

## 1 AFTERNOON SESSION

2 (1:53 p.m.)

3 Whereupon,

4 PETER W. RODMAN

5 was resumed as a witness and, having been previously duly  
6 sworn, was examined and testified further as follows:7 CONTINUED EXAMINATION BY COUNSEL FOR  
8 THE SELECT COMMITTEE ON POW-MIA AFFAIRS  
9 BY MR. KRAVITZ:10 Q. Mr. Rodman, we're back on the record. Let me just  
11 ask you again, as I did at the end of the last recess,  
12 whether there is anything that you've said at any time  
13 during the deposition that you'd like to add to or explain  
14 or change in any way?

15 A. No, not right now.

16 Q. When we broke for lunch, we were discussing the  
17 issue of reconstruction aid.18 (The document referred to was  
19 marked for identification as  
20 Rodman Exhibit No. 5.)

21 BY MR. KRAVITZ:

22 Q. Let me show you what's been marked as Exhibit No.  
23 5. My interpretation of this is --

24 MR. ROSTOW: It will be 6, actually.

25 MR. KRAVITZ: Do we have a No. 5?

1 MR. ROSTOW: 5 will be that JCS thing.

2 MR. KRAVITZ: We didn't number that. I'm sorry.  
3 We're just going to refer to these documents by their page  
4 numbers in sequence in the various materials. The loose  
5 documents we can mark with exhibit stickers.

6 Exhibit No. 5 appears to me to be a two-page  
7 excerpt from a Department of State Bulletin, and beginning  
8 approximately one-third of the way down on the right-hand  
9 margin purports to reprint a message from President Nixon to  
10 the Prime Minister of North Vietnamese dated February 1,  
11 1973.

12 BY MR. KRAVITZ:

13 Q. I'd like you to take a look at that and let me  
14 know if you recognize it to be the same thing and if it's  
15 accurate.

16 (Pause.)

17 A. Okay.

18 Q. Let me ask you first of all: You've talked about  
19 a letter that was delivered at some point on the subject of  
20 reconstruction aid. Does what appears in Exhibit No. 5  
21 accurately repeat or recount that letter?

22 A. Yes, this looks to me to be the letter that we're  
23 talking about, the message.

24 Q. What was the form that that message was written  
25 in? What was it?

1           A. Well, it was a piece of paper. It was the subject  
2 of negotiation. The text was negotiation with the North  
3 Vietnamese over a period of a few weeks, and when it was  
4 finally agreed I think it was sent by telegram, by back  
5 channel cable, on the day in question, or else it was sent  
6 to Paris to our attache, who then handed it over to his  
7 North Vietnamese counterpart on this day, on the day that we  
8 treated it as a complete message.

9           Whereas, as I said, the text had been haggled  
10 over, but at that point it was treated as sent.

11          Q. What was the course of the negotiations, as you  
12 recall it, regarding both the text of the message and the  
13 money figure?

14          A. Well, the North Vietnamese wanted a commitment  
15 from us on money, and we said to them, Kissinger said to  
16 them: We cannot make a commitment because we have a  
17 Congress and there is an appropriation process; the most  
18 that we can do is to state that the administration is  
19 prepared to request.

20                 So we made that clear over and over again, and I  
21 wish to emphasize that. There's a paragraph here in one of  
22 the codicils of it which talks about constitutional  
23 processes, and this was one of the ways we made the point to  
24 them that this letter could not bind the Congress.

25                 What this represented was an understanding between

1 the administration and the North Vietnamese on what we were  
2 prepared to request of the Congress.

3 Q. Let me ask you about that --

4 A. A lot of the details were haggled over. The North  
5 Vietnamese wanted a huge amount and we told them what the  
6 limits were, and this is what we settled on.

7 Q. Let me just ask you about the codicil, because the  
8 main body of the letter does not refer to the constitutional  
9 process of appropriation by the legislature. What are you  
10 referring to?

11 A. This was originally part of our draft. We had our  
12 drafts of what this letter should include. We had that in  
13 there and they didn't want it, and we said, whether it's  
14 there or not, it's the reality. And we compromised by  
15 having it on a separate paper of equal status.

16 It's a gloss on the whole thing and from our point  
17 of view, coupled with everything that Kissinger said to them  
18 a dozen times, it just is of the essence of it that our  
19 commitment represents a commitment by the President that  
20 could not bind the Congress.

21 Q. So was this codicil delivered along with?

22 A. Yes, it was an attachment, if you will.

23 Q. Well, let me ask you this. Were you personally  
24 involved or personally present during the negotiations on  
25 this issue?

1           A.    I was present during a number of negotiations on  
2 the issue, including in Paris on the day of the initialing.  
3 I think January 23rd there was some discussion of the text,  
4 and then in Hanoi.

5           Q.    What was the level of understanding, as far as you  
6 can tell, of the North Vietnamese negotiators of the United  
7 States constitutional processes?

8           A.    Well, what they really understood is hard to tell.  
9 What is clear is they never acknowledged it at all. They  
10 wanted Nixon on the hook. They refused to accept any  
11 excuses. They refused to legitimize any potential excuse.

12           I think a lot of it was just ignorance since they  
13 have no idea what a Congress is. And secondly, it was just  
14 their tactic not to legitimize any loophole. Now, we might  
15 not deliver this money, but of course we made a record, a  
16 pretty I think good record, respectable record, that there  
17 just should not be any doubt in their minds.

18           Kissinger has said, never was he more eloquent on  
19 the subject of Congressional prerogative.

20           (Laughter.)

21           First of all, it was a smart negotiating tactic.  
22 But even moreso, it was the reality. He said it, he made it  
23 clear, in a dozen other ways.

24           He handed over a package of a quarter inch  
25 (indicating) of papers, explaining the legislative process,

1 explaining the budget and appropriations processes, just to  
2 inform them on how a foreign aid program was developed and  
3 what the normal procedure was: The administration submits  
4 a request and the Congress makes up its own mind.

5           There was no reasonable doubt, there was no  
6 reasonable basis for doubt, in their minds that this  
7 commitment by the President was not binding on the Congress.  
8 I think this was a legitimate, and I'd like to take the  
9 opportunity to say, I think this was a legitimate  
10 presidential action.

11           It is normal for us to consult with another  
12 government about what we think an aid program should consist  
13 of, subject to the fact that the Congress then makes up its  
14 own mind. Any other foreign aid request, usually the figure  
15 arises out of some discussions between us and the other  
16 government and that's the basis for the numbers, and then we  
17 submit it to the Congress.

18           The Congress is certainly not bound by any  
19 discussions the Executive Branch has had. So the sequence  
20 and the procedure, at least to my mind, I don't think  
21 there's any impropriety in it.

22           If we had submitted a request to the Congress,  
23 obviously the content of it would have been reflected in our  
24 request and we would have explained that these details arose  
25 out of some discussions we had had with the North

1 Vietnamese.

2 I mean, I think our intention was to proceed in  
3 the most conventional way here. Anyway, that's my general  
4 opinion of this.

5 Q. When was this portion of the agreement reached?

6 A. Well, I think there was some discussions,  
7 exchanges even by cable, in between January 23rd and  
8 February 1 on some points. I don't remember exactly when it  
9 was finalized, but, as I said, there were drafts back and  
10 forth over a period of weeks, and at some point the text was  
11 settled.

12 Then it hinged on, I guess we wanted a Lao  
13 prisoner list. That was the agreement, that when we got  
14 that we would officially deliver it, and that delayed it a  
15 couple of days until we got the list. Then the thing was  
16 officially delivered.

17 Q. Was the agreement on the level and means of  
18 reconstruction aid reached by January 27th, 1973, when the  
19 remainder of the accords were signed?

20 A. I don't recall exactly. Kissinger, he had a  
21 meeting with Le Duc Tho on the 23rd. The day of the  
22 initialing, he had another meeting with Le Duc Tho. I think  
23 this was part of it.

24 Initialing, it took half an hour to initial all  
25 the copies, and I think the rest of it was devoted to a

1 discussion of his trip to Hanoi. So between the 23rd and  
2 the 1st, there may have been other exchanges. I just don't  
3 recall. And there may have been discussions earlier in  
4 January, but I don't recall.

5 Q. When was it decided that, or when was it agreed,  
6 that the specific promise in terms of dollar amount and  
7 really the means by which the reconstruction aid would be  
8 delivered, at least in more specific terms than in the  
9 actual accords themselves, when was it agreed that this  
10 information that appears in Exhibit No. 5 would be delivered  
11 separate from the written accords?

12 A. I don't recall exactly. I think it was our idea  
13 that this should be separate from the agreement, that the  
14 agreement should not reflect anything this specific; and  
15 secondly, I think we wanted to retain a little bit of  
16 leverage subsequently and we couldn't commit ourselves to --  
17 well, I don't know.

18 For a variety of reasons, I think we wanted this  
19 separate from the agreement itself. It just didn't fit. It  
20 wasn't appropriate. I don't know when such a decision was  
21 made. I forget when we started discussing with them about  
22 the text of such an assurance.

23 But as I say, it sort of evolved in January, over  
24 the course of January.

25 Q. You told us that over time different dollar

1 could retain some leverage over the other side?

2 A. Yes. I think the leverage was inherent in this,  
3 in the fact that down the road there was a possibility of  
4 getting some money. I think it didn't really fit in the  
5 agreement. This was one piece of an overall construction  
6 program that we had not had any time to formulate, including  
7 let's say the other recipients of this aid.

8 We're not going to hold up the Paris agreement in  
9 order to spend time developing a foreign aid program for  
10 Indochina. There's a lot of logical reasons why this was  
11 something separable. As I say, it would give us leverage on  
12 their performance subsequent to the signature.

13 I think we had already accumulated sufficient  
14 leverage to get them to sign the bloody thing. That's what  
15 the Christmas bombing did. So it was a foregone conclusion  
16 in early January that this agreement was about to be signed  
17 and we were already looking to the postwar period, both in  
18 terms of maybe a more positive relationship and, secondly,  
19 incentives to encourage their compliance with what had been  
20 settled.

21 But logically it's something that came subsequent.

22 Q. If you viewed the delivery of the letter, or at  
23 least the promise of delivering such a letter, as really a  
24 source of leverage for our side, wouldn't you agree that we  
25 would have held it, held that back longer than just four

1 days?

2 A. No, I disagree with the premise. I think the  
3 letter was a minor, was small leverage. I mean, we used it  
4 to get them to deliver their Lao prisoner list. The  
5 leverage lay in the aid, in the money, not in a commitment  
6 of this kind.

7 They wanted this commitment. We were prepared to  
8 make it. It was part of our position all along. We were  
9 prepared to make a commitment and we were willing to talk to  
10 them about a number.

11 But they're the ones who insisted on some number.  
12 We kept saying -- I think they had an exaggerated idea of  
13 how important it was to have something on a piece of paper  
14 here that the Congress wasn't bound by.

15 Q. In other words, it wasn't the timing of the  
16 delivery of the letter that was the source of the leverage;  
17 it was the money that they were hoping to get?

18 A. Yes. I think in a sense we had already made the  
19 commitment to some sort of aid program for them. It was  
20 implied, if not stated explicitly, in fact in the Paris  
21 agreement.

22 So this is something we had already given, this  
23 commitment in general terms. And the specific commitment  
24 was something that tantalized them. But that may have  
25 played into our hands more than theirs, since there was no

1 money that came with this letter.

2 Q. To your knowledge, how widely discussed within the  
3 United States Government was the subject, was this letter  
4 and its contents, before the time that it was delivered?

5 A. I don't know that completely. The short answer is  
6 I don't know. I think there was a reasonable circle of  
7 people who were familiar with it. The technical details  
8 here show some expertise, some people who knew something  
9 about foreign assistance.

10 One of the people involved was Richard Kennedy,  
11 Colonel Kennedy, who was on the NSC Staff then, who staffed  
12 this business and helped draft it and came along to Hanoi to  
13 help prepare some of this. But I don't know what other  
14 consultations may have been involved.

15 Q. To your knowledge, was this letter or its contents  
16 discussed at a National Security Council meeting?

17 A. I doubt it very much.

18 Q. Why do you say that?

19 A. Because I think this was held, was treated, as a  
20 very sensitive thing at the time. So I don't think it was  
21 widely discussed in that sort of formal forum.

22 Q. Why was this subject viewed as being so sensitive  
23 that it couldn't be discussed among the President's top  
24 foreign policy advisors? That is, the National Security  
25 Council.

1           A. Well, first of all, the formal meetings of the  
2 National Security Council are not -- a President can meet  
3 with his subordinates any way he wants, and Nixon had fallen  
4 out of the habit of having a lot of meetings of the NSC. A  
5 lot of the diplomatic business that Kissinger was involved  
6 in was not vetted before a larger group of people

7           As we know, on the China initiative or the Berlin  
8 negotiations or other things, you didn't have big formal  
9 meetings with a lot of people. You had very closely held  
10 business and limited consultations. I just do not recall to  
11 what degree the State Department was involved in this, or  
12 what agencies.

13           I just don't remember. But it's possible this was  
14 very closely held, as all the other Vietnam diplomacy was.  
15 None of the big -- the secret talks on Vietnam, there were  
16 no NSC meetings on that business. It was closely held.

17           Q. As far as you know, why was it deemed so important  
18 that Exhibit No. 5, the letter and its contents, not be  
19 widely known?

20           A. Nothing else, none of the other exchanges with the  
21 North Vietnamese, were circulated. This was treated as a  
22 back channel communication, like everything else.

23           Q. Is this an agreement?

24           A. Well, it's an assurance of what the administration  
25 was prepared to do. It's not a treaty. It was a unilateral

1 statement. A lot of its wording was in the passive voice:  
2 what our studies indicate about what an appropriate figure  
3 might be. It was very carefully worded.

4 This was part of the exchanges between the United  
5 States and North Vietnam. There were a number of things  
6 that took the form of the exchange of presidential letters,  
7 at various stages of the negotiations.

8 Q. Well, but although it's obviously written to  
9 appear as if it's a unilateral statement, you've already  
10 told us --

11 A. That's correct.

12 Q. -- that it was the result of negotiations.

13 A. Right.

14 Q. As a practical matter, even if not in form, you'd  
15 agree that it's more similar almost to the accords?

16 A. Well, it's an assurance he gave, the content of  
17 which was the result of an understanding, that's correct.

18 Q. I guess my question is, why was it important or  
19 why was it viewed as important to keep secret or keep  
20 closely held this part of the agreement? Well, actually,  
21 let me back up one step and ask you: Do you view the  
22 agreement between the United States Government and the North  
23 Vietnamese Government regarding this letter, or as set forth  
24 in this letter, to be a part of the overall agreement most  
25 of which is set forth in the Paris Accords?

1           A. Well, it was separate. We made a big point of  
2 making sure that it was separate, that this discussion on  
3 aid was separate from the agreement, as I discussed before.

4           It was part of the implementation of the  
5 agreement, this provision on reconstruction in the Paris  
6 agreement. This was the beginning of a process of  
7 consultation with them in this joint committee that was  
8 being set up, to develop a potential program. It was the  
9 beginning of a process.

10           The figure was interesting and concrete. But for  
11 the rest of it -- I'm just interpreting what I'm seeing in  
12 front of me --

13           MR. ROSTOW: I haven't made a big deal about this,  
14 but the document does speak for itself, and international  
15 lawyers can argue about whether it ought to be treated as an  
16 integral part of the agreement or not. But Mr. Rodman can  
17 answer the questions. I just don't want him hectorred,

18           THE WITNESS: I was going to make the same point.  
19 Subject to revision and detailed discussion, it was one in  
20 a series of exchanges. Certainly it was an important  
21 exchange, something that they wanted very much.

22           But I think all our other exchanges with the North  
23 Vietnamese in this channel were secret, and in that sense it  
24 doesn't differ from anything else.

25           BY MR. KRAVITZ:

1 Q. Were you specifically instructed by Dr. Kissinger  
2 or anyone else not to say anything to anyone, outside of a  
3 closely held group of people, about this?

4 A. Well, not in this particular. In general, yes.  
5 All of us who worked for him kept our counsel. It was up to  
6 him to disclose things to people as he chose. It was not  
7 our job to talk about things that were sensitive to people  
8 who were not authorized to be involved.

9 So again, this doesn't differ from other things.

10 Q. You spoke a few minutes ago about something having  
11 to do with this letter being delivered in order to force the  
12 North Vietnamese to release the Laos list of U.S. prisoners.  
13 Can you tell us what you remember about that?

14 A. Well, I have to say, I think we should say for the  
15 record anyway, which I said before we started, I have  
16 refreshed my memory by looking through the Kissinger  
17 memoirs, which I helped to work on. So it's not brand new  
18 to me.

19 Q. Let me just interrupt you for one second. I'm  
20 sorry.

21 A. Sure.

22 Q. If you can, if there's ever a time when your  
23 answer is based specifically and exclusively on your reading  
24 of the memoirs, as opposed to your own recollection, if you  
25 could just point that out to us.

1           A.   That's fair enough.   On this one, this is  
2 something I had forgotten.   I do remember -- I mean, I  
3 remember myself that there was a sort of informal  
4 understanding, if you will, or at least we said we would  
5 deliver the letter when we got this list.

6           As you know, the Lao negotiations went on  
7 separately.   The North Vietnamese delivered their people to  
8 a ceasefire agreement that came later, in February.   But we  
9 insisted on something on POW's earlier than that agreement.  
10 I think late February was the ceasefire in Laos.

11           So we insisted on something as soon as we could  
12 get it.   I think January 30th was agreed on or something,  
13 and then they delayed it.

14           This is something I read in the memoir again.   I  
15 do remember it vividly myself, that they didn't come up with  
16 the list on January 30th.   We held, our fellow in Paris held  
17 onto it.   He had this thing in hand and we just told him not  
18 to deliver it until he got from his counterpart this list of  
19 our POW's in Laos.   So we used it as leverage in this small  
20 way.

21           But we got a list, such as it was.

22           Q.   Where were you at the time that this letter was  
23 delivered?

24           A.   I think I was in Washington at the time.   That's  
25 my recollection.

1 Q. Do you know where Dr. Kissinger was?

2 A. Possibly in Washington. It was delivered, as I  
3 said, through our Paris person by telegram.

4 Q. You've testified that, really consistent with the  
5 way that other back channel communications were handled,  
6 this was very closely held. Who do you know of who was  
7 within the circle of people who knew about the promise that  
8 was delivered on February 1st, 1973?

9 A. Well, I'm only aware of White House people, White  
10 House, NSC. Obviously, Nixon knew, Kissinger, Haig. At  
11 this point, even Brent Scowcroft might have been on board.  
12 At some point he came on.

13 But the NSC staff people who were dealing with  
14 Vietnam issues, I just don't know, because again the NSC  
15 staff people had their own circle of consultation and I was  
16 not directly involved in that.

17 Q. To your knowledge, would people at the Defense  
18 Department -- for example, Secretary Richardson or Deputy  
19 Secretary Clements -- get involved?

20 A. I don't know. I just have no personal knowledge  
21 of that.

22 Q. Are you aware of any disagreement within the group  
23 of top Government officials as to whether our Government  
24 should be making specific promises of reconstruction aid?

25 A. I'm trying to remember. I cannot remember. This

1 is something Kissinger had Nixon's authorization on or it  
2 wouldn't have happened. I mean, it's possible -- Kissinger  
3 did a lot of briefing about the agreement, including in the  
4 Government, Cabinet meetings.

5 I don't know whether he would have gotten into  
6 something as sensitive as this. I think it was known that  
7 when he went to Hanoi this was being discussed. I cannot  
8 exclude that, even in the public domain, and in press room,  
9 press briefings, it was known that the subject was being  
10 discussed with the North Vietnamese in January. I just  
11 don't recall what was in the papers.

12 But it was not really a secret that this was part  
13 of the agenda. It had been foreshadowed by the agreement  
14 itself. So again, I don't know whether he would have  
15 circulated the statistic. Probably not.

16 But the fact that the subject was under discussion  
17 I think was not a secret.

18 Q. We're going to talk a lot more later about  
19 reactions within the U.S. delegation to the lists of U.S.  
20 prisoners that were turned over on January 27th, 1973. But  
21 just with regard to this letter, Exhibit No. 5, I want to  
22 ask you this question.

23 You said this morning that everyone was, I think  
24 your word was, "stunned," but at least disappointed with the  
25 lists that were provided by the Viet Cong and the North

1 Vietnamese on January 27th, 1973. And you've now told us  
2 that this letter was held back, was not provided, on January  
3 30th, as it had been scheduled to be provided, but rather  
4 was held back until February 1st, after the Laos list was  
5 delivered.

6 Was any attempt by any of the United States  
7 negotiators made to use this letter or something similar to  
8 it, to use our promise of reconstruction aid, as leverage to  
9 get a more complete list of prisoners from the North  
10 Vietnamese or the Viet Cong?

11 A. The premise of reconstruction aid really was a  
12 foregone conclusion. I think the question of getting the  
13 aid was going to depend on their performance, and we had  
14 every intention of going back to pursue the list and ask  
15 questions, and Kissinger was going to raise this in Hanoi  
16 just a few weeks later.

17 So this letter, no, this letter was linked, if you  
18 will, to the Lao list, to the furnishing of the list, and  
19 that's it. I don't know whether consideration was given to  
20 any other tactical move here, but they said we were unhappy;  
21 there were questions about these lists which we intended to  
22 pursue.

23 But on the face of it, it was delivered on the day  
24 that it was indicated. But the whole aid, the whole concept  
25 of aid, was precisely that this was dangling out there in

1 front of them, something that they would get if they  
2 complied and something they would never get at all if they  
3 didn't comply, no matter what the paper said.

4 So I think the real leverage came from the money,  
5 not from sort of repeated promises from us that there was  
6 some reconstruction aid out there.

7 Q. I guess the answer is that, although the letter  
8 was, or the delay in the delivery of the letter, was used  
9 really to force the Vietnamese to provide the Laos list, it  
10 was not used to force the Vietnamese to provide any other  
11 information at that time on POW's?

12 A. That's correct, I think. And "to force," even  
13 that is overstated. They promised us a list. I think they  
14 were acting in good faith. They produced the list. There  
15 was a delay of two days. We don't really know what lay  
16 behind it. It may be overstating it to say that we forced  
17 the list. But anyway.

18 Q. Were there any other secret agreements made in the  
19 same vein as the reconstruction aid promise that you are  
20 aware of?

21 A. There's a controversy over the things we said to  
22 the South Vietnamese about re-intervention in the war, but  
23 I think that's outside the scope of this. No, with the  
24 North Vietnamese I don't think -- I cannot think of  
25 anything. I can't think of any other issues like this or

1 any other commitments of this kind. I can't recall.

2 Q. So you can't remember any other kind of unspoken  
3 understandings that didn't make it into the language of the  
4 accords or the protocols?

5 A. Well, there were some other understandings with  
6 the Vietnamese on various aspects of the agreement, like  
7 Laos and Cambodia, and I don't know whether they've ever  
8 been published. They were things that were kind of obvious,  
9 or there were questions of interpretation of text.

10 Kissinger talks about these in the book, I think,  
11 too. Nothing dramatic. They were all sort of things you  
12 would expect. Laos and Cambodia, we were insisting on  
13 things.

14 A lot of these understandings consisted of, we  
15 recited back to them a lot of things Le Duc Tho had said  
16 earlier in various meetings. In fact, that was part of my  
17 job. I would go through the whole record and every time he  
18 said something about we will get our friends in Cambodia to  
19 do this or that, I wrote them all down, and we presented it.

20 This was one of our understandings, or it was a  
21 unilateral statement by us: We recall these statements by  
22 Le Duc Tho, A, B, C, D, E, F, G, and this is part of our  
23 understanding.

24 I think we got a North Vietnamese reply saying:  
25 Yes, we stand by those statements. So various oral

1 understandings that had come up. Some of them were in  
2 recorded form. But nothing of this stature (indicating), if  
3 you will, and they were all sort of elaborations of the  
4 text. They were not dramatic.

5 I don't know whether there is something on the  
6 POW's. I think there may have been one on the Vietnamese  
7 civilian detainee. They wanted from us some commitment to  
8 use our best efforts to get the South Vietnamese to be good  
9 and we may have given them some statement of best efforts or  
10 do our utmost, which was a phrase that was used. So there  
11 may have been an understanding on that.

12 But they were nothing that altered the public  
13 agreement.

14 Q. You said you don't recall there being any  
15 unwritten agreements or any agreements outside the accords  
16 themselves or the protocols, on the subject of POW's and  
17 MIA's?

18 A. Of our POW's? I don't recall it. As I said, I  
19 remember something on the Vietnamese civilians that they  
20 wanted us to say.

21 Q. But with regard to U.S. POW's in Southeast Asia?

22 A. I think not.

23 Q. Your recollection is that the language of the  
24 accords and of the special protocols --

25 A. Right.

1 Q. -- are the entirety of the agreement between the  
2 two parties?

3 A. That's my recollection, and I cannot think of  
4 anything that would have altered those. But I just have to  
5 rely on my memory now, not having the file in front of me.

6 Q. I understand.

7 A. There was a set of these so-called  
8 "understandings," and there were 15 of them or something on  
9 different aspects.

10 Q. Were those written?

11 A. They were in writing in some form or another.  
12 Sometimes it was jointly agreed language. Sometimes it was  
13 an exchange of notes, as I mentioned. There were some  
14 unilateral statements that we made.

15 We made a unilateral statement about Cambodia,  
16 that if the war continued in Cambodia this would be a  
17 serious matter that might go to the heart of the whole  
18 agreement. There was a set of things like this. They have  
19 been discussed. They're part of the official file. They  
20 would be in the Nixon.

21 Q. That's what I was going to ask you. Do you think  
22 they would be in the Nixon?

23 A. Yes, part of the records.

24 Q. In the Nixon Project at the Archives?

25 A. Yes, in the originals and the other set of

1 everything, the main set of everything, in the Nixon files.

2 Q. What was the status of one of these unilateral  
3 declarations or unilateral statements?

4 A. Well, it's like unilateral statements in the SALT  
5 negotiations. They reflect something that we couldn't get  
6 the other side to agree to, so we say it unilaterally and  
7 hope to suggest that, if they don't do it, there'd be some  
8 price.

9 Obviously, unilateral statements are less  
10 effective than having something that's agreed. This is well  
11 known.

12 The Cambodia thing is the one that comes most to  
13 mind. We very much wanted a ceasefire in Cambodia at the  
14 same time as Laos and Vietnam, and the Vietnamese were  
15 starting to tell us that they're Cambodian comrades were not  
16 being cooperative.

17 As I said, I think I said before, it's one of  
18 those occasions in which they were not lying to us, and we  
19 know now that the Khmer Rouge, they rebelled against the  
20 ceasefire. They absolutely refused a ceasefire at that  
21 point, and they publicly said later they would have lost the  
22 war. They considered their position precarious and  
23 absolutely refused a ceasefire and refused to cooperate.

24 The North Vietnamese bear a lot of responsibility  
25 because they had created these people and were arming and

1 continued to arm them through the next two and a half years.  
2 But the North Vietnamese sort of lost the ability to deliver  
3 them to anything.

4 So we made this statement saying we took -- I  
5 forget how it was phrased, but if the war continued, if the  
6 war continued in Cambodia, then we would have to respond in  
7 that respect and it might disrupt the whole thing.

8 I mean, at that point we got the Cambodian  
9 Government to announce a unilateral ceasefire, a sort of  
10 offer to stand down. We said: If the communist side breaks  
11 this, we would draw our conclusions. And as you know, we  
12 shifted -- we continued our air operations in Cambodia  
13 subsequently.

14 Q. Is it accurate to say that, really by definition,  
15 something that was the subject of a unilateral declaration  
16 was something that was discussed, but no agreement was  
17 reached?

18 A. Well, as a general matter, yes. I'm thinking of  
19 the SALT, in the SALT agreement, another controversy where  
20 we couldn't get the Soviets to agree to the definition of a  
21 heavy missile or to a provision against modernizing heavy  
22 missiles. We made a unilateral statement that we would  
23 respond if they did such-and-such. But they ignored it and  
24 they did it anyway.

25 No, on the Cambodian thing I think it was not

1 naive; I think it was a statement of our policy, and we  
2 wanted to make the record show that the failure to end the  
3 war in Cambodia could disrupt everything else, and we  
4 reserved the right to do X, Y, Z.

5 And I think the Vietnamese were very  
6 uncomfortable. I think they had wanted -- they were taking  
7 some risk here that this could get out of hand, and I think  
8 in good faith they did make an effort to get a ceasefire in  
9 both Laos and Cambodia.

10 Q. I want to talk a little bit more about the lists  
11 that were provided on the 27th of January and the 1st of  
12 February. But before we get specifically to that point,  
13 you've testified that you had, you and others on the NSC  
14 staff, had certain reactions to those lists when they were  
15 disclosed, and I guess it goes without saying that they were  
16 obviously different from what people were expecting.

17 Where did the NSC staff and the U.S. negotiating  
18 team get its information upon which it could base its  
19 expectations?

20 A. Well, I think this must have come from the  
21 Pentagon. I wasn't involved between the NSC and the  
22 Pentagon, but we got the list. As soon as we got it we  
23 handed it over to the Pentagon.

24 Their reaction was as I said. I mean, I got from  
25 osmosis the fact that this was a strange list, that it left

1 out people whom we assumed were in their hands. I don't  
2 have any specific recollection of reactions, except the fact  
3 that Kissinger came to Hanoi with a set of these folders  
4 that were sort of inexplicable and asked them for some sort  
5 of explanation.

6 I'm sort of reacting myself to that, the fact that  
7 there were these cases. I don't know how many. I don't  
8 know where the 80 came from. Maybe these were the most  
9 dramatic instances.

10 I myself find it inexplicable that those 80 people  
11 didn't show up on some list, dead or alive.

12 Q. So your understanding -- well, let me ask you  
13 this, because now almost what it sounds like is what  
14 happened was the lists came over and they were sent to the  
15 Defense Department for analysis, and it was really some  
16 process of the Defense Department saying, wait a minute,  
17 they've left off some people, and that created this  
18 surprise.

19 Was there any understanding -- I'm sure there was  
20 some understanding. What was the level of understanding  
21 among Dr. Kissinger and his highest assistants, including  
22 you, as to how many prisoners we should be expecting to be  
23 on those lists before the lists were turned over?

24 A. Well, we had no independent information other than  
25 what the Pentagon had. I'm not sure I understand the

1 question. Our knowledge was the same as the Government's  
2 knowledge.

3 Q. Did the team, Dr. Kissinger and his team, have  
4 that knowledge? In other words, did Dr. Kissinger know that  
5 the Pentagon was carrying approximately 600 people as POW's?

6 A. I suppose somebody on our staff knew. But what  
7 follows from that? Then we get a list that has a lot fewer  
8 names and there we are. I'm sure that either our staff or  
9 the Pentagon was able to tell us immediately that this was  
10 not a good list.

11 But before we received it we were not in a  
12 position to judge it.

13 Q. Right. And I guess my only question is was the  
14 staff in possession before the lists were received of  
15 information that created specific expectations?

16 A. I don't know the extent of Kissinger's knowledge.  
17 I don't know whether he had the numbers in his head. He may  
18 have. I just don't know. Our staff may be more conversant  
19 with the details.

20 MR. ROSTOW: Are you asking whether Kissinger and  
21 his entourage knew the basis for the Pentagon's view that so  
22 many Americans were thought to be alive?

23 MR. KRAVITZ: I guess that's one of the questions  
24 I'm asking. But initially I guess I'm asking what is a less  
25 involved question, which is:

1 BY MR. KRAVITZ:

2 Q. Before the lists were turned, did you and other  
3 people on the U.S. delegation know how many? Did you have  
4 a sense in your own mind as to how many people we were  
5 expecting? Or was the plan, we'll take the list and give it  
6 back to the Defense Department and see what they say?

7 A. I have to qualify a lot of this by saying I don't  
8 recall a whole lot about this. But I don't think Kissinger  
9 and his staff had any independent knowledge. Our Government  
10 had its own list of MIA's and our own list of people we knew  
11 to be prisoners, and I'm sure another category of people who  
12 were prisoners that we didn't know were prisoners.

13 So we didn't know what they had, with a few  
14 exceptions, people they had put on TV. Really, we didn't  
15 know how many prisoners they were holding or what the proper  
16 MIA roster was.

17 And if the list was handed over -- actually, it  
18 wasn't Kissinger that received it. I think it was handed  
19 over at, wasn't it, one of these joint commissions? I'm not  
20 sure. I forget the mechanics of the turnover. So this  
21 wasn't something that Kissinger and his staff had  
22 independent wisdom on, and we didn't see the list until it  
23 was provided.

24 They were not obligated to turn over the list  
25 until that point, and likewise the South Vietnamese had to

1 turn over a list. But actually, the South Vietnamese were  
2 on a somewhat different schedule, but everybody's obligation  
3 went into effect at the same time, and the ceasefire didn't  
4 start until that point.

5 So nobody was free to go running around others'  
6 territory before the ceasefire was in effect, and then the  
7 thing started to operate.

8 Q. What do you remember happening and hearing about  
9 after the lists were traded that led you to say what you  
10 said this morning about our being stunned at the number of  
11 people who appeared to be left off or appeared to be  
12 missing?

13 A. I was thinking of the 80. This is my major  
14 memory, is the fact -- and I saw those folders and carried  
15 them and looked through them. I was just struck by the fact  
16 that these were people who were captured alive, at least by  
17 all evidence, and this was mystifying. How could they not  
18 have them either dead or alive?

19 Q. You're referring to the trip to Hanoi in early  
20 February?

21 A. The Hanoi trip. I have to say also, I remember  
22 some discussions with Kissinger and his staff where he could  
23 not fathom what incentive they would have had to keep  
24 prisoners alive. At one point he said: What do they gain  
25 by that? If they in secret keep live prisoners behind and

1 don't tell anybody about it, what leverage do they gain?  
2 How do they use it? It's of no use.

3  
4 And then if they announce that they have them,  
5 there'd be such an uproar that again they wouldn't gain  
6 anything.

7 So he's trying to calculate rationally what is  
8 their incentive, certainly, to keep live prisoners. He  
9 could not think of a rational reason for doing so.

10 Ask him about his mental process, but that's one  
11 of my memories from I guess roughly this period, that he  
12 couldn't understand why, what motive they would have for  
13 misleading us or, even less, of keeping live prisoners  
14 behind.

15 Q. To your memory, did Dr. Kissinger ever wonder  
16 aloud that his suspicions that the North Vietnamese may have  
17 been holding back prisoners may have been related to Exhibit  
18 No. 5, the promise to pay money, and that prisoners may have  
19 been held back in some way akin to hostages?

20 A. I don't recall him ever speaking in those terms,  
21 except -- I don't think it would have made any sense. What  
22 he did say that I vaguely recall, again, was that there was  
23 no rational incentive for them to do that -- I'm  
24 interpreting here -- that if they had ever sprung this on us  
25 afterwards it would have been such an uproar that we would

1 have had a Congressional resolution to bomb the hell out of  
2 them.

3 There's no strategy here for them in that. They  
4 complained. They used this to beat us over the head for a  
5 while, they didn't get their money. But they had no  
6 reasonable expectation of getting this money unless they  
7 were complying with the agreement.

8 So holding back live prisoners I think would have  
9 been the dumbest thing for them to do if they were trying to  
10 get things out of us. It certainly would not have worked.  
11 So, extrapolating from that, keeping live prisoners wouldn't  
12 have gotten them any money.

13 But even not giving us information about dead  
14 people, I cannot explain. Let's say these 80 people have  
15 been killed. We have to ask ourselves: Why wouldn't they  
16 have put them on the list who died in captivity? We  
17 wouldn't have known necessarily what had happened. That's  
18 very hard to understand. I can't think of any rational  
19 explanation.

20 Q. You've told us that you have specific  
21 recollections about the perceived inadequacies of the list  
22 from your trip to Hanoi with Dr. Kissinger in February.

23 A. Yes.

24 Q. Do you have any recollections about more immediate  
25 reactions to the North Vietnamese lists, in other words

1 closer in time to January 27th, 1973? Any reactions, either  
2 within the U.S. delegation or within the United States  
3 Government?

4 A. I don't have any clear recollection. I'm sure  
5 somebody reported to Kissinger fairly quickly how this list  
6 corresponded to our knowledge, so I'm sure he had that. He  
7 was given that information. But I don't recall any personal  
8 reaction.

9 Q. When you said this morning, "We were stunned by  
10 the lists," who comes within the term "we"?

11 A. Well, that's one thing I may regret. I may regret  
12 the word. My memory is focused on those folders and the  
13 just inexplicable nature of it. I don't know who was  
14 stunned. I found the whole thing puzzling. I found that  
15 aspect inexplicable.

16 Other discrepancies are in some sense easier to  
17 understand, particularly in Laos where the terrain is hard  
18 and nobody is really in control. I think the fact that  
19 there would be discrepancies is not totally to be  
20 unexpected, given the wartime conditions and the general  
21 terrain and so forth, though I think it varies from case to  
22 case.

23 I think the North Vietnamese had less excuse for  
24 things that happened on their territory. The Viet Cong I  
25 think I could certainly understand, and I think this was

1 discussed, that, given the fact that we were bombing them  
2 and they were on the run, you cannot expect them to have  
3 meticulous bookkeeping and hospital care and so on. And  
4 Laos even more.

5 Some discrepancies I would say were puzzling and  
6 disturbing, but not quite of the same level of  
7 bothersomeness of the 80. And I think, if you're giving me  
8 a chance to retract a word, I don't really want the word  
9 "stunned" used.

10 I think we were mystified by particularly those  
11 cases where we thought they must have known. The  
12 discrepancies in general could be explained by a lot of  
13 other reasons. I remember everybody noticed the  
14 discrepancies and it was disturbing.

15 "Stunned" is I think maybe too strong a word,  
16 except in those cases where we just could not understand  
17 what had happened to these people who they had in their  
18 custody.

19 Q. Now, these 80 cases who were presented in Paris --

20 A. Hanoi.

21 Q. -- in Hanoi, in February 1983, were those all  
22 Vietnam cases?

23 A. I don't remember exactly.

24 MR. ROSTOW: Just one thing. You had asked who  
25 was encompassed by the "we". I don't know whether that's

1 also a word you want to modify.

2 THE WITNESS: Well, I don't even know where I'm  
3 getting this recollection. I just remember a sense that I  
4 picked up from my colleagues that the list was puzzling and  
5 there were discrepancies, and it was bothering us. The  
6 other folders, I think I must have asked my colleagues what  
7 explanation there could be. Nobody on our team could  
8 understand or have an explanation.

9 BY MR. KRAVITZ:

10 Q. Who were the colleagues?

11 A. It might be people like John Negroponte, I think,  
12 if he was still on the staff. I don't know when he left.  
13 But my other colleagues who were more conversant on these  
14 issues than I was.

15 Q. Aside from his failure to come up with any reason  
16 why the North Vietnamese would hold back prisoners, either  
17 dead or alive, what was Dr. Kissinger's -- what did Dr.  
18 Kissinger say in your presence about the perceived  
19 inadequacies in the list?

20 A. I can't recall anything specific. But I mean, it  
21 was something he specifically was going to raise in Hanoi  
22 and did.

23 Q. You've said a couple of times that the fact that  
24 Dr. Kissinger brought these folders to Hanoi was meaningful  
25 to you. What do you mean by that?

1           A. Well, I think it was the highest level of contact  
2 we had with these people. We had all these joint  
3 commissions already in operation, presumably. But the main  
4 channel of dealing with them was him, and he was talking to  
5 the people at the highest level in Hanoi.

6           So I think this was a sign of high-level, the  
7 highest level concern on our part, and particularly when  
8 it's raised in the context of a discussion of things like  
9 postwar relations with North Vietnamese.

10          Q. So in other words, if the perceived inadequacies  
11 in the list were really more along the lines of explainable  
12 discrepancies, rather than, as they were, along the lines of  
13 people being left off for whom we had hard evidence they  
14 knew about, it might have been handled at a lower level, for  
15 example by the Four-Party Joint Military Commission, instead  
16 of being handled by Dr. Kissinger?

17          A. Yes. I would say that an issue like that,  
18 discrepancies, certainly would be handled first at the  
19 experts level, and that would not have excluded raising even  
20 those issues to a political level. But what he focused  
21 specifically on was these 80.

22          He may have raised the issue of other  
23 discrepancies. Those other discrepancies, I think that was  
24 probably something for the other people to deal with first,  
25 at least to explore and see what lay behind the

1 discrepancies before we made a political issue out of it.  
2 That would be an appropriate way to deal with it, the  
3 commissions, the people on the commissions to explore and  
4 see what information they could get before escalating it.

5 Q. The 80 cases about which the folders were  
6 presented in Hanoi in February of '73 have been described to  
7 us as 80 cases for which there was strong hard evidence of  
8 someone being alive in captivity at some point before  
9 January 27th, 1973, and no evidence of death. Would you,  
10 based on your review of those folders -- and I understand  
11 it's 20 years ago. But based on your recollection of those  
12 folders, would you agree with that statement?

13 A. That's my recollection, yes.

14 Q. How familiar with the facts of those cases was Dr.  
15 Kissinger during that trip to Hanoi in February of '73?

16 A. Well, again, I can't recall how closely he studied  
17 it. I think he was familiar with what was there. He was  
18 familiar with the essence of the matter. I'm not saying he  
19 read every folder, but he knew what it represented and what  
20 the significance of them.

21 Q. Do you remember your reading the folders and then  
22 briefing him with a summary as to each one?

23 A. No. He saw them. He had them in his hands. I'm  
24 sure he looked at them, and he knew exactly what they  
25 represented.

1 Q. What was the process -- I'm sorry, go ahead. I  
2 didn't mean to interrupt.

3 A. He presented them. I'm not sure at which meeting,  
4 but he presented them himself.

5 Q. What was the process by which these folders were  
6 presented?

7 MR. ROSTOW: Did you go on the trip?

8 THE WITNESS: I was there. I was in Hanoi.

9 I don't remember whether he handed it over at a  
10 meeting or before a meeting. I forget.

11 BY MR. KRAVITZ:

12 Q. Do you remember who else was on that trip?

13 A. Well, Richard Kennedy was there to talk about  
14 economic business. I could look it up in the memoirs  
15 perhaps, but I don't even remember whether Winston was  
16 there, because Winston took six months off. I don't  
17 remember. He may have come, but he left the staff for a  
18 while.

19 Now, Haig may -- no, Haig had probably left. This  
20 is something you could find out. I just don't recall. But  
21 there was some turnover.

22 Q. One of the things that Mr. Lord told us was that  
23 during many of the secret negotiations dating back to, I  
24 think, 1970, either he or Mr. Smyser would take verbatim  
25 notes of the negotiating sessions, notes that would later be

1 typed up.

2 Do you know whether anybody else did that in their  
3 absence?

4 A. Yes.

5 Q. More specifically, do you know if anybody would  
6 have done that on this trip?

7 A. Yes, a number of us. In fact, to backtrack a bit,  
8 I think Winston was on this trip, because there was a trip  
9 to China on the same trip. Yes, in the early days, he's  
10 referring to himself and Smyser. That's at the time we had  
11 no stenographers or whatever, and they would take the notes.

12 Later, when the meetings became more significant,  
13 they brought me along to share in the notetaking duties. We  
14 would rotate. Later we also brought a stenographer, a  
15 secretary, who would take a shorthand record, which then I  
16 or Winston or somebody would go over to correct it, because  
17 the secretaries didn't know all the jargon or the words.

18 So I would take this, or Winston or Negrofonte.  
19 At least some of us, at least one of us, would take as close  
20 to verbatim notes as we could and then use it to fix the  
21 stenographic record that the secretary would take.

22 There was consecutive translation. You had a  
23 little more time to take a record. You can keep writing  
24 while the translation is going. So we had a pretty good  
25 record all along, and would usually rotate the notetaking

1 duties.

2 Q. So you think there's a good chance that there may  
3 actually be a written record somewhere of the meetings in  
4 Hanoi?

5 A. In Hanoi as well as any other negotiating session.

6 Q. And you think those are more likely to be in the  
7 Nixon Project than in the Kissinger collection?

8 A. They'd be in both, they'd be in both.

9 Q. Did Dr. Kissinger obtain any information, any  
10 helpful information, in response to his turning over these  
11 approximately 80 folders?

12 A. I think not. My recollection is no. Their answer  
13 continually was: We've given you all the information we  
14 have.

15 Q. Did the United States Government take any action  
16 in response to -- well, let me back up. Is it accurate to  
17 say that Dr. Kissinger viewed the North Vietnamese response  
18 on this issue during the meetings in Hanoi in February 1973  
19 to be inadequate or unsatisfactory?

20 A. They took the folders. They may well have said  
21 something like, we'll look into it, and then answered later.  
22 I don't recall exactly when they gave their response, but  
23 I'm sure they never gave us a satisfactory response, and I  
24 suspect that was Kissinger's view.

25 Q. Were any actions ever taken by the U.S. Government

Stenographic Transcript of  
**HEARINGS**

Before the

SELECT COMMITTEE  
ON POW/MIA AFFAIRS

**UNITED STATES SENATE**

Continued

Deposition of  
PETER W. RODMAN

Thursday, May 28, 1992

Washington, D.C.

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CONTINUED DEPOSITION OF  
PETER W. RODMAN

- - -

Thursday, May 28, 1992

- - -

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 recess, at 9:02 a.m. in Room S-  
407, Conference Room 2, The Capitol, the witness having been  
previously 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.

1

2

## APPEARANCES:

3

On behalf of the Senate Select Committee for

4

POW-MIA Affairs: .

5

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6

JOHN ERICKSON, ESQ., Counsel

7

8

On behalf of the Witness:

9

NICHOLAS ROSTOW, ESQ.

10

Special Assistant to the President,

11

Legal Adviser

12

National Security Council

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The White House

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Washington, D.C.

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I N D E X

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Witness: Examination by Counsel for  
the Select Committee

PETER W. RODMAN

By Mr. Kravitz 147

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P R O C E E D I N G S

MR. KRAVITZ: Good morning, Mr. Rodman.

THE WITNESS: Good morning.

MR. KRAVITZ: We're back on the record.

Whereupon,

PETER W. RODMAN

was resumed as a witness and, having been previously duly sworn by the Notary Public, was examined and testified further as follows:

CONTINUED EXAMINATION BY COUNSEL

FOR THE SELECT COMMITTEE ON POW-MIA AFFAIRS

BY MR. KRAVITZ:

Q. Why don't I start again by asking you whether there's anything you said yesterday that you wanted to add to in any way?

A. No, I think I made my point. My principal concern is at the word "stunned," which may be melodramatic and it's a little hard to substantiate. But I say about our reaction to the list that we were disappointed, we were puzzled. I think my own reaction was, particularly to the 80, the only concrete thing I recall is that, the list of 80 and how we were sort of stymied to come up with an explanation for it.

I think to say "stunned" is a little bit overdramatizing it. Just, I hope that's reflected in the record.

1 Q. Okay. But just so that we are all clear as to  
2 exactly what was going on in people's minds, you did tell us  
3 yesterday that with these approximately 80 files, they were  
4 all on men for whom there was strong hard evidence of  
5 captivity?

6 A. Right.

7 Q. And no evidence of death.

8 A. Right.

9 Q. And is it fair to say that within the U.S.  
10 delegation to the Paris talks, including Dr. Kissinger, and  
11 President Nixon there was a sense of belief that these  
12 people were in captivity at some point before January 27th,  
13 1973, and that the North Vietnamese should have been able to  
14 tell us something, either that they were dead or alive in  
15 captivity?

16 A. Well, let me be specific. Nixon, I never dealt  
17 with Nixon personally, so I can't speak for him. I had  
18 enough contact with Kissinger to have some sense for his  
19 view, and the view of all of us on the staff was that this  
20 was inexplicable; rather than use adjectives about our  
21 personal mental state, just to say that this was  
22 inexplicable.

23 As to what we thought was the case, as I did  
24 mention yesterday, I remember a discussion with Kissinger  
25 where he just could not imagine why they would keep live

1 prisoners. His assumption, I think his conclusion, was that  
2 they were probably dead. He could not understand. Several  
3 levels of inexplicability here:

4 Even if they were dead, they should have been on  
5 the list. But he, first of all, could not think of why  
6 these significant discrepancies in these 80 could exist.  
7 Secondly, I believe it was his view that he could not  
8 imagine any rational reason why they were keeping live  
9 prisoners.

10 So these are two separate points, but I think I  
11 could speak to those.

12 Q. One of the things you told us yesterday was,  
13 again, there were these approximately 80 cases that were  
14 inexplicable, as you said.

15 A. The most inexplicable, I would say.

16 Q. In other words, these were the 80 most  
17 inexplicable of perhaps some larger number of inexplicable  
18 cases?

19 A. Yes.

20 Q. Then Dr. Kissinger really took these cases to the  
21 North Vietnamese at a political level?

22 A. Yes.

23 Q. In February 1973 in Hanoi, to show the high level  
24 of concern within the U.S. Administration; and that there  
25 really was no satisfactory response.

1           A.    Right.

2           Q.    Even though our Government continued to press this  
3 issue at the diplomatic level over the next several months,  
4 you also told us that there was a decision made not to  
5 pursue military intervention, at least on this issue alone,  
6 at that time back in the spring of 1973.

7           A.    Well, it was a combination of violations that  
8 raised the issue in March or April of some military  
9 response.

10           MR. ROSTOW:   And I'd just like to say, Mr.  
11 Rodman's answers, of course, speak for themselves, not your  
12 characterization or attempt to summarize, which is useful to  
13 remind us all of the subject matter, but not conclusive as  
14 to what he said.

15           MR. KRAVITZ:   A fair point.

16           THE WITNESS:   And I think it's also fair to say  
17 that the state of this country, the political climate of  
18 this country, would have been hysterically opposed to  
19 military action, I believe, and I believe that needs to be  
20 taken into mind.

21           I think the sort of hawkishness that is in the air  
22 at this point is ridiculous compared to the state of the  
23 country at that point.   I find it -- my counsel will  
24 disapprove, but I think I should say for the record that I  
25 find it kind of mind-boggling that people 20 years later are

1 saying Nixon and Kissinger should have been tougher on the  
2 North Vietnamese, particularly the United States Congress  
3 expressing this opinion after the position that Congress was  
4 taking at that time, and the state of the whole country.

5 It's mind-boggling to make this sort of accusation  
6 20 years later. I'll confine myself to that, rather than  
7 say what I really think.

8 MR. KRAVITZ: I hope you don't think I'm implying  
9 that.

10 THE WITNESS: I'm under oath to speak the whole  
11 truth, but I guess at this point I will limit myself to  
12 that. If you want to know what I really think --

13 MR. ROSTOW: We'll go off the record.

14 THE WITNESS: But I will limit myself to that.

15 MR. KRAVITZ: Okay. I just want to make sure that  
16 you don't think that by my questions I'm implying that  
17 that's what I believe.

18 THE WITNESS: No, no. I'm happy to say that for  
19 the record. This has been a quite honorable proceeding and  
20 it's not a complaint about your questions.

21 BY MR. KRAVITZ:

22 Q. We actually did -- I'm sure you're not surprised  
23 to hear, but we discussed the same issue with Mr. Lord in  
24 his deposition. And obviously the transcript of his  
25 deposition speaks most accurately to what he said, but let

1 me just try to paraphrase it.

2 He had the same recollection as you did about 80,  
3 approximately 80 cases that were really very troubling, that  
4 really were unexplainable. He said that his interpretation  
5 really of what happened in terms of the United States  
6 Government's response was that there was almost a choice  
7 between two ways of responding.

8 One would be to intervene militarily in some way,  
9 to try to get either live prisoners, as they believed them  
10 to be, if they were alive, or to get more information about  
11 people who died in captivity, with all the attendant risks,  
12 such as losing more people, having more people killed, or  
13 having more people taken prisoner; or just not doing  
14 anything and hoping that the diplomatic process would bring  
15 more results.

16 His interpretation was that really, between those  
17 two alternatives, it was the second alternative that was  
18 chosen. Do you see it that way?

19 A. I was not a party to discussions on this point.  
20 He may well have been. I don't recall it in those terms.  
21 I think it's a fair characterization of the option. I mean,  
22 it was a dilemma: What do you do?

23 I think, as I've said a few times, there was a  
24 package of obligations here on our side, on their side, and  
25 this was one of them, and we intended to hold them to it.

1 Implementation of the agreement didn't stop on the day the  
2 lists were handed over. Both sides had continuing  
3 obligations, and we hoped to have continuing leverage.

4 So we didn't think that the lists would be the end  
5 of it. We would pursue it, we would pursue it. We would  
6 certainly make clear that things that we held in reserve,  
7 such as the economic aid, would be used as leverage to try  
8 to get more satisfactory answers.

9 So we didn't think the case was closed. But as I  
10 said, if you look at the calendar, March and April we were  
11 faced with a big decision about enforcing the agreement on  
12 the military side and backed away from the confrontation.  
13 Then in June Congress took away our ability to re-intervene,  
14 and Watergate was consuming Nixon and I think we lost our  
15 leverage over the North Vietnamese very rapidly. So it  
16 became moot.

17 No how deep our grievance, in spite of I think  
18 repeated communications with them on this subject, our  
19 ability to hope for more satisfactory answers was  
20 evaporating.

21 Q. I think another point that Mr. Lord made was that,  
22 although the highest officials in our Government believed,  
23 perhaps wrongly but certainly believed, that there were  
24 additional prisoners, they didn't know that for a fact and  
25 they didn't know where they were.

1           So it wasn't simply a matter of going in and  
2 getting people. Do you remember that as a concern?

3           A. Well, vaguely. My own knowledge was limited at  
4 that time, I'm sure, and whatever information we had would  
5 have come from the Pentagon, the people who were following  
6 this. So at NSC some of my colleagues might have been more  
7 involved in these discussions.

8           The dilemma, what you say, sounds very real. We  
9 had tried a raid, remember, in 1970, the Sontay Raid, which  
10 had sort of mixed results, to put it politely. Maybe that  
11 was in our minds as well. But this is speculative.

12          Q. You don't recall any discussions in early 1973  
13 about the success or lack of success of the Sontay Raid?

14          A. I don't remember it being discussed at that point.  
15 I have vivid recollections of the Sontay episode itself, but  
16 that's beside the point.

17          Q. You were saying that the accords certainly  
18 obligated all parties to continue to cooperate with each  
19 other on POW and MIA issues, and certainly specifically  
20 article 8(b) talked about those obligations. As you could  
21 tell, what was Dr. Kissinger's belief as to whether that  
22 process really would be fruitful?

23          A. 8(b)? Is it all right to refresh?

24          Q. Oh, please. This is not a test.

25          A. It's the POW section, chapter 3, I guess.

1 Q. Just to refresh your recollection, you should  
2 refer to 8(a) as well.

3 A. We're talking about the Paris agreement, and 8(b)  
4 is the parties shall help each other get information about  
5 MIA's and determine the location of graves, et cetera. 8(a)  
6 is the obligation to release, to release prisoners.

7 Okay. If you could repeat the question.

8 Q. My question was, as you mentioned before and as  
9 the accords require specifically, January 27th was not the  
10 date at which the various parties' obligations ended. Those  
11 obligations clearly were meant to continue over time.

12 My question is: Did our Government, and  
13 specifically Dr. Kissinger, really believe that the North  
14 Vietnamese were going to be cooperative and helpful, as they  
15 were required to be by the agreement?

16 A. In the context of an agreement that was being  
17 adhered to in other respects, this was entirely possible if  
18 the ceasefire held, if they were not cheating on the  
19 agreement in other respects, if their negotiations with the  
20 South Vietnamese went tolerably well, or even if they  
21 didn't.

22 We hoped, as I said before, to insulate the North  
23 Vietnamese relationship -- we tried to insulate to some  
24 degree from what we knew would be the internal Vietnamese  
25 bitterness. In a certain context, of the agreement holding

1 up, we did believe there would be cooperation. We granted  
2 the possibility of just the physical difficulty that they  
3 might have had in keeping track of all the people that were  
4 shot down.

5 We felt they had incentives to live up to some of  
6 these provisions, particularly with the economic aid out  
7 there as a positive incentive and various negative  
8 incentives. So we thought this was possible, to get better  
9 performance out of them.

10 Q: Did the North Vietnamese response or, I guess more  
11 accurately, their lack of response to Dr. Kissinger's  
12 efforts in Hanoi in February 1973 change his or your  
13 opinions as to the likelihood that the North Vietnamese were  
14 going to be forthcoming with information regarding our  
15 missing men?

16 A. Well, we continued to be, say, mystified. I think  
17 we hoped that once the two-party commission, whatever was  
18 the appropriate commission, once this got going, that this  
19 might actually produce some results. Once we got search  
20 teams or this process going, there was a possibility that it  
21 would bear fruit.

22 So again, the possibility was not closed off.  
23 Even these 80, they might suddenly say: Gee, we just found  
24 some evidence about these people. None of this was  
25 precluded.

1 Q. It may be that your hope wasn't closed off, but I  
2 guess the question remains: Did what happened in Hanoi in  
3 February of '73 dampen your and Dr. Kissinger's hopes that  
4 the North Vietnamese really would be cooperative, as you had  
5 expected them to be?

6 A. Well, I would say that we were discouraged by  
7 their continuing replies which said: We've given you all  
8 the information we have. We were discouraged by it, but we  
9 didn't consider it closed.

10 Q. In the month of January -- I'm sorry. Let's say  
11 the 60-day period between January 27th, 1973, and the end of  
12 the U.S. troop withdrawal and the end of Operation  
13 Homecoming, did the North Vietnamese Government --

14 MR. ROSTOW: When was Operation Homecoming?

15 MR. KRAVITZ: It was during the 60 days after the  
16 signing of the agreement.

17 THE WITNESS: From January 27th to March 27th.  
18 That was the 60-day period.

19 MR. KRAVITZ: Right.

20 THE WITNESS: For both troop withdrawal and the  
21 prisoners.

22 BY MR. KRAVITZ:

23 Q. In that 60-day period between January 27th, 1973,  
24 and March 27th, 1973, did the North Vietnamese Government  
25 say or do anything to indicate that it was going to be

1 cooperative in terms of providing additional information on  
2 our prisoners whom we believed they held, at least at one  
3 time?

4 A. I'm not familiar with whatever technical  
5 discussions may have been going on at that point.

6 Q. So, although you are familiar that there were  
7 certainly some frustrations, you're not familiar, you're not  
8 aware of --

9 A. I don't know what discussions were going on with  
10 the North Vietnamese on the experts level that might have  
11 gone into these questions, so I just don't know the state of  
12 those conversations that might have been taking place, where  
13 some of the discussions with them would have taken place.

14 Q. So the only discussions regarding prisoners that  
15 you are privy to during that time period were the  
16 discussions that Dr. Kissinger had in Hanoi in February  
17 1973?

18 A. That's right, that's all that I can recall at this  
19 point.

20 Q. Were you aware of a list of U.S. prisoners that  
21 the North Vietnamese turned over to Senator Edward Kennedy  
22 in 1970, of approximately 330, that had approximately 330  
23 names on it and that was viewed, at least by the Pentagon,  
24 as being very inadequate?

25 A. I vaguely recall it, not in any great vividness.

1           Q.    Just to see if this refreshes your memory, it was  
2 a situation where Senator Kennedy was passed a list of  
3 approximately, again approximately, 330 names. That was  
4 sent to the Pentagon, where it was analyzed, and there was  
5 a big press conference where I believe it was the Secretary  
6 of Defense at that time, Secretary Laird, held a big  
7 breakfast press conference where he had big photographs of  
8 something like 14 prisoners who had been shown in captivity  
9 in North Vietnam, but whose names had not appeared on the  
10 list.

11           A.    No.

12           Q.    Do you remember?

13           A.    Very vaguely. Well, continue the question.

14           Q.    My question really is, do you remember that  
15 happening, first of all? And second of all, do you remember  
16 that incident being something that factored into the level  
17 of trust or distrust that the U.S. negotiating team had  
18 toward the Vietnamese statements as to the completeness of  
19 the lists of our prisoners?

20           A.    Well, I have a vague memory of it. What I do  
21 remember is that we discussed that the North Vietnamese  
22 would deal on this matter with an opposition political  
23 figure, instead of with the United States Government, that  
24 they would deal with it in such an obviously propagandistic  
25 fashion, and I thought that they were clearly trying to

1       manipulate the POW issue for propaganda purposes.

2               I think that we violently objected to, and I'm  
3       sure we said a few critical words about Senator Kennedy and  
4       his willingness to play along with this kind of sleazy  
5       trick.

6               Now, the list, the inadequacy of the list, I guess  
7       in retrospect did compound the North Vietnamese, their  
8       performance. I don't know. I guess the short answer is no,  
9       I don't know whether the U.S. Government drew conclusions  
10      about the specific unreliability from that.

11              The war was still going on and you might expect --  
12      alternatively, you could say three years later or two years  
13      later they would be capable of having a better -- coming up  
14      with something better. Precisely because there was this  
15      reaction from the Pentagon, they might have been put on  
16      notice that they would have been called on these  
17      inadequacies in the list.

18              I think the Nixon Administration deserves credit  
19      for making the POW issue a higher profile issue. In my  
20      understanding, in the Johnson Administration they were very  
21      worried that if they made a public issue of the treatment of  
22      POW's that it might backfire. And Laird I think recommended  
23      a different approach, which is to call attention to the  
24      plight of the POW's.

25              I believe the record bears out that this resulted

1 in some improvement in their treatment. So the  
2 administration made this a higher profile issue, I think for  
3 lots of very valid reasons, including trying to get better  
4 treatment for them and to put the North Vietnamese on notice  
5 that this is something we care about and that they ought to  
6 perform. It should have put them on notice that their  
7 performance on this issue was of deep concern to the  
8 American public.

9 Q. I want to ask you some questions about the so-  
10 called Laos list that was provided to the United States  
11 Government on February 1, 1973. Correct me if I'm wrong,  
12 but I think I heard you say yesterday that that list was  
13 initially expected to be provided to us on January 30, 1973;  
14 is that correct?

15 A. Yes. I've refreshed my memory on this from the  
16 Kissinger memoirs and I do remember. I remember being  
17 involved in transmitting the economic message. So there was  
18 this informal linkage established for January 30th, is when  
19 we were going to send the letter and get the list. And then  
20 it was delayed a couple of days because they didn't have  
21 this right away.

22 Q. How was it agreed that the Laos list would be  
23 provided on January 30th, rather than January 27th, when  
24 according to the agreement all the prisoner lists were to be  
25 exchanged?

1           A. Well, the Lao agreement wasn't reached until  
2 February, late February, the ceasefire agreement in Laos.  
3 So you could argue the other way, that we got the list early  
4 because we were insisting on getting lists early.

5           The Laotian communists were not a party to the  
6 Paris agreement. What we got from them was as a result of  
7 our informal pressure on the North Vietnamese to use their  
8 influence right away to bring about a Laotian peace  
9 agreement as soon as possible.

10          Q. Is it true, then, that the Paris peace accords  
11 signed on on January 27, 1973, did not require the release  
12 of any prisoners held by communist factions in Laos?

13          MR. ROSTOW: I'm going to intervene here. The  
14 Paris peace agreements speak for themselves on that point.

15          THE WITNESS: I would like to -- I think I know  
16 what they're getting at.

17          MR. ROSTOW: Peter, you can make the point, but  
18 they do speak to that. They either address the question or  
19 they don't.

20          MR. KRAVITZ: Let me rephrase the question because  
21 I think that's a fair objection.

22          BY MR. KRAVITZ:

23          Q. Is it your interpretation of the Paris peace  
24 accords that they did not require the release of U.S.  
25 prisoners held by communist factions in Laos?

1           A. Well, let me answer it this way. It was the  
2 United States position from 1970 onward to insist on a peace  
3 agreement that included Laos and Cambodia. That was one of  
4 the biggest issues in discussions in October, November,  
5 December '72.

6           We could not get the North Vietnamese to deliver  
7 their allies to simultaneous peace agreements. Now, it was  
8 insane to think that the United States could have kept the  
9 war going in Vietnam one day longer on the grounds that we  
10 didn't have ceasefires in Laos and Cambodia. Therefore, we  
11 accepted to sign an agreement with the Vietnamese parties,  
12 but in addition what we did obtain from them was a private  
13 commitment to bring about a peace agreement in Laos as soon  
14 as they could, which they then did.

15           Cambodia was a special case which we can talk  
16 about later, secondly.

17           Thirdly, in the peace agreement, in the Vietnam  
18 agreement itself, there are a host of obligations that we  
19 did get North Vietnam to accept, including they were  
20 required to withdraw their forces from Laos and Cambodia,  
21 they were required no longer to use Laos and Cambodia for  
22 purposes of waging war in Vietnam.

23           We thought we got a hell of a lot from them on  
24 Laos and Cambodia, more than we had any right to expect,  
25 more than our own public and our opposition even cared

1 about.

2 But again, I resent the implication of somehow  
3 another loophole in this agreement, that Nixon and  
4 Kissinger, being so soft on North Vietnam, let the Lao get  
5 away with murder or something. The implication is insane --  
6 I'll change that word. The implication I resent deeply.

7 It is correct, as you asked: The Vietnam  
8 agreement deals with Vietnam. The provisions in chapter 3  
9 about prisoners of war related to the obligations of the  
10 American parties and the Vietnamese parties. We thought we  
11 accomplished something quite significant in getting a list  
12 of prisoners from Laos earlier, even in advance of any  
13 agreement negotiated in Laos.

14 I'll stop there.

15 Q. I guess the question, though -- and maybe you've  
16 already answered, but let me try to state the question more  
17 clearly. As you understood the Paris accords, did the Paris  
18 accords signed on January 27, 1973, require the release of  
19 American prisoners of war held by communist factions in  
20 Laos?

21 A. The Paris agreement dealt with Vietnam, not Laos.  
22 Well, I'll say no.

23 MR. ROSTOW: Again, the document speaks for  
24 itself. And really, I don't see the point of asking Mr.  
25 Rodman for his view of what a document that exists says. It

1 says it either covers the question or it doesn't cover the  
2 question. There's no invisible ink between the lines here.

3 MR. KRAVITZ: Your objection is noted, but I'm  
4 going to ask him to answer the question.

5 THE WITNESS: State it again.

6 BY MR. KRAVITZ:

7 Q. The question is: As you understood the Paris  
8 peace accords, based on your involvement in their  
9 negotiation, your discussions with Dr. Kissinger and others,  
10 did the Paris accords require the release of U.S. prisoners  
11 of war held by communist factions in Laos?

12 A. The text of the agreement does not require, does  
13 not deal with prisoner release outside of Vietnam.

14 Q. And as far as you were aware, were there any  
15 unwritten agreements requiring the release of American  
16 prisoners of war outside of Vietnam?

17 A. Well, as I said, the short answer is yes. We had  
18 every intention to press the North Vietnamese to deliver  
19 their allies to peace agreements in both Laos and Cambodia.  
20 Cambodia slipped away from their grasp as well as ours. In  
21 Laos they were under pressure, including some private  
22 understandings that they had. They made a commitment to  
23 deliver their Laotian allies to a peace agreement in Laos  
24 that had all of the provisions similar to the Vietnam  
25 agreement dealing with prisoners.

1           We thought it was an achievement to have actually  
2 gotten the list from the Lao communists earlier, weeks in  
3 advance of any negotiated agreement in Laos. So in that  
4 sense it was very definitely part of our overall negotiation  
5 to try to get a settlement in Laos and Cambodia as soon as  
6 possible.

7           Q.    But as of January 27th, 1973, there certainly was  
8 no specific agreement regarding the release of American  
9 prisoners?

10          A.    Release, I guess not. The details I don't recall.  
11 I don't remember exactly when they committed to produce this  
12 list. I don't know when they told us that they would have  
13 the list. Obviously there had been some discussions  
14 earlier, prior to January 20th or prior to February 1st.

15          They made a commitment at some point to get this  
16 list for us. I don't remember when the commitment was made,  
17 but it was part of the negotiation all along, I'm sure, to  
18 get from them as much as we could possibly get.

19          Q.    Based on your conversations with Dr. Kissinger or  
20 other things, other contexts in which you may have heard Dr.  
21 Kissinger state his opinion, did Dr. Kissinger's view of the  
22 scope of the Paris accords differ from your view of it  
23 regarding the issue as to whether the accords required the  
24 release of the American prisoners in Laos?

25          A.    I doubt it. I don't recall any difference in the

1 text -- I have to amend that. I don't want to leave  
2 openings here. The text is one thing. There were these  
3 side understandings in which we were insisting on  
4 settlements in Laos and Cambodia.

5 In the Laos thing, I think it was our expectation  
6 that as part of the Laos settlement we'd get our prisoners  
7 back. And as I said, the North Vietnamese were able to  
8 deliver that and we had some expectation that they could  
9 deliver.

10 We pressed and pressed for the same kind of thing  
11 in Cambodia, but the North Vietnamese were not able to  
12 deliver the Cambodian communists to any kind of agreement.  
13 So I think our intention all along in this negotiation was  
14 to achieve an Indochina-wide settlement. There are limits  
15 on what we were able to get, but not because of the lack of  
16 trying.

17 I frankly think even the North Vietnamese were in  
18 good faith when they said they had no control over their  
19 Cambodian comrades. I mean, the text of the Vietnam  
20 agreement deals with Vietnam, not the whole complex of  
21 discussions with them. And the issues on which we were  
22 putting pressure on them very definitely did embrace Laos  
23 and the fate of our prisoners in Laos. Otherwise we  
24 wouldn't have gotten this list.

25 Obviously, we wouldn't have asked for this list if

1 this wasn't part of our agenda.

2 Q. You did tell us yesterday that there were no side  
3 agreements akin to the reconstruction aid letter.

4 A. Yes.

5 Q. There were no side agreements to the Paris accords  
6 specifically related to prisoner of war-missing in action  
7 issues?

8 A. In my recollection, again, these were classified.  
9 There was one I remember, some Vietnamese civilian  
10 detainees; things that dealt with Laos and Cambodia in other  
11 terms. I just don't recall one on the POW issue. That's  
12 just my recollection.

13 There were about a dozen or 15 or so. A lot of  
14 them were definitional points. There were no bombshells  
15 there. When they're ever published, they'll be see as  
16 emendations and things that are not inconsistent with what  
17 is understood from the text.

18 Q. There was certainly no side agreement addressing  
19 the question of release of American prisoners held in Laos,  
20 was there?

21 A. I don't recall.

22 Q. When you first said yesterday that you were  
23 stunned -- and I understand that you've gone back from the  
24 word "stunned," so let's just use the word "concerned" or  
25 whatever word you think is appropriate about the lists.

1           A.    That's fine.

2           Q.    As I recall it, you mentioned both the lists  
3 received on January 27th and the list received on February  
4 1st. Could you describe for us at least what your reaction  
5 was when the so-called Laos list was turned over in February  
6 1st, 1973?

7           A.    I don't have a detailed recollection. I just  
8 remember hearing from somebody that this list had a lot of  
9 even more discrepancies, perhaps, and that the numbers were  
10 very disappointing. I'll leave it at that. I don't  
11 remember being involved in technical deliberations about it.

12           I think I found out at some point that it was  
13 considered a disappointing list.

14           Q.    Do you remember how it was that you found that  
15 out?

16           A.    I probably heard it from colleagues or somebody  
17 said it to Kissinger at a meeting I attended. I can't  
18 recall exactly.

19           Q.    Do you remember -- you went to Hanoi with Dr.  
20 Kissinger in February and discussed with them his thoughts  
21 about the possible inadequacies of the North Vietnamese  
22 list.

23           Do you remember Dr. Kissinger ever saying anything  
24 about the Laos list?

25           A.    I don't recall it. But a point to make: At this

1 point it became a normal governmental procedure for all of  
2 the secret diplomacy and back channel stuff, once you got  
3 into something big and implementing the agreement, the whole  
4 Government was working as a team in a normal way.

5 This is something that the Pentagon had the  
6 expertise on this and the people who knew what they were  
7 doing. Kissinger's role would have been, as in Hanoi, to  
8 raise an important issue at the highest political level, and  
9 so on. But he had no independent expertise here.

10 Q. In other words, Dr. Kissinger wouldn't be doing  
11 the analysis himself? Someone else would do that for him?

12 A. That's correct.

13 Q. And he would present the case to the other side?

14 A. That's correct.

15 Q. Our committee has been told by a number of  
16 witnesses, and in fact some documents that I'll probably  
17 show you in a little while indicate, that soon after the  
18 Laos list was turned over on February 1, 1973, it was  
19 concluded by American officials that that Laos list really  
20 wasn't the Laos list, in the sense that all of the nine  
21 Americans who were on the list out of the ten people total  
22 who were on the list had been captured by the North  
23 Vietnamese Army, in Laos, but had been captured by the North  
24 Vietnamese Army, rather than by the Pathet Lao, and that  
25 they had been held in Hanoi rather than in Laos.

1 Do you remember becoming aware of that?

2 A. I had forgotten. It sounds familiar as you  
3 recount it. I probably knew it at some point. I don't  
4 recall any more details about that.

5 Q. Do you recall any discussions among members of the  
6 U.S. delegation to the Paris talks or among anyone else  
7 about concerns that in fact really we had not received a  
8 Laos list in the sense of prisoners held that we believed to  
9 be held by the Pathet Lao?

10 A. I don't recall, I don't recall. One of the  
11 implications of such a list is that there's nobody else  
12 alive in Laos. So again, I don't recall. The short answer  
13 is I don't recall it.

14 Secondly, I do not recall anyone concluding that  
15 there were live people, either.

16 (Discussion off the record.)

17 BY MR. KRAVITZ:

18 Q. You've told us that the final agreement or, I  
19 guess, the close to the final agreement was reached on the  
20 accords, I think you said, January 13th, 1973. I guess you  
21 weren't positive of the date, but somewhere around then.  
22 And then some members of the team were left behind in Paris  
23 to work on the protocols.

24 A. That sounds right.

25 Q. What happened, just in terms of the physical

1 location of the members of the team, after say January 27?  
2 Were some people still in Paris? Were some people back in  
3 Washington? Where did people go?

4 A. Most of the people on Kissinger's team were  
5 Washington-based, but at various stages when we were into  
6 drafting documents some of the people would go over before  
7 Kissinger got there. Like January 2nd, Sullivan, I think,  
8 and a couple of people went over before Kissinger arrived,  
9 to do some preliminary work and then stayed later. I think  
10 that sounds correct.

11 But these were Washington-based people and  
12 Kissinger, he'd want the team back home at some point. As  
13 they got into drafting documents, I'm sure people were  
14 staying over there to do the work in Paris. But I don't  
15 recall any specific schedules of people.

16 Q. Were people like you and Mr. Negroponte working --  
17 did you all start to work on other things after January  
18 27th, or were you still really working on the Vietnam issue?

19 A. Well, Negroponte, this was his area. I had a  
20 general interest. I was with Kissinger on anything that was  
21 his priority. A few months later he gave a speech on  
22 Europe. There were other things he got involved in after  
23 January 27th, when the agreement was signed.

24 I just don't recall what I was spending my time  
25 on. In fact, a lot of issues had been neglected during that

1 time. Sadat had opened up a channel to us in the previous  
2 year and the whole Middle East thing had been put on hold  
3 for several months, the opening to Egypt which we later  
4 exploited.

5 We set up a meeting, a secret meeting with Sadat's  
6 national security adviser in May. Kissinger's Europe speech  
7 was April. So I would get involved in a lot of different  
8 things.

9 We also had to produce another volume in this  
10 foreign policy report. For four years we produced this  
11 voluminous thing called "U.S. Foreign Policy for the  
12 Seventies," which is a discussion of our overall foreign  
13 policy. We used to do that at the beginning of every year,  
14 and that was delayed. So I think we probably started on  
15 that.

16 But then in March and April -- after January 27th,  
17 the Hanoi trip was coming up, so we were still probably very  
18 involved in Vietnam until that. After that, I think  
19 Kissinger was involved in the whole question of the North  
20 Vietnamese violations and the possibility of a military  
21 strike. That was in March and April.

22 So it's hard to say specifically.

23 MR. ROSTOW: Could we just go off the record a  
24 second, please.

25 (Discussion off the record.)

1 BY MR. KRAVITZ:

2 Q. In terms of handling any crises that may have come  
3 up in the implementation of the accords over the months  
4 following January 27th, 1973, was really still the power  
5 centralized in Dr. Kissinger or in your view was it more  
6 spread out among other agencies of the Government?

7 A. Well, crisis management had its own procedure,  
8 which was the committee that was chaired by Dr. Kissinger,  
9 which was an interdepartmental committee.

10 Q. Is that the WSAG?

11 A. The WSAG, the Washington Special Actions Group.  
12 But Kissinger believed strongly that in a crisis you needed  
13 everybody engaged. He did not withhold information from the  
14 other participants.

15 This group went through several crises together,  
16 but Kissinger was the chairman of it. And in any crisis --  
17 and you see this in any administration -- the reins of  
18 decisionmaking get pulled into the White House necessarily.  
19 So in a crisis that was there.

20 I suspect -- I don't recall. I suspect that when  
21 the issue arose of violations and possible military action,  
22 that this group might have been used. It might not have  
23 been. But again, you can't manage a crisis without  
24 everybody being engaged in either some formal structure or  
25 even informal structure, and it doesn't make that much

1 difference.

2           The crucial thing is whether people are being  
3 included or excluded.

4           Q.    So you say you suspect that the WSAG group may  
5 have been used?

6           A.    I just can't recall. This is easily verifiable.

7           Q.    Right.

8           A.    You consider options. Let me say one sentence:  
9 The job of the WSAG was to compare notes on facts and  
10 develop options for the President's decision. The WSAG  
11 doesn't make decisions.

12          Q.    Similar to the National Security Council?

13          A.    That's right, and any committees of that type,  
14 that's correct.

15          Q.    What was your relationship, if any, to the WSAG  
16 group?

17          A.    Well, I think I hardly ever sat in on them. I  
18 would usually see the records. My job was to follow  
19 developments in various areas, and I think I would be aware  
20 of what was going on. If there were minutes of the meeting,  
21 I would usually see it and make sure that it was filed  
22 properly and so forth.

23          Q.    As the Paris accords themselves were nearing  
24 completion, do you know whether the issue of the  
25 negotiations was discussed in a WSAG meeting?

1           A.    Say that again?

2           Q.    As January 27th, 1973, was approaching and we were  
3 reaching, we were nearing agreement, or as October 1972 was  
4 approaching and at that point it appeared that we were  
5 nearing an agreement, do you recall --

6           MR. ROSTOW:   I'm sorry.   I've got to remind  
7 everybody of the terms of the agreement between the  
8 committee and General Scowcroft regarding access to the WSAG  
9 notes -- that's W-S-A-G -- and that those terms are that  
10 only the three, I guess for ~~DATA~~ stuff, the three  
11 senior staff -- Ms. Zwenig, Mr. Codinha, and Mr. Carluccio -  
12 - have access to those notes.

13           So, consistent with that agreement, answer the  
14 question.   We need to be a little careful, not that his  
15 recollection of 20 years ago is going to be a problem.

16           THE WITNESS:   It doesn't change my answer.

17           That's a crisis management group.   That's not the  
18 appropriate group for discussing other kinds of things.  
19 During the course of '72, the WSAG met frequently to discuss  
20 the military situation in Vietnam on the ground.   As January  
21 27th approached, there was nothing happening that was a  
22 proper subject for the WSAG.

23           And on October 8th, all of that -- the diplomacy,  
24 as I said before, was handled in a different way, nor would  
25 it have been appropriate for the WSAG in any case.

1 BY MR. KRAVITZ:

2 Q. So in other words, the WSAG wasn't dealing with  
3 issues of how the negotiations were doing, but rather how to  
4 react to subjects like alleged violations of an agreement?

5 A. Well, it's a crisis management group, and there  
6 are other interdepartmental committees that deal with policy  
7 issues of different kinds. But this was a political-  
8 military group and it dealt with the Jordan crisis or the  
9 Middle East War or military actions in Vietnam.

10 MR. ROSTOW: I'd like also to point out that Mr.  
11 Rodman has not reviewed the minutes of WSAG meetings. They  
12 speak for themselves, to those who are authorized to read  
13 them. And his answer to the question, of course, is based  
14 on a recollection that is now 20 years old, and about  
15 meetings in which he did not sit in in any event.

16 BY MR. KRAVITZ:

17 Q. Let me ask you about the Four-Party Joint Military  
18 Commission. What was the relationship, if any, between the  
19 United States representatives on that commission and Dr.  
20 Kissinger's negotiating team?

21 A. Well, this commission got going after the  
22 negotiations, the main negotiations, were over, if my  
23 recollection is correct.

24 Q. By the way, I think you're right.

25 A. The agreement set these things up and they then

1 proceeded. But I can answer the question. This was again  
2 a normal governmental body, in which the normal agencies of  
3 the U.S. Government would be participating. It was the job  
4 of the NSC staff to keep Kissinger informed of what was  
5 going on, to let him know if there were some serious  
6 problems that would require some intervention, diplomatic  
7 intervention.

8 Presumably, if there were policy questions, issues  
9 about U.S. policy in this commission, some of these might be  
10 raised to the White House level for decision. That would be  
11 a kind of sporadic involvement.

12 Basically, the commission did its work and we  
13 would monitor it in that sense.

14 Q. As Dr. Kissinger was preparing for his trip to  
15 Hanoi in February 1973 and as you were, I assume, helping  
16 him to prepare for that trip, do you recall whether you had  
17 any contact with our representatives at the Four-Party Joint  
18 Military Commission?

19 Specifically, I'm interested in whether there was  
20 any contact on the subject of prisoners of war.

21 A. I don't think I had contact with anybody, and I  
22 just don't know whether Kissinger did. I don't recall  
23 specific issues that arose about prisoners of war. I just  
24 don't recall that.

25 I think as a general matter when he went to Hanoi

1 he had full briefings about the status of all these  
2 activities, so he knew what the problems were and how these  
3 commissions were going, so he would know what to raise with  
4 the North Vietnamese. But I don't remember the specifics.

5 Q. You said earlier that your recollection about the  
6 reaction to the Laos list was that it was -- there was a  
7 feeling that that list had perhaps even more discrepancies  
8 than the North Vietnamese list had had. Do you remember any  
9 other, any specifics about that?

10 A. No, I can't really substantiate what I said. I  
11 don't remember things like the 80, anything comparable to  
12 the 80. I just don't know the details.

13 Q. I'm going to show you a memorandum that was  
14 written by the Acting Director of the Defense Intelligence  
15 Agency. And again, I understand this very well might be  
16 something that you've never seen, but I'd like to show it to  
17 you and just ask you, first of all, if you've seen it; and  
18 second of all, if it refreshes your memory as to any  
19 discussions about concerns you may have been privy to?

20 For the record, I'm going to be referring to a  
21 memorandum that begins at page 779 of the Joint Chiefs of  
22 Staff files here. And again, the page numbering is  
23 numbering that's added on by the Office of Senate Security.

24 It's a memorandum dated 21 March 1973 from the  
25 Acting Director of the Defense Intelligence Agency, who at

1 that time was a man named John R. Deane, Jr., D-e-a-n-e, as  
2 far as we can tell no relation to the other John Dean. It  
3 was a memorandum written for the Chairman of the Joint  
4 Chiefs of Staff, "Subject: Information pertaining to the  
5 POW-MIA situation in Laos."

6 I'd ask you to take a few minutes and read up to  
7 page 782, starting on page 779. There's actually some  
8 attachments later which you should free to read. Try to  
9 ignore the highlighting on there. It's not intended to  
10 change your view of anything.

11 Why don't you just take a few minutes to read that  
12 and let us know when you're done.

13 (Pause.)

14 MR. ROSTOW: I did not get a chance to really look  
15 at it, but you can go forward and ask your questions.

16 MR. KRAVITZ: I'm perfectly happy to wait a couple  
17 minutes if you'd like.

18 MR. ROSTOW: No, that's all right.

19 BY MR. KRAVITZ:

20 Q. Mr. Rodman, having read that memorandum from the  
21 Director of the DIA to the Chairman of the Joint Chiefs of  
22 Staff, the March 21, 1973, memorandum, does that refresh  
23 your memory as to any specific concerns that U.S. Government  
24 officials had at that time or around that time concerning  
25 the prisoner of war situation in Laos?

1 A. Yes.

2 Q. What do you recall?

3 A. In fact, it does refresh my memory about what the  
4 list was so inadequate. I don't recall the specific memo,  
5 but I'm sure that the information was passed from Defense to  
6 the White House, as the memo indicates. That's how we got  
7 our information.

8 Q. Do you recall whether any actions were taken as a  
9 result of the consideration of that information and those  
10 concerns?

11 A. Well, I would suspect -- I would imagine that  
12 Kissinger had mentioned this in his discussions in February  
13 in Hanoi. February 6th was probably just before he went on  
14 his Asia trip. This memo refers to a memo that was sent to  
15 Kissinger on February 6th, and I suspect that was to be in  
16 part of his briefing materials.

17 He went to China and also Hanoi and perhaps other  
18 places. So I suspect he raised it. I can't verify it.

19 Q. Do you remember the date that he was in Hanoi?

20 A. No, but you could check in the memoirs. But as I  
21 said, he went other places, too, on the same trip, and he  
22 might have left soon after the 6th.

23 Q. So you say that you suspect that Dr. Kissinger may  
24 have raised this issue when he was in Hanoi in February of  
25 '73. Do you recall any other actions, or at least potential

1 actions, that were discussed regarding the perceived  
2 inadequacy of the Laos list?

3 A. No. I did not take part in discussions in the  
4 Government that might have dealt with this, and I have no  
5 recollection of them. But this would be something that I  
6 would not necessarily have been involved in myself.

7 Q. Is there any question in your mind that Dr.  
8 Kissinger would have been made aware of the concerns set  
9 forth in a memorandum like this?

10 A. It is logical to me that he would have been made  
11 aware of it.

12 Q. Does reading this memorandum refresh your memory  
13 of any discussions that you had with Dr. Kissinger on the  
14 issue of the inadequacy of the Laos list?

15 A. No.

16 Q. Does reading the memorandum refresh your  
17 recollection as to anything you heard Dr. Kissinger say in  
18 any other context regarding the inadequacy of the Laos list?

19 A. No. I just don't recall anything of that kind.

20 Q. Do you know whether -- well, after the Laos list  
21 was provided on February 1, 1973, any time from then up  
22 until the end of Operation Homecoming and the end of the  
23 U.S. troop withdrawal toward the end of March 1973, you said  
24 that you think that there was -- that Dr. Kissinger probably  
25 said something to the Vietnamese in Hanoi that February.

1           Do you recall whether there were any direct  
2           overtures made by our Government to the Pathet Lao?

3           A.    I just don't recall. I don't recall what contact,  
4           if any, we had with the Pathet Lao at that point.

5           Q.    I don't know if this is reflected in this  
6           memorandum, but I've certainly seen written in other  
7           Government memoranda that really throughout the negotiating  
8           process there were statements by North Vietnamese officials  
9           and by Pathet Lao officials to the effect that if the United  
10          States wanted to gain, really wanted to gain, the release of  
11          prisoners held by the Pathet Lao in Laos, that it needed to  
12          negotiate directly with the Pathet Lao.

13          I have two questions on that. One is, do you  
14          recall those statements being made? Two is, if so, did Dr.  
15          Kissinger and the other U.S. negotiators take them  
16          seriously, or did we really believe that we could negotiate  
17          with the Pathet Lao really through the North Vietnamese?

18          A.    Well, I don't recall discussions of the issue. If  
19          it is true that we declined to negotiate with them, I think  
20          there'd be a lot of good reasons for it. They had not won  
21          the war. There was a coalition Government that was to be  
22          created by that agreement.

23          I would have had questions about negotiating with  
24          an enemy behind the back of our Laotian allies. So I'm not  
25          sure of the sequence that we had in mind. The Vietnam

1 agreement contained a number of important North Vietnamese  
2 obligations that we thought would make a material difference  
3 in the situation in Laos.

4 The negotiation among the Laotian parties produced  
5 an agreement that we thought was tolerable and things would  
6 follow from that. It's not self-evident that direct  
7 negotiations between us and the communists was appropriate,  
8 but I have no specific recollections.

9 (Recess.)

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

11 BY MR. KRAVITZ:

12 Q. Mr. Rodman, is there anything that you've said at  
13 any point in the deposition that you'd like to add to?

14 A. Or subtract from?

15 Q. Or subtract from.

16 A. No, not at this point.

17 Q. I want to show you another document, and this  
18 appears at page 795 of the Joint Chiefs of Staff files in  
19 the Office of Senate Security, and it is a cable dated March  
20 22nd, 1973, one day after the memorandum from the Director  
21 of the DIA.

22 It's a cable from General Moorer, the Chairman of  
23 the Joint Chiefs, to CINCPAC, with information to some other  
24 recipients, including General Weyand and Major General  
25 Woodward and Ambassador Bunker. I'd like you to read it.

1 Why don't you just read it and let me know when you've had  
2 a chance to do that.

3 (Pause.)

4 Q. Obviously, the cable speaks for itself, but what  
5 is your interpretation of that cable, of the instruction  
6 that that cable gives?

7 MR. ROSTOW: I really object to that question.

8 MR. KRAVITZ: I'll rephrase the question.

9 BY MR. KRAVITZ:

10 Q. Let me ask you this: Have you ever seen this  
11 cable before?

12 A. I have no recollection of seeing it.

13 Q. Are you aware of were you ever aware of the fact  
14 that an instruction was given or a directive was given on  
15 March 22nd, 1973, essentially ordering that the U.S. troop  
16 withdrawal not be completed unless and until a list of U.S.  
17 prisoners held by the Pathet Lao was turned over and a time  
18 and place that those prisoners were to be released was  
19 provided?

20 A. I don't have a recollection of this episode or the  
21 circumstances of this decision being made. I just don't  
22 have a recollection of that.

23 Q. Is that the type of decision that would only be  
24 made -- in your experience, is that the type of decision  
25 that would only be made at the presidential level?

1           A. I would guess, yes, that this came from some  
2 political level. Knowing the circumstance of this  
3 particular thing, I would have thought that this was made at  
4 a high level, or else -- well, very often the Pentagon did  
5 things on its own, but usually there was some bureaucratic  
6 fact that happened. So I can't testify to this specific  
7 event.

8           Q. I think it's accurate to say that it's an  
9 historical fact that the directive, at least what appears to  
10 be the directive, in this cable was not ultimately carried  
11 out and the U.S. troop withdrawal did proceed on schedule,  
12 even though we never did receive a list of U.S. prisoners  
13 from the Pathet Lao.

14                   Are you aware of what went into that decision?

15           A. No.

16           Q. The decision to complete the troop withdrawal  
17 notwithstanding our lack of a Pathet Lao prisoner list?

18           A. No.

19           MR. ROSTOW: I would just like to note -- I mean,  
20 I certainly have not gone back over the records and will  
21 take your word for it as to what the record shows about  
22 this.

23           MR. KRAVITZ: I'm certainly not intentionally  
24 misstating the record and it is my understanding. I have  
25 reviewed the schedule of the troop withdrawals. But I

1 appreciate your concern.

2 MR. ROSTOW: I'd like to go off the record for a  
3 minute.

4 (Discussion off the record.)

5 BY MR. KRAVITZ:

6 Q. I'm going to show you another document from a  
7 different file.

8 MR. KRAVITZ: Mr. Rostow, just in case, in the  
9 event that you ever want to look at this document, we've  
10 received through the Department of Defense a whole set of  
11 files from the ISA, International Security Affairs Division.  
12 Most of them are Secret. This file that I am holding right  
13 here (indicating) is the sum total of the Top Secret  
14 documents, and they're numbered 1 through 136.

15 THE WITNESS: The pages are numbered.

16 MR. KRAVITZ: Right. The pages are numbered 1  
17 through 136, and these are specifically meant to be files  
18 that were kept by Roger Shields, who was the Chairman of the  
19 Prisoner of War-Missing in Action Task Force within OSD-ISA.

20 BY MR. KRAVITZ:

21 Q. I want to show you a document that appears at  
22 pages 4 through 7 of these files, and it's a memorandum for  
23 the Secretary of Defense. It doesn't specifically have a  
24 date on it, although it's clearly from the March 1973  
25 period. I think it's dated the 23rd of March 1973, although

1 you may be able to interpret this more accurately than I  
2 can.

3 It's a memorandum from Lawrence Eagleburger, who  
4 at that time was Acting Assistant Secretary of Defense for  
5 ISA, dealing with U.S. POW-MIA personnel in Laos. And  
6 again, I ask you to read this. I have no idea whether  
7 you've ever seen it before, but I ask you to read it and  
8 tell me when you've finished.

9 (Pause.)

10 A. I'm sorry. It says an attached memorandum for  
11 Kissinger, but I don't see it.

12 Q. If it's not there, it means that it somehow must  
13 have been detached before, before it came over to the  
14 Senate.

15 A. Let me be sure.

16 Q. Sure, yes, take your time.

17 (Discussion off the record.)

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

19 BY MR. KRAVITZ:

20 Q. Mr. Rodman, have you had an opportunity to read  
21 Mr. Eagleburger's memorandum?

22 A. Yes.

23 Q. Let me ask you first: Is this a memorandum that  
24 you remember having seen before?

25 A. No.

1 Q. Do you recall -- well, I think you probably  
2 already answered this question since this memorandum deals  
3 with a lot of the same concerns that Mr. Deane's or General  
4 Deane's memorandum dealt with. Do you recall any  
5 discussion, either within the National Security Council  
6 staff or between the National Security Council staff and any  
7 other agency, regarding issues raised in Mr. Eagleburger's  
8 memorandum?

9 A. No. These are things that I would not necessarily  
10 have been involved in.

11 Q. Just in your experience, if a memorandum like this  
12 or its contents were to be made known to Dr. Kissinger, how  
13 would that happen? Would someone contact him directly or  
14 would they contact a staffer like you?

15 A. Well, this particular memorandum has an  
16 attachment, which is of course not included here, which was  
17 a memorandum to Dr. Kissinger from I guess the Secretary of  
18 Defense. So the contents -- that's what this is about.  
19 These are recommendations that ISA is suggesting be passed  
20 on to the White House. So Kissinger would have seen it in  
21 that form.

22 Q. I think we do have that.

23 A. That's the top?

24 Q. That's my mistake. I apologize.

25 Let me show you then pages 2 and 3 of the same set

1 of documents.

2 A. Is it signed? There's an indication. Those are  
3 Elliott Richardson's initials.

4 Q. Why don't you just say for the record what that  
5 appears to be?

6 A. Yes. This is a memo from the Secretary of  
7 Defense, Elliott Richardson, to Kissinger, Assistant to the  
8 President for National Security Affairs, dated March 28,  
9 1973, and it's the thing that was attached. What we have  
10 here is a package of Eagleburger's memorandum to Richardson,  
11 recommending that he sign this, which he seems to have done,  
12 which conveys much of the same information that's in the  
13 Eagleburger memo in a somewhat condensed statement of the  
14 facts.

15 But I notice it's a somewhat reduced list of  
16 measures. I think it leaves out some of the more dramatic  
17 things that were recommended in the Eagleburger memo. So  
18 Richardson himself has dropped a couple of the more hard-  
19 line options from the package. What is left is a set of  
20 recommendations for diplomatic pressures, plus some  
21 reconnaissance of Laos DATA

22 DATA

23 Q. I think it's fair to say that Mr. Eagleburger's  
24 memorandum suggests the consideration of both military and  
25 diplomatic options, and that Mr. Richardson's memo suggests

1 really only the consideration of diplomatic options?

2 A. Yes.

3 Q. Does reading those memos refresh your memory as to  
4 any discussion within your staff of the various military and  
5 diplomatic options that may have been considered?

6 A. I do not recall being a part of such a discussion.

7 Q. And as far as you recall, the discussions that we  
8 spoke about yesterday regarding the possibility of bombing  
9 the Ho Chi Minh Trail in early spring of 1973, a possibility  
10 that was later decided against, really dealt only with  
11 violations by the North Vietnamese, really dealt only with  
12 addressing perceived violations by the North Vietnamese,  
13 rather than with the Laos situation?

14 A. That is probably fair. I think it was addressed  
15 to the infiltration issue, but it would have been logical  
16 for us to treat this in a context. If we had bombed the Ho  
17 Chi Minh Trail, I think it would have raised the whole issue  
18 of their non-compliance generally.

19 We would have been free to -- in fact, it is  
20 likely we would have raised a whole set of grievances. So  
21 I wouldn't exclude that the prisoner issue would have been  
22 very prominent in our list of grievances, including Laos,  
23 particularly since the Ho Chi Minh Trail raises the whole  
24 question of North Vietnamese behavior in Laos. I would not  
25 assume that we would have neglected the prisoner of war

1 issue.

2 Another thing I might mention: The Eagleburger  
3 memo is interesting because it lists a number of things that  
4 have already been done, channels through which we had  
5 already protested very vigorously the inadequacy of the  
6 list. So that answers some of your earlier questions to me  
7 about what we did after we saw this list. There are a  
8 number of actions by our Ambassador in Laos, and at various  
9 political levels we had clearly made a major fuss over this  
10 inadequate list.

11 Q. Just so the record is clear, you're referring to  
12 the Laos list?

13 A. The Laos list, yes.

14 Q. As the accords were signed and the next 60 days  
15 passed and Operation Homecoming started to come to an end,  
16 were you aware of any effort within the United States  
17 Government to formulate any position as to the completeness  
18 of the enemy lists of U.S. prisoners, any public position

19 A. Not specifically. You do recall that we got into  
20 a follow-on negotiation with the North Vietnamese in May and  
21 June that was attempting to put compliance back on track.  
22 So I think a lot of these issues would have been kept on  
23 that agenda for that subsequent negotiation, but I don't  
24 recall a specific discussion of this issue.

25 Q. One of the things that some witnesses have told us

1 is that there really was a problem -- maybe "problem" is the  
2 wrong word, but a concern, within the Government that  
3 Government officials were repeatedly reminded about by  
4 family members and the press regarding the fact that there  
5 were approximately, I think it was, 57 people who were  
6 officially listed by the services as prisoner of war, but  
7 who didn't appear either on the prisoner list to be returned  
8 or on the died in captivity list.

9 And as you know, there were these 80 people whose  
10 files were discussed in Hanoi in February of 1973. Do you  
11 recall there being any concern within the Government that  
12 you were aware of of the public relations inconsistency,  
13 really an inconsistency between position that I think  
14 President Nixon stated at the end of March of 1973, that all  
15 of our prisoners were home, but we had these official lists  
16 or official classifications which said that these people  
17 were believed to be prisoners.

18 Do you recall any discussions about that?

19 A. No, I don't recall. Are you saying believed to be  
20 prisoners or believed to have died in captivity?

21 Q. Well, they were listed as prisoner of war. I  
22 guess the reason they were listed as prisoner of war, based  
23 on the information that we have, is that the last known  
24 information about them --

25 A. They had been alive, yes. Well, I don't know the

1 facts on these points.

2 Q. Do you remember the press conference that  
3 President Nixon gave -- I think it was March 29, 1973 -- in  
4 which, among other things, he stated that all of our  
5 prisoners are home?

6 A. I don't recall it specifically.

7 MR. ROSTOW: This was March?

8 THE WITNESS: 29th.

9 MR. KRAVITZ: 1973.

10 BY MR. KRAVITZ:

11 Q. I'm going to show you -- let's get this marked.

12 (The document referred to was  
13 marked for identification as  
14 Rodman Exhibit No. 6.)

15 BY MR. KRAVITZ:

16 Q. Exhibit No. 6 is a Xerox of a Washington Post  
17 article from April 13th, 1973, page A10. It's an Associated  
18 Press article reporting on a press conference given the day  
19 before, April 12th, 1973, by Roger Shields, Chairman of the  
20 POW-MIA Task Force. It was a press conference given at the  
21 Pentagon and it reports, this article reports, that the  
22 Pentagon through Dr. Shields said at this press conference  
23 that there was no evidence that there are any more United  
24 States prisoners of war still alive in Indochina.

25 You can read the article to see the additional

1 details that it gives.

2 (Pause.)

3 Q. We've been told by the man who was the Assistant  
4 Secretary of Defense for Public Affairs at that time, Jerry  
5 Friedheim, that an announcement of that magnitude, in light  
6 of the time period, would not be made without the express  
7 approval of at least the Secretary of Defense, if not the  
8 President.

9 My question to you is, are you aware of any  
10 discussions at the NSC level or any discussions within the  
11 National Security Council Staff regarding that announcement  
12 or any similar announcements made by Government officials.

13 MR. ROSTOW: I'd like to intervene and just say  
14 that the press conference of Mr. Shields, rather than the  
15 Washington Post summary, which is rather different than as  
16 being characterized by Mr. Kravitz here, speaks for itself;  
17 and that if one reads the entire document from the  
18 Washington Post, it is the usual weave.

19 MR. KRAVITZ: I'm not sure what you're referring  
20 to.

21 MR. ROSTOW: What I'm saying is that this report  
22 speaks for itself and the press conference speaks for  
23 itself, whatever Mr. Shields may or may not have said, how  
24 everyone should or should not interpret it. The report can  
25 be summarized at length or briefly, and if you read the

1 whole thing some may come away with the impression that  
2 maybe Mr. Shields didn't say quite "there is on evidence,"  
3 "the issue is closed," or anything else that might be  
4 implied.

5 THE WITNESS: From my experience, it would be a  
6 lot better to get a transcript of his remarks and not rely  
7 on a wire service report, particularly if it's as important  
8 as you suggest.

9 MR. KRAVITZ: We all have the same approach.  
10 Unfortunately, the Pentagon has not been able to locate the  
11 transcript of that press conference, so we are stuck with  
12 people's memories of the press conference.

13 THE WITNESS: Well, you asked me if I recall this.  
14 I don't recall this particular press conference. You asked  
15 me what normal procedure would have been. I can say that we  
16 strove for some coordination in the Government on any  
17 foreign policy issue. If State or Defense were preparing  
18 some announcements for that day, putting something out to  
19 give a briefing, usually the White House, the NSC, were  
20 informed of this.

21 And if it's something of some importance, then the  
22 NSC person who finds out would report it to somebody else on  
23 the staff. If it's as important as you imply and if this  
24 wire service report is accurate, then there might well have  
25 been some coordination, bureaucratic coordination, in other

1 words some sort of White House or NSC assent to this  
2 briefing.

3 It didn't always happen, but we usually strived to  
4 have some coordination of press policy. There is somebody  
5 on the NSC who usually had the job of coordinating. Every  
6 day there'd be a conference call with State and Defense and  
7 they'd compare notes on how to respond to stories in the  
8 paper or what any of the agencies had in mind for briefings,  
9 and a division of labor as to who would answer certain kinds  
10 of questions that might come up.

11 Like if there was an article in the paper accusing  
12 us of something, we would decide who would deal with that.  
13 So that sort of coordination was common, as well as some  
14 degree of substantive coordination of what the U.S.  
15 Government position was.

16 But I can't speak to this. I agree with Mr.  
17 Rostow that wire service reports particularly -- and there  
18 are no quotation marks here. This is not the most reliable  
19 indicator of what was said, nor the context particularly.

20 MR. KRAVITZ: Just for the record, I agree with  
21 that view. Just, unfortunately it's the best we have at  
22 this point, and we're obviously trying to interview people  
23 who were there.

24 BY MR. KRAVITZ:

25 Q. I want to move on to a different subject. You've

1 mentioned a few times the continuing negotiations in May and  
2 June of '73, efforts to really kind of enforce the agreement  
3 or enforce the North Vietnamese compliance with the  
4 agreement. Can you just give a summary of what those  
5 negotiations entailed?

6 A. It was an attempt to reinforce the agreement.  
7 What was produced on June 13th, 1973, was a U.S.-North  
8 Vietnamese joint communique that reaffirmed a lot of the  
9 obligations in the Paris agreement. Neither side would  
10 admit that it had violated the agreement in the first place,  
11 so we couldn't get -- it ended up being just a repetition of  
12 various clauses and not -- we did not consider it a great  
13 achievement.

14 The tragedy, of course, is that this idea -- we  
15 had got this idea and made this proposal to the Vietnamese  
16 at a time when we were contemplating a military strike. In  
17 other words, our plan was to sort of hit them on the Ho Chi  
18 Minh Trail and simultaneously ask for follow-on negotiation  
19 with them to reinforce the agreement.

20 In other words, our political position would have  
21 been, it would have had a positive element as well as the  
22 military element. We then didn't go ahead on the military  
23 side, and yet we were stuck with this proposal we had made  
24 for an agreement and our negotiation, which took place in  
25 the absence of leverage, in fact even more dramatic absence

1 of leverage, because we had basically been doing nothing  
2 concrete in response to their infiltration down the Ho Chi  
3 Minh Trail and inadequate performance on other things.

4 So it was the worst kind of negotiation,  
5 negotiation in the worst possible conditions.

6 Q. Who conducted these negotiations?

7 A. This was Kissinger and Le Duc Tho again, and I was  
8 along I think in May and June a couple of rounds, and it was  
9 very frustrating.

10 Q. Were these in Paris?

11 A. In Paris, yes.

12 Q. Who else was present from our side?

13 A. Well, the team I have a hard time remembering. I  
14 think we had different people. I think someone named  
15 William Stearman was the NSC person who dealt with Vietnam.  
16 I don't remember whether Win Lord was involved. He may have  
17 been off. I think he may have been out of the Government in  
18 this period.

19 I think this must be verifiable.

20 Q. I think he told us he took a break after the  
21 accords.

22 A. He went to Aspen and was just unwinding or  
23 something for six months. Then he was called. I don't know  
24 what his long-term plans were, but he came back when  
25 Kissinger was made Secretary of State. But anyway, he was

1 not there then.

2 I forget. This is not a state secret, so it ought  
3 to be obtainable information.

4 Q. Do you recall, though -- well, let me ask about  
5 that. Were these negotiations public or were they more  
6 secret negotiations?

7 A. No, it was known that he was over there, and at a  
8 certain point, even after the "peace is at hand" press  
9 conference, the press would sort of follow Kissinger so  
10 doggedly that he couldn't travel without it being known.  
11 The content of the meetings was confidential. The records  
12 were secret.

13 But people knew that this was going on. They knew  
14 generally what the purpose was, and the result was a public  
15 document. But we never had negotiations with the cameras in  
16 the room. Even the Carter Administration didn't do that.

17 Q. In your opinion, what was the effect of Watergate  
18 on the United States position in these negotiations?

19 A. This is an important question, and I would refer  
20 everybody to the Kissinger books, which talk about it in  
21 some detail. I think I'm familiar with his thinking and I  
22 have the same impressions. It probably affected Nixon's  
23 decision, or non-decision, in March and April not to go  
24 ahead with this air strike. It affected our Congressional  
25 clout.

1           Nixon's ability to head off various anti-war  
2 amendments was evaporating, and political types in the White  
3 House and on the NSC staff, it was their belief that the  
4 loss of votes was a result of Watergate. And that clearly  
5 affected the course of events.

6           Nixon had won a lot of these battles. There had  
7 been Cooper-Church amendments in the Senate all along. We  
8 would defeat them in the House and so on, by shrinking  
9 margins. But as June 1973 approached, Nixon was finally  
10 beaten down on this amendment to cut off all military  
11 operations in Indochina.

12           I think the erosion of his political base and his  
13 political clout -- I think the North Vietnamese, while they  
14 did not have the most sophisticated understanding of our  
15 politics, they could read the newspapers, too, and may well  
16 have been emboldened by the weakness of the administration,  
17 I think certainly in 1975.

18           '74-'75, they were very avidly following all the  
19 actions and Congressional committee actions on aid to South  
20 Vietnam. You find in the memoirs of North Vietnamese  
21 generals they're quite aware of committee votes that  
22 basically denied significant military assistance to South  
23 Vietnam in, say, early 1975.

24           So, go back to the '73 period. One can assume  
25 they were reading the same newspapers that we were.

1 Likewise the Soviets. As I said yesterday, we lost some of  
2 our leverage with the Soviets because of some Congressional  
3 struggles with the President, where Congress imposed on  
4 Nixon some things and Ford some things that we thought were  
5 ill-advised.

6           There may be other angles that I am neglecting.  
7 I think the timing is important. Again, Kissinger's book  
8 has the sequence. I think John Dean was becoming a problem  
9 in March. He was talking to Nixon in March, and I think  
10 it's possible that Nixon was getting very nervous in March  
11 that things were getting out of control.

12           Then April of course is when things did fall  
13 apart. April 30th is when Haldeman and Ehrlichman resigned,  
14 I think.

15           Kissinger was not in the middle of all of this,  
16 either. But he could see from his vantage point Nixon being  
17 distracted, Nixon losing his usual nerve. I mean, to go  
18 back to the decision not to bomb, as we discussed yesterday,  
19 the idea came up at a moment when there were prisoners still  
20 unreleased. In other words, the first theory was that we  
21 might even bomb when there were a couple of increments not  
22 out, which of course would have been very risky.

23           They ended up deferring the thing until the  
24 prisoners were all out, on March 27th. Kissinger was even  
25 recommending that we do it before then, just to show guts.

1 Nixon was a President with incredible gonads. When he was  
2 at the peak of his form, it would not be excluded that he  
3 would have had the guts to do this even while some of our  
4 prisoners were not yet out, and sort of defy the North  
5 Vietnamese to not release them on time and gamble that the  
6 American people -- that if the North Vietnamese didn't  
7 release them on schedule, that the American people would  
8 blame the North Vietnamese and not Nixon.

9 Nixon at the peak of his powers might have done  
10 this. This is the guy who did the mining and the bombing  
11 three weeks before a Soviet summit. And it was a different  
12 Nixon by the spring of '73.

13 One can agree or disagree with his policies or him  
14 in general, but we felt our grip on policy was eroding and  
15 our ability to implement our own strategy was eroding,  
16 rightly or wrongly.

17 Q. When you say we felt that our ability to implement  
18 our own policy was eroding, who do you refer to?

19 A. Well, Kissinger and those of us around him. We  
20 did talk about this general thing often.

21 Then the Cambodia negotiation, which was another  
22 story. We still were trying to bring about some sort of  
23 negotiated deal in Cambodia in June, July, August. Then we  
24 got the Chinese involved in mediation. This was April-May.  
25 That fell apart when Congress cut off the bombing.

1                   Kissinger was in one of his Spenglerian moods  
2 about the inability of the country to function.

3           Q.    I wonder what he thinks now.

4                   (Laughter.)

5           A.    So I'm familiar with his general state of mind to  
6 some degree.

7           Q.    Do you recall any specific discussions during the  
8 May and June '73 negotiations on the subject of prisoners of  
9 war, missing in action personnel?

10          A.    I just do not recall exactly.

11          Q.    Is it accurate -- tell me if it's not, but is it  
12 accurate to say that that subject was not a major part of  
13 the negotiations?

14          A.    Why would you say that? I would think it's on the  
15 list of things that we were concerned about. But our  
16 ability to get satisfactory results from the North  
17 Vietnamese was eroding rapidly.

18          Q.    Is it accurate that, assuming that that issue was  
19 discussed, there was no improvement in the response from the  
20 North Vietnamese over what they had given us in Hanoi in  
21 February of '73?

22          A.    I think the public record shows what was done, and  
23 I think you're probably characterizing it accurately. In  
24 private, my general recollection is that they gave us the  
25 same answers always: that we had all the information they

1 had and that they would do their best in this other area  
2 with the MIA provisions, but there were no prisoners alive,  
3 no prisoners in Cambodia. This was their general stonewall.

4 Q. You mentioned a couple minutes ago North  
5 Vietnamese generals' memoirs that I assume you've read. Are  
6 there any North Vietnamese negotiators who, just in your  
7 opinion, you think it would be worthwhile for the committee  
8 to speak with?

9 A. Well, in general, in connection with the 1975  
10 events I'm thinking of Van Tien Dung, General Van Tien Dung  
11 and his memoir of the 1975 campaign. So it's not really  
12 relevant to this issue.

13 The North Vietnamese negotiators, I remember two  
14 or three names. Le Duc Tho is now dead. He would have been  
15 great to interview, even under oath if you could get him.

16 Thach, Nguyen Co Thach, was his right-hand man.  
17 T-h-a-c-h was his last name, and he was the foreign minister  
18 until a year or so ago, Nguyen Co Thach. So he was very  
19 much involved. He was sort of the Bill Sullivan of the  
20 other side. He was the detail man and very much an  
21 essential element here. He's still around.

22 There's someone named Phan Hien, P-h-a-n H-i-e-n,  
23 who was a foreign ministry fellow who later showed up in  
24 some of Holbrooke's negotiations on Indochina. I forget,  
25 the normalization. So he became a little more prominent in

1 his later career. I don't know where he is now.

2 But these are the three names that I remember of  
3 sort of the regulars on Le Duc Tho's side of the table. I  
4 have to say I cannot vouch for their reliability.

5 Q. That was my question. My question really was, is  
6 there anyone over there whose credibility you think would be  
7 high enough --

8 A. No.

9 Q. -- that we'd gain much from?

10 A. Not as long as the communist regime is in power.  
11 I mean, I have to say, and this is a gratuitous statement  
12 and it may be irrelevant to the committee's work -- and  
13 again, my counsel doesn't like me to speculate. I have a  
14 theory of what might have been motivating the North  
15 Vietnamese. It's totally a theory. I cannot prove it.

16 My personal conviction is that there's no one  
17 alive there, and I have a theory to explain these 80 cases.  
18 I have a theory that these people died in circumstances that  
19 the North Vietnamese found embarrassing, embarrassing to  
20 admit.

21 Q. Do you mean that they died before January of '73?

22 A. Yes. Again, it's just totally speculation.

23 And the regime, having lied about this in the  
24 beginning, is trapped in its lie. It's a phenomenon of many  
25 people who get into the business of lying, and the regime

1 would find it very embarrassing even now to come clean on  
2 this.

3 I cannot think of any other explanation. Judging  
4 from the experience of the other communist countries --  
5 Russia, Eastern Europe -- you get honesty on these things  
6 only when the regime has been changed and the people  
7 replaced by people who have a vested interest in coming  
8 clean about the behavior of their predecessors.

9 So I think the current group of people may feel  
10 the same interest in the so-called "honor" of this communist  
11 regime and will not admit any cover-ups that they have been  
12 involved in. So it just makes me gloomy about the prospects  
13 of getting an honest answer out of these people even now.

14 I read in the Congressional Record of some  
15 committee members who came back from Hanoi and were  
16 encouraged by the prospect of better cooperation. I have to  
17 say this reminds me of some optimistic things that Kissinger  
18 may have thought or said earlier. You hope for cooperation.  
19 It would be premature to cheer too loudly. We don't know  
20 whether we're going to get cooperation.

21 I just have to say, knowing the behavior of  
22 communist regimes, if there's some sort of malfeasance at an  
23 early stage, it's hard for me to imagine getting an honest  
24 count now. I mean, they can go around, they may find more  
25 people, find more remains. That doesn't cost them anything,

1 to continue that effort.

2 But on some of these things that were always the  
3 most inexplicable, there may be something that they don't  
4 want to come clean on. This is all gratuitous. Your  
5 committee studying the matter may have its own conclusions.  
6 But I think my own guess at the time was -- that was my  
7 guess at the time.

8 I don't know whether anyone shares this  
9 assessment. I don't know whether it was Kissinger's view,  
10 but it was sort of my own personal thought.

11 Later, as we kept pressing them, I sort of felt  
12 they would be even less likely to come clean later if they  
13 had lied to us at the beginning.

14 Q. Have you come to grips in any similar way or in an  
15 analogous way with the situation in Laos?

16 A. I would have to say, yes, it's a similar political  
17 system, but I don't know. Laos is a more primitive country.  
18 We even then allowed for a genuine inability to know all the  
19 answers. We may know something and they in good faith may  
20 not know what happened to some guy, even though we knew he  
21 was alive.

22 So there's room for a range of possibilities here.  
23 But those 80 obviously made an impression on me, but I can't  
24 say I have the answer.

25 Q. Go ahead.

1           A.    Even this new group -- there are a new group of  
2 rulers there, but I am inclined to think that they are not  
3 yet at the stage where they're repudiating everything their  
4 predecessors did, which occasionally happens in communist  
5 regimes. But I don't see that happening right now.

6           I mean, if we wait five or ten years this regime  
7 may be gone and you may get the answers. I'm not  
8 recommending the committee remain in being.

9           Q.    Please.

10          A.    That's very definitely not my recommendation.

11          Q.    Mr. Rodman, those are all the questions that I  
12 have for you. Let me give you one last opportunity to add  
13 or subject or change anything that you said before. And if  
14 you want to take a minute and think about it, even talk to  
15 Mr. Rostow, please don't feel rushed.

16          MR. ROSTOW: I'd just like to say that I  
17 appreciate your willingness to break this deposition in half  
18 to accommodate my schedule.

19          THE WITNESS: I could say, too, I appreciate the  
20 courtesy with which you've handled this, all of you. I  
21 can't complain about that.

22          I would like to repeat the general point about how  
23 it looks to somebody like me, who works 20 hours a day for  
24 several months to bring about the best agreement we thought  
25 we could get in near-civil war conditions at home, when all

1 of the pressures on us were to get the hell out. We were  
2 the ones who were saying: Look, there are some interests  
3 here; we can't just bug out; it's dishonorable; you cannot;  
4 it's just not the way the United States should conduct  
5 itself.

6 We were the ones trying desperately to preserve  
7 some leverage over these bastards in North Vietnam. We were  
8 the ones who were extracting out of them what we thought was  
9 the absolute maximum we could have gotten.

10 And I deeply resent -- and I think it's also crazy  
11 to imply that we did not get the maximum that was  
12 obtainable, and it is outrageous for people to second-guess  
13 is 20 years later, particularly the Congress as an  
14 institution, which bears a heavy share of the responsibility  
15 for the disaster that occurred in every respect in  
16 Indochina.

17 I won't get into ad hominem comments about anyone,  
18 but I think the Congress and people who were active in the  
19 anti-war movement and so on, maybe they should be  
20 investigating themselves.

21 I think we did the absolute maximum that was  
22 obtainable. If there are inadequacies in the outcome, I  
23 think the responsibility has to be shared to a considerable  
24 degree by people who were trying their damndest to drive us  
25 out of there. If you look at George McGovern's position

1 during the campaign, it was to insist on hardly any terms;  
2 it was unilateral withdrawal, sort of in the expectation  
3 that we'd get our prisoners out. This was the Democratic  
4 position, the position of all the people who thought Nixon  
5 and Kissinger were a bunch of fascist war-mongers.

6 If you think about the Christmas bombing in  
7 December 1972, when we were trying to get the North  
8 Vietnamese to sign something, they weren't signing anything  
9 at all at that point. Where were all these people? Were  
10 they all insisting that Nixon and Kissinger weren't tough  
11 enough on Hanoi?

12 I think, depending on how you handle this issue --  
13 well, obviously the committee is free to handle this in a  
14 very responsible way that doesn't raise questions of  
15 hypocrisy. I've said too much already, but I think you  
16 cannot understand these decisions without understanding the  
17 context, and I think an honorable way to look at these  
18 issues is to understand that context.

19 I think it's a kind of absurdity 20 years later  
20 for Richard Nixon or Henry Kissinger to be accused of not  
21 being tough enough on the North Vietnamese. I don't know  
22 where you were then, but I don't know what planet people  
23 were living on if they don't understand that.

24 So I've said too much. And again, I respect the  
25 committee. I think there are a lot of questions,

1 particularly in the subsequent period, that deserve an  
2 airing, and I can see a reason why this committee exists,  
3 and to put a lot of anxieties to rest. So there's an  
4 opportunity here to do a useful piece of work for the  
5 country.

6 Obviously, I'm very sensitive to the probing into  
7 the Paris agreement and supposed inadequacies of it.  
8 Obviously I'm very sensitive on the point, but I think I've  
9 given you my reasons. I have no quarrel with how you --  
10 these are questions that it's fair to ask and you've been  
11 very fair in the way you've conducted it.

12 MR. KRAVITZ: Well, thank you very much. I really  
13 appreciate all the information you've provided. It's been  
14 very helpful to us.

15 Unless anyone else has anything else they want to  
16 say, why don't we go off the record.

17 (Whereupon, at 11:01 a.m., the taking of the  
18 instant deposition ceased.)

19  
20  
21  
22  
23  
24  
25

\_\_\_\_\_  
Signature of the witness

SIGNED AND SWORN TO before me this \_\_\_\_\_  
day of \_\_\_\_\_, 199\_\_.

\_\_\_\_\_

Notary Public

1

2

My commission expires:

3

4