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DEPARTMENT OF JUSTICE

Memorandum

TO : Files

DATE: November 1, 1974

KSG:sfk

FROM : Kenneth S. Geller *KSG*SUBJECT: Nixon v. Sampson; interview of Benton Becker.

Richard Davis and Kenneth Geller interviewed Benton Becker in the Special Prosecutor's office this afternoon. Peter Kreindler was present at the beginning of the interview, and Jeffrey Axelrad and Irwin Goldbloom of the Civil Division of the Justice Department were present throughout the interview.

Soon after Richard Nixon's resignation as President, around August 12 or 13, 1974, J. Fred Buzhardt circulated a memo within the White House asking the staff to begin packing White House files for shipment to Nixon. The memo contained sketchy references to the authority of a former President to take these records, but also recognized the necessity in some cases for records to be retained in the District of Columbia. Each White House staff member was to determine which files would be necessary for the transition and was to xerox any files which would be needed by the Ford Administration; all originals were to go to Nixon. Philip Buchen, William Casselman, and Becker discussed this Buzhardt memo and concluded it was too broad in scope. They realized, for example, that all personnel files had to be kept in the White House and also that, by this time, there were outstanding subpoenas for certain materials in the Wounded Knee, network antitrust, and Watergate cases. All Buzhardt memos were therefore superceded by Buchen, and the files placed in cartons in a secure area. An attempt to move these materials to Nixon, which Becker attributed merely to a failure of communication, was aborted.

Also in mid-August, Buchen had requested an opinion from the Attorney General concerning who owned these files. Sometime thereafter, Buchen received an informal opinion from the Attorney General that ownership was in Nixon, but that President Ford, as the current custodian, had certain obligations. Becker cannot recall the specific obligations of which Buchen was informed, but Becker independently realized that the White House could not simply turn over these materials to Nixon "in fee simple," with the chance that they would be destroyed.



Becker was aware not only of the outstanding subpoenas but also of the letter to Buchen from Philip Lacovara on August 15, 1974, which contained a schedule of the additional materials that the Special Prosecutor might need for its ongoing investigations.

On the Wednesday or Thursday preceding Labor Day, August 28 or 29, 1974, Buchen called Becker, who was an unpaid consultant to the White House, and asked Becker to research the pardon issue for President Ford. On September 3, 1974, Becker and Buchen met with Jack Miller at Buchen's suite in the Jefferson Hotel. Though the meeting was primarily concerned with the pardon issue, there was also some discussion of the White House tapes and documents. Miller said that Nixon was adamant that he be given these materials, but Buchen and Becker told Miller that any turnover had to take into account the problems of destruction and outstanding subpoenas. Becker recalls that before this first meeting with Miller there had been much discussion in the White House concerning what should be done with the materials. One person, Alexander Haig, argued that they were Nixon's and should immediately be shipped to him without restrictions. Buchen's desire was to avoid the need to hire a group of White House lawyers who would continually have to go into court in answer to subpoenas for Nixon files; Buchen and Becker also felt that any objections to production on grounds such as relevancy could not properly be made by the Ford Administration but should be made by Nixon.

At the meeting of Buchen, Becker and Miller on September 3, there was a legal discussion concerning ownership of the papers. Miller said he had researched the matter and that it was clear Nixon owned all the materials. Becker concurred in that opinion. The discussion then focused on security for the materials once turned over to Nixon, the problem of outstanding and future subpoenas, and the mechanics of production of the materials pursuant to subpoenas.

Although no one at the September 3 meeting suggested that an agreement covering the tapes and documents be drafted, and Miller did not volunteer to prepare a draft, Miller came to the second meeting of Becker, Buchen and Miller, on the morning of September 5 at the Jefferson Hotel, with a draft agreement. Most of this second meeting was also spent with the pardon.

The September 5 meeting lasted until about 12:30 p.m. Becker then met about an hour later with Buchen and Casselman



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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RICHARD M. NIXON,	:
	:
Plaintiff,	:
	:
- 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.,	:
	:
Plaintiffs,	:
	:
- vs -	:
	:
ARTHUR F. SAMPSON, et al.,	:
	:
Defendants.	:
	:
- and -	:
	:
LILLIAN HELLMAN, et al.,	:
	:
Plaintiffs,	:
	:
- vs -	:
	:
ARTHUR F. SAMPSON, et al.,	:
	:
Defendants.	:
	:
----- X	:

Civil Action
No. 74-1518

Civil Action
No. 74-1533

Civil Action.
No. 74-1551

(Appearances on next page)



1 DEPOSITION OF BENTON L. BECKER, taken on
2 November 13, 1974, at 10:30 a.m., before Leanne P. Dotson,
3 Notary Public in the offices of Arnold & Porter, 1229
4 Nineteenth Street, Northwest, Washington, D. C. 20036, pursuant
5 to notice.

6
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20 For Freedom of the Press, et al.

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Washington, D. C. 20530
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RICHARD DAVIS, Esq.



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P R O C E E D I N G S

Whereupon,

B E N T O N L. B E C K E R

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

EXAMINATION

BY MR. DOBROVIR:

Q Would you state your full name, please?

A. My name is Benton L. Becker, B-e-c-k-e-r.

Q Mr. Becker, would you tell us how you became in-
volved with the question of the disposition of the records of
the Nixon Administration?

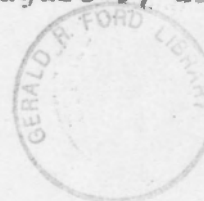
A I was assisting the Ford Administration in their
transition and was requested by Mr. Buchen to assist in the
question of disposition of the records and tapes of former
President Nixon.

Q When was this first brought to your attention?

A. By "this" you mean what, sir?

Q The question of your participation in this problem
of the Nixon records and tapes?

A. The question of a problem existing -- if that is
the right word "problem" -- came to my attention almost
immediately after President Ford's swearing in on August 9, 1974.



1 Q. How was it brought to your attention?

2 A. The papers and records of former President Nixon
3 remained in the White House complex after President Ford's
4 swearing-in, and some question as to what disposition, if any,
5 should be made to these records was considered immediately.

6 Q. Who first brought it--who first talked to you about
7 it?

8 A. I believe it was Mr. Buchen.

9 Q. And what did he say?

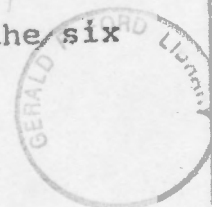
10 A. Well, at that time it was a question of location,
11 of where are the records of President Nixon's Administration,
12 what are the records of President Nixon's Administration, and
13 what procedures are being implemented to secure them in their
14 present state.

15 Q. And what did you do in response to that?

16 A. I attempted to determine where the records were,
17 what packaging was anticipated by the White House staff, and
18 what disposition would be made of the records after the
19 packaging.

20 Q. What do you mean by "packaging"? Who was packaging
21 what?

22 A. By packaging, I mean the removal of the records from
23 the file cabinets that had housed the records for the six



1 years of the Nixon Administration into boxes.

2 Q For what purpose were they being packaged?

3 A There was a memorandum that was circulated in the
4 very early days of President Ford's Administration, I may be
5 wrong but I believe it is August 12 from Mr. Jones, Jerry
6 Jones, instructing staff to take certain steps with respect to
7 records that they had dominion over ~~that had~~ ^{and which} been created 3W
8 during the six years of President Nixon's Administration.

9 Q Let me show you the document that is marked Buchen
10 Deposition Exhibit Number 1 and ask you if that is the memo-
11 randum you are referring to?

12 A This would appear to be the memorandum I just re-
13 ferred to.

14 Q When did you first see that?

15 A I would hasten to guess, noting that the memorandum
16 is dated October 9, 1974, which is the date of President
17 Ford's swearing-in--

18 Q You mean August 9th?

19 A August 9, 1974--that I saw it either that day or
20 Saturday, August 10th.

21 Q And did anyone raise a question that perhaps these
22 documents should not be packaged up and shipped out?

23 A Ultimately, yes, sir.



1 Q When ultimately, do you recall?

2 A I cannot give you the precise date because I don't
3 know it. I can refer to a meeting of August ¹⁵~~16~~, 1974, in 31B
4 Mr. Buzhardt's office that Mr. Buchen attended and members of
5 the Special Prosecutor's force attended wherein it was re-
6 ported to me that Mr. Buzhardt and Mr. Buchen agreed to with-
7 hold any transmittal of records created during the Nixon Ad-
8 ministration from transmittal out of the White House.

9 Q Prior to that time had you spoken to Mr. Buzhardt
10 about the papers?

11 A No, I don't believe I had.

12 Q Had you spoken to General Haig about the papers?

13 A Prior to August 15, it is possible.

14 Q But you don't recall?

15 A I don't recall.

16 Q The first time--am I correct in understanding what
17 you have said is that the first time it was decided not to ship
18 the papers to Mr. Nixon in California was at this meeting on
19 the 15th?

20 A No, that is not my testimony.

21 Q Excuse me?

22 A My testimony is I have a clear recollection of a
23 meeting of August 15th wherein Mr. Buchen advised the Special



1 Prosecutor that he would not forward any papers. I cannot
2 say that that was the precise date.

3 Q Prior to the 15th, did you talk to Mr. Buchen about
4 this?

5 A About "this" meaning the general subject of President
6 Nixon's papers?

7 Q About the subject of whether or not they should be
8 shipped to California.

9 A Mr. Buchen and I had several conversations on that
10 question. It is conceivable that one or more of those con-
11 versations occurred before August 15th.

12 Q But the first date that you can fix--again, if I am
13 misunderstanding or misstating your testimony, I hope you'll
14 correct me--the first date that you can fix as the date when
15 it was decided that the documents would not be shipped out
16 immediately was at this meeting on the 15th, is that right?

17 A Could you repeat that, please?

18 Q Let me try to rephrase it. Is the first date that
19 you can fix in your recollection that a decision was made not
20 to ship papers and tapes to Mr. Nixon in California the 15th
21 of August in the meeting that you have described?

22 A I'm not trying to evade your question but I think
23 to answer it I have to go beyond it slightly.



1 Q Please?

2 A I think your question imports a decision by Mr.
3 Philip Buchen not to ship records and tapes to Mr. Nixon in
4 California as of August 15th. On August 15th Mr. Buchen and
5 Mr. Buzhardt concurred to agree not to send records and tapes
6 to California. On August 15th--I believe that is significant
7 for another purpose and that is that is also the date that
8 Mr. Buchen was elevated to the position of Counsel to the
9 President.

10 Therefore, any action and/or decision or thoughts
11 Mr. Buchen had prior to August 15th would be ones without
12 authority. Mr. Buzhardt continued as Counsel to the President
13 up until that date. Mr. Buchen and I had discussed the question
14 of what to do with Mr. Nixon's tapes prior to August 15th,
15 I believe, but Mr. Buchen was without authority to make any
16 affirmative decision with respect to that question until
17 August 15th.

18 Q There were stories in the press--and I don't mean by
19 describing them to indicate that I either vouch for their
20 accuracy or do not vouch for their accuracy--there were stories
21 in the press to the effect that the documents and tapes were
22 being packaged up and were about to be--were very close to
23 being shipped to California when somebody said "Stop."



1 My question is, does that refresh your recollection
 2 as to, you know, any such order that you heard about around
 3 that time between the 9th and the 15th?

and take

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1 A This document before me, Buchen Deposition Exhibit
 2 No. 1, speaks of an August 12 commencement date to commence
 3 packing. I believe to some extent that occurred. Packing
 4 in the White House at that transition, at that time, was a
 5 complicated problem in that offices were delivered boxes.
 6 There is a rather sophisticated coding system that the packers
 7 had to acquaint themselves with to some extent, and indicate
 8 in a numerical cryptography what the contents of their box
 9 was that they had packed. I believe the packing to some ex
 10 tent began prior to August 15th. I would take issue with the
 11 stories you refer to that records and tapes were "close to
 12 being shipped out to California." I don't think that is the
 13 case. I think a preliminary decision sometime prior to
 14 August 15th had been made to withhold transmittal of any re-
 15 cords until such time that certain investigative procedures
 16 could be undertaken and determined, particularly with reference
 17 to outstanding subpoenas, outstanding restraining orders, out-
 18 standing requests from the Special Prosecutor's Office.

19 Q Did there come a time when you were asked to take a
 20 look at or consider the question of ownership of these records
 21 and tapes?

22 A I never did any independent research on that ques-
 23 tion. I read the memorandum which is before me and a series



1 of memoranda and/or historical recordings of former Presidents
2 which had been prepared by Mr. Casselman, Bill Casselman, and
3 discussed ownership with Mr. Casselman. In addition to that,
4 I was familiar with the report of the Joint Committee on Taxa-
5 tion which met and reported on President Nixon's gift of Vice
6 Presidential Papers in 1968 and 1969 which spoke to the question
7 of ownership and delivery.

8 Q Did you ever speak to Mr. Buchen about the question
9 of ownership, or with Mr. Buchen?

10 A Yes, I did.

11 Q Could you describe those conversations?

12 A Those conversations were to the extent of what I had
13 outlined in my previous statement as to what I knew of owner-
14 ship. I sat in on meetings on the question of ownership with
15 Mr. Casselman and Mr. Buchen. Ultimately, we grew to realize
16 in very short order that the facts facing the Ford White House
17 at that time were unprecedented, in that there was a resigna-
18 tion of a former President and the resignation occurred with
19 the former President leaving behind records and papers which
20 had been created during his administration as opposed to, for
21 example -- I was told, for instance, when President Nixon took
22 office in 1968, literally all of the cupboards were bare in
23 the White House, in the Executive Office Building, including



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1 empty, plain legal pads. You simply couldn't find a piece of
2 paper in the place. Of course, the third unique facet was
3 that those records which had been left behind following his
4 resignation were -- some portion of which were under subpoena
5 and/or court order for production.

6 MR. SPOONER: Off the record.

7 (Discussion off the record.)

8 BY MR. DOBROVIR:

9 Q In the course of these conversations with Mr. Buchen
10 and Mr. Casselman, did you come to a conclusion with respect
11 to the ownership of these papers and tapes?

12 A Did I or did Mr. Buchen?

13 Q The group or any of them.

14 A I would say the conclusion that the group came to
15 was that a -- a recognition of the uniqueness of the facts
16 facing the Ford White House at that time, and prudence that
17 would dictate obtaining an opinion on that particular question
18 from the Attorney General of the United States.

19 Q I see. And did you have any role in discussions with
20 people at the Justice Department -- for example, Mr. Silberman --
21 with respect to that opinion?

22 A No, sir, not with respect to that opinion at all.

23 Q So you feel you needed an opinion from the Attorney



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2-4

1 General in order to guide you as to what steps to take, is
2 that right?

3 A No, that is not right. My statement is -- and I
4 will stand by this -- Mr. Buchen, Mr. Casselman, myself and
5 others employed in the White House recognized that much of
6 what was said in the Jones Memorandum was an accurate reflec-
7 tion of history.

8 Q Was an accurate reflection of history?

9 A Yes. However, history had never provided a situation
10 that was facing President Ford at that time, and that the wise
11 and reasonable and prudent thing to do would be to avail the
12 White House of the statutory provisions of the United States
13 Code that allows for Attorney General opinions to the President
14 of the United States, and to seek that opinion with respect to
15 ownership and with respect to the question of outstanding sub-
16 poenas and obligations of the bailee and to act on the basis
17 of that opinion.

18 Q Let me ask you this. During the period August 9th,
19 let's say for the following month until after the announcement
20 by the President of the pardon and of the agreement of Septem-
21 ber 7th between Mr. Sampson and Mr. Nixon, how much of your
22 time did you spend working on matters for President Ford and
23 Mr. Buchen, for them? Was it full time?

2-5 1 A Well, I think I would more accurately characterize
2 my time as assisting in the transition--

3 Q Right.

4 A --and using that characterization, my answer would
5 be "full time."

6 Q Yes. Could you tell us about what proportion of
7 that full time for that month was devoted to this question of
8 the papers and tapes?

9 A I would have no way of estimating that.

10 Q No way of estimating?

11 A Right.

12 Q What other matters did you work on during that
13 period?

14 A Those would be matters unrelated to this litigation.

15 Q Could you just list them for us in a general way?

16 MR. GOLDBLOOM: If your question goes into matters
17 that are in the nature of confidences with the President of
18 the United States -- formerly Vice President -- I would object
19 and request the witness not to reveal those confidences on the
20 basis of the presidential privilege.

21 MR. DOBROVIR: I haven't gotten into that. We will
22 get into that later.

23 MR. GOLDBLOOM: I am suggesting to the extent that



cc 1 that would reveal--
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2 MR. DOBROVIR: I am just asking him to give us the
3 subject matters that he worked in.

4 MR. GOLDBLOOM: To the extent that the subject matter
5 would reveal confidences, I would request the witness not to
6 answer on the basis of a presidential privilege.

7 MR. DOBROVIR: The witness is, of course, himself an
8 attorney and is familiar with Rule 30 of the Federal Rules of
9 Civil Procedure which provides that if a question is asked and
10 if an objection is made on the grounds of privilege, relevancy
11 or anything else, the proper procedure is for the evidence to
12 be taken, the objection to be noted, and then brought to the
13 attention of the court later on.

14 Now, you may request Mr. Becker not to answer if you
15 wish. I guess Mr. Becker will have to decide that himself.

16 MR. GOLDBLOOM: I can appreciate that. I have sta-
17 ted my request on the record. It is up to Mr. Becker to either
18 honor my request or not.

19 MR. DOBROVIR: All right.

20 MR. MILLER: By not speaking, I do not accept
21 Mr. Dobrovir's characterization of Rule 30.

22 MR. GOLDBLOOM: Neither do I, incidentally.

23 MR. DOBROVIR: I only remember what it says.



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1 THE WITNESS: My response to that question would be
2 that a significant portion of the time that I spent at the
3 White House during that period was devoted to questions re-
4 lating to the records and papers of former President Nixon.
5 That is not to infer that all of that time was devoted to the
6 question of ownership and/or disposition. A significant portion
7 of that time was devoted to defining the whereabouts of these
8 records, attempting to determine the quantity, attempting to
9 determine the security that existed, attempting to determine
10 with what haste or lack thereof the packing procedures were
11 being implemented. And as to other matters that I assisted in
12 during the transition that were totally unrelated to the re-
13 cords and tapes of former President Nixon, I will adhere to
14 the suggestion of Mr. Axelrad --

15 MR. DOBROVIR: Mr. Goldbloom.

16 THE WITNESS: Mr. Goldbloom, sorry, and rely upon
17 the privilege.

18 BY MR. DOBROVIR:

19 Q Leaving aside any confidential communications with
20 President Ford insofar as you were given assignments or under-
21 took assignments at the request of someone else like Mr. Buchen,
22 could you explain those -- could you list those for us?

23 MR. GOLDBLOOM: I would interpose an objection on



cc 1 the basis of presidential privilege to the extent that any
2-8 2 such assignments on behalf of Mr. Buchen might reasonably be
3 defined as acting on behalf of the President. And I would
4 also add an additional objection of relevancy.

5 MR. DOBROVIR: First of all, Mr. Buchen himself
6 spoke quite freely about his work with Mr. Becker yesterday,
7 and no claim of privilege was raised, except with respect to
8 specific conversations that Mr. Buchen had with President Ford.
9 As to everything else, no question of privilege was raised.

10 I am surprised that it is being raised now with re-
11 spect to such a matter.

12 MR. GOLDBLOOM: If you listened to my objection, you
13 would have heard that I raised it only with respect to matters
14 which could be defined as acting on behalf of the President.
15 I have no problem about your questioning Mr. Becker in con-
16 nection with matters that he and Mr. Buchen dealt with sep-
17 arately from those matters. Why don't you go to Mr. Buchen's
18 deposition and ask him about those matters. You know you have
19 asked him a broad question. I have, in effect, raised a broad
20 privilege, but limited to a certain specific area.

21 MR. DOBROVIR: All I am trying to find out is just
22 as a matter of background, what Mr. Becker was working on.
23 Do you claim privilege as to that?



1 MR. GOLDBLOOM: To the extent that he was carrying
2 out assignments for the President and that those assignments
3 were in any sense confidential matters. Yes.

4 MR. DOBROVIR: Do you contend that Mr. Buchen's
5 testimony yesterday did not deal with assignments he was carry-
6 ing out for the President, Mr. Goldbloom?

7 MR. GOLDBLOOM: I don't propose to characterize
8 Mr. Buchen's entire testimony in response to your question.
9 If you want to point out a particular question and answer by
10 Mr. Buchen, I would be delighted to, you know, examine it in
11 that light.

12 BY MR. DOBROVIR:

13 Q Mr. Becker, did you do any work on the question of
14 the pardon--

15 MR. GOLDBLOOM: I object.

16 BY MR. DOBROVIR:

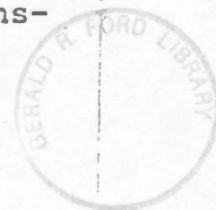
17 Q --of former President Nixon?

18 MR. GOLDBLOOM: I object to that on the grounds of
19 relevancy and presidential privilege.

20 MR. DOBROVIR: I would like to--

21 MR. MILLER: I object to that question on the grounds
22 of relevancy.

23 MR. DOBROVIR: Yesterday those questions were ans-



1 wered by Mr. Buchen with respect to the pardon in considerable
2 detail and quite candidly and frankly. Since Mr. Buchen did
3 not see fit to raise the question of presidential or executive
4 or any other privilege with respect to them, I assume Mr. Bu-
5 chen would not with Mr. Becker to raise such -- to raise such
6 a privilege. I think in view of that--

7 MR. GOLDBLOOM: I withdraw the objection on privi-
8 lege as to the broad question that you raised. I will continue
9 the objection on relevancy, though.

10 MR. DOBROVIR: Thank you.

11 THE WITNESS: I will respond, although from what I
12 have read of these pleadings, I believe it is not relevant to
13 the matter at Bar. But I am on record, public record, as
14 acknowledging that I had some activity with respect to the
15 pardon of President Nixon. That activity involved a review
16 undertaken by me of the precedence, the legal precedence re-
17 lating to pardons in this country and in England, with re-
18 spect to, specifically, a question of the constitutionality
19 of pardon before accusation and a pardon of a former Chief
20 Executive and specificity requirements in a pardon. I under-
21 took that assignment, did the legal research on those ques-
22 tions and reported my findings and conclusions to Mr. Buchen
23 on September 3, 1974.



1 MR. DOBROVIR: Thank you.

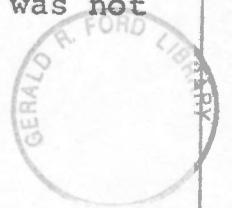
2 BY MR. DOBROVIR:

3 Q When you were considering matters such as the quan-
4 tity and security and the haste with respect to the packing
5 procedures that you referred to a little bit earlier, did you
6 also have occasion to consider what kinds of documents were
7 involved? Did you have occasion to examine any of these
8 documents in order to determine what everybody was talking
9 about or working with?

10 A No.

11 Q You, yourself, never saw any of the Presidential
12 records and tapes that were the subject of your work at the
13 time?

14 A I have never seen the Presidential tapes. I did
15 observe and acquainted myself with the workings of an opera-
16 tion in the White House known as the Central Files and ob-
17 served how they were housed and how they were to be packed.
18 I did not read any one file or any one paper in any file.
19 My interest at that time was questions of xeroxing, what docu-
20 ments would be retained for the ongoing needs of the Ford
21 Administration and how individual staff members who were
22 actually doing the packing were going to make that decision.
23 I was concerned that that is a decision that perhaps was not



1 best made by each individual staff member in terms of what he
2 or she may think should be xeroxed and retained for the ongoing
3 needs of the Ford Administration as per the Jones Memorandum.

4 Q What procedure was adopted, then, with respect to
5 deciding and arranging for the xeroxing of matters that needed
6 to be retained?

7 A None, really. I did urge -- I don't recall the
8 gentleman's name -- I did urge a custodian of the Central
9 Files to xerox the personnel files of all individuals who re-
10 mained in the employ of the Federal Government. The Central
11 Files contained a rather large quantity of files that repre-
12 sented people that had been employed during the Nixon years
13 that were no longer employed and I saw no continuing need for
14 those, but for people that remained in the employ of the
15 Federal Government, I urged that they, for one, be xeroxed
16 and copies retained for the ongoing need of the Ford Adminis-
17 tration.

18 Q How about, for example, Domestic Council memoranda?

19 A I never saw such memoranda nor discussed it with
20 anyone.

21 Q So as far as you know, there was no activity occur-
22 ring in connection with duplicating Domestic Council files for
23 the use of the Ford Administration?



c 2-13 1 A I would have no knowledge of that.

2 Q You have no knowledge of that?

3 A No.

4 Q How about the Council of Economic Advisors?

5 A Same answer.

6 Q How about the National Security Council?

7 A Same answer. The question of xerography became moot,
8 I should add, when the decision was made not to transmit any-
9 thing.

10 Q I think you have testified, if I'm not mistaken, that
11 some packing did take place.

12 A A good deal of packing.

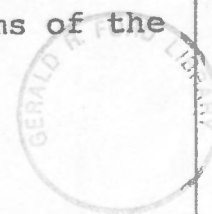
13 Q Can you estimate what proportion of the total volume
14 was packed up?

15 A As of what time?

16 Q As of the time when they stopped packing or are
17 they still packing?

18 A They were packing -- I believe they are still pack-
19 ing. But they were packing as of September 10. I can't esti-
20 mate the number, but -- I could be wrong, but for some reason
21 the number 4,000 boxes sticks in my mind as being located on
22 the fourth floor of the EOB on or about that time.

23 Q Do you know what has been packed up in terms of the



-14 1 kinds of documents, subject matter or any other way of des-
2 cribing them?

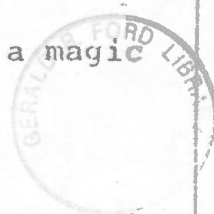
3 A The way I would describe them would be the way they
4 are described in Mr. Jones' memorandum, records and materials
5 created during the Nixon Administration.

6 Q You can't specify any more narrowly than that what
7 happens to be packed up in the boxes?

8 A In some detail I can. I ^owandered on several occa-
9 sions to the fourth floor and familiarized myself with the
10 cryptography code which I spoke of before. I recall ob-
11 serving certain boxes that contained transcripts of Mr. Zeigler's
12 press conferences, transcripts of Mr. Nixon's press conferen-
13 ces -- I know some of the Central Files, the personnel files,
14 were packed. I can't give you any greater detail than that.

15 Q Tell me about this code system. This is the first
16 I at least have heard about that. What kind of code system
17 is it, do you know?

18 A It is a number code that reflects the office that
19 is doing the packing and a series of variables thereafter
20 indicating current, old, which agency was sent copies of these
21 particular records. It is a rather lengthy code. I don't know
22 if that is the right characterization. I would simply say it
23 is a method of defining on the outside of a box with a magic



15 1 marker what is inside the box by the person that packed it,
2 because the boxes are sealed after they are packed.

3 Q Do you know where this code came from, who devised
4 it?

5 A It wasn't devised for the purpose of transition.
6 It was one that had been long in existence. You see, packing
7 and transmitting of records from the White House occurs
8 throughout an individual's administration. A large quantity
9 of records and boxes created during the Nixon Administration
10 are presently located, I believe, at the Federal Records Cen-
11 ter in Suitland, Maryland. They were transmitted to that site
12 sometime in the 1970 and '71 period.

13 The code was long in existence. I remember looking
14 at a black notebook that spelled out the system that should
15 be used. It is basically, I believe, an archival code and may
16 be devised by the archives.

17 Q This black notebook, was that described as or labeled
18 a classification manual?

19 A I don't recall.

20 Q You don't recall. Was it printed or was it typed
21 or was it written?

22 A It was typed, as I recall.

23 Q All right. But it is your impression, at least, that



2-16 1 this was a code devised by the National Archives staff as a
2 general -- for the general use of people classifying files, is
3 that right?

4 A Not classifying, characterizing.

5 Q I didn't mean classifying in the sense of national
6 security classification. I meant in terms of, as you say,
7 characterizing it by subject matter or whatever.

8 A I came to that impression that it was an archival
9 designation from Mr. Casselman, who was familiar with those.

10 Q When did you first become involved, Mr. Becker, with
11 the negotiation of an agreement with former President Nixon's
12 representatives respecting the disposition?

13 A I attended a meeting at the Jefferson Hotel on
14 September 3, 1974. Present at the meeting were Mr. Buchen and
15 Mr. Miller and myself.



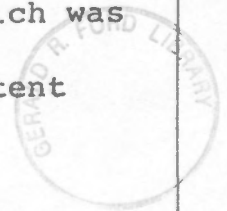
1 Q What happened at that meeting?

2 A A series of discussions with respect to the status
3 of the records and tapes of former President Nixon. At that
4 time Buchen had acquired a rather broader understanding of
5 outstanding subpoenas and court orders respecting those
6 records and tapes and at that time Mr. Buchen had suggested
7 to President Ford and President Ford had requested an opinion
8 from the Attorney General on the question of ownership.

9 I believe -- I may be mistaken but I believe
10 Mr. Buchen had received an oral communication from the
11 Department of Justice by that time which outlined the Depart-
12 ment of Justice's preliminary findings with respect to
13 ownership.

14 Q What if anything was the result of that meeting
15 of September 3rd?

16 A We left that meeting following Mr. Miller's
17 indication that his client, the former President, was most
18 anxious to receive his records with an understanding that
19 when we next met, that it would be later that week and
20 Mr. Miller would attempt to prepare a draft memorandum that
21 would be used to implement a transmittal of those records
22 from the bailee, President Ford, to President Nixon which was
23 consistent -- that is, the memorandum would be consistent



1 with the objectives sought by the -- by Mr. Buchen.

2 Q Did Mr. Miller at that meeting indicate that he
3 was going to file a lawsuit with respect to these things?

4 A It is quite possible. I don't recall specifically.
5 I recall a conversation with Mr. Buchen wherein Mr. Buchen
6 spoke of the possibility of a writ of replevin sought by
7 Mr. Miller. It is quite possible that that question came up
8 at that meeting.

9 Q Did Mr. Buchen ask you to do any legal research on
10 the question of replevin?

11 A No, sir.

12 Q What happened next?

13 A With respect to --

14 Q I would like to get the story insofar as you have
15 it in your own personal knowledge of everything that happened
16 from the 3rd until the notion of the -- the implementation --
17 the signing of an agreement on the 7th.

18 A We met again with Mr. Miller on September 5, which
19 I believe is a Thursday, in the morning at the same place
20 with the same people present. Among other things, Mr. Miller
21 presented to Mr. Buchen and myself a document prepared by
22 Mr. Miller which was a draft letter from President Nixon to
23 Mr. Arthur Sampson, the administrator of the General Services



1 Administration. Mr. Miller indicated that he had spoken with
2 his client in the intervening period.

3 Q I will show you the documents that are marked
4 Buchen Deposition Exhibit 4 and Exhibit 5 and ask you if these
5 are copies of that draft to your recollection?

6 A Yes, they are.

7 Q Is Exhibit 4 -- does Exhibit 4 have on it your own
8 handwritten notes or is it a Xerox of what might be your own
9 handwritten notes?

10 A The answer to your question is no.

11 Q How about Exhibit 5?

12 A The answer to that question is yes.

13 Q Okay.

14 A In part.

15 Q Do you recall when you made those notes?

16 A No, I don't. It might help if I gave you a
17 chronology of what happened after that.

18 Q All right.

19 A Perhaps --

20 Q Before you get into that, did you take any notes
21 in either of these meetings, the 3rd or the 5th?

22 A I may have. I don't have them any longer. The
23 notes that I made on the 5th may be the notes that are



1 reflected on this Exhibit 5.

2 Q Do you have any documents that are called for in
3 the request for production in the Notice of Deposition?

4 A No, sir.

5 Q Did you at any time have any documents that are
6 described in the request for production?

7 A Well, I had at one time the original of the final
8 letter from President Nixon to Mr. Sampson which I trans-
9 mitted to Mr. Buchen. At times I had these documents, Exhibit
10 4 and 5, before me. I had Exhibit' 1 at times. I have none
11 at the moment.

12 Q Why don't you give us the chronology, as you
13 suggested. I think that is a very good suggestion.

14 A Following the meeting on September 5, 1974, I
15 believe Mr. Miller was the first to leave. It was approxi-
16 mately the noon hour. Mr. Buchen left shortly thereafter.
17 I stayed in Mr. Buchen's apartment for approximately ten to
18 fifteen minutes.

19 Later that afternoon at 1:30 or possibly 2:00
20 o'clock I met with Mr. Buchen in the White House and Mr.
21 Buchen had either before my meeting or during my meeting gone
22 over and reviewed Mr. Miller's draft and made some notations.
23 I had done the same, and we discussed some of the changes,



1 some of the problems with Mr. Miller's draft in that those
2 problems failed -- in that the draft failed to accomplish
3 the objectives, we felt, sought by Mr. Buchen. That may
4 have been from two o'clock until four o'clock that afternoon,
5 part of the time that I made some of the notations that you
6 refer to on Exhibit 5.

7 Further, some of these notations may have been
8 made by me as I flew to San Clemente later that night with
9 Mr. Miller. Further, some of these notations may have been
10 made by me on September 6 in San Clemente. I have no way of
11 determining when these notations were made on this Document 5.

12 Q. What were the objectives sought by Mr. Buchen which
13 you just referred to?

14 A. The objectives sought by Mr. Buchen with respect
15 to President Nixon's records and tapes were as follows: One,
16 to satisfy the continuing and prospective need that would --
17 that was anticipated for subpoenas in both civil and criminal
18 matters for these records; two, to provide a method and a
19 mechanic whereby the records, all of the records, would be
20 secured in a fashion pending those anticipated requests.

21 By "secured" I mean not subject to destruction or
22 erasure; three, to satisfy the need which had been expressed
23 on August 15, 1974, of the Special Prosecutor's office for



1 continuing requests for these documents. And further, to
2 provide for the privacy of individuals whose conversations
3 may have been taped during the years of the Nixon Administra-
4 tion without their knowledge.

5 And lastly, although not necessarily in this order,
6 to devise a method where further subpoenas would be -- strike
7 that, please -- to devise a method whereby the mechanics to
8 produce records and tapes under and in response to further
9 subpoenas would be implemented.

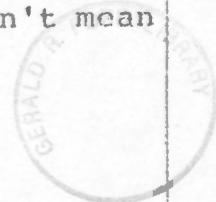
10 That mechanic would be, of course, requiring a
11 search of the records in response to the subpoena and a
12 production.

13 We were further concerned with securing to
14 President Nixon his -- whatever claims or objections he
15 might have to production in the future.

16 I would say that would be it. If I were to summarize
17 it briefly, the concerns were maintaining security, devising
18 a method to insure production for outstanding subpoenas, and
19 to insure production and satisfaction of the August 15th, '74
20 request from the Special Prosecutor's Office.

21 Q Now, were you operating under the assumption that
22 the --

23 A Excuse me, sir. I should also add -- I didn't mean



1 to interrupt you.

2 Q That's all right, go ahead.

3 A I think this is rather significant. Also further
4 to insure compliance to outstanding court orders that
5 were then in effect affecting the White House's treatment of
6 the records and tapes.

7 Q Were you operating under the assumption at this
8 time that the papers and tapes were the property of former
9 President Nixon?

10 A Yes, sir.

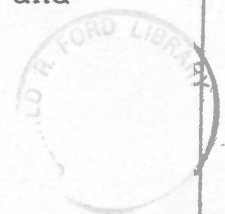
11 Q Was any consideration given by you and Mr. Buchen
12 to at that time obtaining permanent possession of these mater-
13 ials for the United States?

14 A To the detriment of President Nixon altogether?
15 Is that what you mean?

16 Q Permanent possession and ownership for the United
17 States.

18 A That question -- to consider that, one would have
19 to conclude that ownership did not vest with Richard Nixon.

20 Q Excuse me, I did not make my question clear. Did
21 you consider at that time obtaining from Mr. Nixon an agree-
22 ment that would provide for the permanent possession and
23 ownership of the documents in the United States?



1 A. Yes, sir, in the nature of an irrevocable gift.

2 Q. That's right?

3 A. Yes, we did. However, we were stymied by the
4 fact -- and the realization -- that President Nixon had an
5 absolute need and one that we considered to be legitimate and
6 one that I still consider to be legitimate to characterize
7 all of the records and tapes before any deposit graduated to
8 the status of an irrevocable gift.

9 Q. Was the question of irrevocable gift discussed with
10 Mr. Miller?

11 A. I believe it was. And I believe the question of --
12 not the question, but Mr. Miller voiced the concern of
13 Mr. Nixon's need to review the records himself and to
14 characterize certain records before determining which records
15 would be graduated to the level of an irrevocable gift.

16 This was, I might add, consistent with other
17 depository agreements between the General ^{Services} Administration --
18 between GSA and former Presidents.

19 Q. At any of these subsequent meetings or conversa-
20 tions with Mr. Miller did Mr. Miller raise the possibility
21 of litigation?

22 A. I am not sure what you mean by "any of the"
23 subsequent meetings."



1 Q Well, we discussed the meeting of September 3rd
2 in which you said it may have been that at the meeting of
3 September 3rd he mentioned a suit which Mr. Buchen later or
4 at some other time mentioned would be in the nature of a
5 writ of replevin.

6 My question is, either on the 5th or at any other
7 time thereafter, after the meeting of the 3rd, do you recall
8 whether Mr. Miller said anything about litigation?

9 A No, I don't believe he did. I believe by the 5th
10 both Mr. Miller and Mr. Buchen were committed to attempt to
11 work out a mechanical device that would accomplish the
12 objectives sought by Mr. Buchen which would moot the necessity
13 for litigation.

14 Q Now, you flew out to California with Mr. Miller
15 on the evening of September 5th?

16 A That is correct.

17 Q And you were there on the 6th and came back on the
18 7th?

19 A Came back on the 6th.

20 Q Came back on the 6th?

21 A Yes. We arrived in Washington or at Andrews Air
22 Force Base on the morning of the 7th.

23 Q On the morning of the 7th, I see. Now, while you



1 were out in California with Mr. Miller, was your entire work
2 related to this notion of this agreement or did you also work
3 on other matters?

4 A The use of the word "work" is I think what is
5 bothering me. I am on record as saying -- I have no objection
6 to saying at this deposition that I carried in my briefcase
7 to San Clemente a draft of a pardon which President Ford was
8 at that time considering granting.

9 That draft was -- Mr. Miller was given a copy of
10 that on the flight to California. He read it. Mr. Ziegler
11 read it. I believe President Nixon read it in California.
12 Mr. Ziegler in California spent a good deal of time on the
13 6th drafting Mr. Nixon's statement of acceptance of a pardon.

14 But I would not characterize either of those
15 events under the general heading of "work."

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

20 MR. MILLER: I object to the question. The rele-
21 vancy is zero insofar as this lawsuit is concerned.

22 MR. GOLDBLOOM: I also object on the grounds of
23 relevancy. There is no issue in any of the pleadings in this



1 suit as I read them relating to the pardon.

2 MR. MILLER: Except one case in which Mr. Dobrovir
3 I believe, is appearing as amicus curiae which challenges
4 the pardon, if I'm correct.

5 MR. DOBROVIR: That is a different litigation,
6 Mr. Miller.

7 MR. MILLER: That is the point I was trying to
8 make.

9 MR. GOLDBLOOM: It was not consolidated.

10 MR. MILLER: No, it was not. I do believe
11 Mr. Dobrovir -- you can correct me if I'm wrong -- you have
12 filed an application before Judge Ritchie and I believe in the
13 McCord case where he is appearing as amicus curiae.

14 That suit, as I recall, challenges the legality of
15 the pardon of President Nixon. I will be corrected if I'm
16 wrong in what I am stating.

17 MR. DOBROVIR: No. That is correct.

18 MR. MILLER: I renew my objection to the relevancy
19 of the questions concerning the pardon in this deposition.

20 THE WITNESS: I would like to state on the record,
21 whether it is responsive to your question or not -- but I
22 would like to go on record as stating unequivocally that the
23 pardoning of President Nixon and the agreement between



1 President Nixon and Mr. Sampson were unrelated and related
2 only in time and not otherwise.

3 There is no connection other than time between the
4 two and one is not a condition precedent to the other. The
5 pardon of President ^{Nixon} was an unconditional pardon and has ^d no
6 terms.



1 BY MR. DOBROVIR:

2 Q Was there some feeling of haste that Mr. Buchen had
3 or which you had with respect to obtaining an agreement with
4 respect to the papers and tapes, or a feeling of urgency?

5 A Well, I can't speak for Mr. Buchen's feelings. I
6 can tell you what I thought at that time and I will be glad
7 to do that. That is that the longer the records remained in
8 their present undefined status--undefined from the standpoint
9 of who would answer prospective subpoenas and what mechanic
10 would be devised to implement responding to those subpoenas--
11 the longer the matter became more complicated.

12 In addition, the fourth floor of the Executive Office
13 Building became more and more crowded with boxes of records
14 that had been packaged. Mr. Buchen was, I think, properly
15 concerned with the fact that his Attorney General had advised
16 his President that these--this chattel--was the property of
17 a third party and that President Ford was the custodian or
18 bailee, and that there were subpoenas outstanding and those
19 that were anticipated, and what was the prudent thing to do in
20 terms of this particular chattel.

21 The prudent thing to do was to devise a mechanic
22 for implementation at some time in the future whereby the
23 chattel would be returned to its owner with guaranteed security



1 that the chattel would not be destroyed and that the owner
2 would have the mechanic to respond to future subpoenas. That
3 was prudent. What was imprudent would have been to simply
4 mail them all out there immediately and for President Ford or
5 Philip Buchen to adopt the attitude of "They are not my
6 records. I didn't create them. I didn't create the litigation
7 that is going to call for these records. They are Richard
8 Nixon's problems."

9 And to mail them to Richard Nixon. That was a
10 position that could have been espoused and taken by President
11 Ford. It was not a prudent decision and it would not have
12 been a prudent decision because of the fact of outstanding
13 subpoenas and recognition of anticipation of further subpoenas.

14 Q. Let me read to you some of yesterday's deposition
15 of Mr. Buchen.

16 MR. DAVIS: Do you have a page?

17 THE WITNESS: May I read it with you?

18 MR. DOBROVIR: Yes. Why don't I come over there.

19 BY MR. DOBROVIR:

20 Q. My question was--

21 MR. GOLDBLOOM: What page is that?

22 MR. DOBROVIR: Page 21 of Part Two.

23 BY MR. DOBROVIR:



1 Q The question: "Can you tell us with whom you had dis-
2 cussions in which this question of the pardon and the question
3 of the papers were related?" Answer: Yes, to the best of my
4 knowledge I can." Question: "Who were those people?" Answer:
5 " Mr. Becker, Mr. Casselman, and the President."

6 Now, does that refresh your recollection about any
7 discussion with Mr. Buchen in which the pardon and the papers
8 were related?

9 MR. GOLDBLOOM: May I make a request?

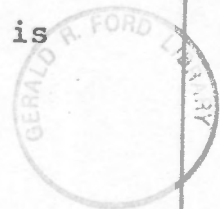
10 MR. DOBROVIR: Yes.

11 MR. GOLDBLOOM: That the witness be allowed to read
12 the two preceding pages of the deposition?

13 MR. DOBROVIR: No. I would like at this point to
14 simply see if that refreshes the witness's recollection. If
15 it doesn't then we will go on. Right now, I would like to
16 just refresh his recollection with that material, if it does.

17 MR. GOLDBLOOM: I want the record to show that I
18 think the question that appears on page 21 was the culmination
19 of a line of questioning in which there was considerable con-
20 fusion about what was being asked for. Indeed, at the top of
21 page 21, you indicated that you were rephrasing the question.
22 I just think that is in fairness to the witness.

23 MR. DOBROVIR: If the witness can answer or is



1 refreshed with respect to this, I would like him to. I am
2 not trying to trick or trap the witness. I merely wanted to
3 point out to him that there was a meeting at which apparently
4 these two questions, these two matters, were discussed.

5 MR. GOLDBLOOM: I have given him page 21.

6 MR. MILLER: If this question relates to the pardon,
7 I, again, object on the grounds I have already stated. I don't
8 think we should utilize this deposition to go into issues
9 which apparently are the subject matter of a totally unrelated,
10 unconsolidated lawsuit.

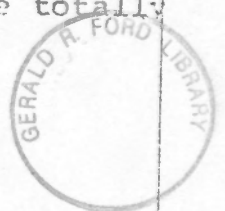
11 MR. DOBROVIR: I am trying to, Mr. Miller, only find
12 out if there was on the basis of this witness's recollection,
13 any relationship made between these two matters.

14 MR. MILLER: I still say it is not relevant.

15 MR. DOBROVIR: If there was a relationship I would
16 say that it is relevant.

17 MR. GOLDBLOOM: I want to register an objection on
18 the grounds of relevancy.

19 THE WITNESS: If everyone is finished, I will respond.
20 My answer is no, it does not refresh any recollection. My
21 wife and I recently had a conversation over the dinner table
22 where we discussed our summer vacation plans and what we would
23 do this Saturday night. Those two subject matters were totally



1 unrelated but they were related in the context that they were
2 discussed at the same time over the same meal. I think that
3 is what Mr. Buchen's response is when he responds at line 16,
4 "Yes" to your question. They were related in the fact that
5 they were discussed at the same time because, as you know,
6 the pardon of President Nixon and the Nixon-Sampson agreement
7 were related as I said only in time and not otherwise.

8 BY MR. DOBROVIR:

9 Q Let me ask you this. Is it your understanding that
10 the pardon was going to be issued at the time it was issued
11 whether or not there had been any agreement with respect to
12 the papers and tapes?

13 MR. MILLER: I renew my objection.

14 MR. GOLDBLOOM: I object on the grounds of relevancy.

15 THE WITNESS: I stand on my position that the pardon
16 of President Nixon was in no way connected to the question of
17 whether or not a resolution or any resolution was arrived at
18 with respect to President Nixon's papers and records.

19 Q Okay. Now, since you have the deposition before
20 you, I would like you to look at the rest of the page and
21 particularly after the lawyers got through wrangling, Mr.
22 Buchen's answer with respect to the subject matter of the con-
23 versation with Mr. Casselman and with yourself that he referred



1 to on line 8. He says "I don't recall the exact words."

2 A. What line is that?

3 Q. That is line 22. "I don't recall the exact words.

4 The substance dealt with trying to get this step behind us
5 prior to the granting of the pardon with the hopes that the
6 pardon wouldn't be followed by litigation that could very well
7 have tied up the materials under a claim of ownership and right
8 to immediate possession which could have impaired any ongoing
9 needs that the Government had."

10 Now, does that refresh your recollection any further
11 with respect to that conversation?

12 A. My answer is no and I see nothing inconsistent in
13 Mr. Buchen's response at page 21, at line 22, with what I have
14 stated. There was no relationship. Mr. Buchen was anxious,
15 as I have testified, to evolve a resolution to the question of
16 the tapes and records. A resolution of same in no way was
17 conditioned upon the granting of the pardon.

18 Q. Now, looking at the next question and answer. The
19 question is, "I see. In other words, you were concerned that
20 the pardon would be followed by litigation brought by Mr.
21 Nixon?" Answer: "Right." Was there any discussion that you
22 recall about the fear of litigation brought by Mr. Nixon with
23 respect to the papers and tapes after the issuance of the



1 pardon?

2 A. Discussion after the issuance of the pardon?

3 Q. No, no. On this occasion, which was apparently
4 prior to your--well, I don't know when it was. Do you recall
5 a meeting at which these matters were discussed that would
6 have been before you went out to California?

7 A. I have testified--

8 MR. MILLER: What are these matters?

9 MR. DOBROVIR: That we have just been reading from
10 the deposition about, Mr. Miller, this particular discussion
11 by Mr.--

12 MR. MILLER: I object to the form of the question.

13 THE WITNESS: I would confess I would feel more comfor-
14 table if you could clarify your question a little bit.

15 MR. DOBROVIR: Let me try to do that. I will at
16 least try to meet the objections of my brother, Mr. Miller.

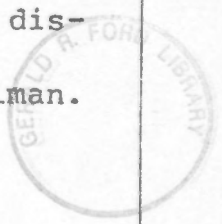
17 MR. MILLER: Off the record.

18 (Discussion off the record.)

19 MR. MILLER: On the record.

20 BY MR. DOBROVIR:

21 Q. Let me rephrase the question if I can. I have just
22 read to you some testimony by Mr. Buchen that refers to dis-
23 cussions at a meeting among yourself, him and Mr. Casselman.



1 Mr question is: Do you recall such a meeting and if you do,
2 when it took place?

3 A. I cannot pinpoint when or where it took place. There
4 were a series of meetings almost daily in August and September
5 involving Mr. Casselman and Mr. Buchen and myself.

6 Q. Now, do you have any recollection yourself with
7 respect to a fear or anticipation that the pardon would be
8 followed by litigation unless the tape agreement was also--
9 unless the tape agreement was signed, the papers and tapes
10 agreement was signed?

11 A. The only way I can answer that question is to sub-
12 tract from your question pardon altogether and say to you
13 this, that unless some resolution occurred with respect to
14 President Nixon's representatives and President Ford's
15 representatives relative to the records and tapes of President
16 Nixon which were held by President Ford and a resolution
17 that incorporated the objectives sought by Mr. Buchen and
18 President Ford, then, in that event, should no such resolution
19 occur, I would have anticipated litigation on that question.
20 I would have anticipated litigation on that question minus
21 or plus the addition of pardon, because the fact of pardon
22 bore zero effect on the question of anticipated litigation.

23 The only thing that had any bearing on the question



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of anticipated litigation was what success, if any, could the parties themselves have in resolving a mechanic for the records and papers to be implemented at sometime in the future which achieved the objectives sought by Mr. Buchen.



1 Q Well, then, you are unable to shed any further
 2 light on this matter that is the subject--this matter of the
 3 testimony that I read to you given by Mr. Buchen yesterday?

4 MR. MILLER: I object to the form of that question.

5 BY MR. DOBROVIR:

6 Q Are you able to shed any further light on this?

7 MR. GOLDBLOOM: I object to the form of the question.
 8 I think it is an unfair characterization of the testimony of
 9 Mr. Buchen.

10 MR. DOBROVIR: I haven't characterized it. I only
 11 read it.

12 BY MR. DOBROVIR:

13 Q My question is, are you able to shed any further
 14 light on the matters to which this testimony relate?

15 A Yes, I would shed this light, that I totally concur
 16 in the question and answer that is the next line that you
 17 haven't read to me, lines 10 and 11 on page 22, where you asked
 18 Mr. Buchen and I quote, "Does that imply that if the pardon
 19 had not been issued you were not concerned about such litiga-
 20 tion," and Mr. Buchen answered, "No, I was still concerned,
 21 obviously." I totally concur with that.

22 Q How is it that you concur with that? Do you have
 23 knowledge of your own with respect to this matter?



1 A. I concur with it to the extent that if no resolution
 2 occurred with respect to the records and tapes that incorpora-
 3 ted Mr. Buchen's objectives, then litigation would have been
 4 the only alternative available to Mr. Miller and Mr. Nixon.

5 That is why we have courts.

6 MR. MILLER: Off the record.

7 (Discussion off the record.)

8 BY MR. DOBROVIR:

9 Q. When you were out in California and having this dis-
 10 cussion with respect to the papers and this agreement, did you
 11 have any instructions from Mr. Buchen with respect to the
 12 materials that you were to try to get written into the agree-
 13 ment?

14 A. Yes, I had general instructions, I would say.

15 Q. And did you negotiate this matter with Mr. Miller?

16 A. Mr. Miller and Mr. Ziegler.

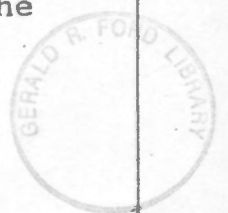
17 Q. And Mr. Ziegler?

18 A. Yes.

19 Q. What role did Mr. Ziegler play in this?

20 A. Mr. Ziegler--I think that question would be better
 21 asked of Mr. Miller, to be frank.

22 Q. To your knowledge. In other words, did you meet
 23 with Mr. Ziegler over this question of the papers and the



1 tapes? Did you negotiate terms of the agreement with him?

2 A. Not alone, no. The role Mr. Ziegler played was one
3 that Mr. Miller would oftentimes in my presence--would seek
4 Mr. Ziergler's advice and thoughts with respect to certain
5 matters that were being discussed. Mr. Ziegler would voice
6 his opinion on those matters. What weight and effect that
7 had in Mr. Miller's ultimate intellectual decision and/or
8 President Nixon's ultimate decision, I cannot comment on that.

9 Q. Now, you came back to Washington, you said, the
10 morning of the 7th?

11 A. Yes, sir.

12 Q. What did you do then?

13 A. I went home.

14 Q. You went to bed?

15 A. As a matter of fact, I did not. It was a rainy
16 night and I picked up my car and went home, got home quite
17 early in the morning and did some reading, showered and had
18 breakfast with my family early and went to the White House.

19 Q. What happened in the course of the day at the White
20 House?

21 A. As far as I know--

22 Q. As far as you know and with respect only to this
23 matter of the papers and tapes?



1 A. I reported to Mr. Buchen in the morning, gave him
2 the original of the final draft of the Nixon-Sampson letter.
3 We discussed what had transpired in California. Mr. Buchen
4 and I had had a series of telephone conversations while I
5 was in California. If memory serves, President Ford had a
6 luncheon engagement with Russian cosmonauts that afternoon
7 and was unavailable until late in the afternoon to be reported
8 to as to what had evolved in the last forty-eight hours.

9 Q Did you around 6:15 or 6:30 participate in a meeting
10 with Mr. Sampson?

11 A. Approximately 6:30 P.M. on that Saturday, along
12 with Mr. Buchen, went into the Roosevelt Room, I believe it
13 is, in the White House where Mr. Sampson was seated with Mr.
14 Casselman. We were introduced. Mr. Sampson was already
15 reading, as I recall, the final Nixon-Sampson letter. Both
16 Mr. Buchen and I sat down for a moment or so and I recall that
17 I was--that I received a telephone call.

18 A secretary came in and I left the room and Mr.
19 Buchen left with me, during which time Mr. Sampson continued
20 to read the letter agreement and was making notes as he read.
21 I responded to the phone call in Mr. Buchen's office. Mr.
22 Buchen, upon returning to his office, was deluged by his
23 secretary with a series of phone calls and matters that required

1 his attention. When I concluded my phone call I returned to
2 the Roosevelt Room alone and left Mr. Buchen in his office.

3 Later, very much towards the end of the meeting with
4 Mr. Sampson, Mr. Buchen did re-enter at that time.

5 Q Did you yourself have any discussions with Mr.
6 Sampson at that meeting?

7 A I spoke with Mr. Sampson, yes. Mr. Sampson
8 concluded his reading of the letter agreement. In fact, he
9 was still reading it when I went back into the room, the
10 Roosevelt Room. He wasn't simply reading it, he seemed to be
11 studying it. It was a very deliberate reading of the document.
12 He had some questions of an archival nature that were directed
13 to Mr. Casselman and the only questions that were directed to
14 me that I responded to, as I recall, were questions that I
15 would characterize as questions of a mechanical nature. I can
16 be more specific if you like.

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1 Q Go ahead.

2 A The mechanical nature of Mr. Sampson's questions --
3 he asked me how it would be done. Would he -- would President
4 Nixon listen to the originals of the tapes at a location,
5 either San Clemente or Washington or elsewhere? Would he -
6 President Nixon - be given originals of records? What
7 mechanically would GSA have to do to implement the terms of
8 the agreement?

9 My response at that time was that the agreement,
10 firstly, contemplated implementation at sometime in the
11 future as opposed to immediately, and secondly, that it also
12 contemplated a series of communications between Mr. Miller
13 on behalf of Mr. Nixon and Mr. Buchen outlining these mechan-
14 ical methods in which implementation would occur.

15 I did indicate to him at that time that Mr. Miller --
16 I don't know if I said Mr. Miller, but I did say that all
17 parties concerned understand and recognize that the former
18 President would have access in all cases to copies only, both
19 with respect to papers and tapes as opposed to originals.

20 His questions to Mr. Casselman on ther other hand
21 were questions of what I would characterize as an archival
22 nature, one that reflects Mr. Sampson's inquiries to Mr.
23 Casselman with respect to precedents and prior presidential



1 deliveries of records for safekeeping.

2 I do recall Mr. Casselman, true to form of
3 Mr. Casselman, who is an extremely fair and judicious indivi-
4 dual -- suggested or indicated that -- words to the effect
5 to Mr. Sampson that, "If you would prefer to review this
6 with Ted Trimmer," who is the General Counsel of GSA, "By all
7 means do so." And suggesting that alternative to Mr. Sampson.

8 Mr. Sampson indicated that he didn't think it was
9 necessary, he understood it and relied on Mr. Casselman's
10 background at GSA.

11 Q Do you recall whether at that meeting Mr. Sampson
12 was told that the President wanted this agreement signed?

13 A I have no recollection of that specifically. I
14 would say that the fact that the President was aware of the
15 agreement was made known to Mr. Sampson.

16 However, I cannot specifically state who said it
17 and whether the President endorsed it. But implicit, I
18 think, was the understanding that President Ford had knowledge
19 of the content of that agreement. I would assume that
20 Mr. Sampson would assume that if President Ford was not in
21 agreement with it, Mr. Sampson would not be there, being shown
22 the document.

23 Q Now, subsequent to the signing of the September 7th



1 agreement have you had any further occasion to be involved
2 in matters relevant to the papers and tapes of the former
3 President, Mr. Nixon?

4 A. I have had discussions on these matters. Of
5 course, I have followed the history of this litigation.

6 Q. With whom have you had such discussions?

7 MR. MILLER: Off the record.

8 (Discussion off the record.)

9 MR. DOBROVIR: On the record.

10 THE WITNESS: Primarily with Mr. Casselman with
11 respect to the status of this litigation and whether litiga-
12 tion was going to come about and when it did come about, why
13 it came about.

14 MR. DOBROVIR: I have no more questions.

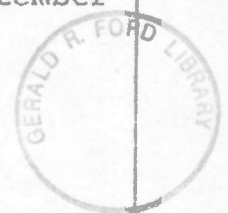
15 MR. SPOONER: I have a few questions.

16 EXAMINATION

17 BY MR. SPOONER:

18 Q. Mr. Becker, I believe that you testified that
19 you had a meeting on September 3rd to discuss the possibility
20 of an agreement and that the next meeting was on September 5th,
21 at which time Mr. Miller handed out a draft of an agreement
22 that he had prepared.

23 My question is this: Between the 3rd of September



1 and the 5th of September, did you have occasion to do any
2 legal research into the Federal statutes or regulations
3 regulating the maintenance or disposal of Federal records?

4 A. I personally? No.

5 Q. Did you ask anyone to do so on your behalf?

6 A. I did not.

7 Q. In your legal practice or other prior experience
8 had you ever had occasion to do any research into the Federal
9 statutes or regulations dealing with the maintenance or
10 disposal of Federal records?

11 A. Only to the extent of the matter that I cited which
12 dealt with the transmittal by President Nixon of his vice-
13 presidential papers in 1968 and '69, and the effect of same.

14 There was some question raised before the Joint
15 Committee on Taxation with respect to ownership rights and
16 delivery as well.

17 Q. You had seen the report rendered by the Joint Com-
18 mittee on Internal Revenue and Taxation on the Nixon
19 vice-presidential papers?

20 A. Yes.

21 Q. Prior to September 7th did you have occasion to
22 consult the statutes or regulations dealing with the disposi-
23 tion of Federal property -- Federal records?



1 A. I did peruse those statutes following a meeting
2 with Mr. Casselman at that time where Mr. Casselman briefed
3 me and Mr. Buchen and I believe possibly Mr. ^{Marsh}~~Marshall~~ was
4 present, Jack ^{Marsh}~~Marshall~~, at that time, on the status of the
5 Federal law on that question.

6 Q Did you refer to what is known as the Presidential
7 Libraries Act?

8 A Yes.

9 Q Did you notice upon reading that statute that the
10 responsibility for negotiating with a President or a former
11 President with regard to the disposition of records belongs
12 to the administrator of General Services?

13 MR. GOLDBLOOM: I object to the question. I think
14 that calls for a legal conclusion. I am not prepared to
15 accept your characterization of the statute.

16 MR. MILLER: I join in the objection for the same
17 reasons.

18 MR. SPOONER: Go ahead and answer.

19 THE WITNESS: I don't know that I can without a
20 copy of the statute.

21 BY MR. SPOONER:

22 Q I am directing your attention to Section 2108 of
23 Title 44 of the United States Code, Subsection (a), where



1 it states: "When the Administrator of General Services
2 considers it to be in the public interest, he may accept for
3 and in the name of the United States, land, buildings,
4 and equipment offered as a gift to the United States for the
5 purposes of creating a presidential archival depository."

6 The section goes on from there.

7 MR. GOLDBLOOM: I renew my objection. I did not
8 hear counsel use the word "negotiate" when he was quoting from
9 the statute.

10 MR. SPOONER: Perhaps I should read further. I
11 refer to Subsection (c) of the same section where it says,
12 "The Administrator, in negotiating for the deposit of
13 presidential historical materials, shall take steps to secure
14 to the Government as far as possible the right to have contin-
15 uous and permanent possession of materials."

16 MR. GOLDBLOOM: I continue my objection. I don't
17 think the statute requires the administrator to negotiate in
18 each and every instance where materials are accepted.

19 BY MR. SPOONER:

20 Q. Let me ask you this, Mr. Becker: Did you think
21 upon reading that statute that the duty of negotiating was
22 that of the administrator of General Services?

23 A. My answer to that question is I don't know at this



1 time if I focused on that question at that time. However,
2 I will say my reading of the statute today would tend to
3 indicate to me that the question of negotiation is not an
4 exclusivity reserved to the administrator.

5 In fact, my recognition of some of the prior
6 precedents with particular reference to President Johnson's
7 temporary deposit and the Kennedy Library involved to the best
8 of my recollection the then President retaining^{ed} counsel,
9 preparing^{ed} a depository deed, and submitting^{ed} it to the
10 administrator.

11 I know of no instances of the administrator
12 and/or his associates becoming involved in negotiations.
13 I might add as well that the same would hold true to President
14 Nixon's deed of gift in 1968 and '69, which was not negotiated
15 but merely transmitted by the deed of gift to the administrator.

16 MR. GOLDBLOOM: Without in any way reflecting
17 upon the witness's legal competence, which I think is not at
18 all in question here, I move to strike his answer as not being
19 pertinent to the issues before the Court in this litigation.
20 His present construction of the statute I don't believe is
21 relevant.



1 BY MR. SPOONER:

2 Q Mr. Becker, did you consult with Mr. Sampson prior
3 to the evening of September 7th with regard to the terms of
4 this agreement?

5 A No, sir.

6 Q Do you know whether anyone else consulted with
7 Mr. Sampson?

8 A No, sir.

9 Q Do you know whether anyone consulted with any of
10 Mr. Sampson's subordinates within the General Services Ad-
11 ministration with regard to the agreement prior to the evening
12 of September 7th?

13 A I know of no such conversations with individuals
14 that work for the General Services Administration.

15 Q At the time that you were working on this agree-
16 ment, were you familiar with the body known as the Federal
17 Records Council?

18 A I was not then and I am not now.

19 Q Do you know whether anyone who was involved in ne-
20 gotiating this agreement did consult with a body known as the
21 Federal Records Council?

22 A No, I have no knowledge of the same.

23 Q Mr. Becker, in response to a question asked by

1 Mr. Dobrovir, I believe that you listed the objectives of
2 Mr. Buchen in negotiating this agreement. My question is
3 this: was one of the objectives of the agreement to get the
4 documents out of the government's hands so it would not have
5 the responsibility of responding to subpoenas?

6 A No, I wouldn't put it that way. Mr. Buchen recog-
7 nized that any agreement that he got with Mr. Miller and
8 Mr. Nixon was better than what he had at the moment. If
9 Mr. Nixon replevined the chattel and obtained it and then, as
10 prior Presidents have done, deposited the chattel with the
11 General Services Administration -- and in fact I believe the
12 original draft prepared by Mr. Miller contemplated a mere de-
13 posit -- that deposit could have had a life tenure of 48 hours.
14 Mr. Nixon could have deposited it and then recalled it. So
15 that Mr. Buchen recognized that and was concerned with the
16 creation of a depository that secured the records from destruc-
17 tion and secured them for availability in future proceedings.

18 Q Secured them for a period of 3 years, is that cor-
19 rect?

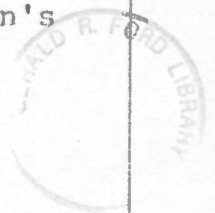
20 A Secured the papers for a period of 3 years, yes,
21 sir. That is what the ultimate draft provides for.

22 Q I am not quite sure that you answered my question,
23 which was whether one of the objectives was to get the papers

1 out of the hands of the government so that the government
2 wouldn't have the responsibility of responding to subpoenas?

3 A Well, the government had a continuing use for some
4 of these records. Bear in mind -- to put it into a fair
5 ~~contention~~ ^{Context}, and I'm sure you want to be fair, we are talking
6 about possibly one-half of one percent of all of these records.
7 Mr. Buchen, I think, was properly concerned with returning to
8 Mr. Nixon in a secure manner those records that had no arguable
9 relevancy to any case now pending or any case which was con-
10 templated to be brought. For example, Mr. Nixon's personal
11 checkbooks -- there were certain clothing from the White House,
12 there were White House memorabilia that all fell into that
13 general category that had no arguable relevancy, that was
14 part of what we were talking about when we were talking about
15 records and tapes. That one-half of one percent that have an
16 arguable relevancy to present and future litigation, Mr. Bu-
17 chen was concerned with securing for use and/or production
18 in that future litigation and insuring that a mechanic would
19 be devised whereby the owner of that material would have an
20 opportunity to review it to see if what was called for in
21 the subpoena did in fact exist and to produce it.

22 Q I am sure you are not trying to evade my question.
23 But specifically, my question is this. Was it Mr. Buchen's



-4 . 1 concern to get the documents out of the hands of the government
2 so that the government wouldn't have to worry about reviewing
3 the documents and responding to subpoenas?

4 A I have a problem with your use of the word, "worry."
5 It is not so much a question of worry. I would say it must
6 begin with this proposition. The Attorney General of the
7 United States told Mr. Buchen that the papers that he holds
8 belongs to a third party. Mr. Buchen then had to address him-
9 self to the question of what are his obligations and what are
10 his liabilities with respect to production of records that he
11 holds after demand has been made by the third party owner with
12 respect to producing same in court.

13 The records were voluminous and it occurred to
14 Mr. Buchen and to Mr. Ford, I would assume, that the proper
15 party to explore the records in compliance with the future
16 subpoena would be the owner. Thereby, the owner could reserve
17 to himself whatever objections he may have towards their pro-
18 duction.

19 Q Maybe we can move this along a little faster if we
20 refer to Mr. Buchen's testimony of November 11. I am refer-
21 ring specifically to page 33, starting on line 6. There,
22 Mr. Buchen was asked by Mr. Dobrovir, and I quote, "Was your
23 principal objective with respect to the timing of this to re-



1 move from you and your staff the obligation of having to
2 respond to subpoenas and other kinds of court discovery de-
3 mands?" Answer: "That's right." Question. "And that is why
4 you were eager to get this document signed and accepted and im-
5 plemented?" Answer: "Right."

6 A That is what it says. What it doesn't say, what
7 Mr. Dobrovir failed to ask was the next question, which I
8 think would have been more--

9 Q Well, specifically I am asking you only right now--

10 A May I finish my thought,-- which might have shed
11 more light on it, the next question should have been, "Why?"
12 What I have responded to is the whys.

13 Mr. Buchen felt that way as he stated on these pages
14 for the reasons that I have stated; namely, that his Attorney
15 General had advised that he was in possession of chattel be-
16 longing to a third party, and that the third party was more
17 familiar with the chattel than anyone else in the world and
18 the owner should be the one to produce.

19 Furthermore, Mr. Buchen I think was concerned,
20 rightfully, with the prospect of creating a legal staff which
21 in effect supplanted Mr. ^{St. Clair's} ~~Sinclair's~~ legal staff for the pur-
22 poses of responding to these subpoenas.

23 Q Do you agree with the testimony of Mr. Buchen at



1 that page?

2 A I do.

3 Q Now, Mr. Becker, in response to a question from
4 Mr. Dobrovir, you responded that certain personnel files
5 at the White House were xeroxed. Is that correct?

6 A I don't know if they were xeroxed. I do know that
7 that was one of the items that I felt most properly belonged
8 within the four corners of the Gerry Jones memorandum, that
9 personnel files of individuals who were continuing in the
10 service of the government should remain or copies of same
11 should remain at the White House for the ongoing purpose. I
12 don't know if in fact that was done.

13 Q Was it contemplated, then, by you that the originals
14 of those files would be sent to Mr. Nixon?

15 A No, it was contemplated by me at that time that the
16 originals would be packed along with the other documents that
17 were being packed.

18 Q Included, then, within the so-called Presidential
19 materials?

20 A Yes. As a matter of fact, I might add to our com-
21 ment that when I spoke to the individual whose name escapes
22 me -- it was the custodian of the personnel files, the Central
23 Files where the personnel files are located, the very sophis-

1 ticated revolving files that house huge numbers of documents --
2 he indicated to me, "Do you think this holds a lot of files,"
3 and I said, "Yes." And he said, "They were all empty when I
4 came aboard in 1968. They were just totally empty. Not even
5 a jacket appeared inside any of these files."

6 So based on that, it was concluded as well that they
7 were part of the Presidential records under the Presidential
8 Libraries Act.

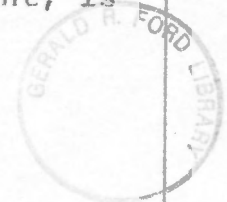
9 Q Mr. Becker, did you speak with Mr. Miller about the
10 proposed agreement regarding the disposition of the papers
11 and tapes prior to the time that you saw his first draft?

12 A On September 3.

13 Q On September third. Did you reach a tentative
14 agreement at that time on the third as to what terms the pro-
15 posed agreement should contain?

16 A That wouldn't be the case. I think what we did
17 reach at that stage was a dual recognition. I think Mr. Miller
18 recognized that the objectives sought by Mr. Buchen were valid
19 and prudent and proper and I think Mr. Buchen recognized that
20 Mr. Miller was under some pressure to -- from his client by
21 way of a request to obtain his records.

22 Q But I take it that at that point you didn't discuss
23 the substance of what should go into the draft agreement, is



1 that correct?

2 A I believe you are correct, even to the extent of what
3 form the draft agreement should take.

4 Q In response to another question from Mr. Dobrovir,
5 I believe that you testified that in connection with negotia-
6 ting this agreement and dealing with the Presidential mater-
7 ials, that you familiarized yourself to some extent with the
8 Central Files. Was it your thought that the Central Files
9 in their entirety would be sent to San Clemente?

10 A My answer to that would be, it was my thought that
11 the Central Files in their entirety were part of the records
12 of President Nixon as contemplated by the ^{Presidential Libraries} Federal Records Act
13 and I was aware that prior administrations had claimed and
14 obtained all of the records of the Central Files.

15 Now, Central Files also contained some records that
16 I believe were sensitive and I don't believe any question of
17 disposition was made with respect to them. But bear in mind,
18 we were not making decisions at that time to ship to San
19 Clemente. We were making decisions to pack and hold these
20 records as well as all other records until some point in time
21 in the future when a decision was made with respect to owner-
22 ship and disposition.

23 MR. SPOONER: Would you read the question back,



1 please?

2 (Question read by the Reporter.)

3 BY MR. SPOONER:

4 Q I take it that your answer is that it was your
5 thought that the materials in Central Files would be packed
6 in their entirety, is that correct?

7 A Yes, that is what I said, they would be packed
8 because they were considered to be part of the records of the
9 Nixon Administration. That is a step short of your question
10 with respect to "sent to San Clemente."

11 Q Right. Mr. Dobrovir asked you a number of ques-
12 tions about Buchen Deposition Exhibit 5. I believe that you
13 said that some of the notations on there were yours, or you
14 may have said the notations were yours in part. Are there any
15 notations that you recognize on there to be those of someone
16 else?

17 A Yes. I can recognize my handwriting.

18 Q Okay.

19 A Do you want me to do it page by page?

20 Q Yes, I would like you to.

21 A I am looking at Exhibit 5.

22 MR. SPOONER: Off the record a minute.

23 (Discussion off the record.)



1 MR. SPOONER: Back on the record.

2 BY MR. SPOONER:

3 Q In addition to your handwriting, do you know who else's
4 handwriting is on that document?

5 A No, I really don't. It could either be Mr. Buchen's
6 or Mr. Casselman's. Conceivably, it could be Mr. Miller's
7 made in California.

8 MR. MILLER: What document are you referring to?

9 THE WITNESS: Buchen Exhibit 5.

10 BY MR. SPOONER:

11 Q On the evening of the 7th, Mr. Becker, when you met
12 with Mr. Sampson, do you know when he was told that President
13 Ford planned to render a pardon of Mr. Nixon on the following
14 day?

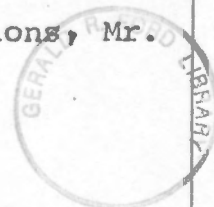
15 A I know he was not so told in my presence. On the
16 evening of the 7th, President Ford's plans for the next day
17 were still a rather closely guarded secret. I would think he
18 was not told.

19 MR. SPOONER: I would like to ask a question of Mr.
20 Dobrovir. Off the record.

21 (Discussion off the record.)

22 MR. SPOONER: I have no further questions.

23 MR. DAVIS: Do you intend to ask any questions, Mr. D.



1 Miller? Do you want to go first?

2 EXAMINATION

3 BY MR. MILLER:

4 Q Mr. Becker, going back in time to the period around
5 August 15th, 1974, did you participate in a meeting with Mr.
6 Buchen, Mr. Buzhardt and the Special Prosecutor?

7 A No, I didn't.

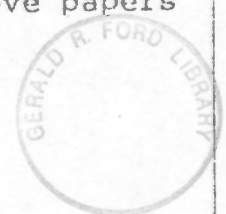
8 Q Do you recall if prior to that time instructions had
9 been given that the Presidential materials of Mr. Nixon should
10 not be shipped out of the White House prior to August 15th?

11 A I believe that is the case, Mr. Miller. But I
12 cannot state with certainty who issued that instruction.

13 Q You have no recollection where you might have learned
14 that?

15 A I have a recollection of an occurrence that I believe
16 was before August 15th that I relate to that question, and that
17 was a news story purporting to reflect a conflict in position
18 between Mr. ^{St. Clair}~~Sinclair~~ and Mr. Buzhardt on the question of owner-
19 ship. Mr. Buzhardt was presumed to be reported to have said
20 that ownership vests with Richard Nixon and Mr. ^{St. Clair}~~Sinclair~~ was
21 reported to have said the contrary.

22 I remember that and I believe that occurred before
23 the 15th. What precipitated that decision not to move papers



1 before the 15th I think is quite simply Mr. Buchen's acqui-
2 sition of certain knowledge that he didn't have on August 9th
3 when President Ford took office, knowledge of outstanding
4 orders in the Wounded Knee case and the Network case and the
5 Halpern case, and I believe further, Mr. Buchen had conversa-
6 tions with Mr. Buzhardt where Mr. Buzhardt briefed Mr.
7 Buchen as to Mr. Buzhardt's meetings with and conversations
8 with the Special Prosecutor's ^Fforce.

9 It is simply a recognition that this is not simply a
10 black and white question. There are shades of gray to the
11 effect that it is not simply a bailee holding something of a
12 bailor.

13 It happens that the bailee is under subpoena and
14 court order and that produces shades of gray, and until a
15 more complete picture and understanding of all of the circum-
16 stances, attending subpoenas, court orders, requests from the
17 Special Prosecutor, et cetera, was discovered and resolved,
18 prudence dictated to withhold transmittal.

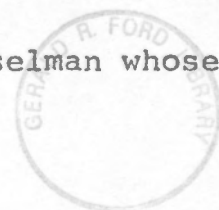
19 Q Withhold transmittal to California?

20 A Yes, sir.

21 Q Of the Presidential material?

22 A Yes, sir.

23 Q Would you identify who is the Mr. Casselman whose



1 name has come up here today?

2 A. That is Mr. William Casselman, who was the Counsel
3 for the Vice President during Mr. Ford's tenure as Vice
4 President, and was General Counsel for the General Services
5 Administration prior to that and is presently Counsel to the
6 President.

7 MR. SPOONER: Mr. Miller, before you go on, let's
8 go off the record.

9 (Discussion off the record.)

10 MR. SPOONER: On the record.

11 BY MR. MILLER:

12 Q. During the period when you and Mr. Buchen were
13 discussing the letter of intent relating to the Nixon documents,
14 was Mr. Casselman consulted concerning the provisions of that
15 agreement?

16 A. Yes, he was, I believe, brought in to discussions
17 on that question on September 5.

18 Q. Do you recall what function Mr. Casselman was
19 supposed to perform, why he was brought in?

20 A. He was brought in as a--to give his thoughts and
21 advice with respect to archival law and GSA law and history
22 of Presidential papers and records.

23 Q. And I assume that he was brought in because of the

1 fact he was former General Counsel of GSA which gave him
 2 knowledge of that particular facet of the law?

3 A. That is correct.

4 Q. And was his advice subsequently incorporated in the
 5 agreement, if you recall?

6 A. Not all of it.

7 Q. Do you recall when you first learned orally that the
 8 Attorney General had given a preliminary report that the title
 9 to the Nixon materials was in fact in Mr. Nixon without
 10 accepting as final my characterization of what the A.G. said?

11 A. I can't give you the precise date, Mr. Miller, but
 12 I can say that I think I was aware of that information at our
 13 meeting of September 3.

14 Q. Do you recall informing any representative of Mr.
 15 Nixon of that fact?

16 A. If you are asking me if Mr. Buchen and I informed
 17 you of that fact during our meeting of September 3, my answer
 18 is I don't recall.

19 Q. I hand you Sampson Deposition Exhibit 1. Returning
 20 in time to September 6th of 1974, did you see the original of
 21 that document in San Clemente, do you recall?

22 A. Yes, I did.

23 Q. At the time you saw it did it bear a signature?



1 A. Ultimately it bore the signature of Richard Nixon.

2 Q. Did you have physical custody of the original of
3 Exhibit 1?

4 A. Yes, sir.

5 Q. What did you do with it?

6 A. I delivered it to Mr. Buchen on Saturday, September
7 7th.

8 Q. Did you observe the original of Exhibit 1 at the
9 meeting that occurred at 6:15 or 6:30 in the White House on
10 September 7, 1974, In other words, was the original of that
11 agreement in the possession of Mr. Sampson at the time of the
12 September 7th meeting?

13 A. Yes. Mr. Sampson executed three originals, as I
14 recall, and I also recall that after xeroxing the original
15 for Mr. Sampson's signature, it was very difficult to tell
16 the difference between the xeroxed copies and the original.

17 Q. Did you observe Mr. Sampson execute that agreement?

18 A. Yes, I was present when he did it.

19 Q. Do you know what then happened to the original of
20 that agreement?

21 A. To the original?

22 Q. Yes.

23 A. I considered it as being three originals, frankly.



1 ^{Buchen}
2 Mr. ~~Miller~~ was contemplating Mr. Sampson would keep one in
3 his files, one would be forwarded to your office, and a copy
4 would be forwarded to the Archives. I can't say where the
5 original Richard Nixon-executed document is at this time.

6 Q In your discussions with Mr. Casselman at the time
7 the negotiations were going on with respect to this agreement,
8 did Mr. Casselman indicate the importance of having the Nixon
9 Presidential materials available for historians?

10 A Yes, he did.

11 Q Was he interested in accomplishing that result to
12 the best of his capability?

13 A He suggested that the ultimate letter of transmittal
14 contain some language providing for scholarly research.



1 MR. MILLER: Mr. Davis?

2 EXAMINATION

3 BY MR. DAVIS:

4 Q Mr. Becker, was it your understanding that there
5 would be no shipment of these Presidential materials and that
6 there would not be full implementation of the letter agreement
7 until the Special Prosecutor was satisfied that his interest
8 was protected?

9 A As well as -- my answer is yes, as well as resolu-
10 tion to the outstanding court orders restraining any shipment.

11 Q And was this understanding on your part conveyed by
12 you or Mr. Buchen to Mr. Miller at your September 3rd or 5th
13 meetings?

14 A I think it was implicit. Mr. Buchen on the Septem-
15 ber 3rd meeting, as I recall, advised Mr. Miller of the Spe-
16 cial Prosecutor's interest as expressed in their meeting and
17 communication of August 15th, 1974.

18 Q So you would say, then, that the thought that what-
19 ever agreement was reached would have to at some point wait
20 until the Special Prosecutor's interests were satisfied were
21 conveyed to Mr. Miller, then, is that correct?

22 A I will ask you to repeat that, please, Mr. Davis.

23 MR. DAVIS: Off the record.



9-2 . 1 (Discussion off the record.)

2 MR. DAVIS: Back on the record.

3 Would you repeat it, please?

4 (Whereupon, the pending question was read by the
5 reporter.)

6 THE WITNESS: I am not sure if I can answer that as
7 it is framed.

8 MR. DAVIS: If you would like, I can rephrase it.

9 THE WITNESS: Would you?

10 MR. DAVIS: Yes, to make sure that we all understand
11 each other.

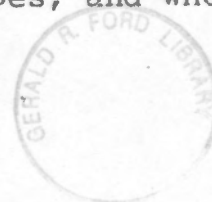
12 BY MR. DAVIS:

13 Q I think you testified already that it was your under-
14 standing that any agreement would not be fully implemented un-
15 til the Special Prosecutor had been satisfied that his interests
16 were protected. Is that correct?

17 A Yes.

18 Q My question is, was that thought conveyed by you or
19 Mr. Buchen to Mr. Miller in your meetings with him on Septem-
20 ber 3rd or 5th?

21 A My answer would be that that thought was implicit
22 in our conversations of September 3, when Mr. Buchen outlined
23 his objectives with respect to the records and tapes, and when



1 Mr. Buchen advised Mr. Miller of the Special Prosecutor's
2 interest as expressed in their meeting of August 15th and
3 their communication of that same date. I don't know that the
4 choice of words that you selected were echoed at either of
5 those meetings.

6 My response in candor would be that it was my under-
7 standing, it was Mr. Buchen's understanding, and I believe it
8 was Mr. Miller's understanding -- though I don't presume to
9 speak for him -- that Mr. Miller -- that Mr. Buchen had an
10 obligation to the Special Prosecutor that had to be satisfied
11 before implementation of this agreement came into effect.

12 The Special Prosecutor's interest, I might add, was
13 in part based upon a possible litigation, criminal litigation
14 involving Richard Nixon which of course became moot after the
15 pardon. That may have played into Mr. Nixon or Mr. Miller's
16 mind in terms of commencement of implementation.

17 Q The agreement as drafted contains a reference allow-
18 ing Mr. Nixon to raise any privileges he might have. Was it
19 your understanding that that word "privilege" there referred
20 to executive privilege or Fifth Amendment privilege?

21 A My understanding was any privilege that could be
22 successfully asserted in a court of law and ruled by a jurist,
23 a competent jurist, in Mr. Nixon's behalf. I make no judgment



1 on the question of whether Mr. Nixon had a claim after the
2 pardon to an objection on the basis of the Fifth Amendment or
3 whether Mr. Nixon had a claim after resignation to an objection
4 on the basis of executive privilege.

5 Q I am not asking for a legal conclusion. I am asking
6 in your mind as this was being drafted, were you thinking in
7 terms of Fifth Amendment privilege or executive privilege?

8 A My answer, Mr. Davis, is really neither. What I
9 was thinking in terms of was reserving to the former President
10 any objection including the two that you enumerated and I
11 would add relevancy and materiality that were sustainable in
12 a court of law.

13 Q Do you recall having some conversations with me
14 as well as members of the Special Prosecutor's Office in
15 the Justice Department a couple weeks ago on this subject?

16 A I do.

17 Q Do you recall indicating at that time that you
18 assumed that the reference to the word "privilege" referred
19 to the Fifth Amendment privilege or some common law privilege
20 such as marital communications, and that there were no dis-
21 cussions of executive privilege at the meetings with Mr. Miller
22 or Mr. Ziegler?

23 A I will stand by that. I don't recall any conver-



1 sation with Mr. Miller or Mr. Ziegler relative to the point of
2 whether President Nixon still retained the right to executive
3 privilege. The use of the word "privilege" in that document
4 would incorporate any privilege that was sustainable.

5 Q Will you stand by -- excuse me, are you finished?

6 A Yes.

7 Q Will you stand by the position that you assumed that
8 the reference to privilege in paragraph 7B and 9B of the
9 agreement referred to Fifth Amendment or some other common
10 law privilege such as marital communications?

11 A I will stand by--

12 MR. MILLER: Point of order. What document are you
13 reading from?

14 MR. DAVIS: I am reading from a typed summary of an
15 interview conducted with Mr. Becker.

16 MR. MILLER: Is it dated?

17 MR. DAVIS: The date on it is November first. I am
18 not certain whether the interview was the first or the 30th.

19 MR. MILLER: Does it indicate who the author is?

20 MR. DAVIS: The author is a member of our office
21 who was present at the interview.

22 MR. MILLER: May I ask his name?

23 MR. DAVIS: Kenneth Geller.



1 MR. MILLER: I ask that that be identified for the
2 record as an exhibit.

3 MR. DAVIS: I would be happy to supply as an exhibit
4 this one, but this has some handwritten notations on the last
5 page of my own which I don't think would probably be marked
6 as an exhibit.

7 MR. MILLER: Aside from those--

8 MR. DAVIS: If the other parties -- I don't know
9 what the position of Mr. Goldbloom is -- if they have no
10 objections, I have no objection.

11 MR. GOLDBLOOM: If the Special Prosecutor has no
12 objection -- I would assume that they would have the primary
13 interest in it.

14 MR. DOBROVIR: I am delighted to have it made an
15 exhibit.

16 MR. DAVIS: I say that because Mr. Goldbloom parti-
17 cipated or was present at the interview. If I may suggest,
18 I will make copies available at a later time.

19 MR. MILLER: How late? There is always a question
20 of when implementation occurs, Mr. Davis. I wonder if I may
21 request a date.

22 MR. DAVIS: Certainly. We will make copies avail-
23 able this afternoon.



1 MR. SPOONER: Off the record.

2 (Discussion off the record.)

3 MR. SPOONER: On the record.

4 MR. DAVIS: Since I have now inked out the one hand-
5 written comment which was on page 4 when we marked this as an
6 exhibit, this will be Exhibit No. 1 for Mr. Becker's deposi-
7 tion.

8 (The above-referred to document
9 was marked Becker Deposition
10 Exhibit No. 1 for identifica-
11 tion.)

12 MR. DAVIS: I have no further questions.

13 EXAMINATION

14 BY MR. GOLDBLOOM:

15 Q Mr. Becker, you indicated that you were present
16 during part of the time that Mr. Sampson was reviewing the
17 letter of intent, I believe, on the evening of September 7th.
18 Did you personally observe Mr. Sampson read the letter of in-
19 tent?

20 A Yes.

21 Q And were you present when he discussed aspects of
22 it?

23 A Yes.



1 Q During the time that you were present, were there
2 any other discussions going on concerning totally unrelated
3 matters or was that the only subject of the meeting?

4 A There were greetings between Mr. Sampson and
5 Mr. Casselman.

6 Q Was Mr. Sampson made aware or was he told by you
7 that you had been the person that had been in California and
8 had in effect negotiated portions of that letter with repre-
9 sentatives of former President Nixon?

10 A I think the latter part of the question, he was made
11 aware of that. I don't recall if he was told where those ne-
12 gotiations occurred.

13 Q Okay. But he knew that you had been a participant
14 in the negotiations?

15 A Yes, sir.

16 Q Was it made clear to him that your presence at that
17 meeting was for the purpose of answering any questions he
18 might have had with respect to the negotiations?

19 A I don't think I announced that that is what my
20 presence was for, but that was the function I served.

21 Q Did he ask you questions specifically relating to
22 the negotiations?

23 A Relating to the negotiations?



9 1 Q Yes.

2 A No, I don't believe he asked any specific questions
3 relating to the negotiations.

4 Q Did he ask you questions relating to the terms of
5 the agreement?

6 A What I would call "mechanical questions," how are
7 these terms going to be implemented, those kinds of questions.

8 Q During any part of the discussion when you were
9 present, did anyone order Mr. Sampson to sign the agreement
10 or direct him to sign it?

11 A No, absolutely not.

12 MR. GOLDBLOOM: I have no further questions.
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RE-EXAMINATION

BY MR. DOBROVIR:

Q. Let me ask just this one question. I don't know if this is in the public record but if it isn't, I hope you won't consider the question impertinent. But I would like to know, your work on behalf of President Ford and Mr. Buchen and so forth that we have been discussing, were you an employee of the United States Government at this time?

A. No.

Q. Was this done purely as a private, personal, unpaid matter?

A. Yes.

MR. MILLER: I have one further question.

Off the record.

(Discussion off the record.)

MR. MILLER: On the record.

RE-EXAMINATION

BY MR. MILLER:

Q. Have you examined Exhibit 1, Mr. Becker?

A. Yes.

Q. Did you ever inform President Nixon or any of his representatives that the Special Prosecutor had a veto power on sending the Nixon Presidential materials to California?



1 A. No, sir.

2 Q. Did you ever inform the Special Prosecutor of the
3 existence of the September 7th agreement which is Exhibit 1,
4 I believe, prior to the time it was executed by former President
5 Nixon?

6 A. You mean your draft?

7 Q. Did you ever show Defendant's Exhibit 1--did you ever
8 tell the Special Prosecutor's office of the existence of
9 Exhibit 1 prior to September 7th, 1974?

10 MR. DAVIS: Exhibit 1 in the Sampson deposition, for
11 the purposes of clarification.

12 MR. MILLER: Yes.

13 BY MR. MILLER:

14 Q. I hand you Sampson deposition exhibit 1.

15 A. Okay.

16 Q. Which purports to be a copy of the final agreement
17 of September 7th, 1974, relating to the Presidential material.
18 Did you notify the Special Prosecutor's office of the contents
19 of that agreement at any time prior to the time it was executed
20 by Mr. Sampson?

21 A. No.

22 Q. Did you discuss the negotiation of that agreement
23 with any member of the Special Prosecutor's office prior to



1 the time it was executed by Mr. Sampson?

2 A. I did not, no.

3 Q. Had you at any time prior to the time that an agree-
4 ment was executed by Mr. Sampson had any contact with the
5 Office of the Special Prosecutor related to Nixon Presidential
6 material?

7 A. No, I did not.

8 Q. At any time subsequent thereto have you had dis-
9 cussions with representatives of the Office of the Special
10 Prosecutor with respect to that agreement of September 7th as
11 represented by Exhibit 1?

12 A. No.

13 Q. Can you tell me, who requested that you give an
14 interview with respect to the negotiations of Sampson Exhibit
15 1?

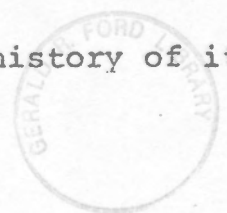
16 A. The interview of November 1, '74.

17 Q. Yes?

18 A. I think it was Mr. Davis.

19 Q. Mr. Davis called? What did he tell you was the
20 purpose of the interview?

21 A. He advised me of the existing litigation and that I
22 would be deposed at some time in the future and that he
23 wanted to discuss these matters with me and the history of it



1 at some time in the immediate future.

2 Q. Right?

3 A. I frankly went to the meeting on November 1 believing
4 it would be under oath with a stenographer there.

5 Q. Did you make any preparation for that meeting?

6 A. I obtained copies of pleadings and reviewed the
7 exhibit, Sampson Exhibit 1, and discussed the status of the
8 litigation, what it was about, with Mr. Casselman.

9 Q. Who was present at the interview on November 1, 1974?

10 A. The individuals shown on the first paragraph.

11 Q. Okay. Anyone else at any time during the interview?

12 A. I don't think so.

13 Q. Did you supply any documents?

14 A. No, sir.

15 Q. At the time of the interview?

16 A. No.

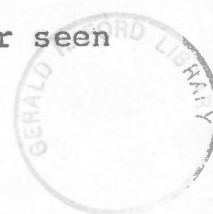
17 Q. Did you request a copy of any memorandum of that
18 interview?

19 A. No.

20 Q. Have you ever been given a copy of a memorandum of
21 that interview?

22 A. Not until today.

23 Q. Today is the very first time you have ever seen



1 Becker Deposition Exhibit Number 1?

2 A. That is correct.

3 Q. Have you discussed the formulation of Defendant's
4 Exhibit 1 with any member of the Special Prosecutor's Office?

5 A. Have I discussed the formulation of this memorandum?

6 Q. Let me withdraw an awkward question.

7 Subsequent to the meeting with the Special Prosecutor's
8 Office, have you had any further discussion with representatives
9 of that office relating to this lawsuit?

10 A. No, sir.

11 Q. Do you recall what you told the individuals present
12 at the meeting, which I will assume, since the memorandum is
13 dated November 1, '74--when was the meeting with the Special
14 Prosecutor?

15 A. I would have to check my calendar.

16 Q. Was it on or about November 1, 1974?

17 A. I believe so.

18 Q. Could you tell me what you told the representatives
19 of the Special Prosecutor at the meeting on or about November
20 1st, 1974, with respect to the use of the term "privilege"
21 in the Sampson Exhibit 1?

22 A. Well, I note, Mr. Miller, that on the third paragraph
23 of page 3 of that exhibit, it states that, "At these meetings

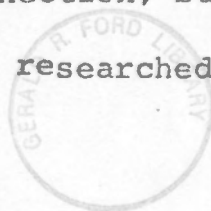
1 with Miller and Ziegler there had been no discussion of
2 executive privilege." That is correct, I believe I stated
3 that.

4 Q You did tell them that?

5 A Yes, sir. And I believe I have stated that today
6 on the record. We, you and I and Mr. Ziegler, did not discuss
7 executive privilege. The second sentence then says, "Becker
8 assumed that the reference to 'privilege' in paragraph 7B and
9 9B of the agreement referred to the Fifth Amendment or some
10 common-law privilege such as marital communications. " My
11 memory of that interview was that the questions evolved to
12 asking me what my thoughts were with respect to President
13 Nixon's right to claim executive privilege.

14 My memory is that I responded to that question by
15 saying, "I have never researched that question and have no
16 real basis to make a statement one way or another." My
17 memory further is that they asked what my impression was on
18 that particular legal question and I believe I stated at that
19 time that my gut feeling was that a former president does not
20 have that privilege available to him.

21 I will add that since that meeting I have been made
22 aware of a President Truman precedent in that connection, but
23 I will still stand on my position that I have not researched



1 the question and have no basis to make any judgment on it one
2 way or another.

3 Q Can we agree, Mr. Becker, that at no time during
4 the negotiations resulting in the Exhibit 1 was there any
5 agreement the negotiators as to what the term "privileged" in
6 that document meant?

7 A We would agree on that. I have no memory of discuss-
8 sing President Nixon's use or available of executive privilege
9 in your and my meeting of September 3 or September 5, of my
10 meetings with you and Mr. Ziegler in California, or, I would
11 add, in that rather long, tiring airplane ride to and from
12 California.

13 Q Did you ever state during the course of negotiations
14 with President Nixon or his representatives that the privilege
15 referred to in paragraph 7(B) and 9(B) of the agreement re-
16 ferred to the Fifth Amendment or some common-law privilege
17 such as marital communication?

18 A Did I ever state that to you?

19 Q Yes.

20 A No, sir.

21 Q Did you ever state it to any other representative of
22 Mr. Nixon?

23 A No, sir. I believe we discussed the question of

1 relevancy as a grounds for Mr. Nixon's objection but not as
2 the exclusive grounds.

3 Q As far as I am concerned, Mr. Becker--and this is
4 not a question--the agreement speaks for itself. I am just
5 trying to clear the record up in view of the existence of
6 Becker Exhibit 1.

7 MR. DAVIS: Since you created Becker Exhibit 1 you
8 are entitled to clear it up.

9 MR. MILLER: I don't have any further questions in
10 view of my 8-minute limitation which is now 30 minutes.

11 MR. DAVIS: Just one point for clarification.

12 EXAMINATION

13 BY MR. DAVIS:

14 Q Would it refresh your recollection that Mr. Kringler
15 actually called you to set up the November 1st interview but
16 that I conducted it when you arrived?

17 A Yes. I recall that, Mr. Davis. While I have the
18 floor I would point out to Mr. Miller, responding further to
19 your questions about privilege, I would say the last sentence
20 of the first full paragraph on page 2 is accurate, which
21 states, "Buchen and Becker also felt that any objections to
22 production on the grounds such as relevancy could not properly
23 be made by the Ford Administration but should be made by



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Nixon." I do recall discussing relevancy. I would also add that at the top of page 2 there was an inaccuracy in this memorandum. "Becker was aware not only of the outstanding subpoena but also of the letter to Buchen from Phil Loccavora on August 15th."

I think that is inaccurate. I think that letter was directed to Mr. Buzhardt and not to Mr. Buchen. Those are items that I note immediately from the reading of this memorandum and I would reserve the right to question other things.

MR. MILLER: Yes. Mr. Becker, certainly I don't think any of us expect you to be bound by this memorandum because it was just shown to you for the first time. I am sure if we have any further proceedings, any changes or what have you that you desire to make in the memorandum will become available to us all.

MR. DOBROVIR: I regret that I have to dissent from Mr. Miller's assumption.

I take



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take



RE-EXAMINATION

1
2 BY MR. DOBROVIR:

3 Q Mr. Becker, first of all, looking again at Buchen
4 Deposition Exhibit 1, I ask you if that to your recollection
5 is the memorandum referred to in the second paragraph on
6 page 2 of Exhibit 1?

7 A Yes. It says that Fred Buzhardt circulated a
8 memorandum on or around August 12 or 13, and this is a memo-
9 randum from Jerry Jones of August 9.

10 I think Mr. Geller accurately reported what I said
11 and what I said was in error. It was Mr. Jones and it was
12 August 9.

13 Q Now, I would like to ask you two questions. I do
14 not necessarily require that the answers be given now if all
15 parties and yourself agree that they can be provided at the
16 time you sign your deposition prior to the 15th.

17 My questions are: First, in addition to the
18 matters that you have already pointed out in which you find
19 this memorandum innacurate, would you state what matters
20 there are in which this memorandum does not accurately
21 reflect what you said at this interview to your best recol-
22 lection; and secondly, the extent to which, on refreshment
23 of your recollection, any matter that does accurately reflect



1 what you said at that time now in your view is not an accurate
2 statement.

3 In other words, I would like to know the extent
4 to which you can adopt this statement as part of this deposi-
5 tion and the extent to which you are unable to do so. That
6 is of course entirely within your own memory.

7 MR. MILLER: I just don't think it is fair to the
8 witness at this stage of the game to do that. I think I
9 would object to the procedure. If we desire to have further
10 testimony from Mr. Becker, I am sure he will be available.

11 It is just unfortunate that we didn't have this
12 memorandum beforehand. So I would object to that procedure.
13 If we need further clarification I am sure Mr. Becker will be
14 available under established procedure.

15 MR. GOLDBLOOM: I also object to it. I think the
16 memorandum is not Mr. Becker's memorandum. It is clearly a
17 memorandum by someone else. If there is any need or desire
18 to have the witness examine the document to determine to
19 what extent he can agree or need disagree with it, I think
20 that is a question for examination and it is a question of
21 characterization.

22 I really see no need for it, since it is a charac-
23 terization by another person regarding an interview.



1 have had a full opportunity to examine Mr. Becker concerning
2 the matters relevant to this litigation during this proceeding.

3 MR. DOBROVIR: In that case, I am just going to have
4 to ask a few questions about the content of this memorandum.
5 I am sorry to take up our time this way, but in view of the
6 inability to agree, I guess I have to.

7 BY MR. DOBROVIR:

8 Q Looking at page 2, Mr. Becker, the first full
9 paragraph, the second sentence says, "On September 3, 1974,
10 Becker and Buchen met with Jack Miller at Buchen's suite in
11 the Jefferson Hotel."

12 The next sentence says, "Though the meeting was
13 primarily concerned with the pardon issue, there was also some
14 discussion of the White House tapes and documents."

15 Does that accurately reflect what you said to
16 Mr. Davis at that meeting of November 1st?

17 A I would reverse the order. I think the greater
18 part of the meeting of September 3 was records and tapes. The
19 only thing stated about pardon at that time was, as I recall,
20 Mr. Buchen stated that, "President Ford is giving considera-
21 tion to. . ." I would say ninety-eight percent of the
22 meeting was a discussion of records and tapes.

23 Q Thank you. Now, a little further on there is a



1 sentence, "One person, Alexander Haig, argued that they were
2 Nixon's and should immediately be shipped to him without
3 restrictions."

4 A Yes, I am glad you brought that out. I would like
5 to -- I would certainly delete the word "argue." General
6 Haig was certainly not advocating a direct shipment without
7 any question.

8 I think the impression that I meant to convey was
9 one that during the course of some of these discussions all
10 of the possible alternatives were considered, including that,
11 and that alternative may have been voiced by General Haig.

12 Certainly he didn't argue in favor of that position
13 and he wasn't an advocate to that position.

14 Q Now, the next sentence -- and I am just going to read
15 the first clause before the semicolon, because we have already
16 discussed the second one -- "Buchen's desire was to avoid the
17 need to hire a group of White House lawyers who would contin-
18 ually have to go into court and answer to subpoenas for
19 Nixon files."

20 Now, is that an accurate reflection of what you
21 stated at that meeting?

22 A That is correct, up to a point. That was part of
23 it.



1 Q Please expand on it.

2 A That was part of Mr. Buchen's desire. As I have
3 testified, it was also Mr. Buchen's desire to secure the
4 records. It was also Mr. Buchen's desire to insure the
5 privacy was maintained of people who didn't know they were
6 being taped.

7 It was also his desire to insure that subpoenas
8 forthcoming would be responded to and the mechanics could be
9 evolved to provide for that. It was also Mr. Buchen's desire
10 to comply with court orders outstanding at the moment, and
11 subpoenas requested from the Special Prosecutor's and others
12 that were outstanding at the moment.

13 Q Going down to the last full paragraph on that page,
14 it says, "No one at the September 3rd meeting suggested that
15 an agreement covering the tapes and documents be drafted."

16 A I don't know where you are reading.

17 Q It is the last full paragraph on page 2.

18 A "Although no one. . ."

19 Q Yes. ". . . at the September 3rd meeting suggested
20 that an agreement covering the tapes and documents be drafted"
21 -- let's stop there a moment. Is that correct?

22 A I don't know that anyone suggested it. My recol-
23 lection was after there was a recognition of the objectives

1 sought by Mr. Buchen and a recognition of Mr. Miller's
2 problems, Mr. Miller said something to the effect that it
3 might help us if we had a paper that we were working from,
4 and, "Let me see if I can put some thoughts on paper," words
5 to that effect.

6 Q So the next clause in this sentence, "And Miller
7 did not volunteer to prepare a draft," is not entirely
8 accurate; is that right?

9 A Well, that would not be totally accurate. I
10 would say here again that may have been the impression that
11 the author of this document got.

12 Q I understand. That is why I am asking about this,
13 so the record is very clear on these points. I think this is
14 important and it is important that it be your testimony and
15 not somebody else's characterization.

16 So that in other words, Mr. Becker, you were not
17 surprised that on September 5th Mr. Miller presented a draft
18 agreement? There had been some anticipation that such an
19 agreement would be prepared by him; is that right?

20 A I wasn't surprised. Possibly on the intervening
21 day, September 4 -- I don't know -- Mr. Miller might have had
22 a conversation with Mr. Buchen where he said he was trying
23 to put something down and he hopes to have it for the meeting



1 of the next day and Mr. Buchen may have informed me of that.
2 I don't recall being surprised.

3 Q Okay. Now, I am going over to page 3. In the first
4 full paragraph, the third sentence, it says; "By one P. M.
5 Miller and Ziegler had come to the understanding that there
6 would not be a blanket turnover of materials to Nixon and that
7 if they did not agree to certain conditions and restrictions
8 they would have to bring a replevin action to recover the
9 materials."

10 Now, is that correct and if not, say how?

11 A I think that is a condensation of some of the
12 statements that I made at that time. To the extent that it is
13 a condensation or an abstract, it is correct. By one p.m.
14 of that day I think what had evolved in our discussions in
15 California had been a recognition of the validity of
16 Mr. Buchen's objectives, and what had evolved on the other side
17 of the coin was a recognition that an irrevocable gift at this
18 time without granting to President Nixon an opportunity to
19 characterize the chattel that he make the subject of an
20 irrevocable gift was both improper and impossible.

21 We sought then to attempt to fashion a document that
22 incorporated those two recognitions. If a document could
23 not be prepared that would accomplish those two recognitions,



1 then there would be a status quo, and the status quo as far
2 as I was concerned indicated to me a probability of litigation
3 initiated by Mr. Nixon, possibly in the nature of replevin.

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12-1 1 Q Now, looking at page 4 -- unless you have more to
2 add?

3 A No.

4 Q On the top of the page, it says, "During all of
5 these negotiations, no one had been in contact with Arthur
6 Sampson or with anyone in the General Services Administration."

7 Does that correctly reflect what you said to
8 Mr. Davis?

9 A That is what I said. I would add, to the best of
10 my knowledge.

11 Q Of course. Then it says, "To Becker's knowledge,
12 the only persons in the government who were aware of this
13 agreement beforehand were President Ford, Robert Hartmann,
14 Alexander Haig, William Casselman, Phillip Buchen, and, at
15 the last minute, Gerry terHoorst." Is that accurate, to the
16 best of your knowledge?

17 A It is accurate if Mr. Geller who wrote this will
18 tell me what he means by "beforehand," and if he will tell me
19 what he means by "at the last minute." What I said was,
20 "Before Mr. Sampson executed it." The people listed there were
21 aware of what had transpired between Mr. Ziegler and Mr. Miller
22 and myself in San Clemente. I would add, there were other
23 people involved. Obviously, there was one Herbert Miller, one



2-2 1 Richard Nixon, one Ronald Ziegler, a young lady that did the
2 typing in California--

3 MR. DAVIS: For clarification, I think it says, "The
4 only persons in the government." I don't think Mr. Nixon was
5 in the government anymore.

6 MR. MILLER: Mr. Ziegler.

7 THE WITNESS: There were some people, some staff
8 secretaries in the White House that may have had some know-
9 ledge.

10 BY MR. DOBROVIR:

11 Q Going on to the next paragraph -- I am almost
12 through -- "It was then shown to Sampson for the first time
13 at about 5 p.m. on September 7th." Is that your recollection?

14 A My recollection is later.

15 Q Later? When? To your recollection, of course.

16 A My recollection would be approximately 6:30. I have
17 a reason for that recollection at that hour.

18 Q That seems to be the same as the recollection of
19 some of the other participants. What is the reason?

20 A I was meeting my wife and another couple that night,
21 it was a Saturday night, to attend a 7:30 movie in Montgomery
22 County and the other couple picked up my wife and I met them
23 in the theater after the movie was three-quarters finished.



12-3 1 It was California Split, or something.

2 Q The next sentence I want to focus on is, "Sampson
3 spent about ten minutes reading and studying the agreement."
4 Does that accurately reflect what you said?

5 A I don't know if I said ten minutes. My testimony
6 today would be a minimum of ten to a maximum of fifteen to
7 twenty minutes. He was reading and writing as he was reading.

8 Q Now, the next sentence I want to ask you about goes,
9 "The one concern of Sampson's, Becker recalls, was that the
10 security features of the agreement would cost a great amount
11 of money and he wondered whether it would come out of his
12 budget." Is that an accurate reflection of what you said?

13 A It is accurate that I recall that that was a concern
14 of Mr. Sampson's and that he voiced that. It is not accurate
15 to the point that that is all I recall.

16 Q What else do you recall?

17 A What I have testified to. Mr. Sampson asked me
18 how these things would be done and would ^{Mr. Nixon} ~~he~~ be getting ori-
19 ginals or duplicates.

20 Q How long did the interview with Mr. Davis take?

21 A Ninety minutes.

22 Q Have you been interviewed by anybody else prior to
23 the deposition today, in addition to Mr. Davis and the gentle-



12-4 1 men that were with him?

2 A No.

3 Q Did Mr. Davis tell you that he had interviewed
4 anyone else?

5 A No. I didn't ask and I don't believe he volunteered.

6 MR. DOBROVIR: I have no further questions.

7 THE WITNESS: You and I met this morning, however,
8 and we discussed this matter on the way over here.

9 MR. DOBROVIR: That's right.

10 MR. SPOONER: I have only a couple of questions.

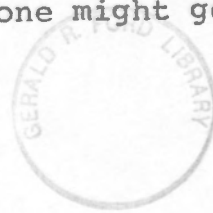
11 FURTHER EXAMINATION

12 BY MR. SPOONER:

13 Q The last sentence of the second paragraph on page
14 one states, "An attempt to move these materials to Nixon,
15 which Becker attributed merely to a failure of communication,
16 was aborted."

17 Do you recall saying that to Mr. Davis, or words
18 to that effect to Mr. Davis, in your meeting?

19 A Let me read that for a moment, please. Mr. Geller
20 is quite inaccurate in the context that he uses the phrase,
21 "these materials." If you take that proper noun, "these
22 materials," and try to determine what he is talking about in
23 that sentence by reading the previous sentences, one might get



12-5 1 the impression that we are talking about all of the records
2 and tapes of former President Nixon. That is not what hap-
3 pened. I am sure I didn't state that. What had happened was
4 that there was by simply a failure of communication an attempt
5 to mail or transmit certain household items of the former
6 President and his family from the White House mansion, and I
7 believe they were clothes and some personal items, Presidential
8 mementos, and also what was placed into that same shipment
9 were a box or was a box containing cards reflecting the re-
10 cords of gifts delivered to President Nixon ^{or} ~~in~~ the United
11 States of America during President Nixon's administration.
12 It is those items that were in a truck presumably earmarked
13 to be sent to Andrews to be placed on the plane to be sent to
14 California that were found to be in the truck and the truck
15 was withheld. Certainly it doesn't include all of the items,
16 just those.

17 Q Do you know who put the box of records into the
18 truck?

19 A No, I don't. I don't know who put them in.

20 Q Who told you about these records being placed in
21 the truck?

22 A I think Bill Casselman.

23 Q Do you know when the records were placed in the



12-6
1 truck?

2 MR. GOLDBLOOM: I am going to object to this on
3 the grounds of relevancy. I fail to see where this line of
4 questioning in such an extensive nature is pertinent to the
5 hearing on the preliminary injunction scheduled for the 15th
6 of November.

7 BY MR. SPOONER:

8 Q Could you answer the question?

9 A I forgot the question.

10 MR. SPOONER: I have too. Would you read the ques-
11 tion back?

12 (Whereupon, the pending question was read by the
13 reporter.)

14 THE WITNESS: No, I don't know the precise date,
15 but it is before September 8th. It would be sometime in mid-
16 August.

17 BY MR. SPOONER:

18 Q Do you know whether Mr. Buzhardt was involved in
19 any way with the placing of the personal materials and the
20 records in the truck or ordering that that be done?

21 A No, sir. What I believe happened there was simply
22 the household effects were placed in a truck by someone who
23 thought it was the right thing to do and some of the boxes

12-7 1 were mailed out or found their way into the truck, too. I
2 don't believe there was anything surreptitious about it.

3 Q Did anyone prevent the household goods from being
4 sent to Mr. Nixon?

5 A Yes, at that time.

6 Q Have they since been sent to Mr. Nixon?

7 A I believe some have.

8 Q How about the records that were on the truck?
9 Have they since been sent to Mr. Nixon, to your knowledge?

10 A To my knowledge, no, they were removed.

11 Q Do you know who ordered that the truck be held up
12 and the materials not be sent to California?

13 A Yes.

14 Q Who was that?

15 A Mr. Casselman and myself.

16 Q Why did you order that the materials not be sent?

17 A Because Mr. Buchen had assured the Special Prose-
18 cutor on August 15th, 1974, that no records would be trans-
19 mitted outside of the White House complex.

20 Q Do you have any knowledge of where these records
21 are today that were on the truck?

22 A No. I would assume they are somewhere secured in
23 the White House complex.



12-8 1 Q I may have asked this before. Tell me if you
2 answered it. Do you have any knowledge of who put the ma-
3 terials on the truck?

4 A I don't.
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1 Q Okay. I would also like to ask you, Mr. Becker,
2 a question about the second sentence in the third paragraph
3 on page 1, which reads as follows: "Sometime thereafter--"
4 namely, after mid-August--"Buchen received an informal opinion
5 from the Attorney General that ownership was in Nixon but
6 that President Ford as the current custodian had certain
7 obligations." Do you recall saying that to Mr. Davis or words
8 to that effect?

9 A Words to that effect, yes.

10 Q Do you recall what the "certain obligations" were
11 that you were referring to?

12 A They would be--I haven't read the Attorney General's
13 opinion in over sixty days, final written opinion, but I would
14 subscribe my answer to whatever that opinion states on that
15 subject matter. I think it relates to the Bailee's obligation
16 and it cites the Fulsom-Marsh case.

17 Q Fulsom versus Marsh case?

18 A Which speaks to that subject.

19 Q Going to the third full paragraph on page 2, the last
20 sentence in that paragraph reads, "Most of this second meeting
21 was also spent with the pardon".

22 A Where are you?

23 MR. MILLER: Page 2.



1 BY MR. SPOONER:

2 Q The third full paragraph on page 2. Now, I believe
3 in response to a question from Mr. Dobrovir, you took issue
4 with the statement elsewhere in this memorandum that most of
5 the first meeting was spent discussing the pardon. Did you
6 tell Mr. Davis that most of the second meeting, namely, the
7 meeting on September 5th, was spent discussing the pardon?

8 A I don't think that is accurate. I will say it is
9 accurate to the point that there was more time spent on the
10 question of pardon on the September 5th meeting than the
11 September 3 meeting because it was simply a matter of seconds.

12 The September 5th meeting with respect to the pardon,
13 the conversation was to the effect that Mr. Ford was still
14 giving consideration to it and Mr. Miller indicated, "If he
15 is going to do it when is he going to do it," and, "May we
16 know in advance," questions to that effect.

17 But there was no substantive conversation as to
18 what a pardon would contain, for what period of time he would
19 be pardoned, for what offenses he would be pardoned, or no
20 substantive conversation at that time on acceptance or re-
21 jection of the pardon. I think it was at that meeting Mr.
22 Miller advised that his personal belief--he wasn't speaking
23 on behalf of his client--that if such a pardon--if a pardon

'13-3

1 were granted, that it was Mr. Miller's personal feeling that
2 a statement should be issued by President Nixon to the effect
3 of acknowledging some complicity in some illegal acts or of
4 contrition. I don't think Mr. Miller used the word "contrition."
5 I don't think he used the word "acknowledging some complicity."

6 But Mr. Millwer was speaking and he made it clear
7 that that was his own personal feeling on that question.

8 MR. SPOONER: I have no further questions.

9 MR. MILLER: One further question.

10 RE-EXAMINATION

11 BY MR. MILLER:

12 Q At the time you stopped the truck with the Presiden-
13 tial materials on it, as you have testified--did you testify
14 that you stopped a truckload of materials from leaving?

15 A Yes.

16 Q Were you acting on behalf of Mr. Buchen when you
17 stopped the shipment?

18 A Yes.

19 MR. MILLER: Okay.

20 MR. DAVIS: One question also.

21 RE-EXAMINATION

22 BY MR. DAVIS:

23 Q Between the date of the interview that is Deposition

o/13-4

1 Number 1 and today have you had occasion to talk about the
2 general facts that we have gone over today with Mr. Casselman
3 and Mr. Buchen or anybody else involved in those facts?

4 A. Have I had?

5 Q. Yes.

6 A. Yes, I have. The facts? Is that what your question
7 is?

8 Q. Yes. Have you gone over the substance of what
9 occurred with--in any kind of detail at all with Mr. Casselman,
10 Mr. Buchen or anybody else involved in the events?

11 A. Not with Mr. Buchen. With Mr. Casselman, he and I
12 had a conversation relative to my interview on this November
13 1 date and my memory of things.

14 MR. DAVIS: I have nothing further.

15 MR. GOLDBLOOM: I have a couple of questions.

16 EXAMINATION

17 BY MR. GOLDBLOOM:

18 Q. With respect to the last page, page 4, I believe
19 there is some confusion in the record about the amount of time
20 Mr. Sampson spent reading and studying the agreement. There
21 is a sentence here in the middle paragraph which relates to,
22 and I quote, "Sampson spent about ten minutes reading and
23 studying the agreement." I believe when questioned about that

/13-5

1 sentence in this memorandum you acknowledged that that was
2 probably so, or between somewhere between ten and fifteen
3 minutes. I believe you testified earlier before this memo-
4 randum had been produced that you were in an out of the
5 Roosevelt Room where Mr. Sampson was examining the agreement,
6 is that correct?

7 A. Yes.

8 Q. During the time that you were out of the room it is
9 obvious that you had no opportunity to observe whether Mr.
10 Sampson was or was not reading the agreement, is that correct?

11 A. That is correct.

12 Q. So while you were out of the room he could very well
13 have been reading the agreement?

14 A. He was reading it when I left and he was still in
15 the process of reading it when I returned.

16 Q. In any event, you did testify that you observed Mr.
17 Sampson either reading the agreement or discussing the agree-
18 ment during all of the time that you had occasion to observe
19 his activities?

20 A. That is correct.

21 MR. GOLDBLOOM: I have no further questions.

22 MR. DOBROVIR: Let me clarify this, Mr. Becker.

23 RE-EXAMINATION



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BY MR. DOBROVIR:

Q You say he was reading it when you left the room and he was reading it when you returned to the room. How long were you out of the room?

A I don't know. It could have been as much as ten minutes. It could have been five minutes.

Q Is your characterization that he read for about ten or fifteen minutes--does that include the time when you were out of the room?

A I would think so, yes.

Q Thank you.

A But when I returned to the room he continued to be reading and he read and I must have sat in the room for another five minutes after I returned, observing Mr. Sampson reading.

MR. DOBROVIR: No more questions.

MR. GOLDBLOOM: I would just like the record to reflect that although there are several parties in these consolidated proceedings and that this deposition of Mr. Becker has been taken on full notice to all of the parties, that those parties who are present are former President Nixon, Mr. Anderson, the Special Prosecutor, the Defendants, and the Reporters Committee.



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(Whereupon, the proceedings in the above-entitled deposition were concluded at 1:30 p.m., this same day.)



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, Leanne P. Bolton, 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 stenographic means 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.

Leanne P. Bolton

 Leanne P. Bolton
 Notary Public

Not Commissioned
 July 31, 1974

11/22/74

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November 20, 1974

Notary Public
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Re: Nixon vs Sampson, et al
DEPOSITION OF MR. BECKER

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**PRESIDENTIAL RECORDINGS AND MATERIALS
PRESERVATION ACT**

NOVEMBER 27, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HAYS, from the Committee on House Administration, submitted the following

REPORT

[To accompany S. 4016]

The Committee on House Administration, to whom was referred the bill (S. 4016) to protect and preserve tape records of conversations involving former President Richard M. Nixon and made during his tenure as President, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment strikes out all after the enacting clause and inserts a substitute text which appears in italic type in the reported bill.

PURPOSE OF THE BILL

The purpose of the bill is twofold:

- (1) to preserve the materials relating to the Presidency of Richard M. Nixon and to provide appropriate access to them; and
- (2) to establish an independent commission to study the disposition of records and documents of all Federal officials.

COMMITTEE ACTION

S. 4016 was passed by the Senate on October 4, 1974, and referred to the Committee on House Administration on October 7, 1974.

The Subcommittee on Printing of the Committee on House Administration held public hearings on H.R. 16902 and other bills relating to the handling of records and documents of Federal officials, including the disposition of the Presidential materials of former President Richard M. Nixon. The hearings were held on September 30 and October 4, 1974.



The subcommittee marked up S. 4016 in public sessions on November 19, 1974, and ordered the bill reported on that day by unanimous voice vote. The full committee marked up the bill in public session on November 26, 1974.

The full committee, on November 26, 1974, by a vote of 20 to 0, ordered the bill reported to the House with an amendment.

BACKGROUND

The disposition and preservation of documents and records of public officials is a matter of continuing importance, particularly to historians, political scientists, and other scholars who have a special interest in preservation of the historical records of the Nation. The disposition of public documents has taken on immediate significance because of the uncertainty regarding the preservation of the tapes and other materials relating to the Presidency of Richard M. Nixon, materials which could provide a full and accurate account of the series of events that have come to be known as "Watergate".

It is unnecessary to recount here the events of "Watergate". It is sufficient to observe that these events led to the approval by the Judiciary Committee of the House of Representatives of three articles of impeachment charging former President Nixon with (1) obstruction of justice; (2) abuse and misuse of Presidential powers; and (3) the failure to comply with congressional subpoenas to produce tapes and other materials necessary to the impeachment inquiry. In the face of these unanimous recommendations, Mr. Nixon resigned from office. These events also resulted in the investigation, prosecution, and conviction of high-ranking executive department officials, including several close aides of former President Nixon, for crimes relating to "Watergate".

Information included in the materials of former President Nixon is needed to complete the prosecutions of Watergate-related crimes. This information is necessary so that the Special Prosecutor may expeditiously conclude his work. This information is necessary to provide defendants in these criminal actions material which may be necessary for their defenses, and information necessary to provide the American people with a complete and accurate account of "Watergate".

But beyond the importance of the Watergate-related material, there is a legitimate public interest in gaining appropriate access to materials of the Nixon Presidency which are of general historical significance. The information in these materials will be of great value to the political health and vitality of the United States. It will permit the American people to understand the events of this important 5½ year period, and to pass on to their legislative representatives any mandates for change in the course of events as for reform of governmental institutions.

Despite the overriding public interest in preserving these materials and for providing appropriate access to them, Mr. Arthur F. Sampson, Administrator of General Services, entered into an agreement on behalf of the Federal Government (see Appendix) which, if implemented, could seriously limit access to these records and could result in the destruction of a substantial portion of them.

NIXON-SAMPSON AGREEMENT

On Sunday, September 8, 1974, President Ford announced a full and unconditional pardon of Mr. Nixon. A few hours later Philip Buchen, Counsel to the President, announced an agreement between former President Nixon and Mr. Sampson regarding the disposition of some 42 million documents and materials relating to the Nixon Presidency.

A legal opinion of September 6, 1974, prepared by Attorney General William Saxbe, took the position that the tapes and other materials of the Nixon Presidency were the private property of Mr. Nixon.

Included within the scope of the agreement is Mr. Nixon's Presidential historical materials as defined in section 2101 of title 44, United States Code. It apparently covers material generated by and collected in the White House and Executive Office Buildings, and includes the recordings, papers, and memoranda produced and collected by Mr. Nixon, by members of his staff, and by staff members of Offices in the Executive Office of the President.

In the agreement, Mr. Nixon asserts that he retains "all legal and equitable title to the materials, including all literary property rights."

The agreement provides that the materials are to be transferred to California for deposit in a GSA facility for at least three years until a permanent depository may be established. The cost of storage is to be assumed by the Federal Government.

Access to the materials would be controlled by Mr. Nixon, who would have absolute veto power over persons who could review the tapes and records.

Although the agreement appears to set forth Mr. Nixon's intention to donate the materials to the Federal Government at some point in the future, it permits Mr. Nixon to withdraw "any or all of the materials" (other than the tapes) after three years for any purpose. This arrangement would permit Mr. Nixon to remove and destroy any of these documents if he wishes to do so.

The agreement further provides that the tape recordings shall remain on deposit until September 1, 1979. Although the agreement purports to donate the tapes to the United States, it allows Mr. Nixon to destroy any of these tapes after September 1, 1979. Further, it provides that the donation of this material is to be based on the condition that the "tapes shall be destroyed at the time of Mr. Nixon's death or on September 1, 1984, whichever event shall first occur."

Thus, the agreement gives Mr. Nixon total control over all the materials and the records of his Administration. It allows him to have access to the materials but excludes others from reviewing these records. By allowing Mr. Nixon to destroy all of the materials, the agreement ignores the public interest in preserving them. It ignores the legitimate continuing need for these materials in many judicial proceedings, including some in which U.S. law enforcement will be frustrated and individual rights impaired if the materials are unavailable to the courts. It ignores the needs of Congress and executive agencies for continued use of the documents in the process of government. And it ignores the needs of historians, political scientists, and other scholars for the information these materials contain on the events of recent years and the workings of our government.

The Special Prosecutor expressed serious reservations about the agreement, and it was determined that none of the materials would be removed from their present locations pending further discussion among Mr. Nixon, the Special Prosecutor, and the White House.

On October 15, 1974, Mr. Nixon brought suit in the United States District Court of the District of Columbia to force Messrs. Sampson, et al., to carry out the provisions of the depository agreement. Several other private parties, including historians, journalists, and scholars, filed, independent actions to block implementation of the agreement. Other parties, including the Special Prosecutor, have moved to intervene as parties in these actions.

The cases were consolidated and a temporary restraining order was issued on October 22, 1974, blocking the Ford Administration from giving Mr. Nixon custody of the materials. This order, with certain subsequent amendments, also gives the Special Prosecutor, defendants in "Watergate" cases, and Mr. Nixon access to the materials.

On November 11, 1974, Senator Ervin, Chairman of the Senate Government Operations Committee, and Senators Nelson and Javits, Chairman Hays and Mr. Brademas filed a memorandum of amici curiae urging the court to maintain the status quo by extending the order until the Congress considered this legislation. Extensive briefs were filed by all the parties in this action in support of motions for preliminary injunctions and oral arguments were heard on November 15 and November 18, 1974.

DESCRIPTION OF BILL

This legislation would nullify the Nixon-Sampson agreement of September 7, 1974, and would provide that the Federal Government retain custody of the Nixon tapes and Presidential materials. The bill would also establish a 17-member commission to study the disposition of the documents of all Federal officials.

TITLE I—PRESERVATION OF PRESIDENTIAL MATERIALS OF MR. NIXON

Title I provides that, notwithstanding any other provision of law or any agreement, the Administrator of GSA shall retain custody and complete control of all tapes, papers, documents, and other materials of general historical significance relating to the Presidency of Richard M. Nixon.

The tape recordings include all conversations recorded beginning June 20, 1969, and ending August 9, 1974, which (1) include former President Nixon or individuals who were employed by the Federal Government, and (2) were recorded in the White House or in the Executive Office Buildings or Offices of the former President at Camp David, Maryland, Key Biscayne, Florida, or San Clemente, California.

This title would give the Federal Government custody of all papers, documents, memoranda, transcripts, and other objects and materials which constitute the historical materials of Mr. Nixon as defined in section 2101 of title 44, United States Code.

The material would be immediately available for use in judicial proceedings, either by subpoena or other legal process. Production of material in these proceedings would be subject to any "right, defenses,

or privileges" which the Federal Government or any person may raise. A request for access to the material by the Special Prosecutor would be given priority over other requests.

Mr. Nixon, or any person whom he may designate, may have at all times access to the material for any purpose.

The legislation takes no position on the question of ownership of the materials prior to enactment of this title; however, in the event a court determines that this legislation deprives any person of private property without "just compensation", this legislation authorizes the payment of such sums as may be deemed necessary by an appropriate United States court.

To guard against the destruction or removal of any of the materials, the bill provides that none of the materials shall be destroyed, except as may be provided by law. It requires that the materials be maintained within the metropolitan area of Washington, D.C., and provides that the Administrator shall issue at the earliest possible date regulations to protect the material from loss or destruction and to prevent access to the material by unauthorized persons.

The bill directs the Administrator to submit to the Congress, within 90 days after the enactment of the measure, regulations that would provide public access to the tape recordings and other material. These regulations would insure access to material related to "Watergate" as well as material of general historical significance. In preparing these regulations, the Administrator shall take into account the following factors: (1) the need to provide a full accounting of the events of "Watergate"; (2) the need to make the materials available in judicial proceedings; (3) the need to limit general access to material relating to national security; (4) the need to protect every individual's right to a fair and impartial trial; (5) the need to protect any individual's opportunity to assert any legal or constitutional right or privilege which may limit general access to the material; (6) the need to provide public access to material of general historical significance in a manner consistent with procedures that have been used to provide public access to materials of former Presidents; and (7) the need to return to Mr. Nixon purely personal materials, which are not of general historical value.

In the enumeration of criteria to be applied by the Administrator in establishing guidelines for the management of materials referred to in section 101, the committee added in subparagraph (5) the term "privilege" to "legally or constitutionally based rights" as grounds for limitation of access. The committee's purpose is to recognize the legitimacy of the doctrine of executive privilege as stated in the July 24, 1974, ruling of the Supreme Court in *United States v. Nixon, President of the United States, et al.*

None of the considerations above enumerated are intended to limit access by the public, otherwise granted by the Freedom of Information Act.

Section 105(a)(6) of this legislation is intended to underscore the concern of the committee that the public be given access to the tapes and other materials of the Nixon Presidency of general historical significance as well as to the materials related to "Watergate." Access under this subsection is to be provided in a manner comparable to procedures that have been followed by Presidents in providing access to their materials. Although it is recognized that some former Presi-

dents have imposed broad restrictions on access to their materials, it is understood that most, and particularly most recent former Presidents, have exhibited an interest in preserving the material intact and providing early public access to the material.

Thus, former President Franklin C. Roosevelt recognized the importance of this approach:

I have been taking the advice of many historians and others. Their advice is that material of that kind [i.e., Roosevelt's papers] ought not to be broken up, for the future. It ought to be kept intact. It ought not to be sold at auction; it ought not to be scattered among descendants. It should be kept in one place and kept in its original form because Presidential papers and other public papers have been culled over during the lifetime of the owner, and the owner has thrown out a good deal of material which he personally did not consider of any importance which, however, from the point of view of factual history, may have been of the utmost importance. *The Public Papers and Addresses of Franklin D. Roosevelt* 630 (1941).

This attitude was also exhibited by former President Dwight D. Eisenhower. During hearings before the Subcommittee on Printing, John Eisenhower, who has continuing responsibility for maintaining the late President's papers, stated:

Since we finished on my father's memoirs and I left Gettysburg, I have been involved on a continuing basis with my responsibilities in trying to get those documents out of Abilene into the public domain. Our philosophy is the quicker the Presidential papers can be gotten out into the public domain the more advantageous it is to the former President.

Where restrictions have been imposed by former Presidents, they have been generally limited to matters of national security. It is not the purpose of this section to authorize Mr. Nixon to place restriction on access to the materials. Any restrictions would be imposed by current government officials in accordance with existing legal authorities and procedures.

The legislation provides that the regulations shall take effect 90 days after submission to the Congress, unless disapproved by a resolution of either House of the Congress. If the committee to which the regulations are referred has not reported a resolution of disapproval within 60 days after their submission to the Congress, any Member may initiate a resolution of disapproval. This title provides that any Member may by resolution discharge the committee of further consideration of the regulations. Such a discharge motion would be privileged and a resolution of disapproval would be in order if the discharge motion succeeds. The effect of this provision would be to permit a vote of disapproval by the whole House, if appropriately raised, 60 days after the relevant committee has had an opportunity to review the regulations.

To assure an expeditious resolution of a challenge to any provision of the title, the bill would vest in the United States District Court for the District of Columbia exclusive jurisdiction to hear any challenge to the legal or constitutional validity of any pro-

vision of that title or any regulations issued thereto. This legislation provides that such a challenge shall be heard by a three-judge panel, with direct appeal to the United States Supreme Court. Any challenge shall be considered a priority matter by both courts, requiring immediate consideration and resolution.

It is the intent of the committee that this section not apply to litigation now pending in which access to the material relating to the Nixon Presidency under the Freedom of Information Act and title to the material in issue. But rather, it is intended to apply to actions filed subsequent to enactment of this title.

Historical materials

This title would give the United States custody of all the Presidential "historical material" of Richard M. Nixon. Section 2101 of title 44, United States Code, provides that the term "historical material" includes "books, correspondence, documents, papers, pamphlets, works of art, models, pictures, photographs, plots, maps, films, motion pictures, sound recordings, and other objects or materials having historical or commemorative value." It is understood that these materials include not only memoranda, letters, and other documents generated by Mr. Nixon, but also all documents and material produced or collected by aides to the former President and officials employed in Offices of the Executive Office during the Presidency of Mr. Nixon.

Private ownership

The legislation takes no position on the ownership of these materials prior to enactment of this title. The committee believes that at this time the resolution of the question of prior ownership is a matter most appropriately left for the judiciary to decide.

Nevertheless, the committee believes it has the authority to pass legislation concerning the disposition of the Nixon Presidential materials. If the material is already public property, the bill is simply an exercise of the congressional power under Article IV of the Constitution to dispose of the property of the United States—one of the basic constitutional grants of authority to the Congress.

If the material is private property, the legislation would, if necessary, exercise the power of eminent domain. This power to take property is also vested in the Congress, although the authority to determine "just compensation" belongs to the judicial branch.

Moreover, even if these materials are private property, the Federal Government may take "protective custody" of material which is necessary for the continuing use of the Federal Government where it is in the public interest to do so. According to Attorney General Saxbe's opinion:

None of the considerations above enumerated is intended to limit access by the public otherwise granted by section 552 of title 5, United States Code (the Freedom of Information Act).

Historically, there has been consistent acknowledgment 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 * * *. 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. (Citation omitted.) 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. (Op. of the Att'y Gen., September 6, 1974, pp. 9-10.)

Clearly, it is in the public interest to preserve the materials and to provide access to the materials for judicial proceedings to expeditiously complete the prosecution of Watergate-related crimes and to permit the just resolution of other adjudications requiring access to the materials. Clearly, it is in the public interest to provide general public access to the materials to assure a full and accurate account of "Watergate" and to provide a basis for legislation and executive action to prevent future "Watergates" and clearly it is in the public interest to safeguard the historical record of the Presidency during the last five and one-half years.

TITLE II—NATIONAL STUDY COMMISSION ON RECORDS AND DOCUMENTS OF FEDERAL OFFICIALS

Title II would establish an independent commission to study the handling of records and documents of all Federal officials. Federal officials would include elected officials, members of the Federal judiciary, and other appointed officers of the government.

The 17-member commission would be composed of two Members of the House of Representatives; two Senators; three appointees of the President, selected from the public on a bipartisan basis, the Librarian of Congress; one appointee each of the Chief Justice of the United States, the White House, the Secretary of State, the Secretary of Defense, the Attorney General, and the Administrator of General Services; and three other representatives, one each appointed by the American Historical Association, the Society of American Archivists, and the Organization of American Historians.

The commission would be directed to make specific recommendations for legislation and recommendations for rules and procedures as may be appropriate regarding the disposition of documents of Federal officials. The final report is to be submitted to the Congress and the President by March 31, 1976.

The Subcommittee on Printing held two days of hearings on legislation relating to the disposition of documents of Federal officials. Testimony during these hearings indicated that the issues relating to the disposition of these documents are so varied and complex that a comprehensive study would be warranted to develop specific recommendations that could be used by the Congress in considering permanent legislation affecting documents of all Federal officials.

The issues that should be considered by the commission are both philosophical and procedural. They include a review of procedures to insure maximum preservation of useful historical material and procedures to assure earliest practicable accessibility of these historical materials to scholars for their use and interpretation. The commission should also consider the extent to which procedures for gaining early access to these materials may affect the willingness of officials to preserve to the maximum extent useful historical matter.

Other issues that should be considered include: (1) the nature of public documents as an adequate documentation of the work of government officials; (2) the disposition of records created by appointed officials such as cabinet officers, White House staff and members of the Federal judiciary; (3) a discussion of a consistent policy regarding records created within the Executive Office of the Presidency; (4) the role of elected officers as they generate and retain files reflecting both politics and public administration; (5) whether personal and truly political matters could be separated from matters of official jurisdiction in public administration; (6) whether the inclusion of political files would inhibit political activities in any way; (7) circumstances under which general public access to materials should be allowed and appropriate procedures to provide such access; (8) the need to protect certain materials for personal, political, or national security reasons; and (9) whether legislation would encourage officials to purge files while still in office.

The bill would establish a commission that would include the leading authorities on, and persons with principal responsibilities for, the disposition of historical records. This commission would ensure the exchange of ideas among experts in the field and lead to highly professional recommendations which will be necessary if the Congress is to legislate intelligently in this area.

Dr. James B. Rhoads, Archivist of the United States, in his testimony in support of the proposal, stated:

* * * we strongly support the call for a study commission to examine the foundations of historical evidence and the presumptions about what should be kept and how best to preserve it to serve the needs of the future. Our archival problems are both philosophical and procedural; a study commission can be a good approach to solving them * * *.

Dr. Rhoads went on to observe that:

Study commissions have often overcome great difficulties in organizing governmental efforts in the past: The creation of a national archives system was brought about by the efforts of a number of study commissions; the Brownlow Committee of 1936-40 established the Executive Office of the President and approved the efficiency of the Executive branch; and the Hoover Commissions of 1949 and 1955 overhauled the whole organization of the Executive branch to make it more responsive to the demands of a changed society. I am confident that this study commission can meet with the same level of success in an area of equal complexity.

CONCLUSION

It is the opinion of the committee that this legislation meets the public interest of preserving the tapes and materials of the Presidency of Richard M. Nixon and that it provides appropriate access to these materials for use in judicial proceedings and for legitimate use by the public. The committee also believes that the bill will constructively contribute to the development of a uniform national policy regarding the handling of the documents and records of all Federal officials.

SECTION-BY-SECTION SUMMARY OF THE BILL

SHORT TITLE

The first section provides that this legislation may be cited as the "Presidential Recordings and Materials Preservation Act".

TITLE I—PRESERVATION OF PRESIDENTIAL RECORDINGS AND MATERIALS

DELIVERY AND RETENTION OF CERTAIN PRESIDENTIAL MATERIALS

Watergate tape recordings

Section 101(a) provides that, notwithstanding any other law or agreement reached under section 2107 of title 44, United States Code, any Federal employee in possession shall deliver to the Administrator of General Services (hereinafter in this summary referred to as the "Administrator") all original tape recordings of conversations which (1) were recorded by any officer or employee of the Federal Government; (2) involve former President Richard M. Nixon or other individuals who were employed by the Federal Government at the time of the conversation; (3) were recorded in the White House or in certain other offices of Mr. Nixon; and (4) were recorded during the period beginning January 20, 1969, and ending August 9, 1974.

Retention of historical materials

Section 101(b) provides that, notwithstanding any other law or agreement reached under section 2107 of title 44, United States Code, the Administrator shall receive and retain all papers, documents, memorandums, transcripts, and other objects and materials which constitute the Presidential historical materials of Mr. Nixon, covering the period beginning January 20, 1969, and ending August 9, 1974.

Section 101(b) also defines the term "historical materials" as having the meaning given it by section 2101 of title 44, United States Code. Section 2101 provides that such term includes books, correspondence, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, motion pictures, sound recordings, and other objects or materials having historical or commemorative value.

AVAILABILITY OF CERTAIN PRESIDENTIAL MATERIALS

Prohibition of destruction

Section 102(a) provides that none of the tape recordings or other materials referred to in section 101 (hereinafter in this summary re-

ferred to as "recordings or materials") shall be destroyed, except as may be provided by law.

Use in judicial proceedings

Section 102(b) provides that, notwithstanding any other provision of title I of this legislation, any other law, or any agreement reached under section 2107 of title 44, United States Code, the recordings or materials shall be made available for use in any judicial proceeding or otherwise subject to court subpoena or other legal process immediately upon the date of enactment of title I of this legislation, subject to any rights, defenses, or privileges which the Federal Government or any person may invoke.

Section 102(b) also provides that priority shall be granted to any request of the Office of Watergate Special Prosecution Force for the recordings or materials.

Access by Mr. Nixon

Section 102(c) provides that Mr. Nixon, or any person he designates in writing, shall have access to the recordings or materials for any purpose, subject to regulations issued by the Administrator under section 104 of this legislation.

Access by executive agencies

Section 102(d) provides that any agency or department in the executive branch of the Federal Government shall have access to the recordings or materials for lawful Government use, subject to regulations issued by the Administrator under section 104 of this legislation.

COMPENSATION

Payment for deprivation of property

Section 103 provides that if any court of the United States determines that any provision of title I of this legislation deprives any individual of his property without just compensation, then compensation shall be made to such individual from the Treasury of the United States.

Determination of property rights

Section 103 also provides that the provisions of title I of this legislation shall not be construed as making any determination with respect to any private property right of title to the recordings or materials, if any such right existed before the date of enactment of title I of this legislation. The committee does not intend this legislation to make any decision, determination, or other rule with respect to the existence or extent of any such private property rights. It is the opinion of the committee that the question of private property rights with respect to the recordings or materials should be left for determination by an appropriate court.

REGULATIONS TO PROTECT CERTAIN TAPE RECORDINGS AND OTHER MATERIALS

Section 104 provides that the Administrator shall issue regulations to protect the recordings or materials from loss or destruction and to prevent access to the recordings or materials by unauthorized persons.

Custody of the recordings or materials shall be maintained in Washington, District of Columbia, or its metropolitan area, unless custody at another location is necessary to carry out the provisions of title I of this legislation.

REGULATIONS RELATING TO PUBLIC ACCESS

Submission of regulations

Section 105(a) requires the Administrator to submit to each House of the Congress, no later than 90 days after the date of enactment of title I of this legislation, a report proposing and explaining regulations to provide public access to the recordings or materials. Such regulations are required to take into account the following factors: (1) the need to inform the public regarding the truth with respect to the Watergate affair; (2) the need to make the recordings or materials available in judicial proceedings; (3) the need to prevent or restrict general access to information relating to national security; (4) the need to protect the right of individuals to a fair trial; (5) the need to protect the right of any party to challenge access to the recordings or materials on legal or constitutional grounds; (6) the need to provide public access to materials of general historical significance with respect to the Presidency of Mr. Nixon, as well as to those materials related to the factor described in (1), in a manner which is consistent with procedures which have been used to provide public access to materials of former Presidents; and (7) the need to give to Mr. Nixon those tape recordings and other materials which are not likely to be related to the factor described in (1) and are not otherwise of general historical significance.

Congressional review of regulations

Section 105(b)(1) provides that regulations proposed by the Administrator under section 105(a) shall take effect 90 legislative days after they are submitted to the Congress, unless either House of the Congress disapproves such regulations by resolution during the 90-legislative-day period. The Congress may disapprove all the regulations which are submitted at the same time by the Administrator, or the Congress may disapprove some of the proposed regulations while accepting others. In the latter case, those regulations which are not expressly disapproved would take effect after the 90-legislative-day period.

Section 105(b)(2) provides that the Administrator may not issue any regulation or any change in any regulation if such regulation or change has been disapproved by either House of the Congress.

Section 105(b)(3) provides that subsection (b) shall apply to any change in any regulation proposed by the Administrator.

Section 105(b)(4) provides that section 105(b)(5) is enacted by the Congress as an exercise of the rule-making power of the House of Representatives, with recognition that the House may change such rules at any time.

Section 105(b)(5) provides that any resolution introduced in the House of Representatives under section 105(b)(1) shall be referred to a committee by the Speaker of the House.

Paragraph (5) also provides that if the committee to which such resolution has been referred does not report any resolution relating to a proposed regulation or change within 60 days after submission of such

proposed regulation or change, then it shall be in order to move to discharge the committee from further consideration of any resolution introduced under section 105(b)(1) which relates to such proposed regulation or change.

Paragraph (5) also provides that such motion may be made only by a person favoring the resolution, and the motion shall be privileged. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

Paragraph (5) also provides that if the motion to discharge is agreed to or disagreed to, then it may not be renewed.

Paragraph (5) also provides that when the committee has reported, or has been discharged from consideration of, a resolution introduced in the House under section 105(b)(1), it shall be in order to move to proceed to the consideration of such resolution. The motion shall be privileged, an amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

Paragraph (6) provides that for purposes of section 105(b), the term "legislative days" does not include any calendar day on which both Houses of the Congress are not in session.

Recordings or materials given to Mr. Nixon

Section 105(c) provides that, on and after the date upon which regulations proposed under section 105(b) take effect, the provisions of title I of this legislation shall not apply to recordings or materials given to Mr. Nixon under section 105(a)(7).

JUDICIAL REVIEW

Exclusive jurisdiction; three-judge court

Section 106(a) provides that the District Court for the District of Columbia shall have exclusive jurisdiction to hear legal or constitutional challenges to title I of this legislation or to any regulation issued under title I. Subsection (a) requires that any such challenge be heard by a three-judge district court in accordance with the procedures established by section 2284 of title 28, United States Code, with the right of direct appeal to the Supreme Court. Subsection (a) also requires that priority be given to such challenges on court dockets.

Savings provision

Section 106(b) provides that if any provision of title I of this legislation or any regulation issued under title I is held unconstitutional or invalid, such holding shall not affect the validity or enforcement of any other provision of title I or regulation issued under title I.

PARTICIPATION IN CERTAIN COURT ACTIONS

Section 107 provides that the Committee on Government Operations of the Senate and the Committee on House Administration of the House of Representatives may appoint counsel to intervene in any case or proceeding which involves (1) the ownership, compensation for any taking, or other similar rights to or in, the recordings or materials; or (2) any challenge to the legal or constitutional validity of any provision of title I of this legislation or of any regulation issued under the authority granted by title I. Each such committee may take such action by acting jointly or separately.

The committee intends that this provision shall serve to assure that legal and constitutional issues in the two types of cases described in the preceding paragraph are raised, developed, and presented in an effective fashion. Section 107 provides each committee with an opportunity to intervene in cases and proceedings if either committee determines that such intervention is necessary to assure a proper and adequate presentation of the issues.

AUTHORIZATION OF APPROPRIATIONS

Section 108 authorizes to be appropriated such sums as may be necessary to carry out the provisions of title I of this legislation.

TITLE II—PUBLIC DOCUMENTS COMMISSION

SHORT TITLE

Section 201 provides that title II of this legislation may be cited as the "Public Documents Act".

ESTABLISHMENT OF STUDY COMMISSION

Section 202 amends chapter 33 of title 44, United States Code, by adding section 3315 through section 3324.

DEFINITIONS

Section 3315 contains the following definitions, which are defined for purposes of section 3315 through section 3324:

1. The term "Federal officials" is defined to mean the President, the Vice President, any Senator, Representative, Delegate, or Resident Commissioner, or any officer of the executive, judicial, or legislative branch of the Federal Government.

2. The term "Commission" is defined to mean the National Study Commission on Records and Documents of Federal Officials.

3. The term "records and documents" is defined to include handwritten and typewritten documents, motion pictures, television tapes and recordings, magnetic tapes, automated data processing documentation, and other records which reveal the history of the Nation.

ESTABLISHMENT OF COMMISSION

Section 3316 establishes the National Study Commission on Records and Documents of Federal Officials (hereinafter in this summary referred to as the "Commission").

DUTIES OF COMMISSION

Section 3317 requires the Commission to study problems and questions with respect to control, disposition, and preservation of records and documents of Federal officials. The Commission is required to develop recommendations with respect to such problems and questions.

The study is required to include consideration of (1) whether the historical practice with respect to Presidential records and documents should be rejected or accepted, and whether such practice should be made applicable with respect to all Federal officials; (2) the relation-

ship of the findings of the Commission to the provisions of chapter 19 of title 44 (relating to depository library program), section 2101 through section 2108 of title 44 (relating to archival administration), and other Federal laws relating to control, disposition, and preservation of records and documents of Federal officials; (3) whether the findings of the Commission should affect control, disposition, and preservation of records and documents of agencies within the Executive Office of the President created for short-term purposes; (4) the recordkeeping procedures of the White House Office; (5) rules which should apply to control, disposition, and preservation of records and documents of Presidential task forces, commissions, and boards; (6) criteria for determining the scope of materials which should be considered the records and documents of Members of the Congress; (7) the privacy interests of individuals who communicate with Federal officials; and (8) any other problems which the Commission considers relevant to carrying out its duties.

MEMBERSHIP

Selection of members

Section 3318(a) provides that the Commission shall be composed of the following 17 members: (1) one Member of the House of Representatives appointed by the Speaker of the House upon recommendation by the majority leader; (2) one such Member appointed by the Speaker upon recommendation by the minority leader; (3) one Member of the Senate appointed by the President pro tempore of the Senate upon recommendation by the majority leader of the Senate; (4) one such Member appointed by the President pro tempore upon recommendation by the minority leader; (5) one Justice of the Supreme Court, appointed by the Chief Justice of the United States; (6) one person employed by the Executive Office of the President or the White House Office, appointed by the President; (7) three appointed by the President (no more than two of which may be of the same political party), by and with the advice and consent of the Senate, from persons who are not officers or employees of any government and who are qualified to serve on the Commission by virtue of their education, training, or experience; (8) one representative of the Department of State, appointed by the Secretary of State; (9) one representative of the Department of Defense, appointed by the Secretary of Defense; (10) one representative of the Department of Justice, appointed by the Attorney General; (11) the Administrator of General Services or his delegate; (12) the Librarian of Congress; (13) one member of the American Historical Association, appointed by the counsel of such Association; (14) one member of the Society of American Archivists, appointed by such Society; and (15) one member of the Organization of American Historians, appointed by such Organization.

Vacancies

Section 3318(b) provides that a vacancy in the Commission shall be filled in the same manner as the original appointment was made.

Continuation of membership

Section 3318(c) provides that if a Member of the Congress serving on the Commission leaves the Congress, or if a person appointed to the Commission from persons not officers or employees of any government becomes such an officer or employee, the Member or person may



continue as a member of the Commission for 60 days after his change in status.

Duration of membership

Section 3318(d) provides that members of the Commission shall be appointed for the life of the Commission.

Pay; travel expenses

Section 3318(e) provides that members of the Commission shall serve without pay. Subsection (e) also provides for travel expenses and per diem allowances for members of the Commission, except that the per diem is not extended to members of the Commission who are full-time officers or employees of the United States or Members of the Congress.

Chairman

Section 3318(f) provides that the President shall designate the Chairman of the Commission from among members appointed by the President under section 3318(a)(1)(G).

Meetings

Section 3318(g) provides that the Commission shall meet at the call of the Chairman or a majority of the members of the Commission.

DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS

Director

Section 3319(a) provides that the Commission shall appoint a Director who shall be paid under the rate in effect for level V of the Executive Schedule (5 U.S.C. 5316).

Additional personnel

Section 3319(b) provides that the Commission may appoint and fix the pay of such additional personnel as it deems necessary.

Temporary and intermittent services

Section 3319(c) authorizes the Commission to procure temporary and intermittent services. In procuring such services, the Commission shall seek to obtain advice and assistance from constitutional scholars and members of the historical, archival, and journalistic professions.

Assistance from Federal agencies

Section 3319(d) provides that the heads of Federal agencies are authorized to detail personnel to the Commission.

POWERS OF COMMISSION

Section 3320 authorizes the Commission to hold hearings and receive testimony and evidence. Any member or agent of the Commission may take any action which the Commission may take, upon authorization by the Commission.

Section 3320 also authorizes the Commission to secure information from any department or agency of the United States, if such information is necessary to enable the Commission to carry out its functions.

SUPPORT SERVICES

Section 3321 requires the Administrator of General Services and the Archivist of the United States to provide services and assistance to the Commission.

REPORT

Section 3322 requires the Commission to transmit a report detailing its findings and recommendations to the President and to each House of the Congress no later than March 31, 1976.

TERMINATION

Section 3323 provides that the Commission shall terminate 60 days after transmitting its report under section 3322.

AUTHORIZATION OF APPROPRIATIONS

Section 3324 authorizes to be appropriated such sums as may be necessary to carry out section 3315 through section 3324.

TECHNICAL AMENDMENT

Section 203 makes a technical amendment to the table of sections for chapter 33 of title 44, United States Code.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in *italics*, existing law in which no change is proposed is shown in *roman*):

TITLE 44.—UNITED STATES CODE

- * * * * *
- Chapter 33.—Disposal of Records
- Sec.*
3301. Definition of records.
3302. Regulations covering lists of records for disposal, procedure for disposal, and standards for reproduction; approval by President.
3303. Lists and schedules of records to be submitted to Administrator of General Services by head of each Government agency.
- 3303a. Examination by Administrator of General Services of lists and schedules of records lacking preservation value; disposal of records.
3308. Disposal of similar records where prior disposal was authorized.
3309. Preservation of claims of Government until settled in General Accounting Office; disposal authorized upon written approval of Comptroller General.
3310. Disposal of records constituting menace to health, life, or property.
3311. Destruction of records outside continental United States in time of war or when hostile action seems imminent; written report to Administrator of General Services.
3312. Photographs or microphotographs of records considered as originals; certified reproductions admissible in evidence.
3313. Moneys from sale of records payable into the Treasury.
3314. Procedures for disposal of records exclusive.
3315. *Definitions.*
3316. *Establishment of Commission.*
3317. *Duties of Commission.*
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3320. *Powers of Commission.*
3321. *Support services.*
3322. *Report.*
3323. *Termination.*
3324. *Authorization of appropriations.*
- * * * * *

§ 3315. Definitions

For purposes of this section and section 3316 through section 3324 of this title—

(1) the term "Federal official" means any individual holding the office of President or Vice President of the United States, or Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States, or any officer of the executive, judicial, or legislative branch of the Federal Government;

(2) the term "Commission" means the National Study Commission on Records and Documents of Federal Officials; and

(3) the term "records and documents" shall include handwritten and typewritten documents, motion pictures, television tapes and recordings, magnetic tapes, automated data processing documentation in various forms, and other records that reveal the history of the Nation.

§ 3316. Establishment of Commission

There is established a commission to be known as the National Study Commission on Records and Documents of Federal Officials.

§ 3317. Duties of Commission

It shall be the duty of the Commission to study problems and questions with respect to the control, disposition, and preservation of records and documents produced by or on behalf of Federal officials, with a view toward the development of appropriate legislative recommendations and other recommendations regarding appropriate rules and procedures with respect to such control, disposition, and preservation. Such study shall include consideration of—

(1) whether the historical practice regarding the records and documents produced by or on behalf of Presidents of the United States should be rejected or accepted and whether such practice should be made applicable with respect to all Federal officials;

(2) the relationship of the findings of the Commission to the provisions of chapter 19 of this title, section 2101 through section 2108 of this title, and other Federal laws relating to the control, disposition, and preservation of records and documents of Federal officials;

(3) whether the findings of the Commission should affect the control, disposition, and preservation of records and documents of agencies within the Executive Office of the President created for short-term purposes by the President;

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

(5) the nature of rules and procedures which should apply to the control, disposition, and preservation of records and documents produced by Presidential task forces, commissions, and boards;

(6) criteria which may be used generally in determining the scope of materials which should be considered to be the records and documents of Members of the Congress;

(7) the privacy interests of individuals whose communications with Federal officials, and with task forces, commissions, and boards, are a part of the records and documents produced by such officials, task forces, commissions, and boards; and

(8) any other problems, questions, or issues which the Commission considers relevant to carrying out its duties under section 3315 through section 3324 of this title.

§ 3318. Membership

(a)(1) The Commission shall be composed of seventeen members as follows:

(A) one Member of the House of Representatives appointed by the Speaker of the House upon recommendation made by the majority leader of the House;

(B) one Member of the House of Representatives appointed by the Speaker of the House upon recommendation made by the minority leader of the House;

(C) one Member of the Senate appointed by the President pro tempore of the Senate upon recommendation made by the majority leader of the Senate;

(D) one Member of the Senate appointed by the President pro tempore of the Senate upon recommendation made by the minority leader of the Senate;

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

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

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

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

(I) one representative of the Department of Defense, appointed by the Secretary of Defense;

(J) one representative of the Department of Justice, appointed by the Attorney General;

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

(L) the Librarian of Congress;

(M) one member of the American Historical Association, appointed by the counsel of such Association;

(N) one member of the Society of American Archivists, appointed by such Society; and

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

(2) No more than two members appointed under paragraph (1)(G) may be of the same political party.

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

(c) If any member of the Commission who was appointed to the Commission as a Member of the Congress leaves such office, or if any member of the Commission who was appointed from persons who are not officers or employees of any government becomes an officer or employee of a government, he may continue as a member of the Commission for no longer than the sixty-day period beginning on the date he leaves such office or becomes such an officer or employee, as the case may be.

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

(e)(1) *Members of the Commission shall serve without pay.*

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

(f) *The Chairman of the Commission shall be designated by the President from among members appointed under subsection (a)(1)(G).*

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

§ 3319. Director and staff; experts and consultants

(a) *The Commission shall appoint a Director who shall be paid at a rate not to exceed the rate of basic pay in effect for level V of the Executive Schedule (5 U.S.C. 5316).*

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

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

(2) *In procuring services under this subsection, the Commission shall seek to obtain the advice and assistance of constitutional scholars and members of the historical, archival, and journalistic professions.*

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

§ 3320. Powers of Commission

(a) *The Commission may, for the purpose of carrying out its duties under sections 3315 through 3324 of this title, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidences as the Commission may deem desirable.*

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

(c) *The Commission may secure directly from any department or agency of the United States information necessary to enable the Commission to carry out its duties under section 3315 through section 3324 of this title. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.*

§ 3321. Support services

(a) *The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services and assistance as the Commission may request.*

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

§ 3322. Report

The Commission shall transmit to the President and to each House of the Congress a report not later than March 31, 1976. Such report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation, administrative actions, and other actions, as it deems appropriate.

§ 3323. Termination

The Commission shall cease to exist sixty days after transmitting its report under section 3322 of this title.

§ 3324. Authorization of appropriations

There is authorized to be appropriated such sums as may be necessary to carry out section 3315 through section 3324 of this title.

* * * * *

§ 3322. Report. The Commission shall submit to the President and to each House of the Congress a report not later than March 31, 1976. Such report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislative, executive, and other actions as it deems appropriate.

§ 3323. Termination. The Commission shall cease to exist sixty days after transmitting its report under section 3322 of this title.

§ 3324. Authorization of appropriations. There is authorized to be appropriated such sums as may be necessary to carry out section 3316 through section 3324 of this title.

§ 3325. Powers of Commission. (a) The Commission may, in the exercise of its duties, obtain the advice and assistance of constitutional scholars and members of the bar, of accountants, and other professionals.

(b) Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist it in carrying out its duties under sections 3316 through 3324 of this title.

§ 3326. Powers of Commission. (a) The Commission may, in the exercise of its duties, obtain the advice and assistance of constitutional scholars and members of the bar, of accountants, and other professionals.

(b) Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist it in carrying out its duties under sections 3316 through 3324 of this title.

§ 3327. Support services. (a) The Administrator of General Services shall provide to the Commission such administrative support services and assistance as the Commission may request.

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

APPENDIX

NIXON-SAMPSON AGREEMENT RELATING TO PRESIDENTIAL MATERIALS

SEPTEMBER 6, 1974.

Hon. ARTHUR F. SAMPSON,
 Administrator, General Services Administration,
 Washington, D.C.

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

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

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



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

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

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

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

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

A. I agree not to withdraw from deposit any originals of the Materials, except as provided in subparagraph B and

paragraph 10 below, and no reproductions shall be made unless there is mutual agreement. Access to the tapes shall be limited to myself, and to such persons as I may authorize from time to time in writing, the scope of such access to be set forth by me in each said written authorization. No person may listen to such tapes without my written prior approval. I reserve to myself such literary use of the information on the tapes.

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

10. The Administrator shall arrange and be responsible for the reasonable protection of the Materials from loss, destruction or access by unauthorized persons, and may upon receipt of any appropriate written authorization from 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,

(Signed) RICHARD NIXON.

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

S. 4016

[Report No. 93-1507]

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 1974

Referred to the Committee on House Administration

NOVEMBER 27, 1974

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

AN ACT

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

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

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



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


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

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

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

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


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



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

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

20 SEC. 4. If a Federal court of competent jurisdiction
21 should decide that the provisions of this Act have deprived
22 any individual of private property without just compensa-
23 tion, then there shall be paid out of the general fund of the
24 Treasury such amount or amounts as may be adjudged
25 just by a Federal court of competent jurisdiction.



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

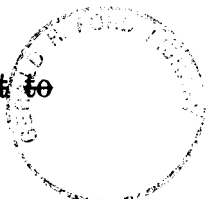
10 ~~SEC. 6. (a)~~ The Administrator shall, within ninety days
11 after the enactment of this Act, submit to the Congress a
12 report proposing and explaining regulations governing access
13 to the tape recordings and other materials referred to in sec-
14 tion 2 of this Act. Such regulations shall take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

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

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

22 (3) the need to prevent general access, except for
23 use in judicial proceedings, to information relating to the
24 Nation's security;

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



1 ~~(5)~~ the need to protect any party's opportunity to
2 assert any legally or constitutionally based right which
3 would prevent or otherwise limit access to the tape
4 recordings and other materials;

5 ~~(6)~~ the need to prevent unrestricted access to tape
6 recordings and other materials unrelated to the need
7 identified in paragraph ~~(1)~~ above; and

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

13 ~~(b)~~ The regulations proposed by the Administrator in
14 the report referred to in subsection ~~(a)~~ above shall take
15 effect upon the expiration of ninety days after the submis-
16 sion of that report to the Congress.

17 SEC. 7. ~~(a)~~ The Federal District Court for the District
18 of Columbia shall have exclusive jurisdiction to hear chal-
19 lenges to the legal or constitutional validity of any provision
20 of this Act or of any regulation issued under the authority
21 granted by this Act. Such challenge shall be heard by a
22 three-judge court constituted under the procedures delineated
23 in section 2284, title 28 of the United States Code, with the
24 right of direct appeal to the United States Supreme Court.
25 Any such challenge shall be treated by the three-judge court



1 and the Supreme Court as a priority matter requiring im-
2 mediate consideration and resolution.

3 ~~(b)~~ If, under the procedures delineated in subsection
4 ~~(a)~~ above, a judicial decision is rendered that a particular
5 provision of this Act, or a particular regulation issued under
6 the authority granted by this Act, is unconstitutional or
7 otherwise invalid, such decision shall not affect in any way
8 the validity or enforcement of any other provision or reg-
9 ulation.

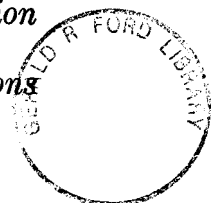
10 SEC. 8. There are authorized to be appropriated such
11 sums as may be necessary to carry out the provision of this
12 Act.

13 *That this Act may be cited as the "Presidential Recordings
14 and Materials Preservation Act".*

15 *TITLE I—PRESERVATION OF PRESIDENTIAL
16 RECORDINGS AND MATERIALS*

17 *DELIVERY AND RETENTION OF CERTAIN PRESIDENTIAL
18 MATERIALS*

19 SEC. 101. (a) Notwithstanding any other law or any
20 agreement or understanding made pursuant to section 2107
21 of title 44, United States Code, any Federal employee in
22 possession shall deliver, and the Administrator of General
23 Services (hereinafter in this title referred to as the "Admin-
24 istrator") shall receive, obtain, or retain, complete possession
25 and control of all original tape recordings of conversations



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

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

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

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

13 (b)(1) Notwithstanding any other law or any agree-
14 ment or understanding made pursuant to section 2107 of
15 title 44, United States Code, the Administrator shall receive,
16 retain, or make reasonable efforts to obtain, complete posses-
17 sion and control of all papers, documents, memorandums,
18 transcripts, and other objects and materials which constitute
19 the Presidential historical materials of Richard M. Nixon,
20 covering the period beginning January 20, 1969, and ending
21 August 9, 1974.

22 (2) For purposes of this subsection, the term "historical
23 materials" has the meaning given it by section 2101 of title
24 44, United States Code.



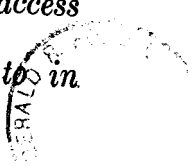
1 AVAILABILITY OF CERTAIN PRESIDENTIAL MATERIALS

2 SEC. 102. (a) None of the tape recordings or other
3 materials referred to in section 101 shall be destroyed, except
4 as may be provided by law.

5 (b) Notwithstanding any other provision of this title,
6 any other law, or any agreement or understanding made
7 pursuant to section 2107 of title 44, United States Code, the
8 tape recordings and other materials referred to in section 101
9 shall, immediately upon the date of enactment of this title,
10 be made available, subject to any rights, defenses, or priv-
11 ileges which the Federal Government or any person may
12 invoke, for use in any judicial proceeding or otherwise subject
13 to court subpoena or other legal process. Any request by the
14 Office of Watergate Special Prosecution Force, whether by
15 court subpoena or other lawful process, for access to such
16 recordings or materials shall at all times have priority over
17 any other request for such recordings or materials.

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

23 (d) Any agency or department in the executive branch
24 of the Federal Government shall at all times have access
25 to the tape recordings and other materials referred to in



1 *section 101 for current lawful Government use, subject to the*
2 *regulations which the Administrator shall issue pursuant to*
3 *section 104.*

4 **COMPENSATION**

5 *SEC. 103. If any court of the United States decides*
6 *that any provision of this title has deprived any individual*
7 *of private property without just compensation, then there*
8 *shall be paid out of the general fund of the Treasury of the*
9 *United States such amount or amounts as may be adjudged*
10 *just by an appropriate court of the United States. However,*
11 *the provisions of this title shall not be construed as making*
12 *any determination with respect to any private property right*
13 *of title to tape recordings and other materials referred to in*
14 *section 101, if any such right existed prior to the date of*
15 *enactment of this title.*

16 **REGULATIONS TO PROTECT CERTAIN TAPE RECORDINGS**
17 **AND OTHER MATERIALS**

18 *SEC. 104. The Administrator shall issue at the earliest*
19 *possible date such regulations as may be necessary to as-*
20 *sure the protection of the tape recordings and other ma-*
21 *terials referred to in section 101 from loss or destruction,*
22 *and to prevent access to such recordings and materials*
23 *by unauthorized persons. Custody of such recordings and*
24 *materials shall be maintained in Washington, District of*



1 *Columbia, or its metropolitan area, except as may otherwise*
2 *be necessary to carry out the provisions of this title.*

3 *REGULATIONS RELATING TO PUBLIC ACCESS*

4 *SEC. 105. (a) The Administrator shall, within ninety*
5 *days after the date of enactment of this title, submit to each*
6 *House of the Congress a report proposing and explaining*
7 *regulations that would provide public access to the tape*
8 *recordings and other materials referred to in section 101.*
9 *Such regulations shall take into account the following factors:*

10 *(1) the need to provide the public with the full*
11 *truth, at the earliest reasonable date, of the abuses of*
12 *governmental power popularly identified under the*
13 *generic term "Watergate";*

14 *(2) the need to make such recordings and materials*
15 *available for use in judicial proceedings;*

16 *(3) the need to prevent general access, except in*
17 *accordance with appropriate procedures established for*
18 *use in judicial proceedings, to information relating to*
19 *the Nation's security;*

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

22 *(5) the need to protect any party's opportunity to*
23 *assert any legally or constitutionally based right or privi-*
24 *lege which would prevent or otherwise limit access to*
25 *such recordings and materials;*



1 (6) the need to provide public access to those ma-
2 terials relating to the Presidency of Richard M. Nixon
3 which have general historical significance, and which are
4 not likely to be related to the need described in paragraph
5 (1), in a manner which is consistent with procedures
6 which have been used to provide public access to materials
7 of former Presidents; and

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

13 (b)(1) The regulations proposed by the Administrator
14 in the report required by subsection (a) shall take effect upon
15 the expiration of ninety legislative days after the submission
16 of such report, unless such regulations are disapproved by a
17 resolution adopted by either House of the Congress during
18 such period.

19 (2) The Administrator may not issue any regulation
20 or make any change in a regulation if such regulation or
21 change is disapproved by either House of the Congress under
22 this subsection.

23 (3) The provisions of this subsection shall apply to any
24 change in the regulations proposed by the Administrator in
25 the report required by subsection (a). Any proposed change



1 shall take into account the factors described in paragraph (1)
2 through paragraph (7) of subsection (a), and such proposed
3 change shall be submitted by the Administrator in the same
4 manner as the report required by subsection (a).

5 (4) Paragraph (5) is enacted by the Congress—

6 (A) as an exercise of the rulemaking power of the
7 House of Representatives, and as such it shall be con-
8 sidered as part of the rules of the House, and such rules
9 shall supersede other rules only to the extent that they
10 are inconsistent therewith; and

11 (B) with full recognition of the constitutional right
12 of the House of Representatives to change such rules at
13 any time, in the same manner, and to the same extent as
14 in the case of any other rule of the House.

15 (5)(A) Any resolution introduced in the House of
16 Representatives under paragraph (1) shall be referred to
17 a committee by the Speaker of the House.

18 (B) If the committee to which any such resolution is
19 referred has not reported any resolution relating to any
20 regulation or change proposed by the Administrator under
21 this section before the expiration of sixty calendar days after
22 the submission of any such proposed regulation or change,
23 it shall then be in order to move to discharge the committee
24 from further consideration of such resolution.



1 (C) Such motion may be made only by a person favor-
2 ing the resolution, and such motion shall be privileged. An
3 amendment to such motion is not in order, and it is not in
4 order to move to reconsider the vote by which such motion
5 is agreed to or disagreed to.

6 (D) If the motion to discharge is agreed to or disagreed
7 to, such motion may not be renewed.

8 (E) When the committee has reported, or has been dis-
9 charged from further consideration of, a resolution intro-
10 duced in the House of Representatives under paragraph
11 (1), it shall at any time thereafter be in order (even though
12 a previous motion to the same effect has been disagreed to) to
13 move to proceed to the consideration of such resolution. Such
14 motion shall be privileged. An amendment to such motion
15 is not in order, and it is not in order to move to reconsider
16 the vote by which such motion is agreed to or disagreed to.

17 (F) For purposes of this subsection, the term "legislative
18 days" does not include any calendar day on which both
19 Houses of the Congress are not in session.

20 (c) The provisions of this title shall not apply, on and
21 after the date upon which regulations proposed by the
22 Administrator take effect under subsection (b), to any tape
23 recordings or other materials given to Richard M. Nixon, or
24 his heirs, pursuant to subsection (a) (7).



1 *rately, appoint counsel to intervene in any case or proceeding*
 2 *relating to—*

3 *(1) the ownership, custody, use, or compensation for*
 4 *any taking, of tape recordings and other materials re-*
 5 *ferred to in section 101, or any other similar right to*
 6 *or in such recordings and materials; or*

7 *(2) any challenge to the legal or constitutional valid-*
 8 *ity of any provision of this title or of any regulation*
 9 *issued under the authority granted by this title.*

10 *AUTHORIZATION OF APPROPRIATIONS*

11 *SEC. 108. There is authorized to be appropriated such*
 12 *sums as may be necessary to carry out the provisions of this*
 13 *title.*

14 *TITLE II—PUBLIC DOCUMENTS COMMISSION*

15 *SHORT TITLE*

16 *SEC. 201. This title may be cited as the "Public Docu-*
 17 *ments Act".*

18 *ESTABLISHMENT OF STUDY COMMISSION*

19 *SEC. 202. Chapter 33 of title 44, United States Code,*
 20 *is amended by adding at the end thereof the following new*
 21 *sections:*

22 *"§ 3315. Definitions*

23 *"For purposes of this section and section 3316 through*
 24 *section 3324 of this title—*

25 *"(1) the term 'Federal official' means any indi-*



1 *vidual holding the office of President or Vice President*
2 *of the United States, or Senator or Representative in,*
3 *or Delegate or Resident Commissioner to, the Congress*
4 *of the United States, or any officer of the executive, ju-*
5 *dicial, or legislative branch of the Federal Government;*

6 *“(2) the term ‘Commission’ means the National*
7 *Study Commission on Records and Documents of Fed-*
8 *eral Officials; and*

9 *“(3) the term ‘records and documents’ shall include*
10 *handwritten and typewritten documents, motion pictures,*
11 *television tapes and recordings, magnetic tapes, automated*
12 *data processing documentation in various forms, and*
13 *other records that reveal the history of the Nation.*

14 **“§ 3316. Establishment of Commission**

15 *“There is established a commission to be known as the*
16 *National Study Commission on Records and Documents of*
17 *Federal Officials.*

18 **“§ 3317. Duties of Commission**

19 *“It shall be the duty of the Commission to study problems*
20 *and questions with respect to the control, disposition, and*
21 *preservation of records and documents produced by or on*
22 *behalf of Federal officials, with a view toward the develop-*
23 *ment of appropriate legislative recommendations and other*
24 *recommendations regarding appropriate rules and proce-*
25 *dures with respect to such control, disposition, and preserva-*
26 *tion. Such study shall include consideration of—*



1 “(1) whether the historical practice regarding
2 the records and documents produced by or on behalf of
3 Presidents of the United States should be rejected or
4 accepted and whether such practice should be made ap-
5 plicable with respect to all Federal officials;

6 “(2) the relationship of the findings of the Com-
7 mission to the provisions of chapter 19 of this title,
8 section 2101 through section 2108 of this title, and other
9 Federal laws relating to the control, disposition, and
10 preservation of records and documents of Federal
11 officials;

12 “(3) whether the findings of the Commission should
13 affect the control, disposition, and preservation of records
14 and documents of agencies within the Executive Office
15 of the President created for short-term purposes by the
16 President;

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

21 “(5) the nature of rules and procedures which
22 should apply to the control, disposition, and preserva-
23 tion of records and documents produced by Presidential
24 task forces, commissions, and boards;

25 “(6) criteria which may be used generally in de-
26 termining the scope of materials which should be con-



1 considered to be the records and documents of Members of
2 the Congress;

3 “(7) the privacy interests of individuals whose com-
4 munications with Federal officials, and with task forces,
5 commissions, and boards, are a part of the records and
6 documents produced by such officials, task forces, com-
7 missions, and boards; and

8 “(8) any other problems, questions, or issues which
9 the Commission considers relevant to carrying out its
10 duties under section 3315 through section 3324 of this
11 title.

12 “§ 3318. Membership

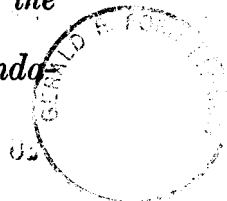
13 “(a) (1) The Commission shall be composed of seven-
14 teen members as follows:

15 “(A) one Member of the House of Representatives
16 appointed by the Speaker of the House upon recom-
17 mendation made by the majority leader of the House;

18 “(B) one Member of the House of Representatives
19 appointed by the Speaker of the House upon recom-
20 mendation made by the minority leader of the House;

21 “(C) one Member of the Senate appointed by the
22 President pro tempore of the Senate upon recommenda-
23 tion made by the majority leader of the Senate;

24 “(D) one Member of the Senate appointed by the
25 President pro tempore of the Senate upon recommenda-
26 tion made by the minority leader of the Senate;



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

3 “(F) one person employed by the Executive Office
4 of the President or the White House Office, appointed by
5 the President;

6 “(G) three appointed by the President, by and with
7 the advice and consent of the Senate, from persons who
8 are not officers or employees of any government and who
9 are specially qualified to serve on the Commission by
10 virtue of their education, training, or experience;

11 “(H) one representative of the Department of State,
12 appointed by the Secretary of State;

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

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

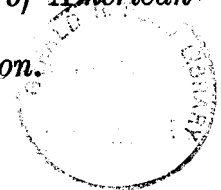
17 “(K) the Administrator of General Services (or his
18 delegate);

19 “(L) the Librarian of Congress;

20 “(M) one member of the American Historical As-
21 sociation, appointed by the counsel of such Association;

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

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



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

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

5 “(c) If any member of the Commission who was ap-
6 pointed to the Commission as a Member of the Congress
7 leaves such office, or if any member of the Commission who
8 was appointed from persons who are not officers or em-
9 ployees of any government becomes an officer or employee
10 of a government, he may continue as a member of the Com-
11 mission for no longer than the sixty-day period beginning
12 on the date he leaves such office or becomes such an officer
13 or employee, as the case may be.

14 “(d) Members shall be appointed for the life of the
15 Commission.

16 “(e)(1) Members of the Commission shall serve without
17 pay.

18 “(2) While away from their homes or regular places of
19 business in the performance of services for the Commission,
20 members of the Commission shall be allowed travel expenses
21 in the same manner as persons employed intermittently in the
22 service of the Federal Government are allowed expenses
23 under section 5703(b) of title 5, United States Code, except
24 that per diem in lieu of subsistence shall be paid only to those
25 members of the Commission who are not full-time officers or
26 employees of the United States or Members of the Congress.



1 “(f) *The Chairman of the Commission shall be desig-*
2 *nated by the President from among members appointed under*
3 *subsection (a)(1)(G).*

4 “(g) *The Commission shall meet at the call of the Chair-*
5 *man or a majority of its members.*

6 “§ 3319. *Director and staff; experts and consultants*

7 “(a) *The Commission shall appoint a Director who*
8 *shall be paid at a rate not to exceed the rate of basic pay*
9 *in effect for level V of the Executive Schedule (5 U.S.C.*
10 *5316).*

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

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

19 “(2) *In procuring services under this subsection, the*
20 *Commission shall seek to obtain the advice and assistance of*
21 *constitutional scholars and members of the historical, ar-*
22 *chival, and journalistic professions.*

23 “(d) *Upon request of the Commission, the head of any*
24 *Federal agency is authorized to detail, on a reimbursable*



1 basis, any of the personnel of such agency to the Commission
2 to assist it in carrying out its duties under sections 3315
3 through 3324 of this title.

4 **“§ 3320. Powers of Commission**

5 “(a) The Commission may, for the purpose of carrying
6 out its duties under sections 3315 through 3324 of this title,
7 hold such hearings, sit and act at such times and places, take
8 such testimony, and receive such evidence, as the Commission
9 may deem desirable.

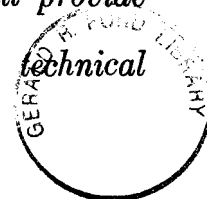
10 “(b) When so authorized by the Commission, any mem-
11 ber or agent of the Commission may take any action which
12 the Commission is authorized to take by this section.

13 “(c) The Commission may secure directly from any
14 department or agency of the United States information nec-
15 essary to enable the Commission to carry out its duties under
16 section 3315 through section 3324 of this title. Upon request of
17 the Chairman of the Commission, the head of such department
18 or agency shall furnish such information to the Commission.

19 **“§ 3321. Support services**

20 “(a) The Administrator of General Services shall pro-
21 vide to the Commission on a reimbursable basis such admin-
22 istrative support services and assistance as the Commission
23 may request.

24 “(b) The Archivist of the United States shall provide
25 to the Commission on a reimbursable basis such technical



1 and expert advice, consultation, and support assistance as
2 the Commission may request.

3 **“§ 3322. Report**

4 “The Commission shall transmit to the President and to
5 each House of the Congress a report not later than March
6 31, 1976. Such report shall contain a detailed statement of
7 the findings and conclusions of the Commission, together with
8 its recommendations for such legislation, administrative ac-
9 tions, and other actions, as it deems appropriate.

10 **“§ 3323. Termination**

11 “The Commission shall cease to exist sixty days after
12 transmitting its report under section 3322 of this title.

13 **“§ 3324. Authorization of appropriations**

14 “There is authorized to be appropriated such sums as
15 may be necessary to carry out section 3315 through section
16 3324 of this title.”.

17 **TECHNICAL AMENDMENT**

18 **SEC. 203.** The table of sections for chapter 33 of title
19 44, United States Code, is amended by adding at the end
20 thereof the following new items:

“3315. Definitions.

“3316. Establishment of Commission.

“3317. Duties of Commission.

“3318. Membership.

“3319. Director and staff; experts and consultants.

“3320. Powers of Commission.

“3321. Support services.

“3322. Report.

“3323. Termination.

“3324. Authorization of appropriations.”.

Union Calendar No. 729

93^d CONGRESS
2^d SESSION

S. 4016

[Report No. 93-1507]

AN ACT

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

OCTOBER 7, 1974

Referred to the Committee on House Administration

NOVEMBER 27, 1974

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

File

XXXXXXXXXXXXXXXXXXXX

December 5, 1974

Baker, Hames & Burkes Reporting, Inc.
1420 K Street, N.W.
Washington, D. C. 20005

Re: Nixon v. Sampson

Ladies and Gentlemen:

I have been authorized by all parties to this matter whom you have billed for depositions to take up with you and adjust the excessive amount of the bills. For 485 pages of transcript you seek to collect a total of \$4,586.70 plus sales tax. You have charged Mr. Spooner and myself a daily copy rate of \$3.65 per page for the original and a copy; you have charged all other parties a rate apparently the daily rate, of \$2.05 for copies; and you charged Mr. Becker, a witness, for a copy of his deposition which he did not order, does not want and has asked me to return to you herewith.

I enclose the Becker bill and copy. Please cancel the bill.

All counsel, including counsel for the Department of Justice, consider these charges, in total, outrageous. I have checked other reporters and find that they are simply excessive. The same job, done by the reporters my firm usually employs, would have been charged at \$2,908.25, plus tax.

We are willing to settle this entire obligation for \$3,000 in total. You have already been paid \$994.25 by the Special Prosecutor's office; we will pay the balance of \$2,005.75 in full settlement of all bills.

Sincerely yours,

William A. Dobrovir

WAD:nye

cc: All counsel



12/30/74

WILLIAM A. DOBROVIR / ANDRA N. OAKES / JOSEPH D. GEBHARDT / ~~SAMUEL X BURTON~~

2005 L Street, N.W. Washington, D. C. 20036 (202) 785-8919

December 27, 1974

Benton L. Becker, Esq.
485 L'Enfant Plaza, S.W.
Washington, D. C. 20024

Re: Nixon v. Sampson

Dear Mr. Becker:

I can't stop the Baker people from sending bills; don't pay it, and continue sending them to me. You never ordered a copy and their attempt to collect for it is an unconscionable gouge which I guess we will have to bring to the Court's attention.

Best wishes for the holiday season.

Sincerely yours,

William A. Dobrovir
William A. Dobrovir

WAD:nye

cc: Irwin Goldbloom, Esq.
Mark Spooner, Esq.
Richard Davis, Esq.



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.

Richey Reviews Tape Rule

By David Pike

Star-News Staff Writer

The numerous complex and tangled legal issues surrounding the tapes and documents of former President Richard M. Nixon — including who owns them

Because questions have been publicly raised about two items in the President's tax returns -- the gift of his papers and the sale of a partial interest in the San Clemente property in 1970 -- they are discussed here in some detail.

1. Gift of Papers

In 1969, President Nixon directed his lawyers to take all necessary steps to make a gift of part of his papers to the United States of America through the National Archives. On March 27, 1969, large crates of his papers were delivered to the Archives. Included were a large volume of paper, books and other memorabilia of his career prior to becoming President, including many of his Vice Presidential papers. On April 8 and 9, 1969, Mr. Ralph Newman, a recognized appraiser of documents, visited the Archives and designated the papers. He also pointed out the items he believed the President should retain. Mr. Newman returned later to the Archives and made a final appraisal of a fair market value of the papers comprising the gift, setting the value at \$576,000.

In making the gift, President Nixon was following the tradition of his six predecessors -- Hoover, Roosevelt, Truman, Eisenhower, Kennedy and Johnson -- all of whom made a gift of their papers to the United States.

A question has arisen in the case of President Nixon, however, because in December, 1969, an amendment was passed retroactive to July 25, 1969, disallowing such deductions and some critics question whether technical requirements relating to the intended gift were sufficiently completed before the expiration date.

President Nixon was and is advised by his attorneys that the gift met the deductibility requirements of the law. Accordingly, in the tax years 1969 - 1972, he has taken deductions totaling approximately \$482,019. As the gift is valued at \$576,000, he is still entitled to additional deductions of \$93,981.

The examination conducted earlier this year by the Internal Revenue Service of President and Mrs. Nixon's returns for the years 1971 and 1972 included a review of the gift. Upon completing this review, the IRS raised no questions about the deductions taken. Nevertheless, because questions have been raised about the procedures followed in making the gift of the papers to the United States, the President is asking the Joint Committee on Internal Revenue Taxation to review those procedures and to pass upon the validity of his tax deductions. The President will abide by the decision of that Committee.

Additional details relating to the gift transaction can be found in the following documents being released today:

-- Appraisal by Ralph G. Newman, President of Abraham Lincoln Book Shop of Chicago, Illinois, of papers of Richard Milhous Nixon, consisting of 600,000 items, as of March 27, 1969 at a valuation of \$576,000, supported by Newman affidavit and statement of his qualifications as an authority in the field of such appraisals.

-- Letter from Kalmbach, DeMarco, Knapp & Chillingworth to Coopers & Lybrand stating their opinion regarding the deductibility for tax purposes of the President's gift of pre-Presidential papers.

--use word "intention" instead of "desire"

--define "materials" as "historical materials" as used in Act

to depository

--provide for transfer/of subsequently discovered or acquired materials
by mutual agreement of former President and Administrator

--after 3 years provide for materials being made available for research and
study, subject to restrictions as may be imposed by former President

--in event above paragraph is agreed to , also seek provisions for equal
access, loan of materials, disposal of materials by Archivist, etc.

--provide for appointment of personal representative

--call whenever you need help, avoid earthquakes!

