

**The original documents are located in Box 6, folder “C.A. 74-1518, 1533, 1551 - Philip Buchen Deposition (2)” of the National Study Commission on Records and Documents of Federal Officials Selected Duplicate Records, 1974-77 at the Gerald R. Ford Presidential Library.**

### **Copyright Notice**

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*Bucyr Dep. Fax H I*

THE WHITE HOUSE

WASHINGTON

August 9, 1974

MEMORANDUM FOR THE WHITE HOUSE STAFF:

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

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

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

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

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

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

*Gerry H. Jones*  
Gerry H. Jones

Special Assistant to the President

## WHITE HOUSE OFFICE PAPERS

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

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

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

### White House Office Papers: Filing with Central Files

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

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

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

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

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

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

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

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

dividual or office from whom they were received.

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

9. No exceptions to the above shall be made without the express consent of the Counsel to the President. Additional advice on the operation of Central Files may be obtained from Frank Matthews, Chief of Central Files (Ext. 2210).

#### White House Office Papers: Disposition of Papers Upon Leaving Staff

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

2. Personal files include: correspondence unrelated to any official duties performed by the staff member; personal books, pamphlets and periodicals; daily appointment books or log books; folders of newspaper or magazine clippings; and copies of records of a personal nature relating to a person's employment or service. Personal files should not include any copies, drafts, or working papers that relate to official business; or any documents or records, whether or not adopted, made or received in the course of official business. The White House Office of Presidential Papers, staffed by representatives of the National Archives, is available to assist staff members in the determination of what are personal files. Any question in this regard should be resolved with their assistance by contacting John Nesbitt, supervisory archivist of the Office of Presidential Papers (Ext. 2515).

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

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

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

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

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

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

7. All confidential and sensitive materials will be protected from premature disclosure by specific provisions of the Presidential Libraries Act of 1955 (44 U.S.C. 2105).

9/5/74

Buchen Dep. Exp # 2

To: Larry Silberman

From: Phil Buchen

As we discussed.

THE WHITE HOUSE

WASHINGTON

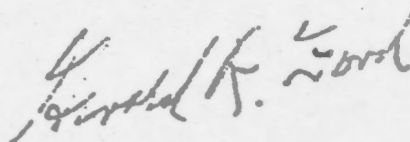
August 22, 1974

Dear Mr. Attorney General:

By this letter I am requesting your legal opinion concerning papers and other historical materials retained by the White House during the administration of former President Richard M. Nixon and now in the possession of the United States or its officials. Some such materials were left in the Executive Office Building or in the White House at the time of former President Nixon's departure; others had previously been deposited with the Administrator of General Services.

I would like your advice concerning ownership of these materials and the obligations of the government with respect to subpoenas or court orders issued against the government or its officials pertaining to them.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gerald R. Ford". The signature is written in a cursive style with some loops and flourishes.

Gerald R. Ford

The Honorable William B. Saxbe  
The Attorney General  
Washington, D. C.

September 6, 1974

MEMORANDUM FOR

The Honorable Laurence H. Silberman  
Deputy Attorney General  
Department of Justice

Attached is the request of President Ford for your legal opinion concerning papers and other historical materials retained by the White House during the administration of former President Richard M. Nixon and now in the possession of the United States or its officials. Also attached is the subpoena served on H. S. Knight, Director of the United States Secret Service, on September 4, 1974.

Phillip W. Buchen  
Counsel for the President

Attachments

cc: Gen. Haig  
Mr. Buzhardt

to. Mr. Buchen

Department  
of the Treasury

room. \_\_\_\_\_ date. 9/6/74

Office of the  
General Counsel

Attached is a copy of the  
subpoena served on September 4  
on Mr. Knight, the Director of the  
Secret Service, at the request of  
the attorneys for Mr. Ehrlichman.



R.R.A.

General Counsel  
Richard R. Albrecht  
room 3000  
ext. 2093



United States District Court  
FOR THE  
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

No. 74-110

v.

JOHN M. MITCHELL, et al,

To H. S. KNIGHT, Director, United States Secret Service,  
as Custodian of Presidential Papers (White House Files),  
The White House  
Washington, D. C.

You are hereby commanded to appear in the United States District Court for the

District of Columbia at John Marshall and Constitution in the city of  
Washington, D. C. on the 16th day of September 1974 at 10:00 o'clock A. M.  
to testify in the case of United States v. Mitchell, et al and bring with you

(SEE ATTACHED)

This subpoena is issued upon application of the Defendant, Ehrlichman.

August 29, 1974

ANDREW C. HALL *Andrew C. Hall*  
Attorney for John D. Ehrlichman  
66 W. Flagler Street  
Miami, Florida 33130

JAMES F. DAVEY  
By *Robert L. L...* Clerk  
Deputy Clerk

\* Insert "United States," or "defendant" as the case may be.

RETURN

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_  
and on \_\_\_\_\_ at \_\_\_\_\_  
served it on the within named \_\_\_\_\_  
by delivering a copy to h \_\_\_\_\_ and tendering to h \_\_\_\_\_ the fee for one day's attendance and the mile-  
age allowed by law.<sup>2</sup>

Dated: \_\_\_\_\_

\_\_\_\_\_, 19\_\_\_\_ By \_\_\_\_\_

Service Fees  
Travel ..... \$  
Services .....

ATTACHMENT TO SUBPOENA TO PRODUCE

1. Notes of Presidential conversations of John D. Ehrlichman from June 17, 1972 to and including May 1, 1973, which are stored in reddish-brown binders.
2. The chronological file of correspondence and memoranda of John D. Ehrlichman from June 17, 1972 to and including May 1, 1973.
3. All personal papers of John D. Ehrlichman prepared or received from June 17, 1972 to and including May 1, 1973 which refer to or relate to the following:
  - (a) The Watergate burglary.
  - (b) The proposal for the development of and the implementation of intelligence gathering activities for the Committee for the Re-election of the President.
  - (c) The activities of Donald Segretti.
  - (d) The investigation and activities in connection therewith of the "Watergate affair".
  - (e) All tape recordings of Presidential conversations involving a discussion of the "Watergate matter".
  - (f) The logs of telephone calls received or placed by Richard M. Nixon from June 17, 1972 to and including May 1, 1973.
  - (g) The logs of telephone calls received or placed by H. R. Haldeman from June 17, 1972 to and including May 1, 1973.
  - (h) The logs of telephone calls received or placed by John D. Ehrlichman from June 17, 1972 to and including May 1, 1973.
  - (i) The visitors' logs and/or appointment logs of Richard M. Nixon from June 17, 1972 to and including May 1, 1973.
  - (j) The visitors' logs and/or appointment logs of H. R. Haldeman from June 17, 1972 to and including May 1, 1973.
  - (k) The visitors logs and/or appointment logs of John D. Ehrlichman from June 17, 1972/and including May 1, 1973.
  - (l) Any and all records of any person, maintained at the White House, which refer to or relate to the "Watergate matter" from June 17, 1972 to and including May 1, 1973.

Buchen Dep. Ex #3

August 30, 1974

To: Herbert J. Miller, Jr.

From: Phil Buchen

Subject: Protection of Certain  
White House Files

Enclosed are memoranda of May 3, 1973,  
May 5, 1973, May 23, 1973, June 21, 1974,  
and August 23, 1974.

There are intervening memoranda which  
I have omitted, but which you are free  
to come and see if you would like.

Attachments

PWBuchen:ed

May 3, 1973

### PROTECTION OF WHITE HOUSE FILES

The following procedure was adopted after consultation among the Department of Justice, the FBI and White House counsel:

1. All files of H. R. Haldeman, John D. Ehrlichman and John W. Dean, III, have been removed from their offices and placed in two secure locations in the Old EOB.
2. At each location where such files are now maintained an FBI agent is present at all times during working hours to supervise access. At all other times the locations are physically secure and no access is permitted.
3. The files may be examined in the secure locations, or reproduced, in the presence of an FBI agent. They may not, however, be removed from the secure locations.
4. If it becomes necessary to remove a particular file from its secure location for any reason, a satisfactory method for safeguarding the file will be agreed upon by the FBI and White House counsel on an ad hoc basis.

THE WHITE HOUSE  
WASHINGTON

May 5, 1973

MEMORANDUM FOR JAMES J. ROWLEY  
FROM: LEONARD GARMENT *LG*  
SUBJECT: Protection of White House Files

This memorandum states the procedures to be followed with respect to protection of the files of H. R. Haldeman, John D. Ehrlichman and John W. Dean, III, by Secret Service guards.

1. The files of H. R. Haldeman are located in Room 522. The persons who have access to those files are listed on the attached memorandum (Tab A).
2. Additional files of H. R. Haldeman and files of John Dean and John Ehrlichman are located in Room 84. Access to those files may be given to the persons on the attached memorandum (Tab B).
3. Access to Room 522 or to the specified files in Room 84 by the persons listed on the attached memorandum should be checked with Bruce Kehrli. In addition, a log of requests shall be maintained for Room 522 and for the specified files in Room 84. It will include the date, time of entry, time of exit, whether any xeroxing was done and the name of the individual admitted.
4. Examination of files in Room 522, or the specified files in Room 84, shall be done in the presence of the guard. This will not however involve any identification or examination by the guard of the particular files examined.
5. A xerox machine is present in Room 522. However, a guard will have to accompany anyone who takes material from Room 84.

for purposes of xeroxing. It is the responsibility of the guard to assure that all material taken for purposes of xeroxing be returned to Room 84.

6. With the exception of the temporary removal of material from Room 84 for xeroxing, no material is to be removed from either Room 522 or Room 84.

Attachments.

THE WHITE HOUSE

WASHINGTON

ROOM 522 ACCESS PROCEDURE

The following people are allowed access to room 522:

H. R. Haldeman  
Larry Higby  
Terry O'Donnell  
Bruce Kehrli  
John Ehrlichman  
Tod Hullin  
Jana Hruska

George Collins

per Bruce Kehrli  
5-7-73

Before anyone is allowed access, however, the agent on duty should contact Bruce Kehrli for clearance.

All material currently stored in room 522 must remain there. No files are to be taken out of the room, however, if copies are needed a Xerox machine has been provided.

Attach 13

THE WHITE HOUSE

WASHINGTON

ROOM 84

The following applies to requests for the files of H. R. Haldeman, John Dean and John Ehrlichman only.

The following people are allowed access to the H. R. Haldeman files:

H. R. Haldeman  
Larry Higby

Terry O'Donnell  
Bruce Kehrli

The following people are allowed access to the John Dean files:

John Dean  
Fred Fielding

Darlene Moulds  
Joe Adams

Bruce Kehrli

The following people are allowed access to the John Ehrlichman files:

John Ehrlichman  
Tod Hullin

Jana Hruska  
Bruce Kehrli

Before anyone looks into the files mentioned above, the request should be checked with Bruce Kehrli.

The agent on duty should keep a log of requests for these particular files only. No files shall be removed from the area, however, copies are to be made if needed and one agent should accompany the individual making the copies to make sure the file remains intact.

*Bruce A. Kehrli*

Bruce A. Kehrli  
Special Assistant  
to the President



... THE HOUSE

WASHINGTON

23 May 1973

MEMORANDUM FOR: JAMES J. ROWLEY

FROM: J. FRED BUZHARDT *J.F.B.*

SUBJECT: Protection of and Access to Presidential Papers (White House Files)

*D.H.*

This memorandum supersedes all previous directions with respect to the protection of the files of John J. Caulfield, Dwight Chapin, Charles Colson, John W. Dear, III, John D. Ehrlichman, H. R. Haldeman, Egil Krogh, Jeb Stuart Magruder, Gordon Strachan and David Young which files are located in Room 522 and Room 84 of the Executive Office Building by Secret Service guards.

1. Until further notice, access to the subject files are to be granted only to the above named individuals and the access of each of these individuals is limited to his own files.
2. None of the persons granted access shall be permitted to make copies of the documents examined nor shall they be permitted to make notes from the documents.
3. Access to Room 522 or to the specified files in Room 84 by the persons listed on the attached memorandum should be checked with Bruce Kehrli. In addition, a log of requests shall be maintained for Room 522 and for the specified files in Room 84. It will include the date, time of entry, time of exit, and the name of the individual admitted.
4. Examination of files in Room 522, or the specified files in Room 84, shall be done in the presence of the guard. This will not however involve any identification or examination by the guard of the particular files examined.

cc: Gen. Haig  
Mr. Kehrli

June 21, 1974

MEMORANDUM FOR:

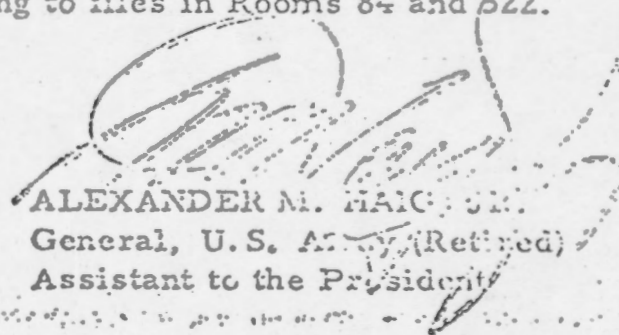
THE HONORABLE H. STUART KNIGHT  
Director  
United States Secret Service

SUBJECT:

Protection of White House Files

Effective this date, all requests for entry into Rooms 84 and 522 in OEOB, for purpose of reviewing files should be cleared through Mr. Geoffrey C. Shepard. Mr. Shepard will document each clearance by memorandum to Director Knight, where a standing authorization by memorandum does not already exist.

The procedures set forth in memorandums of J. Fred Buzhardt commencing May 23, 1973, are still in effect, except for Mr. Shepard replacing Mr. J. Fred Buzhardt in coordinating the approval of requests pertaining to files in Rooms 84 and 522.



ALEXANDER M. HAIG, JR.  
General, U. S. Army (Retired)  
Assistant to the President

1110  
- 211174

To - HOUSE

WASHINGTON

August 23, 1974

MEMORANDUM FOR: H. S. Knight  
Director, United States Secret Service

SUBJECT: Protection of White House Files

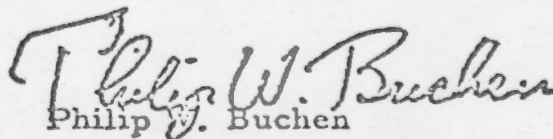
This memorandum will continue in effect the standing instructions issued to you by J. Fred Buzhardt in his memorandum dated May 23, 1973, and by General Alexander Haig in his memorandum dated June 21, 1974, regarding access to all of the files located in Room 522 and the files located in Room 84 of the Old Executive Office Building, which files are under the protection of the United States Secret Service, subject to the following clarifying amendments:

Strike all of the names listed in the first paragraph of the memorandum dated May 23, 1973, and insert in lieu thereof the names listed in Exhibit 1, attached hereto.

Strike the first sentence of numbered paragraph 3 of the memorandum dated May 23, 1973.

Strike the name of Geoffrey C. Shepard wherever it appears in the memorandum dated June 21, 1974, and insert in lieu thereof the name of William E. Casselman II.

This memorandum will remain in effect until amended or revoked by memorandum from the Counsel to the President to the Director of the United States Secret Service. The continued access to Room 522 and Room 84 under the terms of the May 23, 1973, and June 21, 1974, memorandum is being undertaken by me with the concurrence of Richard M. Nixon.

  
Philip W. Buchen  
Counsel to the President

Enclosure

cc: General Alexander M. Haig, Jr.

EXHIBIT 1

Patrick J. Buchanan  
John J. Caulfield  
Dwight Chapin  
Charles Colson  
John W. Dean III  
Frank DeMarco  
John D. Erhlichman  
H. R. Haldeman  
Larry Higby  
Tom Huston  
E. Howard Hunt  
Herb Kalmbach  
Kenneth Khachigian  
Egil Krogh  
Fred LaRue  
G. Gordon Liddy  
Jeb Stewart Magruder  
John M. Mitchell  
Richard Moore  
Robert G. Odle  
Bart Porter  
Robert Reisner  
Maurice Stans  
Hugh Sloan  
Gordon Strachan  
David Young

Buchen Dep Ex #4

D R A F T

Dear Mr. Sampson:

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

In the interim, so that my <sup>materials</sup> ~~papers~~ may be preserved, I offer to transfer to the Administrator of General Services (the "Administrator"), for deposit, pursuant to 44 U.S.C. § 2101, et seq., all of the papers, documents, manuscripts, books and other materials pertaining to my Presidency (the "Materials"), subject to the following:

1. The Administrator agrees to accept solely for the purpose of deposit the transfer of the Materials, and in so accepting the Materials agrees to abide by each of the terms and conditions contained herein.
2. This agreement for deposit of the Materials shall terminate at the time of my death or at such earlier time as provided in paragraph 9, hereof.
3. I retain all legal and equitable title to the Materials, including all literary property rights.

my entire

*an existing*

4. The Materials shall, upon acceptance of this offer by the Administrator, be deposited temporarily in a facility belonging to the United States, located within the State of California near my present residence. The Materials shall remain deposited in the temporary California facility until such time as there may be established, with my approval, a permanent Presidential archival depository as provided for in 44 U.S.C. § 2103.

5. The Administrator shall provide in such temporary depository and in any permanent Presidential archival depository reasonable office space for my personal use in accordance with 44 U.S.C. § 2108(f). The Materials in their entirety shall be deposited within such office space in the manner described in paragraph 6 hereof.

*Confidentiality*

6. Within both the temporary and any permanent Presidential archival depository, all of the Materials shall be placed within <sup>secured</sup> ~~sealed~~ storage <sup>areas</sup> ~~containers~~ to which access can be gained only by use of two keys. One key, essential for access, shall be given to me alone as custodian of the Materials. The other key may be duplicated and entrusted by you to the Archivist of the United States or to members of his staff.

7. Access to the Materials within the <sup>secured areas</sup> ~~sealed containers~~ shall be restricted as follows:

A. Except as provided in subparagraph B) below access shall be limited to myself, and to such persons as I may authorize from time to time in writing the scope of such access to be set forth by me in each said written authorization. Any request for access to the Materials made to the Administrator, the Archivist of the United States or any member of their staffs shall be referred to me. In addition to access, I shall have the right to withdraw from deposit without formality any or all of the Materials to which this letter

applies and to retain such withdrawn Materials for any personal use, reproduction, examination, publication or display by myself or by anyone else I may approve. However, for a period of <sup>three</sup> ~~two~~ years from the date of the creation of the deposit, I agree not to withdraw from deposit any originals of the Materials, except those portions of the Materials which relate to the personal and business affairs of myself or my family. During said <sup>three</sup> ~~two~~ year period I may make reproductions of any originals of the Materials and withdraw from deposit such reproductions for any use I deem appropriate.

7 B. In the event that production of the Materials or any portion thereof is demanded by a subpoena or other order directed to the Administrator, the Archivist of the United States, or any member of their staffs, the recipient of the subpoena or order shall immediately notify me so that I may respond thereto, as the owner and custodian of the <sup>Materials</sup> ~~documents~~, with sole right and power of access thereto and, if appropriate, assert any privilege or defense I may have. 7 Prior to any such production, I shall inform the United States so that it may determine whether it chooses to object to the production on grounds of national security or any other privilege.

8. <sup>reasonable</sup> The Administrator shall arrange and be responsible for the protection of the Materials from loss, destruction or access by unauthorized persons.

9. In the event that any provision of this offer and, if accepted by you, agreement for deposit of the Materials is held by a court of law to be unlawful or unenforceable or in the event the Administrator or any other person acting on behalf of the United States fails to abide by any of the terms and conditions of this depository agreement, I may, in my sole discretion, terminate the deposit provided for herein.

10. At the time of my death, any or all of the Material which remain on deposit as provided herein shall be the property of my estate to be disposed of as I may provide by Will.

*not to be  
used for  
any purpose*

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

If you determine that the terms and conditions set forth above are acceptable for the purpose of governing the establishment and maintenance of a depository of the Materials ~~in Schedule A~~, pursuant to 44 U.S.C. § 2101, please indicate your acceptance by signing the enclosed copy of this letter and returning it to me.



Bucher Depex #5

5/10

DRAFT

Preserving records

written

Materials

Dear Mr. Sampson:

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

In the interim, so that my papers may be preserved, I offer to transfer to the Administrator of General Services (the "Administrator"), for deposit, pursuant to 44 U.S.C. § 2101, et seq., all of the papers, documents, manuscripts, books and other materials pertaining to my Presidency (the "Materials"), subject to the following:

1. The Administrator agrees to accept solely for the purpose of deposit the transfer of the Materials, and in so accepting the Materials agrees to abide by each of the terms and conditions contained herein.
2. This agreement for deposit of the Materials shall terminate at the time of my death or at such earlier time as provided in paragraph 9, hereof.
3. I retain all legal and equitable title to the Materials, including all literary property rights.

4/10/54

my entire

In the event of my death with the contractual obligations and rights shall inure to the benefit upon my Administrator

we do not

4. The Materials shall, upon acceptance of this offer by the Administrator, be deposited temporarily in a facility belonging to the United States, located within the State of California near my present residence. The Materials shall remain deposited in the temporary California facility until such time as there may be established, with my approval, a permanent Presidential archival depository as provided for in 44 U.S.C. § 2108.
5. The Administrator shall provide in such temporary depository and in any permanent Presidential archival depository reasonable office space for my personal use in accordance with 44 U.S.C. § 2108(f). The Materials in their entirety shall be deposited within such office space in the manner described in paragraph 6 hereof.
6. Within both the temporary and any permanent Presidential archival depository, all of the Materials shall be placed within sealed storage containers to which access can be gained only by use of two keys. One key, essential for access, shall be given to me alone as custodian of the Materials. The other key may be duplicated and entrusted by you to the Archivist of the United States or to members of his staff.
7. Access to the Materials within the <sup>sealed</sup> ~~sealed~~ containers shall be restricted as follows:

A. Except as provided in subparagraph B<sup>9</sup> below access shall be limited to myself, and to such persons as I may authorize from time to time in writing the scope of such access to be set forth by me in each said written authorization. Any request for access to the Materials made to the Administrator, the Archivist of the United States or any member of their staffs shall be referred to me. In addition to access, I shall have the right to withdraw from deposit without formality any or all of the Materials to which this letter

*Transcript*

applies and to retain such withdrawn Materials for any personal use, reproduction, examination, publication or display by myself or by anyone else I may approve. However, for a period of two years from the date of the creation of the deposit, I agree not to withdraw from deposit any originals of the Materials, except those portions of the Materials which relate to the personal and business affairs of myself or my family. During said two year period I may make reproductions of any originals of the Materials and withdraw from deposit such reproductions for any use I deem appropriate.

*the above is a reproduction of the original*

B. In the event that production of the Materials or any portion thereof is demanded by a subpoena or other order directed to ~~the Administrator, the Archivist of the United States, or any member of their staffs,~~ <sup>any official</sup> the recipient of the subpoena or order shall immediately notify me so that I may respond thereto, as the owner and custodian of the ~~documents,~~ <sup>materials,</sup> with sole right and power of access thereto and, if appropriate, assert any privilege or defense I may have. Prior to any such production, I ~~shall~~ <sup>shall</sup> ~~inform~~ the United States so that it ~~may~~ <sup>may</sup> ~~and~~ determine whether it ~~chooses~~ to object to the production on grounds of national security or any other privilege.

*reasonable*

8. The Administrator shall arrange and be responsible for the protection of the Materials from loss, destruction or access by unauthorized persons.

*Mutual*

9. In the event that any provision of this offer and, if accepted by you, agreement for deposit of the Materials is held by a court of law to be unlawful or unenforceable or in the event the Administrator or any other person acting on behalf of the United States fails to abide by any of the terms and conditions of this depository agreement, I may, in my sole discretion, terminate the deposit provided for herein.

10. At the time of my death, any or all of the Materials which remain on deposit as provided herein shall be the property of my estate to be disposed of as I may provide by Will.

*to be bound*

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

If you determine that the terms and conditions set forth above are acceptable for the purpose of governing the establishment and maintenance of a depository of the Materials in Schedule A, pursuant to 44 U.S.C. § 2101, please indicate your acceptance by signing the enclosed copy of this letter and returning it to me.

~~If you to be bound by this agreement~~



Upon your acceptance we shall both be bound by this agreement

Bushen dep. Ex 5

THE WHITE HOUSE  
WASHINGTON

September 20, 1974

Dear Mr. Rhoads:

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

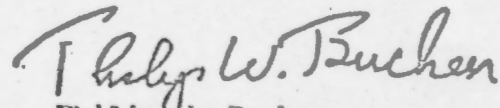
- 1) A principal reason that I had recommended acceptance of this agreement as to disposition of tape recordings which are covered by paragraphs 8 and 9 was based upon my understanding of the clandestine nature of their origin. It is my belief that such recordings made of conversations engaged in by persons of whom one or more were unaware of the recordings are so offensive and contrary to their interests in personal privacy and in freedom of expression as to justify or even require treatment different from that accorded other materials covered by the agreement. The different treatment specified in the agreement, while allowing for Court-ordered disclosure to appropriate parties over a 5-year period, does preclude other access except as conducted or directed by the former President in accordance with specified safeguards involving the General Services Administration and otherwise allows, and ultimately requires, destruction of the tapes over a second 5-year period.
- 2) You correctly pointed out that this different treatment of such tape recordings results in cutting off the possibility for historians to learn the conversational contents of the tapes at some future time, even so far in the future as to make it unlikely any persons involved would then be living. You also expressed your opinion that this was a very objectionable result from your point of view and from that of other archivists and historians. I assured you that you were under no obligation to refrain from expressing this opinion freely so long as you hold it, and that I would be willing to assure anyone to that effect who inquires. Also, you may use this letter to overcome any possible

implication that your undertaking or authorizing steps to implement the agreement as written, whether in the initial 5-year period or afterwards, may constitute a retreat from the opinion you expressed.

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

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

Sincerely yours,

  
Philip W. Buchen  
Counsel to the President

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

cc: William Casselman  
Administrator Arthur F. Sampson

Buchen Sep. Ex. ?

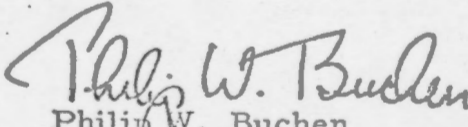
THE WHITE HOUSE  
WASHINGTON

September 10, 1974

Dear Mr. Attorney General:

You are hereby authorized to release for publication your opinion rendered to me on September 6, 1974 concerning the ownership of certain papers and other historical materials retained by the White House Office during the administration of former President Nixon.

Sincerely,

  
Philip W. Buchen  
Counsel to the President

Honorable William B. Saxbe  
The Attorney General  
Department of Justice  
Washington, D. C. 20530

*Buc in Dep Ex. 8*

THE WHITE HOUSE

WASHINGTON

October 9, 1974

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

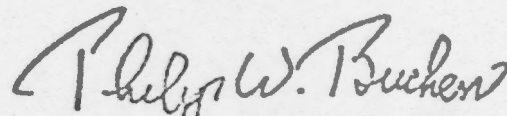
Attention: Mr. Herbert J. Miller, Jr.

Gentlemen:

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

The Agreement contemplates that your client will respond to any such subpoena. So I trust that, if you intend to raise no timely objections in Court, you will work out timely and satisfactory arrangements for production of the documents, consistent with the present circumstances that the documents are still located here under appropriate safeguards. Since the Agreement specifies that you will determine whether to object to production of materials, and will inform the United States if you determine not to object so that it may inspect the materials for the limited purpose stated in the Agreement, I intend to take no action to quash the Subpoena duces tecum and will abide by any Court order as it may affect me.

Sincerely,



Philip W. Buchen  
Counsel to the President

Enclosure

bcc: Larry Silberman  
Irving Jaffe  
Leon Jaworski  
Bill Casselman



*Anchor Dep Ex. 9*

LAW OFFICES

MILLER, CASSIDY, LARROCA & LEWIN

1320 19TH STREET, N.W. - SUITE 500

WASHINGTON, D. C. 20036

ARZA CODE 202

TELEPHONE 293-6400

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

JOSEPH S. MCCARTHY  
COURTNEY A. EVANS  
OF COUNSEL

September 13, 1974

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

Dear Mr. Sampson:

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

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

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

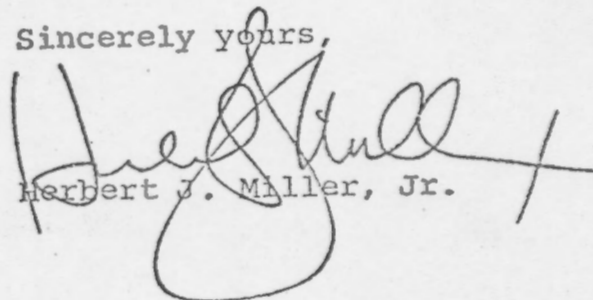
I hereby request on Mr. Nixon's behalf that you immediately arrange for all Presidential materials referred to in the depository agreement which have not as yet been stored in secured areas to be stored immediately under conditions whereby access can be gained only by implementation

Honorable Arthur F. Sampson  
September 13, 1974  
Page Two

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

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

Sincerely yours,



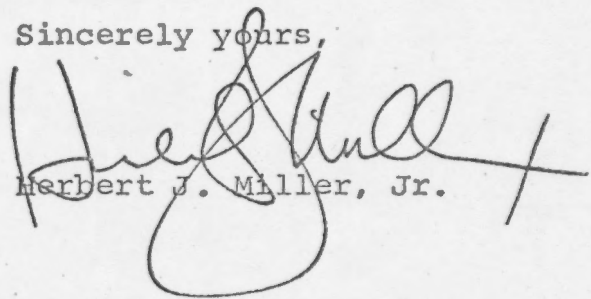
Herbert J. Miller, Jr.

Honorable Arthur F. Sampson  
September 13, 1974  
Page Two

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

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Herbert J. Miller, Jr.", with a large, stylized flourish extending from the bottom of the signature.

Herbert J. Miller, Jr.

Buchen Inv Ex. 10

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

AREA CODE 202  
TELEPHONE 293-6400

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

JOSEPH S. MCCARTHY  
COURTNEY A. EVANS  
OF COUNSEL

September 13, 1974

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

Dear Mr. Sampson:

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

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

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

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

Buchendep Ex. 11

THE WHITE HOUSE  
WASHINGTON

October 16, 1974

Dear Mr. Brademas:

Your Subcommittee, I am advised, has pending before it S. 4016, a bill recently passed by the Senate which relates to the papers and other materials, including tape recordings, of former President Nixon.

Mr. William Sudow has been in contact with Mr. William Casselman of our staff regarding the status of these materials during the upcoming recess of the House and Senate.

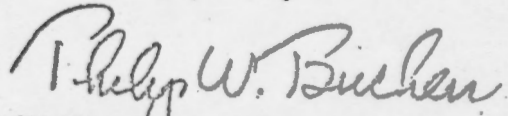
As you may know, my office has been seeking to comply with existing court orders and the requirements of the Office of the Watergate Special Prosecution Force with respect to certain of these materials. We have agreed with the Prosecution Force that the White House will not move to implement the September 6 agreement between former President Nixon and GSA Administrator Sampson or otherwise cause to be removed any materials of the former President pending the outcome of discussions with the Prosecution Force.

I am doubtful about when a plan can be developed for implementing the agreement that satisfies the interests of the Prosecution Force and those reflected in various outstanding subpoenas and Court orders. However, in view of the opinion of the Attorney General as to the ownership of the materials, unless a Court of appropriate jurisdiction should rule otherwise, we have no basis for not recognizing the former President's rights as well, except as the subpoena rights of the Special Prosecutor and of parties to Court proceedings could still delay a change of custody. Of course, even when the double-key custody arrangements called for by the agreement are carried out, physical safeguarding of the materials is assured by the agreement as it exists, and the safeguards would in all events continue for a minimum of three years. Thus, a valid enactment by Congress involving the materials, if it occurred before the end of three years, could not be thwarted by

any possible prior destruction of the subject matter of the legislation.

I trust this information will be helpful.

Sincerely yours,



Philip W. Buchen  
Counsel to the President

The Honorable John Brademas  
Chairman  
Subcommittee on Printing  
Committee on House Administration  
Washington, D. C. 20515

THE WHITE HOUSE

WASHINGTON

October 9, 1974

Buchen Dep. Ex 12

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

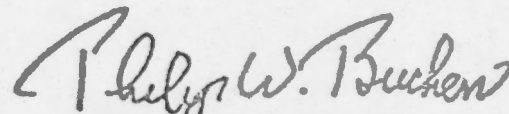
Attention: Mr. Herbert J. Miller, Jr.

Gentlemen:

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

The Agreement contemplates that your client will respond to any such subpoena. So I trust that, if you intend to raise no timely objections in Court, you will work out timely and satisfactory arrangements for production of the documents, consistent with the present circumstances that the documents are still located here under appropriate safeguards. Since the Agreement specifies that you will determine whether to object to production of materials, and will inform the United States if you determine not to object so that it may inspect the materials for the limited purpose stated in the Agreement, I intend to take no action to quash the Subpoena duces tecum and will abide by any Court order as it may affect me.

Sincerely,



Philip W. Buchen  
Counsel to the President

Enclosure      bcc: Larry Silberman  
                     Irving Jaffe  
                     Leon Jaworski  
                     Bill Casselman

United States District Court  
FOR THE  
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

No. 74-110

v.

John N. Mitchell, et al

To PHILIP BUCHEN  
The White House  
Washington, D. C.

You are hereby commanded to appear in the United States District Court for the District of Columbia at John Marshall & Constitution, in the city of Washington, on the 1st day of October, 1974 at 9:30 o'clock A.M. to testify in the case of United States v. Mitchell, et al, and bring with you the documents and tapes described on the attached schedule.

This subpoena is issued upon application of the Defendant, John D. Ehrlichman.

September 26, 1974

Andrew C. Hall  
Attorney for Defendant Ehrlichman  
Twelfth floor, Concord Building  
66 West Flagler Street  
Miami, Florida 33130

JAMES F. DAVEY

By Robert L. Linn  
Clerk  
Deputy Clerk

\* Insert "United States," or "defendant" as the case may be.  
(305) 377-0241

RETURN

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_ and on \_\_\_\_\_ at \_\_\_\_\_ served it on the within named \_\_\_\_\_ by delivering a copy to him and tendering to him the fee for one day's attendance and the mileage allowed by law.<sup>2</sup>

Dated: \_\_\_\_\_

Service Fees \_\_\_\_\_, 19 \_\_\_\_\_ By \_\_\_\_\_

Travel \_\_\_\_\_ \$  
Services \_\_\_\_\_

Total \_\_\_\_\_ \$

<sup>2</sup> Fee and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof. 28 USC 1825.



John D. Ehrlichman's handwritten report of April 14, 1973 of his investigation of Watergate and Watergate-related activities.

2. A proposed newspaper advertisement dealing with Watergate allegations and facts concerning those allegations, prepared sometime between the Democratic National Convention and Labor Day, 1972.
3. Notes of a draft statement dictated by then President Richard M. Nixon, waiving executive privilege.

[Items 1 through 3 are located in a folder marked, "April, 1973 Watergate Notes".]

4. Notes of Presidential conversations with John D. Ehrlichman for the following dates:

November 27, 1972

November 28, 1972

November 30, 1972

December 8, 1972

December 11, 1972

December 18, 1972

February 7, 1973

February 14, 1973

February 16, 1973

February 17, 1973

February 23, 1973

February 24, 1973

February 27, 1973

March 17, 1973

March 20, 1973

March 21, 1973

March 23, 1973

March 27, 1973

March 30, 1973

March 31, 1973

April 2, 1973

April 3, 1973

April 4, 1973

April 12, 1973

April 15, 1973

April 16, 1973

April 17, 1973

April 18, 1973

April 19, 1973

April 20, 1973

April 25, 1973

April 26, 1973

April 27, 1973

August 26, 1972

November 1, 1972

5. Memorandum dated June 26 or 27, 1972 from the Central Intelligence Agency to the Federal Bureau of Investigation indicating the results of an intra agency review made by the Central Intelligence Agency as to the involvement of persons alleged to be connected with the break in of Democratic National Headquarters.
6. The tape of the Presidential conversation on or about July 28, 1972 wherein the President of the United States asked John Ehrlichman to cause a deposition to be taken of Maurice Stans in lieu of testimony by Mr. Stans before the Grand Jury.

7. The tape recording produced by the White House Communications Agency of a meeting in the State Dining Room of the White House on September 12, 1972 between the President, Vice-President, Members of the Cabinet, Republican Congressional leadership, and White House Staff.
  
8. All news summaries prepared by the White House for use by the President or the Presidential staff from June 17, 1972 to and including July 21, 1972.

LAW OFFICES  
JAMES, CASSIDY, LARROCA & LEWIN  
1920 19TH STREET, N.W. - SUITE 500  
WASHINGTON, D. C. 20036

AREA CODE 202  
TELEPHONE 293-6400

*Buchen Dep Ex # 13*

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

JOSEPH S. MCCARTHY  
COURTNEY A. EVANS  
OF COUNSEL

September 13, 1974

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

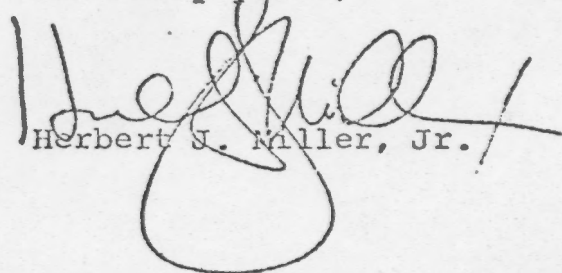
Dear Mr. Buchen:

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

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

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

Sincerely yours,

  
Herbert J. Miller, Jr.

Buchen dep. Ex. 14

September 18, 1974

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

Dear Mr. Buchen:

Reference is made to the letter of September 6, 1974, from my client, Richard M. Nixon, to Mr. Arthur Sampson, Administrator of General Services, pursuant to which Mr. Nixon agreed to place on deposit with the Administrator, under the authority of 44 U.S.C. § 2107, a substantial portion of his Presidential materials.

At the time the above letter was executed there was insufficient time to attempt to remove from the deposit certain strictly personal items such as memorabilia from the White House, and strictly personal records such as family letters, personal business records, medical records, family photo albums and portraits, letters from his mother, files from his law practice and similar documents. I would appreciate your undertaking to work with designees of Mr. Nixon to insure such documents could be released from the depository well in advance of the three-year period. Mr. Nixon has signed the agreement on representation to him that this could be accomplished with reasonable dispatch.

Sincerely,

Herbert J. Miller, Jr.

cc: William E. Casselman, II, Esquire  
( Room 282, Executive Office Bldg., Wash, D.C. 20500 )

**September 24, 1974**

**Dear Mr. Chairman:**

**The President has asked me to reply to your second letter to him of September 17, 1974, which concerns the disposition of tapes and documents compiled by former President Nixon and currently within the custody of the Federal Government.**

**These materials, as you know, are the subjects of various subpoenas and court orders and of requests for disclosure by the Office of the Special Prosecutor. As a result, no further action is being taken to affect the disposition of such materials until after the issues raised by the pendency of the subpoenas, court orders, and Special Prosecutor's requests are resolved. The period of time involved in resolving such issues will of itself operate to assure adherence to the request in the second paragraph of your letter.**

**I shall, of course, keep you informed, if you desire, of any later developments which could lead to a change in the present situation.**

**Sincerely yours,**

**Philip W. Buchen  
Counsel to the President**

**The Honorable William L. Hungate  
Chairman, Subcommittee on Criminal Justice  
Committee on the Judiciary  
House of Representatives  
Washington, D. C. 20515**

**cc: John Marsh  
William Timmons**

PETER W. RODINO, JR. (N.J.) CHAIRMAN

HAROLD E. DONOHUE, MASS.  
 JACK BROOKS, TEX.  
 DONALD W. PASTERMEIER, WIS.  
 DON EDWARDS, CALIF.  
 WILLIAM L. HUNGATE, MO.  
 JOHN CONYERS, JR., MICH.  
 JOSEPH L. ROSEN, PA.  
 JEROME R. WALSH, CALIF.  
 WALTER FLOWERS, ALA.  
 JAMES H. MANN, S.C.  
 PAUL B. SANDERS, MD.  
 JOHN F. TINKER, OHIO  
 GEORGE E. BROWN, CALIF.  
 ROBERT F. BYRNE, MASS.  
 CHARLES B. FANNING, N.Y.  
 BARBARA JOHNSON, TEX.  
 RAY THURMOND, MISS.  
 ELIZABETH HOLZMAN, N.Y.  
 WAYNE OWENS, UTAH  
 EDWARD MCVINSKY, IOWA

EDWARD HUTCHINSON, MICH.  
 ROBERT MCCLORY, ILL.  
 HENRY P. SMITH III, N.Y.  
 TOM HALLSBACK, ILL.  
 CHARLES E. WIGGINS, CALIF.  
 DAVID W. DENNIS, IND.  
 HAMILTON FISH, JR., N.Y.  
 WILEY MAYNE, IOWA  
 LAWRENCE J. HOGAN, MD.  
 M. CALDWELL BUTLER, VA.  
 WILLIAM S. COHEN, MAINE  
 TRANT LOTT, MISS.  
 HAROLD V. FROENICH, WIS.  
 CARLOS J. MOONHEAD, CALIF.  
 JOSEPH J. MARAZITI, N.J.  
 DELBERT L. LATTI, OHIO

Congress of the United States  
 Committee on the Judiciary  
 House of Representatives  
 Washington, D.C. 20515

GENERAL COUNSEL:  
 JEROME M. ZIPFMAN  
 ASSOCIATE GENERAL COUNSEL:  
 GAILIN J. CLINE  
 COUNSEL:  
 HENRY RT FUCHS  
 WILLIAM P. SHATTUCK  
 B. CHRISTOPHER HOLDE  
 ALAN A. PARKER  
 JAMES F. FALCO  
 MAURICE A. BARROZA  
 ANTHONY P. ENDRES, JR.  
 FRANKLIN G. POLK  
 THOMAS E. MOONEY  
 MICHAEL W. BLOMMER  
 ALEXANDER B. COOK  
 CONSTANTINE J. GEKAS  
 ALAN F. COFFEY, JR.

September 17, 1974

SEP 19 1974

BT

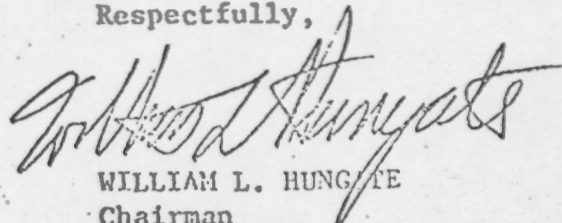
President Gerald R. Ford  
 The White House  
 Washington, D. C.

Dear Mr. President:

As I mentioned in my letter of September 17, 1974, the Subcommittee on Criminal Justice, of which I am Chairman, has pending before it H. Res. 1367 relating to the pardon of former President Richard M. Nixon. In addition, the Subcommittee has pending before it a variety of proposals relating to the disposition of tapes and documents compiled by former President Nixon and currently within the custody of the Federal Government.

Under the circumstances, I respectfully urge that no further action be taken affecting the disposition of such materials until Congress has had sufficient time to thoroughly consider the issue.

Respectfully,



WILLIAM L. HUNGATE  
 Chairman  
 Subcommittee on Criminal Justice

WLH:rtd

## Administration of Gerald R. Ford

# PRESIDENTIAL DOCUMENTS

Week Ending Friday, September 13, 1974

### Alexandria Police Association Picnic

*The President's Remarks at the Picnic at the Northern Virginia Police Academy. September 7, 1974*

THE PRESIDENT. Well, thank you very, very much for the invitation to be here and the warm reception that I have received.

I wanted to come out here because it was one way that I could express my appreciation for the warm and kind things that were done by so many of the Alexandria Police Department, not only during those hectic weeks when I was Vice President and the even more hectic 8 or 10 days while we couldn't move out of where we were until where we are now.

But it was the wonderful opportunities that I and my wife and our four children had to live in Alexandria, to get to know the police department, the school system, the many nice people.

We have many fond memories of living in Alexandria, and we aren't going to sell our home. We are going to come back there. I don't know how soon. We like it and we like the people, and we are deeply grateful to the members of the Alexandria Police Force for all of the nice and many kind things that were done on our behalf.

And we apologize for the inconveniences, the extra hours, and any of the other problems that you went through.

When I decided to come out and have an opportunity to join with you in the crabfest, my schedule was put before me, and it indicated that I was to welcome some very distinguished guests from the Soviet Union who are here with me now, along with three of our American astronauts.

They are Soviet Union cosmonauts who have been in space and the American astronauts have likewise had that experience. And next July, in 1975, the cosmonauts, the two, and the three American astronauts will take off, the Soviet Union cosmonauts from their country, and our

three from our country. And within 2 days, or whatever the time is, they will join up in space and will spend 2 days with their two space vehicles joined, and they will move back and forth between their spaceship and our spaceship.

This is not only a tremendous technological achievement but it is, I think, far broader in its implications and ramifications as far as the world is concerned.

We, as Americans, are very proud of our country; our friends from the Soviet Union are very proud of their country. And our two countries in very recent years have sought to work together in space, in the environment, in medicine, in many fields, including an effort to resolve differences in strategic arms.

I think all of us agree that the broader we can make our relationships in health, in environment, in space, and many other areas, the better it is for us here in America and for our friends in the Soviet Union.

So, I am honored to have the Ambassador from the Soviet Union, Mr. Anatoli Dobrynin, and his cosmonauts here this afternoon. They are your guests and I would like, Mr. Ambassador, for you, because I am not the best spokesman in the Russian language, if you would introduce—well, I will try, but if I don't do very well, then he will have to correct me.

First, this is the Ambassador from the Soviet Union, Mr. Anatoli Dobrynin. And the next is Major General Vladimir Shatalov. General Shatalov.

And Colonel Aleksei Leonov. Colonel Leonov. And Mr. Valeri Kubasov. Mr. Kubasov.

I think your warm welcome to them is indicative of the kind of friendship we have between peoples from the Soviet Union and the United States.

Now, I would like to introduce our three astronauts. First, Brigadier General Tom Stafford; secondly, Deke Slayton. Where is Deke? And then Vance Brand. Where is Vance?

So, next July, I want you young people to understand this, next July the people you have met—one group being launched from the Soviet Union and the other group being launched from the United States of America—will meet way up in the heavens some place—where is it going



to be? They are going to meet over Spain—I am sure for some technical reason, not for any other.

We have some other guests here. General Brent Scowcroft, who is the Deputy Director of the National Security Council; and Mr. Lowe, who is the Deputy Director of our National Aeronautics and Space Agency.

Well, we enjoy the opportunity to be here. We look forward to some of that good crab. He said he would open the shells, or whatever you call them. Out in Michigan, we don't have crab. We have a few crabby people but not any crabs. [Laughter]

SGT. JOHN V. STREETER. Mr. President, we have an officer on our Police Department that is a very talented artist. It is Officer Ned Thompson, and he has taken the time to draw this for you. If I may describe it to the people out here, because they have not seen it either.

It shows President Ford. He is standing there, and there is a poor, sad little fellow there with a sign. In one hand, he is holding the world, and it is all cracked up. And then in the other hand, he is holding a sign that says, "Fix it." [Laughter]

Mr. President, God bless you, sir.

THE PRESIDENT. Thank you very much.

Well, I hope all you young people, particularly, will get to know our astronauts and the Soviet cosmonauts. The astronauts have learned to speak some Russian and the cosmonauts have learned to speak some English, so you can either talk to them in Russian or English, either way you want. [Laughter]

Thank you very much, and we look forward to having a bite to eat.

NOTE: The President spoke at 3:35 p.m. at the Northern Virginia Police Academy, Fairfax, Va.

## Pardon for Former President Nixon

*The President's Remarks Announcing His Decision To Grant the Pardon. September 8, 1974*

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

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

My customary policy is to try and get all the facts and to consider the opinions of my countrymen and to take counsel with my most valued friends. But these seldom agree, and in the end, the decision is mine. To procrastinate, to agonize, and to wait for a more favorable turn

of events that may never come or more compelling external pressures that may as well be wrong as right, is itself a decision of sorts and a weak and potentially dangerous course for a President to follow.

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

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

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

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

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

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

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

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

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

In the end, the courts might well hold that Richard Nixon had been denied due process, and the verdict of

history would even more be inconclusive with respect to those charges arising out of the period of his Presidency, of which I am presently aware.

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

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

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

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

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

I do believe that right makes might and that if I am wrong, 10 angels swearing I was right would make no difference.

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

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

*[At this point, the President began reading from the proclamation granting the pardon.]*

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

*[The President signed the proclamation and then resumed reading.]*

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

NOTE: The President spoke at 11:05 a.m. in the Oval Office at the White House.

The White House Press Office also made available the text of a statement by former President Nixon following President Ford's announcement of the granting of the pardon.

## Pardon for Former President Nixon

*Proclamation 4311. September 8, 1974*

GRANTING PARDON TO RICHARD NIXON

*By the President of the United States of America  
a Proclamation*

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

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

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

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

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

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

GERALD R. FORD

[Filed with the Office of the Federal Register, 11:28 a.m.,  
September 9, 1974]

## Presidential Materials of Richard Nixon

*Letter of Agreement Between Former President Nixon and the Administrator of General Services.*

*September 8, 1974*

September 6, 1974

Dear Mr. Sampson:

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

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

1. The Administrator agrees to accept solely for the purpose of deposit the transfer of the Materials, and in so accepting the Materials agrees to abide by each of the terms and conditions contained herein.

2. In the event of my death prior to the expiration of the three-year time period established in paragraph 7A hereof, the terms and conditions contained herein shall be binding upon and inure to the benefit of the executor of my estate for the duration of said period.

3. I retain all legal and equitable title to the Materials, including all literary property rights.

4. The Materials shall, upon acceptance of this offer by the Administrator, be deposited temporarily in an existing facility belonging to the United States, located within the State of California near my present residence. The Materials shall remain deposited in the temporary California facility until such time as there may be established, with my approval, a permanent Presidential archival depository as provided for in 44 U.S.C. Section 2108.

5. The Administrator shall provide in such temporary depository and in any permanent Presidential archival depository reasonable office space for my personal use in accordance with 44 U.S.C. Section 2108(f). The Materials in their entirety shall be deposited within such office space in the manner described in paragraph 6 hereof.

6. Within both the temporary and any permanent Presidential archival depository, all of the Materials shall be placed within secure storage areas to which access can be gained only by use of two keys. One key, essential for access, shall be given to me alone as custodian of the

Materials. The other key may be duplicated and entrusted by you to the Archivist of the United States or to members of his staff.

7. Access to the Materials within the secure areas, with the exception of recordings of conversations in the White House and the Executive Office Building which are governed by paragraphs 8 and 9 hereof, shall be as follows:

A. For a period of three years from the date of this instrument, I agree not to withdraw from deposit any originals of the Materials, except as provided in subparagraph B below and paragraph 10 herein. During said three-year period, I may make reproductions of any of the originals of the Materials and withdraw from deposit such reproductions for any use I may deem appropriate. Except as provided in subparagraph B below, access to the Materials shall be limited to myself, and to such persons as I may authorize from time to time in writing, the scope of such access to be set forth by me in each said written authorization. Any request for access to the Materials made to the Administrator, the Archivist of the United States or any member of their staffs shall be referred to me. After three years I shall have the right to withdraw from deposit without formality any or all of the Materials to which this paragraph applies and to retain such withdrawn Materials for any purpose or use I may deem appropriate, including but not limited to reproduction, examination, publication or display by myself or by anyone else I may approve.

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

8. The tape recordings of conversations in the White House and Executive Office Building which will be deposited pursuant to this instrument shall remain on deposit until September 1, 1979. I intend to and do hereby donate to the United States, such gift to be effective September 1, 1979, all of the tape recordings of conversations in the White House and Executive Office Building conditioned however on my continuing right of access as specified in paragraph 9 hereof and on the further condition that such tapes shall be destroyed at the time of my death or on September 1, 1984, whichever event shall first occur. Subsequent to September 1, 1979 the Administrator shall destroy such tapes as I may direct. I impose this restriction as other Presidents have before me to guard against the possibility of the tapes being used to injure, embarrass,

or harass any person and properly to safeguard the interests of the United States.

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

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

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

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

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

If you determine that the terms and conditions set forth above are acceptable for the purpose of governing the establishment and maintenance of a depository of the Materials pursuant to 44 U.S.C. Section 2101 and for

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

Sincerely,

RICHARD NIXON

Accepted by: ARTHUR F. SAMPSON 9/7/74  
Administrator  
General Services Administration

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

## Presidential Materials of Richard Nixon

*Text of a Legal Opinion by the Attorney General.*  
September 8, 1974

September 6, 1974

Dear Mr. President:

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

To conclude that such materials are not the property of former President Nixon would be to reverse what has apparently been the almost unvaried understanding of all three branches of the Government since the beginning of the Republic, and to call into question the practices of our Presidents since the earliest times. In *Folsom v. Marsh*, 9 F. Cas. 342 (No. 4901), 2 Story 100, 108-109 (C.C.D. Mass. 1841), Mr. Justice Story, while sitting in circuit, found that President Washington's letters, including his official correspondence,<sup>1</sup> were his private property

<sup>1</sup> The official documents involved in the case were:

Letters addressed by Washington, as commander-in-chief, to the President of Congress.

Official letters to governors of States and speakers of legislative bodies.

Circular letters.

General orders.

Communications (official) addressed as President to his Cabinet.

Letter accepting the command of the army, on our expected war with France. 2 Story at 104-105.

The clear holding on the property point (*Id.* at 108-09) is arguably

which he could bequeath, which his estate could alienate, and in which the purchaser could acquire a copyright. According to testimony of the Archivist of the United States in 1955, every President of the United States beginning with George Washington regarded all the papers and historical materials which accumulated in the White House during his administration, whether of a private or official nature, as his own property.<sup>3</sup> A classic exposition of this Presidential view was set forth by President Taft in a lecture presented several years after he had left the White House:

The office of the President is not a recording office. The vast amount of correspondence that goes through it, signed either by the President or his secretaries, does not become the property or a record of the government unless it goes on to the official files of the department to which it may be addressed. The President takes with him all the correspondence, original and copies, carried on during his administration. Taft, *The Presidency* 30-31 (1916).

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

Even if there were no recent statutory sanction of Presidential ownership, a consistent history such as that described above might well be determinative. As the Supreme Court said in *United States v. Midwest Oil Co.*, 236 U.S. 495 (1915):

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

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

Moreover, with respect to the practice at issue here, there is recent statutory sanction. The 1955 Presidential Libraries Act, which serves as the permanent basis of the

converted to dictum by Justice Story's later indication, in connection with another issue, that copyright violation with respect to the official documents did not have to be established in order to maintain the suit. (*Id.* at 114).

<sup>3</sup> Statement of Dr. Wayne C. Grover, Archivist of the United States, during the House Hearings on the Joint Resolution of August 12, 1955, 69 Stat. 695, *To provide for the acceptance and maintenance of Presidential libraries, and for other purposes* (now codified in 44 U.S.C. 2101, 2107 and 2108; hereinafter referred to as the "Presidential Libraries Act"), Hearing before a Special Subcommittee of the Committee on Government Operations, House of Representatives, 84th Cong., 1st Sess., on H.J. Res. 330, H.J. Res. 331, and H.J. Res. 332 (hereafter referred to as "1955 Hearings"), pp. 28, 45.

Presidential Library system, constitutes clear legislative acknowledgement that a President has title to all the documents and historical materials—whether personal or official—which accumulate in the White House Office during his incumbency. The Federal Records Act of 1950, 64 Stat. 587, which was the predecessor of the Presidential Libraries Act, authorized the Administrator of General Services to accept for deposit "the personal papers and other personal historical documentary materials of the present President of the United States." Section 507(e), 64 Stat. 588. The word "personal" might have been read as intended to distinguish between the private and official papers of the President.<sup>3</sup> The corresponding provision of the current law, however, 44 U.S.C. 2107(1), avoids the ambiguity. It envisions the President's deposit of *all* Presidential materials, not only personal ones. During the House debate on the Presidential Libraries Act, Congressman Moss, who was in charge of the bill, expressly stated:

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

The legislative history of the Act reflects no disagreement with this position on the part of any Member of the Congress. The hearings before a Special Subcommittee of the House Committee on Government Operations indicate congressional awareness of the Act's assumption that all Presidential papers are the private property of the President. 1955 Hearings at 12, 20, 28, 32, 52, 54, 58.

A recent discussion concerning ownership of Presidential materials appears in the report prepared by the staff of the Joint Committee on Internal Revenue Taxation involving the examination of President Nixon's tax returns. H. Rept. 93-966, 93d Cong., 2d Sess. (1974). The report points to the practice of Presidents since Washington of treating their papers, both private and official, as their personal property; and to the congressional ratification of the practice in the 1955 library legislation. It concludes that "the historical precedents taken together with the provisions set forth in the Presidential Libraries Act, suggest that the papers of President Nixon are considered his personal property rather than public property." *Id.* at 28-29.

<sup>3</sup> Compare Section 507(e) with Section 507(a), dealing with the records of an agency. A memorandum prepared in the Office of the Assistant Solicitor General (now Office of Legal Counsel) on July 24, 1951 indicated that such a distinction between private and official Presidential papers would be inconsistent with historic precedents, and difficult if not impossible to maintain. It accordingly regarded the Records Act's use of the term "personal" as intended merely to exclude the permanent files of the Chief Executive Clerk discussed at page 12 below [page 1108 of this issue].

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

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

But objection based upon this provision is circular in its reasoning, except insofar as it applies to the blank typing paper and materials upon which the Presidential records are inscribed. For the records themselves are given to the President as an "emolument" only if one assumes that they are not the property of the President from the very moment of their creation. As for the blank typing paper and materials, which are of course of negligible value, they can be regarded as consumables, like electricity or telephone service, provided for the conduct of Presidential business. In any event, the Constitutional provision can simply not be interpreted in such a fashion as to preclude the conferral of anything of value, beyond his salary, upon the President. An eminent authority on the subject states the following:

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

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

Another obstacle to Presidential ownership of the materials in question is their character as public documents, often secret and sometimes necessary for the continued operation of government. However, without speaking to the desirability of the established property rule (and there is pending in the Congress legislation which would apparently alter it—S. 2951, 93d Cong., 2d Sess., a bill "[t]o provide for public ownership of certain documents of elected public officials"), it must be conceded that accommodation of such concerns can be achieved whether or not ownership of the materials in question rests with the former President. Historically, there has been consistent acknowledgement that Presidential materials are peculiarly affected by a public interest which may justify subjecting the absolute ownership rights of the ex-President to certain limitations directly related to the character of the documents as records of government activity. Thus, in *Folsom v. Marsh*, *supra*, Mr. Justice Story stated the following:

In respect to official letters, addressed to the government, or any of its departments, by public officers, so far as the right of the government extends, from principles of public policy, to withhold them from publication, or to give them publicity, there may be a just ground of distinction. It may be doubtful, whether any public officer is at liberty to publish them, at least, in the same age, when secrecy may be required by the public exigencies, without the sanction of the government. On the other hand, from the nature of the public service, or the charac-

ter of the documents, embracing historical, military, or diplomatic information, it may be the right, and even the duty, of the government, to give them publicity, even against the will of the writers. 2 Story at 113.

That portion of the Criminal Code dealing with the transmission or loss of national security information, 18 U.S.C. § 793, obviously applies to Presidential papers even when they are within the possession of the former President.<sup>4</sup> Upon the death of Franklin D. Roosevelt during the closing months of World War II, with full acceptance of the traditional view that all White House papers belonged to the President and devolved to his estate, some of the papers dealing with prosecution of the War (the so-called "Map Room Papers") were retained by President Truman under a theory of "protective custody" until December 1946. *Matter of Roosevelt*, 190 Misc. 341, 344, 73 N.Y.S. 821, 825 (Sur. Ct. 1947); *Eighth Annual Report of the Archivist of the United States as to the Franklin D. Roosevelt Library* (1947) p. 1. Thus, regardless of whether this is the best way to approach the problem, precedent demonstrates that the governmental interests arising because of the peculiar nature of these materials (notably, any need to protect national security information and any need for continued use of certain documents in the process of government) can be protected in full conformity with the theory of ownership on the part of the ex-President.

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

I must, however, exclude one category of documents from the scope of this opinion concerning ownership and

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

advise you that their status cannot be definitively determined on the basis of presently available information. Although the fact is not recorded in the published materials we have examined, our inquiry indicates that at least in recent memory certain "permanent files" have been retained by the Chief Executive Clerk of the White House from administration to administration. These include White House budget and personnel material, and records or copies of some Presidential actions useful to the Clerk's office for such purposes as keeping track of the terms of Presidential appointments and providing models or precedents for future Presidential action. Retention of these materials by the Chief Executive Clerk is of course not necessarily inconsistent with initial Presidential ownership. In light of the otherwise uniform practice with respect to much more important official documents, relinquishment of these materials may reasonably be regarded as a voluntary act of courtesy on the part of the outgoing Chief Executive. I cannot, however, make an adequately informed judgment concerning these files without more extensive factual and historical inquiry, which your need for this opinion does not permit. Of course, even if such inquiry should show that these particular documents have been regarded as Government property, that conclusion would not support a generalization of Government ownership with respect to the much more extensive other material covered by this opinion, as to which the Presidential practice and congressional acquiescence are clear.

As to the obligations of the Government with respect to subpoenas and court orders directed to the United States or its officials pertaining to the subject materials: Even though the Government is merely the custodian and not the owner, it can properly be subjected to court directives relating to the materials. The Federal Rules of Criminal Procedure authorize the courts, upon motion of a defendant, to order the Government to permit access to papers and other objects "which are within the possession, custody or control of the government. . . ." Fed. R. Crim. P. 16(b). A similar provision is applicable with regard to discovery in civil cases involving material within the "possession, custody or control" of a party (including the Government) Fed. R. Civ. P. 34(a). In addition, in both criminal and civil cases, a subpoena may be issued directing a person to produce documents or objects which are within his possession, but which belong to another person. Fed. R. Crim. P. 17(c); Fed. R. Civ. P. 45(b). See, e.g., *Couch v. United States*, 409 U.S. 322 (1973); *Schwimmer v. United States*, 232 F.2d 855, 860 (8th Cir., 1956), cert. denied, 352 U.S. 833; *United States v. Re*, 313 F. Supp. 442, 449 (S.D.N.Y. 1970). I advise you, therefore, that items included within the subject materials properly subpoenaed from the Government or its officials must be produced; and that none of the materials can be moved or otherwise disposed of contrary to the provisions

of any duly issued court order against the Government or its officials pertaining to them. Of course both the former President and the Government can seek modification of such subpoenas and orders, and can challenge their validity on Constitutional or other grounds.

Respectfully,

WILLIAM B. SAXBE  
*Attorney General*

[The President, The White House]

## Pardon and Agreement on Presidential Materials of Richard Nixon

*News Conference of Philip W. Buchen, Counsel to the President. September 8, 1974*

MR. TERHORST. Gentlemen, if you are ready for the briefing, we have Philip Buchen, the legal counsel of the White House, to address your questions on the President's statement and on the documents you have in your hand.

As you know, he is the President's legal adviser. He was very much a participant in the preparation of this proclamation, and so here is Mr. Buchen to take your questions.

I think he may have an opening statement which he may like to read first.

MR. BUCHEN. Thank you, Jerry.

I appreciate your all being here on this Sunday morning, or midday.

I wanted just to say a few things first, because it may answer questions in advance. And at the conclusion of these remarks, I will try to field the questions you throw this way.

In addition to the major development of this morning when President Ford granted a pardon to former President Nixon, I have two other legal developments to announce which occurred prior to the issuance of the proclamation of pardon.

The first involves the opinion of Attorney General William B. Saxbe to President Ford dealing with papers and other records, including tapes, retained during the Administration of former President Nixon in the White House offices.

In this opinion, the Attorney General concludes that such materials are the present property of Mr. Nixon; however, it is also concluded that during the time the materials remain in the custody of the United States, they are subject to subpoenas and court orders directed to any official who controls that custody. And in this conclusion, I have concurred.

This opinion was sought by the President from the Attorney General on August 22.

Q. When you say the President, you mean President Ford?

MR. BUCHEN. That is right.

The reason for seeking the opinion was the conflict created between Mr. Nixon's requests on the one hand for delivery to his control of the materials, and on the other hand, the pending court orders and subpoenas directed at the United States and certain of its officials.

The court orders have required that the custody of the materials be maintained at their present locations. And both the orders and subpoenas have called for the identification and production of certain materials allegedly relevant to court proceedings in which the orders and subpoenas originated.

In addition, we were advised of interests of other parties in having certain records disclosed to them under warning that if they were to be removed and delivered to the control of Mr. Nixon, court action would be taken to prevent that move and to protect the claimed rights to inspection or disclosure.

Therefore, it became fully apparent that unless this conflict was resolved, the present Administration would be enmeshed for a long time in answering to disputed claims over who could obtain information from the Nixon records, how requested information could, as a practical matter, be extracted from the vast volume of records in which it might appear, and how and by whom its relevancy to any particular court proceeding could be determined, and at the same time to try satisfying the claims of Mr. Nixon that he owned the records.

Within a week of the request to the Attorney General for an opinion made by President Ford, I was advised informally of what its general nature would be. From that time on, I realized that the opinion itself would not provide a practical solution to the handling and management of the papers so as to reconcile rights and interests of private ownership with the limited but very important rights and interests of litigants to disclosure of selected relevant parts of the materials.

Thus, I initiated conversations with the Attorney General's Office, with Special Prosecutor Jaworski, with attorneys for certain litigants seeking disclosure, and with Herbert J. Miller, as soon as he became attorney for Mr. Nixon.

The purpose of these conversations was to explore ways for reconciling these different interests in records of the previous Administration so that this Administration would not be caught in the middle of trying on a case-by-case basis to resolve each dispute over the right of access or disclosure.

The outcome of these conversations was the conclusion on my part that Mr. Nixon, as the principal party in interest, should be requested to come forth with a proposal for dealing satisfactorily with Presidential ma-

terials of his Administration in ways that offered reasonable protection and safeguards to each party who has a legitimate court-supported right to production of particular materials relevant to his case.

Mr. Nixon and his attorney then agreed to pursue this approach, and in company with White House Counsel, they were able to accomplish the second of the developments which I am announcing today.

And that is the letter agreement, of which you have copies, between former President Nixon and Arthur F. Sampson, Administrator of the General Services Administration.

These two developments are, of course, much less significant than the one you have learned about earlier. President Ford has chosen to carry out a responsibility expressed in the preamble to the Constitution of ensuring domestic tranquillity and has chosen to do so by exercise of a power that he alone has under the Constitution to grant a pardon for offenses against the United States.

About a week ago, President Ford asked me to study judicial precedents bearing on the exercise of his right to grant a pardon, particularly with reference to whether or not a pardon could only follow indictment or conviction. The answer I found, based on considerable authority, was that a pardon could be granted at any time and need not await an indictment or conviction.

President Ford also asked me to investigate how long it would be before prosecution of former President Nixon could occur, if it were brought, and how long it would take to bring it to a conclusion.

On this point, I consulted with Special Prosecutor Jaworski, and he advised me as follows and has authorized me to quote his language, and I quote:

"The factual situation regarding a trial of Richard M. Nixon within constitutional bounds is unprecedented. It is especially unique in view of the recent House Judiciary Committee inquiry on impeachment, resulting in a unanimous adverse finding to Richard M. Nixon on the article involving obstruction of justice.

"The massive publicity given the hearings and the findings that ensued, the reversal of judgment of a number of members of the Republican Party following the release of the June 23 tape recording, and their statements carried nationwide, and, finally, the resignation of Richard M. Nixon require a delay before selection of a jury is begun of a period from 9 months to a year, and perhaps even longer.

"This judgment is predicated on a review of the decisions of United States courts involving prejudicial pretrial publicity."

Q. Is that the end of the quotes?

MR. BUCHEN. No, I am going on to indicate something else that will be of interest to you. That is the end of that quote.



Another quote from his communication to me is as follows: "The situation involving Richard M. Nixon is readily distinguishable from the facts involved in the case of *United States v. Mitchell, et al.*, set for trial on September 30.

"The defendants in the Mitchell case were indicted by a grand jury operating in secret session. They will be called to trial, unlike Richard M. Nixon, if indicted, without any previous adverse finding by an investigatory body holding public hearings on its conclusions."

That is the end of the quotation.

Q. Would you read that last sentence again?

MR. BUCHEN. Yes. It is an important one. "They," meaning the defendants, "will be called to trial, unlike Richard M. Nixon, if indicted, without any previous adverse finding by an investigatory body holding public hearings on its conclusions."

Except for my seeking and obtaining this advice from Mr. Jaworski, none of my discussions with him involved any understandings or commitments regarding his role in the possible prosecution of former President Nixon or in the prosecution of others.

President Ford has not talked with Mr. Jaworski, but I did report to President Ford the opinion of the Special Prosecutor about the delay necessary before any possible trial of the former President could begin.

I would also like to add on another subject, no action or statement by former President Nixon, which has been disclosed today, however welcome and helpful, was made a precondition of the pardon.

That is a negative because of the word "no" at the beginning. I might add that whether or not it was disclosed today, it was not a precondition.

Q. There were no secret agreements made?

MR. BUCHEN. That is right.

President Ford in determining to issue a pardon acted solely according to the dictates of his own conscience. Moreover, he did so as an act of mercy not related in any way to obtaining concessions in return.

Q. Would you go over the last phrase?

Q. After "mercy."

MR. BUCHEN. Mercy not related in any way to obtaining concessions in return. However, my personal view—

Q. Is that yours or Ford's?

MR. BUCHEN. Mine. —is that former President Nixon's words, which I have had a chance to read, as you have, that followed the granting of the pardon, constitute a statement of contrition which I believe will hasten the time when he and his family may achieve peace of mind and spirit and will much sooner bring peace of mind and spirit to all of our citizens.

Q. Would you review that sentence?

MR. BUCHEN. Yes.

However, my personal view—these are my own words—is that former President Nixon's words expressed

upon his learning of the pardon, constitute a statement of contrition which I believe will hasten the time when he and his family may achieve peace of mind and spirit and will much sooner bring peace of mind and spirit to all of our citizens.

Now I have only one other paragraph that I would like to bring out in conclusion. I want to express for the record my heartfelt personal thanks and appreciation to a dear friend of the President's and of mine. He is Benton Becker, a Washington attorney, who has served voluntarily as my special and trusted consultant and emissary in helping to bring about the events reported today.

Q. Emissary to Mr. Jaworski or Mr. Nixon?

MR. BUCHEN. To Mr. Miller and Mr. Nixon, not to Mr. Jaworski.

I also acknowledge with deep gratitude the services of William E. Casselman II, who is the highly valued counsel—who was the highly valued counsel to Vice President Ford for his whole tenure in that office, and is now my close associate in the service of the President of the United States.

Q. Who informed President Nixon that he was getting a pardon, and also is President Ford basing this pardon only on the fact that it would have taken a long time to try the Presidency and his own conscience?

MR. BUCHEN. Let me take the first question first.

When Mr. Becker went to San Clemente on Thursday evening, he was authorized to advise the former President that President Ford was intending to grant a pardon, subject, however, to his further consideration of the matter because he wanted to reserve the chance to deliberate and ponder somewhat longer, but he was authorized to say that in all probability a pardon would be issued in the near future.

The second question?

Q. The second question is: There is no admission of guilt here at all and despite your assumptions that it is contrition, there is no actual admission of guilt. Do you agree?

MR. BUCHEN. Well, my interpretation is that it comes very close to saying that he did wrong, that he did not act forthrightly.

Q. Mr. Buchen, what is the linkage between the agreement with Mr. Sampson and Mr. Becker's negotiations at San Clemente?

MR. BUCHEN. The initiative for getting an agreement that would help solve our problems came from me, and I advised Mr. Miller as attorney for Mr. Nixon that that was my desire. I so advised him before I knew anything about a contemplated pardon.

Q. Mr. Buchen—

MR. BUCHEN. May I finish, please?

However, as we pursued talks on what to do with the papers, I made it very clear to Mr. Miller that I wanted the initiative to come from him and his client as to the

specifics of what he and his client would be willing to do regarding the management and ultimate disposition of the papers and tapes.

Q. Mr. Buchen, what will this mean as far as former President Nixon's role as a witness in the upcoming trials are concerned?

MR. BUCHEN. It would have no effect on that. If the documents do get transferred in a timely fashion, it may permit him to review the pertinent material more adequately so far as his testimony is concerned.

Q. Mr. Buchen, doesn't this pardon eliminate any possibility that the former President might invoke the fifth amendment to refuse to testify?

MR. BUCHEN. I think you better ask his own lawyer that. As you know, this applies only to offenses against the United States. It does not apply to possible offenses against State law.

Q. But regarding offenses against the United States, he would have no fifth amendment rights now that he has been pardoned; is that correct?

MR. BUCHEN. I don't know that you can separate them when you plead.

Q. Mr. Buchen, why did the President decide to do this now at a time before the jury has been sequestered in the September 30 trial?

MR. BUCHEN. That will have to be information that will have to come from his statement. I have nothing to add.

Q. Can you tell us if the President has assured himself that former President Nixon is not guilty or liable to accusation of any very serious charges that have not been made public so far, that there is no other time bomb ticking away?

MR. BUCHEN. I don't think he said that.

Q. No, no, I am saying, has President Ford done anything to assure himself that there is no evidence of any more serious criminality committed by former President Nixon than what is generally out in the House Judiciary Committee report and this sort of thing?

MR. BUCHEN. So far as I know, he has made no independent inquiries. If he had wanted to satisfy himself as to the content of the evidence still in the White House, of course, that would have been an insurmountable task, as you have no idea of the huge volumes.

Q. Did you assure yourself—

MR. BUCHEN. Just a minute. There are huge volumes. However, I did personally consult with Mr. Jaworski as to the nature of the investigations being conducted, and I was able to tell the President that so far as I was able to learn through that inquiry, there were no time bombs, as you call them.

Q. Mr. Buchen, what was the President's reaction when Mr. Becker conveyed this message to him?

MR. BUCHEN. I don't know that it was done in person. I don't think he was necessarily in the room, so I don't believe he can—

Q. Did you get any reaction from the President, even if it was by mail or through counsel, did the President say he was grateful for this?

MR. BUCHEN. The only reaction we have gotten is the statement that came over the wire.

Q. Are you saying that Ziegler got the word from Becker and that President Nixon was not informed personally at any time by Ford or by any emissary?

MR. BUCHEN. I think you will have to ask Mr. Becker that. My understanding is that initially the talks went through Mr. Ziegler, but there were also face-to-face meetings between Mr. Becker and the President, and what occurred by one method, and one by the other, I don't know.

Q. There was no personal contact between Ford and Nixon?

MR. BUCHEN. None at all.

Q. You refer to Becker as an emissary, and you talk about one meeting out there Thursday to notify him. What were the reasons for his previous trips back and forth? What was discussed?

MR. BUCHEN. Becker only went once.

Q. Only on Thursday?

MR. BUCHEN. Yes, and not only to discuss that. They had to work out the details of that letter agreement, because Miller and Becker were in negotiation, and Miller had to consult his client, and they had to make modifications. And they had to call back to see whether that fit in correctly with what General Services Administration could feasibly do. So, that involved a lot of the time he was out there.

Q. Mr. Buchen, did Mr. Jaworski inform you that an indictment, or indictments, against former President Nixon were expected?

MR. BUCHEN. No, he did not.

Q. May I follow that, then? Isn't the granting of a pardon at this stage an admission that an indictment was expected and that conviction was probable?

MR. BUCHEN. I think you have to recall that word came out that the grand jury at one time wanted to name the former President, or then President, as a co-conspirator, and that is one evidence that something more would have happened.

And I think it is very likely, from all we have read, that there would be people who would want him prosecuted and would intend to do so, although I don't say that that was Mr. Jaworski's view.

Q. Was Mr. Jaworski ever consulted about this pardon, ever asked about this?

MR. BUCHEN. No.

Q. Did Jaworski agree to what was done today?

MR. BUCHEN. He had no voice in it.

Q. Do you know what his mood or sentiment was?

MR. BUCHEN. You will have to ask him. I want to get to Peter, here.

Q. I wanted to follow up that line. You know we are not able to get a response from Mr. Jaworski's office, and it would really help us for you to tell us all you can about the status of the investigation against the President, former President Nixon?

MR. BUCHEN. I don't have that information, Peter. That is kept in his shop.

Q. But in that regard, why was he not consulted about what kind of action he contemplated against the President before the pardon was issued?

MR. BUCHEN. We didn't think that was relevant.

Q. You assumed he would be prosecuted; is that right?

MR. BUCHEN. We assumed that he may have been prosecuted.

Q. When was Jaworski told?

MR. BUCHEN. About the pardon?

Q. About the pardon.

MR. BUCHEN. I called him about three-quarters of an hour before I knew the President was going to announce it so that he would know it.

Q. Today?

MR. BUCHEN. Yes.

Q. What was his reaction?

Q. When was that?

MR. BUCHEN. He thanked me for advising him in advance of his hearing it over the radio or TV.

Q. And he did not object?

MR. BUCHEN. He didn't. He didn't say anything one way or the other.

Q. As we read this statement, which does not admit any guilt whatsoever, what is to prevent the former President from going out, say 6 months hence, and saying that nothing was really even proven against him and he was hounded out of office?

MR. BUCHEN. I guess he has the right to say that, because until an indictment and conviction, I think that would be true in his case as well as anybody else's case who is under a cloud of suspicion.

Q. But President Ford spoke of the historical aspects of this, and what is going to keep history from getting more muddled than ever?

MR. BUCHEN. I think the historians will take care of that.

Q. Mr. Buchen, does President Ford plan to grant a similar pardon to the former President's subordinates who are scheduled to go on trial later this month?

MR. BUCHEN. To my knowledge, he has not given that matter any thought.

Q. Can you clarify—was the agreement reached with the GSA about the disposal of the tapes and documents? Was the pardon contingent on that?

MR. BUCHEN. Neither.

Q. They are not together?

MR. BUCHEN. Right.

Q. Number two, why did he choose 10:30, Sunday morning, to make the announcement?

MR. BUCHEN. I think you will have to ask him that. He figured that this was a very solemn moment that exemplified, I think, an act that was one of high mercy, and it seemed appropriate, I think, to him that it should occur on a day when we do have thoughts like that, or should.

Q. Mr. Buchen, I don't understand why you contrast the treatment of Nixon with the treatment of Mitchell coming up. If I understand your statement right, you said that Mitchell has not had the publicity and the action by a hearing as Nixon had before the House Judiciary Committee.

MR. BUCHEN. That was Mr. Jaworski's statement. That was not mine.

Q. I don't understand this, and maybe you can explain what you think he means there. Mitchell certainly had the hearing with conclusions and explanations of conclusions of a hearing by the Watergate committee.

MR. BUCHEN. There was a hearing, but I don't know how conclusive the findings were.

Q. There was a hearing, and Mitchell testified. There was a public hearing, and there were conclusions and recommendations on that, and a press conference on that, and great publicity.

MR. BUCHEN. I would judge that Mr. Jaworski does not find those conclusions prejudicial to Mr. Mitchell's upcoming case.

Q. Mr. Buchen, the President, in his statement this morning, referred to this matter threatening the former President's health. Do you have any further details on that? Do you know something about his health that we don't?

MR. BUCHEN. No, I didn't go out there, so I didn't see the man.

Q. Do you know what he meant by that?

MR. BUCHEN. I think it is generally known that this man has suffered a good deal. I think you people who saw him more recently than I have can form your own conclusions.

Q. Have Mr. Ford and Mr. Nixon talked this morning?

MR. BUCHEN. No, not to my knowledge, but I do not believe they did.

Q. Do you know, was the President in a depression and has the President threatened to commit suicide or anything like that?

MR. BUCHEN. I have no knowledge.

Q. You say that you looked into this matter from a constitutional standpoint for the President, and I am sure you looked into the history of it. Has any President ever granted a pardon before in history to anyone prior to that person being charged with a crime formally?

MR. BUCHEN. Oh, yes, there are lots of precedents for that.

Q. Like what?

MR. BUCHEN. Well, one of your colleagues, named Mr. Burdick, was pardoned before he was asked to testify re-

garding some alleged criminality involving the Customs Service during the Wilson Administration, and he was given a pardon.

Q. He was a newsman?

MR. BUCHEN. He was a newsman.

And, of course, the pardons granted by President Lincoln, for example, and the pardons granted after the Whiskey Rebellion and other insurrections, were applied to people who were not indicted.

Q. Mr. Buchen, I am a little confused at your words, more or less dismissing the question of whether or not the President would grant pardons to Mr. Haldeman, Mr. Ehrlichman, Mr. Mitchell, and the others who will go on trial September 30. Is it not fairly clear to you, or at least do you not, here in the White House, admit the possibility that their defense now, in light of the action of President Ford today, will be that the President has pardoned the man under whose orders they were operating? And what is your reaction to this possible line of defense or line of appeal by the defendants in that trial?

Surely, this must have been given some consideration. And I again would ask you what you think is going to happen; what you think the President would do when confronted with this question?

MR. BUCHEN. Well, I question your broad characterization that the acts for which they are being charged were necessarily—

Q. I am just suggesting this may be their defense.

MR. BUCHEN. This may be their defense. Now, that will become Mr. Jaworski's problem and, of course, the judge's problem. You have already seen that Mr. Jaworski apparently assumes that the situation in their case is far different from the situation in the former President's case.

Q. Phil, can I ask you this: Did this process that led up to the pardon today start a week ago when the President came to you?

MR. BUCHEN. Yes.

Q. Was there something that happened just prior to his coming to you that got his interest working in doing this thing just now?

MR. BUCHEN. If there was, I don't know what it was, Ron.

Q. Have they talked on the phone at any time this week or immediately prior to this week?

MR. BUCHEN. They have not talked on the phone since Jack Miller became his attorney.

Q. Did this process start after last Sunday's publication of the Gallup poll that said that the majority of the public wanted to see Mr. Nixon prosecuted?

MR. BUCHEN. Let me figure my dates. That was Labor Day weekend, was it? I worked all Labor Day weekend so it came before that.

Q. To what extent did the transition team look ahead to the problem of a pardon, and have you done any work at all—

MR. BUCHEN. They didn't consider that. They had far too much else to consider.

Q. As a matter of equal justice under law, we have now had the two top officials of the United States, both allegedly involved in crimes, namely, Vice President Agnew and Mr. Nixon, who have been freed of criminal charges. Both of them are entitled to go around the country and represent themselves as being innocent. What is a citizen to make of that situation when ordinary criminals, including the aides involved in this, have to be tried?

MR. BUCHEN. Of course, I cannot speak at all for the treatment of former Vice President Agnew because this Administration was not in any way involved. But I think you have to understand—and maybe it is a good time on Sunday to think about it—that there is a difference between mercy and justice.

I don't think that you can assume that mercy is equally dispensed or how it could be equally dispensed.

Q. Mr. Buchen, is there any pardon being considered for the aides who performed their acts allegedly in the name of and in behalf of Richard Nixon?

MR. BUCHEN. I have already spoken to that question.

Q. I don't think you have, Mr. Buchen. I am actually talking about those now in prison, not Mr. Nixon, John Dean and others?

MR. BUCHEN. So far as I know, no thought has been given to that.

Q. Mr. Buchen, is it now possible under the agreement on the custody of Presidential tapes and papers for any tape made during the Nixon Administration to be subpoenaed even though it is not now the subject of a subpoena?

MR. BUCHEN. It is possible. In order to get a subpoena or court order, of course, certain showings would have to be made. It is also possible, of course, for the owner of the tapes to interject objections.

Q. A followup to that. If the owner of those tapes doesn't want to give them up—he has now been pardoned of everything—what is the leverage?

MR. BUCHEN. It doesn't affect the court orders or subpoenas, and he is subject to the consequences of not obeying a valid court order or subpoena.

Q. In other words, that would come under the expiration date of August 9 in the pardon; is that right?

MR. BUCHEN. That is right.

Q. Do you feel the agreement with Mr. Sampson has insured that the Ford Administration cannot be implicated in any Watergate coverup? Was that one of your considerations?

MR. BUCHEN. That was not involved, because I don't think that is a relevant issue.

Q. Is there any change in the rules of access to documents by former White House aides?

MR. BUCHEN. The problem is that there would, of course, be an interim before the Nixon-Sampson letter agreement can be fully implemented. How we will handle

the interim arrangements, I am sure can be worked out with Jack Miller as attorney for Mr. Nixon.

Q. As you recall, in the Agnew case, a paper prepared by the Justice Department listing the law violations by the former Vice President was presented in court on the theory that the American people were entitled to have the full story in addition to the specific charge to which the former Vice President pleaded.

In President Ford's preparation for today, what thought did he give to the presentation of an analysis by Special Prosecutor Jaworski of the full extent of President Nixon's role in the Watergate case, and is there any understanding at this point of eliminating Special Prosecutor Jaworski's ability to pursue that type of investigation?

MR. BUCHEN. There is no limitation on what Mr. Jaworski can do except, of course, the putative defendant has the defense now of a pardon.

On the first part of your question, there is a distinct difference between asking a man to plead guilty to a limited offense, and the treatment of Mr. Agnew, of course, was done under very different circumstances by the system of justice. In this case, it was reliance entirely on the pardon powers which involve acts of mercy.

Q. You said earlier that you had assumed that Mr. Nixon may have been prosecuted. Is that as far as you are willing to go on that issue? Did you all think it was likely that he would be prosecuted?

MR. BUCHEN. If you mean tried or indicted?

Q. Indicted?

MR. BUCHEN. I think it would be very likely that he would be indicted. How and when he could be tried was still an open question.

Q. This likelihood, is that on the strength of your conversation with Mr. Jaworski that you think it was very likely?

MR. BUCHEN. No, it was largely on the basis of what the grand jury apparently intended to do on the basis of less evidence than is now available.

Q. Mr. Buchen, if the ex-President retains the sole right of access to the documents and, as I understand this GSA agreement, can even limit access by the Archivist of the United States and his staff, why should the United States remain as custodian of the documents at all?

MR. BUCHEN. There is a double-key arrangement. In other words, access can't be obtained by either the former President or the General Services Administration except by their concurrent acts.

Q. But he could conceivably, to prevent himself from embarrassment, limit access—no one could see these documents during the 3 years the United States agrees to act as custodian.

MR. BUCHEN. Unless there is a court order or subpoena.

Q. What about the court orders or subpoenas that are outstanding?

MR. BUCHEN. We will have to take this agreement to the courts involved in those proceedings and seek relief from the present processes and subpoenas on the basis of the current agreement.

Q. Mr. Buchen, did you and the President give much consideration to the fact that a criminal trial could have cleared Mr. Nixon of the charges of possible guilt, could have cleared him, cleared his name?

MR. BUCHEN. We certainly recognized that as a possibility. Whether it was given any consideration, I don't know.

Q. I mean by you or the President?

Q. Well, you were there. What was your own view?

MR. BUCHEN. My own view is that that was a possibility. If that was what the former President wanted to do, he certainly would have told us. He didn't have to accept the pardon.

Q. Did you recommend the pardon?

MR. BUCHEN. I had nothing to do with recommending it or disrecommending it.

Q. Did you ever discuss the political implications of this pardon with the President?

MR. BUCHEN. I did not.

Q. Mr. Buchen, to follow up on some of these other questions, it seems that President Ford has an interest in building into the public record a record of Mr. Nixon's alleged criminality for the same reasons that Mr. Agnew's alleged criminality was made a part of the record, to prevent him from saying that he was driven out by political opponents, et cetera. Is President Ford satisfied that former President Nixon's record of wrongdoing is sufficiently in the public record now?

MR. BUCHEN. All I can tell you is that he knows nothing that you don't know.

Q. Mr. Buchen, does the pardon in any way affect Mr. Nixon's payment of back income taxes?

MR. BUCHEN. Not at all. This does not apply to civil liabilities.

Q. Let's get back to this double-key arrangement. This is just so much lawyer's language.

MR. BUCHEN. I know that is complicated.

Q. Does that double-key arrangement prevent the President from going in there and destroying some of those tapes if he wanted to?

MR. BUCHEN. Yes, it does.

Q. So, there is adequate safeguards?

MR. BUCHEN. Yes.

Q. Does it mean that if any of those tapes are subpoenaed and he just refuses to honor the subpoena, then what would happen?

MR. BUCHEN. He would be subject to contempt of the court that issued the subpoena. It doesn't apply to any future acts.

Q. When will the tapes be physically moved to this repository in California, or are they going to remain here?

MR. BUCHEN. No, they will be moved to the California depository as soon as we can get rid of, or modification of the existing orders that require they be retained here.

Q. Is that that Laguna Niguel pyramid they will be put in?

MR. BUCHEN. Yes.

Q. But nobody can get in there by themselves. There will always be somebody to watch, is that correct?

MR. BUCHEN. Yes.

Q. When you say "current," are you referring to the two court orders that are pending?

MR. BUCHEN. There are at least three court orders that I know of. One is in the Wounded Knee case in Minnesota. Another is in the nature of an order, because the court declined to issue the order on the assurance that documents or tapes would not be moved, and that is the case involving the networks. So, you can get Ron to answer your questions on that.

The third one is the civil suit in North Carolina involving a suit by people kept out of a meeting to celebrate Billy Graham Day.

Q. Mr. Buchen, Mr. Jaworski has, of course, in his possession a considerable number of tapes which are not the originals. They are copies. This agreement with Mr. Sampson does not affect that, does it? They don't have to be returned to the mass to be moved out to Laguna?

MR. BUCHEN. The copies will be disposed of as the court orders, I assume.

Q. But this does not require them to be returned to the big group?

MR. BUCHEN. No.

Q. Can I clarify the chronology of all this? When is the first time the President indicated to you he might want to pardon Mr. Nixon?

MR. BUCHEN. Just at the start of the Labor Day weekend.

Q. On which day?

MR. BUCHEN. I know I started to work Friday night, so it must have been Friday.

Q. Did you have any contact with Mr. Miller on the issue of a pardon?

MR. BUCHEN. Not at that time. The first contact, I think, was on Thursday of this week.

Q. And you can't suggest what precipitated the President's interest?

MR. BUCHEN. I do not know.

Q. Can you tell us whether the President ever tried to—I hesitate to use "extract"—but get any admission of guilt from the President, or was it strictly—

MR. BUCHEN. He did not.

Q. Mr. Buchen, you said that President Ford has not talked to former President Nixon since Mr. Nixon retained Miller. Could you tell us the last time President Ford had contact with President Nixon—direct contact?

MR. BUCHEN. I don't know. I think it may have been the time of the Rockefeller appointment.

Q. Mr. Buchen, I am not clear on one thing, and following up Helen's question, your emissary went out on that Thursday, Mr. Becker went out on Thursday, that was the only time he went out. I am trying to get clear in my mind precisely what it was; he told the former President, or told Mr. Ziegler, and both of them at different times, that President Ford, in all probability would grant a pardon. What did he ask either of Mr. Nixon or Mr. Ziegler? What did he ask that Mr. Nixon do? Did he ask that this statement we have been given today be issued? Did he suggest wording and what it should say or did he ask for nothing? Did he ask for more than what we got in this statement?

You say at one point the former President could have turned down the pardon.

MR. BUCHEN. Yes.

Q. Did he offer that option, and did he say, if the pardon was to be granted, what the former President then should do?

MR. BUCHEN. The former President was represented by counsel, you know.

Q. Well, did he make the offer to Mr. Miller?

MR. BUCHEN. Mr. Miller is a shrewd enough attorney to know that he could have advised his client either to accept or reject the pardon.

To answer your other question, as you can see, that letter agreement is a very complicated one, and it involved a lot of practical problems. Before Miller and Becker went out, a rough draft of Miller's proposal was in our hands. But it was obvious that we could not work out the details of what would suit Miller's client and what would suit GSA and what would suit what we thought was the best interests of the Government and of the potential other parties in interest without going out and making the final draft out there. And that was done.

As far as the statement from the former President is concerned, that was a matter that was left entirely up to the discretion of his own counsel and his own advisers.

Q. Let me see if I can put it another way, Mr. Buchen. Was the pardon in any of the conversations involving yourself, Mr. Becker, or anyone else, with anyone representing the former President, was this pardon contingent on anything?

MR. BUCHEN. I have said no, and I repeat no.

Q. Are you saying if he had not given this letter at all, if he had said, "Well, I will make no letter agreement," are you saying categorically that a pardon would have been issued anyway?

MR. BUCHEN. I am not sure because President Ford could have changed his mind or not made up his mind finally.

Q. When was the package completed that was announced today?

**MR. BUCHEN.** We got the agreement back on early Saturday morning and spent that day reviewing it with Mr. Sampson, so that was wound up.

**Q.** You mean yesterday morning?

**MR. BUCHEN.** Yes, yesterday morning. The statement, of course, we didn't see until we got it over the wires right after the speech.

**Q.** Did the President know there was going to be a statement before he finally decided on the pardon?

**MR. BUCHEN.** Yes.

**Q.** Did he have any idea what the contents would be, what the tone would be?

**MR. BUCHEN.** In a general way, yes.

**Q.** You are saying that the pardon had nothing to do with this letter agreement?

**MR. BUCHEN.** That was not a condition.

**Q.** This was a completely independent action?

**MR. BUCHEN.** Right. The negotiations for that agreement were started independently of even a consideration of a pardon.

**Q.** The decision to pardon was not made until after this agreement was obtained?

**MR. BUCHEN.** That is right.

**Q.** What you are saying, you cannot say there would have been a pardon if the agreement had not been made?

**MR. BUCHEN.** All I can say is that the President had the right not to grant a pardon because he had not finally made up his mind to do so.

**Q.** When did he make up his mind to do so?

**MR. BUCHEN.** I suppose until that pen got on paper or until he started making the statement.

**Q.** He made his decision after the agreement was made?

**MR. BUCHEN.** That—what went on in his mind, I don't know.

**Q.** When did he write the speech?

**MR. BUCHEN.** Last night.

**Q.** In sending this word through the emissary to Mr. Nixon, that he was thinking of or expected to pardon him but was reserving final judgment, was that in any way intended as encouragement to Mr. Nixon to get on with the final agreement and possibly offer the kind of a statement that he did offer today?

**MR. BUCHEN.** That was not the intent. If it created that impression, it was a wrong impression.

**Q.** Mr. Buchen, you just said that the President had an indication in a general way of the content of the former President's statement. If I may ask a two-part question: How did he obtain this indication, and did he believe, or was he informed, that the statement would be one of contrition?

**MR. BUCHEN.** The report was through the mouth of Benton Becker, and the characterization of it as an act of contrition is mine.

**Q.** Excuse me, then. What general feeling did the President have that the statement would be, what indica-

tion did he have of what the statement would be? How was it characterized by Mr. Becker?

**MR. BUCHEN.** He in general told the President what it would amount to and particularly called attention to the fact that there would be an acknowledgement of failure to act decisively and forthrightly on the matter of the Watergate break-in after it became a judicial proceeding.

**Q.** Was that negotiated at all?

**MR. BUCHEN.** It was not negotiated.

**Q.** Was Mr. Becker informed of that on Thursday at the time he went out there?

**MR. BUCHEN.** I think he was informed on Friday because he got out there very late on Thursday night.

**Q.** Do you know if that information had any effect on Mr. Ford's decision?

**MR. BUCHEN.** I don't know. I am sure it pleased him and made him feel that it was easier for him to act as he contemplated doing.

**MR. TERHORST.** We will take three more questions.

**Q.** Would you please clear up some things about this letter of agreement? I am sorry, but it will take me some time to understand it. Let me see here if this is what it means. Unless there is a subpoena or a court order which Mr. Nixon would reply to, any ordinary citizen of the United States, or any officials, outside of Sampson, could not just go in there and look at these tapes or listen to them, or see them at any time? They will be shut off completely to the public?

**MR. BUCHEN.** That is right.

**Q.** Mr. Buchen, why is the date of July 1969 mentioned in the pardon?

**MR. BUCHEN.** It is January, the date of inauguration, January 20. President Ford misspoke when he used the word "July."

**Q.** How complete was your explanation of the case against the former President by Mr. Jaworski? Did he go into what areas that he might be pursuing, what he heard on the tapes that have not been made public? Anything like that?

**MR. BUCHEN.** The question asked him what matters could arguably involve further steps, and it read like a list from one of your newspapers.

**Q.** Did Mr. Becker talk strictly with you or did he ever speak to Mr. Ford? Did he deal strictly with you?

**MR. BUCHEN.** Oh, no; he was also in the room on occasions when I was speaking to the President.

**Q.** Why did he pick Becker to do this?

**MR. BUCHEN.** Part of the problem, as you may know, is we have a rather understaffed legal staff here and Mr. Becker is a man of rare talent that helped during the confirmation hearings of the Vice President, and he is such a good and trusted friend of both of ours that we felt he was the one we should call on.

**REPORTER.** Thank you.

**MR. BUCHEN.** All I am going to say is, for the tapes there will be two 5-year windows. The first of the 5-year

windows involves controlled access by the former President for his listening to copies of tapes, copies to be made by an operator who himself does not listen to the originals.

Also, during the first 5-year window, anyone with a legitimate court subpoena or order that is upheld can have access or can require the former President to furnish the information contained on relevant portions of the tapes.

At the end of that first 5-year period, the former President retains his window, but also can order selective destruction of tapes. At the end of the 10-year period, they all get destroyed, all that remain.

Q. In the second 5-year window, is that just by persons who have legitimate subpoenas and court orders closed off?

MR. BUCHEN. That is right, because there is a 5-year statute of limitations on most, in fact on all, Federal offenses and most civil matters, so it is assumed the initial 5-year window is long enough.

Q. What is the limit on destruction after 5 years plus 1 day, or can he destroy them all?

MR. BUCHEN. He can.

Q. He can?

MR. BUCHEN. He can order them destroyed.

Q. If they were making any copies, would the originals then be destroyed in the second 5-year window?

MR. BUCHEN. The originals will be destroyed. The copies will be destroyed immediately after they are used.

Q. And he could do it after 5 years and one day for everything?

MR. BUCHEN. Right.

Q. Now can you go then from there to the documents?

MR. BUCHEN. The documents are in a different category. There is no present gift of the documents as distinguished from the tapes. However, there is a 3-year period when there will be controlled access by the owner of those documents requiring the double-key arrangement with the General Services Administrator. And the former President is under obligation to respond to any subpoena involving documents, just as he is to those involving tapes.

Q. Could you repeat that last—

MR. BUCHEN. During the 3-year period involving documents, the former President will be under obligation to respond to subpoenas involving those documents. At any time, the former President can designate certain documents by description to become the absolute property of the United States.

However, after the 3-year period, he may either elect to complete his gifts or to withdraw materials as he desires. These are documentary materials.

Q. Why the 3-year limit?

MR. BUCHEN. We felt that as a practical matter on the documentation that would be long enough. It gives everybody a warning. Obviously if there is a subpoena out that

was obtained within the 3 years and the matter of its resolution has not been concluded, the subpoena would prevail.

Q. Can you destroy the documents after 3 years?

MR. BUCHEN. Yes, if he wants to withdraw them.

Q. By the way, Mr. Buchen, I may be wrong in what I am about to say, but I am going to predicate a question on it, nevertheless.

I am under the impression that the tapes, as opposed to documents, the tapes were—that things such as tape recordings were not covered when Congress closed that loophole, and for that reason, the former President could donate those tapes to the Government and claim a tax exemption.

Your second window, the 10-year time for destruction appears to rule that out; is that right?

MR. BUCHEN. He has already given them to the U.S. Government to be a gift effective at the end of the 5-year period.

Q. After he destroys them all?

MR. BUCHEN. He can't destroy them during the first 5-year period.

Q. He has given them as a gift to the United States—we are talking about tapes now—he has given them as a gift to the United States for 5 years; is that right?

MR. BUCHEN. No, it is the other way around. He has retained title for 5 years, and the gift takes effect at the end of the fifth year.

Q. But he can destroy his gift?

MR. BUCHEN. He doesn't have access to them.

Q. But he can the next day. Didn't you say 5 years and 1 day he could destroy them all?

MR. BUCHEN. He can order their destruction.

Q. What can he do with the copies? Can he dispose of them for his own purpose?

MR. BUCHEN. No, the copies will go back into the hands of the General Services Administrator, and they will be destroyed after he has listened to them.

Q. Mr. Buchen, after the 10-year period, is it mandated that the tapes, all tapes and all copies, be destroyed?

MR. BUCHEN. That is a condition.

Q. So, his gift in the second 5 years is a limited gift, in time it is a limited gift, say limited to 5 years; is that right?

MR. BUCHEN. No.

Q. You say he has given them to the United States?

MR. BUCHEN. Effective 10 years from now.

Q. Why are they going to be destroyed after 5 years?

MR. BUCHEN. Well, maybe they never should have been made in the first place. This was his desire, and I think it is consistent with the fact that these matters do involve conversations with people who had no realization that their voices were being recorded.

As an old spokesman for the right of privacy, I think there is considerable merit for putting these in a separate category from documents.

Q. Mr. Buchen, was any consideration given to the right of history and historians?



MR. BUCHEN. I am sure the historians will protest, but I think historians cannot complain if evidence for history is not perpetuated which shouldn't have been created in the first place.

Q. Is there anything he can keep, or intends to keep?

MR. BUCHEN. I am sure there are items in the documents that he would intend to keep. Of course, it would involve family letters, things of a highly personal nature.

Q. Mr. Buchen, if it is Mr. Nixon's desire to destroy the tapes after 10 years, would it not be logical to assume he will destroy them after 5 years?

MR. BUCHEN. That is his option, order them destroyed.

Q. What about the gift option, the tax deduction option?

MR. BUCHEN. I am not his tax lawyer and it seems to me if you give a gift with instructions that the items have to be destroyed, that the gift immediately loses its value, so I would think it would be very questionable.

Q. What about the President, though? Could he——

MR. BUCHEN. They will not be perpetuated beyond the limited use.

Q. Does the word "copies" include written transcripts as well as the originals?

MR. BUCHEN. Yes.

Q. As a practical matter, at the end of 5 years, then all the tapes will be destroyed except those under subpoena?

MR. BUCHEN. No, because he reserves the right to keep the window open for himself for another 5 years.

Q. Just the President, no public?

MR. BUCHEN. That is right.

Q. Is it a question they can be destroyed in 5 years, but must be destroyed in 10 years?

MR. BUCHEN. They can't be destroyed short of 5 years.

Q. Mr. Buchen, Prosecutor Jaworski gave no indication that he objected to the pardon. Is it your impression that he sort of feels relieved?

MR. BUCHEN. Wouldn't you if you were in his place?

REPORTER. Thank you.

NOTE: Press Secretary J. F. terHorst introduced Mr. Buchen at 12:12 p.m. in the Briefing Room at the White House.

For a further news conference by Mr. Buchen, see page 1123 of this issue.

## Juvenile Justice and Delinquency Prevention Act of 1974

*Statement by the President Following Signing the Bill Into Law, While Expressing Reservations About Certain of Its Provisions. September 8, 1974*

Late Saturday, I signed into law S. 821, the Juvenile Justice and Delinquency Prevention Act of 1974.

This is the first piece of legislation to reach my desk for action in the field of prevention and reduction of crime among our youth. Its passage by very strong majorities in both bodies of the Congress represents a continuation of our national commitment to reduce juvenile delinquency in the United States, to keep juveniles from entering the treadmill of the criminal process, and to guarantee procedural and Constitutional protection to juveniles under Federal jurisdiction.

This national commitment is one of partnership with State and local governments through which, together, we spend over \$10 billion per year for criminal justice programs.

During the course of this bill's passage through the Congress, the executive branch voiced serious reservations with regard to several of its provisions for organizational change and fund authorizations. I continue to be concerned about these provisions—especially the threat they carry with regard to increased Federal spending at a time when the economic situation demands across-the-board restraint, especially in the Federal budget.

Therefore, I do not intend to seek appropriations for the new programs authorized in the bill in excess of amounts included in the 1975 budget until the general need for restricting Federal spending has abated. In the interim, the estimated \$155 million in spending already provided under current programs will provide a continuation of strong Federal support.

This bill represents a constructive effort to consolidate policy direction and coordination of all Federal programs to assist States and localities in dealing with the problems of juvenile delinquency. The direction of our Federal programs has been fragmented for too long. This restructuring of present operation and authority will better assist State and local governments to carry out the responsibilities in this field, which should remain with them. Hopefully, the result will be greater security for all citizens and more purpose, sense, and happiness in the lives of young Americans.

NOTE: As enacted, the bill (S. 821) is Public Law 93-415, approved September 7, 1974.

## Federal Employees Compensation Benefits

*Statement by the President Following Signing of Bill Providing Increased Benefits for Employees and Their Survivors. September 8, 1974*

On Saturday, I signed into law H.R. 13871, the 1974 amendments to the Federal Employees' Compensation Act. This act provides workers' compensation benefits for Federal employees injured or killed in the performance

## Pardon and Agreement on Presidential Materials of Richard Nixon

*News Conference of Philip W. Buchen, Counsel to the President. September 10, 1974*

MR. HUSHEN. As I announced earlier, Mr. Philip Buchen, the Counsel to the President, has agreed to come back out here today to answer some of the questions you have.

Let me say we are going to give them 60 seconds to get some photographs and then they will go away.  
[Laughter]

Let me say at the outset that the document that is about to be handed out is embargoed until the completion of the briefing.

MR. BUCHEN. This is a followup, of course, of the meeting we had on Sunday. And at that time someone asked the question about the disclosures made to me by Special Prosecutor Jaworski to the areas of investigation in which his special force was engaged.

And my answer was that the question asked him was: "What matters could arguably involve further steps?" And I reported that it read like a list from one of your newspapers.

You have now before you the document that was furnished to me and, although the copy of the Special Prosecutor's memorandum from Henry Ruth to the Special Prosecutor dated September 3, 1974, on the subject of Mr. Nixon was sent to me in confidence, Mr. Jaworski has since advised me that if I were willing to assume the responsibility for its release, he would raise no objection to my doing so.

However, he cautioned that in the event of its release, he would expect that it be made available in its entirety, including the first and last paragraphs of the memorandum, and I quote that the first paragraph reads:

"The following matters are still under investigation in this Office and may prove to have some direct connection to activities in which Mr. Nixon is personally involved:"

At the conclusion of the memorandum, Mr. Ruth, in reporting to Special Prosecutor Jaworski, wrote:

"None of these matters at the moment rises to the level of our ability to prove even a probable criminal violation by Mr. Nixon, but I thought you ought to know which of the pending investigations were even remotely connected to Mr. Nixon. Of course, the Watergate coverup is the subject of a separate memorandum."

Now I will try to field any questions.

Q. Tell us about considering pardons for everybody involved in Watergate.

MR. BUCHEN. I am not involved in that matter.

Q. Well, who is?

MR. BUCHEN. I said at the time of the last press conference to my knowledge no thought was being given to

that, and I have not been called in to do any part of the study so far. I assume I will be.

Q. Who is at this point?

Q. Who is considering this, the President?

MR. BUCHEN. The President made the statement.

Q. Mr. Buchen, can you tell us if anyone tried to persuade Mr. Nixon to confess guilt prior to the granting of the pardon by President Ford?

MR. BUCHEN. No. Mr. Miller, at the time that I informed him that the President was considering a possible pardon for Mr. Nixon, was told by me that I thought it would be very beneficial in the interests of the country, in the interests of the present Administration, and in the interest of the former President, that as full a statement as possible should be issued by Mr. Nixon, but that I had been told that that was not a condition to the consideration of a pardon.

Mr. Miller at that time assured me that he agreed with me that such a statement should be forthcoming from his client.

Q. Mr. Buchen, I was wondering if—as the President's legal counsel—would you advise that the President in this study about the possibility of giving amnesty to all the Watergate people, that excluded from the people doing the study should be all Nixon holdovers? Would you advise, or do you think it is reasonable for Nixon holdovers to participate in a study of possible amnesty to all Nixon defendants?

MR. BUCHEN. I think that is a decision the President will have to instruct me on.

Q. How would you advise him?

Q. Did you finish your answer to the earlier question?

MR. BUCHEN. I was finished.

Q. Could I follow up then, sir? Did the former President balk at this, was there negotiation on what finally came out in his statement afterwards?

Did you see that statement, sir, or did anyone else in the White House see it prior to its issuance?

MR. BUCHEN. When Mr. Becker came back from San Clemente, he was able to report the substance of the statement that he thought would be forthcoming after the announcement was made. But we did not have the statement in the form in which it was ultimately delivered.

Q. Are you satisfied that this was as full a statement as possible coming from the former President?

MR. BUCHEN. That is something that I think would require going into the former President's mind. Obviously, if you do not condition an act of mercy on the recipient of the mercy doing anything, you are not in a position to do much bargaining.

Q. Mr. Buchen, did Mr. Becker go to San Clemente with a much stronger statement, or a statement—

MR. BUCHEN. He had no statement in hand.

Q. You say he came back with a statement—he reported the substance of the statement he thought would

be forthcoming. Was that substance substantially different from the statement that was then issued?

MR. BUCHEN. No, the essential feature was the statement that the President believed he had not acted decisively and forthrightly in respect to the Watergate once it became a judicial proceeding, and the regret for having done wrong was in the report that Becker gave us.

Q. Was it your hope or intention early in those negotiations to get Mr. Nixon to agree to a statement in which he admitted his own personal wrongdoing and guilt and involvement in the Watergate coverup?

MR. BUCHEN. Again I had to rely on what Mr. Miller believed would be in the best interests of his client and the country, because I had no authority to extract a statement of my own making.

Q. Not what was in the former President's mind, but what was in your mind—do you think that the final statement met the standards that you and Mr. Miller discussed at the meeting?

MR. BUCHEN. Well, I think they did, because as some of your papers have already suggested, the very fact that a man accepts a pardon does imply that he believes it is necessary for him to have that pardon, or that it is useful for him to have that pardon.

And there aren't many instances in which it is useful to have a pardon unless there is a strong probability of guilt.

Q. Mr. Buchen, do you think that you and President Ford misread the public's acceptance of the terms of this pardon and the acceptance in Congress?

MR. BUCHEN. Well, I was not doing much reading on the outside as to what might happen. That was really outside my bailiwick, so I cannot tell you.

Q. Mr. Buchen, do you and the President hope that the former President will at some time, perhaps in the near future, release some kind of formal statement detailing further his connection with Watergate?

MR. BUCHEN. I have not given that any thought, and I assume that would be entirely up to the former President.

Q. Mr. Buchen, you were involved in the preaccession negotiations and pretransition operations of the Ford Administration. Was there at any time any discussion between any high-ranking member of the Ford group and any member of the Nixon group as to the possibility of a pardon for Nixon in advance of his leaving office?

MR. BUCHEN. I answered that question Sunday and, to my knowledge, there was absolutely none and it never came up as a matter to be discussed by the transition team. And I think I participated in virtually all meetings of the transition team.

Q. How about between Ford and Nixon alone?

MR. BUCHEN. I don't believe so.

Q. Can we find out definitely whether there was no deal before Nixon left office?

MR. BUCHEN. Well, I know the man in the present office quite well, and I can assure you he did not make a deal. I know him that well.

Q. Mr. Buchen, he assured us in a press conference it would be untimely to do such a thing, and he assured us when he was nominated for Vice President that the American people would not stand for it. Can you give us an explanation of this?

MR. BUCHEN. Let's take the first. The matter of untimeliness seems to me to involve a debate that really makes little sense, because a man who had to consider whether or not to grant a pardon, it seems to me, has to consider the fact that if a pardon is desirable, the earlier it comes, the better.

It is like making a man walk a plank. You wait until he takes the first step. You wait until he gets to the middle of the plank. You wait until he jumps off the end, and then dive in to rescue him. I think it represents—let me put it this way: I don't think an act of mercy can ever be untimely, and it certainly becomes less merciful if you postpone the agony.

Q. Mr. Buchen, in that statement you are suggesting that the former President was going to go off the end of the plank?

MR. BUCHEN. I think there was strong probability.

Q. When Mr. Becker was out at San Clemente, did he discuss in the President's presence what the President might say in a statement, and did the President get angry at the suggestions that he admit guilt?

MR. BUCHEN. I think those negotiations were entirely with Mr. Ziegler, so I don't think we have any knowledge of what the President—

Q. The New York Times this morning reports it as I've quoted it.

MR. BUCHEN. Yes, but I think that's completely in error.

Q. You better clear up what you mean by "walking the plank"; do you mean suicide or going to jail?

MR. BUCHEN. No, as I understand the law of "walking the planks," it is because the man has been convicted of some crime that offended the master of the ship—or not convicted, say indicted.

Q. What about the question of health, Mr. Buchen? How did that figure into this decision?

MR. BUCHEN. I don't know because I wasn't party to any of the investigations or discussions, if there were any, about the former President's health.

Q. Did you say Mr. Becker at no time spoke to Mr. Nixon in San Clemente?

MR. BUCHEN. I didn't say that.

Q. I thought you said the negotiations were entirely with Mr. Ziegler.

MR. BUCHEN. I don't know whether there were negotiations, but the matter of the content of the former President's statement which he contemplated giving when

the pardon was issued was dealt with entirely through Ron Ziegler. The only face-to-face matters taken up with the former President dealt with the manner of managing and disposing of his papers and tapes.

Q. Mr. Buchen, did Mr. terHorst ask you on Friday whether Mr. Becker was involved in discussing a pardon with the former President during his trip to California, and if he did, what did you tell him?

MR. BUCHEN. Well, we better clear that one up.

Jerry terHorst reported to me that someone had observed Benton Becker and Jack Miller in the area of San Clemente. Jerry terHorst asked me what the purpose of my having sent Benton Becker out to San Clemente was, and I said that the purpose was to take a document that had been prepared in rough draft before he left Washington, had been prepared by Mr. Miller, which related to the management and disposition of the tapes and records.

However, we objected and wanted changes in those documents, partly because we were concerned as to the practicality of some of the proposals made insofar as they involved the Administrator of the General Services Administration.

The matter is very complex, as you see, so I suggested when Mr. Miller said he would have to go and discuss the terms of that document with his client that Mr. Becker go along, so that there would be a way that Mr. Becker could be on hand as changes, additions, or whatnot were proposed, and so that he would be available to report back to me on the progress of the negotiations. That was the purpose of his assignment.

Q. We specifically asked you if Mr. Becker was out there engaging in pardon negotiations.

MR. BUCHEN. There were no pardon negotiations, that is the point.

Q. Anything at all?

Q. You sent him out with instructions to say that the President had this under consideration?

Q. Would you answer my question, please?

MR. BUCHEN. Mr. Miller knew that the pardon was under consideration, and he could report to his client. It was not necessary for Mr. Becker to do anything in connection with the pardon.

Q. Didn't Mr. Becker take out a copy of the proposed pardon?

MR. BUCHEN. Yes, he did. It was a draft that he and I had worked on very hurriedly Thursday afternoon before he had to leave on the plane. I said, "Benton, you are going to be 5 hours on that plane. Take a copy along; keep working on it. I don't think it is in the form we want to submit to the President for his consideration. Take it along and work on it."

Q. You didn't tell Mr. terHorst that?

MR. BUCHEN. No. I will explain. As you may appreciate, being counsel to anyone, or lawyer to anyone, im-

poses certain restrictions. And I believed, on this matter, I was under complete restriction as a lawyer to the President not to disclose what I was doing for the President on a matter that he regarded as highly confidential.

Q. Did the subject of pardon ever—

Q. Would you say that you misled Mr. terHorst on Friday?

MR. BUCHEN. Let me put it this way: I can see how he could have been misled.

Q. Can you see how he could not have been misled?

MR. BUCHEN. No, I can see how he could have been; I don't say he could not have been. After all, if you get a question, why is a man whom you have sent to San Clemente there, and I give him an answer, I can see when he in turn had to respond to the man, or the reporter making the inquiries, that he would inject a negative. Was he there doing anything else? And I assume that Jerry said, "Well, as far as I know, he wasn't," because I had not told him he was doing anything else.

Q. Did you tell him he wasn't out there discussing the pardon?

MR. BUCHEN. Oh, no.

Q. Why was it something you couldn't talk about?

MR. BUCHEN. I could talk about the negotiations on the tapes.

Q. When he asked you about the pardon?

MR. BUCHEN. He didn't ask me about the pardon.

Q. What was the precision of language used in President Nixon's statement?

MR. BUCHEN. Let me get the question.

Q. What was the need for the secrecy in the negotiations, whatever they were?

MR. BUCHEN. In the course of any client-attorney relationship, usually until something happens, you are under obligation—until something happens as a matter of public record—you are under obligation not to disclose the conversations.

Q. I mean, what was the need for secrecy about the fact that a pardon was being considered, generally, not just your conversations with the President?

MR. BUCHEN. Well, generally, that was the President's decision and not mine. I was just bound by my client-attorney relationship.

Q. Mr. Buchen, if Mr. Becker knew all about the pardon, the President seemed to trust him with that information, yet he didn't trust Mr. terHorst with that information?

Q. Or you didn't trust Mr. terHorst with it?

MR. BUCHEN. I had no power to subdelegate in passing information. The first question is why didn't the President trust Mr. terHorst to have the information at the same time I got it?

Q. No, I mean Mr. Becker. You are talking about the attorney-client relationship, which involves you and the President; Mr. Becker I assume is someone outside that

relationship, yet he knew about the pardon because he was working on the pardon agreements.

MR. BUCHEN. No, he had the same relationship that I had in terms of his being a lawyer and working under my supervision for a client. It's just as in a law office, if a client comes and talks to a partner and the partner assigns an associate to work on the problem, the obligation of confidentiality extends to the other lawyer as well as the original one.

Q. Can you be forthright with us on what is your advice to the President on pardoning other individuals associated with the—

MR. BUCHEN. I have not given him any advice.

Q. What would be your advice; how do you see the issue?

MR. BUCHEN. I haven't even had time to study it.

Q. When did the President's other advisers find out that the pardon was under consideration or was to be granted, and did they agree with it when they found out about it?

Q. And did you?

MR. BUCHEN. I was in the room at the time when certain advisers were told about it on Friday before Labor Day, but I don't feel free to report their reactions.

Q. Can you tell us what role General Haig played in this granting of the pardon? He was in on all of this all the time, wasn't he? Was he recommending a pardon during this period?

Q. What was the question?

MR. BUCHEN. I was asked that question last night, and I can tell you that at every occasion when I was present when the subject was raised and General Haig was there, he took an absolutely neutral stand.

Q. Mr. Buchen, you say you are not part of the study of the pardon for the other Watergate defendants. Can you tell me when you became aware that that study was in the works?

MR. BUCHEN. I learned from Mr. Hartmann and Mr. Hushen that this matter was brought up at the early morning conference that the two of them had.

Q. Who brought it up?

Q. Today, for the first time?

Q. Did you say there was a connection between his consideration of a pardon for the others and the reaction against the pardon for Nixon? And secondly, if you are the President's lawyer and you are not working on it, who is?

MR. BUCHEN. Well, I don't know, Ron, I really don't.

Q. What about the first part of that question; is he trying to dampen down the reaction by giving out pardons to the others?

MR. BUCHEN. Well, I don't interpret studying a problem as predicting what the results would be.

Q. Mr. Buchen, as a lawyer, can you see a distinction between a President granting a pardon to a former President and granting pardons or not granting pardons to

former subordinates for involvement in the same illegal acts?

MR. BUCHEN. Well, there certainly is a distinction. I will later have available for distribution—because I don't think there will be many questions on it—a memorandum, a copy of a memorandum that Mr. Jack Miller prepared for the Special Prosecutor in which he rather carefully documents the reason why the situation of his client is distinguishable from the situation of anybody else even remotely involved in the acts, or Watergate-related events.

And as you will remember I quoted the letter from Mr. Jaworski who did say he thought there was a distinction. That was on Sunday.

Q. Phil, could I ask you this question: Does not the mere fact that the White House has made a statement saying that pardons for all Watergate defendants are under study, does that not intrude upon the judicial process to the point that the trial for the Watergate defendants, the trial now scheduled for September 30, is somehow intruded upon and interfered with by this statement?

MR. BUCHEN. Well, I don't think so. You see, after all, the fact that there can be a pardon hangs over the trial of anybody. That is not a unique situation. The power to pardon exists in the Federal Constitution and, I believe, in every State Constitution.

Q. This is a matter of great and intense national interest. It is not like the case of any defendant. This is a case of specific defendants that have been involved in a great national drama or what have you, so it is a different case, is it not?

MR. BUCHEN. Yes, but the Presidential pardon power, as well as that of a Governor of a State, hangs over the judicial process all the time.

Q. What purpose was served by announcing it this morning, or authorizing Jack Hushen to announce it this morning?

MR. BUCHEN. Well, I was not party to that determination, so I can't tell you.

Q. What purpose was served by the intention of releasing the Ruth-Jaworski letter on the 10 points?

MR. BUCHEN. Well, as I indicated, it was given to me on a confidential basis. The comments that have been made around town is that there was not a consideration given of what was, what someone else called "are there any possible time bombs," and we felt that it would be in the interest—provided Mr. Jaworski consented—that we do provide you with the information on which the President in part acted before he decided to grant the pardon.

Q. In this study that is being undertaken, sir, what is your understanding of the philosophy behind it—that families of all Watergate defendants have suffered enough, or what other considerations?

MR. BUCHEN. I can't go beyond the statement Jack gave you. That is all I know.

Q. Where did it first come up?

Q. Where did this subject of possible clemency for all other Watergate defendants first come up? You didn't make that clear. You said "an early morning conference."

Q. What morning?

MR. BUCHEN. This morning, I understand.

Q. What were the circumstances?

MR. BUCHEN. I don't know, except it was reported to me by Mr. Hartmann and Mr. Hushen that it was raised this morning.

Q. Where?

MR. BUCHEN. I assume with the President. I don't know the circumstances.

Q. Is this a reaction, Mr. Buchen? Is this consideration of the study, consideration of pardons, and the announcement of this study—is this a reaction to the popular outcry against the pardon of the former President?

MR. BUCHEN. I don't think so, because the fact that two people are brought into his confidence this morning and that confidence has been shared with you today, doesn't mean that that is when the thought came.

I explained on Sunday when the question was asked me as to whether any thought was given to the way in which the pardon power might be exercised, if at all, respecting other people involved, I said that to my knowledge—meaning that as far as I knew—no thought had been given. But that didn't mean that the thought processes weren't going on unbeknownst to me, or unbeknownst to the people who got the reports this morning.

Q. Mr. Buchen, in going back to my other question, you said mercy is never untimely. Was the President not merciful 10 days ago when he said it would be untimely, and was the President lacking in mercy when he told the committee that the American people wouldn't stand for it?

What caused him to be suddenly merciful? Could you tell us what happened?

MR. BUCHEN. I wish you would come up here and explain the theory of mercy. You can probably do a much better job than I can.

But let me tell you: It is not whether to be merciful, but how he could be merciful; and I do not think he was aware that he could act before there was any formal indictment when he made his statement before the press.

Q. Wasn't the President briefed on that very point before the news conference? Wasn't he briefed that there would be a question on pardon and this was a policy adopted?

MR. BUCHEN. That is right.

Q. Why was that policy changed—that there would be no pardon until there was due process?

MR. BUCHEN. You have lost me; I am sorry.

Q. He announced a policy at that news conference, and you say he was briefed on that policy.

MR. BUCHEN. He said that he would make no commitments. His intention then was to make no commitments on the pardon until something had been brought to him.

Q. Why was that changed?

MR. BUCHEN. Well, because after the conference I assume he reflected on the matter, and then asked me to find out whether or not he could move quicker than he had indicated at the press conference.

Q. Did you brief him prior to the news conference that the best policy was for him to wait until there was some—

MR. BUCHEN. No, I did not.

Q. With whom was he in touch with at that point? Can you tell us who he consulted between Wednesday and Friday when he asked you to begin your research into precedents?

MR. BUCHEN. I have no notion; I really don't, Pete.

Q. Mr. Buchen, what is your understanding of the status of the investigation referred to in the memo? Is Jaworski going on with his investigation into these points? Is he going to make the material public?

MR. BUCHEN. I know nothing more than appears in the memorandum.

Q. The Watergate coverup, it says, is the subject of a separate memorandum. Has that memorandum reached you?

MR. BUCHEN. It has not.

Q. Do you know what it concerns?

MR. BUCHEN. I can imagine what it concerns, but I have not seen it.

Q. Mr. Buchen, is it indicated to you, as a lawyer reading from this, that that, number one, is ongoing, and unlike this listing of 10 points which according to the memo may prove to have some direct connection, but then says there is no point we can prove regarding the connection with Mr. Nixon—does it indicate to you that is a different story entirely when it comes to the coverup?

MR. BUCHEN. As you know, this memorandum was issued before the pardon, so I don't know what the effect of the pardon has on the investigation referred to in the last paragraph.

Q. You must have had some indication from the Special Prosecutor as to where he stands with regard to the coverup investigation.

MR. BUCHEN. I do not.

Q. In preparing your advice for the President, did you address at all the time element of granting this pardon, with specific reference to the possibility that the Watergate coverup trial might be affected since the jury had not been sequestered?

MR. BUCHEN. I did not discuss that with the President, but I understand, of course, that, one, it is not certain the jury would be sequestered. I assume it is available to the attorneys for the defendant to waive any such request; and, second, I am not sure that a story like this could possibly have been kept from the jury, however tightly sequestered.

Q. Mr. Buchen, did you get from Mr. Ziegler or from Mr. Nixon, either after Mr. Becker returned here or while

he was there, some sort of commitment that the President would not in the future make statements protesting his innocence?

MR. BUCHEN. We did not.

Q. Mr. Buchen, are you saying that the President did not know or understand at the time of the August 28 press conference that the pardoning power could be exercised before indictment or conviction?

MR. BUCHEN. I certainly had not so advised him, and he had not asked my advice.

Q. You didn't say that? Do you have reason to believe that, that he didn't realize he could move before the indictment was voted?

MR. BUCHEN. That I don't know. I didn't ask him.

Q. You so far have not really given us any explanation for why Mr. Ford changed his mind after that press conference with the possible exception of his having received this documentation of the investigation.

Does that mean that the investigation turned out to be so serious that he thought the former President couldn't withstand it?

MR. BUCHEN. No; I think more significant than that was the advice that I reported Sunday, namely, that before there could be a trial, there would have to be a delay of a year or more, and I think that was the matter that concerned him most.

Q. Don't many trials take a year or more to come to the court or to settle? And why is Mr. Nixon to be treated any differently in this respect than anyone else?

MR. BUCHEN. Every defendant under the law is entitled to a prompt trial provided he can have a fair trial by an impartial jury.

Q. When did you advise the President of the long delay of 9 months or a year? Was that after the press conference?

MR. BUCHEN. He asked me after the press conference, or that Friday, to find the answer. So, apparently someone had told him that that probably would be the case.

But he wanted his own lawyer to ask the Special Prosecutor who would be the best judge of how long it might take, and that is the reason I went to Mr. Jaworski, so we would have an expert opinion, because I don't claim to be an expert. On the other hand, I also have read the cases that are cited by Mr. Nixon's own attorney who makes the same argument very effectively in a memorandum that you can all take back to your legal counsel, because I don't think you want to read it all.

Q. However, you did know that indictments could be very quick, the question of laying out the charges on the public record would not have taken very long—maybe a month; is that correct?

MR. BUCHEN. As you know, the word came out that the former President—then the President—was about to be named as an unindicted coconspirator, so that the indictment that is involved—that involves the present defendants, spells out everything that would probably have come out of an indictment of Mr. Nixon alone.

Q. But it is not the same, really.

MR. BUCHEN. I think it is pretty good evidence of what that jury intended to do, and would have done if there had not been a pardon.

Q. Was consideration given to the timing of when this jury would have done this, vis-a-vis the November elections?

MR. BUCHEN. It had nothing to do with the elections. However, it was evident that if it was the President's decision to grant a pardon before the indictment, he would have to act fairly soon because it was not possible, of course, to guide the grand jury in the time it would act.

Q. May I clear up a question here?

MR. BUCHEN. Let me get Phil first.

Q. In view of the last sentence in this memorandum, didn't you have any qualms about whether you could give the President full legal advice on what he could do? When it says here there are other matters and other memoranda which you have not seen, how could you give the President full advice on what he could do on the pardon in view of that?

MR. BUCHEN. Well, because we believed, of course, that the evidence before the House Judiciary Committee on this very point that resulted in the article that brought a unanimous vote ultimately, and based on particularly the June 23 tapes, gave every indication of what was involved in the alleged Watergate coverup. I didn't think we needed to know any more than that.

Q. I think my notes are correct, that is, you told us earlier, "I do not think he (the President) was aware that he could grant a pardon before an indictment when he made his press conference statement." Is that right?

MR. BUCHEN. As far as I know. I don't believe that he was or that he understood what, if any, problems—I am talking legal problems now—would arise if he acted before indictment.

Q. The President seemed to say in his news conference that he wouldn't act on the pardon until after an indictment, and your explanation, that there would be 9 months or a year, perhaps longer, before a trial, doesn't really go to the question of why he changed his mind about waiting until after an indictment to act on a pardon.

MR. BUCHEN. Well, I guess all I can go back to is my own analogy. If you are going to—if you do come to the conclusion you ought to consider mercy, it doesn't seem to be very relevant to consider what other steps you ought to require the man to whom you are granting mercy must take.

Q. And at the news conference he had not made up his mind yet?

MR. BUCHEN. He had not made up his mind.

Q. You are saying the main reason he changed his mind was because somebody told him there would be this long delay, and he asked you to check it out, and you did and said it would be. And then he decided to grant it right away. In the same period, did somebody tell him

that a 9-month or a year delay would wreck Nixon's health?

MR. BUCHEN. Not that I know of.

Q. Has there been any discussion about President Nixon testifying in the trials—has there been any discussion about the former President not wishing to testify or be a witness?

MR. BUCHEN. Well, he is under subpoena so he has no choice.

Q. I know, but if you are considering pardons, if there is consideration for others that would spare the former President from testifying, is that a consideration in this study?

MR. BUCHEN. I have not started the study, so I don't know.

Q. In your discussion of the coverup memorandum a moment ago, you said the June 23 tape told you everything you needed to know about that.

MR. BUCHEN. I didn't say everything. I also said the findings of the House Judiciary Committee.

Q. Right, and earlier you spoke of the necessity, the acceptance of the pardon, the necessity for the pardon. Does this mean that you and the President, in offering this pardon to the President, were making a presumption of guilt?

MR. BUCHEN. First, take the "you" pronoun out of that, and perhaps I can answer it. I did advise the President that a pardon could be characterized as implying guilt on the part of the person who was pardoned, because there is no other reason for granting a pardon. But that did not deter or affect his determination to act when he finally made up his mind to do so.

Q. From the perspective of the person who accepts the pardon, does the acceptance of the pardon amount to a tacit admission of guilt?

MR. BUCHEN. You can so read it. The question never came up, because I couldn't find in any cases where that question was litigated, so I can't give you any authority. But it just takes common sense and logic to reach that inference.

Let's have one of the women.

Q. Thank you.

Throughout this, we have heard solely about the consideration of an indictment and the lengthy period of time between indictment and trial. Did you try to determine from Mr. Jaworski the possibility of a plea from the former President? Now faced with the prospect of a multi-count indictment, as he was and as I am sure Mr. Miller advised him, it seems extremely likely there might have been a plea far sooner than there would ever have been an indictment and trial. Did you ask for any timing on this, and if not, why not?

MR. BUCHEN. I did consult, of course, with Mr. Nixon's attorney, and I was pretty sure from what he told me that in his mind there would never be a plea.

Q. There would have been a trial then? You are saying

he would have gone the whole route had he not been pardoned?

MR. BUCHEN. I believe so.

MR. HUSHEN. Let's take two more questions. We've been out here for 45 minutes. Two more questions.

Q. Maybe you have answered this. Why did President Ford want mercy for Richard Nixon?

MR. BUCHEN. Because I think he truly believed it would be in the best interests of the country.

Q. Mr. Buchen, if you are done with that answer, I would like to ask you, as a lawyer, do you think it not fair and proper that, if the President considers amnesty or granting a pardon for persons convicted for or indicted for burglary, perjury, conspiracy in Watergate-related crimes, that he should give equal consideration to pardoning other persons indicted or convicted of burglary, perjury, or conspiracy in non-Watergate related crimes?

MR. BUCHEN. I wish I were a better student of the ethics or morality of mercy, but I believe a representative of the clergy would substantiate my remarks that throughout our religious history—and I don't mean just the Christian religion—there has always been a separate category of mercy that we know has never been equally dispensed, and we know that it is an act of grace that is many times inexplicable.

I am sure all of us in the room have sought mercy on matters that we wanted to blame ourselves for or some adverse consequences, and we didn't always get mercy.

Mercy seems to work in very unequal fashion. That is a point on which Jerry terHorst and I have disagreed. He has a notion, as he said, that mercy should be dispensed with—in the same even-handed fashion as we would like to see justice dispensed.

But, I believe, history tells us mercy doesn't work the same way.

Q. Mr. Buchen—

MR. HUSHEN. Thank you, ladies and gentlemen.

Q. Mr. Buchen, is there any limitation on the power of pardons?

MR. BUCHEN. I refer you to—

Q. Is there any limitation on this at all?

MR. BUCHEN. I refer you to the Constitution.

Q. Is there anything he could do that was more than this?

MR. BUCHEN. No, not that I could find in the Constitution; no.

REPORTER. Thank you.

NOTE: Deputy Press Secretary John W. Hushen introduced Mr. Buchen at 12:49 p.m. in the Briefing Room at the White House. For Mr. Buchen's news conference of September 8, see page 1108 of this issue.

The White House Press Office also made available copies of the following documents:

—Memorandum to the Special Prosecutor from Henry Ruth of the Watergate Special Prosecution Force, concerning matters involving Mr. Nixon which were still under investigation.

—Memorandum to the Special Prosecutor from Herbert J. Miller, Jr., attorney, on behalf of Richard M. Nixon.



## VISIT OF PRIME MINISTER YITZHAK RABIN OF ISRAEL

*Exchange of Remarks Between the President and the Prime Minister at the Welcoming Ceremony on the South Lawn. September 10, 1974*

**THE PRESIDENT.** *Mr. Prime Minister and Mrs. Rabin:*

It is a very real pleasure for me to have the opportunity of welcoming both of you to the United States.

You are returning as the leader of a great country. You are returning to meet many of your friends over the years that you knew so well during your service here as Ambassador to the United States.

I trust that you and Mrs. Rabin will thoroughly enjoy this visit back to the United States.

The United States, Mr. Prime Minister, has been proud of its association with the State of Israel. We shall continue to stand with Israel. We are committed to Israel's survival and security.

The United States for a quarter of a century has had an excellent relationship with the State of Israel. We have cooperated in many, many fields—in your security, in the well-being of the Middle East, and in leading what we all hope is a lasting peace throughout the world.

Many of our people have a close personal relationship and association with your citizens, your fellow citizens in Israel, and we hope, and trust that this relationship will grow and expand.

Over the last few months, there has been movement in the Middle East for a lasting and durable peace. Israel has cooperated; Israel has been helpful. And we hope and trust that in the months ahead the foundation which has been laid will be built upon.

We want, you want, and others throughout the world want a lasting and durable peace in the Middle East.

The first steps have been taken; others will follow. And I am certain and positive that, as we meet here during the next several days, we can contribute to the building of a better and finer peace in the Middle East.

I hope that you and Mrs. Rabin have a delightful and warm welcome, which you so richly deserve, in the United States.

**THE PRIME MINISTER.** Mr. President, Mrs. Ford, I am grateful to you for your kind invitation to come to Washington and for your warm words of welcome.

As you know, Mr. President, I am not a complete stranger in this country, nor, indeed, in this city. But this is the first time that I come here in my capacity of Prime Minister of Israel.

You, Mr. President, have very recently undertaken new and awesome responsibilities, and I feel certain, therefore, that you can appreciate the weighty load that rests on my shoulders.

I represent a country which is faced—which is facing manifold problems, great challenges, but also great and new opportunities for internal progress and for peace with her neighbors.

In the performance of my new duties, I am encouraged, as all my predecessors have been, by their binding friendship and by the ever-deepening ties which bind the people of Israel with the people of this, the greatest democracy, and with its leaders.

Ever since the renewal of Jewish independence in the land of our forefathers, after long generations of suffering and martyrdom, Israel has