of  
17 your Affidavit.

18 A No. I would say that I would stand on the Affidavit.  
19 It would be, of course, bad to answer questions with regard to  
20 your interpretation.

21 Q Well, I don't want to be repetitious. But are you  
22 seeking to protect any interest in regard to the materials, in  
23 addition to the following five interests: First, the interest  
24 in nondisclosure of personal and private matters; second, the  
25 interest in nondisclosure of political matters; third, the  
26 interest in the confidentiality in matters relating to official  
27 action; fourth, interest in preparation of your memoirs; and  
28 fifth, the interest in the relation of a presidential library

1 and preservation of materials for scholars?

2 A Yes. Far more than that.

3 Q Would you please give them to us.

4 A I would suggest counsel refresh his memory by  
5 reading the pleadings. The pleadings are set forth on other  
6 grounds, of course, and the Affidavit addresses itself only to  
7 certain specifics. But I would not want the record to show  
8 that the case, from the factual standpoint, is based solely  
9 on the affidavit.

10 Q Can you tell me what other interests you are seeking  
11 to protect in addition to those five which I have listed?

12 A Do you have the Complaint, Counsel?

13 While they are searching for it, because you  
14 probably read it, --

15 Q I am familiar with it.

16 A I would suggest having read the Complaint, that  
17 from Page 16 through Page 18 we list the reasons for the  
18 invalidity of the act and that, of course, the Complaint itself  
19 goes beyond that. But this is a summary of the reasons for the  
20 invalidity of the Complaint and broader than the Affidavit.  
21 That is the only point I am making.

22 Q I would like you to tell me what those additional  
23 interests are, please.

24 (At this time plaintiff and plaintiff's counsel confer.)

25 THE WITNESS: Well, this is perhaps covered better in  
26 the pleadings than I will cover it orally.

27 To me this suit involves, as the last paragraph of  
28 the Affidavit indicates quite clearly, not simply my interest

1 alone, the ownership question as far as presidential materials  
2 are concerned. My primary interest is the institution of the  
3 presidency itself and of the ability not only of a President  
4 but of any official elected or appointed at the Federal or State  
5 level to carry out his official duties.

6 In my view, from my experience, the carrying out of  
7 official duties involves, and this is more true of the President  
8 than anybody else but it affects members of the Judiciary, it  
9 affects Cabinet Officers, it affects members of Congress,  
10 Governors and State Legislators and even people down the line at  
11 the City and County level.

12 As far as public office is concerned, and particularly  
13 where the Presidency is concerned, the most important consider-  
14 ation is that he make the best decisions possible. Now,  
15 different Presidents have approached this problem of how to  
16 make the best decisions in different ways. I was influenced  
17 to an extent, I must say, not only my rather extended experiences  
18 with President Eisenhower, when for eight years I saw how he  
19 made decisions, but by a conversation that I had just before I  
20 became President, just before my inauguration, with Dr. Arthur  
21 Burns, who had served in the Eisenhower Administration and  
22 in a very consultative capacity for the administrations  
23 thereafter and who, before I appointed him as Chairman of the  
24 Fed, was my chief advisor in the domestic area. And Dr. Burns  
25 said that the problem with most Presidents and, of course, most  
26 officeholders, particularly Presidents, is that everyone who  
27 comes to see him, be he a staff member, Cabinet member,  
28 Congressman, Senator, business or labor representative or

1 | what have you, tries first to find out what the President wants  
2 | or thinks and then does his best to present a case on all fours  
3 | with what the President is thinking or wanting.

4 |           He said the most important prerequisite for good  
5 | decision making is for a President to have before him all  
6 | possible options, a wide range of options. And he said in order  
7 | to get that kind of advice, first he said you must tell your  
8 | Cabinet that, which I did at our first meeting. Second, you  
9 | must tell your staff that, which I did very early in our  
10 | administration, telling them in effect that I was interested  
11 | in their views, that I could not always assure them their views  
12 | would be accepted but that I wanted them to present their views  
13 | with all the bark off so that I could, in making up my own  
14 | mind, have the full range of options in front of me.

15 |           I also did this in my relationships with people  
16 | outside of government, they were quite aware of this, which  
17 | had frankly been my practice long before I became President  
18 | and one which I implemented in many instances quite successfully  
19 | when I was President. People outside of government were willing  
20 | to write in what they might consider to be unpopular views,  
21 | even views which in the light of history might prove to be  
22 | stupid but they would do so usually only if they felt they were  
23 | not going to be held accountable therefore in the public forum.  
24 | They did so and I got advice of that type, because individuals  
25 | knew I could keep a confidence and, of course, I felt that they  
26 | could as well.

27 |           In my view this principle of confidentiality, which  
28 | I realize is not in vogue these days in many quarters, is

1 indispensable for making of great decisions. There would have  
2 been no opening to China without total absolute secrecy and  
3 confidentiality. Not because anything wrong was involved but  
4 because any leak would have destroyed the fragile framework  
5 that we had built up over a period of years starting from the  
6 time I ventured that opinion, before I became President, in an  
7 article to Foreign Affairs.

8           There was a situation there would have been also in  
9 the domestic field very great difficulty in implementing the  
10 program that we had for desegregation of schools in the south  
11 unless it had been done with some degree of confidentiality  
12 and the assurance so that a President could have candid, very  
13 frank discussions with people on both sides with regard to the  
14 problem and by gaining their confidence then be able to make  
15 decisions which would enable him to move forward on an issue.

16           There also comes to mind the new economic policy,  
17 which was announced on August 15th, 1971. It was developed  
18 in the first instance in a long conversation that I had with  
19 Senator Connally in the Oval Office. It was discussed in great  
20 length in memoranda from people within the Administration who  
21 had diametrically opposed views and who wrote those memoranda  
22 to me, all of which I read, and who then when they were together,  
23 when we met at Camp David, expressed those views. I made the  
24 decision. The views resulted in the floating of the Dollar/Wage/  
25 Price Controls, the Freeze.

26           And the other matters, particularly the imposition  
27 of 10% Import Duty, as you recall, on foreign cars and so forth.

28           I give those two examples and there are others,



1 only to show that while the word secrecy is one to us in a free  
2 society is abhorrent, that in terms of decision making it is  
3 indispensable.

4 For example, the long and tortuous process which  
5 resulted in ending the Draft and ending the American involvement  
6 in Vietnam and ending the press of war required secret negotia-  
7 tions over many, many months. At any time had there been  
8 disclosure thereof or if at any time the individuals with whom  
9 we were in contact had thought that their preliminary reviews  
10 would be made public, the American involvement I think would not  
11 have ended as soon as it did.

12 I am not suggesting that as far as a President or  
13 any other officeholder is concerned that to the greatest  
14 extent possible not only his decisions but how he reaches those  
15 decisions should be made public, but I am suggesting that, and I  
16 know that if individuals who advise a President do not assume  
17 that their advice is going to be given in confidence they are  
18 going to be giving advice that has a unique quality. Some did  
19 anyway. But the best advisors I had, I must say, were those who  
20 expressed views far, far apart. And without belaboring the  
21 subject too much, the great debate over Welfare Reform which,  
22 as you know, I finally approved the Family Assistance Program.  
23 And in this instance, since it has become -- oh, since it has  
24 now been written in a book by Mr. Moynihan, but long after the  
25 issue is no longer lively and therefore it is proper for him  
26 to write it, but in this instance my top economic advisors for  
27 Domestic Affairs were poles apart, but I had to see and hear  
28 their views in order to make what I believed to be the right



1 decision, even though it was not implemented by the Congress,  
2 if they had not felt they were expressing them in confidence.

3 And I speak here not only for my own office, my  
4 own tenure in office as an individual but for the Office of the  
5 Presidency in the future and for that matter for all of those  
6 who hold office, because once this precedent is established of  
7 appropriating not only the President's private thoughts and  
8 papers and diaries, et cetera, but also all of the information  
9 that comes in to him with the assumption that it is to be  
10 secret, once it happens here then inevitably, in my opinion, it  
11 will move on and affect future presidencies. It could move  
12 over possibly even to the Judiciary, very unlikely to the  
13 Congress because the Congress, as you know, is quite jealous  
14 of its prerogative, in a sense.

15 Q You are speaking of contemporaneous confidentiality,  
16 are you not? That it would have been destructive had there been  
17 a leak of your preparation to establish, to reestablish  
18 relations with China before the fact?

19 A Oh, no. No. It affects the individual involved  
20 who gives the advice for years to come. Individuals like Dr.  
21 Kissinger, who was very active in those negotiations, will  
22 probably be, and I would hope he would be, in public service  
23 for many years to come. And the conversations that he had here,  
24 and I realize that under the statute there are certain safe-  
25 guards that are provided for national security, but here again  
26 what we are talking about is how those safeguards are to be  
27 implemented. But you will find that as far as individuals are  
28 concerned, that they are thinking of their future.

1 A Congressman or Senator doesn't give advice without  
2 thinking of what is going to happen to him in the next election  
3 or if he is planning to move up from House to Senate or from  
4 House to Governor or whatever the case might be or down, he  
5 doesn't want anything in the public's, spread in the public  
6 record that might later prove to him to be embarrassing, not in  
7 a personal sense but would inhibit his freedom of expression.

8 As a matter of fact, --

9 Q You indicated --

10 A Go ahead, interrupt.

11 Q I am sorry, I thought you had completed your answer.

12 A I don't mind being interrupted, I am used to it.

13 Q You indicated that you had no objection to Mr.

14 Moynihan's revelations with respect to the Family Assistance  
15 Planning, because it was long after the fact; is that correct?

16 A Yes, that is true.

17 Q Did you have any objections to Mr. Kissinger's  
18 revelation of conversations with you by his biographers  
19 Messrs. Kalb, as they appeared in their biography of him?

20 A No. I frankly haven't had an opportunity to read  
21 those.

22 Q I see. Did you forbid Mr. Safire to report conver-  
23 sations with you that he had attended in his book before the  
24 fall or was there no objection to those disclosures?

25 A It is inevitable that individuals who are in the  
26 administration, who leave it, are going to write their memoirs  
27 with regard to their role in the administration and they will  
28 see it from their vantage point.

*Schlesinger*

1 Mr. Shirer did in his Thousand Days and Mr. Sorensen  
 2 did and others will do so. So as far as I am concerned, but that  
 3 is far different from what the statute provides. Each of them,  
 4 like a fly on a wall, sees only or hears only part of the story.  
 5 The full story is something else again and the full story is  
 6 something that can only be obtained from the whole range of  
 7 presidential materials. That is the subject of this suit.

8 For example, I note the Reporter's Committee have  
 9 placed apparently considerable stock in affidavits by Mr. Novak  
 10 and Mr. <sup>Lisogor</sup> Lisigore and that after all they are ready to release  
 11 anything, why should they worry? I am shorthanded<sup>ing</sup> what I under-  
 12 stand the advantages are.

13 Let me say, I have great respect for both of those  
 14 individuals as being good investigative reporters. They think  
 15 they know but in some instances they know what they know is  
 16 inaccurate and in other instances -- and in all instances it is  
 17 only a very -- it is only a part of the story. A good newsman  
 18 has the responsibility to develop, as he can, his so-called  
 19 sources just as a good -- as any individual attempts to develop  
 20 a line of communication with individuals that can be helpful to  
 21 him. But as far as those that we call "leakers" are concerned,  
 22 anybody who is sophisticated in the political area and who has  
 23 been in it as long as I have is usually able to make a pretty  
 24 good guess as to, when he reads an article which does contain  
 25 a leak, who the leaker is and his remedy, while it is not a  
 26 legal remedy, is a very effective one. The individual who is  
 27 a leaker doesn't find out things in the future.

28 Q Did anyone who participated in conversations about

1 what you describe in Paragraph 20, and let me get the page  
2 because that is a long paragraph, Page 15, which you describe  
3 as "dramatic changes in foreign policy" and conversations with  
4 respect to crucial domestic issues, if any individual states a  
5 disclosure <sup>specially met</sup> that would inhibit that person from giving what you  
6 say or what you describe in your Affidavit as "free-wheeling,  
7 candid, and often blunt or critical advice."

8 A It was implicit in the conversations that I had with  
9 them. After all, as I pointed out, I indicated for every  
10 individual who came into possession of responsibility with me  
11 and to several members of the house and several democrats and  
12 republicans, whom I often talked in confidence, that they could  
13 tell me anything and it wasn't going to get out as far as I was  
14 concerned. Sometimes it got out as far as they were concerned.

15 Now, I would say also, in answer to your question,  
16 that it had an enormously inhibiting effect on what a foreign  
17 leader might say to a President of the United States. I had  
18 the custom of what is called a "one-on-one." It was not always  
19 followed. Sometimes we would have what we call plenary sessions.

20 Q Sir, let me interrupt.

21 A Let me finish the answer, then you can interrupt.  
22 I found that because I had developed a reputation, going back  
23 over twenty-five years, of never disclosing a confidence, or  
24 at least not knowingly doing so unless I had the implied or  
25 expressed permission of that leader, that that leader would  
26 talk very frankly with me. It was on that basis that we were  
27 able to develop not always a friendly relationship but at least  
28 a relationship of negotiation rather than confrontation with

1 the People's Republic of China, with the Soviet Union, leaders  
2 of the Mid-East, with the leaders of Europe as well as other  
3 nations throughout the world, and that is invaluable to a  
4 President. I know, for example, that what we call the Pentagon  
5 Papers came out, that we received a number of cables from  
6 countries abroad concerned that their private conversations and  
7 so forth, even though that dealt only with the war in Vietnam,  
8 it might become public. The same is true when the so-called  
9 what has been called the taping system, not so-called, it was a  
10 taping system. This had a chilling effect, certainly in terms  
11 of what they might say in the future. And, of course, having in  
12 mind that this legislation, potentially due to the fact that it  
13 set up a commission to deal with future presidencies, that this  
14 legislation would tend to open the door for further disclosure  
15 and in future presidencies and probably even in past presidencies  
16 of what had been assumed to be confidential information, I think  
17 will inevitably have a chilling effect not only on those who  
18 advised the President, but also on those who, I might suggest,  
19 and I am speaking of those who had advised the President in his  
20 official family but in the broader context of the political  
21 arena, House and Senate and Governors, et cetera, in the private  
22 sector, and I cannot emphasize in terms of the President's  
23 foreign policy responsibilities, even in the foreign policy area,  
24 recognizing that the legislation purports to cover the National  
25 Security area in a way that would not inhibit in that concern  
26 but also recognizing that as far as any individual is concerned,  
27 while they might trust a President or former President's dis-  
28 cretion with regard to revealing a confidential discussion, they



1 would not have the same confidence in a bureaucrat's decision  
2 on a matter of that sort. An example is, and this letter just  
3 arrived yesterday from an individual I haven't heard from  
4 perhaps for one or two years, but I have known him as I entered  
5 public life twenty-seven years ago, Mr. Morris Ernst, and you  
6 can tell he is an old friend because he refers to me as Dick.  
7 He says "Dick, I see in the New York Times that there is an  
8 attempt to get from you your personal mail. You may recall  
9 that for some years I had put on the top of my letters, 'Burn  
10 before reading.' I am quite sure that I would have written  
11 differently if I would have thought that my random letters  
12 would have become public. Best regards. Please return all  
13 my letters."

14 Now, that is we take a Morris Ernst, we take,  
15 for example, one in the economic community who is not a favorite  
16 with <sup>them,</sup> Pierre Renfret. What individuals like that would do in  
17 the future, with regard to giving their very learned advice to  
18 the President, I don't know, in the event that this legislation  
19 is upheld and then is made to apply to future Presidents. But  
20 I do know this, that to me, in the conduct of a Presidency, it  
21 has been invaluable to have views on the domestic scene, in the  
22 foreign scene, from the broadest possible spectrum. That is  
23 one of the reasons why when people have come into my office I  
24 have the reputation of being the devil's advocate and I will  
25 present a view as being my own, remembering what Dr. Arthur  
26 Burns told me, to see whether the individual concerned is there  
27 just to pander to the President's views or to express his own.  
28 Good lawyers do the same thing.



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I am convinced, as far as future decision makers are concerned, that the quality of the decisions will reach the lowest common denominator in the event that the confidentiality of the discussions that takes place is impaired and inhibited or for that matter destroyed.

Q I take it the answer to my question, which was: Did anyone ever specifically state that the disclosure of the conversation would inhibit them from giving candid and blunt or critical advice? And the answer was "No, it was implicit"?

A I read this letter from Mr. Ernst from the outside. I would say, and I know Counsel would not want to try to put words in my mouth, but I used the word "implicit" but then went on to say that because I had so informed my staff and because I had a reputation over the years of being, frankly being very closemouthed about advice that I had received much, incidentally, to the disgruntlement of the members of the press, because they felt that all of the foreign and domestic policies and advice that inevitably goes on, conflicts and competition in the official family, should be presented in the public record. Some should, sometimes it is healthy, and some should not. And in the cases where it should not be spread in the public record is where an individual who gives advice, thinking it is going to be confidential and then feels that he would be inhibited from giving such advice in the future if he stays in an advisory position, if we want to talk about his First Amendment Rights, I would think that he would feel very concerned that he would be embarrassed politically, not embarrassed personally, by the fact that he had written or expressed views

1 that historically is later seemed so outlandish at the time.

2 Q Mr. Nixon, the deposition will be shortened con-  
3 siderably if you can just answer my questions as asked.  
4 Obviously you are entitled to explain your answer, but I hope  
5 that we can move on a little more rapidly now.

6 MR. MILLER: My silence is not an indication that I  
7 accept your characterization of it. It seems to me the answer  
8 was precisely what you called for.

9 THE WITNESS: As I recall, Counsel asked me if I had any  
10 other selective areas outside of the deposition. He said is  
11 your case based only on this and I proceeded to take one area  
12 which went far beyond that. Now Counsel can go on with  
13 specific questions and get specific answers.

14 MR. DOBROVIR: I will endeavor to do that.

15  
16 BY MR. DOBROVIR:

17 Q In your affidavit, on Page 13, you refer to a conver-  
18 sation with "the ranking minority member of a House Committee."  
19 And you state "I do not believe the ranking minority member  
20 would have felt free to discuss this delicate situation if  
21 he had believed that his communication would later be made  
22 public."

23 Did the ranking minority member say that to you?  
24 A Say that to me?

25 Q Did he say that he would not have felt free to  
26 discuss this delicate situation if he would have believed that  
27 his communication would later be made public?

28 A Let me read from the Affidavit.

1 Q Please.

2 A It was important that I be aware of this in order  
3 to be in a position to determine what the <sup>course</sup> ~~cause~~ of action would  
4 take in a particular legislation. I do not believe the ranking  
5 member would have told me or discussed this delicate situation  
6 if he had believed that his communication would later be made  
7 public.

8 Q My question was: Did he say that he would not have  
9 felt free to discuss the situation if he had believed that his  
10 communication would later be made public?

11 A I have no recollection of his having said that, but  
12 I am confident that he would not have said it because we had  
13 that kind of relationship.

14 Q Thank you.

15 A And also it would have destroyed him politically if  
16 it had been public, self-interest would be involved.

17 Q Was that conversation taped?

18 A It was.

19 Q Did he know it was being taped?

20 A No.

21 Q Was the principle of confidentiality to which you  
22 referred, breached by John Dean in his testimony before the  
23 Senate Watergate Investigating Committee?

24 A I think, as I recall, that I waived the attorney-  
25 client privilege in his case. He was counsel to the White  
26 House, as you may recall. They asked for a waiver and I gave  
27 it, I granted it. Obviously the attorney-client privilege does  
28 not hold once the waiver of confidentiality is not an issue.

1 Q Did you not state, on April 29, 1974, and I am  
2 quoting from your speech to the nation on television that "I am  
3 making a major exception to the principle of confidentiality,  
4 because I believe such action is now necessary in order to  
5 restore the principle itself, by clearing the air of the central  
6 question that has brought such pressures upon it and also to  
7 provide the evidence which will allow this matter to be brought  
8 to a prompt conclusion"?

9 A Yes, I made that speech.

10 Q Do you still hold to that view, with respect to the  
11 events commonly denominated as Watergate?

12 A Yes.

13 Q Then do you agree with the Congress of the United  
14 States that there is a need to provide the public with the full  
15 truth at the earliest reasonable date of the abuses of govern-  
16 mental power, popularly defined under the generic term  
17 "Watergate"?

18 A Do I -- may I have the first part again.

19 Q Do you agree with the Congress of the United States,  
20 that there is a need to provide the public with the full truth  
21 at the earliest reasonable date of the abuses of governmental  
22 power, popularly identified under the generic term "Watergate"?

23 A Would you like to be more precise as to what is  
24 popularly known as "Watergate," apart from the so-called legal  
25 matters that are in the courts? Do you want to comment on those?

26 Q I am referring to Section 104-A1 of the Act which  
27 you were challenging in the lawsuit as unconstitutional, an act  
28 which was signed by President Ford.

1 MR. MORTENSON: Counsel, it is a matter of position taken  
2 by Counsel for plaintiff that the term is not reasonably  
3 definable and you ask this plaintiff whether he agrees with what  
4 Congress states. It is not reasonably definable and puts him  
5 in an impossible position to answer.

6 MR. DOBROVIR: Let me try and ask it another way then.

7  
8 BY MR. DOBROVIR:

9 Q Do you believe that the full story of the activities  
10 carried out by you and members of your staff, that had to do  
11 with the concealment of various aspects of the Watergate matter  
12 should be made public in their entirety?

13 A The Affidavit, I believe, answers that question,  
14 pointing out that we have cooperated with the Special Prosecutor  
15 and as of this time we have satisfied all of the requests of  
16 the Special Prosecutor for documents, tapes, that he has made.  
17 In addition, of course, I have given testimony to the Special  
18 Prosecutor Task Force on a number of the issues other than those  
19 covered by the matters currently in court.

20 So my answer to the question is that in view of that  
21 cooperation, I believe we have complied with the spirit of the  
22 statement that I made on April 29th and also with the Con-  
23 gressional statement that you have just read.

24 Q Do you believe that the public at large, as opposed  
25 to the Special Prosecutor, has a right to know the complete  
26 story?

27 MR. MORTENSON: The full story of what?

28 MR. DOBROVIR: Watergate.



1 MR. MORTENSON: What do you mean by "Watergate," Counsel?  
2 The building?

3 MR. DOBROVIR: No, I mean by Watergate, I am asking the  
4 question in this sense: All the activities that occurred after  
5 June 17, 1972, up through August 9, 1974. I only use that date  
6 because that was the date Mr. Nixon resigned from office.  
7 Relating to what is popularly described as the "cover-up."

8 Now, if the witness knows what I mean by that, I  
9 would like him to answer the question.

10 MR. MILLER: The witness may know what you mean but I  
11 don't.

12 MR. DOBROVIR: Well, if the witness knows, I would like  
13 the witness to answer.

14 A. Counsel has given you the answer.

15  
16 BY MR. DOBROVIR:

17 Q. Counsel has said Counsel doesn't know what is meant  
18 by "Watergate."

19 A. If my Counsel doesn't, I would never put my wisdom  
20 above his.

21 Q. Do you know what is meant by "The Watergate cover-  
22 up"?

23 A. I know what several people have written.

24 Q. Can you tell me what you understand it to mean?

25 A. I can only tell you that we have cooperated with  
26 the Special Prosecutor in all of his requests and that insofar  
27 as any activities on my part are concerned, that they have been  
28 disclosed to the Special Prosecutor, who is responsible in this



1 area. And beyond that, I have nothing further to add.

2 MR. MORTENSON: Counsel, you are putting the plaintiff  
3 here in an impossible position to answer your questions, because  
4 of the fact that in cooperating with the Special Prosecutor's  
5 Office and providing the Grand Jury, through the Special  
6 Prosecutor's Office testimony and documentation, that that  
7 material becomes subject to the Grand Jury's proceedings and  
8 the laws regarding disclosure thereof. And to ask the plaintiff  
9 if he believes the American people should have access to these  
10 items, which pertain to what we don't seem to be able to extract  
11 as a definition of Watergate, would require him to conclude that  
12 he disagrees with the laws that provide for the Grand Jury.  
13 And I think that is an impossible task for him.

14 MR. DOBROVIR: My question and the whole examination  
15 relates not to what the witness has stated to the Grand Jury or  
16 to any other law enforcement body, but rather to what is  
17 contained in the presidential materials that are the subject  
18 matter of this lawsuit, Mr. Mortenson.

19 Let me try another definition, what I am talking  
20 about, to see if this will help the witness to answer.

21  
22 BY MR. DOBROVIR:

23 Q Do you believe, Mr. Nixon, that the public is  
24 entitled to full disclosure of everything that is in the  
25 presidential materials, that relate to the break in at the  
26 Democratic National Committee Headquarters on June 17, 1972,  
27 and subsequent efforts by anyone to conceal the involvement  
28 of the Committee for the Re-election of the President, with that

1 break-in.

2 A Well, the answer to your question at this point is  
3 not at this time, in view of the legal proceedings that are  
4 underway and in view of, as we have already indicated, when I  
5 speak of legal proceedings, including the Grand Jury proceedings.  
6 However, I would anticipate that in the future, that in the  
7 presidential library, that all of these matters would be made  
8 public, because they are not in the provided -- they were not in  
9 the category of the -- let me put this more precisely.

10 These matters, in which there was a public interest  
11 since the tapes as well as the documents, et cetera, would be  
12 delivered to the library. It would be my intent that, except  
13 where there would be a violation of the guidelines, that former  
14 Presidents under the Presidential Library Act of 1955, which  
15 passed when I was Vice-President of the United States, and that  
16 under those guidelines that matters involving Watergate would be  
17 among those made public.

18 I should point out what we are talking about here  
19 is, well, of course of great public interest, in view of how  
20 much has already been made public and in view of the present  
21 status of the matter. I find that less than one percent of the  
22 presidential materials, the number 42 million documents, con-  
23 versations and so forth, is Watergate-related in any respect.  
24 But we are not talking about a great deal of material.

25 Q If I can summarize your answer. You are saying that  
26 you agree it should be made public but not at this time?

27 MR. MORTENSON: I think the answer stands for itself in  
28 the record as stated. If you want the reporter to read it back

1 so you can get it, --

2 THE WITNESS: The reporter can read it back.

3 MR. MORTENSON: Let that stand in the record or not to  
4 agree or disagree with your characterization.

5

6 BY MR. DOBROVIR:

7 Q When do you think that this material should be made  
8 public?

9 A Pardon?

10 Q When should this material be made fully public?  
11 You said not at this time.

12 A Well, first of all we have to get the decision made  
13 with regard to this action that we have brought so that I can  
14 have the opportunity to obtain the material and to segregate those  
15 portions that are private and personal. And, of course, what-  
16 ever portions that might involve the national security there  
17 has to be a check.

18 I notice, for example with regard to tapes, that  
19 President Johnson placed a 50-year limitation, as you probably  
20 know, with regard to his tapes.

21 Q My question is still with Watergate.

22 A I am not quite through and I have not interrupted  
23 Counsel in his, Counsel's questions. And if Counsel will show  
24 me the same regard I would appreciate it.

25 President Johnson has placed a 50-year limitation  
26 with regard to any materials that were on tapes and now that  
27 he has passed away, of course whether or not members of his  
28 family or others may decide to move before that time, to make

54  
1 some of them public, remains to be seen. But I think that is  
2 too long.

3 In the agreement that I have, that I will eventually  
4 work out, the letter of intent with the University of Southern  
5 California and so forth, I intend to provide for making first,  
6 of course, for proper review of the tapes, which can only be  
7 undertaken by me and members of my family, because of the  
8 private and personal considerations that are there and for making  
9 them public as soon as those reviews are completed.

10 MR. MORTENSON: Let us take a brief recess.

11 (A brief recess is taken at this time.)  
12

13 BY MR. DOBROVIR:

14 Q Let me ask the question then, Mr. Nixon. Do you  
15 have a time period that you expect, within which to make full  
16 disclosure of all the Watergate matters?

17 A No.

18 Q Do you expect it to be longer than five years?

19 A I can't tell until I see how big the task is.

20 Most of the tapes are not as audible as the one you played at  
21 that cocktail party.

22 Q How long do you expect it will take for you and the  
23 members of your family to review all the tapes, Mr. Nixon?

24 A I don't know. But we will do it as expeditiously  
25 as possible.

26 Obviously, as Counsel is aware, we won't have  
27 access to the tapes until this case is decided, which, as I  
28 understand, at the earliest will be next spring. But by that

1 time the tape review process could begin and I have some ideas  
2 as to how it could be expedited and I do want, because of the  
3 great interest in the tape material, I want it to move as quickly  
4 as possible. What is the Supreme Court's statement? With all  
5 the deliberate speed. A little faster than that, particularly  
6 as it applies.

7 Q But only yourself and Mrs. Nixon and your daughters  
8 will be listening to the tapes; is that correct?

9 A Yes. Well, --

10 MR. MILLER: May I ask, Counsel, what the relevancy of  
11 the time period is to this lawsuit?

12 MR. DOBROVIR: Well, we are discussing a section of the  
13 statute with which Mr. Nixon disagrees, which provides that the  
14 public should be provided with the full truth at the earliest  
15 reasonable date. And I am just trying to get some information.

16 MR. MORTENSON: Counsel, you are characterizing --

17 MR. DOBROVIR: Let me finish. Please don't interrupt,  
18 Counsel, we must have this evenhanded so that we can have some  
19 basis for understanding what the witness' plan is with respect  
20 to the time frame for release of the full story of Watergate.

21 MR. MORTENSON: I don't believe that your characterization  
22 of his agreement or disagreement with the statement contained in  
23 the statute is accurate and I just want the record to reflect  
24 that.

25

26 BY MR. DOBROVIR:

27 Q Do you believe that the President has an ongoing  
28 constitutional responsibility to protect the confidentiality



1 of communications?

2 A I certainly do.

3 Q And does that responsibility extend to communications  
4 with former Presidents -- of former Presidents?

5 A It always has.

6 Q And did you not seek to protect that interest when  
7 you sought, when you authorized the litigation to prevent the  
8 publication of the Pentagon Papers?

9 A Yes, that is correct.

10 I should point out that from a political standpoint,  
11 some of the members of my staff totally disagreed. In fact, most  
12 of them were <sup>against</sup> my decision to litigate on the Pentagon Papers  
13 matter, because it was no skin off our back. After all, when  
14 we came into power there were 300 men being killed every day  
15 and 550,000 in Vietnam at that time. We were drafting 34,000  
16 a month, and this all reflects on the previous administration.

17 Well, the way I saw it was that far more important  
18 than who the Pentagon Papers may have reflected on, as to how  
19 we got in Vietnam and what we had done in Vietnam was the  
20 Office of the Presidency of the United States, that is why I  
21 felt that for the individual who removed the papers, top secret  
22 papers, although most of them were not particularly important  
23 some were vitally important, should not have been given a badge  
24 of honor and the paper that published them should not have  
25 received the Pulitzer Prize.

26 Q But you felt it was part of your responsibility to  
27 protect the confidentiality of communications in the Kennedy  
28 and Johnson Administrations; isn't that correct?



1 (At this time plaintiff and plaintiff's counsel confer.)

2 MR. DOBROVIR: I would like the record to show that ~~Mr.~~  
3 Mortenson is whispering to the witness.

4 THE WITNESS: Yes. What Mr. Mortenson just pointed out to  
5 me was exactly the point that I was going to make and that is  
6 that what I was protecting here was the classification system  
7 itself. These were classified documents. If classified  
8 documents are leaked out in an administration and if no action  
9 is taken against those responsible for that leak, it becomes  
10 pervasive, confidentiality is destroyed and the ability to  
11 conduct the Presidency is seriously eroded. And this is  
12 particularly true in the foreign policy field. But as I say,  
13 it is also true in the domestic field where you have such  
14 issues as Monetary Reform, International Trade, et cetera, in-  
15 volved.

16

17 BY MR. DOBROVIR:

18 Q But it is the responsibility of the President, is  
19 it not, --

20 MR. MORTENSON: It is, is it not, --

21 MR. DOBROVIR: -- of the President in Office --

22 MR. MORTENSON: -- to protect classified documents?

23 MR. DOBROVIR: To protect.

24 THE WITNESS: I consider it to be that, to be my  
25 responsibility.

26

27 BY MR. DOBROVIR:

28 Q And it is presently the responsibility of President

1 Ford, is it not?

2 A To the extent that he agrees with that, yes. Each  
3 President views the situation from his own likes. From my  
4 experience I had felt very strongly on this issue at that time.  
5 I should point out we were engaged in a very difficult war.  
6 That war slopped over at home and erupted into violence and was  
7 tearing the country apart. And I felt that at that time.  
8 Also we were engaging in initiatives not only to bring that war  
9 to a conclusion, as far as we were concerned, but initiatives  
10 to avoid that kind of action taking place in the future with  
11 those issues and for that reason I felt perhaps more strongly  
12 than even a peacetime President might feel, that confidentiality  
13 was absolutely imperative.

14 MR. MORTENSON: Counsel, let me interject for the record  
15 here that I object to the question as calling for legal con-  
16 clusions of this witness. The record, I believe, made in this  
17 case is such that there is no claim that plaintiff, as a former  
18 President, claims the right, the duty under the Constitution, or  
19 statute, or any other basis, to either classify or declassify  
20 documents. And I believe that it is a matter of law, the  
21 question of whether the encumbent Administration, the encumbent  
22 President is charged with the responsibility of protecting  
23 classified documents.

24 So to ask this plaintiff whether or not he views  
25 himself as having that responsibility or not is a matter of  
26 legal conclusion.

27 THE WITNESS: As I understood the question, the question  
28 related only to what was my responsibility at the time of the

1 Pentagon Papers and I intended my answer to be directed to that  
2 question.

3 MR. DOBROVIR: My further question --

4 THE WITNESS: Incidentally, could I ask, for the record,  
5 because I wouldn't want Counsel to feel we are violating any of  
6 the rules, I have, of course, no objection whatever to indicating  
7 that I consult with Counsel from time to time. Does Counsel  
8 suggest that is not to be allowed? What was the purpose?

9 MR. DOBROVIR: I have no objection to you consulting with  
10 your counsel with respect to such matters as to whether or not  
11 you are to answer a particular question or whether it is a  
12 proper or improper question. It is my understanding of the  
13 procedure in a deposition, however, that it is not proper for  
14 a witness to consult with his counsel with respect to the  
15 substance of the answer.

16 THE WITNESS: Well, I should point out to counsel that,  
17 as Mr. Mortenson has just stated, the question on which Mr.  
18 Mortenson was advising me was one that involved a legal  
19 interpretation as well as substance and many times it is not.  
20 But let me say on our part that I would like for the reporter  
21 to put down every time there is any kind of this thing so that  
22 Counsel does not feel that the record is inadequate in showing  
23 that I do consult with counsel. I will consult with counsel  
24 only when I feel there is a legal matter involved. But I have  
25 no objection whatever to that and so Counsel need not raise  
26 that question again, I mean in any way that he wants.

27 Let's go forward with the questions.

28 MR. DOBROVIR: Thank you.

1 THE WITNESS: At any time Counsel objects to my consultation  
2 with Counsel, I wish he would say so rather than making a remark  
3 as he did to the reporter, that let the record show that he  
4 consults with Counsel.  
5

6 BY MR. DOBROVIR:

7 Q On April 16, 1973, did you say to John Dean, and  
8 I quote, "Nothing is privileged that involves wrongdoing".

9 MR. MORTENSON: Counsel, let me interrupt. Is Counsel  
10 quoting from a document and if so let us enter the document  
11 into the record.

12 MR. DOBROVIR: This is a quote from Submission of  
13 Recorded Presidential Conversations to the Committee on the  
14 Judiciary of the House of Representatives by President Richard  
15 Nixon, April 30, 1974. It is a blue book, paperbound, approxi-  
16 mately two and a half to three inches thick and I am quoting  
17 from Page 802. I would be happy to show it to the witness if  
18 he would like.

19 THE WITNESS: I do not recall the conversation  
20 specifically. I would not affirm nor deny that is the case,  
21 but I do not recall the conversation.  
22

23 BY MR. DOBROVIR:

24 Q Do you believe the proposition to be true, the  
25 statement "Nothing is privileged that involves wrongdoing"?

26 MR. MORTENSON: Again, Counsel, I object to the question  
27 as calling for a legal conclusion of the witness.

28 MR. DOBROVIR: I am asking the witness to do no more than

1 tell me whether or not he believes that that is true or not.  
2 And if you are instructing the witness not to answer, that is  
3 fine, we will let the record so reflect.

4 THE WITNESS: What is the definition of "wrongdoing"?  
5

6 BY MR. DOBROVIR:

7 Q I am quoting your words, Mr. Nixon.

8 A I am asking you, what do you say is wrongdoing? I  
9 don't know.

10 MR. MORTENSON: Counsel, you are stating that the witness  
11 has said he does not recall the conversation. You have then  
12 asked the witness whether or not he believes the general  
13 proposition and you have stated a general proposition. We need  
14 to know, in order to answer that, first of all because it calls  
15 for a legal conclusion, what interpretation of that proposition  
16 you are making.

17 MR. DOBROVIR: I am making no interpretation of the  
18 proposition. The question is clear. If the witness is unable  
19 to answer it as stated let the record so reflect.

20 THE WITNESS: Is Counsel's interpretation of wrongdoing  
21 an engaging in illegal activity?

22 MR. DOBROVIR: I have no interpretation of the word, I  
23 simply ask the question.

24 MR. MORTENSON: I will instruct the witness not to answer  
25 the question because it calls for a legal conclusion stemming  
26 from the Fifth Amendment and a variety of other privileges that  
27 might apply, depending on what the definition of the proposition  
28 is and you are unable to or unwilling to state that, so I cannot



1 let the witness speculate what that means.

2 THE WITNESS: I would like to add to that, even though  
3 Counsel instructed me not to answer, as far as wrongdoing is  
4 concerned, I am not trying to debate with Counsel on the subject  
5 of what wrongdoing is and particularly in the present day, it  
6 is a very broad term that in the eyes of some is very limited.  
7 Lawyers usually interpret wrongdoing as being matters of which  
8 involve breaking the law. Others might consider wrongdoing  
9 an American, for example, in 1945, as many of them did, support  
10 the DeGaspari Government in order to avoid a communism over-  
11 throw.

12 The point that I make is that in terms of wrongdoing  
13 unless the question is put more precisely I shall have to  
14 follow counsel's direction in order to respond.

15 MR. DOBROVIR: Very well.

16 THE WITNESS: I can also say that I should also point  
17 out that not only with regard to the Johnson tapes, in which  
18 there is a fifty year, as you know, restriction with regard to  
19 their being made public but also with regard to the Kennedy  
20 tapes, of which there are several hundred in Hyannis Port, as I  
21 understand, they obviously, their families now, and the  
22 President's at the time that they set up there or made plans  
23 for their library, wrote their letters of intent, each have  
24 had a right to place such conditions on their release as they  
25 thought were proper.

26 Implicitly saying that as far as I am concerned,  
27 that I have always felt that an administration, after a  
28 President leaves office, a President or Congressman or Senator

1 or Vice President, should be very forthcoming with regard to  
2 conduct of his office. And in my review of the tapes I shall  
3 of course, follow that policy.

4 I should also point out that when Counsel earlier  
5 as he very properly did, went into the subject of what is called  
6 the Watergate tapes, then, of course, limited it to what he  
7 called the Watergate cover-up, that here we have two different  
8 questions. First we have what is basically a legal question,  
9 and that is whether or not a President or former President  
10 should waive privilege, which I have done, where illegality is  
11 charged. We have done so. The Special Prosecutor has been  
12 appointed and we have cooperated with the Special Prosecutor.

13 Now, with regard to the situation on any further  
14 release of material in what is called Watergate, I want to  
15 leave no implication of any intention of what Counsel has  
16 referred to as cover-up or nondisclosure or what have you.  
17 However, I cannot at this time and will not violate the legal  
18 procedures with regard to a Grand Jury, with regard to  
19 defendants who are on appeal. And all that I can do is to  
20 cooperate with the Special Prosecutor, which we will do after  
21 that period is completed. Then I shall determine, but not the  
22 Congress, I shall determine what can appropriately be made  
23 public. And as far as that matter is concerned, I shall follow  
24 the same guidelines that all former Presidents since the  
25 Library's Act was passed in '55, President Hoover, President  
26 Kennedy, President Johnson and President Eisenhower followed,  
27 except that I will be as forthcoming as possible, particularly  
28 with regard to the tape matter.

1 BY MR. DOBROVIR:

2 Q Do you claim --

3 A As I say, what I have just said I do not mean to  
 4 imply any criticism of President Johnson and I don't know what  
 5 President Kennedy's decision or his family's decision with  
 6 regard to the release of their tapes. That is a decision for  
 7 them to make, because those conversations, conversations that  
 8 are more than anything else in the President's materials, are  
 9 his and his alone not for profit but because they are so intima  
 10 because they go far beyond what a note taker might write and  
 11 under those circumstances therefore the President should have  
 12 a right to make a determination as to whether or not and how  
 13 and when there should be a disclosure. And in my case I am  
 14 indicating my own intent to disclose, to make public the tapes,  
 15 having in mind the national security problem, the embarrassment,  
 16 the private issue. By "embarrassment," I am speaking of persona  
 17 embarrassment and not speaking of embarrassment with illegality,  
 18 of course.

19 Q With respect to the question of privacy and  
 20 embarrassment, besides yourself who had knowledge of the taping  
 21 system, that is when the taping system was in operation?

22 A The Secret Service operatives, Mr. Butterfield and  
 23 Mr. Haldeman. I don't believe any others knew.

24 Q Did Mrs. Nixon know?

25 A No.

26 Q Did either of your daughters know?

27 A No.

28 Q Did your personal physician know?

1 A No.

2 Q Did your attorneys know?

3 A No.

4 Q Do you claim --

5 A Incidentally, my secretary didn't.

6 Q Did not?

7 A No.

8 Q Miss Woods?

9 A She didn't know.

10 Q Do you claim, as part of the presidential materials  
11 included in this lawsuit, documents prepared by members of your  
12 White House Staff for their own use? For example, handwritten  
13 notes that Mr. Erlichman would take of meetings with you.

14 A For my use or his?

15 Q For his use.

16 A Well, handwritten notes that he made of me would  
17 be made for my purpose and for my files. Those were the  
18 instructions. If he was the notetaker, those notes were made  
19 for me and they became part of the presidential materials. If  
20 on the other hand he was doodling, which he might often do,  
21 or making a note to himself, they belong to him.

22 Q Do you claim as part of the presidential materials  
23 included in this lawsuit recordings that either Mr. Erlichman  
24 or Mr. Colson made of their telephone conversations?

25 A No.

26 Q The answer was "No"?

27 MR. MORTENSON: Are you asking of all records?

28 THE WITNESS: What are you talking about? Recordings of

1 whose telephone conversations?  
2

3 BY MR. DOBROVIR:

4 Q The record is that Mr. Colson and Mr. Erlichman  
5 sometimes recorded their telephone conversations from their  
6 end and that those telephone conversations, after being  
7 recorded, were sometimes transcribed. I am asking you if those  
8 are included in the presidential materials which you claim  
9 ownership of in this lawsuit?

10 A I would have to differentiate. If the telephone  
11 conversation was a private conversation that they were having,  
12 with regard to their own business and so forth, that was one  
13 thing, that is theirs. If the conversation had to do with a  
14 direct presidential assignment for the purpose of the President,  
15 the telephone conversation and its transcription would be part  
16 of the presidential materials and in such instance the decision  
17 would depend upon the subject of the conversation.

18 Q Do you claim --

19 A As I should point out, Counsel, I think the record  
20 will show that their conversations, that the only, I believe,  
21 made records of conversations on official business and not  
22 personal, but it could have been otherwise. I don't know. They  
23 never told me.

24 Q But the records of conversations on official  
25 business are included in the materials which you claim?

26 A On official business having to do with the  
27 presidency, yes.

28 Q Do you claim FBI records of electronic surveillance



1 of seventeen individuals, which was ordered in May of 1969, to be  
2 part of the presidential materials included in this lawsuit?

3 A Well, if any FBI records -- I think perhaps we can  
4 shortcut just a bit here by going further than that. The FBI  
5 not only furnished such records but they furnished highly  
6 classified records whenever we made appointments through the  
7 Judiciary to the Cabinet, et cetera. So-called raw files were  
8 sent to us and all of those, all of the record that the FBI made,  
9 where we requested them, I would consider part of the presidential  
10 material; yes.

11 Q On April 30, 1973, did you order that the FBI  
12 records of the surveillance of these seventeen individuals be  
13 placed among your papers?

14 A I don't know. I can't recall it.

15 Q All right. Do you claim as part of the presidential  
16 materials involved in this lawsuit documents transmitted to  
17 members of the White House Staff, not addressed to you, from  
18 foreign governments?

19 A Excuse me. Whether members of the White House Staff?

20 Q Documents transmitted to members of the White House  
21 Staff not addressed to you, which came from foreign governments,  
22 do you claim that those are part of the presidential materials  
23 which you claim ownership of?

24 A It would depend again, Counsel, on the nature of the  
25 correspondence. For example, such correspondence would primarily  
26 come to Dr. Kissinger or sometimes General Haig and in most  
27 instances that I can recall, while the correspondence went to  
28 them, the correspondence went to them with the thought that it

1 was part of our ongoing dialogue and that it would be made  
 2 available to me for my consideration. If it was correspondence  
 3 of that type, yes, it is part of the presidential material. If  
 4 it is, however, personal correspondence with regard to a  
 5 trip of a member of the White House Staff, for example Mr.  
 6 <sup>Runsfield</sup> Runsfield took a trip to Asia which was part official and part  
 7 personal, and Mr. Finch went with him. They had a lot of  
 8 correspondence. I would not consider that correspondence as  
 9 part of the presidential material.

10 On the other hand, their report on the trip, the  
 11 conversations that they had and any communications that they  
 12 had thereafter dealing with the substance of their trip, even  
 13 though this was in a domestic area, would be presidential area.

14 Q When you refer to correspondence addressed to you,  
 15 do you mean correspondence addressed to you with your name or as  
 16 President, or do you also include correspondence addressed to  
 17 your principal aides without specifically designating <sup>that it is</sup> addressed  
 18 to you?

19 A The way it worked is that many private citizens in  
 20 this country and some foreign officials often addressed their  
 21 correspondence to an aide because of his desire to be sure that  
 22 it came to my attention. If it was addressed just to me it  
 23 might get in the mill and they felt, sometimes justifiably,  
 24 it might not be brought to my attention, so it came both ways.  
 25 But the substance of the correspondence would determine whether  
 26 or not it was presidential material or whether it was their  
 27 materials.

28 Q Do you claim included in the presidential materials

69  
1 in this lawsuit documents prepared by members of the White House  
2 staff for internal use that were not intended to be transmitted  
3 to you and that were not transmitted to you which dealt with  
4 government business, their official business?

5 A It is very difficult to separate that out from  
6 official business, what we call presidential materials, because  
7 within the White House Staff there might be a memorandum that  
8 was written from one staff member to another but because the  
9 staff member, say at a lower level, might not think a memorandum  
10 written directly to the President would get to him. I recall  
11 one in particular, because it has become rather famous, a  
12 memorandum a Mr. Liddy, whom I didn't know, wrote to Mr. Bud  
13 Krogh, in which he recommended strongly that Mr. Hoover resign.  
14 Normally such a memorandum would never come to my attention, but  
15 Mr. Krogh showed it to Mr. Erlichman and Mr. Erlichman thought  
16 at least it was something I should consider and it came to me.  
17 I would consider that to be presidential material, because the  
18 purpose of the memorandum basically was to affect presidential  
19 action.

20 Any memorandum that is supposed to influence  
21 presidential acts, presented by a staff member is presidential  
22 material.

23 Q <sup>In</sup> The Paragraph 23 of your Affidavit, you indicate  
24 as a reason for installing the tape recording system a recom-  
25 mendation that you received from President Johnson by way of  
26 a close mutual friend. And you indicate that President Johnson  
27 urged you to do so because the taping system he had installed  
28 had assisted him in writing his memoirs. Who was that close

1 mutual friend?

2 A Mr. Don Kendall.

3 Q How did he communicate President Johnson's recom-  
4 mendations?

5 A Through Mr. Haldeman.

6 Q In writing or orally?

7 A Orally. Basically I can explain it quickly and  
8 probably answer all your questions.

9 Mr. Kendall was a member of the Nixon Foundation  
10 and along with several others who were members of the Foundation  
11 visited various presidential libraries and President Johnson  
12 graciously asked him to come visit, to give advice with regard  
13 to the libraries.

14 At the time they made their visit to the library,  
15 President Johnson in a discussion with Mr. Kendall, and whether  
16 others were present or not I do not know, at least in a  
17 discussion with Mr. Kendall I can say firsthand and not  
18 hearsay, said that he had noted, President Johnson had noted I  
19 had ordered all electronic equipment out of the White House. I  
20 think what he was referring to was the fact that I had gotten  
21 rid of the television sets and so forth and so on. And there  
22 was a lot of equipment I didn't know about, other equipment  
23 was there. But I said to clean it all out, we want to run our  
24 own show.

25 In any event, President Johnson said to go back  
26 and tell President Nixon that it is vitally important that he  
27 install or reinstall, what term was used I do not recall, but  
28 a system for taping, because he said he found it proved

1 invaluable in writing his memoirs and also he thought very  
2 important in terms of a presidential library to have this kind  
3 of material in it.

4 Mr. Kendall came back and reported the findings of  
5 the Committee to Mr. Haldeman. Mr. Haldeman came in to see me.  
6 This I recall quite clearly, it was a very brief conversation,  
7 and he said President Johnson had recommended that we put in a  
8 taping system. And I said to limit it to the offices and not  
9 in the residences and no taping of staff members' telephones  
10 and so forth and so on, which apparently, at least I cannot say  
11 this for sure, but apparently had been part of the Johnson  
12 system. It has been alleged by some, whether that is true or  
13 not I do not know.

14 But in any event, the taping system was then  
15 installed, my memory, the reason I use Mr. Kendall's name here,  
16 is not that I independently recollected that Mr. Haldeman told  
17 me Mr. Kendall was the one who came in to see him but Mr.  
18 Kendall, oh, two, three months ago was a visitor here at my  
19 house and told me that he was the one that had recommended the  
20 taping system and for that reason I can say that Mr. Haldeman's  
21 recommendation to me had come from Mr. Kendall and Mr. Kendall  
22 had gotten it from Mr. Johnson. And Mr. Kendall recounted in  
23 detail his conversation with Mr. Johnson and Mr. Johnson's  
24 concern about my not having any taping system whatever.

25 Q Did you ever speak to former President Johnson at  
26 any time subsequent to your receiving this communication?

27 A No, not about that.

28 Q My question is: Did you ever speak to him at all



1 subsequent to that communication with former President Johnson?

2 A Yes.

3 Q And in none of those conversations did you mention  
4 the taping system?

5 A No. I am sure he assumed we took his recommendation

6 Q But you never discussed the matter with him?

7 A No. Incidentally, when I saw President Johnson on  
8 two occasions in the period between the nomination and the  
9 election, he did not mention the conversation was taped. Also  
10 when I saw him and members of the National Security Council  
11 after my nomination but before the election, just as he saw  
12 Mr. McGovern and also Mr. Wallace, he did not mention that the  
13 Cabinet room was taped. It would have been quite interesting  
14 to have that tape.

15 Q So one reason for installing the taping system was  
16 to have a record for your use in writing your memoirs; is that  
17 correct?

18 A That was a reason that Mr. Johnson, President  
19 Johnson had indicated to Mr. Kendall, was a good reason to put  
20 it in. I frankly was not thinking of writing memoirs at that  
21 time. I had in mind at some day I would. I had other things  
22 I was thinking of. This is early 1971. My reason for approving  
23 it was that was primarily because of the historical significance.  
24 I knew of it, particularly in the foreign policy area, of the  
25 conversations that were taking place and I felt having those  
26 conversations taped for purpose of history would be very, very  
27 useful and that is why it was done.

28 Q That was the reason?

1 A That was my primary motivation.

2 Q Were there any other reasons?

3 A No.

4 Q So that was the sole reason?

5 A I didn't say it was the sole reason.

6 Q I am sorry, I don't want the record to be incorrect.  
7 You said it was the primary reason and I said are there any other  
8 reasons and I thought you said, "No."

9 A Well, Counsel, there is no reason to quibble.

10 I said as far as memoirs were concerned, I wasn't thinking of  
11 memoirs specifically at that time, although I intended sometime  
12 to write memoirs. And President Johnson had indicated that he  
13 had found it very useful in the memoirs and certainly in my  
14 mind, thinking about reasons, President Johnson's reference to  
15 memoirs must have been a consideration. My reason, primary  
16 reason, and we want to be quite precise, was that I felt that  
17 for historical purposes, particularly in the foreign policy  
18 area, it would be well to have conversations taped.

19 Q All right. So your primary reason was for historical  
20 purposes and another consideration was the possibility of use in  
21 your writing your memoirs. Were there any other considerations?

22 A No.

23 Q Just those two?

24 A None that I can recall.

25 Q Thank you.

26 Do you know whether Henry Kissinger, when he was  
27 your National Security Advisor, had his telephone conversations  
28 taken down in shorthand by a secretary?

1 A I have no knowledge of that.

2 Q You have no knowledge of that. You were never  
3 advised at any time that that might be the case?

4 A No, I didn't ask him. The secretary didn't tell me  
5 if she had I would have told him to discharge her.

6 Q You would have told him to discharge her?

7 A Yes.

8 Q For telling you?

9 A Yes. She was working for him.

10 Q I wasn't asking about whether the secretary told you  
11 or not, I was merely asking you whether you had any knowledge of  
12 that and your answer is "No"?

13 A All right.

14 Q Are you aware of the <sup>Matin</sup> John Erlichman files, presently  
15 included in the presidential materials that are involved in this  
16 lawsuit, are copies of the CIA psychiatric profile of Daniel  
17 Ellsberg?

18 A No, I am not personally aware of that. I have been  
19 informed that that could be the case.

20 Q Do you claim those documents as part of your  
21 presidential materials involved in this lawsuit?

22 A Yes. I think they would be part of the presidential  
23 materials; yes. Because whatever was done in this particular  
24 area was done in its official and not in an unofficial capacity.

25 Q <sup>which</sup> What of the interests that we earlier identified  
26 would be protected by your having the exclusive control over  
27 those materials?

28 A The Ellsberg case?

1 Q That is right. Mr. Ellsberg's psychiatric profile  
2 is what I had reference to.

3 A Well, I would suggest first that that material, it  
4 seems to me, would come under the provision, the guidelines that  
5 I intend to lay down in my letter of intent in regard to what I  
6 consider to be private or embarrassing material. And I am  
7 speaking in terms of its disclosure, and to the extent that it  
8 involved Mr. Ellsberg's activities and their removing top  
9 secret documents from the various places he was employed within  
10 the government. That would fall within the strictures of the  
11 National Security test, except, of course, to the extent that  
12 the Supreme Court and Court of Appeals' opinion and the Pentagon  
13 Papers case makes that no longer a National Security item. I  
14 have not seen his profile, incidentally.

15 Q Are you familiar at all with the General Services  
16 Administration regulations under the statute that is in issue  
17 in this case?

18 A Yes, I am familiar regulations were issued. I have  
19 not studied them carefully; no. I have not done so because I  
20 feel that we should first try to prevail in the suit and if we  
21 do not prevail I, of course, will study them very carefully.

22 Q Are you aware that the regulations provide expressly  
23 for your access to the materials, the statute and the regula-  
24 tions so provide?

25 A Access under certain circumstances, as I understand.  
26 Certain conditions and access also by others.

27 Q Would your interests be satisfied, Mr. Nixon, if  
28 either a complete copy of all of the Presidential materials were

1 made and transmitted to you for your use here at your home or if  
2 the originals were transmitted to you and a complete copy  
3 remained to be administered as provided in the statute?

4 A No, that misses the point of the whole case. Because  
5 the point of this case is not just access for me for purposes of  
6 writing my memoirs, the point of this case is much more funda-  
7 mental and profound. It goes to the issue of -- a number of  
8 issues, but particularly the separation of powers issue. The  
9 principle of confidentiality, which I have addressed directly  
10 earlier and access to me, when coupled with access to government  
11 bureaucrats on a wide-scale basis, individuals who even with  
12 the best of intentions would not be able to make the fine  
13 judgments which, and by fine I mean the delicate judgments with  
14 regard to what is private and what is personal and what is  
15 political and what is embarrassing, what is National Security,  
16 et cetera. In other words, I believe that the Federal Libraries  
17 Act which, as I say, was passed in 1955 during the Eisenhower  
18 Administration, very appropriately considering a precedent that  
19 was not in law but just understood since the presidency came  
20 into being two hundred years ago, the Federal Libraries Act  
21 provides that a former President first has the discretion and  
22 the sole discretion to make decisions with regard to the  
23 disposition of materials that were accumulated during his  
24 presidency.

25 MR. MORTENSON: I want the record to reflect that in  
26 counsel's position, counsel for the plaintiff's opinion, the  
27 question was replete with requests for legal conclusions by  
28 the witness. I think the pleadings in this case are clear, to



1 the extent that plaintiff does not believe that this statute  
 2 adequately protects his rights; his rights, for example, under  
 3 the First Amendment. I believe it is a legal conclusion to be  
 4 decided by the Court, whether the provisions of the statute  
 5 do adequately protect that interest.

6 Plaintiff is on record with filing the Complaint  
 7 that the statute does not in any way, in his opinion, protect  
 8 his interests as set forth in the Complaint.

9 MR. DOBROVIR: Thank you. It is time for our noon  
 10 recess. We will convene at one o'clock.

11 (The time is 12 m. At this time the noon recess is  
 12 taken.)

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