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THE WHITE HOUSE

FROM
THE WHITE HOUSE
WASHINGTON, D.C.

Privileged

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

Copies of memoranda internal to the
Office of Counsel to the President in
files of Philip W. Buchen, Counsel
to the President



N. L. C.



CHECK NO.

PERSONS

TABLE NO.

REVISED

DATE

78887

4

120

1. No affidavit w/o looking
2. Needs to comply Sirica
3. Justice will - wounded Hines
lose
4. Naworski case more
important than network
5. Spectrum of
problems &
needs notes to
testify
6. Needs time to
comply
1 1/2 months

Membership No.

Firm

Member's Signature



N. L. C.

DATE	SERVER	TABLE NO.	PERSONS	CHECK NO.
7/19			3	56697

1				8.25
2	✓			1.50
3				1.30
4				.50
5				
6				
7				
8				
9				
10				
11				
12				

Membership No.: 8212

Firm: _____

Member's Signature: [Signature]

McCor

Rothblatt v. Nixon

(atty. for McCord)

Letter to Court signed by Buzhardt

Wounded Knee = Means & Banks, def's ads. U.S.
- 30 days more to respond

1. Identify box by packer + sequential # with date
2. Memo to PWB re general nature of contents
3. Appropriately relevant then goes to secure in-house place
4. Otherwise to San Clemente [there while still in
Custody of pres. admr., check to verify
accuracy of memo, then actual delivery to RN]

John Nesbitt

Bert Rhodes



Ownership question

Left within right of

San Francisco counsel to retain custody of papers

~~for~~ ~~the~~ which are the subject

of process ~~or~~ or threatened process (subpoena or orders etc.)

pending resolution of the validity

or effectiveness of the process

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

Ron's resistance to statement

- not a pre-condition, so not going to be given

Irrevocable gift of tapes (direct with RN)

- message: "Good fellowship etc."

- Why? not answered yet but will be

- Notorious foreign leaders

- institutional problem

Tapes - last sentence 7 B

Present gift of recorded materials + transcripts

Mechanics of access to tapes - convenience

Secure privacy of tapes & infinitum

- family conversations

Law suits

~~1/1~~

1

Sampson
Shoro



--use word "intention" instead of "desire"

--define "materials" as "historical materials" as used in Act

to depository

--provide for transfer/of subsequently discovered or acquired materials
by mutual agreement of former President and Administrator

--after 3 years provide for materials being made available for research and
study, subject to restrictions as may be imposed by former President

--in event above paragraph is agreed to , also seek provisions for equal
access, loan of materials, disposal of materials by Archivist, etc.

--provide for appointment of personal representative

--call whenever you need help, avoid earthquakes!



OFFICE OF THE VICE PRESIDENT
WASHINGTON, D.C.

TO: *Phie Barber*

FROM: Bill Casselman

Information *✓ per an. document.*

Action:

As appropriate _____

See me _____

Prepare reply _____

Concur and return _____





**General
Services
Administration**

Washington, D.C. 20405

Arthur L. Fox II, Esq.
Reuben B. Robertson III, Esq.
Public Citizen Litigation Group
2000 P Street, NW.
Washington, D.C. 20036

Gentlemen:

This is in reply to your letter of August 14 in which you question the assumption that a President owns "all Presidential documents and papers, official as well as personal" and request answers to four questions regarding the disposition of such records and papers.

Let me first deal with the distinction you recognize between official records and personal papers. That distinction is the customary basis for handling the two types of materials in different ways. Official Presidential documents include proclamations, Executive orders, laws, treaties, and other documents signed by the President having the force of law, as well as his messages to Congress and communications to Government departments. Such documents constitute the record of a President's official acts and as such are preserved as records of the Federal Government by the National Archives and Records Service. They have never been claimed by a President as his personal property.

On the other hand, every President from George Washington has considered the papers he accumulates in his own office to be his personal property, to do with as he pleases. Washington, at the end of his second term, shipped his papers to Mt. Vernon and kept them in his personal possession until his death. Through his will he left them to his nephew, Bushrod Washington. The Government purchased them in two installments from his heirs in 1834 and 1849. They are now in the Manuscript Division of the Library of Congress.

The precedent established by Washington in treating his Presidential papers as his private property and in retaining control over them when he left office was followed by every succeeding President or his heirs. In the course of our history some were lost, some destroyed, some deposited in State or local institutions, and some purchased by, or given to, the Federal Government.

**Progress Through Excellence
Service Through People**



In 1939, the Congress authorized the acceptance of a library for President Franklin D. Roosevelt's papers and memorabilia, and then in the Federal Records Act of 1950, authorized the Administrator of General Services to accept for deposit the papers and other historical materials of any President (now codified at 44 U.S.C. 2107). In 1955, Congress enacted further legislation authorizing a general system of Presidential "archival depositories," or libraries, under the Administrator of General Services.

Before doing so, however, Congress examined the basis for considering a President's personal papers as his private property. The statement of Archivist of the United States Wayne C. Grover to the Special Subcommittee on Government Operations of the House of Representatives, June 13, 1955, and an article submitted to the subcommittee by David D. Lloyd, former assistant to President Truman, are included in the printed Hearing (copy enclosed) and are of particular interest on the matter of ownership of a President's personal papers.

The provisions in the Presidential Libraries Act are quite specific and, among other things, allow the acceptance by the Administrator of General Services, with the review of the Congress, of an offer of a Presidential Library. The law has now been applied in several instances since its enactment, and there are now established Libraries for Presidents Hoover, Roosevelt, Truman, Eisenhower, Kennedy and Johnson.

Most recently, the matter of who owns Presidential papers was reviewed by the staff of the Joint Committee on Internal Revenue Taxation. They gave their opinion as follows:

. . . the staff believes that the historical precedents taken together with the provisions set forth in the Presidential Libraries Act, suggest that the papers of President Nixon are considered his personal property rather than public property. (Examination of President Nixon's Tax Returns for 1969 through 1972, prepared for the Joint Committee on Internal Revenue Taxation by its Staff, 93rd Congress, 2d session, Senate Report No. 93-768, April 3, 1974, p. 28-29).

Our answers to your questions, numbered from 1 through 4, are as follows:

1. In view of what we believe to be definitive historical precedents and legislative enactments, the General Services Administration has not thought it necessary to seek an opinion from the Attorney General as to the ownership or protection of Presidential papers and does not plan to do so.



2. The General Services Administration is making a general inventory of the personal papers and personal memorabilia of President Nixon. This is mainly a calculation as to the number of packing cartons and crates and total volume in cubic feet rather than a list of the material by subject or type. This is being done in anticipation that some or all of the material will be moved out of the White House Office or from storage in the National Archives Building at a future date.

The General Services Administration made an inventory of all pieces of Government-owned furniture in the East and West wings of the White House, at Key Biscayne and at San Clemente, several months ago. None of this Government property has been removed by President Nixon and none is expected to be moved for him. Camp David, of course, is under the jurisdiction of the Department of Defense.

3. To preserve the personal papers of President Nixon, the General Services Administration has detailed a team of professional archivists from the National Archives and Records Service to work with the staff of the White House Office in identifying, segregating, and packing the Nixon papers and memorabilia. However, under an agreement announced August 14 between White House Legal Counsel J. Fred Buzhardt and representatives of the Office of Special Prosecutor Leon Jaworski, no files or tapes will be moved from the White House Office pending further discussion with representatives of the Special Prosecutor. In all other respects, the disposition of the papers and personal memorabilia will be determined by President Nixon. The General Services Administration will accept them for deposit in a records depository if he so directs. Gifts to the President from foreign governments are subject to the provisions of the Foreign Gifts and Decorations Act of 1966, as amended (5 U.S.C. 7342), and pursuant to that Act, many of these gifts ultimately find their way to the appropriate Presidential library or other institutions as public property.

4. Neither President Nixon nor any member of his staff has submitted a list of "records or documents proposed to be removed from Government files or otherwise disposed of," nor has the General Services Administration asked that this be done. This is because the laws, proclamations, and other Federal records signed by the President are already included or will be included in the national archival system; and because we believe, for the reasons



4

indicated herein, that a President's personal papers and memorabilia are not subject to laws relating to the disposition of Federal records or to the Freedom of Information Act.

Sincerely,

Enclosure



PUBLIC CITIZEN LITIGATION GROUP
 SUITE 700
 2000 P STREET, N. W.
 WASHINGTON, D. C. 20036
 (202) 785-3704

Filed by:	NARS
Filed with:	
For:	Information
Prepare ready for Signature of:	A
Number Copy of Reply to:	A12,
Received on:	August 14, 1974
REPLY DUE:	8-23-74

Arthur F. Sampson, Administrator
 General Services Administration
 Washington, D.C. 20405

Dear Mr. Sampson:

In an article in the August 9 Washington Post (p. A20), said to have been based upon a recent study by the Joint Congressional Committee on Internal Revenue Taxation, it was reported that "President Nixon leaves office with a bright financial future virtually guaranteed by his personal ownership of rooms full of presidential documents that will be worth millions of dollars." The figure of \$5 million was suggested. On August 12, the Washington Post (p. A6) carried another article reporting that "the transfer from Washington to the West Coast of [Mr. Nixon's] personal belongings, papers and tape recordings" was already under way.

The purpose of our writing is to question the inference that Mr. Nixon, or any President, is automatically the rightful owner of all Presidential documents and papers, official as well as personal. We have no desire whatever to deprive Mr. Nixon of any future financial benefits and prospects to which he is rightfully entitled. We are concerned, however, about the possibility that hasty removal of items from the President's office may result in depriving the public of property which rightfully belongs to it. The Congress has already made generous provision for Presidents and former Presidents*, and while they are without doubt also entitled to the benefits of their own property as well as from the sale of their memoirs or autobiographies which result from their own work and effort, they are not entitled to enrich themselves through conversion of public papers, documents and records accumulated

*A President's salary is \$200,000 while in office. Thereafter, Presidents receive an annual pension of \$60,000 and an allowance of \$95,000 for administrative and secretarial assistance, together with other benefits of value.

Aug 15 3 03 PM '74

RECEIVED
 GSA



8/14/74

Arthur F. Sampson
August 14, 1974
page two

at the government's expense, any more than such liberties should be permitted with respect to White House furnishings or equipment or other government properties.

Inasmuch as the National Archives fall within your responsibility, and you are authorized to accept all forms of government records of historical interest including Presidential papers and documents, we would like to know what action is being taken to arrange for the transfer of the Presidential records from the Nixon Administration. 44 U.S.C. § 2101, et seq.

Moreover, whenever any government agency proposes to dispose of any documents or records, it must first submit a list of the documents or records in question. 44 U.S.C. § 3301, et seq. Since the White House is not in any material respect different from other government agencies, Presidents and their administrative personnel must likewise be required to prepare lists of materials before disposing of them. We are therefore inquiring whether Richard Nixon or any member of his staff has submitted any such list, since removal of the materials from government possession is tantamount to disposal.

The Congress has clearly provided that any monies derived from the disposition of public records shall be paid into the U.S. Treasury (44 U.S.C. § 3313), and there is no reason to believe that the Congress intends to make an exception of Presidential papers, documents or materials relevant to the official functioning of the White House.* Indeed, under Article IV, Section 3, Clause 2 of our Constitution, Congress has the sole power "to dispose of and make all needful Rules and Regulations respecting the . . . Property belonging to the United States." Absent express authorization by the

*This provision defines "records" as including: ". . . all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them." 44 U.S.C. § 3301.



Arthur F. Sampson
August 14, 1974
page three

Congress--and there has been none--removal of official Presidential papers would also be unconstitutional.

At the very least we are sure you will agree that the prospect of President Nixon's removing valuable Presidential papers, documents, or records in the immediate future, to do with as he pleases, raises important legal questions which should be resolved before such removal is accomplished. In light of the foregoing, we would appreciate the following information from you:

1. Have you sought an opinion from the Attorney General concerning the ownership and protection of official Presidential papers, documents and records, or will you do so?
2. Have you made any inventory of government property including official Presidential papers, documents and records in the White House and other places used by former President Nixon and his staff in the conduct of official business?
3. Have you or any other agency to your knowledge taken any other steps to preserve and protect for the public such property and records of the Nixon administration?
4. Has Mr. Nixon or any member of his staff submitted a list of records or documents proposed to be removed from government files or otherwise disposed of? If so, would you please provide us with a copy pursuant to the Freedom of Information Act, 5 U.S.C. § 552.

1914 a

We would appreciate your response at the earliest possible date. If we have not received a reply to our request under paragraph 4 above within 10 working days we will deem it to have been denied. Thank you for your close attention to this matter.

Sincerely,

Arthur L. Fox, II

Reuben B. Robertson, III

cc: Leon Jaworski
William B. Saxbe
Alexander M. Haig



b

THE WHITE HOUSE

WASHINGTON

November 29, 1963

MEMORANDUM FOR THE WHITE HOUSE STAFF:

By custom and tradition, the files of the White House Office belong to the President in whose Administration they are accumulated. It has been the invariable practice, at the end of an Administration, for the outgoing President or his estate to authorize the depository or disposition to be made of such files.


President Taft in his book "Our Chief Magistrate and his Powers," made the following reference to this practice:


"The . . . office of the President is not a recording office. The vast amount of correspondence that goes through it, signed either by the President or his secretaries, does not become the property or a record of the Government, unless it goes on to the official files of the Department to which it may be addressed. The retiring President takes with him all the correspondence, original and copies, which he carried on during his Administration. . . ."

In the interest of continuing this practice the President has directed that, so long as President Kennedy's files remain in the White House Office, there is to be no intermingling of the files of the two Administrations. This applies of course both to the Central Files and the files in the offices of the various members of the staff.

Papers of the White House Office at the time of President Kennedy's death as well as those enroute at that time and intended for him shall be considered as belonging to the Kennedy Administration files. Any papers relating to President Kennedy's funeral are also to be included in this category.

All other papers now accumulating in the White House Office will constitute a new set of files for President Johnson.


William J. Hodgans
Executive Clerk



THE WHITE HOUSE

WASHINGTON

August 9, 1974

MEMORANDUM FOR THE WHITE HOUSE STAFF:

By custom and tradition, the files of the White House Office belong to the President in whose Administration they are accumulated. It has been the invariable practice, at the end of an Administration, for the outgoing President or his estate to authorize the depository or disposition to be made of such files.

President Taft in his book "Our Chief Magistrate and his Powers," made the following reference to this practice:

"The retiring President takes with him all the correspondence, original and copies, which he carried on during his Administration. . . ."

In the interest of continuing this practice, it has been directed that, so long as President Nixon's files remain in the White House Office, there is to be no intermingling of the files of the two Administrations. This applies of course both to the Central Files and the files in the offices of the various members of the staff.

Papers of the White House Office at the time of President Nixon's resignation as well as those enroute at that time and intended for him shall be considered as belonging to the Nixon Administration files. Of course, some Nixon Administration files may be needed for future reference. These files should be duplicated and placed with all other papers accumulated after noon today which constitute a new set of files for President Ford.

Specifically, please expedite the return of all withdrawals you have made from Central Files. On Monday, August 12, archivists under the supervision of John R. Nesbitt, Office of Presidential Papers, will be available to assist in the collection and segregation of President Nixon's papers for shipment. Meanwhile, please read the attached instructions.


Jerry H. Jones

Special Assistant to the President



WHITE HOUSE OFFICE PAPERS

By custom and tradition, all White House Office papers are regarded as the personal property of the President and subject to such control and disposition as he may determine. At the close of the Administration, the entire collection of papers now being created may be expected to be deposited in a Presidential library similar to the libraries that preserve the papers of the last six Presidents. To provide the President with a complete and accurate record of his tenure in office, the White House staff must oversee the preservation of the papers it generates.

The procedures set forth in this document represent the collective thinking of many members of the staff as to how best to preserve papers and documents for the President. Compliance with these procedures is an expression of loyalty by the staff to the President. For these procedures to be effective, it will require cooperation and assistance of every staff member.

The security classification of each document prepared in the White House is determined by the individual staff member writing it in accordance with Executive Order 10501—or other applicable Executive Orders. He is responsible for insuring that the classification assigned to his work reflects the sensitivity of the material concerned, and also for making certain that this classification is not excessively restrictive.

White House Office Papers: Filing with Central Files

1. *It is requested that the maximum possible use be made of Central Files, and the procedures listed below be followed.* This will aid in the faster and more complete retrieval of current information, eliminate unnecessary duplication of files, prevent excessive xeroxing, and maximize preservation of White House papers.

2. *Each staff member shall maintain his personal files separate from any working files he may keep on official business and clearly designate them as such.* Personal files include correspondence unrelated to any official duties performed by the staff member; personal books, pamphlets and periodicals; daily appointment books or log books; folders

of newspapers or magazine clippings; and copies of records of a personnel nature relating to a person's employment or service. Personal files should not include any copies, drafts or working papers that relate to official business or any documents or records, whether or not adopted, made or received in the course of official business.

3. *Each staff office shall forward regularly to Central Files three copies of all outgoing official business consisting of correspondence and memoranda. One copy of all other outgoing related materials should also be filed.*

4. *Each staff office shall forward regularly to Central Files any incoming official business from sources other than White House staff offices after action, if any, has been taken.* Each staff office, if it so desires, may keep a copy of such incoming official business for its own working files.

5. *Each staff office shall forward regularly to Central Files any originals of incoming official business from other White House staff offices after action, if any, has been taken and if such originals were not intended to be returned to the sender.* If desired, a copy may be kept for the staff's working files.

6. *Each staff office shall forward to Central Files at such times as it determines to be appropriate all working files of official business which are inactive and no longer needed.* These files will be stored by office as well as listed by subject matter. They will, of course, always be available for later reference.

7. *Each staff office at its own discretion may segregate any materials that it believes to be particularly sensitive and which should not be filed by subject matter.* Such sensitive materials should be forwarded to the Staff Secretary on the same basis as outlined in paragraphs 3 through 6 in an envelope marked SENSITIVE RECORDS FOR STORAGE with the office or individual from which they are sent marked on the outside and (as appropriate) a list of inventory in general terms attached. This list of inventory should also be sent to Central Files so that notations can be made in subject files that certain material is missing from the file. These materials will be filed in locked containers and will only be made available to the in-



dividual or office from whom they were received.

8. No defense material classified under Executive Order No. 10501 with a classification of TOP SECRET or Restricted Data under the Atomic Energy Act of 1954 should be forwarded to Central Files. All such material should be forwarded to the Staff Secretary for storage.

9. No exceptions to the above shall be made without the express consent of the Counsel to the President. Additional advice on the operation of Central Files may be obtained from Frank Matthews, Chief of Central Files (Ext. 2240).

White House Office Papers: Disposition of Papers Upon Leaving Staff

1. Upon termination of employment with the staff, each staff member will turn over his entire files to Central Files with the exception of any personal files he might have maintained.

2. Personal files include: correspondence unrelated to any official duties performed by the staff member; personal books, pamphlets and periodicals; daily appointment books or log books; folders of newspaper or magazine clippings; and copies of records of a personal nature relating to a person's employment or service. Personal files should not include any copies, drafts, or working papers that relate to official business; or any documents or records, whether or not adopted, made or received in the course of official business. The White House Office of Presidential Papers, staffed by representatives of the National Archives, is available to assist staff members in the determination of what are personal files. Any question in this regard should be resolved with their assistance by contacting John Nesbitt, supervisory archivist of the Office of Presidential Papers (Ext. 2545).

3. A staff member, upon termination of employment, may at his discretion make copies for his personal use of a carefully chosen selection of the following types of documents within his files:

(A) Documents which embody original intellectual thought contributed by the staff member, such as research work and draftsmanship of speeches and legislation.

(B) Documents which might be needed in future related work by the individual.

4. No staff members shall make copies as permitted in paragraph three of any documents which contain defense material classified as CONFIDENTIAL, SECRET OR TOP SECRET under Executive Order No. 10501, Restricted Data under the Atomic Energy Act of 1954, or information supplied to the government under statutes which make the disclosure of such information a crime.

5. Each staff member who decides to make copies of such documents described in paragraph three shall leave a list of all such documents copied with Central Files. This will enable retrieval of a document in the event that all other copies of it and the original should be later lost.

6. The discretionary authority granted in paragraph three is expected to be exercised sparingly and not abused. All White House Office papers, including copies thereof, are the personal property of the President and should be respected as such. Any copies retained by a staff member should be stored in a secure manner and maintained confidentially.

7. All confidential and sensitive materials will be protected from premature disclosure by specific provisions of the Presidential Libraries Act of 1955 (44 U.S.C. 2108).



8/19/74

For discussion with Mr. Jaworski

Problem areas

1970 campaign

Personnel & "responsiveness" program

Campaign contributions in 1970

Wire tap area

Ambassadors' list of contributors (other than 4 cases already disclosed)

Records maintenance & sorting problems

Ownership, access, & disposition problems re records

General discussion of future of ~~Pres~~ Special Prosecutor's office & its relationships to (i) former Pres., (ii) Pres. Ford

1. None a target of investigation or possible charge
2. Romsefeld may be witness in "Townhouse" 1970 campaign funding practices. ~~In~~ as member of "Appropriations Committee" with Haldeman, Finch, Dent & possibly Chotiner & possibly Harlow.
3. Perot may have gotten funds for Rogan at request of Kalmbach in May of 1970
4. Bush received approx \$110,000 ~~in~~ from Townhouse operations, \$6,000 of which came in cash through Jack Gleason. (John Mulcahy ~~out of Agency~~ \$40,000 to set agency \$15,000 to Bush campaign committee)



Max Fisher
Cloment Stone
etc.

Jim Neal
Rick Bonvenista

Effect on Sept 9 trials

of not getting personal diaries & diabolists



Summary of references in House Judiciary Committee proceedings to the 1970 campaign funding practices, also referred to as the "Townhouse" or "Senatorial Campaign Program".

Herbert Kalmbach testified that he was formally asked to accept the responsibility for this fundraising effort by Haldeman, for which he was assigned a budget goal of \$2,050,000 (although Kalmbach testifies that they had a surplus of \$20,000 or \$30,000 which was turned over to the 1972 campaign, he did not state how much he was actually able to raise.). Kalmbach worked closely with Harry Dent and Jack Gleason, with Gleason serving as the administrative man in the operation. Kalmbach would secure pledges from various donors, and Gleason follow up with the donors, instructing them to which campaign to write their checks or else taking the checks and delivering them to the "right" campaign.

On July 16, 1970, a dinner/cruise was held on the Sequoia by President Nixon and attended by the major contributors.

On April 1, 1970, on the instructions of Higby, Kalmbach delivered \$100,000 to an unknown person in the Sherry Netherlands Hotel in New York City.

In April 1970 approximately \$400,000 was sent "South", apparently for the Brewer campaign in opposition to Wallace for the Alabama Governor's race. This included the \$100,000 delivered to the unknown person, above.

List of major contributors for this found on page 633, Book III, Testimony of Witnesses before the Judiciary Committee.

On February 25, 1974, Herbert Kalmbach plead guilty to a felony count for violation of the Federal Corrupt Practices Act, 2 U.S.C. 252(b) in connection with these fundraising efforts. He also plead guilty to the misdemeanor of offering a government position in exchange for a campaign contribution in connection with these efforts--promising ambassadorships to J. Fife Symington and Vincent DeRoulet, one-half for 1970, the remainder for 1972.



Original message
hand delivered.

bcc: Silberman
Jaffe
Jaworski
Casselman

No enclosures to
them.

DRAFT 10/9/74

Miller, Cassidy, Larroca & Lewin
1320 19th Street, N. W.
Fifth Floor
Washington, D. C.

Attention: Mr. Herbert J. Miller, Jr.

Gentlemen:

You have already been furnished, as I am told, with a copy of a Subpoena duces tecum directed to me and captioned United States of America v. John N. Mitchell, et al., D. D.C., Criminal No. 74-110, which was issued upon application of defendant John D. Ehrlichman. I enclose an additional copy, reproduced from the original in my possession, to serve as notice ^{of the subpoena} to you and your client, the Honorable Richard M. Nixon, ~~of such subpoena~~ in accordance with paragraph 9B of the September 6, 1974, Agreement between your client and the Administrator, General Services Administration.

^{The} ~~Such~~ Agreement contemplates that your client will respond to any such subpoena, ^{so} ~~and~~ I trust you will work out ^{that, if you intend to raise no timely objections in Court,} satisfactory arrangements ^{timely and} consistent with the present circumstances that the documents ~~in question~~ ^{for production of the documents,}

are still located here under appropriate safeguards. Since the Agreement specifies that you will determine whether to object to production of materials, and will inform the United States if you determine not to object so that it may inspect the materials, I intend



^{for the limited purpose} stated ⁱⁿ the Agreement.

-2-

to take no action to quash the Subpoena duces tecum and will abide
by any Court order as it may affect me.

Sincerely,

Philip W. Buchen
Counsel to the President

Enclosure



DRAFT 10/9/74

Miller, Cassidy, Larroca & Lewin
1320 19th Street, N. W.
Fifth Floor
Washington, D. C.

Attention: Mr. Herbert J. Miller, Jr.

Gentlemen:

You have already been furnished, as I am told, with a copy of a Subpoena duces tecum directed to me and captioned United States of America v. John N. Mitchell, et al., D. D.C., Criminal No. 74-110, which was issued upon application of defendant John D. Ehrlichman. I enclose an additional copy, reproduced from the original in my possession, to serve as notice to you and your client, the Honorable Richard M. Nixon, of such subpoena in accordance with paragraph 9B of the September 6, 1974, Agreement between your client and the Administrator, General Services Administration.

Such Agreement contemplates that your client will respond to any such subpoena, and I trust you will work out satisfactory arrangements consistent with the present circumstances that the documents in question are still located here under appropriate safeguards. Since the Agreement specifies that you will determine whether to object to production of materials, and will inform the United States if you determine not to object so that it may inspect the materials, I intend



-2-

to take no action to quash the Subpoena duces tecum and will abide
by any Court order as it may affect me.

Sincerely,

Philip W. Buchen
Counsel to the President

Enclosure

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

EYES ONLY

EYES ONLY

MEMORANDUM FOR: Mr. Phillip Buchen
FROM: Benton L. Becker *B-L*
DATE: August 13, 1974 8:00 PM
SUBJECT: Presidential Tapes and Ehrlichman/Haldeman/
Dean/Colson/Kroegh Papers

Information developed today identified the location of what has been described as 900 reels of President Nixon's tapes and the full files of former employees Ehrlichman/Haldeman/Dean/Colson/Kroegh.

Purpose of this memorandum is to identify the whereabouts of the documents; identify their present access status and suggest an immediate disposition.

I THE TAPES:

Approximately 900 tapes are retained on the ground floor of the Old Executive Office Building in a converted closet across from the cafeteria - sealed and secure. The room is so small that it does not have a room number. The security of this room is under the jurisdiction of the Technical Security Division of the Secret Service. (TSD of SS) The tapes have been secured in this room since July 18, 1973 at which time combinations to locks and locks were changed. (July 18, 1973 is the date of the Ehrlichman/Haldeman resignations and Dean firing). The key to same was given to President Nixon. General Haig authorized the TSD of SS that access to the room shall be restricted to John Bennett (a former employee of General Haig's and President Nixon's) who terminated approximately four months ago.

Upon Bennett's termination, he was replaced by Jerry Jones as that individual authorized to enter the room.

The Technical Security Division maintains a time log reflecting the hour and minute of Mr. Jones' entry and exit from this room. The TSD maintains no security within the room at any time that Mr. Jones is present nor does it inspect or restrict the removal of tapes from the room.



The time log for the room reflects that Mr. Jones entered twice on the day of President Ford's swearing-in on August 9, 1974. Mr. Jones entered at 10:25 AM and exited at 10:26 AM and again entered at 10:48 AM and exited at 10:49 AM. It is my impression that President Nixon was meeting with the White House Staff at those times offering his farewell remarks. No information or records are available to indicate whether tapes were removed from the room on August 9, 1974 or on his previous visits to the room. No apparent effort has been made to alter the present access procedures or to remove the tapes from the EOB for delivery to their rightful owner, Richard M. Nixon.

II EHRlichman/HALDEMAN/DEAN/COLSON/KROEGH Files:

Rooms 84 and 522 of the EOB house all of the files of former employees listed above. Since May 8, 1973, the TSD of the Secret Service has secured these two rooms. The TSD allows access to the room upon receipt of an authorized memorandum from Fred Buzhardt and/or his associate Jeff Shepherd. The individual entering is accompanied by a Secret Service Agent at all times.

From May 18, 1973 through May 23, 1973, former employees whose files were housed in these rooms were allowed to enter same (if cleared through Buzhardt's office) and obtain and xerox copies of their records and make notes. From May 23, 1973 to the present, the entry procedures have remained the same. Note taking and xerox copying, however, have been disallowed.

At 5:30 PM, August 13, 1974, Mr. Haldeman sought entry into the rooms as had been his allowed practice through President Nixon's administration. In addition to Mr. Haldeman all of the employees listed above, whose files are retained in Rooms 84 and 522, have been allowed continued access -- always accompanied by a Secret Service Agent.

Like the tapes referred to above, no apparent change has occurred within the Ford administration to the Nixon access rights to these rooms and no discernible effort has been expended, to my knowledge, to remove the files for return to San Clemente.

III CONCLUSIONS:

Records of the Nixon administration are the property of Richard M. Nixon. He is the legal owner of all records from his administration including, but not limited to, tapes. A close analogy of Former Presidential Tapes



created during an administration, may be found in President Johnson's retention and ownership of all video tape recordings created during his administration.

President Gerald R. Ford presently serves in a role as trustee of the documents described in this memorandum. As a trustee, he is charged with the responsibility of maintaining these items in a safe manner while in his custody and causing the items to be delivered safely to the rightful owner, at which time his trusteeship terminates.

It is altogether reasonably foreseeable that some of the items referred to in this memorandum may, at some time in the future, be the subject of a judicial subpoena issued either by the Special Prosecutor's office; a defendant in a criminal litigation or a plaintiff in civil litigation. No subpoenas are presently outstanding for any of the documents described herein. Should such a subpoena be served today, it would be properly served on the present custodian, President Ford, and he (rather than Richard M. Nixon) would be required to comply. Alternatively, if the items described herein were speedily transmitted to their rightful owner in San Clemente, President Ford being no longer their custodian, would not be required to comply to the process.

Should that contingency occur and hypothesizing; should former President Nixon then refuse to comply with a subpoena then served upon him for production of records which President Ford had transmitted to him (possibly through a plea of self-incrimination) then, in that event, President Ford might be criticized for his transmittal of the items to President Nixon as being an aid or to preventing full disclosure.

IV RECOMMENDATIONS:

I recommend that President Ford neither retain the items in the White House Complex (thereby enfusing within his administration Watergate related responses to judicial summonses) nor transmit same to President Nixon (thereby running the risk of possible criticism of aiding in President Nixon's hypothetical non-disclosure).

It is my recommendation that an attorney associated with the Transition Team immediately meet with Judge Sirica in Chambers and urge the court to accept custody of all of the items referred to herein.



August 14, 1974

MEMORANDUM FOR THE FILE

From: Philip W. Buchen *P.W.B.*

Talked to General Haig at 1:55 p. m. on August 14, 1974, per request of Benton Becker after latter advised me that Jerry Jones was at this time packing up tapes in closet on ground floor of EOB for shipment to RMN in San Clemente. I had earlier been advised by both Don Rumsfeld and Jack Marsh that at the morning conference with the President he had approved transmission of tapes and of papers in rooms 84 and 522 of EOB to RMN under direction of Gen. Haig after latter had contacted Special Prosecutor Leon Jaworski.

Purpose of my call to General Haig was to learn if Special Prosecutor had in fact concurred in steps now underway. I was told that as the result of two conversations between General Haig and the Special Prosecutor, the latter had raised no objections to such steps and asked only to be advised when shipments had been made.

The substance of my conversation with General Haig was conveyed by me to Benton Becker immediately afterwards.



THE WHITE HOUSE

WASHINGTON

August 18, 1974

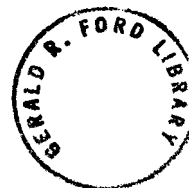
MEMORANDUM FOR: Phil Buchen

FROM: Bill Casselman



Attached is the package from Grand Rapids, together with some pertinent materials from my files (including the Brandon decision, and the portion of the Soucie decision that we discussed today). I have also prepared for your review the enclosed draft memorandum to Stu Knight regarding access to the White House files under the protection of the Secret Service. This language has not been cleared with Lew Sims, but I shall do so first thing Monday and I do not anticipate any problems. It will be necessary, however, for you to execute a second memorandum covering access to the tape room ("Zone 128").

Enclosures



THE WHITE HOUSE

WASHINGTON

August 20, 1974

MEMORANDUM FOR: Phil Buchen

FROM: Benton Becker *AK*

SUBJECT: H. R. Haldeman's counsel's informal request to review tapes and logs from June 20, 21, and 22, 1972

Approximately 950 reels of six hour tapes are located in the OEOB in an area designated as Zone 128. No logs identifying either the participants in the conversation or the substance of the conversation are available. The only records available discloses the date and location of the conversation; i. e., Oval Office, Presidential Office, OEOB, Cabinet Room or White House telephone.

These records reflect that tapes are available for the following days and places during the three day period of June 20, 21, and 22, 1972.

Dates covered in tape

Place of Recording

1. 6/20/72 thru 6/27/72	EOB
2. 5/22/72 thru 6/20/72	EOB
3. 6/12/72 thru 6/20/72	EOB
4. 6/13/72 thru 7/5/72	Cabinet
5. 5/25/72 thru 6/23/72	W/H Telephone
6. 6/20/72	Oval
7. 6/21/72	Oval
8. 6/22/72	Oval
9. 6/23/72	Oval
10. 6/26/72	Oval



August 20, 1974

MEMORANDUM FOR: Phil Buchen

FROM: Benton Becker

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BLB:bw



August 20, 1974

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BLB:bw



August 20, 1974

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|-------------------------|---------------|
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| 3. 6/12/72 thru 6/20/72 | EOB |
| 4. 6/13/72 thru 7/5/72 | Cabinet |
| 5. 5/23/72 thru 6/23/72 | W/H Telephone |
| 6. 6/20/72 | Oval |
| 7. 6/21/72 | Oval |
| 8. 6/22/72 | Oval |
| 9. 6/23/72 | Oval |
| 10. 6/26/72 | Oval |

BLB:bw



August 20, 1974

MEMORANDUM FOR: Phil Buchen
FROM: Benton Becker
SUBJECT: H. R. Haldeman's counsel's informal request to review tapes and logs from June 20, 21, and 22, 1972

Approximately 950 reels of six hour tapes are located in the OEOD in an area designated as Zone 128. No logs identifying either the participants in the conversation or the substance of the conversation are available. The only records available discloses the date and location of the conversation; i. e., Oval Office, Presidential Office, OEOD, Cabinet Room or White House telephone.

These records reflect that tapes are available for the following days and pieces during the three day period of June 20, 21, and 22, 1972.

Dates covered in tape

Place of Recording

1. 6/20/72 thru 6/27/72	EOB
2. 5/22/72 thru 6/20/72	EOB
3. 6/12/72 thru 6/20/72	EOB
4. 6/13/72 thru 7/5/72	Cabinet
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BLB:bw

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7. 6/21/72	Oval
8. 6/22/72	Oval
9. 6/23/72	Oval
10. 6/26/72	Oval

BLB:bw



8/21/74

13 boxes 10 letters

A-M

Networks

Request

TRO

If -

Col/Sorn's

N.Y.

Richard Nixon's fight



739-2101

works

Serve interests of U.S. by:

tape recordings + transcripts

Executive privilege

applies & only RN can claim

Exec. privilege

Remove impediments to shipments



MEMORANDUM

THE WHITE HOUSE

WASHINGTON

DRAFT 8/22/74

DRAFT OF PROPOSED LETTER FOR PRESIDENT
TO SEND THE ATTORNEY GENERAL

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

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



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

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

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

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



MEMORANDUM

THE WHITE HOUSE

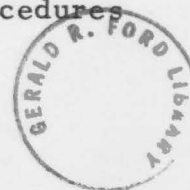
WASHINGTON

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

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

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

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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

DRAFT 8/22/74

DRAFT OF PROPOSED LETTER FOR PRESIDENT
TO SEND THE ATTORNEY GENERAL

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

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



NIXON ADMINISTRATION
Tapes file

Draft 8/23/74

The Honorable Arthur F. Sampson
Administrator
General Services Administration
Washington, D. C. 20405

From
J. Morgan
my eyes only

Dear Mr. Sampson:

I am forwarding to you for custody by the National Archives all files and records from the Administration of former President Nixon. While in that custody pursuant hereto, such files and records shall be subject to such restrictions as to availability and use as may be prescribed from time to time by the Secretary of State, the Secretary of Defense, or the Attorney General as being necessary to protect the national security or the public interest. This action shall not prejudice any determination as to the ownership of the files and records being forwarded.



Draft 8/23/74

PROPOSED PRESS RELEASE

The President today directed that all files and records of the Administration of former President Nixon that are still in the White House, including those of all White House Staff personnel, be gathered together for forwarding to the Administrator of General Services for custody by the National Archives. While in that custody pursuant hereto, such files and records will be subject to restrictions as to availability and use prescribed from time to time by the Secretary of State, the Secretary of Defense, or the Attorney General as being necessary to protect the national security or the public interest. The President's action does not apply to files and records of a kind traditionally retained in the White House upon a change of Administration, nor is it intended to prejudice any determination as to ownership.

The President's order covers all files and records through Noon, August 9, 1974. To insure the orderly conduct of the business of his Administration, the President authorized Staff personnel to retain copies of those files and records deemed necessary to the continuation of on-going activities.



Draft 8/23/74

Memorandum from the President

To all present Staff personnel
from the previous Administration

Please turn over to General Haig all of your files and records from the Administration of former President Nixon. These files and records will be forwarded to the Administrator of General Services for custody by the National Archives and will be subject to such restriction as to availability and use as may be prescribed from time to time by the Secretary of State, the Secretary of Defense, or the Attorney General as being necessary to protect the national security or the public interest. This includes all files and records through Noon, August 9, 1974. For the orderly conduct of the on-going business of the present Administration, it may be necessary to retain copies of some of these files and records. It does not include records that are purely personal.



THE WHITE HOUSE

WASHINGTON

August 29, 1974

MEMORANDUM FOR: Philip W. Buchen

FROM: Benton L. Becker *3LD*

SUBJECT: Whereabouts of Presidential Papers
of the Nixon Administration

Information developed to date indicates that the records and the materials created during the Nixon Administration are presently located in three places. They are: (1) The Federal Records Center in Suitland, Maryland, (2) the National Archives, and (3) the White House Complex.

1. Suitland Records Center. Approximately 2,800 boxes of records are contained at this site and prepared for shipment. 1,200 boxes consists of GPO publications and the balance consists of what has been described as "Public Records of the Nixon Administration."
2. National Archives. Approximately 6,500 boxes are awaiting shipment at the National Archives. They are categorized as follows: (1) Non-deeded Nixon Pre-Presidential Papers, (2) Administration audio and visual items (films of State Dinners, travel abroad, regularly recorded news broadcasts, etc.), (3) Records of all communications created and/or administered during the Nixon Administration, (4) Republican National Committee publications relating to former President Nixon and other Republican candidates for the past 5 1/2 years, (5) Dormant central files (representing the daily transmittal of closed "subject" files and "people" files from central files, (6) Records and papers of Nixon appointees who voluntarily donated their records and papers to the Archives for use in the Nixon Library, (7) CREP records (which have already been examined by the Watergate Committee, the Special Prosecutor and Common Cause).
3. White House Complex. As of the close of business on August 28, 1974, 7,678 boxes were packed and ready for shipment. These boxes are located



in 14 rooms and the Treaty Room of the EOB, 5,785 of which came from central files, and in my judgment contain no arguably relevant Watergate information. The balance were transmitted from individual offices in the Old Executive Office Building and the New Executive Office Building. An estimated 5,000 additional boxes remain in various staff offices.

None of the above refers to any of the records contained in Room 522, Room 84 or Safe-Zone 128.



9/16/74

To: Bill Casselman

From: Phil Buchen



LAW OFFICES
MILLER, CASSIDY, LARROCA & LEWIN
1320 19TH STREET, N.W. - SUITE 500
WASHINGTON, D. C. 20036

AREA CODE 202
TELEPHONE 293-8400

HERBERT J. MILLER, JR.
JOHN JOSEPH CASSIDY
RAYMOND G. LARROCA
NATHAN LEWIN
MARTIN D. MINSKER
WILLIAM H. JEFFRESS, JR.
THOMAS D. ROWE, JR.
RAYMOND RANDOLPH, JR.
STAN MORTENSON

JOSEPH S. MCCARTHY
COURTNEY A. EVANS
OF COUNSEL

September 13, 1974

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

Dear Mr. Sampson:

This letter is in reference to the depository agreement entered into between my client, Richard M. Nixon, and you by letter dated September 6, 1974.

The depository agreement provides that upon acceptance of Mr. Nixon's offer of deposit, the Administrator will arrange the temporary deposit of Mr. Nixon's Presidential materials in a facility located within the State of California. The agreement further provides that the Administrator shall arrange and be responsible for the reasonable protection of the materials from loss, destruction and access by unauthorized persons.

It has been brought to my attention that some of the materials covered by the depository agreement have not as yet been placed in a secure area to which access can be gained only upon Mr. Nixon's written authorization. It is my further understanding that the Secret Service is currently responsible for protecting certain of Mr. Nixon's Presidential materials that have been stored in locked rooms or safes.

I hereby request on Mr. Nixon's behalf that you immediately arrange for all Presidential materials referred to in the depository agreement which have not as yet been stored in secured areas to be stored immediately under conditions whereby access can be gained only by implementation

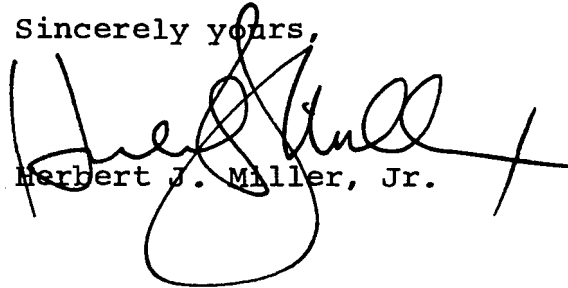


Honorable Arthur F. Sampson
September 13, 1974
Page Two

of the two key arrangement called for in the depository agreement. I further request that any Presidential materials which are not currently subject to subpoena or other court order be immediately transferred to California as provided for in the depository agreement.

Finally, I most urgently request that Presidential materials, including but not limited to tapes, personal notes and dictabelts, which Mr. Nixon must review in order to comply with pending judicial orders or processes, be immediately transferred to California in order to enable Mr. Nixon to comply with such orders or processes.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Herbert J. Miller, Jr.", written over the typed name below it.

Herbert J. Miller, Jr.



LAW OFFICES
MILLER, CASSIDY, LARROCA & LEWIN
1320 19TH STREET, N.W. - SUITE 500
WASHINGTON, D. C. 20036

AREA CODE 202
TELEPHONE 293-6400

BERT J. MILLER, JR.
N JOSEPH CASSIDY
MOND G. LARROCA
HAN LEWIN
TIN D. MINSKER
LIAM H. JEFFRESS, JR.
MAS D. ROWE, JR.
RAYMOND RANDOLPH, JR.
STAN MORTENSON

JOSEPH S. MCCARTHY
COURTNEY A. EVANS
OF COUNSEL

September 13, 1974

Philip W. Buchen, Esquire
Counsel to the President
The White House
Washington, D. C. 20500

Dear Mr. Buchen:

I am writing on behalf of my client, Richard M. Nixon, to inform you that pursuant to the depository agreement entered into by letter from Mr. Nixon to Mr. Arthur F. Sampson on September 6, 1974, and as owner of the Presidential materials referred to therein, Mr. Nixon exercises his right of sole access and control to the materials.

Accordingly, I am advising you on Mr. Nixon's behalf that no person may be admitted to any locked room or other secured area containing any of Mr. Nixon's Presidential materials without Mr. Nixon's express written authorization, nor may any person inspect, copy or otherwise exercise any authority over any Presidential materials without such authorization.

If any action is taken or permitted inconsistent with the depository agreement or this letter, Mr. Nixon will consider such action to be in breach of the depository agreement.

Sincerely yours,

Herbert J. Miller, Jr.



THE WHITE HOUSE
WASHINGTON

September 18, 1974

Dear Mr. Rhoads:

Confirming
Concerning our recent conversation, in which William Casselman also participated, I set forth the following points concerning the letter agreement between former President Nixon and Administrator Arthur F. Sampson of the General Services Administration dated September 6, 1974:

- 1) *A principal* ~~Among the~~ reasons that I had recommended acceptance of this agreement as ^{to} disposition of tape recordings which are covered by paragraphs 8 and 9 was based upon my understanding of the clandestine nature of their origin. It is my belief that such recordings made of conversations engaged in by persons of whom one or more were unaware of the recordings are so offensive and contrary to their interests in personal privacy and in freedom as to justify or even require treatment different from that accorded other materials covered by this agreement. The different treatment specified in the agreement, while allowing for Court-ordered disclosure to appropriate parties over a 5-year period, does preclude other access except as conducted or directed by the former President in accordance with specified safeguards involving the General Services Administration, ^{and} otherwise allows, and ultimately requires, destruction of the tapes over a second 5-year period.
- 2) You correctly pointed out that this different treatment of such tape recordings results in cutting off the possibility for historians to learn the conversational contents of the tapes at some future time, even so far in the future as to make it unlikely any persons involved would then be living. You also expressed your opinion that this was a very objectionable result from your point of view and from that of other archivists and historians.

*Freedom of
expression*



Mr. James B. Rhoads
September 18, 1974
Page 2

I assured you that you were under no obligation to refrain from expressing this opinion freely so long as you hold it, and that I would be willing to assure anyone who inquires, in that regard. Also, you may use this letter to overcome any possible implication that your undertaking or authorizing ~~any tasks to implement~~ the agreement as written, whether in the initial 5-year period or afterwards, may constitute a retreat from the opinion you expressed.

to that effect

steps

the problems posed

- 3) I suggested to you that the historical and archival community may wish to consider fully, under appropriate organizational auspices, by the surreptitious use of modern recording techniques to make a "record of history" of private conversations. The problem occurs when not all parties to the conversation have been made aware a recording is in process and also when none of the parties is aware the conversation is being recorded. We discussed generally the concerns to be addressed and their relations to problems, present and future, going far beyond those caused by only the tape recordings covered by the agreement in question. However, those are matters which you and others who may want to take up the suggestion would independently want to determine.

far

Thank you very much for our meeting and for your thoughtful attention to the points raised.

Sincerely yours,

Philip W. Buchen
Counsel to the President

The Honorable James B. Rhoads
Archivist of the United States
General Services Administration
8th and Pennsylvania Avenue, N. W., Room 111
Washington, D. C. 20408



letter agreement between former President Nixon and Administrator Arthur F. Sampson of the General Services Administration dated September 6, 1974;

Mr. James B. Rhoads
Archivist of the United States
General Services Administration (N)

Dear Mr. Rhoads:

Confirming our ^{recent} conversation, in which William Casselman also participated, I ~~make~~ set forth the following points concerning the

1) ^{Among} the reasons that I had recommended acceptance of this agreement as to disposition of tape recordings ~~as to~~ which are covered by paragraphs 8 and 9 was ^{based upon} ~~the~~ my understanding of the clandestine

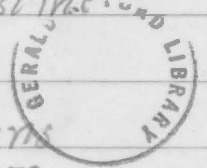
~~secret~~ nature of their origin. It is my belief that ^{such} recordings ^{made} of conversations engaged in by persons of whom ^{one or more were} ~~whom~~ ^{unaware} of the recordings are so offensive and contrary to their ^{interests} ~~rights~~ ^{and} in

personal privacy ^{is to} ~~justify or even require~~ ^{require} special treatment ^{different} from that accorded other materials covered by the agreement.

The different treatment specified in the agreement, while allowing for Court-ordered disclosure to appropriate parties, ^{does} ~~preclude~~ ^{over a 5-year period,} other ~~interim~~ access ^{except} ~~as~~ ^{conducted} ~~authorized~~ ^{Conducted}

directed by the former President in accordance with ^{specified} safeguards involving by the General Services Administrator and (ii)

^{allows and ultimately} otherwise ^{requires} destruction of the tapes over a second 5-year period.



and
in free



2) You correctly pointed out that this different treatment of ~~the~~ such tape recordings results in depriving historians of access cutting off the possibility ~~of~~ ~~see~~ for historians to ~~discover~~ ^{learn} ultimately the ~~entire~~ conversational contents of the tapes at some future time, even so far in the future as to make it unlikely ~~the~~ persons involved would ~~still~~ ^{then} ~~be~~ be living. You also expressed your opinion that this was a ~~bad~~ ~~or~~ a very ~~undesirable~~ ^{objectionable} result from your point of view and from that of other archivists and of historians. I assured you that you were ^{under} no obligation to refrain from expressing this opinion freely ^{as long as you hold it,} and that ~~no one in the~~ ~~At~~ I would be willing ^{so} to assure anyone who inquires ~~of your freedom~~ ^{in that regard,} ~~as to~~ ~~incite~~ ~~as~~ of no implication of a contrary opinion ~~on your part~~ ~~and~~ ~~also~~ ~~I~~ ~~you~~ ~~are~~ ~~concerned~~. Also, ~~I~~ ~~you~~ ~~are~~ ~~concerned~~ may use this letter to ~~correct~~ ^{overcome} any possible implication that your undertaking or authorizing of any tasks to implement the agreement ~~as~~ ^{present} written, whether in the initial 5-year period or afterwards, may constitute a retreat from the opinion you expressed.

3) I suggested to you that the historical and archival community may wish to ~~study~~ consider fully, ~~in~~ ~~the~~ ~~problems~~ posed if ~~modern~~ ^{recording} techniques ~~are~~ ~~used~~ ~~surroptitiously~~ ~~on~~ ~~the~~ ~~surroptitious~~ ~~is~~ ~~used~~ ~~surroptitiously~~

by the surreptitious use of

the effect of



Under appropriate organizational auspices,

to make a "record for history" of private conversations. The problem ^{occurs} ~~exists~~ when not all parties to the conversation ^{have been made} ~~were~~ aware a recording was being made ^{is} ~~is~~ in process and ^{2/50} when none of the parties ^{we} discussed generally various ~~aspects~~ ^{as} the issues to concerns to be addressed and their ~~applicab~~ extension far beyond the ~~particular~~ relations to circumstances ~~on~~ problems going far beyond those ^{caused by} ~~of~~ the tape recordings covered by the agreement in question. However, those are matters which you and others who may want to ^{take up} ~~follow~~ the suggestion ~~and offer~~ would independently want to determine, ~~after~~ ~~after~~ ~~to~~ ~~to~~ ~~to~~ ~~to~~ ~~study~~ ~~but~~ ~~in~~ ~~trying~~ ~~to~~ ~~identify~~ ~~it~~

Thank you very much for ~~having~~ our meeting and for your thoughtful attention to the points raised.

Sincerely yours,

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aware
the
conversation
is
being
recorded.



THE WHITE HOUSE

WASHINGTON

October 12, 1974

MEMORANDUM FOR: Phil Buchen

FROM: Bill Casselman

SUBJECT: Letter to Congressman Brademas

Per my telephone conversation with Bill Sudow on Friday evening, Congressman Brademas has requested a letter from you assuring him, as Chairman of the House Administration Subcommittee on Printing to which S. 4016 was referred, that the Nixon materials in the custody of the White House will not be removed from the White House complex during the Congressional recess.

I had advised Sudow that we were trying to accommodate existing court orders and the concerns of the Special Prosecutor and, in fact, had agreed with the Special Prosecutor that there would be no change in the physical location of the Nixon materials pending the outcome of ongoing discussions. I further noted that while we did not anticipate any agreement with the Special Prosecutor during the Congressional recess, nevertheless appropriate notice would be given to the Congress before any materials were removed during the recess period. Attached is a draft letter to this effect.

Sudow also requested a description of the security arrangements for storage of the Nixon materials. Frankly, I don't believe this is a matter to which Brademas or any other member of Congress should be privy in any great detail. Disclosure of such arrangements might compromise the security of the materials. Moreover, the security arrangements are the primary responsibility of the Secret Service, National Security Council, and National Archives and Records Service. I would, therefore, suggest that Brademas address his inquiries to those agencies. (Last Thursday representatives of the Special Prosecutor's and attorneys for the former President were given a complete tour of all of the White House storage areas containing Nixon materials. At the conclusion of that inspection all parties were satisfied that the materials were being maintained under safe conditions using appropriate procedures).



By way of comment, it appears to me that the position of the Special Prosecutor as to any agreement is set out in Jaworski's resignation letter, wherein he avers that S. 4016 "if enacted, will solve the problem." My view is the prosecutor's office will await Congressional action.

Jack Miller must realize this too. I suspect that he may file suit against GSA, White House, et al., for specific performance of the September 6 agreement. If he does so, he would also seek a temporary restraining order and preliminary injunction to prevent our turning over any materials pursuant to subpoenas or other requests. Presumably, the Special Prosecutor would then intervene on behalf of the Government. Once the matter is in litigation, there would be less possibility of Congressional action because of the Congress' traditional reluctance to act in the face of on going judicial controversy.

Enclosure

