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Memorandum to the
Special Prosecutor
on behalf of
Richard M. Nixon

This memorandum is submitted on behalf of Richard M. Nixon to bring to the attention of the Special Prosecutor facts and supporting legal authority which, we submit, warrant a decision not to seek indictment of the former President. We wish to emphasize that this memorandum focuses specifically on issues of law rather than policy. In so limiting this presentation we do not wish to imply that all other considerations are irrelevant or inappropriate. Indeed, we believe it is highly desirable and proper for the Special Prosecutor to weigh in his judgment the possible impact of such an indictment on the domestic spirit and on



international relations, as well as the more traditional policy considerations entrusted to prosecutorial discretion. ^{*/}

However, the purpose of this memorandum is solely to demonstrate that one -- and probably the most crucial -- legal prerequisite to indicting and prosecuting Mr. Nixon does not exist: the ability of this government to assure him a fair trial in accordance with the demands of the Due Process Clause of the Fifth Amendment and the right to trial by an impartial jury guaranteed by the Sixth Amendment.

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Such intangible but none-the-less critical factors as domestic and international relations certainly fall within the ambit of the prosecutor's discretion as expressed in the Standards Relating to The Prosecution Function and The Defense Function, ABA Project on Standards for Criminal Justice, March 1971, where it is stated that

" . . . The prosecutor may in some circumstances and for good cause consistent with the public interest decline to prosecute, notwithstanding that evidence exists which would support a conviction. ABA Standards § 3.9(b).

A decision to forego prosecution because of overriding concerns of the national interest is in keeping with similar prosecutorial decisions to forego prosecution rather than disclose confidential national security or law-enforcement information required as evidence. United States v. Andolchek, 142 F.2d 503 (2d Cir. 1944); United States v. Beekman, 155 F.2d 580 (2d Cir. 1946); Christoffel v. United States, 200 F.2d 734 (D.C. Cir. 1952).

I. The Events and Publicity
Surrounding Watergate have
Destroyed the Possibility
of a Trial Consistent with
Due Process Requirements.

Recent events have completely and irrevocably eliminated, with respect to Richard M. Nixon, the necessary premise of our system of criminal justice -- that, in the words of Justice Holmes, ". . . the conclusions to be reached in a case will be induced only by evidence and argument in open court, not by any outside influence, whether of private talk or public print." Patterson v. Colorado, 205 U.S. 454, 462 (1907). As reiterated by the Court in Turner v. Louisiana, 379 U.S. 466, 472 (1965):

"The requirement that a jury's verdict 'must be based upon the evidence developed at trial' goes to the fundamental integrity of all that is embraced in the constitutional concept of trial by jury."

Never before in the history of this country have a person's activities relating to possible criminal violations been subjected to such massive public scrutiny, analysis and debate. The events of the past two years and the media coverage they received need not be detailed here, for we are sure the Special Prosecutor is fully aware of the nature of the media exposure generated. The simple fact is that the

national debate and two-year fixation of the media on Watergate has left indelible impressions on the citizenry, so pervasive that the government can no longer assure Mr. Nixon that any indictment sworn against him will produce "a charge fairly made and fairly tried in a public tribunal free of prejudice, passion [and] excitement . . ." Chambers v. Florida, 309 U.S. 227, 236-37, (1940).

Of all the events prejudicial to Mr. Nixon's right to a fair trial, the most damaging have been the impeachment proceedings of the House Judiciary Committee. In those proceedings neither the definition of the "offense," the standard of proof, the rules of evidence, nor the nature of the fact-finding body, were compatible with our system of criminal justice. Yet the entire country witnessed the proceedings, with their all-pervasive, multi-media coverage and commentary. And all who watched were repeatedly made aware that a committee of their elected Representatives, all lawyers, had determined upon solemn reflection to render an overwhelming verdict against the President, a verdict on charges time and again emphasized as constituting "high crimes and misdemeanors" for which criminal indictments could be justified.

All of this standing alone would have caused even those most critical of Mr. Nixon to doubt his chances of subsequently receiving a trial free from preconceived judgments of guilt. But the devastating culmination of the proceedings eliminated whatever room for doubt might still have remained as the entire country viewed those among their own Representatives who had been the most avid and vociferous defenders of the President (and who had insisted on the most exacting standards of proof) publicly abandon his defense and join those who would impeach him for "high crimes and misdemeanors."

None of this is to say, or even to imply, that the impeachment inquiry was improper, in either its inception or its conduct. The point here is that the impeachment process having taken place in the manner in which it did, the conditions necessary for a fair determination of the criminal responsibility of its subject under our principles of law no longer exist, and cannot be restored.

Even though the unique televised congressional proceedings looking to the possible impeachment of a President leave us without close precedents to guide our judgments con-

cerning their impact on subsequent criminal prosecutions, one court has grappled with the issue on a much more limited scale and concluded that any subsequent trial must at minimum await the tempering of prejudice created by the media coverage of such events.

In Delaney v. United States, 199 F.2d 107 (1st Cir. 1952), a District Collector of Internal Revenue was indicted for receiving bribes. Prior to the trial a subcommittee of the House of Representatives conducted public hearings into his conduct and related matters. The hearings generated massive publicity, particularly in the Boston area, including motion picture films and sound recordings, all of which "afforded the public a preview of the prosecution's case against Delaney without, however, the safeguards that would attend a criminal trial." 199 F.2d at 110. Moreover, the publicized testimony "ranged far beyond matters relevant to the pending indictments." 199 F.2d at 110. Delaney was tried ten weeks after the close of these hearings and was convicted by a jury. The Court of Appeals reversed, holding that Delaney had been denied his Sixth Amendment right to an impartial jury by being forced to "stand trial while the damaging effect of all that hostile publicity may reasonably be thought not to have been erased from the public mind." Id. 114.

The Court of Appeals did not suggest that the hearings were themselves improper. Indeed, the court emphatically stated that ". . . [i]t was for the Committee to decide whether considerations of public interest demanded at that time a full-dress public investigation . . ." Id. 114 (emphasis added). But the court continued,

"If the United States, through its legislative department, acting conscientiously pursuant to its conception of the public interest, chooses to hold a public hearing inevitably resulting in such damaging publicity prejudicial to a person awaiting trial on a pending indictment, then the United States must accept the consequence that the judicial department, charged with the duty of assuring the defendant a fair trial before an impartial jury, may find it necessary to postpone the trial until by lapse of time the danger of the prejudice may reasonably be thought to have been substantially removed."

The principle expounded by the court in Delaney is applicable here. Faced with allegations that the Watergate events involved actions by the President, the House of Representatives determined that not only was an impeachment inquiry required, but that the inquiry must be open to the public so that the charges and evidence in support thereof could be viewed and analyzed by the American people. We need not fault Congress in that decision. Perhaps -- in the interest of the country -- there was no other choice. But having pursued a

course purposely designed to permit the widest dissemination of and exposure to the issues and evidence involved, the government must now abide by that decision which produced the very environment which forecloses a fair trial for the subject of their inquiry.

The foregoing view is not at all incompatible with the Constitution, which permits the trial of a President following impeachment -- and therefore, some might argue, condones his trial after his leaving office. Nothing in the Constitution withholds from a former President the same individual rights afforded others. Therefore, if developments in means of communication have reached a level at which their use by Congress in the course of impeachment proceedings forever taints the public's mind, then the choice must be to forego their use or forego indictment following impeachment. Here, the choice has been made.

Further demonstration of the wholly unique nature of this matter appears in the public discussion of a pardon for the former President -- which discussion adds to the atmosphere in which a trial consistent with due process is impossible

Since the resignation of Mr. Nixon, the news media has been filled with commentary and debate on the issue of whether the former President should be pardoned if charged with offenses relating to Watergate. As with nearly every other controversial topic arising from the Watergate events, the media has sought out the opinions of both public officials and private citizens, even conducting public opinion polls on the question. A recurring theme expressed by many has been that Mr. Nixon has suffered enough and should not be subjected to further punishment, certainly not imprisonment.

Without regard to the merits of that view, the fact that there exists a public sentiment in favor of pardoning the former President in itself prejudices the possibility of Mr. Nixon's receiving a fair trial. Despite the most fervent disclaimers, any juror who is aware of the general public's disposition will undoubtedly be influenced in his judgment, thinking that it is highly probable that a vote of guilty will not result in Mr. Nixon's imprisonment. Indeed, the impact of the public debate on this issue will undoubtedly fall not only on the jury but also on the grand jury and the Special Prosecutor, lifting some of the constraints which might otherwise have militated in favor of a decision not to prosecute. Human nature could not be otherwise.

We raise this point not to suggest that the decision of whether to prosecute in this case cannot be reached fairly, but rather to emphasize that this matter -- like none other before it and probably after it -- has been so thoroughly subjected to extraneous and highly unusual forces that any prosecution of Mr. Nixon could not fairly withstand detached evaluation as complying with due process.

II. The Nationwide Public
Exposure to Watergate
Precludes the Impaneling
of an Impartial Jury

The Sixth Amendment guarantees a defendant trial by jury, a guarantee that has consistently been held to mean that each juror impaneled -- in the often quoted language of Lord Coke -- will be "indifferent as he stands unsworn." Co. Litt. 155b. See Irvin v. Dowd, 366 U.S. 717 (1961); Turner v. Louisiana, 379 U.S. 472 (1965). The very nature of the Watergate events and the massive public discussion of Mr. Nixon's relationship to them have made it impossible to find any array of jurymen who can meet the Sixth Amendment standard.

On numerous occasions the Supreme Court has held that the nature of the publicity surrounding a case was such that jurors exposed to it could not possibly have rendered a

verdict based on the evidence. See Sheppard v. Maxwell, 384 U.S. 333 (1966); Rideau v. Louisiana, 373 U.S. 723 (1963); Irvin v. Dowd, supra; Marshall v. United States, 360 U.S. 310 (1959). The most memorable of these was Sheppard v. Maxwell, in which the Court, describing the publicity in the Cleveland metropolitan area, referred time and again to media techniques employed there -- which in the Watergate case have been utilized on a nationwide scale and for a much longer period of time. The following excerpts from the Court's opinion are exemplary:

"Throughout this period the newspapers emphasized evidence that tended to incriminate Sheppard and pointed out discrepancies in his statements to authorities."
p. 340.

* * *

"On the sidewalk and steps in front of the courthouse, television and newsreel cameras were occasionally used to take motion pictures of the participants in the trial, including the jury and the judge. Indeed, one television broadcast carried a staged interview of the judge as he entered the courthouse. In the corridors outside the courtroom there was a host of photographers and television personnel with flash cameras, portable lights and motion picture cameras. This group photographed the prospective jurors during selection of the jury. After the trial opened, the witnesses, counsel, and jurors were photographed and televised whenever they entered or left the courtroom."
pp. 343-44.

* * *

"The daily record of the proceedings was made available to the newspapers and the testimony of each witness was printed verbatim in the local editions, along with objections of counsel, and rulings by the judge. Pictures of Sheppard, the judge, counsel, pertinent witnesses, and the jury often accompanied the daily newspaper and television accounts. At times the newspapers published photographs of exhibits introduced at the trial, and the rooms of Sheppard's house were featured along with relevant testimony." pp. 344-45.

* * *

"On the second day of voir dire examination a debate was staged and broadcast live over WHK radio. The participants, newspaper reporters, accused Sheppard's counsel of throwing roadblocks in the way of the prosecution and asserted that Sheppard conceded his guilt by hiring a prominent criminal lawyer." p. 346.*

The Sheppard murder was sensational news and the media reacted accordingly. In the course they destroyed the state's ability to afford Sheppard a fair trial.

The sensation of Watergate is a hundredfold that of the Sheppard murder. But the media techniques remain the

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The prejudicial publicity in Sheppard commenced well before trial, even before charges were brought, and continued throughout the duration of the prosecution. Although Mr. Nixon has not been criminally tried, the press coverage of the impeachment proceedings and Watergate related criminal trials reflect obvious similarities to the Sheppard coverage.

same and the destruction of an environment for a trial consistent with due process has been nationwide. The Supreme Court should not -- upon an appeal by Mr. Nixon -- have to recount for history the unending litany of prejudicial publicity which served to deprive the President of the rights afforded others.

The bar against prosecution raised by the publicity in this case defies remedy by the now common techniques of delaying indictment or trial, changing venue, or scrupulously screening prospective jurors. Although the court in Delaney, supra, could not envision a case in which the prejudice from publicity would be "so permanent and irradicable" that as a matter of law there could be no trial within the foreseeable future, 199 F.2d, at 112, it also could not have envisioned the national Watergate saturation of the past two years.

Unlike others accused of involvement in the Watergate events, Mr. Nixon has been the subject of unending public efforts "to make the case" against him. The question of Mr. Nixon's responsibility for the events has been the central political issue of the era. As each piece of new evidence became public it invariably was analyzed from the viewpoint of whether it brought the Watergate events closer to "the

Oval Office" or as to "what the President knew and when he knew it." The focus on others was at most indirect.

In short, no delay in trial, no change of venue, and no screening of prospective jurors could assure that the passions aroused by Watergate, the impeachment proceedings, and the President's resignation would dissipate to the point where Mr. Nixon could receive the fair trial to which he is entitled. The reasons are clear. As the Supreme Court stated in Rideau v. Louisiana, 373 U.S. 717, 726 (1963):

For anyone who has ever watched television the conclusion cannot be avoided that this spectacle, to the tens of thousands of people who saw and heard it, in a very real sense was . . . [the] trial . . . Any subsequent court proceedings in a community so pervasively exposed to such a spectacle could be but a hollow formality.

Not only has the media coverage of Watergate been pervasive and overwhelmingly adverse to Mr. Nixon, but nearly every member of Congress and political commentator has rendered a public opinion on his guilt or innocence. Indeed for nearly two years sophisticated public opinion polls have surveyed the people as to their opinion on Mr. Nixon's involvement in Watergate and whether he should be impeached. Now the polls ask whether Mr. Nixon should be indicted. Under such conditions, few Americans can have failed to have formed an opinion

as to Mr. Nixon's guilt of the charges made against him. Few, if any, could -- even under the most careful instructions from a court -- expunge such an opinion from their minds so as to serve as fair and impartial jurors. "The influence that lurks in an opinion once formed is so persistent that it unconsciously fights detachment from the mental processes of the average man." Irvin v. Dowd, 366 U.S. 717, 727 (1961). And as Justice Robert Jackson once observed, "The naive assumption that prejudicial effects can be overcome by instructions to the jury, . . . all practicing lawyers know to be unmitigated fiction." Krulewitch v. United States, 336 U.S. 440, 453 (1949) (concurring opinion). See also Delaney v. United States, 199 F.2d 107, 112-113 (1st Cir. 1952).

CONCLUSION

The media accounts of Watergate, the political columnists' debates, the daily televised proceedings of the House Judiciary Committee, the public opinion polls, the televised dramatizations of Oval Office conversations, the newspaper cartoons, the "talk-show" discussions, the letters-to-the-editor, the privately placed commercial ads, even

bumper stickers, have totally saturated the American people with Watergate. In the process the citizens of this country -- in uncalculable numbers -- from whom a jury would be drawn have formulated opinions as to the culpability of Mr. Nixon. Those opinions undoubtedly reflect both political and philosophical judgments totally divorced from the facts of Watergate. Some are assuredly reaffirmations of personal likes and dislikes. But few indeed are premised only on the facts. And absolutely none rests solely on evidence admissible at a criminal trial. Consequently, any effort to prosecute Mr. Nixon would require something no other trial has ever required -- the eradication from the conscious and subconscious of every juror the opinions formulated over a period of at least two years, during which time the juror has been subjected to a day-by-day presentation of the Watergate case as it unfolded in both the judicial and political arena.

Under the circumstances, it is inconceivable that the government could produce a jury free from actual bias. But the standard is higher than that, for the events of the past two years have created such an overwhelming likelihood

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of prejudice that the absence of due process would be inherent in any trial of Mr. Nixon. ^{*/} It would be forever regrettable if history were to record that this country -- in its desire to maintain the appearance of equality under law -- saw fit to deny to the former President the right of a fair trial so jealously preserved to others through the constitutional requirements of due process of law and of trial by impartial jury.

Herbert J. Miller, Jr.

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Of Counsel

William H. Jeffress, Jr.
R. Stan Mortenson

^{*/}

"It is true that in most cases involving claims of due process deprivations we require a showing of identifiable prejudice to the accused. Nevertheless, at times a [procedure] employed by the State involves such a probability that prejudice will result that it is deemed inherently lacking in due process." Estes v. Texas, 381 U.S. 532, (1965).

Statement by the President

The announcement yesterday by Mr. Hushen concerning study of the entire matter of Presidential clemency and pardons was prompted by inquiries to the White House Press Office concerning Mrs. John Dean's reported statement in reference to pardoning of her husband and similar public statements on behalf of others.

Such a study is, of course, made for any request concerning pardon of an individual.

However, no inference should be drawn as to the outcome of such study in any case. Nor is my pardon of the former President, under the unique circumstances stated by me in granting it, related to any other case which is or may be under study.

THE WHITE HOUSE

WASHINGTON

August 29, 1974

The Speaker of the

House of Representatives


Sir:

I ask the Congress to consider proposed supplemental appropriations for the fiscal year 1975 in the amount of \$850,000 for Presidential transition expenses and allowances for former Presidents.

The details of this proposal are set forth in the enclosed letter from the Director of the Office of Management and Budget, with whose comments and observations I concur.

Respectfully,

GERALD R. FORD



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

The President

The White House

Sir:

I have the honor to submit for your consideration proposed supplemental appropriations for the fiscal year 1975, in the amount of \$850,000 as follows:

GENERAL SERVICES ADMINISTRATION

Expenses Presidential Transition

For expenses necessary to carry out the provision of the Presidential Transition Act of 1963 (3 U.S.C. 102 note), \$450,000, to be available from August 9, 1974, and to remain available until June 30, 1975.

This proposed supplemental appropriation will provide funds for former President Nixon to promote an orderly transfer of executive power as authorized by the Presidential Transition Act of 1963 (3 U.S.C. 102 note).

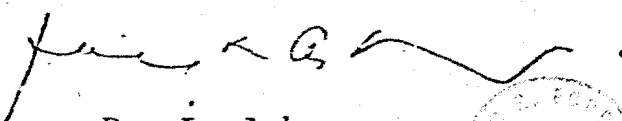
Allowances and Office Staff for Former Presidents

For an additional amount for "Allowances and Office Staff for Former Presidents", \$400,000.

This proposed supplemental appropriation will cover fiscal year 1975 costs for pension, office staff, and related expenses for former President Nixon as authorized by the Former Presidents Act of 1958 (3 U.S.C. 102 note).

I have carefully reviewed the proposals for appropriations contained in this document and am satisfied that these requests are necessary at this time. I recommend, therefore, that these proposals be transmitted to the Congress.

Respectfully,


Roy L. Ash
Director

THE WHITE HOUSE
WASHINGTON

file

Date 9-5/74

TO: JERRY JONES

FROM: WILLIAM TIMMONS

FOR YOUR INFORMATION _____

FOR YOUR COMMENTS _____

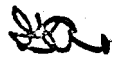
FOR APPROPRIATE HANDLING ✓

OTHER *NOTE REPORT
ATTACHED.*

THE WHITE HOUSE
WASHINGTON

September 5, 1974

MEMORANDUM FOR: BILL TIMMONS

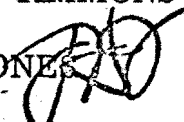
FROM: GENE AINSWORTH 

SUBJECT: Mr. and Mrs. Manolo Sanchez
re: Detail to San Clemente

I checked this matter with Tex Gunnels, Clerk of Rep. Steed's Appropriations Subcommittee and, while he did not believe it would be the subject of future controversy during White House budget hearings, Tex was nevertheless disturbed. Because of the past adverse effects of spending for both property improvements at Key Biscayne and San Clemente and personnel detail to these locations, added to the present difficulties with the supplemental requests for former President Nixon, it might be advisable to pursue some other course of action (e.g. transfer Mr. and Mrs. Sanchez to the GSA payroll and have GSA detail them to San Clemente.) Regardless of the action taken, we have properly notified Chairman Steed and his Subcommittee staff of the situation.

THE WHITE HOUSE
WASHINGTON

August 26, 1974

MEMORANDUM FOR: WILLIAM E. TIMMONS
FROM: JERRY H. JONES 
SUBJECT: Mr. and Mrs. Manolo Sanchez
Re Detail to San Clemente

The Transition Act provided for unlimited details from departments and agencies of the Federal government to work on the transition. The White House Office has detailed about 10 people to the Office of Former President Richard Nixon in San Clemente.

It is hoped that Mr. and Mrs. Manolo Sanchez (Manolo receives \$13,225 from Residence Budget funded through Interior Department and Fina receives \$7,906) might also be detailed for six months (ending February 9, 1975) from Department of Interior. However, Rex Scouten, Chief Usher, hesitates carrying the Sanchez's in a detailed status without the knowledge of Chairman Steed. Scouten does not want to jeopardize his outstanding relationship with the Hill, and he reports that in the past, questions during his budget hearings have always related to whether any of his Residence appropriation (through Interior) went for anything or anybody at Camp David, Key Biscayne or San Clemente. If he is asked such a question again, he reports, he will have to answer "Yes" if Manolo and Fina are carried on his payroll until February.

Would you please cover this matter with Chairman Steed to insure that Rex Scouten is covered, and Chairman Steed concurs with the temporary 6 month detail of Mr. and Mrs. Sanchez for the period of the transition?

_____ I have covered it with Chairman Steed and he concurs

_____ Other:

SEPTEMBER 8, 1974

Office of the White House Press Secretary

THE WHITE HOUSE

TEXT OF A LEGAL OPINION
BY THE ATTORNEY GENERAL

September 6, 1974

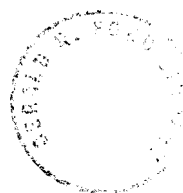
The President,

The White House.

Dear Mr. President:

You have requested my opinion concerning papers and other historical materials retained by the White House Office during the administration of former President Richard M. Nixon and now in the possession of the United States or its officials. Some such materials were left in the Executive Office Building or in the White House at the time of former President Nixon's departure; others had previously been deposited with the Administrator of General Services. You have inquired concerning the ownership of such materials and the obligations of the Government with respect to subpoenas and court orders addressed to the United States or its officials pertaining to them.

To conclude that such materials are not the property of former President Nixon would be to reverse what has apparently been the almost unvaried understanding of all



three branches of the Government since the beginning of the Republic, and to call into question the practices of our Presidents since the earliest times. In Folsom v. Marsh, 9 F. Cas. 342 (No. 4901), 2 Story 100, 108-109 (C.C.D. Mass. 1841), Mr. Justice Story, while sitting in circuit, found that President Washington's letters, including his official correspondence, ^{1/} were his private property which he could bequeath, which his estate could alienate, and in which the purchaser could acquire a copyright. According to testimony of the Archivist of the United States in 1955, every President of the United

1/ The official documents involved in the case were:

Letters addressed by Washington, as commander-in-chief, to the President of Congress.

Official letters to governors of States and speakers of legislative bodies.

Circular letters.

General orders.

Communications (official) addressed as President to his Cabinet.

Letter accepting the command of the army, on our expected war with France. 2 Story at 104-105.

The clear holding on the property point (Id. at 108-09) is arguably converted to dictum by Justice Story's later indication, in connection with another issue, that copyright violation with respect to the official documents did not have to be established in order to maintain the suit. (Id. at 114).

States beginning with George Washington regarded all the papers and historical materials which accumulated in the White House during his administration, whether of a private or official nature, as his own property. ^{2/} A classic exposition of this Presidential view was set forth by President Taft in a lecture presented several years after he had left the White House:

The office of the President is not a recording office. The vast amount of correspondence that goes through it, signed either by the President or his secretaries, does not become the property or a record of the government unless it goes on to the official files of the department to which it may be addressed. The President takes with him all the correspondence, original and copies, carried on during his administration. Taft, The Presidency 30-31 (1916).

2/

Statement of Dr. Wayne C. Grover, Archivist of the United States, during the House Hearings on the Joint Resolution of August 12, 1955, 69 Stat. 695, To provide for the acceptance and maintenance of Presidential libraries, and for other purposes (now codified in 44 U.S.C. 2101, 2107 and 2108; hereinafter referred to as the "Presidential Libraries Act"), Hearing before a Special Subcommittee of the Committee on Government Operations, House of Representatives, 84th Cong., 1st Sess., on H.J. Res. 330, H.J. Res. 331, and H.J. Res. 332 (hereafter referred to as "1955 Hearings"), pp. 28, 45.

Past Congressional recognition of the President's title is evidenced by the various statutes providing for Government purchase of the official and private papers of many of our early Presidents, including Washington, Jefferson, Madison, Monroe and Jackson. See 1955 Hearings at 28, 39-42.

Even if there were no recent statutory sanction of Presidential ownership, a consistent history such as that described above might well be determinative. As the Supreme Court said in United States v. Midwest Oil Co., 236 U.S. 459 (1915):

[G]overnment is a practical affair intended for practical men. Both officers, law-makers and citizens naturally adjust themselves to any long-continued action of the Executive Department -- on the presumption that unauthorized acts would not have been allowed to be so often repeated as to crystallize into a regular practice. That presumption is not reasoning in a circle but the basis of a wise and quieting rule that in determining the meaning of a statute or the existence of a power, weight shall be given to the usage itself -- even when the validity of the practice is the subject of investigation. Id. at 472-73.

. . .
[W]hile no . . . express authority has been granted [by Congress], there is nothing in the nature of the power exercised which prevents Congress from granting it by implication just as could be done by any other owner of property under similar conditions. Id. at 474.

Moreover, with respect to the practice at issue here, there is recent statutory sanction. The 1955 Presidential Libraries Act, which serves as the permanent basis of the Presidential Library system, constitutes clear legislative acknowledgement that a President has title to all the documents and historical materials -- whether personal or official -- which accumulate in the White House Office during his incumbency. The Federal Records Act of 1950, 64 Stat. 587, which was the predecessor of the Presidential Libraries Act, authorized the Administrator of General Services to accept for deposit "the personal papers and other personal historical documentary materials of the present President of the United States." Section 507 (e), 64 Stat. 588. The word "personal" might have been read as intended to distinguish between the private and official papers of the President.^{3/} The corresponding provision of the current law, however, 44 U.S.C. 2107 (1), avoids the ambiguity. It envisions the President's deposit of all Presidential materials, not only personal ones. During

^{3/} Compare Section 507 (e) with Section 507 (a), dealing with the records of an agency. A memorandum prepared in the Office of the Assistant Solicitor General (now Office of Legal Counsel) on July 24, 1951 indicated that such a distinction between private and official Presidential papers would be inconsistent with historic precedents, and difficult if not impossible to maintain. It accordingly regarded the Records Act's use of the term "personal" as intended merely to exclude the permanent files of the Chief Executive Clerk discussed at page 12 below.

the House debate on the Presidential Libraries Act, Congressman Moss, who was in charge of the bill, expressly stated:

Four. Finally, it should be remembered that Presidential papers belong to the President, and that they have increased tremendously in volume in the past 25 or 30 years. It is no longer possible for a President to take his papers home with him and care for them properly. It is no accident that the last three Presidents -- Hoover, F.D. Roosevelt, and Harry Truman -- have had to make special provisions through the means of the presidential library to take care of their papers. 101 Cong. Rec. 9935 (1955).

The legislative history of the Act reflects no disagreement with this position on the part of any member of the Congress.

The hearings before a Special Subcommittee of the House Committee on Government Operations indicate congressional awareness of the Act's assumption that all Presidential papers are the private property of the President. 1955 Hearings at 12, 20, 28, 32, 52, 54, 58.

A recent discussion concerning ownership of Presidential materials appears in the report prepared by the staff of the Joint Committee on Internal Revenue Taxation involving the examination of President Nixon's tax returns. H. Rept. 93-966, 93d Cong., 2d Sess. (1974). The report points to the practice of Presidents since Washington of treating their papers, both private and official, as their

personal property; and to the congressional ratification of the practice in the 1955 library legislation. It concludes that "the historical precedents taken together with the provisions set forth in the Presidential Libraries Act, suggest that the papers of President Nixon are considered his personal property rather than public property." Id. at 28-29.

An apparent obstacle to Presidential ownership of all White House materials is Article II, section 1, clause 7 of the Constitution, which provides:

"The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them."

But objection based upon this provision is circular in its reasoning, except insofar as it applies to the blank typing paper and materials upon which the Presidential records are inscribed. For the records themselves are given to the President as an "emolument" only if one assumes that they are not the property of the President from the very moment of their creation. As for the blank typing paper and materials, which are of course of negligible

value, they can be regarded as consumables, like electricity or telephone service, provided for the conduct of Presidential business. In any event, the Constitutional provision can simply not be interpreted in such a fashion as to preclude the conferral of anything of value, beyond his salary, upon the President. An eminent authority on the subject states the following:

As a matter of fact the President enjoys many more "emoluments" from the United States than the "compensation" which he receives "at stated times" --at least, what most people would reckon to be emoluments. Corwin, The President 348 N. 53.

He gives as examples of such additional emoluments provided by the Congress the use of personal secretaries and the right to reside in the White House. Id. at 348-49.

Another obstacle to Presidential ownership of the materials in question is their character as public documents, often secret and sometimes necessary for the continued operation of government. However, without speaking to the desirability of the established property rule (and there is pending in the Congress legislation which would apparently alter it--S. 2951, 93d Cong., 2d Sess., a bill "[t]o provide for public ownership of certain documents of elected public officials"), it must

be conceded that accommodation of such concerns can be achieved whether or not ownership of the materials in question rests with the former President. Historically, there has been consistent acknowledgement that Presidential materials are peculiarly affected by a public interest which may justify subjecting the absolute ownership rights of the ex-President to certain limitations directly related to the character of the documents as records of government activity. Thus, in Folsom v. Marsh, supra, Mr. Justice Story stated the following:

In respect to official letters, addressed to the government, or any of its departments, by public officers, so far as the right of the government extends, from principles of public policy, to withhold them from publication, or to give them publicity, there may be a just ground of distinction. It may be doubtful, whether any public officer is at liberty to publish them, at least, in the same age, when secrecy may be required by the public exigencies, without the sanction of the government. On the other hand, from the nature of the public service, or the character of the documents, embracing historical, military, or diplomatic information, it may be the right, and even the duty, of the government, to give them publicity, even against the will of the writers.
2 Story at 113.

That portion of the Criminal Code dealing with the transmission or loss of national security information, 18 U. S. C. § 793, obviously applies to Presidential papers even when

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they are within the possession of the former President.

Upon the death of Franklin D. Roosevelt during the closing months of World War II, with full acceptance of the traditional view that all White House papers belonged to the President and devolved to his estate, some of the papers dealing with prosecution of the War (the so-called "Map Room Papers") were retained by President Truman under a theory of "protective custody" until December 1946 Matter of Roosevelt, 190 Misc. 341, 344, 73 N.Y.S. 821, 825 (Sur. Ct. 1947); Eighth Annual Report of the Archivist of the United States as to the Franklin D. Roosevelt Library (1947) p. 1. Thus, regardless of whether this is the best way to approach the problem, precedent demonstrates that the governmental interests arising because of the peculiar nature of these materials (notably, any need to protect national security information and any need for continued use of certain documents in the process of government) can be protected in full conformity with the theory of ownership on the part of the ex-President.

4/ Section 11 of Executive Order 11652 makes explicit provision for declassification of Presidential material that has been deposited in the Archives.

Because the principle of Presidential ownership of White House materials has been acknowledged by all three branches of the Government from the earliest times; because that principle does not violate any provision of the Constitution or contravene any existing statute; and because that principle is not inconsistent with adequate protection of the interests of the United States; I conclude that the papers and materials in question were the property of Richard M. Nixon when his term of office ended. Any inference that the former President abandoned his ownership of the materials he left in the White House and the Executive Office Building is eliminated by a memorandum to the White House staff from Jerry H. Jones, Special Assistant to President Nixon, dated the day of his resignation, asserting that "the files of the White House Office belong to the President in whose Administration they were accumulated," and setting forth instructions with respect to the treatment of such materials until they can be collected and disposed of according to the ex-President's wishes. We are advised that the materials previously deposited with the Administrator of General Services were likewise transmitted and received with the understanding

of continuing Presidential ownership.

I must, however, exclude one category of documents from the scope of this opinion concerning ownership and advise you that their status cannot be definitively determined on the basis of presently available information. Although the fact is not recorded in the published materials we have examined, our inquiry indicates that at least in recent memory certain "permanent files" have been retained by the Chief Executive Clerk of the White House from administration to administration. These include White House budget and personnel material, and records or copies of some Presidential actions useful to the Clerk's office for such purposes as keeping track of the terms of Presidential appointments and providing models or precedents for future Presidential action. Retention of these materials by the Chief Executive Clerk is of course not necessarily inconsistent with initial Presidential ownership. In light of the otherwise uniform practice with respect to much more important official documents, relinquishment of these materials may reasonably be regarded as a voluntary act of courtesy on the part of the outgoing Chief Executive. I cannot, however, make an adequately informed judgment concerning these files without

more extensive factual and historical inquiry, which your need for this opinion does not permit. Of course, even if such inquiry should show that these particular documents have been regarded as Government property, that conclusion would not support a generalization of Government ownership with respect to the much more extensive other material covered by this opinion, as to which the Presidential practice and congressional acquiescence are clear.

As to the obligations of the Government with respect to subpoenas and court orders directed to the United States or its officials pertaining to the subject materials; Even though the Government is merely the custodian and not the owner, it can properly be subjected to court directives relating to the materials. The Federal Rules of Criminal Procedure authorize the courts, upon motion of a defendant, to order the Government to permit access to papers and other objects "which are within the possession, custody or control of the government," Fed. R. Crim. P. 16 (b). A similar provision is applicable with regard to discovery in civil cases involving material within the "possession, custody or control" of a party (including the Government).

Fed. R. Civ. P. 34(a). In addition, in both criminal and civil cases, a subpoena may be issued directing a person to produce documents or objects which are within his possession, but which belong to another person. Fed. R. Crim. P. 17(c); Fed. R. Civ. P. 45(b). See, e.g., Couch v. United States, 409 U.S. 322 (1973); Schwimmer v. United States, 232 F.2d 855, 860 (8th Cir., 1956), cert. denied, 352 U.S. 833; United States v. Re, 313 F Supp. 442, 449 (S. D. N. Y. 1970).

I advise you, therefore, that items included within the subject materials properly subpoenaed from the Government or its officials must be produced; and that none of the materials can be moved or otherwise disposed of contrary to the provisions of any duly issued court order against the Government or its officials pertaining to them. Of course both the former President and the Government can seek modification of such subpoenas and orders, and can challenge their validity on Constitutional or other grounds.

Respectfully,

Attorney General

SEPTEMBER 8, 1974

Office of the White House Press Secretary

THE WHITE HOUSE

TEXT OF A LETTER FROM RICHARD NIXON
TO ARTHUR F. SAMPSON, ADMINISTRATOR
GENERAL SERVICES ADMINISTRATION

September 6, 1974

Honorable Arthur F. Sampson
Administrator
General Services Administration
Washington, D.C.

Dear Mr. Sampson:

In keeping with the tradition established by other former Presidents, it is my desire to donate to the United States, at a future date, a substantial portion of my Presidential materials which are of historical value to our Country. In donating these Presidential materials to the United States, it will be my desire that they be made available, with appropriate restrictions for research and study.

In the interim, so that my materials may be preserved, I offer to transfer to the Administrator of General Services (the "Administrator"), for deposit, pursuant to 44 U.S.C. Section 2101, et seq., all of my Presidential historical materials as defined in 44 U.S.C. Section 2101 (hereinafter "Materials"), which are located within the metropolitan area of the District of Columbia, subject to the following:

1. The Administrator agrees to accept solely for the purpose of deposit the transfer of the Materials, and in so accepting the Materials agrees to abide by each of the terms and conditions contained herein.
2. In the event of my death prior to the expiration of the three-year time period established in paragraph 7A hereof, the terms and conditions contained herein shall be binding upon and inure to the benefit of the executor of my estate for the duration of said period.
3. I retain all legal and equitable title to the Materials, including all literary property rights.
4. The Materials shall, upon acceptance of this offer by the Administrator, be deposited temporarily in an existing facility belonging to the United States, located within the State of California near my present residence. The Materials shall remain deposited in the temporary California facility until such time as there may be established, with my approval, a permanent Presidential archival depository as provided for in 44 U.S.C. Section 2108.
5. The Administrator shall provide in such temporary depository and in any permanent Presidential archival depository reasonable office space for my personal use in accordance with 44 U.S.C. Section 2108 (f). The Materials in their entirety shall be deposited within such office space in the manner described in paragraph 6 hereof.

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6. Within both the temporary and any permanent Presidential archival depository, all of the Materials shall be placed within secure storage areas to which access can be gained only by use of two keys. One key, essential for access, shall be given to me alone as custodian of the Materials. The other key may be duplicated and entrusted by you to the Archivist of the United States or to members of his staff.
7. Access to the Materials within the secure areas, with the exception of recordings of conversations in the White House and the Executive Office Building which are governed by paragraphs 8 and 9 hereof, shall be as follows:
 - A. For a period of three years from the date of this instrument, I agree not to withdraw from deposit any originals of the Materials, except as provided in subparagraph B below and paragraph 10 herein. During said three-year period, I may make reproductions of any of the originals of the Materials and withdraw from deposit such reproductions for any use I may deem appropriate. Except as provided in subparagraph B below, access to the Materials shall be limited to myself, and to such persons as I may authorize from time to time in writing, the scope of such access to be set forth by me in each said written authorization. Any request for access to the Materials made to the Administrator, the Archivist of the United States or any member of their staffs shall be referred to me. After three years I shall have the right to withdraw from deposit without formality any or all of the Materials to which this paragraph applies and to retain such withdrawn Materials for any purpose or use I may deem appropriate, including but not limited to reproduction, examination, publication or display by myself or by anyone else I may approve.
 - B. In the event that production of the Materials or any portion thereof is demanded by a subpoena or other order directed to any official or employee of the United States, the recipient of the subpoena or order shall immediately notify me so that I may respond thereto, as the owner and custodian of the Materials, with sole right and power of access thereto and, if appropriate, assert any privilege or defense I may have. Prior to any such production, I shall inform the United States so it may inspect the subpoenaed materials and determine whether to object to its production on grounds of national security or any other privilege.
8. The tape recordings of conversations in the White House and Executive Office Building which will be deposited pursuant to this instrument shall remain on deposit until September 1, 1979. I intend to and do hereby donate to the United States, such gift to be effective September 1, 1979, all of the tape recordings of conversations in the White House and Executive Office Building conditioned however on my continuing right or access as specified in paragraph 9 hereof and on the further condition that such tapes shall be destroyed at the time of my death or on September 1, 1984, whichever event shall first occur. Subsequent to September 1, 1979 the Administrator shall destroy such tapes as I may direct. I impose this restriction as other Presidents have before me to guard

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against the possibility of the tapes being used to injure, embarrass, or harass any person and properly to safeguard the interests of the United States.

9. Access to recordings of conversations in the White House and Executive Office Building within the secure areas shall be restricted as follows:

A. I agree not to withdraw from deposit any originals of the Materials, except as provided in subparagraph B and paragraph 10 below, and no reproductions shall be made unless there is mutual agreement. Access to the tapes shall be limited to myself, and to such persons as I may authorize from time to time in writing, the scope of such access to be set forth by me in each said written authorization. No person may listen to such tapes without my written prior approval. I reserve to myself such literary use of the Information on the tapes.

B. In the event that production of the Materials or any portion thereof is demanded by a subpoena or other order directed to any official or employee of the United States, the recipient of the subpoena or order shall immediately notify me so that I may respond thereto, as the owner and custodian of the Materials, with sole right and power of access thereto and, if appropriate, assert any privilege or defense I may have. Prior to any such production, I shall inform the United States so it may inspect the subpoenaed materials and determine whether to object to its production on grounds of national security or any other privilege.

10. The Administrator shall arrange and be responsible for the reasonable protection of the Materials from loss, destruction or access by unauthorized persons, and may upon receipt of any appropriate written authorization from the Counsel to the President provide for a temporary re-deposit of certain of the Materials to a location other than the existing facility described in paragraph 4 herein, provided however that no diminution of the Administrator's responsibility to protect and secure the Materials from loss, destruction, unauthorized copying or access by unauthorized persons is affected by said temporary re-deposit.

11. From time to time as I deem appropriate, I intend to donate to the United States certain portions of the Materials deposited with the Administrator pursuant to this agreement, such donations to be accompanied by appropriate restrictions as authorized by 44 U.S.C. Section 2107. However, prior to such donation, it will be necessary to review the Materials to determine which of them should be subject to restriction, and the nature of the restrictions to be imposed. This review will require a meticulous, thorough, time-consuming analysis. If necessary to fulfill this task, I will request that you designate certain members of the Archivist's staff to assist in this review under my direction.

If you determine that the terms and conditions set forth above are acceptable for the purpose of governing the establishment and maintenance of a depository

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of the Materials pursuant to 44 U.S.C. Section 2101 and for accepting the irrevocable gift of recordings of conversations after the specified five year period for purposes as contained in paragraph 8 herein, please indicate your acceptance by signing the enclosed copy of this letter and returning it to me. Upon your acceptance we both shall be bound by the terms of this agreement.

Sincerely,

/s/ Richard Nixon

Accepted by: Arthur F. Sampson /s/ Arthur F. Sampson
Administrator 9/7/74
General Services Administration

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

PRESS CONFERENCE
OF
PHILIP BUCHEN
COUNSELLOR TO THE PRESIDENT

THE BRIEFING ROOM

AT 12:12 P.M.

MR. TER HORST: Gentlemen, if you are ready for the briefing, we have Philip Buchen, the legal counsel of the White House to address your questions on the President's statement and on the documents you have in your hand.

As you know, he is the President's legal adviser. He was very much a participant in the preparation of this proclamation and so here is Mr. Buchen to take your questions.

I think he may have an opening statement which he may like to read first.

MR. BUCHEN: Thank you, Jerry.

I appreciate your all being here on this Sunday morning, or midday.

I wanted just to say a few things first, because it may answer questions in advance, and at the conclusion of these remarks, I will try to field the questions you throw this way.

In addition to the major developments of this morning when President Ford granted a pardon to former President Nixon, I have two other legal developments to announce which occurred prior to the issuance of the proclamation of pardon.

The first involves the opinion of Attorney General William B. Saxbe and President Ford dealing with papers and other records, including tapes, retained during the Administration of former President Nixon in the White House offices.

In this opinion, the Attorney General concludes that such materials are the present property of Mr. Nixon; however, it also concluded that during the time the materials remain in the custody of the United States, they are subject to subpoenas and court orders directed to any official who controls that custody. And in this conclusion, I have concurred.

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This opinion was sought by the President from the Attorney General on August 22.

Q When you say the President, you mean President Ford?

MR. BUCHEN: That is right.

The reason for seeking the opinion was the conflict created between Mr. Nixon's request on the one hand for delivery to his control of the materials, and on the other hand, the pending court orders and subpoenas directed at the United States and certain of its officials.

The court orders have required that the custody of the materials be maintained at their present locations. And both the orders and subpoenas have called for the identification and production of certain materials allegedly relevant to court proceedings in which the orders and subpoenas originated.

In addition, we were advised of interests of other parties in having certain records disclosed to them under warning that if they were to be removed and delivered to the control of Mr. Nixon, court action would be taken to prevent that move and to protect the claimed rights to inspection or disclosure.

Therefore, it became fully apparent that unless this conflict was resolved, the present Administration would be enmeshed for a long time in answering the disputed claims over who could obtain information from the Nixon records, how requested information could, as a practical matter, be extracted from the vast volume of records in which it might appear, and how, and by whom its relevancy in any particular court proceeding could be determined, and at the same time to try satisfying the claims of Mr. Nixon that he owned the records.

Within a week of the request by the Attorney General for an opinion made by President Ford, I was advised informally of what its general nature would be. From that time on, I realized that the opinion itself would not provide a practical solution to the handling and management of the papers so as to reconcile rights and interest of private ownership with the limited but very important rights and interest of litigants to disclosure of selected relevant parts of the materials.

Thus I initiated conversations with the Attorney General's Office, Special Prosecutor Jaworski, with attorneys for certain litigants seeking disclosure, and with Herbert J. Miller, as soon as he became attorney for Mr. Nixon.

The purpose of these conversations was to explore ways for reconciling these different interests in records of the previous Administration so that this Administration would not be caught in the middle of trying on a case-by-case basis to resolve each dispute over the right of access or disclosure.

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The outcome of these conversations was the conclusion on my part that Mr. Nixon, as the principal party in interest, should be requested to come forth with the proposal for dealing satisfactorily with Presidential material of his Administration in ways that offered reasonable protection and safeguards to each party who has a legitimate court-supported right to production of particular materials relevant to his case.

Mr. Nixon and his attorney then agreed to pursue this approach and in company with White House Counsel, they were able to accomplish the second of the developments which I am announcing today.

And that is the letter agreement, of which you have copies, between former President Nixon and Arthur F. Sampson, Administrator of the General Services Administration.

These two developments are, of course, much less significant than the one you have learned about earlier. President Ford has chosen to carry out a responsibility expressed in the Preamble to the Constitution of ensuring domestic tranquility, and has chosen to do so by exercise of a power that he alone has under the Constitution to grant a pardon for offenses against the United States.

About a week ago, President Ford asked me to study traditional precedents bearing on the exercise of his right to grant a pardon, particularly with reference to whether or not a pardon could only follow indictment or conviction. The answer I found, based on considerable authority, was that a pardon could be granted at any time and need not await an indictment or conviction.

President Ford also asked me to investigate how long it would be before prosecution of former President Nixon could occur, if it were brought, and how long it would take to bring it to a conclusion.

On this point, I consulted with Special Prosecutor Jaworski and he advised me as follows, and has authorized me to quote his language, and I quote:

"The factual situation regarding a trial of Richard M. Nixon within Constitutional bounds is unprecedented. It is especially unique in view of the recent House Judiciary Committee inquiry on impeachment, resulting in a unanimous adverse finding to Richard M. Nixon on the article involving obstruction of justice.

"The massive publicity given the hearings and the findings that ensued, the reversal of judgment of a number of Members of the Republican Party following the release of the June 23rd taperecording, and their statements carried nationwide. And, finally, the

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resignation of Richard M. Nixon require a delay before selection of a jury is begun of a period from nine months to a year, and perhaps even longer.

"This judgment is predicated on a review of the decisions of the United States courts involving prejudicial pre-trial publicity."

Q Is that the end of the quotes?

MR. BUCHEN: No, I am going on to indicate something else that will be of interest to you. That is the end of that quote.

Another quote from his communication to me is as follows: "The situation involving Richard M. Nixon is readily distinguishable from the facts involved in the case of United States versus Mitchell, et al, set for trial on September 30th.

"The defendants in the Mitchell case were indicted by a grand jury operating in secret session. They will be called to trial, unlike Richard M. Nixon, if indicted, without any previous adverse finding by an investigatory body holding public hearings on its conclusions."

That is the end of the quotation.

Q Would you end that last sentence again?

MR. BUCHEN: Yes. It is an important one. "They," meaning the defendants, "will be called to trial, unlike Richard M. Nixon, if indicted, without any previous adverse finding by an investigatory body holding public hearings on its conclusions."

Except for my seeking and obtaining this advice from Mr. Jaworski, none of my discussions with him involved any understandings or commitments regarding his role in the possible prosecution of former President Nixon, or in the prosecution of others.

President Ford has not talked with Mr. Jaworski, but I did report to President Ford the opinion of the Special Prosecutor about the delay necessary before any possible trial of the former President could begin.

I would also like to add on another subject, no action or statement by former President Nixon, which has been disclosed today, however welcome and helpful, was made a pre-condition of the pardon.

That is a negative because of the word "no" at the beginning. I might add that whether or not it was disclosed today, it was not a pre-condition.

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Q There were no secret agreements made?

MR. BUCHEN: That is right.

President Ford in determining to issue a pardon acted solely according to the dictates of his own conscience. Moreover, he did so as an act of mercy not related in any way to obtaining concessions in return.

Q Would you go over the last phrase?

Q After "mercy".

MR. BUCHEN: Mercy not related in any way to obtaining concessions in return. However, my personal view --

Q Is that yours or Ford's?

MR. BUCHEN: Mine. -- is that former President Nixon's words, which I have had a chance to read, as you have, that followed the granting of a pardon, constitute a statement of contrition which I believe will hasten the time when he and his family may achieve peace of mind and spirit and will much sooner bring peace of mind and spirit to all of our citizens.

Q Would you review that sentence?

MR. BUCHEN: Yes.

However, my personal view -- these are my own words -- is that former President Nixon's words expressed upon his learning of the pardon, constitute a statement of contrition which I believe will hasten the time when he and his family may achieve peace of mind and spirit and will much sooner bring peace of mind and spirit to all of our citizens.

Now I have only one other paragraph that I would like to bring out in conclusion. I want to express for the record my heartfelt personal thanks and appreciation to a dear friend of the President's and of mine. He is Benton Becker, a Washington attorney, who has served voluntarily as my special and trusted consultant and emissary in helping to bring about the events recorded today.

Q Emissary to Mr. Jaworski or Mr. Nixon?

MR. BUCHEN: To Mr. Miller and Mr. Nixon, not to Mr. Jaworski.

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I also acknowledge with deep gratitude the services of William Casselman, II; who is the highly valued counsel -- who was the highly valued counsel to Vice President Ford for his whole tenure in that office, and is now my close associate in the service of the President of the United States.

Q Who informed President Nixon that he was getting a pardon, and also is President Ford basing this pardon only on the fact that it would have taken a long time to try the Presidency in his own conscience?

MR. BUCHEN: Let me take the first question first.

When Mr. Becker went to San Clemente on Thursday evening, he was authorized to advise the former President that President Ford was intending to grant a pardon, subject, however, to his further consideration of the matter because he wanted to reserve the chance to deliberate and ponder somewhat longer, but he was authorized to say that in all probability a pardon would be issued in the near future.

The second question?

Q The second question is: There is no admission of guilt here at all and despite your assumptions that it is contrition, there is no actual admission of guilt. Do you agree?

MR. BUCHEN: Well, my interpretation is that it comes very close to saying that he did wrong, that he did not act forthrightly.

Q Mr. Buchen, what is the linkage between the agreement between Mr. Sampson and Mr. Becker's negotiations at San Clemente?

MR. BUCHEN: The initiative for getting an agreement that would help solve our problems came from me and I advised Mr. Miller as attorney for Mr. Nixon that that was my desire. I so advised him before I knew anything about a contemplated pardon.

Q Mr. Buchen --

MR. BUCHEN: May I finish, please?

However, as we pursued talks on what to do with the papers, I made it very clear to Mr. Miller that I wanted the initiative to come from him and his client as to the specifics of what he and his client would be willing to do regarding the management and ultimate disposition of the papers and tapes.

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Q Mr. Buchen, what will this mean as far as former President Nixon's role as a witness in the upcoming trials are concerned?

MR. BUCHEN: It would have no effect on that. If the documents do get transferred in a timely fashion, it may permit him to review the pertinent material more adequately so far as his testimony is concerned.

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Q Mr. Buchen, doesn't this pardon eliminate any possibility that the former President might invoke the Fifth Amendment to testify?

MR. BUCHEN: I think you better ask his own lawyer that. As you know, this applies only to offenses against the United States. It does not apply to possible offenses against State law.

Q But regarding offenses against the United States, he would have no Fifth Amendment rights now that he has been pardoned; is that correct?

MR. BUCHEN: I don't know that you can separate them when you plead.

Q Mr. Buchen, why did the President decide to do this now at a time before the jury has been sequestered in the September 30th trial?

MR. BUCHEN: That will have to be information that will have to come from his statement. I have nothing to add.

Q Can you tell us if the President has assured himself that former President Nixon is not guilty or liable to accusation of any very serious charges that have not been made public so far, that there is no other time bomb ticking away?

MR. BUCHEN: I don't think he said that.

Q No, no, I am saying, has President Ford done anything to assure himself that there is no evidence of any more serious criminality committed by former President Nixon than what is generally out in the House Judiciary Committee report and this sort of thing?

MR. BUCHEN: So far as I know, he has made no independent inquiries. If he had wanted to satisfy himself as to the content of the evidence still in the White House, of course, that would have been an insurmountable task, as you have no idea of the huge volumes.

Q Did you assure yourself --

MR. BUCHEN: Just a minute. There are huge volumes. However, I did personally consult with Mr. Jaworski as to the nature of the investigation being conducted and I was able to tell the President that so far as I was able to learn through that inquiry, there were no time bombs, as you call them.

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Q Mr. Buchen, what was the President's reaction when Mr. Becker conveyed this message to him?

MR. BUCHEN: I don't know that it was done in person. I don't think he was necessarily in the room, so I don't believe he can --

Q Did you get any reaction from the President, even if it was by mail or through counsel, did the President say he was grateful for this?

MR. BUCHEN: The only reaction we have gotten is the statement that came over the wire.

Q Are you saying that Ziegler got the word from Becker and that President Nixon was not informed personally at any time by Ford or by any emissary?

MR. BUCHEN: I think you will have to ask Mr. Becker that. My understanding is that initially the talks went through Mr. Ziegler, but there were also face-to-face meetings between Mr. Becker and the President and what occurred by one method, and one by the other, I don't know.

Q There was no personal contact between Ford and Nixon?

MR. BUCHEN: None at all.

Q You refer to Becker as an emissary and you talk about one meeting out there Thursday to notify him. What were the reasons for his previous trips back and forth? What was discussed?

MR. BUCHEN: Becker only went once.

Q Only on Thursday?

MR. BUCHEN: Yes. And not only to discuss that, they had to work out the details of that letter agreement because Miller and Becker were in negotiation and Miller had to consult his client and they had to make modifications. And they had to call back to see whether that fit in correctly with what General Services Administration could feasibly do. So, that involved a lot of the time he was out there.

Q Mr. Buchen, did Mr. Jaworski inform you that an indictment, or indictments, against former President Nixon were expected?

MR. BUCHEN: No, he did not.

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Q May I follow that, then? Isn't the granting of a pardon at this stage an admission that an indictment was expected and that conviction was probable?

MR. BUCHEN: I think you have to recall that word came out that the Grand Jury at one time wanted to name the former President, or then President, as a co-conspirator and that is one evidence that something more would have happened.

And I think it is very likely, from all we have read, that there would be people who would want him prosecuted and would intend to do so, although I don't say that that was Mr. Jaworski's view.

Q Was Mr. Jaworski ever consulted about this pardon, ever asked about this?

MR. BUCHEN: No.

Q Did Jaworski agree to what was done today?

MR. BUCHEN: He has no voice in it.

Q Do you know what his mood or sentiment was?

MR. BUCHEN: You will have to ask him. I want to get to Peter, here.

Q I wanted to follow up that line. You know we are not able to get a response from Mr. Jaworski's office and it would really help us for you to tell us all you can about the status of the investigation against the President, former President Nixon?

MR. BUCHEN: I don't have that information, Peter. That is kept in his shop.

Q But in that regard, why was he not consulted about what kind of action he contemplated against the President before the pardon was issued?

MR. BUCHEN: We didn't think that was relevant.

Q You assumed he would be prosecuted; is that right?

MR. BUCHEN: We assumed that he may be prosecuted.

Q When was Jaworski told?

MR. BUCHEN: About the pardon?

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Q About the pardon.

MR. BUCHEN: I called him about three-quarters of an hour before I knew the President was going to announce it so that he would know it.

Q Today?

MR. BUCHEN: Yes.

Q What was his reaction?

Q When was that?

MR. BUCHEN: He thanked me for advising him in advance of his hearing it over the radio or TV.

Q And he did not object?

MR. BUCHEN: He didn't. He didn't say anything one way or the other.

Q As we read this statement, which does not admit guilt whatsoever, what is to prevent the former President from going out, say six months hence, and saying that nothing was really ever proven against him and he was hounded out of office?

MR. BUCHEN: I guess he has the right to say that because, until an indictment and conviction, I think that would be true in his case as well as anybody else's case who is under a cloud of suspicion.

Q But President Ford spoke of the historical aspects of this and what is going to keep history from getting more muddled than ever?

MR. BUCHEN: I think the historians will take care of that.

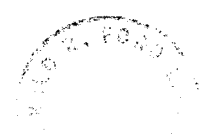
Q Mr. Buchen, does President Ford plan to grant a similar pardon to the former President's subordinates who are scheduled to go on trial later this month?

MR. BUCHEN: To my knowledge, he has not given that matter any thought.

Q Can you clarify, was the agreement reached with the GSA about the disposal of the tapes and documents? Was the pardon contingent on that?

MR. BUCHEN: Neither.

MORE



Q They are not together?

MR. BUCHEN: Right.

Q Number two, why did he choose 10:30, Sunday morning, to make the announcement?

MR. BUCHEN: I think you will have to ask him that. He figured that this was a very solemn moment that exemplified, I think, an act that was one of high mercy and it seemed appropriate, I think, to him that it should occur on a day when we do have thoughts like that, or should.

Q Mr. Buchen, I don't understand why you contrast the treatment of Nixon with the treatment of Mitchell coming up. If I understand your statement right, you said that Mitchell has not had the publicity and the action by a hearing as Nixon had before the House Judiciary Committee.

MR. BUCHEN: That was Mr. Jaworski's statement. That was not mine.

Q I don't understand this and maybe you can explain what you think he means there. Mitchell certainly had the hearing with conclusions and explanations of conclusions of a hearing by the Watergate Committee.

MR. BUCHEN: There was a hearing, but I don't know how conclusive the findings were.

Q There was a hearing and Mitchell testified. There was a public hearing and there were conclusions and recommendations on that, and a press conference on that, and great publicity.

MORE



MR. BUCHEN: I would judge that Mr. Jaworski does not find those conclusions prejudicial to Mr. Mitchell's upcoming case.

Q Mr. Buchen, the President, in his statement this morning, referred to this matter threatening the former President's health. Do you have any further details on that? Do you know anything about the former President's health that we don't?

MR. BUCHEN: No, I didn't go out there, so I didn't see the man.

Q Do you know what he meant by that?

MR. BUCHEN: I think it is generally known that this man has suffered a good deal. I think you people who saw him more recently than I have can form your own conclusions.

Q Has Mr. Ford and Mr. Nixon talked this morning?

MR. BUCHEN: No, not to my knowledge, but I do not believe they did.

Q Do you know, was the President in a depression and has the President threatened to commit suicide or anything like that?

MR. BUCHEN: I have no knowledge.

Q You say that you looked into this matter from a constitutional standpoint for the President, and I am sure you looked into the history of it. Has any President ever granted a pardon before in history to anyone prior to that person being charged with a crime formally?

MR. BUCHEN: Oh, yes, there are lots of precedents for that.

Q Like what?

MR. BUCHEN: Well, one of your colleagues, named Mr. Burdick, was pardoned before he was asked to testify regarding some alleged criminality involving the Customs Service during the Wilson Administration and he was given a pardon.

Q He was a newsman?

MR. BUCHEN: He was a newsman.

And, of course, the pardons granted by President Lincoln, for example -- the pardons granted after the Whiskey Rebellion and other insurrections, were applied to people who were not indicted.

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Q Mr. Buchen, I am a little confused at your words, more or less dismissing the question of whether or not the President would grant pardons to Mr. Haldeman, Mr. Ehrlichman, Mr. Mitchell and the others who will go on trial September 30th. Is it not fairly clear to you, or at least do you not, here in the White House, admit the possibility that their defense now, in light of the action of President Ford today, will be that the President has pardoned the man under whose orders they were operating and what is your reaction to this possible line of defense or line of appeal by the defendants in that trial?

Surely, this must have been given some consideration and I again would ask you what you think is going to happen, what you think the President would do when confronted with this question?

MR. BUCHEN: Well, I question your broad characterization that the acts for which they are being charged were necessarily --

Q I am just suggesting this may be their defense.

MR. BUCHEN: This may be their defense. Now, that will become Mr. Jaworski's problem and, of course, the judge's problem. You have already seen that Mr. Jaworski apparently assumes that the situation in their case is far different from the situation in the former President's case.

Q Phil, can I ask you this: Did this process that led up to the pardon today start a week ago when the President came to you?

MR. BUCHEN: Yes.

Q Was there something that happened just prior to his coming to you that got his interest working in doing this thing just now?

MR. BUCHEN: If there was, I don't know what it was, Ron.

Q Have they talked on the phone at any time this week, or immediately prior to this week?

MR. BUCHEN: They have not talked on the phone since Jack Miller became his attorney.

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Q Did this process start after last Sunday's publication of the Gallup poll that said that the majority of the public wanted to see Mr. Nixon prosecuted?

MR. BUCHEN: Let me figure my dates. That was Labor Day week-end, was it? I worked all Labor Day week-end so it came before that.

Q To what extent did the transition team look ahead to the problem of a pardon, and have you done any work at all --

MR. BUCHEN: They didn't consider that. They had far too much else to consider.

Q As a matter of equal justice under law, we have now had the two top officials of the United States, both allegedly involved in crimes, namely, Vice President Agnew and Mr. Nixon, who have been freed of criminal charges. Both of them are entitled to go around the country and represent themselves as being innocent. What is a citizen to make of that situation when ordinary criminals, including the aides involved in this, have to be tried?

MR. BUCHEN: Of course I cannot speak at all for the treatment of former Vice President Agnew because this Administration was not in any way involved. But I think you have to understand -- and maybe it is a good time on Sunday to think about it -- that there is a difference between mercy and justice.

I don't think that you can assume that mercy is equally dispensed or how it could be equally dispensed.

Q Mr. Buchen, is there any pardon being considered for the aides who performed their acts allegedly in the name of and in behalf of Richard Nixon?

MR. BUCHEN: I have already spoken to that question.

Q I don't think you have, Mr. Buchen. I am actually talking about those now in prison, not Mr. Nixon. John Dean and others?

MR. BUCHEN: So far as I know, no thought has been given to that.

Q Mr. Buchen, is it now possible under the agreement on the custody of Presidential tapes and papers for any tape made during the Nixon Administration to be subpoenaed even though it is not now the subject of a subpoena?

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MR. BUCHEN: It is possible. In order to get a subpoena, or court order, of course, certain showings would have to be made. It is also possible, of course, for the owner of the tapes to interject objections.

Q A follow up to that. If the owner of those tapes doesn't want to give them up -- he has now been pardoned of everything -- what is the leverage?

MR. BUCHEN: It doesn't affect the court orders or subpoenas, and he is subject to the consequences of not obeying a valid court order or subpoena.

Q In other words, that would come under the expiration date of August 9 in the pardon; is that right?

MR. BUCHEN: That is right.

Q Do you feel the agreement with Mr. Sampson has insured that the Ford Administration cannot be implicated in any Watergate cover-up? Was that one of your considerations?

MR. BUCHEN: That was not involved because I don't think that is a relevant issue.

Q Is there any change in the rules of access to documents by former White House aides?

MR. BUCHEN: The problem is that there would, of course, be an interim before the Nixon-Sampson letter agreements can be fully implemented. How we will handle the interim arrangements, I am sure can be worked out with Jack Miller as attorney for Mr. Nixon.

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Q As you recall, in the Agnew case, a paper prepared by the Justice Department listing the law violations by the former Vice President was presented in court on the theory that the American people were entitled to have the full story in addition to the specific charge to which the former Vice President pleaded?

In President Ford's preparation for today, what thought did he give to the presentation of an analysis by Special Prosecutor Jaworski of the full extent of President Nixon's role in the Watergate case, and is there any understanding at this point of eliminating Special Prosecutor Jaworski's ability to pursue that type of investigation?

MR. BUCHEN: There is no limitation on what Mr. Jaworski can do except, of course, the putative defendant has the defense now of pardon.

On the first part of your question, there is a distinct difference between asking a man to plead guilty to a limited offense and the treatment of Mr. Agnew, of course, was done under very different circumstances by the system of justice. In this case, it was reliance entirely on the pardon powers which involve acts of mercy.

Q You said earlier that you had assumed that Mr. Nixon may have been prosecuted, is that as far as you are willing to go on that issue? Did you all think it was likely that he would be prosecuted?

MR. BUCHEN: If you mean tried or indicted?

Q Indicted?

MR. BUCHEN: I think it would be very likely that he would be indicted. How and when he could be tried was still an open question.

Q This likelihood, is that on the strength of your conversation with Mr. Jasorski that you think it was very likely?

MR. BUCHEN: No, it was largely on the basis of what the Grand Jury apparently intended to do on the basis of less evidence than is now available.

Q Mr. Buchen, if the ex-President retains the sole right of access to the documents and as I understand this GSA agreement, can even limit access by the Archivist of the United States and his staff, why should the United States remain as custodian of the documents at all?

MORE

MR. BUCHEN: There is a double-key arrangement. In other words, access can't be obtained by either the former President or the General Services Administration except by their concurrent acts.

Q But he could conceivably, to prevent himself from embarrassment, limit access -- no one could see these documents during the three years the United States agrees to act as custodian.

MR. BUCHEN: Unless there is a court order or subpoena.

Q What about the court orders or subpoenas that are outstanding?

MR. BUCHEN: We will have to take this agreement to the courts involved in those proceedings and seek relief from the present processes and subpoenas on the basis of the current agreement.

Q Mr. Buchen, did you and the President give much consideration to the fact that a criminal trial could have cleared Mr. Nixon of the charges of possible guilt, could have cleared him, cleared his name?

MR. BUCHEN: We certainly recognized that as a possibility. Whether it was given any consideration, I don't know.

Q I mean by you or the President?

Q Well, you were there. What was your own view?

MR. BUCHEN: My own view is that that was a possibility. If that was what the former President wanted to do, he certainly would have told us. He didn't have to accept the pardon.

Q Did you recommend the pardon?

MR. BUCHEN: I had nothing to do with recommending it or disrecommending it.

Q Did you ever discuss the political implications of this pardon with the President?

MR. BUCHEN: I did not.

Q Mr. Buchen, to follow up on some of these other questions, it seems that President Ford has an interest in building into the public record a record of Mr. Nixon's alleged criminality for the same reasons that Mr. Agnew's alleged criminality was made a part of the record, to prevent him from saying that he was driven out by political opponents, et cetera. Is President Ford satisfied that former President Nixon's record of wrongdoing is sufficiently in the public record now?

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MR. BUCHEN: All I can tell you is that he knows nothing that you don't know.

Q Mr. Buchen, does the pardon in any way affect Mr. Nixon's payment of back income taxes?

MR. BUCHEN: Not at all. This does not apply to civil liabilities.

Q Let's get back to this double-key arrangement. This is just so much lawyer's language.

MR. BUCHEN: I know that is complicated.

Q Does that double-key arrangement prevent the President from going in there and destroying some of those tapes if he wanted to?

MR. BUCHEN: Yes, it does.

Q So, there is adequate safeguards?

MR. BUCHEN: Yes.

Q Does it mean that if any of those tapes are subpoenaed and he just refuses to honor those subpoenas, then what would happen?

MR. BUCHEN: He would be subject to contempt of the court that issued the subpoenas. It doesn't apply to any future acts.

Q When will the tapes be physically moved to this repository in California or are they going to remain here?

MR. BUCHEN: No, they will be moved to the California repository as soon as we can get rid of, or modification of the existing orders that require they be retained here.

Q Is that that Laguna Niguel pyramid they will be put in?

MR. BUCHEN: Yes.

Q But nobody can get in there by themselves. There will always be somebody to watch; is that correct?

MR. BUCHEN: Yes.

Q When you say "current", are you referring to the two court orders that are pending?

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MR. BUCHEN: There are at least three court orders that I know of. One is in the Wounded Knee case in Minnesota. Another is in the nature of an order because the court declined to issue the order on the assurance that documents or tapes could not be moved, and that is the case involving the networks. So, you can get Ron to answer your questions on that.

The third one is the civil suit in North Carolina involving a suit by people kept out of a meeting to celebrate Billy Graham Day.

Q Mr. Buchen, Mr. Jaworski has, of course, in his possession a considerable number of tapes which are not the originals. They are copies. This agreement with Mr. Sampson does not affect that, does it? They don't have to be returned to the mass to be moved out to Laguna?

MR. BUCHEN: The copies will be disposed of as the court orders, I assume.

Q But this does not require them to be returned to the big group?

MR. BUCHEN: No.

Q Can I clarify the chronology of all this? When is the first time the President indicated to you he might want to pardon Mr. Nixon?

MR. BUCHEN: Just at the start of the Labor Day weekend.

Q On which day?

MR. BUCHEN: I know I started to work Friday night, so it must have been Friday.

Q Did you have any contact with Mr. Miller on the issue of a pardon?

MR. BUCHEN: Not at that time. The first contact, I think, was on Thursday of this week.

Q And you can't suggest what precipitated the President's interest?

MR. BUCHEN: I do not know.

Q Can you tell us whether the President ever tried to -- I hesitate to use "extract" -- but get any admission of guilt from the President, or was it strictly --

MR. BUCHEN: He did not.

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Q Mr. Buchen, you said that President Ford has not talked to former President Nixon since Mr. Nixon retained Miller. Could you tell us the last time President Ford had contact with President Nixon, direct contact?

MR. BUCHEN: I don't know. I think it may have been the time of the Rockefeller appointment.

Q Mr. Buchen, I am not clear on one thing, and following up Helen's question, your emissary went out on that Thursday, Mr. Becker went out on Thursday, that was the only time he went out. I am trying to get clear in my mind precisely what it was he told the former President, or told Mr. Ziegler, and both of them at different times, that President Ford, in all probability would grant a pardon. What did he ask either of Mr. Nixon or Mr. Ziegler? What did he ask that Mr. Nixon do? Did he ask that this statement we have been given today be issued? Did he suggest wording and what it should say or did he ask for nothing? Did he ask for more than what we got in this statement?

You say at one point the former President could have turned down the pardon.

MR. BUCHEN: Yes.

Q Did he offer that option and did he say if the pardon was to be granted, what the former President then should do?

MR. BUCHEN: The former President was represented by counsel, you know.

Q Well, did he make the offer to Mr. Miller?

MR. BUCHEN: Mr. Miller is shrewd enough attorney to know that he could have advised his client to accept or reject the pardon.

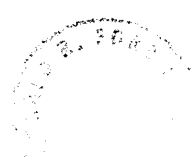
To answer your other question, as you can see, that letter agreement is a very complicated one and it involved a lot of practical problems. Before Miller and Becker went out, a rough draft of Miller's proposal was in our hands. But it was obvious that we could not work out the details of what would suit Miller's client and what would suit GSA and what would suit what we thought was the best interests of the Government and of the potential other parties in interest without going out and making the final draft out there. And that was done.

As far as the statement from the former President is concerned, that was a matter that was left entirely up to the discretion of his own counsel and his own advisers.

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Q Let me see if I can put it another way, Mr. Buchen. Was the pardon in any of the conversations involving yourself, Mr. Becker, or anyone else, with anyone representing the former President, was this pardon contingent on anything?

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MR. BUCHEN: I have said no and I repeat no.

Q Are you saying if he had not given this letter at all, if he had said, "Well, I will make no letter agreement," are you saying categorically that a pardon would have been issued anyway?

MR. BUCHEN: I am not sure because President Ford could have changed his mind or not made up his mind finally.

Q When was the package completed that was announced today?

MR. BUCHEN: We got the agreement back on early Saturday morning and spent that day reviewing it with Mr. Sampson so that was wound up.

Q You mean yesterday morning?

MR. BUCHEN: Yes, yesterday morning. The statement, of course, we didn't see until we got it over the wires right after the speech.

Q Did the President know there was going to be a statement before he finally decided on the pardon?

MR. BUCHEN: Yes.

Q Did he have any idea what the contents would be, what the tone would be?

MR. BUCHEN: In a general way, yes.

Q You are saying that the pardon had nothing to do with this letter agreement?

MR. BUCHEN: That was not a condition.

Q This was a completely independent action?

MR. BUCHEN: Right. The negotiations for that agreement were started independently before even consideration of a pardon.

Q The decision to pardon was not made until after this agreement was obtained?

MR. BUCHEN: That is right.

Q What you are saying, you cannot say there would have been a pardon if the agreement had not been made?

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MR. BUCHEN: All I can say is that the President had the right not to grant a pardon because he had not finally made up his mind to do so.

Q When did he make up his mind to do so?

MR. BUCHEN: I suppose until that pen got on paper or until he started making the statement.

Q He made his decision after the agreement was made?

MR. BUCHEN: That is correct, but what went on in his mind, I don't know.

Q When did he write the speech?

MR. BUCHEN: Last night.

Q In sending this word through the emissary to Mr. Nixon that he was thinking of or expected to pardon him but was reserving time judgment, was that in any way intended as encouragement to Mr. Nixon to get on with the final agreements and possibly offer the kind of a statement that he did offer today?

MR. BUCHEN: That was not the intent. If it created that impression, it was a wrong impression.

Q Mr. Buchen, you just said that the President had an indication in a general way of content of the former President's statement. If I may ask a two-part question: How did he obtain this indication, and did he believe, or was he informed, that the statement would be one of contrition?

MR. BUCHEN: The report was through the mouth of Benton Becker, and the characterization of it as an act of contrition is mine.

Q Excuse me, then. What general feeling did the President have that the statement would be, what indication did he have of what the statement would be? How was it characterized by Mr. Becker?

MR. BUCHEN: He in general told the President what it amounts to and in particular called attention to the fact that there would be an acknowledgement of failure to act decisively and forthrightly on the matter of the Watergate break-in after it became a judicial proceeding.

Q Was that negotiated at all?

MR. BUCHEN: It was not negotiated.

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Q Was Mr. Becker informed of that on Thursday at the time he went out there?

MR. BUCHEN: I think he was informed on Friday because he got out there very late on Thursday night.

Q Do you know if that information had any effect on Mr. Ford's decision?

MR. BUCHEN: I don't know. I am sure it pleased him and made him feel that it was easier for him to act as he contemplated doing.

MR. BUCHEN: We will take three more questions.

Q Would you please clear up some things about this letter of agreement. I am sorry, but it will take me some time to understand it. Let me see here if this is what it means. Unless there is a subpoena or a court order which Mr. Nixon would reply to, any ordinary citizen of the United States, or any officials, outside of Sampson, could not just go in there and look at these tapes or listen to them, or see them at any time. They will be shut off completely to the public?

MR. BUCHEN: That is right.

Q Mr. Buchen, why is the date of July 1969 mentioned in the pardon?

MR. BUCHEN: It is January, the date of inauguration, January 20. President Ford misspoke when he used the word "July".

Q How complete was your explanation of the case against the former President by Mr. Jaworski? Did he go into what areas that he might be pursuing, what he heard on the tapes that have not been made public? Anything like that?

MR. BUCHEN: The question asked him what matters could arguably involve further steps, and it read like a list from one of your newspapers.

Q Did Mr. Becker talk strictly with you or did he ever speak to Mr. Ford? Did he deal strictly with you?

MR. BUCHEN: Oh, no; he was also in the room on occasions when I was speaking to the President.

Q Why did he pick Becker to do this?

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MR. BUCHEN: Part of the problem, as you may know, is we have a rather understaffed legal staff here and Mr. Becker is a man of rare talent that helped during the confirmation hearings of the Vice President, and he is such a good and trusted friend of both of ours that we felt he was the one we should call on.

THE PRESS: Thank you.

MR. BUCHEN: All I am going to say is, for the tapes there will be two five-year windows. The first of the five-year windows involves controlled access by the former President for his listening to copies of tapes, copies to be made by an operator who himself does not listen to the originals.

Also, during the first five-year window, anyone with a legitimate court subpoena or order that is upheld can have access or can require the former President to furnish the information contained on relevant portions of the tapes.

At the end of that first five-year period, the former President retains his window, but also can order selective destruction of tapes. At the end of the ten-year period, they all get destroyed, all that remain.

Q In the second five-year window, is that just by persons who have legitimate subpoenas and court orders closed off?

MR. BUCHEN: That is right, because there is a five-year statute of limitations on most, in fact on all, Federal offenses and most civil matters, so it is assumed the initial five-year window is long enough.

Q What is the limit on destruction after five years plus one day, or can he destroy them all?

MR. BUCHEN: He can.

Q He can?

MR. BUCHEN: He can order them destroyed.

Q If they were making any copies, would the originals then be destroyed in the second five-year window?

MR. BUCHEN: The originals will be destroyed. The copies will be destroyed immediately after they are used.

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Q And he could do it after five years and one day for everything?

MR. BUCHEN: Right.

Q Now can you go then from there to the documents?

MR. BUCHEN: The documents are a different category. There is no present gift of documents as distinguished from the tapes. However, there is a three-year period when there will be controlled access by the owner of those documents requiring the double-key arrangement with the General Services Administrator. And the former President is under obligation to respond to any subpoena involving documents, just as he is to those involving tapes.

During the three-year period involving documents, the former President will be under obligation to respond to subpoenas involving those documents. At any time, the former President can designate certain documents by description to become the absolute property of the United States.

However, after the three-year period, he may either elect to complete his gifts or to withdraw materials as he desires. These are documentary materials.

Q Why the three-year limit?

MR. BUCHEN: We felt that as a practical matter on the documentation that would be long enough. It gives everybody a warning. Obviously if there is a subpoena out that was obtained in the three years and the matter of its resolution has not been concluded, the subpoena would prevail.

Q Can you destroy the documents after three years?

MR. BUCHEN: Yes, if he wants to withdraw them.

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Q By the way, Mr. Buchen, I may be wrong in what I am about to say, but I am going to predicate a question on it, nevertheless.

I am under the impression that the tapes, as opposed to documents, the tapes were -- that things such as taperecordings were not covered when Congress covered that loophole and for that reason, the former President could donate those tapes to the Government and claim a tax exemption.

Your second window, the ten-year time for destruction appears to rule that out; is that right?

MR. BUCHEN: He has already given them to the U.S. Government to be a gift effective at the end of the 5-year period.

Q After he destroys them all?

MR. BUCHEN: He can't destroy them during the first five-year period.

Q He has given them as a gift to the United States -- we are talking about tapes now -- he has given them as a gift to the United States for five years; is that right?

MR. BUCHEN: No, it is the other way around. He has retained title for five years and the gift takes effect at the end of the fifth year.

Q But he can destroy his gift?

MR. BUCHEN: He doesn't have access to them.

Q But he can the next day. Didn't you say five years and one day he could destroy them all?

MR. BUCHEN: He can order their destruction.

Q What can he do with the copies? Can he dispose of them for his own purpose?

MR. BUCHEN: No, the copies will go back into the hands of the General Services Administrator and they will be destroyed after he has listened to them.

Q Mr. Buchen, after the ten-year period, is it mandated that the tapes, all tapes and all copies be destroyed?

MR. BUCHEN: That is a condition.

MORE



Q So, his gift in the second five years is a limited gift, in time it is a limited gift, say limited to five years; is that right?

MR. BUCHEN: No.

Q You say he has given them to the United States?

MR. BUCHEN: Effective five years from now.

Q Why are they going to be destroyed after five years?

MR. BUCHEN: Well, maybe they never should have been made in the first place. This was his desire and I think it is consistent with the fact that these matters do involve conversations with people who had no realization that their voices were being recorded.

As an old spokesman for the right of privacy, I think there is considerable merit for putting these in a separate category from documents.

Q Mr. Buchen, was any consideration given to the right of history?

MR. BUCHEN: I am sure the historians will protest, but I think historians cannot complain if evidence for history is not perpetuated which shouldn't have been created in the first place.

Q Is there anything he can keep, or intends to keep?

MR. BUCHEN: I am sure there are items in the documents that he would intend to keep. Of course, it would involve family letters, things of a highly personal nature.

Q Mr. Buchen, if it is Mr. Nixon's desire to destroy the tapes after ten years, would it not be logical to assume he will destroy them after five years?

MR. BUCHEN: That is his option, order them destroyed.

Q What about the gift option? The tax deduction option?

MR. BUCHEN: I am not his tax lawyer and it seems to me if you give a gift with instructions that the items have to be destroyed, that the gift immediately loses its value, so I would think it would be very questionable.

MORE

Q What about the President, though? Could
he --

MR. BUCHEN: They will not be perpetuated
beyond the limited use.

Q Does the word "copies" include written
transcripts as well as the originals?

MR. BUCHEN: Yes.

Q As a practical matter, at the end of
five years, then all the tapes will be destroyed except
those under subpoena?

MR. BUCHEN: No, because he reserves the right
to keep the window open for himself for another five years?

Q Just the President, no public?

MR. BUCHEN: That is right.

Q Is it a question they can be destroyed
in five years, but must be destroyed in ten years?

MR. BUCHEN: They can't be destroyed short of
five years.

Q Mr. Buchen, Prosecutor Jaworski gave no
indication that he objected to the pardon. Is it your
impression that he sort of feels relieved?

MR. BUCHEN: Wouldn't you if you were in his
place?

THE PRESS: Thank you.

END

(AT 1:28 P.M. EDT)

September 8, 1974

Office of the White House Press Secretary

THE WHITE HOUSE

GRANTING PARDON TO RICHARD NIXON

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Richard Nixon became the thirty-seventh President of the United States on January 20, 1969 and was reelected in 1972 for a second term by the electors of forty-nine of the fifty states. His term in office continued until his resignation on August 9, 1974.

Pursuant to resolutions of the House of Representatives, its Committee on the Judiciary conducted an inquiry and investigation on the impeachment of the President extending over more than eight months. The hearings of the Committee and its deliberations, which received wide national publicity over television, radio, and in printed media, resulted in votes adverse to Richard Nixon on recommended Articles of Impeachment.

As a result of certain acts or omissions occurring before his resignation from the Office of President, Richard Nixon has become liable to possible indictment and trial for offenses against the United States. Whether or not he shall be so prosecuted depends on findings of the appropriate grand jury and on the discretion of the authorized prosecutor. Should an indictment ensue, the accused shall then be entitled to a fair trial by an impartial jury, as guaranteed to every individual by the Constitution.

It is believed that a trial of Richard Nixon, if it became necessary, could not fairly begin until a year or more has elapsed. In the meantime, the tranquility to which this nation has been restored by the events of recent weeks could be irreparably lost by the prospects of bringing to trial a former President of the United States. The prospects of such trial will cause prolonged and divisive debate over the propriety of exposing to further punishment and degradation a man who has already paid the unprecedented penalty of relinquishing the highest elective office in the United States.

NOW, THEREFORE, I Gerald R. Ford, President of the United States, pursuant to the pardon power conferred upon me by Article II, Section 2, of the Constitution, have granted and by these presents do grant a full, free, and absolute pardon unto Richard Nixon for all offenses against the United States which he, Richard Nixon, has committed or may have committed or taken part in during the period from January 20, 1969 through August 9, 1974.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of September in the year of our Lord nineteen hundred seventy-four, and of the Independence of the United States of America the one hundred ninety-ninth.

GERALD R. FORD

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FOR IMMEDIATE RELEASE

SEPTEMBER 8, 1974

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

THE WHITE HOUSE

REMARKS OF THE PRESIDENT
ANNOUNCING THE GRANTING OF A PARDON
TO FORMER PRESIDENT NIXON

THE OVAL OFFICE

11:05 A. M. PDT

Ladies and gentlemen, I have come to a decision which I felt I should tell you and all of my fellow American citizens, as soon as I was certain in my own mind and in my own conscience that it is the right thing to do.

I have learned already in this office that the difficult decisions always come to this desk. I must admit that many of them do not look at all the same as the hypothetical questions that I have answered freely and perhaps too fast on previous occasions.

My customary policy is to try and get all the facts and to consider the opinions of my countrymen and to take counsel with my most valued friends. But these seldom agree, and in the end, the decision is mine. To procrastinate, to agonize and to wait for a more favorable turn of events that may never come, or more compelling external pressures that may as well be wrong as right, is itself a decision of sorts, and a weak and potentially dangerous course for a President to follow.

I have promised to uphold the Constitution, to do what is right as God gives me to see the right, and to do the very best that I can for America.

I have asked your help and your prayers, not only when I became President, but many times since. The Constitution is the supreme law of our land and it governs our actions as citizens. Only the laws of God, which govern our consciences, are superior to it.

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As we are a nation under God, so I am sworn to uphold our laws with the help of God. And I have sought such guidance and searched my own conscience with special diligence to determine the right thing for me to do with respect to my predecessor in this place, Richard Nixon, and his loyal wife and family.

Theirs is an American tragedy in which we all have played a part. It could go on and on and on, or someone must write the end to it. I have concluded that only I can do that, and if I can, I must.

There are no historic or legal precedents to which I can turn in this matter, none that precisely fit the circumstances of a private citizen who has resigned the Presidency of the United States. But it is common knowledge that serious allegations and accusations hang like a sword over our former President's head, threatening his health as he tries to reshape his life, a great part of which was spent in the service of this country and by the mandate of its people.

After years of bitter controversy and divisive national debate, I have been advised, and I am compelled to conclude that many months and perhaps more years will have to pass before Richard Nixon could obtain a fair trial by jury in any jurisdiction of the United States under governing decisions of the Supreme Court.

I deeply believe in equal justice for all Americans, whatever their station or former station. The law, whether human or divine, is no respecter of persons, but the law is a respecter of reality.

The facts, as I see them, are that a former President of the United States, instead of enjoying equal treatment with any other citizen accused of violating the law, would be cruelly and excessively penalized either in preserving the presumption of his innocence or in obtaining a speedy determination of his guilt in order to repay a legal debt to society.

more

During this long period of delay and potential litigation, ugly passions would again be aroused. And our people would again be polarized in their opinions. And the credibility of our free institutions of Government would again be challenged at home and abroad.

In the end, the courts might well hold that Richard Nixon had been denied due process and the verdict of history would even more be inconclusive with respect to those charges arising out of the period of his Presidency, of which I am presently aware.

But it is not the ultimate fate of Richard Nixon that most concerns me, though surely it deeply troubles every decent and every compassionate person. My concern is the immediate future of this great country.

In this, I dare not depend upon my personal sympathy as a long-time friend of the former President, nor my professional judgment as a lawyer, and I do not.

As President, my primary concern must always be the greatest good of all the people of the United States whose servant I am. As a man, my first consideration is to be true to my own convictions and my own conscience.

My conscience tells me clearly and certainly that I cannot prolong the bad dreams that continue to reopen a chapter that is closed. My conscience tells me that only I, as President, have the constitutional power to firmly shut and seal this book. My conscience tells me it is my duty, not merely to proclaim domestic tranquility, but to use every means that I have to insure it.

I do believe that the buck stops here, that I cannot rely upon public opinion polls to tell me what is right.

I do believe that right makes might, and that if I am wrong, ten angels swearing I was right would make no difference.

I do believe, with all my heart and mind and spirit, that I, not as President, but as a humble servant of God, will receive justice without mercy if I fail to show mercy.

Finally, I feel that Richard Nixon and his loved ones have suffered enough and will continue to suffer, no matter what I do, no matter what we, as a great and good Nation, can do together to make his goal of peace come true.

MORE

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Now, therefore, I, Gerald R. Ford, President of the United States, pursuant to the pardon power conferred upon me by Article II, Section 2 of the Constitution, have granted and by these presents do grant a full, free and absolute pardon unto Richard Nixon for all offenses against the United States which he, Richard Nixon, has committed or may have committed or taken part in during the period from July (January) 20, 1969 through August 9, 1974.

(The President signed the Proclamation)

In witness whereof, I have hereunto set my hand this 8th day of September in the year of our Lord 1974, and of the independence of the United States of America, the 199th.

END

(AT 11:16 A.M. EDT)

THE WHITE HOUSE

WASHINGTON

September 17, 1974

MEMORANDUM FOR:

BILL TIMMONS

THROUGH:

MAX FRIEDERSDORF *m. 7.*

FROM:

GENE AINSWORTH *ga*

SUBJECT:

Supplemental Appropriations for
Presidential Transition and
Former President's Act

The House Treasury-Postal Service Subcommittee on Appropriations completed its mark-up of our Supplemental request for \$850,000. The reported amount is \$398,000; \$245,000 Transition, and \$153,000 Former Presidents. The vote on this was 7 to 6 with Steed, Mahon and Cederberg joining the four regular Republican Subcommittee Members.

cc: Vern Loen

Gene - Did you get and deliver this letter? File
yes - gone

Sept 10

Vern:

I had a call from Congressman Horton's office --

the secretary said that the Congressman is in the District and is being asked about newspaper reports that the President has requested the Appropriations Committee to appropriate \$850,00 in transition funds for former President Nixon.

info to Eloise
for telephonic
transmit

They would like to know whether this is true and, if possible, get some background so that he will be able to give "his reaction" to his constituents as they are requesting.

Would you pls tell me what I should tell her? Many thanks.

9-11

To Gene -

ef

Eloise -

we will have GF ltr
to Steed wed a.m. & assist
in answering this - remind
me or Gene & we will
handle.

VL

93^D CONGRESS
2^D SESSION

S. 4016

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 1974

Referred to the Committee on House Administration

AN ACT

To protect and preserve tape recordings of conversations involving former President Richard M. Nixon and made during his tenure as President, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Presidential Recordings
4 and Materials Preservation Act".

5 SEC. 2. (a) Notwithstanding any other agreement or un-
6 derstanding made pursuant to section 2107 of title 44, United
7 States Code, or any other law, any Federal employee in pos-
8 session shall deliver, and the Administrator of General Serv-
9 ices shall receive, obtain, or retain complete possession and
10 control of all original tape recordings of conversations which

1 were recorded or caused to be recorded by any officer or
2 employee of the Federal Government and which—

3 (1) involve former President Richard M. Nixon
4 and/or other individuals who, at the time of the conver-
5 sation, were employed by the Federal Government;

6 (2) were recorded in the White House or in the
7 office of the President in the Executive Office Building
8 located in Washington, District of Columbia; Camp
9 David, Maryland; Key Biscayne, Florida; San Clemente,
10 California; and

11 (3) were recorded between January 20, 1969, and
12 August 9, 1974, inclusive.

13 (b) Notwithstanding any other agreement or understand-
14 ing made pursuant to section 2107 of title 44, United States
15 Code, or any other law, the Administrator of General Services
16 shall receive, retain, or make reasonable efforts to obtain,
17 complete possession and control of all papers, documents,
18 memorandums, and transcripts which constitute the Presi-
19 dential historical materials of Richard M. Nixon as defined
20 in section 2101 of title 44, United States Code, covering the
21 period between January 20, 1969, and August 9, 1974,
22 inclusive.

23 SEC. 3. (a) None of the tape recordings, or other mate-
24 rials, referred to in section 2 above shall be destroyed except
25 as may be provided by Congress.

1 (b) Notwithstanding any other provision of this Act,
2 or any other law, or any agreement or understanding made
3 pursuant to section 2107 of title 44, United States Code, the
4 tape recordings and materials referred to in section 2 of this
5 Act shall, immediately upon the date of enactment of this
6 Act, be made available, subject to any rights or privileges
7 which any party may invoke, for use in any judicial proceed-
8 ing or otherwise subject to court subpoena or other legal
9 process: *Provided*, That any request by the Office of Water-
10 gate Special Prosecution Force, whether by court subpoena,
11 or other lawful process, for access to the tape recordings
12 and materials, referred to in section 2 of this Act, shall at
13 all times have priority over any other request for such
14 tapes or materials.

15 (c) Richard M. Nixon, or any party whom he may
16 designate in writing, shall at all times have access to the
17 tape recordings and other materials referred to in section 2
18 of this Act for any purpose, subject to the regulations which
19 the Administrator shall issue pursuant to section 5 of this
20 Act.

21 SEC. 4. If a Federal court of competent jurisdiction
22 should decide that the provisions of this Act have deprived
23 any individual of private property without just compensa-
24 tion, then there shall be paid out of the general fund of the

1 Treasury such amount or amounts as may be adjudged
2 just by a Federal court of competent jurisdiction.

3 SEC. 5. The Administrator shall issue at the earliest
4 possible date such reasonable regulations as may be neces-
5 sary to assure the protection of the tape recordings, and
6 other materials, referred to in section 2 above, from loss,
7 destruction, or access to by unauthorized persons. Custody
8 of such tape recordings and other materials shall be main-
9 tained in Washington, District of Columbia, except as may
10 otherwise be necessary to carry out the provisions of this
11 Act.

12 SEC. 6. (a) The Administrator shall, within ninety days
13 after the enactment of this Act, submit to the Congress a
14 report proposing and explaining regulations governing access
15 to the tape recordings and other materials referred to in sec-
16 tion 2 of this Act. Such regulations shall take into account
17 the following factors:

18 (1) the need to provide the public with the full
19 truth, at the earliest reasonable date, of the abuses of
20 governmental power, popularly identified under the
21 generic term, "Watergate";

22 (2) the need to make the tape recordings and other
23 materials available for use in judicial proceedings;

24 (3) the need to prevent general access, except for

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

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

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

9 (6) the need to prevent unrestricted access to tape
10 recordings and other materials unrelated to the need
11 identified in paragraph (1) above; and

12 (7) the need to give to Richard M. Nixon, or his
13 heirs, for his sole custody and use, tape recordings and
14 other materials which are unrelated to the need identified
15 in paragraph (1) above and are not otherwise of his-
16 torical significance.

17 (b) The regulations proposed by the Administrator in
18 the report referred to in subsection (a) above shall take
19 effect upon the expiration of ninety days after the submis-
20 sion of that report to the Congress.

21 SEC. 7. (a) The Federal District Court for the District
22 of Columbia shall have exclusive jurisdiction to hear chal-
23 lenges to the legal or constitutional validity of any provision
24 of this Act or of any regulation issued under the authority

1 granted by this Act. Such challenge shall be heard by a three-
2 judge court constituted under the procedures delineated in
3 section 2284, title 28 of the United States Code, with the
4 right of direct appeal to the United States Supreme Court.
5 Any such challenge shall be treated by the three-judge court
6 and the Supreme Court as a priority matter requiring im-
7 mediate consideration and resolution.

8 (b) If, under the procedures delineated in subsection
9 (a) above, a judicial decision is rendered that a particular
10 provision of this Act, or a particular regulation issued under
11 the authority granted by this Act, is unconstitutional or
12 otherwise invalid, such decision shall not affect in any way
13 the validity or enforcement of any other provision or regula-
14 tion.

15 SEC. 8. There are authorized to be appropriated such
16 sums as may be necessary to carry out the provision of this
17 Act.

Passed the Senate October 4, 1974.

Attest: FRANCIS R. VALEO,
Secretary.

93^d CONGRESS
2^d SESSION

S. 4016

AN ACT

To protect and preserve tape recordings of conversations involving former President Richard M. Nixon and made during his tenure as President, and for other purposes.

OCTOBER 7, 1974

Referred to the Committee on House Administration

November 25, 1974

MEMORANDUM FOR: WILLIAM E. CASSELMAN
THRU: MAX L. FRIEDERSDORF
FROM: VERN LOEN
SUBJECT: Nixon Papers

Per your request, here is a copy of the clean bill (H.R. 17484) introduced by Rep. Brademan and others. It is to be taken up in full House Administration Committee at 10:30 a.m. Tuesday.

If adopted, presumably there would have to be a conference with the Senate on its version, S. 4016, passed on October 10.

Under that bill GSA would retain the Nixon tapes and documents, keep them available for judiciary procedures, promulgate regulations regarding access and report back to Congress within 90 days.

Attachment

Reptd 11/26



93D CONGRESS
2D SESSION

H. R. 17484

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 20, 1974

Mr. BRADEMAS (for himself, Mr. GETTYS, Mr. GAYDOS, Mr. JONES of Tennessee, Mr. KOCH, Mr. CLEVELAND, and Mr. HANSEN of Idaho) introduced the following bill; which was referred to the Committee on House Administration

A BILL

To protect and preserve tape recordings of conversations involving former President Richard M. Nixon and made during his tenure as President, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Presidential Recordings
- 4 and Materials Preservation Act".

1 TITLE I—PRESERVATION OF PRESIDENTIAL
2 RECORDINGS AND MATERIALS

3 DELIVERY AND RETENTION OF CERTAIN PRESIDENTIAL
4 MATERIALS

5 SEC. 101. (a) Notwithstanding any other law or any
6 agreement or understanding made pursuant to section 2107
7 of title 44, United States Code, any Federal employee in
8 possession shall deliver, and the Administrator of General
9 Services (hereinafter in this title referred to as the "Admin-
10 istrator") shall receive, obtain, or retain, complete possession
11 and control of all original tape recordings of conversations
12 which were recorded or caused to be recorded by any officer
13 or employee of the Federal Government and which—

14 (1) involve former President Richard M. Nixon or
15 other individuals who, at the time of the conversation,
16 were employed by the Federal Government;

17 (2) were recorded in the White House or in the
18 office of the President in the Executive Office Buildings
19 located in Washington, District of Columbia; Camp
20 David, Maryland; Key Biscayne, Florida; or San
21 Clemente, California; and

22 (3) were recorded during the period beginning Jan-
23 uary 20, 1969, and ending August 9, 1974.

24 (b) (1) Notwithstanding any other law or any agree-
25 ment or understanding made pursuant to section 2107 of

1 title 44, United States Code, the Administrator shall receive,
2 retain, or make reasonable efforts to obtain, complete posses-
3 sion and control of all papers, documents, memorandums,
4 transcripts and other objects and materials which constitute
5 the Presidential historical materials of Richard M. Nixon,
6 covering the period beginning January 20, 1969, and end-
7 ing August 9, 1974.

8 (2) For purposes of this subsection, the term "historical
9 materials" has the meaning given it by section 2101 of title
10 44, United States Code.

11 AVAILABILITY OF CERTAIN PRESIDENTIAL MATERIALS

12 SEC. 102. (a) None of the tape recordings or other
13 materials referred to in section 2 shall be destroyed, except
14 as may be provided by law.

15 (b) Notwithstanding any other provision of this title,
16 any other law, or any agreement or understanding made
17 pursuant to section 2107 of title 44, United States Code, the
18 tape recordings and other materials referred to in section 101
19 shall, immediately upon the date of enactment of this title,
20 be made available, subject to any rights, defenses, or pri-
21 vileges which the Federal Government or any person may
22 invoke, for use in any judicial proceeding or otherwise subject
23 to court subpoena or other legal process. Any request by the
24 court subpoena or other lawful process, for access to such

1 recordings or materials shall at all times have priority over
2 any other request for such recordings or materials.

3 (c) Richard M. Nixon, or any person whom he may
4 designate in writing, shall at all times have access to the
5 tape recordings and other materials referred to in section 101
6 for any purpose, subject to the regulations which the Admin-
7 istrator shall issue pursuant to section 104.

8 (d) Any agency or department in the executive branch
9 of the Federal Government shall at all times have access
10 to the tape recordings and other materials referred to in
11 section 101 for current lawful Government use, subject to the
12 regulations which the Administrator shall issue pursuant to
13 section 104.

14 COMPENSATION

15 SEC. 103. If any court of the United States decides
16 that any provision of this title has deprived any individual
17 of private property without just compensation, then there
18 shall be paid out of the general fund of the Treasury of the
19 United States such amount or amounts as may be adjudged
20 just by an appropriate court of the United States. However,
21 the provisions of this title shall not be construed as making
22 any determination with respect to any private property right
23 of title to tape recordings and other materials referred to in
24 section 101, if any such right existed prior to the date of
25 enactment of this title.

1 REGULATIONS TO PROTECT CERTAIN TAPE RECORDINGS 2 AND OTHER MATERIALS

3 SEC. 104. The Administrator shall issue at the earliest
4 possible date such regulations as may be necessary to assure
5 the protection of the tape recordings and other materials re-
6 ferred to in section 101 from loss or destruction, and to pre-
7 vent access to such recordings and materials by unauthorized
8 persons. Custody of such recordings and materials shall be
9 maintained in Washington, District of Columbia, or its metro-
10 politan area, except as may otherwise be necessary to carry
11 out the provisions of this title.

12 REGULATIONS RELATING TO PUBLIC ACCESS

13 SEC. 105. (a) The Administrator shall, within ninety
14 days after the date of enactment of this title, submit to each
15 House of the Congress a report proposing and explaining
16 regulations that would provide public access to the tape
17 recordings and other materials referred to in section 101.
18 Such regulations shall take into account the following factors:

19 (1) the need to provide the public with the full
20 truth, at the earliest reasonable date, of the abuses of
21 governmental power popularly identified under the
22 generic term "Watergate";

23 (2) the need to make such recordings and materials
24 available for use in judicial proceedings;

25 (3) the need to prevent general access, except in

1 accordance with appropriate procedures established for
2 use in judicial proceedings, to information relating to
3 the Nation's security;

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

6 (5) the need to protect any party's opportunity to
7 assert any legally or constitutionally based right which
8 would prevent or otherwise limit access to such record-
9 ings and materials;

10 (6) the need to provide public access to those ma-
11 terials relating to the Presidency of Richard M. Nixon
12 which have general historical significance, and which are
13 not likely to be related to the need described in paragraph
14 (1), in a manner which is consistent with procedures
15 which have been used to provide public access to ma-
16 terials of former Presidents; and

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

22 (b) (1) The regulations proposed by the Administrator
23 in the report required by subsection (a) shall take effect
24 upon the expiration of ninety legislative days after the sub-
25 mission of such report, unless such regulations are disap-

1 proved by a resolution adopted by either House of the
2 Congress during such period. The motion to proceed to the
3 consideration of any such resolution in the House of Rep-
4 resentatives is privileged. An amendment to the motion is
5 not in order, and it is not in order to move to reconsider the
6 vote by which the motion is agreed to or disagreed to.

7 (2) The provisions of this subsection shall apply to any
8 change in such regulations proposed by the Administrator.
9 Any proposed change shall take into account the factors
10 described in paragraph (1) through paragraph (7) of
11 subsection (a), and such proposed change shall be submitted
12 by the Administrator in the same manner as the report re-
13 quired by subsection (a).

14 (3) The Administrator may not prescribe any regula-
15 tion or make any change in a regulation if such regulation
16 or change is disapproved by either House of the Congress
17 under this subsection.

18 (4) For purposes of this subsection, the term "legisla-
19 tive days" does not include any calendar day on which both
20 Houses of the Congress are not in session.

21 (c) The provisions of this title shall not apply, on and
22 after the date upon which regulations proposed by the Ad-
23 ministrator take effect under subsection (b), to any tape

1 recordings or other materials given to Richard M. Nixon, or
2 his heirs, pursuant to subsection (a) (7).

3 JUDICIAL REVIEW

4 SEC. 106. (a) The Federal District Court for the Dis-
5 trict of Columbia shall have exclusive jurisdiction to hear
6 challenges to the legal or constitutional validity of any pro-
7 vision of this title or of any regulation issued under the au-
8 thority granted by this title. Such challenge shall be heard by
9 a three-judge court constituted under the procedures estab-
10 lished by section 2284 of title 28, United States Code, with
11 the right of direct appeal to the United States Supreme Court.
12 Any such challenge shall be treated by the three-judge court
13 and the Supreme Court as a priority matter requiring imme-
14 diate consideration and resolution.

15 (b) If, under the procedures established by subsection
16 (a), a judicial decision is rendered that a particular provision
17 of this title, or a particular regulation issued under the author-
18 ity granted by this title, is unconstitutional or otherwise in-
19 valid, such decision shall not affect in any way the validity or
20 enforcement of any other provision of this title or any regu-
21 lation issued under the authority granted by this title.

22 AUTHORIZATION OF APPROPRIATIONS

23 SEC. 107. There are authorized to be appropriated such
24 sums as may be necessary to carry out the provisions of this
25 title.

1 TITLE II—PUBLIC DOCUMENTS COMMISSION

2 SHORT TITLE

3 SEC. 201. This title may be cited as the "Public Docu-
4 ments Act".

5 ESTABLISHMENT OF STUDY COMMISSION

6 SEC. 202. Chapter 33 of title 44, United States Code,
7 is amended by adding at the end thereof the following new
8 sections:

9 "§ 3315. Definitions

10 "For purposes of section 3316 through section 3324—

11 "(1) the term 'Federal official' means any indi-
12 vidual holding the office of President or Vice President
13 of the United States, or Senator or Representative in,
14 or Delegate or Resident Commissioner to, the Congress
15 of the United States, or any officer of the executive, ju-
16 dicial, or legislative branch of the Federal Government;

17 "(2) the term 'Commission' means the National
18 Study Commission on Records and Documents of Fed-
19 eral Officials; and

20 "(3) the term 'records and documents' shall include
21 handwritten and typewritten documents, motion pictures,
22 television tapes and recordings, magnetic tapes, auto-
23 mated data processing documentation in various forms,
24 and other records that reveal the history of the Nation.

1 **“§ 3316. Establishment of Commission**

2 “There is established a commission to be known as the
3 National Study Commission on Federal Records and Docu-
4 ments of Federal Officials.

5 **Y“§ 3317. Duties of Commission**

6 “It shall be the duty of the Commission to study prob-
7 lems and questions with respect to the control, disposition,
8 and preservation of records and documents produced by or on
9 behalf of Federal officials, with a view toward the develop-
10 ment of appropriate legislative recommendations and other
11 appropriate rules and procedures with respect to such control,
12 disposition, and preservation. Such study shall include con-
13 sideration of—

14 “(1) whether the historical practice of regarding
15 the records and documents produced by or on behalf of
16 Presidents of the United States should be rejected or
17 accepted and whether such policy should be made appli-
18 cable with respect to all Federal officials;

19 “(2) the relationship of such conclusions and find-
20 ings to the provisions of section 1901 through section
21 1914 and section 2101 through section 2108 of this title,
22 and other Federal laws regarding the disposition and
23 preservation of papers of Federal officials;

24 “(3) whether such findings and conclusions should
25 affect the control and disposition of records and docu-

1 ments of agencies within the Executive Office of the
2 President created for short-term purposes by the
3 President;

4 “(4) the recordkeeping procedures of the White
5 House Office, with a view toward establishing means
6 to determine which records and documents are produced
7 by or on behalf of the President;

8 “(5) the nature of rules and procedures which
9 should apply to the control, disposition, and preserva-
10 tion of papers and documents produced by Presidential
11 task forces, commissions, and boards;

12 “(6) criteria which may be used generally in de-
13 termining the scope of materials which should be con-
14 sidered to be the records and documents of Members of
15 the Congress;

16 “(7) the privacy interests of individuals whose com-
17 munications with Federal officials, and with task forces,
18 commissions, and boards, are a part of the records and
19 documents produced by such officials, task forces, com-
20 missions, and boards; and

21 “(8) any other problems, questions, or issues which
22 the Commission considers relevant to carrying out its
23 duties under section 3315 through section 3324.

1 **§ 3318. Membership**

2 “(a) (1) The Commission shall be composed of seven-
3 teen members as follows:

4 “(A) one Member of the House of Representatives
5 appointed by the Speaker of the House upon recom-
6 mendation made by the majority leader of the House;

7 “(B) one Member of the House of Representatives
8 appointed by the Speaker of the House upon recom-
9 mendation made by the minority leader of the House;

10 “(C) one Member of the Senate appointed by the
11 President pro tempore of the Senate upon recommenda-
12 tion made by the majority leader of the Senate;

13 “(D) one Member of the Senate appointed by the
14 President pro tempore of the Senate upon recommenda-
15 tion made by the minority leader of the Senate;

16 “(E) one Justice of the Supreme Court, appointed
17 by the Chief Justice of the United States;

18 “(F) one person employed by the Executive Office
19 of the President or the White House Office, appointed by
20 the President;

21 “(G) three appointed by the President, by and
22 with the advice and consent of the Senate, from persons
23 who are not officers or employees of any government and
24 who are specially qualified to serve on the Commission
25 by virtue of their education, training, or experience;

1 “(H) one representative of the Department of State,
2 appointed by the Secretary of State;

3 “(I) one representative of the Department of De-
4 fense, appointed by the Secretary of Defense;

5 “(J) one representative of the Department of Jus-
6 tice, appointed by the Attorney General;

7 “(K) the Administrator of General Services (or his
8 delegate);

9 “(L) the Librarian of Congress;

10 “(M) one member of the American Historical Asso-
11 ciation, appointed by the counsel of such Association;

12 “(N) one member of the Society of American Ar-
13 chivists, appointed by such Society; and

14 “(O) one member of the Organization of American
15 Historians, appointed by such Organization.

16 “(2) No more than two members appointed under para-
17 graph (1) (G) may be of the same political party.

18 “(b) A vacancy in the Commission shall be filled in the
19 manner in which the original appointment was made.

20 “(c) If any member of the Commission who was ap-
21 pointed to the Commission as a Member of the Congress
22 leaves such office, or if any member of the Commission who
23 was appointed from persons who are not officers or employees
24 of any government becomes an officer or employee of a gov-
25 ernment, he may continue as a member of the Commission

1 for no longer than the sixty-day period beginning on the date
2 he leaves such office or becomes such an officer or employee,
3 as the case may be.

4 “(d) Members shall be appointed for the life of the
5 Commission.

6 “(e) (1) Members of the Commission shall serve with-
7 out pay.

8 “(2) While away from their homes or regular places of
9 business in the performance of services for the Commission,
10 members of the Commission shall be allowed travel expenses
11 in the same manner as persons employed intermittently in
12 the service of the Federal Government are allowed expenses
13 under section 5703 (b) of title 5, United States Code, except
14 that per diem in lieu of subsistence shall be paid only to those
15 members of the Commission who are not full-time officers or
16 employees of the United States or Members of the Congress.

17 “(f) The Chairman of the Commission shall be desig-
18 nated by the President from among members appointed
19 under subsection (a) (1) (F).

20 “(g) The Commission shall meet at the call of the
21 Chairman or a majority of its members.

22 **“§ 3319. Director and staff; experts and consultants**

23 “(a) The Commission shall appoint a Director who
24 shall be paid at a rate not to exceed the rate of basic pay in

1 effect for level V of the Executive Schedule (5 U.S.C.
2 5316).

3 “(b) The Commission may appoint and fix the pay of
4 such additional personnel as it deems necessary.

5 “(c) (1) The Commission may procure temporary and
6 intermittent services to the same extent as is authorized by
7 section 3109 (b) of title 5, United States Code, but at rates
8 for individuals not to exceed the daily equivalent of the
9 annual rate of basic pay in effect for grade GS-15 of the
10 General Schedule (5 U.S.C. 5332).

11 “(2) In procuring services under this subsection, the
12 Commission shall seek to obtain the advice and assistance of
13 constitutional scholars and members of the historical, ar-
14 chival, and journalistic professions.

15 “(d) Upon request of the Commission, the head of any
16 Federal agency is authorized to detail, on a reimbursable
17 basis, any of the personnel of such agency to the Commission
18 to assist it in carrying out its duties under sections 3315
19 through 3324.

20 **“§ 3320. Powers of Commission**

21 “(a) The Commission may, for the purpose of carrying
22 out its duties under sections 3315 through 3324, hold such
23 hearings, sit and act at such times and places, take such

1 testimony, and receive such evidence, as the Commission
2 may deem desirable.

3 “(b) When so authorized by the Commission, any
4 member or agent of the Commission may take any action
5 which the Commission is authorized to take by this section.

6 “(c) The Commission may secure directly from any
7 department or agency of the United States information neces-
8 sary to enable the Commission to carry out its duties under
9 section 3315 through section 3324. Upon request of the
10 Chairman of the Commission, the head of such department
11 or agency shall furnish such information to the Commission.

12 **“§ 3321. Support services**

13 “(a) The Administrator of General Services shall pro-
14 vide to the Commission on a reimbursable basis such admin-
15 istrative support services and assistance as the Commission
16 may request.

17 “(b) The Archivist of the United States shall provide
18 to the Commission on a reimbursable basis such technical and
19 expert advice, consultation, and support assistance as the
20 Commission may request.

21 **“§ 3322. Report**

22 “The Commission shall transmit to the President and to
23 each House of the Congress a report not later than March 31,
24 1976. Such report shall contain a detailed statement of the
25 findings and conclusions of the Commission, together with its

1 recommendations for such legislation, administrative actions,
2 and other actions, as it deems appropriate.

3 **“§ 3323. Termination**

4 “The Commission shall cease to exist sixty days after
5 transmitting its report under section 3322.

6 **“§ 3324. Authorization of appropriations**

7 “There is authorized to be appropriated such sums as
8 may be necessary to carry out section 3315 through section
9 3324.”.

10 **TECHNICAL AMENDMENT**

11 **SEC. 203.** The table of sections for chapter 33 of title 44,
12 United States Code, is amended by adding at the end thereof
13 the following new items:

- “3315. Definitions.
- “3316. Establishment of Commission.
- “3317. Duties of Commission.
- “3318. Membership.
- “3319. Director and staff; experts and consultants.
- “3320. Powers of Commission.
- “3321. Support services.
- “3322. Report.
- “3323. Termination.
- “3324. Authorization of appropriations.”.

93^d CONGRESS
2^d SESSION

H. R. 17484

A BILL

To protect and preserve tape recordings of conversations involving former President Richard M. Nixon and made during his tenure as President, and for other purposes.

By Mr. BRADEMAS, Mr. GETTYS, Mr. GAYDOS,
Mr. JONES of Tennessee, Mr. KOCH, Mr.
CLEVELAND, and Mr. HANSEN of Idaho

NOVEMBER 20, 1974

Referred to the Committee on House Administration

S. 4016

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 1974

Referred to the Committee on House Administration

AN ACT

To protect and preserve tape recordings of conversations involving former President Richard M. Nixon and made during his tenure as President, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Presidential Recordings
4 and Materials Preservation Act".

5 SEC. 2. (a) Notwithstanding any other agreement or un-
6 derstanding made pursuant to section 2107 of title 44, United
7 States Code, or any other law, any Federal employee in pos-
8 session shall deliver, and the Administrator of General Serv-
9 ices shall receive, obtain, or retain complete possession and
10 control of all original tape recordings of conversations which

1 were recorded or caused to be recorded by any officer or
2 employee of the Federal Government and which—

3 (1) involve former President Richard M. Nixon
4 and/or other individuals who, at the time of the conver-
5 sation, were employed by the Federal Government;

6 (2) were recorded in the White House or in the
7 office of the President in the Executive Office Building
8 located in Washington, District of Columbia; Camp
9 David, Maryland; Key Biscayne, Florida; San Clemente,
10 California; and

11 (3) were recorded between January 20, 1969, and
12 August 9, 1974, inclusive.

13 (b) Notwithstanding any other agreement or understand-
14 ing made pursuant to section 2107 of title 44, United States
15 Code, or any other law, the Administrator of General Services
16 shall receive, retain, or make reasonable efforts to obtain,
17 complete possession and control of all papers, documents,
18 memorandums, and transcripts which constitute the Presi-
19 dential historical materials of Richard M. Nixon as defined
20 in section 2101 of title 44, United States Code, covering the
21 period between January 20, 1969, and August 9, 1974,
22 inclusive.

23 SEC. 3. (a) None of the tape recordings, or other mate-
24 rials, referred to in section 2 above shall be destroyed except
25 as may be provided by Congress.

1 (b) Notwithstanding any other provision of this Act,
2 or any other law, or any agreement or understanding made
3 pursuant to section 2107 of title 44, United States Code, the
4 tape recordings and materials referred to in section 2 of this
5 Act shall, immediately upon the date of enactment of this
6 Act, be made available, subject to any rights or privileges
7 which any party may invoke, for use in any judicial proceed-
8 ing or otherwise subject to court subpoena or other legal
9 process: *Provided*, That any request by the Office of Water-
10 gate Special Prosecution Force, whether by court subpoena,
11 or other lawful process, for access to the tape recordings
12 and materials, referred to in section 2 of this Act, shall at
13 all times have priority over any other request for such
14 tapes or materials.

15 (c) Richard M. Nixon, or any party whom he may
16 designate in writing, shall at all times have access to the
17 tape recordings and other materials referred to in section 2
18 of this Act for any purpose, subject to the regulations which
19 the Administrator shall issue pursuant to section 5 of this
20 Act.

21 SEC. 4. If a Federal court of competent jurisdiction
22 should decide that the provisions of this Act have deprived
23 any individual of private property without just compensa-
24 tion, then there shall be paid out of the general fund of the

1 Treasury such amount or amounts as may be adjudged
2 just by a Federal court of competent jurisdiction.

3 SEC. 5. The Administrator shall issue at the earliest
4 possible date such reasonable regulations as may be neces-
5 sary to assure the protection of the tape recordings, and
6 other materials, referred to in section 2 above, from loss,
7 destruction, or access to by unauthorized persons. Custody
8 of such tape recordings and other materials shall be main-
9 tained in Washington, District of Columbia, except as may
10 otherwise be necessary to carry out the provisions of this
11 Act.

12 SEC. 6. (a) The Administrator shall, within ninety days
13 after the enactment of this Act, submit to the Congress a
14 report proposing and explaining regulations governing access
15 to the tape recordings and other materials referred to in sec-
16 tion 2 of this Act. Such regulations shall take into account
17 the following factors:

18 (1) the need to provide the public with the full
19 truth, at the earliest reasonable date, of the abuses of
20 governmental power, popularly identified under the
21 generic term, "Watergate";

22 (2) the need to make the tape recordings and other
23 materials available for use in judicial proceedings;

24 (3) the need to prevent general access, except for

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

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

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

9 (6) the need to prevent unrestricted access to tape
10 recordings and other materials unrelated to the need
11 identified in paragraph (1) above; and

12 (7) the need to give to Richard M. Nixon, or his
13 heirs, for his sole custody and use, tape recordings and
14 other materials which are unrelated to the need identified
15 in paragraph (1) above and are not otherwise of his-
16 torical significance.

17 (b) The regulations proposed by the Administrator in
18 the report referred to in subsection (a) above shall take
19 effect upon the expiration of ninety days after the submis-
20 sion of that report to the Congress.

21 SEC. 7. (a) The Federal District Court for the District
22 of Columbia shall have exclusive jurisdiction to hear chal-
23 lenges to the legal or constitutional validity of any provision
24 of this Act or of any regulation issued under the authority

1 granted by this Act. Such challenge shall be heard by a three-
2 judge court constituted under the procedures delineated in
3 section 2284, title 28 of the United States Code, with the
4 right of direct appeal to the United States Supreme Court.
5 Any such challenge shall be treated by the three-judge court
6 and the Supreme Court as a priority matter requiring im-
7 mediate consideration and resolution.

8 (b) If, under the procedures delineated in subsection
9 (a) above, a judicial decision is rendered that a particular
10 provision of this Act, or a particular regulation issued under
11 the authority granted by this Act, is unconstitutional or
12 otherwise invalid, such decision shall not affect in any way
13 the validity or enforcement of any other provision or regula-
14 tion.

15 SEC. 8. There are authorized to be appropriated such
16 sums as may be necessary to carry out the provision of this
17 Act.

Passed the Senate October 4, 1974.

Attest:

FRANCIS R. VALEO,

Secretary.

93d CONGRESS
2d SESSION

S. 4016

AN ACT

To protect and preserve tape recordings of conversations involving former President Richard M. Nixon and made during his tenure as President, and for other purposes.

OCTOBER 7, 1974

Referred to the Committee on House Administration

THE WHITE HOUSE

WASHINGTON

October 10, 1975

MEMORANDUM FOR: JACK MARSH
THRU: MAX L. FRIEDERSDORF
VERN LOEN *VL*
FROM: CHARLES LEPPERT, JR. *CL*
SUBJECT: Status Report on H. Res. 710
Nixon Papers and Tapes, etc.

H. Res. 710, relating to the Nixon papers and tapes was favorably reported by the Committee on House Administration on September 18, 1975, by a vote of 10-5-1. Voting against the resolution were Rep.'s Dickinson, Devine, Wiggins, Holt, and Moore. Rep. Cleveland voted present.

The House Administration Committee filed its Committee report on H. Res. 710 on October 9, 1975. Rep. Cleveland filed Minority views which I am advised raise some excellent constitutional issues concerning the resolution. Copies of the Committee report are being sent to me as soon as they are available.

The Committee on House Administration has three other measures before the Committee of interest. They are:

- (1) H.R. 1686, Postcard Voter Registration which was referred to the Full Committee on July 23, 1975, without amendments. No action scheduled at this time.
- (2) H.R. 3211 and S. 95, Overseas Citizens Voting Rights Act is in the process of being marked-up by the Full Committee. It is anticipated that this bill will go to the House for consideration in November 1975.
- (3) H.R. 111, et al, Federal Election Campaign Act Amendments which are pending in the Subcommittee on Elections and nothing is scheduled at this time.

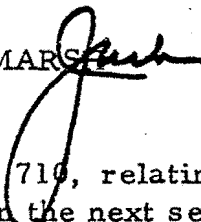
" H.R. 214 et al concerning wiretapping and electronic surveillance is pending before the Subcommittee on Courts, Civil Liberties and the Administration of Justice in the House Judiciary Committee. Hearings on this legislation were held in March, May, June, July and September 1975. No action on these bills are scheduled for the Subcommittee during the month of October 1975.

THE WHITE HOUSE

WASHINGTON

October 8, 1975

MEMORANDUM FOR: MAX FRIEDERSDORF

FROM: JACK MARSH 

It is my understanding that H. Res. 710, relating to Nixon papers and tapes, may be considered within the next several weeks before the House Administration Committee. I would be grateful for a discreet inquiry from one of your House people and a status report. I suggest at the time they make the inquiry of the Committee that they also inquire about another matter pending before the same Committee, in order to not arouse any unusual interest in the request. For example, postcard registration is pending before the same Committee.

We would also be interested in the status of H. R. 214, electronic surveillance before the Judiciary Committee.

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WASHINGTON

October 10, 1975

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JACK MARSH

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MAX L. FRIEDERSDORF

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THE WHITE HOUSE
WASHINGTON

Date: 10-9-75

TO:

Chas.

FROM: Max L. Friedersdorf

For Your Information

Please Handle



Please See Me

Comments, Please

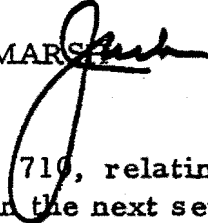
Other

Pls. check
out.

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