

The original documents are located in Box 30, folder “Nixon - Papers Court Cases - Nixon v. Sampson (5)” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

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THE WHITE HOUSE

WASHINGTON

March 19, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: BARRY ROTH *BR*

Today's story in the Washington Post (attached) regarding access by the Special Prosecutor to the Nixon "tapes" contained a listing of former White House staff members who have sought access to their old files at the request of the Special Prosecutor. Judge Richey's restraining order in Nixon v. Sampson, et al., requires that we notify the Court in writing each time that a former staff member requests access to his files. We refused to provide the reporter with such information. Since the requests of most of these persons were turned down by Nixon, the only explanation for the listing used is that it came from the court records.

Bill Casselman has mentioned this to the Special Prosecutor as it not only impinges on personal privacy, but it also allows anyone looking at these records to determine who is testifying before the Grand Jury and, thereby, to track the Prosecutor's investigations.

cc: Bill Casselman



Nixon Tapes Access Gained By Prosecutor

By Stephen Isaacs

Washington Post Staff Writer

The Watergate special pros-| look at the files have done so

DRAFT

[Aug. 1975?]

IN THE UNITED STATES COURT OF APPEALS

MOTION FOR MODIFICATION OF ORDER OF JANUARY 31, 1975

The United States and the Administrator of General Services, by their undersigned attorneys, respectfully move the Court for a modification of the Order of this Court dated January 31, 1975, which directed "that no further order be entered in C. A. Nos. 74-1518, 74-1533, and 74-1551 until further order of this Court."

This motion is for the limited purpose of presenting a motion to the District Court for a ruling on the applicability of the temporary restraining orders entered October 21 and 22, 1974, to the subpoena from the Senate Select Committee on Intelligence Activities.

This subpoena was directed to Philip W. Buchen, Counsel to the President, and Arthur F. Sampson, Administrator of General Services, two of the three defendants in the consolidated cases initiated by former President Richard M. Nixon. Although defendants Buchen and Sampson possess some of the indicia of custodianship, the purpose of plaintiff Nixon's suit is to establish



ownership of the subpoenaed materials in himself. The Senate Select Committee on Intelligence Activities has not sought to subpoena plaintiff Nixon for these materials.

The District Court's order has heretofore been construed as precluding the access which would be required in order to comply with the subpoena. Further, counsel for plaintiff Nixon have indicated that they intend to seek appropriate sanctions against custodians Buchen and Sampson in the event that a search of these materials for the purpose of complying with the subpoena takes place without their consent.

For these reasons, the government respectfully requests that the Court's Order of January 31, 1975, be modified so as to permit the District Court to clarify its previous orders.

Respectfully submitted,

REX E. LEE
Assistant Attorney General

IN THE UNITED STATES COURT OF APPEALS ✓
FOR THE DISTRICT OF COLUMBIA CIRCUIT

RICHARD NIXON, :
 :
 Petitioner, :
 :
 v. : No. 74-1063
 :
 HON. CHARLES R. RICHEY, :
 :
 Respondent. :

MOTION FOR MODIFICATION OF ORDER OF JANUARY 31, 1975

The United States and the Administrator of General Services, by their undersigned attorneys, respectfully move the Court for a modification of the Order of this Court dated January 31, 1975, which directed "that no further order be entered in C. A. Nos. 74-1518, 74-1533, and 74-1551 until further order of this Court."

This motion is for the limited purpose of presenting a motion to the District Court for ^{a ruling on the applicability} ~~an order consenting~~ to ~~a search of the Presidential materials of the Nixon Administration now governed by~~ ^{of the} temporary restraining orders entered October 21 and 22, 1974. ^{to the} ~~This order is necessary~~ in order for Philip W. Buchen and Arthur F. Sampson (defendants in the consolidated cases) to comply with the subpoena from the Senate Select Committee on Intelligence Activities. The ~~Order directed to Philip W. Buchen and Arthur F. Sampson (defendants in the consolidated cases)~~



District Court's order has heretofore been construed as precluding the access which would be required in order to comply with the subpoena. *Further, counsel for plaintiff Nixon have indicated that they intend to seek appropriate sanctions against*

For these reasons, the government respectfully requests that the Court's Order of January 31, 1975, be modified so as to permit the District Court to *clarify its previous orders.* ~~enter an order consenting to a search of the Presidential Materials of the Nixon Administration.~~

Respectfully submitted,

 REX E. LEE
 Assistant Attorney General

custodians Bushby and Sampson in the event that a search of these materials for the purpose of complying with the subpoena takes place without their consent.



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

A RULING ON THE APPLICABILITY

~~MOTION FOR AN ORDER PERMITTING SEARCH OF
THE PRESIDENTIAL MATERIALS OF THE NIXON
ADMINISTRATION~~

*OF THE TEMPORARY RESTRAINING ORDER ENTERED
OCTOBER 22, 1974 TO A CONGRESSIONAL SUBPOENA*
Defendants Buchen, Sampson, and Knight, by their under-

signed attorneys, respectfully move the Court for ~~an a~~
ruling to clarify the applicability of the Temporary Restraining
~~order permitting a search of the Presidential Materials~~
Order entered 10/22/74 to the subpoena
~~of the Nixon Administration which would be consistent~~
~~with the Temporary Restraining Order issued by this Court~~
on October 22, 1974, ^{as} and thereafter amended, supplemented,
and modified, *to the subpoena from the Senate Select Committee **
The grounds for this motion are as follows:



**on Intelligence Activities, and directed to Philip W. Buchen
and Arthur F. Sampson (defendants in the consolidated
cases).*

and said persons shall take such steps as are necessary to assure that the search for and copying of said materials will in no way destroy or affect the original character of any of the materials, including tapes, documents or other papers referred to herein. [October 22, 1974, Supplemental Order, page 3, para-2.]

The October 22, 1974, Order was modified by a further Order extending the Temporary Restraining Order, included in the October 22, 1974, Order, "until the hearing on the Motions for Preliminary Injunction set for November 15, 1974, at 9:30 a.m., and for a reasonable time thereafter until the Court renders its decision of the Motions." The October 22, 1974, and the October 31, 1974, Orders were further modified, although not in respects material to this Motion, by an Order entered November 7, 1974.^{3/} All these Orders remain in effect.

3. Counsel to the President Buchen and Administrator Sampson ~~desire to obtain access to court as to the applicability of its previous orders to the subpoenas in order to determine existence of Materials covered by the subpoenas how to proceed with the subpoena without being (Exhibits "A" and "B") causing searches to be subject to sanctions~~ *seek a ruling from the* ~~made for Materials included therein; and transmitting all documents which they find responsive to the subpoenas, excepting only any documents of responding to the subpoena, ^{as with} Congressional~~ *plaintiff Nixon has advised,* ~~which they may not transmit for reasons which can be determined only after access is permitted.~~ *made for Materials included therein; and through his counsel, he intends to take in the event a search of these materials for the purpose*

3/ A copy of the October 22, 1974, Order is attached hereto as Exhibit "C"; and a copy of the October 31, 1974, Order is attached hereto as Exhibit "D"; and a copy of the November 7, 1974, Order is attached hereto as Exhibit "E".



ORDER

This matter having come before the Court on the Motion For an Order Permitting Search of the Presidential Materials of the Nixon Administration filed by Defendants Buchen, Sampson, and Knight, and counsel having been heard and the Court being fully advised in the premises, it is by the Court this ____ day of September 1975

ORDERED, ADJUDGED, and DECREED

(1) That the Temporary Restraining Order issued by this Court on October 22, 1974, and thereafter amended, supplemented, and modified, ^{is further modified to} permit Defendants Buchen and Sampson to obtain access to the Materials of the Nixon Administration covered by the subpoenas issued by the Senate Select Committee on Intelligence Activities on August ____, 1975, for the purposes of determining the existence of materials covered by the subpoenas, causing searches to be made for materials included therein, and transmitting all documents which they find responsive to the subpoenas, excepting only any documents they may not transmit which for reasons which can be determined only after access is permitted.

UNITED STATES DISTRICT JUDGE



(4) By its terms, the quoted provisions of the Order of October 22, 1974, would appear to preclude Defendants Buchen and Sampson from taking action to comply with the subpoenas as set forth in paragraph 3 herein. The question arises since the term in paragraph 3 of the October 22, 1974, Supplemental Order "for purposes of current government business" has been interpreted to mean the ongoing business of the government, encompassed ^{primarily} within specific needs of the Executive Branch. ~~An example of such specific needs has been the need for access to national security and foreign affairs materials by the Executive Branch.*~~

(5) In order to remove any questions as to a possible violation of this Court's restraining order and to permit the counsel to the President and the Administrator to proceed ^{accordingly with respect} ~~to respond to the~~ ~~to the~~ subpoenas of the Senate Select Committee on Intelligence Activities, the Court is respectfully requested ~~to enter an Order in the form attached.~~ ^{rule on the scope of its Order. Since the Court}

Respectfully submitted,

It is in the absence of any judicially imposed restrictions, Defendants Buchen and Sampson intend to cause a search of the Presidential materials of the Nixon Administration for the purposes of determining the existence of materials covered by the subpoenas, causing searches to be made for materials included therein, and transmitting all documents

— A copy of
* ~~For the convenience of the Court,~~ the transcript from the hearing of October 22, 1974, regarding ~~this~~ provision, is attached hereto as Exhibit.

which they find responsive to the subpoenas, excepting only any documents they may not transmit for reasons which can be determined only after access ~~has~~ taken place. ^{to those materials}



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MOTION FOR A RULING ON THE APPLICABILITY
OF THE TEMPORARY RESTRAINING ORDER
ENTERED OCTOBER 22, 1974, TO A
CONGRESSIONAL SUBPOENA

Defendants Buchen, Sampson, and Knight, by their undersigned attorneys, respectfully move the Court for a ruling on the applicability of the Temporary Restraining Order issued by this Court on October 22, 1974, as thereafter amended, supplemented, and modified, to the subpoena from the Senate Select Committee on Intelligence Activities, and directed to Philip W. Buchen and Arthur F. Sampson (defendants in the consolidated cases). The grounds for this motion are as follows:

(1) Defendant Philip W. Buchen, Counsel to the President, has been served with a subpoena duces tecum^{1/} from the Senate Select Committee on Intelligence Activities, returnable August 25, 1975. The subpoena seeks, inter alia, materials related to "activities during the period September 1, to November 3, 1970 directed toward preventing Salvador Allende from assuming the Office of President of Chile". The subpoena states that "[f]iles which should be searched include the files of the Special Files Unit in the Office of Presidential papers, and the files of Richard Nixon, H. R. Haldeman, John D. Ehrlichman, Egil Krogh, Robert Finch, John Dean III, and Tom Huston". It also seeks materials which were transmitted to the Office of the Special Prosecutor relating to events described in a statement of then President Nixon on May 22, 1973,, materials relating to the origin and disposition of a report prepared for former President Nixon, dated June 1970 and materials relating to efforts and activities, in the period from April -- December 31, 1970, to coordinate intelligence, collection and operations with respect to domestic groups or individuals or to relax restraints on such collection and operations. An identical subpoena was received by the Administrator of General Services, Arthur F. Sampson.^{2/}

(2) The subpoenas seek to obtain copies of materials included in the "Presidential Materials of the Nixon Administration". ("The Materials".)

1/ A copy of the subpoena is attached hereto as Exhibit "A"

2/ A copy of the subpoena directed to Mr. Sampson is attached hereto as Exhibit "B".



These Materials are the subject matter of three Orders entered in actions before the District Court for the District of Columbia, to wit, Civil Action Nos. 74-1518, 74-1533, and 74-1551. Specifically, an Order entered on October 22, 1974, provides, in pertinent part:

FURTHER ORDERED, that the Defendants, their superiors, agents and assigns are, subject to the conditions hereinafter described in the balance of this Order, hereby enjoined from disclosing, transferring, disposing or otherwise making known to any person, be he/she private citizen or public official, the materials, including documents, tapes and other papers, known as the "Presidential materials of the Nixon Administration", that are presently in the custody and control of the Defendants. [October 22, 1974, Supplemental Order, page 2, paragraph 1.]

* * * * *

FURTHER ORDERED, that the injunction shall not serve as a bar to the production of said materials pursuant to a validly-issued subpoena, discovery demand, or court order in any civil or criminal case, either outstanding or while this injunction is extant; or to the production of said materials in regard to the ongoing Watergate criminal trial before United States District Judge John Sirica; or to the production of said material pursuant to requests by the Special Prosecutor, or to a validly issued subpoena by a Grand Jury; or to the use of said materials, with prior notification to counsel for Plaintiff Richard M. Nixon and with the consent of Defendant Philip W. Buchen, for purposes of current government business. [October 22, 1974, Supplemental Order, page 2, paragraph 3.]

* * * * *

FURTHER ORDERED, that such search conducted for purposes of producing or using said materials as provided in this Order shall be conducted jointly by Defendant Philip W. Buchen, or his agent, and counsel for Plaintiff Richard M. Nixon, or his agent,



and said persons shall take such steps as are necessary to assure that the search for and copying of said materials will in no way destroy or affect the original character of any of the materials, including tapes, documents or other papers referred to herein. [October 22, 1974, Supplemental Order, page 3, para-2.]

The October 22, 1974, Order was modified by a further Order extending the Temporary Restraining Order, included in the October 22, 1974, Order, "until the hearing on the Motions for Preliminary Injunction set for November 15, 1974, at 9:30 a.m., and for a reasonable time thereafter until the Court renders its decision of the Motions." The October 22, 1974, and the October 31, 1974, Orders were further modified, although not in respects material to this Motion, by an Order entered November 7, 1974.^{3/} All these Orders remain in effect.

3. Counsel to the President Buchen and Administrator Sampson seek a ruling from the Court as to the applicability of its previous orders to the subpoena in order to determine how to proceed with the subpoena without being subject to sanctions that plaintiff Nixon has advised, through his counsel, he intends to take in the event a search of these materials is made for the purpose of responding to the subpoena, as well as Congressional sanctions for non-compliance with the subpoena.

^{3/} A copy of the October 22, 1974, Order is attached hereto as Exhibit "C"; and a copy of the October 31, 1974, Order is attached hereto as Exhibit "D"; and a copy of the November 7, 1974, Order is attached hereto as Exhibit "E".



(4) By its terms, the quoted provisions of the Order of October 22, 1974, would appear to preclude Defendants Buchen and Sampson from taking action to comply with the subpoenas as set forth in paragraph 3 herein. The question arises since the term in paragraph 3 of the October 22, 1974, Supplemental Order "for purposes of current government business" has been interpreted to mean the ongoing business of the government, encompassed summarily within specific needs for access to national security and foreign affairs materials by the Executive Branch. ^{4/}

(5) In order to remove any questions as to a possible violation of this Court's restraining order and to permit the counsel to the President and the Administrator to proceed accordingly with respect to the subpoenas of the Senate Select Committee on Intelligence Activities, the Court is respectfully requested to rule on the scope of its Order.

In the absence of any judicially imposed restrictions, Defendants Buchen and Sampson intend to cause a search of the Presidential materials of the Nixon Administration for the purposes of determining the existence of materials covered by the subpoenas, causing searches to be made for materials included therein, and transmitting all documents which they find responsive to the subpoenas, excepting only any documents they may not transmit for reasons which can be determined only after access to these materials has taken place.

Respectfully submitted,

^{4/} A copy of the transcript from the hearing of October 22, 1974, regarding this provision, is attached hereto as Exhibit ____.



[Aug. 1975]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

RICHARD NIXON,	:	
	:	
Petitioner,	:	
	:	
v.	:	No. 74-1063
	:	
HON. CHARLES R. RICHEY,	:	
	:	
Respondent.	:	

MOTION FOR MODIFICATION OF ORDER OF JANUARY 31, 1975

The United States and the Administrator of General Services, by their undersigned attorneys, respectfully move the Court for a modification of the Order of this Court dated January 31, 1975, which directed "that no further order be entered in C. A. Nos. 74-1518, 74-1533, and 74-1551 until further order of this Court."

This motion is for the limited purpose of presenting a motion to the District Court for an order consenting to a search of the Presidential materials of the Nixon Administration now governed by temporary restraining orders entered October 21 and 22, 1974. This order is necessary in order for Philip W. Buchen and Arthur F. Sampson (defendants in the consolidated cases) to comply with the subpoena from the Senate Select Committee on Intelligence Activities. The



District Court's order has heretofore been construed as precluding the access which would be required in order to comply with the subpoena.

For these reasons, the government respectfully requests that the Court's Order of January 31, 1975, be modified so as to permit the District Court to enter an order consenting to a search of the Presidential Materials of the Nixon Administration.

Respectfully submitted,

REX E. LEE
Assistant Attorney General

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

MOTION FOR AN ORDER PERMITTING SEARCH OF
THE PRESIDENTIAL MATERIALS OF THE NIXON
ADMINISTRATION

Defendants Buchen, Sampson, and Knight, by their under-
signed attorneys, respectfully move the Court for an
order permitting a search of the Presidential Materials
of the Nixon Administration which would be consistent
with the Temporary Restraining Order issued by this Court
on October 22, 1974, and thereafter amended, supplemented,
and modified. The grounds for this motion are as follows:

(1) Defendant Philip W. Buchen, Counsel to the President, has been served with a subpoena duces tecum^{1/} from the Senate Select Committee on Intelligence Activities, returnable August 25, 1975. The subpoena seeks, inter alia, materials related to "activities during the period September 1, to November 3, 1970 directed toward preventing Salvador Allende from assuming the Office of President of Chile". The subpoena states that "[f]iles which should be searched include the files of the Special Files Unit in the Office of Presidential papers, and the files of Richard Nixon, H. R. Haldeman, John D. Ehrlichman, Egil Krogh, Robert Finch, John Dean III, and Tom Huston". It also seeks materials which were transmitted to the Office of the Special Prosecutor relating to events described in a statement of then President Nixon on May 22, 1973,, materials relating to the origin and disposition of a report prepared for former President Nixon, dated June 1970 and materials relating to efforts and activities, in the period from April -- December 31, 1970, to coordinate intelligence, collection and operations with respect to domestic groups or individuals or to relax restraints on such collection and operations. An identical subpoena was received by the Administrator of General Services, Arthur F. Sampson.^{2/}

(2) The subpoenas seek to obtain copies of materials included in the "Presidential Materials of the Nixon Administration". ("The Materials".)

1/ A copy of the subpoena is attached hereto as Exhibit "A".

2/ A copy of the subpoena directed to Mr. Sampson is attached hereto as Exhibit "B".

These Materials are the subject matter of three Orders entered in actions before the District Court for the District of Columbia, to wit, Civil Action Nos. 74-1518, 74-1533, and 74-1551. Specifically, an Order entered on October 22, 1974, provides, in pertinent part:

FURTHER ORDERED, that the Defendants, their superiors, agents and assigns are, subject to the conditions hereinafter described in the balance of this Order, hereby enjoined from disclosing, transferring, disposing or otherwise making known to any person, be he/she private citizen or public official, the materials, including documents, tapes and other papers, known as the "Presidential materials of the Nixon Administration", that are presently in the custody and control of the Defendants. [October 22, 1974, Supplemental Order, page 2, paragraph 1.]

* * * * *

FURTHER ORDERED, that the injunction shall not serve as a bar to the production of said materials pursuant to a validly-issued subpoena, discovery demand, or court order in any civil or criminal case, either outstanding or while this injunction is extant; or to the production of said materials in regard to the ongoing Watergate criminal trial before United States District Judge John Sirica; or to the production of said material pursuant to requests by the Special Prosecutor, or to a validly issued subpoena by a Grand Jury; or to the use of said materials, with prior notification to counsel for Plaintiff Richard M. Nixon and with the consent of Defendant Philip W. Buchen, for purposes of current government business. [October 22, 1974, Supplemental Order, page 2, paragraph 3.]

* * * * *

FURTHER ORDERED, that such search conducted for purposes of producing or using said materials as provided in this Order shall be conducted jointly by Defendant Philip W. Buchen, or his agent, and counsel for Plaintiff Richard M. Nixon, or his agent,

and said persons shall take such steps as are necessary to assure that the search for and copying of said materials will in no way destroy or affect the original character of any of the materials, including tapes, documents or other papers referred to herein. [October 22, 1974, Supplemental Order, page 3, para-2.]

The October 22, 1974, Order was modified by a further Order extending the Temporary Restraining Order, included in the October 22, 1974, Order, "until the hearing on the Motions for Preliminary Injunction set for November 15, 1974, at 9:30 a.m., and for a reasonable time thereafter until the Court renders its decision of the Motions." The October 22, 1974, and the October 31, 1974, Orders were further modified, although not in respects material to this Motion, by an Order entered November 7, 1974.^{3/} All these Orders remain in effect.

3. Counsel to the President Buchen and Administrator Sampson desire to obtain access to the Materials for purposes of determining the existence of Materials covered by the subpoenas (Exhibits "A" and "B"); causing searches to be made for Materials included therein; and transmitting all documents which they find responsive to the subpoenas, excepting only any documents which they may not transmit for reasons which can be determined only after access is permitted.

^{3/} A copy of the October 22, 1974, Order is attached hereto as Exhibit "C"; and a copy of the October 31, 1974, Order is attached hereto as Exhibit "D"; and a copy of the November 7, 1974, Order is attached hereto as Exhibit "E".

(4) By its terms, the quoted provisions of the Order of October 22, 1974, would appear to preclude Defendants Buchen and Sampson from taking action to comply with the subpoenas as set forth in paragraph 3 herein. The question arises since the term in paragraph 3 of the October 22, 1974, Supplemental Order "for purposes of current government business" has been interpreted to mean the ongoing business of the government encompassed within specific needs of the Executive Branch. An example of such specific need has been the need for access to national security and foreign affairs materials by the Executive Branch.

(5) In order to remove any questions as to a possible violation of this Court's restraining order and to permit the counsel to the President and the Administrator to proceed to respond to the subpoenas of the Senate Select Committee on Intelligence Activities, the Court is respectfully requested to enter an Order in the form attached.

Respectfully submitted,



ORDER

This matter having come before the Court on the Motion For an Order Permitting Search of the Presidential Materials of the Nixon Administration filed by Defendants Buchen, Sampson, and Knight, and counsel having been heard and the Court being fully advised in the premises, it is by the Court this ____ day of September 1975

ORDERED, ADJUDGED, and DECREED

(1) That the Temporary Restraining Order issued by this Court on October 22, 1974, and thereafter amended, supplemented, and modified, ^{is further modified to} permit Defendants Buchen and Sampson to obtain access to the Materials of the Nixon Administration covered by the subpoenas issued by the Senate Select Committee on Intelligence Activities on August ____, 1975, for the purposes of determining the existence of materials covered by the subpoenas, causing searches to be made for materials included therein, and transmitting all documents which they find responsive to the subpoenas, excepting only any documents they may not transmit which for reasons which can be determined only after access is permitted.

UNITED STATES DISTRICT JUDGE



RICHARD NIXON, individually)
and as the former President)
of the United States,)
)
Plaintiff,)
)
v.)
)
ADMINISTRATOR OF GENERAL SERVICES,)
et al.,)
)
Defendants.)
)

C.A. No. 74-1852

PLAINTIFF'S RESPONSE TO INTERVENOR-
DEFENDANTS' REQUEST FOR ADMISSION

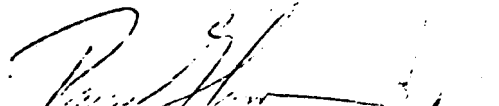
Plaintiff, by his counsel, hereby objects to the Intervenor-Defendants' Request for Admission, dated August 14, 1975, in its entirety, for the following reasons:

1. By Order of this Court, dated June 13, 1975, all evidence proffered in this case was to be submitted no later than July 30, 1975. Intervenor-Defendants' Request for Admission was submitted to Plaintiff fifteen days after that date.
2. Intervenor-Defendants did not, on or before July 30, 1975, inform Plaintiff that this Request for Admission would be made, nor did they request such admissions informally from Plaintiff.
3. Plaintiff is in the process of responding to all other discovery requests, formal or informal, made by Intervenor-Defendants on or before July 30, 1975.



4. The Requests by Intervenor-Defendants could have been made at the deposition of Plaintiff on July 25, 1975, but Intervenor-Defendants failed to do so.


Herbert J. Miller, Jr.


Raymond G. Larroca

MILLER, CASSIDY, LARROCA & LEWIN
2555 M Street, N.W., Suite 500
Washington, D. C. 20037
(202) 293-6400

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

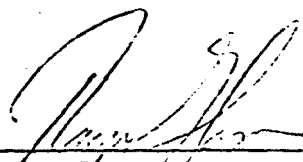
I hereby certify that one copy of the foregoing Plaintiff's Response to Intervenor-Defendants' Request for Admission was served by hand delivery on this the 21st day of August, 1975, to each of the following:

Irwin Goldbloom, Esquire
Deputy Assistant Attorney General
Room 3607, Main Justice
Washington, D. C. 20530

Peter Kreindler, Esquire
Counsel to the Special Prosecutor
1425 K Street, N.W.
Washington, D. C. 20006

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

Andrew S. Krulwich, Esquire
Arnold & Porter
1229 19th Street, N.W.
Washington, D. C. 20036



Raymond G. Larroca



Aug. 1976

D R A F T

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MOTION FOR A RULING ON THE APPLICABILITY
OF THE TEMPORARY RESTRAINING ORDER
ENTERED OCTOBER 22, 1974, TO A
CONGRESSIONAL SUBPOENA

Defendants Buchen, Sampson, and Knight, by their undersigned attorneys, respectfully move the Court for a ruling on the applicability of the Temporary Restraining Order issued by this Court on October 22, 1974, as thereafter amended, supplemented, and modified, to the subpoena from the Senate Select Committee on Intelligence Activities, and directed to Philip W. Buchen and Arthur F. Sampson (defendants in the consolidated cases). The grounds for this motion are as follows:

RECEIVED
MAY 1976

(1) Defendant^s Philip W. Buchen, Counsel to and Arthur F. Sampson, Administrator of General Services the President, **have** been served with a subpoena duces
1/
tecum from the Senate Select Committee on Intelligence Activities, returnable August 25, 1975. The subpoena seeks, inter alia, materials related to "activities during the period September 1, to November 3, 1970 directed toward preventing Salvador Allende from assuming the Office of President of Chile". The subpoena states that "[f]iles which should be searched include the files of the Special Files Unit in the Office of Presidential papers, and the files of Richard Nixon, H. R. Haldeman, John D. Ehrlichman, Egil Krogh, Robert Finch, John Dean III, and Tom Huston". It also seeks materials which were transmitted to the Office of the Special Prosecutor relating to events described in a statement of then President Nixon on May 22, 1973,, materials relating to the origin and disposition of a report prepared for former President Nixon, dated June 1970 and materials relating to efforts and activities, in the period from April -- December 31, 1970, to coordinate intelligence, collection and operations with respect to domestic groups or individuals or to relax restraints on such collection and operations. An identical subpoena was received by the Administrator of General Services, Arthur F. Sampson. 2/

(2) The subpoenas seek to obtain copies of materials included in the "Presidential Materials of the Nixon Administration". ("The Materials".)

1/ A copy of the subpoena is attached hereto as Exhibit "A".

2/ A copy of the subpoena directed to Mr. Sampson is attached hereto as Exhibit "B".

These Materials are the subject matter of three Orders entered in actions before the District Court for the District of Columbia, to wit, Civil Action Nos. 74-1518, 74-1533, and 74-1551. Specifically, an Order entered on October 22, 1974, provides, in pertinent part:

FURTHER ORDERED, that the Defendants, their superiors, agents and assigns are, subject to the conditions hereinafter described in the balance of this Order, hereby enjoined from disclosing, transferring, disposing or otherwise making known to any person, be he/she private citizen or public official, the materials, including documents, tapes and other papers, known as the "Presidential materials of the Nixon Administration", that are presently in the custody and control of the Defendants. [October 22, 1974, Supplemental Order, page 2, paragraph 1.]

* * * * *

FURTHER ORDERED, that the injunction shall not serve as a bar to the production of said materials pursuant to a validly-issued subpoena, discovery demand, or court order in any civil or criminal case, either outstanding or while this injunction is extant; or to the production of said materials in regard to the ongoing Watergate criminal trial before United States District Judge John Sirica; or to the production of said material pursuant to requests by the Special Prosecutor, or to a validly issued subpoena by a Grand Jury; or to the use of said materials, with prior notification to counsel for Plaintiff Richard M. Nixon and with the consent of Defendant Philip W. Buchen, for purposes of current government business. [October 22, 1974, Supplemental Order, page 2, paragraph 3.]

* * * * *

FURTHER ORDERED, that such search conducted for purposes of producing or using said materials as provided in this Order shall be conducted jointly by Defendant Philip W. Buchen, or his agent, and counsel for Plaintiff Richard M. Nixon, or his agent,



and said persons shall take such steps as are necessary to assure that the search for and copying of said materials will in no way destroy or affect the original character of any of the materials, including tapes, documents or other papers referred to herein. [October 22, 1974, Supplemental Order, page 3, para-2.]

The October 22, 1974, Order was modified by a further Order extending the Temporary Restraining Order, included in the October 22, 1974, Order, "until the hearing on the Motions for Preliminary Injunction set for November 15, 1974, at 9:30 a.m., and for a reasonable time thereafter until the Court renders its decision of the Motions." The October 22, 1974, and the October 31, 1974, Orders were further modified, although not in respects material to this Motion, by an Order entered November 7, 1974.^{3/} All these Orders remain in effect.

3. Defendants Buchen and Sampson seek a ruling from the Court as to the applicability of its previous orders to the subpoena. The District Court's Order has heretofore been construed as precluding access to in the disclosure of contents of the Nixon Presidential Materials which would be required in order to comply with the subpoena. In the absence of the requested ruling, defendants Buchen and Sampson risk the imposition of judicial sanctions for noncompliance with the Order in the event they proceed to unilaterally comply with the subpoena. At the same time, noncompliance with a Congressional subpoena is a misdemeanor punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment for not less than one month nor more than twelve months (2 U.S.C. 192). The issue that defendants present to this Court is, therefore, justiciable.



^{3/} A copy of the October 22, 1974, Order is attached hereto as Exhibit "C"; and a copy of the October 31, 1974, Order is attached hereto as Exhibit "D"; and a copy of the November 7, 1974, Order is attached hereto as Exhibit "E".

and said persons shall take such steps as are necessary to assure that the search for and copying of said materials will in no way destroy or affect the original character of any of the materials, including tapes, documents or other papers referred to herein. [October 22, 1974, Supplemental Order, page 3, para-2.]

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^{3/} A copy of the October 22, 1974, Order is attached hereto as Exhibit "C"; and a copy of the October 31, 1974, Order is attached hereto as Exhibit "D"; and a copy of the November 7, 1974, Order is attached hereto as Exhibit "E".



(4) By its terms, the quoted provisions of the Order of October 22, 1974, would appear to preclude Defendants Buchen and Sampson from taking action to comply with the subpoenas as set forth in paragraph 3 herein. The question arises since the term in paragraph 3 of the October 22, 1974, Supplemental Order "for purposes of current government business" has been interpreted to mean the ongoing business of the government.^{4/} Heretofore, access has been provided under this provision only to national security, ~~and~~ foreign affairs *and other* materials required by the Executive Branch to maintain continuity of operations.

(5) In order to remove any questions as to a possible violation of this Court's restraining order and to permit Defendants Buchen and Sampson to proceed accordingly with respect to the subpoenas of the Senate Select Committee on Intelligence Activities, the Court is respectfully requested to rule on the applicability of its Order to this Congressional subpoena.

(a) subpoena does not ask specific stuff
(1) We cannot determine the

In the absence of any judicially imposed restrictions, Defendants Buchen and Sampson intend to cause a search of the Presidential materials of the Nixon Administration for the purposes of determining the existence of materials covered by the subpoenas, causing searches to be made for materials included therein, and transmitting all documents which they find responsive to the subpoenas, excepting only any documents they may not transmit for reasons which can be determined only after access to these materials has taken place.

Respectfully submitted,

^{4/} A copy of the transcript from the hearing of October 22, 1974, regarding this provision, is attached hereto as Exhibit F.



[8/13/75]

THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

_____)
RICHARD M. NIXON)
)
	Petitioner,)
v.)
)
)
THE HONORABLE CHARLES R. RICHEY)
United States District Court)
for the District of Columbia)
)
	Defendant.)
_____)

Civil Action No.
75-1063.

RESPONSE OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS ET AL., TO MOTIONS OF ROSE MARY WOODS (i) FOR LEAVE TO INTERVENE AND (ii) TO MODIFY THE STAY ORDER GOVERNING CONSOLIDATED CASES, NIXON, ET AL., v. SAMPSON, C.A. NOS. 74-1518, 1533, 1551 (D.D.C.)

Rose Mary Woods has moved for leave to intervene in this action and in the "consolidated cases" for the purpose of obtaining certain materials that are lodged with the "presidential materials" pursuant to Court Order in the "consolidated cases," (C.A. Nos. 74-1518, 74-1533, 74-1551). The Reporters Committee for Freedom of the Press, American Historical Association, American Political Science Association, et al. do not object to her obtaining those materials which are truly "personal" and those which are not considered by any party to be part of the



"presidential materials." However, on the current state of the record we are compelled to oppose her Motion for Leave to Intervene and her Motion to Modify the Stay in the "consolidated cases" on the following basis:

1. Ms. Woods has requested both her "personal papers and other materials" as set forth in List F attached to her proposed Complaint in Intervention. (See Motion to Modify The Stay Order . . . p. 1). As noted above, we have no objection to her obtaining those materials which are truly her "personal papers" and not "presidential materials." However, included among the materials listed as contained in Box 40W on List F under the heading "Rose Mary Woods - Personal Legal (B):" are two items that trouble us. The first is described as "Presidenti's [sic] Daily Logs, June 12-20, 1972/ Sept. 29, 1973"; the other item is described as "June 20, 1972 Tape." It was the June 20, 1972 tape on which appears the 18-1/2 minute gap, over which there has been considerable public interest and which was the subject of the court proceedings in In Re Subpoena to Richard M. Nixon, Misc. No. 47-73 (D.D.C. 1973-74). Accordingly, it would be clearly inappropriate for Ms. Woods to take that tape. Moreover, we do



not understand the basis for her claim that the Presidential Daily Logs referred to on List F are either her "personal papers" or "other materials" to which she is entitled.

2. Ms. Woods should not be permitted to intervene nor should the Stay be lifted without further clarification of (i) the nature of these materials (particularly the two items noted above), (ii) the precise nature of Ms. Filippini's examination of the items of List F (e.g., Did she read all of the documents? Did she listen to all of the tapes? If she read and listened to only some of the materials and tapes, on what basis did she choose which to examine? Did she examine the two items noted above in their entirety?), (iii) the basis for Ms. Woods' assertion and Ms. Filippini's conclusion that the two items noted above are the "personal property of Ms. Rose Mary Woods" (Filippini Affidavit, ¶ 7).

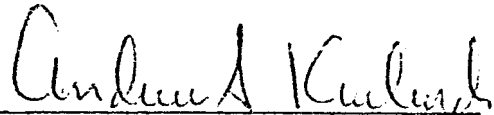
3. The parties are actively engaged in preparation of briefs under an expedited schedule in Civil Action No. 74-1852 (Mr. Nixon's lawsuit challenging the validity of P.L. 93-526). In this context, the burden should not be placed on the parties to clarify through discovery or even an ancillary proceeding before the District Court, at this time, the questions raised by Ms. Woods' papers. That burden



should rest with Ms. Woods, especially in light of the untimely nature of her motion.

For these reasons, we respectfully request that this Court deny at this time Ms. Woods' Motion for Leave to Intervene and her Motion to Modify the Stay Order governing the consolidated cases, Nixon et al. v. Sampson, C.A. Nos. 71-1518, 1533, 1551 (D.D.C.).

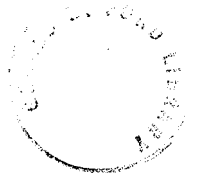
Respectfully submitted,



Robert E. Herzstein
Mark J. Spooner
Andrew S. Krulwich

ARNOLD & PORTER
1229 - 19th Street, N. W.
Washington, D. C. 20036
Tel. No. (202) 872-6700
Counsel for Reporters Committee
for Freedom of the Press, the
American Historical Association,
the American Political Science
Association, et al.

Date: August 13, 1975



CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing
"Response of the Reporters Committee for Freedom of
the Press, et al., to Motions of Rose Mary Woods
(i) for Leave to Intervene and (ii) to Modify the Stay
Order Governing Consolidated Cases, Nixon, et al., v.
Sampson, C.A. Nos. 74-1518, 1533, 1551 (D.D.C.)" have
been served, by hand, this 13th day of August, 1975
on the following:

Herbert J. Miller, Esquire
Miller, Cassidy, Larroca & Lewin
2555 M Street, N. W.
Washington, D. C. 20037

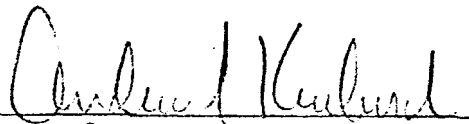
Irwin Goldbloom, Esquire
Deputy Assistant Attorney General
United States Department of Justice
Room 3607
11th & Pennsylvania Avenue, N. W.
Washington, D. C.

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

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

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

Charles S. Rhyne, Esquire
Rhyne and Rhyne
839 Seventeenth Street, N. W.
Washington, D. C. 20006


Andrew S. Krulwich



DRAFT -- August 18, 1975

IN THE UNITED STATES COURT OF APPEALS

MOTION FOR MODIFICATION OF ORDER OF JANUARY 31, 1975

The United States and the Administrator of General Services, by their undersigned attorneys, respectfully move the Court for a modification of the Order of this Court dated January 31, 1975, which directed "that no further order be entered in C. A. Nos. 74-1518, 74-1533, and 74-1551 until further order of this Court."

This motion is for the limited purpose of presenting a motion to the District Court for a ruling on the applicability of the temporary restraining orders entered October 21 and 22, 1974, to the subpoena from the Senate Select Committee on Intelligence Activities.

This ruling is necessitated by the subpoena directed to Philip W. Buchen, Counsel to the President, and Arthur F. Sampson, Administrator of General Services, two of the three defendants in the consolidated cases initiated by former President Richard M. Nixon. Although defendants Buchen and Sampson possess some of the indicia of custodianship, the purpose of plaintiff Nixon's suit is to establish ownership of the subpoenaed materials in himself.



The Senate Select Committee on Intelligence Activities has not sought to subpoena plaintiff Nixon for these materials.

The District Court's Order has heretofore been construed as precluding access to and disclosure of the contents of the Nixon Presidential Materials which would be required in order to comply with the subpoena. In the absence of the requested ruling, defendants Buchen and Sampson risk the imposition of judicial sanctions for noncompliance with the Order in the event they proceed to unilaterally comply with the subpoena. On the other hand, noncompliance with a Congressional subpoena is a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100, and imprisonment for not less than one month nor more than twelve months ^(20.S.C.192). Therefore, the issue defendants ~~defendants~~ Buchen and Sampson wish to present to the District Court is justiciable, and necessitates an expedited ruling by that Court.

For these reasons, the government respectfully requests that the Court's Order of January 31, 1975, be modified so as to permit the District Court to rule with respect to its previous orders.

Respectfully submitted,

REX E. LEE
Assistant Attorney General



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD M. NIXON,)	
)	
Plaintiff,)	
)	
v.)	
)	
ARTHUR F. SAMPSON, <u>et al.</u> ,)	Civil Action Nos.
)	
Defendants,)	74-1518
)	74-1533
and)	74-1551
)	
THE REPORTERS COMMITTEE FOR FREEDOM)	
OF THE PRESS,)	
THE AMERICAN HISTORICAL ASSOCIATION,)	
THE AMERICAN POLITICAL SCIENCE)	
ASSOCIATION, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	
ARTHUR F. SAMPSON, <u>et al.</u> ,)	
)	
Defendants,)	
)	
and)	
)	
LILLIAN HELLMAN, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	
ARTHUR F. SAMPSON, <u>et al.</u> ,)	
)	
Defendants.)	

FILED
DEC - 5 1975
JAMES F. BERRY

ORDER GRANTING MOTION FOR STAY PENDING APPEAL

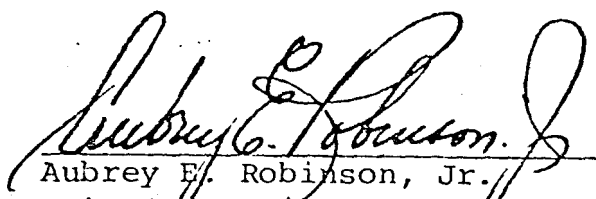
Having considered the Motion filed December 5, 1975, by Plaintiffs The Reporters Committee for Freedom of the Press, et al. ("Reporters Committee, et al."), seeking a stay pending appeal of this Court's Order of December 2, 1975, granting the

Motion for Judgment on the Pleadings filed November 19, 1975, by Plaintiff-Intervenor Rose Mary Woods ("Miss Woods"), and having considered responses thereto presented by the parties to the action, the Court finds that a stay of this Court's Order of December 2, 1975, is required in order to permit Reporters Committee, et al. to prosecute the appeal they have taken from that Order to the Court of Appeals, and further finds that such a stay will impose no substantial hardship or prejudice on Miss Woods. It is therefore hereby

ORDERED that the Motion of Reporters Committee, et al. for a stay of this Court's Order of December 2, 1975, shall be and is hereby granted, pending final disposition of the matter in connection with the appeal taken by Reporters Committee, et al. from said Order of December 2, 1975; and it is further

ORDERED that Defendants Sampson and Buchen, their agents and employees, remain subject to the restrictions imposed by this Court's Order of October 22, 1974, enjoining them from "disclosing, transferring, disposing or otherwise making known to any person," the items sought by Miss Woods in her Motion for Judgment on the Pleadings, filed November 19, 1975.

Dated this 5th day of December, 1975.


Aubrey E. Robinson, Jr.
United States District Judge

Copy to Barry

April 1, 1976

IGoldbloom:mmo
145-171-133

R. Stan Mortenson, Esquire
Miller, Cassidy, Larroca & Lewin
Suite 500
2555 M Street, N. W.
Washington, D. C. 20037

Re: Richard M. Nixon v. Arthur F. Sampson,
et al., U.S.D.C. D.C., Civil Action
No. 74-1513

Dear Mr. Mortenson:

This will confirm the discussions that we have had in connection with the government's motion concerning the proposed move of materials from the Old Executive Office Building complex to GSA's facility at Suitland.

As we discussed in our conversation, while our motion is directed generally to all such materials, we do not plan, as part of this move, to transfer out of the Old Executive Office Building complex the materials now stored in Rooms 84 and 522 nor the tapes and the presidential daily diaries. In addition, we do not plan to move the materials presently stored in Room 429 and Mr. Nixon's personal files which were located in the Old Executive Office Building presidential suite and which are currently in Room 414.

Further, in response to your inquiry, we have been advised that the rewinding of the tapes will not involve the use of any equipment which monitors the sound level.



We trust this information will enable you to advise the Court that you do not oppose the government's motion.

Sincerely yours,

IRWIN GOLDBLOOM
Deputy Assistant Attorney General
Civil Division

cc: All Counsel

bcc: Philip W. Buchen, Esquire
Counsel to the President
The White House
Washington, D. C. 20501

General Services Administration
Washington, D. C. 20405
Attention: General Counsel

