

for identification.)

THE WITNESS: Which part of this?

BY MR. MARTIN:

Q On ~~the~~ second page, and unfortunately due to the Xerox-ing --

A That is all right; I can read it.

Q Just above the note 1 there was a note on the original that just said "Mn", meaning Mr. Mardian, so this is the beginning of the portion of the meeting at which Mr. Mardian is present - the second page.

A These are the notes of the meeting of Mardian and Ehrlichman? Ehrlichman must have been there, because he made the notes, I suppose.

Q Right, and then Haldeman comes in after the first notation.

A Fine.

Q The first notation is "re National Security taps", as you can see, especially "special coverage taps, Beecher, Sheehan, Hedrick Smith - overhearings would be disclosed," and then the notation Referred Do you recall Mr. Mardian at this meeting giving a list of any of the names of the people who had been wire tapped during this project, such as Mr. Ehrlichman would have written down - these names?

A It is possible that he did mention some names. I don't recall that he did.

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1 Q Well, these notes, and it does state national
2 security wire taps, but the special coverage taps is the term
3 and I believe you would be familiar with them, that some people
4 in the FBI used to refer to this project of the 17 taps,
5 which is principally what he was discussing. Now do you re-
6 call Mr. Mardian listing any additional names, such as Mr.
7 Halperin?

8 A I don't even recall these names. These are names
9 of newsmen, as I recall,. Beecher, Sheehan and Hedrick Smith
10 were all reporters with the New York Times.

11 I can't even recall that, and I don't recall his
12 listing any names of National Security staff or NSC staff
13 people, but he might have.

14 Q Do you recall whether or not he made the statement
15 that overhearings would be disclosed? Do you recall that
16 statement?

17 A I cannot recall that. I don't know in what
18 connotation he would make it.

19 Q Let me explain to you why overhearings would be dis-
20 closed. Mr. Ellsberg, among others, and these people listed
21 here, had been overheard during the NSC wire taps.

22 A In the earlier period, too?

23 Q In the earlier period. Now, as you know, the
24 fact that Mr. Ellsberg was overheard was not disclosed, as
25 in the normal course it should have been, at least to the

1 Court in camera, not necessarily publicly, but at least in
2 camera it would have had to have been disclosed after he was
3 indicted, and again these people could have required over-
4 hearings to be disclosed in the same manner if they were in-
5 dicted or if they had some contempt hearings with regard to
6 the Grand Jury. So do you recall in that vein anyone mention-
7 ing these wire taps and these overhearings would have to be
8 disclosed in connection with court proceedings?

9 A I don't recall it. It is very possible that they
10 did talk to me about those things. I must say I can't remember
11 Mardian even being here, let alone what he said. I was think-
12 ing about other things.

13 Q As we went through earlier with the July 12 meet-
14 ing with Mr. Mitchell, where he informs you that the wire
15 tap records are being reviewed, do you recall whether or not
16 Mr. Mardian in raising this subject stated this had come up as
17 part of his review of the wire tap records in connection with
18 the Pentagon Papers investigation?

19 A No, I have no recollection.

20 Q Now, the next note involves a U.S. Attorney's office
21 and various indications that people in that office may be
22 disloyal, and I would like to suggest and see whether this
23 strikes any response as something that may have happened,
24 whether or not that was raised in the context that these wire
25 tap records or the fact that these wire taps had taken place

1 would in the normal course have to be disclosed to various
2 people in the Justice Department bureaucracy dealing with
3 the Pentagon Papers case and that these people may be dis-
4 loyal and might leak that information?

5 A Well, let's understand these, of course, are not
6 my notes; they are Mr. Ehrlichman's notes, and when I saw
7 this reference to the U.S. Attorney's office, this is
8 certainly what he thought about --

9 Q Well, I --

10 A Now, just a moment. With regard to the possible
11 disloyalty, as you have asked the question about that,
12 summer interns and Whitney North Seymour, Jr. -- I knew
13 his father, but I never knew him -- et cetera, and Lindsay
14 type people -- I don't know what that means. Oh, yes,
15 Lindsay was mayor then, but I don't know what the New York
16 offi-e, what it had on its plate at that time that it would
17 allow it to get in the wire tap area.

18 Was there a case there with them? There would
19 have been if we brought something on the newspapers, I
20 suppose. Is that what you are referring to?

21 Q All I mean to suggest is that if people in the
22 bureaucracy were disloyal and if -- this is just given as an
23 example -- whether other people in the Justice Department,
24 in the U.S. Attorney's offices elsewhere that might have to
25 be handling this case, such as in Los Angeles, whether they

1 were viewed as possibly leaking information about these
2 wire taps.

3 A Let's stick precisely with the notes. This refers
4 to the New York Attorney's office. What was going on there
5 then?

6 Q At that time there was nothing further going on
7 there then.

8 A Then I don't know what the reference is there, why
9 that would be brought up. I would say that would be the last
10 place that you would expect information to be disclosed.

11 You see, the real point is, as I read these notes,
12 and my asking you about what was going on in New York in the
13 U.S. Attorney's Office bears out what I said earlier, that I
14 just have no independent recollection of the meeting with
15 Mardian and what was discussed at the meeting. I am
16 only relying on, for whatever information I am giving you,
17 on the notes that others have made.

18 Q Whether or not you remember specifically this
19 meeting as occurring on this date with these people and these
20 exact words being used, do you recall at or about this time
21 this subject matter being discussed concerning the wire
22 tap records?

23 As we go through you will see that there are various
24 references to gathering these documents together, to destroy-
25 ing the documents, to telling Mr. Hoover to destroy the

1 documents and later on a reference to having General Haig re-
2 turn all of the documents he has to the FBI and then to request
3 the FBI to destroy all of the documents. Do you recall that
4 subject matter?

5 A That subject matter was discussed because at the
6 conclusion a decision was made that Mr. Mardian should go
7 back to Washington and get the documents together, as I recall,
8 and collect them from the various plades that they were. The
9 references to destruction are mystifying to me. I can't
10 recall directing that they be destroyed, and if I did the
11 directing was not carried out.

12 Q Why was Mr. Mardian having all of these records
13 gathered together? Did it relate at all to the Pentagon
14 Papers and the possible disclosure of these wire taps in
15 connection with the Ellsberg trial or other aspects of the
16 Pentagon Papers investigation?

17 A No, not as far as I was concerned. What I was con-
18 cerned about was that after the Pentagon Papers case and the,
19 if I may use the term, the enormous positive hullabaloo that
20 developed across the country, where people who steal classi-
21 fied documents are made heroes and those that publish them
22 get Pulitzer Prizes, I was concerned about a massive leaking
23 problem in the State Department, in the CIA, and, frankly, in
24 the Defense Department -- to my great surprise, I learned
25 later I proved to be right in that respect -- and what I was

1 concerned about was to do everything possible not to have
2 this program basically totally, not only revealed, but by its
3 revelation the capacity removed to do the necessary work that
4 I considered we would have to do if we were going to plug
5 leaks involving the national security and involving highly
6 sensitive negotiations which we were undertaking.

7 Q If I understand your answer, you are saying that
8 you are concerned about the existence of these wire taps
9 leaking because you felt that it was something that may be
10 necessary, a necessary evil, if you want, to use this type
11 of activity to track down leaks that you were afraid might
12 occur in the future? Is that essentially correct?

13 A That was my primary concern, yes.

14 Q I would now like to turn to a later period, in
15 October of 1971, and just to briefly recap what happened:
16 Mr. Sullivan was fired by Director Hoover at the end of
17 September. At that time Director Hoover learned that these
18 wire taps were no longer at the Bureau and was trying to
19 locate them.

20 On October 8 you met with Mr. Mitchell and Mr.
21 Ehrlichman and the decision was made to give these wire tap
22 records to Mr. Ehrlichman since Mr. Mardian had them. What I
23 would like to get to is October 25, and I will mark as the
24 next exhibit two documents. We will mark as Exhibit E-5 a
25 memo from Mr. Liddy to Mr. Krogh, dated October 22, 1971, and

1 as E-6 a transcript of a meeting between yourself and Mr.
2 Ehrlichman on October 25, 1971, in the Oval Office.

3 (The documents referred to
4 were marked Exhibits E-5 and
5 E-6 for identification.)

6 BY MR. MARTIN:

7 Q Now there are two specific references which I would
8 like to go to, and on the Liddy memo, at page 7 --

9 A Don't you first want to ask me if I have seen it?

10 Q Well, the transcript of the October 25 meeting in-
11 dicates that you had seen it and were discussing it with Mr.
12 Ehrlichman.

13 A Yes. Fine. I just thought you ought to get it in
14 the record.

15 Sorry. I have seen it; that is right. It is one
16 of the rare instances where a staff memorandum was brought to
17 my attention. Apparently Mr. Ehrlichman sent it in because
18 he thought it was a rather perceptive memorandum, because
19 he agrees with its recommendation that Mr. Hoover had to go.

20 Q On page 7, under arguments against immediate re-
21 moval, that being immediate removal of Mr. Hoover --

22 A This is Liddy?

23 Q This is Liddy. The first argument is that Hoover
24 could resist and make good his threat against the President.
25 Now, in discussing this memorandum with Mr. Ehrlichman, in

1 the transcript of that meeting you state, with regard to Mr.
2 Hoover, we may have on our hands here a man who will pull down
3 the temple with him, and that reference is at page 3 of the
4 transcript, about a quarter of the way down the page.

5 A Page 3?

6 Q Yes, page 3.

7 A Yes. Right. Go ahead.

8 Q Do you recall whether or not you were aware that
9 Mr. Hoover had indicated to you or others that he might dis-
10 close these wire taps that we have been discussing?

11 A Well, you have read again out of context a very
12 small portion of my statement. We are speculating there about
13 the Liddy memorandum and Mr. Hoover's situation, his problems,
14 and I say, "You are correct, we have on our hands here a man
15 who will pull down the temple with him, including me. I
16 don't think he would want to. I think he considers himself
17 a patriot, but he now sees himself as McArthur did, Benson
18 did, and perhaps Agnew does --

19 "Mr. Ehrlichman: Yep."

20 And I say "Yep", and he says, ". . .himself as an
21 issue greater than the issue which is the great --" and I
22 said "weakness of any political man."

23 Now what is all this? This is simply a discussion,
24 a free-wheeling discussion between the President and one of
25 his top advisors on some theories that a very bright young

1 man in one way, very stupid in others, Mr. Liddy, who had been
2 in the FBI and had written us about Mr. Hoover.

3 Let me just recount briefly what my attitude
4 towards him was and what I really believe. I always, in my
5 process of thinking, went down every avenue, considered every
6 option, would even put out to my advisors something that I
7 might not even be for myself in order to drag out of them
8 their best thinking because many times, you know, people who
9 advise the President tell him what he wants to hear and they
10 always wait to find out what they think he wants and what he
11 believes before they talk. I didn't like that. I wanted to
12 find out what they really thought.

13 Now as far as Mr. Hoover was concerned, my relation-
14 ship with him goes back many years. It goes back clear to
15 the Hiss case where because of an order issued by Mr. Truman
16 the FBI was prohibited from giving the committee of which I
17 was a member any assistance whatever in uncovering that
18 activity. We did it; we got it done. We didn't need a hun-
19 dred lawyers.

20 The second point was that over that 25 years I have
21 considered him to be a patriot; I have considered that he was
22 an intelligent man, in a super-sensitive position. I recall,
23 for example, the last conversation -- I believe it was the
24 last one I had with President Johnson in the White House, in
25 December -- you recall, sir, things that are first are last.

1 It was in December of 1969, and he told me, very emotionally,
2 that the greatest mistake that he made was after his election
3 in his own right in '64 in not firing all of the people or
4 virtually all of the people whom he had inherited from the
5 previous Administration and getting his own people in, and
6 he said, "You know, many times Edgar Hoover I think is the
7 only man I can talk to. I recall calling President Johnson
8 on the day Hoover died and telling him about it.

9 I do not mean to digress, but what I am saying is
10 that I met with Mr. Hoover, at his suggestion, in one of our
11 regular meetings at Easter of this year -- I believe it was
12 then. You have the transcript of that conversation.

13 No, you haven't. You got notes of it or something
14 and recollections as far as that meeting because I recounted
15 that meeting to Mr. Ehrlichman or Mr. Haldeman later. Mr.
16 Hoover on that occasion said that he would leave then, he
17 was over age, he was 75, or he would stay, whatever I want.
18 He said, "My major interest is the country, my major interest"--
19 he was never a partisan -- he served President Johnson and
20 President Kennedy, President Eisenhower, just as well as he
21 served me. I mean he was a man who considered the presidency
22 was what was important, not whether he was a Democrat or
23 Republican or Liberal or Conservative, but I remember in that
24 meeting he went on to say he would do anything that would
25 help; if resigning would help, he would get out, if he was a

1 liability. He didn't think he was a liability; he preferred
2 to stand and fight.

3 One of the things he was concerned about at that
4 time was a Congressman, who, unfortunately, was killed, Mr.
5 Boggs, from Alaska. Mr. Boggs had launched a rather vicious
6 attack on Mr. Hoover and Mr. Kleindienst, who was then the
7 Deputy Attorney General, had apparently, in an unguarded
8 moment, indicated there should be a congressional investigation
9 of the FBI. This is in regard to Caleb's charges that the
10 FBI were bugging congressmen and senators, which Mr. Hoover
11 has always denied to me, that he has never done this, but in
12 any event what happened was that I reassured him that he
13 ought not to pay any attention to Boggs. Boggs, and no one
14 likes to speak ill of those who are gone, but everybody knows
15 he had a terrible drinking problem and he would say things.
16 He made an ass of himself when he was in China. We sent him
17 there on that delegation and we practically had to drag him
18 out of there or our relations with China might have been
19 seriously jeopardized. But my point is I reassured Mr. Hoover;
20 forget Boggs' attacks, I am going to keep you on. This was
21 in April All right. At no time did Mr. Hoover, directly
22 or indirectly, ever threaten that, look, unless you keep me
23 on I am going to blow the whistle on you. At no time did
24 he ever say, look, unless you keep me on, I am going to pull
25 down the whole temple, including you.

1 I considered Hoover to be a patriot. I don't
2 question that I talked this way, but as far as what I believed
3 is concerned, it is best indicated by what I did. I kept
4 him on until he died, and delivered a rather good eulogy on his
5 death, and so when we talk about his possibly using the fact
6 he had these taps to blackmail, it was something that was
7 brought to my attention. Mr. Ehrlichman thought he might;
8 Mr. Mitchell apparently thought he might. Obviously Gordon
9 Liddy, whom I didn't know -- I don't believe I ever met him,
10 as far as I can recall -- thought he might, but as far as I
11 was concerned, I had to weigh what my closest advisors thought.
12 I still stuck with him, because with all of his weaknesses,
13 even in his advanced age, I didn't know of a better man for
14 the job.

15 Q Back in April of '71 -- this Eastertime that you
16 referred to -- there is some indication in the notes that Mr.
17 Hoover implied that if there was such a congressional investi-
18 gation, one of the things he might be asked about would be
19 wiretapping and that these wiretaps might have to be dis-
20 closed. Do you recall discussing that at that time, the
21 possibility that these wiretaps might have to be disclosed
22 if such a congressional investigation were ever launched?

23 A No, I don't specifically recall that part of it,
24 but he well might have told me that because he always leveled
25 with me on conversations.

1 Q Do you recall whether or not you had any conver-
2 sations with Mr. Kleindienst at that time concerning the
3 congressional investigation?

4 A With Mr. Kleindiesnt? I think the only conver-
5 sation that I had was more indirect. I think I talked to
6 Attorney General Mitchell and told him to tell Kleindienst
7 he was out of his mind to suggest a congressional investigation
8 of the FBI. As a matter of fact, I can think of nothing
9 that is more damaging to the national interest than the
10 current investigation of the CIA. I can think of nothing
11 that would be more detrimental to the national interest than
12 an investigation of the FBI.

13 I don't mean that the CIA and FBI should be engaged
14 in activities without having proper surveillance and the
15 rest, but it can be done without putting everybody out in
16 front of television lights and so forth. Here they have
17 smeared the memories of three former presidents of the United
18 States by suggesting assassinations and by putting all of
19 this out, and as far as the FBI is concerned, if they want to
20 get into them, they will make them impotent, and I am digressing
21 here a moment by pointing out and making the point that it is
22 essential sometimes in government to have intelligence organi-
23 zations, intelligence organizations that don't run loose and
24 just go off on some kick in Florida where some IRS investigator
25 is looking into homosexuality of people down there -- I don't

1 know what he was doing that for -- but you have to have con-
2 trol, on the other hand, and to have a fullblown investigation
3 and then to the point that you completely destroy their
4 ability to do their job, that is not in the interest of this
5 country.

6 Q Do you recall any other meetings during this summer
7 and fall of 1971 with Mr. Mardian, other than this one meeting
8 out here in San Clemente?

9 A No, I don't recall any other meetings. No. One
10 could have occurred, but I don't recall.

11 BY MR. HOROWITZ:

12 Q Sir, continuing on the other aspect of this Grand
13 Jury investigation, which relates to the wire tap project, as
14 I informed you, relates to the allegations that Mr. Gray --

15 A Lied?

16 Q -- lied during his confirmation hearings, and I
17 am going to try to cover that material with you over the next
18 45 minutes or so.

19 Before we get directly into Mr. Gray's confirmation
20 hearings themselves, there has been evidence before the Grand
21 Jury which is relevant here, and to them only insofar as it
22 relates to the Gray matter which pertains to this other
23 electronic surveillance project which I will dub the
24 Radford project, which commenced in December of 1971 and
25 continued until June of 1972 and involved installing electronic

1 surveillance on others, including Yoeman Radford. My only
2 questions about that will be a few, and relate to this Gray
3 matter.

4 Firstly, when that commenced in December of 1971,
5 Mr. Mitchell was Attorney General and Mr. Felt was the
6 Deputy Associate Director, or number two or three in the
7 FBI, and they were the people running it.

8 A Sullivan had left at that time, I think.

9 Q That is correct, and in about March, or March 1,
10 or thereabouts, of 1972 Mr. Mitchell left his position as
11 Attorney General and Mr. Kleindienst took over as Acting
12 Attorney General.

13 My first question is whether you can tell us about
14 briefings or discussions of Mr. Kleindienst concerning the
15 Radford electronics surveillance project, whether you par-
16 ticipated in any or were aware of any.

17 A I don't recall participating in any. I don't
18 recall being aware of any. This project was the most highly
19 sensitive that we had while I was President.

20 Q I understand that and I understand --

21 A And I am going to describe the project, too, even
22 though you won't ask the question. It is necessary. I mean
23 let me say --

24 Q I don't want to cut you off.

25 A Let me say, Mr. Horowitz, the only reason I must do

1 this is that you say why don't you tell the Attorney General
2 and the Secretary of State and all of the rest about your
3 taps. I think the Grand Jurors want to know why didn't I
4 tell Mr. Gray about them when he came in to see me, why
5 didn't I mention the Radford taps.

6 Q You are anticipating my questions here.

7 First, if I might, do you have any reason to be-
8 lieve that Mr. Kleindienst did not know about that Radford
9 project?

10 A I have no reason to believe that he did or did not
11 know.

12 Q And going ahead in time, when Mr. Gray was named
13 as Acting Director, following Mr. Hoover's death in early May
14 of 1972, when he came in and I believe met with yourself
15 and then served as Acting Director for a period, do you have
16 any reason to believe that Mr. Gray, while the Radford project
17 was being administered by the FBI itself, did not know about
18 the Radford project?

19 A I have no reason to believe that he did, and from
20 the conversation that I had with him, I certainly didn't inform
21 him of it. As a matter of fact, if the FBI agent who was
22 involved in the project did not inform him of it, he was doing
23 exactly right because it was so sensitive that I didn't want
24 anybody to know about it.

25 Q But you don't know that Mr. Ehrlichman, for example,

1 did not tell him? You just don't know one way or the other?

2 A I don't know it, but I would assume -- I want this
3 Grand Jury, before it considers or weighs whether Mr. Gray is
4 guilty or not guilty, to have in mind the facts why this was
5 such a sensitive project and why it is very possible that Mr.
6 Gran, as the Director of the FBI, didn't know about it or was
7 not told about it, because, you see, otherwise the Director
8 of the FBI you would assume would know about every wire tap
9 project. Hooever knew about, I think, all of them, unless
10 somebody was tapping him, but as far as this one was concerned,
11 it was so closel- held that even people in the White House
12 staff who would normally know didn't know about it.

13 Q You have indicated you wanted to state about the
14 Radford project.

15 A I want to only because it, to members of the
16 prosecuting team and to members of the Grand Jury, it does
17 sound incredible that the Attorney General and Acting Director
18 of the FBI wouldn't have been informed of a wire tap project.

19 If the record is correct, and I assume that it is, that all
20 taps were stopped in February of 1971, and then this one was
21 the only one that was instituted and that there was no
22 tapping in their investigation of Ellsberg -- that is what
23 the record, Mr. Martin, indicates, as far as I can see -- the
24 question is why this one and why would we take such risks if
25 we had knocked them off before.

1 I should also point out when you ask why were the
2 taps discontinued in February, it wasn't just the hullabaloo
3 out there, but you gentlemen should know that that was Mr.
4 Hoover's common practice. He told me about it. He said,
5 "You know a month or so before I ever go up to testify before
6 the Appropriations Committee I discontinue all taps."

7 I said, "Why do you do that?"

8 He said, "The reason is so that when they ask me
9 the question as to whether we are tapping anybody, I can say
10 no."

11 Now that was the reason that it was done. I don't
12 recall any order that I gave, let's discontinue taps, although
13 I would have agreed with it in the event that they had come
14 to me, because I didn't think it had been particularly pro-
15 ductive up to that time.

16 (Continued on page 269)

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1 We will come to the Radford tap. You will all
2 remember that miserable war between two terribly poor
3 countries, India and Pakistan. You will all remember, also,
4 that I issued some orders sending the American Fleet into
5 the Indian Oceans and used every diplomatic and other --

6 MR. RUTH: Could I interrupt a minute?

7 Could I speak with Mr. Miller a minute?

8 (Counsel withdrew from the Conference Room.)

9 MR. RUTH: We will proceed.

10 THE WITNESS: All right.

11 As a result of what we did, we were able to save
12 what was left of Pakistan, west Pakistan. We incurred the,
13 at that time, what appeared to be the undying enmity of
14 India, of the Indians, and, of course, in the United States
15 there are many friends of India and very few of Pakistan,
16 among, particularly, the more liberal people of the press.
17 The net result was that there was very vigorous criticism
18 of the decision that I had made to, the decision that I made --

19 You don't have to take this; I have to take it;
20 It doesn't hurt me at all. (Referring to medication)

21 (Continuing) -- the decision that I made putting
22 pressure on India. We put pressure on the Soviet Union, as
23 well.

24 Now you have to understand why we did it and why
25 American foreign policy was so vitally involved.

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1 I said "ship him out." We got ahold of the Defense Department
2 and they sent him out to Oregon. His parents, apparently,
3 lived there, so he was willing to go. But it was vitally
4 important that he be tapped to see whether this mania he had
5 developed for leaking was continuing, and so he was tapped
6 and his closest associates were tapped for about six months.
7 They were knocked off in June, on June 20, when the tapping
8 was concluded, and I would say that as far as I am concerned,
9 with all of the talk about wiretapping and the rest -- I mean
10 it is your job and I want the Jury and the Special Prosecutors
11 to kick the hell out of us for wiretapping and for the
12 Plumbers and the rest, because obviously you may have con-
13 cluded it is wrong, but I want to say this, that if as a
14 result of the secret negotiations that we have had we have
15 changed the world, which we have, if as a result we have
16 saved American lives, which we did in Vietnam by shortening
17 a war -- the secret Cambodian bombings saved at least ten
18 thousand lives, as I have told you -- if as a result we
19 have made some progress in reducing the threat of nuclear
20 destruction by arms limitation with the Russians, and if the
21 other choice is to have what we call total openness, with no
22 security whatever, then the United States is finished as a
23 great power. Maybe a lot of people don't care, but I care
24 a great deal. I think all of you care a great deal.

25 That is what Yoeman Radford was about, and I would

1 strongly urge the Special Prosecutor don't open that can
2 of worms, because there is even more, because he not only --

3 MR. RUTH: I think it was probably a specific
4 question addressed to you, sir. We are not opening it up.

5 THE WITNESS: Yoeman Radford was not only there, but
6 he was a direct channel to the Joint Chiefs of Staff.

7 BY MR. HOROWITZ:

8 Q Sir, if I might take us back now to --

9 A This indicates to the members of the Grand Jury,
10 if I might address them for a moment, why it is that, first,
11 it had to be top secret and, second--for example, particularly
12 I didn't want the Joint Chiefs of Staff involved in this sort
13 of thing--second, that by keeping it top secret, and my orders
14 were this case is to be out only on a need-to-know basis, and
15 by need-to-know, that could have excluded the Attorney General,
16 it could have excluded Mr. Gray, it could have excluded every-
17 body except those that were conducting the investigation.

18 That is why, Mr. Martin and Mr. Horowitz, when you
19 asked me the question can you say for sure that Mr. Gray didn't
20 know about the tap, my answer is I am not sure that he did. My
21 guess is he probably didn't because of the high sensitivity
22 involved.

23 (Continued on page 278)

24 * * *

1 BY MR. HOROWITZ:

2 Q Now, as you have focused it back again, we do want
3 to talk about Mr. Gray's knowledge and the knowledge of
4 Radford was one aspect, but a small aspect, so if I can now,
5 I would like to direct your attention, sir, to the month of
6 February, 1973, when Mr. Gray was nominated by yourself to
7 be Director of the FBI, and our specific reference there is
8 that in the days and immediate week before his hearings
9 Time magazine published an article alleging that there had
10 been wiretapping by the FBI requested or directed by the
11 White House and that that wiretapping had involved White
12 House staffers and newsmen.

13 The week end of February 23 and 24, which is
14 immediately before Mr. Gray is going up to his hearings,
15 this story is coming out, the White House is aware of it,
16 and the story hits the news stand, I suppose, that Sunday
17 night.

18 I want to focus our attention on that week end,
19 if I can, and it was a week end when you were in Camp
20 David and Mr. Gray, preparing and anticipating his con-
21 firmation hearings, was down at a place called Marco Beach
22 in Florida, and we have notes of a conversation that you
23 had with Mr. Haldeman that Sunday afternoon, which was
24 February 25, so we will mark that in the same E series,
25 as Exhibit E-7.

1 (The document referred to
2 was marked Exhibit No. E-7
3 for identification.)

4 BY MR. HOROWITZ:

5 Q I will pass a copy of that over to you.

6 A Yes, go ahead.

7 Q So you have looked over these notes and if I might,
8 for the record, they read - quote - talked to Ehrlichman re
9 Time's latest thing on FBI story. Had names of Brandon and
10 Safire. Ehrlichman told Ziegler just stonewall it."

11 The next sentence is, "Everything handled", which
12 is abbreviated, "by Dean, Kliendienst, et cetera. He",
13 I believe referring to Ehrlichman" and "I", referring to
14 Haldeman, "stay out of it."

15 Do you recall this specific conversation with
16 Haldeman?

17 A No.

18 Q Do you recall discussing with Mr. Haldeman the
19 Time magazine article, their latest thing on the FBI stuff?

20 A I probably discussed it with him. He probably
21 brought it to my attention.

22 Q What do you remember about that?

23 A Only what thbse notes may reflect, except these
24 are his notes, and whether his ideas and what are his ideas
25 and what are mine, I can't tell.

1 Q Well, for example, sir, do you recall discussing
2 with Mr. Haldeman or perhaps with someone else, like Ehrlichman,
3 that Time had the names of Mr. Brandon and Mr. Safire? Do
4 you recall that aspect of it?

5 A I recall it only when I read the notes.

6 Q Does that bring it back to you, that you --

7 A Like I am saying -- I am telling you the truth --
8 I said I don't recall the conversation. I just recall it when
9 I read the notes. In other words, you've got it.

10 What is the next question?

11 Q You don't recall discussing Safire or Brandon or
12 these names with Mr. Ehrlichman at that time?

13 A I don't recall discussing names that Time had. I
14 do recall discussing a Time magazine article with Haldeman in
15 which they are supposed to have names of various people that
16 were supposed to have been tapped. As far as what specific
17 names were involved, I don't recall that those specific
18 names were in the discussion. I mean if you want me to lie
19 about it, I will be glad to.

20 Q I think I understand, but I was a little confused.

21 A Better strike that last.

22 Q In other words, do you recall discussing with Mr.
23 Haldeman that they did have some names, but you don't recall
24 these specific names?

25 A What?

Q Is that it, that you recall that they did have

1 some names, but you don't recall these specific names?

2 A I don't recall a discussion of specific names, but
3 it could havd happened.

4 I just want to say with regard to my earlier point,
5 Mr. Horowitz, -- I mean I am trying to be a cooperative
6 witness, and I believe you should press me, but don't put
7 words in my mouth and make me lie about something.

8 Q I am certainly not trying to do that.

9 A I am not going to lie about something. If I don't
10 remember something, I have to say I don't remember.

11 Q But I also have to try to understand exactly. I
12 might be a little unclear as to your testimony.

13 Let me ask you this: Are you distinguishing be-
14 tween Mr. Haldeman and Mr. Ehrlichman, that is, do you recall
15 discussing this matter with Mr. Ehrlichman, as presumably you
16 reported on it to --

17 A No, I have no recollection of that. I very well
18 might have.

19 Q As I noted, Mr. Gray was that week end, when this
20 matter was coming to light, and apparently, according to the
21 notes, there was some conversation about it, but Mr. Gray was
22 away in Florida preparing for his confirmation hearings and,
23 therefore, not available up here in Washington to discuss this
24 matter in person. Do you recall calling Mr. Gray or causing
25 Mr. Gray to be called to ask him or talk to him about the

1 Time article?

2 A No, I have no recollection of a call by me or one
3 directed by me. One could have been made. I don't recall it
4 at this point.

5 Q In an effort to help refresh your recollection, earlier
6 when you had discussed with Gray his impending appointment,
7 which was a meeting you had some week prior to this time, you
8 had emphasized to him, among other things, your concern with
9 leaks and it appeared fairly clear from this Time magazine
10 article that some leaks had taken place to Time magazine.

11 Now, does that bring back conversations with
12 Ehrlichman or Mr. Haldeman, when it was apparent there was
13 this lead, that they should instruct Gray to do something
14 about it?

15 A No.

16 Q Now, sir, staying with these notes, and again I
17 appreciate you don't remember the specific conversation, but
18 if I can capture the ambiance surrounding the possible con-
19 versation, perhaps it will help us. You indicate here or
20 Haldeman indicates that you state, "Everything handled by
21 Dean, Kliendienst, et cetera; "E" and I stay out of it."
22 Do you recall any conversations concerning how the Time
23 magazine article or allegations were to be handled in that
24 respect?

25 A I don't recall it. I can speculate as to what

1 I might have said, if you want me to.

2 Q But you don't recall it?

3 A No, I can't recall it, no. I mean I can speculate
4 why I might have said that, if you want to know what my specu-
5 lation is, about Haldeman and Ehrlichman staying out of it.

6 Q I assume because they had other duties?

7 A Exactly. I felt that Haldeman and Ehrlichman were
8 spending too much time on some of these things. Incidentally,
9 they weren't spending enough, it turns out. None of us were.
10 But my view was I wanted them to stay out and let Dean and
11 people that were responsible take care of it. That was my
12 policy, but I don't understand that.

13 Q I understand that qualification.

14 Let me ask you when you refer to having said
15 "Everything handled by Dean, Kliendiesnt, et cetera; Ehrlichman
16 and I," - Haldeman - "stay out of it," do you recall what there
17 was to be handled insofar as this Time magazine story was
18 concerned, other than putting out a press response to it? Do
19 you recall discussions as to Gray had to be briefed or any-
20 thing of that nature?

21 A No, I have no recollection of my talking about
22 briefing Gray on this article or, as I have earlier said, no
23 recollection of my briefing or having anybody else brief
24 Gray on the Yoeman Radford wiretaps.

25 Q On the following day, sir, just after this

1 conversation with Mr. Haldeman, but at this time Time pub-
2 lishes its article and Time does not publish the names of any
3 persons allegedly subject to wiretapping.

4 A They didn't? Okay.

5 Q Now in view of a lot of the things you have told us
6 here about the concerns for the wiretapping and that type of
7 thing, I wonder whether you had conversations with others
8 directed toward making entreaties at the time that they not
9 publish specific names or, alternatively, of conversations
10 about why Time hasn't published the names of who had been
11 tapped?

12 A No, I don't recall any such thing. Let me say that
13 my attitude toward the press and their attitude toward me is
14 well known.

15 Q Turning to February 27, that was a day when you had
16 a lengthy meeting with Mr. Dean in the afternoon, and the
17 transcript of your conversation which was taped refers to or
18 includes references to various subjects, but of relevance here
19 are the references to the general subject of wiretapping, and
20 so forth. Most directly relevant here is the following
21 dialog:

22 Let me, sir, hand to you what we have marked as
23 Exhibit E-8, which is a transcript of this particular meeting.

24 (The document referred to
25 was marked Exhibit E-8 for
identification.)

1 THE WITNESS: What page would you like me to look
2 at?

3 You don't really need to find the page. Just ask the
4 question.

5 BY MR. HOROWITZ:

6 Q This is a directly relevant reference, and if we
7 can locate it for you and direct your attention to it, we will.

8 It is the bottom of page 11, sir.

9 It commences with "Dean's last full statement
10 there - quoting - the way it is postured now, uh, we can
11 stonewall it, ah, Gray can go up there in his confirmation
12 hearings and he's not gonna have to bother with it, because
13 they'd accused him in the article of being, sitting on top of
14 the bugs.

15 "President: Yea

16 "Dean: . . . it was there once he came in, which
17 is not factual.

18 "President: Well, there wasn't any.

19 "Dean: There were none there when he came in.

20 "President: Well, three years ago that this
21 happened.

22 "Dean: That's right.

23 "President: . . .and there hasn't been a God damn
24 thing since.

25 "Dean: That's right. Correct.

1 "President. Right."

2 Now, directing your attention to that, sir, Mr.
3 Dean apparently is telling you that Gray is going to stone-
4 wall this article and by that, I take it, you understood
5 that he was not going to admit the allegations made in Time
6 magazine?

7 A Correct.

8 Q Do you recall discussing either with Mr. Dean or with
9 others at about this time exactly how he was going to stone-
10 wall it, how Gray was going to do that, what type of responses
11 he was going to give?

12 A No, I didn't discuss how he would testify.

13 Q Did you understand he was going to testify un-
14 truthfully?

15 A You can play that trick all you want, all day.
16 We can take all day on that. You are not going to put words
17 in my mouth. Ask the question properly.

18 Q Did you understand that he was going to testify
19 untruthfully?

20 A No, I didn't understand that.

21 Q How did you understand the stonewalling? What did
22 you understand that to mean, the reference to stonewalling?

23 A Look, the Time magazine article contained a number
24 or covered a number of subjects and I didn't feel that Gray
25 should be up there trying to respond to a lot of subjects in

1 which he might not have had any knowledge, but I did not
2 understand that he was going to testify untruthfully, if that
3 is what you meant. I am not telling you today what he knew.
4 All that I have told you today is that when he did testify,
5 contrary to what the assumptions of your earlier questions
6 were, it is very possible, more possible than not, that
7 Gray did not know that there was a wiretap still in existence
8 when he came into office, and there were none in existence
9 when he came in in the first instance.

10 Q Sir, if I can, just to make my last question clear,
11 when Dean says "we can stonewall it" and then refers to how
12 the article had some inaccuracies on the bottom of page 11 and
13 top of page 12, he is referring, is he not, to these National
14 Security wiretaps? Those are the ones that Time had alleged.
15 They weren't concerned with this Radford matter. They had
16 alleged the wiretaps of the news reporters and the White House
17 staffers and Dean is referring to stonewalling that. Do you
18 recall that, the stonewalling reference in that respect?

19 A Well, the stonewall in that respect -- trying to
20 remember what I might have been thinking three years ago, or
21 two years ago -- would be that if Dean is asked a question,
22 as Mr. Hoover was asked for the fifty years he was Director
23 of the Bureau, as to whether or not there had been wiretapping
24 and there were none at that time, that is a stonewall, yes.

25 Q I am sorry; you mean if Gray were asked that question?

1 A That is right, if Gray were asked it. I am sorry.
2 Mr. Hoover, over a period of fifty years, always stone-
3 walled that question and he was technically truthful.

4 Q Sir, do you recall -- Well, let me strike that.
5 In the course of this meeting with Mr. Dean, did you have
6 occasion to discuss with Mr. Dean several of the subjects of
7 these wiretaps, and I refer to Mr. Brandon, to whom you
8 referred earlier today, and Mr. Kraft and Mr. Lake and Mr.
9 Halperin. Now, do you recall whether you knew that anyone
10 was sent to or went to discuss with Mr. Gray those subjects
11 of these wiretaps, those particular ones, that is, Brandon,
12 Kraft, Lake and Halperin?

13 A I don't recall it, no. I have no recollection of
14 it. I don't believe the record shows in any place that I
15 instructed Dean to go over and tell Pat Gray that you had
16 this -- If you have something to the contrary, I would like
17 to see it.

18 Q No. That is why I am asking. I was just curious
19 if you could help us on that.

20 A I would tell you if I knew, but I don't recall it.

21 Q Now the other matter which is discussed at some
22 length during this meeting you had with Dean which is relevant
23 to the Grand Jury investigation is you touch upon who might
24 have leaked this story to Time and you talk about -- when
25 I say "you", I am referring to both you and Dean, to a

1 certain extent, but I am paraphrasing -- you discuss about
2 Mr. Felt and Mr. Sullivan and so forth. Now in that vein,
3 did you at this time direct that any investigation be done
4 by the FBI as to who the leak was on this Time magazine
5 article, again as to the National Security taps; that is, the
6 seventeen?

7 A No, I don't recall that.

8 Q Do you recall learning that Gray had himself
9 directed an investigation of who had leaked this information
10 to Time magazine?

11 A I don't recall that Gray told me. I think I remember
12 that in a conversation that I had with Gray --- that is the only
13 one I had with -- I expressed my general views about the FBI
14 and the relationship of the Director to the President, but I
15 don't recall any reference to conducting an investigation of,
16 a specific investigation, because your question is specific.

17 Q Right. I think we are merging together two things.

18 A I did refer to the fact that I thought the morale
19 of the Bureau was low; I thought there were leakers at the
20 Bureau, et cetera.

21 Q I think we are merging together two things, and
22 maybe this will help focus my question: During your meeting
23 with Mr. Gray, when you told him you were appointing him,
24 you had occasion to raise with him your concern for leaks in
25 Time magazine, particularly. My question is when, roughly

1 a week and a half after that, you had a leak to Time maga-
2 zine from the FBI which went to one of the sensitive National
3 Security projects, in view of having raised that specifically
4 as a concern with Gray, my question is whether you directed
5 there be any investigation or whether you learned that Gray
6 on his own conducted an investigation.

7 A I don't recall learning that he had conducted one
8 and I don't recall directing him to do so. I think he knew
9 he was going to have a rough confirmation session and I
10 imagine he was spending most of his time on that.

11 Q Do you recall hearing or discussing with others,
12 sir, in the days after Gray's relevant testimony on this
13 subject, which was March 1, 1973, when he was asked about
14 the wiretaps and in fact did at least parry those questions,
15 or stonewall them, or what you will, do you recall hearing
16 about his testimony, how he had testified on this issue?

17 A The only recollection I have, and it is probably
18 something that I read that you furnished to me or that we
19 furnished to you and you furnished to me, is that someone
20 told me that Gray had done well on one occasion and somebody
21 told me on another occasion he hadn't done very well, and I
22 didn't know which way he had done or what they were referring
23 to, actually.

24 Q To make my question a little more specific, and this
25 might or might not be of assistance, Gray's testimony, when

1 asked about the subject, was not to pointblank deny that
2 there had or had not been such wiretapping, but, rather, to
3 testify that there were no records at the FBI which was, of
4 course, literally a true statement?

5 A That is correct.

6 Q Those records are the records to which we earlier
7 referred in Mr. Martin's questioning.

8 A The ones Mr. Mardian delivered to Mr. Ehrlichman
9 and who were, therefore, in the White House, and I don't even
10 know that Gray knew where they were.

11 Q But Gray's testimony related to the record aspect
12 of it. My question is whether you recall discussing how
13 Gray had, if you will, couched his testimony in that language,
14 rather than speaking to the allegation directly.

15 A That I suggested he testify a certain way?

16 Q Whether you knew that he had so testified and dis-
17 cussed it with others?

18 A No, not the specifics of his testimony. I would
19 only get a general -- with all of the things that had to come
20 across my desk and people that came through -- I would only
21 get a general appraisal of how the man did.

22 Q Do you recall any general appraisal beyond
23 what you have already told us is what I am asking.

24 A Well, you have the tape of Dean of the 28th.

25 Q Well, that was prior to his testimony on this

1 subject.

2 A Oh, it was?

3 Q Yes.

4 A Anything with regard to his testimony, I think
5 I would have, that it was probably at some meeting that we
6 had, but I don't recall at this time.

7 You mean as to how he testified?

8 Q How he testified.

9 A As to whether he lied or not?

10 Q As to whether he couched it in a literally truth-
11 ful fashion?

12 A Let me say, first, I never directed him, and I
13 don't know anybody else that could have directed him to go in
14 and lie. I certainly didn't, and I have used this term,
15 as you will note, in one of the tapes, want to give the store
16 away as far as turning over raw FBI files to the Congress,
17 and I think all of you gentlemen would agree that is a
18 horrible practice because the raw files that we get -- the
19 FBI doesn't necessarily do work in the area -- the raw file
20 we get when people apply for jobs contain the most outlandish
21 quotes and most of it is totally irrelevant -- what a kid
22 might have done or a man have done when he is five years
23 old.

24 MR. HOROWITZ: Thank you.

25 THE WITNESS: That is not only outlandish; that is

1 just irrelevant.

2 MR. HOROWITZ: I think you have answered that,
3 and we will check with the Grand Jurors as to whether there
4 are any questions.

5 THE WITNESS: Let me say first, and I will put
6 this on the record, I first met him when he was Admiral
7 Radford's top assistant and he attended a National Security
8 Council meeting. This was back in the '50s. I didn't know
9 him well. My relationship with Gray was not personal, as
10 it was with Hoover. He was never my personal guest, for
11 example.

12 With Mr. Hoover, I would see him quite often, with
13 my wife, the two of us together, and her family, on a per-
14 sonal basis, going back over 25 years, and my relations with
15 Hoover were that close.

16 With Mr. Gray, while he had always been a
17 supporter, apparently, since the Radford days and had been
18 a good friend, I understood, it was more on an official
19 basis, but not on a personal basis. But I would say this
20 with regard to Gray, and I realize the place for this is not be-
21 fore the Grand Jury, but it bears on it because it would be
22 so easy for me to sit here and try to nail Pat Gray to the
23 mast, and I would if, first, if there were any evidence;
24 second, if there was even a suggestion which I might turn
25 into evidence if I thought he was a basically untruthful,

1 dishonorable man. I considered Patrick Gray, when I
2 appointed him, as not being particularly the best qualified
3 man to be head of the Bureau -- actually we were looking for
4 a judge or former prosecutor or any number of people, in-
5 cluding Judge Byrne, as you may recall, who I shook hands
6 with out here, and incidentally Mr. Kleindiesnt thought so
7 well of Judge Byrne that he was the one that recommended
8 him to be considered as head of the Bureau. I hope some
9 day he does get it, even though it is a little late now. He
10 is too old.

11 But what I was going to say with regard to Gray,
12 my answers on Gray and what he may have known and what he has
13 testified to are, of course, colored to a certain extent
14 by my knowledge of the man. He was a decent man; he was an
15 upright man; he had a relatively high level of intelligence,
16 but he was sometimes rather, in my view, too military and straight-
17 laced in his thinking. He didn't have the subtlety that Edgar
18 Hoover had or that I hoped that Chief Kelly has now. But in
19 terms of whenever I would hear something about Gray, first I
20 would never have appointed him if I thought he was basically a
21 man who was untruthful. I wouldn't have appointed him unless
22 I thought he was honorable.

23 I believe that in his life he did the best job he
24 could. I believe it is tragic that at this time of this silly,
25 incredible Watergate break-in, he took the papers from

1 Hunt's safe and burned them, rather than hold them, which
2 led, of course, to his withdrawing his nomination for the
3 FBI, but when you come down to the key point, you see you
4 have asked me. Mr. Horowitz, and very properly --- I wasn't
5 really needling you before, you understand -- it is your
6 job to needle me, but, very properly, when you pressed me
7 on the point, well, do you think that Gray was telling the
8 truth or was he asked to lie or this, that or the other
9 thing, that all of the information I have and with all of
10 the discussion that I have, my answer is I believe Pat Gray
11 is an honorable man. I do not believe he would deliberately
12 lie. I don't not believe that if he was told that national
13 security was involved, if he knew about the Brandon tap and
14 it was so sensitive that he could not reveal it, that he would
15 not reveal it, but I don't think he even knew about that.
16 That is my belief.

17 MR. HOROWITZ: Thank you. We are going to ask
18 the Grand Jurors if they have additional questions, and I
19 think that will take all of 30 seconds, and we will be back.

20 (Counsel and jurors withdraw from the Conference
21 Room.)

22 MR. HOROWITZ: Thank you. No further questions.

23 (Whereupon, at 12:50 p.m., the taking of the
24 deposition was concluded.)
25

C E R T I F I C A T E

I, Mary S. Smith, do hereby certify that the witness whose testimony appears in the foregoing pages was first duly sworn by the Chief Judge, United States District Court for the Southern District of California, that the testimony given by said witness was taken stenographically by me and thereafter reduced to typewriting by me, or under my direction, that the transcript is a true record of the testimony given by said witness.

Mary S. Smith
Mary S. Smith, Reporter

WATERGATE SPECIAL PROSECUTION FORCE

DEPARTMENT OF JUSTICE

Memorandum

TO : Peter Kreindler

DATE: July 10, 1975

FROM : Henry L. Hecht HLLH

SUBJECT: Typographical Errors in the Nixon Transcript

In my review of the questioning of Richard Nixon concerning alleged harassment of Larry O'Brien by the IRS, I found the following typographical errors.

- (1) Page 170, line 11, nwxt should read next.
- (2) Page 173, Claud De Sautels should read Claude DeSautels.
- (3) Page 184, line 3, type should read tip.
- (4) Page 184, line 8, type should read tip.
- (5) Page 184, line 25, type should read tip.
- (6) Page 197, Internal Report should read internal report.

Because of the sensitivity of this deposition, I have not made a chron or file copy of this memorandum.