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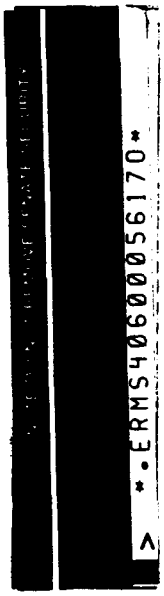
HEARINGS

Before the

SELECT COMMITTEE

ON POW/MIA AFFAIRS

UNITED STATES SENATE



Deposition of

PETER W. RODMAN

Wednesday, May 27, 1992

Washington, D.C.

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DEPOSITION OF

PETER W. RODMAN

- - -

Wednesday, May 27, 1992

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United States Senate

Select Committee on POW-MIA Affairs

Washington, D.C.

The deposition of PETER W. RODMAN, the witness herein, was convened, pursuant to notice, at 10:03 a.m. in Room S-407, Conference Room 2, The Capitol, the witness having been duly sworn by Mark T. Egan, a Notary Public in and for the District of Columbia, and the proceedings being taken down by Stenomask by Mark T. Egan and transcribed under his direction.

APPEARANCES:

On behalf of the Senate Select Committee for POW-MIA Affairs:

NEAL KRAVITZ, ESQ., Investigative Counsel
J. WILLIAM CODINHA, ESQ., Chief Counsel
JOHN ERICKSON, ESQ., Counsel

On behalf of the Witness:

NICHOLAS ROSTOW, ESQ.
Special Assistant to the President,
Legal Adviser
National Security Council
The White House
Washington, D.C.
202-456-6538

I N D E X

EXHIBITS

PROCEEDINGS

MR. KRAVITZ: Why don't we start by having Mr. Rodman state his full name and then we'll go into some instructions on the deposition.

MR. RODMAN: I'm Peter Warren Rodman.

MR. KRAVITZ: Mr. Rodman, as we were discussing off the record, first of all, my name is Neal Kravitz and I'm an attorney working for the Senate Select Committee on POW-MIA Affairs. With me today is John Erickson, who also is an attorney working for the Select Committee.

We are here today for your deposition. As I was explaining off the record, that will consist essentially of my asking you questions and your providing answers under oath.

As we were saying, we all understand that we're going to be asking you primarily about subjects or about incidents and discussions and work that you may have done approximately 20 years ago and your memory may not be the freshest. What we ask you to do is to provide us your best recollection.

If you think that documents that you know of might refresh your recollection, you should tell us that. I don't think they're here, but it may enable us to retrieve documents at a later time and maybe come back and ask you questions again.

It's very important that you understand every question before you answer it. Please don't hesitate to tell me that one of my questions is unclear or that you just simply don't understand something that I'm asking you.

The purpose in our taking your deposition is to get as much and as accurate information as we can. It doesn't do us any good if you're answering a question that you don't fully understand.

Everything during the deposition will be on the record. So every question I ask and every answer you provide will be on the record, unless for some reason we decide to go off the record. One of the reasons to go off the record would be if you wish to discuss a matter with your lawyer.

All you need to do is say that you'd like to discuss it with your lawyer and we'll go off the record and provide an opportunity for you to meet privately with your counsel.

Let me just say one thing about the fact that everything is on the record. As we discussed off the record before we started here, the deposition is being taped and a transcript will be typed up within a couple of weeks.

Under the Rules of the Senate Select Committee, you have access to that transcript and an opportunity to review it and to make any corrections if anything is typed

up incorrectly. I've provided you with my business card, and if you're interested in -- you're not required to review the transcript, obviously.

If you're interested in reviewing it, you should just contact me and we'll make arrangements for you to have a room here or at some other secure room in the Senate for you to review the transcript and prepare an errata sheet if you desire.

MR. ROSTOW: Is it your practice to allow agency counsel representing a witness also to review the transcript or not?

MR. KRAVITZ: As far as I know, that's never come up. But I don't see that that would be a problem. I'd have to check with our Chief Counsel, but I can't imagine that that would be of concern.

Also, for the record, why don't we have Mr. Rostow state his name and spell his name for the reporter.

MR. ROSTOW: I am Nicholas Rostow. That's R-o-s-t-o-w. I am Special Assistant to the President for National Security Affairs and Legal Adviser to the National Security Council, and I'm here representing Mr. Rodman because I understand the deposition is to cover principally the period of the Paris peace negotiations and perhaps other periods in which Mr. Rodman was an employee of the National Security Council.

MR. KRAVITZ: Let me just ask Mr. Rodman whether he is satisfied with Mr. Rostow being here representing him, in light of the fact that you're no longer employed by the National Security Council and Mr. Rostow is here, at least in part, representing that agency.

MR. RODMAN: I understand what you're saying, and it was at my invitation that he came along. Steve Gekoski volunteered to me that I could bring someone along, a counsel, and he suggested the State Department. And it occurred to me that NSC was more relevant since it relates to my NSC tenure.

So it was my choice to bring Nicholas Rostow and I am comfortable with that.

MR. KRAVITZ: If at any time there seems to be any conflict in your mind, just let me know.

MR. RODMAN: No. It was my decision, a conscious decision.

MR. KRAVITZ: I understand. I just want you to know that you have a right to have a lawyer here representing you. And if at any time you feel -- I can't imagine this would happen, but if at any time you feel there's a conflict between you and the National Security Council, you should just let us know.

MR. RODMAN: I understand that.

MR. KRAVITZ: I want to mark a few documents just

to begin with. Let me have marked No. 1 the Notice of Senate Deposition.

(The document referred to was marked for identification as Rodman Exhibit No. 1.)

MR. KRAVITZ: Mr. Rodman, this is a copy of a deposition notice that was mailed to you some time in the recent past.

MR. RODMAN: Yes, I received it.

MR. KRAVITZ: Do you have any questions about it?

MR. RODMAN: No, it's just a notice of this meeting.

MR. ROSTOW: Are you going to swear him, Mr. Rodman?

MR. KRAVITZ: Yes. I guess I forgot to do that.

MR. ROSTOW: In a technical sense it's unnecessary, since we all now know the consequences of not telling the truth to a Government official.

MR. KRAVITZ: Actually, we are going to swear in Mr. Rodman, as we've been doing with all the other witnesses. Actually, I appreciate that. Why don't we do that now. I thank Mr. Rostow for that.

Whereupon,

PETER W. RODMAN

was called as a witness by counsel for the Select Committee

and, having been first duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR
THE SELECT COMMITTEE

BY MR. KRAVITZ:

Q. I'm going to show you Exhibit No. 2 for purposes of the deposition, an authorization form for the deposition signed by the Chairman and Vice Chairman of the Committee.

(The document referred to was marked for identification as Rodman Exhibit No. 2.)

BY MR. KRAVITZ:

Q. Was that document also provided to you in the mail?

A. Yes.

Q. Do you have any questions about it?

A. No.

MR. KRAVITZ: Exhibit No. 3 is a copy of the Authority and Rules of the Senate Select Committee on POW-MIA Affairs.

(The document referred to was marked for identification as Rodman Exhibit No. 3.)

BY MR. KRAVITZ:

Q. Did you have an opportunity to review that?

A. Yes.

Q. Do you have any questions?

A. No.

MR. KRAVITZ: One final item as an introductory matter is something that I don't think you've seen. It's a memorandum dated May 11th, 1992, from Duane Andrews, who is the Assistant Secretary of Defense for Command, Communications, Control, and Intelligence. And you can take a minute to read it, but in essence what it does is grants you a DATA security clearance for purposes of this deposition.

(The document referred to was marked for identification as Rodman Exhibit No. 4.)

(Pause.)

BY MR. KRAVITZ:

Q. On the issue of security clearances, I should tell you -- well, let me ask you this. Do you have through any other source a security clearance higher than DATA at this time?

A. At this time, no.

Q. My security clearance then, as yours, is actually only one of DATA .

MR. ROSTOW: Not DATA .

MR. KRAVITZ: I'm sorry?

MR. ROSTOW: Not DATA .

MR. KRAVITZ: Yes. And what is your security clearance, Mr. Rostow?

MR. ROSTOW: . DATA

MR. KRAVITZ: You've got a lot?

MR. ROSTOW: A lot, a lot of DATA .

MR. KRAVITZ: Mr. Erickson?

MR. ERICKSON: DATA .

MR. KRAVITZ: Our court reporter has also a DATA DATA

I guess the bottom line is, then, that you should feel free obviously to answer any questions up to the DATA level. We have some documents here that are at that level. For obvious reasons, we have no documents here that are above that level, and I will not intentionally ask you any question seeking to elicit information above the DATA level.

If by chance I ask you a question to which you believe the complete honest answer would require you to provide information that you recall from your past that is at a level higher than DATA , you should not answer the question, but rather you should just tell me that the answer would involve information higher than DATA , and we'll figure out some other way to proceed.

BY MR. KRAVITZ:

Q. Do you understand that?

A. I understand.

Q. In terms of our schedule, we'll go for approximately an hour, hour and a half at a time, then take a five or ten-minute break, just so everyone can get up and walk around and make a phone call or whatever you need to do.

On the other hand, if you need to take a break at any point, even if it hasn't been an hour, just let me know. We can easily take a break.

MR. ROSTOW: Can we go off the record a second?

(Discussion off the record.)

(Recess.)

BY MR. KRAVITZ:

Q. Mr. Rodman, let me just start briefly by going into some of your background and training. Where did you attend college?

A. Harvard College.

Q. What year did you graduate?

A. 1964.

Q. What was your major?

A. Government.

Q. What did you do after you graduated?

A. I spent two years at Oxford studying politics, philosophy, and economics. Then I came back to Harvard Law

School. I have a degree from Harvard Law School in 1969.

Q. Was there any specific subject within the government field that you majored in in college?

A. International relations.

Q. Have you had any further education after Harvard Law School?

A. No.

Q. At any time did you study the subject of negotiation?

A. Well, it's part of what one learns in university about foreign policy. It's just part of contemporary history. I don't take seriously courses in negotiation as such. I think one learns about it from history and understanding how nations behave in general.

Q. Were there any specific negotiations that you can recall studying, either at college or some later time, that you relied on in terms of your approaches to negotiation policies?

A. I can't recall.

Q. What did you do after law school?

A. I came to Washington to join the NSC staff in August 1969.

Q. Go ahead.

A. Well, just to explain, at Harvard I came into contact with Henry Kissinger, who was my tutor my senior

year in college, and developed a relationship with him as a research assistant.

And summer vacations or other vacations when I was going to school, after graduation, including even law school, I would work with him on things he was doing. And in the summer of 1968 we worked on Nelson Rockefeller's presidential campaign. This was between my second and third year of law school. When most people go get a legal job, I was in Miami Beach trying to stop Richard Nixon from becoming President.

But Kissinger said to me at one point that of course if Nelson won the election -- I won't try to imitate his accent -- that he would be delighted to have me join him in Washington. And of course we lost our candidate along the way.

But when he was asked by Richard Nixon to be the National Security Adviser, he did invite me to come. And I joined him, as I said, the beginning of August of 1969.

Q. You said Dr. Kissinger was your tutor your senior year in college?

A. Right.

Q. Did he supervise your thesis?

A. That's right, an hours thesis, undergraduate thesis. The system at Harvard is for one course you have a one-on-one relationship with a senior professor and you

write a thesis under his direction. It's a worthwhile experience.

Q. What was the subject of your thesis?

A. The Cuban missile crisis.

Q. Was one of the subjects you discussed the negotiation process involved in that crisis?

A. Yes.

Q. Would you say that Dr. Kissinger was an integral part of your thesis, your thinking in regard to that piece of work?

A. Yes, he was.

Q. When you arrived at the National Security Council in 1969, had you had any negotiation experience yourself?

A. No.

Q. Had you had any experience dealing with subjects of military intelligence or analysis of military intelligence?

A. No.

Q. Had you had any experience in the subject of accounting for missing, casualty accounting?

A. No.

Q. When you got to -- actually, let me back up. You said that you had worked for Dr. Kissinger during summers and vacations?

A. Right.

Q. What type of work did you do for him?

A. Well, this was library research on issues of foreign policy and history connected with books he was writing, some of which he did publish and others he never finished.

Q. Was this before the time that he was working for President Nixon?

A. Oh, of course. He was still a professor.

There was a book on European policy called "The Troubled Partnership" that he published in 1965. The summer of '64 I did a lot of work on that. Various European-American policy issues. He also started to work on some larger work on international relations, political philosophy, and history.

And even when I was at Oxford, obviously I had the use of the libraries there and was able to do some projects of research on British and European history and political philosophy.

So that's the nature of the research I was doing.

Q. When you joined the National Security Council staff, what was your position?

A. It was called Staff Assistant at the beginning, and later on I took the title of Special Assistant to the President for National Security Affairs. But it was basically a very junior position at the beginning.

Q. How long were you on the NSC staff?

A. I stayed on the NSC staff until January 20th, 1977.

Q. That was the day that President Carter was inaugurated.

A. Right, right.

Q. So in other words, you remained on the staff in the same position that you had been previously when President Ford took over?

A. That's correct.

Q. So August of '74 was not the time that you actually changed titles?

A. No, no. That's correct.

Q. When was your title changed?

A. Well, it was very informal. I think I asked Brent Scowcroft at some point if I could call myself a Special Assistant and he said yes, and there was a piece of paper perhaps. It was not a consequential matter.

But I stayed on the staff through the change of administration and even when Dr. Kissinger became Secretary of State. And there were various stages. As you know, for a while he retained both jobs, then he lost the NSC job. And I stayed where I was.

I can just explain that I had the choice. He invited me to come with him to State, to the State

Department, and I decided to stay where I was. I was in a fairly pivotal position in the West Basement with Scowcroft.

Particularly when Kissinger had both jobs, it was work he used to do through his White House office, and I was a kind of liaison. And at that stage I was accompanying Dr. Kissinger on most of his trips and diplomatic missions, and I would kind of be the liaison between him and Scowcroft.

I used to handle certain chores that came up, and in fact the same relationship continued even after he lost his hat formally, because nothing really changed then.

But anyway, I would have been lost in the crowd at the State Department. But being in the White House in the West Wing, I had some access to things and some function, useful function, and I preferred to stay there.

Q. You mentioned that you accompanied Dr. Kissinger on some of his trips. Were there specific subject areas that you focused on, or were you one of the more generalists within the NSC staff?

A. Well, it's a mixture. Beginning about 1972, I started going on most of his trips. There were some issues on which I had, I think, more involvement. One was Middle East and the other was Soviet affairs. On issues like China and Vietnam, Winston Lord was clearly the principal special assistant. But I accompanied Winston as a kind of junior

partner of Winston on Vietnam and China, because as the work increased it was useful to have an extra person.

But on Soviet matters, since I knew some Russian, Winston didn't play such a great role on that. On the Middle East, I was one of Kissinger's, part of the inner circle on Middle East matters. But I am a generalist and I did go on most trips, including the European trips, Japan, southern Africa, in 1976.

So I got into most of the business as a kind of general extra helper, helping staff certain projects wherever it was useful.

Q. What was your involvement in the secret negotiations with the North Vietnamese government?

A. From the beginning, I was aware of them and I did have access to the records. So I was familiar with the fact that he was traveling to Paris, but nothing much was going on in these talks.

But in the spring of '72, he predicted that, if we blunted the North Vietnamese offensive, that this negotiation would pick up. So he told me that I should start to come along, just as an extra hand.

I didn't go on the May 2nd trip, but I think in July I started going on the Vietnam missions as well.

Q. So you didn't go on any of the trips starting back in 1969 and 1970?

A. No, no. It was some time in '72 that I started going. I think it was July.

Q. You indicated that you were aware of the earlier secret trips?

A. Yes.

Q. Was there only a small number of staff members who were aware of those trips?

A. Yes.

Q. So that even among the NSC staff there were a lot of people who weren't aware of the trips?

A. Well, the people who dealt with Vietnam did know, the people like John Negroponte and Dick Smyser and people who had been -- I forget who was involved before. Kissinger used to work with the professional staff plus a special assistant. It was sort of a team.

Winston, you already talked to Winston. He was always, he was a trusted associate. And Kissinger would use some people like us who he trusted implicitly, plus the professionals, who had sort of a professional background in Vietnamese affairs.

So in that sense it was a normal way to proceed. He did not exclude the people on the staff whose job was Vietnam affairs.

Q. Who were the professional staff members who were specialists on Vietnam affairs?

A. I don't remember at the beginning period. You may know better. I remember Dick Smyser and Negroponte. I forget who was Smyser's predecessor, but I know Smyser was involved in the talks.

MR. ROSTOW: Can I interrupt? When you say these people were specialists on Vietnam affairs, I'm not sure that's quite accurate, is it? Shouldn't that be explained a little?

THE WITNESS: I'm happy to. Their job on the staff was to be involved in Vietnam affairs. Our Government, at the time of our Vietnam involvement we did not have armies of people who knew Vietnamese. They recruited people from other fields.

Dick Smyser started out as a European scholar. Negroponte is a Latin Americanist. But they all were thrown into the subject matter. Negroponte served, I think, in the field in Vietnam, and maybe Dick Smyser as well.

So they had by immersion become our Vietnam specialists and that was their function on the staff.

MR. ROSTOW: That's exactly what I meant. It isn't as if they were Ph.D.'s emphasizing Vietnam studies or Indochina.

THE WITNESS: No. They were foreign service officers who had been thrown into this topic, as a lot of other people were, and developed some expertise.

BY MR. KRAVITZ:

Q. What was the difference in the roles taken by these professional staff members, such as Mr. Negroponte and Mr. Smyser, and the roles played by you or Winston Lord?

A. Well, there were some things that he would do directly with us, or he would use Winston for drafting messages and so on, and he would not always involve the other staff members.

But at least to my recollection, through most of this process the other staff members were not excluded from knowledge of what was happening. They may not have been his most immediate confidants, but it was a team effort.

Certainly, as the negotiations suddenly had content, he needed the help of everybody on the team.

Q. Can you give us a sense of how many people on the NSC staff were working on the negotiations over time, say going back to 1969, when you first started working at the NSC?

A. In 1969, I don't really remember. It's possible that on his first meetings with the Vietnamese he may have had only one special assistant. Tony Lake was a special assistant that first year before Winston got involved.

I frankly don't remember how many people went on these trips. I think it probably grew over time. For a while there wasn't much content to these discussions. In

'72, as I said, it got a little more interesting, and he brought -- well, for many years he didn't even have an interpreter.

We used General Walters, who was the air attache in Paris, who is a multilingual fellow and who would translate into French, and then the Vietnamese would translate into French. It was a complicated thing.

In '72 at some point, maybe in the mid-summer, we got a young FSO who was a Vietnamese speaker. So we had our own interpreter, so that expanded the team.

Q. Who was that?

A. David Engel.

Winston and me, and we even brought a secretary at some point to transcribe the record. So that's the team.

Now, you asked the number of people who would be involved. It may well be that some of the other staffers at home dealing with Vietnam were aware and were helping out. I'm just not sure how the staffing worked in the EOB.

Q. Now, once you became personally involved in the secret negotiations -- I think you said it was some time either in the spring or summer of 1972 --

A. Yes.

Q. -- did you continue to be personally involved right up through the signing of the accords in January of '73?

A. Yes, and in fact through the signing of the so-called communique of June 13th, '73.

Q. And you went on all the trips to Paris?

A. Almost all. I think I may have missed one or two because of his itinerary. I think in September, September 15th, I don't think I went on. He was going on to elsewhere. I don't think I went on that trip.

But most of his trips.

Q. In that later stage of the secret negotiations, who was on the team? You've already mentioned Mr. Engel as the translator, and obviously Mr. Lord.

A. Lord, myself, Negroponte, at some point William Sullivan from the State Department joined. I think this was late in the fall. As it got closer to the time of the agreement, we had George Aldrich, who was the Deputy Legal Adviser of the State Department, and General Haig accompanied us on some of these trips.

I may be missing somebody. I'm sure if I looked it up in the memoirs I'd see a list. In fact, there's some pictures in the book about the group. But those are the people who come to mind.

Q. Were you involved in the public negotiations?

A. No. You mean the formal Paris peace talks?

Q. Right.

A. No.

Q. Was there a definite split within the staff of who was involved in the formal negotiations?

A. I don't think any of us were direct participants in those talks. That was a State Department activity. The State Department would clear with the NSC its proposed statements for these sessions of these talks, and there would always be a report. Somebody would do a summary report to Kissinger, what went on. I guess it was a State Department summary of those talks.

So we obviously monitored what was going on in that forum. But that was a public forum, which tended to be a place where important business did not happen. You could see the debate and the two sides jockeying publicly and so on, but the settlement, real negotiation, didn't take place there.

Q. Certainly, from what I understand, it was pretty frequently the case that there were different positions being taken by our Government publicly than what was being taken in the secret negotiations?

A. No, not inconsistent positions. I think some of the more sensitive exchanges went on in the more private session and were not always reflected in the public session.

But that was true of the other side as well. I mean, they sometimes made proposals in the secret sessions

that were not reflected in the public ones. I would state it that way.

Q. We're obviously going to come back and go into much more detail about the negotiations themselves. But I want to ask you before you get to that, can you give us just a brief summary of what you've done professionally since January of '77?

A. Of course. I went out of Government with Kissinger and I accompanied him to the Center for Strategic and International Studies, the think tank in Washington that was at that point connected with Georgetown University. And I stayed with him until March of 1983 and I worked with him on his memoirs and did some things on my own, writing and so on. But I was going to work with him there.

In March 1983 I rejoined the Government. I went to the State Department on the policy planning staff with George Shultz. From March '83 to April '84, I was a senior member of the policy planning staff.

April '84, I became the director of the policy planning staff. This is under George Shultz. I stayed in that job for two years, until March '86.

In March '86 I was lured back to the NSC as a Deputy Assistant to the President. This was when poor John Poindexter was the Security Adviser, and his deputy was John Fortier, whom you maybe had a chance to meet.

: John was his principal deputy, and Poindexter decided to adopt a three-deputy system. I think he felt he needed -- he knew he needed some help. So he had three deputies. One was Fortier, and he had a deputy, namely me, supervising foreign policy issues, and another deputy to watch defense and arms control issues. I was the deputy for foreign policy. That was a fairly senior bureaucratic status.

At the end of '86, of course, everything fell apart. There was a great purge. But I was clean. I had not done anything wrong. In fact, I was one of the few people who knew about the sales to Iran, and I told them it was crazy.

I said this to Poindexter, said it to Fortier, said it to North, and so on. So they did not consult me a whole lot from that point on on the subject. But I also hat the wit to put it in writing at some point that I thought it was turning into arms for hostages and it was a strategic mistake.

Anyway, so the new people came in, Frank Carlucci, and asked me to stay on. But he went back to the normal system of having one deputy, who was Colin Powell. So I was bumped down to the lowly status of Special Assistant to the President, with still a kind of general policy planning overview mandate, I mean a portfolio to keep an eye on

everything and be a strategist and think ahead. It was a kind of policy planning function.

When Bush came in, he also asked me to stay. Scowcroft was somebody I knew from the old days in the Kissinger times. So I was invited to stay on.

I left in September 1990 in order to write a book and do some things on my own.

Q. Is that what you've been doing since September of 1990?

A. Yes.

Q. What's your relationship with Johns Hopkins University?

A. Well, I'm a fellow of the Johns Hopkins Foreign Policy Institute. The Foreign Policy Institute is a little research institute that is part of SAIS. SAIS is the School of Advanced International Studies. So I'm not a member of the faculty, but I'm part of this institute, and I do some teaching.

It's a think tank that is part of the school, but not -- as I said, I'm not a member of the faculty as such.

Q. Has any of the writing that you've done related to your experiences in the Vietnam negotiations?

A. I've published an article on Cambodia about a year ago, on the Cambodian negotiations, particularly the more recent period. It may reflect some of my experience. It

doesn't deal with the subject matter of the Paris agreement or the POW issue, but it's obviously related.

My interest in this subject goes back to the earlier period. When I was working for Kissinger between '77 and '83, I wrote some articles. I wrote a critique of William Shawcross' book on Cambodia. We obtained the same Freedom of Information Act documents that he had obtained and found out that his research was totally shoddy and it was a fraudulent book. And I wrote some long pieces on that subject.

Shawcross, as you know, developed the thesis that we were responsible for the holocaust in Cambodia, and his argumentation is rather misleading.

The book I'm working on is about the Cold War in the third world, the U.S.-Soviet rivalry in the third world, and it touches on Vietnam a bit and the Cambodian negotiation.

Q. Have you ever written anything specifically related to the Vietnam negotiations?

A. Well, not the negotiations as such. I'm trying to think of things that are related. I did a book review on Norman Podhoretz's book about the Vietnam War. I think those are the things that come to mind about what I've written about that experience, not the negotiations, not the negotiations as such.

Q. You mentioned that you assisted Dr. Kissinger in writing his memoirs.

A. Yes.

Q. What was your role in that process?

A. I was his principal research assistant and editorial assistant. There were a few people, a few of us, who had left the Government with him and were familiar with what had gone on, who were able to work with his files in the Library of Congress and so helped organize them so he could work with his files in some useful way.

Editorially I helped him. As he produced the drafts, I was one of those who sort of helped smooth it out, put the verbs back in the middle of the sentences.

Q. Having clerked for a judge, I know exactly what you're talking about.

Who wrote most of Dr. Kissinger's memoirs?

A. He wrote all of it. He did the drafts. There were a number of people who helped, who would mark up a draft and give it back to him, and he would sit down with other people's comments and recast it if he chose. But he did the draft.

He had, as I said, a number of people making various kinds of suggestions, structural suggestions or whatever. But he did the first draft and all the subsequent drafts. He'd get a lot of people's advice on how to revise,

but it was his product.

Q. Have you ever written anything on the subject of prisoners of war or missing in action, accounting for casualties, anything on those subjects?

A. No.

Q. Have you ever written anything on negotiation strategies or techniques?

A. Yes. Actually, I did a piece on the Iranian hostage negotiation March 1981 in "The Washington Quarterly." It was a criticism of the way the Carter Administration had handled the Iranian hostage negotiation.

As I said, my Cambodia article a year ago, which was in the "National Interest" magazine, was about the negotiation that just recently ended the Cambodian conflict.

Q. In 1981 you were still working with Dr. Kissinger?

A. Right.

Q. Did he have any input into your article criticizing the Carter Administration?

A. I showed it to him and he thought it was good. But no, it was my own work. He may have made some suggestions, but not significantly.

Q. You don't see him as having acted in the role of an editor?

A. No.

Q. Did you have any involvement in any prisoner of

war-missing in action issues before you joined the NSC staff in 1969?

A. No.

Q. Have you had any direct involvement with any POW or MIA issues since the end of the Paris negotiations?

A. No.

Q. One of the subjects that we are hoping you can help us on in terms of our understanding of who was controlling the Paris talks from the United States Government's perspective is really the balance of power between the State Department and the National Security Council throughout President Nixon's tenure as President.

When you joined -- you joined the National Security Staff in the fall?

MR. ROSTOW: I'd like to make just a statement for the record. It is now 10:45 and you guys haven't even come close to anything that remotely has anything to do with the subject of POW's and MIA's, and I just feel rather concerned that Mr. Rodman's time is valuable, your time is valuable, my time is valuable.

I just wish that to be in the record.

MR. KRAVITZ: Your concern is noted. However, I should tell you, Mr. Rostow, that this is our deposition and we will conduct it as we see fit.

MR. ROSTOW: I understand.

MR. KRAVITZ: And I should say that our outline has been approved by our Chief Counsel.

MR. ROSTOW: I understand.

MR. KRAVITZ: If you have concerns about it, I don't think this is -- I just don't think it's your position to seek to control the subject of this deposition.

BY MR. KRAVITZ:

Q. So why don't we go back to the question. You told us that you first joined the NSC staff in the fall of 1969?

A. August 1st, I think.

Q. At that time, from your point of view were the negotiations being controlled more by the State Department or more by Dr. Kissinger at the NSC?

A. Well, my recollection is fuzzy. From what I've heard -- in fact, I've read Kissinger's own account of the early years and his relationship with Rogers. The State Department started out with the authority. The State Department started out dealing with the Soviets, dealing with the issues, in ways that went against what Nixon had in mind.

Nixon came in with some very definite ideas about strategy toward the Soviets, for example, and definite ideas about how he wanted to deal with the issue of Vietnam with the Soviets, for example. And the State Department didn't seem to understand what Nixon had in mind, and they would

charge ahead and conduct conversations with the Soviets or whatever that either showed no understanding of Nixon's preference or of sophisticated foreign policy as he conceived it.

So an evolution took place, which is that Nixon and Kissinger themselves started to, first of all, impose presidential will more concretely on various things. Then as it evolved -- this didn't just happen at the beginning. As it evolved, Nixon decided he'd rather trust Dr. Kissinger to handle some things or to conduct some back channel exchanges, rather than let the State Department screw it up.

The second point I think I have to make clear is that in a lot of negotiations, such as arms control, the principal negotiators were a team of people handling the main negotiation, and the role of the White House in the back channel was to intervene whenever some particular deadlock occurred.

I mean, arms control, for example, is such a complicated topic that nobody in the White House can negotiate this. But when a deadline would appear or some crucial issue that needed to be resolved, it could only be resolved at the political level.

This is the essence of any negotiation. An issue gets raised to the political level if there is to be any hope of breaking the deadlock, and that's at the point that

on a number of issues Kissinger on Nixon's behalf would step in, in fact with Nixon's authorization, if not instigation.

So that's really the evolution of it. So in a lot of cases there was a division of labor between the official delegation and the sort of White House intervention.

Berlin is another example, where there were a lot of negotiations. The main negotiation was in this formal channel, but there was this back channel kind of intervening on crucial points, without which the thing wouldn't have gone anywhere. And I think Vietnam started out that way.

I do not have an impression of Kissinger intervening a lot in the formal negotiation. What Kissinger's role was was helping to prepare Nixon's negotiating positions. There were a series of speeches -- November 3rd, 1969; October 3rd, 1970, May 1969 -- where Nixon would announce a new position on the issues under negotiation, and obviously that would be the product of an inter-agency deliberation.

But Nixon's final choices would be very much the result of Nixon and Kissinger deciding together what they thought was the right negotiating strategy. Similarly on troop withdrawals.

Troop withdrawals was a little bit different. Nixon had the idea that he wanted to control this process of every once in a while announcing another increment of troop

withdrawal. But he had a hard time with Mel Laird, who used to kind of preempt and force his hand a little bit.

But there too, Nixon wanted to sort of have control over these issues of strategy himself, and he and Kissinger would be sort of closeted and would help shape the decision. That's one way of looking at the delegation of labor: These are obviously presidential matters, not for the bureaucracy.

What Nixon and Kissinger developed was a procedure by which the bureaucracy would give its input and give its advice, and then Nixon would decide himself, and he would not necessarily accept the advice of the Cabinet Departments.

And Kissinger clearly had evolved into a role where he was Nixon's principal adviser on these issues, not so much in what somebody said at Paris, except to the extent that when Nixon announces a new Vietnam position, that was the guidance henceforth for our negotiators.

The decisive thing was the formulation of the new position in Washington, and in that Kissinger clearly had the major role at that point. It varies. I think even in the beginning, early on in May 1969, Kissinger and his staff helped to shape that very conciliatory negotiating position, May 14th, 1969, I think.

Q. So was it definitely the case that Dr. Kissinger

was more prominent than anyone from the State Department in helping President Nixon determine the negotiation strategies for the Government?

A. As I say, there was an inter-agency process that contributed ideas. Nixon needed to know what his people recommended. But I think, yes, the adviser he came to rely on the most was Kissinger.

Q. From your point of view in what you saw and heard and experienced, how involved was President Nixon in terms of determining the negotiating strategy for the Government?

A. Well, every time there was a major change in our negotiating position, it was a presidential speech, a highly political act, in the middle of sort of near-civil war conditions at home, rebellion in the Congress constantly, and people, tens of thousands of people demonstrating in the streets.

This is not something a President delegates. So this was some of the most important decisions Nixon was making. He, being a highly intelligent man, was as engaged as he could possibly be in making these decisions, because, as I said, they were announced usually in presidential speeches: a new position on Vietnam responding to something or trying to get the negotiations on track.

Q. What about with regard to the strategies used in the secret negotiations? Obviously, those were not

announced in speeches.

A. Those were, I think, him and Kissinger. Those were developed between him and Kissinger, in consultation with the South Vietnamese and with some State Department involvement.

As it developed, Kissinger realized that he needed some help. Bill Sullivan was brought on. I think as the negotiations got more serious he was relying on some State Department expertise. But these were again Nixon-Kissinger together.

Now, you can read the memoirs of both men and see how some tensions developed at some crucial moments toward the end.

Q. How much reliance was there, either by NSC staffers or by Nixon and Kissinger themselves, on experts from the State Department or from the Defense Department on specific subjects, such as prisoners of war?

A. Well, my recollection was more of the State Department involvement in the diplomacy. I recall that. I don't recall Defense Department representation on our team.

On the other hand, our staff included a number of military people. And this could be checked. Certainly in the early years of Vietnam policy in the Nixon Administration there were military people on the staff dealing with issues of strategy, and quite possibly the POW

issue as well.

But we did not have DOD representatives on the negotiating team.

Q. We've spoken with someone named Frank Sieverts from the State Department.

A. I know Frank.

Q. And a man named Roger Shields from the Defense Department, who was the head of the POW-MIA task force within the Pentagon.

Were those the type of people who on various subjects provided input to the negotiating team, or were they really not relied on?

A. Well, I think, I suspect strongly, that our staff was in constant touch with their colleagues in the rest of the Government. Kissinger would deal with people in his immediate circle and Bill Sullivan was brought into that circle, and George Aldrich and so on as the thing developed.

But the job of an NSC staffer includes very prominently keeping in touch with everyone in the Government who is a source of information and so on. And I think certainly as the negotiations became public, as they did in '72, there was no inhibition about the NSC staff -- I mean, I don't speak from personal observation, but I think that's the normal job of an NSC staff person.

Q. To get as much information?

A. To get -- to be in contact with colleagues around the Government and have the advantage of their input.

Q. I mean for example, how did somebody like Dr. Kissinger educate himself or how did he get educated as to what to ask for on the subject, say, of prisoners of war or missing in action accounting?

A. Well, most of our public positions, and even in the private negotiations, reflected sort of collective deliberations of the U.S. Government. I mean, when Nixon made a speech the input came from all of the agencies and he would make a decision of how he wanted it to go in the end.

But major decisions about negotiating positions, certainly the public speeches, had the benefit of the input. Then as the secret talks developed and things were done a little more quickly, you didn't have that kind of deliberation.

But on the POW issue, I have to say our position didn't change. I can tell you what the issue was. The issue was an adamant insistence by the United States that our prisoner release be unlinked to political issues. This was agreed to by the whole Government. It was not controversial in our Government.

This is a position we stuck to for years. The North Vietnamese insisted on linking it to settlement of the political conflict within Vietnam and we insisted, on the

contrary, that our strong preference was to have a solution to the military issues that was not linked to this political conflict.

I don't remember a lot of repetitive deliberations on a subject on which the Government's position was pretty set.

Q. In terms of our being able to review Dr. Kissinger's papers and have a sense of what we're looking for that might be most informative, are there memoranda, say, from people like you to Dr. Kissinger on specific subjects, or would they more be just meetings where you would just talk to him?

In other words, is there a paper trail of really the building and the determination of the negotiation strategies?

A. Well, these would be in the Nixon files, too. I think you have a complete record of the negotiating record and the White House memoranda and so on and NSC memoranda. I think there might be a more complete set in the Government files.

But some of it -- well, it varied from time to time. In the early years, I think the NSC staff probably sent memos to Kissinger about negotiating issues.

MR. ROSTOW: Do you recall such?

THE WITNESS: I recall seeing such memoranda from the staff that went through the system on a variety of issues on Vietnam policy, including negotiations. You know, later on, certainly on a trip a lot of it would be oral, talking about it within the team, and there may have been things in writing as well. I don't recall specifics.

This was not the most contentious issue, frankly.

BY MR. KRAVITZ:

Q. The POW issue?

A. Right. Among the Government, I think our policy was set fairly firmly.

Q. Winston Lord told us that in his recollection POW's really weren't discussed that much, either within the negotiating team or between the two sides, because it really was an issue that the United States had made it clear we were not willing to negotiate on. Is that something -- is that a statement that you would agree with?

A. Yes.

Q. You mentioned earlier that Dr. Kissinger used to get involved in back channels, through back channels, in a lot of issues. I don't know whether it's just a coincidence you used that term. Does that refer specifically to back channel cable traffic?

A. Yes. I'm thinking of message traffic. It's a generic name for message traffic that did not go through the

usual diplomatic channels. Sometimes the CIA would be the messenger or we would set up some sort of special channel.

Talking about the subject of Vietnam, we're referring to a channel to the Vietnamese which went through Paris, and it was basically a message to our own air attache, General Walters, on a secure channel that didn't go through any agency that I'm aware of, DATA

DATA .

But anyway, Walters would then deliver it to the North Vietnamese representative. But we had no diplomatic links with the North Vietnamese, and it's a back channel in the sense that it didn't go through the State Department communications or any other formal thing.

We also had a back channel to Ellsworth Bunker in Saigon for our exchanges with Thieu and all of this, and there was sort of constant consultation with Thieu. It was a special communications channel that went from the White House to Bunker, that again didn't go through State Department channels. So we would call that a back channel. That's what it refers to.

Q. Where do you think those cables are located now? Do you think they're in the Nixon Project?

A. Certainly. There should be a complete set of those in the White House files.

Q. And you're referring specifically to the cables

that went to the Vietnamese through Mr. Walters --

A. I believe.

Q. -- and the cables that went to Ambassador Bunker?

A. Yes.

MR. ROSTOW: I'd just like to note for the record that Peter does not have personal knowledge, presumably --

THE WITNESS: I don't know where they are now.

MR. ROSTOW: -- of what happens to them when they're boxed up.

THE WITNESS: That's true.

MR. KRAVITZ: I understand that.

THE WITNESS: It's just my belief that there's a set, a complete set, that was made part of the presidential file.

BY MR. KRAVITZ:

Q. Are you aware of any other back channel cables or telegrams that you think would be helpful in our understanding of the negotiating process?

A. Well, I can't determine what would be helpful. We had back channels to our other ambassadors, some other ambassadors, I think in Thailand and maybe Laos and I guess in Cambodia.

I'm not always sure. There may have been back channels, there probably were, but the content of those, the message traffic, I can't recall to necessarily help you in

your investigation. China. We had exchanges with the Soviets and Chinese through all variety of channels that often discussed Vietnam, but not necessarily the POW issue.

And there were meetings. Kissinger would meet, obviously met with the North Vietnamese and the Chinese, sort of exchanges of that kind, memoranda of conversations, as well as written traffic.

Q. Did you or any other staff members write memoranda to the President or to Dr. Kissinger either summarizing secret negotiations or preparing for secret negotiations?

A. I think that happened. I recall certainly as he would set out on a trip he would often put in writing a plan, his proposed strategy. Then on the way back we would often, particularly Winston would often, do a summary, or the staff would work exhausted on the airplane back home and do a sort of a summary of what had happened for the President's eyes only.

Q. Did the President respond to those memos in writing, or was that something that just happened orally?

A. Kissinger would go off with the President after these trips and he would report directly to the President personally. Perhaps General Haig would sit in, but usually these were very restricted meetings.

Q. Do you remember being present at any of those?

A. I was never present at such a meeting.

Q. As far as you know, were other NSC staffers ever present?

A. They were not.

Q. Were the secret negotiations, as far as you know, ever discussed at the National Security Council before the time that they were made public?

A. I don't think so. You know, this is checkable. I don't recall it. I don't believe that they were.

Q. All I'm asking for is what your understanding was. I know you weren't there, obviously.

A. But I should say, I think Kissinger felt that, he and Nixon both felt, that what they were doing was within the framework of what the U.S. Government as a whole was willing to do. It wasn't inconsistent with the Government's deliberations.

There were times, particularly when Nixon made a speech, when he would get the wisdom of the rest of the Government and then make his own choices about how to proceed. So I don't think he necessarily broke from what would have been the Government consensus on a lot of these issues.

Q. How much communication was there between Kissinger and Nixon at various stages of the negotiations when Dr. Kissinger was in Paris and Mr. Nixon was back in Washington, or wherever else he may have been?

I guess what I'm getting at is, how much authority did Dr. Kissinger and the negotiating team have to change strategies, make policies, before they had to go back to President Nixon to get his approval?

A. Well, this evolved. Most of the negotiations were one-day or maybe two-day sessions. They started to get two days I think in the summer of '72. So most of these things were quick encounters, with an exchange of views, and each side would often bring something new to the session.

But you didn't get a prolonged negotiation. That developed in September and October. So the question arose in its sharpest form them. Kissinger always reported back after the sessions in writing, and he would sometimes speak over the phone to Haig, and Haig was still back there. And as the communications became prolonged, there might be even more communications, more than once a day.

Now, there's one dramatic episode on October 8th, when the North Vietnamese actually presented us with something dramatic and Kissinger did not report the contents back right away. He told Washington, Haldeman, that something, some major progress likely, and he wanted to keep everybody calm. So he sort of said: Trust me; I'm going to try to squeeze a little bit more. But he didn't disclose everything.

This is a rather unusual step, and I think there

were tensions between Nixon and Kissinger over this. On the other hand, Kissinger felt that, A, this was the best way to get a result and that what he would come up with would be consistent with Nixon's objectives.

I have nothing to add to what you can read in the memoirs of both people, and they may have some different interpretations of what happened.

Q. I'm just trying to get a sense of -- I guess everybody would agree that President Nixon certainly controlled the generalities of the negotiating approach. I'm just trying to get a sense of how involved President Nixon was in specific negotiating positions.

A. Well, tactics? Tactics, not overwhelmingly; but the general objective, yes, including what I think was crucial at that point, October of '72: Should you try to proceed to drive home an agreement if an opening presented itself?

And this was obviously something for the President to decide, since he had an election coming up and this was rather crucial. And that is something that they had talked about.

Nixon's view was that he was afraid of his right wing; there was as much risk in having an agreement before the election as in not having it. I believe this. I think this was absolutely sincere. Nixon couldn't care less.

The fact that an agreement was reached before the elections made no difference in the polls, and there was as much cynicism about it as there was elation.

So Kissinger understood Nixon's objective, Nixon's political calculation. He understood what the President wanted or needed and what the range of outcomes would be that Nixon would live with. So he felt he had some freedom on the tactics, and he saw an opening on October 8th and basically tried to ram it home without getting detailed instructions from Nixon.

He felt this was justifiable in the national interest. It was an unusual step for a negotiator to sort of take this authority in his own hand.

Something similar happened in April 1972 in a negotiating trip to Moscow, separate kinds of issues. This was just part of the relationship between Nixon and Kissinger, and they can judge it as they choose.

Q. Was there any change in that relationship after the time in October '72 where you said there were some tension between the two possibly resulting from Dr. Kissinger's not having gone to President Nixon?

A. Yes. Nixon grumbled a lot. There were times, if Haig was still back in Washington, Haig and Nixon would be closeted and probably share opinions on how Kissinger was out of control. But the fact is they would calm down,

because the result had a certain validity.

The result would speak for itself. Nixon could have fired him if he wanted to, but he didn't, because I think he sort of grudgingly respected how it came out.

Nixon was concerned about the appearance of screwing the South Vietnamese and this was an occasion when in the nature of things this was a moment of great pressure on the South Vietnamese to continue to cooperate with this diplomacy, and Nixon did it quite well. Nixon would blow hot and cold.

There were times when Nixon said to Kissinger: I'm not going to let Thieu stand in the way if it's a good deal. So again, Kissinger felt he had a sufficient mandate to charge ahead.

But to answer the question: I don't know this first-hand. Nixon is a little bit cryptic in his memoirs. Kissinger is actually fairly forthcoming on what he did. Haig is in a position to know more directly.

Q. As the negotiations heated up again in January of '73, in your opinion did Dr. Kissinger still have authority to make tactical decisions and to change the U.S. negotiating position on all points without going back to President Nixon, or had that changed in any way as a result of what happened in October?

A. Well, we'd have to be specific about what issues

we're talking about. But yes, when the negotiations resumed in January most of the issues were resolved fairly smoothly, but they were not even big issues at that point.

The problem that led to the Christmas bombing was that the North Vietnamese would not allow the agreement to be reached. They kept reopening new issues just to keep balls in the air and would not allow closure on the agreement, and they would renege on issues they had agreed to a week before.

We were the ones who said: None of these issues are really deal-breaking issues. The question was the North Vietnamese willingness to settle.

So yes, those issues were resolved fairly quickly in ways that Kissinger had, I think, authority to deal with. But if you have a specific issue in mind, there might be some specific issues. I don't know.

Q. One of the questions I asked you a couple minutes ago was the way that the National Security Council staff and, more specifically, Dr. Kissinger received information on specific subjects. Do you know, for example, was anyone in charge, anyone on the staff in charge, of obtaining information on prisoner of war issues, missing in action issues, and providing that information to Dr. Kissinger?

For example, was there anyone on the staff in charge of coordinating intelligence and finding out how many

prisoners of war there were?

A. Well, we had some liaison with DOD. There's no question about it. And when Kissinger went to Hanoi, he turned over a set of files, copies of files. All this came from DOD.

Q. You're referring to the February '73 trip?

A. The February 1973 trip to Hanoi.

So I don't know directly who was doing what. I would assume it's the job of the staff people, like John Negroponte, as I say, to be in contact with the relevant people and have whatever information was necessary.

Q. So you think that task would have gone to one of the people in what you describe as the professional staff?

A. The professional staff, that's my assumption.

MR. KRAVITZ: Did you want to take a short break?

MR. ROSTOW: I just wanted to make sure Mr. Rodman had the opportunity to take a short break if he wanted to.

THE WITNESS: I don't need one.

MR. KRAVITZ: Why don't we take a break.

(Discussion off the record.)

(Recess.)

MR. KRAVITZ: Why don't we go back on the record.

BY MR. KRAVITZ:

Q. Mr. Rodman, one of the things that I'll try to do after each break is ask you if there's anything that you

said previously that you want to add to or change in any way.

A. I can't think of anything.

Q. Obviously, at any point during the deposition, even in the middle of a session, if you think of anything that you'd like to add or change in any way, just let us know.

As far as you could tell, what were President Nixon's and Dr. Kissinger's top priorities in terms of what they wanted to achieve with the negotiations, and where among those top priorities did prisoner of war and missing in action interests stand?

A. Well, one way to answer it is to say obviously they wanted to get out, wanted to end the war, and their strategy in a sense was reflected in Kissinger's "Foreign Affairs" article in the beginning of 1969, which was a solution to the military issues alone.

This meant ceasefire, troop withdrawal, and a return of prisoners, and this was the package. It was our preference because it seemed to be the simplest way of getting us out and ending the killing.

Obviously, the prisoners were an essential part of this, it went without saying. Now, the issue in the negotiation with the North Vietnamese was they insisted on a political deal. They wanted us to help them settle their

conflict with South Vietnam.

They wanted us basically to stay until we helped them break the back of the South Vietnamese. We were willing to get out and it was the North Vietnamese insisting on our staying because they were afraid to unlink the military and the political issues. I think it's a sign of the insecurity.

Our proposal was: Look, you deal with the South Vietnamese, you take your chances with the South Vietnamese; we're willing to get out with our prisoners, and particularly if there's a ceasefire. So the issue in the negotiations, the issue that stalled the negotiations for four years, was this North Vietnamese insistence that we be there and that we overthrow the South Vietnamese Government ourselves, replace the South Vietnamese Government with a coalition that the communists would dominate, and then that coalition would negotiate with the NLF on a final settlement, a final arrangement for South Vietnam.

We thought this was outrageous, and it prolonged the war. People say: Oh, we could have gotten the same terms in 1969. That's news to us, because we couldn't get. It took four years for the North Vietnamese to come around to accept that framework for a solution. That's one way to answer the question.

Another way is just to say what I said earlier,

which is one reason the issue didn't come up repetitively in the deliberations was that we knew what our position was. It had to be unconditional. First of all, it had to be unlinked from all these political complexities.

Then in October, October 8th, that session, October 8th, 9th, whatever, the North Vietnamese dropped the political linkage, basically. They then linked the POW release to the release of Viet Cong prisoners in South Vietnamese jails.

And we just slammed them on that and said: Never, never in a million years. And they dropped off that about a week later. Never in a million years were we going to let our prisoners to be tied to this sort of messy internal conflict.

There were about, I don't know how many thousand, but lots of civilian detainee, we called them, in South Vietnamese jails, and we knew that the South Vietnamese would use them as leverage in all the other haggling that would go on among the Vietnamese parties. And we wanted our people unconditionally released, and we got that point.

Now, the North Vietnamese reneged on that on and off. And again, one of the things that led to the Christmas bombing, they kept reopening issues, and that's one of the issues they chose to renege on, which of course did not endear them to us.

But I think that is relevant to this question, because we were not going to accept any kind of linkage. Now, we understood a linkage between troop withdrawal and prisoner release, and in the end you got this phased release of prisoners on the same 60-day schedule as the withdrawal of the remaining U.S. troops.

But that was about the only kind of linkage that we would ever accept.

Q. I think it's clear from your testimony and also from the testimony that Winston Lord gave us a couple of weeks ago that our side made it clear throughout that prisoners of war really was not a negotiable issue. I guess what I'm more interested in now is, aside from at the general level saying that the prisoner of war issue is not negotiable -- obviously we want all of our prisoners back and we will insist on getting all of our prisoners back -- how sophisticated was the negotiating process regarding procedures for getting prisoners back and procedures for ensuring a full accounting for our MIA's?

Was it simply the Vietnamese promising, we'll give you back all the prisoners and we'll help you as best we can account for your MIA's? Or was there a whole give-and-take on different procedures and different negotiating positions that could have ensured a greater accounting?

MR. ROSTOW: I'm not clear what you mean by

"sophisticated," as opposed to what appears implicit as an unsophisticated negotiating process. So maybe you could explain that.

MR. KRAVITZ: Okay. Why don't we substitute the word "detailed."

THE WITNESS: Well, leaving aside the characterizations, I can explain what happened. The agreement was going to be accompanied by four protocols on various issues, one of them on the question of prisoner releases and how it related to the Four-Party Joint Commission and Two-Party Commission, and there was such a protocol that was agreed.

We kept asking the North Vietnamese to give drafts. We had submitted drafts of these things.

BY MR. KRAVITZ:

Q. Of the protocols?

A. Of the protocols. And weeks went by and they didn't come up with any counterproposal or critique until the end of the December round.

When we saw them, they were totally outrageous. They used the protocol to reopen some of the issues that were settled in the agreement, we had thought. So the delay in getting to these protocols is something that the North Vietnamese were responsible for.

Q. What types of outrages?

A. Well, I can't, I can't think of an example right now. But points, wording that had been argued over in the main agreement -- and the protocols obviously reflected the main body of the main agreement, and they would sometimes just reinsert in the text of the protocol something that we had gotten them to back off of in the main text. They did that on a few occasions.

But let me come at it a different way. What we wanted was an unconditional commitment. The issue, the real issue I think from your point of view, if I may presume, is their performance. The question is how much could we have gotten, how much can you get in advance?

The protocols, the people who worked on the protocols, the people who were presumably experts on this -- I don't think that Kissinger knew much about the detail. I think he was likely to rely on people he thought were more expert on this.

Q. Was that a subject, was the prisoner of war protocols really, the details of the prisoner of war issue, a subject that Dr. Kissinger showed much interest in, or was he more interested in some of the other issues in the accords?

A. All the protocols dealt with technical issues of implementation, and I think he was less interested in those than he was in the main issues of the settlement. He was

certainly interested in ensuring, or his people interested in ensuring, that the protocols reflect the letter and spirit of the agreement.

Q. Do you know who worked -- I'm sorry.

A. Do I know who worked on them? I'm not sure. I think by then we had probably brought in larger numbers of people, but I don't recall who they were.

Q. Did you work on the POW-MIA protocols?

A. No, I did not.

Q. Do you recall if the protocols were ever discussed -- I'm sorry -- the POW-MIA protocols were ever discussed at a staff meeting of the U.S. delegation, or were reviewed by Dr. Kissinger?

A. I can't recall at this late date.

Q. Do you recall if other protocols were discussed or reviewed in that way?

A. Well, I think it was of interest to Kissinger when there were hangups in some of these protocols and I think people called to his attention issues, obstacles that had come up. Many of them were, as I said, attempts to renege on what they had agreed in the agreement. These were called to his attention.

But the negotiation of the protocols was done by others.

Q. One of the things that you mentioned earlier --

(Discussion off the record.)

BY MR. KRAVITZ:

Q. You mentioned a little while ago that all of this, all of your work in Paris, was being done against a backdrop of, and I think your word was, "near-revolution here"?

A. Civil war.

Q. I'm sorry, "near-civil war here" in the United States. What effect did that all have on the negotiating strategies and positions taken toward the end of the negotiations, say beginning in October of '72 and going up to the date that the accords were signed?

And if you could address specifically the political unrest, threats in Congress to cut off money.

A. Well, I think Nixon's re-election certainly made some difference. The situation was fairly calm after May '72. Even with the mining and the bombing, I think the fact that the Soviets went ahead with the summit kind of blew a lot of the tension away, and Nixon had a freer hand.

But none of us had any doubt that the war had to be ended. No one knew what the new Congress would look like. I mean, the bottom line here is that Nixon and Kissinger felt they had no possibility of continuing this war, and particularly when the North Vietnamese leaked the fact that there was an agreement, which was on October 26th, we had no choice but to finish this agreement, because if we

didn't, if Thieu were an obstacle to completing an agreement, the Congress would have destroyed South Vietnam, I mean would have just blown us away totally.

We had no possibility of continuing this war. So there were a number of issues that bothered us in the agreement, for example Cambodia. We wanted to have a ceasefire-settlement in Laos and Cambodia and we pressed and pressed, and we got the Vietnamese to commit to delivering their Laotian allies, and they started pleading with us that they didn't have control over the Cambodian comrades.

Now, it turned out they were not lying and we were very nervous about this, because we didn't like the idea that the war was still going on in some part of Indochina. It had the potential to disrupt the rest of the settlement.

But we had zero possibility of continuing the war. This weakened our leverage considerably. This was the point that we had to make to Thieu, that this was a deal that we thought was defensible in any sense of that word. The deal gave us the ability to continue to supply South Vietnam. We thought it was an honorable deal and a deal where both sides were taking risks.

We thought if the deal fell through we were dead. So our ability to hold out for better terms, which 20 years later say, sure, insist on this, that, and the other, given the mood in the Congress, we would have been destroyed. Our

whole enterprise would have collapsed, given the Congressional sentiment, if we had not put an agreement together.

And we thought it was a decent agreement.

Q. We're going to come back later to the question of the North Vietnamese control over Laos and Cambodia. But on a more general point, I wanted to ask you: You said that as the negotiations came down to the end there was certainly an understanding within the U.S. delegation that we had to end the war, we had to get an agreement.

As far as you could tell, either based on actions or by things that were said by the North Vietnamese negotiators, did the North Vietnamese negotiators understand that, from the United States perspective, we needed an agreement and we needed to end the war?

A. I don't think so. I think that Nixon had outfoxed them several times. I think they were afraid of Nixon after his re-election, because their incentive to settle before the election -- they were the ones who were driving to settle this before the election because they thought that they had leverage over Nixon before the election moreso than after Nixon was liberated by re-election.

They had miscalculated a number of times. They used to sort of boast to Kissinger: Oh, your anti-war movement is strong. He would say: We understand our

politics better than you do.

The mining and the bombing on May 8th I think was an example of how Nixon outmaneuvered them. We had the Russians and Chinese, and basically our anti-war movement was very much becalmed after May '72, as I said. So they couldn't be sure.

But we thought this was again a moment when both sides have a kind of balanced assessment of the risks, and that was the best moment for us to cut a deal, because we knew that after January 20th and the new Congress and so on we sort of could see, could sense, that without an agreement -- I mean, as of October 26th we stood accused of reneging on a peace agreement. That's what we were accused of.

The North Vietnamese went public with this deal, saying: The U.S. and North Vietnamese reached this agreement and now the Americans are reneging on it, which is why Kissinger gave his press conference, to explain: No, no, this is under control; we're very close to a breakthrough here. He said "peace is at hand," which he regrets using the word. But the basic message was: No; we're almost there.

If we had failed to produce the agreement, I think the Congress would have turned on the South Vietnamese with a vengeance. But no, I'm repeating myself: We were conscious of our own vulnerabilities, perhaps because we had

a more sophisticated understanding of our politics than they did.

Even after the election, the new Congress was much, much less favorable than the previous Congress in its composition.

Q. You said a moment or two ago that if we hadn't made an agreement we would have been dead.

A. Our Vietnam policy would have been dead.

Q. What exactly did you mean by that?

A. I think the Congress would have turned on South Vietnam. They would have blamed the South Vietnamese for the failure because of what was publicly known about Thieu raising obstacles. So I think the Congress would have cut off South Vietnam.

We would have ended up with a worse outcome than with the agreement, meaning we had two options: one is this agreement, with all its risks; and the other option was to have our whole Vietnam policy destroyed in the absence of an agreement and ending up with also zero leverage over the North Vietnamese on any issue.

So we signed an agreement knowing there were risks and weak points, and also conscious that the other side faced a number of risks. If we had been able to enforce the agreement subsequently as we intended, the North Vietnamese

were taking considerable risks.

Q. What were the risks and weak points from the United States perspective that you saw?

A. Well, it was compliance. It was demonstrated very clearly by all the things that happened after the agreement. The North Vietnamese cheated on the unambiguous provisions. Everybody criticizes the agreement for having a lot of ambiguous provisions, particularly in the political arrangements, which was deliberate. But they violated the unambiguous provisions.

There was a ban on infiltration of equipment and men down the Ho Chi Minh Trail. Within one week of signature there were tanks moving down the Ho Chi Minh Trail.

The ceasefire was broken various ways. You could blame both sides for that. But we thought the North Vietnamese were more guilty than the South Vietnamese. All of the issues on which their performance was unsatisfactory, these were risks in the agreement.

Also, Laos and Cambodia. In Laos at least we got them to deliver a ceasefire agreement. In Cambodia, the war went on in Cambodia and, as I said, we had tried to nail down beforehand a ceasefire that would have applied to all of Indochina. That was Nixon's position from going back to October 1970.

Well, the risk of the North Vietnamese forces in the South, which everybody commented on. There was no explicit position that they should leave, but we thought -- let me finish this point.

Q. Sure.

A. We thought that, since there was a ban on resupply and a ban on the use of Laos and Cambodia for infiltration, if they complied with the agreement that their forces in South Vietnam would have atrophied. We thought if they complied with the agreement it protected us.

But no agreement is self-enforcing, which that opens up another set of issues: the fact our leverage to enforce the agreement was lost.

Q. One of the things you said was that really one of the risks was that the agreement would not be followed by the North Vietnamese and that they would violate at least the ambiguous provisions, if not the unambiguous provisions.

When you say that that was viewed as a risk, what was your sense as to President Nixon's, Dr. Kissinger's belief on January 27th, 1973, that the North Vietnamese would comply with the terms of the agreement?

A. Well, I'm glad you asked that question. We thought -- we intended to continue a foreign policy which would maintain the balance of forces that the agreement reflected.

At the end of '72, militarily there was a stalemate. The North Vietnamese had been beaten back. The South Vietnamese had recaptured the territory that had been taken in the offensive. There was a balance on the ground, a balance of forces.

The North Vietnamese had actually done very badly in the offensive, taken all together.

MR. ROSTOW: This is the Tet offensive?

THE WITNESS: No, in '72, the March '72 North Vietnamese invasion of South Vietnam across the DMZ. And we intervened with bombing and mining and so on and had this bloody competition through the end, until about October.

And you had a balance on the ground. The South Vietnamese had proven themselves not too badly. The American intervention had shown we hadn't given up. We thought if we could maintain the basic conditions that underlay this balance of forces that the North Vietnamese would have no real option except to make this agreement, to shift the competition to a political struggle in the South, in the South, which was what the agreement provided.

There were four things that we were counting on to maintain this balance of forces: One is the possibility of American re-intervention. When these tanks started coming down the Hon Chi Minh Trail and we protested and so on, they

just laughed. They said: Oh, they're elephants; your intelligence is wrong, they're really elephants.

In March Nixon and Kissinger were considering a three or four-day air strike against the Ho Chi Minh Trail, which I think would have had a shock effect on the North Vietnamese, at least given them pause and taught them that, hey, they cannot violate this thing with impunity.

The problem was Nixon decided not to go ahead with it. I think Watergate was starting to envelop him. If he had done that, I think Congress would have passed a law prohibiting it ever again, which they did in June.

But the point is the threat of American re-intervention implicitly is one of the things we were counting on as a deterrent, and Congress took this away in June 1973.

The second factor was we had the right to continue to arm the South Vietnamese. Military and economic aid were permitted by this agreement, so this enabled us to keep them as a viable military factor. Now, what happened here, the Congress cut our aid in half in two successive years. They cut it in half in '74, they cut it in half again in '75.

In the meantime, in October '73 oil prices quadrupled. So all the aid we were giving to the South Vietnamese went to petroleum and ammunition and a few spare parts. They were getting no new major equipment from us.

So basically the Congress was strangling the South Vietnamese over the subsequent period. That's the second factor.

The third element was this promise of economic aid, which I'm sure you want to talk about. But the function of that was as an incentive, as something to dangle in front of them, contingent on their compliance with the agreement. They wanted our money.

Assuming the balance of forces held and everything else, this was an additional incentive to them. Now, what happened to that? I think there was great revulsion in this country at the treatment of the prisoners when the prisoners started coming home. The mood in the country changed to a sort of anti-Hanoi climate.

The administration never sent a request up, if I recall correctly. There was just no enthusiasm for this, and there were other compliance problems. So as you know, we never -- this policy kind of started to fade, and I think understandably. But we lost another element or incentive for North Vietnamese compliance.

The fourth factor was the Soviets. The Soviets had cut back significantly aid to North Vietnam. They told us they had cut it all off, and I think they hadn't cut it all off, but it shrank considerably. But then it grew again a little bit later.

My point is, so this was tied up with our policy towards the Soviet Union, which was also under assault. There was a great reaction against detente, and things like the Jackson-Vanik Amendment in 1974, which killed the U.S.-Soviet trade agreement, denying them MFN, which soured that relation.

The Soviets are the main people responsible for the souring of the relationship. Nick doesn't agree with any of this.

MR. ROSTOW: It's not a legal point.

THE WITNESS: It's not a legal point, but Jackson-Vanik. Again, Angola came along in 1975. The Congress cut off our ability to confront the Soviets on the ground, so the carrots and the sticks of our Soviet policy were being removed by the Congress. And I think that ought to be treated as a factor.

I think if we were hoping for the Soviets in Vietnam to enforce the agreement, we were losing control over our Soviet policy, for all these reasons. And I think a lot of them, these factors, were operating even in the first six months of 1973.

Our perception was that we were losing control over our policy and we were losing our ability to maintain this agreement. What had been a balancing of risks and incentives had turned into something very unbalanced and

totally against the administration's -- the administration's expectations were materially undermined by our own political events, which took away our leverage.

And our leverage on any issue on which we had a grievance, and there were many, our ability to enforce the agreement, I think was evaporating. And it's just as true on the POW issue as it is on their infiltration down the Ho Chi Minh Trail or their refusal to evacuate us in Cambodia or any of the other things on which their performance was totally duplicitous.

Q. But you don't mean to say that Dr. Kissinger or President Nixon was surprised that Congress acted quickly after the agreement was signed in January of '73 to undercut their ability to enforce the agreement?

A. Well, some of it was a result of Watergate, which was a surprise. At least it was to Kissinger, that Watergate undermined the President's leverage in Congress. I think there are people who think in June of '73, when the issue of the bombing came up, that he lost his clout.

It was probably a result of the election result, which I had said before was a little bit less favorable with Congress. But I think Watergate was the decisive and unpredicted factor.

Q. When did Watergate start interfering with President Nixon's ability to act to enforce the Paris

Accords?

A. Well, I think it dates to, say, March or April '73, at this moment when Nixon was thinking of a bombing strike on the Ho Chi Minh Trail, and he basically backed away. Kissinger thinks it was because of some Watergate thing; it was just sort of getting out of control.

Q. I know it is a long time ago now, but do you have any recollection as to what part of March 1973 the issue of whether to bomb the Ho Chi Minh Trail came up?

A. I don't have the number in my head. Kissinger tells this in his memoirs. It was one of the most important events in the history of the Vietnam War. It's the thing that didn't happen.

But again, the constraints -- well, obviously that was something Nixon could have done, although, as I said before, I think there would have been a negative Congressional reaction, which might have taken that instrument away even earlier than it happened.

So these are a number of things that we could not have counted on, could not have expected. Our expectation was to the contrary, an honorable agreement that gave us a fair chance to survive and was a sort of honorable way to end our involvement and get our troops out and get our prisoners out.

We thought that the climate in this country would

have improved, that Nixon would have a certain freedom of action to do whatever was needed to keep the peace, acting in the name of an international agreement that we had negotiated.

So we thought, and in fact we said this to Thieu, that our chances of helping him were better if there was an agreement reached than if the agreement had fallen apart. We thought the country would have come together, it would have been a less divisive issue.

Here was an agreement that everybody would see as a good outcome, and we thought we would have certain freedom of action to maintain it.

Q. You said earlier that one aspect of the U.S. Government position that you expected would serve as some deterrent to the North Vietnamese in their decision as to whether to violate the agreement was always the possibility that the U.S. Government would intervene militarily after January 27th, 1973. And one of the areas that apparently such intervention was discussed was the North Vietnamese sending trucks with supplies and materials --

A. Tanks.

Q. Tanks, down the Ho Chi Minh Trail.

MR. ROSTOW: Elephants.

BY MR. KRAVITZ:

Q. What other violations were viewed as potentially

resulting in American military intervention? And let me focus the time period for you. At the time that we signed the accords, January '73, what types of violations by the North Vietnamese Government were going to raise the possibility of American military intervention from our perspective?

A. It's hard to recall. I think it was an abstract consideration. This was another controversy, of course. We did say to Thieu that if there were major violations we would be prepared to do something, and I wouldn't speculate on what kinds of provisions met this standard of seriousness.

I think certainly infiltration of weapons down the Ho Chi Minh Trail was pretty basic to the viability of the basic agreement. It would be hard to speculate on what other things. That was a violation of Article 7 about infiltration and of Article 20, which was use of Laos and Cambodia for this purpose.

The military balance was one of the basic conditions that gave the agreement some sense. One of the basic conditions of it was this military balance, sort of mutual exhaustion at the end of '72. Anything that upset that was going to the heart of the agreement.

Q. Was suspected dishonesty in the North Vietnamese treatment of POW's or on their POW list, or suspected

unhelpfulness on the part of the North Vietnamese with regard to our missing in action personnel, were those subjects that in your opinion held the level of importance for President Nixon and Dr. Kissinger for which they would have considered military intervention?

A. Well, I can't recall a discussion of that, and it's hard to say what my opinion would have been then or is now. It's hard to say.

Q. I understand that you can't recall discussion of that. If you can't answer this question, just tell me that you can't. Based on your sense of Nixon's and Kissinger's priorities over the course of the negotiation period, do you think that those subjects -- dishonesty regarding POW lists on the part of the North Vietnamese or a lack of helpfulness, as required by Article 8(b), in helping us account for our missing in action -- were the type of issues that would have aroused such concern in Nixon and Kissinger that they would have considered military intervention?

A. Well, let me say I would not exclude it, particularly if it was coupled with some other concerns. One thing I can say is that we knew that there was a lot of concern in the country over that issue. One issue that you could actually rally the silent majority was this.

Whereas on most other issues the dominant opinion in the country would be that nothing was worth fighting for

any more -- the independence of Laos and Cambodia wasn't important to people in the country, the viability of South Vietnam nobody cared about and beat us up continually for caring about these things -- this, the POW issue, was obviously something that people did care about and had a different political dynamic in this country.

It's hard to speculate. It's also maybe impossible to think of the North Vietnamese complying with every other aspect of agreement and then violating that one. It's a speculative issue. The fact that there was a pattern of their non-performance, that's how the issue presented itself in fact.

Q. Admiral Thomas Moorer, the Chairman of the Joint Chiefs at the time, testified in his deposition -- I'm paraphrasing, but testified in essence that from the very top of our Government -- Nixon, Kissinger, and other members of the National Security Council -- the expectation in January of '73 was we were going to get what they gave us on POW's and MIA's, and in reality really we were helpless to do anything about it in light of -- and he put most of the blame on the political situation at home in terms of the fact that, what he viewed as a fact, that Congress was going to cut off our money and any military intervention would just be devastating to Nixon and Kissinger and wouldn't be permitted, almost, by the American public.

Do you agree with that pessimistic view?

A. That's what I had said originally. I was just trying to leave open a sort of glimmer of possibility. As I said, particularly as the time came to confront the North Vietnamese -- and this was one of the elements of their non-performance -- we certainly would have made that part of the thing if we had the ability to do anything.

I basically agree. I know what you're trying to get me to -- well, let me start over again. I do agree with it. I have said several times already that we were very conscious of our vulnerability, our political vulnerability, and the risks that we would take, particularly when Watergate erupted.

On the POW issue alone, it would have been hard. And what is the strategy, to bomb somebody to get prisoners back? I mean, the scenario is kind of hard to visualize.

Basically it is, as I said and as Moorer was saying, that the impulse in this country was to get the hell out. But I have to acknowledge, the one thing that people did care about was making sure of the prisoners and getting some performance.

But we were stunned by the lists we got. We got lists that we knew were inadequate or at least were very puzzling on both Laos and Vietnam. We kept pressing them and pressing them. As time went by, we lost our leverage

over them.

So I think that's what happened subsequent to the agreement, in a nutshell. Whether we could have used military power, it's kind of an unreal question and it's moot because we lost the option pretty quickly.

Q. When you say that we lost leverage over time, do you mean over the course of the troop withdrawal even, or do you mean over a longer period of time?

A. No. January to June and subsequently over the course of 1973.

Q. One of the recommendations that I have seen written in a number of negotiation papers -- specifically there was one that was written by Frank Sieverts and I know Winston Lord said he had read and he was certain that Dr. Kissinger had read, an interdepartmental study on negotiation strategies with regard to the Vietnam conflict on POW issues.

One of the recommendations was that we require or that we insist on having a single release of our prisoners of war, as opposed to a release of POW's phased in commensurate with the withdrawal of our own troops, for the reason that the fewer troops we have there the less our leverage is to insist that procedures are followed regarding the POW releases.

As you remember, was that an issue that was put

forward by the U.S. team?

A. I don't remember that Sieverts memo. I may have seen it, I may not. I just don't recall, and I can't really recall how that provision of the agreement evolved. I remember certainly after the fact that when we saw the tanks moving down the Ho Chi Minh Trail right away, we were inhibited by the fact that there were still increments of prisoners yet to be released.

Nixon didn't really want to -- I don't think he wanted to take the risk of bombing when there were still a few people yet to come. So it was a problem.

But I mean, even after March 27th had passed, then that inhibition was gone.

MR. ROSTOW: Can I just ask a question, which is: Did people feel inhibited about using force after March 27th on the ground that if you had a bombing raid planes might get shot down and you'd have more prisoners?

THE WITNESS: It's an argument.

MR. ROSTOW: Was that an argument?

THE WITNESS: It may have been, yes, I think, an inhibition. But I think Watergate was more an inhibition. A bombing raid would have involved a lot of risks, including that. But it's something that in retrospect might well have been justified.

BY MR. KRAVITZ:

Q. You said that you -- I think you said "we" were stunned when the lists were provided on the 27th of January, and you also said the Laos list. So I assume you're referring to the list that was provided on February 1st, '73?

A. Yes.

Q. We're going to go into more detail later about what was the basis for everyone's being stunned by those lists. But my question is, it seems to me, and I understand it may not mean anything, but it seems to me that it would make sense at least to ask the other side in the negotiations to agree to turn over lists of prisoners of war before the agreement is signed or, at a minimum, perhaps between the day that it was initialed and the day that it was signed, four days later, so that we could react to our being stunned by those lists, if appropriate, before the actual agreement was signed.

Was that a position that we asked for?

A. I don't recall. I don't recall it being discussed. I think with hindsight we're all geniuses. I think this was part of the agreement. The whole procedure about prisoners was part of the agreement, and the agreement went into effect when it was reached.

The interval, there was about a week and a half between the initialing and the final signature. So it

wasn't as if there was a whole long period or a huge amount of time that would have been gained.

Q. I think actually it was shorter than that.

A. Well, the initialing was the 13th. The signature was the 27th. Two weeks.

Q. I think actually the initialing was the 23rd.

A. The 23rd, that's right.

Q. There's only four days in between.

A. But the January round of the negotiations ended on the 13th, something like that. So there wasn't that much time to be gained.

Q. I guess my question is, did we ask that the prisoner lists be exchanged before the time that the ceasefire was entered, and was that a concession that we made in the agreement?

A. I don't recall. I just don't recall whether it evolved that way. But the ceasefire -- everything else went into effect on the 27th. It's a little hard to start exchanging -- lists are a different issue.

Q. Would you agree as a member of the negotiating team that once the ceasefire is begun, and taking into account all of the political ramifications that the entering into the ceasefire would have back home in terms of any support for our going back on the ceasefire, would you agree that once that event occurs that greatly diminishes our

leverage in complaining about or insisting on -- complaining about the lists that were provided to us and in doing anything about it?

A. Well, we had lots of other leverage. I think our ability to withhold signature is highly questionable, would have been highly questionable, even on that issue. I would not be sure.

I think if Nixon had said, I'm not going to sign this thing, you would have had mass hysteria in this country. You know, conceivably it would have been possible, given the importance of the POW issue, as I was saying before --

(Discussion off the record.)

BY MR. KRAVITZ:

Q. If you remember where you were, can you just pick up?

A. Yes. It was about could we have withheld signature on the basis of the POW's, say a list that we had gotten a week earlier. I don't think we had that possibility. I think Moorer was basically right. I would allow maybe a two percent chance that Nixon could have parlayed the POW concern into popular support for holding up the agreement.

But the climate of the country was we were sick of this war. We had just gone through the Christmas bombing,

which was a great outpouring of vicious abuse of Nixon. People were comparing him to the Nazis.

So it was a great relief in January that the issues were resolved. We were surprised by these lists that just didn't include people that -- you know the story -- people we thought they would have in their custody. I'm judging -- the issue of being "stunned," I don't know whether that's the right adjective.

I'm judging by one recollection, which is the fact that Kissinger brought these files to Hanoi a few weeks later, these cases of people we assumed they had knowledge of and couldn't understand why they would not have had knowledge of.

So your question was would we have been smarter if we had asked for the list earlier. I don't know whether it would have made any difference. I think it's highly speculative to assume it would have made any big difference or given us any greater leverage or not had the same dilemma that we had a week later.

Q. My question is actually not would we have been smarter.

A. Well, leverage; you asked about leverage.

Q. Yes, I guess. I mean, the smartness of the people there is really not at issue. My question is do you agree -- and you may already have answered it, but the question

really was do you agree that we would have been in a stronger position had we received the list before the ceasefire was entered?

A. I guess I'm saying not really.

Q. And if so, was that a concession that we made in reaching the agreement, in other words in not insisting on that list.

A. The second one, I just don't remember if this is how it was discussed. I don't remember whether we asked for that and then backed away. I just don't remember that.

Q. Before I ask this question, let me say that I understand that to a certain extent your answer might require you to speculate. But I'd ask you to answer the question really based on your understanding of the approach of Mr. Nixon and Dr. Kissinger.

We talked about what types of violations by the North Vietnamese could have resulted in military intervention on our part, and you already told us about the tanks going down the Ho Chi Minh Trail and that by March there were all sorts of other considerations, such as Watergate, that in your opinion probably prevented Mr. Nixon from intervening militarily.

What I want to focus on is, as of January 27th, 1973, based on your knowledge of Dr. Kissinger's approach and more specifically Mr. Nixon's approach, what violations

or combinations of violations by the North Vietnamese would have resulted in terms of our thinking at that time, before Watergate had really taken over perhaps, what violations or combinations of violations were perceived at that time as being of the magnitude to result in military intervention?

A. Well, I can't really say any more. It wasn't discussed in those terms, in my recollection. It is a kind of speculation which is kind of idle for me to indulge in now.

So I mean, it's giving you the same evasive answer I gave you before.

Q. You said earlier that we had told President Thieu certainly that we would be prepared to intervene militarily in response to large-scale violations by the North Vietnamese, and my recollection is that President Nixon said that publicly on at least one occasion.

Do you recall what specifically was said to President Thieu and perhaps what maybe a more private understanding was of his than was made public in terms of what types of violations would result in our intervention?

A. I don't recall specific things being mentioned, specific clauses being mentioned. I think my assumption then was that a material violation, particularly a military, that affected the military situation and the survival of the South Vietnamese Government. So that, I think, those are

the most logical candidates.

I guess indirectly it's an answer to your other question.

MR. ROSTOW: I would just like to note, to remind Mr. Rodman that the record does not show humor. So when you use terms like "evasiveness" in an attempt to characterize your answer, as an attempt at humor, the record does not show.

THE WITNESS: Yes, I have the right not to incriminate myself.

MR. KRAVITZ: Well, I can just say for the record, in case there is any question, we have not found any of your answers to be evasive.

MR. ROSTOW: We're not treating this as a litigation-type deposition.

MR. KRAVITZ: And we appreciate the completeness of your answers, so that's actually very helpful.

BY MR. KRAVITZ:

Q. You mentioned earlier the question of reconstruction aid and you were correct in anticipating that that was a subject that we wanted to talk with you about. Was the subject of reconstruction aid something that the North Vietnamese negotiators raised often during the negotiations?

A. Yes. It came up simply in the negotiation of this

clause that was later called the "healing the wounds of war." It was part of our position also that there would be reconstruction aid. Nixon had said this in speeches. It goes back to LBJ's pronouncements as well.

So the question was, in the negotiation of the agreement, the question was how to phrase this? Was it an obligation or not? The United States wanted it to be clear that this was an act of grace, something that we always did traditionally after wars. We did not want to allow any implication of reparations.

So the wording of this clause was the subject of negotiation. The implementation of this was something that we separated from the agreement, as you know. It may have been discussed in January. I don't recall exactly. But the most significant discussion of that was left until Kissinger's visit to Hanoi after the Paris agreement.

Q. You've told us that the North Vietnamese did raise the issue of reconstruction aid frequently during the negotiation process. In your recollection, did the North Vietnamese negotiators ever seek to link the issue of reconstruction aid or reparations, however they termed it, with the release of United States prisoners of war?

A. I don't recall that.

MR. ROSTOW: Did we ever link it? No POW's, no aid?

THE WITNESS: You're doing his work for him. Let him do it.

MR. KRAVITZ: That's a good question, though.

THE WITNESS: No, I figured you'd get to that.

Aid was linked to their compliance generally. Certainly as this agreement was being negotiated there was no reason to single out any particular provision. We let it be known that there was no chance of this aid except in a condition of compliance with the agreement in general.

I do not recall any specific linkage with the POW clause, as opposed to any other clause.

BY MR. KRAVITZ:

Q. I'm going to show you one document here. It very well may be something that you've never seen before. If so, just tell me. I described for you earlier the interdepartmental study on POW negotiation strategies. There was an interdepartmental study group that was chaired by Frank Sieverts from the State Department, and it included representatives from the National Security Council Staff, from DOD, and some other agencies throughout the Executive Branch of the Government.

When they wrote a draft, I think their initial draft was somewhere around 80 pages, and they sent it around to various agencies for suggestions. The document I want to show you is actually a response to that draft from someone

at the Joint Chiefs of Staff.

Just for the record, the documents that I have here are files that were provided to us by the Department of Defense. They're POW-related files from the Joint Chiefs of Staff office.

MR. ROSTOW: You're going to make that an exhibit in this deposition?

MR. KRAVITZ: Well, what I'm going to do, because there are all sorts of rules here at the Office of Senate Security about what we can Xerox, I'm going to tell you these documents are numbered consecutively 1 through --

MR. ROSTOW: If you could just describe the document for the record.

MR. KRAVITZ: Let me tell you, they're numbered 1 through 1,078. What I'm going to do is identify them by page number and give some kind of description of the document. It may be that Mr. Rodman can add to the description. If he hasn't seen it, obviously he can't add to the description.

And if you have anything you want to add so that there is no question as to what the document is, feel free.

MR. ROSTOW: If you can just describe it in such a way that if I want to get it and look at it, I can tell DOD, I want this document, and they know what the hell I'm talking about.

MR. KRAVITZ: Okay. If at any time my description is less than you think you need, just let me know.

We're going to start at page 476 of the JCS files. The first thing you'll notice about this is that it's a horrendous Xerox, but there's nothing we could do about that.

It's a memo on Joint Chiefs of Staff stationery dated 28 June 1972. Mr. Rostow, this may help you get the document if you need it. Right above the date it says "JCSM-301-72". It's a memorandum for the Secretary of Defense and the subject is "Review of Indochina PW Release and Repatriation Study."

BY MR. KRAVITZ:

Q. Again, Mr. Rodman, that was the title of the study done by the interdepartmental study group.

A. This memo you're going to show me was an internal Pentagon document? Was it something that was shared with the NSC?

Q. That's what I'm asking. I don't know. I want to show this to you.

MR. ROSTOW: Does that say who wrote the memo? Is it signed?

MR. KRAVITZ: It's written by a man named Martin Colladay, C-o-l-l-a-d-a-y, Major General, U.S. Air Force, Vice Director of the Joint Staff. I don't know whether it

got to the NSC or not, and that's really what I want to ask you about it.

BY MR. KRAVITZ:

Q. Just take a moment and read it to yourself. And obviously Mr. Rostow should read it, too, if he wishes.

(Pause.)

MR. ROSTOW: You can go ahead and ask your questions.

BY MR. KRAVITZ:

Q. I guess to me the import of that memorandum is that, at least within the Department of Defense, there was some concern, or at least a sense that greater study was needed to discuss the issue as to whether a promise to pay reconstruction aid or reparations might ultimately result in the North Vietnamese using our prisoners as hostages or something akin to that.

Again, this was a memo written to -- well, not written to, but certainly written in response to the interdepartmental study group, and our investigation has shown their report was shared with the National Security Council Staff. Indeed, it was written for the purposes of educating and advising Dr. Kissinger on the issue.

A. Well, we should have gotten this memo.

Q. I understand, but the study report went through additional drafts after this memo was written. My question

to you is: Do you recall any discussions at the NSC level -- and when I say that, I mean including NSC staff -- regarding the issue of whether making a promise to pay reconstruction aid presented a risk or a danger that the North Vietnamese would rely on that, would end up using our prisoners as hostages to make sure that we paid?

A. Well, the short answer is no. I don't recall that being discussed. I think we thought we had guarded against that by having the prisoner release unconditional as part of the agreement and deferring concrete discussion of reconstruction aid until after the agreement, which from our point of view would have unlinked them.

The prisoners were out by March. The commitment, their commitment to release all of the people, was part of the Paris agreement. The discussion of economic aid came later.

Q. But our promise to give economic aid and in fact a letter detailing its specifics was certainly delivered long before.

A. No, three days after, three days after the signature. No, it was discussed. There was some discussion of amounts and so on on a preliminary basis before that January 30th letter was finalized, that's correct.

Q. But that was before the prisoners were released.

A. That is true.

Q. In light of that timing --

A. But it was contingent upon compliance. A piece of paper -- they could not sue us in an American court on the basis of this letter. Their ability to get it depended on compliance with the agreement, and that was repeated over and over again.

So the leverage -- I mean, to that extent this aid, this premise of aid, was always out there as an incentive presumably for them to comply on this or any other issue. A letter from Nixon didn't mean a whole lot. It said very clearly that it depended on our Congressional procedure, and this was an understanding we had about them with an amount.

But it wasn't binding on the Congress, and it would be subject to the appropriation process like any other aid recipient. So again, we still had the leverage. Not a penny went to them unless we were satisfied with their general compliance.

Q. One of the other subjects discussed in Mr. Sieverts' interdepartmental study group paper -- and by the way, I should say I have a copy of a draft here in these files and the only reason I haven't showed it to you is it's very long. If at any point you want to look at it or if you want to look at it over lunch, just let me know. I can easily make it available to you.

MR. ROSTOW: Is it classified?

MR. KRAVITZ: You mean so he might be able to take it out? DATA You can easily determine that.

THE WITNESS: Can I ask you a question about this?

MR. KRAVITZ: Sure.

THE WITNESS: Did this point of view get incorporated in the interdepartmental memo, this suggestion? Do we know that this suggestion was transmitted to the interdepartmental group or the NSC Staff?

MR. KRAVITZ: That's what we don't know and that's what we're trying to find out.

THE WITNESS: But let me finish. This is an internal memo.

MR. KRAVITZ: Right.

THE WITNESS: There's no suggestion here that this would have been shared outside of the Pentagon on the face of it, unless there's some other indication.

MR. KRAVITZ: No, I understand. We don't know. That's actually one of the reasons why I was asking you, was because we don't have a later -- we don't have a draft or the final copy of the interdepartmental study paper --

THE WITNESS: Oh, you don't?

MR. KRAVITZ: -- later than this (indicating). I think we have an April '72 draft.

One of the things we're interested in finding out is whether this subject did make it to the National Security Council and to the U.S. negotiating team, more specifically.

BY MR. KRAVITZ:

Q. Your testimony is that you don't remember it?

A. I don't think I remember ever even seeing the Sieverts memo. I'm just not the best witness on that point. Certainly I don't think I saw this before.

Q. Let me show you the draft that we have. I don't want you to read it now, but maybe seeing it might refresh your memory. I think it begins at page 376 of the JCS files. It may not be in that bunch. That has half of it. The beginning of that bunch you have in your hand is probably the second half of the paper.

Just for the record, it is marked DATA with a DATA marked in, which I have to confess I don't know what that means.

A. DATA They have DATA And is there another?

Q. I've seen DATA

A. DATA

MR. ROSTOW: And for the record, nowadays the whole document would be given the highest classification and then each page and paragraph would be marked. That's the

way it's supposed to be.

THE WITNESS: It's another kind of distribution, which I think to the State Department secretariat means something, but I'm not sure I can tell you what.

BY MR. KRAVITZ:

Q. It starts at page 376 and then it will actually continue into the next stapled portion.

A. And what is this, interdepartmental group? Oh, interdepartmental study panel. First of all, I don't recall this panel, and I'm not sure what the interdepartmental study panel is. It seems like just an ad hoc interdepartmental group under something called the Ad Hoc Group in Vietnam, which is just another interdepartmental group.

Well, I don't have anything to add to your knowledge on that, I mean on the group. Shall I read this?

Q. No.

A. "Phased versus immediate releases" is something you asked me about.

Q. Why don't we move on, since if you don't remember this it obviously wasn't -- unless looking at it refreshes your memory and makes you think that it was part of your thinking or approach, it really ends up not being relevant and, as I said, I'd just rather not take up a lot of time now. But you could read it over lunch.

A. No. If you don't have questions on it for me, there's no point.

Q. One question I do have about it is, and I don't think you need to read it to answer this question: One of the subjects that the study group memo discusses is really what kind of lessons we can learn in the area of POW accounting from history, and they discuss the American experience with prisoners in the Korean War. They also discuss the so-called French experience from the Indochina War in the 1950's, the war of independence.

Were those subjects that you recall ever being discussed at the NSC level?

A. Not in my presence. This is an issue that possibly my colleagues who were more specialists spent some time on, particularly if they were participating in this interdepartmental group. They would have been presumably contributing to this discussion in some way. That was not part of my responsibility.

Q. So you think Mr. Negroponte is someone who might have --

A. Might. This is for you to check. He is more likely than I to have participated in some of these discussions.

Q. Mr. Lord told us that he actually did remember reading that, that study.

A. I don't.

Q. You told us that the general approach of the U.S. Government to the issue of reconstruction aid was that really it was a tradition for the United States Government to give that kind of aid after wars. What were the specific considerations that our negotiating team and, by extension, President Nixon had in mind when they were thinking about this issue?

A. Well, two things. First, the general provision in the Paris agreement, and that just reflects what had been our public policy going back to Johnson and had been repeated in Nixon's speeches on our negotiating position, something that we were prepared to do as a gesture, and it's just part of our -- it reflected the American desire to end this war on the best possible terms, by negotiation if possible; reconstruction for all of Indochina, obviously particularly our friends, but we were willing to include the Vietnamese in this, provided that there was some reconciliation afterwards and the agreement was lived up to.

And we were prepared to put a lot of money in it. I think Nixon publicly mentioned a figure of 7.5 billion in it for all of Indochina. So this was open. This was not a secret idea.

It resembled something that Kissinger also, maybe somewhat controversially, used to think about U.S.-Soviet

relations, that you rest your relationship with an adversary first of all on deterrence of misdeeds, but you assume that if you can deter misbehavior you can add some positive incentives that over time might help strengthen a habit of moderation on the other side.

So that this was, as I said before, an incentive for the North Vietnamese to behave themselves. If the North Vietnamese saw that the objective situation on the ground was not congenial to their winning a military victory, they had that plus this carrot to at least tempt them toward a different course.

So this was part of the philosophy of it. But I think Kissinger, not being known for being naive, would have put more emphasis on the negative, on the disincentives and on the sort of physical restraints, and not expected just the positive inducement to be sufficient.

These were Leninists who were not in this for the money. These are dedicated revolutionaries who had subjected their country to the most horrendous sacrifices for decades for what they believed in. They weren't going to be bought off.

There is a kind of naive view among some Americans that the whole world really is interested in prosperity. There are people who propose this for the Middle East every once in a while: Why don't they all just stop fighting and

we'll contribute to their economic development.

There was no illusion that this by itself would make a difference. It would fit into a strategy that we thought we had.

MR. ROSTOW: I don't know if this is a suitable time to break for lunch.

MR. KRAVITZ: Why don't we break.

(Whereupon, at 12:41 p.m., the taking of the instant deposition was recessed, to reconvene the same day.)