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[12/74]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD M. NIXON,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO. 74-1518
	:	
ARTHUR F. SAMPSON, et al.,	:	
	:	
Defendants,	:	
	:	
and	:	
	:	
THE REPORTERS COMMITTEE FOR	:	
FREEDOM OF THE PRESS, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	CIVIL ACTION NO. 74-1533
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ARTHUR F. SAMPSON, et al.,	:	
	:	
Defendants,	:	
	:	
and	:	
	:	
LILLIAN HELLMAN, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	CIVIL ACTION NO. 74-1551
	:	
ARTHUR F. SAMPSON, et al.,	:	
	:	
DEFENDANTS.	:	

MEMORANDUM IN SUPPORT OF MOTION FOR
A STAY AND FOR RECONSIDERATION OR
CERTIFICATION TO THE COURT OF APPEALS

Because, by its order of December 3, 1974, the Court has rejected defendants' claims of privilege contrary to the controlling principles of law and without the benefit of briefing or argument on the issues, defendants move for a stay and reconsideration of said order. Since one of the issues determined by the Court in its December 3, 1974, order



is a question of significant constitutional dimension involving the balance of power between the Executive and Judicial branches of government, defendants seek, in the alternative, certification of an interlocutory appeal from the order to the Court of Appeals pursuant to 28 U.S.C. 1292(b).

I

EXECUTIVE PRIVILEGE

By order of this Court of December 3, 1974, defendant Philip Buchen has been ordered to present to the Court certain documents as to which Mr. Buchen, as Counsel to the President, has asserted executive privilege. Said documents, as described in Mr. Buchen's deposition at p. II-9, include:

- (1) Memoranda and talking papers to the President of the United States from his counsel, Mr. Philip Buchen, and
- (2) memoranda internal to the office of the Counsel for the President.

Moreover, the Court has indicated that it is inclined to reject the assertion of executive privilege raised in response to the following questions concerning the September 6 agreement directed by Mr. Dobrovir to Mr. Buchen:

Page II-23, 1.13: Was the President apprised of the precise terms of the agreement?

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Page II-24, 1.11: And did [the President] want the agreement to be signed right away?

Finally, the Court failed to rule on Mr. Buchen's assertion of the privilege in response to a question directed to him by Mr. Miller at:



Page II-69, 1.7: Did you discuss this matter with the President of the United States, this agreement? 1/

Because the order of this Court appears to depart from the standards and procedures for considering claims of executive privilege described in United States v. Nixon, ___ U.S. ___, No. 73-1766 (July 24, 1974), defendants move this Court to stay its order to the extent that it concerns executive privilege or the production of materials potentially subject to that privilege and to reconsider said order. 2/

In United States v. Nixon, supra, the Supreme Court identified a presumptive privilege for Presidential communications which has constitutional underpinnings and calls for great deference from the courts. Slip. op. at 21. As the Court observed:

The expectation of a President to the confidentiality of his conversations and correspondence, like the claim of confidentiality of judicial deliberations, for example, has all the values to which we accord deference for the privacy of all citizens and added to those values the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in presidential decision-making. A President and

1/ Since this question inquires into the content of a conversation between the President and one of his aides, it is a presumptively privileged Presidential communication as described in United States v. Nixon, supra; hence, no further assertion of privilege is required. The same analysis is applicable to the Court's ruling on the privilege as asserted in response to questions addressed to Benton Becker by Mr. Dobrovir, appearing at pp. 16-20, 36, and 42-43 of the Becker deposition. Hence, defendants move the Court to reconsider its ruling on those matters as well.

2/ Judge Robinson, then a District Judge, granted a motion for reconsideration of an order to produce documents for in camera production and vacated that order where the documents were the subject of a claim of executive privilege in Carl Zeiss Stiftung v. VEB Carl Zeiss, Jena, 40 F.R.D. 381 (D.C. 1966); aff'd, 384 F.2d 979 (1967).



those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately. These are the considerations justifying a presumptive privilege for presidential communications. [Slip op. at 23; emphasis added.]

Both the questions and the documents referred to above touch upon such "communications between high government officials and those who advise and assist them in the performance of their manifold duties." Id., slip op. at 20.

In United States v. Nixon, supra, the Court also explained that when dealing with Presidential communications, a District Court must treat the subject material as presumptively privileged and require the discovering party to make a sufficient showing to rebut the presumption. Slip. op. at 28-29. Far more than a mere showing of relevance is required. In United States v. Nixon, supra, the presumption was overcome only by demonstration of a particularized need for the production of evidence at a criminal trial--a need which was, itself, of "constitutional dimensions," slip op. at 26, relating to "fundamental demands of due process of law in the fair administration of criminal justice." Slip op. at 28. Only because the presumption had been overcome by such a compelling showing of need was it appropriate for the District Court to order that the subject materials be transmitted to the Court for in camera inspection. Slip op. at 28-29.

In contrast, this Court, by its order of December 3, 1974, has required transmittal of documents to the Court for in camera inspection and indicated a willingness to overrule claims of privilege without the party seeking discovery ever



having made the showing necessary to rebut the presumptive privilege.^{3/} No particularized and compelling need and certainly no need of a constitutional dimension for the materials or answers to the disputed questions has been demonstrated by any of the parties to this case.^{4/} Accordingly, the materials should be considered presumptively privileged and not subject to in camera inspection, and the objections to the disputed questions should be sustained.

Accordingly, defendants respectfully request that this Court modify its order of December 3, 1974, to conform to the requirements of United States v. Nixon, supra, to sustain the objections to the disputed questions and to hold the subject documents presumptively privileged, pending some particularized showing of a compelling need by the party seeking discovery. Defendants also move this Court for an order staying the relevant portions of its December 3, 1974, order pending a decision on the motion for reconsideration.

In the alternative, defendants seek a certification to the Court of Appeals pursuant to 28 U.S.C. 1292(b) of an interlocutory appeal on the issue of whether in camera

3/ The December 3, 1974, order is particularly inappropriate because the Court has thereby brought the parties to an unnecessary "showdown" on an important constitutional issue. Freeman v. Seligson, 405 F.2d 1326 (CA DC 1968). The matters for which discovery is sought have not been shown to be essential to decision in the case. Whatever relevance questions concerning the September 6 agreement might previously have had, the pending legislation abrogating the effect of that agreement has rendered such questions of little importance to the issues posed in the lawsuit. In such circumstances, the Court should avoid unnecessarily and prematurely deciding grave constitutional questions.

4/ Indeed, there have been no motions filed by any party under Rule 37, F.R.Civ.P. seeking to compel discovery.



inspection of the subject documents is presently appropriate given the assertion of executive privilege and the lack of any showing of a particularized and compelling need for the answers or materials. Such an interlocutory appeal would materially advance this litigation by resolving an issue of significant constitutional dimensions. The substantial ground for difference of opinion on this issue is demonstrated by the fact that the question of when and if the presumptive privilege can be rebutted in civil litigation was specifically reserved by the Supreme Court in United States v. Nixon, supra, slip op. at 27, n. 19. Defendants also move this Court to grant a stay of the relevant portions of its December 3, 1974, order pending resolution of the interlocutory appeal.

II

OTHER PRIVILEGES

By its order of December 3, 1974, the Court also ordered Mr. Buchen to present to the Court other materials as to which a privilege has been claimed. The materials and the privileges asserted are described in Mr. Buchen's deposition at pp. II 8-9:

(1) Early drafts of the Attorney General's opinion on the former President's ownership of his presidential materials, as to which both attorney-client and internal agency memorandum privileges were claimed.

(2) Correspondence between Mr. Buchen, Counsel to the President, and Mr. Kauper, Assistant Attorney General for the Antitrust Division, dated September 10,



1974, relating to certain litigation in which the United States is a party, known as the network cases. Attorney-client and intra-agency memoranda privileges were claimed.

(3) Correspondence between the Office of the Counsel to the President and the Special Prosecutor, as to which privilege is asserted on the grounds that the documents are internal government communications^{5/} and that they concern an ongoing criminal investigation.^{6/}

(4) A letter from Mr. Buchen, Counsel to the President, to Mr. Herbert J. Miller, attorney for former President Nixon, dated September 20, 1974, which relates to and identifies specific requests by the Special Prosecutor. These materials also touch upon an ongoing criminal investigation.

Defendants assert that in each of the above instances a prima facie showing that a valid privilege attached to the materials has been made. Accordingly, the Court should not have required that the subject materials be presented to the Court, in derogation of the privilege, without some showing by the party seeking discovery of his need for acquiring access to them. Accordingly, defendants request that the

5/ A generalized privilege protecting the confidentiality of internal government memoranda was recognized by the Court of Appeals in Grumman Aircraft Engineering Corp. v. Renegotiation Board, 482 F.2d 710 (CA DC 1973), cert. granted, ___ U.S. ___.

6/ The Court recognized the applicability of such a privilege to similar materials in sustaining defendants' objection to questions to Mr. Buchen by Mr. Miller, at p. II-75.



Court stay the effect of its December 3, 1974, order concerning production of those documents for which privilege is claimed, reconsider said order, and decline inspection of the documents until the party seeking discovery has made a showing adequate to justify an encroachment upon the defendants' lawfully asserted privileges.

Respectfully submitted,

CARLA A. HILLS
Assistant Attorney General

EARL J. SILBERT
United States Attorney

IRVING JAFFE
Deputy Assistant Attorney General

IRWIN GOLDBLOOM
Acting Deputy Assistant Attorney
General

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Telephone: 202-739-3300

Attorneys for Defendants



[12/74]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD M. NIXON,)	
)	
Plaintiff,)	
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v.)	C.A. No. 74-1518
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ARTHUR F. SAMPSON, et al.,)	
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Defendants.)	
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and)	
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THE REPORTERS COMMITTEE FOR)	
FREEDOM OF THE PRESS, et al.,)	
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ARTHUR F. SAMPSON, et al.,)	
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Defendants.)	

MOTION FOR RECONSIDERATION, OR,
IN THE ALTERNATIVE, CERTIFICATION
TO THE COURT OF APPEALS

Defendants by their undersigned attorneys hereby
move for reconsideration of the order entered by the
Court in the above-captioned proceedings on December 3,
1974, insofar as said order concerns:

- (A) Production of certain documents as
to which Mr. Buchen, as Counsel to the President,
has claimed executive privilege. Said documents,
as described in Mr. Buchen's deposition, at
p. II-9 include:



(1) Memoranda and talking papers to the President of the United States from his Counsel, Mr. Philip Buchen, and

(2) memoranda internal to the office of the Counsel for the President.

(B) Rejection of the assertions of executive privilege by Mr. Buchen, as counsel to the President, in response to the following questions by Mr. Dobrovir:

Page II-23, 1.13: Was the President apprised of the precise terms of the agreement?

Page II-23, 1.19: Had the President seen the agreement or a previous draft of the agreement?

Page II-24, 1.1: Do you of your own knowledge know whether the President understood what the agreement provided?

Page II-24, 1.11: And did [the President] want the agreement to be signed right away?

(C) Failure to rule on the privilege issue in regard to the following question directed to Mr. Buchen by Mr. Miller:

Page II-69, 1.7 : Did you discuss this matter with the President of the United States, this agreement?

(D) Ordering in camera inspection of the following documents, as to which lawful claims of privilege, other than executive privilege has been asserted, but as to which the party seeking seeking discovery has made a showing of need to justify infringing upon those privileges. The

materials and the privileges asserted are described in Mr. Buchen's deposition at p. II 8-9:

(1) Early drafts of the Attorney General's opinion on the former President's ownership of his presidential materials, as to which both attorney-client and internal agency memorandum privileges were claimed.

(2) Correspondence between Mr. Buchen, Counsel to the President, and Mr. Kauper, Assistant Attorney General for the Antitrust Division, dated September 10, 1974, relating to certain litigation in which the United States is a party, known as the network cases. Attorney-client and intra-agency memoranda privileges were claimed.

(3) Correspondence between the Office of the Counsel to the President, and the Special Prosecutor, as to which privilege is asserted on the grounds that the documents are internal governmental communications and that they concern an ongoing criminal investigation.

(4) A letter from Mr. Buchen, Counsel to the President, to Mr. Herbert J. Miller, attorney for former President Nixon, dated September 20, 1974, which relates to and identifies specific requests by the Special Prosecutor. These materials also touch upon an ongoing criminal investigation.

In the alternative defendants request that the Court certify to the Court of Appeals, pursuant to 28 U.S.C. 1292(b), that the order of December 3, 1974 involves a controlling question of constitutional law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.

In support of this motion, the Court is referred to the memorandum filed herewith.

Respectfully submitted,

CARLA A. HILLS

EARL J. SILBERT
United States Attorney

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Deputy Assistant Attorney General

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Attorneys for Defendants

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Defendants by their undersigned attorneys hereby move for reconsideration of the order entered by the Court in the above-captioned proceedings on December 3, 1974, insofar as said order concerns:

- (A) Production of certain documents as to which Mr. Buchen, as Counsel to the President, has claimed executive privilege. Said documents, as described in Mr. Buchen's deposition, at p. II-9 include:

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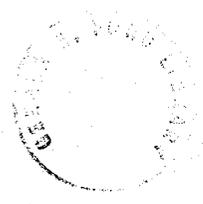
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MOTION FOR STAY PENDING RECONSIDERATION
OR CERTIFICATION TO THE COURT OF APPEALS

For the reasons stated in the memorandum filed herewith, Defendants, by their undersigned attorneys, hereby move for a stay of the order entered by the Court in the above-captioned proceedings on December 3, 1974, pending the Court's reconsideration



of said order, or, in the alternative, pending resolution
of an interlocutory appeal of that order, pursuant
to 28 U.S.C. § 1292(b).

Respectfully submitted,

CARLA A. HILLS
Assistant Attorney General

EARL J. SILBERT
United States Attorney

IRVING JAFFE
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those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately. These are the considerations justifying a presumptive privilege for presidential communications. [Slip op. at 23; emphasis added.]

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having made the showing necessary to rebut the presumptive privilege.^{3/} No particularized and compelling need and certainly no need of a constitutional dimension for the materials or answers to the disputed questions has been demonstrated by any of the parties to this case.^{4/} Accordingly, the materials should be considered presumptively privileged and not subject to in camera inspection, and the objections to the disputed questions should be sustained.

Accordingly, defendants respectfully request that this Court modify its order of December 3, 1974, to conform to the requirements of United States v. Nixon, supra, to sustain the objections to the disputed questions and to hold the subject documents presumptively privileged, pending some particularized showing of a compelling need by the party seeking discovery. Defendants also move this Court for an order staying the relevant portions of its December 3, 1974, order pending a decision on the motion for reconsideration.

In the alternative, defendants seek a certification to the Court of Appeals pursuant to 28 U.S.C. 1292(b) of an interlocutory appeal on the issue of whether in camera

3/ The December 3, 1974, order is particularly inappropriate because the Court has thereby brought the parties to an unnecessary "showdown" on an important constitutional issue. Freeman v. Seligson, 405 F.2d 1326 (CA DC 1968). The matters for which discovery is sought have not been shown to be essential to decision in the case. [Whatever relevance questions concerning the September 6 agreement might previously have had, the pending legislation abrogating the effect of that agreement has rendered such questions of little importance to the issues posed in the lawsuit.] In such circumstances, the Court should avoid unnecessarily and prematurely deciding grave constitutional questions.

4/ Indeed, there have been no motions filed by any party under Rule 37, F.R.Civ.P. seeking to compel discovery.



inspection of the subject documents is presently appropriate given the assertion of executive privilege and the lack of any showing of a particularized and compelling need for the answers or materials. Such an interlocutory appeal would materially advance this litigation by resolving an issue of significant constitutional dimensions. The substantial ground for difference of opinion on this issue is demonstrated by the fact that the question of when and if the presumptive privilege can be rebutted in civil litigation was specifically reserved by the Supreme Court in United States v. Nixon, supra, slip op. at 27, n. 19. Defendants also move this Court to grant a stay of the relevant portions of its December 3, 1974, order pending resolution of the interlocutory appeal.

II

OTHER PRIVILEGES

By its order of December 3, 1974, the Court also ordered Mr. Buchen to present to the Court other materials as to which a privilege has been claimed. The materials and the privileges asserted are described in Mr. Buchen's deposition at pp. II 8-9:

(1) Early drafts of the Attorney General's opinion on the former President's ownership of his presidential materials, as to which both attorney-client and internal agency memorandum privileges were claimed.

(2) Correspondence between Mr. Buchen, Counsel to the President, and Mr. Kauper, Assistant Attorney General for the Antitrust Division, dated September 10,



197 , relating to certain litigation in which the United States is a party, known as the network cases. Attorney-client and intra-agency memoranda privileges were claimed.

(3) Correspondence between the Office of the Counsel to the President and the Special Prosecutor, as to which privilege is asserted on the grounds that the documents are internal government communications^{5/} and that they concern an ongoing criminal investigation.^{6/}

(4) A letter from Mr. Buchen, Counsel to the President, to Mr. Herbert J. Miller, attorney for former President Nixon, dated September 20, 1974, which relates to and identifies specific requests by the Special Prosecutor. These materials also touch upon an ongoing criminal investigation.

Defendants assert that in each of the above instances a prima facie showing that a valid privilege attached to the materials has been made. Accordingly, the Court should not have required that the subject materials be presented to the Court, in derogation of the privilege, without some showing by the party seeking discovery of his need for acquiring access to them. Accordingly, defendants request that the

5/ A generalized privilege protecting the confidentiality of internal government memoranda was recognized by the Court of Appeals in Grumman Aircraft Engineering Corp. v. Renegotiation Board, 482 F.2d 710 (CA DC 1973), cert. granted, ___ U.S. ___.

6/ The Court recognized the applicability of such a privilege to similar materials in sustaining defendants' objection to questions to Mr. Buchen by Mr. Miller, at p. II-75.



Court stay the effect of its December 3, 1974, order concerning production of those documents for which privilege is claimed, reconsider said order, and decline inspection of the documents until the party seeking discovery has made a showing adequate to justify an encroachment upon the defendants' lawfully asserted privileges.

Respectfully submitted,

CARLA A. HILLS
Assistant Attorney General

EARL J. SILBERT
United States Attorney

IRVING JAFFE
Deputy Assistant Attorney General

IRWIN GOLDBLOOM
Acting Deputy Assitant Attorney
General

JEFFREY AXELRAD

BERNARD J. CARL
Special Assistant to the
Assistant Attorney General

Attorneys, Department of Justice
Washington, D. C. 20530
Telephone: 202-739-3300

Attorneys for Defendants



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

DEC 3 1974

JAMES E. DAVEY, Clerk

RICHARD M. NIXON :
: Plaintiff :

v. : C.A. No. 74-1518

ARTHUR F. SAMPSON, et al., :
: Defendants:

and :

THE REPORTERS COMMITTEE FOR :
FREEDOM OF THE PRESS, et al., :
: Plaintiffs;

v. : C.A. No. 74-1533 *file*

ARTHUR F. SAMPSON, et al., :
: Defendants:

and :

LILLIAN HELLMAN, et al., :
: Plaintiffs:

v. : C.A. No. 74-1551

ARTHUR F. SAMPSON, et al., :
: Defendants:

ORDER

In accordance with the Order of the Court of November 7, 1974, and upon consideration of the depositions of Philip W. Buchen, Benton L. Becker, Jack Nesbitt, and Arthur F. Sampson, it is, by the Court, this third day of December, 1974,

ORDERED, that the following objections (designated by page and deponent) be, and the same are, hereby:

Philip W. Buchen

(2)
Page
7,8
8-10

Objection - Ruling
Overruled.
Documents requested subject to privilege must be presented to the Court in accordance with the procedure set forth in Nixon v. Sirica, 487 F.2d 700 (D.C. Cir. 1973), United States v. Reynolds, 345 U.S. 1 (1953), Black v. Sheraton Corporation of America, 371 F. Supp. 97 (D.D.C. 1974)

<u>Page</u>	<u>Objection - Ruling</u>
12	Overruled
14	Overruled
16-17	Sustained
18-19	Overruled
20-24	Documents where privilege claimed must be presented to Court but questions such as those appearing on page 23, line 19, do not appear to be subject to valid claim of privilege but Court reserves ruling until parties finally submit matter as above.
28	Overruled
29	Overruled
51-54	Overruled
55-58	Overruled
69	Must present formal claim to court, <u>supra</u> , Objections 8-10
75	Sustained

Benton L. Becker

<u>Page</u>	<u>Objection - Ruling</u>
16-20, 36, 42, 43	Questions re pardon are relevant and to that extent should be answered. Questions of presidential privilege will be deemed waived unless formally and properly asserted within 15 days from date hereof. The Court will then determine if assertions of privilege are proper.
48	The deponent shall answer.
57	Overruled - legal conclusion
95-96	Overruled
107	The deponent shall answer

Jack Nesbitt

<u>Page</u>	<u>Objection - Ruling</u>
44	The deponent shall answer
83	The deponent shall answer

Arthur F. Sampson

<u>Page</u>	<u>Objection - Ruling</u>
6	Overruled
8	Overruled
17	Overruled
31-32	Overruled
37	Overruled
54, 55, 56, 57	Overruled
75-76	Sustained
81-83	Overruled
92	Overruled
96	Overruled
103	Sustained
111-116	Overruled



Charles R. Richey

 Charles R. Richey
 United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

DEC 3 1974

RICHARD M. NIXON, :
 :
 Plaintiff, :
 v. :
 ARTHUR F. SAMPSON, et al., :
 :
 Defendants, :
 :
 and :
 :
 THE REPORTERS COMMITTEE FOR :
 FREEDOM OF THE PRESS, et al., :
 :
 Plaintiffs, :
 v. :
 ARTHUR F. SAMPSON, et al., :
 :
 and :
 :
 LILLIAN HELLMAN, et al., :
 :
 Plaintiffs, :
 v. :
 ARTHUR F. SAMPSON, et al., :
 :
 Defendants. :

JAMES F. DAVEY, Clerk
Civil Action No. 74-1518

Civil Action No. 74-1533 *File*

Civil Action No. 74-1551

ORDER

Upon consideration of the Motion of the Hon. Ronald V. Dellums for Leave to Intervene and for Modification of Orders of October 22, 1974 and October 31, 1974, the oral arguments of counsel on December 2, 1974, it is, this 2d day of December, 1974, ORDERED, that the Motion of the Hon. Ronald V. Dellums be, and the same is, hereby denied without prejudice.

(2)

Charles R. Richey

 Charles R. Richey
 United States District Judge

DEC 10 1974

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

DEC 3 1974

JAMES E. DAVEY, Clerk

RICHARD M. NIXON

Plaintiff

v.

C.A. No. 74-1518

ARTHUR F. SAMPSON, et al.,

Defendants:

and

THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS, et al.,

Plaintiffs;

v.

C.A. No. 74-1533

File

ARTHUR F. SAMPSON, et al.,

Defendants:

and

LILLIAN HELLMAN, et al.,

Plaintiffs:

v.

C.A. No. 74-1551

ARTHUR F. SAMPSON, et al.,

Defendants:

ORDER

In accordance with the Order of the Court of November 7, 1974, and upon consideration of the depositions of Philip W. Buchen, Benton L. Becker, Jack Nesbitt, and Arthur F. Sampson, it is, by the Court, this third day of December, 1974,

ORDERED, that the following objections (designated by page and deponent) be, and the same are, hereby:

Philip W. Buchen

Page
7,8
8-10

Objection - Ruling

Overruled.

Documents requested subject to privilege must be presented to the Court in accordance with the procedure set forth in Nixon v. Sirica, 487 F.2d 700 (D.C. Cir. 1973), United States v. Reynolds, 345 U.S. 1 (1953), Black v. Sheraton Corporation of America, 371 F. Supp. 97 (D.D.C. 1974).

(70)

<u>Page</u>	<u>Objection - Ruling</u>
12	Overruled
14	Overruled
16-17	Sustained
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20-24	Documents where privilege claimed must be presented to Court but questions such as those appearing on page 23, line 19, do not appear to be subject to valid claim of privilege but Court reserves ruling until parties finally submit matter as above.
28	Overruled
29	Overruled
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55-58	Overruled
69	Must present formal claim to court, <u>supra</u> , Objections 8-10
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Benton L. Becker

<u>Page</u>	<u>Objection - Ruling</u>
16-20, 36, 42, 43	Questions re pardon are relevant and to that extent should be answered. Questions of presidential privilege will be deemed waived unless formally and properly asserted within 15 days from date hereof. The Court will then determine if assertions of privilege are proper.
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6	Overruled
8	Overruled
17	Overruled
31-32	Overruled
37	Overruled
54, 55, 56, 57	Overruled
75-76	Sustained
81-83	Overruled
92	Overruled
96	Overruled
103	Sustained
111-116	Overruled


 Charles R. Richey
 United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

DEC 3 1974

RICHARD M. NIXON,

Plaintiff,

v.

ARTHUR F. SAMPSON, et al.,

Defendants,

and

THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS, et al.,

Plaintiffs,

v.

ARTHUR F. SAMPSON, et al.,

and

LILLIAN HELLMAN, et al.,

Plaintiffs,

v.

ARTHUR F. SAMPSON, et al.,

Defendants.

JAMES F. DAVEY, Clerk
Civil Action No. 74-1518

Civil Action No. 74-1533-*fil*

Civil Action No. 74-1551

ORDER

Upon consideration of the Motion of the Hon. Ronald V. Dellums for Leave to Intervene and for Modification of Orders of October 22, 1974 and October 31, 1974, the oral arguments of counsel on December 2, 1974, it is, this 2d day of December, 1974,

ORDERED, that the Motion of the Hon. Ronald V. Dellums be, and the same is, hereby denied without prejudice.

Charles R. Richey

Charles R. Richey
United States District Judge

(2)



THE WHITE HOUSE

WASHINGTON

December 5, 1974

MEMORANDUM FOR: Philip W. Buchen

FROM: J. Roger Edgar

SUBJECT: Judge Richey's Order
of December 3, 1974
in Nixon v. Sampson, et al.,
No. 74-1518.

Following is an analysis of Judge Richey's Order of December 3, 1974 which rules upon objections made at your deposition taken on November 11 and 12, 1974 in Nixon v. Sampson.

<u>Page</u>	<u>Objection-Ruling</u>	<u>Comment</u>
7, 8	Over-ruled	Questions propounded were answered subject to objection. No further response required.
8-10	No ruling	Comment below:

As to the following documents Judge Richey directed that a claim of privilege must be presented in accordance with procedure set forth in Nixon v. Sirica, 487 F. 2d 700 (D.C. Cir. 1973):

1. Drafts of Attorney General's opinion.
2. Correspondence between Mr. Buchen and Mr. Keuper (sic) dated September 10, 1974.
3. Communications between Office of Counsel to the President and the Special Prosecutor.
4. Letter from Mr. Buchen to Mr. Miller dated September 20, 1974.



5. Memoranda to the President from Mr. Buchen.
6. Internal memoranda of the Office of Counsel to the President.
7. Court papers relating to the litigation.
8. Correspondence between Office of Counsel to the President and members of the public.

NOTE: The Order is somewhat ambiguous as it recites that: "Documents . . . must be presented to the Court . . ." This would suggest an in camera inspection as a preliminary matter, rather than adherence to the procedure suggested by Judge Richey in Black v. Sheraton Corp., 371 F. Supp. 97 at 100 (D. D. C. 1971).

- | | |
|------------------|---|
| 12. Over-ruled | Same as pp. 7-8, supra. |
| 14. Over-ruled | Same as pp. 7-8, supra. |
| 16-17 Sustained | |
| 18-19 Over-ruled | No questions propounded remain unanswered. |
| 20-24 No ruling | <p>A claim of privilege must be presented as to documents where privilege is claimed. Pending such submission ruling was reserved on the following questions:</p> <p>(1) Was President appraised of the precise terms of the agreement?</p> <p>(2) Had the President seen the agreement or a previous draft of the agreement?</p> <p>(3) Whether the President understood the agreement?</p> <p>(4) Whether the President wanted the agreement signed right away?</p> |

26 Over-ruled

Same as pp. 7-8, supra.

29 Over-ruled

Same as pp. 7-8, supra.

51-54 Over-ruled

Same as pp. 7-8, supra.

55-58 Over-ruled

No question as to which objection was made remains unanswered, but presumably Counsel may reconvene the deposition and propound questions about the subject of Presidential gifts and records made with respect thereto.

69. No ruling

A formal claim of privilege must be presented to the Court with respect to the following questions:

(1) Whether Mr. Buchen discussed agreement with President?

(2) What was said in discussions which were had between the President and Mr. Buchen concerning the agreement.

75. Sustained



THE WHITE HOUSE

WASHINGTON

December 5, 1974

MEMORANDUM FOR: PHILIP W. BUCHEN

FROM: STANLEY S. SHAW, JR.

SUBJECT: Court Ruling on Benton Becker's
Deposition

In accordance with your request dated today to supply an analysis of the Order entered in Nixon v. Sampson, et al., on December 3 with regard to the deposition of Mr. Becker, I submit the following:

1. Pages 16-20.

Question: Mr. Dobrovir. "What other matters did you work on during that period?" Could you just list them for us in a general way?" (P. 15)

Objection: Mr. Goldbloom. "If your question goes into matters that are in the nature of confidences with the President of the United States -- formerly Vice President -- I would object and request the witness not to reveal those confidences on the basis of presidential privilege." (P. 15)

Response: Witness. "And as to other matters that I assisted in during the transition that were totally unrelated to the records and tapes of former President Nixon, I would adhere to the suggestion of Mr. Axelrad -- Mr. Goldbloom, sorry, and rely upon the privilege."

Ruling: "Questions re pardon are relevant and to that extent should be answered. Questions of Presidential privilege will be deemed waived unless formally and properly asserted within 15 days from date hereof. The Court will



then determine if assertions of privilege are proper.

Question: Mr. Dobrovir. "Mr. Becker, did you do any work on the question of the pardon . . . of former President Nixon?" (P. 19)

Objection: Mr. Goldbloom. "I object to that on the grounds of relevancy and Presidential privilege." (P. 19)

Following the statement of Mr. Dobrovir that Mr. Buchen did not raise any privilege with regard to such a question earlier, Mr. Goldbloom stated as follows: "I withdraw the objection on privilege as to the broad question that you raise. I will continue the objection on relevancy, though." (P. 20)

Response: Witness. "I will respond, although from what I have read of these pleadings, I believe it is not relevant to the matter at Bar. But I am on record, public record, as acknowledging that I had some activity with respect to the pardon of President Nixon. That activity involved a review undertaken by me of the precedents, the legal precedents relating to pardons in this country and in England, with respect to, specifically, the question of the constitutionality of pardon before accusation and the pardon of a former Chief Executive and specificity requirements in a pardon. I undertook that assignment, did the legal research on those questions and reported my findings and conclusions to Mr. Buchen on September 3, 1974."

Ruling: Same as for Item 1, above.



2. Page 36.

Question:

Mr. Dobrovir. "Well, did you discuss the pardon with Mr. Ziegler or Mr. Miller or Mr. Nixon or anybody else - discuss the terms of the pardon or Mr. Nixon's acceptance thereof, or any other matter related to it?"

Objection:

Mr. Goldbloom (joined by Mr. Miller). "I also object on the grounds of relevancy. There is no issue in any of the pleadings in this suit as I read them relating to the pardon."

Response:

Witness. "I would like to state on the record, whether it is responsive to your question or not -- but I would like to go on record as stating unequivocally that the pardoning of President Nixon and the agreement between President Nixon and Mr. Sampson were unrelated and related only in time and not otherwise."

"There is no connection other than time between the two and one is not a condition precedent to the other. The pardon of President Nixon was an unconditional pardon and had no terms."

Later, on page 50, Mr. Becker testified as follows: "The role Mr. Ziegler played was one that Mr. Miller would oftentimes in my presence -- would seek Mr. Ziegler's advice and thoughts with respect to certain matters that were being discussed. Mr. Ziegler would voice his opinion on those matters. What weight and effect that had in Mr. Miller's ultimate intellectual decision and/or President Nixon's ultimate decision, I cannot comment on that."

Ruling:

Same as for Item 1, above.



3. Page 42.

Question: Mr. Dobrovir. [Reading from Mr. Buchen's deposition] [The question: "Can you tell us with whom you had discussions in which this question of the pardon and the question of the papers were related?"]

"Yes, to the best of my knowledge I can"

"Who were those people?"

"Mr. Becker, Mr. Casselman, and the President."]

"Now, does that refresh your recollection about any discussion with Mr. Buchen in which the pardon and the papers were related?" (P. 41)

Objection: Mr. Miller and Mr. Goldbloom. After being denied their request that the witness be allowed to read the first two pages preceding the quotations above from Mr. Buchen's deposition, both Mr. Goldbloom and Mr. Miller objected to the question above on the grounds of relevancy.

Response: Witness. "If everyone is finished, I will respond. My answer is no, it does not refresh any recollection. My wife and I recently had a conversation over the dinner table where we discussed our summer vacation plans and what we would do this Saturday night. Those two subject matters were totally unrelated but they were related in the context that they were discussed at the same time over the same meal. I think that is what Mr. Buchen's response is when he responds in line 16, "Yes" to your question. They were related in the fact that they were discussed at the same time because, as you know, the pardon of President Nixon and the Nixon-Sampson agreement were related as I said only in time and not otherwise."

Ruling: Same as for Item 1, above.

4. Page 43.

Question: Mr. Dobrovir. "Let me ask you this. Is it your understanding that the pardon was going to be issued at the time it was issued, whether or not there had been any agreement with respect to the papers and tapes?"

Objection: Mr. Miller and Mr. Goldbloom renewed their objection on the grounds of relevancy.

Response: Witness. "I stand on my position that the pardon of President Nixon was in no way connected to the question of whether or not a resolution or any resolution was arrived at with respect to President Nixon's papers and records."

Ruling: Same as for Item 1, above.

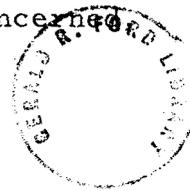
5. Page 48

Question: Mr. Dobrovir. "Well, then, you are unable to shed any further light on this matter which is the subject -- this matter of the testimony that I read to you today given by Mr. Buchen yesterday?"

Objection: Mr. Miller. I object to the form of that question."

Response: The court has ordered: "The deponent shall answer." However, on page 48, the witness responded as follows: "Yes, I would shed this light, that I totally concur in the question and answer that is the next line that you haven't read to me, lines 10 and 11 on page 22, where you asked Mr. Buchen and I quote 'Does that imply that if the pardon had not been issued you were not concerned about such litigation,' and Mr. Buchen answered, 'No, I was still concerned obviously.' 'I totally concur with that.'"

Ruling: "The deponent shall answer."



6. Page 57.

Question: Mr. Spooner. "Did you notice upon reading that statute that the responsibility for negotiating with the President or a former President with regard to the disposition of records belongs to the administrator of General Services?"

Objection: Mr. Goldbloom joined by Mr. Miller. "I objected to the question. I think that calls for a legal conclusion. I am not prepared to accept your characterization of the statute."

Response: Witness. My answer to that question is I don't know at this time if I focused on that question at that time. However, I will say my reading of the statute today would tend to indicate to me that the question of negotiation is not an exclusivity reserved to the administrator . . . I know of no instances of the administrator and/or his associates becoming involved in negotiations. I might add as well that the same would hold true to President Nixon's deed of gift in 1968 and '69, which was not negotiated but merely transmitted by a deed of gift to the administrator."

Mr. Goldbloom moved to strike this answer.

Ruling: "Overruled - legal conclusion."

7. Pages 95-96.

Question: Mr. Dobrovir. "In other words, I would like to know the extent to which you can adopt this statement, [Ex. 1: Memorandum from Kenneth S. Geller: Nixon v. Sampson; interview of Benton Becker.] As part of this deposition and the extent to which you are able to do so. That is, of course, entirely within your own memory."



Objection:

Mr. Miller and Mr. Goldbloom. "It is clearly a memorandum by someone else. If there is any need or desire to have the witness examine the document to determine to what extent he can agree or disagree with it, I think that is a question for examination and it is a question of characterization. I really see no need for it, since it is a characterization by another person regarding an interview."

Response:

Mr. Dobrovir then asked several specifics regarding the memorandum and received these responses from Mr. Becker to the effect that the greater part of the September 3 meeting involved records and dates; very little time was spent on the question of the pardon. General Haig did not argue that the material should be shipped to California immediately. Mr. Buchen desired not only to avoid hiring a mass of White House lawyers, but also to secure the records and maintain the privacy of people who had been taped. Furthermore, he wanted to assure that the subpoenas which would be forthcoming would be responded to. Mr. Miller indicated that he would put some thoughts on paper at the September 3 meeting with regard to a pardon. Such a paper was forthcoming on September 5. The agreement in California incorporated Mr. Buchen's desires and made provisions for the acceptable property rights of former President Nixon. Becker then outlined people who knew of the pardon in advance of its execution by Mr. Sampson and discussed Sampson's examination and signing of the document.

Ruling:

"Overruled."



8. Page 107.

Question: Mr. Spooner. "Do you know when the records were placed in the truck?"

Objection: Mr. Goldbloom. "I am going to object to this on the grounds of relevancy."

Response: Witness. "No, I don't know the precise date, but it is before September 8. It would be sometime in mid-August."

Ruling: "The deponent shall answer."



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD M. NIXON,)
)
) Plaintiff,)
)
) v.) C.A. No. 74-1518
)
) ARTHUR F. SAMPSON, et al.,)
)
) Defendants.)
)
) and)
)
) THE REPORTERS COMMITTEE FOR)
) FREEDOM OF THE PRESS, et al.,)
)
) Plaintiffs,)
)
) v.) C.A. No. 74-1533
)
) ARTHUR F. SAMPSON, et al.,)
)
) Defendants.)
)
) and)
)
) LILLIAN HELLMAN, et al.,)
)
) Plaintiffs,)
)
) v.) C.A. No. 74-1551
)
) ARTHUR F. SAMPSON, et al.,)
)
) Defendants.)

MOTION FOR STAY PENDING RECONSIDERATION
OR CERTIFICATION TO THE COURT OF APPEALS

For the reasons stated in the memorandum filed herewith, Defendants, by their undersigned attorneys, hereby move for a stay of the order entered by the Court in the above-captioned proceedings on December 3, 1974, pending the Court's reconsideration



of said order, or, in the alternative, pending resolution
of an interlocutory appeal of that order, pursuant
to 28 U. .C. § 1292(b).

Respectfully submitted,

CARLA A. HILLS
Assistant Attorney General

EARL J. SILBERT
United States Attorney

IRVING JAFFE
Deputy Assistant Attorney General

IRWIN GOLDBLOOM
Acting Deputy Assistant Attorney General

JEFFREY AXELRAD

BERNARD J. CARL
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Attorneys for Defendants



copy sent
to Mr Bushen

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD M. NIXON,)
)
 Plaintiff,)
)
 v.) CIVIL ACTION NO. 74-1518
)
 ARTHUR F. SAMPSON, et al.,)
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THE REPORTERS COMMITTEE FOR)
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 Defendants.)

LILLIAN HELLMAN, et al.,)
)
 Plaintiffs,)
)
 v.) CIVIL ACTION NO. 74-1551
)
 ARTHUR F. SAMPSON, et al.,)
)
 Defendants.)

REPORT TO THE COURT

On December 20, 1974, the Court requested the parties to advise it as to whether they would, or would not, agree to consider the hearing held in the above-captioned litigation on the motions for preliminary injunctions to constitute the complete record for final disposition of the litigation. For reasons



including, inter alia, the reasons set forth in
Defendants' Memorandum Regarding Theories of Law Dis-
positive of the Instant Litigation and the Effect of
Recent Legislation on the Above-Captioned Cases,
defendants are unable to agree to this procedure.

Respectfully submitted,

CARLA A. HILLS
Assistant Attorney General

EARL J. STIBERT
United States Attorney

IRVING JAFFE
Deputy Assistant Attorney General

IRWIN GOLDBLOOM
Deputy Assistant Attorney General

JEFFREY AXELRAD
Attorney, Department of Justice

BERNARD J. CARL
Special Assistant to the
Assistant Attorney General

Attorneys, Department of Justice
Washington, D. C. 20530
Telephone: 739-3300

Attorneys for Defendants



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DRAFT

RICHARD M. NIXON,)	
)	
Plaintiff,)	
)	
v.)	
)	C.A. No. 74-1518
ARTHUR F. SAMPSON, et al.,)	
)	
Defendants)	
)	
and)	
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THE REPORTERS COMMITTEE FOR)	
FREEDOM OF THE PRESS,)	
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)	
LILLIAN HELLMAN, et al.,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 74-1551
)	
ARTHUR F. SAMPSON, et al.,)	
)	
Defendants.)	

DEFENDANTS' MEMORANDUM REGARDING
THEORIES OF LAW DISPOSITIVE OF THE
INSTANT LITIGATION AND EFFECT OF
RECENT LEGISLATION ON THE ABOVE-
CAPTIONED CASES.

The Court has requested the parties to file memoranda discussing the theories of law which they see to be dispositive of the issues in the instant litigation with particular attention as to how the recent legislation, if it becomes law, would effect those consolidated suits.^{1/}

1/ For purposes of this discussion the recent legislation, entitled "The Presidential Recordings Material Preservation Act", will be discussed on the assumptions that it will become law and that its provisions are constitutional.



For the convenience of the Court this memorandum will separately address each of the consolidated actions presently pending before the Court.

1. Richard M. Nixon v. Arthur F. Sampson, et al.,
U.S.D.C. D.C., CA No. 74-1518

The new legislation would seem to moot Mr. Nixon's suit at least as it is presented by his complaint in its present form. The Act would foreclose this Court from ordering the transfer of Mr. Nixon's Presidential materials to him pursuant to the September 6 agreement.^{2/} That transfer is the only relief sought by Mr. Nixon in his complaint.^{3/} The complaint does not challenge the constitutionality of the pending legislation barring transfer nor does Mr. Nixon seek compensation for the taking of what he alleges to be his private property. Since the Court would be barred from affording the only relief requested by Mr. Nixon, his action should be dismissed. It is, of course, possible that Mr. Nixon might amend his complaint to challenge the validity of the legislation, but whether he does so and in what form is entirely speculative. Accordingly, it would be inappropriate to discuss the effect of such an amendment in this memorandum.

^{2/} The Act compels the Administrator of General Services to retain complete possession and control of Mr. Nixon's tape recordings, § 101(a) and Presidential documents. §101(b)

^{3/} The Act requires that regulations be promulgated providing for certain material unrelated to "abuses of power" and not otherwise of "significant historical significance" to be returned to Mr. Nixon or his heirs. § 104(a)(7). Until those regulations are promulgated, however, any suit seeking transfer of such materials to Mr. Nixon is clearly premature.

2. The Reporters Committee for Freedom of the
Press v. Arthur F. Sampson, et al.,
U.S.D.C. D.C., CA No. 74-1533

The complaints in these cases seek two forms of relief. First, they seek preliminary injunctive relief to prevent the transfer of Mr. Nixon's Presidential materials to his control and custody. Since the Act requires the Administrator of General Services to obtain and retain complete possession and control of Mr. Nixon's Presidential documents and tape recordings, a preliminary injunction to prevent a transfer is obviously unnecessary and the claim for that relief is clearly moot.

The second purpose for these suits is not encompassed within their motion for preliminary relief. Plaintiffs also seek access to certain of Mr. Nixon's Presidential materials. Plaintiffs seek access to these materials under the Freedom of Information Act and request the Court to issue injunctive and declaratory relief to establish their asserted right to such access.

The new legislation provides a complex and comprehensive scheme for the promulgation of regulations controlling the confidentiality and the disclosure of Mr. Nixon's Presidential materials. The Act sets out the criteria to be followed in issuing regulations governing access (§ 104(a)). It requires the Administrator to provide Congress, within 90 days after enactment, with a report proposing and explaining access regulation taking into account:

- (1) the need to provide the public with the full truth, at the earliest reasonable date, of the abuses of governmental power popularly identified under the generic term "Watergate";
- (2) the need to make such recordings and materials available for use in judicial proceedings;
- (3) the need to prevent general access, except in accordance with appropriate procedures established



for use in judicial proceedings, to information relating to the Nation's security;

(4) the need to protect every individual's right to a fair and impartial trial;

(5) the need to protect any party's opportunity to assert any legally or constitutionally based right or privilege which would prevent or otherwise limit access to such recordings and materials;

(6) the need to provide public access to those materials which have general historical significance, and which are not likely to be related to the need described in paragraph (1); and

(7) the need to give to Richard M. Nixon, or his heirs, for his sole custody and use, tape recordings and other materials which are not likely to be related to the need described in paragraph (1) and are not otherwise of general historical significance.

These regulations become effective 90 legislative days after submission, unless disapproved by either House in the interim.

The Act also provides that "The provisions of this title shall not in any way effect the rights, limitations or exemptions applicable under the FOIA, 5 U.S.C. § 552 et seq." § 104E(6)(d). While this provision may seem inconsistent with those governing access, it is the role of the court to harmonize such statutes whenever possible. Such an accommodation is possible here. One can read the new legislation to incorporate the FOIA, as a mechanism for public access to the instant materials, while FOIA, via Exemption 3, concerning materials exempt from disclosure by other statutes, in turn, incorporate the regulations governing disclosure mandated by the new Act. In other words, a FOIA claim would be proper only as to materials required to be disclosed to the public rather than be kept confidential under the new statute. If this



for use in judicial proceedings, to information relating to the Nation's security;

(4) the need to protect every individual's right to a fair and impartial trial;

(5) the need to protect any party's opportunity to assert any legally or constitutionally based right or privilege which would prevent or otherwise limit access to such recordings and materials;

(6) the need to provide public access to those materials which have general historical significance, and which are not likely to be related to the need described in paragraph (1); and

(7) the need to give to Richard M. Nixon, or his heirs, for his sole custody and use, tape recordings and other materials which are not likely to be related to the need described in paragraph (1) and are not otherwise of general historical significance.

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reading is proper, then any FOIA claim for access to the materials at this time is obviously premature since the regulations required by the new statute, which may accord the plaintiffs the disclosure they seek, have not yet been promulgated.^{5/} A determination of plaintiffs' right of access should await the full development of the new statutory framework, or the Act's careful and complex balance between the need for disclosure and the need for confidentiality, as embodied in § 104(a) of the Act, supra, would be for naught.

One can also read the provision in the new statute concerning the FOIA merely to indicate that the Act is not intended to in any way affect pre-existing FOIA claims for access to the documents. It neither bars nor provides access to materials under the FOIA. On this reading, the materials at issue in this litigation are not subject to disclosure pursuant to the FOIA. For the Court to hold that the materials are properly subject to an FOIA claim which is not limited by the access provisions of the new legislation would mean that materials which the new act requires be kept confidential might have to be disclosed. Obviously, to have the two statutes work at cross purposes in this way could not have been Congress' intention.

^{5/} Under the statutory scheme, the new regulations must be reported to Congress within 90 days and do not go into effect until 90 legislative days later.



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

DEC 3 1974

JAMES F. DAVEY, Clerk

RICHARD M. NIXON :
: Plaintiff :

v. : C.A. No. 74-1518

ARTHUR F. SAMPSON, et al., :
: Defendants:

and :

THE REPORTERS COMMITTEE FOR :
FREEDOM OF THE PRESS, et al., :

Plaintiffs;

v. : C.A. No. 74-1533 *File*

ARTHUR F. SAMPSON, et al., :
: Defendants:

and :

LILLIAN HELLMAN, et al., :

Plaintiffs:

v. : C.A. No. 74-1551

ARTHUR F. SAMPSON, et al., :
: Defendants:

ORDER

In accordance with the Order of the Court of November 7, 1974, and upon consideration of the depositions of Philip W. Buchen, Benton L. Becker, Jack Nesbitt, and Arthur F. Sampson, it is, by the Court, this third day of December, 1974,

ORDERED, that the following objections (designated by page and deponent) be, and the same are, hereby:

Philip W. Buchen

Page
7,8
8-10

Objection - Ruling
Overruled.

Documents requested subject to privilege must be presented to the Court in accordance with the procedure set forth in Nixon v. Sirica, 487 F.2d 700 (D.C. Cir. 1973), United States v. Reynolds, 345 U.S. 1 (1953), Black v. Sheraton Corporation of America, 371 F. Supp. 97 (D.D.C. 1974).

(2)

<u>Page</u>	<u>Objection - Ruling</u>
12	Overruled
14	Overruled
16-17	Sustained
18-19	Overruled
20-24	Documents where privilege claimed must be presented to Court but questions such as those appearing on page 23, line 19, do not appear to be subject to valid claim of privilege but Court reserves ruling until parties finally submit matter as above.
28	Overruled
29	Overruled
51-54	Overruled
55-58	Overruled
69	Must present formal claim to court, <u>supra</u> , Objections 8-10
75	Sustained

Benton L. Becker

<u>Page</u>	<u>Objection - Ruling</u>
16-20, 36, 42, 43	Questions re pardon are relevant and to that extent should be answered. Questions of presidential privilege will be deemed waived unless formally and properly asserted within 15 days from date hereof. The Court will then determine if assertions of privilege are proper. The deponent shall answer.
48	Overruled - legal conclusion
57	Overruled
95-96	The deponent shall answer
107	

Jack Nesbitt

<u>Page</u>	<u>Objection - Ruling</u>
44	The deponent shall answer
83	The deponent shall answer

Arthur F. Sampson

<u>Page</u>	<u>Objection - Ruling</u>
6	Overruled
8	Overruled
17	Overruled
31-32	Overruled
37	Overruled
54, 55, 56, 57	Overruled
75-76	Sustained
81-83	Overruled
92	Overruled
96	Overruled
103	Sustained
111-116	Overruled



Charles R. Richey
 Charles R. Richey
 United States District Judge

U
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

DEC 3 1974

RICHARD M. NIXON,

Plaintiff,

v.

ARTHUR F. SAMPSON, et al.,

Defendants,

and

THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS, et al.,

Plaintiffs,

v.

ARTHUR F. SAMPSON, et al.,

and

LILLIAN HELLMAN, et al.,

Plaintiffs,

v.

ARTHUR F. SAMPSON, et al.,

Defendants.

JAMES F. DAVEY, Clerk
Civil Action No. 74-1518

Civil Action No. 74-1533-*File*

Civil Action No. 74-1551

ORDER

Upon consideration of the Motion of the Hon. Ronald V. Dellums for Leave to Intervene and for Modification of Orders of October 22, 1974 and October 31, 1974, the oral arguments of counsel on December 2, 1974, it is, this 2d day of December, 1974,

ORDERED, that the Motion of the Hon. Ronald V. Dellums be, and the same is, hereby denied without prejudice.

(21)
Charles R. Richey

Charles R. Richey
United States District Judge

THE WHITE HOUSE

WASHINGTON

December 5, 1974

MEMORANDUM FOR: Philip W. Buchen

FROM: J. Roger Edgar

SUBJECT: Judge Richey's Order
of December 3, 1974
in Nixon v. Sampson, et al.,
No. 74-1518.

Following is an analysis of Judge Richey's Order of December 3, 1974 which rules upon objections made at your deposition taken on November 11 and 12, 1974 in Nixon v. Sampson.

<u>Page</u>	<u>Objection-Ruling</u>	<u>Comment</u>
7, 8	Over-ruled	Questions propounded were answered subject to objection. No further response required.
8-10	No ruling	Comment below:

As to the following documents Judge Richey directed that a claim of privilege must be presented in accordance with procedure set forth in Nixon v. Sirica, 487 F. 2d 700 (D.C. Cir. 1973):

1. Drafts of Attorney General's opinion.
2. Correspondence between Mr. Buchen and Mr. Keuper (sic) dated September 10, 1974.
3. Communications between Office of Counsel to the President and the Special Prosecutor.
4. Letter from Mr. Buchen to Mr. Miller dated September 20, 1974.



5. Memoranda to the President from Mr. Buchen.
6. Internal memoranda of the Office of Counsel to the President.
7. Court papers relating to the litigation.
8. Correspondence between Office of Counsel to the President and members of the public.

NOTE: The Order is somewhat ambiguous as it recites that: "Documents . . . must be presented to the Court . . ." This would suggest an in camera inspection as a preliminary matter, rather than adherence to the procedure suggested by Judge Richey in Black v. Sheraton Corp., 371 F. Supp. 97 at 100 (D. D. C. 1971).

- | | |
|------------------|---|
| 12. Over-ruled | Same as pp. 7-8, supra. |
| 14. Over-ruled | Same as pp. 7-8, supra. |
| 16-17 Sustained | |
| 18-19 Over-ruled | No questions propounded remain unanswered. |
| 20-24 No ruling | <p>A claim of privilege must be presented as to documents where privilege is claimed. Pending such submission ruling was reserved on the following questions:</p> <p>(1) Was President appraised of the precise terms of the agreement?</p> <p>(2) Had the President seen the agreement or a previous draft of the agreement?</p> <p>(3) Whether the President understood the agreement?</p> <p>(4) Whether the President wanted the agreement signed right away?</p> |

26 Over-ruled

Same as pp. 7-8, supra.

29 Over-ruled

Same as pp. 7-8, supra.

51-54 Over-ruled

Same as pp. 7-8, supra.

55-58 Over-ruled

No question as to which objection was made remains unanswered, but presumably Counsel may reconvene the deposition and propound questions about the subject of Presidential gifts and records made with respect thereto.

69. No ruling

A formal claim of privilege must be presented to the Court with respect to the following questions:

(1) Whether Mr. Buchen discussed agreement with President?

(2) What was said in discussions which were had between the President and Mr. Buchen concerning the agreement.

75. Sustained



This
copy to
Bill C. 2006
P.

December 9, 1974

Philip W. Buchen, Esq.
Counsel to the President
The White House
Washington, DC 20500

Thomas P. Wolf, Esq.
Special Assistant to the Administrator
General Services Administration
Office of Presidential Papers
Old Executive Office Building
Washington, DC 20500

Re: Richard M. Nixon v. Arthur F. Sampson,
et al., C.A. No. 74-1518
The Reporters Committee for Freedom of
the Press, et al. v. Arthur F. Sampson,
et al., C.A. No. 74-1533
Lillian Hellman, et al. v. Arthur F.
Sampson, et al., C.A. No. 74-1511

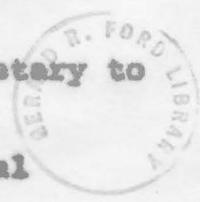
Gentlemen:

Enclosed for your files in connection with the above-entitled consolidated actions is an Order by Judge Richey dated December 5, 1974, ordering all counsel for all parties, intervenors and amici to submit supplemental memoranda as to principal issues in these proceedings before close of business December 12, 1974; to identify theories which would be dispositive of the case and their recommendation as to how the court should treat same; and attention is particularly invited to what effect the current action of Congress will have on said proceedings.

Sincerely,

Beverly Posey, secretary to

CARLA A. HILLS
Assistant Attorney General
Civil Division



bp
Enclosure



Department of Justice
Washington, D.C. 20530

*holding
attachment*

ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION

December 20, 1974

Philip W. Buchen, Esq.
Counsel to the President
The White House
Washington, DC 20500

Thomas P. Wolf, Esq.
Special Assistant to the Administrator
General Services Administration
Office of Presidential Papers
Old Executive Office Building
Washington, DC 20500

Gentlemen:

Enclosed find the following documents for your files
in connection with the referenced actions.

Re: Richard M. Nixon v. Arthur F. Sampson,
et al., C.A. No. 74-1518
The Reporters Committee for Freedom of
the Press, et al. v. Arthur F. Sampson,
et al., C.A. No. 74-1533
Lillian Hellman, et al. v. Arthur F.
Sampson, et al., C.A. No. 74-1511

1. PROPOSED FINDINGS OF FACT submitted by the Special
Prosecutor, dated December 6, 1974.
2. PROPOSED CONCLUSIONS OF LAW submitted by the Special
Prosecutor, dated December 6, 1974.



Re: James W. McCord, Jr. v. Gerald Ford,
et al., C.A. No. 74-1386

1. PLAINTIFF'S MOTION FOR EXTENSION OF TIME, dated December 4, 1974.
2. MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR AN EXTENSION OF TIME.
3. ORDER (proposed).

Sincerely,

Beverly Posey

Beverly Posey, secretary to

CARLA A. HILLS
Assistant Attorney General
Civil Division

bp
Enclosures



THE WHITE HOUSE
WASHINGTON

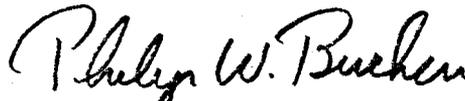
February 3, 1975

Dear Mr. Goldbloom:

In accordance with your conversation of this date with Mr. Barry Roth of my staff, enclosed is a subpoena and check which my office has accepted requiring Mrs. Marjorie Wicklein to appear on February 4, 1975, at a hearing in connection with Nixon, et al. v. Sampson, et al., D.D.C., Civil Action No. 74-1518.

As you know, Mrs. Wicklein's sole involvement in this case is in connection with her official duties as a member of the White House staff. This is to request, therefore, that the Department of Justice handle this matter on her behalf.

Sincerely,



Philip W. Buchen
Counsel to the President

Irwin Goldbloom, Esq.
Deputy Assistant Attorney General
Civil Division
Department of Justice
Washington, D.C. 20530

Enclosure

cc: Marjorie Wicklein



United States District Court
for the
District of Columbia

The Reporters Committee
for Freedom of the Press, et al.
Plaintiff.

vs.

CIVIL ACTION No. 74-1533

Arthur F. Sampson, et al.
Defendant.

To: Marjorie Wicklein

YOU ARE HEREBY COMMANDED to appear in (this court) (~~the office of~~ the Courtroom of
the Honorable Charles R. Richey, Court room No. 11)
to give testimony in the above-entitled cause on the 4th day of February, 1975,
at 2:00 o'clock p. m. (and bring with you)

and do not depart without leave.

James F. Davey, Clerk

By Robert L. Line
Deputy Clerk.

Date February 3, 1975

Andrew J. Krulwich
Attorney for { Plaintiff
Defendant.

RETURN ON SERVICE

Summoned the above-named witness by delivering a copy to h and tendering to h the fees
for one day's attendance and mileage allowed by law, on the day of
19, at

Dated



Subscribed and sworn to before me, a this day of
19

NOTE.—Affidavit required only if service is made by a person other than a U.S. Marshal or his deputy.

ARNOLD & PORTER

1229 NINETEENTH STREET, N. W.

WASHINGTON, D. C. 20036

February 3, 19 75

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0540

No 9545

PAY

ARNOLD & PORTER - 20 nls 80 cts

\$ 20.80

TO THE
ORDER OF

Marjorie Wicklein

MADISON NATIONAL BANK
WASHINGTON, D. C. 20036

ARNOLD & PORTER

Frank X. Suter, Jr.

⑈009545⑈ ⑆0540⑈0125⑆ 200⑈002⑈4⑈



THE WHITE HOUSE
WASHINGTON

MR. BUCHEN

FYI.

Tom Wolf
5/18/75

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MAY 28 9 48 AM '75

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD M. NIXON, :
:
Plaintiff, :
:

v. :
:

Civil Action No. 74-1518

ARTHUR F. SAMPSON, et al., :
:
Defendants, :
:

and :
:

THE REPORTERS COMMITTEE :
FOR FREEDOM OF THE PRESS, :
et al., :
:

Plaintiffs, :
:

v. :
:

Civil Action No. 74-1533

ARTHUR F. SAMPSON, et al., :
:
Defendants, :
:

and :
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LILLIAN HELLMAN, et al., :
:
Plaintiffs, :
:

v. :
:

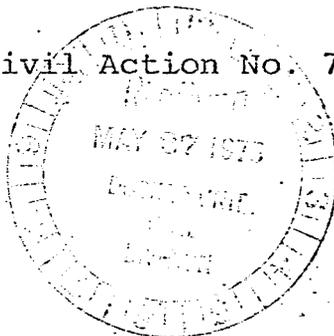
Civil Action No. 74-1551

ARTHUR F. SAMPSON, et al., :
:
Defendants. :
:

FILED

MAY 22 1975

JAMES F. DAVEY, CLERK



ORDER

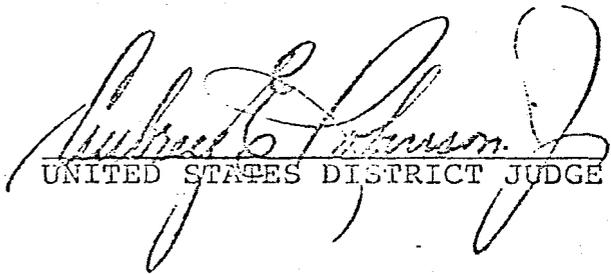
This matter having come before the Court on the Administrator's Motion to Amend Court's Orders of October 21, 1974, and October 22, 1974, and the Court being fully advised in the premises and it appearing that the transfer of such materials will in no way alter the custody of such materials by the Administrator or remove them from the jurisdiction of this Court, and it further appearing that such materials will continue to be accessible to authorized individuals as

145-171-133

MAY 27 1975

provided in this Court's orders heretofore entered and it further appearing that the parties do not object to the movement of certain materials to the Washington National Records Center, Suitland, Maryland, it is by the Court this 23rd day of May 1975

ORDERED that the Administrator is permitted to move the pallets described in the attachment to the aforesaid motion to the Washington National Records Center, Suitland, Maryland.


UNITED STATES DISTRICT JUDGE

