

9/16 Grand Jury testimony of Richard M. Nixon June 24, 1975

SCREENED
By *claps* Date *9/16/75*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

-----X
 :
 UNITED STATES OF AMERICA :
 :
 v. :
 :
 JOHN DOE : January 1964
 : Grand Jury Investigation
 :
 -----X

San Clemente, California

Tuesday, June 24, 1975

The deposition of RICHARD M. NIXON was reconvened at 9:00 o'clock a.m., Pacific Standard Time, June 24, 1975, in the Conference Room, United States Coast Guard Station, San Clemente, California, the witness having been previously sworn by The Honorable Edward J. Schwartz, Chief Judge, United States District Court for the Southern District of California.

APPEARANCES:

On behalf of the Government:

HENRY S. RUTH, Esq.,
Special Prosecutor

RICHARD J. DAVIS, Esq.,
Assistant Special Prosecutor

JAY HOROTITZ, Esq.,
Assistant Special Prosecutor

FRANCIS J. MARTIN, Esq., (Page 222)
Assistant Special Prosecutor

HENRY L. HECHT, Esq.,
Assistant Special Prosecutor (Page 213)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES (Continued)

On behalf of the Witness:

HERBERT J. MILLER, JR., Esq.,
R. STAN MORTENSON, Esq.,
1320 - 19th Street, Northwest
Washington, D. C.

Also In Attendance:

FOIA(b) 6

Foreman, January 7, 1974 Grand Jury

Juror, January 7, 1974 Grand Jury

C O N T E N T SWITNESSEXAMINATION

Richard M. Nixon

170

E X H I B I T SNUMBERIDENTIFIED

7	D-1	177
8	D-2	180
9	D-3	188
10	D-4	191
11	D-5	197
12	D-6	201
13	D-7 and D-8	205
14	E-1	234
15	E-2	240
16	E-3	246
17	E-4	248
18	E-5	257
19	E-6	257
20	E-7	280
21	E-8	285

P R O C E E D I N G S

MR. RUTH: Let me go on the record.

This is a reminder that this is a continuation of yesterday's sworn deposition, that therefore the oath continues today and, in addition, you may continue, of course, as you did yesterday, to consult with your attorneys who are here, Mr. Miller and Mr. Mortenson, consult with them at any time you wish.

The attorneys here today, in addition to Mr. Davis and myself, are Mr. Hecht, at the far end of the table, and Mr. Horowitz next to him.

Whereupon,

RICHARD M. NIXON,

having been previously duly sworn, was examined and testified further as follows:

E X A M I N A T I O N

BY MR. HOROWITZ:

Q Sir, my name is Jay Horowitz and Mr. Hecht is next to me, to my right.

We intend to ask you some questions relevant to the Grand Jury's investigation, which is, specifically, into allegations that White House affiliated persons attempted to influence the IRS to audit or otherwise harass Mr. Lawrence F. O'Brien, Sr., and questions which are also relevant to the Grand Jury's investigation that the White

1 House affiliated persons attempted to secure from the Internal
2 Revenue Service documents --

3 A. Could I interrupt, please?

4 In other words, the Special Prosecutor's Office
5 is only interested in the IRS harassment activities insofar
6 as it deals with Mr. O'Brien? It is not interested in any
7 harassment that the IRS may have done or is doing or has
8 done with regard to, say, me, my friends, or anything like
9 that? Am I clear that your sole interest is IRS activity
10 with regard to O'Brien?

11 Q. Not exactly. In this particular investigation,
12 this particular Grand Jury investigation --

13 A. Do you have other Grand Jury investigations in
14 which you are applying a single standard, in which you are
15 looking, seeing whether the IRS has harassed other people?

16 Q. Well, Mr. Nixon, this particular investigation is
17 directed to these allegations.

18 A. I think you have answered my question.

19 Go ahead.

20 MR. RUTH: Could I just interrupt, sir?

21 THE WITNESS: Sure, anytime.

22 MR. RUTH: As you know, sir, we are limited by a
23 charter that we operate under that limits our jurisdiction
24 to certain factual situations having to do with White House
25 staff members, presidential appointees and the 1972

1 presidential campaign and other matters. We can only investi-
2 gate that which is within our charter.

3 THE WITNESS: Your charter, however, Mr. Ruth, as
4 I understand it, is not limited simply to one political
5 party. It covers both, does it not?

6 MR. RUTH: That is correct.

7 THE WITNESS: In other words, harassment, if it
8 happened in the other political party, would also be part of
9 your charter, would it not?

10 MR. RUTH: Only if it were by presidential
11 appointees from January 20, 1969. The Department of Justice
12 has to do the rest. We are quite limited in what we are able
13 to do.

14 THE WITNESS: Yes. I just wanted to know, and
15 you have quite enough on your plate without having more to do.

16 Sorry, Mr. Horowitz. Go ahead. I know you have a
17 lot of questions.

18 BY MR. HOROWITZ:

19 Q I think I indicated, sir, that one thrust of this
20 Grand Jury investigation relates to efforts to get the IRS
21 to audit or otherwise harass Mr. O'Brien.

22 The other leg of it, if you will, relates to
23 attempts to secure documents from the Internal Revenue
24 Service, attempts allegedly made by White House affiliated
25 persons for the purpose of disseminating such documents or

1 distributing them to unauthorized persons, that is, persons
2 who would not in the ordinary or legal course have access to
3 such internal revenue Service information.

4 Now, those are the two legs of this particular
5 and very specifically, as you pointed out, specifically
6 limited investigation.

7 I will focus most of my questions upon various
8 documents which we have, to a certain extent, been provided
9 by your counsel in the past, and we have provided them prior
10 to our meeting here today, and most of the questions will be
11 by myself, although near the end probably Mr. Hecht will put
12 some questions to you as well.

13 Now, one further thing by way of prefatory remarks
14 and background, and hopefully we can assist in refreshing
15 your recollection.

16 Where we are focused, sir, is on the summer, and
17 primarily July, August and September of 1972, and during that
18 period there was an extensive Internal Revenue Service
19 investigation of Howard Hughes, whether personally or his
20 affiliated company, but that conglomerate of interests, and
21 it was in the course of that investigation that the Internal
22 Revenue Service developed information which established that
23 Mr. O'Brien and two associates of his, one by the name of
24 Joseph Napolitan, N-a-p-o-l-i-t-a-n, and one by the name of
25 Claud de Sautels -- I am not sure of the spelling of that one.

1 A. I think it is not Mr. Napolitan, it is Napolitan
2 Associates. It is a public relations firm.

3 Q. (Continuing) -- that those individuals had
4 received various funds from Mr. Hughes back in 1969 and 1970.

5 Now we are going to focus specifically, starting
6 on a meeting that you had with Messrs. Haldeman and Ehrlich-
7 man on August 3 of 1972. But before I do that, since this
8 information developed prior to that time in the course of the
9 investigation, could you tell us when you first became aware
10 of the fact that information indicating that O'Brien and his
11 associates had received funds from Hughes or Hughes affili-
12 ated companies had come to surface through the IRS investi-
13 gation?

14 A. Well, we are talking about two different problems
15 here, and I want to be quite precise.

16 First, is the problem in which you have jurisdic-
17 tion, and that is the alleged harassment of Mr. O'Brien by
18 the IRS; and, second, when I became aware of the fact that
19 the Hughes Company had Mr. O'Brien on retainer. Is that your
20 question?

21 Q. Well, no, I made it a little unclear, I think.
22 What I am interested in is when you first became aware that
23 the Internal Revenue Service had developed information that
24 the Hughes Company had O'Brien on retainer.

25 A. My first recollection of having knowledge that the

6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Internal Revenue Service had information with regard to the retainer by Mr. O'Brien was sometime in the summer of 1972.

However, I should point out that I had been informed long ago, and I think this was public knowledge, that O'Brien was, O'Brien and Senator Hubert Humphrey's son-in-law and others, were on retainer with the Hughes organization. I learned that as early as, oh, 1969 or 1970. Whether the IRS knew it then or was interested in it then, I do not know.

Q. You say in the summer of 1972. Can you tell us who first informed you that the Internal Revenue Service was inquiring into that matter?

A. No, I can't remember who specifically informed me that the Internal Revenue Service was looking into that matter.

Q. When you first heard that they were looking into that matter, what did you understand they were looking into?

A. What I understood they were looking into was the fact that Mr. Hughes and the various other people that the recorder has already put into her notes were receiving very, very substantial retainers from Mr. Hughes or from, I should say, the Hughes organization, and the question was whether those retainers were for services rendered or whether those retainers might be used for the purpose of being funneled into political campaigns. That is, in sum, a number of

7

1 of conversations, you see.

2 Q All right, I think it will assist, and perhaps it
3 was about the time of these first notes to refer then to
4 notes of August 3, 1972, which we have been provided by your
5 counsel sometime ago, and they refer to a meeting between
6 yourself, Mr. Haldeman and Mr. Ehrlichman in the morning,
7 and I will mark that D-1, which serves as a Grand Jury
8 designation.

9 A Uh-huh.

10 (The document referred to was
11 marked Exhibit D-1 for
12 identification.)

13 THE WITNESS: Where did it take place?

14 MR. HOROWITZ: That I cannot tell you.

15 THE WITNESS: Sorry.

16 BY MR. HOROWITZ:

17 Q Now, these notes, like others --

18 A I would have thought my counsel would have
19 furnished you with tapes where it took place.

20 MR. HOROWITZ: We now understand it took place in
21 Washington, D. C.

22 THE WITNESS: All right, go ahead.

23 I was just curious whether it was San Clemente.
24 It may help to refresh my recollection.

25

8

1

BY MR. HOROWITZ:

2

Q These notes, like other notes we will get into, are fragmentary in part, and what I propose to do with these notes, which I will do with later notes, is to read those notations on the notes to you which directly appear to pertain to our investigation.

3

4

5

6

7

A You, of course, will have a copy for me so I can read along with you?

8

9

Q Let me give you D-1.

10

11

A I can see why teachers hate to grade papers. They are so hard to read, the writing, let alone to know what they meant by it.

12

13

Go ahead.

14

15

16

17

Q Under (1), which is headed IRS and Justice, there is a note, "Investigations of us when we were out," a note pertaining to Ed Nixon-Oceanographic Fund, and in the following notes, "Use our power, contributors, Larry O'Brien."

18

19

Can you tell us what that conversation was as to that portion, "Use our powers, contributors, Larry O'Brien"?

20

21

22

A Perhaps it would be best for me to, rather than to take that out of context, to put it in context, which I know you would want, so that you have a total story.

23

24

25

When I referred to investigations of us when we were out, I was referring to the fact that the IRS notoriously had a well-deserved reputation for being used politically,

9

1

and in some instances developing within its own bureaucracy
2 a partisan political viewpoint.

2

3

For example, when I ran for Vice President in
4 1952, the IRS, I understand, and I am not sure from whom they
5 got the orders, but from very high sources, took my income
6 tax returns and made them available to a Washington columnist,
7 Mr. Drew Pearson, and to the Saint Louis Post Dispatch.

4

5

6

7

8

Those returns were used in the campaign against me.

9

They were not -- obviously, whoever got the returns only put
10 out those portions of the returns that might be derogatory.

10

11

The next year I gave the whole return out, all of my returns,

12

12 to Look Magazine, and they were printed, and that is when

13

13 Look was still being published.

14

In 1962, the IRS again -- I was then, of course,
15 out of power -- I was not in Washington -- I was running for
16 Governor -- the IRS instituted an intensive investigation
17 which was a dry hole for them.

15

16

17

18

As a matter of fact, at the end I think they owed
19 us some money. But an intensive investigation with regard
20 to the purchase of my house, in Truesdale Estates, they
21 leaked that information to the press, in this instance to the
22 California press, to the Los Angeles Times and the Long
23 Beach paper, and I have a letter, ironically, which I
24 received from the man who was the head of the field office
25 of the IRS, which I would like to submit for --

19

20

21

22

23

24

25

10

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE WITNESS: Can I submit something, a document in evidence?

MR. RUTH: Yes, sir.

THE WITNESS: (Continuing) -- which I will submit as D-3.

MR. HECHT: 2 - sir.

THE WITNESS: D-2.

(The document referred to was marked Exhibit D-2 for identification.)

THE WITNESS: This is the letter of November 13, 1973. It is to Miss Woods, my secretary. I will leave out the --

MR. RUTH: Excuse me, sir, does this pertain to any particular --

THE WITNESS: The IRS, it certainly does.

MR. RUTH: Does it have to do with a tax situation of yours?

THE WITNESS: You listen and you will see.

MR. RUTH: Could I just explain a problem we have?

THE WITNESS: Sure.

MR. RUTH: We have an outstanding indictment having to do with a tax situation with Mr. De Marco and Mr. Newman, and we are not allowed to use the Grand Jury to get into that, and I just wanted to make sure --

11

1 THE WITNESS: No, this is November 13, 1973. It
2 has to do with the IRS harassment of an individual who had
3 been Vice President, who is running for Governor of California,
4 about his returns, and I am sure the IRS and this group have
5 no interest in that sort of thing. I mean obviously if you
6 did, you would lose your jobs.

7 It says, "I am writing this letter to you" --
8 Miss Woods -- "with the hope that you will have the
9 President see the two attachments. My wife is a
10 cousin of Edward Haakinson, and many members of my
11 family live in Sebring. I have been there many
12 times over the past fifty years and am so proud
13 that such a distinguished lady as you came from
14 that town."

15 That is Sebring, Ohio.

16 "I retired from the Treasury Department as
17 of 12-31-65. My position was 'super supervisor'
18 in charge of sensitive audits -- one being you
19 know who. I immediately took charge and verified
20 the original audit as 'no change' and the case
21 was sent back to Washington. Within a month it
22 came back with a letter severely criticizing the
23 N.C. report and referring to articles in the
24 newspapers and magazines. I sent the case back
25 to Washington with this comment: 'We don't work

12

1 cases by what the news media and magazines say, we
2 base our findings on facts.' That settled the
3 case. Three times it had been sent to Los Angeles
4 from Washington."

5 Now, without saying who sent it, without saying it
6 was done with the knowledge of people high in government, it
7 was quite clear that the IRS was engaging in harassing
8 tactics during that campaign.

9 Now, that is what that refers to, the use of
10 their power in a personal way, the IRS, for harassment
11 purposes.

12 Now when we talk about using our power here, what
13 we are talking about, as far as I was concerned, having gone
14 through this agony, was not, in my view, to harass, but at
15 least to see what you gentlemen, as you stand before the bar
16 of history, must have in your minds, that you will be judged
17 not only by the very effective job you have done and are doing
18 on one side, but whether or not you have had a single standard
19 and are just as effective in going after any charges, the 140
20 that are before you right now, with regard to violations by
21 the other side.

22 It says here "contributors."

23 MR. HOROWITZ: I am sorry --

24 THE WITNESS: Let me finish the answer.

25 It says "contributors." That refers, of course,

13

1 to contributors to the other side.

2 "Larry O'Brien," and then his notes say, "Better
3 they drop him now because" -- I don't know what the note
4 means. It possibly means that I said on Larry O'Brien,
5 don't go forward with him now because it would be too
6 politically hot to do so.

7 Nevertheless, later on there is something to
8 indicate that there is a suggestion that we go forward.

9 Then the next notation, "Check McGovern IRS
10 files." Now this, understand, is Mr. Ehrlichman's notes. I
11 should point out that I can never recall suggesting Mr.
12 McGovern, Senator McGovern's files be checked. What I do
13 recall is only a suggestion that the McGovern contributors
14 might be checked.

15 BY MR. HOROWITZ:

16 Q So, if I understand, sir, when you discussed using
17 "our powers," that was to use the powers in the White House
18 to get the Internal Revenue Service to audit Mr. O'Brien,
19 is that right?

20 A You are putting words in my mouth there that I
21 did not say. What I am saying is, and I am looking at these
22 notes -- I am refreshing my recollection about an event that
23 occurred two years, three years ago, when I was engaged in
24 activities that in my view were far more important than this
25 type of activity, and from the notes and from my recollection

14

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

and to the best of my recollection, I can only say that I was suggesting that in the campaign that we should be as effective in conducting our investigations as they had been effective in conducting their investigations.

Q Now, sir, on the --

A As you noted, it says "Better they drop him now," whatever that means.

Q I was just about to ask you, sir, you indicated that you don't recall that. Do you believe that that was a discussion about talking to the Democratic Party or someone representing the Democratic Party and urging that they drop him, meaning that they drop Mr. O'Brien?

A You know, many times, Mr. Horowitz, people think that a President of the United States running for re-election, with a good chance to be re-elected, has a great deal of power, but even the suggestion that I or one of my representatives could have influence within the Democratic Party to get them to drop their National Chairman is so absurd that really I am not going to dignify it with a comment.

Q So, clearly, it doesn't mean that, it doesn't have anything to --

A I have answered the question.

Q If I might, if I could refer your attention to the second page of these notes, and the notes read, "Sh," and I believe that that is a reference to then Secretary Treasury

15 1 Shultz, and the three entries underneath that in Mr. Ehrlich-
2 man's handwriting are, "Must be political, give him an
3 external type, e.g., Larry O'Brien, check his returns."

4 Now, can you tell us about that part of the con-
5 versation?

6 A. Oh, I have no independent recollection of that
7 conversation.

8 Q. In connection with the phrase, "an external type,"
9 do you have any recollection of a conversation about convey-
10 ing to Mr. Shultz some bit of information concerning Mr.
11 O'Brien?

12 A. I have no recollection of telling Mr. Ehrlichman
13 what to do, except to be sure that since there was,
14 apparently, an investigation of the Hughes organization
15 involving O'Brien that it could be followed to its conclusion,
16 and as one of the later documents I trust you will put into
17 evidence will show, I tell them if nothing turns up, drop it.

18 You have that document, I assume?

19 Q. I think we will get to a document which reflects
20 that, sir.

21 A. Yes, and of course exculpatory matters should be
22 put in as well as others.

23 Q. If I just might have one more question on that.

24 A. You can have five.

25 Q. The words "external type," that doesn't bring

16

1 back any recollection of a conversation in which information
2 was conveyed in a fashion from some third party or something
3 of that nature, rather than directly from a White House
4 person to the IRS?

5 A. I wouldn't know who such a third party would be.

6 Q. Now, sir, at about this same time, as I have
7 alluded to, the Internal Revenue Service was in the process of
8 investigating all of these many Hughes related items and
9 they had come upon the O'Brien business and they had shortly,
10 prior to the time of this meeting to which we have been
11 referring, scheduled an interview of Mr. O'Brien and Mr.
12 O'Brien had failed to show up for that interview and there
13 was considerable discussion concerning that fact at the high
14 ranks of the Internal Revenue Service, and what I am asking
15 you --

16 A. You are telling me you know this?

17 Q. Right, that the evidence has established that.

18 A. Okay.

19 Q. And since that event crystallized shortly before
20 this meeting, can you tell us whether you became aware at or
21 about this time that such an event had occurred, i.e., they
22 had gone out to interview O'Brien and he hadn't shown up and
23 they were considering what next to do with him?

24 A. You would have to refresh my recollection as to
25 some document on that. I am sure you have documents.

17

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q All right, we will get to some documents.

A Perhaps it would help to refresh my recollection if you would tell me, when you say that the IRS was having discussions with regard to whether to go forward with the O'Brien investigation -- is that what you are telling me?

Q Well, exactly how to proceed next insofar as Mr. O'Brien was concerned in the context of their overall Hughes investigation, because to be sure Mr. O'Brien was one of probably hundreds of people --

A What were your discussions, is what I am trying to get at.

Q When next to schedule an interview and that type of thing.

A When or whether, or both?

Q Well, both to a certain extent.

A You mean the Internal Revenue Service was not going forward, necessarily?

Q Well, I think we will come back to that, but their policy at that time was to, as to a number of figures, both Republican and Democratic, that came up in the Hughes investigation --

A That was not to use their --

Q Mindful of the political sensitivity to try to delay it, but if I can go on I think we will come back to that.

18

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A. Not to do what they had done to me in '52 and in '62?

Q. I can't speak to that.

A. Well, I have spoken to that.

Q. At the same time, and perhaps related to the notations on Mr. Ehrlichman's notes, and maybe you better pull them back in front of you, the notation "contributors," about the same time as you are having this discussion with Mr. Haldeman and Mr. Ehrlichman, evidence before the Grand Jury establishes that there was discussion between Mr. Ehrlichman and Mr. Chotiner about the production of a list of contributors.

Now, we are not interested in that as an independent matter, but we are interested in raising that because it seems to tie in to the O'Brien matter, and what I would like to do is place before you a list which will be marked D-2 --

A. D-3. I got 2.

Q. I am sorry, what I will mark as D-3, and ask you to take a look at that.

(The document referred to was marked Exhibit D-3 for identification.)

THE WITNESS: Yes.

What is your question, Mr. Horowitz?

19

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. HOROWITZ:

Q In connection with the same conversation you had, sir, about Mr. O'Brien, which is reflected here in these notes of August 3, and the notation immediately above that "contributors," do you recall whether there was a discussion about using your powers against Democratic contributors? And I show you that list because it was a list, the evidence establishes, which was produced at about this period of time or following this period of time.

A Are these Democratic contributors?

Q Yes.

A Did you establish that?

Q Yes.

Do you recall whether that was discussed, using your powers against contributors?

A I don't understand the question.

Why don't you put it more precisely, so that the Grand Jury will be able to understand it when they read the transcript?

Q Perhaps I have confused you somewhat because it is a little premature to show you the list.

The list was not produced until somewhat later but all I am asking you is on your notes, rather Mr. Ehrlichman's notes of this conversation with you, which is reflected in D-1, you referred to using our powers against contributors

20

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

and Larry O'Brien.

Now, in fact, the evidence establishes that the same day as this meeting there was a meeting between-- Shall I wait until you are finished consulting?

A. Well, I think you are putting an assumption in there that I do not say, "to use our powers against the Democrats."

What we are referring to here is what I referred to yesterday, and what I referred to again today, referred to, Mr. Ruth, again today is something I strongly believe in, that there should be a single standard where justice is concerned and a single standard where government generally is concerned, and not a double standard.

And I was quite aware that the IRS was harassing, if I may use that term, not only contributors, but other friends on our side. I felt that they should simply have a single standard. That is what I was talking about.

I don't recall asking anybody to prepare a list of contributors and give it to the IRS. I have no recollection of that. I have no recollection of seeing this list. I think this was shown to me yesterday, maybe one of the same lists was shown to me yesterday.

Q. Sir, if I might continue on.

A. Sure.

MR. HOROWITZ: We will mark as D-4, and I will

21

1 hand a copy to you, a slightly longer than one page typed
2 memorandum which bears the heading, "Memorandum for H. R.
3 Haldeman from The President."
4

5 I would like to ask you some questions about that.

6 THE WITNESS: Sure.

7 MR. HOROWITZ: That is Exhibit D-4.

8 (The document referred to
9 was marked Exhibit D-4
10 for identification.)

11 BY MR. HOROWITZ:

12 Q You have taken the time to read this and I think
13 we had supplied this to you earlier. I want to ask you some
14 questions about several of the references there, to what
15 appears to have been a conversation between yourself and then
16 former Secretary Connally. I think he already had left his
17 position as Secretary of the Treasury.

18 The notes read, sir, and I am taking portions of
19 them, but by reference to your conversation about Mr. O'Brien
20 that, quote, "Connally feels very strongly that any informa-
21 tion we get in this matter should not be held but should pop
22 out just as quickly as possible."

23 And in the same vein you refer to, quote,
24 "Connally's very strong conviction is that dropping something
25 on O'Brien will have far more effect now than at a later
time," close quote.

22

1 Now, can you tell us what you intended to do in
2 that connection?

3 A. All I can tell you is that I am reflecting here, as
4 I read this memorandum, what former Secretary Connally had
5 urged in terms of the handling of this matter.

6 Q. Did you agree with his urging at the time?

7 A. Let us speak very precise. In terms of a political
8 campaign, there are those who use broad and sweeping terms
9 which may mean one thing to them and something else to some-
10 body else.

11 As far as I was concerned, and obviously you will
12 put this in the record, I wanted the matter to be handled in
13 an evenhanded way.

14 For example, as you will note, I say "Ehrlichman
15 says that unless O'Brien responds with a request that he
16 submit to a voluntary IRS interrogation, that he be subpoenaed.
17 I think this should not be handled on that basis until at
18 least a telephone call is made by the head of the IRS to
19 O'Brien and before he stonewalls it, a subpoena should
20 follow."

21 That was the proper way to handle the Chairman of
22 the Democratic Party, rather than the way that Mr. Stans is
23 being handled by some of his opponents.

24 Q. I am sorry, if I might just ask a few more
25 questions about this memorandum.

23

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A. Sure.

Q. You will note that in the beginning of the second paragraph on the first page, you refer to "Connally strongly urged that in addition to following through on the [redacted] that was paid to O'Brien and associates, and the [redacted] that was paid to Joe Napolitan, we should follow on the Napolitan returns in 1968 and O'Brien's as well," close quote.

Can you tell us whether Mr. Connally gave you that specific information or whether you gave it to him?

A. I knew nothing about Mr. Napolitan or what had happened in the '68 campaign.

Back there, Connally, Mr. Connally was on the other side in '68, as you may recall, and he was supporting Mr. Humphrey and therefore what he points out, and if you read this memorandum, it says according to Connally there was approximately nine million dollars in unpaid bills after Humphrey's unsuccessful campaign. All of the bills submitted to Napolitan were paid. The others were not, apparently.

O'Brien at that time was making a great deal out of the fact he was an unpaid National Chairman. Of course, Connally was pointing up, I assume, from his experience on the Democratic side some of the matters that were popping up in the Hughes investigation that, if they proved to be true, should be publicly exposed.

24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Just going back, because I perhaps lumped two things into one in my question to you. Specifically, as far as the information about [redacted] paid to O'Brien and associates and [redacted] that was paid to Napolitan, that particular information, do you recall whether you conveyed that to Mr. Connally or whether he conveyed that to you?

A I have no recollection. I think that it was the other way around, that Mr. Connally knew about it.

Q Do you recall learning where Mr. Connally found that out from?

A No, I don't know where he could have learned it. It could have very well been public knowledge at the time of the Hughes investigation. In fact, be sure to check Jack Anderson's column. Your staff seems to be very interested in that, and that is always a good source.

Q Sir, if I can continue on with this matter --

A I won't ever stop you.

Q (Continuing) -- beyond those notes, but let me ask you first, can you tell us whether you had discussed the O'Brien matter in the summer of '72 with Mr. Connally prior to the time of what appears to have been an August 9, '72, conversation?

A I have no such recollection of a conversation, no.

Q Do you recall having further conversations with Mr. Connally later in the summer regarding the same business

1 of Mr. O'Brien's tax situation?

2 A. No, I have no independent recollection of any
3 further conversation with Mr. Connally.

4 Q. Either telephonic or in a meeting?

5 A. No. No.

6 Oh, I would have to qualify that to this extent:
7 When nothing, as I had expected, developed out of the O'Brien
8 investigation, and instead of conducting two years of
9 harassment against him, as they have against Mr. Rebozo, for
10 example, they simply dropped the matter.

11 I remember that on one occasion -- that was
12 shortly before the election -- Connally said that IRS, he
13 says that is what you have to expect, I didn't expect they
14 would do anything. He said they are right in the pocket, at
15 that time at least, in the pocket of the Democratic Party.

16 I would say the top leadership was all supporters
17 of McGovern. I think that was the other point he made. I
18 am not referring to the man at the very top because, as you
19 know, there are only two people appointed by the President,
20 with the advice of the Secretary of Treasury.

21 All of the rest is a self-perpetuating bureaucracy
22 and it was that bureaucracy that Connally, even as Secretary
23 of Treasury, was unable to control, and I don't mean control
24 for improper purposes but to control them to get them to have
25 a single standard, the same thing I am urging upon all of you.

26

1 Q I understand that.

2 If I might continue on and fill in a few facts
3 which evidence before the Grand Jury has established.

4 In mid-August, in fact, the Internal Revenue
5 Service arranged an interview with Mr. O'Brien, and they did
6 interview Mr. O'Brien, and it is of interest to the Grand
7 Jury whether you received, personally received, any memorandum
8 prepared by the Internal Revenue Service, one or another of
9 their agents, concerning or summarizing that interview.

10 A I don't recall personally receiving any memoranda.
11 I do recall receiving a report that the investigation was a
12 dry hole and that the whole matter was being dropped at some
13 point. I don't know who gave it to me.

14 Q We will get to that in a minute, sir, but just for
15 the time being if we can distinguish between just a memorandum
16 of an interview of O'Brien, and you indicated you don't
17 recall receiving such a memorandum --

18 A I say I don't recall receiving any memoranda on
19 the matter. I am telling you what I do recall and what I
20 know the Grand Jury is most interested in is what happened in
21 all of this case, and what happened was that the IRS conducted
22 a cursory investigation and dropped the matter and we did
23 nothing further.

24 Incidentally, we put nothing out publicly on it.

25 Q As far as the memorandum of the interview, you

27

1 don't recall having seen one. Do you recall Mr. Ehrlichman
2 or anyone else briefing you or discussing with you those
3 things that Mr. O'Brien had said during his interview?

4 A. I don't have any recollection of that. I think
5 it would depend on the time, Mr. Horowitz. If I were busy
6 with, you know, preparing a speech or something of that sort,
7 they wouldn't have briefed me on a matter of this sort.

8 Normally, even though this was the campaign
9 period, at that time we, as you know, were rather busy in
10 international affairs, and I simply wasn't paying much
11 attention to the campaign, and I left it to my top appointees
12 to handle matters of this sort. But I am not saying that he
13 may not have briefed me. He might have.

14 Q. Now, the interview and any conversations about
15 the interview would have occurred in mid-August, and of
16 course the convention at which you were nominated again was
17 August 21 or 23 -- something in that neighborhood.

18 Now, thereafter, certain reports, in late August
19 and early September, were prepared by the Internal Revenue
20 Service which discuss and analyze Mr. O'Brien's situation.

21 Now, you have alluded to one, and I would like
22 to mark as the next Grand Jury --

23 A. I haven't alluded to any written report that I
24 have seen. I have told you, Mr. Horowitz, that I have no
25 recollection of having seen a written report on this, no

1 recollection. I may have -- I may have. It may have crossed
2 my desk. I do recall having received in substance a report
3 that nothing was developed on the O'Brien investigation, it
4 has been dropped.

5 MR. HOROWITZ: If I might, sir, let me mark as
6 D-5, a report which was prepared by the Internal Revenue
7 Service.

8 THE WITNESS: For whom?

9 MR. HOROWITZ: I will give that to you.

10 This one was an Internal Report prepared to the
11 Commissioner from the Acting Assistant Commissioner.

12 (The document referred to
13 was marked Exhibit D-5
14 for identification.)

15 THE WITNESS: I have scanned the report.

16 BY MR. HOROWITZ:

17 Q You have scanned that, and do you recall that or
18 anything substantially similar to that, recall having seen
19 it, Mr. Nixon?

20 Q I don't recall. It is possible in the mass of
21 material that comes across a president's desk that it might
22 have been sent to me, if it was available to us. And,
23 incidentally, so that we can be perfectly candid, this was
24 one of those sensitive case reports where it would have been
25 available to us, so I assume it was available to somebody.

29

1 Q Let me ask you this: Do you recall Mr. Ehrlichman
2 informing you around this period of time that he had himself
3 personally, and not yourself, that he had received reports
4 similar to that?

5 A No, I only recall that Mr. Ehrlichman was follow-
6 ing the O'Brien matter. He didn't indicate to me that I can
7 recall what reports, if any, he was receiving in written
8 form or oral form. And he certainly wouldn't have wasted my
9 time by going into great detail about a matter of this sort.

10 All that I recall with regard to Mr. Ehrlichman,
11 my conversation with him about this matter at that time, is
12 what I already testified to, that the Internal Revenue
13 Service has completed its investigation of O'Brien, and have
14 found nothing. And I said, well, that is what I expected,
15 drop it, they won't try to find anything.

16 Q Sir, some evidence before the Grand Jury
17 establishes that Mr. Ehrlichman was, during this period of
18 time, in contact with a Mr. Roger Barth, who was a gentleman
19 who was then employed by the Internal Revenue Service as
20 Assistant to the Commissioner, and that at one time or
21 another during this period the two of them discussed this
22 matter.

23 Do you recall being aware of Mr. Barth and/or
24 aware of Mr. Ehrlichman's contact with Mr. Barth on the
25 subject?

30

1
2 A. I was aware of Mr. Barth, although I don't know
3 him well, I was aware that he was working in IRS, and from
4 the documents that you have shown me it appears that Mr. Barth
5 and Mr. Ehrlichman were in contact, but I have no recollection
6 of it independent of those documents.

7 Q. All right, that was my question.

8 A. Sorry for such a long answer.

9 Q. Nor do you recall whether Mr. Barth-- Let me
10 rephrase that.

11 Do you recall understanding or hearing at that
12 point of time that Mr. Barth had prepared some report?

13 A. I don't recall that. It is possible that I might
14 have been so told.

15 Q. Now, sir, I have asked you about reports. There
16 is a notation on another document -- I think I can just
17 handle this with one question really -- which leads me to ask
18 you whether you during this period of time, you yourself saw
19 Mr. O'Brien's tax returns?

20 A. That I saw his tax returns?

21 Q. Or asked to see his tax returns, yes.

22 A. I can say categorically that I did not see his tax
23 returns, and as far as asking to see his tax returns, I can't
24 recall asking to see his tax returns.

25 I didn't even take, as I pointed out yesterday,
enough time looking at my own returns, let alone looking at

31

1 somebody else's.

2 MR. HOROWITZ: Now if I might mark as D-6, what
3 are handwritten notes, again Mr. Ehrlichman is the author of
4 the notes, and they are dated, although the date is not
5 complete here but we have established that the date is
6 September 5, 1972, and they relate to a conversation aboard
7 Air Force One between yourself and Mr. Ehrlichman and there
8 are some notations there, and I would like to ask you about
9 those.

10 (The document referred to
11 was marked Exhibit D-6
12 for identification.)

13 THE WITNESS: Have you previously shown us this
14 document or is this a new one?

15 MR. HOROWITZ: No, no, you have seen all of these.
16 These were all furnished to you.

17 THE WITNESS: When they are new, if you will let
18 me know, I will read them more carefully.

19 MR. HOROWITZ: Well, they haven't been.

20 THE WITNESS: That is perfectly all right for you
21 to have any you have got.

22 Go ahead with your question.

23 BY MR. HOROWITZ:

24 Q Now, sir, at the bottom of this first page it
25 reads, "6. Anonymous to Hart re Hughes and O'Brien, warn

32

1 Senator McGovern," and McGovern is abbreviated.

2 Now, do you recall having a conversation with Mr.
3 Ehrlichman or this conversation with Mr. Ehrlichman about
4 warning Senator McGovern about the O'Brien-Hughes business?

5 A. This is what date?

6 Q. This is September 5, 1972.

7 A. I have no recollection of the conversation and it
8 is very hard for me to decipher Mr. Ehrlichman's notes due
9 to the fact that he, like many note-takers, has a practice
10 of writing notes to himself as well as recording what he is
11 hearing. All that I say is that I don't recall any conver-
12 sation of this kind.

13 Q. Merely in an effort to refresh your recollection,
14 do you have a recollection of a conversation with Mr.
15 Ehrlichman that McGovern should be informed that there was
16 this material pertaining to O'Brien's tax situation which
17 could prove to be embarrassing to McGovern or to the
18 Democrats?

19 A. No, I do not have a recollection of this, apart
20 from what these notes show.

21 I, frankly, would be very surprised, very sur-
22 prised, if I indicated that we were going to try to warn
23 Senator McGovern -- apparently the Hart referred to is now
24 the young man who is now a Senator from Colorado, and Miss
25 Westwood, you know, I guess she was the chairman of their

33

1 campaign -- that you better do something about O'Brien.

2 What difference would it have made? I don't
3 understand what this is about.

4 Q One final question on that. I phrased my question
5 in terms of Mr. Ehrlichman.

6 Do you recall any conversations with anyone around
7 that period of time which pertain to that type of subject,
8 that is, informing the Democrats of this?

9 A I don't recall any conversations of this nature
10 at that time. I cannot affirm or deny that people working
11 in the campaign, like Mr. Ehrlichman, may have brought up
12 subjects, some of them as far out as this one. It seems far
13 out today.

14 Q But you don't remember him bringing up that far-
15 out-type thing?

16 A No. It sure wasn't my idea. I think it was a
17 stupid idea, frankly.

18 Q On the second page, sir, there are the two
19 sentences, or two notations to which I have not yet alluded
20 which appear there: "Get someone in Las Vegas. Do it.
21 Ask how much he got."

22 And there is other evidence, sir, that Mr. Ehrlich-
23 man and/or Mr. Barth had someone from the Internal Revenue
24 Service situated in Las Vegas, apparently, to get informa-
25 tion.

34

1 Do you recall hearing anything like that or knowing
2 anything about that?

3 A. Until these papers were put in front of me, I had
4 no recollection of that. Having read these notes and also
5 the transcript of a telephone call that Mr. Ehrlichman had
6 with Mr. Shultz and I think the then head of the Internal
7 Revenue Service, apparently there was somebody, they had
8 somebody in Las Vegas, but I am not testifying to that on
9 firsthand knowledge. That is simply hearsay.

10 Q. I understand that.

11 Did you know that Mr. Ehrlichman had anyone from
12 the Internal Revenue Service who was, in effect, acting out
13 of channels for him in the fashion that is suggested by
14 those notes, that he had someone in Las Vegas?

15 A. No. What I know is what his notes show.

16 Q. Now, --

17 A. As far as his notes are concerned, I am not going
18 to testify to their veracity and I am not going to testify as
19 to their interpretation, because I don't know what he meant
20 by them.

21 Q. Now, finally, Mr. Nixon, I think we are at the end
22 of our documents and drawing to a close here, but let me show
23 you what we will mark as D-7, which are, again, Mr. Ehrlich-
24 man's handwritten notes of a meeting between yourself and him,
25 and again part of the date appears to have been cut off, but

35

1 we have established that it was September 30, 1972.

2 I would like you to-- This again is something
3 you have seen before, but I will place it before you.

4 (The document referred to
5 was marked Exhibit D-7
6 for identification.)

7 THE WITNESS: You also have-- Would you please
8 give me the memoranda I wrote to Haldeman? You want to put
9 those two in evidence, don't you?

10 MR. HOROWITZ: I believe that is in evidence, sir.

11 THE WITNESS: I don't see them. I have one.
12 There are two to Haldeman. Could I see the second one or
13 the first one?

14 MR. HOROWITZ: We can get into that.

15 THE WITNESS: No, I want to see them. I mean I
16 should be able to see them. You furnished them to us earlier.

17 MR. HOROWITZ: Let's mark that D-8, and that is a
18 one-page typewritten memorandum for H. R. Haldeman from The
19 President, dated August 9, 1972.

20 THE WITNESS: Could I see that too, because it
21 may refresh my recollection.

22 (The document referred to
23 was marked Exhibit D-8
24 for identification.)

25 THE WITNESS: Just in answering your question,

36

1 the memorandum to Mr. Haldeman on August 9, with regard to
2 this whole matter, and which counsel has not questioned me
3 on yet, says on both the O'Brien and Kimmelman matters --
4 Kimmelman, incidentally, was the finance secretary of the
5 McGovern campaign -- "I want you personally to follow up
6 and keep me posted on what has developed. Of course if
7 nothing turns up, drop the whole matter. But let's be sure
8 we have gone the extra mile and developed material before
9 we drop the matter."

10 I think, Mr. Ruth, it is proper to have that
11 in and be questioned on that as well as matters that are
12 derogatory, do you not?

13 MR. RUTH: I think Mr. Horowitz intended to.

14 THE WITNESS: Well, Mr. Horowitz didn't intend
15 to put this in thoroughly and I have.

16 MR. RUTH: I think he intended to put it in.

17 THE WITNESS: I don't question Mr. Horowitz'
18 ethics. I am sure he was going to put it in.

19 Now, what do you want to know about this one?

20 BY MR. HOROWITZ:

21 Q. By this one-- I think we have confused some
22 pieces of paper in --

23 A. This is September 30, '72.

24 Q. On the bottom of the second page, we have the
25 notes, "Larry O'Brien - worry him."

37

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

What was that a reference to?

A. What is this conversation, please?

Q. This is a conversation between Ehrlichman and yourself.

A. Well, as I say, three years later all I can imagine is that Larry O'Brien was worrying Mr. Stans with a lawsuit. He was certainly being a very effective-- Mr. McGovern made a great mistake in not using him. He was the only effective pro that McGovern had working for him and was worrying us. So I think there must have been some discussion of worrying Mr. O'Brien with regard to the fact that he, having claimed that he was an unpaid chairman now apart from the IRS investigation, had received in the neighborhood of two hundred thousand dollars a year from the Howard Hughes organization.

I thought that would worry him, and I thought it was perfectly proper to put that out.

Q. You understood, sir, did you not, that those funds had been paid, at least as far as the IRS investigation had been established, had been paid for his services. They weren't paid as a salary for the Democratic National Committee.

A. As far as the IRS investigation is concerned -- just a moment.

Mr. O'Brien, you understand, had made a point

1 that he was an unpaid national chairman when he was chairman
2 of the National Committee. By "unpaid National Chairman,"
3 that means to me and it would mean to members of the Grand
4 Jury that he is not going to be paid there and they don't
5 think he would be taking something on the side.

6 And the point was that the Howard Hughes organiza-
7 tion at that time was under intensive public investigation
8 as well as private, with regard to payoffs. That is how
9 the investigations began. And here Larry O'Brien had his
10 hand in the till there.

11 Now, I am putting now a connotation on it which
12 I do not want to be left in the record as being unfair to
13 O'Brien. It is very possible that his story about it is
14 correct, that he rendered enormous services for the Howard
15 Hughes organization even though he didn't register as a
16 lobbyist apparently for them, in doing the things that they
17 wanted to have done. And if he did, he was entitled to be
18 paid, that was all.

19 Q. So let me understand.

20 Those facts you felt, in view of his puffing his
21 unpaid status, should be brought out to indicate that perhaps
22 he had not been unpaid, is that it?

23 A. You know, you have to think of the campaign. In
24 the one sense our campaign, we were the campaign of the rich,
25 with all of the big people supporting us, and their campaign

39

1 was the campaign of the people, you know, like Mr. Strauss,
2 the Democratic National Chairman took fifty thousand dollars
3 in cash from Ashland Oil, and apparently sold somebody on
4 the idea that he didn't report it because he thought these
5 were five-dollar contributions from people who worked for
6 Ashland Oil that were against the war.

7 You couldn't find that many people in Kentucky
8 that were against the war at that time. And yet, it was
9 accepted.

10 In the case of O'Brien, this purist image of no
11 connection with big business, which the McGovern campaign
12 of course was trying to do, and, incidentally, no connection
13 with the milk interests, and we received twice as many
14 letters from Democratic Senators, including one from McGovern
15 and one from Humphrey, asking for ninety percent parity on
16 milk as we did from Republican Senators, and three times as
17 many from Democratic Congressmen as we did from Republicans,
18 and, incidentally, they were all proper, all proper.

19 Q. I am sorry, sir, could I just turn back to the
20 O'Brien matter?

21 A. Oh, all right.

22 Q. On the following page, you state -- I am sorry,
23 Mr. Ehrlichman's notes state, "Get it to O'Brien. Don't
24 publish."

25 Does that refresh your recollection as to a

40

1 conversation in which the purpose was not to make public
2 these facts but rather to convey the information to O'Brien,
3 indicating that he did possibly face tax problems?

4 A. No, it doesn't refresh my recollection. I don't
5 remember the conversations, the specifics of it.

6 I only remember, as I have indicated, my general
7 interest in the O'Brien matter due to the fact that he was
8 giving us a rough time, and I felt that we had, at least,
9 as I pointed out only if the facts bore it out, and we
10 should emphasize this. I said if nothing turns up, drop the
11 matter.

12 Now, that ought to be there -- the Grand Jury I
13 think is interested in a matter like that, as well as some-
14 thing which says if something doesn't turn up, go after
15 him anyway.

16 That is what I am trying to say, and I think you
17 should emphasize that to the Grand Jury too.

18 Q. In the same conversation Mr. Ehrlichman's notes
19 read, and just for your reference I am on page 3, reads,
20 quote, "Bobby Baker blowing whistle on Larry O'Brien and
21 others," close quote. And immediately above that you have
22 "Gossip" -- I am sorry, I misspoke, Mr. Ehrlichman has
23 "Gossip - plant, Jack Anderson," and Jack Anderson was
24 underlined.

25 Did you have conversations at around this time

41

1 of planting this information with reporters?

2 A. Since you have put in the record the name of
3 Bobby Baker, let me just be sure that after all of the abuse
4 that poor man has taken, and apparently some of it deserved,
5 but Bobby Baker had apparently talked to people in our
6 campaign, and when he saw that we were the victims of the
7 roughest campaign physically -- and incidentally, when we do
8 get into this business of wiretapping and so forth, I want to
9 be sure that the Special Prosecutor tells us what he has
10 done with regard to the bombing of our Phoenix headquarters,
11 what he has done with regard to twenty-five thousand dollars
12 in damage directly ordered by the McGovern Campaign --

13 Q. Sir, I am sorry, but --

14 A. All right, now we will come back to this.

15 Bobby Baker came in and said, look, he says I
16 have enough on O'Brien to sink him. He put that in.

17 Q. Who did he tell that to?

18 A. Who did he tell that to? He told it to somebody
19 and they reported it to me. I don't recall.

20 Q. Do you remember who reported it to you?

21 A. Who reported it to me? I think it could have
22 been Haldeman, that Bobby Baker was talking.

23 Q. On these same notes, sir, on the last page there
24 is the notation, quote, "Via Andreas, dash" --

25 A. Incidentally, Bobby Baker is reporting he was

42 1 going to blow the whistle, not only on Larry O'Brien, he
2 said, but a number of Democratic Senators that he, Bobby
3 Baker, personally had delivered cash to.

4 Apparently Bobby Baker had been a bagman for
5 Hughes at one time, as well, or at least a transmittal valve
6 for many others, as well, and he said there were a number of
7 Democratic Senators, technically those on the Left, that
8 were taking a sanctimonious attitude and that he wanted
9 all of this brought out.

10 Incidentally, nothing came of that. He would not
11 have been a credible man to use in a campaign, and that
12 kind of gossip I didn't frankly feel was proper.

13 Q In other words, you do recall discussing using
14 the Bobby Baker information? Is that it?

15 A We didn't use it. That is the whole point.

16 Q You recall discussing it and deciding not to, is
17 that it?

18 A I recall that it was brought to my attention, and
19 it seemed to me to be so way out that with Bobby Baker just
20 having finished a prison term, that it would be not right
21 to use it, and also I felt that we should just go on and
22 conduct our own campaign.

23 We were doing all right without that kind of
24 stuff. We allowed them to engage in that kind of thing, but
25 we went on and did our campaign without it.

1 Q On the last page there are the notations, quote,
2 "Via Andreas - worry O'Brien - work through Dean," and other
3 evidence before the Grand Jury establishes that there was
4 an attempt to have Mr. Andreas make an overture to Mr.
5 O'Brien, indicating that Mr. O'Brien was in tax trouble.

6 Do you recall a discussion about that, sir?

7 A I don't have an independent recollection of that.
8 I have seen these notes and I have been trying to think what
9 it must mean.

10 I can only surmise that what it may mean is that
11 Andreas first was a very big financial supporter of the
12 Democratic Party.

13 He was also one of our supporters in this campaign
14 and it was felt that Andreas, who also apparently was a
15 pretty good political operator, could have some influence
16 on O'Brien in terms of the violence and viciousness -- strike
17 the word "violence" -- in terms of the word "viciousness" of
18 the attacks that O'Brien was making, not only on Mr. Stans,
19 but on me.

20 Q Was it discussed that he would have more influ-
21 ence if O'Brien was told that O'Brien faced tax problems
22 otherwise?

23 A I don't recall that we talked about O'Brien -- I
24 don't recall any conversation about O'Brien's tax problems.

25 Q In other words, was Andreas to be a courier to

44

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Mr. O'Brien to have an influence?

A. I think probably this notation is more interesting here where it says "Offer him a retainer."

MR. HOROWITZ: All right, sir, just two or three more questions from Mr. Hecht.

BY MR. HECHT:

Q. Aside from Mr. O'Brien's receipt of income from the Hughes Tool Company, were you aware that after the '68 campaign he had taken employment as an officer in a Wall Street brokerage firm?

A. No, I really wasn't, not until it was brought to my attention in this investigation.

Q. Were you aware that, jumping ahead in time, not the summer of '72 but in the spring of 1973, that Mr. O'Brien was audited, or an audit was begun as to the handling of some stocks that he had owned in that brokerage firm that he had been officer of and that he had taken a loss on those stocks?

A. No. I am learning that, I think, for the first time right now.

All that I am aware of is that I understood from the papers that you have provided -- sorry, that we have provided you and you have provided me, that O'Brien after the '68 campaign wanted employment.

He went with a brokerage firm. The brokerage

1 firm went broke and that after that he went with Hughes, even
2 though Hughes, I think, had offered him a rather good job
3 before he went with the brokerage firm. He then decided to
4 go with the Hughes firm, which proved to be a very good
5 choice for him.

6 Q Now, as to the receipt of funds by Mr. O'Brien
7 from the Hughes Tool Company or the stock loss issue or any
8 other issues on Mr. O'Brien's returns, did you have any
9 conversations directly with Mr. Shultz, who, during the
10 relevant period of time, was Secretary of the Treasury?

11 A I have no recollection of any such conversations.
12 I don't believe Mr. Shultz would bring such technical, and
13 what to me would be picayune, matters to my attention. I
14 believe that all that would be brought to my attention by
15 Mr. Shultz or Mr. Ehrlichman, whoever was familiar with this,
16 the big issue, whether or not Mr. O'Brien was or was not
17 vulnerable to a major income tax violation. If he was, I
18 wanted to know.

19 Q Did you have occasion to discuss that question
20 directly with Mr. Shultz that you recall?

21 A No, not with Mr. Shultz that I can recall.

22 Q Did you have occasion to discuss that matter with
23 the then Commissioner of the Internal Revenue Service,
24 Johnnie Walters?

25 A Not that I can recall. I don't think I saw him

1 at all.

2 MR. HECHT: I think that covers our questions, but
3 we are going to take a short recess to inquire of the repre-
4 sentatives of the Grand Jury whether they have any further
5 questions.

6 THE WITNESS: I should have talked to Mr. Walters,
7 I guess.

8 (Short recess.)

9 MR. HOROWITZ: Sir, we have no further questions
10 for you.

11 Thank you.

12 THE WITNESS: Let me say, Mr. Horowitz, and Mr. --

13 MR. HECHT: Hecht.

14 THE WITNESS: I thought it was. H-a-c --

15 MR. HECHT: -- h-t.

16 THE WITNESS: I thought so.

17 That is the store in Washington?

18 MR. HECHT: Yes, sir. No relation.

19 THE WITNESS: Do you have a part --

20 MR. HECHT: Unfortunately not.

21 THE WITNESS: They do well, I think. We bought
22 a dining room set there once.

23 I did want to say for the record, and particularly
24 to Mr. Horowitz and Mr. Hecht, I know you have been living
25 with this O'Brien investigation and you have gone through a

1 lot of work to prepare these questions and you have probably
2 been somewhat, perhaps, disappointed that some of my answers
3 have been, well, to put it mildly, rather testy, which is
4 not my usual way of trying to answer questions in what is
5 basically a legal forum.

6 But I think that it is time, and perhaps the
7 Special Prosecutor, when he files his final report, will have
8 one paragraph in for history, it is time for us to recognize
9 that in politics in America, and this is not excusable, but
10 it does explain it to an extent, particularly where the
11 highest office in the land is involved, and even in some
12 instances where campaigns for governor in major states or
13 senators are involved, that in politics some pretty rough
14 tactics are used. We deplore them all.

15 I am very proud of the fact that as a result of
16 my orders, and I gave them directly, that never to my
17 knowledge was anybody in my campaign responsible for heckling
18 Mr. McGovern or shouting him down. Sometimes he was heckled,
19 not much. I told them not to do it.

20 Now, actually my decision was not all that
21 altruistic, to be quite honest. My decision was based on
22 the fact that I didn't think it would do any good. Why
23 martyr the poor fellow? He was having enough trouble.

24 And yet, there was not an appearance I made in
25 the campaign, not one in which not only we were the subject

1 of voice heckling through loud speakers and the rest. That
2 is why I got a little hoarse, even though I didn't make many
3 speeches -- but also of violence and threats of violence,
4 violence in San Francisco, for example, which I am sure you
5 have investigated or will. And if you are going back a few
6 years, you can pick up the violence in San Jose when a
7 direct assault was made on our car, and so forth.

8 What I am pointing out here is not that our
9 campaign was pure; what I am pointing out also is not that
10 theirs was all that bad, but what I am saying is that having
11 been in politics for the last twenty-five years, that politics
12 is a rough game, and in 1952, as I said, I was subjected
13 to some of the most brutal assaults, not only by the IRS and
14 political opponents, but particularly by some elements of
15 the press.

16 Now, I have given out some too, to be perfectly
17 honest -- I am speaking now of speeches and that sort of
18 thing.

19 But in 1962, the same thing, where the Administra-
20 tion in power, and they were pretty smart, I guess, rather
21 than using a group of amateur Watergate bugglers -- burglars
22 -- well, they were bunglers -- used the FBI, used the IRS,
23 and used it directly by their own orders against, in one
24 instance, a man who had been Vice President of the United
25 States, running for Governor, and in another instance a man

49

1 running for President of the United States, the FBI, accord-
2 ing to information that we have, were at least ordered to,
3 and whether they did it or not, I can't say, to bug the
4 plane of the Presidential candidate.

5 What I am simply saying is that here we must be
6 under no illusions about what happens in politics in
7 America. I don't condone it.

8 I see memoranda which I have long forgotten.
9 What really counts in the long run is what happens, and when
10 I see this long list -- this is what they call the enemy
11 list -- what happened? Nothing.

12 I never recall seeing any income tax return; I
13 never recall seeing any result of any of this done. What
14 happened to Mr. O'Brien's case? Nothing.

15 A cursory, pleasant interview with the IRS. That
16 is one thing. All that I say is that the Special Prosecutor,
17 you had your job, you had to do it, we made our mistakes,
18 we have to pay for them.

19 All have paid a heavy price. I am paying mine,
20 but if there is one thing I am going to do to the day I die,
21 it is going to be to insist to the best of my ability that
22 whether it is the case of political leaders or the press,
23 including the television people, or education leaders, that
24 it is time where ethics are concerned in politics, not to
25 clean up one side and then turn your back and forget what

50 1 happens on the other side.

2 I would say that our campaigns in '68 and in 1972,
3 in terms of what we did, were clean campaigns. I would say
4 as far as their campaigns were concerned, there was some
5 violence, there was some rough heckling, but we took it.

6 And I am confident that Mr. McGovern, who I
7 understand is a rather gentle man, probably wouldn't have
8 approved it, just as I wouldn't have approved any violence,
9 but it happened.

10 But I simply want the record to show here that
11 when you conduct this extensive investigation of whether or
12 not Mr. Larry O'Brien was being persecuted by the Administra-
13 tion in power, I think, and I don't urge you to do this
14 because now he has a splendid position and I think he is the
15 Basketball Commissioner, and he deserves it. He doesn't
16 have any money and he has a big family, and I think he is a
17 decent guy actually, but he plays politics tough.

18 But if you were to look, as Bobby Baker suggested,
19 into Larry O'Brien's activities politically over the years,
20 and into the activities of some of the Democratic Senators
21 and others, including some Republicans who are taking this
22 sanctimonious attitude about the cleanliness of their
23 campaigns, if you would put them to the same test you have
24 put us, you would find that we come out rather well.

25 I don't say this, as I say finally, in

51 1 justification of any wrongdoing where it occurred. I deplore
2 it. I regret it. And I am paying a price for it.

3 And as far as you gentlemen are concerned, you have
4 your job to do, and I respect you for doing it. For two years
5 you have been on this job; for two years, and you have been
6 working very, very hard to expose anything that we did that
7 was wrong.

8 And I do not, in what I am writing at the present
9 time, my memoirs, which I hope will come out before you die
10 or before I die, I am not going to be critical of the fact
11 that you are doing the job you are hired to do.

12 But I am going to come down hard, and you, I would
13 urge, thinking not of yourselves because at the present time,
14 if I could give one last bit of advice, taking the double
15 standard is going to make you much more popular with the
16 Washington press corps, with the Georgetown social set, if you
17 ever go to Georgetown, with the power elite in this country,
18 but, on the other hand, think of your children -- they are
19 going to judge you in the pages of history and as they look
20 at you, they are going to say, well, now, you did a pretty
21 good job one way, but did they overlook other things because
22 they believed things.

23 I mean I am not unaware of the fact that the great
24 majority of the people working in the Special Prosecutor's
25 Office did not support me for President. After all, there

52 1 are many millions of people who didn't -- about thirty-
2 eight percent of the people in the country. I respect
3 those who didn't, just as I am thabkful for those who did
4 support me.

5 I am not unaware of the fact, too, that therefore
6 you would have a motive to go after me and my associates
7 and to ignore others, but I also say I just trust in the
8 future, as you go on, after you leave these positions, have
9 a single standard. That is what the country needs.

10 I am sorry to take so much time.

11 MR. RUTH: I wonder if we could recess a second
12 because the Prosecutors are not allowed to respond to the
13 charge of being partisan; we are not going to respond, and
14 we will pick up in the area of questioning having to do
15 with the wiretaps in a couple of minutes.

16 THE WITNESS: Sorry, I intended no personal
17 reflection.

18 (Short recess.)
19
20
21
22
23
24
25

1 BY MR. HOROWITZ:

2 Q Sir, the next area of inquiry being pursued by the
3 Grand Jury relates to the so-called National Security Council
4 surveillance project and on that I will be asking you some
5 questions and Mr. Frank Martin, who is to my right, will be
6 asking you some questions.

7 A Right.

8 Q More specifically, if I might indicate to you, the
9 Grand Jury's investigation insofar as this electronic sur-
10 veillance project is concerned is focused upon two primary in-
11 cidents: First, the circumstances in the summer and early
12 fall of 1971 when the wire tap project itself had ended, and
13 the records of the wire tap project were removed ultimately
14 from the FBI to the White House, so they are focused on that
15 as one leg of their inquiry, and, second, they are focused upon
16 allegations that Mr. L. Patrick Gray, in February and March of
17 1973, during his confirmation hearings, committed perjury while
18 testifying about the electronic surveillance project.

19 A But you haven't decided that yet.

20 Q Upon allegations, as I said.

21 Q Before we get into removal of the records, sir, just
22 so that it is clear when we are referring to the electronic
23 surveillance project, we are referring to the project which
24 embraced, I think, a total of 17 wire taps of various reporters
25 and some White House affiliated persons, and it commenced in and

1 about May of 1969, and terminated in and about February of
2 1971.

3 Now before we get right into the removal circum-
4 stances, which were in the summer of '71, during the project
5 itself, can you tell us whether you personally received the
6 summary letters which Mr. Hoover wrote, which summarized the
7 information that was coming off these wire taps?

8 A I think I testified yesterday that the first summary
9 letter that I received, and it is the only one that I can re-
10 call receiving, was one within two or three days after I was
11 inaugurated president in 1969. It was a report on Mr. Henry
12 Brandon, the correspondent of the London Times, and I, being
13 new at the job, wondered what it was all about.

14 I asked Mr. Hoover, when we had our first meeting,
15 which was shortly there afterwards -- perhaps within a week
16 or so -- what this was all about.

17 (CLASSIFIED MATERIAL DELETED)

18 we do other taps, as well, where we think the national security
19 is involved, and he said -- he pointed out then -- he said
20 "I have to have a direct relationship with you and the Attorney
21 General on these because these can only be instituted by and
22 approved by the Attorney General."

23 Q All right, sir, but commencing with what I have
24 identified as the project for purposes of our questioning,
25 which was May of '69, putting to the side for the moment the

1 reference which you made, although not ignoring it --

2 A But you understand the Brandon name was on that list.

3 Q That is right, he was on that list.

4 A My point is it was there, it has been there for
5 years, long before we came in.

6 Q But during the project itself, from May of '69 to
7 February of '71, if I can just focus briefly upon that period
8 from May of '69 to May of '70, the first half of that period,
9 letters were addressed by Mr. Hoover in duplicate original
10 form, one to Dr. Kissinger and one to Mr. Ehrlichman. Now my
11 question at this point, briefly and limited, is did you re-
12 ceive those letters, did Mr. Ehrlichman bring those letters
13 into you or route them to you? Do you remember that?

14 A I don't recall that he did. If he did, I would,
15 of course, have approved them.

16 Q Did he, during that period, route his own memoranda
17 to the President, which would review the letters that he had
18 received from Mr. Hoover? Do you remember that?

19 A You mean review the fruits of the taps?

20 Q That is right.

21 A Yes, I don't recall that he did. It is possible
22 that he did.

23 Q The reason I am raising these questions again is
24 because we are interested in what records there were that
25 relate to the summer of '71.

1 A Sure. Let me point out, so the Grand Jurors would
2 not think that I was being derelict in my duties, when I saw
3 this Brandon report, it was such a bunch of garbage and
4 irrelevant that I told Kissinger, I believe, at the time -- I
5 said, "I don't want to see any of this crap." Pardon the
6 expression, but that is what I thought it was. I said, "Have
7 it evaluated and if there is anything we need to know in-
8 volving our national security, let me know, but I don't want
9 to see any FBI raw files or FBI reports. That was my policy.
10 But I cannot say for sure that sometime across my desk one
11 of these summary reports, you know, with the usual language,
12 "a highly sensitive source has informed us that", and so on,
13 may have been a wire tap source.

14 I must also point out, because I think counsel should
15 know, that Mr. Hoover used that "highly sensitive source" for
16 one of his other projects. As you know, he had no con-
17 fidence in the CIA, and it was mutual, . . .

18 (CLASSIFIED MATERIAL DELETED)

19
20
21 . . . and I remembered that
22 Mr. Hoover, because I remember seeing that report, Mr. Hoover
23 used to use the same, that phrase that he used when I saw
24 the Brandon report, "a highly sensitive source known to this
25 Bureau" has found and reported this and that and the other

1 thing, so that is why I can't identify whether it was a wire
2 tap source or that source or something else.

3 Q I think, sir, that you have answered the next limited
4 question I was going to put to you, which was during the second
5 half of that wire tap project, which would have been from May
6 '70 until February '71, the letters from Mr. Hoover which
7 summarized this wire tap business, and you have accurately
8 described the way they started, they were not sent in dual
9 originals. They were, during that period of time, directed
10 to you, but sent to Mr. Haldeman, and my next question was
11 whether Mr. Haldeman would in the regular course send those
12 into you or make copies for you?

13 A No. On the contrary. The reason that developed
14 was that Mr. Hoover did not want to have so much proliferation
15 of his reports. He came to be very suspicious in his later
16 years of many people in the bureaucracy, including people
17 in the White House, and he did have confidence in Haldeman
18 and he asked me on one occasion if he could just have one
19 person that he could send this stuff to. I said, "Fine, send
20 them to Haldeman."

21 Now I cannot recall Haldeman discussing anything
22 from some of these reports. It is very possible that he did.
23 If it involved a national security matter of importance, he
24 would have, but, as you will note, Mr. Horowitz, because you
25 have lived with this record for two years and I have seen it for

1 a couple of weeks, but, as you will note, I in one of the
2 tapes point out that I found that these wire taps were very
3 unproductive, which means that nothing had come into me that
4 meant anything.

5 Q Now, finally, sir, before we get to the summer of
6 '71, the wire tap project per se ended in February of '71 and
7 there is a reference which you take in a conversation much
8 later down the road, in April of 1973, with Mr. Henry Petersen,
9 in which you refer to a - quote - hullabaloo causing the end
10 of this wire tap project."

11 Now, can you tell us what you remember about how
12 the or what brought the wire tap project to an end in February
13 of '71?

14 A Well, I know the reference to the hullabaloo was that
15 our press office and I in press conferences, as well, as I
16 recall, were catching a lot of heat or taking a lot of heat be-
17 cause of alleged wire taping of newsmen. That was their con-
18 cern. I don't believe they mentioned the National Security
19 people. They may not have known that they were being tapped.

20 I know, too, that Mr. Hoover was taking a lot of
21 heat on this score, and he, in his later years, became very
22 sensitive about anything that happened in the press.

23 By "hullabaloo" I meant, in other words, the
24 hullabaloo we were catching from the press.

25 Q All right, sir. Now we are going to shift timewise

1 to after the project had terminated in February of '71, to
2 June of '71, and to the allegations which relate to the removal
3 of these records and their ultimate storage in the White House,
4 to the so-called Pentagon Papers case and Mr. Martin will ask
5 you those questions.

6 A Okay.

7 BY MR. MARTIN:

8 Q I would like to begin with some questions concern-
9 ing the time period immediately following the publication
10 of the Pentagon Papers and although I realize there may have
11 been many concerns that you would have had with that event, to
12 focus in in particular as to your being concerned or your
13 Administration being concerned about what exactly these papers
14 were, who had prepared them, where copies were, who had access
15 to these papers and whether or not you recall learning very
16 early on that these papers had been prepared, in part, by
17 Mr. Halperin, who had worked for Dr. Kissinger early in your
18 Administration.

19 A Well, Mr. Martin, I can't recall specifically Mr.
20 Halperin's name coming up in connection with having prepared
21 the Pentagon Papers as of that time. As of a later time I
22 had a suspicion that that might have been the case.

23 What I should say is that the reason, and I think
24 you want to know, the reason that we were concerned about the
25 Pentagon Papers was, and their release, was that, first, a lot

1 of highly classified material was contained in it. Much of
2 it was unimportant. It could have been released without any
3 damage to the national security, but, as I pointed out yester-
4 day, it takes only two or three words for an expert to break
5 a code; it takes only two or three references for an in-
6 dividual who is serving the United States abroad in the CIA
7 or FBI or what have you, or even in Foreign Service, for his
8 wife to become endangered if it is known he is acting in this
9 way, and the release of the Pentagon Papers thereby jeopardized
10 the life of Americans who might be engaged in such activities.

11 It also made their release, raised a grave question
12 in the minds of foreign leaders who came to see me in great
13 numbers, and I went to see them in considerable numbers --
14 foreign leaders -- grave questions as to the confidentiality
15 of the discussions we were having and that confidentiality,
16 of course, I considered and they considered to be absolutely
17 essential if we were to reach agreement on sensitive matters.
18 And the release of the Pentagon Papers also raised a serious
19 question as to what we within the close circles in the White
20 House and our discussions with those from the Joint Chiefs
21 of Staff and the State Department could discuss in confidence
22 because we had a number of initiatives at that time beginning,
23 the Soviet initiative, the China initiative, the initiative
24 with regard to Vietnam, and also with regard to a cease fire
25 in the mid-East.

1 Now, and we will come right down to your question,
2 with regard to the Pentagon Papers, ironically, there were
3 some members of my staff, particularly on the public relations
4 side, that said, look, this is no skin off our back. The
5 Pentagon Papers, as you know, did not involve what happened
6 during this Administration; they only involved what had happened
7 during the Johnson Administration and the Kennedy Administration,
8 the history of the --

9 Q Sir, I --

10 A Let me finish my answer. -- the history of the war
11 administration, and so far as we were concerned, from a
12 political standpoint it would have been much to our advantage
13 to have the Pentagon Papers revealed, to throw off, if we
14 wanted to, on previous presidents, but in my view, where
15 American lives are involved, where the United States is in-
16 volved in a conflict, even though it is one that many people
17 disapproved of, there is only one President -- I don't care
18 whether he is a Democrat or Republican, whether he is for me
19 or against me, but I said, "As far as these papers are con-
20 cerned, we have to protect the confidentiality of presidential
21 communications, and unless we stand here there is not going to
22 be any chance for not only this President, but future
23 presidents, to be able to conduct their foreign policy
24 successfully."

25 That is the background with respect to the Pentagon

1 Papers.

2 Now if you will come to the precise question, I
3 will answer the precise question.

4 Q The precise question, and realizing there were many
5 concerns of great importance that you would have had --

6 A Concerns not involving our Administration.

7 Q Not involving your Administration and involving
8 foreign policy. Putting that aside, whether you learned or
9 were informed or became aware that Mr. Halperin was one of
10 the people principally responsible for the preparation of
11 this study and that Mr. Halperin was one of the people who
12 had given access to that study to Mr. Ellsberg, who,
13 obviously, was the person who did leak the papers. Do you
14 recall being informed of that?

15 A I can't recall being specifically informed that
16 Mr. Halperin gave access to the papers to Mr. Ellsberg. I can
17 only be informed -- I can only tell you that the suspicions
18 as to who might have given access to Ellsberg were rampant
19 and Halperin's name was among many others that were included.

20 Q Given your statement that the suspicion focused
21 on one, as you say, of many people, but one of them was Mr.
22 Halperin, and I ask whether you recall directing or being
23 aware that anyone in the White House or elsewhere was reviewing
24 these wire tap records that had been on for some 21 months on
25 Mr. Halperin to see whether there would be any information

1 there that might be helpful in determining whether or not
2 Halperin had leaked these documents or had been involved in
3 leaking these documents?

4 A At what time would this have been done?

5 Q This would be done shortly after the publication of
6 the Pentagon Papers. It appears -- I realize this is difficult
7 to go back and separate out times, but it appears that very
8 shortly after that you were aware of Mr. Halperin's involve-
9 ment?

10 A Potentially. I wasn't sure.

11 Q But that you would have directed or at least been
12 aware of people going back and checking the wire tap of Mr.
13 Halperin, which had been on for some 21 months, and see whether
14 or not --

15 A I have no recollection of suggesting that Halperin's
16 wire taps, which had occurred so many months before, be reviewed
17 to see if he was one of those who was a leaker. I do have
18 a recollection that Dr. Kissinger told me, when he separated
19 Mr. Halperin from his NSC staff, that he felt he had made a
20 mistake in taking him on because they considered him to be
21 a leaker. That is why the suspicion was raised, but many
22 people were leakers, so that was nothing new.

23 Q Turning now to Mr. Ellsberg, in some of the in-
24 formation that has been supplied to us by your attorneys there
25 is reference to Dr. Kissinger informing you of his previous

1 association with Mr. Ellsberg and of informing you that Mr.
2 Ellsberg was somewhat unstable and that Mr. Ellsberg used
3 drugs? Do you recall being informed that Mr. Ellsberg used
4 drugs?

5 A The fact that Mr. -- I mean the charge or the
6 allegation that Mr. Ellsberg used drugs I have no recollection
7 of. All that I do recall is that Dr. Kissinger pointed out
8 to me that Mr. Ellsberg apparently had been one of this
9 students and therefore he knew him.

10 He also, apparently, knew of his record in Vietnam or
11 he had been a hawk at one time -- I testified to this yester-
12 day, so I won't repeat it today -- and then turned into a dove
13 and that his, during the time he was a hawk, apparently he was
14 working with the JCS, and then, also, Dr. Kissinger's
15 evaluation of him as a man and Dr. Kissinger and I had very
16 frank discussions, and I hope all future presidents can have
17 such discussions with their top national security advisors and
18 their secretaries of State, and that will only happen in the
19 event that Mr. Miller and Mr. Martenson are successful in
20 the suit that we are now bringing to be sure that confidentiality
21 of future presidents, as well as our own, is protected. But
22 Dr. Kissinger said that Ellsberg, he said, basically, and I
23 use the term, he was a "nut," that he was unstable, therefore
24 untrustworthy, and he didn't know what he might do. He felt --
25 in other words, he had no confidence in Ellsberg's emotional

1 stability.

2 Now let me, however, be sure that I give Mr.
3 Ellsberg credit for what he also had. He said that he was a
4 brilliant doctor, that he had been a very good student, that he
5 was very bright, but that he would become emotionally involved
6 in a matter and then be on one side at one time and some other
7 side at another time.

8 As far as the use of drugs is concerned, I recall
9 neither Dr. Kissinger or anybody else telling me that Ellsberg
10 used drugs.

11 Q I would like now to show you a letter to see whether
12 this at all refreshes your recollection, and we will mark
13 this as Exhibit E-1.

14 (The document referred to
15 was marked Exhibit No. E-1
16 for identification.)

17 BY MR. MARTIN:

18 Q I will ask you to take a look at the second para-
19 graph of this letter that deals with Mr. Ellsberg.

20 A This letter I notice is dated on September 3, 1969.

21 Q Let me explain that for you. This is one of the
22 letters that was sent as part of this overall wire tap pro-
23 ject, and this letter, although this copy is addressed to you,
24 a copy also went to Dr. Kissinger and Dr. Kissinger did re-
25 ceive and discuss this letter.

1 A I do recall, and when I testified earlier I was
2 aware, of course, of this letter, I do recall that letter
3 having been brought to my attention. I do recall that Dr.
4 Kissinger had a very high opinion of Mr. Ellsberg and Mr.
5 Halperin's mental capability and a very low opinion of their
6 emotional stability, but I recall Dr. Kissinger -- this does
7 not refresh my recollection, and I think that by this time,
8 September 3, 1969, the policy had been instituted, which I
9 have earlier described, where I had this, what I call this
10 wire tap information sent to Haldeman or Kissinger or who-
11 ever had responsibility, but not to be sent to me unless there
12 was something that required action on my part, but I might
13 have seen it.

14 Q Realizing that might have been the policy during
15 the operation of these wire taps, given the fact that Mr.
16 Ellsberg had been accused of leaking these papers and it
17 becoming a major issue in the summer of '71, the question is
18 whether or not that information was brought to your attention
19 in the summer of '71 concerning Mr. Ellsberg?

20 A After Mr. Ellsberg was indicted, you mean?

21 Q Not necessarily after he was indicted, but after
22 he was identified as the source and became a topic of dis-
23 cussion.

24 A I recall some discussion with regard to Ellsberg and
25 Halperin being friends and being, shall we say, possibly engaged

1 in erratic activities. I don't recall any specific dis-
2 cussion at that time of a letter of this sort saying that a
3 wire tap two years before had disclosed that Ellsberg and
4 Halperin had -- the Grand Jurors are going to love this --
5 had recommended that Harry not take a trip at the same time
6 his wife takes one, so Ellsberg subsequently mentioned to
7 another individual that he left a satchel filled with stuff
8 at his friend's house during a contact with Pat Marks --
9 that, of course, would be a misspelling -- of Scarsdale, New
10 York. She told him that the stuff Harry had was all right,
11 although it was disorienting.

12 Anybody reading the letter would say that that must
13 refer to drugs. I am not up on this lingo of "trip" and
14 the rest. What information was brought to me, when it came
15 to my attention, I do not recall. At some time I heard,
16 after the Pentagon Papers case became national news--Mr.
17 Ellsberg's name was brought into it along with, apparently,
18 Mr. Halperin's--I heard that there was information to the
19 effect that these people were on drugs. I must say, though,
20 that my recollection at this time was that that information
21 had been developed in the investigation of Ellsberg after
22 the Pentagon Papers came out, rather than in this period. And,
23 frankly, when I read this file, I was surprised to find that
24 this business about Ellsberg being on drugs and so forth was
25 two years old at the time of the Pentagon Papers.

1 Q Given that there would be concern about Mr.
2 Ellsberg's erratic behavior and the possibility that he had
3 other documents which he might leak, do you recall or do you
4 have any knowledge of anyone directing that Mr. Ellsberg him-
5 self or any of the other principals involved in the Pentagon
6 papers case should be wire tapped during this time period,
7 after the publication of the Pentagon Papers?

8 A No, I have no recollection of directing that they
9 be wire tapped. As a matter of fact, there was a considerable
10 disagreement within the Administration as to whether Ellsberg
11 should even be prosecuted.

12 As I testified yesterday, I stopped the prosecution
13 or stopped the efforts that someone had to make to prosecute
14 the publishers, who were equally guilty, for reasons that I
15 thought were very good reasons, and in the Ellsberg case I
16 didn't think or I didn't know or didn't believe -- I mean,
17 when I say that, many of my associates did not believe it
18 was worthwhile to go ahead and prosecute him, but eventually
19 the decision was made to go forward on the prosecution.

20 Incidentally, one of those who was very reluctant
21 at the beginning to go forward on Mr. Ellsberg's prosecution
22 was Mr. Hoover and that was for a very sensitive, personal
23 reason. Ellsberg was involved --

24 Q You refer to Mrs. Marx?

25 A To Mrs. Marx. That is why I say it is a misspelling

1 here. It says M-a-r-k-s here and it is M-a-r-x, the Marx
2 I knew and Mr. Hoover knew and Ellsberg was married to the
3 daughter of the toy maker, who was one of Mr. Hoover's
4 closest friends, and apparently Mr. Marx, like, I am afraid,
5 poor Mr. Hearst, even though his daughter he knew was a little
6 off, he still loved her, and Hoover just didn't want to get
7 into the Ellsberg thing because of the embarrassment that it
8 would cause to them.

9 Incidentally, he didn't tell me that specifically,
10 but that information was conveyed to me, I believe, by the
11 Attorney General.

12 Q Returning to the issue of wire tapping, much later
13 on, and again in the same conversations that Mr. Horowitz
14 has referred to earlier, in April of 1973, on that day you
15 had meetings with, among others, Mr. Petersen and Mr. Richard
16 Moore, and in those conversations you again refer to the
17 Marx episode with Director Hoover. You seem to indicate in
18 those conversations that there was some wiretapping and
19 you state to Mr. Petersen, and I quote, "Now when Hoover got
20 into it, it should now be wire tapping" and later you state,
21 that same day, to Mr. Moore, "They had the FBI do bugging
22 once it got into the case, let me assure you - unquote.

23 I believe you stated you don't recall being aware
24 of such wire taps?

25 A Yes, sir, and I am well aware of that record,

1 and I must say I was surprised to find, when I read this
2 record, that there was no wire tapping except for a highly
3 sensitive case that I, of course, will answer questions on if
4 the Special Prosecutor is interested in it, involving Yoeman
5 Radford, but there was no wire tapping after February of 1971.
6 Of course there was none after June 20 of '72 because that
7 was the time the statute went into effect.

8 I just assumed, without knowing, that Mr. Hoover
9 in conducting an investigation would probably be doing what
10 the FBI always does, going to every source, using every method
11 possible in order to get information. My assumption, apparently,
12 was incorrect.

13 Q I would like to turn to the period after --

14 A Incidentally, I should point out I can't recall see-
15 ing and have no recollection of seeing any wire taps that May.
16 If they were instituted and then destroyed or something, I
17 have no recollection of ever being informed of what was in
18 them or anything of that sort, so if they were destroyed,
19 which is possible -- that is Mr. Hoover's practice quite
20 often -- nothing was produced in them that was considered to
21 be important to the prosecution.

22 Q I would like to turn briefly to a meeting you had
23 with Mr. Mitchell, Mr. Ehrlichman, Mr. Haldeman, after Mr.
24 Ellsberg was indicted, and just to try to refresh your
25 recollection, the meeting was on July 6. What you might

1 remember about it is that at that time you were about to
2 depart for San Clemente.

3 A This is 1971?

4 Q Yes.

5 A Four years ago.

6 Q And Mr. Mitchell was about to depart for London
7 for the ABA Association, I believe.

8 A That is the year the two bar associations had their
9 meeting in London?

10 Q Yes, and let me give you a transcript of that con-
11 versation.

12 A They might have made Mitchell a Knight of the Guards.

13 MR. MARTIN: Let me mark this as E-2.

14 THE WITNESS: Or Martha, make her the Knight of the
15 Guards.

16 I am sorry. How he stood that woman that long, I
17 will never know.

18 That's all right; take it down.

19 Now what do you want to know about this conversation?

20 (The document referred to
21 was marked Exhibit No. E-2
22 for identification.)

23 BY MR. MARTIN:

24 Q I believe this conversation generally deals with
25 whether or not members of the NSC staff, Dr. Kissinger's staff,

1 may be involved in leaking information, whether there may be
2 a conspiracy aspect to various leaks that were occurring
3 at that time, but what we are specifically interested in is
4 the references beginning on page 8, where Mr. Haldeman raises
5 the possibility that someone should review the wire tap records
6 that we have been referring to to see whether there would be
7 anything of value to the Pentagon Papers investigation and
8 Mr. Mitchell states that he is having them reviewed in the
9 Bureau. That conversation continues in that vein up to
10 about the middle of page 9 or the top of page 9.

11 A Yes, I have read it.

12 Q Do you recall being informed by Mr. Mitchell that
13 these wire tap records were being reviewed?

14 A I have no independent recollection of it, but having
15 seen this conversation, Mr. Mitchell must have told me that
16 on that occasion.

17 Q Do you recall whether anyone, other than Mr.
18 Mitchell, informed you of that?

19 A I have no recollection of anybody else having
20 told me, because it is not a subject that I consider to be --
21 I fear at that time I had very much on my mind.

22 You noted the date here - July 6?

23 Q Yes, I noted that is the date that Dr. Kissinger
24 was on his way to China and I think that --

25 A You know why I wasn't thinking about it?

1 Q I am sorry?

2 A It was at that time that the Chinese initiative
3 was being undertaken and my mind was, being the single track
4 mind that it is, where major subjects were concerned, through-
5 out the period of July, until the announcement was made on
6 July 15 that the trip was going to be taken, and for some
7 time thereafter, I was thinking of the China initiative. Con-
8 sequently my recollection of a conversation of this sort is,
9 frankly, as I stated. I simply don't recollect it, but if
10 you were to question me today about the meetings I had with
11 Kissinger, the cables that he sent to me while he was on the
12 way to China, the problems he was having of getting from
13 Pakistan to China, his conversations with Chou En-lai and a
14 meeting that he had with other Chinese officials, I could
15 remember it almost verbatim. But this kind of thing I just
16 didn't pay that much attention to, and I don't think you would
17 have either.

18 Q I can appreciate that --

19 A No, you wouldn't.

20 Q I would like to turn to --

21 A I don't say that with any reflection on you. I mean
22 you have your job and I have mine, but I want the Grand Jurors
23 to understand when I say I don't recognize something, it
24 isn't because I am trying to duck a question. If I don't
25 recollect it, I am not going to say I do, and when you are

1 engaged in activities that are, for example, what you talked
2 about, the date of the institution of the wire taps, -- You
3 know how many Americans were being killed in Vietnam them --
4 three hundred a week. There were 600 POWs in Vietnam in May
5 of 1969, and at that time massive offensives were coming down
6 from the north in Vietnam and at that time, as well, 14,000
7 Americans were being drafted. All of that we stopped, and
8 we couldn't have stopped them unless we had had secret meet-
9 ings with the Chinese, with the Russians, with the North
10 Vietnamese and the South Vietnamese. It was a four-legged
11 stool, and that is why, you see, my concern about leaks was
12 so great, my concern about the Pentagon Papers was so great.

13 A lot of our sources dried up for some time after
14 the Pentagon Papers came out and they dried up because they
15 didn't think they could talk to somebody from the United
16 States without fearing -- I am speaking of foreign sources --
17 without fearing, without being assured that that would be
18 in confidence, so I would say that as a result of what
19 Mr. Ellsberg did and what the New York Times, and, in my
20 opinion, one of the most irresponsible actions by a great
21 newspaper of this nation did, the ending of a war and the
22 killing of Americans was delayed. Initiatives would have
23 come much sooner had that not happened.

24 Oh, I know this goes against the current thinking.
25 I don't mean you gentlemen and I don't mean the Grand Jurors.

1 The current thinking is that Ellsberg and the New York Times
2 should be heroes for exposing and putting out all of this
3 confidential information.

4 Let me say when confidential information is put
5 out that costs one American life, I think the one that puts
6 it out should go to jail for it.

7 Q Well, appreciating your concerns as you stated
8 them --

9 A Why I think you agree with that, don't you?

10 Q Well, I think I --

11 A I am sorry, it is not my right to question you. I
12 am sorry.

13 Q Given this concern, and given your concern about
14 the fact that Mr. Ellsberg, in order to minimize the damage
15 that had already been done, he should be prosecuted so that
16 this would be an example that might restore some of this con-
17 fidence that has been lost, I would like to go back and
18 focus on the events involving Mr. Ellsberg during this period.
19 I would like to turn to a meeting that you had in San Clemente
20 with Mr. Ehrlichman and Mr. Haldeman. The notes that we
21 have indicated that Miss Woods was there at the beginning of
22 the meeting, but I believe that portion of the conversation
23 dealt with the Nixon Library and it is not relevant to us.

24 After that portion of the conversation, the
25 conversation turns to the Pentagon Papers and there is

1 really just two brief references: One, there is a statement,
2 which apparently would have been made by you, stating that
3 Rogers, meaning Secretary of State Rogers, should be tapping
4 more. Do you recall making such a statement?

5 A I don't recall making such a statement, but I do
6 recall that Dr. Kissinger, and, incidentally, I think in-
7 correctly in this instance, felt that the State Department
8 bureaucracy was potentially more vulnerable in terms of
9 leaking and less trustworthy than any other parts of the
10 bureauracracy, and that we should make some effort to do
11 something about the State Department people.

12 Now, as far as Mr. Rogers was concerned, he was the
13 Secretary of State. He couldn't do any tapping. It had to
14 be done, as I have also said, through the usual ways: The
15 Attorney General had to approve them or I had to approve
16 them -- no, I didn't approve them -- the Attoreny General
17 approved them, but if I ordered them, the Attorney General
18 would approve them, but as far as the State Department~~s~~ per-
19 sonnel were concerned, as you know, none of them were tapped.

20 Q Being it appears that the subject of wiretapping
21 was being raised by this comment, there is, again, a statement
22 with regard to "re Grand Jury: don't worry re taps on dis-
23 covery re witness" and it appears to be witnesses of the
24 White House. "Witness" is abbreviated. Do you recall --

25 A Let me take a look at that one. I know you furnished

1 it to me, but I have forgotten which one it is.

2 MR. MARTIN: I have marked as Exhibit E-2 Mr.
3 Ehrlichman's notes of a meeting on July 10, 1971.

4 (The document referred to
5 was marked Exhibit No. E-2
6 for identification.)

7 THE WITNESS: Yes, you can go ahead with your
8 question. I can listen while I read it.

9 BY MR. MARTIN:

10 Q The first page of those notes is, as I indicated
11 earlier, is with regard to the Nixon Library. On the second
12 page, note 9 turns to the subject of Ellsberg, note 10 is
13 the note I read previously concerning Mr. Rogers and then
14 there is this note I just read concerning the Grand Jury. Do
15 you recall any such reference being made to wire taps some-
16 how being discovered or discovery motions relating to wire
17 tapping in the Grand Jury investigation or in any aspect of
18 the Pentagon Papers?

19 A No, I don't recall. I don't know what grand jury
20 that could have been he is referring to. These are his
21 notes, of course.

22 I do know this, that on many occasions I told him,
23 and I told Dr. Kissinger, I told several of them that we should
24 not be defensive with regard to wire tapping for national
25 security purposes, that we could defend them. I did not want

1 to disclose that we were doing it because that would, of
2 course, blow the whole program, but that we should not be
3 defensive, and obviously if there was a grand jury proceed-
4 ing, since grand jury proceedings are totally off the record,
5 that is one area where there would be no concern if wire
6 tapping was disclosed.

7 Q Specifically, the way that concern could arise is
8 that if a Grand Jury witness was hostile and refused to
9 testify and even after granted immunity refused to testify
10 and the government went into court to have him held in con-
11 tempt, he could raise the issue of whether or not he had been
12 wiretapped. This would have happened, perhaps, although
13 it did not happen, but it could have happened with Mr.
14 Halperin if he was called before a grand jury, and it could
15 have happened with various reporters if they were called be-
16 fore a grand jury.

17 Do you recall any concern that in these grand
18 jury proceedings these wire taps might have to be disclosed?

19 A What proceedings were going on at that time in
20 the grand jury?

21 Q There was the Boston Grand Jury at that time.

22 A What were they investigating?

23 Q They were investigating the aspects more related
24 to the delivery of the papers to the Times and Post as opposed
25 to the earlier investigation, which was, basically, the Xerox-

1 ing and copying of the documents during 1969 and '70. Do
2 you recall any such statement about or any indication --

3 A I don't recall this. I cannot recall the discussion
4 specifically. I recall generally what I have told you already.

5 Q Do you recall in this discussion or at or about
6 this time being told that Mr. Mardian would come out here
7 to San Clemente to discuss these wire taps with you, that
8 there was some problem with regard to the wire taps?

9 A Yes, I know Mr. Mardian did come out to talk to me
10 about it.

11 Q Do you recall the circumstances under which you
12 were told he was coming, whether a talking paper or some
13 preliminary meetings were held, or anything of that nature?

14 A No, and I don't have any papers. As you know,
15 you have those, so I wouldn't have any opportunity to review
16 that. I mean you have them, unless we haven't turned them
17 over to you. You don't have them unless we turned them over
18 to you.

19 That is not a fair statement. But your actions
20 have made it impossible for me to have my papers here.

21 Q We would like to turn now to the meeting on July
22 12, '71, and I have marked as Exhibit E-4 Mr. Ehrlichman's
23 notes of that meeting.

24 (The document referred to
25 was marked Exhibit No. E-4