

The original documents are located in Box 2, folder “Nixon v. Sampson (1)” of the Benton L. Becker Papers at the Gerald R. Ford Presidential Library.

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File... 10

Papers relating to
Nixon v. Sampson litigation
(post. grand) in US Fed
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NIXON VS. SAMPSON

Nixon-Rodden



TELEPHONE WHITEHALL 4-3085

ABRAHAM LINCOLN BOOK SHOP, INC.

Fine Arts Appraisers

18 EAST CHESTNUT STREET
CHICAGO, ILLINOIS, 60611

Richard Milhous Nixon

The White House

Washington, D. C. 20500

1969



APPRAISAL

STATE OF ILLINOIS }
COUNTY OF COOK } SS

Ralph G. Newman being first duly sworn, upon oath deposes and states as follows:

1. He is the president and the duly authorized agent in this behalf of Abraham Lincoln Book Shop, Inc., and he makes this affidavit in its behalf and under its lawful authority. He has full personal knowledge of all of the matters and things-hereinafter set forth.

2. Said Abraham Lincoln Book Shop, Inc., was duly authorized and created and exists under and by virtue of the laws of the State of Illinois and it is duly authorized to and does transact business in the State of Illinois and throughout the United States.

3. Among the purposes and businesses of said Abraham Lincoln Book Shop, Inc., is the buying, selling and dealing in and general appraisal of libraries, collections of rare books, autographs, letters, documents, drawings, prints, paintings, etchings, broadsides, historical objects, mementos and curiosities and other allied printed, pictorial and manuscript materials.

4. Said Abraham Lincoln Book Shop, Inc., its officers, employees and agents, and its predecessor companies have been doing business as appraisers of libraries, collections of rare books, autographs, letters, documents, drawings, printing, paintings, etchings, broadsides, historical objects, mementos and curiosities and other allied printed, pictorial and manuscript materials since the year 1933, in Illinois and in various other states of the United States of America and have been called upon as consultants in such matters by many of the leading private collectors, libraries, museums and public and private institutions of this country.

5. The said Abraham Lincoln Book Shop, Inc., through its employees, agents and officers did, from the sixth to the eighth day of April 1969, and on Nov. 3, Nov. 17 through 20, and December 8 1969, examine the PAPERS OF RICHARD MILHOUS NIXON, PART II

being the property of Richard Milhous Nixon
The White House
Washington, D. C. 20500

and found that the reasonable and fair and true market value thereof in money was Five Hundred Seventy-Six Thousand and no hundredths - - - - - Dollars (\$576,000.00) as appears from the annexed schedule attached hereto and made a part thereof.

This deponent verily believes the said valuation to be the fair and reasonable and true market value.

Ralph G. Newman

Subscribed and sworn to before me, a Notary Public, this sixth day of April 1970

Lillian Jacobs
Notary Public of Cook County, Illinois.

My commission expires September 30, 1971



APPRAISAL

Abraham Lincoln Book Shop, Inc., an Illinois corporation having its principal place of business in Chicago, Illinois, does hereby certify that, through its officers, agents and employees, it is familiar with and has carefully examined and appraised:

THE PAPERS OF RICHARD MILHOUS NIXON, PART II

This material is the property of **Richard Milhous Nixon**

The White House

Washington, D. C. 20500

and is listed in the schedule herewith following and attached to this statement and expressly made a part thereof. There has been recorded, together with the listing of each item, figures representing the fair and reasonable and true market value thereof, in money, as by it known, estimated and believed as of the **twenty-seventh** day of **March** 19 **69**

In witness whereof Abraham Lincoln Book Shop, Inc. has appended hereto the affidavit of its **president**, **Ralph G. Newman** and has caused these presents to be signed in its behalf by its **president** and attested by its **secretary, Margaret H. April** and its corporate seal to be hereunto affixed this **sixth** day of **April** 19 **70**

ABRAHAM LINCOLN BOOK SHOP, INC.
an Illinois corporation

By *Ralph G. Newman*
president

Attested:

By *Margaret H. April*
secretary



PROPERTY OF RICHARD MILHOUS NIXON
The White House
Washington, D. C. 20500

APPRAISAL

THE PAPERS OF RICHARD MILHOUS NIXON

PART II

Part II of The Papers of Richard Milhous Nixon was delivered to the Office of Presidential Papers of The National Archives and Records Service, Washington, D. C., March 24 to 27, 1969.

These papers were transferred from their original containers to standard archives boxes by the members of the staff of the Office of Presidential Papers. In identifying the papers our reference to boxes is to these standard archives boxes.

The papers and documents covered by this document are divided into five (5) general divisions, and are so identified.



PROPERTY OF RICHARD MILHOUS NIXON
The White House
Washington, D. C. 20500

THE PAPERS OF RICHARD MILHOUS NIXON

PART II

I. GENERAL CORRESPONDENCE

AS VICE PRESIDENT, 1953-1961

Aandahl through Zwieng

[National Archives Boxes #18

through #845]

828 boxes ----- 414,000 items

II. APPEARANCE FILE

1948-1962

[National Archives Boxes

#1 through #173]

173 boxes ----- 87,000 items

III. CORRESPONDENCE

RE: INVITATIONS AND TURN-DOWNS

1954-1961

[In unnumbered National Archives Boxes]

56 boxes ----- 27,000 items



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IV. FOREIGN TRIP FILES

AS VICE PRESIDENT, 1953-1961

[In unnumbered National Archives
Boxes]

116 boxes ----- 57,000 items

V. VISIT OF NIKITA S. KHRUSCHEV

TO THE UNITED STATES, 1959

[In unnumbered National Archives
Boxes]

3 boxes ----- 15,000 items

Total number of boxes; Part II;

The Richard Milhous Nixon Papers ---- 1,176

Total number of items; Part II,

The Richard Milhous Nixon Papers -- 600,000



PROPERTY OF RICHARD MILHOUS NIXON

The White House

Washington, D. C. 20500

The appraised fair market value of The Richard Milhous Nixon Papers, Part II, as of the twenty seventh day of March, One Thousand Nine Hundred Sixty Nine, is Five Hundred Seventy Six Thousand and no/hundredths Dollars (\$576.000).



RALPH GEOFFREY NEWMAN -- QUALIFICATIONS

(See biographical sketch from WHO'S WHO IN AMERICA, attached)

Ralph Geoffrey Newman has been engaged in the buying and selling, appraisal, and authentication of rare books, manuscripts, films, photographs, prints, archives, and historical and literary properties, etc. since 1933.

He has been recognized internationally as an authority in his field and has been honored for his work with degrees from James Millikin University, Lincoln College, Iowa Wesleyan College, Knox College, and Rockford College. He has also been the recipient of many honors from learned societies, universities, and other organizations including the Freedoms Foundation at Valley Forge, the Independence Hall Association, Lincoln Memorial University, Friends of American Writers, the Civil War Round Table, the Royal Society (London), Lincoln Group of Washington, the Manuscript Society, Lincoln College, and others.

He has acted as a consultant in the assembling of some of the major collections in the United States, both private and public. His clients include the Library of Congress, the United States Army Military History Research Collection, the National Archives, the Chicago Historical Society, Notre Dame University, the State Historical Society of Wisconsin, Yale University Library, Cornell University Library, Lincoln National Life Foundation, Oregon Historical Society, David Wolper Productions, Walt Disney Productions, the Bell and Howell Company, and many distinguished individuals, including the Presidents of the United States, members of the Supreme Court, the Senate and House of Representatives of the United States, leading industrialists, collectors, authors, and historians.

He has appraised collections for all of the above and for hundreds of others, including banks, insurance companies, attorneys, and business firms.

He has been president of the Illinois State Historical Society, the Adult Education Council of Greater Chicago, the Civil War Round Table, and is currently president of the Board of Directors of the Chicago Public Library. He is a member of the Library Council of Notre Dame University, a trustee of Lincoln College and of Lincoln Memorial University, and a director of the Abraham Lincoln Association. He served as chairman of the Illinois Commission for the New York World's Fair and as chairman of the Illinois Sesquicentennial Commission. Currently, he is a member of the Illinois Special Events Commission. He was special consultant to the Secretary of the Interior for the opening of Ford's Theatre in Washington and is chairman of the Board of Directors of the Ford's Theatre Society.



RALPH GEOFFREY NEWMAN -- QUALIFICATIONS

(continued)

He is president of the Abraham Lincoln Book Shop, Inc. and of Ralph Geoffrey Newman, Inc. Both of these firms specialize in the buying, selling, and appraisal of rare books, manuscripts, and materials in the field of communication.

He has served as special consultant for a variety of business firms, including Encyclopaedia Britannica, Broadcast Music, Inc., WGN Continental Broadcasting Company, Automatic Retailers of America, and the Parker Pen Company. In 1969, he supervised the planning and construction of a Lincoln and American History exhibit which he took to Japan and Australia under the auspices of the United States Department of Commerce.

Allan Nevins, America's leading historian and twice winner of the Pulitzer Prize for history, has characterized Newman as "a national resource." The late Carl Sandburg called him a "unique and useful American."

Since 1950 his work has concentrated on the field of appraisals and he has been widely recognized as one of the most qualified persons in the field. He is a member of the American Society of Appraisers and the Appraisers Association of America. His articles on appraisals have appeared in many publications including the ANTIQUARIAN BOOKMAN, MANUSCRIPTS, AMERICAN HERITAGE, and the ASSOCIATION FOR STATE AND LOCAL HISTORY BULLETIN.

Newman is the author of several works including THE AMERICAN ILIAD, EYEWITNESS, THE CIVIL WAR DIGEST, LINCOLN FOR THE AGES, and 999 QUESTIONS AND ANSWERS ON AMERICAN HISTORY. His articles have appeared in the country's leading publications and he has been the subject of articles in the SATURDAY EVENING POST, READER'S DIGEST, HOLIDAY, and other nationally known periodicals. He writes a weekly column for the CHICAGO TRIBUNE, "Do You Remember?" which has been a popular feature for almost ten years.

At a ceremony in Washington a few years ago, when tribute was paid to Newman, Dr David C. Mearns of the Library of Congress referred to him as "Acknowledged authority . . . preceptor of the past for the enlightenment of the future."



Some items in this folder were not digitized because it contains copyrighted materials. Please contact the Gerald R. Ford Presidential Library for access to these materials.

FROM WHO'S WHO IN AMERICA

Volume 35, 1968 - 1969

NEWMAN, Ralph Geoffrey, bookseller, pub.; b. Chgo., Nov. 3, 1911; s. Henry and Dora (Glickman) N.; Litt.D., James Milliken U. (Lincoln Coll.).

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OF COUNSEL
JAMES R. KNAPP
WILLIAM P. MILLER

August 22, 1973

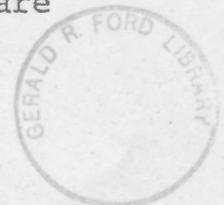
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RICHARD S. BARGER
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HOWARD S. SLUSHER
THOMAS J. BARRACK, JR.
JACK B. ANDERSON

Coopers and Lybrand
1251 Avenue of the Americas
New York, New York 10020

Gentlemen:

In connection with your engagement to examine and report on the statement of assets and liabilities as of May 31, 1973 of our clients Richard M. Nixon and Patricia R. Nixon, you have requested our opinion respecting the gift of certain pre-Presidential private papers of Richard M. Nixon to the United States of America on March 27, 1969 and the treatment of such contribution as a deductible item for income tax purposes as claimed on the Federal income tax returns filed by the clients for the years 1969 through 1972.

In connection therewith, we have made a factual examination of the circumstances of the transaction, the law applicable thereto and such other and further matters as we have deemed pertinent to the inquiry and to the delivering of this opinion, and based upon such examination and the applicable law, it is our opinion that on March 27, 1969, the client made a valid gift to the United States of America of certain of his personal private papers having at the date of such gift a fair market value of \$576,000; that deductions claimed by the said taxpayer on his Federal income tax returns for the calendar year 1969 were in all respects proper and valid; that the facts and circumstances of the gift were fully disclosed in the 1969 return as filed; that subsequent deductions for those allocable portions of the market value of the gift claimed by the taxpayer in subsequent federal income tax returns filed for the calendar years 1970, 1971 and 1972 were and are proper and valid deductions against income.



Coopers and Lybrand
April 22, 1973
Page Two

Our examination of the facts and circumstances of the transaction show that immediately prior to March 27, 1969, the taxpayer declared an intention to make a gift of the subject private papers to the people of the United States and that at his direction, his personal counsel, Edward L. Morgan, directed and supervised the removal of such private papers from the taxpayer's personal dominion and control at the Executive Office Building, Washington, D.C., and caused the same to be delivered to the National Archives in Washington, D.C. on said date where said materials have remained for an uninterrupted period. At all times subsequent to March 27, 1969, the materials constituting the subject matter of the gift were under the exclusive dominion and control of the National Archives. On or about April 6, 7 and 8, 1969, the material constituting the subject matter of the gift was examined and segregated from other materials by an appraiser duly appointed by the taxpayer to appraise the market value of the said papers, and the same thereafter were maintained, cataloged, segregated, sorted and identified by members of the staff of the National Archives in accordance with filing and cataloging procedures established by the National Archives and as to which the taxpayer had no element of control. The materials constituting the gift thereafter were, after a period of time extending from April 6, 1969 through March 27, 1970, individually itemized and appraised by the appraiser, and as a result of said appraisal, the market value ascribed to the gift was certified to by an affidavit executed by said appraiser on April 6, 1970.

While, in our opinion, the law is clear that an instrument of deed is not a necessary requisite to a gift of personal property, the duly appointed and constituted attorney-in-fact and agent of the taxpayer did on April 21, 1969 execute an instrument of gift reciting and declaring the intent of the donor to make such gift; that said gift had in fact been made on March 27, 1969 and the subject matter thereof delivered to the National Archives. The instrument contained a clause reserving to the donor only a right of access to himself to inspect and copy the materials. In our opinion, the law is clear



LAW OFFICES

KALMBACH, DEMARCO, KNAPP & CHILLINGWORTH

Coopers and Lybrand
August 22, 1973
Page Three

that the reservation of such right of access for inspection and copying by the donor did not constitute a sufficient retention of ownership in the material to anyway vitiate the gift.

Very truly yours,

KALMBACH, DE MARCO, KNAPP & CHILLINGWORTH

BY

Frank De Marco, Jr.
FRANK DE MARCO, JR.

FDM:gem



EMBARGOED FOR RELEASE UNTIL
4:00 P. M. , EST, SATURDAY
DECEMBER 8, 1973
EMBARGOED FOR WIRE TRANSMISSION
UNTIL NOON, EST, DECEMBER 8, 1973

DECEMBER 8, 1973

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

With the documents and papers released today, I am making a full disclosure of my financial affairs as President of the United States. No previous President, to my knowledge, has ever made so comprehensive and exhaustive a disclosure as I am making today, with regard to assets and liabilities, expenses and income, during his tenure of office.

The purpose of my release of these papers is to answer questions that have arisen, to remove doubts that have been raised and to correct misinformation that currently exists about what I have earned, and what I own.

To the open-minded, the papers and documents provided today, the facts they contain and the figures they reveal, will lay to rest such false rumors as that campaign contributions were converted to my personal use, that campaign funds were used in the purchase of my home in San Clemente, that I have hidden away a secret \$1 million investment portfolio, that I sheltered the income on which my daughter, Tricia, should have paid taxes, and that \$10 million in Federal funds was spent on my homes in Key Biscayne and San Clemente.

In conducting my private affairs in public office, I have proceeded in a manner I thought both prudent and in the best interests of my family. And even though both American law and tradition protect the privacy of the papers I am releasing today, these documents are being made public -- because the confidentiality of my private finances is far less important to me than the confidence of the American people in the integrity of the President.

Questions and controversies may continue as a consequence of these disclosures. Even the men who have advised me in these matters and who have prepared my financial records, statements and tax returns have disagreements of professional opinion among themselves. But most of the questions outstanding in the public mind today should be put to rest with the publication of these documents.

With regard to my tax returns -- the contents of which will be made public today -- the accountants who prepared them listed all of the deductions to which they believed I was entitled, and only those deductions -- as any accountant would and should do on behalf of his client.

The following are among the papers being released today:

The figures from the Federal Income tax returns which my wife and I filed for the years 1969, 1970, 1971 and 1972.

(MORE)



An independent audit of my private financial affairs, since January 1, 1969, conducted by one of the nation's largest and most respected accounting firms, Coopers & Lybrand of New York City.

The significant documents relating to the major financial transactions since my first Inauguration, including the purchase of my home in San Clemente, and the sale of stock and real estate owned at the time I became President.

Tax Review by Congressional Committee

Even with these disclosures, there may continue to be public questions about the tax consequences of two of the transactions shown. One is the gift of my papers to the United States Government in 1969. As permitted by the Internal Revenue Code, I have taken tax deductions for the value of that gift, but some have asked whether the procedures used to make the donation met the technical requirements of the gift law. The second transaction was the sale in 1970 of a large portion of the beneficial interest my wife and I held in our property at San Clemente. No capital gain was declared on that sale for tax purposes, and there has been speculation in the press that the transaction was inaccurately reported.

The tax lawyers and accountants who assisted me in the preparation of my Federal Income tax returns advised me that both of these items were correctly reported to the Internal Revenue Service. My tax attorneys today are giving me similar advice. Furthermore, when it conducted an examination of my tax returns for 1971 and 1972, the Internal Revenue Service reviewed both items and advised me that they were correctly reported.

Nevertheless, questions will continue on these matters and because they are complex transactions, it will not be easy to resolve public doubts without an independent review. For that reason, I have asked the members of the Joint Congressional Committee on Internal Revenue Taxation to examine the procedures relating to both matters and to decide whether, in their judgment, my tax returns should have shown different results. I will abide by the Committee's judgment.

Government Spending at San Clemente

Another concern of mine has been the degree of public misunderstanding about Government expenditures at my home in San Clemente.

The perception is now widespread that the Government spent anywhere from \$6 million to \$10 million on improvements at my home. One myth breeds another, so many observers also believe that the Government improvements have vastly enriched me personally.

Those views are grossly inaccurate. More than 20,000 manhours have now been expended by the General Services Administration to track down every penny of spending. Their findings establish three points:

-- Total GSA spending on my San Clemente home was \$68,000. That money was spent almost entirely on fire and smoke detection systems, interior electrical systems for protection and security, and the installation of an electric heating system that the Secret Service thought necessary for safety purposes.

(MORE)

-- The GSA spent approximately \$635,000 on the grounds surrounding my home. That work consisted largely of the installation of lighting and alarm systems for security purposes, construction of walls and guard posts, and extensive re-landscaping to restore areas torn up when the protective devices were installed.

-- By comparison, almost \$6 million has been spent by the military services to construct and maintain the Western White House Office complex. That complex is not on my property, but on Government property, and when it is not in use for the White House staff, it is frequently employed as a conference center for public and civic groups.

Unfortunately, the American people have been misled into believing that the funds for the office complex were spent on my home. The fact that the total spent on my home was \$68,000 has been ignored; the fact that my wife and I spent ourselves three times as much as that, \$187,977 out of our own funds, for real improvements to our homes, has been lost altogether. I trust that with the release of these documents the impressions can be erased and the truth of this matter firmly established.

Future of the Western White House

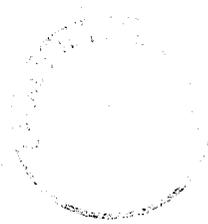
As public misunderstandings over San Clemente expenditures pass away in the future, we should recognize that the Western White House complex will continue to be a valuable asset for the Nation.

I have always been concerned that over the course of a single man's eight years in office, the country probably will not derive from that complex benefits proportional to the Government investment there. The office facility would, of course, remain available for public use after my term ends, but the usefulness of San Clemente as a conference center, guest facility for visiting foreign dignitaries, and working base for future Presidents would be far greater in the coming decades if what is now my private residence, La Casa Pacifica, could also be part of that complex.

Accordingly, at the time of my death or that of my wife, which ever is later, we intend to make a gift to the people of the United States of my home at San Clemente.

I have directed my attorneys to take the necessary steps to accomplish this, so that future Administrations and future generations can take advantage of this beautiful Western setting to help maintain a truly national perspective for the Presidency.

#



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD M. NIXON, individually)
and as the former President)
of the United States)
San Clemente, California)
(202) 456-1414)

Plaintiff,)

v.)

ARTHUR F. SAMPSON, individually)
and as Administrator of)
General Services)
F Street between 18th & 19th, N.W.)
Washington, D. C.)
(202) 343-6161)

PHILIP W. BUCHEN, individually)
and as Counsel to)
President Gerald R. Ford)
The White House)
Washington, D. C.)
(202) 347-4704)

H. STUART KNIGHT, individually)
and as Director of the)
Secret Service)
1800 G Street)
Washington, D. C.)
(202) 456-1414)

Defendants.)

COMPLAINT

Plaintiff, Richard M. Nixon, for his complaint against
defendants alleges the following:

Introductory Statement

1. This is a suit for an injunction to preserve the
constitutional right and duty of the former President of the



United States to ensure, to the extent consistent with law, the confidentiality of the presidential materials of the Nixon Administration. Plaintiff's right to relief arises both from the Constitution and laws of the United States and from a contract between the plaintiff and defendant Sampson. The relief requested in this suit does not affect compliance by the defendants with subpoenas duces tecum for portions of the materials served by any person prior to the filing of this complaint, nor does it affect compliance by the defendants with any subpoena which has been or may be served for production of presidential materials for use in the Watergate conspiracy trial now in progress. Apart from those exceptions, the requested injunction would ensure to the former President the right to respond to legal process demanding production of the materials, and to prohibit disclosure of the materials except pursuant to such legal process.

Jurisdiction and Venue

2. The jurisdiction of this Court to hear this action is founded upon Title 28 U.S.C. §1332 (Diversity of Citizenship); Title 28 U.S.C. §1331 (Federal Question) and Title 28 U.S.C. §1361 (Action in Nature of Mandamus). The amount in controversy, exclusive of interest and costs, exceeds the sum or value of \$10,000. Many of the acts hereinafter alleged to have been committed were committed in the District of Columbia.

Parties

3. Plaintiff, Richard M. Nixon, is a citizen of the State of California, residing in San Clemente, California, and



President of the United States, having served as President from January 20, 1969, to August 9, 1974.

4. Defendant, Arthur F. Sampson, is a citizen of the State of Pennsylvania, residing in the District of Columbia, and is the Administrator of General Services for the United States, and at all times relevant to the allegations contained herein acted in his official capacity as Administrator and as agent for or representative of the United States.

5. Defendant, Philip W. Buchen, is a citizen of the State of Michigan, residing in the District of Columbia, and is Counsel to Gerald R. Ford, President of the United States and at all times relevant to the allegations contained herein acted in his official capacity and as agent for or representative of the United States.

6. Defendant, H. Stuart Knight, is a citizen of the State of Virginia, residing in Virginia, and is Director of the Secret Service and at all times relevant to the allegations contained herein acted in his official capacity and as an agent for or representative of the United States.

Nature of the Claim

The Presidential Materials In Question

7. On November 5, 1968, Richard M. Nixon was elected to the Office of President of the United States. He assumed that office on January 20, 1969.

8. On November 7, 1972, Mr. Nixon was reelected to the Office of President of the United States. The second term of his



Presidency commenced on January 20, 1973, and ended on August 9, 1974 upon his resignation from office.

9. During his term as President, Richard Nixon maintained many of his personal files, including family and law practice records, memorabilia and other items which cover periods of time prior to his Presidency, at the White House and, upon information and belief, such records are still located at the White House and, despite requests, have not at this time been sent to the former President.

10. In addition to the personal materials referred to above, Richard Nixon and members of his staff, during the period Mr. Nixon served as President, generated and retained within the White House, the Old Executive Office Building ("OEOB"), parts of the New Executive Office Building ("NEOB") and other Executive Offices a substantial number of documents, papers, tapes, photographs, notes or other items (herein referred to as "presidential materials").

11. All of these presidential materials are the property of former President Nixon. The Attorney General of the United States has given an opinion to that effect.

12. Many of the presidential materials embody communications between President Nixon and his aides relating to the conduct of the Office of the President. The Constitution of the United States affords to the former President a privilege of confidentiality as to such materials subject to exception only upon demonstration of a specific need for relevant evidence in a criminal prosecution. The Supreme Court of the United States in

ould that the basis of this privilege is "the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in presidential decisionmaking," as well as "the values to which we accord deference for the privacy of all citizens."

13. Because of the national interest in a swift but orderly transition from the Presidency of Richard Nixon to the Presidency of Gerald Ford, there was not adequate time when President Nixon resigned on August 9, 1974, to arrange for transfer of all of the former President's presidential materials and his personal records to his California residence or storage facility in the vicinity.

14. President Nixon directed that his presidential materials and personal records be immediately transferred to California when he departed from the White House so that he could personally review the materials or cause them to be reviewed under his direction, and thereafter make arrangements for their care and handling. Contrary to that direction, the presidential materials and personal records have not been transferred to California.

15. On information and belief, all of the presidential materials of the Nixon Administration and Mr. Nixon's personal records which are within the metropolitan area of the District of Columbia are presently stored within the White House, the "OEOB", or the National Archives.



Proposal for Deposit of
the Former President's
Materials.

16. On or about September 2, 1974, defendant Buchen and representatives of the former President entered into discussions concerning the presidential materials and the possible deposit of all or part thereof with the United States for some period under conditions whereby the safety of the materials would be assured and whereby access could be gained upon lawful judicial order or other legal processes directed to the former President.

17. On or about September 3, 1974, representatives of the former President learned from defendants or their agents that William Saxbe, the Attorney General of the United States, had been requested to give an opinion concerning the legal ownership of the presidential materials and that the Attorney General had concluded that title to the presidential materials referred to herein is vested in former President Nixon, as has been the case with the papers, documents and effects of every President of the United States. (A copy of the text of the Attorney General's opinion is attached as Exhibit A.)

Agreement to Deposit the
Presidential Materials.

18. On September 6, 1974, Mr. Nixon and defendant Sampson, pursuant to the authority of Title 44 U.S.C. §2107, signed an agreement whereby former President Nixon agreed to place on deposit with the General Services Administration all of his presidential materials located within the metropolitan area of the District of Columbia, such deposit to be subject



terms and conditions contained in the agreement. (A copy of the depository agreement is attached as Exhibit B.)

Some of the Terms and Conditions of the Depository Agreement.

19. The depository agreement, inter alia, provides that defendant Sampson will transfer the presidential materials and personal items to California and deposit them temporarily in an existing facility belonging to the United States located near the residence of the former President, where they will remain on deposit, under stated terms and conditions, until a permanent presidential archival depository is established.

20. The depository agreement provides that access to Mr. Nixon's presidential materials within both the temporary and permanent presidential archival depository will require use of two keys, one to be given to the former President, as custodian of the materials, and the other to be given to the Archivist of the United States or to members of his staff.

21. The agreement further provides that all of the presidential materials (except tape recordings of conversations in the White House and Executive Office Buildings) will remain on deposit for a period of three years under terms and conditions specified in the depository agreement. (Upon agreement of the parties, the personal materials may be removed without limitation as to time.)

22. With respect to the tape recordings of conversations, the agreement provides that such recordings will remain on deposit until September 1, 1979. In no event will the tape recordings be destroyed prior to that date. Thereafter, the agreement



provides that the former President will and by the agreement did donate to the United States (such gift to be effective September 1, 1979) all of the tape recorded conversations. This gift was conditioned upon the former President's right to order destruction of such tapes as he then might direct and upon the further condition that the tapes will be destroyed at the time of the former President's death subsequent to September 1, 1979 or on September 1, 1984, whichever should first occur.

23. In specific recognition of the fact that the presidential materials should remain available for some period for production in connection with lawful judicial orders or other legal processes, the agreement provides that in the event production of the materials is demanded by subpoena or other order directed to an official or employee of the United States, the recipient thereof shall notify the former President so that he, as owner and custodian of the materials, with sole right of access thereto, can respond to the demand and, if appropriate, assert any privilege or defense available. The parties recognized that the former President, as owner and physical custodian of the presidential materials, will be subject to service of process demanding production of the materials and therefore any legally recognized need for the materials or part thereof can be accommodated.

Interference With the Parties' Agreement.

24. On or about September 9, 1974, members of the Watergate Special Prosecution Force agreed with defendant Buchan



not to permit any of the former President's presidential materials to be moved from their present location without the prior approval of the Special Prosecutor. Among other things, the object of this agreement was to interfere with the contractual rights of former President Nixon and to inhibit the former President's ability to protect the constitutionally based privilege of confidentiality in his presidential materials and to raise other defenses or privileges available under the Constitution or laws of the United States.

Attempts to Modify the Depository Agreement.

25. In an effort to bring about implementation of the depository agreement, representatives of the former President have participated in negotiations with members of the Watergate Special Prosecution Force concerning implementation of the depository agreement in whole or in part. These negotiations have not resulted in even a limited implementation of the depository agreement and members of the Watergate Special Prosecution Force have stated that they intend to serve a subpoena duces tecum on defendant Buchen demanding production of Mr. Nixon's presidential materials.

26. In addition to the subpoena referred to above, at least six other requests for access to the materials have been made by persons engaged in civil litigation against the United States or officials of former officials thereof. Some of these requests have subsequently been made by subpoenas duces tecum



and others will no doubt be made by subpoenas duces tecum in the near future.

The Demand for Compliance
With the Depository Agreement.

27. On September 13, 1974, the former President requested that steps be taken immediately to implement the depository agreement as to all of the presidential materials not then subject to subpoena or other court order. As to those materials which could not be immediately transferred to California because of then outstanding subpoenas or court orders, he requested that arrangements be made for storage of such materials in the District of Columbia under conditions whereby access could be gained only by means of the two key arrangement described in the depository agreement.

28. Subsequent demands for implementation of the depository agreement have been made orally to defendant Buchen and to members of his staff.

Refusal To Implement
the Depository Agreement.

29. No person may gain access to Mr. Nixon's presidential materials without defendant Buchen's written authorization to defendant Knight, who, upon receipt of such authorization, will order members of the Secret. Service who guard the presidential materials to permit access in accordance with defendant Buchen's instructions. Without defendant Buchen's consent, defendant Sampson will not implement the depository agreement.



Impairment of
Constitutional
Privileges.

30. The Constitution of the United States vests in the President the privilege of maintaining in confidence the communications engendered in the conduct of his office. To preserve that privilege, both during and after his term in office, the President must maintain the right of control, subject to court order, over disclosure of the presidential materials of his office. The former President must also have available to him personally the presidential materials of his office in order to facilitate review of the materials in determining whether to assert presidential privilege.

31. On information and belief, defendants presently intend to comply, in whole or in part, with subpoenas duces tecum or other demands for production of the presidential materials. Such compliance will be in derogation of rights and privileges afforded the former President by the Constitution.

32. Compliance by defendants with demands for production of presidential materials will necessitate a search of the materials for those items requested. Any search not authorized by former President Nixon will be in derogation of rights and privileges afforded the former President by the Constitution and therefore is in violation thereof.

33. The agreement between defendant Buchen and the Watergate Special Prosecution Force not to implement the depository agreement and thereby retain the former President's materials within the White House and the Oval Office is in violation of the Constitution.



President's ability to exercise the rights and privileges afforded him by the Constitution and therefore is in violation thereof.

34. The agreement between defendant Buchen and the Watergate Special Prosecution Force also impairs the ability of the former President to assert other constitutionally based defenses to production and disclosure of the materials and therefore is in violation of the Constitution.

Failure to Perform Statutory Duties.

35. Title 44 U.S.C. §§2107 and 2108 (the Presidential Libraries Act of 1955) authorize the Administrator of General Services to enter into agreements providing for the deposit of presidential historical materials and further authorize the Administrator to accept the materials for deposit upon conditions imposed by the donor and require him to abide by such restrictions. This Act represents Congressional recognition of the importance of maintaining presidential confidentiality.

36. Pursuant to this statutory authorization, defendant Sampson entered into a depository agreement with former President Nixon whereby the former President agreed, among other things:

- (a) to deposit certain presidential historical materials with the General Services Administration, (b) to donate at a future date a substantial portion of his presidential materials to the United States, (c) to donate as of September 1, 1979 the tape recorded conversations made within the White House and the Executive Office Building and (d) to limit his own right of access to the materials under conditions set forth in the depository agreement.

37. In turn, pursuant to the statutory authorization of Title 44 U.S.C. §2107, defendant Sampson agreed, among other



things: (a) to accept the materials for deposit, (b) to transfer the materials to a storage facility within the State of California, (c) to provide access only upon the terms and conditions specified in the depository agreement and (d) to protect the materials from loss, destruction or access by unauthorized persons.

38. Defendant Sampson has failed to comply with the terms and conditions of the depository agreement. He therefore has violated the depository agreement and the requirements of Title 44 U.S.C. §2107 and thereby has failed to perform those duties owed by him to the former President.

**Failure to Comply With
the Depository Agreement.**

39. Defendant Buchen continues to refuse to permit the presidential materials to be transferred pursuant to the depository agreement without the prior consent of the Special Prosecutor. This failure to permit transfer of the materials and implementation of the agreement constitutes a refusal to abide by the terms of the depository agreement.

40. Compliance by defendants with demands for production of all or part of the presidential materials will violate the terms and conditions set forth in the depository agreement.

41. A search of the materials by defendants pursuant to a demand for production thereof, without authorization by the former President, will violate the terms and conditions of the depository agreement.

42. The continued failure of defendants Buchen and Sampson to implement the depository agreement has jeopardized the former President's legal and equitable title to the materials and



has impaired his rights thereto.

43. The continued failure of defendants Buchen and Sampson to implement the depository agreement has impaired the former President's ability to comply with the subpoenas duces tecum served on him demanding production of portions of the materials. Such impairment is in violation of the terms and conditions of the depository agreement.

44. The continued failure of defendants Buchen and Sampson to implement the depository agreement has impaired the former President's own access to the presidential materials which impairment is in violation of the terms and conditions of the depository agreement.

Injury to Plaintiff

45. The injury suffered by former President Nixon because of defendants' actions in failing to implement the depository agreement and in impairing his constitutional rights and privileges is imminent and irreparable and cannot be compensated by an award of damages. The only adequate remedy is mandamus or injunction in the nature of specific performance of the depository agreement by defendant Sampson, uninhibited by defendants Buchen and Knight. Specific performance will not work a hardship upon defendants.

46. The possible production of the presidential materials to persons other than the former President, and the search of such



materials by persons not authorized by the former President, poses an immediate threat to the former President's constitutional rights and privileges. This threat constitutes a significant and irreparable injury which cannot be remedied by an action at law but can only be remedied by injunction.

Relief Requested.

WHEREFORE, plaintiff requests this Court:

(a) to preliminarily enjoin defendants from taking any action to produce or to give access to any person other than plaintiff, or those whom he authorizes, the presidential materials of the Nixon Administration presently located within the metropolitan area of the District of Columbia, except (1) pursuant to subpoenas duces tecum served or court orders issued prior to the time of filing of this complaint, or (2) pursuant to subpoenas duces tecum or court orders demanding production of materials to be used in criminal trials now in progress;

(b) to permanently enjoin any defendants from taking any action inconsistent with the terms and conditions of the depository agreement;

(c) to order defendant Sampson to perform those duties owed to the former President with respect to implementation of the depository agreement pursuant to Title 44 U.S.C. §§2107 and 2108 and prohibiting defendants Buchen and Knight from taking any action inconsistent therewith;

(d) alternatively to (b) and (c), to direct defendants to return to the former President all presidential materials referred to herein; and

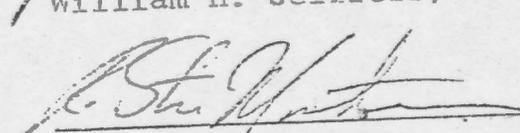


(a) to grant such other and further relief as this Court deems warranted in the circumstances.


Herbert J. Miller, Jr.


Raymond G. Larroca


William H. Jessress, Jr.

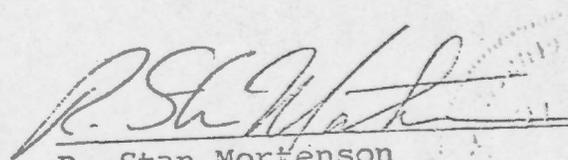

R. Stan Mortenson

MILLER, CASSIDY, LARROCA & LEWIN
1320 19th Street, N.W., Suite 500
Washington, D. C. 20036
(202) 293-6400

VERIFICATION

District of Columbia, ss:

R. STAN MORTENSON, being first duly sworn on oath says that the foregoing is a just and true statement of the facts upon which plaintiff bases his claims for relief.


R. Stan Mortenson
Attorney for Plaintiff

Subscribed and sworn to before me this 16th day of October, 1974.


My Commission Expires April 30, 1979



Office of the White House Press Secretary

THE WHITE HOUSE

TEXT OF A LEGAL OPINION
BY THE ATTORNEY GENERAL.

September 6, 1974

The President,

The White House.

Dear Mr. President:

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

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

EXHIBIT A



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

1/ The official documents involved in the case were:

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

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

Circular letters.

General orders.

Communications (official) addressed as President to his Cabinet.

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

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



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

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

^{2/} Statement of Dr. Wayne C. Grover, Archivist of the United States, during the House Hearings on the Joint Resolution of August 12, 1955, 69 Stat. 695, To provide for the acceptance and maintenance of Presidential libraries, and for other purposes (now codified in 44 U.S.C. 2101, 2107 and 2108; hereinafter referred to as the "Presidential Libraries Act"), Hearing before a Special Subcommittee of the Committee on Government Operations, House of Representatives, 84th Cong., 1st Sess., on H.J. Res. 330, H.J. Res. 331, and H.J. Res. 332 (hereafter referred to as "1955 Hearings"), pp. 28, 45.



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

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

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

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



Moreover, with respect to the practice at issue here, there is recent statutory sanction. The 1955 Presidential Libraries Act, which serves as the permanent basis of the Presidential Library system, constitutes clear legislative acknowledgement that a President has title to all the documents and historical materials -- whether personal or official -- which accumulate in the White House Office during his incumbency. The Federal Records Act of 1950, 64 Stat. 587, which was the predecessor of the Presidential Libraries Act, authorized the Administrator of General Services to accept for deposit "the personal papers and other personal historical documentary materials of the present President of the United States." Section 507 (e), 64 Stat. 538. The word "personal" might have been read as intended to distinguish between the private and official papers of the President. ^{3/} The corresponding provision of the current law, however, 44 U.S.C. 2107 (1), avoids the ambiguity. It envisions the President's deposit of all Presidential materials, not only personal ones. During

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



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

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

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

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

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



personal property; and to the congressional ratification of the practice in the 1955 library legislation. It concludes that "the historical precedents taken together with the provisions set forth in the Presidential Libraries Act, suggest that the papers of President Nixon are considered his personal property rather than public property." Id. at 23-29.

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

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

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



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

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

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

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



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

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

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



they are within the possession of the former President.^{4/}

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

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



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



of continuing Presidential ownership.

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



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

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



Fed. R. Civ. P. 34(a). In addition, in both criminal and civil cases, a subpoena may be issued directing a person to produce documents or objects which are within his possession, but which belong to another person. Fed. R. Crim. P. 17(c); Fed. R. Civ. P. 45(b). See, e.g., Couch v. United States, 409 U.S. 322 (1973); Schwimmer v. United States, 232 F.2d 855, 360 (8th Cir., 1956), cert. denied, 352 U.S. 833; United States v. Re, 313 F Supp. 442, 449 (S. D. N. Y. 1970).

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

Respectfully,

Attorney General



September 6, 1974

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

Dear Mr. Sampson:

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

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

1. The Administrator agrees to accept solely for the purpose of deposit the transfer of the Materials, and in so accepting the Materials agrees to abide by each of the terms and conditions contained herein.
2. In the event of my death prior to the expiration of the three-year time period established in paragraph 7A hereof, the terms and conditions contained herein shall be binding upon and inure to the benefit of the executor of my estate for the duration of said period.
3. I retain all legal and equitable title to the Materials, including all literary property rights.

EXHIBIT B

Mr. Sampson received 7/6.

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4. The Materials shall, upon acceptance of this offer by the Administrator, be deposited temporarily in an existing facility belonging to the United States, located within the State of California near my present residence. The Materials shall remain deposited in the temporary California facility until such time as there may be established, with my approval, a permanent Presidential archival depository as provided for in 44 U.S.C. Section 2103.

5. The Administrator shall provide in such temporary depository and in any permanent Presidential archival depository reasonable office space for my personal use in accordance with 44 U.S.C. Section 2103 (2). The Materials in their entirety shall be deposited within such office space in the manner described in paragraph 6 hereof.

6. Within both the temporary and any permanent Presidential archival depository, all of the Materials shall be placed within secure storage areas to which access can be gained only by use of two keys. One key, essential for access, shall be given to me alone as custodian of the Materials. The other key may be duplicated and entrusted by you to the Archivist of the United States or to members of his staff.

7. Access to the Materials within the secure areas, with the exception of recordings of conversations in the White House and the Executive Office Building which are governed by paragraphs 8 and 9 hereof, shall be as follows:



A. For a period of three years from the date of this instrument, I agree not to withdraw from deposit any originals of the Materials, except as provided in subparagraph B below and paragraph 10 herein. During said three-year period, I may make reproductions of any of the originals of the Materials and withdraw from deposit such reproductions for any use I may deem appropriate. Except as provided in subparagraph B below, access to the Materials shall be limited to myself, and to such persons as I may authorize from time to time in writing, the scope of such access to be set forth by me in each said written authorization. Any request for access to the Materials made to the Administrator, the Archivist of the United States or any member of their staffs, shall be referred to me. After three years I shall have the right to withdraw from deposit without formality any or all of the Materials to which this paragraph applies and to retain such withdrawn Materials for any purpose or use I may deem appropriate, including but not limited to reproduction, examination, publication or display by myself or by anyone else I may approve.

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



8. The tape recordings of conversations in the White House and Executive Office Building which will be deposited pursuant to this instrument shall remain on deposit until September 1, 1979. I intend to and do hereby donate to the United States, such gift to be effective September 1, 1979, all of the tape recordings of conversations in the White House and Executive Office Building conditioned however on my continuing right of access as specified in paragraph 9 hereof and on the further condition that such tapes shall be destroyed at the time of my death or of September 1, 1984, whichever event shall first occur. Subsequent to September 1, 1979 the Administrator shall destroy such tapes as I may direct. I impose this restriction as other Presidents have before me to guard against the possibility of the tapes being used to injure, embarrass, or harass any person and properly to safeguard the interests of the United States.

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

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

B. In the event that production of the Materials or any portion thereof is demanded by a subpoena or other order directed to any officer or employee of the United States,



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

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

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



If you determine that the terms and conditions set forth above are acceptable for the purpose of governing the establishment and maintenance of a depository of the Materials pursuant to 44 U.S.C. Section 2101 and for accepting the irrevocable gift of recordings of conversations after the specified five year period for purposes as contained in paragraph 8 herein, please indicate your acceptance by signing the enclosed copy of this letter and returning it to me. Upon your acceptance we both shall be bound by the terms of this agreement.

Sincerely,



Accepted by:

Arthur F. Sampson
Administrator
General Services Administration



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

SUPPLEMENTAL ORDER

Upon consideration of the Temporary Restraining Order issued yesterday, dated October 21, 1974 at 4:20 p.m., and upon consideration of the parties' requests for certain modifications thereof, and it appearing that the parties consent to said modifications and that the same are consistent with the ends of justice, and it appearing that the aforesaid Order as well as this Supplemental Order are necessary to preserve the status quo in the above-entitled litigation, it is by the Court this 22nd day of October, 1974,

ORDERED, that the Court's Order of October 21, 1974, be and the same is hereby amended and supplemented as follows:

ORDERED, that the Motions for a Temporary Restraining Order be, and the same are hereby granted in part and denied in part; and it is



FURTHER ORDERED, that the Defendants, their superiors, agents and assigns are, subject to the conditions hereinafter described in the balance of this Order, hereby enjoined from disclosing, transferring, disposing or otherwise making known to any person, be he/she private citizen or public official, the materials, including documents, tapes and other papers, known as the "Presidential materials of the Nixon Administration", that are presently in the custody and control of the Defendants; and it is

FURTHER ORDERED, that the Defendants are hereby enjoined from effectuating the terms and conditions of the "Agreement" entered into by Richard M. Nixon and Arthur F. Sampson, on or about September 6, 1974, and it is

FURTHER ORDERED, that the injunction shall not serve as a bar to the production of said materials pursuant to a validly-issued subpoena, discovery demand, or court order in any civil or criminal case, either outstanding or while this injunction is extant; or to the production of said materials in regard to the ongoing Watergate criminal trial before United States District Judge John Sirica; or to the production of said material pursuant to requests by the Special Prosecutor, or to a validly issued subpoena by a Grand Jury; or to the use of said materials, with prior notification to counsel for Plaintiff Richard M. Nixon and with the consent of Defendant Philip W. Buchen, for purposes of current government business, and it is

FURTHER ORDERED, that Plaintiff Richard M. Nixon, or his attorney, shall be afforded access to said materials under current access procedures established by Defendants for the sole purposes of preparing to testify in the Watergate trial and determining whether to raise any privileges or defenses he believes he might have in opposition to production of said materials for current government business or pursuant to requests by the Special Prosecutor or to validly-issued subpoenas, discovery demand or a court order, and if Plaintiff Richard M. Nixon shall be unable to physically do so, the government Defendants shall provide copies of said materials for such use, but he shall not disclose or divulge the contents thereof except in regard to his testimony or in response to validly-issued subpoenas, and said copies shall be returned promptly to the Defendants when such purposes have been served; and it is



FURTHER ORDERED, that any person either now or previously a member of the White House staff shall be afforded access under current access procedures established by Defendants, with or without his/her attorney present, to said materials which comprise or comprised his/her files while a member of the White House staff, and be allowed to take notes regarding the same, but not to make copies thereof, all the above solely for any purposes relating to criminal investigations or prosecutions; and it is

FURTHER ORDERED, that any search conducted for purposes of producing or using said materials as provided in this Order shall be conducted jointly by Defendant Philip W. Buchen, or his agent, and counsel for Plaintiff Richard M. Nixon, or his agent, and said persons shall take such steps as are necessary to assure that the search for and copying of said materials will in no way destroy or affect the original character of any of the materials, including tapes, documents or other papers referred to herein; and it is

FURTHER ORDERED, that the Plaintiffs shall not be required to post any bond; and it is

FURTHER ORDERED, that this injunction shall be effective for ten (10) days and shall be renewed upon proper application of the parties.

/s/ CHARLES R. RICHEY
Charles R. Richey
United States District Judge

United States District Court
for the District of Columbia
A TRUE COPY

JAMES F. DAVEY, CLERK,

By /s/ ESTHER E. CREIDEN
October 22, 1974
Time 2:35 p.m.



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD M. NIXON

Plaintiff

v.

ARTHUR F. SAMPSON, et al.,

Defendants

and

THE REPORTERS COMMITTEE FOR FREEDOM OF
THE PRESS

Plaintiffs

v.

ARTHUR F. SAMPSON, et al.,

Defendants

and

LILLIAN HELLMAN, et al.,

Plaintiffs

v.

ARTHUR F. SAMPSON, et al.,

Defendants

C.A. No. 74-1518

FILED

NOV 7 1974

JAMES E. DAVEY, Clerk

ORDER

Upon consideration of the Motion for Leave to Take Depositions and to Inspect Storage Areas Prior to the Expiration of 30 days After Service of Summons, pursuant to Rules 30(a) and 34(b) of the Federal Rules of Civil Procedure, the Points and Authorities in support of and in opposition thereto, and it appearing to the Court that waiver of the 30-day rule would be in the best interests of a fair and proper disposition of the issues but that an inspection of the storage areas would not be proper at this time, it is, by the Court, this 7th day of November, 1974,



ORDERED, that leave to take depositions be, and the same is, hereby granted, said depositions to commence on Friday, November 8, 1974, and terminate at the close of business on Wednesday, November 13, 1974; and it is

FURTHER ORDERED, that the time, place and person to be deposed shall be by the agreement of the parties; and it is

FURTHER ORDERED, that the deponents shall bring to the depositions the requested materials, and may raise any privilege as to any or all of the materials at that time, and upon the assertion of any such privilege, the dispute shall be presented to the Court for resolution on November 15, 1974, or before, as an emergency matter if essential to the fair administration of justice, along with the materials in question, which shall be under seal; and it is

FURTHER ORDERED, that counsel for all of the parties shall be given the opportunity to be present at the depositions; and it is

FURTHER ORDERED, that the Motion to Enter and Inspect Storage Areas Containing the Materials in Dispute be, and the same is, hereby denied, but in lieu thereof, the Defendants, in conjunction with counsel for Mr. Nixon, shall file with the Court and serve on all counsel any existing lists or statements categorizing and/or describing the materials in issue, but which do not reveal the contents thereof, and if such lists or statements do not exist, the Defendants, in conjunction with counsel for Mr. Nixon, shall prepare a statement which describes, with as much particularity as is reasonably possible in the time available, the categories of the materials, said statements to be filed with the Court and served on all parties on or before



twelve o'clock noon, Thursday, November 14, 1974.

Charles R. Richey

Charles R. Richey
United States District Judge

November 7, 1974



DOBROVIR / OAKES / GEBHARDT / ~~BUTTON~~
2005 L Street, N.W.
Washington, D. C. 20036



Benton L. Becker Esq.
485 L'Enfant Plaza S.W.
Washington DC 20024



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD M. NIXON,)
)
Plaintiff,)
)
v.) No. _____
)
ARTHUR F. SAMPSON)
PHILIP W. BUCHEN)
H. STUART KNIGHT,)
)
Defendants.)
_____)

APPLICATION FOR TEMPORARY
RESTRAINING ORDER

Plaintiff Richard M. Nixon, through his undersigned attorneys, hereby moves this Court pursuant to Rule 65, Federal Rules of Civil Procedure, for an order temporarily restraining the defendants, until such time as plaintiff's motion for a preliminary injunction may be heard and determined, from producing or disclosing the presidential materials of the Nixon Administration to any person other than the plaintiff or his designees, except as may be necessary (1) to comply with subpoenas duces tecum already served upon any defendant, or (2) to comply with subpoenas duces tecum or court orders served upon any defendant for materials for use in criminal trials presently in progress.

This application is made upon the verified complaint filed this day, on grounds more fully stated in the motion for the points discussed in that motion, plaintiff shows as follows:



1. The subpoenas and other demands for production of the presidential materials already made, and the numerous lawsuits presently pending in which similar demands may be made, make it likely that a large number of subpoenas, Rule 34 demands, and other demands for access to the presidential materials will be made in the near future. In order to avoid interference with the jurisdiction of courts out of which subpoenas have already issued, plaintiff has not sought through this lawsuit or the motion for a preliminary injunction to restrain the defendants from complying with outstanding subpoenas. However, this proviso in the requested injunction is likely to stimulate parties contemplating subpoenas upon portions of the materials to serve those subpoenas during the time prior to the hearing on the motion for a preliminary injunction, in the hope of thereby avoiding application of any injunction to their own requests.

2. In ruling on an application for a temporary restraining order the Court must consider the "probability of irreparable harm, probability of success on the merits, the balancing of interests and the preservation of the status quo Palmigiano v. Travisono, 317 F.Supp. 776, 785 (D.R.I. 1970). See United States v. Washington Post Co., 446 F.2d 1322, 1325 (D.C.Cir. 1971). The questions of irreparable injury and probable success on the merits are fully discussed in our motion for a preliminary injunction. Plainly, the relief requested is merely to preserve the status quo; that is, to maintain the existing confidentiality of the presidential materials and to



13-

preserve plaintiff's right to control access thereto. Moreover, plaintiff asks no immediate transfer of the materials or change in the security arrangements as to their present storage. Finally, with regard to both the "status quo" and the "balance of interests," we have sought to exempt from the relief requested all existing subpoenas, and also any subpoenas that might be issued for the purpose of the Watergate conspiracy trial now in progress as to which particularly speedy compliance may be necessary. Therefore, the requested relief will not injure the legitimate interests of any other parties; it will simply force those who seek access to the materials to make their demand upon Mr. Nixon rather than officials of the White House.

3. Notice of this application has been given by telephone call prior to its filing to the office of each of the defendants as well as to the office of the United States Attorney for the District of Columbia.

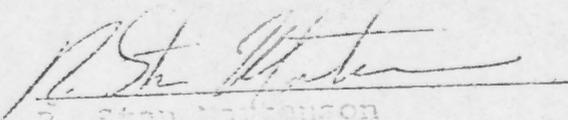
WHEREFORE, it is respectfully requested that this application be granted and a temporary restraining order entered in the form attached hereto.

Respectfully submitted,


Herbert J. Miller, Jr.


Raymond G. Larroca


William H. Jeffress, Jr.


R. Stan Robinson

1320 19th Street, N.W., Suite 500
Washington, D. C. 20036

Attorneys for Plaintiff



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD M. NIXON

Plaintiff,

v.

ARTHUR F. SAMPSON

PHILIP W. BUCHEN

H. STUART KNIGHT,

Defendants.

No. _____

PROPOSED ORDER

Upon consideration of plaintiff's application for a temporary restraining order, each party having received notice thereof, and the Court having heard the parties, and it appearing to the Court that plaintiff has shown a likelihood of success on the merits and that irreparable injury will occur in the absence of preliminary relief and that such an order is necessary to preserve the status quo, it is this ____ day of _____, 1974 hereby

ORDERED that until such time as a hearing is had on plaintiff's motion for a preliminary injunction, the defendants shall not produce or disclose, or permit the production or disclosure by others, of any presidential materials of the Nixon Administration presently located within the District of Columbia metropolitan area to any person other than Richard M. Nixon or his designees, except (1) as may be necessary to comply with subpoenas duces tecum served upon any defendant or other court orders issued prior to the time of the filing of the complaint in this action, and (2) as may be necessary to comply with subpoenas duces tecum or court orders requiring production of materials for use in criminal trials presently in progress.

UNITED STATES DISTRICT JUDGE



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA.

RICHARD M. NIXON,

Plaintiff,

v.

ARTHUR F. SAMPSON
PHILIP W. BUCHEN
H. STUART KNIGHT,

Defendants.

No. _____

MOTION FOR PRELIMINARY INJUNCTION

Plaintiff Richard M. Nixon, through his undersigned attorneys, hereby moves this Court for a preliminary injunction restraining the defendants, pendente lite, from allowing access to the presidential materials of the Nixon Administration except (1) pursuant to subpoenas served upon the defendants prior to the filing of this complaint, or (2) pursuant to subpoenas or court orders, whenever served, requiring production of such materials for use in criminal trials presently in progress, or (3) as specifically authorized by plaintiff Richard M. Nixon. This motion is made upon the verified complaint in this action on grounds fully explained below.

I.

PRELIMINARY STATEMENT

Because of the widespread publicity and intense interest given to matters having to do with Richard M. Nixon's presidential materials, it is appropriate to emphasize at the outset



exactly what this lawsuit is about. This is not an action to remove any of the materials beyond the reach of lawful process of a court, grand jury, or any other body, nor to gain unrestricted control over the custody, preservation, or location of the materials. Rather, this suit is an effort only to secure to Mr. Nixon the right to review the presidential materials in preparation for response to subpoenas or other demands for production of the materials and to determine whether the constitutional privilege of Presidential confidentiality should be exercised. This is nothing more than was provided by the conditions of an agreement previously entered into by the Administrator of General Services -- an agreement which itself ensures preservation of the materials at a specified location, and deprives Mr. Nixon of access to the materials without notification to and cooperation of the Administrator or his agent.

Mr. Nixon's purpose in seeking to control access to the materials is to preserve the privilege of confidentiality of Presidential communications, and to preserve his own rights as a citizen to the privacy of his personal conversations and correspondence. There may, of course, be lawful rights of access to particular materials by particular parties, and those rights will, under the relief sought by this lawsuit, be enforceable by legal process served upon Mr. Nixon. At the present time, however, process has been and will continue to be served upon present government officials, and Mr. Nixon has no way of controlling their response to subpoenas or other requests --

or for that matter, controlling their ability to inspect, copy or remove the materials without legal process.

The relief sought by this lawsuit, therefore, is designed simply to obtain compliance by the defendants with their legal and contractual duties, and the temporary relief sought by the present motion is designed only to prevent the rights of a former President from being irreparably destroyed until such time as those duties are fully performed.

II.

STATEMENT OF FACTS

Richard M. Nixon served as President of the United States from January 20, 1969 to August 9, 1974 at which time he resigned from office. While President, Richard Nixon and members of his staff generated approximately 42 million documents which are commonly referred to as "presidential materials." These materials embody thousands of communications between the former President and his aides and relate to topics covering the enormous range of responsibilities which fall within the functions of the Presidency. Some of the materials also contain purely personal communications between the President and his family and friends.

At the time Mr. Nixon resigned from office, he determined that it would be in the national interest to arrange for a swift but orderly transition to the Presidency of Gerald Ford. In this transition there was not adequate time for Mr. Nixon's presidential materials to be transferred to his California

residence or another facility. Therefore, President Nixon instructed members of his staff to transfer the presidential materials to California after his departure where he would personally review the materials or cause them to be reviewed under his direction.

On September 6, 1974, President Nixon entered into an agreement with defendant Arthur F. Sampson, Administrator of General Services, whereby the former President deposited with the General Services Administration all of his presidential materials located within the metropolitan area of the District of Columbia. In addition to placing the materials on deposit, President Nixon agreed, among other things: (a) to donate at a future date a substantial portion of the materials to the United States, (b) to donate to the United States, as of September 1, 1979, the tape recordings of conversations made within the White House and the Executive Office Building; and (c) to limit his own right of access to the materials under conditions set forth in the depository agreement.

In turn, defendant Sampson, pursuant to the statutory authorization of Title 44 U.S.C., §2107, agreed, among other things: (a) to accept the materials for deposit, (b) to transfer the materials to a storage facility within the State of California, (c) to provide access thereto only upon terms and conditions specified in the agreement, and (d) to protect the materials from loss, destruction and access by unauthorized persons. Contrary to widespread public belief, none of the

materials may be removed from deposit or destroyed for a period of three years, and the famed White House tapes cannot be removed from deposit or destroyed for at least five years. Consequently, all of the materials will remain available for production in connection with legal processes for at least the period indicated.

Within days after execution of this depository agreement and before it could be implemented, members of the Watergate Special Prosecution Force initiated discussions with defendant Buchen asking that the materials not be transferred in accordance with the depository agreement but held in place and made available to the Special Prosecutor at his request. Defendant Buchen agreed not to permit implementation of the depository agreement but did not consent at that time to produce the materials to the Special Prosecutor.

Since that time, attorneys for the former President have asked both defendant Sampson and defendant Buchen to carry out the terms and conditions of the agreement. With respect to those materials which are currently subject to subpoena or other court order demanding production thereof, the former President has consented to such materials remaining in Washington and has asked only that the other materials be transferred to California. As for those materials subject to subpoena, the former President either has taken steps already to comply with the request for production or has sought or will seek to raise in the issuing court whatever objections he may have to production of the materials. Thus this suit relates only to

not presently subject to any compulsory process.

III.

ARGUMENT

The standard governing the grant or denial of a preliminary injunction is succinctly stated in A Quaker Action Group v. Hickel, 137 U.S. App. D.C. 176, 181, 421 F.2d 1111, 1116 (1969):

The movant must show a substantial likelihood of success on the merits, and that irreparable harm would flow from the denial of an injunction. In addition, the trial judge must consider the inconvenience that an injunction would cause the opposing party, and must weigh the public interest as well.

The merits of this lawsuit concern two issues: (1) whether Mr. Nixon is entitled to performance of the agreement entered into on September 6, 1974, and (2) whether the Constitutional privilege of confidentiality of Presidential communications requires that Mr. Nixon be in a position to control any review of the presidential materials and to determine whether the privilege should be exercised. We first discuss these issues and then turn to the additional issues: irreparable injury to plaintiff, lack of injury to defendants, and the overall public interest.

A. Plaintiff Is Entitled to Performance of the Depository Agreement

The agreement between Mr. Nixon and defendant Sampson was entered into pursuant to 44 U.S.C. §2107, which provides in relevant part as follows:

§2107. Material accepted for deposit.

When the Administrator of General Services considers it to be in the public interest he may accept for deposit

(1) the papers and other historical materials of a President or former President of the United States, or other official or former official of the Government, and other papers relating to and contemporary with a President or former President of the United States, subject to restrictions agreeable to the Administrator as to their use . . .

Under 44 U.S.C. §2108, the restrictions as to availability and use of materials accepted by the Administrator for deposit in a Presidential archival depository "shall be respected for the period stated, or until revoked or terminated by the donors or depositors or by persons legally qualified to act on their behalf."

These provisions are part of the Presidential Libraries Act of 1955, 69 Stat. 695. In Nixon v. Sirica, ___ U.S. App. D.C. ___, 487 F.2d 700, 744 (1973), Judge MacKinnon described the purpose of this Act and its implementation by other former Presidents as follows (footnotes omitted):

By enacting the Presidential Libraries Act of 1955, Congress recognized the importance of maintaining presidential confidentiality. The Act bestows an absolute privilege upon papers and sound recordings deposited with the Government-administered presidential libraries by providing that presidential papers and recordings may be accepted "subject to restrictions agreeable to the administrator [of General Services] as to their use." The presidential papers of Presidents Eisenhower, Kennedy, and Johnson are subject to the restriction that "materials containing statements made by or to" the President are to be

kept in confidence and held under seal and not revealed to anyone except the donors or archival personnel until "the passage of time or the circumstances no longer require such materials being kept under restriction." Restrictions imposed by letters from President Eisenhower and from President Johnson additionally prohibit disclosure to "public officials" on the ground that "the President of the United States is the recipient of many confidences from others, and . . . the inviolability of such confidence is essential to the office of the presidency" Thus Congress by statute has recognized the confidential nature of presidential papers and recordings, and has subjected them to restrictions against disclosure. It would be incongruous to accord a greater confidence to the materials of a deceased President than to the materials of a living, incumbent President.

The agreement between Mr. Nixon and the Administrator complied in every respect with the provisions of §2107, and there can be no doubt as to its validity. Upon execution of the agreement, the Administrator was bound to honor the restrictions contained therein. Those restrictions, inter alia, guarantee to Mr. Nixon exclusive control over access to the materials. For the Administrator to permit, or for anyone else to gain, access to the materials without authorization by Mr. Nixon is, therefore, a violation of the agreement.

The duty of the defendants to carry out the agreement derives both from normal contract principles and from the above-quoted statutes. It is settled that when all the elements of

a valid contract are established, an injunction will issue to require specific performance where the remedies at law are inadequate or impracticable. Restatement of Contracts §361; Shanks Village Committee Against Rent Increases v. Cary, 197 F.2d 212 (2d Cir. 1952); Campbell Soup Co. v. Wentz, 172 F.2d 80 (3d Cir. 1949). Since the services which the Administrator agreed to perform cannot be obtained from anyone else, and since the interests in privacy and in preservation of the constitutional privilege of confidentiality which Mr. Nixon sought to protect through the contract are of a type not measurable in money terms, this prerequisite to specific performance is plainly met.

Furthermore, when an official of the United States undertakes a duty by agreement with a private party which is authorized by statute, an injunction in the nature of mandamus will issue to compel the official to carry out that duty. A case very close in point is Chapman v. El Paso Natural Gas Co., 204 F.2d 46 (D.C. Cir. 1953), where the court directed the Secretary of Interior to issue certain rights-of-way for a natural gas pipeline. An earlier license granted by the Secretary, after full negotiations and consideration of policy questions, had promised that rights-of-way be issued upon execution of a stipulation by the plaintiff. Later, the Secretary attempted to impose additional conditions on the issuance of the rights-of-way, contending that the authorizing statute permitted him to do so. The court, however, held that the

original agreement of the Secretary was binding, and even though the conditions in question might lawfully have been imposed at the time the license was granted, they could not later be added. The court stated, 204 F.2d at 53:

"By the granting of a license to El Paso the Secretary necessarily made not an ephemeral, reversible determination, but he so exhausted and terminated whatever discretion he possessed with relation to this particular controversy that it thereafter became proper for the courts not only to strike down illegal conditions attached then or later but also to compel the Secretary affirmatively, by mandatory injunction, to perform whatever ministerial duties remained to be executed by him in the discharge of the initial policy decision."

See also Chapman v. Santa Fe Pacific Railroad Co., 198 F.2d 498, 502 (D.C. Cir. 1952).

The remedy of mandamus is appropriate where the act compelled is ministerial rather than discretionary, and where the duty is in the form of a positive legal command. United States v. Walker, 409 F.2d 477, 481 (9th Cir. 1969). Both these tests are satisfied here. For although, as in Chapman, supra, the Administrator may have had discretion at the time the agreement was made whether or not to accept its provisions, he has no power now to repudiate the agreement itself, and the execution of the agreement involves solely ministerial acts. Furthermore, even putting aside the fact that the contract itself constitutes a positive legal duty on the Administrator to carry out its provisions, the language of 44 U.S.C. §2108 specifically makes it his duty to abide by the restrictions placed by the donors on materials deposited pursuant to the

statutory scheme.

There thus can be little doubt that plaintiff is entitled to prevail on the merits of this litigation, and we submit it is beyond question that there exists such a "likelihood" of success as to entitle plaintiff to a preliminary injunction protecting his rights under the agreement pending final relief on the merits.

B. Control By The Former President Over Access To The Presidential Materials of His Own Administration Is Necessary To Preserve The Constitutional Privilege of Confidentiality.

The Supreme Court in United States v. Nixon, ___ U.S. ___, 94 S.Ct. 3090 (1974), recognized a constitutionally-based privilege protecting the confidentiality of presidential communications, which yielded only to a "demonstrated, specific need for evidence in a pending criminal trial." 94 S.Ct. at 3110. The Court described the basis for this privilege as follows (94 S.Ct. at 3107):

The expectation of a President to the confidentiality of his conversations and correspondence, like the claim of confidentiality of judicial deliberations, for example, has all the values to which we accord deference for the privacy of all citizens and added to those values the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in presidential decisionmaking. A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express even privately.

The Court's reasoning makes it plain that the privilege is one exercisable by a President as to the materials of his own Administration, both during and after his term in office. A guarantee of confidentiality that lasts only for the duration of a President's term in office would be completely useless in fostering the interests described by the Court. The only possible conclusion from the reasoning adopted by the Court -- and from its careful avoidance of the term "executive privilege" -- is that the presidential privilege, like the attorney-client and other privileges, is one that may be waived only by the President in office at the time the communication was made.

The policy basis for the privilege also requires that confidentiality be protected not only against Congressional and judicial demands for disclosure of the President's materials, but also to access by subsequent Administrations. ^{1/} If unknown future occupants and staff of the White House are permitted to sift through the confidential communications of a former President and his aides, in response to subpoenas or otherwise, the expectation of privacy in such communications will be as thoroughly destroyed, and the purposes served by the privilege as effectively nullified, as if the same access were given to

^{1/} It should be noted that we have no reason to believe that any members of the current Administration intend to examine the presidential materials for their own purposes. Nevertheless, such examination will be required in order to comply with subpoenas served upon the defendants.

st. Congresses.

The right of Mr. Nixon to exclusive control of his privileged Presidential materials -- subject, of course, to lawful judicial process served upon Mr. Nixon -- is required not only by his ownership of the materials, his agreement with defendant Sampson, and the provisions of 44 U.S.C. §§ 2107 and 2108, but also by the same Constitutional principles which underlie the presumptive presidential privilege of confidentiality upheld in United States v. Nixon, supra. The imminent action of the defendants, therefore -- both in searching or causing searches to be made of the materials by persons not authorized by Mr. Nixon, and by disclosing materials to others without Mr. Nixon's consent -- will violate Mr. Nixon's constitutional rights in his capacity as a former President, as well as his contractual rights under the depository agreement.

C. In the Absence of a Preliminary Injunction the Plaintiff Will Suffer Irreparable Injury, While an Injunction Will Not Injure the Defendants or the Public.

The threatened disclosure by third parties of privileged communications, or simply information made confidential by contract, has always been viewed as an irreparable injury justifying issuance of an injunction. See, e.g., Roe v. Doe, 42 A.D. 2d 559, 352 N.Y.S.2d 626 (1973), aff'd, 33 N.Y.2d 902, 352 N.Y.S.2d 626, cert. granted, 94 S.Ct. 2601 (May 28, 1974) (injunction against physician's disclosure of patient's confidential communications; Amstar Oil Co. v. Alcon Corp., ___ U.S. ___, 94 S.Ct. 1879 (1974) (injunction against disclosure of trade secrets; Amstar v. Libbia, 216 Mass. 599, 97

N.E. 309 (1912) (injunction against disclosure of private letters)

See also Bell v. Waterfront Comm'n of N. Y. Harbor, 183 F.Supp. 175, 177-178 (SDNY 1960), aff'd, 279 F.2d 853 (2d Cir. 1960):

"The unauthorized seizure of one's papers, if unlawful, and thus an injury, is an irreparable injury."

To our knowledge, three subpoenas have already been served upon Mr. Buchen or Mr. Knight seeking production of some of Mr. Nixon's Presidential materials, and Rule 34 demands for production have been made in at least two civil suits to which the United States is a party.

In order to avoid requesting this Court to interfere with the jurisdiction of other courts from which subpoenas have already been issued, we are not seeking in this motion or in this action any relief with respect to compliance by the defendants with those outstanding subpoenas. Furthermore, to avoid any possibility of interference in a pending trial, we seek no relief with respect to compliance by the defendants with subpoenas issued by any party for materials to be used in the trial in the case of United States v. Mitchell, et al.

2/ These subpoenas are the following: (1) a subpoena by John Ehrlichman for the purpose of the Watergate conspiracy trial; (2) a subpoena by James McCord for the purpose of discovery in a civil suit in the District of Columbia; and (3) a subpoena by Spencer Oliver in a civil suit seeking damages arising out of the bugging of the Democratic National Committee headquarters at the Watergate. These subpoenas would not be affected by the relief requested. Additionally, Rule 34-type demands for Presidential materials have been made by several oil companies in a civil suit in the Court of Claims, and by the three television networks in a civil antitrust action. Production has been made in the former suit, and refused in the latter.

in the United States District Court for the District of Columbia.

The subpoenas already served and the Rule 34 demands already made in a wide variety of lawsuits illustrate, however, the wholesale threat to the confidentiality of the Presidential materials that already exists and that, given the fashionableness of such demands, may be expected to increase in the near future. In the absence of relief by this Court, Mr. Nixon will be unable to protect the confidentiality of the materials to the full extent consistent with the constitutional privilege by controlling production of his materials pursuant to these demands, or repeated review of the confidential materials by present White House staff necessary to comply with the demands. For these reasons, the injury that Mr. Nixon will suffer in the absence of a preliminary injunction is plainly substantial and irreparable.

By contrast, neither the defendants nor any third parties will be injured by the injunction. We repeat that neither the depository agreement, this lawsuit, nor the preliminary relief requested seek in any way to place the materials beyond legal process, which is the only lawful means by which any person may obtain access. We seek only to place control over access in the hands of the party -- Mr. Nixon -- to whom it lawfully belongs, and to ensure that he has the opportunity to assert such privileges and defenses as he may have with respect to those materials. While this relief may result in denying certain persons unimpeded access to the Presidential materials, it will not deprive anyone of any legitimate rights

to production.

Finally, because the public interest is a relevant factor in determining whether to issue a preliminary injunction, we emphasize that the privilege of Presidential confidentiality is not one designed to protect Presidents, but to protect "the public interest in candid, objective, and even blunt or harsh opinions in presidential decisionmaking." United States v. Nixon, supra, 94 S.Ct. at 3107 (emphasis added). It is that public interest, together with the interest in privacy which Mr. Nixon shares with all citizens, which this motion seeks to vindicate.

CONCLUSION

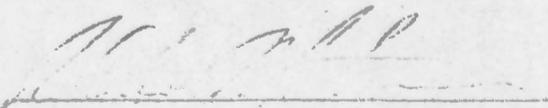
For the reasons stated herein, plaintiff respectfully requests that the motion be granted and that a preliminary injunction be entered in the form attached hereto.

Respectfully submitted,


Herbert J. Miller, Jr.


Raymond G. Larroca


William H. Jeffress, Jr.


R. Stan Mortenson

MILLER, G. SAYS, LARROCA &
1300 10th Street, N.W.
Washington, D. C. 20006

Attorneys for the Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD M. NIXON,)
)
 Plaintiff,)
)
 v.) No. _____)
)
 ARTHUR F. SAMPSON)
 PHILIP W. BUCHEN)
 H. STUART KNIGHT,)
)
 Defendants.)
 _____)

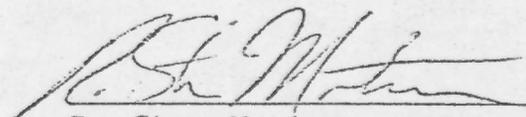
PROPOSED ORDER

Upon consideration of plaintiff's motion for a preliminary injunction and of the opposition thereto, and the Court having heard the parties, and it appearing to the Court that plaintiff has shown a likelihood of success on the merits and that irreparable injury will occur in the absence of preliminary relief, it is this ____ day of _____, 1974, hereby

ORDERED that the defendants, during the pendency of this lawsuit, shall not produce or disclose, or permit the production or disclosure by others, of any presidential materials of the Nixon administration presently located within the District of Columbia metropolitan area to any person other than Richard M. Nixon or his designees, except (1) as may be necessary to comply with subpoenas duces tecum served upon any defendant or other court orders issued prior to the time of the filing of the complaint in this action, and (2) as may be necessary to comply with subpoenas duces tecum or court orders requiring production of materials for use in criminal trials presently in progress.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached Application for Temporary Restraining Order and Motion for Preliminary Injunction has been served this 17th day of October, 1974 upon the following: Arthur F. Sampson, Administrator of General Services, F Street between 18th & 19th, N.W., Washington, D. C.; Philip W. Buchen, Counsel to President Gerald R. Ford, The White House, Washington, D. C.; H. Stuart Knight, Director of the Secret Service, 1800 G Street, Washington, D. C.; William B. Saxbe, Attorney General, 10th & Constitution Avenue, N.W.; and Earl J. Silbert, Acting United States Attorney for the District of Columbia, United States Courthouse, Washington, D. C.


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CABLE: "ARFOPO"
TELEX: 88-2735

November 8, 1974

THURMAN ARNOLD (1891-1969)
PAUL A. PORTER
MILTON V. FREEMAN
NORMAN DIAMOND
WILLIAM L. MCGOVERN
CAROLYN E. AGGER
G. DUANE VIETH
REED MILLER
ABE KRASH
WILLIAM D. ROGERS
B. HOWELL HILL
JULIUS M. GREISMAN
EDGAR H. BRENNER
DENNIS G. LYONS
STUART J. LAND
ROBERT E. HERZSTEIN
JAMES R. MCALEE
MITCHELL ROGOVIN
WALTER J. ROCKLER
CLIFFORD L. ALEXANDER, JR.
WERNER KRONSTEIN
PAUL S. BERGER
JAMES F. FITZPATRICK
MELVIN C. GARBOW
BRUCE L. MONTGOMERY
JOHN D. HAWKE, JR.
MURRAY H. BRING
DANIEL A. REZNECK
GERALD M. STERN
MELVIN SPAETH
DAVID R. KENTOFF
DAVID H. LLOYD
RICHARD S. EWING
PETER K. BLEAKLEY
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RICHARD J. WERTHEIMER
HARRY HUGE
JACK L. LIPSON
JEROME I. CHAPMAN
MYRON P. CURZAN

JAMES A. DOBKIN
STEPHEN L. HESTER
MICHAEL N. SOHN
BROOKSLEY LANDAU
PATRICK F. J. MACRORY
ANDREW S. KRULWICH
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NORTON F. TENNILLE, JR.
ROBERT D. ROSENBAUM
J. BRADWAY BUTLER
FREDERICK B. ABRAMSON
RICHARD L. HUBBARD
KENNETH A. LETZLER
DOUGLAS G. ROBINSON
STEPHEN M. SACKS
THOMAS J. MCGREW
MARK J. SPOONER
G. PHILIP NOWAK
DAVID BONDERMAN
STEVEN P. LOCKMAN
JEFFREY A. BURT
CARY H. SHERMAN
JUDITH N. STEIN
SIMON LAZARUS III
THOMAS E. SILFEN
IRVING B. YOSKOWITZ
DANIEL M. LEWIS
RONALD G. NATHAN
GARY G. GERLACH
LANNY J. DAVIS
PAUL S. RYERSON
THOMAS D. NURMI
JOHN M. FEDDERS
RICHARD A. GOLDSTEIN
PHILIP J. MAUSE
THOMAS S. WILNER
DIANA D. CLARK

MARTIN RIGER
ROBERT PITOFSKY
OF COUNSEL

Jeffrey F. Axelrad, Esquire
Civil Division
General Litigation Section
Department of Justice
Washington, D.C. 20006

Re: Reporters Committee, et al. v. Sampson, et al.

Dear Jeffrey:

Attached is a Revised Notice of Deposition reflecting the schedule arranged by Bill Dobrovir and yourself. It is our understanding that Messrs. Sampson, Buchen, Casselman and Nesbitt will appear at the times stated in the attached Notice, without the necessity of serving them with subpoenas or other compulsory process. It is our understanding that Mr. Becker has also agreed to appear voluntarily for his deposition.

If this does not accurately reflect your understanding, please let me know immediately.

Sincerely yours,

Mark J. Spooner

Mark J. Spooner

Enclosure
cc w/encl: All Counsel
Benton Becker



REVISED NOTICE OF DEPOSITIONS

Please take notice that plaintiffs in #74-1533 and plaintiff-intervenor in #74-1518 will take the depositions of the following persons at the times and dates stated, at the United States Department of Justice, First Floor, Briefing and Conference Room (opposite Room 1350), Washington, D.C.:

1. Arthur F. Sampson, on Monday, November 11, 1974, at 10:00 a.m.
2. Philip W. Buchen, on Monday, November 11, 1974, at 3:30 p.m.
3. William E. Casselman, II, on Tuesday, November 12, 1974, at 10:00 a.m.
4. Jack Nesbitt, on Tuesday, November 12, 1974, at 2:00 p.m.

The deposition of Benton L. Becker will be taken at the offices of Arnold & Porter, 1229 Nineteenth Street, N.W., Washington, D.C. on Wednesday, November 13, 1974, at 10:00 a.m.

Each deponent shall bring with him any document, writing or tape recording in his possession, custody or control, or that of his subordinates and/or agents that reflects, relates to, mentions or is otherwise pertinent to the agreement of September 7, 1974, between Richard M. Nixon and Arthur F. Sampson; the implementation, proposed or attempted, of that agreement; the negotiation of that agreement, and/or the events leading up to the negotiation of that agreement, and any other events occurring between August 9, 1974, and October 16, 1974, pertinent to the foregoing.



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Robert E. Herzstein, Esquire
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Attorneys for Plaintiffs in
#74-1533

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Attorneys for Plaintiff-Intervenor
in #74-1518

DATED: November 8, 1974



VOLUME I

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----X
: :
RICHARD M. NIXON, : :
: :
Plaintiff, : Civil Action
: No. 74-1518
- vs - : :
: :
ARTHUR F. SAMPSON, et al., : :
: :
Defendants, : :
: :
- and - : :
: :
THE REPORTERS COMMITTEE FOR : :
FREEDOM OF THE PRESS, : :
AMERICAN HISTORICAL ASSOCIATION, : :
AMERICAN POLITICAL SCIENCE ASSOCIATION, : :
et al., : Civil Action
: No. 74-1533
Plaintiffs, : :
- vs - : :
: :
ARTHUR F. SAMPSON, et al., : :
: :
Defendants. : :
- and - : :
: :
LILLIAN HELLMAN, et al., : Civil Action
: No. 74-1551
Plaintiffs, : :
- vs - : :
: :
ARTHUR F. SAMPSON, et al., : :
: :
Defendants. : :
-----X

(Appearances on next page)



DEPOSITION OF PHILIP W. BUCHEN, taken on
November 11, 1974, at 3:30 p.m., before Craig L. Knowles,
Notary Public, at the United States Department of Justice,
First Floor, Briefing and Conference Room, Washington, D. C.,
pursuant to notice.

APPEARANCES:

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(Appearances continued on next page)



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Washington, D. C. 20405

RICHARD DAVIS, Esq.

C O N T E N T S

WITNESS

PHILIP W. BUCHEN

Examination by Mr. Dobrovir,

Page I-4



P R O C E E D I N G S

1
2 Whereupon,

3 PHILIP W. BUCHEN

4 was called as a witness, and after being first duly sworn,
5 was examined and testified as follows:

EXAMINATION

6
7 BY MR. DOBROVIR:

8 Q Mr. Buchen, would you please state your name?

9 A Philip W. Buchen.

10 Q Your present position in the U. S. Government?

11 A Counsel for the President.

12 Q How long have you held that position?

13 A Since August 15, 1974.

14 Q Did you hold a Government position previous to that
15 time?

16 A I was on a consulting basis as executive director of
17 Domestic Council Committee on the Right of Privacy from
18 March 15, until August 15, '74.

19 Q When was there first brought to your attention
20 or when did you first become aware of a matter of the
21 disposition of the records of the Nixon Administration?

22 A The afternoon of August 15 I attended a meeting
23 in Fred Bussard's office, which had been pre-arranged



1 between him and certain members of the Special Prosecution
2 Force.

3 Q Who was at that meeting?

4 A I think Phil Lacovara, Peter Kreindler, and
5 Ben Veniste, I believe.

6 Q What happened at the meeting?

7 A The people from the Special Prosecutor's Office
8 came to discuss their future needs for access to -- or future
9 needs to see certain materials in connection with their
10 on-going investigations, and also sought some assurances that
11 the location of the materials would be preserved until such
12 time as their needs were accommodated.

13 Q Was there any mention at that meeting of a
14 transfer of the records to California?

15 A Well, if my recollection is right, Fred Bussard
16 made the point that he would hope that the interests of the
17 Special Prosecutor could be so defined that the great bulk
18 of materials falling outside of that interest could be
19 transferred.

20 Q Was there any discussion about who owned the docu-
21 ments?

22 A Not that I recall.

23 Q Was it assumed that the documents belonged to



1 Mr. Nixon?

2 A I certainly think Fred Bussard assumed that.
3 Whether the Special Prosecutor did or not, I don't recall.

4 Q Did you have any assumption in that regard?

5 A No.

6 Q When was the next time that you dealt with the
7 question of the records of the Nixon Administration?

8 A Well, in one way or another, almost every day
9 after that.

10 Q I see. Well, perhaps it would shorten things up
11 if you would narrate as briefly as you can the events from
12 August 15 to September 7 within your knowledge or as reported
13 to you that led to the execution of the agreement of
14 September 7 between Richard M. Nixon and Arthur F. Sampson.

15 A Well, in the course of that period I learned of the
16 huge volume of documents we were talking about and approxi-
17 mate number of tape recordings.

18 Also, I learned that there had been various
19 procedures developed regarding access, and that steps had
20 been taken to bring the materials into storage areas within
21 the E.O.P; that these storage areas were under a variety
22 of different controls and devices.

23 I also learned over that period of time of certain



1 outstanding court orders affecting disposition of the
2 documents, and I recall asking the people on the staff to give
3 me all the information they had and asking people at Justice
4 to do the same.

5 And I recall we learned that there was an out-
6 standing order in the Wounded Knee case in Minneapolis, one
7 involving an anti-trust suit against the networks in
8 California, a suit in one of the Carolinas that bore on the
9 documents.

10 In fact, I think there were two suits there; and
11 also received copies of correspondence and telephone calls
12 from various parties to litigation, including the Watergate
13 prosecution wanting to know what access procedures would be.

14 I received certain letters in that period of time.
15 Then ultimately that led to a verbal request to the Attorney
16 General to seek a legal opinion as to the ownership of the
17 documents and as to the effects on the White House of
18 subpoenas or court orders.

19 Q Who initiated the request for the legal opinion?

20 A I initiated the request verbally, I believe, on
21 August 22nd.

22 Q At the time you initiated the request, did you
23 have a view as to the ownership of the records of the Nixon



1 Administration that were then in the White House complex
2 under GSA.

3 MR. MILLER: I object to the question, the form.

4 MR. DOBROVIR: Objection is noted.

5 MR. GOLDBLOOM: You may answer.

6 THE WITNESS: I did learn of a memorandum that had
7 gone through the White House staff on August 9th, which
8 enunciated the principles that the ownership of the presiden-
9 tial papers was in the former President and that it included
10 an archival memorandum that I was told had been drafted
11 during earlier Administrations, words to that effect.

12 And then I knew from general reading in the news-
13 papers that the historical precedent was that presidential
14 papers belong to the President. And I also became familiar
15 with the statutes involving the presidential libraries and
16 archives in which Congress had passed certain laws that, as
17 I read them, at least impliedly assumed that the ownership
18 was in the President, former Presidents.

19 BY MR. DOBROVIR:

20 Q Do you have with you the memorandum of August 9th
21 to which you just referred and the archival memorandum to
22 which you just referred?

23 A Yes, it's in the documents.



1 (Pause.)

2 MR. GOLDBLOOM: In connection with the request
3 for production of documents, I am afraid to say we have not
4 completed the categorization and separation of the documents
5 as of this moment. It's hopeful we will have it done by the
6 morning.

7 There are, I can say in advance, certain types of
8 documents as to which we will claim privilege, whether it
9 be attorney-client privilege or privilege regarding internal
10 Government communications. And I would hope we could postpone
11 until the morning the production of the documents so that
12 we can finish the separation and segregation of these
13 materials.

14 MR. DOBROVIR: Very well.

15 BY MR. DOBROVIR:

16 Q Let me ask you, Mr. Buchen, on the basis of your
17 review of the two memoranda to which you referred, and
18 newspaper stories to which you referred on the presidential
19 Libraries Act, had you by August 22 formed a view that the
20 ownership of the records in question was in former President
21 Nixon?

22 A No, or I wouldn't have asked the Attorney General
23 for an opinion.



1 Q I see. So that on the basis of your review of
2 these materials that you just referred to, you still have
3 not made up your mind?

4 A That's right.

5 Q Now, when you asked the Attorney General for an
6 opinion, did you do that in writing or orally?

7 A I did it orally, first; followed it later by a
8 letter from the President.

9 MR. DOBROVIR: I see.

10 Mr. Goldbloom, may I assume that that letter will
11 be the subject of the documentary production or claim of
12 privilege tomorrow?

13 MR. GOLDBLOOM: Yes.

14 MR. DOBROVIR: Very well.

15 BY MR. DOBROVIR:

16 Q To the best of your recollection, Mr. Buchen,
17 what questions did you ask the Attorney General orally and
18 in writing?

19 A The question of ownership and, second, however
20 he would answer that question, what our responsibilities
21 were as being -- because of the location of the documents in
22 the White House complex, to court orders and subpoenas.

23



1 Q How did you phrase the question about ownership,
2 to the best of your recollection?

3 A Well, I would just say, "Who owns these papers,"
4 the substance of it.

5 Q Did you say, "Who owns these papers," period? Or
6 did you say, for example, "Who owns these papers - Richard
7 Nixon or the United States?" I mean insofar as you can
8 recall.

9 A Well, I probably limited it to these two parties,
10 since I couldn't conceive of any others.

11 Q Did you intimate to the Attorney General any way
12 in which you might be leaning on the question?

13 A No, I don't think so, except I am sure I made it
14 clear that I was beginning to find it quite burdensome, so
15 that I was equally concerned with what our responsibilities
16 were for these documents. If he drew any inferences from
17 that, I don't know.

18 Q Now when were you first advised by the Attorney
19 General or by any of his subordinates what his opinion was
20 going to be on the question of ownership?

21 A I think a week later, about August 29.

22 Q And what was that advice?

23 A That the ownership was in the former President,



1 subject to certain rights that the Government had for on-
2 going Government purposes, plus the fact that as custodians,
3 or if there was a balement of the documents, we as bailees
4 would have responsibility for responding to any court order
5 or subpoena from third parties.

6 And at that point I quizzed my informant that I
7 wanted to be sure that that really was a responsibility,
8 because it seemed an unusual burden to place on a new
9 Administration that knew nothing about the contents, or even
10 were documents were, to have to respond to subpoenas.

11 And I recall saying, "Have you got any case
12 involving something like the Mayflower Storage Company that
13 may have been the recipient of many, many files of some
14 person who put them there for storage? Is it actually the
15 law that the storage company, without any knowledge of the
16 contents, would be called upon to respond to subpoenas to
17 find particular documents?"

18 Q When did there first come to your attention
19 the possibility or idea of negotiating with former President
20 Nixon an agreement concerning the disposition of the records?

21 A Well, I first tried to figure out if there might
22 be some unilateral way that we could rid ourselves of the
23 responsibility, such as interpleading the documents in a



1 court. I discussed that with people on the staff, and I
2 think I must have mentioned it to the Attorney General. And
3 I got no encouragement that any court would take that kind
4 of case.

5 When I couldn't get any encouragement, I could
6 realize the problems, that it was far different than paying
7 a sum of money into court and walking away from the case.
8 Then is when we decided we would take some sort of negotiations.

9 Q Do you recall when that was? Was it before or
10 after you requested the opinion of the Attorney General?

11 A Well, I started to think about the problem before
12 requesting it, obviously. It was only after I found out
13 definitely that there was no theory that they could offer me
14 that would allow us to escape the effects of court orders
15 or subpoenas or responsibility for responding.

16 Then after I found out there didn't seem to be
17 any unilateral way to get out of it is when I seriously
18 thought that negotiations were necessary. That would have
19 been toward the end of August, right after I got the informal
20 opinion.

21 Q So it would be on or about or shortly after the
22 29th of August?

23 A Right.



1 Q What steps did you take then? And if you could
2 go through this with as much detail as you can recall, it
3 would be very helpful to us.

4 A Well, for a long -- part of the problem and why
5 there was some delay is that, of course, Mr. Nixon had no
6 counsel who was representing him in this matter. And I think
7 it was only after August 30, or about that time, that I
8 received word that Mr. Miller would be acting as Mr. Nixon's
9 attorney.

10 I think in my first meeting with him, or first
11 telephone conversation, I mentioned that this was a problem.

12 Q Your first telephone conversation with Mr. Miller?

13 A Right. And I know that on August 30 I sent him
14 a copy of the existing order, or existing internal document
15 involving the protection of the documents in storage.

16 Q Is that different from the memorandum of August 9th
17 that you have already described?

18 A Yes, because the August 9th had nothing to do with
19 the protection of storage documents.

20 Q So this is another document?

21 A Right.

22 Q Thank you. And did you then begin negotiations
23 with Mr. Miller?



1 A. No. The negotiations did not proceed, or did
2 not begin until I had begun to work on the pardon and was
3 advised by the President to approach Mr. Miller on that
4 subject. I brought up the other subject at the same time.
5 I think this occurred September 3rd.

6 Q. What did you say to Mr. Miller with respect to the
7 subject of the records?

8 A. I said that I was looking for some way that we could
9 develop a plan that would relieve us of responsibilities
10 to third parties for responding to subpoenas or future
11 court orders. And that in view of the fact that the law
12 seemed to put this burden on us because we had physical
13 possession and physical access to the documents, that I
14 would like to work out some arrangement whereby their condi-
15 tion would be preserved, physical integrity would be
16 preserved, and yet be relieved of that responsibility for
17 the current Administration.

18 Q. Was there any discussion in that first conversa-
19 tion about the question of ownership, or did you both
20 assume that the ownership was in Mr. Nixon?

21 A. By that time I knew what the Attorney General's
22 opinion would be on that subject.

23 Q. Did you give any thought at that time to the



1 subject of preserving the records for historical purposes?

2 A. No, because I also was familiar with the steps
3 taken by previous Presidents. I had gained that familiarity
4 when I had been asked by the then Vice-President in my
5 capacity as a private attorney to consult with his then
6 counsel, Bill Casselman, as to what steps he should be taking
7 to rationalize the disposition of his own papers.

8 And Bill Casselman sent me a good deal of material
9 concerning the manner in which the four previous Presidents
10 had handled the disposition of their documents so that I
11 knew these were unilateral acts in a sense by the former
12 Presidents, and who had imposed various restrictions for
13 various kinds of documents and had provided various means
14 for handling those.

15 So I considered that the matter of preserving
16 them for history was largely a determination that had to
17 emanate from the former President.

18 Q What did you have in mind at this point in time
19 as to what were the records that you by this time had been
20 advised were the property of Mr. Nixon?

21 A. The ones I was concerned with were the ones that
22 had been set off in separate rooms, even though I had no
23 precise knowledge as to where the dividing line was between



1 documents that had gotten into these rooms and the ones that
2 hadn't. I assumed that again was not a matter that could
3 be resolved necessarily by negotiations, because, again,
4 dependent upon what the law was, if he owned papers, he
5 owned them; if he didn't, he didn't own them.

6 Q Did you consider at this point in time that the
7 so-called restricted files of Mr. Haldeman and Mr. Ehrlichman
8 and Mr. Colson were the property of former President Nixon?

9 A All I had to go on was this archival memorandum
10 that draws rather hard to apply distinctions between, as to
11 the rights of a subordinate employee to particular papers.

12 I gathered that personal letters not connected
13 with official duties that happened to get into the files
14 were excluded by the archival definition. They also had
15 categories where a document might be the result of the
16 intellectual creativeness of a subordinate employee, that the
17 subordinate employee had certain rights to at least have
18 copies of those.

19 But since I was not familiar with what files had
20 gone in precisely for any particular individual, I wasn't
21 able to say that this document did belong to the President
22 and that one didn't, or this file, because I didn't go into
23 any of the files.



1 Q Did you have a view about a document which was
2 a record of the official business, the Government function
3 of, say, Mr. Ehrlichman as Chairman of the Domestic Council,
4 a Domestic Council memorandum as the private property of
5 Richard M. Nixon?

6 A No, I didn't zero in on it that directly.

7 Q Is it fair to say - and I am not meaning to
8 mischaracterize your testimony, if I do - is it fair to say
9 that you had in mind that there was a great mass of material
10 that had been accumulated in the White House, that you were
11 not familiar with it, but that you had been advised that it
12 all belonged to Richard Nixon?

13 A With the minor exceptions of purely personal
14 items that were, I gathered, distinct from the category of
15 documents produced in relation to official functions.

16 Q This included communications between the Chairman
17 of the Domestic Council and the Department of Health,
18 Education & Welfare, for example, or communications between
19 the Chairman of the Domestic Council and the Chairman of the
20 Council of Economic Advisors?

21 A Assuming there was a copy retained in the White
22 House staff files, I assumed that was the property of the
23 President based on what I knew of the Attorney General's



1 opinion.

2 Q Coming back to the negotiations, after your
3 conversation with Mr. Miller, on September 3rd, what was
4 the next step that you took?

5 A May I look at a calendar?

6 Q Absolutely.

7 A I think we met again on the morning of the 5th
8 which was a Thursday, and it was then determined that
9 Mr. Miller would draft an initial proposal to get over to us
10 the same day, which he did.

11 Q That meeting was in Washington?

12 A Yes.

13 Q Do you retain a copy of that initial proposal?

14 A Right.

15 MR. DOBROVIR: I take it we will hear something
16 about that tomorrow morning?

17 MR. GOLDBLOOM: Yes, sir.

18 BY MR. DOBROVIR:

19 Q What happened with respect to that proposal?

20 A Well, Benton Becker and I went over it. And then
21 he and Mr. Miller went out to California with the initial
22 proposal and results of my discussion with Mr. Becker.

23 Q After receiving the proposal, were there portions



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1 of it which you did not consider to be satisfactory from
2 the Government's point of view?

3 A Well, after I saw the form of the proposal, which
4 was made in reliance on the fact that it covered those
5 documents that Mr. Nixon had ownership of without necessarily
6 defining them, but using a definition from the statute as
7 to what were presidential materials, and because it was
8 framed as being an act by the owner to deposit the materials
9 with the General Services Administration, so that it had no
10 effect of giving him more rights than the law allowed, I was
11 less concerned because I knew the overriding governmental
12 interests that would have to be reckoned with. So that I
13 became less concerned about the exact terms of the agreement,
14 knowing that this being the unilateral act on the part of
15 the former President; not involving anyone in the Administra-
16 tion except the persons involved as guardian of the deposi-
17 tories for Presidents, namely, the General Services Adminis-
18 tration, I did not have spelled out in any negotiations the
19 exact way in which the overriding governmental interest would
20 be asserted.

21 Q Did Mr. Miller's proposal provide that, after
22 three years, all of the materials except the White House
23 tapes would revert to Mr. Nixon for him to do with as he



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1 saw fit?

2 A Well, the word "revert" was not used. The agree-
3 ment for this deposit would last by its terms only for three
4 years. But there was clear indication that in that period
5 the claimed owner of the documents would be making selections
6 of gifts that would be in fact donated.

7 The statute allows deposits by a depository or a
8 donor. And as to the documents other than the tapes, it was
9 purely an agreement between an owner and a temporary bailee.

10 Q So in your view, it was only a temporary bailment
11 for a period of three years?

12 A Right.

13 Q Now, did Mr. Miller's proposal also provide for
14 the destruction of White House tapes at some point in time?

15 A It provided for a future gift of the tapes after
16 five years. And, subject to their being destroyed any time
17 after the first five years at the direction of the donor,
18 but in all events to be destroyed at the end of ten years
19 or death in the second five-year period.

20 Q Now, upon reading Mr. Miller's proposal, did you
21 consider that as part of the negotiations you ought to try
22 to get a present gift to the United States of these materials?

23 A We did, except we ran into the roadblock that



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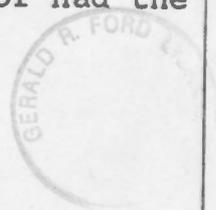
1 unless the subject of the gift could be precisely defined,
2 I had read the report of the Joint Congressional Taxation
3 Commission on the problem of gifts to be selected afterwards,
4 and also I had recalled that the other Presidents had first
5 indicated an intention to make gifts, but never completed
6 them until they were able to designate this group of materials
7 was given and given subject to certain restrictions as to
8 that category.

9 And I didn't see how it would be possible to
10 negotiate an effective present gift with whatever conditions
11 might have to be put on, or the donor might want to put on
12 different categories, and with complete specifications as to
13 what documents fell into each category.

14 I could appreciate the fact that this couldn't be
15 done until a period of deposit when the ownership rights,
16 whatever they were, remained with the former President.

17 Q You were aware, were you not, and we are talking
18 now about Mr. Miller's proposal, in that in that proposal
19 there was no assurance except for the tapes that anything
20 would indeed be donated to the United States?

21 A No, but neither had there been in a lot of other
22 letters of intent until the gift was actually made. The
23 owner reserved the right to do anything he wanted, or had the



1 right on the matter of reserving.

2 Q Was there in any of those other letters that you
3 saw, was there a provision that after three years, the
4 deposit would lapse and the materials would be at the sole
5 control of the person donating them, or depositing them,
6 rather?

7 A Well, they were, as I recall them, the depositor
8 retained the right to do anything he wanted from the day they
9 went in; could have pulled them back the next day. And that
10 was actually more restrictive in the sense that they would
11 be preserved in fact for this period which was not, as I
12 recall, customary in the other so-called letters of intent.

13 Q Did you have any changes that you proposed to
14 Mr. Miller's proposal?

15 A Yes.

16 Q Could you tell us what they were?

17 A Well, there were some technical changes, not much
18 in substance, but then other provisions, that the differences
19 between the original proposal and the final proposal
20 represented the results of negotiations.

21 Q How did the final proposal -- strike that. Was
22 the final proposal something agreed upon between you and
23 Mr. Miller which Mr. Becker then carried out to California?

1 A No. Becker went out with the incomplete document.

2 Q I see.

3 A And reported to me by telephone as different
4 provisions were settled on.

5 Q So in other words, the negotiations were continued
6 in California?

7 A Yes.

8 Q By Mr. Becker?

9 A Right.

10 Q Did Mr. Miller go out with Mr. Becker?

11 A Yes.

12 Q I see. What in particular were the substantive
13 changes that you wanted to see on the document, in the agree-
14 ment?

15 A Well, the one that got in was that we left the door
16 open for changing locations of depositories, even after the
17 agreement was implemented by my direction. That was one of
18 the significant changes that I recall.

19 Q Now, in Mr. Miller's proposal, was there the
20 language that remains -- that was in the document as executed
21 and which had been made public with respect to response to
22 subpoenas by Mr. Nixon?

23 A Yes.



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1 Q And with respect to the exercise of privileges by
2 Mr. Nixon?

3 A Yes.

4 Q Was there any discussion by you with respect to
5 the possibility that Mr. Nixon might exercise executive
6 privilege, as such; by you or with you?

7 A As against -- if he were called upon under the
8 agreement to produce any document --

9 Q If a subpoena was served.

10 A Right. He could exercise whatever privileges he
11 thought he could prevail upon.

12 Q Did you discuss with Mr. Miller, anybody else,
13 executive privilege in particular?

14 A Yes, I am sure that was mentioned.

15 Q And --

16 A But again, without passing on to what extent it
17 would be applicable.

18 Q But you did entertain the view that Mr. Nixon, as
19 a former President, might be able to exercise executive
20 privilege?

21 A I knew of the one precedent that Mr. Trumann at
22 one time after he was out of office had asserted it.

23 Q With respect to the House of Representatives.



1 A. Yes.

2 Q. So on the basis of that precedent you did have
3 the view that Mr. Nixon had the right to interpose a claim
4 of executive privilege?

5 A. Well, I considered that that again was an issue
6 that might finally have to be resolved in a court in a
7 particular situation.

8 Q. I see. How was it that Mr. Becker, Benton L.
9 Becker --

10 A. Right.

11 Q. -- became involved in these transactions?

12 A. Well, at the time of the transition -- go back.
13 He originally helped the nominee for Vice-President during
14 the confirmation hearings. That is where I first got to
15 know him.

16 Also, at the time of the change of Administration,
17 the Vice-President or his staff had asked him to perform
18 certain services on a volunteer basis. And he had acquired
19 some knowledge of the condition of the documents and tapes
20 as a result of that, and that was before I became counsel
21 to the President.

22 So I knew he had some familiarity with it, with
23 the problem, and also knew he was a close friend of the



1 President, the then President.

2 Q Now, you were aware, were you not, from your
3 understanding and knowledge of the Presidential Libraries
4 Act, that the responsibility with respect to obtaining and
5 preserving presidential historical materials belongs to the
6 General Services Administration?

7 A Right.

8 Q Did you at any time in the course of these
9 negotiations consult with the Administrator of General
10 Services?

11 A I consulted with Bill Casselman, former General
12 Counsel of General Services Administration, who was familiar
13 with the procedures of that Administration, and I personally
14 did not consult with Mr. Sampson.

15 Q Well, you were aware that Mr. Sampson was going
16 to have to sign any such agreement, isn't that right?

17 A Yes.

18 Q But you did not -- did you consult Mr. Sampson at
19 any time prior to the time on September 7 at approximately
20 6:15 p.m., when you presented him with the document as signed
21 by Richard Nixon?

22 A I came into the conference that Bill Casselman
23 had had much earlier on the 7th of September just at the



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1 time that Mr. Sampson was going to sign the agreement. But
2 I didn't participate in any discussions with him.

3 Q Well, to your knowledge, did Mr. Casselman consult
4 with Mr. Sampson at any time between, say, the 3rd of
5 September and the 7th of September?

6 A Not to my knowledge.

7 Q Let me rephrase the question. Do you know that
8 he did not consult with Mr. Sampson?

9 A No.

10 Q Is it your understanding, do you have any under-
11 standing whether he did or did not consult with Mr. Sampson?

12 A I don't believe he did until the 7th.

13 Q You did not instruct Mr. Casselman to consult with
14 Mr. Sampson?

15 A No. I knew the statute Section 107, which is the
16 deposits, where he deals not only with respect to the donor,
17 but the depositor; that he can accept the deposit of materials.
18 And I knew that from prior precedents, deposited materials
19 was made on much less restrictive conditions in the past than
20 went into this agreement, namely, that the deposit could have
21 been a momentary one, and that there were already papers of
22 the Nixon Administration held by the General Services
23 Administration, which were under no restrictions.



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1 There are materials held by the General Services
2 Administration that were just, I guess, called a deposit for
3 convenience.

4 Q Materials of the Nixon Administration?

5 A Yes.

6 Q That up until the time of the September agreement,
7 September 7 agreement, were under no restrictions?

8 A That's right.

9 Q And which by reason of the September 7th agreement
10 came under the restrictions of that agreement?

11 A Right.

12 Q But you did not see fit to consult Mr. Sampson
13 about any of this?

14 A No.

15 Q Can you tell me why?

16 A Because Bill Casselman understood the law, I
17 believed, and that obviously, if Mr. Sampson did not want
18 to sign, we wouldn't have had an agreement. It was not some-
19 thing we were going to force him to do. We tried to get the
20 best agreement we could and present it to him.

21 Q Well, I still don't understand why you didn't feel
22 it appropriate to bring him into these consultations,
23 discussions, negotiations which were, after all, for a matter



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1 that was within his statutory responsibility.

2 A Well, they were within his statutory responsibility.

3 But if he wanted to reject being a depository for these
4 materials, he could have. But I knew he had accepted the
5 custody of materials under no conditions whatsoever, and
6 that this did provide a means, I thought, for letting the
7 White House get out of having to respond indefinitely to
8 subpoenas from third parties.

9 Q What instructions did you give to Mr. Becker when
10 he went out to California to complete the negotiations?

11 A Well, I gave him some suggested language changes
12 and told him that I thought there should be additional
13 flexibility; that if the arrangements could be worked out,
14 that there may still have to be modifications later on.

15 And then I realized we couldn't cover all potential
16 modifications, so that we should achieve some flexibility
17 so that the agreement would work under a variety of circum-
18 stances.

19 Q You didn't, then, instruct him to try to get an
20 agreement that provided for permanent possession of these
21 records for the nation?

22 A I considered we could only do that if we could
23 work out a present gift. I didn't think anything short of

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1 a present gift could possibly involve a permanent arrange-
2 ment.

3 Q Did you instruct him to try to work out a present
4 gift?

5 A Well, that was discussed with Mr. Miller. And
6 he pointed out the impracticality of getting a present gift
7 because of the inability to designate exactly what materials
8 would go under the present gift under what conditions.

9 Q You indicated earlier that Mr. Becker and you had
10 some telephone conversations, long-distance telephone
11 conversations while he was in California. What were the
12 matters that arose to which those conversations related?

13 A Just the changes in the agreement from the origi-
14 nal draft.

15 Q I see. Did he read the entire final agreement
16 to you prior to agreeing to it?

17 A Just the changes.

18 Q Just the changes. So that you approved the final
19 text of the agreement as signed by Mr. Nixon by reason of
20 your approval of the changes that were made?

21 A No, I didn't approve it in any official sense.
22 I merely said, "Well, it looks as though you have covered
23 these points. Bring it back." I realized there were --



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1 one of the problems was they were running out of time.

2 Q Why were they running out of time?

3 A Well, because we preferred to get the agreement
4 signed before the pardon was granted. This was to avoid
5 trying to get one more step along the way so that there would
6 not have to be subsequent litigation over the terms under
7 which transfers should be made if the documents were to be
8 gotten out of the White House.

9 Q I am sorry, it's late in the day. I don't think
10 I understood your answer.

11 MR. GOLDBLOOM: Would this be a good time to
12 quit?

13 MR. DOBROVIR: Let's see if perhaps we can just
14 resolve this point.

15 MR. GOLDBLOOM: All right.

16 THE WITNESS: I looked upon any agreement that
17 we got as being better than we have; that if we didn't get
18 any arrangement for putting these materials in a place where
19 they would be outside the White House, properly protected,
20 that there was no way either that Mr. Nixon could begin to
21 sort through the materials and deal with them as he would
22 have dealt with them if he had had them deposited before he
23 left on August 9th.



1 And anything that moved that process along looked
2 to me to put us in a better position than we were ~~and would~~
3 give us plenty of time after that to workout the implementation
4 of the agreement and any modifications that the owner was
5 willing to make as to the disposition of the papers.

6 Q Was your principal objective with respect to the
7 timing of this to remove from you and your staff the obliga-
8 tion of having to respond to subpoenas and other kinds of
9 court discovery demands?

10 A That's right.

11 Q And that is why you were eager to get this document
12 signed and accepted and implemented?

13 A Right.

14 MR. DOBROVIR: I see. If it's all right with
15 everybody else, this is a good time for me to stop.

16 (Whereupon, at 5:35 p.m., the deposition in the
17 above-entitled was adjourned, to reconvene on Tuesday,
18 November 12, 1974, at 10:00 a.m.)

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
) Civil Action Nos.
 FOR THE DISTRICT OF COLUMBIA) 74-1518, 74-1533, 74-1551

I, Craig L. Knowles, Notary Public, before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing pages was duly sworn by me; that the testimony of said witness was recorded by me by stenotype and thereafter reduced under my direction to typewritten form; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition is taken; and further, that I am not a relative of or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Craig L. Knowles
 Notary Public

