

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.

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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10 et al.,

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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 ^{a member} ~~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 ^{course} 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 ^{hundred} 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 ^{is} 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, ^{and} 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. Sorense
 2 did and others will do so. So as far as I am concerned, but th
 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. ^{Lisogor} Lisigore and that after all they are ready to release
 11 anything, why should they worry? I am shorthanded^{ing} 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 ^{specifically} 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 ^{them,} 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 ^{course} ~~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

28

Q Do you believe that the President has an ongoing
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 ^{against} 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 ^{Runsfield} 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 ^{that it is} 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 ^{In} 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 ^{Matin} 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 ^{which} 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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