

**The original documents are located in Box 2, folder “Nixon Pardon - Becker's Memorandum” of the Benton L. Becker Papers at the Gerald R. Ford Presidential Library.**

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# Gerald R. Ford Library

file: Benton Becker Papers

box 2

folder: Nixon-Randall-Becker's Memoranda

1000 Beal Avenue Ann Arbor, Michigan 48109-2114

**Date** : June 9, 1992

**Reply to:** David Horrocks *DH*

**Subject** : Identification of "The Bird"

**To** : The File



On this date, John Robert Greene of Cazenovia College called me to say he had just spoken by telephone with Benton Becker. He had asked Becker to identify "The Bird," mentioned in a memoir document in Becker's papers.

Becker said "The Bird" was Henry Kissinger, and the term derives from the Secret Service codewords for Kissinger, e.g. "Eagle," which all had to do with flight.

Becker told Greene that he did not cite Kissinger by name because, at the time of writing, he did not know where the document would be going.

I asked Greene if I had his permission to place this explanation in the Becker Papers, for future researchers. He said yes.

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MEMORANDUM

September 9, 1974

FROM: BENTON L. BECKER <sup>2/3</sup>  
RE: HISTORY AND BACKGROUND OF NIXON PARDON

Gerald R. Ford was sworn in as President of the United States on August 9, 1974, at 12:00 Noon. Early in the afternoon on the day before President Ford's swearing in, I received a call from then Vice President Ford's Chief of Staff, Robert Hartmann, requesting rather urgently that I meet with the Vice President.

I arrived at the Vice President's Executive Office Building office and met with Mr. Ford and Bob Hartmann. The Vice Presidential suite of offices were aglow with activities. Transition team members were meeting, an "inaugural address" was being prepared for the following day, personnel changes were being considered, etc. Hartmann and Ford advised that they had received information that Nixon's staff members were stuffing an inordinately high amount of papers in their "burn bags". [These bags later were macerated chemically.] Vice President Ford was concerned with the security of papers and records from the Nixon Administration and asked me to look into and investigate the matter from top to bottom. I agreed.



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During the course of the conversation I volunteered to the Vice President a status report on what had become to be known as the "Kline matters". The status at that time was that 8 of the 9 allegations of improper conduct made about me by Kline and Baer had been fully and completely investigated and resolved in my favor. Lingerin, although the investigative process was concluded and the reviewing of that process was undertaken, was the 9th matter in which Kline alleged a \$10,000 kickback to me as part of a tax fraud scheme. The investigation of that matter consumed an inordinante period of time in that the Assistant United States Attorney deemed it prudent to determine the source of each and every deposit and expenditure in my and my wife's bank accounts for the 12 month period. I have been informally told that this matter too would be resolved in my favor as there never having been such a kickback, none was found.

In the ensuing weeks, which at sometime perhaps would be the subject of other memoranda, while assisting in transition, I worked on the problem created by Nixon records and papers, President Ford's selection of Nelson Rockefeller as Vice President and his screening of other potential candidates and generally assisted Philip Buchen as his right-hand man.

By the week of August 26, 1974, the following information was known relating to the Nixon papers:



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1. Approximately 46 million pieces of paper and 950 reels of tape existed which traditionally were property of the former President. None of which had been removed from the White House.

2. That Richard Nixon had been served with a subpoena as a witness in U. S. vs. Mitchell, et al., commencing September 30, 1974, and that it was absolutely necessary for him to review his records and tapes before that appearance in order to be adequately prepared to testify.

3. The Ford Administration had been served with at least two restraining orders (in the Wounded Knee criminal case and the Network Anti-Trust suit) restraining any transmittal of any Nixon records from the White House to any other place.

4. Various production subpoenas had been issued to the White House in numerous civil suits calling for production of tapes and other records relating to the matters under litigation in each of the suits.

5. The opinion of the Attorney General sought and received by President Ford concluded that Richard Nixon was the legal owner of the records.

The problem presented by the tapes and records was how to satisfy Nixon's immediate need for a search of the records, how to satisfy the outstanding production subpoenas for the records without employing Ford White House staff for the task. Or, alternatively, how to insure Richard



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Nixon's ability to produce the requested items in the subpoena while at the same time prevent destruction and/or deletion of the records in light of the 18 minute gap.

The problem was defineable and it appeared unsolvable. And, as time progressed, packaging, boxing of the records continued and storage of same commenced on the Fourth Floor of the Executive Office Building until such time as the Secret Service in a confidential memorandum expressed real concern as to the strength of the Fourth Floor of the E.O.B. to hold these boxes. As of the time of writing this memorandum, literally tens of thousands of boxes rest on the squeaking floors of the E.O.B. Numerous alternative approaches were considered. Among them, an interpleader giving all the records to the Court. This was discarded as unworkable and perhaps illegal in light of the Attorney General's opinion that Richard Nixon was the legal owner. Ultimately, early in the week of August 26th some light in the tunnel surfaced when Richard Nixon announced that he had obtained Herbert J. Miller as his counsel. This action by Nixon at the very least opened an avenue of communication on the question of records between Phil Buchen and myself and the Former President which had not existed before.



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Commencing during the week of August 26, 1974, meetings occurred between Buchen, Miller and myself. The purpose of these meetings were to define the mutual problems relating to tapes and records of the former President and to conceptually consider feasible solutions.

On Thursday, August 29th, Mr. Buchen advised me privately that he had had a conversation with the President in the company of Haig, Hartmann and the Bird, wherein the President indicated a disposition to move on a Presidential Pardon. All parties present were sworn to secrecy by the President. The President instructed Buchen to include me among the four and to explore, among other things, the legal feasibility of such an action at this time.

Throughout the remainder of that weekend, including Monday of Labor Day, I studied the law with respect to pardons. This work was commenced at my law office in Washington, the law library at my law school and at the Supreme Court law library. The issues developed acquiring resolution were two. They were: (1) Whether a President was Constitutionally empowered to issue a pardon before formal accusation, and (2) whether a pardon was valid if not specific in its grant of grace, i.e., whether a specific statutory crime need be named from which the recipient was pardoned.

I concluded on the basis of the Burdick case, the Garland case, Blackstone's writings and an opinion from the Attorney General during President ~~Washington's~~ presidency that neither issue was an impediment against pardon.



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Monday  
On ~~Tuesday~~, September 3<sup>rd</sup>, 1974, Mr. Buchen and I met with the President and advised as to our findings. The President appeared to me at that time to no longer be considering the possibility of pardon but rather had made up his mind, that if he could do it, he would. Buchen and I continued to meet throughout the remainder of that day and on September 4th and 5th met with Jack Miller. During the course of the meeting on September 4th, Buchen advised Miller that the President was giving consideration to a pardon.

This precipitated movement to the question of tapes and records which had been on dead center for the past month. The Buchen/Becker concept of <sup>the</sup> Presidential Deed of Gift of the Presidential papers to GSA, while retaining ownership with President Nixon and restricting access to the general public under the Deed of Gift, was expressed. Miller prepared a draft letter from President Nixon to Arthur Sampson, Administrator of GSA, which attempted to incorporate the concept discussed by Buchen and myself.

Simultaneously, the Attorney General had informally advised Buchen that it was his, the Attorney General's, opinion, ~~that~~ the records and tapes of the Nixon Administration were the property of Richard Nixon.

During the course of the September 4th meeting with Miller when the concept of pardon was disclosed, Miller





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advised that it was his firm belief that President Nixon should, if such pardon were issued, offer a statement of admission to his Watergate involvement. Miller was quick to add, however, that the scant meetings to date with President Nixon demonstrated to him that the President's ability for objective mental recollection on that subject were poor. Buchen and I concurred on the question of a statement with Miller but hastened to add that should a pardon be granted, President Ford would not impose such a statement as a pre-condition.

On September 5th, Miller, Buchen and I again met, as we had in the past, in Buchen's hotel room in the Jefferson Hotel in Washington. The Miller draft of the Nixon/Sampson letter was discussed and found to be lacking in achieving the objectives presented earlier in this Memorandum. Miller advised that in order to consummate the matter of records and tapes, he deemed it necessary to meet in person with his client and suggested that one of the two of us attend that meeting. A flight was planned that night for Miller and me to San Clemente to meet with ~~the~~ President *Nixon*.

Before taking off I met with President Ford at approximately 4:00 P.M. on September 5th in the company of Haig and Buchen. The President was pleased that we had made progress on the tape and records resolution and pleased



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that Miller had indicated to us that his client was willing to make a statement. That conversation dealt largely with the tapes and records disposition.

Near the end of the conversation, the President advised that the Bird had expressed concern for himself and others with regard to a public disclosure of all tapes. Although not personally incriminating, those tapes were potentially embarrassing to individuals remaining in Washington, after the Nixon resignation. The President instructed me that in my negotiations with President Nixon, at the very least, prevent public disclosure of the tapes for 50 years. That was counter to Buchen's and my negotiations with Miller to date and represented a major impediment, in my judgment, to a full resolution to the records and tapes problem.

The President did not indicate that a satisfactory resolution of same was a pre-condition of pardon.

On the flight to San Clemente that evening with Miller, I advised of the necessity for tight security of the tapes. Miller indicated that he felt it could abort any resolution to the records and tapes.

On the previous Wednesday, Buchen and I had prepared a draft pardon which we had disclosed to the President at our Thursday meeting. I showed Miller a copy of the draft indicating that this was the type of pardon that President Ford was considering granting. No commitment was made however.



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We arrived at El Toro Air Force Base near San Clemente at Midnight September 5th. I was still on Washington time which was 3:00 A.M. and was quite exhausted. Nonetheless we proceeded directly to the compound where I had the pleasure of meeting for the first time, Mr. Ronald Zeigler.

Ziegler had, of course, been briefed by Miller of my anticipated arrival. He knew of the personal relationship between GRF and myself and that a pardon was not a ~~total~~ *fatte* complete. I learned later, what I had suspected at the time, that Ziegler had had telephone contact with General Haig regarding GRF's position on pardon, GRF's reliance on me and my report to him upon my return to D. C. which could "tip" the decision either way and GRF's position of not imposing a statement of contrition upon President Nixon before granting, if to be granted at all, the Pardon. Armed with what he apparently considered to be "inside" information, Ziegler immediately attempted to seize the initiative and "upperhand" in the negotiations. Bill Casselman had warned me of the deceptive Mr. Ziegler, yet I was still somewhat surprised by his opening gambit. "I can tell you right now," he announced boldly, demonstrating that he, not Jack Miller, was in charge of the negotiations, "that President Nixon will make no statement of admission or complicity in return for a pardon from Jerry Ford."



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This exclamation had a "ring" of having been rehearsed and re-rehearsed in order to theatrically achieve just the right authoritarian tone. The spitting reference to "Jerry Ford" rather than President Ford and the dramatic sense of timing, following, "Hello, Mr. Becker," all reinforced the phonyness of his precipitous ploy.

I knew, and he knew, we had many ~~oth~~er things to argue about before addressing the "Nixon statement" question, so I called the biggest bluff in my life. Quietly I remarked, "Mr. Ziegler, I've never been to San Clemente before and for that matter I don't work for the government, so...I'm a bit confused. Can you tell me how to reach the Air Force pilot that brought me here, so that I could instruct him to take me back to Washington?" A long silence followed, at the conclusion of which I added, "I'll also need a car and driver to take me back to El Toro." Miller understood that I was prepared to leave and sought to quiet the matter by commenting that the lateness of the hour has made us all tired and we could address that question in the morning, after other questions had been resolved. It seemed to work, for Ziegler mellowed.

For approximately one to one and a half hours thereafter we three spoke conceptually of the problem facing both Presidents Ford and Nixon relating to the present status of the papers and tapes created during the Nixon administration.



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Ziegler appeared surprized at the depth of the problem, the evidence of outstanding subpoenas for production and a feasible manner to implement compliance. No substantive resolution occurred that morning.

Approximately 2:00 A.M. California time, Miller and I checked into the San Clemente Inn. San Clemente Inn is approximately 15 minutes from the Compound and has the appearance of a high class Holiday Inn, with the exception that instead of J. Willard Marriott's picture prominently hung the San Clemente Inn appeared to be the Richard Nixon memorial shrine. The lobby is replete with White House photographs of the former First Family, and one gets <sup>an</sup> ~~the~~ impression <sup>of</sup> ~~that~~ a modern public relations effort of George Washington Slept Here<sup>1</sup> was undertaken by the Inn. Miller and I wandered into the cocktail lounge and had two draft beers each while we observed the Inn's patrons. In all, it is my judgment that the Inn would not be recommended by Duncan Heinz.

Before going to sleep about 3:00 A.M. in the morning, I called the desk and asked for a 5:30 A.M. call. So I enjoyed a 2-1/2 hour slumber. At 5:30 I called Washington, 8:30 D. C. time, and spoke with Phil Buchen. I advised Phil of the thrust of the meeting the night before and of Mr. Ziegler's charm. During the course of that phone call Mr. Buchen advised of a tentative schedule, calling for a pardon announcement on Sunday afternoon, subject to President Ford's



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final concurrence upon my return. Buchen and I reaffirmed our position that while a statement of contrition was not a precondition to pardon, it would be both proper and helpful for pardon acceptance to both President Ford and President Nixon.

After a leisurely shower and a review of my records, I unpacked and prepared to breakfast with Jack Miller. My wife, who had packed rather hastily for the trip, had included a blue and white striped, cuffed shirt which I put on. No cuff links were packed with it. And so I commenced this momentous day negotiating with the former President on behalf of a present President with paper clips on my cuffs. It gave me a bit of a common touch.

San Clemente Inn has a large breakfast bar where Miller and I sat. We had not been seated long before an individual identifying himself as a representative from the Los Angeles Times approached Miller and asked what he was doing there and who was Mr. Becker. I politely excused myself and returned to breakfast after he had left. Miller advised that he believed the desk clerk at the Inn reports to the local press his comings and goings to California.

I later learned that at 2:00 P.M. in Washington on that very day the reporter had connected an association between my name and President Ford's and approached the then Press Secretary, Gerald terHorst, and inquired as to the reason for my being in San Clemente. terHorst, who had





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not been advised in advance of the contemplated pardon, was told by Phil Buchen that I was there to discuss a disposition to the Nixon records and tapes. Consequently, no story was printed in advance of the Sunday announcement. Later, TerHorst felt that because of that conversation and apparently others he had had in the past with members of the press on other subject matter, he had lost his credibility with the Press Corps and felt compelled to resign.

The meeting in San Clemente that day commenced immediately after breakfast and took on the same structure as the meeting of the evening before. The question of the Nixon statement was not mentioned until Noon that day.

Sentence by sentence, the three of us meticulously reviewed the Miller draft of the Nixon/Sampson letter. As changes to that document were discussed and resolved, Miller and Ziegler would leave the office in which we were meeting and obtain President Nixon's authority for the change. Often these meetings with President Nixon were brief, more frequently they were lengthy. During the course of these periods I would call Phil Buchen and report the status.

Mid-Afternoon, Ziegler commented to me that it must be difficult to make a decent living in Washington as it was obvious I could not afford a pair of cuff links. In typical Ziegler charm, he removed from his own arms a pair of Presidential cuff links which he gave me. During the course of this dictation, untypical of me, I banged on my desk and broke one, to which my Secretary has claimed ownership.



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At Noon, without any prior reference to the subject matter, Ziegler announced that on reflection he believed that a statement was proper. He informed me that he had outlined a statement, submitted it to a speech writer on the Nixon staff and had before him what he believed to be the finished product. He asked me to read it and give him the benefit of my thoughts. I did.

The statement spoke of the pressures of the Office of the Presidency, the necessity for the reliance upon the judgment and honesty of staff and the President's preoccupation with the Nation's international posture. It concluded by acknowledging that President Nixon should have placed less reliance and delegated less authority to staff members. It said nothing more. Ron Ziegler did not have to inform me of ~~his~~ authorship, it reeked with Zieglerisms and protestations of innocence.

Before speaking I reaffirmed to Ziegler and Miller that a statement was not a precondition to pardon and then gave him my opinion of ~~the~~ draft. That opinion was that the proposed draft would be better substituted by no statement whatsoever. I reminded him that 38 members of the House Judiciary Committee differed with the opinions expressed in that statement and that an estimated 67% of the population of the Nation concurred with the Judiciary's findings. I





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reminded him that the documented evidence introduced before the Judiciary Committee contradicted the statement and concluded by stating that in my judgment the statement was an invitation to State prosecution should a Federal pardon be granted. Miller concurred entirely with all my observations.

The speech writer was called in and Miller dictated the thoughts to be contained in a second draft. I contributed nothing to that dictation. We then proceeded in our discussion of record and tape status. At approximately 3:00 what I later learned was draft number 4 of the original Miller proposed statement was submitted to me for comment. It was far more candid than the original Ziegler draft but considerably watered down from the outline of ideas that Miller had dictated to the speech writer. It contained an acknowledgement by the Former President of poor judgment. I concluded once again that the statement was both absent of candor and counterproductive and so advised Miller and Ziegler. When asked how I would change it, for the 53rd time that day I reaffirmed that a statement was not a precondition to pardon, but suggested an acknowledgement of mistreatment of the so-called Watergate Affair by President Nixon after it had reached a judicial stage. Ultimately, the statement contained language to the effect that, "I was wrong in not dealing with Watergate more forthrightly and directly, particularly when it reached a judicial stage".



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In my judgment, that statement represents an acknowledgement of obstruction of justice by President Nixon. I recall vividly on Saturday, September 7th, Genral Haig reading the proposed statement and more particularly the quoted line above and asking me if I had put a gun to President Nixon's head. To Al Haig that acknowledgment by President Nixon represented an admission far beyond any statement of contrition or complicity that he had heretofore made.

When the kinks had been ironed out of the proposed Nixon/Sampson transmittal letter and a satisfactory disposition to the records and tapes arrived at, I was invited to meet President Nixon. The meeting occurred in an office approximately 40 yards from Ziegler's office where we had been meeting throughout the day.

I had never met or spoken with President Nixon before and ~~k~~<sup>k</sup>new the man physically only from my television and film observations of him. Consequently, I was shocked when meeting him in person.

As I entered the office he was seated behind a desk in a room that was very sparsely adorned. He rose upon my entrance and appeared to demonstrate a sense of nervousness or almost fright at meeting me in person. I tried to relieve that.

My first impression and the one that continues with me to this day, was, unhappily, one of freakish grotesqueness.



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His arms and body were so thin and frail as to project an image of a head size disproportionate to a body. I am told there is a condition known as Hyperextensive which describes that appearance. Secondly, I met a man whom I might more reasonably expect to meet at an octogenarian nursing home. He was old. Had I never known of the man before and met him for the first time, I would have estimated his age to be 85.

The famous Nixon jowls were exaggerated, the face highly wrinkled, the hair disheveled and the posture and comportment all reminiscent of advanced age.

We spoke of the disposition that had been tentatively agreed upon to the Nixon administration records, with particular reference to the implementation of Richard Nixon's access to the records for memoir purposes during his lifetime. We spoke of restricted access to others during Mr. Nixon's lifetime. At times he was alert, at times he appeared to drift. I believe the entire experience was painful for him for at times he attempted to change the subject and discuss trivia. Inquiring if I ever played football and how I thought the Redskins would do this year. On those occasions I would return him to the subject at hand.

Before I left, a rather emotional experience occurred. We had said goodbye and I was preparing to leave when he said, "Mr. Becker wait a moment please." The former President spoke to me then in the most pathetic, sad frame of mind that I believe I have ever seen anyone in my life. He said,



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"You have been so fair and thoughtful that I want to give you something." He then looked about the sparse office, <sup>and</sup> gesturing as he looked and raising both hands toward his shoulders, said, "But I don't have anything any more. They took it all away from me. Everything I had is gone. I tried to get you a Presidential tie pin and cuff links with my name on it, but I don't even have them any more. There's nothing left from my Presidency. I asked Pat to get these," ~~and~~ He bent forward and opened the desk drawer and removed ~~two~~ <sup>small</sup> white boxes. "From my personal jewelry box. There aren't any more of these in the world; you have got the last one." With that the former President handed me the two boxes which contained a Richard Nixon signature tie pin and Presidential seal cuff links identical to the kind Ziegler had given me earlier that day. I thanked him and took the boxes noting that he was inches away from tears. On the flight back to Washington I asked Miller if he had tried to locate other cuff links and tie pins and Miller acknowledged that he ~~had~~ and was deeply disturbed that nothing was available to give to me.

I returned to my home that night at approximately 5:00 A.M. Saturday morning and reported my trip to President Ford that day. On Sunday at Noon, President Ford pardoned Richard Nixon.

