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DRAFT 10/18/74

MEMORANDUM FOR THE PRESIDENT

FROM: Phil Buchen

SUBJECT: Proposed position of Defendants in suit of
Richard M. Nixon v. Arthur F. Sampson, Philip W. Buchen,
and H. Stuart Knight

The suit was started October 17, 1974, for specific performance of the letter agreement dated September 6, 1974, between the former President and Arthur F. Sampson, Administrator of the General Services Administration, covering Presidential historical materials of the prior Administration.

The suit asks for immediate implementation of the agreement by transfer of materials not subject at the time it was started to compulsory process for production or which may be affected by subpoenas or court orders for production to be used in criminal trials now in progress. Thus, it does not allow for retention of custody here of materials which are subject to requests already made or to be made and subpoenas which may be issued for materials in behalf of the Watergate Special Prosecutor for his other proper investigatory and prosecutorial purposes.

A question by Congressman Mann of the Subcommittee hearing on October 17, 1974, and your answer were:

"MANN: What response would you have if the special prosecutor's office now requested access to certain of the tapes now in the custody of the Government?"



"PRESIDENT: The material that is still held by the Government, in my understanding of the Supreme Court's decision, permits the Special Prosecutor to obtain any of that material for its responsibilities and I, of course, not in a personal way, would make certain that that information was made available to the Special Prosecutor's Office."

It is necessary to determine now what position should be taken by the Department of Justice in representing the three defendants in the present civil suit, which would not be inconsistent with the position of the Special Prosecutor, nor with your statement before the Hungate Subcommittee.

I would recommend taking the following position:

1) That the letter agreement of September 6, 1974, was made on the basis of the Attorney General's opinion to you dated September 6, 1974, upholding the former President's ownership of the materials covered by the agreement, subject only to:

(a) the tradition of retention of "permanent files" by the Chief Executive Clerk of the White House from administration to administration, such as "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." (However, the opinion, although not conclusive on the point, does not regard retention of these materials as inconsistent with Presidential ownership but says the



"relinquishment of these materials may reasonably be regarded as a foluntary act of courtesy on the part of the outgoing Chief Executive. "



MEMORANDUM FOR THE PRESIDENT

FROM: PWB

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suit of RICHARD M. NIXON v. ARTHUR F. SAMPSON,
PHILIP W. BUCHEN, and H. STUART KNIGHT

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Copy.

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A on p. 12'". (However,
the opinion, although not
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of these materials as
inconsistent with Presidential
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"copy marked portion B
on same page.")
(b) the advise "copy marked
portion C from p. 14"



involves an offer to "transfer to the Administrator of General Services for deposit pursuant to 44 U.S.C. Section 2101 et seq." all of Mr. Nixon's Presidential historical materials; and it

2) That the agreement was offered by the former President for acceptance under this conditional language at the end:

"Copy first sentence on p. 6 of the agreement.

3) That ~~for such purpose~~ the agreement ~~is consistent~~ ^{was intended to be consistent} with the statute under, which, by its provisions, ~~terms~~ it was offered and accepted, and that it is valid for the purpose of that statute is ~~as indicated~~ supported by the view of the Comptroller General of the United States (see attached)

Comment

4) That nevertheless the agreement is subject to challenge, ~~under~~ on grounds that, (i) is

5) That such challenge can be by ~~it does not~~ ^{by} intervention of anyone in an action such as ~~that~~ the pending suit "when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest" (Rule 24). (This would permit the United States to intervene through attorneys designated by the Special Prosecutor ~~under~~ to the

as the Plaintiff is seeking to enforce the agreement, it either not supported by the statute, under which it was intended to take effect to operate or (ii) is otherwise contrary to or controlled by a different law or regulation or (iii) is contrary to public policy.



Insert

4) That the agreement was negotiated in ~~the~~ President Ford's interest and ~~that of~~ the ~~General Admin Services Administration~~ because of his concern, in view of the Attorney General's opinion, that the burden of ^{inspecting huge quantities of materials for purposes} ~~responding to subpoenas having~~ ~~been~~ ^{of} responding ^{to Court directives} ~~to~~ merely as a custodian and not as owner of the materials would fall ^{upon} ~~on~~ the current White House staff so long as the custodianship ~~were~~ ~~not~~ ~~changing~~ remained unchanged, when according to the Attorney General's opinion the former President, ~~as~~ ^{in that capacity} was the owner and well as the Government, could ^{challenge} the validity of such directives no matter what the

5) That ^{by} the agreement ~~did not~~ ^{custodian might otherwise wish to do in its response to the directives,} recognize the ~~responsibility of the former~~ ^{accepted the responsibility} the former President, to respond to Court directives (~~para 9 B~~) and ~~the~~ subject to the continuing right of the United States ~~to~~ to challenge ~~as well~~ the validity of ~~the~~ any directive as it might affect current interests of the United States (~~para 9 B~~) and the responsibility of the General Services Administrator for ~~its~~ safeguarding the materials from loss or destruction. ^{if}

6) That ~~whether or not~~ the agreement had not been ^{negotiated or had not} accepted by the General Services Administrator,



extent of the functions assigned and delegated to the Special Prosecutor under 28 CFR 74 at pp 11-12, as well as any third party with standing who may have such an interest)

6) That the Attorney General designate or another officer of the Department of Justice ~~be designate~~ as directed by him to ~~re~~ conduct the legal proceedings in behalf of the three officers named as defendants, to the extent he takes a position in their behalf that is ^{not inconsistent} ~~consistent~~ with an intervention by the United States acting through the Special Prosecutor.

7) That plaintiff has ~~by its~~ admitted the interest of the United States ~~and~~ ~~is~~ as represented by the Watergate Special Prosecution ~~in the memo~~ by the negotiations alleged in paragraph 25 of the complaint.



Insert (cont.)

Mr. Nixon could have brought a suit
to recover his materials and would
then have claimed ^{an unrestricted} right of possession.



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"relinquishment of these materials may reasonably be regarded as a [✓]voluntary act of courtesy on the part of the outgoing Chief Executive."



11/8/74

To: Dick Cheney

From: Eva Daughtrey

**Since is the copy of the
memo on which the President
initialed his approval,
Mr. Buchen asked that I get
it back to you.**

(We have retained a copy.)



THE WHITE HOUSE

WASHINGTON

November 6, 1974

MEMO FOR: DON RUMSFELD

FROM: PHILIP W. BUCHEN *Phil*

Because of the sensitivity of the issues raised by this memo, I would like only you to see it for comment before it goes to the President as early as he can consider it. There is urgency because the Court will rule on a continuing injunction at hearing scheduled for November 15 and we should move well ahead of this if at all possible.

Also, here is copy of letter of November 5, 1974, which Art Sampson asked I deliver to you.



THE WHITE HOUSE

WASHINGTON

November 6, 1974

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN

SUBJECT: Access of Watergate Special Prosecutor
to Tapes and Documents of the Nixon
Administration

Despite the efforts made to disengage the White House staff of your Administration from the burden and risks of responding to requests or subpoenas initiated by the Special Prosecutor or arising from the present Watergate trial, the responsibility as a result of Judge Richey's order in the cases of Nixon et. al., vs. Sampson et. al., falls on the present White House legal staff acting jointly with Plaintiff Nixon's attorneys.

Subpoenas returnable to grand juries on November 6, as well as others returnable on November 8, 11, and 13 cannot be fully complied with, as the Special Prosecutor understands, despite heroic efforts by Bill Casselman and two other lawyers on our staff plus two more detailed to us by Justice. The problems arise from absence of comprehensive inventories, our unfamiliarity with the files, the scattered locations of the materials in EOB, the complexities of satisfying security requirements imposed by GSA and SS responsibilities, as well as ours, and the lack of available manpower from the small law firm representing Mr. Nixon. Some subpoenas are fairly general in their nature, so as to require extensive searches, and even where specifically identified documents or recorded conversations are sought, sometimes it takes many man-hours to find them or to determine that a requested item is probably nonexistent. The risks that later discoveries will cast doubt on the thoroughness of subpoena compliance are great.



At your appearance before the Subcommittee of the House Judiciary Committee, in answer to a question from Congressman Mann, you referred to the Supreme Court decision which "permits the Special Prosecutor to obtain any of the material for its responsibility" and said "I . . . would make certain that that information was made available to the Special Prosecutor's office." (Vol 10, Presidential Documents, No. 42, p. 1311.)

I have discussed at length with Larry Silberman and his colleagues who represent the defendants from this Administration in the pending suits before Judge Richey what alternatives we may have, consistent with your commitment at your Congressional appearance. The only one which seems feasible is to agree in court with the Special Prosecutor that he may have direct access to the stored materials for the purposes of locating and using items for grand jury purposes and criminal trial purposes within his prosecutorial jurisdiction if the court approves such an agreement.

The agreement would be negotiated, if possible, on terms that would allow the Nixon attorneys to have concurrent access and to raise legal objections available to their client against the production of any particular items. Role of non-prosecutorial people in your Administration would be limited to providing archival aid, raising national security issues before production, if ever necessary, and providing reasonable physical safeguards for the materials (preferably at a location within the District more suitable than EOB). No longer would any such people have responsibility for seeing that responses to the requirements of the Special Prosecutor are accurate, complete, and timely when even an unavoidable slip-up in carrying out such responsibility could very adversely impact on your Administration. Although in the course of any such search the Prosecutor may discover evidence of criminality not heretofore suspected, the same effect would occur if anyone on your staff while searching the materials should find such evidence because of his duty to inform the Special Prosecutor in that regard.

Larry Silberman believes that such an arrangement could be proposed to the court without compromising the validity and ultimate operation of the tapes and documents agreement between the former President



and Arthur Sampson, which your staff negotiated. Yet, you should understand that the Nixon counsel may strenuously object on the grounds the arrangement would violate the agreement and his client's ownership rights.

In doing so, such counsel risks for his client a determination by the Court that if the agreement precludes direct access for the ongoing governmental operations of the Special Prosecutor, it is to that extent invalid or may even be invalid in its entirety on grounds that, despite the Attorney General's opinion, the former President is not the legal owner of the materials. Of course, the risks for the former President as to either the legal limits of his rights under the agreement or as to whether he has any rights at all would not be removed by a Nixon concurrence in the proposed arrangements (or by the Court's overruling his objections), because third parties to the litigation would still press for a resolution of such issues in favor of public access or governmental ownership or both.

Yet, his concurrence would avoid inducing the Special Prosecutor to take a stand at least partly on the side of the third parties; and the Nixon position as against third parties should be enhanced by eliminating the issue raised by the government's prosecutorial needs, which is peculiar to the Nixon materials, and by joining parties with an interest in preserving the restrictive terms on which materials of earlier Presidents are being held.

The consequences of this proposal are not wholly predictable as it may:

- a) Impinge on numbers of persons whose conduct in office is adversely reflected in the Nixon materials;
- b) Enlarge the capabilities of the Special Prosecutor to present evidence to grand juries;
- c) Cause resentment on the part of the former President and persons partisan to him;

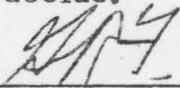


d) Set something of a precedent for ready access by Federal law enforcement officials to White House documents;

e) Add to the incentive of Congress for passing legislation to provide access, beyond the access proposed here, to the Nixon materials and even to current or future White House materials; and

f) Produce public reaction of mixed sorts, though probably it would be widely favorable.

Nevertheless, I do recommend your authorizing the proposal herein made and would like to discuss the matter with you before you decide.

Approve 

Disapprove _____

Comment _____





UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, D. C. 20405

ADMINISTRATOR

November 5, 1974

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

Dear Mr. Buchen:

I am pleased to inform you that we are continuing to fulfill all of the requirements of the temporary restraining order issued by Judge Richey on October 22, 1974. Because of the particular sensitivity of this issue, I have taken the view that the order must be interpreted literally and strictly enforced, and I appreciate the cooperation of the members of your staff in our efforts to comply with the terms set forth by Judge Richey.

All of the items referred to as "Nixon Presidential Materials" which have been transferred to the custody of GSA since January 20, 1969, continue to be secured under my personal supervision. The materials are located in the Executive Office Building, the Archives Building, and the Federal Records Center in Suitland, Maryland; and access is controlled by a single individual who is one of my special assistants (Tom Wolf). With the exception of provisions for emergencies, he is in sole possession of the keys and/or lock combinations to the areas where the records are stored.

There are a few items of concern which continue to require attention. One of them, of course, is your request for a plan to relocate materials from the White House and Executive Office Building. I am personally involved in this effort, and will submit a detailed plan to you no later than November 11.

We are about to undertake some processing of the materials so that we will have an accurate box-by-box inventory and more effective aids for retrieval purposes. I should like to discuss these measures and our relocation plan with you as soon as possible.



2

Because of the effect of the litigation and associated matters on the administration of the White House, it would be particularly beneficial if Mr. Rumsfeld could attend our meeting. Accordingly, I have sent him a copy of this letter, and have instructed Tom Wolf of my staff to work with both your and Mr. Rumsfeld's secretaries to arrange a mutually convenient time for such a meeting.

Sincerely,

{ (Signed) A. F. Sampson

ARTHUR F. SAMPSON
Administrator

cc: Honorable Donald Rumsfeld
Assistant to the President
The White House



THE WHITE HOUSE

FROM
THE WHITE HOUSE
WASHINGTON, D.C.

Privileged

Nixon, et al. v. Sampson, et al.
C. A. 74-1518 and C. A. 74-1533

Copies of memoranda to President Ford
from Philip W. Buchen, Counsel to the President
and talking paper



Nixon, et al. v. Sampson, et al.
C. A. 74-1518 and C. A. 74-1533

Extra copies of memorandum to President Ford from
Philip W. Buchen, Counsel to the President



THE WHITE HOUSE

WASHINGTON

August 23, 1974

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: PHIL BUCHEN
FROM: JERRY  BRANTLEY

The President asked that the attached paper be returned to you.



MEMORANDUM

THE WHITE HOUSE

WASHINGTON

DRAFT 8/22/74

DRAFT OF PROPOSED LETTER FOR PRESIDENT
TO SEND THE ATTORNEY GENERAL

By this letter, I am requesting a legal opinion from you concerning the papers and other historical materials of or relating to former President Richard M. Nixon which are presently located in the Executive Office Building or in the White House or which have been furnished to the United States District Court for the District of Columbia pursuant to a subpoena duces tecum issued to former President Nixon originally made returnable on May 2, 1974.

The subjects of the requested opinion should include all those types of papers and other historical materials which the Administrator of General Services could accept for deposit pursuant to the Presidential Libraries Act (44 U. S. C. 2101 et seq.). Certain of the items involved, namely former President Nixon's personal notes and personal dictation belts or cassettes not heretofore transcribed, are related to the subpoena mentioned above. They are still located in the Executive Office Building but are ready for shipment to former President Nixon at San Clemente, California, where he needs to use them for the time-consuming task of completing his compliance with such subpoena as directed by the United States Supreme Court on July 24, 1974, in accordance with procedure



prescribed by the District Court Judge in the pending case of U. S. v. Mitchell, et al., which is presently set for trial as early as September 9, 1974. Such items and other items to be covered by the requested opinion are also needed by former President Nixon for other purposes related to such pending case wherein former President Nixon has been subpoenaed by one of the defendants to become a witness. Further reasons may exist or could occur which make it necessary for the former President to be able readily to review the contents of various papers and materials.

The questions which I request you to deal with in your opinion are:

- 1) What interests and rights does former President Nixon have in and to the papers and materials mentioned?
- 2) What responsibilities, if any, do persons on my staff with actual control of the papers and materials presently located in the Executive Office Building or in the White House have to the extent that any or all of such papers and materials are or become subject to subpoenas, requests court orders, or/by parties to court actions, by members of the Congress, or by others for inspection, discovery, or disclosure?

I ask that you please expedite the rendering of your opinion because of the need for prompt answers to these questions.



11/8/74

To: Dick Cheney

From: Eva Daughtrey

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memo on which the President
initialed his approval,
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(We have retained a copy.)



THE WHITE HOUSE
WASHINGTON

Bumsfeld
transmitted

initialed approval

Sampson ltr



THE WHITE HOUSE

WASHINGTON

November 6, 1974

MEMO FOR: DON RUMSFELD

FROM: PHILIP W. BUCHEN *Phil*

Because of the sensitivity of the issues raised by this memo, I would like only you to see it for comment before it goes to the President as early as he can consider it. There is urgency because the Court will rule on a continuing injunction at hearing scheduled for November 15 and we should move well ahead of this if at all possible.

Also, here is copy of letter of November 5, 1974, which Art Sampson asked I deliver to you.



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WASHINGTON

November 6, 1974

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN

SUBJECT: Access of Watergate Special Prosecutor
to Tapes and Documents of the Nixon
Administration

Despite the efforts made to disengage the White House staff of your Administration from the burden and risks of responding to requests or subpoenas initiated by the Special Prosecutor or arising from the present Watergate trial, the responsibility as a result of Judge Richey's order in the cases of Nixon et. al., vs. Sampson et. al., falls on the present White House legal staff acting jointly with Plaintiff Nixon's attorneys.

Subpoenas returnable to grand juries on November 6, as well as others returnable on November 8, 11, and 13 cannot be fully complied with, as the Special Prosecutor understands, despite heroic efforts by Bill Casselman and two other lawyers on our staff plus two more detailed to us by Justice. The problems arise from absence of comprehensive inventories, our unfamiliarity with the files, the scattered locations of the materials in EOB, the complexities of satisfying security requirements imposed by GSA and SS responsibilities, as well as ours, and the lack of available manpower from the small law firm representing Mr. Nixon. Some subpoenas are fairly general in their nature, so as to require extensive searches, and even where specifically identified documents or recorded conversations are sought, sometimes it takes many man-hours to find them or to determine that a requested item is probably nonexistent. The risks that later discoveries will cast doubt on the thoroughness of subpoena compliance are great.



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(Signed) A. F. Sampson

ARTHUR F. SAMPSON
Administrator

cc: Honorable Donald Rumsfeld
Assistant to the President
The White House



THE WHITE HOUSE
WASHINGTON

2 copies

As originally
sent
w/ attachment

without Pres.
approval



THE WHITE HOUSE

WASHINGTON

November 6, 1974

MEMO FOR: DON RUMSFELD

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Larry Silberman believes that such an arrangement could be proposed to the court without compromising the validity and ultimate operation of the tapes and documents agreement between the former President



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In doing so, such counsel risks for his client a determination by the Court that if the agreement precludes direct access for the ongoing governmental operations of the Special Prosecutor, it is to that extent invalid or may even be invalid in its entirety on grounds that, despite the Attorney General's opinion, the former President is not the legal owner of the materials. Of course, the risks for the former President as to either the legal limits of his rights under the agreement or as to whether he has any rights at all would not be removed by a Nixon concurrence in the proposed arrangements (or by the Court's overruling his objections), because third parties to the litigation would still press for a resolution of such issues in favor of public access or governmental ownership or both.

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The consequences of this proposal are not wholly predictable as it may:

- a) Impinge on numbers of persons whose conduct in office is adversely reflected in the Nixon materials;
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f) Produce public reaction of mixed sorts, though probably it would be widely favorable.

Nevertheless, I do recommend your authorizing the proposal herein made and would like to discuss the matter with you before you decide.

Approve _____

Disapprove _____

Comment _____





UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, D. C. 20405

ADMINISTRATOR

November 5, 1974

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

Dear Mr. Buchen:

I am pleased to inform you that we are continuing to fulfill all of the requirements of the temporary restraining order issued by Judge Richey on October 22, 1974. Because of the particular sensitivity of this issue, I have taken the view that the order must be interpreted literally and strictly enforced, and I appreciate the cooperation of the members of your staff in our efforts to comply with the terms set forth by Judge Richey.

All of the items referred to as "Nixon Presidential Materials" which have been transferred to the custody of GSA since January 20, 1969, continue to be secured under my personal supervision. The materials are located in the Executive Office Building, the Archives Building, and the Federal Records Center in Suitland, Maryland; and access is controlled by a single individual who is one of my special assistants (Tom Wolf). With the exception of provisions for emergencies, he is in sole possession of the keys and/or lock combinations to the areas where the records are stored.

There are a few items of concern which continue to require attention. One of them, of course, is your request for a plan to relocate materials from the White House and Executive Office Building. I am personally involved in this effort, and will submit a detailed plan to you no later than November 11.

We are about to undertake some processing of the materials so that we will have an accurate box-by-box inventory and more effective aids for retrieval purposes. I should like to discuss these measures and our relocation plan with you as soon as possible.



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Because of the effect of the litigation and associated matters on the administration of the White House, it would be particularly beneficial if Mr. Rumsfeld could attend our meeting. Accordingly, I have sent him a copy of this letter, and have instructed Tom Wolf of my staff to work with both your and Mr. Rumsfeld's secretaries to arrange a mutually convenient time for such a meeting.

Sincerely,

(Signed) A. F. Sampson

ARTHUR F. SAMPSON
Administrator

cc: Honorable Donald Rumsfeld
Assistant to the President
The White House



THE WHITE HOUSE

WASHINGTON

November 6, 1974

MEMO FOR: DON RUMSFELD

FROM: PHILIP W. BUCHEN *Phil*

Because of the sensitivity of the issues raised by this memo, I would like only you to see it for comment before it goes to the President as early as he can consider it. There is urgency because the Court will rule on a continuing injunction at hearing scheduled for November 15 and we should move well ahead of this if at all possible.

Also, here is copy of letter of November 5, 1974, which Art Sampson asked I deliver to you.



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FROM: PHILIP W. BUCHEN

SUBJECT: Access of Watergate Special Prosecutor
to Tapes and Documents of the Nixon
Administration

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