The original documents are located in Box 24, folder "Legal Matters" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

Rod: This is out-of-data & should not be sent without updating, so I suggest you give Jay French + Barry Roth some guidance on this project next week.

J

THE WHITE HOUSE

WASHINGTON

Information

March 15, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN

SUBJECT: Recent Significant Legal Matters

1. Suits against Federal officials.

In Miller, et al., v. Saxbe, et al., Judge Gesell of the United States District Court for the District of Columbia held the doctrine of official immunity inapplicable as a bar to a suit against eleven (11) present and former Justice Department officials, including former Attorney General Saxbe, in their personal capacities, for conspiracy to deny two black U.S. Deputy Marshals equal job opportunities on the basis of race. In the past, the courts have breached this doctrine only in the most compelling and extreme cases, far beyond the facts here. In his chambers, the Judge indicated his view that these officials should retain private counsel. However, there is no court order to this effect, and the Department of Justice intends to continue to represent the officials, as well as to vigorously object to any lessening of the official immunity doctrine.

2. Presidential materials.

Nixon v. Administrator of General Services. A hearing is scheduled on Monday, March 17, before a three-judge panel of the United States District Court for the District of Columbia in former President Nixon's suit attacking the constitutionality of the Presidential Recordings and Materials Preservation Act. The hearing will deal primarily with two issues: Is it proper for a three-judge panel to sit to hear this case on its merits; and, if so, what treatment should be accorded Judge Richey's earlier opinion (now stayed) in Nixon v. Sampson, et al.

THE WHITE HOUSE

WASHINGTON

March 18, 1975

MEMORANDUM

FOR: PHIL BUCHEN

FROM: DON RUMSFELD

I need an answer today on the question I asked your office concerning whether or not the President can call back Congress under certain circumstances. Do they have to be adjourned or recessed or what?

Replied verbally to Don 3/18/75
P.

Tuesday 3/18/75

2:15 Ken advises the time that Congress was called back by Truman was done during a recess period.

Ken is preparing a piece of paper for you.

(See attached memo from Don Rumsfeld)

Tuesday 3/18/75

10:50 Mr. Rumsfeld's question:

"Can the President call the Congress back from a recess or only from an adjournment?"

11:00 Mr. Lazarus says as a matter of law there is no question -- he can. Citation -- Article II, Sect. 3 -- gives him the authority -- as a matter of law, he can.

As a matter of practice, the last time it was done was in the Truman administration. In the Truman administration there was a special session called -- doesn't know whether it was during an adjournment in the constitutional sense or in a recess but that was the last time it was done.

Do you want to call Mr. Rumsfeld or do you want me to tell him this?

THE WHITE HOUSE

WASHINGTON

March 19, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: KEN LAZARUS KC

SUBJECT: Special Sessions of Congress:
A follow-up to our Phone Conversation

This is to provide you with some background information on the referenced subject and to outline the procedure for calling a special session.

Article II, Section 3 of the Constitution in pertinent part provides that the President

> "may on extraordinary occasions,
> convene both Houses [of Congress],
> or either of them...."

Sessions of the Congress, or of either House, convened pursuant to the power are generally referred to as Special Sessions.

In the earliest days of our Republic, the power was routinely used to convene the Senate in order to obtain "advice and consent" to the appointment of officers requiring confirmation. The first such instance occurred under President Washington in 1791. Thereafter Presidents called the Senate alone into Special Session nearly fifty times. The last time this power was invoked over the Senate was in 1933 under President Hoover. The Twentieth Amendment (effective date: October 15, 1955) setting new dates for the term of the President and Member of Congress eliminated the necessity for using the power to obtain confirmation of Presidential appointees.

The first Special Session convening both Houses of Congress was called by President John Adams on May 15, 1797. In 1877, President

Hays convened the Forty-Fifth Congress for the extraordinary purpose of passing the usual appropriation for the support of the Army.

President Truman convened Special Sessions of both Houses on two occasions: Proclamation No. 2751, October 23, 1947; and Proclamation No. 2796, July 15, 1948. The latter instance represents the last proclamation of this kind.

There is no specific time requirement for the calling of a Special Session. Thus, a proclamation may issue during a recess or an "adjournment" in the Constitutional sense.

The interval between the assertion of the power and the date of the convening of Congress has depended on the circumstances and urgency of the legislation. Notice has ranged from two months to a few days.

Although Special Sessions have also been convened by way of "Summons" or "circular", traditionally the power has been exercised by way of proclamation. A specimen of Proclamation No. 2751 referred to above is attached for your information.

A P P E N D I X

PROCLAMATION 2751

CONVENING THE CONGRESS

WHEREAS the public interest requires that the Congress of the United States should be convened at twelve o'clock, noon, on Monday, the Seventeenth day of November, 1947, to receive such communication as may be made by the Executive:

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim and declare that an extraordinary occasion requires the Congress of the United States to convene at the Capitol in the City of Washington on Monday, the Seventeenth day of November, 1947, at twelve o'clock, noon, of which all persons who shall at that time be entitled to act as members thereof are hereby required to take notice.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the great seal of the United States.

DONE at the City of Washington this twenty-third day of October, in the year of our Lord nineteen hundred and forty-seven, and of the Independence of the United States of America the one hundred and seventy-second.

[SEAL]

HARRY S. TRUMAN

By the President:

ROBERT A. LOVETT,
Acting Secretary of State.

Legal

THE WHITE HOUSE

WASHINGTON

July 22, 1975

MEMORANDUM FOR: ELISKA HASEK

FROM: PHILIP BUCHEN P.W.B.

SUBJECT: Autographing of Currency

Autographing of currency by the President does not raise a legal problem. 18 U.S.C. 333 prohibits the mutilation, defacement or disfiguration of currency with "the intent to render such bank bill, draft, note, or other evidence of debt, unfit to be reissued...." The Secret Service legal counsel has confirmed that neither this nor any other statute prohibits the autographing of currency. The same is true with respect to savings bonds.

In terms of whether this practice is appropriate, it is my understanding that while a member of Congress, the President adopted a policy to autograph currency. Additionally, the attached bills indicate that the Secretary of the Treasury and the Treasurer of the United States apparently feel that this is not a problem. While I agree with you that we should not encourage cash to be sent to the White House, we do not assume the risk when people send it through the mails. In terms of the risk, it is unlikely that people will send in bills of large denominations. Finally, I see no difference between using the autopen on a dollar bill or a picture.

While I appreciate your concerns, I, therefore, defer to Mildred Leonard as to what policy the President wishes to adopt in this area.

7/25/75

Mr Buchan
talked to
Mike Kozak
since Monroe Leigh
was on the Hill.

TRANSMITTED BY:
(Date & Time Stamp)

DEPARTMENT OF STATE

1975 JUL 25 PM 1 07

DEPARTMENT OF STATE
Operations Center

LDX MESSAGE RECEIPT

S/S #

RECEIVED BY:
(Date & Time Stamp)

75 JUL 25 PM 1:24

WHITE HOUSE
SITUATION ROOM

LDX MESSAGE NO: 866, CLASSIFICATION Unclassified, EXDIS

DESCRIPTION OF MSG. Opinion re constitutionality of Snyder Amendment

FROM:			
Monroe Leigh, Officer	L, Office Symbol	29598, Extension	6425, Room Number

LDX TO:	DELIVER TO:	EXTENSION:	ROOM NUMBER:
White House	Mr. Philip Buchen	456-2632	2nd Floor West Wing

FOR: CLEARANCE [ ] INFORMATION [ ] PER REQUEST [ ] COMMENT [ ]

REMARKS:

VALIDATED FOR TRANSMISSION BY: _____
Executive Secretariat Officer

SNYDER AMENDMENT

Precluding Use of Appropriated Funds to Negotiate an Agreement on the Panama Canal

During consideration in the House of Representatives of the Department of State Appropriations Bill (H.R. 8121), Congressman Snyder introduced an amendment to prevent appropriated funds from being used to negotiate a new treaty that would relinquish any U.S. rights in the Panama Canal Zone. The amendment, as adopted by the House, states:

> None of the funds appropriated in this title shall be used for purposes of negotiating the surrender or relinquishment of any U.S. rights in the Panama Canal Zone. [H.R. 8121, § 104.]

This amendment, or one similar to it, will soon be considered in the Senate.

The purpose of this memorandum is to discuss the constitutionality of the Snyder Amendment, in particular whether Congress, by restricting the use of appropriations or otherwise, can constitutionally prevent or inhibit the President from "negotiating" particular treaty terms.

Statutory restrictions on what treaty terms the President can negotiate are inconsistent with the treaty-making process set forth in the Constitution. Article II, Section 2 of the Constitution assigns very specific functions to the President and to the Senate:

> He [the President] shall have Power, by and with the Advice and Consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, . . .

Thus, in the exercise of treaty-making powers, there are prerogatives and roles for the executive and legislative branches of government. This allocation and separation of powers is fundamental to our constitutional system.

In practice, the effective conduct of the foreign relations of the United States requires close coordination between the legislative and executive branches of our government in carrying out their respective constitutional responsibilities with regard to the making of treaties. However, as the Supreme Court has stated, the limits of those responsibilities are clear:

> [The President] makes treaties with the advice and consent of the Senate; but he alone negotiates. Into the field of negotiation the Senate cannot intrude; and Congress itself is powerless to invade it. [U.S. v. Curtis-Wright Corp., 299 U.S. 304, 319 (1936).]

Accordingly, legislation purporting to preclude the President from negotiating treaty terms which he considers to be in the national interest would not be a proper subject for congressional action under the Constitution. Similarly, in exercising a proper legislative function, such as the appropriation of funds for the conduct of executive branch activities, the Congress may not properly impose conditions which would otherwise be unconstitutional. See Henkin, Foreign Affairs and the Constitution, p. 113. Just as Congress cannot limit who the President nominates for an ambassadorship, so it cannot restrict the subject matter of treaties to be negotiated and submitted to the Senate.

It is, therefore, the opinion of the Department of State that inasmuch as Section 104 of H.R. 8121 purports to restrict the President in the exercise of a power exclusively reserved to him by the Constitution, it cannot be considered a constitutionally valid exercise of the legislative authority of the Congress.

Monroe Leigh
Legal Adviser
Department of State