the first witness we’ve shown that to.

A. The first page is not very revealing, is it?

What is the date of this?

Q. Someone wrote in pencil at the top April 12, 1973.

[Pause.]

A. Is page 9 important?

Q. If you give it to me for a second --

A. The question you were asking is on page 6.

Q. Right. Let me see it just for a second. On page 6, it indicates that the U.S. position is "the U.S. is prepared to withdraw all of its remaining forces in South Vietnam within four months from the implementation of an Indochina-wide ceasefire and the return of all U.S. prisoners."

Can you tell from looking at this document, redacted as it is --

A. It looks like an NSC paper.

Q. And these would be talking points, you assume, for whom?

A. For Kissinger, probably.

Q. In negotiation?

A. Right.

Q. Does this help you remember that at least as of April 1972 our negotiating position was that we didn’t want
to enter into a ceasefire or withdraw our troops until
after our prisoners were already home?

A. Well, as I told you, my position would have been
that.

Q. I'm not asking what your position was. I'm
asking you whether this refreshes your memory as to
what --

A. Now, that piece of paper may be worth nothing,
and if you don't understand how a bureaucracy works, then
it's going to be very difficult for me to give you a
roadmap on the conduct of government.

Q. Okay.

A. This is a staffer, maybe over across the way,
writing something for Henry Kissinger prior to perhaps a
negotiation in the spring of '72.

Q. I understand that.

A. That was before we bombed and mined in the first
iteration, as I recall.

Q. General --

A. I don't know what you're leading to. It makes no
sense, if you think that that represents or refreshes my
memory that this was our firm position. That's some piece
of paper drafted by some guy who may have been somebody
that I'd have fired ten times over -- there were several
like that working for Kissinger and most of them turned out
Q. Okay.

A. All I'm saying is, don't ask me to give you a
categoric judgment on that paper. I can't do it.

Q. I didn't ask you to do that. Let me just --

well, I didn't. If you'd let me finish the question, you'd
understand that I didn't.

My only question to you was whether this
refreshed your memory as to whether that was our position.
If your answer is no, you can say no.

A. I can't say that that would be a categoric proof
that that was our position or wasn't. I can tell you it
would have been my position.

Q. So your testimony is that Exhibit Number 7 does
not refresh your memory as to whether our position was that
we had to have our prisoners home before we would enter the
ceasefire?

A. I would certainly have told you that that would
be my position.

Q. But you don't recall whether that was the
position of the U.S. Government in the negotiations?

A. Well, you know, I'm a pretty smart guy and I had
some influence on events at the time, and I suspect
Kissinger and I got along together very well for four
years, that he probably had the same attitude on that
subject that I had.

Q. You've now stated that as a speculation. Is that as far as you can go?

A. I can't do any more than speculate. This is 20 years ago, my friend. You're nitpicking through some piece of paper that some staffer may or may not have written. I don't know.

Q. What is your best recollection as to whether -- let me finish the question, excuse me.

A. Well, whether Dr. Kissinger wanted the prisoners out before we withdrew. That's the question.

Q. I know you understand what the question is sometimes before I finish, but for purposes of the record I have to finish the question before you answer it.

The question is, what is your memory, your best recollection, as to whether our negotiating position initially was, or at any time was that we should have our prisoners home before a ceasefire was entered and before our troops were withdrawn.

A. Probably was. It certainly would have been the position I would have recommended, and I have to go through the files and the records and all the kinds of things. You know, you guys forget that there are people out making a living -- and I'm one of them -- and it costs me a lot of money.
It cost me a big piece of money to testify on another cockamamie hearing that you had up here, that October Surprise, for which somebody should be indicted on the Senate side, in my view. But, be that as it may —

Q. I’m going to show you what’s been marked as Exhibit Number 8. Again, it appears to be some kind of NSC background paper. This one is dated June 15, 1972.

[The document referred to was marked Haig Exhibit No. 8 for identification and was retained in the custody of the National Security Council.]

On page 10, under a heading entitled Withdrawal Issue, it says: "The period for completion of this withdrawal has become progressively shorter in the course of our negotiations, to the point that we are now prepared to withdraw all our military forces from South Vietnam within four months from the return of our prisoners and the implementation of an internationally-supervised ceasefire."

Does hearing that or seeing this document—

A. That sounds somewhat more authoritative than the one I just read.

Q. Why do you say that?

A. Because it's a categoric statement of our policy, as you read it to me.
Q. It's on the page where the sticker is, the yellow sticker.

[Pause.]

A. That's much more persuasive than the earlier one.

Q. Do you believe that our policy as of June 1972 was as is stated in Exhibit Number 8?

A. Yes. Having read this, because knowing that these guys don't write something that the reader -- in that case maybe Kissinger or even the President -- would read and know to be untrue, it may not be their integrity but it's their self-preservation instinct.

Q. At a meeting of the Washington Special Action Group on June 30, 1972, stated that it "would be unacceptable" to agree to a concurrent troop withdrawal and prisoner return. I don't have any reason to believe you were at that meeting.

A. I may have been.

Q. Did you understand, at least as of June 1972, that it was the policy of Dr. Kissinger and President Nixon that it was unacceptable for there to be a concurrent prisoner return and troop withdrawal?

A. I wouldn't care to make a generalization on as thin a reed as alleged comment at a WSAG meeting.
Q. It's not an alleged comment. We have a transcript, and I'd be happy to show that to you, if that would make a difference.

A. Even a transcript. [redacted] was about three tiers down, four tiers down in the policymaking hierarchy. I mean, I wouldn't draw any sweeping conclusions from that.

Q. You relied more on the last exhibit I showed you, Exhibit Number 8?

A. I would be more inclined to, yes. You know, I might have said the same thing.

Q. As what?

A. As [redacted] said. Knowing my instincts, I probably would have. In fact, they would have been far more vigorous.

Q. As you probably know, when the Accords were actually signed in January of 1973, the agreement, as it was reached, did not require the return of prisoners before the implementation of a ceasefire or before the withdrawal of our troops, but rather it required concurrent troop withdrawal and prisoner return after the ceasefire. Do you view that as a concession on this point, when you compare it to Exhibit Number 8 that I just showed to you?

A. I can offer you an observation. I think I told you that I personally was uncomfortable with certain
aspects of the negotiations as they pertained primarily to
the continuing North Vietnamese presence in the south.
That was a central issue.

But I must also add that the total collapse of
legislative support for the Executive Branch conduct of
foreign policy was a major and controlling and overriding
factor in the final negotiations, from my humble point of
view, and I didn't conduct them. But I would suggest that
that's the case.

Q. You seem to be more interested in who's to blame
for all this than I am. My only question is, regardless of
who's to blame for it --

A. No, no. I can't say that.

Q. All I want to know is, regardless of whose fault
it may have been, if it was anyone's fault, the question
is, do you have any understanding as to how we got from the
negotiating position set forth in that policy document of
June 15, 1972, which was Exhibit 8, to the point on January
27, 1973?

A. I will answer your question in a general way
because I'm not going to be here a whole day nitpicked and
led through leading questions based on esoteric pieces of
documents that you've picked up or haven't picked up and
associate me with a point of view on them. I'm not going
to do that.
I'm going to tell you this, that everyone I knew who was involved in these negotiations was operating in good faith, patriotically, in the best interest of the American people, and any threads or innuendos of your questions that would suggest to me otherwise -- and I don't doubt for a moment there were many incompetents involved, mostly in the Pentagon -- but, having said that, I just find it something I can't participate with and I won't do it.

I'm at a stage in my life and accomplishments that you can cite me for contempt if you like, but I am not going to be part of indicting people who did a hell of a lot more for the interest of this country and our people than the people now involved in this witchhunt can claim, and that has nothing to do with my deep sense of respect for the families and the POW issue.

I know something about it that you don't, and the members of your Committee perhaps do not.

MS. ZWENIG: Could we go off the record for a minute?

THE WITNESS: I just do not want to be led into this kind of exchange. I'm not going to do it.

MS. ZWENIG: Off the record.

[Discussion off the record.]

MR. KRAVITZ: Let's go back on the record.
BY MR. KRAVITZ:

Q. Let me just repeat the last question that I asked, and you can either answer it or not answer it, as I suppose you wish, since you are here voluntarily.

The question is this: What is your understanding as to how our government got from the position it was in in June 1972, as set forth in Exhibit 8, which was that we would not withdraw our troops and enter into a ceasefire until after our prisoners of war were home, to the position that it was in on January 27, 1973?

A. How we got there?

Q. What was the negotiating procession that got us there?

A. I didn't negotiate, so I can't answer that question. All I can tell you is that I have no doubt that those who did negotiate were convinced that the prospects of getting our prisoners out were enhanced by the modifications of the positions they took. Does that answer your question? Given the climate, what they did was an absolute good faith and patriotic effort to extract our prisoners safely and in a timely fashion.

That's my answer.

Q. You said something off the record while we were having our discussion off the record that you said you wanted to be on the record, so if you'd like to repeat
something you said off the record now while the record is
on, why don’t you go ahead?

A. I don’t know what you’re asking.

Q. I think you were saying something about your own
feelings on the subject of withdrawing prisoners or
withdrawing troops before the prisoners were home, and you
said you wanted that on the record, but the record was off
at that point.

A. Don’t worry about it. If it was off the record,
it’s off the record. There will be plenty of opportunity
to get it on.

Q. Do you know whether our negotiators ever asked or
insisted on receiving a list of U.S. prisoners of war from
the other side before the time that the ceasefire was
entered?

A. I think there was discussion of list exchanges
from the outset, certainly as negotiations got serious. I
can’t say that without doublechecking the record, but my
recollection is that it was a very key issue.

Q. Actually my question was ambiguous. It wasn’t...

Was it ever our position that we should get their
list, the DRV’s list of U.S. prisoners, before the time
that the ceasefire was entered? In other words, did we say
you have to give us our list on X date before the
ceasefire?

A. I can't answer that, but it would be my feeling that that would be a very worthwhile negotiating objective.

Q. Why is that?

A. Because then we'd be able to check what we knew against our records, which really -- that's another important thing to remember, is that the catalog of knowledge of the whole subject of prisoners of war, their names, circumstances surrounding their capture, or their deaths or missing status, has been the product of 20 years of increasing intensity and expenditure of funds and human resources.

What existed in 1969 through 1973 or '74, '75, on this subject would have been like fire with a stone versus a supercomputer. I think that's very important to bear in mind, very important, as you go through a lot of questions which are really ultimately going to be focusing on whether or not there was malfeasance.

Q. You started out by saying that you thought it would have been a good idea to get the other side's list of our prisoners ahead of time.

A. Of course. You know, where I stand is I fundamentally mistrusted Hanoi, Moscow, and anybody associated with them, including members of our Congress and Senate who became spokesmen for them, willingly or
unwillingly. That's my position.

Q. Did your distrust of the North Vietnamese include specifically a distrust as to whether they would give us all our prisoners back? In other words, was it a general distrust?

A. I have to answer that in a general way. It's a general question. I have never believed for a moment that we could categorically close the book on the question of whether or not we got all our prisoners back, we have them properly accounted for, or whether or not there are additional men being held against their will.

I have always been the strongest advocate for that assumption -- that they just may be cheating today, as they have historically in almost every key issue, including the Peace Accords themselves, which they proceeded to violate almost from the day the ink dried.

Q. How good was our intelligence as to who were prisoners and who weren't back before the Accords?

A. That's the point I'm making. Very rudimentary. We were in the process of conducting a war where people were being killed every day in far larger numbers, and it was when that war went down and the focus of attention and energy and resources got into this that a catalog of information began to evolve.

But in those early days I think very skimpy.
Q. What do you mean by "early days"?

A. I'm talking about the period during which the conflict was reasonably intense.

Q. But as of, say, January of 1973, how good was our intelligence?

A. January '73 we entered into a different period, of course. And I would say '73 to April '75, when the total consequences of our historical failures in Southeast Asia came to pass, that it was a limbo situation in which the intensity of the legislative opposition to the Executive branch on the issue of the war was at its height.

Q. Let me ask you another question related to the POW aspects, POW/MIA aspects of the Paris negotiations. Do you recall that it was the U.S. position that the Accords, when reached, should formally require -- in other words, as a part of the written Accords should formally require -- that live POWs throughout Indochina must be returned pursuant to the agreement, as opposed to simply being limited to POWs held by the parties to the Accords?

A. Well, as I say, I recall -- and I'd have to refresh my memory and you'd be better to ask Kissinger or someone who was involved in that, those final negotiations -- that it was understood, although I don't think it's in Article 8, and I would have to reread it, that the prisoners in Laos would be included, and Cambodia.
And, of course, there was a constant insistence on the part of Hanoi that they didn't control these countries, which of course they did. It was a difficult question, but I seem to remember that I had assurances at the time -- it could have been subsequent to that -- that we got Hanoi's assurance that they would be included.

Q. I want to show you a document that I have marked as Exhibit Number 9. It's a memo from Henry Kissinger to General Haig dated September 27, 1972.

[The document referred to was marked Haig Exhibit No. 9 for identification and was retained in the custody of the National Security Council.]

A. September?

Q. September 27, 1972, asking you actually to transmit the following message to Ambassador Bunker via usual channels, and specifically in paragraph 4 on page 2 of the document Dr. Kissinger writes: "In other areas it emerged clearly both from DRV document and discussions that we remain far apart on a number of major issues. They do not formally acknowledge the presence of their forces in South Vietnam."

A. Correct.

Q. "And are clearly unwilling to withdraw them as
part of an agreement." This is the important part right here. "They refuse to include Laos and Cambodia in any formal ceasefire or POW provisions, and they insist that their September 26 proposal is their final position."

It goes on for a few other sentences that are not important here. Hearing this -- and I will give you the document so you can see the whole thing in context -- but does hearing that refresh your memory that it was the U.S. position, at least as late as the end of September 1972, that it was a major issue, the fact that the North Vietnamese were not willing to include --

A. Yes. I think I just made a comment to that effect. They insisted they weren't in Laos or Cambodia, and that they had no influence over the situation.

Q. And that was considered to be a major issue for us, meaning Dr. Kissinger and President Nixon, that the North Vietnamese would not formally -- would not agree formally?

A. That had to be changed.

Q. Let me just finish the question. It was considered a major issue for us at the end of September 1972 that the North Vietnamese would not agree formally to arrange the release of U.S. prisoners throughout Indochina?

A. One of many, one of many major issues, and probably, given the depth and the weight of those issues,
it was not the main one. It was not the main one. It
didn’t make it any less significant or important, but there
were others that were even more significant.

Q. I think you stated a couple minutes ago that your
memory of the actual peace accords was that they did not
require the release, they did not formally require the
release of U.S. prisoners in Laos and Cambodia, and I can
tell you your memory is accurate.

Can you help us understand how it is that we
moved from our position on September 27, 1972, of insisting
that the Accords formally require the release of U.S. POWs
throughout Indochina to the position that we were in in
January?

A. Didn’t we have a private assurance? Again -- and
it gets back to the same answer I’ve given you on several
of your questions -- it was the considered judgment of the
negotiators that the position taken with respect to that
very difficult issue was that the release of our prisoners
would be, prospects for it would be improved by that
shifting position.

That would be my position on just about every
question you’ve asked in terms of changing positions.

Q. How could the prospects for the release of our
prisoners in Laos be improved by changing it from a formal
A. You must be a Harvard lawyer, right?

Q. You know, I don’t have to answer questions in a deposition; it’s great.

A. You know, the answer to that is that this is a multi-calculated assessment being made by people who are totally devoid of the support they need to conduct more rational policies and therefore are looking for the objective of getting our prisoners out under whatever circumstances are best to get them.

Now that’s the Harvard approach; they call it pragmatism. Principles be damned.

Q. Let’s hear the Kissinger approach.

A. May be.

Q. Let’s hear it.

A. Well, I think that was their calculation, that the important thing was to get the prisoners out.

Q. I understand that.

A. If they had the assurance — you know, the written document of the Paris Peace Accords was as meaningless as it would have been whether it was in writing or not in writing. They totally violated it, and the American Congress stood by and not only permitted that to happen but gave them the assurances they could do it with impunity. There’s your problem and the whole issue.

If you let this investigation of a lot of
important things overlook that reality, then you’re distorting history. That’s the fact of it.

What I’m telling you is that I am confident, and I have worked with Henry Kissinger long enough and hard enough and President Nixon long enough and hard enough, to be absolutely convinced that they believed in their heart of hearts that the best way to get our prisoners out was to agree to that compromise or that change in position.

That’s my answer.

Q. I understand that’s your answer, but help us understand why we would be more likely to get prisoners out of Laos with an informal understanding than with it in the formal agreement.

A. Because the facts are that neither of them meant anything, formal or informal, if historic sanctions which are associated with international accords of any kind -- treaties, understandings, private arrangements -- if you are deprived of the sanctions that are necessary to enforce on the part of the signatories those agreements.

They’re not worth the paper they’re written on.

And that is the process that the American Executive branch faced on the whole issue.

Q. Let me interrupt you there.

A. The sanctions were removed.

Q. Surely it’s not your testimony that at the time
the Paris Peace Accords were signed that President Nixon
and Dr. Kissinger felt that those documents were worthless
and that they wouldn't be implemented.

A. No. That's not what I said.

Q. I know that's not what you said. So you agree
that that's not the case?

A. Of course not.

Q. Then, according to your testimony, they must have
thought that this agreement was going to be implemented.

A. Right.

Q. My question for you is, help us understand why
the side agreement, an informal secret agreement, was more
likely to get the live prisoners out of Laos than a formal
requirement in the written document would be.

A. Because the alternative was a proposal by many in
the Senate, and especially in the Foreign Relations
Committee, was that if we didn't get a peace agreement
there was going to be a cessation and termination of all
support for our activities there, and a date certain
unilateral withdrawal schedule had to be arrived at.

Now you put yourself in the position of
negotiating against that backdrop, and I think you'll
understand what I say.

Now the other point I make is equally important.

No President would have entered into formal or informal
agreements or understandings, secret or public, if he did not believe that the integrity of the American government, including the legislature and the Executive Branch and the American people, would meet the obligations associated with that.

That meant two things -- first, that the Congress would support South Vietnam with equipment, money, all the things we were committed to and, secondly, that if the Accords were violated we as a nation would take action against the violator.

We were deprived within six months of those Accords of both of those assumptions. So all I can say is, thank God we had President Nixon and President Jerry Ford and Jimmy Carter that somehow continued to work this problem against the backdrop that I just described to you.

MR. KRAVITZ: Why don’t we take a five-minute break?

[Recess.]

BY MR. KRAVITZ:

Q. General, before we broke we were talking about the issue of whether there should be a formal requirement that prisoners held throughout Indochina be returned as part of the Accords. Was it also our position that the Paris Peace Accords should formally require an accounting for missing in action throughout Indochina?
A. Well, I have no doubt about that, but again when you refer to the Paris Peace Accords you’ve got to remember that I wasn’t in the White House, associated with the final evolution of that situation, after January of 1973.

Q. I understand that.

A. Okay.

Q. But before the time you left your position as Deputy National Security Advisor --

A. I still was not an expert on all the esoterics of the drafts and the various discussions other than the major issues, and certainly this was a major issue.

Q. So, despite those disclaimers, you certainly understood that it was the U.S. position that the Paris Peace Accords should formally require a full accounting for missing in action throughout Indochina?

A. Yes, of course.

Q. As you may be aware, but, if you’re not, I’ll tell you, the Paris Peace Accords themselves require assistance in accounting for missing in action personnel only in Vietnam. In our understanding, based on documents from the Administration itself, is that this side agreement relating to return of prisoners in Laos was limited to the return of live prisoners and did not extend to any assistance in accounting for MIAs in Laos.

A. I can’t answer that.
Q. My question is do you have any understanding as to how we went from position A to position B?

A. No, I don't have any understanding because I wasn't part of it. I can't answer that question.

Q. You weren't part of what?

A. Of that negotiation that led up to that and the side bar. I think I said earlier that I was told either before or after the fact that the prisoners in Laos and Cambodia would be included. They were not included.

Q. Well, let me show you a document, because I think you were involved to a certain extent.

A. On the issue?

Q. Right, at least with regard to our government communications with President Thieu.

A. With Thieu, right.

Q. Let me now mark as Exhibit Number 10 a memorandum of conversation from Monday, October 2, 1972, a conversation that took place --

A. October?

Q. October 2, 1972, a conversation that took place at the Presidential Palace in Saigon. Participants were Major General Alexander Haig and Ellsworth Bunker from the United States, President Thieu, a Mr. Nah from South Vietnam.

(The document referred to was
marked Haig Exhibit No. 10 for identification and was retained in the custody of the National Security Council."

Unfortunately, thanks to the National Security Council, we have a somewhat abbreviated transcript of this.

A. I'm reassured.

Q. But point 3, POWs, it states -- let me just find the right place: "This point remains unchanged, except that we have added a sentence about provision for verification of those still considered missing in action after prisoner of war lists have been exchanged. I am sure you have no problem with this addition. It relates to our concern that there be access to grave and crash sites throughout Indochina to ensure that every possible effort is made to locate MIA after the war is over. If the talks were to break up on this point, we would be in excellent shape since this is the major U.S. concern."

These appear to be your talking points for that meeting. Does that help you remember the extent to which you were aware of the U.S. position on this point?

A. Well, that's not the question you asked me about the Accords themselves. I think it's very consistent with what I have said.

Q. I'm not saying that it isn't.
A. It is. It is exactly -- would have been my position, and the fact that it was in talking points prepared for a meeting with Thieu I have no difficulty with.

Q. What does the fact that it was in talking points mean, if anything?

A. Well, it means that these were the guidance that I took with me to Saigon and explained to President Thieu the current state of the negotiations, which were not concluded at that time, which were still quite flexible and which, as a matter of fact, at this time -- what's the date again? September, did you say?

Q. I think it was October 2.

A. October. At the next meeting all of the North Vietnamese concessions, everything, was withdrawn, and we were right back at square one. That led us up to the bombing and the mining. So what I'm saying to you is yes, that would have been my position, and I think it's the right position, given the circumstances at the time and our ability to anticipate a reasonable national support for the policy.

Q. But you can't give us any specific assistance in understanding how it is that the United States moved from its earlier position, as you had described it to President Thieu on October 2 --
A. The same thing I told you a few moments ago: I wouldn't change one iota, not one iota.

Q. Just so the record is clear, you're referring to the answer you gave relating to the shift in position or movement in position on prisoners?

A. That it was the assumption of the negotiator -- and I can't speak for him but he can speak for himself, and I hope to heck you have him up here and I hope it's a public session and fully televised, because it's going to be a humdinger, and I hope if you get me before the Committee it will be the same. It will be a humdinger. Nothing could make me happier than to get the record straight on how we got to where we were in Vietnam in general and with our POWs in particular.

And I hope you know that this is the position I'm going to take publicly. Again, I'll answer the question because I don't want you to think -- it's my considered judgment that whatever changes were made were made in the interest of getting our prisoners out in a timely fashion against a declining backdrop of support, essential support, of bipartisanship and legislative support for the Executive branch in the conduct of our foreign affairs.

Q. At a meeting of the Washington Special Action Group, also known as WSAG, on November 8, 1972, Dr. Kissinger asked the Department of Defense representatives
to prepare for him a two-page list of essential prisoner of
war/missing in action negotiating points for him to bring
with him to Paris.

"I need just two pages saying what we want on
POWs, how they’re going to be released, the time sequence,
how many and in what order, when and where they will be
picked up, et cetera."

On November 19, 1972, [redacted] sent a 3-
page memo to Dr. Kissinger including a list of “essential”
points. Many of those we have already discussed in
deposition, but I want to focus just on one. One of the
points that [redacted] said was essential was for U.S.
aircraft to have the authorization throughout Indochina for
overflights to check on crash sites, grave sites, et
cetera.

Let me ask you first of all would you agree with
that statement by [redacted]?

A. As a desirable negotiating, absolute.

Q. How about as something that’s essential?

A. I can’t answer that. My suspicion is that it
would depend on the judgment of whether other factors in
the negotiating position were going to give you a better
opportunity to get our prisoners out or a weaker
opportunity to get them out.

Q. Do you have any sense as to whether Dr. Kissinger
or President Nixon viewed that suggestion from as an essential negotiating point to help get a complete accounting of our MIAs?

A. Well, you know, I think I know enough about Kissinger's negotiating style to suggest that yes, absolutely he would have sought to get that.

Q. But my question was do you have a sense as to whether he viewed that as essential or simply something to ask for?

A. Even at the time I couldn't answer that, and not 20 years later.

Q. As you were observing the Paris negotiations from your various positions inside the White House and then over at Army headquarters, was there any sense as to either satisfaction or dissatisfaction or somewhere in-between with the details of the agreement relating to POWs and MIAs?

A. I think I explained to you at the beginning that I had a measure of discomfort with the broad terms of the agreement, as I knew them and had to explain them to President Thieu, and I think the record will reflect that at the time. I write about it in my book, which will be out this month, in September.

Q. But you said as a general matter --

A. And the reasons were that, as I told you also
earlier, the President was restricted from doing anything that a rationale executive would seek to do to achieve the objectives of the national interest of the United States on the prisoners and on the outcome of the war by legislative restraints and threat, including impeachment, including the cutoff of all monetary and executive authority to conduct retaliatory operations against the enemy.

Now that was implemented and it was done.

Q. Let me ask you about this.

A. Within six months of the time those agreements were signed.

Q. Let me ask you about that. You've said both now and a little bit earlier that for all these reasons the President was not permitted to respond to violations of the Paris agreements. Were any of those violations to which the President was not permitted to respond violations relating to prisoners or MIAs?

A. Well, I think from almost the very beginning those provisions were violated.

Q. What are you referring to?

A. The lists of people to be exchanged, the accuracy of the lists, the categoric assurances that everybody was out.

Q. You mean you think those were false?

A. Of course I do, and subsequently they were proven
to be false. But it didn’t mean that we had -- from the beginning, I recall there was a military action in the south where our people were trying to go out to verify grave sites, et cetera, crash sites, and came under fire. That’s a massive violation.

Q. That was in December of ’73?
A. Yes.

Q. What was your sense? You said something about the lists were false and the assurances that everybody --

A. They were not complete. You know, I suppose you could argue historically that the people with whom we were dealing were limited in their ability also to live by the spirit and the letter of the obligations of the Peace Accords, both formal and informal.

But against the backdrop of their blatant violation of the major provisions of the Peace Accords -- that is, no further infiltration, relocation of their forces into enclaves, no more violation of the DMZ -- I mean, it wasn’t just the POW provisions; it was everything. And, had it been possible, I think I know enough about President Nixon to know that he would have threatened everything from nuclear weapons to Hanoi had he had the support of the Congress, the press and the American people.

I don’t blame him on the American people, because in every case in my memory that he took vigorous action,
both in '72 and later in the Christmas bombing, he had the
support of the American people. What he didn't have was
the support of the Congress.

Q. You were talking about concerns that you had as
soon as the DRV's lists of prisoners came out. What was
the reaction of people like Dr. Kissinger as to what to do
about the fact that the lists -- I mean, I take it they
were clearly insufficient when they came out. What was the
response to that?

A. Well, I don't know. You see, I was away from the
time the Accords were signed and implemented, such as they
were, until May, and then it was really a period of three
or four months before I began again. But I was aware of
the fact that Henry Kissinger, not specifically for the POW
question but on the broader violations, of which the POW
was an issue, wanted to resume bombing and so recommended
it to the President in the spring of 1973.

Q. We're actually going to get to that. I think
that was in March of '73.

A. Right. Now I know that not because I was a part
of it but because I was aware of it after I got to the
White House.

Q. But we were talking about really the sense of
resolve within the White House to fight violations on all
subjects, and that that resolve was undermined, at least in
your judgment, by sources outside the White House.

A. It was worse than that, more than undermined. It was neutralized.

Q. Was there a resolve to fight a violation such as simply an inadequate list? Was that something --

A. Everything, sure. Absolutely. You know, if you had ever sat in on one of the negotiating sessions, as I had for about two or three weeks over there in Paris, while I wouldn't have given a Nobel Peace Prize to Henry Kissinger, I would have given him a medal of honor for his patience and the time he spent with the most frustrating of circumstances and against a backdrop of insanity in his own country behind him -- an incredible historic situation.

Q. At a meeting of the Washington Special Action Group on November 2, 1972, Dr. Kissinger said that he didn't believe that we should be haggling over prisoner lists -- in other words, over who was on each one.

A. When did he do this?

Q. November 2, 1972. I can get the --

A. That's all right.

Q. I'm going to mark as Exhibit Number 11 a document which is dated November 6, 1972, and relates to the minutes from the November 2, 1972, WSAG meeting.

[The document referred to was marked Haig Exhibit No. 11 for
identification and was retained in the custody of the National Security Council."

I can tell you from the lineup here that you were not present at the meeting, but, in any event, page 12 of this transcript has a discussion of POW lists, and...
Kissinger's position in terms of responding to perceived inadequacies in the enemy's POW list? Clearly it would be a violation.

A. I can't make a comment on a meeting I didn't even participate in, and the minutes, which I find so often to be less than accurate as a broad bureaucratic observation, especially in the State Department -- I don't know where you got those, but --

Q. Those are from the National Security Council.

A. Even there it depended on who prepared them. You know, on issues of the importance of the matter -- I mean, you are trying to unravel a whole set of problems, but I can't answer one like that because I wasn't there, and I don't have the sense 20 years later of just what Dr. Kissinger's attitude was.

Q. Let me ask the question this way. You've said that there was a great resolve within the Nixon White House, to the extent it was permitted to do so, to enforce the Accords and to react appropriately --

A. Right.

Q. Let me finish my question -- react appropriately to perceived violations by the DRV. How many people from our list of U.S. POWs did they have to cheat us on, did the DRV have to cheat us on before we would consider that to be a violation worth reacting to?
A. You're asking me a question the answer to which I couldn't conceivably give you.

Q. Why do you say that?

A. Because I don't know.

Q. Who would know that?

A. That's a question that you should ask whoever was responsible for doing whatever generated the question in the first place, and it wasn't me. I don't know the answer to that question. I just can't say.

Q. I'm going to ask you just some general questions about side understandings, side agreements, in other words the set of agreements or understandings that were reached in addition to the actual public documents that were the Paris Peace Accords and the protocols.

Why were there side understandings or side agreements in addition to the actual public documents?

A. It's not at all unusual. We could go to the Cuban missile crisis and some of the side agreements that were made and never revealed to the public, such as the agreement to withdraw missiles from Turkey and Italy in exchange for the withdrawal of Soviet missiles from Cuba, a side agreement perpetrated by the Attorney General of the United States -- unbelievable, denied under oath by a Secretary of State, a Secretary of Defense, under oath, and admitted 25 years later to have been the truth.
Not uncommon. That's my answer to your question.

Q. That doesn't really answer my question.

A. Sure it does.

Q. The question is why did we have them? The fact that it's common doesn't answer why we have them.

A. Again, I go back to the basic answer and a judgment of the officials who are conducting the business of the people in the Executive branch, as provided for by the Constitution of the United States, believed in the best of their conscience and their heart that this would bring about the outcome that was the objective of our people, and that was to get our prisoners out. And they believed that with great conviction.

Whether they did it infallibly, I don't know, probably not because human beings are fallible. But when we go into a public orgy of this kind to try to suggest, as again your question suggests to me, malfeasance of some kind on the part of public officials whose patriotism is unchallengeable, whereas those that are asking the questions may have to prove theirs someday -- I hope you don't, but you may.

And what I am saying is I am offended by questions that I can interpret subjectively as impugning the patriotism of Henry Kissinger as a negotiator or myself
as his assistant, or the President of the United States; all of whom were operating under circumstances brought about primarily by the Congress of the United States, which are unacceptable and historically unprecedented, although I saw them again in the Gulf war, except the President was smart enough to go to the people and the people overrode the insanity of our legislature, our special interest condominium.

Q. To the extent that you were aware, what forms did these side understandings or side agreements take?

A. I don't know, you know.

Q. You weren't involved in any of that?

A. No, I wasn't involved in any side understanding.

I did sit in on a series of negotiations that lasted about three weeks. It was incredible the amount of time and effort and detail and the vigor with which Kissinger fought to achieve the objectives of the American people and the interests of our prisoners.

I, with mixed emotions, found myself in the position of having to attempt to clarify and achieve the support of President Thieu for these agreements, when in my heart of hearts I suspected that they were sufficiently flawed that without the kind of vigorous sanctions that were later deprived, taken away from the President, that it might unravel. It did.
And in that sense, hindsight, I was right, but at the time I believed the President and Kissinger did the best they could under the circumstances.

Q. As you understood it at the time, back in late 1972-early 1973, was a side understanding or side secret understanding between the U.S. and the DRV perceived as being as enforceable or more enforceable or less enforceable than a part of the actual formal agreement?

A. Well, I don't know how to split that hair. I think logic would tell you on the surface that of course a written formal agreement was more enforceable than a private side understanding. On the other hand, events confirmed that even a written formal agreement would not be supported by the Congress of the United States.

So it becomes an irrelevant question unless you are seeking some academic value out of it.

Q. Was there ever a sense that one of these side understandings could be easily aborted or undone by one of the sides?

A. I can't answer that question because I wasn't engaged in it. Do you understand what I'm saying? I was not subjectively engaged in that issue.

Q. Which issue?

A. The side understandings, the things that ultimately brought about the agreement, the hard rocks that
were circumvented in the process of concluding the agreement. I was not involved.

Q. Let me just ask you another general question about side agreements. I assume it was important to the United States not to appear as if it was violating the agreement. How could the United States react, say, for example, militarily to enforce a violation of a secret side agreement without it appearing to the world as if the United States was itself violating the agreement -- in other words, if we bombed to get prisoners?

A. Oh, very easily, because there was no reason, if there was a violation, to keep any of those understandings secret, and any normal government in which the Executive branch had a modicum of bipartisanship and support for the policies which they were pursuing, there would be no doubt.

I mean, hell, I saw the United States bomb North Vietnam because of an alleged attack against our destroyers in the Gulf of Tonkin when that attack actually never occurred, and only one vote was against the action that was taken. So you go a distance from that, a myth, to reality, and what you ought to be doing an investigation on is what happened to the American Congress and what is it doing to the interest of the American people.

Now there are a lot of American people are beginning to ask that question and hopefully they'll take
action at the ballot box.

Q. You've spoken earlier today about a side understanding or secret understanding which required the release of U.S. prisoners held in Laos. Do you know how that understanding or agreement was reached?

A. No, I don't. As I say, I don't know whether I learned about that because of my concerns and I asked Dr. Kissinger what he was going to do about that issue, or whether he told me, volunteered it to me, or whether in some discussion in the White House, because I went in and out in a very hectic period, I was just told that officially.

Q. But it's certainly something you knew about at the time as opposed to something you learned about later?

A. I think so, yes.

Q. Was it your understanding that that side agreement was limited to U.S. prisoners in Laos or whether it extended also to U.S. prisoners in Cambodia?

A. I think Cambodia as well. That's my recollection, and that was a key issue to me too, because I had been very active in the Cambodian thing earlier.

Q. Was it your belief back in late 1972-early 1973 that there were live American prisoners in Cambodia?

A. I was not sure, and I don't think anybody was then or can be today, because the likelihood of anyone
being captured would have been by forces or by North Vietnamese and the likelihood of those prisoners being shipped to the facilities that had been established in North Vietnam I thought was very, very high.

Q. Both Winston Lord and George Aldrich, who was the legal advisor to Dr. Kissinger's team in Paris, have testified that this side understanding was limited in scope to prisoners in Laos and specifically did not extend to U.S. prisoners in Cambodia because the DRV stated that they had no control. They said they had no control over the communist factions in Cambodia.

Do you recall it differently?

A. No. I wasn’t involved. I’ll give you my recollection.

Q. I just was wondering if that might refresh your memory.

A. I wasn’t involved in the discussions with the North Vietnamese with respect to those sidebar understandings. It would have seemed to me that it was a tossup with respect to whether or not it was more unacceptable for Hanoi to admit that they had picked up prisoners in Cambodia than they had picked up prisoners in Laos. I have difficulty there.

We all knew that North Vietnamese forces were in en masse operated in Cambodia.
Q. I'm going to show you what I'm marking as Exhibit Number 12 to the deposition. It’s a document that is located here in the Office of Senate Security, and it's number 92-4629, a 12-page document, and it's entitled Vietnam Agreement Understandings, as Agreed January 1973, and it's a list of 9 understandings, one of which, H, is regarding Laos and Cambodia.

[The document referred to was marked Haig Exhibit No. 12 for identification and was retained in the custody of the Office of Senate Security.]

First of all, no one has yet been able to tell us what this document -- really where it came from and who wrote it. If maybe by looking at it you might be able to tell us, that would be helpful.

I can tell you that we got it out of the Legal Advisor's office at the State Department.

A. You got this?

Q. Right, although no one there has been able to tell us who wrote it. At first we thought that it was probably George Aldrich, but when he looked at it he said it was something that was given to him, but he did not say that he had written it.

[Pause.]
That's the end of the portion on POWs in Laos.

You don't know what that document is?

A. The cover and the format of it is very much like an NSC paper, and this, of course, page 6, is very different. That's a minutes, apparently, of the discussion, and that's injected in there. But then it picks up with what looks like a post facto part of the basic, as do the remainder of the pages.

But it's pure speculation on my part. I just have no way of knowing.

Q. The portion setting forth the understanding that U.S. POWs in Laos will be released --

A. You interrupted me before I got to read that.

Q. It's these three pages right here (indicating) where the title is Regarding Laos and Cambodia. It appears as if this agreement or this side understanding was reached in a series of three cables which went back and forth between President Nixon and the Prime Minister of North Vietnam back in October.

I just ask you to read those to yourself and see if maybe you remember that happening.

[Pause.]

A. Yes.

Q. Having reviewed at least that portion of Exhibit Number 12, is your memory refreshed as to the exchange of
those cables between President Nixon and the Prime Minister of North Vietnam?

A. I think that was January, wasn't it, the message?

Q. The messages were October 20, 21, and 22.

A. Oh. That was after the "peace is at hand" sessions in which that issue was still unresolved. And then you got those assurances, right?

Q. According to this document --

A. You know, I don't know. I don't remember the message, and again I emphasize that I was scheduled to leave there in October. The only reason I was held on was because of the negotiations and the credibility I had with President Thieu with respect to the whole conflict.

So I started a two-step in which I was getting oriented at the Pentagon, on the one hand, and hoping to get over there as quickly as I could on the other, and the constant obligations associated with President Thieu.

Q. So is it your testimony that you were unaware?

A. I won't say I was unaware of it. Today I don't recall it in the context of the document and the cables that you just asked about.

Q. Let me ask you this. Do you recall any negotiations or any understandings relating to the release of U.S. prisoners in Laos other than these cables that we've just shown you and other than what appears to have
been some kind of private --

A. I can't answer it. You know, I really think that Dr. Kissinger will give you a full and complete exposition on the whole issue because he, after all, was doing it, and the key guys that were at his right hand 24 hours a day doing it. I don't know whether you're calling them as witnesses or whether you have or you haven't.

Q. We've talked to a lot of them.

A. And there are a number of them -- Dick Schmeiser, Winston, of course, Negroponte. And there was the other fellow who was very close to Henry during all this, Peter Rodman.

Q. Did you feel comfortable, back in late 1972, with this side agreement for U.S. prisoners in Laos?

A. I can't answer that in the context of the question and the way you've asked it. I was very uncomfortable about the whole set of peace accords. On the other hand, in fairness, as I pointed out earlier, I had to say that, given the circumstances following the bombing and, above all, the premature termination of that bombing under legislative pressure, I could not myself come up with any other alternatives that would have made me happier and still be doable.

Q. Was the fact that the promise from the North Vietnamese to release or arrange the release of U.S.
prisoners on Laos was implied in this side understanding, which was not written down or signed or anything, was that part, was that one of the reasons why you were generally uncomfortable about the agreement as a whole?

A. Yes, but it wasn't my main objection or concern. My main concern was the achievability of the outcome, which would have left South Vietnam sovereign and independent, which was, after all, the reason all of this was undertaken, was the reason there were prisoners of war and many, many casualties.

And, you know, I don't mean to suggest that this was a lesser matter of concern to me, but it was not the central matter of concern.

Q. I think I can understand that. Some of us tend to focus on only one issue, and I think it's important for all of us to see it in context.

I want to show you another document. I'm marking as Exhibit Number 13 a message from Dr. Kissinger to Ambassador Godley in Laos dated February 20, 1973.

[The document referred to was marked Haig Exhibit No. 13 for identification and was retained in the custody of the National Security Council.]

Again, I understand it's a time when you were not
at the National Security Council. In this message, Dr. Kissinger asks Ambassador Godley to have the deputy chief of mission at the embassy, a man named John Deane, approach Soth Petrasy, who was the Pathet Lao's ambassador or spokesperson in Vientiane, and to attempt to negotiate with him the release of U.S. prisoners of war held by the Pathet Lao.

I'd like you to take a look at that, and my question to you is why would this be necessary if we in fact had an enforceable understanding or what we believed to be an enforceable understanding with the DRV requiring the release of U.S. prisoners in Laos?

A. That last document you just showed me also made reference to assurances from the Laotian officials, too, did it not?

Q. Why don't you show me what you remember reading? Just so the record's clear, I have given General Haig back Exhibit Number 12.

A. Making reference to Laotian participation in what was happening here. I'm just giving you that as a suggestion that this wasn't an altogether imprudent message, and it was again designed to reinforce the agreements.

Q. Well, just so the record is clear, in Exhibit 12 the portion that General Haig was just pointing out on page
3 of this portion dealing with the side understanding for U.S. prisoners in Laos, the reference to consultation with concerned Lao parties is actually related to another subject. It's related to --

A. The earlier '62 accords, right?

Q. It's related to the period of time after the signing of the Paris Agreements within which the separate Laos peace agreement would be reached.

A. Yes.

Q. But that's separate.

A. But it also involves withdrawals, too. It involves obligations of the "Laotian government," such as it is.

Q. But it's not specifically related to --

A. It's not unrelated. The reason I raise it is that here's a message, and if you'll let me finish it I think I know enough about what I've seen already to suggest that there's nothing wrong with this. There's nothing inconsistent with this and the Accords and the assurances we had from the North.

It is merely an insurance policy which any prudent official -- you know, everybody involved gets pinged. I think the basic objective that should be read by the Committee here is that of course we remained interested in the rapid return of any U.S. prisoners held by the
communists in Laos, plus another factor says it seems the
only language the communists understand is military action,
which was -- the ability to execute was withdrawn.

Q. In your opinion, the fact that Dr. Kissinger
asked Ambassador Godley to have his office in Vientiane
negotiate directly with the Pathet Lao for the release of
U.S. prisoners indicates nothing regarding Dr. Kissinger's
view of the enforceability of the side agreement, side
understanding with the DRV?

A. Oh, no, no. I read it as a prudent supplement to
that. As I say, you're getting an observation from a guy
who wasn’t there when it was drafted or sent.

Q. Do you know when the United States was supposed
to receive a list of U.S. prisoners in Laos pursuant to the
side understanding?

A. I don't remember, if I ever knew.

MR. KRAVITZ: Why don’t we break for lunch?

We're at a convenient stopping point here.

[Whereupon, at 1:00 p.m., the taking of the
instant deposition recessed, to reconvene at 1:40 p.m. the
same day.]
Whereupon,

ALEXANDER M. HAIG, JR.,

the witness herein, called for examination by counsel on behalf of the Senate Select Committee on POW/MIA Affairs and having been previously duly sworn by the Notary Public, was further examined and testified as follows:

EXAMINATION ON BEHALF OF THE SELECT COMMITTEE - Resumed

BY MR. KRAVITZ:

Q. General Haig, before I ask any more questions, let me just ask you if there's anything you said this morning you'd like to add to or take away from or change in any way.

A. No.

MR. GOLDBERG: On 7 and 8, which were those exhibits from the NSC, they were not identified as being to whom or by whom, as compared to a memo to General Haig, that those were not identified formally as being what they were represented to be.

MR. KRAVITZ: Right. I think General Haig said what he thought they probably were.

MR. GOLDBERG: Exhibit Number 11 used the words in the memcon Dr. Kissinger said let's not haggle it out of context, again to be put in complete context and not