

The original documents are located in Box 31, folder “Nixon - Papers Government Officials Memoranda (2)” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

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Saturday 8/24/74

3:30 Mr. Buchen:

The package was sent to Mr. Wilderotter at Justice by special messenger.

Attached are the originals of the materials we sent him (from which I xeroxed copies) -- with a copy of the memo you sent transmitting them.

I thought you might want these "originals" pulled to go back with the original file on the separate suits.

If so, I have also attached a complete set of xeroxes for your use.

We are holding a complete set to be given to Mr. Buzhardt



THE WHITE HOUSE

WASHINGTON

August 24, 1974

MEMORANDUM FOR

The Honorable Laurence H. Silberman
Deputy Attorney General
Department of Justice

Subject: Matters related to subjects of opinion requested
August 22 from the Attorney General

Attached are copies of the following:

- (1) Case pending in Charlotte, North Carolina, which arises from incidents during Billy Graham Day on October 15, 1971:
 - (a) Copy of memorandum from William Henkel, Jr., to Dudley H. Chapman dated August 22, 1974, with attachment.
 - (b) Memorandum between same parties dated August 23, 1974.
- (2) Cases of U. S. v. Means & Banks ('Wounded Knee'):
 - (a) Memorandum from Skip Williams to me dated August 19, 1974, with attachment (please note that this attachment relates to the order of August 13, 1974, when there has since been a supplemental order of August 15, 1974, of which we need a copy).
 - (b) Copy of memorandum dated August 13, 1974, from U. S. Attorney Earl Kaplan to Roger Cabbage in your Department.
- (3) Case of U. S. v. John B. Connally: copy of letter to J. Fred Buzhardt of August 15, 1974, from the Watergate Special Prosecution Force.



- (4) Case of U. S. v. Mitchell, et al., Criminal No. 74-110, which is set for trial in the District starting September 30, 1974:
 - (a) Three items of correspondence dated August 16, August 19, and August 21, respectively.
 - (b) Copy of my memorandum to H. S. McKnight, dated August 23, 1974.
- (5) Case of H. Spencer Oliver v. Committee for Re-Election of the President, et al., Civil Action No. 1207-73, in the U. S. District Court for the District of Columbia: copies of documents served on me August 23, 1974.
- (6) Case of Democratic National Committee, et al. v. James W. McCord, Jr., Civil Action No. 1233-72 in the District Court for the District of Columbia: copies of documents served on me August 23, 1974.
- (7) Case of Allnutt v. Wilson, Civil Action No. 874-72, pending in the United States District Court for the District of Columbia, and other similar cases: copy of letter dated August 20, 1974, from James H. Heller of Hydeman, Mason & Goodell to me.
- (8) Copy of S. 2951 introduced by Senator Bayh in February. (I have had a call on August 20 from Bill Heckman of the Senate Judiciary Committee saying that Senator Bayh wants to know whether the Administration would be able to move forward on this bill during the current session of Congress.)

Also called to my attention recently has been the material appearing in the report by the staff of the Joint Committee on Internal Revenue Taxation dealing with the examination of former President Nixon's tax returns from 1969-72 (House Report No. 93-966), at pages 28 and 29 and in Exhibit I-3, starting at page 16 of the Memorandum of Law prepared by Attorneys Kenneth W. Gemill and H. Chapman Rose in behalf of the then President Richard M. Nixon.

P.W.B.

Philip W. Buchen
Counsel to the President




Attachments

THE WHITE HOUSE

WASHINGTON

August 22, 1974

1:45 pm

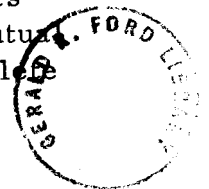
MEMORANDUM FOR: DUDLEY H. CHAPMAN
FROM: WILLIAM HENKEL, JR. 
SUBJECT: REQUEST FOR WHITE HOUSE DOCUMENTS

Yesterday, I appeared in Charlotte, North Carolina, for a deposition in the civil suit resulting from President Nixon's attendance at Billy Graham Day on October 15, 1971.

As we discussed, I was ordered to produce, for inspection and copying, any and all documents made or received during the period from September 1, 1971, through April 1, 1972, regarding the subject event. I, personally, do not have any documents in my possession, however the Advance Office has a file on Billy Graham Day. Based on your earlier guidance and my attorney's interpretation of the 9 August 1974 memorandum (attached) regarding the files of the White House Office belonging to President Nixon's Administration and recent decisions on the subject by the White House Counsel's Office; I did not produce the requested documents.

It is reasonable to conclude that Mr. George S. Daly, Jr., the attorney for the plaintiffs, will approach United States District Judge for the Western District of North Carolina, James B. McMillan, on the subject and request further action.

Would you please apprise me at your earliest convenience as to what steps or actions I should take on this matter. By mutual consent, I will return to Charlotte on September 5th to complete my deposition, which was begun yesterday.



THE WHITE HOUSE

WASHINGTON

August 9, 1974

MEMORANDUM FOR THE WHITE HOUSE STAFF:

By custom and tradition, the files of the White House Office belong to the President in whose Administration they are accumulated. It has been the invariable practice, at the end of an Administration, for the outgoing President or his estate to authorize the depository or disposition to be made of such files.

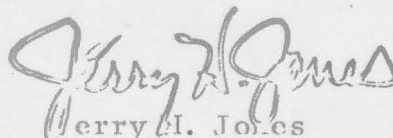
President Taft in his book "Our Chief Magistrate and his Powers," made the following reference to this practice:

"The retiring President takes with him all the correspondence, original and copies, which he carried on during his Administration. . . ."

In the interest of continuing this practice, it has been directed that, so long as President Nixon's files remain in the White House Office, there is to be no intermingling of the files of the two Administrations. This applies of course both to the Central Files and the files in the offices of the various members of the staff.

Papers of the White House Office at the time of President Nixon's resignation as well as those enroute at that time and intended for him shall be considered as belonging to the Nixon Administration files. Of course, some Nixon Administration files may be needed for future reference. These files should be duplicated and placed with all other papers accumulated after noon today which constitute a new set of files for President Ford.

Specifically, please expedite the return of all withdrawals you have made from Central Files. On Monday, August 12, archivists under the supervision of John R. Nesbitt, Office of Presidential Papers, will be available to assist in the collection and segregation of President Nixon's papers for shipment. Meanwhile, please read the attached instructions.


Jerry H. Jones

Special Assistant to the President



WHITE HOUSE OFFICE PAPERS

By custom and tradition, all White House Office papers are regarded as the personal property of the President and subject to such control and disposition as he may determine. At the close of the Administration, the entire collection of papers now being created may be expected to be deposited in a Presidential library similar to the libraries that preserve the papers of the last six Presidents. To provide the President with a complete and accurate record of his tenure in office, the White House staff must oversee the preservation of the papers it generates.

The procedures set forth in this document represent the collective thinking of many members of the staff as to how best to preserve papers and documents for the President. Compliance with these procedures is an expression of loyalty by the staff to the President. For these procedures to be effective, it will require cooperation and assistance of every staff member.

The security classification of each document prepared in the White House is determined by the individual staff member writing it in accordance with Executive Order 10501—or other applicable Executive Orders. He is responsible for insuring that the classification assigned to his work reflects the sensitivity of the material concerned, and also for making certain that this classification is not excessively restrictive.

White House Office Papers: Filing with Central Files

1. *It is requested that the maximum possible use be made of Central Files, and the procedures listed below be followed.* This will aid in the faster and more complete retrieval of current information, eliminate unnecessary duplication of files, prevent excessive xeroxing, and maximize preservation of White House papers.

2. *Each staff member shall maintain his personal files separate from any working files he may keep on official business and clearly designate them as such.* Personal files include correspondence unrelated to any official duties performed by the staff member; personal books, pamphlets and periodicals; daily appointment books or log books; folders

of newspapers or magazine clippings; and copies of records of a personnel nature relating to a person's employment or service. Personal files should not include any copies, drafts or working papers that relate to official business or any documents or records, whether or not adopted, made or received in the course of official business.

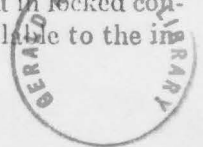
3. *Each staff office shall forward regularly to Central Files three copies of all outgoing official business consisting of correspondence and memoranda. One copy of all other outgoing related materials should also be filed.*

4. *Each staff office shall forward regularly to Central Files any incoming official business from sources other than White House staff offices after action, if any, has been taken.* Each staff office, if it so desires, may keep a copy of such incoming official business for its own working files.

5. *Each staff office shall forward regularly to Central Files any originals of incoming official business from other White House staff offices after action, if any, has been taken and if such originals were not intended to be returned to the sender.* If desired, a copy may be kept for the staff's working files.

6. *Each staff office shall forward to Central Files at such times as it determines to be appropriate all working files of official business which are inactive and no longer needed.* These files will be stored by office as well as listed by subject matter. They will, of course, always be available for later reference.

7. *Each staff office at its own discretion may segregate any materials that it believes to be particularly sensitive and which should not be filed by subject matter.* Such sensitive materials should be forwarded to the Staff Secretary on the same basis as outlined in paragraphs 3 through 6 in an envelope marked SENSITIVE RECORDS FOR STORAGE with the office or individual from which they are sent marked on the outside and (as appropriate) a list of inventory in general terms attached. This list of inventory should also be sent to Central Files so that notations can be made in subject files that certain material is missing from the file. These materials will be filed in locked containers and will only be made available to the in-



dividual or office from whom they were received.

8. *No defense material classified under Executive Order No. 10501 with a classification of TOP SECRET or Restricted Data under the Atomic Energy Act of 1954 should be forwarded to Central Files. All such material should be forwarded to the Staff Secretary for storage.*

9. *No exceptions to the above shall be made without the express consent of the Counsel to the President. Additional advice on the operation of Central Files may be obtained from Frank Matthews, Chief of Central Files (Ext. 2240).*

White House Office Papers: Disposition of Papers Upon Leaving Staff

1. *Upon termination of employment with the staff, each staff member will turn over his entire files to Central Files with the exception of any personal files he might have maintained.*

2. *Personal files include: correspondence unrelated to any official duties performed by the staff member; personal books, pamphlets and periodicals; daily appointment books or log books; folders of newspaper or magazine clippings; and copies of records of a personal nature relating to a person's employment or service. Personal files should not include any copies, drafts, or working papers that relate to official business; or any documents or records, whether or not adopted, made or received in the course of official business. The White House Office of Presidential Papers, staffed by representatives of the National Archives, is available to assist staff members in the determination of what are personal files. Any question in this regard should be resolved with their assistance by contacting John Nesbitt, supervisory archivist of the Office of Presidential Papers (Ext. 2545).*

3. *A staff member, upon termination of employment, may at his discretion make copies for his personal use of a carefully chosen selection of the following types of documents within his files:*

(A) *Documents which embody original intellectual thought contributed by the staff member, such as research work and draftsmanship of speeches and legislation.*

(B) *Documents which might be needed in future related work by the individual.*

4. *No staff members shall make copies as permitted in paragraph three of any documents which contain defense material classified as CONFIDENTIAL, SECRET OR TOP SECRET under Executive Order No. 10501, Restricted Data under the Atomic Energy Act of 1954, or information supplied to the government under statutes which make the disclosure of such information a crime.*

5. *Each staff member who decides to make copies of such documents described in paragraph three shall leave a list of all such documents copied with Central Files. This will enable retrieval of a document in the event that all other copies of it and the original should be later lost.*

6. *The discretionary authority granted in paragraph three is expected to be exercised sparingly and not abused. All White House Office papers, including copies thereof, are the personal property of the President and should be respected as such. Any copies retained by a staff member should be stored in a secure manner and maintained confidentially.*

7. *All confidential and sensitive materials will be protected from premature disclosure by specific provisions of the Presidential Libraries Act of 1955 (44 U.S.C. 2108).*




THE WHITE HOUSE

WASHINGTON

August 23, 1974

MEMORANDUM FOR: DUDLEY H. CHAPMAN

FROM: WILLIAM HENKEL, JR. 

REGARDING: REQUEST FOR WHITE HOUSE DOCUMENTS

In my memorandum yesterday, I concluded that Mr. George S. Daly, Jr., the attorney for the plaintiffs, would pursue the matter of my not submitting White House documents pertaining to Billy Graham Day. Mr. James D. Monteith, the Department of Justice appointed attorney defending me, informed me yesterday afternoon that Mr. Daly filed a motion with U.S. District Judge James B. McMillan requesting that an order be issued requiring me to hold all papers in safekeeping and not relinquish possession and further that I be held in contempt.

As soon as I receive a copy of the motion, I will send it to you. However, my attorney recommends that prior to returning to Charlotte on September 5th or sooner if Judge McMillan requests immediate action that the Department of Justice and the White House provide me with documentation and justification for my inability on August 21st and, at present, to produce the requested documents. Until a policy decision on the overall issue of possession of the former President's papers is promulgated, it is my understanding, that I cannot do anything on this matter.



August 19, 1974

MEMORANDUM FOR:

PHILIP BUCHEN

FROM:

SKIP WILLIAMS *SPW*

SUBJECT:

Subpoena for Tapes in
Wounded Knee Trial

Attached hereto for your information is a copy of an order issued August 13, 1974 in connection with the "Wounded Knee" trial in St. Paul. The judge has ordered that the "prosecution and the Executive Office of the White House" provide information under oath concerning the existence of taped conversations of Richard Nixon relating to Wounded Knee.

The scope of the subpoena has been narrowed to a sixteen day period (March 11-18 and March 26 - April 2, 1973).

The order also seeks access to any logs, indexes or transcripts indicating the existence of taped conversations involving Wounded Knee.

A draft affidavit for Fred Buzhardt's signature is also attached.

You should also be aware that an order has been issued by the judge in this proceeding directing the Executive Office of the President to preserve the materials demanded by the subpoena.



DRAFT AFFIDAVIT

J. Fred Bushardt, having served as Counsel to the President under Richard Nixon, deposes and says:

1. I have read the order entered August 13, 1974, in this proceeding.
2. I am unable to state whether or not any tape recordings or transcripts thereof exist for conversations in which Richard Nixon was a party to a discussion in which the subject of Wounded Knee was mentioned during the period March 11-18 and March 26 - April 2, 1973. In order to confirm or deny the existence of such recorded conversations one would have to listen to all recorded conversations which occurred during the above - described period.
3. There are no logs, indexes or other materials which would indicate whether or not such a conversation took place and was recorded during the period in question.



Memorandum

TO : Roger Cabbage, Dept. of Justice
Room 402 Fed. Triangle Bldg.
315 9th St., N. W.
Washington, D.C. 20530

(6)
DATE: August 13, 1974

FROM : Earl Kaplan
U.S. Attorney's Office (for S.Dak.)
681 Fed. Bldg., 316 N. Robert St.
SUBJECT: St. Paul, Minn. 55101

Re: U. S. v. Means & Banks

Enclosed is order signed by Judge Nichol dated August 13, 1974, dealing with the so-called White House tapes. It is requested that you forward this order to the White House so that they may respond in affidavit form.

EK
I have already talked to Skip Williams in the White House with regard to this order. He advises me that the only logs that they have in the White House deal with meetings or conversations or telephone conversations. The logs of such conversations deal only with the time and duration of the meeting and who was there. The logs do not contain the subject matter of any conversations.

In regard to the tapes, Mr. Williams advises that there are no logs of the tapes. The only time that they would review tapes would be in response to a specific subpoena involving a specific date, a specific conversation, and specific participants. Therefore, he has no knowledge, nor is he aware of anyone else who has knowledge of any logs concerning the subject matter of Wounded Knee as it pertains to the tapes.

The information supplied to me should be the subject of an affidavit and should satisfy the enclosed order. I would appreciate receiving this affidavit as soon as possible.



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FILED
<i>August 13 1973</i>
<i>WILLIAM J. SASTEN</i>
<i>blak.</i>
By <i>[Signature]</i>
CLERK

United States of America,
Plaintiff,

vs

Dennis Banks,
Defendant.

CR73-5034
CR73-5062

United States of America,
Plaintiff,

vs

Russell Means,
Defendant.

CR73-5035
CR73-5063


ORDER



Upon the motion of the government to quash the subpoena of Richard M. Nixon or his authorized representative commanding the production of certain tape recordings in his possession or under his control relative to events at Wounded Knee, South Dakota, between February 27 and May 9, 1973, defendants' motion for the issuance of an amended subpoena similarly directed, and all the proceedings heretofore had herein, it is ordered that the prosecution and the Executive Office of the White House (1) disclose under oath whether any such tape recordings and transcripts thereof exist, and (2) if so, furnish (a) to the Court and the defendants any logs, indexes, lists or other records of such recordings and transcripts as well as any logs,

indexes, lists or other records indicating the existence and nature of any communication, conversations or meetings relative to the subject matters specified in said subpoenas and (b) to the Court in camera any tape recordings and transcripts thereof for the dates March 11-18, and March 26-April 2, 1973.

Dated: August 13, 1974



Judge of the U. S. District Court

ATTEST:

William J. Lister
clerk

By Helen Notboorn
deputy

WATERGATE SPECIAL PROSECUTION FORCE
United States Department of Justice
1425 K Street, N.W.
Washington, D.C. 20005
August 15, 1974

J. Fred Buzhardt, Esq.
Counsel to the President
The White House
Washington, D. C.

Re: United States v. John B. Connally

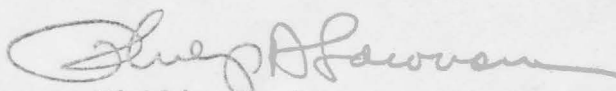
Dear Mr. Buzhardt:

In connection with the above-captioned criminal prosecution, the attorneys for John B. Connally have requested that the Special Prosecutor's office make available, among other things, "White House tapes not yet turned over to anyone." Their position is that appropriate means must be found to see that such tapes are turned over to the Court for determination of which portions are relevant and therefore available to the defendant under Rule 16(a)(1) of the Federal Rules of Criminal Procedure. The Special Prosecutor's office has no knowledge of whether there are in fact any such tapes.

We recognize that you have concluded that these materials are the personal property of the former President, but we request that, to whatever extent you have any tapes falling within this request, they be retained pending further developments in the case.

Thank you very much.

Sincerely,



Philip A. Lacovara
Counsel to the Special
Prosecutor

cc: Edward Bennett Williams, Esq.
Williams, Connolly & Califano
839 Seventeenth Street, N. W.
Washington, D. C.



HENRY J. FOX
HARRY M. PLOTKIN
SAMUEL EFRON
THOS. SCHATTENFIELD
JOEL N. SIMON
JACK L. LAHR
GEORGE R. KUCIK
M. J. SHEFFIELD, JR.
JOHN M. BRAY
MICHAEL R. FLYER
LEE HERMELSTEIN
ARNOLD R. WESTERMAN
DANIEL C. SMITH
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ROBERT H. NEUMAN
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EVAN R. BERLACK
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HOWELL J. REEVES
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CHRISTOPHER SANGER
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SALVATORE A. ROMANO
JAMES P. PARKER
RODNEY F. PAGE
JOHN W. CURRIE
LARRY N. GANDAL
RONALD I. TISH
ROBERT P. BUNN
E. RICK BUELL, II
BENJAMIN E. GOLDMAN
LEE CALLIGARO
ERIC L. CUMMINGS
BARRY R. SCHENOF

LAW OFFICES
ARENT, FOX, KINTNER, PLOTKIN & KAHN
FEDERAL BAR BUILDING
1815 H STREET, N. W.
WASHINGTON, D. C. 20006

CABLE: ARFOX, WESTERN UNION TELEX: 892672

202 347-8500

August 16, 1974

EARL W. KINTNER
DAVID M. OSNOS
ARTHUR L. CONTENT
SIDNEY HARRIS
CHARLES S. RUTTENBERG
ALLEN G. SIEGEL
STEPHEN J. WEISS
WILLIAM J. LEHRFELD
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JOSEPH E. CASSON
JOHN R. RISHIER, JR.
MICHAEL E. JAFFE
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CYNTHIA H. MILLIGAN
MARC L. FLEISCHAKER
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JOHN L. BURKE, JR.
STEPHEN T. PHELPS
CHARLES F. PLENOE
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EDWIN L. KAHN
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DONALD E. OSTEN
KEITH A. SEAY
STEPHEN B. FORMAN
SAMUEL H. WEISSBARD
MICHAEL M. EATON
DOUGLAS G. GREEN

Jack McCahill, Esq.
The White House
Washington, D. C.

Re: Gordon Strachan

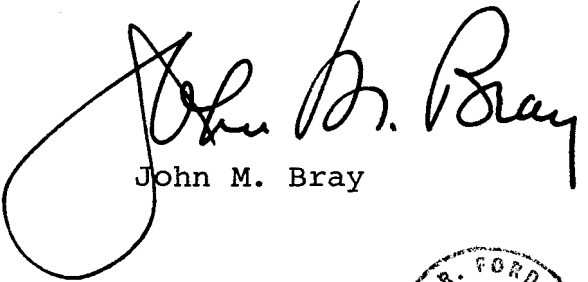
Dear Mr. McCahill:

In view of the resignations of President Nixon, Mr. St. Clair and Mr. Buzhardt, I would like to inquire whether the White House policy has changed with respect to restrictions on obtaining access to and copies of documents, notes and memoranda written by or to my client, Gordon Strachan.

On July 31, while Mr. Strachan was in town for a pre-trial hearing in United States v. Mitchell, et al. (D.D.C. No. 74-110), he called Mr. St. Clair's office to inquire whether he could review his files with counsel present and was advised that the current policy prohibited his doing so. In the event that policy has been relaxed, I would appreciate your letting me know. I would also appreciate your advising me whether it is possible for me to come alone to review his files since Mr. Strachan lives in Salt Lake City and would have to make a special trip here to review the files.

I will await your response.

Sincerely,


John M. Bray



ROGER J. WHITEFORD 1886-1965
RING GOLD HART 1886-1965
JOHN J. CARMODY 1901-1972
JOHN J. WILSON
HARRY L. RYAN, JR.
JO V. MORGAN, JR.
FRANK H. STRICKLER
WILLIAM E. ROLLO
CHARLES J. STEELE
JOHN J. CARMODY, JR.
JAMES EDWARD ABLARD
KEVIN W. CARMODY

COUNSEL
DONALD L. HERSKOVITZ

LAW OFFICES
WHITEFORD, HART, CARMODY & WILSON

815 FIFTEENTH STREET, NORTHWEST

WASHINGTON, D. C. 20005

202-638-0465

CABLE ADDRESS

WHITEHART WASHINGTON

MARYLAND OFFICE
7401 WISCONSIN AVENUE
BETHESDA, MARYLAND 20014
301-656-5700

JO V. MORGAN, JR.
FRANK H. STRICKLER
WILLIAM E. ROLLO
CHARLES J. STEELE

August 19, 1974

Philip W. Buchen, Esq.
Counsel to the President
White House
Washington, D.C.

Re: U.S. v. Mitchell, et al.
Criminal No. 74-110

Dear Mr. Buchen:

We are the attorneys for Mr. H.R. Haldeman, one of the defendants in the above entitled proceeding. This morning Judge Sirica denied motions of the defendants for a postponement. Thus, we are facing a trial which is scheduled, as heretofore announced, for Monday, September 9.

The problem which I wish to present is urgent, and I hope may have immediate consideration. I should like to come over and discuss this matter with you, if possible, today or tomorrow.

In the past the rule of the Nixon-White-House was that Mr. Haldeman would be permitted to have unlimited access to the room in the Executive Office Building in which his files are kept, and that he could examine anything and everything in those files, but a Secret Service man has always been present who would log him in and out, would permit him to have access to whatever he chose in his files, but he could neither have copies nor make copies of portions, nor even to make any notes at all. The awkward procedure was followed with the knowledge of the Secret Service that Mr. Haldeman would examine a document, memorize portions or points thereof, excuse himself from the room and make cryptic notes in the hallway, and then was permitted to come back and repeat this process as many times as he chose. The urgent

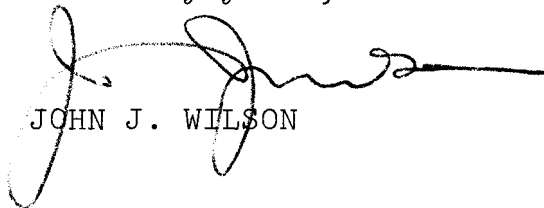


problem arises that in this transition period he is not permitted even to do this, thus preventing him from pursuing even the preparation for trial heretofore afforded him.

I would like to present this matter in its full context to you personally, and I hope that you will be able to see me promptly.

Thanking you in anticipation of your immediate consideration of our problem, and looking forward to the opportunity to meet you personally, I am

Sincerely yours,



JOHN J. WILSON

JJW/bps



LAW OFFICES

FRATES FLOYD PEARSON STEWART PROENZA & RICHMAN

PROFESSIONAL ASSOCIATION

TWELFTH FLOOR CONCORD BUILDING

MIAMI, FLORIDA 33130

WM. SNOW FRATES
ROBERT L. FLOYD
RAY H. PEARSON
LARRY S. STEWART
MORRIS C. PROENZA
GERALD F. RICHMAN
JAMES D. LITTLE
ALAN G. GREER
KENNETH J. WEIL
BERTHA CLAIRE LEE
ANDREW C. HALL
JOHN M. BRUMBAUGH
IRA H. LEESFIELD
STEPHEN N. ZACK
SHERRYLL MARTENS DUNAJ
WM. BRUCE HARPER, JR.
MARVIN E. CHAVIS
DENNIS L. WEBB
GEORGE E. SCHULZ, JR.
DONALD R. THOMPSON
PHILLIP E. WALKER
BILLIE J. SPENCER

AREA CODE 305

TELEPHONE 377-0241

BROWARD LINE 523-4297

August 21, 1974

Philip W. Buchen
Counsel to the President
Executive Office Building
Washington, D.C.

Re: United States v. Mitchell, Case No. 74-110
United States District Court for the District
of Columbia

Dear Mr. Buchen:

Yesterday I spoke with you to advise you that my client, John D. Ehrlichman, a defendant in the above styled cause, was in Washington and to request that he be permitted to examine his papers now stored in the Presidential Archives of the White House. I further conveyed to you the request that the previous procedure followed during the Nixon Administration be amplified to allow Mr. Ehrlichman to have the effective assistance of counsel during this examination by allowing defense counsel or any one of them to examine these papers with Mr. Ehrlichman. To each of these requests you replied that since the Ford Administration had just come to the White House, my request could not be honored at this time but that you would employ your best efforts to obtain a decision in the next few days. There is one additional fact which should be conveyed. Trial in this major criminal prosecution is now set for September 9, 1974. Motions for a continuance have been denied by the trial judge, John Sirica. Consequently, there is a very limited amount of time available in which the defendants, including my client, can prepare for trial. Each day that passes greatly prejudices their rights. Consequently, I urge you to permit inspection as quickly as possible in order to avoid a grave injustice which will occur if inspection is not permitted or is permitted at a late date.

Sincerely,


ANDREW C. HALL



THE WHITE HOUSE

WASHINGTON

August 23, 1974

MEMORANDUM FOR

H. S. Knight
Director, United States Secret Service

Per memorandum of Philip W. Buchen dated August 23, 1974,
this is to confirm authorization for Mr. H. R. Haldeman
to review his files in Room 522 on the afternoon of Friday,
August 23, 1974.



William E. Casselman II

cc: Philip W. Buchen



THE WHITE HOUSE
WASHINGTON

August 23, 1974

MEMORANDUM FOR: H. S. Knight
Director, United States Secret Service

SUBJECT: Protection of White House Files



This memorandum will continue in effect the standing instructions issued to you by J. Fred Buzhardt in his memorandum dated May 23, 1973, and by General Alexander Haig in his memorandum dated June 21, 1974, regarding access to all of the files located in Room 522 and the files located in Room 84 of the Old Executive Office Building, which files are under the protection of the United States Secret Service, subject to the following clarifying amendments:

Strike all of the names listed in the first paragraph of the memorandum dated May 23, 1973, and insert in lieu thereof the names listed in Exhibit 1, attached hereto.

Strike the first sentence of numbered paragraph 3 of the memorandum dated May 23, 1973.

Strike the name of Geoffrey C. Shepard wherever it appears in the memorandum dated June 21, 1974, and insert in lieu thereof the name of William E. Casselman II.

This memorandum will remain in effect until amended or revoked by memorandum from the Counsel to the President to the Director of the United States Secret Service. The continued access to Room 522 and Room 84 under the terms of the May 23, 1973, and June 21, 1974, memorandum is being undertaken by me with the concurrence of Richard M. Nixon.


Philip W. Buchen
Counsel to the President


Enclosure

cc: General Alexander M. Haig, Jr.

EXHIBIT 1

Patrick J. Buchanan
John J. Caulfield
Dwight Chapin
Charles Colson
John W. Dean III
Frank DeMarco
John D. Erhlichman
H. R. Haldeman
Larry Higby
Tom Huston
E. Howard Hunt
Herb Kalmbach
Kenneth Khachigian
Egil Krogh
Fred LaRue
G. Gordon Liddy
Jeb Stewart Magruder
John M. Mitchell
Richard Moore
Robert G. Odle
Bart Porter
Robert Reisner
Maurice Stans
Hugh Sloan
Gordon Strachan
David Young



ASHCRAFT & GEREL
ATTORNEYS AT LAW
WASHINGTON, D. C. 20005

1039

August 23 1974 $\frac{15.52}{540}$

PAY TO THE
ORDER OF

Philip W. Buchen, Esq.

\$ 20.80

Twenty and 80/100

DOLLARS



NATIONAL SAVINGS AND TRUST COMPANY
WASHINGTON, D.C.

FOR Witness Fee



George L. Ford

⑆0540⑆0052⑆ 01⑆9⑆208032⑆3⑆

CIVIL SUBPOENA

United States District Court
for the
District of Columbia

R. SPENCER OLIVER

Plaintiff.

vs.

THE COMMITTEE FOR THE RE-ELECTION
OF THE PRESIDENT, et al

Defendant.

CIVIL ACTION No. 1207-73

To: Philip W. Buchen, Esquire, Counsel to the President

1600 Pennsylvania Avenue, N. W., Washington, D. C.

YOU ARE HEREBY COMMANDED to appear in ~~this court~~ (the office of Joseph H. Koonz, Jr.,
Esquire, 925-15th Street, N. W., Washington, D. C. (Fifth Floor))
to give testimony in the above-entitled cause on the 12th day of September, 1974,
at 2:00 o'clock p. m. (and bring with you) all tapes, and transcripts of tapes, of con-
versations of Richard M. Nixon and/or his Aides recorded in the White House
for the period from May 26 through June 21, 1972.

and do not depart without leave.

JAMES F. DAVEY, Clerk

By *Patricia M. Hayden*

Deputy Clerk.

Date August 23, 1974

Joseph H. Koonz, Jr.

Attorney for *Plaintiff.*
~~*Defendant.*~~

RETURN ON SERVICE

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

Dated _____

Subscribed and sworn to before me, a _____
_____, 19____



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

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

R. SPENCER OLIVER

Plaintiff

v.

THE COMMITTEE FOR THE RE-ELECTION :
OF THE PRESIDENT, et al

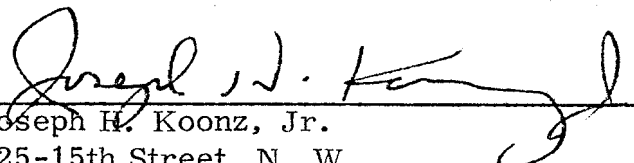
Defendants

CIVIL ACTION

NO. 1207-73

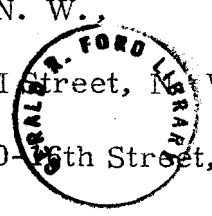
NOTICE OF TAKING DEPOSITION

Please take notice that on Thursday, September 12, 1974, at 2:00 P.M., in the office of Joseph H. Koonz, Jr., Esquire, 925-15th Street, N. W., Washington, D. C., before a Notary Public of Friedli, Wolff and Pastore, or any other authorized Notary Public, the plaintiff, through his attorney, will take the deposition of Philip W. Buchen, Esquire, Counsel to the President, by oral examination, pursuant to the provisions of the Rules of Civil Procedure.


Joseph H. Koonz, Jr.
925-15th Street, N. W.
Washington, D. C. 20005
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Taking Deposition was mailed, postage prepaid, this 23rd day of August, 1974, to Richard W. Galiher, Esquire, 1215-19th Street, N. W., Washington, D. C. 20036; James R. Stoner, Esquire, 1000 Connecticut Avenue, N. W., Washington, D. C. 20006; Daniel E. Schultz, Esquire, 1990 M Street, N. W., Washington, D. C. 20036; Bernard Fensterwald, Esquire, 910-15th Street,

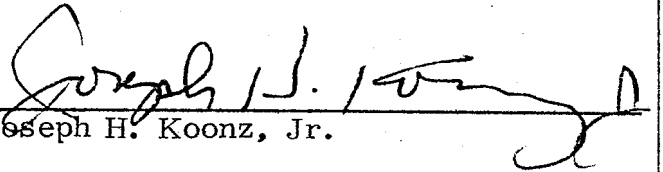


LAW OFFICES
CHCRAFT AND GEREL
25 15TH STREET, N.W.
WASHINGTON, D. C. 20005
783-6400

SUITE 201
2030 CAMERON STREET
VER SPRING, MD. 20910
563-1918

SUITE 220
600 KENMORE AVENUE
ALEXANDRIA, VA. 22304
751-7400

N. W., Washington, D. C. 20006; Fred M. Vinson, Jr., Esquire, 800-17th Street, N. W., Washington, D. C. 20006; William A. Snyder, Jr., Esquire, 1600 Maryland National Bank Building, Baltimore, Maryland 21202; Peter L. Maroulis, Esquire, 11 Cannon Street, Poughkeepsie, New York 12601; James J. Bierbower, Esquire, 1625 K Street, N. W., Washington, D. C. 20006; Walter J. Bonner, Esquire, 1001 Connecticut Avenue, N. W., Washington, D. C. 20036; Charles B. Murray, Esquire, 1025-15th Street, N. W., Washington, D. C. 20005; William G. Hundley, Esquire, 839-17th Street, N. W., Washington, D. C. 20006; and John J. Wilson, Esquire, 815-15th Street, N. W., Washington, D. C. 20005.


Joseph H. Koonz, Jr.

LAW OFFICES
SHCRAFT AND GEREL
1025 15TH STREET, N. W.
WASHINGTON, D. C. 20005
783-6400
SUITE 201
3930 CAMERON STREET
SILVER SPRING, MD. 20910
589-1818
SUITE 220
6550 KENMORE AVENUE
ALEXANDRIA, VA. 22304
751-7400



FENSTERWALD AND OHLHAUSEN, ATTORNEYS

NUMBER

2681

DATE Aug 23 1974

15-3/540

PAY
TO THE
ORDER
OF

Philip W. Buchen, Counsel to the President \$ 21.00

twenty one & 00/100 DOLLARS

The RIGGS NATIONAL BANK
of WASHINGTON, D. C.

FEDERAL OFFICE
1750 PENNSYLVANIA AVENUE, N. W.



FENSTERWALD AND OHLHAUSEN, ATTORNEYS

B Fensterwald Jr. AUTH. SIG.

⑆0540⑈0003⑆ 11⑈07098530⑈

CIVIL SUBPOENA

United States District Court
for the
District of Columbia

~~Democratic National Committee, et al.~~
Plaintiff.

vs.

CIVIL ACTION No. 1233/72

~~James W. McCord, Jr.~~
Defendant.

To: ~~Philip W. Buchen, Esquire, Counsel to the President,~~
~~1600 Pennsylvania Avenue, N.W., Washington, D.C.~~

YOU ARE HEREBY COMMANDED to appear in (~~this court~~) (the office of ~~Bernard Fensterwald, Jr., Esquire, 910 16th Street, N.W., Washington, D.C.~~)
~~to give testimony in the above entitled cause~~ on the 17th day of September, 1974,
at 10:00 o'clock a.m. (and bring with you) all tapes, and transcript of tapes,
of conversations of Richard M. Nixon and/or his aides recorded in the
White House for the period from January 1, 1973 to January 31, 1973,
inclusive.

and do not depart without leave.

James P. Davey, Clerk

By Robert L. Lane

Deputy Clerk.

Date August 23, 1974

~~Bernard Fensterwald, Jr.~~
Attorney for Plaintiff
Defendant.

RETURN ON SERVICE

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

Dated _____

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

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

HYDEMAN, MASON & GOODELL

1225 NINETEENTH STREET, N.W.

WASHINGTON, D. C. 20036

ARTHUR K. MASON
LEE M. HYDEMAN
HAROLD E. MESIROW
JOHN M. BURZIO
JAMES T. LLOYD
JAMES H. HELLER
CHARLES E. GOODELL

August 20, 1974

TELEPHONE
202 659-3650

CABLE ADDRESS
HASTEN

OF COUNSEL

ALGER B. CHAPMAN
ALEXANDER M. LANKLER

Mr. Phillip W. Buchen
Counsel to the President
The White House
Washington, D.C.

Dear Mr. Buchen:

It was gratifying to learn that upon your appointment as Counsel to President Ford you immediately undertook reconsideration of the decision of your predecessor that the tapes of conversations between President Nixon and others, apart from those already ordered produced in criminal matters, would be deemed the property of Mr. Nixon and turned over to him.

I write you with some concern about this question because there is a dimension which may not have been fully considered. That is the possible relevance and evidentiary or discovery value of these tapes in pending civil litigation to vindicate fundamental civil liberties.

It appears altogether likely that if the tapes are in fact returned to Mr. Nixon they will either be destroyed within a short period of time or will at least be put beyond the reasonable reach of persons who may have need for those tapes in the course of such litigation.

I am volunteer counsel for the plaintiffs in one such class action filed by the American Civil Liberties Union. That suit, Allnutt v. Wilson, Civil Action No. 874-72 pending in the United States District Court for the District of Columbia, is a damage action brought on behalf of more than 3200 persons who were arrested during the course of the so-called "Mayday" demonstrations on Tuesday, May 4, 1971 next to the Justice Department building here in Washington. To my knowledge there are at least three other class actions pending which involve the so-called Mayday demonstrations. While I have some general familiarity with those other suits, I can speak most specifically with respect to the Allnutt case and the possible relevance of taped Presidential conversations.

The May 4, 1971 arrests on 10th Street, N.W. between Constitution Avenue and Pennsylvania Avenue alongside the Justice Department occurred in the most suspicious manner and circumstances. I think it is fair to say that almost every one of the more than 3200 persons arrested in that spot



Mr. Phillip W. Buchen
August 20, 1974

- 2 -

on that date believed they were peacefully demonstrating with the permission of the Police Department until shortly before the time they were actually arrested. A very large proportion of all of those persons had previously congregated in Franklin Park in northwest Washington and had been peacefully escorted by the police under Chief Wilson down through the streets of Washington to the point alongside the Justice Department where they were gathered when the arrests began. We have on file numerous affidavits indicating that people were either caught by surprise when the warning to disperse within five minutes was suddenly given, or didn't even hear the warning, that they were either given no time to pass through the police lines or were intimidated and in some cases even beaten when they sought to leave the area. The entire block was walled off by policemen. During the course of the arrests some FBI agents sortied from the Justice Department and arrested selected leaders of the demonstration. As far as we know, no more than a few demonstrators were actually able to leave the police cordons and avoid the arrests, although many wished to do so. You may also recall newspaper photographs of Attorney General Mitchell watching the arrests from a Justice Department balcony.

Thus, the situation immediately preceding the arrests and the arrests themselves (ultimately thrown out of court) had the look of a police encirclement and trap. It is of course possible that this is not true. It is also possible that, if it is true, it was entirely conceived and carried out by the Metropolitan Police of the District of Columbia themselves. However, we do know that during the preceding evening after the Monday demonstrations, Chief Wilson conferred with high Justice Department officials and there is at least a plausible inference that the tactics used on Tuesday May 4, namely the lulling of the demonstrators into a false sense of security, their encirclement, and their arrest en masse, were part of a conceived plan.

We also know from the testimony of Mr. Mitchell and Mr. John Dean during the Senate "Watergate" Committee hearings that President Nixon and at least some of his advisors had an almost paranoid concern with political demonstrations and demonstrators, and indeed that the Liddy plan, thrice presented to Attorney General Mitchell and finally partly carried out, originally had to do in Mr. Mitchell's mind with that very question, namely how to deter and sabotage demonstrations.

In the Allnutt litigation we desire to know whether there were any conversations in which the President was a participant which either directly or indirectly led to White House orders to accomplish the encirclement and arrests of May 4, 1971.

The tapes which are to be returned to Mr. Nixon if you do not reverse the opinion of your predecessor, Mr. Buzhardt, may or may not contain evidence that this suspicious mass arrest on May 4, 1971 was in fact ordered in the White House. We do not know, but at the very least we would like to



Mr. Phillip W. Buchen
August 20, 1974

- 3 -

have our day in court while the tapes are still in government hands and to have access to any taped conversations relating to those demonstrations. We have a long enough record of concealment and false statements on the part of former Nixon Administration officials that we may never discover this fact if the tapes themselves are not available.

In the next few days I expect to file in court a request for production of any tapes bearing on this question. It is a matter of great urgency from our viewpoint that the Presidential tapes be preserved as property of the Federal government at least until it is clearly shown that they no longer have any public usefulness. I myself do not understand the notion that they could possibly be private property. It is of course true that they may be privileged, although I do not read the Supreme Court decision in United States v. Nixon to deal with this question in the context of civil litigation undertaken to vindicate constitutional rights.

However, we are much more interested in possible orders given by or in the name of the President than in advice given to him by his advisors. It is hard to understand how anyone could say a priori that these tapes are merely the private property of Mr. Nixon when they may contain the only record of decisions he made as President which may in the future be of concern to both the Congress and the courts of this country.

Thank you very much for your consideration of this letter.

Sincerely,


James H. Heller



93^D CONGRESS
2^D SESSION

S. 2951

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 1974

Mr. BAYH introduced the following bill; which was read twice and referred
to the Committee on Government Operations

A BILL

To provide for public ownership of certain documents of elected
public officials.

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 "Public Documents Act".

4 SEC. 2. (a) Title 44, United States Code, is amended
5 by adding at the end thereof the following new chapter:

6 **"Chapter 39—PUBLIC DOCUMENTS OF ELECTED**
7 **OFFICIALS**

"Sec.

"3901. Definitions.

"3902. Papers of elected officials.

"3903. Preservation of public documents.

"3904. Judicial review.



1 **“§ 3901. Definitions**

2 “For purposes of this chapter—

3 “(1) ‘elected official of the United States’ means
4 the President, Vice President, Senator, and Member
5 of (or Resident Commissioner or Delegate to) the
6 House of Representatives, including any individual hold-
7 ing such office for any period by reason of appointment
8 to such office or succession to such office; and

9 “(2) ‘public documents’ means, with respect to an
10 elected official of the United States, the books, corre-
11 spondence, documents, papers, pamphlets, models, pic-
12 tures, photographs, plats, maps, films, motion pictures,
13 sound recordings, and other objects or materials which
14 shall have been retained by an individual holding elec-
15 tive office under the United States and which were pre-
16 pared for or originated by such individual in connec-
17 tion with the transaction of public business during the
18 period when such individual held elective office and
19 which would not have been prepared if that individual
20 had not held such office; except that copies of public
21 documents preserved only for convenience of reference,
22 and stocks of publications and of public documents previ-
23 ously processed under this title are not included.

1 **“§ 3902. Papers of elected officials**

2 “Within one hundred and eighty days after an elected
3 official of the United States ceases to hold his office, the
4 Administrator of General Services shall obtain any objects
5 or materials of that elected official which the Administrator
6 determines to be public documents within the meaning of
7 section 3901 (2) of this title, and such elected official shall
8 transmit such documents to the Administrator.

9 **“§ 3903. Preservation of public documents**

10 “The Administrator of General Services shall deposit in
11 the National Archives of the United States the public docu-
12 ments of each elected official of the United States obtained
13 under section 3902 of this title. Sections 2101–2113 of this
14 title shall apply to all public documents accepted under this
15 section.

16 **“§ 3904. Judicial review**

17 “A decision by the Administrator of General Services
18 that any object or material is a public document of an elected
19 official of the United States within the meaning of section
20 3901 (2) of this title shall be a final agency decision within
21 the meaning of section 702 of title 5.”.

22 (b) The table of chapters, preceding chapter 1 of such
23 title 44, is amended by adding at the end thereof the
24 following:

“39. Public Documents of Elected Officials..... 3901”.

93^d CONGRESS
2^d SESSION

S. 2951

A BILL

To provide for public ownership of certain
documents of elected public officials.

By Mr. BAYH

FEBRUARY 4, 1974

Read twice and referred to the Committee on
Government Operations

71

THE WHITE HOUSE

WASHINGTON

August 27, 1974

MEMORANDUM FOR

The Honorable Laurence H. Silberman
Deputy Attorney General
Department of Justice

Subject: Further matters related to subjects of opinion
requested August 22 from the Attorney General

Confirming my report to you by telephone, I wish to advise of a threatened action by Richard M. Cooper at Williams, Connolly & Califano, attorneys for the Washington Post under the Freedom of Information Act (5 U.S.C. 552) for access to documents prepared by the White House Gift Unit during the Nixon administration with respect to gifts given to former President Nixon and his family by foreign governments or their officials and currently located in packing boxes within the White House complex. By telephone, Cooper has indicated he will defer action but only until I advise him of what the position of the present administration will be after we have received the opinion requested of the Attorney General.

On the matter you raised in our conversation of a letter to Arthur F. Sampson, Administrator of GSA, dated August 14, from Ralph Nader or a related party or law firm, I find that William Casselman has no copy of this. He wonders if it was related to the case of Brandon v. Sampson and G.S.A. on appeal before the U. S. Court of Appeals for the District of Columbia.

We have had some indication that subpoena may soon be issuing, which could relate to documents being dealt with in your opinion, in the case of Institute for Policy Studies, et al. v. Mitchell, et al., U.S.D.C. (D.C.), Civil Action No. 74-316.

P.W.B.



THE WHITE HOUSE

WASHINGTON

To: Mr. Buchen

From: Eva

This was sent to Mr. Silberman.

Do you want copies to --

Yes Gen. Haig ?

Yes Fred Buzhardt ?

~~Anyone else ?~~

Yes Casselman ?



THE WHITE HOUSE

WASHINGTON

August 27, 1974

MEMORANDUM FOR

The Honorable Laurence H. Silberman
Deputy Attorney General
Department of Justice

Subject: Further matters related to subjects of opinion
requested August 22 from the Attorney General

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P. W. B.



THE WHITE HOUSE
WASHINGTON

August 27, 1974

MEMORANDUM FOR

The Honorable Laurence H. Silberman
Deputy Attorney General
Department of Justice

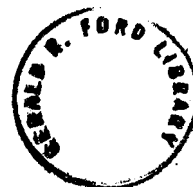
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requested August 22 from the Attorney General

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P. W. B.



August 27, 1974

MEMORANDUM FOR

**The Honorable Laurence H. Silberman
Deputy Attorney General
Department of Justice**

**Subject: Further matters related to subjects of opinion
requested August 22 from the Attorney General**

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On the matter you raised in our conversation of a letter to Arthur F. Sampson, Administrator of GSA, dated August 14, from Ralph Nader or a related party or law firm, I find that William Casselman has no copy of this. He wonders if it was related to the case of Brandon v. Sampson and G.S.A. on appeal before the U. S. Court of Appeals for the District of Columbia.

We have had some indication that subpoenas may soon be issuing, which could relate to documents being dealt with in your opinion, in the case of Institute for Policy Studies, et al. v. Mitchell, et al., U.S.D.C. (D.C.), Civil Action No. 74-316.

PWBuchen:ed

cc: General Haig
Fred Buzhardt
Bill Casselman



August 27, 1974

MEMORANDUM FOR

**The Honorable Laurence H. Silberman
Deputy Attorney General
Department of Justice**

**Subject: Further matters related to subjects of opinion
requested August 23 from the Attorney General**

Confirming my report to you by telephone, I wish to advise of a threatened action by Richard M. Cooper at Williams, Connolly & Califano, attorneys for the Washington Post under the Freedom of Information Act (5 U.S.C. 552) for access to documents prepared by the White House Gift Unit during the Nixon administration with respect to gifts given to former President Nixon and his family by foreign governments or their officials and currently located in packing boxes within the White House complex. By telephone, Cooper has indicated he will defer action but only until I advise him of what the position of the present administration will be after we have received the opinion requested of the Attorney General.

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PWBuchen:ed

cc: General Haig
Fred Buzhardt
Bill Casselman



August 27, 1974

MEMORANDUM FOR

The Honorable Laurence H. Silberman
Deputy Attorney General
Department of Justice

Subject: Further matters related to subjects of opinion
requested August 22 from the Attorney General

Confirming my report to you by telephone, I wish to advise of a threatened action by Richard M. Cooper at Williams, Connolly & Callane, attorneys for the Washington Post under the Freedom of Information Act (5 U.S.C. 552) for access to documents prepared by the White House GMR Unit during the Nixon administration with respect to gifts given to former President Nixon and his family by foreign governments or their officials and currently located in packing boxes within the White House complex. By telephone, Cooper has indicated he will defer action but only until I advise him of what the position of the present administration will be after we have received the opinion requested of the Attorney General.

On the matter you raised in our conversation of a letter to Arthur F. Sampson, Administrator of GSA, dated August 14, from Ralph Nader or a related party or law firm, I find that William Casselman has no copy of this. He wonders if it was related to the case of Bragdon v. Sampson and G.S.A. on appeal before the U. S. Court of Appeals for the District of Columbia.

We have had some indication that subpoenas may soon be issued, which could relate to documents being dealt with in your opinion, in the case of Institute for Policy Studies, et al. v. Mitchell, et al., U.S.D.C. (D.C.), Civil Action No. 74-316.

PWBuchen:d

cc: General Haig
Fred Bushardt
Bill Casselman



August 27, 1974

MEMORANDUM FOR

**The Honorable Laurence H. Silberman
Deputy Attorney General
Department of Justice**

**Subject: Further matters related to subjects of opinion
requested August 22 from the Attorney General**

Confirming my report to you by telephone, I wish to advise of a threatened action by Richard M. Cooper at Williams, Connolly & Califano, attorneys for the Washington Post under the Freedom of Information Act (5 U.S.C. 552) for access to documents prepared by the White House Gift Unit during the Nixon administration with respect to gifts given to former President Nixon and his family by foreign governments or their officials and currently located in packing boxes within the White House complex. By telephone, Cooper has indicated he will defer action but only until I advise him of what the position of the present administration will be after we have received the opinion requested of the Attorney General.

On the matter you raised in our conversation of a letter to Arthur F. Sampson, Administrator of GSA, dated August 14, from Ralph Nader or a related party or law firm, I find that William Casselman has no copy of this. He wonders if it was related to the case of Brandon v. Sampson and G. S. A. on appeal before the U. S. Court of Appeals for the District of Columbia.

We have had some indication that subpoenas may soon be issuing, which could relate to documents being dealt with in your opinion, in the case of Institute for Policy Studies, et al. v. Mitchell, et al., U.S.D.C. (D.C.), Civil Action No. 74-316.

PWBuchen:ed

cc: General Haig
Fred Buzhardt
Bill Casselman



Draft/8/29/74

DRAFT OF PROPOSED LETTER FOR PRESIDENT
TO SEND ATTORNEY GENERAL

Dear Mr. Attorney General:

By this letter, I am requesting your legal opinion concerning papers and other historical materials prepared and maintained in the White House office during the Administration of former President Richard M. Nixon and still located in the Executive Office Building or in the White House.

We have been advised that certain of the items involved are required by former President Nixon in order that he may complete the task of complying with the subpoena directed to him in connection with the pending case of United States v. Mitchell, et al, which is presently set for trial on September 30, 1974. We are further advised that certain items will be needed by former President Nixon for other purposes relating to that case, wherein he has been subpoenaed as a witness, and for other litigation now pending or in contemplation.

I would like your advice concerning the ownership of these materials; the obligation of the Government to deliver



them to former President Nixon at his request; [the right of the Government to examine them for evidence of criminal wrongdoing;] and the obligations of the Government with respect to subpoenas or court orders heretofore or hereafter issued pertaining to them.

Sincerely,



I. Ownership of the Materials.

Beginning with George Washington, every President of the United States has regarded all the papers and historical materials—/ which accumulated in the White House during his administration, of a private or official nature, as his own property.—/ In Folsom v. Marsh, 9 Fed. Case 342, 2 Story 100, 108-109 (D.C. D. Mass 1841), Mr. Justice Story, while sitting in circuit, held that President Washington's letters, including his official correspondence,—/ were his private property which he could bequeath, which his estate could alienate, and in which the purchaser could acquire a copyright.

—/The term "historical materials" is used here as it is defined in 44 U.S.C. 2101 to cover:

"books, correspondence, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, motion pictures, sound recordings, and other objects or materials having historical or commemorative value."

—/Statement of Dr. Grover, Archivist of the United States, during the House Hearings on the Joint Resolution of August 12, 1955, supra, To Provide for the Acceptance and Maintenance of Presidential Libraries, and for Other Purposes. 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.

—/The official documents involved in that 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 the expected war with France. 2 Story, at 104-105.



A classic exposition and explanation of the status of Presidential papers, private and official, 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, pp. 30-31 (1914). [Emphasis supplied.]

It is true that section 507 of the Federal Records Act of 1950, 64 Stat. 587, the predecessor to the Joint Resolution of August 12, 1955, 69 Stat. 695 (now codified in 44 U.S.C. 2101, 2107 and 2108) seemed to distinguish between official and personal papers of a President (compare subsection (a) dealing with the records of an agency with subsection (e) relating to the personal papers of a President). A memorandum prepared in the Office of the Assistant Solicitor General (now Office of Legal Counsel) on April 6, 1951, on the subject of the President's papers, indicated that such a distinction was inconsistent with historic precedents, and that the dichotomy would be difficult if not impossible to effectuate.

In any case, the 1955 Joint Resolution, which serves as the permanent basis of the Presidential Library system, clearly rejects the distinction and proceeds on the premise that a President has title to all the documents and historical materials--whether personal or official--which accumulate in the White House during his incumbency.



This appears first from the omission of the word "personal" from 44 U.S.C. 2107(a), the equivalent to section 507(e) of the 1950 Federal Records Act of 1950. Thus, the current law covers the deposit of all Presidential papers, not only personal ones. Second, during the debate on the Joint Resolution on the floor of the House, 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. [Emphasis supplied.]

So far as we are aware, no members of Congress disagreed.

Finally, the hearings on the Joint Resolution before a Special Subcommittee of the House Committee on Government Operations indicate full congressional awareness that all Presidential papers are the private property of the President. 1955 Hearings, pp. 12, 20, 28, 32, 52, 54, 58.

The most recent discussion concerning ownership of Presidential papers 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. The report pointed 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 concluded that the historical precedents, taken together with the provisions of the Presidential



Libraries Act, indicated that the papers of President Nixon should be considered his personal property.

II. Disposition of Materials Subject to Court Orders and Subpoenas.

Even though the government is merely the custodian and not the owner of the subject materials, it can properly be subjected to court directives relating to them. 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 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).

1 The question arises as to the status of court orders or subpoenas issued before former President Nixon resigned his position. With respect to those directed against the United States there is no question of continued applicability, since

the United States remains in custody of the materials in question. With respect to the subpoena that issued in United States v. Nixon, ___ U.S. ___, if any portions of that subpoena remain uncomplied with the answer is far less clear. Prior to the adoption of Fed. R. Civ. P. ___, the rule was that a law suit against a government official would not continue in effect against his successor in office, and that a substitution of parties would be necessary (cite of cases). There is no such curative statute with respect to subpoenas, which are presumably no less personal than party status in a law suit. On the other hand, we are aware of no case law on the subject, and it is possible that ruling on the precise issue in modern times without restrictive case precedent a court might reach the contrary conclusion. This is particularly the case with respect to a subpoena as well publicized as one directed to the President of the United States. On balance, we are inclined to believe that the old subpoena would not be effective, but until the matter is definitively resolved it would be wise to assure the retention of materials responsive to that earlier subpoena. (During the period of such retention, former President Nixon and his representatives would have to be allowed access to the materials, with appropriate safeguards against removal.)



We conclude, therefore, that those portions of the documents and materials in question which are the subject of court orders or subpoenas issued before August 9 and addressed to the United States or to Richard M. Nixon, President of the United States, must be treated and disposed of in accordance with the terms of those orders or subpoenas. Such obligation would supersede any demand by President Nixon for return of the materials subject to those orders or subpoenas, though he would, of course, be able to petition the appropriate courts to substitute orders and subpoenas directed to him, so that the materials might be returned to his control. He would also be able to challenge the validity of these orders and subpoenas on constitutional or other grounds. See, e.g., Schwimmer v. United States, supra, 232 F.2d at 861.

Optional Paragraph, end of PART II.

[The foregoing conclusions would be altered if the Government were not the custodian of the materials in question. This would be the case if the materials were contained in offices provided to the former President pursuant to the Presidential Transition Act of 1963. In that event, the United States in our view would be no more subject to court orders or subpoenas with respect to the documents in question than would the owner of an office building be subject to a subpoena with respect to materials contained in the premises of one of his tenants. We do not understand, however, that the materials are preserved in premises that are subject to the exclusive and unrestricted use of the former President, which in our view makes it clear that the Presidential Transition Act is not the basis of the present arrangement.]



III. Disposition of Materials not Subject to Court Orders or Subpoenas.

Those portions of the materials which are not subject to court order or subpoena, being the property of former President Nixon, should generally speaking be disposed of according to his instructions. These materials are, however, affected by 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."

It was recognition of this limitation on private use of private papers containing government information which caused President Truman to omit "certain material" from his memoirs on the grounds of national security. Harry S. Truman, Memoirs, Vol. I, Year of Decisions, p. x. Upon the death of Franklin D. Roosevelt during the closing months of World War II, despite the accepted view that all White House papers belonged



to the President and evolved to his estate, some of the papers dealing with prosecution of the War (theso-called "Map Room Papers") were kept by President Truman in "protective custody" for security reasons until December 1946. Matter of Roosevelt, 190 Misc. 34, 344, 73 N.Y.S. 821, 825 (1947), Eighth Annual Report of the Archivist of the United States as to the Franklin D. Roosevelt Library (1947), p. 1. Because

of these historical precedents, and almost from the necessity of the matter, we would conclude that there might be withheld from immediate possession of former President Nixon any materials currently needed for operation of the Government and any materials which the President might deem it essential to preserve in federal custody for national security reasons.

Beyond possible limitations of this sort upon the property right of the ex-President, limitations deriving from the very nature of the documents as records of government activity, it is our opinion that the Government has no right to examine the documents without court order, or to withhold them from the former President against his wishes. More specifically, it would not in our view be proper for the Government to search the materials without court authorization for evidence of a crime. While the United States may make custodial or caretaking inspections of the property of another temporarily in its custody, Harris v. United States, 390 U.S. 234 (1968), Cady v. Dombrowski, 413 U.S. 433 (1972), it may not undertake a search for evidence of a crime without a warrant unless the property was seized or otherwise acquired in the course of a criminal investigation, Preston v. United States, 376 U.S. 364 (1946). To the extent that the

materials in question may be relevant to further criminal investigation, they may, of course, be subjected to further subpoenas by the Special Prosecutor.

As to the place of custody of the materials: Pending a request by former President Nixon for their return, the materials may be kept in their present location. They may also be removed to other safe locations subject to Government control, unless a condition of the custody of which we have not been advised would require their retention in their present locations. In the latter event, removal to new locations could still be achieved by advising former President Nixon of the Government's unwillingness to continue custody unless this is permitted.

Some question exists as to the ability of the Government to continue its custody with the permission of former President Nixon indefinitely, without any appropriations for that purpose under the Presidential Transition Act, _____, and without any donation of the materials or expression of intention to donate the materials under the Presidential Archives Act, 44 U.S.C. § 2101-08. The public interest in the documents alluded to above, however, would seem to justify dedication of government facilities to this purpose for a reasonable period.



Dear Mr. President:

You have requested my opinion concerning those papers and other historical materials prepared in or transmitted to the White House Office during the administration of former President Richard M. Nixon and still located in the Executive Office Building or in the White House. 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 officers pertaining to them.

To conclude that such materials are not the property of former President Nixon would be to reverse 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. According to testimony of the Archivist of the United States in 1955, every President of the United States beginning with George Washington had 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.^{1/}

^{1/} 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.



In Folsom v. Marsh, 9 Fed Case 342, 2 Story 100, 108-109 (D.C. D. Mass 1841), Mr. Justice Story, while sitting found in circuit, ~~stated~~ that President Washington's letters, including his official correspondence,^{2/} were his private property which he could bequeath, which his estate could alienate, and in which the purchaser could acquire a copyright.

A classic exposition and explanation of the status of Presidential papers, private and official, 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, pp. 30-31 (1914).

It is true that section 507 of the Federal Records Act of 1950, 64 Stat. 587, the predecessor to the Presidential

^{2/}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 (officially 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 ~~subsequently~~ 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).



Libraries Act seemed to distinguish between official and private papers of a President (compare subsection (a), dealing with the records of an agency, with subsection (e), relating to the "personal" papers of a President).^{3/} A memorandum prepared in the Office of the Assistant Solicitor General (now Office of Legal Counsel) on April 6, 1951, on the subject of the President's papers, indicated that such a distinction was inconsistent with historic precedents, and that the dichotomy would be difficult if not impossible to maintain.

In any case, the 1955 Presidential Libraries Act, which serves as the permanent basis of the Presidential Library system, clearly rejects the distinction and must reasonably be regarded to proceed on the premise that a President has title to all the documents and historical materials--whether personal or official--which accumulate in the White House during his incumbency. This appears first from the omission of the word "personal" from 44 U.S.C. 2107(1), the equivalent to section 507(e) of the Federal Records Act of 1950. Thus, the current law covers the deposit of all Presidential materials, not only personal ones. During the debate on the Joint

^{3/} The conclusion that this language is intended to make such a distinction seems preferable but is perhaps not inevitable. The Staff Report prepared by the Joint Committee on Internal Revenue Taxation concerning former President Nixon's tax returns draws precisely the opposite conclusion, citing the 1950 Act as evidence of Presidential ownership of all White House materials. H. Rept. 93-966, pp. 28-29. This interpretation evidently assumes that the word "~~found~~" was prefixed to the phrase "Presidential papers" not as a qualifier but merely to emphasize Presidential ownership.

"personal"



Resolution on the floor of the House, 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.

NO H ← 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 full congressional awareness of the Act's assumption that all Presidential papers are the private property of the President. 1955 Hearings, pp. 12, 20, 28, 32, 52, 54, 58.

The most 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. The report pointed 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 concluded (pp. 28-29) that "the historical precedents taken together with the provisions of the Presidential Libraries Act, suggest that the papers of President Nixon are considered his personal property rather than public property."



One of the objections sometimes raised 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."

An objection based upon this provision is circular, 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 to the blank typing paper and materials, their value is of course negligible. In any event, the Constitutional provision can simply not be interpreted with the degree of literalness that the argument requires. An eminent authority on the subject, Edward S. Corwin, 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, note 53, p. 348.

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 common objection to Presidential ownership of the materials in question is based upon their character as public documents, often secret and sometimes necessary for the continued operation of government. Without speaking to



the desirability of the established property rule (and there is presently pending in the Congress legislation which would apparently alter it--S. 2951, "A Bill to Provide for Public Ownership of Certain Documents of Elected Public Officials"), I may point out that accommodation of such concerns can be achieved whether or not ownership of the materials in question rests with the former President. It has consistently been acknowledged 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."

That portion of the Criminal Code dealing with the transmission or loss of nation security information, 18 U.S.C. § 793, obviously applies to Presidential papers even when they are within the possession of the former President.^{4/}

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



NO 9

← 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. 34, 344, 73 N.Y.S. 821, 825 (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, both precedent and logic demonstrate 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.



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 by leaving the materials 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.

I conclude, therefore, that these materials are the property of former President Nixon, in your personal custody; in my view, it is lawful and appropriate, because of the special governmental interest in these materials, to accept such custody for a reasonable time. You may, of course, delegate custody to a responsible subordinate officer in the White House. You may also transfer custody to the Administrator of General Services, pursuant to 44 U.S.C. § 2107. This provision clearly contemplates the deposit of



papers and other historical materials without an accompanying transfer of title to the United States. Compare section 2107 ("the Administrator of General Services . . . may accept for deposit . . . papers and other historical materials of a President or former President") with section 2108 ("the Administrator of General Services . . . may accept . . . land, buildings, and equipment offered as a gift . . . and take title"). See also H.Rep. No. 998, 84th Cong., 1st Sess., p. 4. I would also advise that any transfer to the custody of an individual not a part of the White House staff, or to any location outside of the White House and Executive Office Building, should not be effected without the consent of former President Nixon.

Finally, as to the obligations of the Government with respect to subpoenas and court orders, heretofore or hereafter directed to the Government ^{or its officials} with respect 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 documents heretofore or hereafter subpoenaed
or its custodial officials
from the Government *(included within the subject materials)*
must be produced; and that none of the materials can be
moved or otherwise disposed of contrary to the provisions
or its custodial officials
of any court order against the Government *pertaining to them.*

*The foregoing advise is
subject, of course, to
any timely defense
or objection effectively
raised by either the
owner of the materials
or the Government
against the subpoena
or order*