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VOLUME I

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

(Appearances on next page)



DEPOSITION OF PHILIP W. BUCHEN, taken on  
November 11, 1974, at 3:30 p.m., before Craig L. Knowles,  
Notary Public, at the United States Department of Justice,  
First Floor, Briefing and Conference Room, Washington, D. C.,  
pursuant to notice.

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C O N T E N T S

WITNESS

PHILIP W. BUCHEN

Examination by Mr. Dobrovir,

Page I-4

P R O C E E D I N G S

1  
2 Whereupon,

3 PHILIP W. BUCHEN

4 was called as a witness, and after being first duly sworn,  
5 was examined and testified as follows:

## EXAMINATION

6  
7 BY MR. DOBROVIR:

8 Q Mr. Buchen, would you please state your name?

9 A Philip W. Buchen.

10 Q Your present position in the U. S. Government?

11 A Counsel for the President.

12 Q How long have you held that position?

13 A Since August 15, 1974.

14 Q Did you hold a Government position previous to that  
15 time?

16 A I was on a consulting basis as executive director of  
17 Domestic Council Committee on the Right of Privacy from  
18 March 15, until August 15, '74.

19 Q When was there first brought to your attention  
20 or when did you first become aware of a matter of the  
21 disposition of the records of the Nixon Administration?

22 A The afternoon of August 15 I attended a meeting  
23 in Fred Bussard's office, which had been pre-arranged

1 between him and certain members of the Special Prosecution  
2 Force.

3 Q Who was at that meeting?

4 A I think Phil Lacovara, Peter Kreindler, and  
5 Ben Veniste, I believe.

6 Q What happened at the meeting?

7 A The people from the Special Prosecutor's Office  
8 came to discuss their future needs for access to -- or future  
9 needs to see certain materials in connection with their  
10 on-going investigations, and also sought some assurances that  
11 the location of the materials would be preserved until such  
12 time as their needs were accommodated.

13 Q Was there any mention at that meeting of a  
14 transfer of the records to California?

15 A Well, if my recollection is right, Fred Bussard  
16 made the point that he would hope that the interests of the  
17 Special Prosecutor could be so defined that the great bulk  
18 of materials falling outside of that interest could be  
19 transferred.

20 Q Was there any discussion about who owned the docu-  
21 ments?

22 A Not that I recall.

23 Q Was it assumed that the documents belonged to



1 Mr. Nixon?

2 A I certainly think Fred Bussard assumed that.  
3 Whether the Special Prosecutor did or not, I don't recall.

4 Q Did you have any assumption in that regard?

5 A No.

6 Q When was the next time that you dealt with the  
7 question of the records of the Nixon Administration?

8 A Well, in one way or another, almost every day  
9 after that.

10 Q I see. Well, perhaps it would shorten things up  
11 if you would narrate as briefly as you can the events from  
12 August 15 to September 7 within your knowledge or as reported  
13 to you that led to the execution of the agreement of  
14 September 7 between Richard M. Nixon and Arthur F. Sampson.

15 A Well, in the course of that period I learned of the  
16 huge volume of documents we were talking about and approxi-  
17 mate number of tape recordings.

18 Also, I learned that there had been various  
19 procedures developed regarding access, and that steps had  
20 been taken to bring the materials into storage areas within  
21 the E.O.P; that these storage areas were under a variety  
22 of different controls and devices.

23 I also learned over that period of time of certain

1 outstanding court orders affecting disposition of the  
2 documents, and I recall asking the people on the staff to give  
3 me all the information they had and asking people at Justice  
4 to do the same.

5           And I recall we learned that there was an out-  
6 standing order in the Wounded Knee case in Minneapolis, one  
7 involving an anti-trust suit against the networks in  
8 California, a suit in one of the Carolinas that bore on the  
9 documents.

10           In fact, I think there were two suits there; and  
11 also received copies of correspondence and telephone calls  
12 from various parties to litigation, including the Watergate  
13 prosecution wanting to know what access procedures would be.

14           I received certain letters in that period of time.  
15 Then ultimately that led to a verbal request to the Attorney  
16 General to seek a legal opinion as to the ownership of the  
17 documents and as to the effects on the White House of  
18 subpoenas or court orders.

19           Q     Who initiated the request for the legal opinion?

20           A     I initiated the request verbally, I believe, on  
21 August 22nd.

22           Q     At the time you initiated the request, did you  
23 have a view as to the ownership of the records of the Nixon

1 Administration that were then in the White House complex  
2 under GSA.

3 MR. MILLER: I object to the question, the form.

4 MR. DOBROVIR: Objection is noted.

5 MR. GOLDBLOOM: You may answer.

6 THE WITNESS: I did learn of a memorandum that had  
7 gone through the White House staff on August 9th, which  
8 enunciated the principles that the ownership of the presiden-  
9 tial papers was in the former President and that it included  
10 an archival memorandum that I was told had been drafted  
11 during earlier Administrations, words to that effect.

12 And then I knew from general reading in the news-  
13 papers that the historical precedent was that presidential  
14 papers belong to the President. And I also became familiar  
15 with the statutes involving the presidential libraries and  
16 archives in which Congress had passed certain laws that, as  
17 I read them, at least impliedly assumed that the ownership  
18 was in the President, former Presidents.

19 BY MR. DOBROVIR:

20 Q Do you have with you the memorandum of August 9th  
21 to which you just referred and the archival memorandum to  
22 which you just referred?

23 A Yes, it's in the documents.



1 (Pause.)

2 MR. GOLDBLOOM: In connection with the request  
3 for production of documents, I am afraid to say we have not  
4 completed the categorization and separation of the documents  
5 as of this moment. It's hopeful we will have it done by the  
6 morning.

7 There are, I can say in advance, certain types of  
8 documents as to which we will claim privilege, whether it  
9 be attorney-client privilege or privilege regarding internal  
10 Government communications. And I would hope we could postpone  
11 until the morning the production of the documents so that  
12 we can finish the separation and segregation of these  
13 materials.

14 MR. DOBROVIR: Very well.

15 BY MR. DOBROVIR:

16 Q Let me ask you, Mr. Buchen, on the basis of your  
17 review of the two memoranda to which you referred, and  
18 newspaper stories to which you referred on the presidential  
19 Libraries Act, had you by August 22 formed a view that the  
20 ownership of the records in question was in former President  
21 Nixon?

22 A No, or I wouldn't have asked the Attorney General  
23 for an opinion.

1 Q I see. So that on the basis of your review of  
2 these materials that you just referred to, you still have  
3 not made up your mind?

4 A That's right.

5 Q Now, when you asked the Attorney General for an  
6 opinion, did you do that in writing or orally?

7 A I did it orally, first; followed it later by a  
8 letter from the President.

9 MR. DOBROVIR: I see.

10 Mr. Goldbloom, may I assume that that letter will  
11 be the subject of the documentary production or claim of  
12 privilege tomorrow?

13 MR. GOLDBLOOM: Yes.

14 MR. DOBROVIR: Very well.

15 BY MR. DOBROVIR:

16 Q To the best of your recollection, Mr. Buchen,  
17 what questions did you ask the Attorney General orally and  
18 in writing?

19 A The question of ownership and, second, however  
20 he would answer that question, what our responsibilities  
21 were as being -- because of the location of the documents in  
22 the White House complex, to court orders and subpoenas.

23

1 Q How did you phrase the question about ownership,  
2 to the best of your recollection?

3 A Well, I would just say, "Who owns these papers,"  
4 the substance of it.

5 Q Did you say, "Who owns these papers," period? Or  
6 did you say, for example, "Who owns these papers - Richard  
7 Nixon or the United States?" I mean insofar as you can  
8 recall.

9 A Well, I probably limited it to these two parties,  
10 since I couldn't conceive of any others.

11 Q Did you intimate to the Attorney General any way  
12 in which you might be leaning on the question?

13 A No, I don't think so, except I am sure I made it  
14 clear that I was beginning to find it quite burdensome, so  
15 that I was equally concerned with what our responsibilities  
16 were for these documents. If he drew any inferences from  
17 that, I don't know.

18 Q Now when were you first advised by the Attorney  
19 General or by any of his subordinates what his opinion was  
20 going to be on the question of ownership?

21 A I think a week later, about August 29.

22 Q And what was that advice?

23 A That the ownership was in the former President,

1 subject to certain rights that the Government had for on-  
2 going Government purposes, plus the fact that as custodians,  
3 or if there was a balement of the documents, we as bailees  
4 would have responsibility for responding to any court order  
5 or subpoena from third parties.

6 And at that point I quizzed my informant that I  
7 wanted to be sure that that really was a responsibility,  
8 because it seemed an unusual burden to place on a new  
9 Administration that knew nothing about the contents, or even  
10 were documents were, to have to respond to subpoenas.

11 And I recall saying, "Have you got any case  
12 involving something like the Mayflower Storage Company that  
13 may have been the recipient of many, many files of some  
14 person who put them there for storage? Is it actually the  
15 law that the storage company, without any knowledge of the  
16 contents, would be called upon to respond to subpoenas to  
17 find particular documents?"

18 Q When did there first come to your attention  
19 the possibility or idea of negotiating with former President  
20 Nixon an agreement concerning the disposition of the records?

21 A Well, I first tried to figure out if there might  
22 be some unilateral way that we could rid ourselves of the  
23 responsibility, such as interpleading the documents in a



1 court. I discussed that with people on the staff, and I  
2 think I must have mentioned it to the Attorney General. And  
3 I got no encouragement that any court would take that kind  
4 of case.

5 When I couldn't get any encouragement, I could  
6 realize the problems, that it was far different than paying  
7 a sum of money into court and walking away from the case.  
8 Then is when we decided we would take some sort of negotiations.

9 Q Do you recall when that was? Was it before or  
10 after you requested the opinion of the Attorney General?

11 A Well, I started to think about the problem before  
12 requesting it, obviously. It was only after I found out  
13 definitely that there was no theory that they could offer me  
14 that would allow us to escape the effects of court orders  
15 or subpoenas or responsibility for responding.

16 Then after I found out there didn't seem to be  
17 any unilateral way to get out of it is when I seriously  
18 thought that negotiations were necessary. That would have  
19 been toward the end of August, right after I got the informal  
20 opinion.

21 Q So it would be on or about or shortly after the  
22 29th of August?

23 A Right.

1 Q What steps did you take then? And if you could  
2 go through this with as much detail as you can recall, it  
3 would be very helpful to us.

4 A Well, for a long -- part of the problem and why  
5 there was some delay is that, of course, Mr. Nixon had no  
6 counsel who was representing him in this matter. And I think  
7 it was only after August 30, or about that time, that I  
8 received word that Mr. Miller would be acting as Mr. Nixon's  
9 attorney.

10 I think in my first meeting with him, or first  
11 telephone conversation, I mentioned that this was a problem.

12 Q Your first telephone conversation with Mr. Miller?

13 A Right. And I know that on August 30 I sent him  
14 a copy of the existing order, or existing internal document  
15 involving the protection of the documents in storage.

16 Q Is that different from the memorandum of August 9th  
17 that you have already described?

18 A Yes, because the August 9th had nothing to do with  
19 the protection of storage documents.

20 Q So this is another document?

21 A Right.

22 Q Thank you. And did you then begin negotiations  
23 with Mr. Miller?

1           A.       No. The negotiations did not proceed, or did  
2 not begin until I had begun to work on the pardon and was  
3 advised by the President to approach Mr. Miller on that  
4 subject. I brought up the other subject at the same time.  
5 I think this occurred September 3rd.

6           Q       What did you say to Mr. Miller with respect to the  
7 subject of the records?

8           A.       I said that I was looking for some way that we could  
9 develop a plan that would relieve us of responsibilities  
10 to third parties for responding to subpoenas or future  
11 court orders. And that in view of the fact that the law  
12 seemed to put this burden on us because we had physical  
13 possession and physical access to the documents, that I  
14 would like to work out some arrangement whereby their condi-  
15 tion would be preserved, physical integrity would be  
16 preserved, and yet be relieved of that responsibility for  
17 the current Administration.

18          Q       Was there any discussion in that first conversa-  
19 tion about the question of ownership, or did you both  
20 assume that the ownership was in Mr. Nixon?

21          A.       By that time I knew what the Attorney General's  
22 opinion would be on that subject.

23          Q       Did you give any thought at that time to the



1 subject of preserving the records for historical purposes?

2 A No, because I also was familiar with the steps  
3 taken by previous Presidents. I had gained that familiarity  
4 when I had been asked by the then Vice-President in my  
5 capacity as a private attorney to consult with his then  
6 counsel, Bill Casselman, as to what steps he should be taking  
7 to rationalize the disposition of his own papers.

8 And Bill Casselman sent me a good deal of material  
9 concerning the manner in which the four previous Presidents  
10 had handled the disposition of their documents so that I  
11 knew these were unilateral acts in a sense by the former  
12 Presidents, and who had imposed various restrictions for  
13 various kinds of documents and had provided various means  
14 for handling those.

15 So I considered that the matter of preserving  
16 them for history was largely a determination that had to  
17 emanate from the former President.

18 Q What did you have in mind at this point in time  
19 as to what were the records that you by this time had been  
20 advised were the property of Mr. Nixon?

21 A The ones I was concerned with were the ones that  
22 had been set off in separate rooms, even though I had no  
23 precise knowledge as to where the dividing line was between

1 documents that had gotten into these rooms and the ones that  
2 hadn't. I assumed that again was not a matter that could  
3 be resolved necessarily by negotiations, because, again,  
4 dependent upon what the law was, if he owned papers, he  
5 owned them; if he didn't, he didn't own them.

6 Q Did you consider at this point in time that the  
7 so-called restricted files of Mr. Haldeman and Mr. Ehrlichman  
8 and Mr. Colson were the property of former President Nixon?

9 A All I had to go on was this archival memorandum  
10 that draws rather hard to apply distinctions between, as to  
11 the rights of a subordinate employee to particular papers.

12 I gathered that personal letters not connected  
13 with official duties that happened to get into the files  
14 were excluded by the archival definition. They also had  
15 categories where a document might be the result of the  
16 intellectual creativeness of a subordinate employee, that the  
17 subordinate employee had certain rights to at least have  
18 copies of those.

19 But since I was not familiar with what files had  
20 gone in precisely for any particular individual, I wasn't  
21 able to say that this document did belong to the President  
22 and that one didn't, or this file, because I didn't go into  
23 any of the files.

1 Q Did you have a view about a document which was  
2 a record of the official business, the Government function  
3 of, say, Mr. Ehrlichman as Chairman of the Domestic Council,  
4 a Domestic Council memorandum as the private property of  
5 Richard M. Nixon?

6 A No, I didn't zero in on it that directly.

7 Q Is it fair to say - and I am not meaning to  
8 mischaracterize your testimony, if I do - is it fair to say  
9 that you had in mind that there was a great mass of material  
10 that had been accumulated in the White House, that you were  
11 not familiar with it, but that you had been advised that it  
12 all belonged to Richard Nixon?

13 A With the minor exceptions of purely personal  
14 items that were, I gathered, distinct from the category of  
15 documents produced in relation to official functions.

16 Q This included communications between the Chairman  
17 of the Domestic Council and the Department of Health,  
18 Education & Welfare, for example, or communications between  
19 the Chairman of the Domestic Council and the Chairman of the  
20 Council of Economic Advisors?

21 A Assuming there was a copy retained in the White  
22 House staff files, I assumed that was the property of the  
23 President based on what I knew of the Attorney General's

1 opinion.

2 Q Coming back to the negotiations, after your  
3 conversation with Mr. Miller, on September 3rd, what was  
4 the next step that you took?

5 A May I look at a calendar?

6 Q Absolutely.

7 A I think we met again on the morning of the 5th  
8 which was a Thursday, and it was then determined that  
9 Mr. Miller would draft an initial proposal to get over to us  
10 the same day, which he did.

11 Q That meeting was in Washington?

12 A Yes.

13 Q Do you retain a copy of that initial proposal?

14 A Right.

15 MR. DOBROVIR: I take it we will hear something  
16 about that tomorrow morning?

17 MR. GOLDBLOOM: Yes, sir.

18 BY MR. DOBROVIR:

19 Q What happened with respect to that proposal?

20 A Well, Benton Becker and I went over it. And then  
21 he and Mr. Miller went out to California with the initial  
22 proposal and results of my discussion with Mr. Becker.

23 Q After receiving the proposal, were there portions



1 of it which you did not consider to be satisfactory from  
2 the Government's point of view?

3 A Well, after I saw the form of the proposal, which  
4 was made in reliance on the fact that it covered those  
5 documents that Mr. Nixon had ownership of without necessarily  
6 defining them, but using a definition from the statute as  
7 to what were presidential materials, and because it was  
8 framed as being an act by the owner to deposit the materials  
9 with the General Services Administration, so that it had no  
10 effect of giving him more rights than the law allowed, I was  
11 less concerned because I knew the overriding governmental  
12 interests that would have to be reckoned with. So that I  
13 became less concerned about the exact terms of the agreement,  
14 knowing that this being the unilateral act on the part of  
15 the former President; not involving anyone in the Administra-  
16 tion except the persons involved as guardian of the deposi-  
17 tories for Presidents, namely, the General Services Adminis-  
18 tration, I did not have spelled out in any negotiations the  
19 exact way in which the overriding governmental interest would  
20 be asserted.

21 Q Did Mr. Miller's proposal provide that, after  
22 three years, all of the materials except the White House  
23 tapes would revert to Mr. Nixon for him to do with as he

1 saw fit?

2 A Well, the word "revert" was not used. The agree-  
3 ment for this deposit would last by its terms only for three  
4 years. But there was clear indication that in that period  
5 the claimed owner of the documents would be making selections  
6 of gifts that would be in fact donated.

7 The statute allows deposits by a depository or a  
8 donor. And as to the documents other than the tapes, it was  
9 purely an agreement between an owner and a temporary bailee.

10 Q So in your view, it was only a temporary bailment  
11 for a period of three years?

12 A Right.

13 Q Now, did Mr. Miller's proposal also provide for  
14 the destruction of White House tapes at some point in time?

15 A It provided for a future gift of the tapes after  
16 five years. And, subject to their being destroyed any time  
17 after the first five years at the direction of the donor,  
18 but in all events to be destroyed at the end of ten years  
19 or death in the second five-year period.

20 Q Now, upon reading Mr. Miller's proposal, did you  
21 consider that as part of the negotiations you ought to try  
22 to get a present gift to the United States of these materials?

23 A We did, except we ran into the roadblock that

1 unless the subject of the gift could be precisely defined,  
2 I had read the report of the Joint Congressional Taxation  
3 Commission on the problem of gifts to be selected afterwards,  
4 and also I had recalled that the other Presidents had first  
5 indicated an intention to make gifts, but never completed  
6 them until they were able to designate this group of materials  
7 was given and given subject to certain restrictions as to  
8 that category.

9           And I didn't see how it would be possible to  
10 negotiate an effective present gift with whatever conditions  
11 might have to be put on, or the donor might want to put on  
12 different categories, and with complete specifications as to  
13 what documents fell into each category.

14           I could appreciate the fact that this couldn't be  
15 done until a period of deposit when the ownership rights,  
16 whatever they were, remained with the former President.

17           Q       You were aware, were you not, and we are talking  
18 now about Mr. Miller's proposal, in that in that proposal  
19 there was no assurance except for the tapes that anything  
20 would indeed be donated to the United States?

21           A       No, but neither had there been in a lot of other  
22 letters of intent until the gift was actually made. The  
23 owner reserved the right to do anything he wanted, or had the



1 right on the matter of reserving.

2 Q Was there in any of those other letters that you  
3 saw, was there a provision that after three years, the  
4 deposit would lapse and the materials would be at the sole  
5 control of the person donating them, or depositing them,  
6 rather?

7 A Well, they were, as I recall them, the depositor  
8 retained the right to do anything he wanted from the day they  
9 went in; could have pulled them back the next day. And that  
10 was actually more restrictive in the sense that they would  
11 be preserved in fact for this period which was not, as I  
12 recall, customary in the other so-called letters of intent.

13 Q Did you have any changes that you proposed to  
14 Mr. Miller's proposal?

15 A Yes.

16 Q Could you tell us what they were?

17 A Well, there were some technical changes, not much  
18 in substance, but then other provisions, that the differences  
19 between the original proposal and the final proposal  
20 represented the results of negotiations.

21 Q How did the final proposal -- strike that. Was  
22 the final proposal something agreed upon between you and  
23 Mr. Miller which Mr. Becker then carried out to California?

1 A No. Becker went out with the incomplete document.

2 Q I see.

3 A And reported to me by telephone as different  
4 provisions were settled on.

5 Q So in other words, the negotiations were continued  
6 in California?

7 A Yes.

8 Q By Mr. Becker?

9 A Right.

10 Q Did Mr. Miller go out with Mr. Becker?

11 A Yes.

12 Q I see. What in particular were the substantive  
13 changes that you wanted to see on the document, in the agree-  
14 ment?

15 A Well, the one that got in was that we left the door  
16 open for changing locations of depositories, even after the  
17 agreement was implemented by my direction. That was one of  
18 the significant changes that I recall.

19 Q Now, in Mr. Miller's proposal, was there the  
20 language that remains -- that was in the document as executed  
21 and which had been made public with respect to response to  
22 subpoenas by Mr. Nixon?

23 A Yes.

1 Q And with respect to the exercise of privileges by  
2 Mr. Nixon?

3 A Yes.

4 Q Was there any discussion by you with respect to  
5 the possibility that Mr. Nixon might exercise executive  
6 privilege, as such; by you or with you?

7 A As against -- if he were called upon under the  
8 agreement to produce any document --

9 Q If a subpoena was served.

10 A Right. He could exercise whatever privileges he  
11 thought he could prevail upon.

12 Q Did you discuss with Mr. Miller, anybody else,  
13 executive privilege in particular?

14 A Yes, I am sure that was mentioned.

15 Q And --

16 A But again, without passing on to what extent it  
17 would be applicable.

18 Q But you did entertain the view that Mr. Nixon, as  
19 a former President, might be able to exercise executive  
20 privilege?

21 A I knew of the one precedent that Mr. Trumann at  
22 one time after he was out of office had asserted it.

23 Q With respect to the House of Representatives.

1 A Yes.

2 Q So on the basis of that precedent you did have  
3 the view that Mr. Nixon had the right to interpose a claim  
4 of executive privilege?

5 A Well, I considered that that again was an issue  
6 that might finally have to be resolved in a court in a  
7 particular situation.

8 Q I see. How was it that Mr. Becker, Benton L.  
9 Becker --

10 A Right.

11 Q -- became involved in these transactions?

12 A Well, at the time of the transition -- go back.  
13 He originally helped the nominee for Vice-President during  
14 the confirmation hearings. That is where I first got to  
15 know him.

16 Also, at the time of the change of Administration,  
17 the Vice-President or his staff had asked him to perform  
18 certain services on a volunteer basis. And he had acquired  
19 some knowledge of the condition of the documents and tapes  
20 as a result of that, and that was before I became counsel  
21 to the President.

22 So I knew he had some familiarity with it, with  
23 the problem, and also knew he was a close friend of the



1 President, the then President.

2 Q Now, you were aware, were you not, from your  
3 understanding and knowledge of the Presidential Libraries  
4 Act, that the responsibility with respect to obtaining and  
5 preserving presidential historical materials belongs to the  
6 General Services Administration?

7 A Right.

8 Q Did you at any time in the course of these  
9 negotiations consult with the Administrator of General  
10 Services?

11 A I consulted with Bill Casselman, former General  
12 Counsel of General Services Administration, who was familiar  
13 with the procedures of that Administration, and I personally  
14 did not consult with Mr. Sampson.

15 Q Well, you were aware that Mr. Sampson was going  
16 to have to sign any such agreement, isn't that right?

17 A Yes.

18 Q But you did not -- did you consult Mr. Sampson at  
19 any time prior to the time on September 7 at approximately  
20 6:15 p.m., when you presented him with the document as signed  
21 by Richard Nixon?

22 A I came into the conference that Bill Casselman  
23 had had much earlier on the 7th of September just at the

1 time that Mr. Sampson was going to sign the agreement. But  
2 I didn't participate in any discussions with him.

3 Q Well, to your knowledge, did Mr. Casselman consult  
4 with Mr. Sampson at any time between, say, the 3rd of  
5 September and the 7th of September?

6 A Not to my knowledge.

7 Q Let me rephrase the question. Do you know that  
8 he did not consult with Mr. Sampson?

9 A No.

10 Q Is it your understanding, do you have any under-  
11 standing whether he did or did not consult with Mr. Sampson?

12 A I don't believe he did until the 7th.

13 Q You did not instruct Mr. Casselman to consult with  
14 Mr. Sampson?

15 A No. I knew the statute Section 107, which is the  
16 deposits, where he deals not only with respect to the donor,  
17 but the depositor; that he can accept the deposit of materials.  
18 And I knew that from prior precedents, deposited materials  
19 was made on much less restrictive conditions in the past than  
20 went into this agreement, namely, that the deposit could have  
21 been a momentary one, and that there were already papers of  
22 the Nixon Administration held by the General Services  
23 Administration, which were under no restrictions.

1           There are materials held by the General Services  
2 Administration that were just, I guess, called a deposit for  
3 convenience.

4           Q       Materials of the Nixon Administration?

5           A       Yes.

6           Q       That up until the time of the September agreement,  
7 September 7 agreement, were under no restrictions?

8           A       That's right.

9           Q       And which by reason of the September 7th agreement  
10 came under the restrictions of that agreement?

11          A       Right.

12          Q       But you did not see fit to consult Mr. Sampson  
13 about any of this?

14          A       No.

15          Q       Can you tell me why?

16          A       Because Bill Casselman understood the law, I  
17 believed, and that obviously, if Mr. Sampson did not want  
18 to sign, we wouldn't have had an agreement. It was not some-  
19 thing we were going to force him to do. We tried to get the  
20 best agreement we could and present it to him.

21          Q       Well, I still don't understand why you didn't feel  
22 it appropriate to bring him into these consultations,  
23 discussions, negotiations which were, after all, for a matter



1 that was within his statutory responsibility.

2 A Well, they were within his statutory responsibility.

3 But if he wanted to reject being a depository for these  
4 materials, he could have. But I knew he had accepted the  
5 custody of materials under no conditions whatsoever, and  
6 that this did provide a means, I thought, for letting the  
7 White House get out of having to respond indefinitely to  
8 subpoenas from third parties.

9 Q What instructions did you give to Mr. Becker when  
10 he went out to California to complete the negotiations?

11 A Well, I gave him some suggested language changes  
12 and told him that I thought there should be additional  
13 flexibility; that if the arrangements could be worked out,  
14 that there may still have to be modifications later on.

15 And then I realized we couldn't cover all potential  
16 modifications, so that we should achieve some flexibility  
17 so that the agreement would work under a variety of circum-  
18 stances.

19 Q You didn't, then, instruct him to try to get an  
20 agreement that provided for permanent possession of these  
21 records for the nation?

22 A I considered we could only do that if we could  
23 work out a present gift. I didn't think anything short of

1 a present gift could possibly involve a permanent arrange-  
2 ment.

3 Q Did you instruct him to try to work out a present  
4 gift?

5 A Well, that was discussed with Mr. Miller. And  
6 he pointed out the impracticality of getting a present gift  
7 because of the inability to designate exactly what materials  
8 would go under the present gift under what conditions.

9 Q You indicated earlier that Mr. Becker and you had  
10 some telephone conversations, long-distance telephone  
11 conversations while he was in California. What were the  
12 matters that arose to which those conversations related?

13 A Just the changes in the agreement from the origi-  
14 nal draft.

15 Q I see. Did he read the entire final agreement  
16 to you prior to agreeing to it?

17 A Just the changes.

18 Q Just the changes. So that you approved the final  
19 text of the agreement as signed by Mr. Nixon by reason of  
20 your approval of the changes that were made?

21 A No, I didn't approve it in any official sense.  
22 I merely said, "Well, it looks as though you have covered  
23 these points. Bring it back." I realized there were --

1 one of the problems was they were running out of time.

2 Q Why were they running out of time?

3 A Well, because we preferred to get the agreement  
4 signed before the pardon was granted. This was to avoid  
5 trying to get one more step along the way so that there would  
6 not have to be subsequent litigation over the terms under  
7 which transfers should be made if the documents were to be  
8 gotten out of the White House.

9 Q I am sorry, it's late in the day. I don't think  
10 I understood your answer.

11 MR. GOLDBLOOM: Would this be a good time to  
12 quit?

13 MR. DOBROVIR: Let's see if perhaps we can just  
14 resolve this point.

15 MR. GOLDBLOOM: All right.

16 THE WITNESS: I looked upon any agreement that  
17 we got as being better than we have; that if we didn't get  
18 any arrangement for putting these materials in a place where  
19 they would be outside the White House, properly protected,  
20 that there was no way either that Mr. Nixon could begin to  
21 sort through the materials and deal with them as he would  
22 have dealt with them if he had had them deposited before he  
23 left on August 9th.

1           And anything that moved that process along looked  
2 to me to put us in a better position than we were and would  
3 give us plenty of time after that to workout the implementation  
4 of the agreement and any modifications that the owner was  
5 willing to make as to the disposition of the papers.

6           Q       Was your principal objective with respect to the  
7 timing of this to remove from you and your staff the obliga-  
8 tion of having to respond to subpoenas and other kinds of  
9 court discovery demands?

10          A       That's right.

11          Q       And that is why you were eager to get this document  
12 signed and accepted and implemented?

13          A       Right.

14               MR. DOBROVIR: I see. If it's all right with  
15 everybody else, this is a good time for me to stop.

16               (Whereupon, at 5:35 p.m., the deposition in the  
17 above-entitled was adjourned, to reconvene on Tuesday,  
18 November 12, 1974, at 10:00 a.m.)



C E R T I F I C A T E

UNITED STATES DISTRICT COURT)  
 ) Civil Action Nos.  
 FOR THE DISTRICT OF COLUMBIA) 74-1518, 74-1533, 74-1551

I, Craig L. Knowles, Notary Public, before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing pages was duly sworn by me; that the testimony of said witness was recorded by me by stenotype and thereafter reduced under my direction to typewritten form; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition is taken; and further, that I am not a relative of or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

---

Craig L. Knowles  
 Notary Public

Tuesday, November 12, 1974

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

-----X

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

(Appearances on next page)

DEPOSITION OF PHILIP W. BUCHEN continued on Tuesday,  
November 12, 1974, at 10:15 am., before Leanne P. Dotson,  
Notary Public, at the United States Department of Justice,  
First Floor, Briefing and Conference Room, Washington, D. C.,  
pursuant to adjournment.

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Attorney for Watergate Special Prosecution Force

STEPHEN GARFINKEL, Esq.

C O N T E N T SWITNESSPAGE NO.

PHILIP W. BUCHEN (resumed)	
Examination by Mr. Dobrovir	II-10
Examination by Mr. Spooner	II-36
Examination by Mr. Davis	II-61
Examination by Mr. Miller	II-64

BUCHEN DEPOSITION EXHIBITSFOR IDENTIFICATION

No. 1	II-26
No. 2	II-31
No. 3	II-33
No. 4	II-34
No. 5	II-34
No. 6	II-79
No. 7	II-79
No. 8	II-80
No. 9	II-81
No. 10	II-81
No. 11	II-82
No. 12	II-83
No. 13	II-84
No. 14	II-86

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P R O C E E D I N G S

1  
2 Whereupon,

3 P H I L I P W. B U C H E N

4 resumed the stand, and having been previously duly sworn,  
5 was examined and testified further as follows:

6 MR. DOBROVIR: We are resuming the deposition of  
7 Mr. Philip Buchen, Counsel to the President of the United  
8 States. Prior to beginning the questioning, there is a  
9 preliminary matter.

10 Mr. Goldbloom, I understand that with respect to  
11 the Government witnesses who are being deposed this week,  
12 they do not waive signature?

13 MR. GOLDBLOOM: That is correct.

14 MR. DOBROVIR: But that you will endeavor to have  
15 these depositions read and signed in time to be filed prior  
16 to the hearing on November 15th.

17 MR. GOLDBLOOM: Well, in time to be used prior to  
18 the hearing on November 15th. I want to stipulate that they  
19 may be filed. I should point out for the record that I have  
20 not received the original of the deposition from Mr. Sampson  
21 to examine. I received a copy but will attempt to make  
22 arrangements with the reporter at the conclusion of the  
23 depositions today and thereafter for Mr. Sampson to obtain a

1 copy, examine it, and make any necessary corrections and have  
2 it signed prior to the 15th.

3 MR. DOBROVIR: Yesterday also we had the matter of  
4 production of documents. You advised me that that would be  
5 disposed of the first thing this morning, so I ask you if you  
6 have any documents to produce pursuant to the request for  
7 production in the Notice of Deposition of Mr. Buchen.

8 MR. GOLDBLOOM: Yes, I do. I would like to read  
9 into the record that which we are producing and to assert  
10 privileges for documents as to which we are not producing.  
11 We have copies of the press conference of Philip Buchen dated  
12 September 8, 1974; a copy of the press conference of Philip  
13 Buchen dated September 10, 1974; and a copy of the appearance  
14 by the President before the Subcommittee on Criminal Justice,  
15 Committee on the Judiciary, House of Representatives, on  
16 October 17, 1974.

17 We have a memorandum dated August 9, 1974 for the  
18 White House staff signed by Jerry Jones to which is attached  
19 a two-page printed document. We have a copy of the opinion  
20 of the Attorney General dated September 6, 1974. We have a  
21 copy of the letter from the Comptroller General of the United  
22 States to Senator Montoya dated September 20, 1974.

23 We have a copy of a letter dated September 20, 1974,

kb/1-3

1 to Mr. Rhoads from Mr. Buchen. We have a copy of a letter to  
2 the Attorney General dated September 10, 1974 from Mr. Buchen.  
3 I have a document which has a typewritten note on the top  
4 dated 9-6-74 from Philip Buchen to Larry Silberman to which  
5 is attached a memorandum to Mr. Silberman from Mr. Buchen  
6 dated September 6, 1974; a letter to the Attorney General  
7 from President Ford dated August 22nd, 1974; a copy of a  
8 memorandum from the Department of Treasury, Office of General  
9 Counsel, dated 9-6-74; and a copy of a subpoena in the United  
10 States versus John M. Mitchell, et al, to which is attached  
11 a schedule.

12 I have also a copy of a handwritten memo to which  
13 are attached two identical letters from Mr. Miller to Mr.  
14 Buchen dated September 13, 1974, one of which is signed and  
15 the other of which is not.

16 I have a copy of a letter from Mr. Miller to Mr.  
17 Buchen dated October 15, 1974; a copy of a letter from Mr.  
18 Buchen to Mr. Miller dated October 9, 1974 together with a  
19 copy of a subpoena in the United States versus John M. Mitchell,  
20 et al, to which is attached a schedule; a copy of a letter  
21 to Mr. Miller dated October 9, 1974, from Mr. Buchen.

22 I have a copy of a letter to Mr. Sampson dated  
23 September 13, 1974, from Mr. Miller; a copy of a memorandum

jmb/1-4

1 from Mr. Buchen to Mr. Miller dated August 30, 1974 to which  
2 there are attached various other memoranda. Perhaps I should  
3 identify the memoranda attached.

4 One is dated May 3, 1973, entitled "Protection of  
5 White House Files." The next is dated May 5, 1973. It is a  
6 memorandum from Leonard Garment to James J. Reilly. The next  
7 is a document on White House stationery entitled "Room 522:  
8 Access Procedure."

9 Another document on White House stationery is en-  
10 titled "Room 84," signed by Bruce Kehrli, K-e-h-e-l-i. There  
11 is a memorandum dated 23 May, 1973 from J. Fred Bussard to  
12 James J. Reilly. There is a memorandum for H. Stuart Knight  
13 dated June 21, 1974, from Alexander M. Haig. A memorandum  
14 for H. S. Knight dated August 23, 1974 from Philip W. Buchen  
15 to which there is attached a list of names.

16 Next I have a copy of a draft of a letter to Mr.  
17 Sampson which has various handwriting notations on it; another  
18 document also which appears to be a draft of a letter to Mr.  
19 Sampson, again with handwriting notations on it.

20 Next is a copy of a White House press release dated  
21 September 6, 1974, containing the text of a letter from  
22 Richard Nixon to Arthur F. Sampson, Administrator, General  
23 Services Administration.



1           Next is a letter dated October 15, 1974, from Mr.  
 2 Miller to Mr. Sampson. There is another letter dated September  
 3 6, 1974 to Mr. Sampson from former President Nixon, a copy.

4           Next is a copy of a letter to Mr. Brademas from Mr.  
 5 Buchen dated October 16, 1974; a carbon copy of a letter to  
 6 Congressman Hungate dated September 24, 1974 from Mr. Buchen;  
 7 a copy of a letter to President Ford from Congressman Hungate  
 8 dated September 17, 1974.

9           Now, those are the documents which we are producing.  
 10 There are also in the files of Mr. Buchen earlier drafts of  
 11 the Attorney General's opinion as to those documents we are  
 12 claiming privilege, attorney-client privilege and internal  
 13 communication between executive-agencies privilege. There is  
 14 correspondence, an exchange of correspondence between Mr.  
 15 Buchen and Mr. Keuper, Assistant Attorney General of the  
 16 Antitrust Division, dated 9-10-74 relating to certain litiga-  
 17 tion in which the United States is a party, the net works  
 18 cases.

19           We are claiming attorney-client privilege as to  
 20 those communications as well as interagency privileged com-  
 21 munication. There are communications between the Office of  
 22 Counsel to the President and the Special Prosecutor. We are  
 23 claiming two privileges as to those. In one instance it is

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internal communications within the Executive branch.

Secondly, in view of the fact that some of that correspondence identifies matters under investigation by the Special Prosecutor, they relate to ongoing criminal investigations and are therefore privileged.

There is a letter from Mr. Buchen to Mr. Miller dated September 20, 1974, which relates to and identifies specific requests by the Special Prosecutor. We are claiming privilege as to that in view of the fact that it involves investigatory matters by the Office of the Special Prosecutor.

There are copies of memoranda and talking papers to the President of the United States from Mr. Buchen. We are claiming Presidential privilege as to that. There are copies of memoranda internal to the Office of the Counsel to the President. We are claiming an internal memorandum privilege as well as the Presidential privilege.

There are also certain documents in the Office of Counsel to the President which relate to this litigation as well as other litigation. All of these are court papers which in one way or another may relate to the issues involved in this case, but they are all public documents and in no way not otherwise available to any of the parties here.

There is also correspondence between the Office of

1 Counsel to the President and members of the public. We  
2 haven't produced them. They are not substantive, they are  
3 citizen letters. It would be difficult to attempt to retrieve  
4 them since they are not centrally filed but are by subject  
5 matter, and therefore, while we are not claiming privilege,  
6 just it would be burdensome to try to retrieve them for the  
7 purpose of this deposition. I think that covers it.

8 MR. DOBROVIR: Thank you. Can I have the documents?

9 MR. GOLDBLOOM: Yes.

10 MR. DOBROVIR: These are in the order in which you  
11 read them off?

12 MR. GOLDBLOOM: I think so.

13 EXAMINATION (Continued)

14 BY MR. DOBROVIR:

15 Q Mr. Buchen, yesterday--

16 MR. GOLDBLOOM: Excuse me. Mr. Buchen would like to  
17 add something to his testimony of yesterday.

18 MR. DOBROVIR: All right.

19 THE WITNESS: On page Roman numeral I-5, I was  
20 asked who attended a meeting on August 15th in the office of  
21 Fred Bussard from the Special Prosecutor's office and I listed  
22 Phil Lacovara, Peter Kreindler and Mr. Ben Veniste. In  
23 addition, Mr. Vorenberg from the Special Prosecutor's office

1 was present.

2 BY MR. DOBROVIR:

3 Q When we recessed yesterday, we were discussing the  
 4 interest of your office in speed in executing the agreement  
 5 that became the agreement of September 7th. I remember that  
 6 I asked you about whether the principal reason for speed  
 7 was in order to remove from your office the responsibility for  
 8 having to respond to the subpoenas and other requests for  
 9 documents in the presidential files of Richard M. Nixon that  
 10 were coming from the Special Prosecutor's office and from  
 11 others. And my recollection is that your answer was "Yes,  
 12 that was the principal reason." Do I correctly summarize  
 13 your testimony?

14 A No, because I specifically mentioned that our in-  
 15 terest was in relieving us from responsibility for future  
 16 court orders and subpoenas from third parties. Because we  
 17 already had requests from the Special Prosecutor and we were  
 18 under certain existing court orders.

19 Q I see. Thank you for that correction. I wanted to  
 20 make sure that I was not misunderstanding. Another thing that  
 21 we talked about--and this appears on page Roman numbers I-32,  
 22 the question was "Why were they running out of time?" and your  
 23 answer was " Well, because we preferred to get the agreement



1 signed before the pardon was granted. This was to avoid try-  
2 ing to get one more step along the way so that there would  
3 not have to be subsequent litigation over the terms under  
4 which transfers should be made if the documents were to be  
5 gotten out of the White House." At that point I decided that  
6 I was too tired to--

7 A Yes. I think there is an error there. This was not  
8 to avoid trying to get it, it was to try to get one more step  
9 along the way.

10 Q Well, let me ask you this. What connection was there  
11 between the pardon and the negotiation or discussion with  
12 former President Nixon and his representatives of the pardon  
13 and the negotiation of this agreement with respect to the  
14 papers?

15 MR. MILLER: I object to that question on the  
16 grounds I do not see it has any conceivable relevance to the  
17 matter pending before Judge Ritchie.

18 MR. DOBROVIR: Your objection is noted.

19 MR. MILLER: Thank you, Mr. Dobrovir.

20 THE WITNESS: The President stated before the Sub-  
21 committee of the House Judiciary Committee that the matter was  
22 related in time but not otherwise to the granting of the  
23 pardon. That was my understanding.

1 BY MR. DOBROVIR:

2 Q The two matters were under discussion at the same  
3 time between you and Mr. Miller, isn't that right?

4 A That's right.

5 Q And the two matters were also worked on by Mr.  
6 Becker when he was in California with Mr. Miller and Mr. Nixon,  
7 isn't that right?

8 A No, Mr. Becker worked only on the tapes and documents.

9 Q Mr. Becker had nothing to do with the pardon?

10 A Not when he was in California.

11 Q I see. Did he have something to do with the pardon  
12 at another time?

13 A He did research for me prior to the President's  
14 making up his mind to grant the pardon, yes.

15 Q But Mr. Becker then had no function or role or dis-  
16 cussions with representatives of Mr. Nixon with respect to the  
17 pardon?

18 MR. MILLER: Is this as to his personal knowledge,  
19 counsel?

20 MR. DOBROVIR: Of course as to his personal knowledge.

21 MR. MILLER: All right.

22 THE WITNESS: I don't know whether the subject was  
23 discussed in California, but it was not the subject of the

1 trip or the purpose of the trip.

2 BY MR. DOBROVIR: In other words, you did not  
3 authorize or instruct Mr. Becker in connection with the pardon  
4 matter at all?

5 A. Not as it related to the California trip.

6 Q. And not, if I may try to wrap this up--and you never  
7 authorized or instructed him to discuss this matter with Mr.  
8 Nixon or representatives of Mr. Nixon, is that right?

9 MR. MILLER: I would like the record to reflect a  
10 continuing objection to this line of questioning on the  
11 grounds of relevancy.

12 MR. DOBROVIR: Thank you.

13 THE WITNESS: There was no reason to give him any  
14 authority at the time he went to California. I didn't say,  
15 "Don't discuss it" because obviously it was known by Mr.  
16 Miller and I assume by his client at that time that it was  
17 under consideration.

18 BY MR. DOBROVIR:

19 Q. Was there any discussion by you with any of your  
20 associates or subordinates or with anyone else about linking  
21 the matter of the papers and tapes and the pardon?

22 A. Only in point of time.

23 Q. Well, could you tell us what that discussion was?

1           A.     Only that it was my judgment that it would be a  
2 good time to get this step behind us if we could.

3           Q.     The step of--

4           A.     Of an agreement concerning deposit on a temporary  
5 basis of the presidential materials.

6           Q.     Well, did you think it would be a good time because  
7 the pardon was going to be announced at the same time?

8           A.     Yes.

9           Q.     And why was that?

10          A.     To avoid having immediate litigation to force the  
11 U. S. Government to comply with any demands that Mr. Nixon  
12 might make to get custody of the papers and tapes.

13          Q.     Well, this was litigation anticipated to be brought  
14 by Mr. Nixon?

15          A.     Yes.

16          Q.     And had the question of Mr. Nixon's bringing such  
17 litigation been approached?

18          A.     By Mr. Miller, yes.

19          Q.     I see. So then--strike that.

20                   What did Mr. Miller say about litigation that was  
21 being contemplated by Mr. Nixon and when did he say it?

22          A.     I think as early as August 30th he had indicated to  
23 me his client's urgent desire to get custody of the materials



1 and either then or subsequently the mention was made of the  
2 grounds that Mr. Miller thought he had for bringing a replevin  
3 action.

4 Q Did he say why his client was anxious to get custody  
5 of these materials?

6 A One reason was that his client needed direct access  
7 for the purpose of meeting any requirements he was under to--  
8 with respect to the case of U. S. versus Mitchell et al.

9 Q Were there any other things that he said?

10 A I believe he mentioned the fact that there were a  
11 lot of materials that related to continuing responsibilities  
12 of the former President including unanswered correspondence,  
13 personal items, I believe even current bills that were still  
14 in the White House.

15 Q Any mention of his need for use of those materials  
16 in preparation of his memoirs?

17 A No, I don't believe that was mentioned but I guess  
18 I assumed that that would be a reason he would want ready  
19 access.

20 MR. MILLER: Could I have the latter part of the  
21 question read back? I missed it.

22 (Question read.)

23 MR. MILLER: I move to strike the last part of that

1 question on the grounds that it is an assumption not supported  
2 by the witness's personal knowledge.

3 MR. DOBROVIR: I am sorry.

4 MR. MILLER: I move to strike the last part of that  
5 answer on the grounds that it is an assumption not supported  
6 by facts within the witness's personal knowledge.

7 MR. DOBROVIR: All right.

8 BY MR. DOBROVIR:

9 Q Did Mr. Miller indicate how soon he was <sup>planning</sup> to bring  
10 any such litigation?

11 A He evidenced a degree of urgency but did not specify  
12 a time.

13 Q Did he indicate that if the agreement that became  
14 the September 7th agreement was not entered into rather promptly  
15 he would institute litigation?

16 A He was not that specific.

17 Q I see. Now, let me see if I can express myself a  
18 little better than I have been. I believe you said--no, I  
19 won't try to characterize your testimony. Now, how does this  
20 question of the possible litigation relate to the pardon?

21 I am still trying to pin down if we can the specific relation  
22 that was made in conversations which you had with anyone  
23 between the papers, the negotiation of the papers, any

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litigation that was threatened to be brought, and the question of the pardon.

d of take

1 MR. GOLDBLOOM: I would object to your line of  
2 questioning which you appear to be embarked upon on the grounds  
3 that it is irrelevant and in addition on the grounds that  
4 Mr. Buchen has already testified that there was no relationship  
5 between the two except in point of time.

6 MR. DOBROVIR: Well, let me see if I can get this  
7 pinned down. I am not very clear on it in my own mind.  
8 If it doesn't prove fruitful, I am not going to pursue this  
9 very much longer.

10 BY MR. DOBROVIR:

11 Q You testified that there was a relationship that  
12 was discussed as a relationship between the two matters in  
13 point of time; isn't that right? And then in connection  
14 with that, you discussed the question of the possibility that  
15 litigation would be brought on Mr. Nixon's behalf to have  
16 the papers turned over to him.

17 My question is: How did this question of litigation  
18 that might be brought relate to the question of the pardon,  
19 if it did?

20 A Again, it related in point of time but it was not  
21 a condition of the pardon to avoid the litigation.

22 Q I understand that. Well, was the need of Mr. Nixon  
23 for these materials going to be greater or less? Was there



1     a discussion with respect to the need of Mr. Nixon for  
2     these materials being greater or lesser because of the pardon?

3             MR. MILLER: I object on the grounds of relevancy  
4     again and because I don't understand what "greater or lesser"  
5     may be under the circumstances.

6             MR. DOBROVIR: Let me rephrase the question.

7             BY MR. DOBROVIR:

8             Q     Was there any discussion of a change in the urgency  
9     of Mr. Nixon's need for the papers that in turn was related  
10    to the issuance of the pardon?

11            A     No, because the prime urgency was the upcoming trial  
12    in US versus Mitchell, et al., which was not affected.

13            Q     Besides Mr. Miller, with whom else did you speak  
14    in which a relation was discussed, whether in point of time,  
15    as you have testified, or any other possible connection  
16    between the pardon and the papers?

17            A     I --

18            MR. GOLDBLOOM: Excuse me. I want to object to the  
19    form of the question. I believe Mr. Buchen has already  
20    testified that in point of time was the only connection.

21            MR. DOBROVIR: All right.

22            MR. GOLDBLOOM: Your question assumes a fact that  
23    has not been testified to.

1 MR. DOBROVIR: I will rephrase the question.

2 BY MR. DOBROVIR:

3 Q Can you tell us with whom you had discussions in  
4 which this question of the pardon and the question of the  
5 papers were related?

6 A Yes, to the best of my knowledge, I can.

7 Q Who were those people?

8 A Mr. Becker, Mr. Casselman and the President.

9 Q Not Mr. Miller?

10 A And Mr. Miller.

11 Q All right. If you could tell us what the conver-  
12 sation with each of those gentlemen was, please.

13 MR. GOLDBLOOM: I am going to object to your question  
14 insofar as it relates to the discussions between Mr. Buchen  
15 and the President on the grounds of presidential privilege,  
16 and I direct the witness not to answer.

17 MR. DOBROVIR: I am not asking about the President.  
18 Mr. Becker, Mr. Casselman and Mr. Miller.

19 THE WITNESS: I think I have answered that. Would  
20 you read the question again?

21 (Question read.)

22 THE WITNESS: I don't recall the exact words.

23 The substance dealt with trying to get this step behind us

1 prior to the granting of the pardon with the hopes that the  
2 pardon wouldn't be followed by litigation that could very  
3 well have tied up the materials under a claim of ownership and  
4 right to immediate possession which could have impaired any  
5 on-going needs that the Government had.

6 BY MR. DOBROVIR:

7 Q I see. In other words, you were concerned that the  
8 pardon would be followed by litigation brought by Mr. Nixon?

9 A Right.

10 Q Does that imply that if the pardon had not been  
11 issued you were not concerned about such litigation?

12 A No; I was still concerned, obviously.

13 Q Were you more concerned that litigation would  
14 follow the issuance of the pardon than you were concerned if  
15 the pardon had not been issued?

16 A I don't know.

17 Q Let me go on to another matter. In the September  
18 7th Saturday meeting which you and Mr. Becker and Mr. Cassel-  
19 man and Mr. Sampson had -- I guess Mr. Sampson testified it was  
20 about 6:30, 6:15 or 6:30, thereabouts -- do you recall that  
21 meeting?

22 A I am not sure Mr. Becker was present but I do recall  
23 the meeting with Casselman and Sampson.

1 Q My recollection may be faulty. Now, in the course  
2 of that meeting did you tell Mr. Sampson that the President  
3 wanted him to sign the agreement that you had shown to him?

4 A I don't recall seeing that.

5 Q Do you know whether the President wanted that agree-  
6 ment to be signed?

7 A That was his preference.

8 Q Was he familiar with --

9 MR. MILLER: Pardon me for interrupting. I didn't  
10 catch that last answer.

11 (Answer read.)

12 BY MR. DOBROVIR:

13 Q Was the President apprised of the precise terms of  
14 the agreement?

15 MR. GOLDBLOOM: I object to the question on the  
16 ground of presidential privilege and direct the witness not to  
17 answer.

18 BY MR. DOBROVIR:

19 Q Had the President seen the agreement or a previous  
20 draft of the agreement?

21 MR. GOLDBLOOM: I object for the same reasons and  
22 direct the witness not to answer.

23 BY MR. DOBROVIR:



1 Q Do you of your own knowledge know whether the  
2 President understood what the agreement provided?

3 MR. GOLDBLOOM: I object for the same reason and  
4 direct the witness not to answer. It would necessarily  
5 involve communications or knowledge between Mr. Buchen and the  
6 President of the United States.

7 BY MR. DOBROVIR:

8 Q But it was his preference that the agreement be  
9 signed. You testified to that; is that right?

10 A Yes.

11 Q And did he want the agreement to be signed right  
12 away?

13 MR. GOLDBLOOM: I object to the question for the  
14 reasons previously stated and direct the witness not to answer.

15 BY MR. DOBROVIR:

16 Q I am looking at the memorandum for the White  
17 House staff of August 9, 1974. And I am looking at the  
18 paragraph two-thirds along the way down the bottom of the  
19 page that begins, "Papers of the White House office at the  
20 time of President Nixon's resignation."

21 It says, "Of course, some Nixon Administration files  
22 may be needed for future reference. These files should be  
23 duplicated and placed with all other papers accumulated after

1 noon today which constitute a new set of files for President  
2 Ford."

3 Are you aware of the duplication of any such files  
4 in accordance with that paragraph?

5 A. I have since become aware.

6 Q. Could you tell us did you know about how much of  
7 that duplication has been accomplished?

8 A. Only in a very general way.

9 Q. Well, as much as you know.

10 A. I understand that in general, all of the officials  
11 still in the White House have duplicates of those matters that  
12 have some importance for on-going Government use and I have  
13 been told that some have kept duplicates of files as permitted  
14 by Item 3 on the second page of the archival memorandum that  
15 is attached to the Jones memorandum -- Item 3(a), rather,  
16 the body of documents which embody original intellectual thought  
17 contributed by the staff member.

18 Q. Do you know where this attached, printed list of  
19 instructions was generated and when?

20 A. I have been told that it was produced by the  
21 Archival Office, probably the Office of Presidential Papers  
22 which is manned by archivists, and I believe it was produced  
23 under some prior Administration, either the Kennedy or the

1 Johnson Administration.

2 Q The last paragraph says, it asks people to expedite  
3 the return of all documents that "have been withdrawn from  
4 Central Files." And then it says that, "Archivists will be  
5 available to assist in the collection and segregation of  
6 President Nixon's papers for shipment."

7 That was supposed to take place on Monday, August  
8 12th. Do you know what happened on August 12 or at any time  
9 that prevented the collection and segregation of the papers  
10 for shipment?

11 A Well, collection was slow, I found out later,  
12 largely because of inertia -- collection and segregation,  
13 because one would follow the other. But as for shipment,  
14 that has not been done.

15 Q Thank you.

16 MR. DOBROVIR: Would the reporter mark this as  
17 Exhibit 1 to the Buchen Deposition

18 MR. DAVIS: Is that the August 9 memo you have just  
19 been referring to?

20 MR. DOBROVIR: And its attached printed instructions.

21 (Whereupon, Buchen Deposition Exhibit No. 1  
22 was marked for identification.)  
23

1 BY MR. DOBROVIR:

2 Q I am now looking at a group of documents. The top  
3 one is dated 9/6/74 to Larry Silberman from Phil Buchen, and  
4 then it says, "As we discussed," and attached to it is a  
5 memorandum from Philip W. Buchen to The Honorable Lawrence  
6 H. Silberman, attaching a request to President Ford for a  
7 legal opinion, and then attached is a letter from President Ford  
8 to the Attorney General, and then there further attaches a  
9 memo from the General Counsel of the Treasury, further attach-  
10 ing a subpoena.

11 Was this the first time that the August 22nd  
12 letter -- it is dated August 22nd -- was in fact transmitted  
13 to the Justice Department?

14 A Yes, because the date of August 22nd reflected the  
15 date when the opinion was orally requested.

16 Q All right. Now in your testimony yesterday,  
17 Mr. Buchen, you indicated that you yourself had formed the view  
18 that the papers did belong to the former President on the  
19 basis of your research in history and your examination of  
20 the Presidential Libraries Act.

21 Did you, in the course of your thinking about this  
22 problem, consider other pertinent legal opinions; for example,  
23 the principles relating to the patentability and copyrightability



1 of materials that an employee creates in the course of his  
2 employment?

3 MR. GOLDBLOOM: I am going to object to the question.  
4 I am not certain I see the relevance to this litigation.

5 THE WITNESS: I am not sure you have correctly  
6 paraphrased my testimony. You asked if I had any inclination  
7 one way or the other and I gave you some bases on which I  
8 had some degree of anticipation of what the opinion might be.  
9 I did not do any thorough research because we were relying, or  
10 going to rely on the opinion of the Attorney General.

11 BY MR. DOBROVIR:

12 Q Well, is your answer that you did not give consid-  
13 eration to such matters as the patent and copyright aspect?

14 A Right.

15 Q All right. Now, were you aware around August 22nd  
16 or thereafter that there was legislation that had been  
17 introduced in the Congress that would provide for -- specifi-  
18 cally for the disposition of these presidential papers?

19 A I knew about a Bill that had been introduced by  
20 Senator Bayh that was introduced without reference to these  
21 specific papers. I think that was at an earlier session of  
22 the Congress. But I don't know to what extent that controls  
23 the disposition.

1 Q Well, you weren't aware, then, of HR 12116  
2 introduced in December 1973 by Congressman Latta, that would  
3 have provided that all documents produced or acquired by any  
4 officer or employee of the United States would be the property  
5 of the United States?

6 A I am not sure.

7 Q But you were aware of the Bayh Bill?

8 A Yes. I subsequently became aware of it.

9 Q When did you become aware of it? I don't want  
10 the record to be misleading.

11 A Well, it would have been shortly after August 22nd.

12 Q Did you become aware around that time or thereafter  
13 of a Bill introduced in the House by Congressman Bingham  
14 which was identical to the Bayh Bill? It was introduced on  
15 August 15th, HR 16454.

16 MR. MILLER: I object to the question concerning the  
17 pendency of legislation having no bearing on the issue in the  
18 lawsuit, despite the fact that I read the papers of five  
19 Congressmen applying to intervene.

20 THE WITNESS: I don't believe I was aware of that.

21 MR. GOLDBLOOM: I think the record should reflect  
22 that the introduction of such legislation seemingly would have  
23 been an indication on the part of those Congressmen that

1 it was necessary to change existing law.

2 MR. MILLER: To that extent, I withdraw my objection  
3 on relevancy.

4 MR. DOBROVIR: I am sure we would all argue that  
5 and many other points for different purposes in our briefs,  
6 or already have.

7 BY MR. DOBROVIR:

8 Q Well, Mr. Buchen, aware, then, as you were of the  
9 Bayh Bill, did you give any consideration to holding up  
10 execution of the agreement of September 7th to give Congress  
11 a chance to take action?

12 A I left that entirely to the Attorney General,  
13 because I recall having mentioned the pendency of the Bayh Bill  
14 to the Attorney General's office.

15 Q You did talk about that to Mr. Silberman, was it,  
16 or to Mr. Saxby himself?

17 A Mr. Silberman.

18 Q To Mr. Silberman. Was it Mr. Silberman who  
19 indicated to you on or about the -- I don't have the date in  
20 my mind -- there was an indication, I believe you said, orally  
21 about how the opinion was going to come out?

22 A Right.

23 Q That preceded the issuance of the written opinion?

1 A. Right.

2 Q. Was it Mr. Silberman who gave you that indication?

3 A. Right.

4 Q. Did you, in the course of the discussion with him  
5 when he gave you that indication, was there any mention of this  
6 pending legislation?

7 A. I dont believe so.

8 Q. Was the pendency of this legislation at all instru-  
9 mental in creating a sense of urgency about the execution of  
10 the agreement?

11 A. No.

12 MR. DOBROVIR: Why don't we mark this as Exhibit 2.  
13 (Buchen Deposition Exhibit No. 2 was marked  
14 for identification.)

15 BY MR. DOBROVIR:

16 Q. Now, I am looking at a group of documents, the  
17 top one of which is a memorandum from Phil Buchen to Herbert  
18 J. Miller, Jr., dated August 30, 1974, attaching a number of  
19 memoranda. I am looking at the memorandum of August 23rd,  
20 1974. Do you have that?

21 A. Yes.

22 Q. Thank you. Now, this memorandum says that it  
23 continues in effect standing instructions respecting access to



1 files in Room 522 and Room 84 of the Old Executive Office  
2 Building.

3 MR. GOLDBLOOM: You are characterizing this memor-  
4 andum.

5 MR. DOBROVIR: I am trying to summarize it, what  
6 it says.

7 BY MR. DOBROVIR:

8 Q And it says then, "Strike all the names listed in  
9 the first paragraph of the memorandum of May 23rd, '73, and  
10 insert the names listed in Exhibit 1."

11 And Exhibit 1 has a list of names, many of which do  
12 not appear on the memorandum of May 23rd, and which therefore  
13 seem to be additional names.

14 I would like to ask you, Mr. Buchen, why it was that  
15 these other names were added, and let me go through the ones  
16 that were added: Patrick Buchanan.

17 MR. MILLER: I object to the relevancy of that  
18 question. I don't see how access pursuant to that memorandum  
19 has any bearing on the issues of this lawsuit.

20 MR. GOLDBLOOM: I object for the same reason.  
21 I don't see what relevance it has to the hearing on the  
22 preliminary injunction set forth this Friday.

23 MR. DOBROVIR: I don't know what relevance it is

1 going to have until I hear an answer.

2 MR. MILLER: Let the record show that if relevancy  
3 would be determined by an answer, there would never be a  
4 sustained objection throughout.

5 THE WITNESS: I don't know the reason any of the  
6 names were added, but this was based on recommendations made  
7 to me by Mr. Casselman, as I recall.

8 MR. DOBROVIR: We will mark this as an exhibit,  
9 as well.

10 (Buchen Deposition Exhibit No. 3 was marked  
11 for identification.)

12 BY MR. DOBROVIR:

13 Q Now I am looking at two drafts of a letter to,  
14 "Dear Mr. Sampson," one of which has more handwritten notations  
15 on it than the other does.

16 First of all, Mr. Buchen, is the typescript of  
17 these two documents exactly the same? Are these copies of the  
18 same draft as far as the typescript is concerned?

19 A Except for the handwritten notes, to the best of  
20 my knowledge they are duplicates one of the other.

21 Q Now, what are these drafts?

22 A These drafts were the initial draft presented to  
23 our office by Mr. Miller of the proposed agreement.

1 Q When did he give these to you?

2 A On September 4th or 5th.

3 Q Now, I think we'd better mark these because other-  
4 wise, I'm going to get confused.

5 MR. DOBROVIR: I will ask that the one on the first  
6 page with the fewer number of handwritten notations be given  
7 the next number, and the other one be given the number after  
8 that, and then I would like them back.

9 (Buchen Deposition Exhibit Nos. 4 and 5 were  
10 marked for identification.)

11 BY MR. DOBROVIR:

12 Q Exhibit No. 4 is the one with the fewer number of  
13 handwritten notations. Let's look at that first. Whose  
14 handwriting is on that document?

15 A Mine.

16 Q Yours. That is also on the second page?

17 A Yes.

18 Q And the third?

19 A Yes.

20 Q Down at the bottom of the third page next to the  
21 number 10 there is something I can't make out. Can you  
22 interpret that for us?

23 A "Out," or "put over in" I guess.

1 Q "Put over in"? Put over in what?

2 A There seems to be the letter "IN" and "out" over  
3 them.

4 Q All right. Now looking at No. 5, which is the other  
5 version, can you tell me whose handwriting that is?

6 A The initials BLB would indicate it is Benton  
7 Becker's.

8 Q Now, do you know when Mr. Becker made these notations?

9 A Well, the ones that correspond to my notations were  
10 made in my presence. Those later on, I don't recall when  
11 they were made -- or those that are different, I don't recall  
12 when they were made.

13 Q But there are some notations of yours on this copy,  
14 too, is that right?

15 A No; only that there are some corresponding changes  
16 such as in the second paragraph, changing "papers" to  
17 "materials."

18 Q Right. When did Mr. Becker give you this marked-  
19 up copy or the original of this marked-up copy, Exhibit 5?

20 A Well, this copy was not in my file until I got the  
21 subpoena and I knew there was -- there existed this document  
22 and I got it from Mr. Casselman's office.

23 MR. DOBROVIR: I have no more questions.



1 MR. SPOONER: I have a few questions.

2 EXAMINATION

3 BY MR. SPOONER:

4 Q Mr. Buchen, at the end of the deposition session  
5 yesterday afternoon Mr. Dobrovir was asking you about the  
6 chronology of events that led up to the execution of this  
7 agreement.

8 I believe that you testified that Mr. Miller agreed  
9 on the morning of September 5th to prepare a draft of an  
10 agreement and that he provided it to you on the same day.

11 After the 5th when you first received the draft,  
12 could you briefly outline your participation in the further  
13 notions that culminated in the execution of the agreement?

14 MR. MILLER: I think the record should reflect that  
15 the witness, I believe, has just testified that he received  
16 the draft from Mr. Miller on the 4th or the 5th. I don't have  
17 a copy of yesterday's deposition so I don't know if the  
18 characterization of the witness's testimony is accurate or not.

19 MR. SPOONER: That is true.

20 BY MR. SPOONER:

21 Q Do you know whether it was the 4th or 5th that you  
22 received the draft?

23 A I am not certain. I may have said the 5th in my

1 prior testimony but I don't find it.

2 Q I believe on page 19.

3 A I am not sure that is correct. It may have been we  
4 got the draft late on the 4th. My recollection is not clear.

5 Q In any event, after you received the draft on the  
6 4th or the 5th, what did you then do with it? Did you at that  
7 time mark it up or make any suggestion on it or were your  
8 comments which are reflected on Buchen Deposition Exhibit 4  
9 made subsequent to the day that you received it?

10 A No; they were made the same day.

11 Q Were these changes made in the course of a meeting  
12 that you had with Mr. Becker on that same day?

13 A I am sure he was present when I made them. Whether  
14 Mr. Miller was, I don't recall.

15 Q Now, after the meeting at which the changes  
16 reflected on Deposition Exhibit 4 were made, Mr. Becker went  
17 out to California; is that correct?

18 A Yes.

19 Q Did you accompany Mr. Becker to California?

20 A No.

21 Q Did you give Mr. Becker any instructions with  
22 respect to the notion of the agreement in California?

23 A I certainly instructed him to seek to get the

1 changes as indicated by my markings and in a general way to  
2 develop a clause that permitted greater flexibility after the  
3 agreement was first implemented.

4 Q What do you mean by "flexibility"?

5 A As to location, as to location of the documents  
6 or parts of them.

7 Q Flexibility in what respect? Did you contemplate  
8 that some of the documents might be kept in Washington?

9 A Well, they were all in Washington but as the  
10 agreement appeared in its final form, there was a clause in  
11 Paragraph 10 that didn't appear in the earlier draft to  
12 provide for temporary deposit to a location other than the  
13 original one in California.

14 Q Other than suggesting the changes that appear on  
15 Exhibit 4 and instruction Mr. Becker to seek a clause which  
16 would be similar to what resulted in Paragraph 10 of the final  
17 agreement, did you give him any other instructions with  
18 respect to the agreement?

19 A Well, one change relative appeared in Paragraph 6  
20 of the original draft which changed "containers" to "storage  
21 areas" was one that I urged because the idea of having to  
22 have separate locked containers seemed to be a very impractical  
23 thing.

1           The approach had been that this would be akin to  
2 safety deposit vaults that banks maintain where the bank as  
3 nominal custodian would have one key and the depositor would  
4 have another key, but in view of the huge volume, I urged that  
5 we merely develop a key system to the access door of the storage  
6 area, not to containers within the storage area. I also urged  
7 elimination of Paragraph 9.

8           Q       Why did you want Paragraph 9 of the draft eliminated?

9           A       Because it seemed one-sided. If the agreement was  
10 unlawful, we should be able to terminate it, too.

11          Q       To save a little time in comparing these - the draft  
12 with the final - do you recall whether the draft of Paragraph 9  
13 was omitted from the final version?

14          A       Yes.

15          Q       Now, on Deposition 5, which is, as I understand it,  
16 Mr. Becker's copy, do you know whether the handwritten changes  
17 and notations that are reflected thereon were made by  
18 Mr. Becker during the meeting that you had with him on the  
19 4th or the 5th?

20          A       Well, some certainly were to the extent they  
21 corresponded with my markings. They were made at the same  
22 time. One of those changes was to change the initial deposit  
23 of the documentary materials to a guaranteed period of three



1 rather than two years.

2 Q Which paragraph are you referring to now?

3 A Well, if you will look at Exhibit 5, it is Paragraph  
4 7(a) near the top of page 3.

5 Q Mr. Buchen, did you have any oral conversation with  
6 Mr. Miller or with Mr. Nixon's other representatives as to  
7 what the content of the agreement should be prior to the time  
8 that this draft was prepared?

9 A Yes, I had a conversation with Mr. Miller only.

10 Q What date was that conversation?

11 A Both on September 4th and September 5th.

12 Q Now, in your conversation with Mr. Miller prior to  
13 the preparation of this draft, did you discuss the possibility  
14 of having a provision in the agreement with regard to destruc-  
15 tion of the tape recordings?

16 A That provision was not in the original draft. I  
17 believe it occurred as a result of discussion that I authorized  
18 Mr. Becker to have with Mr. Miller.

19 Q When you authorized Mr. Becker to go to California --

20 A Right.

1 Q At that time did you discuss with Mr. Becker the  
2 possibility of having a provision in the agreement dealing  
3 with the destruction of the tape recordings?

4 A We had a discussion first that a different treatment  
5 ought to be given to the tapes from the rest of the documents  
6 in view of the unusual origin of those documents. And we  
7 discussed either a very long embargo on those or the possibility  
8 that because of the way that they were obtained through record-  
9 ing conversations of people who generally did not know their  
10 conversations were being recorded, I raised the possibility  
11 that maybe destruction would be the most sensible thing to  
12 provide for once the need for the materials for ongoing  
13 criminal investigations or civil suits would undoubtedly be  
14 over because of the five-year period.

15 Q Now, with regard to the provision in the draft  
16 agreement for the withdrawal of papers other than the tape  
17 recordings after a two or three year period by Mr. Nixon, had  
18 you discussed that provision with Mr. Miller orally prior  
19 to the time that he prepared the draft?

20 A Well, we certainly had discussed the principle that  
21 I wanted to preserve the integrity of the collection for as  
22 long as it could reasonably be needed by third parties for  
23 court purposes.

1 Q Do you recall having objected to the provision in  
2 paragraph 7-A of the draft agreement regarding withdrawal of  
3 papers after a period of time?

4 A On the assumption that as owner and with the  
5 realization that unless we had some time limit, the owner  
6 presumably, unless he had made an irrevocable gift, could do  
7 what he wanted to with his own property. I was unable to  
8 urge seriously that we make this a permanent deposit agreement.

9 Q You urged that it would be made a permanent deposit  
10 agreement?

11 MR. GOLDBLOOM: That is not what his testimony was.

12 MR. SPOONER: I am sorry, I didn't mean to character-  
13 ize it. Would you read the answer back?

14 (Answer read.)

15 BY MR. SPOONER:

at all

16 Q Did you urge/that it be made a permanent deposit  
17 agreement?

18 A I may have but I understood the problem of the fact  
19 that unless there was some characterization of the different  
20 materials that were subject to the agreement and the restrict-  
21 ions that would be posed on different types of materials as  
22 is customary when a president in the past has donated materials,  
23 I didn't see how we could do it.

3-4

1 MR. SPOONER: I am sorry for the delay. Would you  
2 read the answer back?

3 (Answer read.)

4 BY MR. SPOONER:

5 Q Did you attempt to define or to characterize the  
6 materials that were the subject of the agreement?

7 A No, other than the general language.

8 Q At the time that the negotiations for the agreement  
9 were being conducted, were all of the materials that you deemed  
10 to be the presidential materials--were they all located in a  
11 particular location or locations?

12 A I would have to say yes but I didn't know which  
13 locations.

14 Q Do you know which locations now?

15 A No.

16 Q Assuming that the legal difficulties are resolved,  
17 have you given any thought as to how you will determine which  
18 materials are covered by the agreement?

19 A I have given some thought to it but I don't have the  
20 answer.

21 Q Do you know who will make the decision as to which  
22 materials are covered by the agreement?

23 A I expect it is going to be some court.



1 Q Mr. Buchen, I'm not sure that I can find the exact  
 2 part of the transcript of yesterday's session of your depo-  
 3 sition immediately, but I believe you testified yesterday  
 4 that when you asked Mr. Saxbe for a legal opinion regarding  
 5 the ownership of the presidential materials, you also asked  
 6 him to consider the--to consider what rights the Government  
 7 might have in the materials for ongoing purposes. Is that  
 8 correct? Is that a correct summary of your testimony from  
 9 yesterday?

10 A That certainly isn't specified in the written re-  
 11 quest but we certainly discussed that and it is discussed in  
 12 the opinion.

13 Q When you say that it is discussed in Mr. Saxbe's  
 14 opinion, you mean insofar as the opinion is dealing with the  
 15 amenability of these documents to subpoena?

16 A Well, the case of Folsom B. Marsh is discussed at  
 17 length in the Attorney General's opinion and that raises the  
 18 issue of so-called user rights for purposes of ongoing govern-  
 19 ment business, not necessarily affecting ownership but giving  
 20 some rights to the government to use the materials for ongoing  
 21 government business purposes.

22 Q Mr. Buchen, do you have a copy of the final version  
 23 of the letter agreement?

1           A.     Yes.  The shorter copy, the one you are looking at  
2 I think is the press release copy.  There is one on eight-and-  
3 a-half by eleven paper which was introduced.  That probably  
4 should be used.  There may be some typos in the press release.

5           Q.     Does the letter agreement to your knowledge provide  
6 for the continuing use of any of the presidential materials by  
7 the Government?

8           A.     It doesn't by its terms because the agreement pur-  
9 ports to relate to the deposit of materials away from the  
10 site of government.  And until the arrangements are worked  
11 out, the user rights would be exercised either through duplica-  
12 ting the materials before they were deposited or as has been  
13 the case, the originals have continued to be used.

14          Q.     If the materials are put in the storage facility in  
15 California and the Government thereafter has a need for a  
16 particular document or group of documents, at that point the  
17 Government will have to obtain access through the two-key  
18 arrangement, is that correct?

19          A.     Yes, but that is very similar to the way the Govern-  
20 ment gets access now to materials in collections of prior  
21 presidents.

22          Q.     Under the two-key arrangement, however, Mr. Nixon's  
23 consent would be required for the Government to have access,

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is that correct?

A. If the Government had not retained a copy, you're right.

Q. Do you recall the day on which Mr. Becker went to California?

A. It was the night of September 5th. He was there to the day of September 6th.

Q. September 6th was a--

A. A Friday.

Q. Friday. When did you first see Mr. Becker when he returned from California?

A. The morning of the 7th.

Q. And at that time did he bring back a clean draft of the proposed letter agreement?

A. With Mr. Nixon's signature on it.

Q. After that time were any further changes made to the proposed agreement?

A. No.

Q. Can you relate as best you can recall what discussions you had with Mr. Becker on the morning of September the 7th?

A. We went over the final draft together and he pointed out the language that he previously read to me over the telephone as to what changes had been made from the prior draft

1 and the reasons for them. And he reported on his understanding  
2 of how the agreement would work once it was implemented.

3 Q When did you first meet with Mr. Sampson? I think  
4 this is clear but I just want to make sure. Did you first  
5 meet with him after 6 o'clock on Saturday evening, the 7th?

6 A Yes. But Mr. Casselman had met with him starting  
7 much earlier.

8 Q Much earlier in that day?

9 A Right.

10 Q Are you sure Mr. Casselman met with him?

11 A Yes.

12 Q Did you direct Mr. Casselman to meet with Mr. Sampson?

13 A Yes.

14 Q Did you direct Mr. Casselman to explain the terms of  
15 the agreement to Mr. Sampson?

16 A Yes.

17 Q Do you know approximately what time of day he met  
18 with Mr. Sampson?

19 A I am not sure. It was in the afternoon but at what  
20 time, I don't know.

21 Q Did you join the meeting between Mr. Casselman and,  
22 Mr. Sampson?

23 A At the very end.



1 Q That was just prior to the time that the agreement  
2 was signed?

3 A Right.

4 Q After you came into the meeting between Mr. Casselman  
5 and Mr. Sampson, was there any substantive discussion about  
6 the terms of the agreement, the meaning of any provisions of  
7 the agreement?

8 A Not that I recall.

9 Q Mr. Buchen, did you personally ask Mr. Becker to  
10 assist in the negotiations of this agreement or was that done  
11 by someone else?

12 A I did it.

13 Q Did you indicate to Mr. Sampson that President Ford  
14 wanted the agreement to be signed?

15 A I cannot recall just what I said. I am sure that  
16 the substance of my conversation with Mr. Sampson would have  
17 been that the agreement or the terms of it had been reviewed  
18 with the President and he believed it would be proper to do so.

19 Q Mr. Buchen, do you keep a log presently of persons who  
20 have access to the materials that are covered by this agreement?

21 A I personally don't but under all the various arrange-  
22 ments there is a voluminous record made of every access.

23 Q Who keeps that record?

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A. Various people depending upon the jurisdiction under which particular rooms are kept.

Q. Is there a log kept with respect to each room?

A. I believe so.

Q. Who would keep the log of access to the rooms in the White House where Presidential materials were located?

A. Well, to the extent there are Presidential materials, either copies or a few remaining originals, in operating offices that are not under my custody or control or that of any of the other defendants, there is no log made as far as I know unless the individual office makes them. There are still some NSC materials in the Situation Room in the White House. I believe those are available to employees cleared to operate in the Situation Room. But I don't believe there is any log made.

To the extent that there are NSC materials in other locations, the EOB, where there are not activities going on moment by moment, the record is made of who has access to any file that is really in storage.

Q. Who is the person in charge of maintaining custody and control over the materials that are in the White House? Is that you?

A. No.

1 Q Who is the person?

2 A Well, again, the only materials that conceivably  
3 fall within the definition of "Presidential materials" are  
4 either in individual offices under the control of the head of  
5 the office or in the Situation Room under the control of NSC.

6 MR. GOLDBLOOM: Counsel, is there anything par-  
7 ticularly relevant to the preliminary injunction hearing  
8 scheduled for this Friday as to which this line of questioning  
9 is directed?

10 MR. SPOONER: Yes.

11 MR. GOLDBLOOM: Would you mind stating it for the  
12 record?

13 MR. SPOONER: Well, one thing this is relevant to  
14 is that there is a temporary restraining order out regarding  
15 access to the Presidential materials. I would like to know  
16 where they are and what security measures have been--

17 MR. GOLDBLOOM: I think the court has taken care of  
18 questions of that nature by its most recent order, has it not?

19 MS. SPOONER: The court has entered an order but I  
20 don't know it is being carried out.

21 MR. DAVIS: Mr. Spooner, to the extent there may be  
22 some confusion, when you use the term White House, materials  
23 that are actually being stored as far as I have seen are being

1 stored in the old Executive Office Building where all the  
2 security arrangements that everybody has always discussed are  
3 maintained. So to the extent that there is some confusion  
4 because you have referred to the White House, which is a  
5 distinct building, I think the concern may be less.

6 MR. SPOONER: I meant to ask about the Executive  
7 Office Building. For the moment I am only asking about the  
8 White House itself.

9 MR. GOLDBLOOM: I was going to suggest that as far  
10 as I know there is no question pending before the court in  
11 connection with the enforcement applicability of the temporary  
12 restraining order. In fact, to the extent that there was a  
13 question raised in regard to access, a motion made to gain  
14 access for a viewing of the materials, that motion was denied  
15 and the court made specific order with respect to furnishing  
16 information.

17 I would suggest that the questions that you/embarked  
18 upon now seem to be irrelevant to the hearing before the court.

19 MR. SPOONER: The questions I am asking are also  
20 relevant to other issues in this case, among them being the  
21 definition of the materials that are covered by the agreement.

22 BY MR. SPOONER:

23 Q Mr. Buchen, let's turn for a moment to the Executive



1 Office Building, the presidential materials that are contained  
2 therein. Who has the responsibility for logging the access  
3 to the presidential materials that are located in the Executive  
4 Office Building?

5 MR. MILLER: I too am going to object to this line  
6 of inquiry. If counsel desires to bring some type of a con-  
7 tempt action for violating the TRO then these questions would  
8 be relevant. Otherwise, I don't see that they are. I object.

9 BY MR. SPOONER:

10 Q Go ahead and answer.

11 A Well, there are different arrangements for different  
12 rooms. The materials are so voluminous they have had to be  
13 put in twenty-five or thirty different rooms, and there are  
14 certain highly sensitive materials that are under the juris-  
15 diction directly of the Secret Service. There are other ma-  
16 terials that are under the jurisdiction of the Office of  
17 Presidential Archives.

18 Access to any of the rooms, however, requires con-  
19 currence by the Secret Service because of where they are  
20 alarmed, even though it doesn't require the presence of a  
21 secret serviceman as it does in some of the areas.

22 Q Do you know whether any materials have been added  
23 to the rooms that contain the presidential materials within

1 the last two weeks?

2 A. Yes, there have been.

3 Q. Do you know who has placed additional materials in  
4 those rooms?

5 A. There has been a record made in the Presidential  
6 Archives office.

7 Q. The Presidential Archives office maintains the  
8 record?

9 A. Yes.

10 Q. Well, these records are not descriptive because--in  
11 the sense that they say that they deposited X number of boxes  
12 in Room so-and-so, received from a particular office. But  
13 what is in them, in the files, isn't known.

14 Who makes the decision as to whether additional  
15 material should be placed in those rooms?

16 A. Well, the memorandum of August 9 is the guide under  
17 which materials continue to be accessioned, as the archivists  
18 call it. This puts the burden on the operating office and  
19 says that the archivists are available for consultation.

20 Q. Well, are there any procedures that are in existence  
21 to screen the materials that are being placed in those rooms  
22 to determine whether they should be added to the Presidential  
23 materials?

1           A     No, because part of the problem is what the restrain-  
2     ing order means in that regard. And the volume is such that  
3     it is impractical.

4           Q     Do you know, Mr. Buchen, whether a White House gift  
5     register has been placed in those materials?

6           MR. GOLDBLOOM: I am going to object to that question.  
7     This was raised yesterday in the deposition of Mr. Sampson.  
8     It seems to me that it is wholly irrelevant to the proceedings  
9     scheduled before the court on the 15th of November. The  
10    purposes of getting early discovery were, I believe, limited  
11    to the purposes of the hearing on the 15th of November. For  
12    this type of questioning to be embarked upon, I believe is  
13    irrelevant.

14          MR. SPOONER: I believe it can be done very quickly  
15    because I only plan to ask three or four questions most of  
16    which undoubtedly can be answered by a yes or no answer.

17          MR. MILLER: I would like to join in the objection  
18    by esteemed counsel and point out that this is just a further  
19    example of the problems that are created by the vast multitude  
20    of parties that are now either consolidated with or have inter-  
21    vened in this lawsuit which makes the whole process unwieldy.  
22    With respect to the issues of whether or not there is a gift  
23    list placed in the White House documents I don't see any

1 relevancy to the issues before the court that we are to con-  
2 sider during the course of this deposition. I stated that  
3 yesterday in Mr. Sampson's deposition and I will restate it  
4 again today.

5 MR. SPOONER: I will try to do that as quickly as  
6 I can. Can you answer the question, Mr. Buchen?

7 THE WITNESS: I believe that there gift records in  
8 the other areas--in the areas where the Presidential papers  
9 are stored.

10 MR. MILLER: I move to strike the answer on the  
11 grounds that belief is insufficient.

12 BY MR. SPOONER:

13 Q How did you come to this belief, Mr. Buchen, that  
14 there is a gift register in the Presidential materials?

15 A I guess because someone told me.

16 Q Do you recall who?

17 A No.

18 Q Do you know when or approximately when the gift  
19 register was placed in the Presidential materials?

20 MR. MILLER: I object for the reasons already stated.

21 MR. GOLDBLOOM: I object on the grounds of relevancy.  
22 I can't see what possible relevancy a question concerning the  
23 gift register in the Presidential materials has to do with a



1 hearing on the motions for preliminary injunction set for the  
2 15th of November and I think this is an excessive imposition  
3 upon the witness to prolong the deposition for the purposes  
4 of this inquiry.

5 MR. SPOONER: Mr. Goldbloom, there is an estimated  
6 42 million documents covered by this agreement and I obviously  
7 can't ask about all of them. I am just trying to introduce a  
8 small degree of specificity so that we are just not talking in  
9 complete generalities.

10 MR. GOLDBLOOM: I find it curious that you should  
11 pick such an item to question the witness about, of the 42  
12 million.

13 MR. SPOONER: I suppose I could have picked another  
14 but we might as well finish up with this one.

15 BY MR. SPOONER:

16 Q Do you know when or approximately when the gift  
17 register may have been placed in the Presidential materials?

18 MR. MILLER: I object to the question on the grounds  
19 already stated.

20 THE WITNESS: Well, I don't know whether there is  
21 the gift register or whether there are other records of gifts.  
22 I believe--for all I know there may have been records of gifts  
23 stored long before I got there. But the reference is made to

1 some gift records, I believe--I was informed, and again this  
2 is just my recollection of what someone told me, because I  
3 don't supervise matters going in on the accession basis. That  
4 is covered by this procedure that was set forth before I got  
5 there. I believe there were some gift records put in over  
6 the last three or four weeks.

7 BY MR. SPOONER:

8 Q Do you have any idea which gift records were placed  
9 in there?

10 A No.

11 MR. MILLER: I object to the question.

12 BY MR. SPOONER:

13 Q Do you know whether an inventory of jewellery or  
14 other gifts was placed--

15 MR. GOLDBLOOM: I am going to call a halt to this  
16 line of questioning and direct the witness not to answer any  
17 further questions on this basis. If you seek to pursue the  
18 matter further I suggest you pursue the matter before Judge  
19 Ritchie.

20 MR. MILLER: I request if it is pursued further that  
21 I be given notice. I would like to be present at the hearing.

22 MR. SPOONER: Mr. Goldbloom, you are not claiming  
23 that this matter is privileged, are you?

1 MR. GOLDBLOOM: No, but I think you have gone beyond  
2 the bounds of relevancy for the purposes of this deposition  
3 and the hearing scheduled for the 15th of November.

4 MR. SPOONER: All right. I will terminate that  
5 line of questioning with the proviso that the deposition may  
6 have to be resumed if necessary after this matter is resolved.

7 BY MR. SPOONER:

8 Q I just have a few more questions, Mr. Buchen.

9 It was you that asked Mr. Saxbe to prepare a legal  
10 opinion, was it not?

11 A Well, I believe I originally talked to Mr. Silberman

12 Q When did you receive the written opinion from Mr.  
13 Saxbe?

14 A The final signed version I think I received on  
15 September 6th, the day it was dated.

16 Q Did Mr. Saxbe indicate that he was going to release  
17 that opinion publicly / prior to the time that you might authorize  
18 him to do so?

19 A I don't think the question was raised.

20 Q Mr. Buchen, has Mr. Rhoads, the Archivist of the  
21 United States, raised any objections concerning this agreement  
22 of September 7th? Has he raised any objections with you?

23 A He did prior to my letter to him of September 20th,

1 which has been furnished. I haven't heard anything from him  
2 since.

3 Q It may possibly be in here and I may have missed it.  
4 Your letter of September 20th, 1974, to Mr. Rhoads is included  
5 in these materials. I can't recall, however, having seen  
6 Mr. Rhoads' letter to you.

7 A He didn't send me a letter.

8 Q I see. What were the objections that Mr. Rhoads  
9 voiced to you?

10 A He objected to the provision that dealt differently  
11 with the tapes from the way the other documents were treated  
12 under the agreement.

13 Q Did he want the tapes to be treated in the same way  
14 as the other documents? Is that what this objection was to?

15 A He objected that there was authority on the part of  
16 the owner or claimed owner to order their destruction after  
17 the five-year period and that a condition had been imposed that  
18 in all events they be destroyed if death occurred in that five-  
19 year period or if it did not occur, at the end of the ten-year  
20 period.

21 Q Were there any other provisions in the agreement that  
22 Mr. Rhoads objected to?

23 A Not to my knowledge.



1 Q Do you know whether anyone who had anything to do  
2 with negotiating this agreement consulted with Mr. Rhoads  
3 prior to the time that the agreement was signed?

4 A I do not believe so.

5 MR. SPOONER: I have no further questions. Oh, I'm  
6 sorry, there is one other matter.

7 Mr. Goldbloom, you mentioned before in reference to  
8 the court's order denying a view of the storage areas that  
9 the court had entered an order requiring a production of a  
10 description to the extent possible of the materials.

11 MR. GOLDBLOOM: I forget the particular language of  
12 the court's order, but it did deal with that matter.

13 MR. SPOONER: Does the Government plan to provide  
14 such a description?

15 MR. GOLDBLOOM: I trust we plan to comply with the  
16 court's order, yes.

17 MR. SPOONER: Do you, Mr. Axelrad?

18 MR. AXELRAD: We will comply with the court's order?

19 MR. SPOONER: What does that mean? Will a description  
20 be provided?

21 MR. AXELRAD: It is due on Thursday at noon and that  
22 is when we will file our response in keeping with the court's  
23 order.

1 MR. SPOONER: You are being awfully vague. Is there  
2 a particular reason? Are you going to provide a list or not?

3 MR. GOLDBLOOM: We are going to comply with the  
4 court's order.

5 MR. SPOONER: Thank you. That's all.

6 MR. DAVIS: Just a few questions, Mr. Buchen.

7 EXAMINATION

8 BY MR. DAVIS:

9 Q The memorandum that has been marked as Exhibit  
10 Number 1 in this deposition is a memorandum for the White  
11 House staff signed Jerry H. Jones, Special Assistant to the  
12 President. Have you been able to determine which president  
13 Mr. Jones is Special Assistant to or was at the time that was  
14 circulated?

15 A I haven't. But I suspect if it wasn't issued, it  
16 was probably conceived while he was Assistant to President  
17 Nixon.

18 Q Just so we are clear, August 9th is the date of the  
19 memo, which is the date Mr. Nixon formally resigned and Presi-  
20 dent Ford was sworn in, is that correct?

21 A Right. It does refer to President Nixon in the memo  
22 instead of former President.

23 Q In your conversations with Mr. Miller on September--

1 I think you have said September 4th or 5th, without attempting  
 2 to define in which of the conversations it may have taken  
 3 place, did you have any conversations about the fact that there  
 4 was an interest of the Special Prosecutor in the various--in  
 5 various of these materials?

6 A. Yes.

7 Q. Can you tell us what you recall about that aspect  
 8 of the conversation?

9 A. Well, I didn't disclose the specific requests because  
 10 of their sensitive nature but I did indicate either in those  
 11 conversations or in earlier ones--we discussed the tapes and  
 12 documents before the fourth and fifth--that there were these  
 13 requests pending, that assurance had been given that these  
 14 would have to be resolved, and that the Special Prosecutor  
 15 could transfer these requests into subpoenas immediately if  
 16 that would improve his--if he thought that would improve his  
 17 claim on these materials.

18 Q. In terms of the development of this agreement, was  
 19 it your understanding that these requests would have to be  
 20 resolved prior to materials being sent out to California,  
 21 materials which might have been relevant to the request?

22 A. Well, yes, but that probably related to a very  
 23 small portion of the total. The problem I saw was developing

1 a means for determining which documents were of interest to the  
2 Special Prosecutor, which was something we intended to tackle  
3 after the agreement was signed.

4 Q In your press conference on September 8th in answer-  
5 ing a question which reads, "Is there any change in the rules  
6 of access to documents by former White House aides," you  
7 replied, "The problem is that there would of course be a interim  
8 before the Nixon-Sampson letter agreement can be fully im-  
9 plemented. How we will handle the interim arrangements, I am  
10 sure can be worked out with Jack Miller as attorney for Mr.  
11 Nixon."

12 Now, that question relates, I assume, to the materials  
13 related to the Watergate trial, since it mentions the White  
14 House aides. Was it your understanding when you gave that  
15 answer that question is related to those materials which the--  
16 which might be necessary for the Special Prosecutor would have  
17 to be resolved before all aspects of the agreement could be  
18 implemented?

19 A The question didn't bear on that and the answer  
20 didn't bear on it. But I mean, I was being responsive to the  
21 question, which was related to the Watergate defendants and  
22 not the Special Prosecutor.

23 MR.DAVIS: I have no further questions.



## EXAMINATION

1  
2 BY MR. MILLER:

3 Q Mr. Buchen, are you aware that counsel who was in-  
4 terrogating you with respect to the foreign gift records  
5 represents the Reporters Committee for Freedom of the Press?

6 A I believe I knew that, yes.

7 Q Have you had any inquiries from the press recently  
8 with regard to foreign gift records in the White House?

9 A I haven't but my staff has.

10 Q Can you tell me who made that request?

11 A Maxine Cheshire, I believe, was the principle.

12 Q She made several contacts with the White House re-  
13 questing access to these foreign gift records?

14 A Almost daily, I understand.

15 Q Do you know who Maxine Cheshire is?

16 A I do. I have talked to her on the phone, a long  
17 time ago.

18 Q Do you know her as a reporter for the Washington  
19 Post?

20 A Yes.

21 MR. SPOONER: Mr. Miller, is it still your view that  
22 this line of inquiry is irrelevant?

23 MR. MILLER: It certainly is, even more so in view

1 of the recent answer of the witness.

2 BY MR. MILLER:

3 Q Are you a permanent resident of the State of Michigan?

4 A Yes.

5 Q Would you tell me where you currently reside, in  
6 what jurisdiction?

7 A Well, my legal residence, I believe, is still Michi-  
8 gan, but I am temporarily here--I mean I am temporarily--I  
9 don't know how long I'm here, but I'm temporarily at the  
10 Jefferson Hotel.

11 Q Commencing from a period of time of August 9th to  
12 the present time what has been your title as a government  
13 official?

14 A Well, prior to August 15th my only title was Execu-  
15 tive Director of the Domestic Council on the Committee to--  
16 the Domestic Council Committee on the Right of Privacy.

17 Q What was your position subsequent to August 15th?

18 A Counsel to the President.

19 Q That is Counsel to President Ford?

20 A Yes.

21 Q Have you held that position at all times since  
22 August 15th down to the present time?

23 A Yes.

1 Q When you were participating in the matters about  
2 which you have testified in this deposition from August 15 to  
3 the present time, were you acting in your capacity as counsel  
4 to President Ford?

5 A Yes.

6 Q Drawing your attention to August 15, 1974, did you  
7 on or about that date have a meeting with representatives of  
8 the Special Prosecutor's?

9 A I did.

10 Q And did you in fact allude to that meeting during  
11 your testimony here today or here yesterday?

12 A Yes.

13 Q At that time, on or about that time, were you given  
14 a document from the Special Prosecutor's office?

15 A Yes.

16 Q Have you supplied that document in response to the  
17 Notice of Deposition here this morning?

18 A I believe that is among the communications from the  
19 Special Prosecutor that we have claimed--

20 Q To shorten this, Mr. Buchen, if I request that you  
21 give me a copy of that August 15th communication from the  
22 Special Prosecutor's office, will you refuse to produce it?

23 MR. GOLDBLOOM: Yes.

1 BY MR. MILLER:

2 Q Did there come a time subsequent to August 15th, 1974,  
3 that you were served with several subpoenas issued by a grand  
4 jury and issued at the behest of the Office of the Special  
5 Prosecutor?

6 A Yes.

7 Q Do you recall approximately when that was?

8 A I think it was after October 17th but I don't recall  
9 the exact date.

10 Q Do you have copies or the originals of the grand  
11 jury subpoenas?

12 A In my office.

13 Q Yes. If I asked that you produce those grand jury  
14 subpoenas, would you do so?

15 A I believe they fall within the claim of privilege  
16 that we have asserted.

17 Q Thank you. Have you received any communication from  
18 the Office of Special Prosecutor withdrawing those subpoenas,  
19 Mr. Buchen?

20 A I have.

21 MR. DAVIS: The record should note that Mr. Miller  
22 received a copy of that communication.

23 MR. MILLER: At the present time I am not testifying.



1 That is why I asked the question, Mr. Davis.

2 MR. DAVIS: I just wanted to keep the record clear.

3 MR. MILLER: That is something we all aspire to.

4 MR. DAVIS: I think the record perhaps should also  
5 note Mr. Miller was given the attachments which contain the  
6 matters that were subpoenaed.

7 MR. MILLER: The reason I am asking the question is  
8 to ascertain if the Government or the Special Prosecutor desires  
9 that they be kept confidential. If so, I will accommodate my  
10 copy accordingly, Mr. Davis.

11 MR. DAVIS: I think it is fair that the Special  
12 Prosecutor would like to keep confidential the detailed re-  
13 quests which do go right into the matters which are the sub-  
14 ject of grand jury inquiry.

15 BY MR. MILLER:

16 Q Mr. Buchen, do you know why or was any reason given  
17 by the Special Prosecutor for withdrawing these subpoenas?

18 A The reason given was the agreement made on two  
19 dates, a Friday and Saturday--it carried two different dates.

20 Q This agreement, would you characterize it ?

21 A It is an agreement between the three federal defen-  
22 dants in the suit brought by you, your client and the Special  
23 Prosecutor that deals with the use of certain materials for

1 the ongoing criminal investigations and prosecutions within  
2 the jurisdiction of the Special Prosecutor.

3 Q Do you recall that the initial part of that agree-  
4 ment contains a whereas clause indicating that the President  
5 of the United States has considered the matter?

6 A Yes.

7 Q Did you discuss this matter with the President of  
8 the United States, this agreement?

9 MR. GOLDBLOOM: I object to the question and direct  
10 the witness not to answer claiming Presidential privilege.

11 MR. MILLER: To save time, Mr. Goldbloom, if I  
12 asked the witness what he told the President of the United  
13 States and what the President told him I assume you would give  
14 him the same instruction.

15 MR. GOLDBLOOM: Yes, I would give him the same in-  
16 struction and object on the grounds of Presidential privilege.

17 MR. MILLER: On the grounds of Presidential privilege.

18 MR. GOLDBLOOM: Yes.

19 BY MR. MILLER:

20 Q During the course of the negotiations conducted by  
21 you, Mr. Buchen and by Mr. Becker, culminating in the agree-  
22 ment of September 7, 1974, did you consult with a Mr. Casselman?

23 A I think Becker did most of the consulting. I don't

1 recall that I sat in on those meetings.

2 Q Were you informed by Mr. Becker or Mr. Casselman  
3 that the two of them had discussed the agreement?

4 A Yes.

5 Q Do you know--can you identify Mr. Casselman for the  
6 record?

7 A He was Counsel to the Vice President and continued  
8 to function on the counsel staff for the President after the  
9 change of administration.

10 Q Do you know what his occupation was before that?

11 A He was formerly general counsel for the General  
12 Services Administration.

13 Q Did there come a time, Mr. Buchen, when you gave  
14 instructions that the Presidential materials belonging to  
15 former President Richard M. Nixon should not be shipped from  
16 the District of Columbia?

17 MR. SPOONER: For the record, I object to the  
18 question on the grounds that it assumes the Presidential ma-  
19 terials belong to President Nixon.

20 THE WITNESS: I am not sure I ever gave those in-  
21 structions. That was the policy, I believe, before I became,  
22 Counsel to the President.

23 BY MR. MILLER:

1 Q Did anyone ever tell you that instructions had been  
2 given that the documents should not be shipped?

3 A I believe Fred Buzhardt so informed me when I took  
4 over from him.

5 Q Did Mr. Buzhardt indicate who had given him those  
6 instructions?

7 A Not that I recall.

8 Q If I asked you for your permission to ship the  
9 documents now would you give your consent?

10 A I am trying to figure out whether--I'm subject to a  
11 court order, I know, and I am also under obligation to the  
12 Special Prosecutor now--

13 Q Leaving aside the court order, Mr. Buchen, if I  
14 requested that you sign a letter authorizing the Presidential  
15 materials of former President Richard M. Nixon be shipped to  
16 a federal facility in California, would you agree to sign such  
17 an authorization?

18 A If I was sure I didn't have the authority to send  
19 them there--but if I have the authority, no, I cannot sign  
20 such a letter. I don't know that I have the authority to  
21 begin with on the subject.

22 Q Do you know who does?

23 A No.



1 Q Have you ever made any--had any agreement or under-  
2 standing with the Special Prosecutor about whether Presidential  
3 materials will remain in Washington, D. C.?

4 A I inherited such an agreement from Fred Buzhardt  
5 who had given it to the Special Prosecutor.

6 Q Is Mr. Buzhardt currently employed by the White  
7 House?

8 A No.

9 Q Then can we agree that you not only inherited it  
10 but you are now a party to such an agreement?

11 A That's right.

12 Q And can you tell me what that agreement is?

13 A Well, one version of it is now embodied in this  
14 document.

15 Q How about prior to that agreement, Mr. Buchen? What  
16 was your understanding of what the agreement was?

17 A The document being the agreement of November 8th?

18 Q Right.

19 A And 9th, '74.

20 Q Prior to the execution of that document, what was  
21 your understanding with the Special Prosecutor with respect  
22 to whether the Presidential materials could be shipped to  
23 California?

1           A.     My understanding was the one that was confirmed at  
2 the conference where Fred Buzhardt was involved and brought me  
3 in on August 15th.

4           Q.     And what was the understanding?

5           A.     That the agreement would not--sorry, that the docu-  
6 ments would not be moved from their present location until  
7 satisfactory arrangements were made with the Special Prosecutor.

8           Q.     Do you consider yourself bound by that arrangement?

9           A.     Yes.

10          Q.     Has the Special Prosecutor contacted you subsequent  
11 to August 15th with respect to that arrangement?

12          A.     I don't recall whether the contact was made--they  
13 contacted me but I don't know whether it was for that purpose.

14          Q.     Do you feel that you are bound by that agreement not  
15 to ship these documents to California?

16          A.     Not to exercise any authority I have to allow them  
17 to go.

18          Q.     Did you have a meeting with representatives of the  
19 Special Prosecutor on or around--on or about September 9th,  
20 1974? I am trying to place it. Did there come a time when  
21 you had a meeting with the representatives of the Special  
22 Prosecutor's office in which a Mr. Vorenberg was present?

23          A.     Yes, he was present on August 15th and I think we

1 had another meeting either on the 9th or 10th of September.

2 Q The 9th or 10th of September. Do you recall receiving  
3 a communication from the Special Prosecutor's office subsequent  
4 to that meeting of the 9th or 10th of September?

5 A I recall receiving one, yes.

6 Q Is that a document which you decline to make available?

7 MR. GOLDBLOOM: Yes, it is.

8 BY MR. MILLER:

9 Q Do you recall if--do you recall who was present at  
10 that meeting on the 9th or 10th of September?

11 A Mr. Silberman, Mr. Casselman, Mr. Lacovara, Mr.  
12 Vorenberg, I think Mr. Kreindler. I don't recall anybody  
13 else but there could have been.

14 Q Where was that meeting, if you recall?

15 A The Executive Office Building.

16 Q During the course of that meeting was there any  
17 discussion of whether the Nixon Presidential material should  
18 remain in Washington, D. C., or could be shipped to California?

19 A The Special Prosecutor certainly made the point that  
20 they expected compliance with the previous understanding they  
21 had until the arrangements were made.

22 Q Do you recall the precise language that was used?

23 A Yes, but I don't know that I can disclose it.

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MR. GOLDBLOOM: We object to disclosure of specific conversations with the Special Prosecutor on the grounds of both the privilege as to interagency communications and to such extent as applicable, the privilege attaching to investigative matters conducted by the Special Prosecutor's force.

BY MR. MILLER:

Q Subsequent to that meeting, Mr. Buchen, did you give orders that the materials belonging--that the so-called Presidential materials of Mr. Nixon could be shipped to California?

A Did I give orders that it could?

Q Yes.

A No.

Q At any time, Mr. Buchen, have you discussed with Mr. Sampson whether Mr. Sampson has the authority to move the Presidential materials of former President Nixon to California?

A No.

of take



1 BY MR. MILLER:

2 Q Returning to the Grand Jury subpoenas which I  
3 recall you suggested were served on you in October, did those  
4 subpoenas request production or access to document which were  
5 located in the Executive Office Building?

6 A I don't believe it specified the documents -- that  
7 they were confined to documents in the Executive Office  
8 Building. There were some descriptions of the documents.

9 Q Were the subpoenas for documents or recordings  
10 which were part of the presidential materials of former  
11 President Nixon?

12 A Well, they related to materials created prior to  
13 August 9, 1974, and subsequent to January 20, '69.

14 Q Mr. Buchen, who has the authority to authorize the  
15 shipment of the records of former President Nixon to California?

16 A Well, I don't know who has. They are under various  
17 jurisdictions. The Secret Service has put physical restraints  
18 on access. The General Services Administration through the  
19 Presidential Archival Office has put on restraints.

20 I required that my authority be sought for access to  
21 the materials, which I assume includes access for any movement  
22 of them. Who can overrule us and direct us to -- direct all  
23 three of these entities, individuals, would probably be only

1 the President of the United States provided it didn't  
2 contravene a Court Order or some law.

3 Q Does Mr. Knight take direction from you with  
4 respect to these documents?

5 Let me put it a different way. Have you in fact  
6 sent memoranda to Mr. Knight giving instructions as to what  
7 shall be done with or how these documents shall be treated?

8 A I have given him memorandum authorizing his people  
9 to permit individuals to enter rooms.

10 Q Did you in fact enter into an agreement authorizing  
11 the Special Prosecutor to have access to those documents?

12 A I did with Mr. Knight and with the General Services  
13 Administration.

14 Q Mr. Sampson?

15 A Right.

16 Q Yourself and those other two were signatories to  
17 that agreement?

18 A Right.

19 MR. MILLER: Off the record.

20 (Discussion off the record.)

21 MR. MILLER: On the record.

22 BY MR. MILLER:

23 Q Prior to the execution of the November 7th or 8th

1 agreement, Mr. Buchen, who controlled access to the presiden-  
2 tial materials of former President Nixon?

3 A Access to materials stored in EOB was controlled  
4 under various arrangements which required sign-offs by --

5 Q But who established those procedures?

6 A They were established before the end of the prior  
7 Administration.

8 Q Did you have the right to grant access to those  
9 materials, Mr. Buchen?

10 A Not by myself.

11 Q Did you undertake to tell persons or to instruct  
12 persons that they could have access to those materials?

13 A Provided other people concurred.

14 Q What other person concurred?

15 A In some rooms -- I guess in all rooms it required  
16 Knight's concurrence -- well, in some rooms it required  
17 Knight's concurrence.

18 In other rooms it required concurrence from  
19 Archival personnel, but even in those rooms to the extent they  
20 were alarmed it required Knight's concurrence if the alarm  
21 wouldn't be responded to by a policeman coming up and stopping  
22 the intrusion -- not a policeman, but an Executive Protective  
23 Serviceman or Secret Serviceman.

1 MR. MILLER: Could I see the documents produced  
2 this morning?

3 MR. SPOONER: Yes.

4 THE WITNESS: May I add one other name? It requires  
5 Jerry Jones's concurrence to enter certain rooms. He inherited  
6 that from General Raleigh. That antedated change of the  
7 Administration.

8 MR. MILLER: Would you mark this as Exhibit 6.

9 (Buchen Deposition Exhibit No. 6 was marked  
10 for identification.)

11 BY MR. MILLER:

12 Q Mr. Buchen, I hand you Buchen Deposition Exhibit 6  
13 which purports to be a copy of a letter dated September 20, 1974,  
14 signed by you and addressed to a Mr. Rhoads, Archivist of the  
15 United States. Did you prepare and send the original of that  
16 letter to Mr. Rhoads?

17 A Yes.

18 Q On or about the date indicated?

19 A Right.

20 MR. MILLER: Would you mark this as Buchen Exhibit 7.

21 (Buchen Deposition Exhibit No. 7 was  
22 marked for identification.)

23



1 BY MR. MILLER:

2 Q I hand you Exhibit No. 7 which purports to be a  
3 letter signed by you addressed to the Attorney General of the  
4 United States dated September 10, 1974. Let me ask you if you  
5 sent the original of that letter to the Attorney General on or  
6 about September 10, 1974?

7 A I did.

8 Q All right.

9 MR. MILLER: Would you mark this No. 8.

10 (Buchen Deposition Exhibit No. 8 was marked  
11 for identification.)

12 BY MR. MILLER:

13 Q I hand you Buchen Deposition Exhibit 8 which purports  
14 to be a letter signed by you dated October 9, 1974, addressed  
15 to Herbert J. Miller, Jr. I ask you if you sent the original  
16 of that letter to Mr. Miller on or about October 9, 1974,  
17 with copies to the persons indicated on the letter?

18 A To the best of my knowledge I sign these letters  
19 and they go to the Secretary and they get out. I should  
20 qualify all my answers that way.

21 MR. MILLER: Was this produced?

22 MR. GOLDBLOOM: Yes, that was produced.

23 MR. MILLER: Would you mark this Buchen Deposition

1 Exhibit No. 9.

2 (Buchen Deposition Exhibit No. 9 was marked  
3 for identification.)

4 BY MR. MILLER:

5 Q I hand you Buchen Deposition Exhibit No. 9 which  
6 purports to be a letter from Herbert J. Miller, Jr., to  
7 Arthur Sampson dated September 13, 1974. Did you see the  
8 original or a copy of that letter, Mr. Buchen, on or about  
9 the date of the letter?

10 A I saw what I now realize probably was an original  
11 which I find in my pile. In the age of Xerox it is so hard  
12 to know whether you <sup>have</sup> gotten a copy or the original. But this  
13 looks to be an original.

14 Q Did you receive the original of that letter on or  
15 about the date indicated?

16 A If this is an original, I did receive it.

17 Q Okay.

18 A That is what I found in my pile.

19 MR. MILLER: Would you mark this which purports  
20 to be an original of a letter from Miller to Sampson dated  
21 September 13, 1974, as Exhibit 10.

22 (Buchen Deposition Exhibit No. 10 was marked  
23 for identification.)

1 MR. SPOONER: Before you go on, I want to make sure  
2 something hasn't slipped between the cracks. We have an 8  
3 and a 10 here. Did you skip 9?

4 MR. MILLER: That is the copy.

5 Would you mark this Deposition Exhibit 11.

6 (Buchen Deposition Exhibit No. 11 was marked  
7 for identification.)

8 BY MR. MILLER:

9 Q I hand you a copy of Exhibit 11 which purports  
10 to be a copy of a letter signed by you and addressed to  
11 Mr. John Brademas, Chairman, Subcommittee on Printing, House  
12 of Representatives, dated October 16, 1974. I ask you, sir,  
13 did you send the original of that letter to Mr. Brademas on or  
14 about the date indicated?

15 A So far as I know, it went to him.

16 Q Have you looked at Exhibit 11 recently, Mr. Buchen?

17 A I have just read it.

18 Q You have just read it?

19 A Yes.

20 Q Are the facts as stated therein true and correct  
21 to the best of your knowledge?

22 A I believe so.

23 MR. MILLER: Would you mark this 12.

1 (Buchen Deposition Exhibit No. 12 was marked  
2 for identification.)

3 BY MR. MILLER:

4 Q I hand you Exhibit 12 which purports to be a copy of  
5 a letter signed by you addressed to Herbert J. Miller, dated  
6 October 9, 1974, and ask you if the original of that letter  
7 and its attachment was sent to Mr. Miller on or about the  
8 date indicated in the letter?

9 A This was already covered.

10 MR. DAVIS: Also Exhibit 8.

11 THE WITNESS: I don't think the subpoena went to you.  
12 This was attached only to the copies that went to the copy  
13 addressees because the letter says, "You already had a copy."

14 MR. MILLER: I see.

15 BY MR. MILLER:

16 Q So the subpoena was not sent along with the  
17 letter of October 9, 1974?

18 A I don't believe so, except to the copy addressees.

19 Q Were copies of the attachment which purports to be  
20 a subpoena sent to Mr. Larry Silberman and the other two people?

21 A I believe so, yes. That is why it is attached to,  
22 that other copy.

23 MR. MILLER: This is Exhibit 13.



1 (Buchen Deposition Exhibit No. 13 was marked  
2 for identification.)

3 BY MR. MILLER:

4 Q I hand you Exhibit No. 13 which purports to be a  
5 letter from Herbert J. Miller, to Mr. Buchen dated September 13,  
6 1974, and ask you if you received the original of that letter on  
7 or about the date of the letter?

8 A I am not sure I received a signed original at that  
9 time. My file indicates that I had an unsigned copy of this  
10 same letter and a notation written in my secretary's hand-  
11 writing indicates that a copy was furnished to Mr. Silberman  
12 on 9/26.

13 I have a recollection that the letter came over  
14 to me in unsigned form and that was on or about September 13th  
15 but it was later that I got a signed copy.

16 Q Came over to you unsigned? Do you recall why that  
17 was, aside from my oversight?

18 A No. I think that you called me at the time and  
19 said you were sending over a draft of a letter you thought  
20 you would send me. I don't think you sent the signed copy  
21 until later.

22 Q Until later. Well, did you eventually see a signed  
23 copy of this letter?

1 A. Yes.

2 Q Do you recall when you first saw the signed copy  
3 of the letter?

4 A The only clue is my note of when a copy was  
5 given to Larry Silberman which my secretary said was 9/26,  
6 a few days later.

7 Q September 26. Okay, thank you.

8 Mr. Buchen, addressing yourself to the problem of  
9 copies of presidential materials of a former President needed  
10 for on-going governmental purposes, have copies been made  
11 of necessary presidential materials to permit on-going  
12 programs to continue with the necessary information in the  
13 file?

14 A Not entirely.

15 Q Has it in some instances?

16 A As far as I know, yes.

17 Q Have you in fact sent letters to counsel for  
18 Mr. Nixon explaining that copies of various files purportedly  
19 belonging to Mr. Nixon had been copied so that the information  
20 will be available for on-going programs in the White House?

21 A I have sent letters since October 22nd indicating,  
22 the files that were reported to me after that date as having  
23 been duplicated and with the originals having gone into the

1 storage areas, and have also indicated that in certain cases  
2 the copying process had not been done but that the originals  
3 were being used for on-going Government purposes.

4 Q The copies that were made were used for on-going  
5 Government purposes; is that correct?

6 A The reason the copies were made is the judgment of  
7 the person in whose office the materials were retained that  
8 they were needed for on-going Government business. To what  
9 extent they have been used, I don't know.

10 MR. MILLER: Off the record.

11 (Discussion off the record.)

12 MR. MILLER: Would you mark this, please.

13 (Buchen Deposition Exhibit No. 14 was marked  
14 for identification.)

15 BY MR. MILLER:

16 Q Mr. Buchen, I hand you a copy of Exhibit 14 which  
17 purports to be a letter from Herbert J. Miller, Jr., to you  
18 dated September 18, 1974. I ask you if you received the  
19 original of that document on or about the date indicated?

20 A I don't recall it. In going through my files in  
21 preparation for the -- for this deposition, I didn't find a  
22 copy in my files. It shows William Casselman got a copy so  
23 there may be one in his.

1 Q You don't recall receiving the original of that?

2 A No.

3 Q Do you ever recall discussin the question of fact  
4 that in the presidential materisl of Mr. Nixon, that there  
5 were personal documents?

6 A Yes.

7 Q Have you ever authorized the removal of those  
8 personal documents from the presidential materials?

9 A We did authorize removal of certain personal items,  
10 as I recall, but not anywhere near as comprehensive as the  
11 ones --

12 Q What personal items were those, Mr. Buchen? Do  
13 you recall when it was?

14 A It was in August. There were some items that  
15 went -- one was a personal telephone list that belonged to  
16 Mrs. Nixon and a few other items that I think were hers.

17 Q Could you tell us how that came to be? How did  
18 that come to pass? Did you authorize it? Did somebody else?

19 A At that time I raised no objections to it because  
20 at that time the only restriction we were under was our  
21 commitment to the Special Prosecutor. I satisfied myself  
22 that there could not possibly be any need for these materials.

23 Q Was there anything other than Mrs. Nixon's personal



1 telephone list?

2 A Well, there were some -- I have a list of them made  
3 some place. I think there were some items that related to  
4 some of the personnel out at San Clemente that had nothing to  
5 do with Government business, just items that were left in the  
6 White House. Actually they were items that were scheduled  
7 for schipment but we interrupted the shipment.

8 Q You interrupted the shipment?

9 A I didn't.

10 Q Who did? Were you informed that the shipment was  
11 interrupted?

12 A After the fact.

13 Q And who informed you that the shipment was inter-  
14 rupted?

15 A I think Mr. Casselman.

16 Q Did Mr. Casselman inform you who ordered the  
17 shipment interrupted?

18 A It was probably General Haig.

19 Q Did you take any steps to countermand the order to  
20 interrupt the shipment?

21 A No.

22 Q Do you recall when that was?

23 A Sometime in August.

1 Q Was it subsequent to August 15th or prior thereto,  
2 if you recall?

3 A I --

4 Q Well, we will get the information.

5 A The materials went after August 15th but the ship-  
6 ment was interrupted before August 15th.

7 Q We will find out from Mr. Casselman.

8 MR. MILLER: I have no further questions.

9 MR. SPOONER: I have none.

10 MR. DAVIS: Nothing.

11 MR. GOLDBLOOM: We have none.

12 (Whereupon, at 1:30 p.m., the deposition in the  
13 above-entitled matter was concluded.)

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT)  
 ) Civil Action Nos.  
 FOR THE DISTRICT OF COLUMBIA) 74-1518, 74-1533, 74-1551

I, Leanne P. Dotson, Notary Public, before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing pages was duly sworn by me; that the testimony of said witness was recorded by me by stenotype and thereafter reduced under my direction to typewritten form; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition is taken; and further, that I am not a relative of or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

*Leanne P. Dotson*  
 \_\_\_\_\_  
 Leanne P. Dotson  
 Notary Public

My commission expires  
 July 31, 1973