

# Excerpts From Nixon Deposition About

THURSDAY, MARCH 11, 1976

## Security Wiretaps in the Halperin Case

Special to The New York Times

WASHINGTON, March 10—Following are excerpts from the first public testimony by former President Richard M. Nixon on the use of national security wiretaps during his Administration. The former President gave the deposition in San Clemente, Calif., in January in connection with a civil action now before the Federal Court here.

Those participating in the deposition include: John F. Shattuck, attorney for the plaintiff, Morton H. Halperin; Lawrence H. Schwartz, attorney for a former Presidential assistant, John D. Ehrlichman, and Edward S. Christenbury, Justice Department attorney representing Mr. Nixon and all other Federal defendants in the lawsuit.

Mr. Shattuck and other attorneys for Mr. Halperin are acting in their capacity as members of the American Civil Liberties Union.

Mr. Shattuck: Would you restate the last question.

The witness: No. I can recall it, I think, the general nature of the question. It was when there was any discussion of the use of wiretapping for the purpose of determining who within the Administration might be leaking classified information; is that the question?

Mr. Shattuck: That is the question.

A. Right. I think in order to answer that question it is necessary to indicate why, as President and particularly at that time with the war in Vietnam, when it was in a rather escalated position, I felt that it was vitally important to have tight security with regard to national security information. If counsel will permit, I will make a brief statement with regard to my concern about the need for security.

Q. I don't want to interrupt you, Mr. Nixon. But I believe your opportunity to make such statement will come during the course of the deposition and we could continue the flow of the question.

A. I think that for that purpose that I can answer the question in this way then and cover both grounds very quickly. Then we can come back to you if you would like to pick it up.

At the time that I assumed office in 1969, there were five major areas in which I had determined there should be a new direction for American policy. One, of course, was to end American involvement in Vietnam in a way that would enable America to continue to play a responsible role in world affairs.

Second was to develop a new relationship with the People's Republic of China.

Third was to develop a new relationship with the Soviet Union.

Fourth was to try at least, to make some progress with regard to cooling the potential time bomb in the Mid-eastern area with all the ramifications involved.

Finally, it was to take the necessary steps with our allies in Europe to re-establish an Atlantic community that worked together rather than against each other and to remove some of the misunderstandings that had developed during the previous Administration.

These were, of course, very high goals when he comes in and we tried to implement them and succeeded in varying degrees in all five objectives.

In order to accomplish this, in long discussions with Dr. Kissinger after

I had selected him as the National Security Adviser before I was inaugurated. I decided that the National Security Council procedures, which as you all know had been set up by President Eisenhower and had been regularly followed during this period—which had been rather generally dismantled during the Kennedy Administration and during the Johnson Administration—

### Reinstating Procedures

Those procedures should be reinstated and by reinstating them, we thereby could have the kind of consultation and the broad range of discussions that were needed in order to make progress in these five areas.

Some related to each other and some were independent. As we had these discussions, I pointed out to Dr. Kissinger that I wanted to have views expressed from the bureaucracy, the State Department, the Defense Department, the C.I.A. and et cetera. All of them were involved in national security affairs. Also, I wanted to have on the national security staff a variety of views expressed because only when the decision maker gets the broadest possible range of options before him can he make what is the best decision. After having set this in place immediately after the information, I recognized that there were some risks involved. One of the reasons that I had some concern was based on a conversation I had with former President Johnson. This was after my nomination, of course, and there was another one after my re-election before I was inaugurated.

President Johnson said he had noted my decision to reinstate the regular meetings of the National Security Council and rebuild the staff. He said, and I am quoting him from recollection, that "I must warn you," that the reason he had not had the formalized procedures in the National Security Council with the broad range of discussion that would be entailed was his, I would say, almost obsession about the possibility of leaks.

He said, "I have every confidence in my Secretary of Defense, Secretary of State Rusk, in the director of the C.I.A. and Mr. Rostow. But the difficulty is that when these people go back to their staffs and debrief, there are people on their staffs who, not because of any disloyalty but because of lack of judgment and because they had information and might not know how important it was to keep that information classified, might discuss it with an unauthorized person. The information leaking therefore would not enable President Johnson to go forward with what he considered to be a very top secret operation.

He therefore suggested that I should take every precaution to see to it that not only the agencies like the State Department, the Defense Department and so forth had responsibility for policing their own shops in this regard but that I should take the responsibility and delegate it to someone on my own staff. That of course would be Dr. Kissinger, to see to it that any of those on his staff were people that

could be totally trusted with information. He also indicated at that time that he had great confidence in Mr. Hoover. One statement he made to me was that without Mr. Hoover, and he was speaking only of National Security Council matters when we were having this discussion, without Mr. Hoover

he said he simply couldn't have run the foreign policy of this country during the last difficult months of his Presidency. What he was referring to, I do not know.

### Memorandum From Hoover

We come now to the period after I became President and we will get to the specific question very quickly.

Within two days after I was in the office of the Presidency or I should say within a week after I was in office and the time can be determined if we desire, if it becomes relevant by checking further files, there came across my desk a memorandum from Mr. Hoover. It was a memorandum called a Summary With Regard To Top Secret Information.

The memorandum dealt with a British correspondent. I quickly scanned the memorandum. As you can imagine, there were a great number of memoranda that came across my desk, particularly in those early days. I didn't have much time for any of them except the most important ones. I called Mr. Hoover and said, "What is this all about?"

He said, "well, this individual is named as one who we have been surveilling." And he indicated they used electronic surveillance for a number of years. It was inaugurated in the previous Administration. I don't know whether it went clear back to the Kennedy Administration or the Eisenhower Administration, but he said, "we have been surveilling him for years because our information is that he is possibly an intelligence agent for the British and also we therefore have every reason to believe that information he gets through a broad range of contacts within the Government might get outside of channels and without any intent to harm the United States, be leaked and therefore be harmful without his intent to do so."

When I saw the memorandum, I recall calling Dr. Kissinger into my office and I handed it to him. I knew the individual. He knew the individual. I said, "as far as this kind of memorandum is concerned, I don't want to see any of them in the future. I have not the time to look at them. That is your job. I mean, if there is anything that comes up that indicates a problem, then you let me know."

That was the first indication I had that wiretapping by the director of the F.B.I., apparently with authority that had been given either by the Attorney General or by the President and it could have come from either or both, the previous President or Attorney General, wiretapping was undertaken in national security matters.

I note that Dr. Kissinger, who has examined his files, found that in the period of the first five months of our Administration that there were at least 21 specific instances in which highly classified material from the National Security Council files or from files that dealt with National Security Council matters that might have existed in other agencies had leaked to the press. Dr. Kissinger and I both noted this. We both discussed it. He did not know how to proceed.

### Ordered Precautions

At that particular point, all that I did was to—when we had formal meetings in the National Security Council—

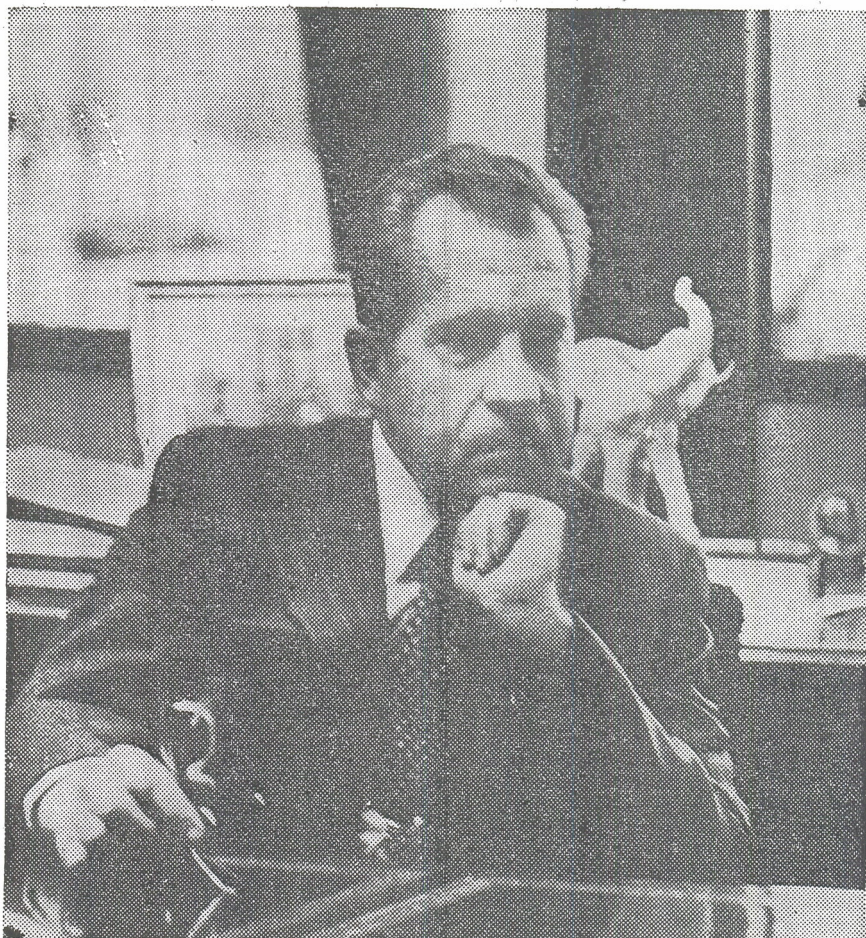
was to again impress upon Secretary Rogers and Secretary Laird and Director Helms and upon Dr. Kissinger that it was their responsibility to police their own shops and to see to it any individuals who had access to information were totally reliable.

Second, that if they found someone unreliable, that they should limit their access or of course in the worst case, we trusted that that would not happen too often if not at all, they should of course be separated from their positions.

In April of 1969, late in April, I discussed this matter and after the preliminary discussions with Dr. Kissinger about his concern and mine that we could not continue to have these frequent and open discussions which we had been having in the National Security Council unless we were able to stop these leaks.

I discussed with Dr. Kissinger and I decided that I should have a discussion with the Attorney General and with Mr. Hoover. We did have such a discussion. Mr. Hoover informed me that this had happened before in previous Administrations. He said that there was only one way to deal with it. He said it had been done on a very classified basis because of the sensitivity that would be involved and the possible adverse press reaction and morale problems within the staffs and so forth and so on. But he said that in the case of four previous Administrations that he had had authority to wiretap, to use wiretap where normal investigative surveillance—as you know, you can have surveillance and wiretapping. Wiretapping being the ultimate weapon that can be used and sometimes in a very effective way. One situation I will point out later if the question arises.

So to summarize briefly. I would say that at the April meeting—it occurred in April—I told Mr. Hoover we would go forward with this program. I called Dr. Kissinger in and indicated to him that he should take the responsibility of checking his own staff, that Cabinet officers should have the responsibility to do their own staffs. But that he should take the responsibility of checking his own staff because of the leaks that occurred up to that point. They could have come from outside the National Security Council staff, but they could have come from within the staff. I felt that the White House above all, should set the example for the rest of the bureaucracy. It was after that meeting, I think perhaps in early May, that I was at Key Biscayne, Fla., and a leak occurred, one of the 21 Dr. Kissinger described. This one he considered and detrimental to the United States and I considered to be one that was highly



United Press International

Richard M. Nixon at his home in San Clemente, Calif., last month

called as you know, the Menu Program.

Mr. Schwartz: Did you say Menu?

The witness: Yes, menu like you get at the Sans Souci, but it doesn't cost that much.

Mr. Schwartz: Yes, sir.

The witness: But in any event, when this occurred, the problem that it presented to us was that it broke off with Sihanouk — Sihanouk says, "as long as I don't officially know of it it is all right, but I don't want any foreigners in Cambodia. So if I know it, then I have to object to whatever you do in Cambodia."

As a result of that leak the program had to be derailed. The net result to me was that because of this great tragedy of the leak, that we could not take the acts that I considered indispensable and that the Joint Chiefs considered indispensable to stop the buildup or at least abort the buildup of enemy forces in the Cambodian sanctuaries which were making hit and run attacks on our forces in Viet Nam.

When this came up in Key Biscayne, Dr. Kissinger and I discussed it at length and I said under the circumstances —because this program was one that had not been discussed in an open N.S.C. meeting, and was to be discussed and be held on a need-to-know basis—I said it was essential that he try to get to the bottom of it. I said that if this can leak, anything can leak. I said that I felt that this was one of those cases where he should directly call Mr. Hoover and provide to Mr. Hoover in his assessment, individuals who might have had access to this information by providing that information to Mr. Hoover.

The witness: I do not know the contents of the telephone calls that Dr. Kissinger had with Mr. Hoover at that time except that I later learned he did furnish Mr. Hoover the names of certain individuals that he thought might be potential leakers of this information.

Mr. Shattuck: Pardon me. Just to clarify, I had a question as to something we couldn't hear, all of us before.

#### Subjects for Surveillance

Q. Did you say at Dr. Kissinger's assessment or Mr. Hoover's assessment

as to who the individuals would be? I just couldn't hear you.

A. Dr. Kissinger's assessment. The guidelines as to who should be investigated and therefore an investigation could mean simply surveillance.

Well, it could be three categories. Investigation could be a name check. It could be surveillance or it could be wiretapping. Wiretapping, of course, being used only if the other two procedures were not adequate. In this instance, it was Dr. Kissinger's responsibility to furnish to Mr. Hoover the names of individuals that he, Dr. Kissinger, felt might have had access to information or that—he could use another test for who because of their personal records which, of course, Dr. Kissinger had available before he hired them on his staff, might have had a tendency to be loose mouthed and have acquired the information without his knowledge and have put it out.

I should point out too, that in this discussion with Mr. Hoover, I, of course, having previously told Mr. Hoover that in his investigations he was to—if he ran into any leads or had any ideas as to who might be a potential leaker—he, of course, should so indicate and if he considered the surveillance or the wiretapping necessary, get the proper approval by the Attorney General to proceed with the investigation. That's the general story. Then I realize you have specific questions.

Q. Referring to those meetings, do I understand that there was more than one meeting at which this subject of wiretapping was discussed, specifically wiretapping and not the general question of investigating leaks?

A. I think it is probable that wiretap-

ping was discussed in more than one meeting. It was no secret that wiretapping technically had been used very, very heavily in previous Administrations. As a matter of fact, when the subject came up before I made the decision, I checked as to what had happened and I found that the highest number of wiretaps during the previous 20 years had been during the third year of the Kennedy Administration.

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incidentally, a leak which was directly responsible for the deaths of thousands of Americans because it required the discontinuance of a policy that saved American lives.

I refer of course, to the leak of the fact that the United States, based on a recommendation made by the Joint Chiefs of Staff, had begun bombing enemy-occupied, North Vietnamese-occupied, areas in Cambodia. Through a source—and even in this deposition because it would not be—you would not want me to reveal the source, might endanger him, but through a source I will not disclose, we learned that Prince Sihanouk, then the head of state of Cambodia, had no objection to our using our air power against those enemy-occupied territories in Cambodia, those territories being used, of course, to launch attacks upon American forces in Vietnam. And this was

I do not say that in criticism because that was a very difficult year, as you recall.

Q. Are you referring to wiretapping to investigate leaks?

A. Wiretapping on national security matters, national security wire taps as I understood them.

Q. But specifically with respect to the investigation of leaks? A. Yes, leaks. I suppose other things, as well. But my point is that I do not say it in criticism for the reason that in my view, that if one additional wiretap might have discovered and exposed Mr. Oswald, it would have been useful.

#### Hoover Attended Meetings

Q. Who was in attendance at those meetings at which wiretapping was discussed in connection with the investigation of leaks?

A. I have already indicated that. This is a matter that I discussed with Mr. Hoover. I discussed it with the Attorney General and I discussed it with Dr. Kissinger.

But, only in general terms with regard to the use of wiretapping. In each instance, I indicated my own view that I wanted wiretapping limited. I also, having had some experience in investigation and also having had an opportunity when I first came into office of reviewing some of the F.B.I. name checks and investigations for clearance of personnel that we were considering for employment, I did not want to have an extended program. I wanted it to be limited to what was necessary and to what was in the national interest and what really involved national security. This is why for example, that if you will check the record, you will find that the number of wiretaps for national security purposes during the five and a half years I was President was less than the average number of wiretaps in the previous eight years.

Again, I do not say that in criticism of the practice during the previous eight years. I was not President then. President Johnson and President Kennedy must have had reasons which I assume were good reasons for doing what they did.

Q. Did you direct Dr. Kissinger to select the names of the persons which he would give to Mr. Hoover on that day? Was it your understanding that Dr. Kissinger would select the names?

A. I of course did not select the names myself because I did not know. I told Dr. Kissinger that he could inform Mr. Hoover of any names that he considered to be prime suspects. By "prime suspects," again if we may use the A.C.L.U. term, I did not say that in a condemnatory fashion, prime suspects or prime targets by reason of the fact that they might have had access or by reason of the fact that they had previous records about being loose in their talk. That was Dr. Kissinger's responsibility. It was his responsibility not to control the program but solely to furnish the information to Mr. Hoover. Mr. Hoover then was to take it from there and then to get the appropriate authority from the Attorney General before of course installing any electronic surveillance which Mr. Hoover needed.

#### Kissinger Made Selections

Q. So it was for Dr. Kissinger on that day following your instructions, to select the persons who had access to information and based on other factors determined by him, would then supply those names to director Hoover; is that correct?

A. No. Dr. Kissinger discussed the matter that day with Mr. Hoover. My recollection is that they went back and forth Mr. Hoover and Dr. Kissinger as to who might be the individual or individuals who should be surveilled. It was at a later date that I think

was two days later that General Haig established the direct liaison with Mr. Sullivan of the F.B.I. I don't know who told me that. I think it was Sullivan. From that time on, Haig as Kissinger's deputy would furnish names of individuals.

And the responsibility thereafter was Mr. Hoover's to conduct a surveillance and furnish information to indicate those occasions when he felt that further surveillance would be required of other individuals because of conduct

that those who were being surveilled were having. And of course to indicate those occasions when he thought that the program was no longer serving a useful purpose. That was his responsibility.

Q. Did you on that day May 9th, or any prior date, instruct Dr. Kissinger to request a wiretap on the telephone of Morton Halperin?

A. To instruct him to tap Morton Halperin?

Q. Yes.

A. I have no recollection of Morton Halperin's name coming up. I do not want to sound as if I am being derogatory of Dr. Halperin, who is very distinguished in his academic background. Dr. Kissinger, one of his great talents was to surround himself with very bright people. I do not recall Dr. Kissinger mentioning Mr. Halperin or Dr. Halperin being with him.

I have since learned, but did not know at the time, that Dr. Halperin was actually in Key Biscayne with Dr. Kissinger at the time.

Q. So that the record is clear, did you on that date or any other date prior to that instruct Director Hoover or Attorney General Mitchell to install a wiretap on Dr. Halperin?

A. Did I? No. I have no recollection of so doing. I think the record should show that, because the contrary was in the public press and this deposition will also be in the public press, probably in the P.M. papers.

MR. SHATTUCK: Your attorney has the opportunity to say the magic words on that.

#### Single Standard on Rights

THE WITNESS: No. I have every confidence in the attorneys for the A.C.L.U. to follow a single standard with regard to the rights of those they represent, where it is with regard to their right to counsel. You are only interested in the truth. You have a set standard.

Therefore, I leave myself totally in your hands in that respect and of course, would be very surprised if the A.C.L.U. would, despite the great pressures you have from the press, deliberately leak any information prior to the time that Judge Smith has approved it.

MR. SHATTUCK: We will certainly treat every party and witness in this case with absolute equality, Mr. Nixon.

THE WITNESS: I am just trying to get —

Mr. CHRISTENBURY: Mr. President, while I share your admiration for the A.C.L.U., I think for clarity here we have to add a standing agreement that no matters discussed at the deposition itself would be disclosed publicly until counsel for all parties have had an opportunity to review the depositions and determine whether there are any portions that require being sealed pursuant to Judge Smith's protective order and pursuant to our understanding. I presume that is our arrangement.

THE WITNESS: Well, I must say I have every confidence of course in my fine counsel seated at my right and counsel on the left, here. But in the previous deposition, not with the special prosecutor, but the one involving our suit with regard to our Presidential papers, the deposition was leaked deliberately and apparently by opposition

counsel to the press prior to that time. I understand it is par for the course. If it does, I will not be surprised but I will be a little disappointed.

MR. SCHWARTZ: I am sorry. I didn't hear that. You wouldn't be surprised?

THE WITNESS: No because I figure that it wouldn't be from you. Q. By Mr. Shattuck: With respect to the instructions that you testified that you gave to Dr. Kissinger on May 9—

A. No. I am sorry to interrupt you because I was talking about Dr. Halperin. There were Presidential supporters and Dr. Halperin will recall this, there some who objected to his being employed just as they objected to many that we employed in those early days and months.

There was a feeling among some of our supporters that those who had not supported us in the campaign, that we should have no holdovers, who had anything to do with the previous Administration and that we therefore should be surrounded totally by what are called long-time loyalists and et cetera.

#### Comments on Staff

Let me say that that argument did not fall on deaf ears. I have appreciated as any man in public life must, the need to have people who are loyal and dedicated and direct. But I have also found that in order to make decisions, the decision-maker must listen to and must hear a whole spectrum and range of views and he isn't going to get it from a bunch of yes men. That is why I frankly approved of Dr. Kissinger's moving out as he did, not only in having a very broad range of views within his staff, many of whom had served the previous Administration and some in the Kennedy Administration and some in the Johnson Administration, many of whom had been his students.

There were a variety of views. After all, they had gone to Harvard.

In addition to that, I told our people whether it was Dr. Kissinger or others, to take the flack. I said I just wanted the best man or woman for the job.

But when it came to leaks, even a loyalist can leak and has. We won't go into any specific names because leaks occurred—without getting into any esoteric conversation in this very highly structured legal proceeding—leaks occur as I indicated from the most unexpected sources. Sometimes more often than not, without a bad intention.

This particularly has become more common these days because those who do not leak information and particularly those who print leak information get Pulitzer Prizes and those who leak it are made national heroes, why not leak it?

Q. Mr. Nixon, so that we can clarify this last portion of your testimony, are you testifying or are you stating that you personally had no doubts about the employment of Morton Halperin?

A. I was not asked about his employment.

MR. CHRISTENBURY: I don't believe

the record reflects that question or response.

MR. SHATTUCK: I will make that a question.

THE WITNESS: I did not. I was never asked about Mr. Halperin's employment. I was never asked about General Haig's employment or anybody on Dr. Kissinger's staff.

I did not look at—what do you call them? the curriculum vitae, I did not look at. I did not look at the F.B.I. reports.

As a matter of fact, I have never during the time I was President, I refused to look at any one of the personnel reports on individuals that we were considering hiring because these personnel records—and this is not critical of the F.B.I.—they cover

everything from the time the person was born. It is unsubstantiated material from informants for this or that or the other thing and something that happened many years ago, which somebody has since disproved.

The net result is that first it would be a waste of the President's time. But second, it would create a very, in my opinion, uncomfortable relationship between the President and the individual he is working with to have personal information of that sort, not put in because it was personal, by the F.B.I. but because they put in everything, not knowing what may be important.

Q. So you did not express personal doubts about the employment of Dr. Halperin during this period?

MR. CHRISTENBURY: I believe the testimony was that he didn't reflect on this. I would prefer the record to speak for itself rather than your characterization.

Q. MR. SHATTUCK: The question is framed—

A. Counsel, I know you would not want to try to put words in any witness's mouth. I simply said that as far as Dr. Halperin was concerned, his employment by Dr. Kissinger was not brought up to me for decision. This is the only thing that came to my attention, because it was in the public press, was the fact that there were some who thought that not only Dr. Halperin but others on the N.S.G. staff and in the State Department were either holdovers or had other views than were currently being promulgated by the Administration. But that was simply par for the course.

As far as Dr. Halperin is concerned, his name is one of many that came across. I took no note that I can recall or any notice except if unusual material came to my attention. It was passed on to Dr. Kissinger for whatever decision he felt was right under the circumstances.

Q. Referring again to instructions to Dr. Kissinger on May 9, would there have been any written record of those instructions? Does there exist now written a written record of those instructions? A. I wouldn't be able to know. I don't believe so.

Q. Did you dictate them into a Dictabelt at that stage? A. No, I was not as I said—I did not start that practice until years later.

Q. No one would have taken any notes of those instructions? A. With Kissinger and me? Not unless he did. It was just the two of us together.

Q. MR. SHATTUCK: Mr. Nixon, at various points in the statement you have just made you have averred to leaks that actually occurred or that might have occurred and been damaging if they had occurred. Do you have any reason to believe personally that Morton Halperin was responsible for any of these leaks?

A. That Morton Halperin was responsible? Q. Yes.

#### Comments on Halperin

A. No. I have no reason. If he was responsible, I would assume that he would have been charged with something. Now I do understand that and correct me if I am wrong, Mr. Halperin voluntarily left the staff and that he did have apparently, some discussion with Dr. Kissinger about leaks and that he remained on as a consultant but consulted only once and probably much less than he was worth for one day. But still, of course, being a consultant he was able to have contact, I suppose, with the members of the National Security Council staff. And then he resigned in May, May the 7th after the Cambodia occurrence. I think that is a correct assumption about his background, but that is totally from my memory.

Q. Did Dr. Kissinger state to you at any point that the reason Morton Halperin left the staff had anything to do with the leaks?

A. You wouldn't ask that question, counsel, if you knew Dr. Kissinger. Dr. Kissinger is not one to come in and say that he was concerned about this fellow or that fellow. He felt that when he came in to talk to the President, he should be talking about those matters that were vital, and, we had plenty of them in that period.

For example, the period before Morton Halperin resigned. It was then as you recall, on April 30, 1970, and he resigned May 7th, 1970, because of objections as I understand them, well-intentioned—other people also objected to it because of my making a very difficult decision which I think was the right decision to destroy the Cambodian sanctuaries which were then being used again for hit-and-run attacks against our American forces. It was that that I would be talking about, rather than some staff matter.

As a matter of fact, people were to come in and unless it was somebody at a very high level on the staff and say that this one or somebody very high in the staff is leaking information, that would be brought to my attention.

But Kissinger didn't come and say that it was Halperin—I think we should look at some of the others for example. There were several people for example who at the time were surveilled who are still on the staff, not of the N.S.C. but in the State Department. One went to China with him. Another I consider is the hardest line Kissinger—not only Kissinger supporter, but supporter of basically the Administration—was considered to be hard on the policy as to ending American involvement in Vietnam. Why he was tapped obviously bears on my earlier point that Dr.

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Kissinger I think, was bending over say in all honesty that this person or that person or this person has discussed a matter and might have had access to the material and might therefore have leaked it.

But without so charging and he never did and I never did, and he told me that before any of these people.

Q. But you have testified that taps were to remain on as long as they were necessary. How was it to be determined when they were no longer necessary?

A. That could come either from a recommendation from me or Dr. Kissinger, after consulting with me, that if we weren't getting information that was worth the time, or from Mr. Hoover. I should point out Mr. Hoover, in his early years, was not as sensitive about tapping and surveillance and so forth, particularly during the years of the cold war and et cetera. The F.B.I. was applauded for some of its covert activities. When the C.I.A. was applauded, as you know, for saving Italy in 1947 and now it is being condemned for trying to save it, as a result of the unconscionable and utterly irresponsible actions of the committee of Congress with regard to possible United States support of non-Communist parties in the Italian elections.

But Mr. Hoover, while I was President, was coming under increasing attack from the press and despite the fact that he is considered to be and was always considered to be a martinet with regard to his staff, which he was, he was very sensitive to public relations. As the press began to criticize him and the taps and a study was being made in Princeton, one of the smaller of the Ivy League colleges and a very good one, too, after Woodrow Wilson made it that way, even though he never attended—Mr. Hoover being sensitive about that, did not want to do tapping first any more than was absolutely necessary and second, if there was any significant danger of the information being leaked to the press, he would be subject to it. So, we didn't have an unwilling administrator of our program. I again emphasized that if he reached conclusions and he did on occasions, that he felt that some tap should be removed, I, of course, would take note of his judgment and give it great weight. I think as a matter of fact, it was in July of 1970 that Mr. DeLoach pointed out some of the taps should come out. My recollection may be incorrect.

Q. We will get to that. Did you at this time give any instructions to the F.B.I. or Mr. Hoover about conversations not to be recorded, not to be intercepted on these wiretaps? For example, the attorney/client conversations or husband/wife conversations or conversations about political matters unrelated to leaks? Did you give any such instructions to Mr. Hoover.

A. No. I realize the A.C.L.U. is apparently not concerned about that kind of conversation in my own case, but apparently you are in this case; is that correct?

#### Questioner Is Questioned

Q. I am not sure that we aren't concerned about it in any case in which it comes up, Mr. Nixon.

A. Are you concerned? You are concerned about the revelation of private conversations between husband/wife and others? You don't believe that it should be publicized or should be public? What is your position?

Q. My question stands.

A. No. This is very important to me to understand the question because of your long tradition of a single standard.

Q. I am talking about wiretaps at the moment and the law provides that wherever possible, the interceptions that occur shall be minimized. My question is whether or not in your conversa-

tions there were any instructions that were given with respect to minimization?

A. No. The only instructions were the instructions I gave generally to Mr. Hoover. Our interest was in leaks. We had no interest in political matters. We had no interest in personal matters. I was quite aware of the fact that where wiretaps are concerned, that conversations as in the case of my taped conversations where the A.C.L.U. takes the opposite position which you presently now are advocating, conversations inevitably intermingle—a personal conversation with a conversation that may deal with substantive matters of very great importance. As far as the work load in the White House was concerned, I would have certainly instructed Mr. Hoover to include first only the tapping to begin with and that only the report should deal with that specific thing bearing specifically on a leak.

The difficulty is the field officer with the earphones on is listening to something apparently and through the years, has not felt that he could or should make that judgment. The F.B.I. was bending over backwards, never knowing what might appear to be a very casual phone conversation about setting up a date for a girlfriend or a boyfriend or what have you, might lead to some other source of contact.

As a matter of fact, the amount of material included should be as limited as possible. But, it is apparently very difficult to do that.

Q. Do you recall receiving reports about the thrust of the Halperin wiretap? A. No.

Q. About other wiretaps?

A. No. I recall as you may remember we were in a rather difficult period then. We moved into the Cambodian sanctuaries May 1st, 1970. For three months my concern was primarily in that area. So in that three-month period, I paid very little attention to anything of this sort.

I cannot recall any discussions. It would only have been I think, with Dr. Kissinger at that point. My conversations with Dr. Kissinger or with Mr. Haldeman at a later point when he had exactly the same responsibility as Dr. Kissinger and carried it out in the same way. But I don't recall anything about what it was they found out about Dr. Halperin.

Q. You did state that you became aware of the fact that there was a tap on Dr. Halperin's telephone shortly after its initiation on May 9, 1969? How did you become aware? How was



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Secretary of State Henry A. Kissinger in Washington yesterday. He declined to make any comment on the deposition made by Richard M. Nixon.

it brought to your attention. If you recall?

A. I think Dr. Kissinger told me.

Q. Did you initially receive all reports from Dr. Kissinger about the wiretaps in place? A. I can recall none.

Q. Certainly not about this case?

A. My only concern was whether they had found out who was leaking. If he had found out who was leaking, he would have told me immediately and he would have been fired. In this case, he never came in and said that.

As far as anything else that might have been on a tap, I never recall any discussions by Dr. Kissinger as to what else was on it, assuming that he was on it.

Q. The records provided to us in discovery in this case indicate that beginning on May 28, 1969, summary letters from the F.B.I. addressed to you, were sent to the White House. They were summarizing the conversations overheard on Dr. Halperin's tap. Do you recall receiving any of those summary letters?

A. No. I don't recall reading any of them. It is possible they might have been received.

Q. Mr. Nixon, I would like to return just briefly for one question or series of questions to the role of the Attorney General, Mr. Mitchell, in the authorizations of wiretapping that were requested by Dr. Kissinger.

Mr. Mitchell has testified and I will read to you that portion of his testimony and will provide you with a copy, that he was instructed by you to authorize any taps requested by Dr. Kissinger.

So that there may be no confusion about that, I will read you his testimony and then simply ask you whether you agree with it. It appears on page 49 of his deposition. This is line 7:

"Q. That is, your instructions from the President as you understood them were that Dr. Kissinger would provide names or a member of his staff would provide names for the F.B.I., and that when he received such a name you are under instructions from the President to put on such a tap?

A. That is correct."

Do you agree with Mr. Mitchell's testimony in that regard?

#### Hoover Was to Map Inquiries

A. I think I would agree, but with a qualification. My instructions to Mr. Mitchell and Mr. Hoover, who was present when I talked to Mr. Mitchell, as I have already indicated, back in April, were that our goal was to find the leakers and stop them, if we could. Second, that investigations should be conducted, and I said that there could be three levels of investigations, the third level being a tap. And whatever was necessary or considered necessary by Mr. Hoover should be undertaken.

I did not intend—in my conversation with Mr. Mitchell, he might have interpreted it that way—but when Mr. Hoover called—I mean when Dr. Kissinger might call Mr. Hoover or General Heig which would be more likely in the chain of command—it would go to Mr. Sullivan and give him some names to say, "please tap so and so and so and so," because in some instances I don't know what the procedures were that were followed. In some instances the F.B.I. might have determined and they have a right to determine that a tap was not necessary, that surveillance would be enough. But it was not a specific direction that Kissinger had the authority to order taps on people.

I had the authority, of course. The Attorney General had the authority. He approved them all. As far as Kissinger was concerned, it was Kissinger's responsibility to furnish the information to those who had the responsibility for implementing the policy, to furnish information as to individuals who potentially might be leakers or lead to leakers. That is the way I would interpret

what I told Mr. Mitchell.

Q. Was there anything further that Mr. Mitchell should do if he received a name from Dr. Kissinger or Colonel Haig to determine whether or not such a wiretap should be authorized by the Attorney General?

MR. CHRISTENBURY: I think you said Mr. Mitchell. Did you mean Mr. Hoover?

MR. SHATTUCK: No, I meant Mr. Mitchell. It was Mr. Mitchell.

MR. CHRISTENBURY: Just so I can understand, you are asking if Dr. Kissinger submitted names directly to Mr. Mitchell, rather than submitting them to the F.B.I. and the F.B.I. submitting them?

MR. SHATTUCK: I am not talking about anything more than Mr. Mitchell's testimony.

THE WITNESS: I understand—

MR. CHRISTENBURY: I thought the testimony reflects that Dr. Kissinger would provide names or members of his staff would provide names for the

F.B.I. and that when he received such names under instructions from the President—

THE WITNESS: I believe that what Mr. Christenbury has indicated was the procedure. The procedure was that Dr. Kissinger or his deputy, General Haig—then Colonel Haig—would submit the name, or names rather, to Mr. Hoover directly, eventually it was delegated by Mr. Hoover to Mr. Sullivan who was in charge at that time.

Then the Hoover office would from there take the responsibility. But before they could institute a tap, they had to have Mr. Mitchell's approval. Now whether there could have been incidents in which Colonel Haig talked directly to Mitchell or where Kissinger talked directly to Mitchell, I do not know. It could have been. I do not know. But, it would not have been the usual procedure.

MR. SHATTUCK: With respect to the role of Dr. Kissinger in determination of these wiretaps, I would like to show you a document which will be marked as plaintiff's Exhibit B. It is a document dated September 15, 1969. It is a memorandum from W. C. Sullivan to Mr. C. D. DeLoach. It is an F.B.I. memorandum.

(Whereupon the above described Xerox copy of a one-page memorandum dated Sept. 15, 1969, was marked as plaintiff's Exhibit B by the notary public and is attached hereto.)

MR. SHATTUCK: The second paragraph of this memorandum reads:

"At the request of Dr. Kissinger's office, we have surveillances in effect at this time on blank and Mr. Morton Halperin, blank and blank. Col. Alexander Haig of Dr. Kissinger's office has indicated that Dr. Kissinger desires all surveillances discontinued except those on Morton Halperin and blank."

Before asking you a question about that, I would like to read you Mr. Mitchell's testimony about his understanding of Dr. Kissinger's role in determination of these wiretaps and ask you whether you agree with it.

At Page 58 and continuing on to Page 59 of this testimony in the deposition, Mr. Mitchell was also shown this document and was asked the following question:

"The second paragraph says, does it not, 'according to Alexander Haig, Dr. Kissinger has not advised that he desires all such surveillances installed at his request discontinued except the ones with reference to Mr. Halperin and (names deleted). Accordingly, the surveillances on apparently two names are being discontinued.'"

"Does the description in that paragraph of the control of the continuance of these wiretaps correspond

to your understanding at the time that this was up to Dr. Kissinger to decide when the wiretaps came off?"

"A. I think I would have to answer the question the way you put it, yes. Dr. Kissinger having initiated the taps, that would be his determination as to when they came off, yes."

#### Kissinger's Responsibility

A. I think that would appear to be a difference of opinion as to who would determine as to when taps would be put on or surveillances described in the paragraph and as to when they could come off and it can be explained in this way, as I pointed out earlier, it was Dr. Kissinger's responsibility to furnish to the F.B.I. the names of individuals who, under the guidelines that I have previously outlined, might be possible prospects for leaking information. Needless to say, when Dr.—if at any time Dr. Kissinger, after having evaluated the taps or other surveillance material over a period of time or because of the problems of leaks having receded in importance, Dr. Kissinger had then reached a conclusion that they were no longer necessary, it would be his obligation to furnish that information to Mr. Hoover and Mr. Hoover would then take them off.

I should point out, however, that this is consistent with the way that I understood it and directed that the program be set up, that Dr. Kissinger should furnish the names and Mr. Hoover would institute the surveillances and furnish the fruits or results of the surveillances to Dr. Kissinger's office and that they would be evaluated and Mr. Hoover, in addition of course, would recommend additional names, if he felt it was necessary or advisable because of his own investigations.

I think that Mr. Hoover under these circumstances, therefore, would give very great weight to Dr. Kissinger's recommendation that a tap be removed, just as he would give very great weight to a recommendation that a surveillance be instituted.

It does not indicate in my opinion that Mr. Hoover was simply acting as Dr. Kissinger's agent because in the final analysis, the surveillances had to be approved by the Attorney General and it would be, therefore, a combined judgment with the final decision being made by the Attorney General. It was Hoover who removed the taps. I mean, he would discontinue the surveillances and issue the order that they be discontinued, rather than Dr. Kissinger.

Q. Was it your instruction that Mr. Hoover should also give very great weight to any recommendation by Dr. Kissinger that a tap be continued when the F.B.I. might not regard it as being productive?

A. Well to be specific, I do not recall an instance in which Mr. Hoover indicated that a tap was not productive and that it should come off and in which Dr. Kissinger insisted that a tap be retained.

MR. SHATTUCK: I would like to turn now to another subject. I would like to mark as Plaintiff's Exhibit C, D and E, three documents. The first is a letter of Dec. 29, 1969 to the President from J. Edgar Hoover. The second, Exhibit D is a memorandum, handwritten on stationery of the Summer White House, San Clemente, Calif., to H. from John Ehrlichman and the third is a one-page handwritten note headed the White House, Washington, and it is from Bob Haldeman.

(Whereupon the above described documents were marked as Plaintiff's Exhibits C, D and E respectively for identification by the notary public and are attached hereto.)

Q. By Mr. Shattuck: Reading from the second paragraph of exhibit No. C which is the letter of Dec. 29, 1969, it says:

"Halperin was recently in contact with an unidentified individual who told Halperin that he received a call from Clark Clifford. Clifford is probably identical with the former Secretary of Defense. According to this individual, he and Clifford discussed an article which Clifford may be preparing. He said that Clifford is concerned about 'sharpening up his attack upon Nixon' and that apparently he had obtained 'old Nixon statements,' one being to the effect that President Thieu is one of the five greatest men of our time. Another statement is that Vietnam is one of the finest hours in United States history. He said that Clifford felt that whether the article would be published would depend on what alternative he, Clifford, has to offer and that Clifford asked him what alternative he could offer. This unidentified individual did not indicate what he told Clifford."

I will ask you first whether you recall reading this letter prior to any knowledge that you may have of it in connection with this case. A. No.

MR. CHRISTENBURY: You mean other than in preparation for this deposition?

THE WITNESS: No. I do not recall.

MR. SHATTUCK: What was the significance in terms of the ongoing investigation of leaks of Clark Clifford's writing a magazine article attacking the Administration's Vietnam policies?

MR. CHRISTENBURY: Excuse me. I guess I have a problem. When the President indicated he never saw the document and never reflected on it at that point in time, I don't perceive the role that he had at that time. That is, in evaluating the letter and what action may or may not have been taken by others.

(Consultation off the record between counsel for both parties.)

#### Policy on Vietnam

THE WITNESS: Counsel, I know that it is rather difficult for you to try to sanitize every question and get it down to what is absolutely specific. But I mean, you are trying to get at the heart of the matter, shall we say not over the strenuous objections of my counsel, but with his permission, I evaluated but not having seen it at the time—

MR. SHATTUCK: I appreciate that.

A. As far as Mr. Clifford was concerned, I would not have seen any memorandum of this sort. Mr. Clifford had been and was very strongly attacking our policy in Vietnam. You may recall on Nov. 3, 1969, I laid out the policy and rejected the demand for immediate withdrawal and took the line which eventually led to the Paris peace accords and the release of the P.O.W.'s on Jan. 23, 1973.

Now as far as what was done as a result of this memorandum, I recall nothing at all was done and I recall no discussions with me about it. As far as this, I think maybe it gets to the heart of the matter, I think perhaps that is the reason for your question, which generally, is appropriate. It is, why would such information which would appear to be political come in?

Well, I suppose one reason would be that Mr. Clifford was not just a private citizen at the time but was a former Secretary of Defense. I can well recall when I had my briefing by the National Security Council, after my nomination, he was the strongest talker in the group. His changing his position and coming out against our position that President Johnson, his former chief, was still supporting, would have from a foreign policy standpoint, some fairly significant consequences.

Nevertheless, I would not consider myself that that would be a proper

subject for the F.B.I. to be informing the White House on because there were people against the war and there were people for the war and unless it involved illegal activity on the part—writing an article, of course, is something that was not in their realm of responsibility.

On the other hand, I think the memorandum would cause some concern in the sense that Mr. Halperin at that time, while he was not a full-time member of the N.S.C. staff, was still a consultant to the N.S.C. He still had his contacts with the N.S.C. He still had within that time his recollections of what policies had been and some of the top secret information that was previously disclosed.

And the fact that Mr. Halperin would be in direct contact with an individual working with a former Secretary of Defense against the policy of the Administration for which Mr. Halperin was

a consultant, would I think, raise some doubts. I think that is the reason perhaps that Mr. Hoover sent the document in.

MR. SHATTUCK: It would appear that the letter is addressed to you and that the information contained therein was disseminated through several offices in the White House, particularly that of Mr. Ehrlichman and Mr. Haldeman and Mr. Magruder, although that is not reflected on one of the documents I have given you.

The question that I had was, was it consistent with your instructions for these individuals to have this information?

A. Certainly not. I had always as I have indicated earlier in this deposition, indicated and instructed that the purpose of our investigation here was to stop leaks of confidential information and highly sensitive information and in addition, I was not interested in and did not consider a proper purpose of such investigation to be information for political purposes as apparently the F.B.I. and some previous Administrations had been used for personal purposes.

#### 'Considered it Justified'

The wiretapping and generally the surveillance in our society is not a pleasant and not a preferable action that any Chief Executive likes to approve. It has proved in the past and during our Administration during a very difficult war, we considered it to be justified on a limited basis at that time. But to the extent that the overlap even in previous Administrations and in ours where the overlap as far as I can see, goes into the field of an individual's personal life, I think that that is one of the greatest deficits.

Q. I have just one further question about this series of documents. Plaintiff's Exhibit D which is a two-page note on John Ehrlichman's stationery reads:

"H—this is the kind of early warning we need more of. Your game planners are now in an excellent position to map anticipatory action."

My question is, is the happening of anticipatory action based on this information consistent with the original purpose of this wiretap as originally instituted?

A. No. The wire was instituted for the purpose of stopping leaks. That was the legitimate national security purpose. As I have pointed out and I do not want to be repetitive, but I think it would be well to summarize it concisely now then and answer your question exactly. Some of you may know that despite my party affiliation, I am a great admirer of Woodrow Wilson. I once quoted with great approval Woodrow Wilson's very famous statement made immediately after World War I when he was going to Versailles. You may all remember the phrase, "open covenants openly agreed to." As a matter of fact, I was critical

of President Johnson for a conference that he had had in Manila in which covenants had been made openly. I mean, had been agreed to openly. They had agreed to privately.

I had been announced openly but had I would say in retrospect that Wilson was wrong, naive and idealistic. But, he was wrong, in the case of world dealings between nations and even in our private sector, if you are going to have covenants that are openly agreed to, almost inevitably they must be secretly negotiated. That was true of all of the five great initiatives which I have referred to today. None would have succeeded without secrecy.

Now I know that the charges have been made maliciously and vicious — and not by you but by others—that and at the time were totally false that the transfer from Kissinger to Haldeman was for political purposes so that Haldeman could gather political intelligence on people that Hoover was wiretapping. That is totally false.

I can recall no instance of any kind in which Mr. Haldeman initiated a political investigation. He would not have had the authority to do so. The Attorney General would have to have approved it. Second, I can recall no instance where Mr. Haldeman used any such information or reported any such information or used it in any other way. He acted impeccably as far as I know in handling these reports, just as Dr. Kissinger handled them. As a matter of fact, I think there was less proliferation when he handled them than when Dr. Kissinger did.

But as I referred to earlier with regard to Italy, I was in Italy in 1947. I was a young Congressman. I know that without American assistance, the non-Communist parties would never

have survived at that time, at least that was my conviction, and it was a conviction that was held when a Democratic President was in the White House.

I strongly supported his efforts and those of the C.I.A. then under his direction to be of assistance.

Now today, we have a situation and it is not on all fours with this, but it is an indication of it, where the situation in Italy is difficult. One picks up the morning paper and reads that a committee of Congress has performed a great service by exposing the fact that the C.I.A. may provide funds for the non-Communist parties in Italy and so two lines of criticism develop. One is that it should not be done at all if they can't get the funds on their own, they don't have a right to survive. That of course, overlooks the fundamental fact that in a period of détente, the risk of war goes down but the risk of conquest without a war through subversion and covert means goes up geometrically. That has been true for years.

Coming back to the other way, the argument about that is that if we help Italy, the non-Communist parties, we should do it openly. So if \$100 million goes to the Christian Democratic Party and so forth in covert activities that the United States has had where free political parties are fighting against a Communist Party, a Communist Party supported quite openly by the Communist Party of the U.S.S.R., the support that we have given has been covert.

If it is given openly, ironically, it would be kiss of death to that party, because there is no American political party in the world. There is a Communist political party in the world.

Let me come back to this, now. As we examine the C.I.A. as we are and as we examine the F.B.I. and its activities in the field of surveillance, it is the age-old problems civilizations in all modern times have been faced with. You have to balance security and freedom. In some areas you have all freedom without security and in other areas security without freedom.

#### Concerns About Hoover

The second concern was that Mr. Hoover might use the taps that he had in his possession for the purpose of having leverage on me so that I would retain him as director of the F.B.I. Now I will comment on the second part and then on the first part.

The second part probably is not related. But it would be to the extent you see a student of history.

Mr. Hoover, in all the time I knew him, including my time as President, never threatened or blackmailed me. Whether he did with others, I cannot say. I would be surprised.

But nevertheless, as a matter of fact in the meetings I had with him, he always said that he was approaching the age of 75 and, when I had seen him at Easter this year, he had told me when he was under attack by Hale Boggs, the late leader of the Democrats in the House who died in a plane crash in Alaska, I told him I would stand by him.

He said, "I will resign any time you want me to, if you think it will help because I don't want to be a liability as this campaign comes along."

There were some on my staff—I had received memorandums from some and I am not indicating that they felt that Hoover should resign because of his age, but there were other reasons as well that were expressed. This gets back to the Mardian view about Hoover, that he expressed. He said that he and others believed that Hoover might use the taps for blackmail purposes.

I said I didn't believe that. They said that the other point was that they might leak in any event, if they were left there at the F.B.I., with the Ellsberg thing coming out and the political atmosphere heating up and he felt and others concurred that they should be removed from the F.B.I. to his office.

In my view—many people have asked why I didn't destroy my famous tapes. I felt that evidence was evidence, and even though they had not been subpoenaed, so be it. They were not destroyed. They could have been.

Q. Would there be a tape of your conversation with Mr. Ehrlichman in connection with his taking possession of the wiretap records?

A. No. I think it occurred ~~out~~ here right after I had seen Mr. Mardian. As you know, there is no taping capability—we have no tape equipment in any of the—only in the White House, only two offices of the White House.

Incidentally, he [Halperin] was wiretapped not only because Dr. Kissinger put him on his list but because Mr. Hoover urged that he be put on the list.