

**The original documents are located in Box 34, folder “Nixon Pardon - Press Releases, 9/8/74” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.**

### **Copyright Notice**

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 Gerald R. Ford donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections.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

Exact duplicates within this folder were not digitized.

SEPTEMBER 8, 1974

Office of the White House Press Secretary

---

THE WHITE HOUSETEXT OF A LETTER FROM RICHARD NIXON  
TO ARTHUR F. SAMPSON, ADMINISTRATOR  
GENERAL SERVICES ADMINISTRATION

September 6, 1974

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

Dear Mr. Sampson:

In keeping with the tradition established by other former Presidents, it is my desire to donate to the United States, at a future date, a substantial portion of my Presidential materials which are of historical value to our Country. In donating these Presidential materials to the United States, it will be my desire that they be made available, with appropriate restrictions for research and study.

In the interim, so that my materials may be preserved, I offer to transfer to the Administrator of General Services (the "Administrator"), for deposit, pursuant to 44 U.S.C. Section 2101, et seq., all of my Presidential historical materials as defined in 44 U.S.C. Section 2101 (hereinafter "Materials"), which are located within the metropolitan area of the District of Columbia, subject to the following:

1. The Administrator agrees to accept solely for the purpose of deposit the transfer of the Materials, and in so accepting the Materials agrees to abide by each of the terms and conditions contained herein.
2. In the event of my death prior to the expiration of the three-year time period established in paragraph 7A hereof, the terms and conditions contained herein shall be binding upon and inure to the benefit of the executor of my estate for the duration of said period.
3. I retain all legal and equitable title to the Materials, including all literary property rights.
4. The Materials shall, upon acceptance of this offer by the Administrator, be deposited temporarily in an existing facility belonging to the United States, located within the State of California near my present residence. The Materials shall remain deposited in the temporary California facility until such time as there may be established, with my approval, a permanent Presidential archival depository as provided for in 44 U.S.C. Section 2108.
5. The Administrator shall provide in such temporary depository and in any permanent Presidential archival depository reasonable office space for my personal use in accordance with 44 U.S.C. Section 2108 (f). The Materials in their entirety shall be deposited within such office space in the manner described in paragraph 6 hereof.

MORE

6. Within both the temporary and any permanent Presidential archival depository, all of the Materials shall be placed within secure storage areas to which access can be gained only by use of two keys. One key, essential for access, shall be given to me alone as custodian of the Materials. The other key may be duplicated and entrusted by you to the Archivist of the United States or to members of his staff.
7. Access to the Materials within the secure areas, with the exception of recordings of conversations in the White House and the Executive Office Building which are governed by paragraphs 8 and 9 hereof, shall be as follows:
  - A. For a period of three years from the date of this instrument, I agree not to withdraw from deposit any originals of the Materials, except as provided in subparagraph B below and paragraph 10 herein. During said three-year period, I may make reproductions of any of the originals of the Materials and withdraw from deposit such reproductions for any use I may deem appropriate. Except as provided in subparagraph B below, access to the Materials shall be limited to myself, and to such persons as I may authorize from time to time in writing, the scope of such access to be set forth by me in each said written authorization. Any request for access to the Materials made to the Administrator, the Archivist of the United States or any member of their staffs shall be referred to me. After three years I shall have the right to withdraw from deposit without formality any or all of the Materials to which this paragraph applies and to retain such withdrawn Materials for any purpose or use I may deem appropriate, including but not limited to reproduction, examination, publication or display by myself or by anyone else I may approve.
  - B. In the event that production of the Materials or any portion thereof is demanded by a subpoena or other order directed to any official or employee of the United States, the recipient of the subpoena or order shall immediately notify me so that I may respond thereto, as the owner and custodian of the Materials, with sole right and power of access thereto and, if appropriate, assert any privilege or defense I may have. Prior to any such production, I shall inform the United States so it may inspect the subpoenaed materials and determine whether to object to its production on grounds of national security or any other privilege.
8. The tape recordings of conversations in the White House and Executive Office Building which will be deposited pursuant to this instrument shall remain on deposit until September 1, 1979. I intend to and do hereby donate to the United States, such gift to be effective September 1, 1979, all of the tape recordings of conversations in the White House and Executive Office Building conditioned however on my continuing right or access as specified in paragraph 9 hereof and on the further condition that such tapes shall be destroyed at the time of my death or on September 1, 1984, whichever event shall first occur. Subsequent to September 1, 1979 the Administrator shall destroy such tapes as I may direct. I impose this restriction as other Presidents have before me to guard

MORE



against the possibility of the tapes being used to injure, embarrass, or harass any person and properly to safeguard the interests of the United States.

9. Access to recordings of conversations in the White House and Executive Office Building within the secure areas shall be restricted as follows:

A. I agree not to withdraw from deposit any originals of the Materials, except as provided in subparagraph B and paragraph 10 below, and no reproductions shall be made unless there is mutual agreement. Access to the tapes shall be limited to myself, and to such persons as I may authorize from time to time in writing, the scope of such access to be set forth by me in each said written authorization. No person may listen to such tapes without my written prior approval. I reserve to myself such literary use of the Information on the tapes.

B. In the event that production of the Materials or any portion thereof is demanded by a subpoena or other order directed to any official or employee of the United States, the recipient of the subpoena or order shall immediately notify me so that I may respond thereto, as the owner and custodian of the Materials, with sole right and power of access thereto and, if appropriate, assert any privilege or defense I may have. Prior to any such production, I shall inform the United States so it may inspect the subpoenaed materials and determine whether to object to its production on grounds of national security or any other privilege.

10. The Administrator shall arrange and be responsible for the reasonable protection of the Materials from loss, destruction or access by unauthorized persons, and may upon receipt of any appropriate written authorization from the Counsel to the President provide for a temporary re-deposit of certain of the Materials to a location other than the existing facility described in paragraph 4 herein, provided however that no diminution of the Administrator's responsibility to protect and secure the Materials from loss, destruction, unauthorized copying or access by unauthorized persons is affected by said temporary re-deposit.

11. From time to time as I deem appropriate, I intend to donate to the United States certain portions of the Materials deposited with the Administrator pursuant to this agreement, such donations to be accompanied by appropriate restrictions as authorized by 44 U.S.C. Section 2107. However, prior to such donation, it will be necessary to review the Materials to determine which of them should be subject to restriction, and the nature of the restrictions to be imposed. This review will require a meticulous, thorough, time-consuming analysis. If necessary to fulfill this task, I will request that you designate certain members of the Archivist's staff to assist in this review under my direction.

If you determine that the terms and conditions set forth above are acceptable for the purpose of governing the establishment and maintenance of a depository

MORE



of the Materials pursuant to 44 U.S.C. Section 2101 and for accepting the irrevocable gift of recordings of conversations after the specified five year period for purposes as contained in paragraph 8 herein, please indicate your acceptance by signing the enclosed copy of this letter and returning it to me. Upon your acceptance we both shall be bound by the terms of this agreement.

Sincerely,

/s/ Richard Nixon

Accepted by:     Arthur F. Sampson     /s/ Arthur F. Sampson  
                  Administrator                     9/7/74  
                  General Services Administration

#     #     #



FOR IMMEDIATE RELEASE

SEPTEMBER 8, 1974

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

---

THE WHITE HOUSE

REMARKS OF THE PRESIDENT  
ANNOUNCING THE GRANTING OF A PARDON  
TO FORMER PRESIDENT NIXON

THE OVAL OFFICE

11:05 A. M. PDT

Ladies and gentlemen, I have come to a decision which I felt I should tell you and all of my fellow American citizens, as soon as I was certain in my own mind and in my own conscience that it is the right thing to do.

I have learned already in this office that the difficult decisions always come to this desk. I must admit that many of them do not look at all the same as the hypothetical questions that I have answered freely and perhaps too fast on previous occasions.

My customary policy is to try and get all the facts and to consider the opinions of my countrymen and to take counsel with my most valued friends. But these seldom agree, and in the end, the decision is mine. To procrastinate, to agonize and to wait for a more favorable turn of events that may never come, or more compelling external pressures that may as well be wrong as right, is itself a decision of sorts, and a weak and potentially dangerous course for a President to follow.

I have promised to uphold the Constitution, to do what is right as God gives me to see the right, and to do the very best that I can for America.

I have asked your help and your prayers, not only when I became President, but many times since. The Constitution is the supreme law of our land and it governs our actions as citizens. Only the laws of God, which govern our consciences, are superior to it.

MORE

(OVER)



As we are a nation under God, so I am sworn to uphold our laws with the help of God. And I have sought such guidance and searched my own conscience with special diligence to determine the right thing for me to do with respect to my predecessor in this place, Richard Nixon, and his loyal wife and family.

Theirs is an American tragedy in which we all have played a part. It could go on and on and on, or someone must write the end to it. I have concluded that only I can do that, and if I can, I must.

There are no historic or legal precedents to which I can turn in this matter, none that precisely fit the circumstances of a private citizen who has resigned the Presidency of the United States. But it is common knowledge that serious allegations and accusations hang like a sword over our former President's head, threatening his health as he tries to reshape his life, a great part of which was spent in the service of this country and by the mandate of its people.

After years of bitter controversy and divisive national debate, I have been advised, and I am compelled to conclude that many months and perhaps more years will have to pass before Richard Nixon could obtain a fair trial by jury in any jurisdiction of the United States under governing decisions of the Supreme Court.

I deeply believe in equal justice for all Americans, whatever their station or former station. The law, whether human or divine, is no respecter of persons, but the law is a respecter of reality.

The facts, as I see them, are that a former President of the United States, instead of enjoying equal treatment with any other citizen accused of violating the law, would be cruelly and excessively penalized either in preserving the presumption of his innocence or in obtaining a speedy determination of his guilt in order to repay a legal debt to society.

more

During this long period of delay and potential litigation, ugly passions would again be aroused. And our people would again be polarized in their opinions. And the credibility of our free institutions of Government would again be challenged at home and abroad.

In the end, the courts might well hold that Richard Nixon had been denied due process and the verdict of history would even more be inconclusive with respect to those charges arising out of the period of his Presidency, of which I am presently aware.

But it is not the ultimate fate of Richard Nixon that most concerns me, though surely it deeply troubles every decent and every compassionate person. My concern is the immediate future of this great country.

In this, I dare not depend upon my personal sympathy as a long-time friend of the former President, nor my professional judgment as a lawyer, and I do not.

As President, my primary concern must always be the greatest good of all the people of the United States whose servant I am. As a man, my first consideration is to be true to my own convictions and my own conscience.

My conscience tells me clearly and certainly that I cannot prolong the bad dreams that continue to reopen a chapter that is closed. My conscience tells me that only I, as President, have the constitutional power to firmly shut and seal this book. My conscience tells me it is my duty, not merely to proclaim domestic tranquility, but to use every means that I have to insure it.

I do believe that the buck stops here, that I cannot rely upon public opinion polls to tell me what is right.

I do believe that right makes might, and that if I am wrong, ten angels swearing I was right would make no difference.

I do believe, with all my heart and mind and spirit, that I, not as President, but as a humble servant of God, will receive justice without mercy if I fail to show mercy.

Finally, I feel that Richard Nixon and his loved ones have suffered enough and will continue to suffer, no matter what I do, no matter what we, as a great and good Nation, can do together to make his goal of peace come true.

MORE





Now, therefore, I, Gerald R. Ford, President of the United States, pursuant to the pardon power conferred upon me by Article II, Section 2 of the Constitution, have granted and by these presents do grant a full, free and absolute pardon unto Richard Nixon for all offenses against the United States which he, Richard Nixon, has committed or may have committed or taken part in during the period from July (January) 20, 1969 through August 9, 1974.

(The President signed the Proclamation)

In witness whereof, I have hereunto set my hand this 8th day of September in the year of our Lord 1974, and of the independence of the United States of America, the 199th.

END

(AT 11:16 A.M. EDT)

FOR IMMEDIATE RELEASE

SEPTEMBER 8, 1974

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

---

THE WHITE HOUSE

REMARKS OF THE PRESIDENT  
ANNOUNCING THE GRANTING OF A PARDON  
TO FORMER PRESIDENT NIXON

THE OVAL OFFICE

11:05 A. M. PDT

Ladies and gentlemen, I have come to a decision which I felt I should tell you and all of my fellow American citizens, as soon as I was certain in my own mind and in my own conscience that it is the right thing to do.

I have learned already in this office that the difficult decisions always come to this desk. I must admit that many of them do not look at all the same as the hypothetical questions that I have answered freely and perhaps too fast on previous occasions.

My customary policy is to try and get all the facts and to consider the opinions of my countrymen and to take counsel with my most valued friends. But these seldom agree, and in the end, the decision is mine. To procrastinate, to agonize and to wait for a more favorable turn of events that may never come, or more compelling external pressures that may as well be wrong as right, is itself a decision of sorts, and a weak and potentially dangerous course for a President to follow.

I have promised to uphold the Constitution, to do what is right as God gives me to see the right, and to do the very best that I can for America.

I have asked your help and your prayers, not only when I became President, but many times since. The Constitution is the supreme law of our land and it governs our actions as citizens. Only the laws of God, which govern our consciences, are superior to it.

MORE



As we are a nation under God, so I am sworn to uphold our laws with the help of God. And I have sought such guidance and searched my own conscience with special diligence to determine the right thing for me to do with respect to my predecessor in this place, Richard Nixon, and his loyal wife and family.

Theirs is an American tragedy in which we all have played a part. It could go on and on and on, or someone must write the end to it. I have concluded that only I can do that, and if I can, I must.

There are no historic or legal precedents to which I can turn in this matter, none that precisely fit the circumstances of a private citizen who has resigned the Presidency of the United States. But it is common knowledge that serious allegations and accusations hang like a sword over our former President's head, threatening his health as he tries to reshape his life, a great part of which was spent in the service of this country and by the mandate of its people.

After years of bitter controversy and divisive national debate, I have been advised, and I am compelled to conclude that many months and perhaps more years will have to pass before Richard Nixon could obtain a fair trial by jury in any jurisdiction of the United States under governing decisions of the Supreme Court.

I deeply believe in equal justice for all Americans, whatever their station or former station. The law, whether human or divine, is no respecter of persons, but the law is a respecter of reality.

The facts, as I see them, are that a former President of the United States, instead of enjoying equal treatment with any other citizen accused of violating the law, would be cruelly and excessively penalized either in preserving the presumption of his innocence or in obtaining a speedy determination of his guilt in order to repay a legal debt to society.

more



During this long period of delay and potential litigation, ugly passions would again be aroused. And our people would again be polarized in their opinions. And the credibility of our free institutions of Government would again be challenged at home and abroad.

In the end, the courts might well hold that Richard Nixon had been denied due process and the verdict of history would even more be inconclusive with respect to those charges arising out of the period of his Presidency, of which I am presently aware.

But it is not the ultimate fate of Richard Nixon that most concerns me, though surely it deeply troubles every decent and every compassionate person. My concern is the immediate future of this great country.

In this, I dare not depend upon my personal sympathy as a long-time friend of the former President, nor my professional judgment as a lawyer, and I do not.

As President, my primary concern must always be the greatest good of all the people of the United States whose servant I am. As a man, my first consideration is to be true to my own convictions and my own conscience.

My conscience tells me clearly and certainly that I cannot prolong the bad dreams that continue to reopen a chapter that is closed. My conscience tells me that only I, as President, have the constitutional power to firmly shut and seal this book. My conscience tells me it is my duty, not merely to proclaim domestic tranquility, but to use every means that I have to insure it.

I do believe that the buck stops here, that I cannot rely upon public opinion polls to tell me what is right.

I do believe that right makes might, and that if I am wrong, ten angels swearing I was right would make no difference.

I do believe, with all my heart and mind and spirit, that I, not as President, but as a humble servant of God, will receive justice without mercy if I fail to show mercy.

Finally, I feel that Richard Nixon and his loved ones have suffered enough and will continue to suffer, no matter what I do, no matter what we, as a great and good Nation, can do together to make his goal of peace come true.

MORE



Now, therefore, I, Gerald R. Ford, President of the United States, pursuant to the pardon power conferred upon me by Article II, Section 2 of the Constitution, have granted and by these presents do grant a full, free and absolute pardon unto Richard Nixon for all offenses against the United States which he, Richard Nixon, has committed or may have committed or taken part in during the period from July (January) 20, 1969 through August 9, 1974.

(The President signed the Proclamation)

In witness whereof, I have hereunto set my hand this 8th day of September in the year of our Lord 1974, and of the independence of the United States of America, the 199th.

END

(AT 11:16 A.M. EDT)



September 8, 1974

Office of the White House Press Secretary

-----

THE WHITE HOUSE

GRANTING PARDON TO RICHARD NIXON

-----

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Richard Nixon became the thirty-seventh President of the United States on January 20, 1969 and was reelected in 1972 for a second term by the electors of forty-nine of the fifty states. His term in office continued until his resignation on August 9, 1974.

Pursuant to resolutions of the House of Representatives, its Committee on the Judiciary conducted an inquiry and investigation on the impeachment of the President extending over more than eight months. The hearings of the Committee and its deliberations, which received wide national publicity over television, radio, and in printed media, resulted in votes adverse to Richard Nixon on recommended Articles of Impeachment.

As a result of certain acts or omissions occurring before his resignation from the Office of President, Richard Nixon has become liable to possible indictment and trial for offenses against the United States. Whether or not he shall be so prosecuted depends on findings of the appropriate grand jury and on the discretion of the authorized prosecutor. Should an indictment ensue, the accused shall then be entitled to a fair trial by an impartial jury, as guaranteed to every individual by the Constitution.

It is believed that a trial of Richard Nixon, if it became necessary, could not fairly begin until a year or more has elapsed. In the meantime, the tranquility to which this nation has been restored by the events of recent weeks could be irreparably lost by the prospects of bringing to trial a former President of the United States. The prospects of such trial will cause prolonged and divisive debate over the propriety of exposing to further punishment and degradation a man who has already paid the unprecedented penalty of relinquishing the highest elective office in the United States.

NOW, THEREFORE, I Gerald R. Ford, President of the United States, pursuant to the pardon power conferred upon me by Article II, Section 2, of the Constitution, have granted and by these presents do grant a full, free, and absolute pardon unto Richard Nixon for all offenses against the United States which he, Richard Nixon, has committed or may have committed or taken part in during the period from January 20, 1969 through August 9, 1974.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of September in the year of our Lord nineteen hundred seventy-four, and of the Independence of the United States of America the one hundred ninety-ninth.

GERALD R. FORD

# # #



SEPTEMBER 8, 1974

Office of the White House Press Secretary

---

THE WHITE HOUSE

TEXT OF A LETTER FROM RICHARD NIXON  
TO ARTHUR F. SAMPSON, ADMINISTRATOR  
GENERAL SERVICES ADMINISTRATION

September 6, 1974

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

Dear Mr. Sampson:

In keeping with the tradition established by other former Presidents, it is my desire to donate to the United States, at a future date, a substantial portion of my Presidential materials which are of historical value to our Country. In donating these Presidential materials to the United States, it will be my desire that they be made available, with appropriate restrictions for research and study.

In the interim, so that my materials may be preserved, I offer to transfer to the Administrator of General Services (the "Administrator"), for deposit, pursuant to 44 U.S.C. Section 2101, et seq., all of my Presidential historical materials as defined in 44 U.S.C. Section 2101 (hereinafter "Materials"), which are located within the metropolitan area of the District of Columbia, subject to the following:

1. The Administrator agrees to accept solely for the purpose of deposit the transfer of the Materials, and in so accepting the Materials agrees to abide by each of the terms and conditions contained herein.
2. In the event of my death prior to the expiration of the three-year time period established in paragraph 7A hereof, the terms and conditions contained herein shall be binding upon and inure to the benefit of the executor of my estate for the duration of said period.
3. I retain all legal and equitable title to the Materials, including all literary property rights.
4. The Materials shall, upon acceptance of this offer by the Administrator, be deposited temporarily in an existing facility belonging to the United States, located within the State of California near my present residence. The Materials shall remain deposited in the temporary California facility until such time as there may be established, with my approval, a permanent Presidential archival depository as provided for in 44 U.S.C. Section 2108.
5. The Administrator shall provide in such temporary depository and in any permanent Presidential archival depository reasonable office space for my personal use in accordance with 44 U.S.C. Section 2108 (f). The Materials in their entirety shall be deposited within such office space in the manner described in paragraph 6 hereof.

MORE



6. Within both the temporary and any permanent Presidential archival depository, all of the Materials shall be placed within secure storage areas to which access can be gained only by use of two keys. One key, essential for access, shall be given to me alone as custodian of the Materials. The other key may be duplicated and entrusted by you to the Archivist of the United States or to members of his staff.
7. Access to the Materials within the secure areas, with the exception of recordings of conversations in the White House and the Executive Office Building which are governed by paragraphs 8 and 9 hereof, shall be as follows:
  - A. For a period of three years from the date of this instrument, I agree not to withdraw from deposit any originals of the Materials, except as provided in subparagraph B below and paragraph 10 herein. During said three-year period, I may make reproductions of any of the originals of the Materials and withdraw from deposit such reproductions for any use I may deem appropriate. Except as provided in subparagraph B below, access to the Materials shall be limited to myself, and to such persons as I may authorize from time to time in writing, the scope of such access to be set forth by me in each said written authorization. Any request for access to the Materials made to the Administrator, the Archivist of the United States or any member of their staffs shall be referred to me. After three years I shall have the right to withdraw from deposit without formality any or all of the Materials to which this paragraph applies and to retain such withdrawn Materials for any purpose or use I may deem appropriate, including but not limited to reproduction, examination, publication or display by myself or by anyone else I may approve.
  - B. In the event that production of the Materials or any portion thereof is demanded by a subpoena or other order directed to any official or employee of the United States, the recipient of the subpoena or order shall immediately notify me so that I may respond thereto, as the owner and custodian of the Materials, with sole right and power of access thereto and, if appropriate, assert any privilege or defense I may have. Prior to any such production, I shall inform the United States so it may inspect the subpoenaed materials and determine whether to object to its production on grounds of national security or any other privilege.
8. The tape recordings of conversations in the White House and Executive Office Building which will be deposited pursuant to this instrument shall remain on deposit until September 1, 1979. I intend to and do hereby donate to the United States, such gift to be effective September 1, 1979, all of the tape recordings of conversations in the White House and Executive Office Building conditioned however on my continuing right or access as specified in paragraph 9 hereof and on the further condition that such tapes shall be destroyed at the time of my death or on September 1, 1984, whichever event shall first occur. Subsequent to September 1, 1979 the Administrator shall destroy such tapes as I may direct. I impose this restriction as other Presidents have before me to guard

MORE





against the possibility of the tapes being used to injure, embarrass, or harass any person and properly to safeguard the interests of the United States.

9. Access to recordings of conversations in the White House and Executive Office Building within the secure areas shall be restricted as follows:

A. I agree not to withdraw from deposit any originals of the Materials, except as provided in subparagraph B and paragraph 10 below, and no reproductions shall be made unless there is mutual agreement. Access to the tapes shall be limited to myself, and to such persons as I may authorize from time to time in writing, the scope of such access to be set forth by me in each said written authorization. No person may listen to such tapes without my written prior approval. I reserve to myself such literary use of the Information on the tapes.

B. In the event that production of the Materials or any portion thereof is demanded by a subpoena or other order directed to any official or employee of the United States, the recipient of the subpoena or order shall immediately notify me so that I may respond thereto, as the owner and custodian of the Materials, with sole right and power of access thereto and, if appropriate, assert any privilege or defense I may have. Prior to any such production, I shall inform the United States so it may inspect the subpoenaed materials and determine whether to object to its production on grounds of national security or any other privilege.

10. The Administrator shall arrange and be responsible for the reasonable protection of the Materials from loss, destruction or access by unauthorized persons, and may upon receipt of any appropriate written authorization from the Counsel to the President provide for a temporary re-deposit of certain of the Materials to a location other than the existing facility described in paragraph 4 herein, provided however that no diminution of the Administrator's responsibility to protect and secure the Materials from loss, destruction, unauthorized copying or access by unauthorized persons is affected by said temporary re-deposit.

11. From time to time as I deem appropriate, I intend to donate to the United States certain portions of the Materials deposited with the Administrator pursuant to this agreement, such donations to be accompanied by appropriate restrictions as authorized by 44 U.S.C. Section 2107. However, prior to such donation, it will be necessary to review the Materials to determine which of them should be subject to restriction, and the nature of the restrictions to be imposed. This review will require a meticulous, thorough, time-consuming analysis. If necessary to fulfill this task, I will request that you designate certain members of the Archivist's staff to assist in this review under my direction.

If you determine that the terms and conditions set forth above are acceptable for the purpose of governing the establishment and maintenance of a depository

MORE



of the Materials pursuant to 44 U.S.C. Section 2101 and for accepting the irrevocable gift of recordings of conversations after the specified five year period for purposes as contained in paragraph 8 herein, please indicate your acceptance by signing the enclosed copy of this letter and returning it to me. Upon your acceptance we both shall be bound by the terms of this agreement.

Sincerely,

/s/ Richard Nixon

Accepted by: Arthur F. Sampson /s/ Arthur F. Sampson  
Administrator 9/7/74  
General Services Administration

# # #



SEPTEMBER 8, 1974

Office of the White House Press Secretary

---

THE WHITE HOUSE

TEXT OF A LEGAL OPINION  
BY THE ATTORNEY GENERAL

September 6, 1974

The President,

The White House.

Dear Mr. President:

You have requested my opinion concerning papers and other historical materials retained by the White House Office during the administration of former President Richard M. Nixon and now in the possession of the United States or its officials. Some such materials were left in the Executive Office Building or in the White House at the time of former President Nixon's departure; others had previously been deposited with the Administrator of General Services. You have inquired concerning the ownership of such materials and the obligations of the Government with respect to subpoenas and court orders addressed to the United States or its officials pertaining to them.

To conclude that such materials are not the property of former President Nixon would be to reverse what has apparently been the almost unvaried understanding of all



three branches of the Government since the beginning of the Republic, and to call into question the practices of our Presidents since the earliest times. In Folsom v. Marsh, 9 F. Cas. 342 (No. 4901), 2 Story 100, 108-109 (C. C. D. Mass. 1841), Mr. Justice Story, while sitting in circuit, found that President Washington's letters, including his official correspondence, <sup>1/</sup> were his private property which he could bequeath, which his estate could alienate, and in which the purchaser could acquire a copyright. According to testimony of the Archivist of the United States in 1955, every President of the United

---

1/ The official documents involved in the case were:  
Letters addressed by Washington, as commander-in-chief, to the President of Congress.  
Official letters to governors of States and speakers of legislative bodies.  
Circular letters.  
General orders.  
Communications (official) addressed as President to his Cabinet.  
Letter accepting the command of the army, on our expected war with France. 2 Story at 104-105.  
The clear holding on the property point (Id. at 108-09) is arguably converted to dictum by Justice Story's later indication, in connection with another issue, that copyright violation with respect to the official documents did not have to be established in order to maintain the suit. (Id. at 114).

States beginning with George Washington regarded all the papers and historical materials which accumulated in the White House during his administration, whether of a private or official nature, as his own property. <sup>2/</sup> A classic exposition of this Presidential view was set forth by President Taft in a lecture presented several years after he had left the White House:

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 President takes with him all the correspondence, original and copies, carried on during his administration. Taft, The Presidency 30-31 (1916).

---

2/

Statement of Dr. Wayne C. Grover, Archivist of the United States, during the House Hearings on the Joint Resolution of August 12, 1955, 69 Stat. 695, To provide for the acceptance and maintenance of Presidential libraries, and for other purposes (now codified in 44 U.S.C. 2101, 2107 and 2108; hereinafter referred to as the "Presidential Libraries Act"), Hearing before a Special Subcommittee of the Committee on Government Operations, House of Representatives, 84th Cong., 1st Sess., on H. J. Res. 330, H. J. Res. 331, and H. J. Res. 332 (hereafter referred to as "1955 Hearings"), pp. 28, 45.

Past Congressional recognition of the President's title is evidenced by the various statutes providing for Government purchase of the official and private papers of many of our early Presidents, including Washington, Jefferson, Madison, Monroe and Jackson. See 1955 Hearings at 28, 39-42.

Even if there were no recent statutory sanction of Presidential ownership, a consistent history such as that described above might well be determinative. As the Supreme Court said in United States v. Midwest Oil Co., 236 U.S. 459 (1915):

[G]overnment is a practical affair intended for practical men. Both officers, law-makers and citizens naturally adjust themselves to any long-continued action of the Executive Department -- on the presumption that unauthorized acts would not have been allowed to be so often repeated as to crystallize into a regular practice. That presumption is not reasoning in a circle but the basis of a wise and quieting rule that in determining the meaning of a statute or the existence of a power, weight shall be given to the usage itself -- even when the validity of the practice is the subject of investigation. Id. at 472-73.

[W]hile no . . . express authority has been granted [by Congress], there is nothing in the nature of the power exercised which prevents Congress from granting it by implication just as could be done by any other owner of property under similar conditions. Id. at 474.

Moreover, with respect to the practice at issue here, there is recent statutory sanction. The 1955 Presidential Libraries Act, which serves as the permanent basis of the Presidential Library system, constitutes clear legislative acknowledgement that a President has title to all the documents and historical materials -- whether personal or official -- which accumulate in the White House Office during his incumbency. The Federal Records Act of 1950, 64 Stat. 587, which was the predecessor of the Presidential Libraries Act, authorized the Administrator of General Services to accept for deposit "the personal papers and other personal historical documentary materials of the present President of the United States." Section 507 (e), 64 Stat. 588. The word "personal" might have been read as intended to distinguish between the private and official papers of the President.<sup>3/</sup> The corresponding provision of the current law, however, 44 U.S.C. 2107 (1), avoids the ambiguity. It envisions the President's deposit of all Presidential materials, not only personal ones. During

---

<sup>3/</sup> Compare Section 507 (e) with Section 507 (a), dealing with the records of an agency. A memorandum prepared in the Office of the Assistant Solicitor General (now Office of Legal Counsel) on July 24, 1951 indicated that such a distinction between private and official Presidential papers would be inconsistent with historic precedents, and difficult if not impossible to maintain. It accordingly regarded the Records Act's use of the term "personal" as intended merely to exclude the permanent files of the Chief Executive Clerk discussed at page 12 below.

the House debate on the Presidential Libraries Act, Congressman Moss, who was in charge of the bill, expressly stated:

Four. Finally, it should be remembered that Presidential papers belong to the President, and that they have increased tremendously in volume in the past 25 or 30 years. It is no longer possible for a President to take his papers home with him and care for them properly. It is no accident that the last three Presidents -- Hoover, F.D. Roosevelt, and Harry Truman -- have had to make special provisions through the means of the presidential library to take care of their papers. 101 Cong. Rec. 9935 (1955).

The legislative history of the Act reflects no disagreement with this position on the part of any member of the Congress.

The hearings before a Special Subcommittee of the House Committee on Government Operations indicate congressional awareness of the Act's assumption that all Presidential papers are the private property of the President. 1955 Hearings at 12, 20, 28, 32, 52, 54, 58.

A recent discussion concerning ownership of Presidential materials appears in the report prepared by the staff of the Joint Committee on Internal Revenue Taxation involving the examination of President Nixon's tax returns. H. Rept. 93-966, 93d Cong., 2d Sess. (1974). The report points to the practice of Presidents since Washington of treating their papers, both private and official, as their



personal property; and to the congressional ratification of the practice in the 1955 library legislation. It concludes 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." Id. at 28-29.

An apparent obstacle to Presidential ownership of all White House materials is Article II, section 1, clause 7 of the Constitution, which provides:

"The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them."

But objection based upon this provision is circular in its reasoning, except insofar as it applies to the blank typing paper and materials upon which the Presidential records are inscribed. For the records themselves are given to the President as an "emolument" only if one assumes that they are not the property of the President from the very moment of their creation. As for the blank typing paper and materials, which are of course of negligible



value, they can be regarded as consumables, like electricity or telephone service, provided for the conduct of Presidential business. In any event, the Constitutional provision can simply not be interpreted in such a fashion as to preclude the conferral of anything of value, beyond his salary, upon the President. An eminent authority on the subject states the following:

As a matter of fact the President enjoys many more "emoluments" from the United States than the "compensation" which he receives "at stated times" --at least, what most people would reckon to be emoluments. Corwin, The President 348 N. 53.

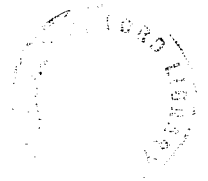
He gives as examples of such additional emoluments provided by the Congress the use of personal secretaries and the right to reside in the White House. Id. at 348-49.

Another obstacle to Presidential ownership of the materials in question is their character as public documents, often secret and sometimes necessary for the continued operation of government. However, without speaking to the desirability of the established property rule (and there is pending in the Congress legislation which would apparently alter it--S. 2951, 93d Cong., 2d Sess., a bill "[t]o provide for public ownership of certain documents of elected public officials"), it must

be conceded that accommodation of such concerns can be achieved whether or not ownership of the materials in question rests with the former President. Historically, there has been consistent acknowledgement that Presidential materials are peculiarly affected by a public interest which may justify subjecting the absolute ownership rights of the ex-President to certain limitations directly related to the character of the documents as records of government activity. Thus, in Folsom v. Marsh, supra, Mr. Justice Story stated the following:

In respect to official letters, addressed to the government, or any of its departments, by public officers, so far as the right of the government extends, from principles of public policy, to withhold them from publication, or to give them publicity, there may be a just ground of distinction. It may be doubtful, whether any public officer is at liberty to publish them, at least, in the same age, when secrecy may be required by the public exigencies, without the sanction of the government. On the other hand, from the nature of the public service, or the character of the documents, embracing historical, military, or diplomatic information, it may be the right, and even the duty, of the government, to give them publicity, even against the will of the writers.  
2 Story at 113.

That portion of the Criminal Code dealing with the transmission or loss of national security information, 18 U. S. C. § 793, obviously applies to Presidential papers even when



they are within the possession of the former President.<sup>4/</sup>

Upon the death of Franklin D. Roosevelt during the closing months of World War II, with full acceptance of the traditional view that all White House papers belonged to the President and devolved to his estate, some of the papers dealing with prosecution of the War (the so-called "Map Room Papers") were retained by President Truman under a theory of "protective custody" until December 1946 Matter of Roosevelt, 190 Misc. 341, 344, 73 N. Y. S. 821, 825 (Sur. Ct. 1947); Eighth Annual Report of the Archivist of the United States as to the Franklin D. Roosevelt Library (1947) p. 1. Thus, regardless of whether this is the best way to approach the problem, precedent demonstrates that the governmental interests arising because of the peculiar nature of these materials (notably, any need to protect national security information and any need for continued use of certain documents in the process of government) can be protected in full conformity with the theory of ownership on the part of the ex-President.

---

<sup>4/</sup> Section 11 of Executive Order 11652 makes explicit provision for declassification of Presidential material that has been deposited in the Archives.

Because the principle of Presidential ownership of White House materials has been acknowledged by all three branches of the Government from the earliest times; because that principle does not violate any provision of the Constitution or contravene any existing statute; and because that principle is not inconsistent with adequate protection of the interests of the United States; I conclude that the papers and materials in question were the property of Richard M. Nixon when his term of office ended. Any inference that the former President abandoned his ownership of the materials he left in the White House and the Executive Office Building is eliminated by a memorandum to the White House staff from Jerry H. Jones, Special Assistant to President Nixon, dated the day of his resignation, asserting that "the files of the White House Office belong to the President in whose Administration they were accumulated," and setting forth instructions with respect to the treatment of such materials until they can be collected and disposed of according to the ex-President's wishes. We are advised that the materials previously deposited with the Administrator of General Services were likewise transmitted and received with the understanding

of continuing Presidential ownership.

I must, however, exclude one category of documents from the scope of this opinion concerning ownership and advise you that their status cannot be definitively determined on the basis of presently available information. Although the fact is not recorded in the published materials we have examined, our inquiry indicates that at least in recent memory certain "permanent files" have been retained by the Chief Executive Clerk of the White House from administration to administration. These include White House budget and personnel material, and records or copies of some Presidential actions useful to the Clerk's office for such purposes as keeping track of the terms of Presidential appointments and providing models or precedents for future Presidential action. Retention of these materials by the Chief Executive Clerk is of course not necessarily inconsistent with initial Presidential ownership. In light of the otherwise uniform practice with respect to much more important official documents, relinquishment of these materials may reasonably be regarded as a voluntary act of courtesy on the part of the outgoing Chief Executive. I cannot, however, make an adequately informed judgment concerning these files without

more extensive factual and historical inquiry, which your need for this opinion does not permit. Of course, even if such inquiry should show that these particular documents have been regarded as Government property, that conclusion would not support a generalization of Government ownership with respect to the much more extensive other material covered by this opinion, as to which the Presidential practice and congressional acquiescence are clear.

As to the obligations of the Government with respect to subpoenas and court orders directed to the United States or its officials pertaining to the subject materials; Even though the Government is merely the custodian and not the owner, it can properly be subjected to court directives relating to the materials. The Federal Rules of Criminal Procedure authorize the courts, upon motion of a defendant, to order the Government to permit access to papers and other objects "which are within the possession, custody or control of the government. . . ." Fed. R. Crim. P. 16 (b). A similar provision is applicable with regard to discovery in civil cases involving material within the "possession, custody or control" of a party (including the Government).



Fed. R. Civ. P. 34(a). In addition, in both criminal and civil cases, a subpoena may be issued directing a person to produce documents or objects which are within his possession, but which belong to another person. Fed. R. Crim. P. 17(c); Fed. R. Civ. P. 45(b). See, e.g., Couch v. United States, 409 U.S. 322 (1973); Schwimmer v. United States, 232 F.2d 855, 860 (8th Cir., 1956), cert. denied, 352 U.S. 833; United States v. Re, 313 F Supp. 442, 449 (S. D. N. Y. 1970).

I advise you, therefore, that items included within the subject materials properly subpoenaed from the Government or its officials must be produced; and that none of the materials can be moved or otherwise disposed of contrary to the provisions of any duly issued court order against the Government or its officials pertaining to them. Of course both the former President and the Government can seek modification of such subpoenas and orders, and can challenge their validity on Constitutional or other grounds.

Respectfully,

Attorney General