

The original documents are located in Box 29, folder “Nixon - Papers Court Cases - Nixon v. Sampson (3)” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

Copyright Notice

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Gerald R. Ford donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections. Works prepared by U.S. Government employees as part of their official duties are in the public domain. The copyrights to materials written by other individuals or organizations are presumed to remain with them. If you think any of the information displayed in the PDF is subject to a valid copyright claim, please contact the Gerald R. Ford Presidential Library.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD M. NIXON

Plaintiff

v.

ARTHUR F. SAMPSON, et al.,

Defendants

and

THE REPORTERS COMMITTEE FOR FREEDOM OF
THE PRESS

Plaintiffs

v.

ARTHUR F. SAMPSON, et al.,

Defendants

and

LILLIAN HELLMAN, et al.,

Plaintiffs

v.

ARTHUR F. SAMPSON, et al.,

Defendants

C.A. No. 74-1518

FILED

NOV 7 1974

JAMES E. DAVEY, Clerk

O R D E R

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



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

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

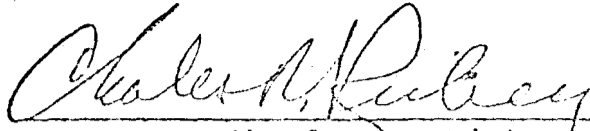
FURTHER ORDERED, that the deponents shall bring to the depositions the requested materials, and may raise any privilege as to any or all of the materials at that time; and upon the assertion of any such privilege, the dispute shall be presented to the Court for resolution on November 15, 1974, or before,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

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

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

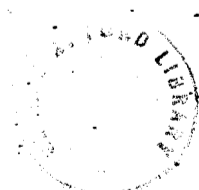


twelve o'clock noon, Thursday, November 14, 1974.



Charles R. Richey
United States District Judge

November 7, 1974



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD M. NIXON

Plaintiff

v.

ARTHUR F. SAMPSON, et al.,

Defendants

and

THE REPORTERS COMMITTEE FOR FREEDOM OF
THE PRESS

Plaintiffs

v.

ARTHUR F. SAMPSON, et al.,

Defendants

and

LILLIAN HELLMAN, et al.,

Plaintiffs

v.

ARTHUR F. SAMPSON, et al.,

Defendants

C.A. No. 74-1518

FILED

NOV 7 1974

JAMES E. DAVEY, Clerk

O R D E R

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



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

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

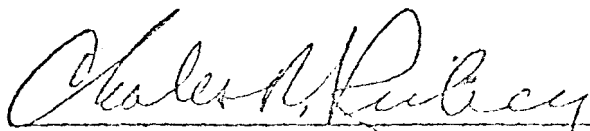
FURTHER ORDERED, that the deponents shall bring to the depositions the requested materials, and may raise any privilege as to any or all of the materials at that time; and upon the assertion of any such privilege, the dispute shall be presented to the Court for resolution on November 15, 1974, or before,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

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

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

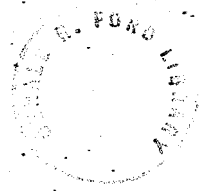


twelve o'clock noon, Thursday, November 14, 1974.



Charles R. Richey
United States District Judge

November 7, 1974



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD M. NIXON

Plaintiff

v.

ARTHUR F. SAMPSON, et al.,

Defendants

and

THE REPORTERS COMMITTEE FOR FREEDOM OF
THE PRESS, et al.,

Plaintiffs

v.

ARTHUR F. SAMPSON, et al.,

Defendants

and

LILLIAN HELLMAN, et al.,

Plaintiffs

v.

ARTHUR F. SAMPSON, et al.,

Defendants

FILED

NOV 7 1974

JAMES E. DAVEY, Clerk

ORDER

Upon consideration of the Motions for Modification of the Order of the Court of October 31, 1974, the Points and Authorities in support of and in opposition thereto, and it appearing to the Court that the provision in the Order of the Court of October 22, 1974 (page three, lines nine and ten), as amended by the Order of the Court of October 31, 1974, which provides that access "shall be afforded under current access procedures established by Defendants", is no longer viable due to the confusion on the part of the parties as to what these procedures entail, it is, by the Court, this 7th day of November, 1974,

ORDERED, that the first full paragraph of page three of

the Supplemental Order of the Court of October 22, 1974,
as amended by the Order of the Court of October 31, 1974,
be, and the same is, hereby further amended to provide as
follows:

"FURTHER ORDERED, that any person either now
or previously a member of the White House Staff, or
any defendant in the Watergate criminal trial, now
pending before the Honorable Judge John J. Sirica,
or the Special Prosecutor, shall be afforded access,
solely for purposes relating to criminal investi-
gations or prosecutions, under the following
procedure:

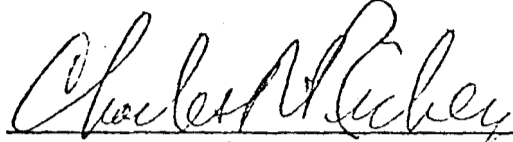
1. a request for access shall be delivered
to Mr. Philip W. Buchen, or his designated
agent, who shall advise counsel for Mr.
Nixon and the Special Prosecutor, as well
as this Court, of the request; and
2. upon receiving the consent of counsel
for Mr. Nixon, said person shall be given
access, in the presence of an agent of
the Secret Service, to said materials which
comprise or comprised his or her files while
a member of the White House staff, with or
without his or her attorney present, and
shall be allowed to review and make notes
regarding said materials; and
3. any person having access under this
procedure who wishes to make photostatic
copies shall designate and itemize those
materials and serve notice of same upon
counsel for Mr. Nixon, Mr. Buchen, or his
designated agent, the Special Prosecutor, and
this Court; and
4. counsel for Mr. Nixon or Mr. Buchen, or
his designated agent, shall give or withhold
their consent, and if consent is withheld by
either or both, photostatic copies shall not
be made, and in such instances, the reasons
for withholding such consent shall be given
to the person requesting such copies and the
Court; and
5. when photostatic copies are provided, they
shall be returned promptly to the Defendants
when the purpose for which they have been made
has been served; and it is "

and it is

FURTHER ORDERED, that any person who has been given
access under the above procedure prior to this Order and has
made photostatic copies shall forthwith comply with provisions
4 and 5 of the above procedure, and upon the withholding of

consent to any item, said photostatic copy shall be immediately returned to Mr. Philip Buchen, or his designated agent; and it is

FURTHER ORDERED, that the Orders of the Court of October 22, 1974 and October 31, 1974 shall remain in full force and effect except as herein modified.



Charles R. Richey
United States District Judge

November 7, 1974



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD M. NIXON

Plaintiff

v.

ARTHUR F. SAMPSON, et al.,

Defendants

and

THE REPORTERS COMMITTEE FOR FREEDOM OF
THE PRESS, et al.,

Plaintiffs

v.

ARTHUR F. SAMPSON, et al.,

Defendants

and

LILLIAN HELLMAN, et al.,

Plaintiffs

v.

ARTHUR F. SAMPSON, et al.,

Defendants

C.A. No. 74-1518

FILED

NOV 7 1974

JAMES E. DAVEY, Clerk

ORDER

Upon consideration of the Motions for Modification of the Order of the Court of October 31, 1974, the Points and Authorities in support of and in opposition thereto, and it appearing to the Court that the provision in the Order of the Court of October 22, 1974 (page three, lines nine and ten), as amended by the Order of the Court of October 31, 1974, which provides that access "shall be afforded under current access procedures established by Defendants", is no longer viable due to the confusion on the part of the parties as to what these procedures entail, it is, by the Court, this 7th day of November, 1974,

ORDERED, that the first full paragraph of page three of

the Supplemental Order of the Court of October 22, 1974,
as amended by the Order of the Court of October 31, 1974,
be, and the same is, hereby further amended to provide as
follows:

"FURTHER ORDERED, that any person either now
or previously a member of the White House Staff, or
any defendant in the Watergate criminal trial, now
pending before the Honorable Judge John J. Sirica,
or the Special Prosecutor, shall be afforded access,
solely for purposes relating to criminal investi-
gations or prosecutions, under the following
procedure:

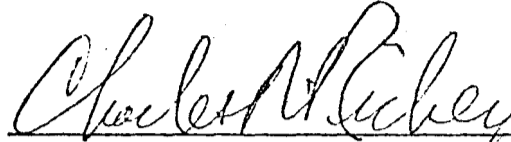
1. a request for access shall be delivered
to Mr. Philip W. Buchen, or his designated
agent, who shall advise counsel for Mr.
Nixon and the Special Prosecutor, as well
as this Court, of the request; and
2. upon receiving the consent of counsel
for Mr. Nixon, said person shall be given
access, in the presence of an agent of
the Secret Service, to said materials which
comprise or comprised his or her files while
a member of the White House staff, with or
without his or her attorney present, and
shall be allowed to review and make notes
regarding said materials; and
3. any person having access under this
procedure who wishes to make photostatic
copies shall designate and itemize those
materials and serve notice of same upon
counsel for Mr. Nixon, Mr. Buchen, or his
designated agent, the Special Prosecutor, and
this Court; and
4. counsel for Mr. Nixon or Mr. Buchen, or
his designated agent, shall give or withhold
their consent, and if consent is withheld by
either or both, photostatic copies shall not
be made, and in such instances, the reasons
for withholding such consent shall be given
to the person requesting such copies and the
Court; and
5. when photostatic copies are provided, they
shall be returned promptly to the Defendants
when the purpose for which they have been made
has been served; and it is "

and it is

FURTHER ORDERED, that any person who has been given
access under the above procedure prior to this Order and has
made photostatic copies shall forthwith comply with provisions
4 and 5 of the above procedure, and upon the withholding of

consent to any item, said photostatic copy shall be immediately returned to Mr. Philip Buchen, or his designated agent; and it is

FURTHER ORDERED, that the Orders of the Court of October 22, 1974 and October 31, 1974 shall remain in full force and effect except as herein modified.



Charles R. Richey
United States District Judge

November 7, 1974





Department of Justice
Washington, D.C. 20530

ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION

November 12, 1974

William E. Casselman II, Esq.
Office of Counsel to the President
Old Executive Building
Washington, DC

Mr. Thomas P. Wolf
Office of Presidential Papers
Old Executive Office Building
Washington, DC

Re: Richard M. Nixon v. Arthur F. Sampson,
et al., C.A. No. 74-1518
The Reporters Committee for Freedom of
the Press, et al. v. Arthur F. Sampson,
et al., C.A. No. 74-1533
Lillian Hellman, et al. v. Arthur F.
Sampson, et al., C.A. No. 74-1511

Gentlemen:

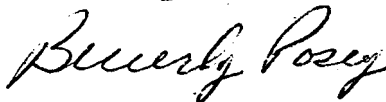
Enclosed find the following documents for your files
in connection with the above-entitled consolidated actions:

1. Memorandum in support of the Joint Motion of Defendants and the Special Prosecutor for Modification of the Temporary Restraining Order.
2. Opposition to Motion for Preliminary Injunction in C.A. No. 74-1533; Opposition to Motion for Preliminary Injunction in C.A. No. 74-1511; Memorandum in support of Defendants' Opposition to Motions for Preliminary Injunction; Proposed Order.
3. Memorandum of Lillian Hellman, et al. in support of the Motion of The Reporters Committee for Freedom of the Press, et al. for a Preliminary Injunction and in Opposition to the Motion of Richard M. Nixon for a Preliminary Injunction.



4. Memorandum of the Special Prosecutor in Response to Motions for Preliminary Injunctions.
5. Memorandum of Intervenor in Opposition to Motion of Richard M. Nixon for Preliminary Injunction and in support of Motions of Intervenor and the Reporters' Committee et al. for Preliminary Injunction.
6. Motion of Plaintiff Nixon to Dismiss Complaint of Intervenor - Anderson.
7. Brief on Richard M. Nixon on Motions for Preliminary Injunctions.
8. Appendix to Brief of Richard M. Nixon.
9. Affidavit of Mack Thompson.
10. Affidavit of Clement E. Vose.
11. Affidavit of James MacGregor Burns.
12. Memorandum of Plaintiffs, The Reporters Committee for Freedom of the Press, American Historical Association, American Political Science Association, et al., in support of Motion for Preliminary Injunction

Sincerely,



Beverly Posey, secretary to

CARLA A. HILLS
Assistant Attorney General
Civil Division

bp
Enclosures



THE WHITE HOUSE
WASHINGTON

November 13, 1974

*Nixon
Sampson
Litigation*

Dear Carla:

Finally I have had a chance to study the legal memoranda filed this week with Judge Richey for the Federal defendants in the Nixon-Sampson litigation.

You and your colleagues have done superb work in preparing these memoranda, and I am most grateful to all of you. It is hard for me to believe that any group of lawyers could produce such complete and well-reasoned, well-documented and well-written arguments even if they were given a much longer time than you had. I consider your accomplishments a true legal miracle, and my esteem for your skills and alacrity is boundless.

Again, many thanks and warmest regards.

Sincerely yours,



Philip W. Buchen
Counsel to the President

The Honorable Carla A. Hills
Assistant Attorney General
Room 3143
Department of Justice
Washington, D. C. 20530

cc: Attorney General Saxbe
Larry Silberman



Volume 1

THE WHITE HOUSE
WASHINGTON

November 13, 1974

Dear Mr. Goldbloom:

Following are my corrections of transcript Volume I of my Deposition taken November 11, 1974, at 3:30 p.m., re Nixon, et al., v. Sampson, et al., CA Nos. 74-1518, 74-1533, and 74-1551:

Page 4, line 11 - change "for" to "to"

Page 4, line 23; page 5, line 15; page 6, line 2 - change "Bussard" to "Buzhardt"

Page 6, line 21 - change "P" to "B"

Page 7, line 10 - insert at end of line the word "T"

Page 7, line 13 - insert ", " after "prosecution"

Page 8, line 11 - strike ", " and "words"

Page 8, line 16 - change "in" to "on"

Page 10, line 2 - change "have" to "had"

Page 10, line 21 - strike "as being"

Page 10, line 22 - strike ", " and replace with "--"

Page 12, line 3 - correct spelling of "balement" to "bailment"

Page 12, line 7 - strike one "that"

Page 12, line 10 - correct spelling of "were" to "where"



Page 16, line 12 - strike "and"

Page 17, line 10 - strike "between" and ",,"

Page 20, line 12 - strike the word "that" at both places

Page 21, line 16 - strike ".," and the "And" and run sentence together

Page 22, line 1 - replace ",," with ".,"

Page 22, line 18 - strike one "in that"

Page 23, line 9 - strike "that" and replace with "the Nixon agreement"

Page 23, line 18 - strike second ",," and replace with word "also" followed by ".," and strike "that" and capitalize first letter of "the"

Page 24, line 15 - strike the first "the"

Page 28, line 15 - the number should be "2107"

Page 28, line 16 - replace "the" with small "a" and strike ",," at end

Page 28, line 17 - replace the first "the" with "also to"

Page 28, line 18 - replace "deposited" with "deposit of"

Page 28, line 23 - strike ",,"

Page 30, line 14 - strike "that"

Page 30, line 16 - strike "so"

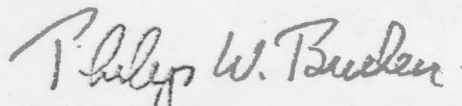


Page 32, lines 4 and 5 - strike "avoid trying"
and replace with "try"

Page 32, line 17 - replace "have" with "had"

Page 32, line 20 - strike "either that"

Sincerely yours,



Philip W. Buchen
Counsel to the President

Honorable Irwin Goldbloom
Acting Deputy Assistant
Attorney General
Room 3607
Department of Justice
Washington, D. C. 20530



THE WHITE HOUSE

WASHINGTON

November 13, 1974

Dear Mr. Goldbloom:

Following are my corrections of transcript Volume I of my Deposition taken November 11, 1974, at 3:30 p.m., re Nixon, et al., v. Sampson, et al., CA Nos. 74-1518, 74-1533, and 74-1551:

Page 4, line 11 - change "for" to "to"

Page 4, line 23; page 5, line 15; page 6, line 2 - change "Bussard" to "Buzhardt"

Page 6, line 21 - change "P" to "B"

Page 7, line 10 - insert at end of line the word "I"

Page 7, line 13 - insert ", " after "prosecution"

Page 8, line 11 - strike ", " and "words"

Page 8, line 16 - change "in" to "on"

Page 10, line 2 - change "have" to "had"

Page 10, line 21 - strike "as being"

Page 10, line 22 - strike ", " and replace with "--"

Page 12, line 3 - correct spelling of "balement" to "bailment"

Page 12, line 7 - strike one "that"

Page 12, line 10 - correct spelling of "were" to "where"



Page 16, line 12 - strike "and"

Page 17, line 10 - strike "between" and ",,"

Page 20, line 12 - strike the word "that" at both places.

Page 21, line 16 - strike "." and the "And" and run sentence together

Page 22, line 1 - replace ",," with "."

Page 22, line 18 - strike one "in that"

Page 23, line 9 - strike "that" and replace with "the Nixon agreement"

Page 23, line 18 - strike second ",," and replace with word "also" followed by "." and strike "that" and capitalize first letter of "the"

Page 24, line 15 - strike the first "the"

Page 28, line 15 - the number should be "2107"

Page 28, line 16 - replace "the" with small "a" and strike ",," at end

Page 28, line 17 - replace the first "the" with "also to"

Page 28, line 18 - replace "deposited" with "deposit of"

Page 28, line 23 - strike ",,"

Page 30, line 14 - strike "that"

Page 30, line 16 - strike "so"

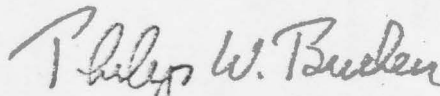


Page 32, lines 4 and 5 - strike "avoid trying"
and replace with "try"

Page 32, line 17 - replace "have" with "had"

Page 32, line 20 - strike "either that"

Sincerely yours,



Philip W. Buchen
Counsel to the President

Honorable Irwin Goldbloom
Acting Deputy Assistant
Attorney General
Room 3607
Department of Justice
Washington, D.C. 20530

Volume II

THE WHITE HOUSE

WASHINGTON

November 14, 1974

Dear Mr. Goldbloom:

Following are my corrections of transcript Volume II of my Deposition taken November 12, 1974, at 10:15 a.m., re Nixon, et al., v. Sampson, et al., CA Nos. 74-1518, 74-1533, and 74-1551:

Page 8, line 15 - change "Keuper" to "Kauper"

Page 16, line 7 - delete "to--"

Page 16, line 13 - insert "and" after comma

Page 23, line 4 - change "seeing" to "saying"

Page 30, line 16 - change "Saxby" to "Saxbe"

Page 34, line 23 - delete the word "or" and move next quotation mark to just before "in"

Page 35, line 1 - move first quotation mark to just before "in"

Page 35, line 2 - drop the "s" from "seems" and add "s" to the word "letter"

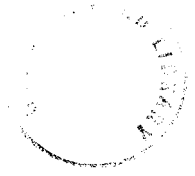
Page 42, line 18 - delete "of the fact"

Page 44, line 16 - change "B." to small "v."

Page 45, line 12 - insert comma after "or"

Page 46, line 6 - delete "to"

Page 59, line 19 - insert comma after "or"



Page 63, line 20 - change "But" to "What"

Page 64, line 11 - delete "principle" and insert "principal one"

Page 65, lines 8, 9 and 10 - delete and change to read as follows: "gan, but I am temporarily here -- I mean I don't know how long I'm here -- at the Jefferson Hotel."

Page 65, lines 15 and 16 - delete "on the Committee to--the Domestic Council Committee"

Page 71, line 10 - insert before dash "I could"

Page 77, line 8 - change "memorandum" to "memoranda"

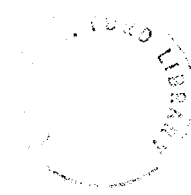
Page 79, line 6 - change "Raleigh" to "Rowley"

Sincerely yours,



Philip W. Buchen
Counsel to the President

Honorable Irwin Goldbloom
Acting Deputy Assistant
Attorney General
Room 3607
Department of Justice
Washington, D. C. 20530



THE WHITE HOUSE

WASHINGTON

November 14, 1974

Dear Mr. Goldbloom:

Following are my corrections of transcript Volume II of my Deposition taken November 12, 1974, at 10:15 a.m., re Nixon, et al., v. Sampson, et al., CA Nos. 74-1518, 74-1533, and 74-1551:

Page 8, line 15 - change "Keuper" to "Kauper"

Page 16, line 7 - delete "to--"

Page 16, line 13 - insert "and" after comma

Page 23, line 4 - change "seeing" to "saying"

Page 30, line 16 - change "Saxby" to "Saxbe"

Page 34, line 23 - delete the word "or" and move next quotation mark to just before "in"

Page 35, line 1 - move first quotation mark to just before "in"

Page 35, line 2 - drop the "s" from "seems" and add "s" to the word "letter"

Page 42, line 18 - delete "of the fact"

Page 44, line 16 - change "B." to small "v."

Page 45, line 12 - insert comma after "or"

Page 46, line 6 - delete "to"

Page 59, line 19 - insert comma after "or"

Page 63, line 20 - change "But" to "What"

Page 64, line 11 - delete "principle" and insert
"principal one"

Page 65, lines 8, 9 and 10 - delete and change to
read as follows: "gan, but I am temporarily here --
I mean I don't know how long I'm here -- at the
Jefferson Hotel."

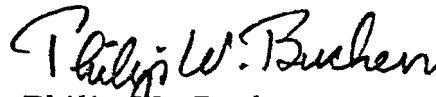
Page 65, lines 15 and 16 - delete "on the Committee
to--the Domestic Council Committee"

Page 71, line 10 - insert before dash "I could"

Page 77, line 8 - change "memorandum" to "memoranda"

Page 79, line 6 - change "Raleigh" to "Rowley"

Sincerely yours,


Philip W. Buchen
Counsel to the President

Honorable Irwin Goldbloom
Acting Deputy Assistant
Attorney General
Room 3607
Department of Justice
Washington, D. C. 20530

THE WHITE HOUSE

WASHINGTON

November 14, 1974

Dear Mr. Goldbloom:

Following are my corrections of transcript Volume II of my Deposition taken November 12, 1974, at 10:15 a.m., re Nixon, et al., v. Sampson, et al., CA Nos. 74-1518, 74-1533, and 74-1551:

Page 8, line 15 - change "Keuper" to "Kauper"

Page 16, line 7 - delete "to--"

Page 16, line 13 - insert "and" after comma

Page 23, line 4 - change "seeing" to "saying"

Page 30, line 16 - change "Saxby" to "Saxbe"

Page 34, line 23 - delete the word "or" and move next quotation mark to just before "in"

Page 35, line 1 - move first quotation mark to just before "in"

Page 35, line 2 - drop the "s" from "seems" and add "s" to the word "letter"

Page 42, line 18 - delete "of the fact"

Page 44, line 16 - change "B." to small "v."

Page 45, line 12 - insert comma after "or"

Page 46, line 6 - delete "to"

Page 59, line 19 - insert comma after "or"

Page 63, line 20 - change "But" to "What"

Page 64, line 11 - delete "principle" and insert
"principal one"

Page 65, lines 8, 9 and 10 - delete and change to
read as follows: "gan, but I am temporarily here --
I mean I don't know how long I'm here -- at the
Jefferson Hotel."

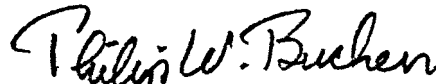
Page 65, lines 15 and 16 - delete "on the Committee
to--the Domestic Council Committee"

Page 71, line 10 - insert before dash "I could"

Page 77, line 8 - change "memorandum" to "memoranda"

Page 79, line 6 - change "Raleigh" to "Rowley"

Sincerely yours,



Philip W. Buchen
Counsel to the President

Honorable Irwin Goldbloom
Acting Deputy Assistant
Attorney General
Room 3607
Department of Justice
Washington, D. C. 20530

ARNOLD & PORTER

1229 NINETEENTH STREET, N.W.

WASHINGTON, D.C. 20036

TELEPHONE: (202) 574-6000

CABLE: "ARFOPOR"

TELETYPE: 89-2733

November 15, 1974

THOMAS A. ARNOLD (Residence)
PAUL A. BARNER
MILTON C. BIRNBAUM
NORMAN BRANTON
WILLIAM C. BRANTON
CANDACE L. BROWN
C. DONALD BROWN
FRANK R. BROWN
WILLIAM C. BROWN
WILLIAM C. BROWN
WILLIAM C. BROWN
LENNY G. BROWN
STUART C. BROWN
ROBERT C. BRUNTON
JAMES H. BROWN
MILTON C. BROWN
WALTER D. BROWN
COURTNEY D. BROWN
WALTER D. BROWN
PAUL S. BROWN
JAMES F. BROWN
MELVIN C. BROWN
DORCE L. BROWN
JOHN D. BROWN
MURRAY H. BROWN
DANIEL A. BROWN
GERALD M. BROWN
MELVIN BROWN
DAVID H. BROWN
DAVID H. BROWN
RICHARD S. BROWN
PETER A. BROWN
ANDREW F. BROWN
RICHARD J. BROWN
HARRY HUGH
JACK L. BROWN
JEROME L. BROWN
HYRON P. BROWN
JAMES A. BROWN
STEPHEN S. BROWN
MICHAEL N. BROWN

ROBERT E. BROWN
BROOKLYN
ANDREW BROWN
PATRICK F. BROWN
IRVIN D. BROWN
RICHARD H. BROWN
NANCY M. BROWN
ROBERT D. BROWN
WILLIAM C. BROWN
FRANK R. BROWN
DORCE L. BROWN
STEPHEN A. BROWN
THOMAS J. BROWN
MARK J. BROWN
C. PHILIP BROWN
DAVID BROWN
STEVEN F. BROWN
JEFFREY A. BROWN
CARY H. BROWN
SIMON BROWN
THOMAS D. BROWN
DANIEL M. BROWN
RONALD G. BROWN
GARY G. BROWN
LANNY J. BROWN
PAUL S. BROWN
THOMAS D. BROWN
LAFRENCE C. BROWN
JOHN M. BROWN
RICHARD A. BROWN
THOMAS E. BROWN
DIANA D. BROWN
STEVEN BROWN
IVOR C. BROWN
JAMES W. BROWN
STEVEN M. BROWN
ROBERT S. BROWN
ROBERT H. BROWN
ROSALIND C. BROWN
PAUL S. BROWN
LINDA E. BROWN
LEONARD H. BROWN

Arnold

Hon. Charles R. Richey
United States District Judge
United States Courthouse
Washington, D.C.

MARTIN RIGER
ROBERT PITOFENY
OF COUNSEL

Re: Nixon v. Sampson, et al., C.A. No. 74-1518;
The Reporters Committee for Freedom of the
the Press, et al. v. Sampson, C.A. No.
74-1533; Hellman v. Sampson, C.A. No. 74-1551

Dear Judge Richey:

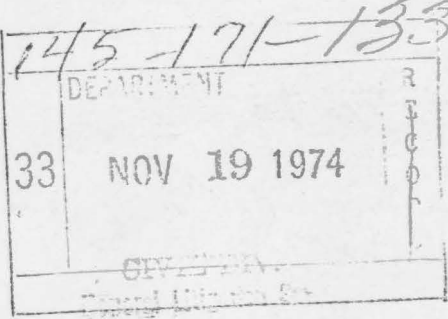
For the convenience of those using our brief,
I am enclosing a Table of Authorities for the Memorandum
of Plaintiffs, The Reporters Committee for Freedom of
the Press, American Historical Association, American
Political Science Association, et al., in Support of
Motion for Preliminary Injunction.



Sincerely yours,

Robert E. Herzstein

Enclosure



Hon. Charles R. Richey

November 15, 1974

Page Two

cc: Jeffrey F. Axelrad, Esquire
Civil Division
U.S. Department of Justice
Room 3627
Washington, D.C. 20530

William A. Dobrovir, Esquire
2005 L Street, N.W.
Washington, D.C. 20036

Herbert J. Miller, Esquire
Miller, Cassidy, Larroca & Lewin
1320 19th Street, N.W.
Washington, D.C. 20036

Peter Kreindler, Esquire
Counsel to the Special Prosecutor
1425 K Street, N.W.
Washington, D.C. 20005

Melvin L. Wulf, Esquire
410 First Street, S.E.
Washington, D.C. 20003

Leon Friedman, Esquire
American Civil Liberties Union
Foundation
22 East 40th Street
New York, New York 10016



TABLE OF AUTHORITIES

<u>Cases:</u>	<u>Page</u>
<u>Amalgamated Meat Cutters & Butchers Workmen of North America v. Connally,</u> 337 F. Supp. 737 (D.D.C. 1971).....	45, 81
<u>American Mail Line, Ltd. v. Gulick,</u> 133 U.S. App. D.C. 382 411 F.2d 696 (1969).....	18, 42
<u>Ashwander v. TVA,</u> 297 U.S. 288 (1936).....	37
<u>Association of Data Processing Service Organizations, Inc. v. Camp,</u> 397 U.S. 150 (1970).....	17
<u>Barlow v. Collins,</u> 397 U.S. 159 (1970).....	17
<u>Benson v. General Services Administration,</u> 289 F. Supp. 590 (W.D. Wash. 1968), <u>aff'd,</u> 415 F.2d 878 (9th Cir. 1969).....	19, 59
<u>Black v. Sheraton Corp. of America,</u> 371 F. Supp. 97 (D.D.C. 1974).....	68, 120, 121
<u>Brandon v. Sampson,</u> Civ. No. 73-2232 (D.D.C. April 24, 1974), <u>appeal</u> <u>pending,</u> No. 74-1503 (D.C. Cir.).....	48-49
<u>Brattleboro Publishing Co. v.</u> <u>Winmill Publishing Corp.,</u> 369 F.2d 565 (2d Cir. 1966).....	26
<u>Bristol-Myers Co. v. FTC,</u> 138 U.S. App. D.C. 22, 424 F.2d 935, <u>cert. denied,</u> 400 U.S. 824 (1970).....	39
<u>Center on Corporate Responsibility, Inc.</u> <u>v. Shultz,</u> 368 F. Supp. 863 (D.D.C. 1973).	45, 68, 120
<u>Coleman v. Commonwealth,</u> 25 Grattan (66 Va.) 865 (1874).....	26
<u>Cooney v. Sun Shipbuilding & Drydock Co.,</u> 288 F. Supp. 708 (E.D. Pa. 1968).....	119
<u>Cowles Communications, Inc. v. Department of Justice,</u> 325 F. Supp. 726 (N.D. Cal. 1971).....	42



Cuneo v. Schlesinger, 157 U.S. 440
D.C. 368, 484 F.2d 1086 (1973).....

Cutler v. CAB, 375 F. Supp 722
(D.D.C. 1974).....

Deilums v. Powell, Civil Action
No. 2271-71 (D.D.C.).....

Ditlow v. Volpe, 362 F. Supp. 1321
(D.D.C. 1973), rev'd on other
grounds, ___ U.S. App. D.C.
___, 494 F.2d 1073 (1974).....

Dowse v. Federal Rubber Co., 254
F. 308 (N.D. Ill. 1918).....

EPA v. Mink, 410 U.S. 73 (1973).....

Epstein v. Resor, 421 F.2d 930
(9th Cir.), cert. denied, 398
U.S. 965 (1970).....

Firth Sterling Steel Co. v.
Bethlehem Steel Co., 199 F.
343 (E.D. Pa. 1912).....

Fisher v. Renegotiation Board,
153 U.S. App. D.C. 398, 473 F.2d
109 (1972).....

Flast v. Cohen, 392 U.S. 83 (1968).....

Folsom v. Marsh, 9 Fed. Car. 342
(No. 4,901) (C.C.D. Mass. 1841).....

Frankel v. SEC, 460 F.2d 813 (1970).
cert. denied, 409 U.S. 889 (1972).....

Freeman v. U.S. Dept. of Agriculture
350 F. Supp. 457 (D.D.C. 1972).....

GSA v. Benson, 415 F.2d 878 (9th Cir.
1969).....

Garrison v. Louisiana, 379 U.S. 84
(1964).....

Getman v. NLRB, 146 U.S. App. D.C.
209, 450 F.2d 670 (1971).....



	<u>Page</u>
<u>Green v. Kennedy</u> , 309 F. Supp. 1127, 1132 (D.D.C. 1970) (three-judge court), <u>appeal dismissed</u> , 400 U.S. 986 (1971).....	13, 14
<u>Grip Nut Co. v. Sharp</u> , 150 F.2d 192 (7th Cir. 1945), <u>cert. denied</u> , 326 U.S. 742 (1945).....	26
<u>Grumman Aircraft Engineering Corp. v. Renegotiation Board</u> , 138 U.S. App. D.C. 147, 425 F.2d 578 (1970).....	59
<u>Harbolt v. Alldredge</u> , 464 F.2d 1243 (10th Cir.), <u>cert. denied</u> , 409 U.S. 1025 (1972).....	60
<u>Hass v. Henkel</u> , 216 U.S. 462 (1910).....	27
<u>Hawkes v. Internal Revenue Service</u> , 467 F.2d 787 (6th Cir. 1972).....	20, 42
<u>Healy v. Edwards</u> , 363 F. Supp. 1110 (E.D. La. 1973), <u>probable jurisdiction noted</u> , 94 S. Ct. 1405 (1974).....	18
<u>Heine v. Raus</u> , 399 F.2d 785 (4th Cir. 1968).....	115
<u>Hoblitzell v. Howard</u> , 25 N.J. Super. 397, 96 A.2d 446 (1953).....	32
<u>In re Pacific Automation Products</u> , 224 F. Supp. 995 (S.D. Cal. 1964).....	48, 56
<u>Inland Waterways Corp. v. Young</u> , 309 U.S. 517 (1940).....	113
<u>In re Investigation of World Arrangements with Relation to . . . Petroleum</u> , 13 F.R.D. 280 (D.D.C. 1952).....	115
<u>International Union of Elec. Radio & Machine Workers v. NLRB</u> , 289 F.2d 757 (D.C. Cir. 1960).....	56
<u>Kleindienst v. Mandel</u> , 408 U.S. 753 (1972).....	127
<u>Kreindler v. Department of Navy</u> , 363 F. Supp. 611 (S.D.N.Y. 1973).....	19, 42



	<u>Page</u>
<u>Lamont v. Postmaster General</u> , 381 U.S. 301 (1965).....	127
<u>Le Fiell v. United States</u> , 162 Ct. Cl. 865 (1963) (citing numerous cases).....	31
<u>M.A. Schapiro & Co. v. SEC</u> , 339 F. Supp. 467 (D.D.C. 1972).....	43
<u>Manning v. Mercantile Securities Co.</u> , 242 Ill. 584, 90 N.E. 238 (1909), <u>aff'd</u> , 217 U.S. 597 (1910).....	32
<u>Martin v. Carl</u> , 213 Md. 564, 132 A.2d 601 (1957).....	32
<u>McElree v. Darlington</u> , 187 Pa. 593, 41 A. 456 (1898).....	32
<u>Mitchell v. Bass</u> , 252 F.2d 513 (8th Cir. 1958).....	119
<u>Montrose Chemical Corp. v. Train</u> , U.S. App. D.C. ___, 491 F.2d 63 (1974)...	39
<u>NLRB v. Getman</u> , 404 U.S. 1204 (1971).....	19
<u>Nancy Lee Mines, Inc. v. Harrison</u> , 93 Idaho 652, 471 P.2d 39 (1970).....	32
<u>National Cable Television Ass'n, Inc. v. FCC</u> , 156 U.S. App. D.C. 91, 479 F.2d 183 (1973).....	43
<u>National Parks & Conservation Ass'n v. Morton</u> , ___ U.S. App. D.C. ___, 498 F.2d 765 (1974).....	42
<u>Nelson v. Radio Corporation of America, Inc.</u> , 148 F. Supp. 1 (S.D. Fla. 1957)....	26
<u>Nichols v. United States</u> , 460 F.2d 671 (10th Cir.), <u>cert. denied</u> , 409 U.S. 966 (1972).....	20, 54, 55
<u>Nixon v. Sirica</u> , 159 U.S. App. D.C. 58, 487 F.2d 700 (1973).....	33
<u>Overby v. U.S. Fidelity & Guaranty Co.</u> , 224 F.2d 158 (5th Cir. 1955).....	119



<u>Petkas v. Staats</u> , ___ U.S. App. D.C. ___, 501 F.2d 887 (1974).....	
<u>Philadelphia Newspapers, Inc. v. HUD</u> , 343 F. Supp. 1176 (E.D. Pa. 1972).....	4
<u>Potomac Oil Co. v. Dye</u> , 102 P. 677 (Cal. Ct. of App. 1909).....	3:
<u>Public Affairs Associates v. Rickover</u> , 268 F. Supp. 444 (D.D.C. 1967).....	27, 28, 29, 46
<u>Quaker Action Group v. Hickel</u> , 137 U.S. App. D.C. 176, 421 F.2d 1111 (1969).....	13
<u>Renegotiation Board v. Bannerkraft Clothing Co.</u> , 415 U.S. 1 (1974).....	22, 39, 43
<u>Red Lion Broadcasting Co. v. FCC</u> , 395 U.S. 367 (1969).....	127
<u>Robertson v. Butterfield</u> , ___ U.S. App. D.C. ___, 498 F.2d 1031 (1974).....	19, 43, 52, 54
<u>Rose v. Department of Air Force</u> , 495 F.2d 261 (2d Cir. 1974).....	42
<u>Sawver v. Crowell Publishing Co.</u> , 46 F. Supp. 471 (S.D.N.Y. 1942), <u>aff'd</u> , 142 F.2d 497 (2d Cir. 1944), <u>cert. denied</u> , 323 U.S. 735 (1944).....	26, 27, 29, 30
<u>Scherr v. Universal Match Corp.</u> , 417 F.2d 497 (2d Cir. 1969), <u>cert. denied</u> , 397 U.S. 936 (1970).....	25, 27, 29
<u>Schlesinger v. Reservists Committee to Stop the War</u> , ___ U.S. ___, 94 S. Ct. 2925 (1974).....	18
<u>Sierra Club v. Morton</u> , 405 U.S. 727 (1972).....	17
<u>Skolnick v. Parsons</u> , 397 U.S. F.2d 523 (7th Cir. 1968).....	18
<u>Soucie v. David</u> , 145 U.S. App. D.C. 144, 448 F.2d 1067 (1971).....	18, 19, 41, 44 45, 46, 47 119, 121



	<u>Page</u>
<u>Stanley v. Georgia</u> , 394 U.S. 557 (1969).....	127
<u>Sterling Drug, Inc. v. FTC</u> , 146 U.S. App. D.C. 237, 450 F.2d 698 (1971).....	43
<u>Stern v. Richardson</u> , 367 F. Supp. 1316 (D.D.C. 1973).....	18, 42
<u>Stretch v. Weinberger</u> , 495 F.2d 639 (3d Cir. 1974).....	42, 52, 53, 54
<u>Stokes v. Brennen</u> , 476 F.2d 699 (5th Cir. 1973).....	42
<u>Tax Analysts & Advocates v. Internal Revenue Service</u> , 362 F. Supp. 1298 (D.D.C. 1973).....	42
<u>Tennessean Newspapers, Inc. v. Federal Housing Administration</u> , 465 F.2d 657 (6th Cir. 1972).....	19, 42
<u>Thieblbeule v. M/S Nordsee Pilot</u> , 452 F.2d 1230 (2d Cir. 1971).....	56
<u>Thill Securities Corp. v. N.Y.S.E.</u> , 57 F.R.D. 133 (E.D. Wis. 1972).....	119
<u>United States v. Chadwick</u> , 76 F. Supp. 919 (N.D. Ala. 1948).....	27, 28
<u>United States v. City and County of San Francisco</u> , 223 F.2d 737 (9th Cir. 1955), <u>cert. denied</u> , 350 U.S. 903 (1955).....	37
<u>United States v. Dubilier Condenser Corp.</u> , 289 U.S. 178 (1933).....	26
<u>United States v. First Trust Co. of St. Paul</u> , 251 F.2d 686 (8th Cir. 1958).....	27, 28, 29
<u>United States v. Lee</u> , 106 U.S. 196 (1882)...	33
<u>United States v. Mideast Oil Co.</u> , 236 U.S. 459 (1915).....	112



<u>United States v. N.B.C., Inc.</u> , No. 72-819- RJK, C.D. California 9-27-74, BNA Antitrust & Trade Reg. Rptr. 10/8/72 at A-10.....	68
<u>United States v. Nixon</u> , ___ U.S. ___, 94 S. Ct. 3090 (1974).....	114, 119, 120
<u>United States v. Richardson</u> , ___ U.S. ___, ___, 94 S. Ct. 2940 (1974).....	18
<u>United States v. Reynolds</u> , 345 U.S. 1 (1953)	114, 116
<u>United States v. Russo</u> , Cir. No. 9373, (C.D. Cal.).....	118
<u>United States v. SCRAP</u> , 412 U.S. 669 (1973)	16, 17, 18
<u>United States v. Shlom</u> , 420 F.2d 263 (2d Cir. 1969), <u>cert. denied</u> , 397 U.S. 1974 (1970).....	32
<u>Vaughn v. Rosen</u> , 157 U.S. App. D.C. 340 F.2d 820 (1973), <u>cert. denied</u> , 415 U.S. 977 (1974).....	19, 43
<u>Virginia Petroleum Jobbers Association v. FPC</u> , 104 U.S. App. D.C. 106, 259 F.2d 921 (1958).....	13
<u>Virginian Ry. v. System Federation No. 40</u> , 300 U.S. 515 (1937).....	14
<u>Washington Research Project, Inc. v. HEW</u> , 366 F. Supp. 929 (D.D.C. 1973).....	42
<u>Wellford v. Hardin</u> , 444 F.2d 21 (7th Cir. 1971).....	19, 42
<u>Williams v. IRS</u> , 345 F. Supp. 591 (D. Del. 1972), <u>aff'd</u> , 479 F.2d 317 (3d Cir.), <u>cert. denied</u> , 415 U.S. 1024 (1973).....	60
<u>Wine Hobby, USA, Inc. v. United States Bureau of Alcohol, Tobacco & Firearms</u> , 363 F. Supp. 231 (E.D. Pa. 1973).....	18
<u>Yakus v. United States</u> , 321 U.S. 414 (1944)	14
<u>Youngstown Sheet & Tube Co. v. Sawyer</u> , 103 F. Supp. 569 (D.D.C.), <u>aff'd</u> , 343 U.S. 579 (1952).....	112, 113



5 U.S.C. § 133..... App. 1, p.

5 U.S.C. § 551 40, 44, 4

5 U.S.C. § 55215, 38, 45, 46
49, 52, 5

5 U.S.C. § 701(b)(1)..... 4

18 U.S.C. § 793.....61, 63, 64, 11

18 U.S.C. § 1905..... 60, 6

40 U.S.C. § 472..... 35, 36, 81, 8

42 U.S.C. § 4321..... App. 1, p.

42 U.S.C. § 1306(a)..... 5

42 U.S.C. § 1982..... 12

44 U.S.C. § 1501..... 8

44 U.S.C. § 2101..... 7

44 U.S.C. § 2103..... 79-80, 86, 8

44 U.S.C. § 2104..... 80, 83, 8

44 U.S.C. § 2107..... 48, 50, 80, 8

44 U.S.C. § 2108..... 48, 49, 71, 8

44 U.S.C. § 2701..... 71, 72, 73, 7

44 U.S.C. §§ 2901-3314..... 35, 36, 5

44 U.S.C. § 3105..... 3

44 U.S.C. § 3303..... 3

44 U.S.C. § 3314..... 3

53 Stat. 561..... App. 1, p.

79 Stat. 1185..... 5

86 Stat. 646..... App. 1, p.

89 Stat. 1185..... App. 1, p. 5



Constitution

Article II, Section 3 33

Article II, Section 1, Clause 6..... 74, 75, 76, 77

Article IV, Section 3, Clause 2..... 37

Regulations and Executive Materials

FTC Procedures and Rules of Practice, 16 C.F.R. § 4.11..... 60

Executive Order 11,652
3 C.F.R. § 339 (1974)..... 61, 62, 63, 64

Presidential Proclamation 4311, 39
Fed. Reg. 32,601..... 2-3

United States Government Manual

1973-74..... App. 1, pp. 3, 4, 5, 6, 7, 8, 9, 11,

Legislative Materials

Documents Illustrative of the Formation of the Union of the
398, 69th Cong., 1st Sess. (1927)..... 33, 76

S. Rep. No. 1621, 90th Cong.,
2d Sess. (1968)..... 80

S. Rep. No. 2140, 81st Cong.,
2d Sess. 16-17..... 85

H.R. Rep. No. 1497, 89th Cong., 2d
Sess. (1966)..... 59

H.R. Rep. No. 998, 84th Cong., 1st Sess.
(1955)..... 87, 88, 91

Hearings on H.J. Res. 330 Before A Special Subcommittee of the House Committee on Government Operations,
84th Cong., 1st Sess. (1955)..... 88, 90, 91, 93

1950 U.S. Cong. and Adm. News p. 3561..... 73



Berger, <u>Administrative Arbitrariness: A Synthesis</u> , 78 Yale L.J. 965 (1969).....	45
Davis, <u>Administrative Arbitrariness -- A Postscript</u> , 114 U. Pa. L. Rev. 823 (1966).....	45
Davis, <u>The Information Act: A Preliminary Analysis</u> , 34 U. Chi. L. Rev. 761 (1967)...	20
<u>Freedom of Information Act and the Exemption for Intra-Agency Memoranda</u> , 86 Harv. L. Rev. 1047 (1973).....	39
<u>Freedom of Information Act: A Seven Year Assessment</u> , 74 Colum. L. Rev. 895 (1974).....	39
<u>Freedom of Information Act -- The Parameters of the Exemptions</u> , 62 Geo. L.J. 177 (1973).....	39
Jaffee, <u>The Right to Judicial Review</u> , 71 Harv. L. Rev. 401 (1958).....	45
<u>Reform in the Classification and Declassification of National Security Information: Nixon Executive Order No. 11,652</u> , 59 Iowa L. Rev. 110 (1973).....	62
Relyea, <u>The Management of Presidential Papers: A Brief Overview</u> , App. I.....	99
 <u>Books & Misc. Sources</u>	
Fletcher, <u>Cyclopedia Corporations</u> , Vol. 5 p. 717 (perm. ed. 1967).....	32
E. Hargrove, <u>The Power of the Modern Presidency</u> , 80-81 (1974).....	App. 1, p. 2
H. G. Jones, <u>The Records of a Nation</u> 162 (1969).....	100, 102, 111, 119
<u>Memoirs of John Quincy Adams Vol. 3</u> (1874)..	99



<u>The Public Papers and Addresses of</u> <u>Franklin D. Roosevelt, Vol. 7, p. 630</u> (1941).....	102
<u>Webster's New Collegiate Dictionary</u> (1973 ed.).....	75
<u>Wildavsky, The Presidency</u> (1969).....	App. 1, p. 2
<u>William Howard Taft Papers</u> (1972).....	101
<u>The Writings of George Washington, Vol. 25,</u> p. 288 (1938).....	97



107 73 9 32 AM '74

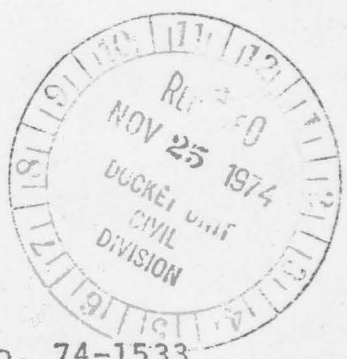
DEPT. OF JUSTICE
MAIL ROOM
CR-011

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD M. NIXON,
 Plaintiff,
 v.
 ARTHUR F. SAMPSON, et al.,
 Defendants.

Civil No. 74-1518

THE REPORTERS COMMITTEE FOR
 FREEDOM OF THE PRESS, et al.,
 Plaintiffs,
 v.
 ARTHUR F. SAMPSON, et al.,
 Defendants.



Civil No. 74-1533

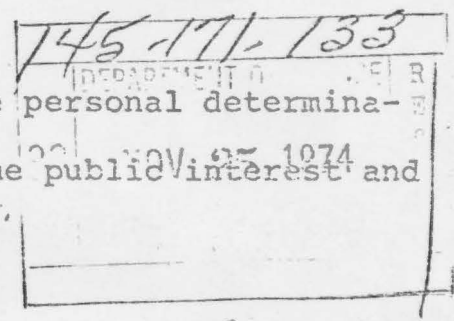
LILLIAN HELLMAN, et al.,
 Plaintiffs,
 v.
 ARTHUR F. SAMPSON, et al.,
 Defendants.

Civil No. 74-1551

REPLY MEMORANDUM OF THE SPECIAL PROSECUTOR
 IN SUPPORT OF MODIFICATION OF THE
 TEMPORARY RESTRAINING ORDER

The Special Prosecutor submits this reply memorandum in support of the Joint Motion of the Special Prosecutor and defendants Arthur F. Sampson, Philip W. Buchen, and H. Stuart Knight for modification of the temporary restraining order of this Court to allow implementation of the November 9, 1974 Agreement reached by those parties.

That Agreement is premised upon the personal determination of President Gerald R. Ford that the public interest and



the due administration of justice require that the Special Prosecutor have prompt and effective use of those presidential materials of the Nixon Administration that are relevant and important to investigations and prosecutions within the jurisdiction of the Watergate Special Prosecution Force. Pursuant to the Agreement the Special Prosecutor may conduct limited searches for those materials under specified procedures. Since implementation of the Agreement is dependent upon modification of this Court's temporary restraining order, defendants and the Special Prosecutor moved on November 11, 1974 for a modification of that Order.

As we have argued to the Court, the incumbent President has a right to use the materials compiled during the Administration of a former President. This right exists whether or not the former President is deemed the "owner" of the material.^{1/} See Folsom v. Marsh, 9 Fed. Cas. 342, 347 (D. Mass. 1841).

This principle is central to the rights and obligations of the incumbent President under Article II of the Constitution to "take Care that the Laws be faithfully executed," and it consistently has been followed by past Presidents as a necessary accommodation to the overriding needs of the government. For example, as was pointed out in the memorandum in support of the Joint Motion, after President Roosevelt's death President Truman had unrestricted use of the papers of

^{1/} Counsel for Mr. Anderson has expressed the view that we can have the right to use these materials only if the Government is deemed their owner. This is obviously incorrect since the very case relied on to establish ownership in the President--Folsom v. Marsh--is the same case which sets forth the principle we are urging here. This right, clearly a limited property right to the information in the materials, has been likened to an easement in real property.



the Roosevelt Administration concerning the conduct of World War II. See In re Roosevelt's Will, 73 N.Y.S.2d 821, 825 (Surr. Ct. Dutchess Co. 1947). More recently, President Nixon was given access to papers stored in the Lyndon B. Johnson Library in Austin, Texas when such materials pertained to current government functions. Indeed, as the letters from defendant Buchen to counsel to Mr. Nixon (attached to Nixon Exhibit No. 5) clearly indicate, copies of many files and other documents of the Nixon Administration presently are being used by President Ford and his subordinates to conduct the business of the United States. Those copies are now treated as files of the Ford Administration.

In opposing the Joint Motion, plaintiff Nixon has not challenged the principle of Folsom v. Marsh, supra; nor has he denied that the principle has been followed by previous Administrations as well as by President Ford. Plaintiff opposes implementation of the November 9 Agreement, however, on the ground that implementation would constitute an unreasonable search and seizure in violation of the Fourth Amendment.

The notion that the government could be prohibited by the Fourth Amendment from having access to materials (a) which are lawfully within its possession, (b) which were produced in the course of official government business by government employees using government facilities, and (c) which the President of the United States has asserted are presently required for the conduct of ongoing government business is frivolous. Simply stated, no illegal "search" or "seizure" occurs when officials of the federal government are given access to materials in the lawful possession and control of



the federal government.^{2/} See, e.g., Burdeau v. McDowell, 256 U.S. 465 (1921).

The Fourth Amendment, as the Supreme Court has repeatedly held, protects an individual against unjustified intrusions into areas where there is a reasonable expectation of privacy. See, e.g., Couch v. United States, 409 U.S. 324, 335-36 (1973); Combs v. United States, 408 U.S. 224, 227 (1972); United States v. White, 401 U.S. 745, 752 (1971); Mancusi v. De Forte, 392 U.S. 364, 368 (1968); Katz v. United States, 389 U.S. 347 (1967). It is difficult to perceive of a situation in which there is a less justified expectation of freedom from government intrusion than the present. First, Mr. Nixon's "presidential materials" all lawfully came into the possession of the government, and all are housed in a government building. See United States v. Donato, 269 F. Supp. 921, 923-24 (E.D. Pa.), aff'd., 379 F.2d 288 (3d Cir. 1967) (employee of United States Mint has no greater expectation of privacy in government-owned locker than he was given by the government); Jafree v. Scott, 372 F. Supp. 264, 273-74 (N.D. Ill. 1974). See also United States v. Blok, 188 F.2d 1019 (D.C. Cir. 1951), where the court stated that the superiors of a federal employee "might reasonably have searched the desk [of the employee] for

2/ The authorities cited by Mr. Nixon address only the question of who has standing to protest a search and seizure and seek suppression, not what constitutes an unlawful search or seizure. See, e.g., Combs v. United States, 408 U.S. 224 (1972); Mancusi v. De Forte, 392 U.S. 364 (1968); Jones v. United States, 362 U.S. 257 (1960). The distinction is far from illusory. For example, if the Department of Health, Education and Welfare or the Department of the Treasury were to allow officers of the Department of Justice access to a citizen's social security or tax file, one may assume that the citizen would have "standing" to protest the action. But any suggestion that an illegal search and seizure occurred, within the meaning of the Fourth Amendment, would be absurd.



official property needed for official use." Id. at 1021.

In addition, while the litigants in these consolidated actions have offered divergent views as to who has title to the Nixon "presidential materials," no one disputes that the overwhelming bulk of them were generated as part of the official business of the Executive Branch of the federal government and that the materials are, therefore, affected with a public interest. The Opinion of the Attorney General dated September 6, 1974, for example, while concluding that these documents and tapes are the property of the former President, nevertheless recognizes that "historically, there has been consistent acknowledgment that Presidential materials are peculiarly affected by a public interest***." See also Hearing before a Special Subcommittee of the Committee on Government Operations, 84th Cong., 1st Sess. 12, 28 (1955) (statements of James N. Milne and Wayne C. Grover). There can be no legitimate expectation of privacy from government intrusion for documents which are the records of that government over a five-and-one-half year period. Indeed, the Supreme Court has recognized that the strictures of the Fourth Amendment do not apply with their usual force when public as opposed to private papers are involved. See Davis v. United States, 328 U.S. 582, 589-91 (1945); Wilson v. United States, 221 U.S. 361 (1911); Boyd v. United States, supra, 116 U.S. at 623-24. In Davis, for example, Justice Douglas upheld as reasonable the warrantless search and seizure of gasoline ration coupons, relying on "the public character of the property." 328 U.S. at 593.

It should be emphasized that the only materials to which the November 9, 1974 Agreement applies are tapes and documents created or compiled in the course of official duties.



It does not apply to documentation of personal, private affairs of Mr. Nixon, including medical or financial records or communications with his family or priest.^{3/} Moreover, the Court will be able to determine from the subpoenas submitted under seal (Nixon Exh. No. 2) that very few of the 42 million documents constituting the Nixon presidential materials will be involved in the procedure provided by the November 9, 1974 Agreement.

Contrary to the impression which Mr. Nixon seeks to leave, the Agreement authorizes no general search, nor is it a throwback to the writs of assistance. Indeed, unlike the situation emphasized by the Supreme Court in Boyd v. United States, 116 U.S. 616 (1886), there will be no rummaging through a citizen's private papers.

In conclusion, the government has an information right to the Nixon "presidential materials" that are necessary to ongoing government business. Mr. Nixon has no justifiable expectation of privacy from the government for those documents in the government's custody which undisputably are records of the Executive's operation during Mr. Nixon's term in office.

Respectfully submitted,

HENRY S. RUTH, JR.
Special Prosecutor

PETER M. KREINDLER
Counsel to the Special Prosecutor

^{3/} As the Special Prosecutor stated at the hearing before this Court on November 15, 1974, there would be no objection to Counsel for Mr. Nixon segregating these private materials under appropriate procedures. It also should be noted that they are not part of the res that is the subject matter of this litigation.



RICHARD J. DAVIS
Assistant Special Prosecutor

KENNETH S. GELLER
Assistant Special Prosecutor

Watergate Special Prosecution
Force
1425 K Street, N.W.
Washington, D. C. 20005

Dated: November 22, 1974



CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served by mail, postage prepaid, this 22nd day of November, 1974, on the attorneys listed below a copy of the foregoing Reply Memorandum Of The Special Prosecutor In Support Of Modification Of The Temporary Restraining Order:

Jeffrey F. Axelrad, Esq.
Civil Division
U. S. Department of Justice
Room 3627
Washington, D. C. 20530

William A. Dobrovir, Esq.
2005 L Street, N.W.
Washington, D. C. 20036

Robert E. Herzstein, Esq.
Arnold & Porter
1229 19th Street, N.W.
Washington, D. C. 20036

Herbert J. Miller, Jr., Esq.
Miller, Cassidy, Larroca
& Lewin
1320 19th Street, N.W.
Washington, D. C. 20036

John H. F. Shattuck, Esq.
American Civil Liberties Union
22 East 40th Street
New York, New York 10016

PETER M. KREINDLER



NOV 23 9 32 AM '74

DEPT. OF JUSTICE
MAIL ROOM
GROUP

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD M. NIXON,

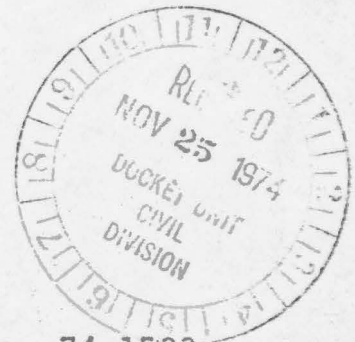
Plaintiff,

v.

ARTHUR F. SAMPSON, et al.,

Defendants.

Civil No. 74-1518



THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS, et al.,

Plaintiffs,

v.

ARTHUR F. SAMPSON, et al.,

Defendants.

Civil No. 74-1533

LILLIAN HELLMAN, et al.,

Plaintiffs,

v.

ARTHUR F. SAMPSON, et al.,

Defendants.

Civil No. 74-1551

REPLY MEMORANDUM OF THE SPECIAL PROSECUTOR
IN SUPPORT OF MODIFICATION OF THE
TEMPORARY RESTRAINING ORDER

The Special Prosecutor submits this reply memorandum in support of the Joint Motion of the Special Prosecutor and defendants Arthur F. Sampson, Philip W. Buchen, and H. Stuart Knight for modification of the temporary restraining order of this Court to allow implementation of the November 9, 1974 Agreement reached by those parties.

That Agreement is premised upon the personal determination of President Gerald R. Ford that the public interest and

74-151-133
DEPARTMENT OF JUSTICE
NOV 25 1974

CIVIL DIV.
General Litigation S-3



the due administration of justice require that the Special Prosecutor have prompt and effective use of those presidential materials of the Nixon Administration that are relevant and important to investigations and prosecutions within the jurisdiction of the Watergate Special Prosecution Force. Pursuant to the Agreement the Special Prosecutor may conduct limited searches for those materials under specified procedures. Since implementation of the Agreement is dependent upon modification of this Court's temporary restraining order, defendants and the Special Prosecutor moved on November 11, 1974 for a modification of that Order.

As we have argued to the Court, the incumbent President has a right to use the materials compiled during the Administration of a former President. This right exists whether or not the former President is deemed the "owner" of the material.^{1/} See Folsom v. Marsh, 9 Fed. Cas. 342, 347 (D. Mass. 1841).

This principle is central to the rights and obligations of the incumbent President under Article II of the Constitution to "take Care that the Laws be faithfully executed," and it consistently has been followed by past Presidents as a necessary accommodation to the overriding needs of the government. For example, as was pointed out in the memorandum in support of the Joint Motion, after President Roosevelt's death President Truman had unrestricted use of the papers of

^{1/} Counsel for Mr. Anderson has expressed the view that we can have the right to use these materials only if the Government is deemed their owner. This is obviously incorrect since the very case relied on to establish ownership in the President--Folsom v. Marsh--is the same case which sets forth the principle we are urging here. This right, clearly a limited property right to the information in the materials, has been likened to an easement in real property.



the Roosevelt Administration concerning the conduct of World War II. See In re Roosevelt's Will, 73 N.Y.S.2d 821, 825 (Surr. Ct. Dutchess Co. 1947). More recently, President Nixon was given access to papers stored in the Lyndon B. Johnson Library in Austin, Texas when such materials pertained to current government functions. Indeed, as the letters from defendant Buchen to counsel to Mr. Nixon (attached to Nixon Exhibit No. 5) clearly indicate, copies of many files and other documents of the Nixon Administration presently are being used by President Ford and his subordinates to conduct the business of the United States. Those copies are now treated as files of the Ford Administration.

In opposing the Joint Motion, plaintiff Nixon has not challenged the principle of Folsom v. Marsh, supra; nor has he denied that the principle has been followed by previous Administrations as well as by President Ford. Plaintiff opposes implementation of the November 9 Agreement, however, on the ground that implementation would constitute an unreasonable search and seizure in violation of the Fourth Amendment.

The notion that the government could be prohibited by the Fourth Amendment from having access to materials (a) which are lawfully within its possession, (b) which were produced in the course of official government business by government employees using government facilities, and (c) which the President of the United States has asserted are presently required for the conduct of ongoing government business is frivolous. Simply stated, no illegal "search" or "seizure" occurs when officials of the federal government are given access to materials in the lawful possession and control of



the federal government.^{2/} See, e.g., Burdeau v. McDowell, 256 U.S. 465 (1921).

The Fourth Amendment, as the Supreme Court has repeatedly held, protects an individual against unjustified intrusions into areas where there is a reasonable expectation of privacy. See, e.g., Couch v. United States, 409 U.S. 324, 335-36 (1973); Combs v. United States, 408 U.S. 224, 227 (1972); United State v. White, 401 U.S. 745, 752 (1971); Mancusi v. De Forte, 392 U.S. 364, 368 (1968); Katz v. United States, 389 U.S. 347 (1967). It is difficult to perceive of a situation in which there is a less justified expectation of freedom from government intrusion than the present. First, Mr. Nixon's "presidential materials" all lawfully came into the possession of the government, and all are housed in a government building. See United States v. Donato, 269 F. Supp. 921, 923-24 (E.D. Pa.), aff'd., 379 F.2d 288 (3d Cir. 1967) (employee of United States Mint has no greater expectation of privacy in government-owned locker than he was given by the government); Jafree v. Scott, 372 F. Supp. 264, 273-74 (N.D. Ill. 1974). See also United States v. Blok, 188 F.2d 1019 (D.C. Cir. 1951), where the court stated that the superiors of a federal employee "might reasonably have searched the desk [of the employee] for

^{2/} The authorities cited by Mr. Nixon address only the question of who has standing to protest a search and seizure and seek suppression, not what constitutes an unlawful search or seizure. See, e.g., Combs v. United States, 408 U.S. 224 (1972); Mancusi v. De Forte, 392 U.S. 364 (1968); Jones v. United States, 362 U.S. 257 (1960). The distinction is far from illusory. For example, if the Department of Health, Education and Welfare or the Department of the Treasury were to allow officers of the Department of Justice access to a citizen's social security or tax file, one may assume that the citizen would have "standing" to protest the action. But any suggestion that an illegal search and seizure occurred, within the meaning of the Fourth Amendment, would be absurd.



official property needed for official use." Id. at 1021.

In addition, while the litigants in these consolidated actions have offered divergent views as to who has title to the Nixon "presidential materials," no one disputes that the overwhelming bulk of them were generated as part of the official business of the Executive Branch of the federal government and that the materials are, therefore, affected with a public interest. The Opinion of the Attorney General dated September 6, 1974, for example, while concluding that these documents and tapes are the property of the former President, nevertheless recognizes that "historically, there has been consistent acknowledgment that Presidential materials are peculiarly affected by a public interest***." See also Hearing before a Special Subcommittee of the Committee on Government Operations, 84th Cong., 1st Sess. 12, 28 (1955) (statements of James N. Milne and Wayne C. Grover). There can be no legitimate expectation of privacy from government intrusion for documents which are the records of that government over a five-and-one-half year period. Indeed, the Supreme Court has recognized that the strictures of the Fourth Amendment do not apply with their usual force when public as opposed to private papers are involved. See Davis v. United States, 328 U.S. 582, 589-91 (1945); Wilson v. United States, 221 U.S. 361 (1911); Boyd v. United States, supra, 116 U.S. at 623-24. In Davis, for example, Justice Douglas upheld as reasonable the warrantless search and seizure of gasoline ration coupons, relying on "the public character of the property." 328 U.S. at 593.

It should be emphasized that the only materials to which the November 9, 1974 Agreement applies are tapes and documents created or compiled in the course of official duties.



It does not apply to documentation of personal, private affairs of Mr. Nixon, including medical or financial records or communications with his family or priest.^{3/} Moreover, the Court will be able to determine from the subpoenas submitted under seal (Nixon Exh. No. 2) that very few of the 42 million documents constituting the Nixon presidential materials will be involved in the procedure provided by the November 9, 1974 Agreement.

Contrary to the impression which Mr. Nixon seeks to leave, the Agreement authorizes no general search, nor is it a throwback to the writs of assistance. Indeed, unlike the situation emphasized by the Supreme Court in Boyd v. United States, 116 U.S. 616 (1886), there will be no rummaging through a citizen's private papers.

In conclusion, the government has an information right to the Nixon "presidential materials" that are necessary to ongoing government business. Mr. Nixon has no justifiable expectation of privacy from the government for those documents in the government's custody which undisputably are records of the Executive's operation during Mr. Nixon's term in office.

Respectfully submitted,

HENRY S. RUTH, JR.
Special Prosecutor

PETER M. KREINDLER
Counsel to the Special Prosecutor

^{3/} As the Special Prosecutor stated at the hearing before this Court on November 15, 1974, there would be no objection to Counsel for Mr. Nixon segregating these private materials under appropriate procedures. It also should be noted that they are not part of the res that is the subject matter of this litigation.



RICHARD J. DAVIS
Assistant Special Prosecutor

KENNETH S. GELLER
Assistant Special Prosecutor

Watergate Special Prosecution
Force
1425 K Street, N.W.
Washington, D. C. 20005

Dated: November 22, 1974



CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served by mail, postage prepaid, this 22nd day of November, 1974, on the attorneys listed below a copy of the foregoing Reply Memorandum Of The Special Prosecutor In Support Of Modification Of The Temporary Restraining Order:

Jeffrey F. Axelrad, Esq.
Civil Division
U. S. Department of Justice
Room 3627
Washington, D. C. 20530

William A. Dobrovir, Esq.
2005 L Street, N.W.
Washington, D. C. 20036

Robert E. Herzstein, Esq.
Arnold & Porter
1229 19th Street, N.W.
Washington, D. C. 20036

Herbert J. Miller, Jr., Esq.
Miller, Cassidy, Larroca
& Lewin
1320 19th Street, N.W.
Washington, D. C. 20036

John H. F. Shattuck, Esq.
American Civil Liberties Union
22 East 40th Street
New York, New York 10016

PETER M. KREINDLER



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RECEIVED
NOV 27 8 29 AM '74
DEPT. OF JUSTICE
MAIL ROOM
480H

RICHARD M. NIXON,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 74-1518
)	
ARTHUR F. SAMPSON, et al.,)	
)	
Defendants.)	
)	
and)	
)	
THE REPORTERS COMMITTEE FOR)	
FREEDOM OF THE PRESS, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil No. 74-1533
)	
ARTHUR F. SAMPSON, et al.,)	
)	
Defendants.)	
)	
and)	
)	
LILLIAN HELLMAN, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil No. 74-1551
)	
ARTHUR F. SAMPSON, et al.,)	
)	
Defendants.)	
)	
)	



STIPULATION

1. It is hereby stipulated and agreed between counsel for plaintiffs and counsel for defendant Richard M. Nixon that the time within which said defendant may answer,

145-171-133

DEPARTMENT OF JUSTICE	RECORD
33 NOV 27 1974	
R.A.O.	
CIVIL DIV.	
General Litigation Sec	



move or otherwise plead with respect to the complaint herein
be and t is hereby extended to December 13, 1974.

2. Defendant Nixon asserts that he does not waive
any defenses, including lack of personal jurisdiction over
the defendant by this stipulation.

3. John H. F. Shattuck, counsel for plaintiffs
has authorized counsel for defendant Nixon to sign his name
to this stipulation.

Respectfully submitted,

Herbert J. Miller, Jr. by P.R.L.
HERBERT J. MILLER, JR.

Raymond G. Larroca
RAYMOND G. LARROCA

William H. Jeffress, Jr. by P.R.L.
WILLIAM H. JEFFRESS, JR.

R. Stan Mortenson by P.R.L.
R. STAN MORTENSON

MILLER, CASSIDY, LARROCA & LEWIN
1320 19th Street, N.W., Suite 500
Washington, D. C. 20036

John H. Shattuck by P.R.L.
JOHN H. F. SHATTUCK
Counsel for Plaintiffs

Dated: November 25, 1974



CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached Stipulation was mailed this 25th day of November, 1974, first class mail, postage prepaid, to the following:


Jeffrey F. Axelrad, Esquire
Civil Division
General Litigation Section
Room 3627, U. S. Department of Justice
Washington, D. C. 20530

Peter Kreindler, Esquire
Counsel to the Special Prosecutor
1425 K Street, N.W.
Washington, D. C. 20005

Robert E. Herzstein, Esquire
Arnold & Porter
1229 19th Street, N.W.
Washington, D. C. 20036

William A. Dobrovir, Esquire
2005 L Street, N.W.
Washington, D. C. 20036

John H. F. Shattuck, Esquire
American Civil Liberties Union
Foundation
22 East 40th Street
New York, New York 10016


RAYMOND G. LARROCA



NOV 23 9 32 AM '74

DEPT. OF JUSTICE
MAIL ROOM
GROUP

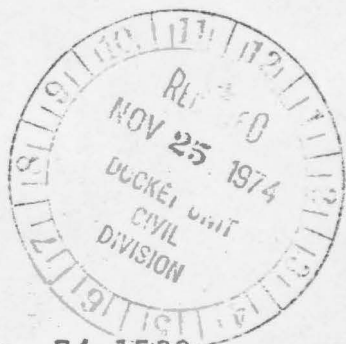
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD M. NIXON,
Plaintiff,
v.
ARTHUR F. SAMPSON, et al.,
Defendants.

THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS, et al.,
Plaintiffs,
v.
ARTHUR F. SAMPSON, et al.,
Defendants.

LILLIAN HELLMAN, et al.,
Plaintiffs,
v.
ARTHUR F. SAMPSON, et al.,
Defendants.

Civil No. 74-1518



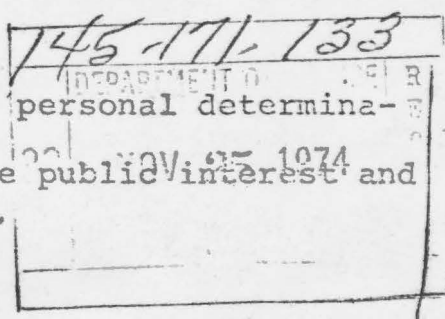
Civil No. 74-1533

Civil No. 74-1551

REPLY MEMORANDUM OF THE SPECIAL PROSECUTOR
IN SUPPORT OF MODIFICATION OF THE
TEMPORARY RESTRAINING ORDER

The Special Prosecutor submits this reply memorandum in support of the Joint Motion of the Special Prosecutor and defendants Arthur F. Sampson, Philip W. Buchen, and H. Stuart Knight for modification of the temporary restraining order of this Court to allow implementation of the November 9, 1974 Agreement reached by those parties.

That Agreement is premised upon the personal determination of President Gerald R. Ford that the public interest and



CIVIL DIV.
General Litigation 54



the due administration of justice require that the Special Prosecutor have prompt and effective use of those presidential materials of the Nixon Administration that are relevant and important to investigations and prosecutions within the jurisdiction of the Watergate Special Prosecution Force. Pursuant to the Agreement the Special Prosecutor may conduct limited searches for those materials under specified procedures. Since implementation of the Agreement is dependent upon modification of this Court's temporary restraining order, defendants and the Special Prosecutor moved on November 11, 1974 for a modification of that Order.

As we have argued to the Court, the incumbent President has a right to use the materials compiled during the Administration of a former President. This right exists whether or not the former President is deemed the "owner" of the material.^{1/} See Folsom v. Marsh, 9 Fed. Cas. 342, 347 (D. Mass. 1841).

This principle is central to the rights and obligations of the incumbent President under Article II of the Constitution to "take Care that the Laws be faithfully executed," and it consistently has been followed by past Presidents as a necessary accommodation to the overriding needs of the government. For example, as was pointed out in the memorandum in support of the Joint Motion, after President Roosevelt's death President Truman had unrestricted use of the papers of

^{1/} Counsel for Mr. Anderson has expressed the view that we can have the right to use these materials only if the Government is deemed their owner. This is obviously incorrect since the very case relied on to establish ownership in the President--Folsom v. Marsh--is the same case which sets forth the principle we are urging here. This right, clearly a limited property right to the information in the materials, has been likened to an easement in real property.



the Roosevelt Administration concerning the conduct of World War II. See In re Roosevelt's Will, 73 N.Y.S.2d 821, 825 (Surr. Ct. Dutchess Co. 1947). More recently, President Nixon was given access to papers stored in the Lyndon B. Johnson Library in Austin, Texas when such materials pertained to current government functions. Indeed, as the letters from defendant Buchen to counsel to Mr. Nixon (attached to Nixon Exhibit No. 5) clearly indicate, copies of many files and other documents of the Nixon Administration presently are being used by President Ford and his subordinates to conduct the business of the United States. Those copies are now treated as files of the Ford Administration.

In opposing the Joint Motion, plaintiff Nixon has not challenged the principle of Folsom v. Marsh, supra; nor has he denied that the principle has been followed by previous Administrations as well as by President Ford. Plaintiff opposes implementation of the November 9 Agreement, however, on the ground that implementation would constitute an unreasonable search and seizure in violation of the Fourth Amendment.

The notion that the government could be prohibited by the Fourth Amendment from having access to materials (a) which are lawfully within its possession, (b) which were produced in the course of official government business by government employees using government facilities, and (c) which the President of the United States has asserted are presently required for the conduct of ongoing government business is frivolous. Simply stated, no illegal "search" or "seizure" occurs when officials of the federal government are given access to materials in the lawful possession and control of



the federal government.^{2/} See, e.g., Burdeau v. McDowell, 256 U.S. 465 (1921).

The Fourth Amendment, as the Supreme Court has repeatedly held, protects an individual against unjustified intrusions into areas where there is a reasonable expectation of privacy. See, e.g., Couch v. United States, 409 U.S. 324, 335-36 (1973) Combs v. United States, 408 U.S. 224, 227 (1972); United State v. White, 401 U.S. 745, 752 (1971); Mancusi v. De Forte, 392 U.S. 364, 368 (1968); Katz v. United States, 389 U.S. 347 (1967). It is difficult to perceive of a situation in which there is a less justified expectation of freedom from government intrusion than the present. First, Mr. Nixon's "presidential materials" all lawfully came into the possession of the government, and all are housed in a government building. See United States v. Donato, 269 F. Supp. 921, 923-24 (E.D. Pa.), aff'd., 379 F.2d 288 (3d Cir. 1967) (employee of United States Mint has no greater expectation of privacy in government-owned locker than he was given by the government); Jafree v. Scott, 372 F. Supp. 264, 273-74 (N.D. Ill. 1974). See also United States v. Blok, 188 F.2d 1019 (D.C. Cir. 1951), where the court stated that the superiors of a federal employee "might reasonably have searched the desk [of the employee] for

2/ The authorities cited by Mr. Nixon address only the question of who has standing to protest a search and seizure and seek suppression, not what constitutes an unlawful search or seizure. See, e.g., Combs v. United States, 408 U.S. 224 (1972); Mancusi v. De Forte, 392 U.S. 364 (1968); Jones v. United States, 362 U.S. 257 (1960). The distinction is far from illusory. For example, if the Department of Health, Education and Welfare or the Department of the Treasury were to allow officers of the Department of Justice access to a citizen's social security or tax file, one may assume that the citizen would have "standing" to protest the action. But any suggestion that an illegal search and seizure occurred, within the meaning of the Fourth Amendment, would be absurd.



official property needed for official use." Id. at 1021.

In addition, while the litigants in these consolidated actions have offered divergent views as to who has title to the Nixon "presidential materials," no one disputes that the overwhelming bulk of them were generated as part of the official business of the Executive Branch of the federal government and that the materials are, therefore, affected with a public interest. The Opinion of the Attorney General dated September 6, 1974, for example, while concluding that these documents and tapes are the property of the former President, nevertheless recognizes that "historically, there has been consistent acknowledgment that Presidential materials are peculiarly affected by a public interest***." See also Hearing before a Special Subcommittee of the Committee on Government Operations, 84th Cong., 1st Sess. 12, 28 (1955) (statements of James N. Milne and Wayne C. Grover). There can be no legitimate expectation of privacy from government intrusion for documents which are the records of that government over a five-and-one-half year period. Indeed, the Supreme Court has recognized that the strictures of the Fourth Amendment do not apply with their usual force when public as opposed to private papers are involved. See Davis v. United States, 328 U.S. 582, 589-91 (1945); Wilson v. United States, 221 U.S. 361 (1911); Boyd v. United States, supra, 116 U.S. at 623-24. In Davis, for example, Justice Douglas upheld as reasonable the warrantless search and seizure of gasoline ration coupons, relying on "the public character of the property." 328 U.S. at 593.

It should be emphasized that the only materials to which the November 9, 1974 Agreement applies are tapes and documents created or compiled in the course of official duties.



It does not apply to documentation of personal, private affairs of Mr. Nixon, including medical or financial records or communications with his family or priest.^{3/} Moreover, the Court will be able to determine from the subpoenas submitted under seal (Nixon Exh. No. 2) that very few of the 42 million documents constituting the Nixon presidential materials will be involved in the procedure provided by the November 9, 1974 Agreement.

Contrary to the impression which Mr. Nixon seeks to leave, the Agreement authorizes no general search, nor is it a throwback to the writs of assistance. Indeed, unlike the situation emphasized by the Supreme Court in Boyd v. United States, 116 U.S. 616 (1886), there will be no rummaging through a citizen's private papers.

In conclusion, the government has an information right to the Nixon "presidential materials" that are necessary to ongoing government business. Mr. Nixon has no justifiable expectation of privacy from the government for those documents in the government's custody which undisputably are records of the Executive's operation during Mr. Nixon's term in office.

Respectfully submitted,

HENRY S. RUTH, JR.
Special Prosecutor

PETER M. KREINDLER
Counsel to the Special Prosecutor

^{3/} As the Special Prosecutor stated at the hearing before this Court on November 15, 1974, there would be no objection to Counsel for Mr. Nixon segregating these private materials under appropriate procedures. It also should be noted that they are not part of the res that is the subject matter of this litigation.



RICHARD J. DAVIS
Assistant Special Prosecutor

KENNETH S. GELLER
Assistant Special Prosecutor

Watergate Special Prosecution
Force
1425 K Street, N.W.
Washington, D. C. 20005

Dated: November 22, 1974



CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served by mail, postage prepaid, this 22nd day of November, 1974, on the attorneys listed below a copy of the foregoing Reply Memorandum Of The Special Prosecutor In Support Of Modification Of The Temporary Restraining Order:

Jeffrey F. Axelrad, Esq.
Civil Division
U. S. Department of Justice
Room 3627
Washington, D. C. 20530

William A. Dobrovir, Esq.
2005 L Street, N.W.
Washington, D. C. 20036

Robert E. Herzstein, Esq.
Arnold & Porter
1229 19th Street, N.W.
Washington, D. C. 20036

Herbert J. Miller, Jr., Esq.
Miller, Cassidy, Larroca
& Lewin
1320 19th Street, N.W.
Washington, D. C. 20036

John H. F. Shattuck, Esq.
American Civil Liberties Union
22 East 40th Street
New York, New York 10016

PETER M. KREINDLER



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RECEIVED
NOV 27 8 29 AM '74
DEPT. OF JUSTICE
MAIL ROOM
ORON

RICHARD M. NIXON,

Plaintiff,

v.

Civil No. 74-1518

ARTHUR F. SAMPSON, et al.,

Defendants.

and

THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS, et al.,

Plaintiffs,

v.

Civil No. 74-1533

ARTHUR F. SAMPSON, et al.,

Defendants.

and

LILLIAN HELLMAN, et al.,

Plaintiffs,

v.

Civil No. 74-1551

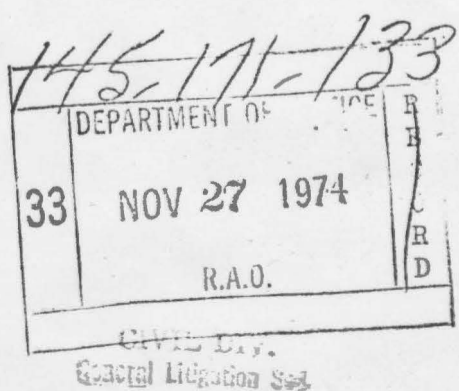
ARTHUR F. SAMPSON, et al.,

Defendants.



STIPULATION

1. It is hereby stipulated and agreed between counsel for plaintiffs and counsel for defendant Richard M. Nixon that the time within which said defendant may answer,

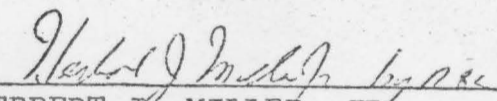



move or otherwise plead with respect to the complaint herein
be and t is hereby extended to December 13, 1974.

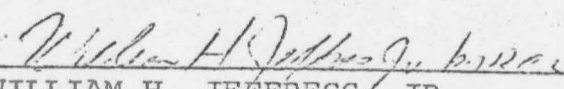
2. Defendant Nixon asserts that he does not waive
any defenses, including lack of personal jurisdiction over
the defendant by this stipulation.

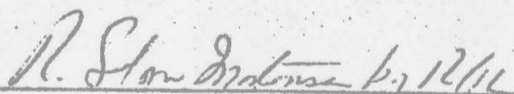
3. John H. F. Shattuck, counsel for plaintiffs
has authorized counsel for defendant Nixon to sign his name
to this stipulation.

Respectfully submitted,



HERBERT J. MILLER, JR.


RAYMOND G. LARROCA


WILLIAM H. JEFFRESS, JR.


R. STAN MORTENSON

MILLER, CASSIDY, LARROCA & LEWIN
1320 19th Street, N.W., Suite 500
Washington, D. C. 20036


JOHN H. F. SHATTUCK
Counsel for Plaintiffs

Dated: November 25, 1974



CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached Stipulation was mailed this 25th day of November, 1974, first class mail, postage prepaid, to the following:

Jeffrey F. Axelrad, Esquire
Civil Division
General Litigation Section
Room 3627, U. S. Department of Justice
Washington, D. C. 20530

Peter Kreindler, Esquire
Counsel to the Special Prosecutor
1425 K Street, N.W.
Washington, D. C. 20005

Robert E. Herzstein, Esquire
Arnold & Porter
1229 19th Street, N.W.
Washington, D. C. 20036

William A. Dobrovir, Esquire
2005 L Street, N.W.
Washington, D. C. 20036

John H. F. Shattuck, Esquire
American Civil Liberties Union
Foundation
22 East 40th Street
New York, New York 10016


RAYMOND G. LARROCA

