

# Nixon To Control His Papers

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The White House announced yesterday a negotiated agreement with Richard M. Nixon under which the former President and the U.S. government will have joint custody of White House tapes and presidential documents, but with Mr. Nixon determining who shall have access to them.

In the letter of agreement making him the sole legal owner of the papers and tapes until their future donation to the government, Mr. Nixon specifically asserted his legal title to "all literary rights" accompanying possession of the materials. Mr. Nixon has reportedly been told that a book of memoirs would be worth at least \$2 million.

Mr. Nixon will still be subject to contempt action if he refuses to comply with subpoenas for any of the materials, according to White House counsel Philip Buchen, although in the agreement the former President specifically reserved the right to "assert any privilege or defense I may have" against such subpoenas.

Mr. Nixon also stipulated in the agreement that while he will donate his White House tapes to the government on Sept. 1, 1979, they shall be destroyed by Sept. 1, 1984, or upon Mr. Nixon's death if that should occur first.

The Nixon White House had originally said it had taped all conversations in the Oval Office and Cabinet room and some in the Executive Office Building and on certain telephones as a way to preserve a historical record of the Nixon presidency.

But in a Sept. 6, 1974, letter to General Services Administrator Arthur F. Samp-

son sealing the agreement, which was released yesterday, Mr. Nixon said eventual destruction of the tapes was necessary "to guard against the possibility of the tapes being used to injure, embarrass or harass any person and to properly safeguard the interests of the United States."

All the materials will be stored in federal custody in a government storage building about 10 miles from San Clemente, Mr. Nixon's former Western White House

See PAPERS, A18, Col. 3

*Ford's negotiator with Nixon is being investigated on tax charges. Page A14.*

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## PAPERS, From A1

and his present home at "Casa Pacifica."

Buchen said he sought an agreement because he did not want President Ford to become enmeshed in continuing disputes over access to Nixon White House materials. He called it a practical solution to the access problem.

Buchen said that Watergate Special Prosecutor Leon Jaworski had been informed of the agreement. A spokesman for Jaworski confirmed that, but would not comment on whether the special prosecutor had approved of the plan.

Mr. Nixon's White House tapes have been a constant source of controversy and litigation ever since their existence was revealed in testimony to the Senate select Watergate committee last summer. The question of access to them went as far as the Supreme Court, which ordered then-President Nixon to turn over a number of tapes Jaworski had subpoenaed.

A legal opinion prepared for President Ford by Attorney General William B. Saxbe was released with the Nixon-Ford agreement yesterday. In it, Saxbe concluded that "the papers and materials in question were the property of Richard M. Nixon when his term of office ended."

Two keys will be necessary to open the building in which the materials will be stored, according to the agreement. Nixon stipulated that he alone shall possess both of them. The Archivist of the United States will hold only one key, which will not be sufficient for access.

According to Buchen, it was early word of Saxbe's opinion regarding ownership of the materials that prompted the negotiations leading to the agreement with Mr. Nixon.

Buchen requested the opinion on Aug. 22. After he was informed of what its contents would be, he initiated discussions to seek a practical solution to the access question.

Benton L. Becker, a Washington lawyer and friend of President Ford and Buchen, was selected to act as a middleman in dealing with Mr. Nixon, the General Services Administration and the

White House.

A letter dated Sept. 6, and signed by Mr. Nixon was sent to Sampson, the General Services administrator. It outlined Mr. Nixon's requirements, apparently determined after discussions with Becker.

At the conclusion of the letter, Mr. Nixon asked Sampson to "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."

Sampson signed on Sept. 7.

Mr. Nixon began the agreement letter by saying: "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," Nixon wrote, "it will be my desire that they be made available, with appropriate restrictions, for research and study."

Mr. Nixon then outlined his requirements for "the interim, so that my materials may be preserved . . .

"I retain all legal and equitable title to the Materials including all literary property rights," Mr. Nixon wrote.

The materials shall be deposited "temporarily" in the building near San Clemente "until such time as there may be established, with my approval, a permanent Presidential archival depository" as provided for by existing law.

Mr. Nixon stipulated that the storage facility should include office space for his "personal use." He provided for separate access requirements for the tapes and documents.

For a period of three years, Mr. Nixon agreed not to withdraw any of the originals of the papers from the depositories, although he reserved the right to reproduce them for his own purposes.

"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 case.

After three years, Mr. Nixon said he "shall have the right" to withdraw materials "for any purpose or use I may deem appropriate. . . ."

In the event of a subpoena "or other order directed to any official or employee of the United States," Mr. Nixon said that he must be notified so that he may respond "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."

Mr. Nixon wrote that he would inform the government before producing any materials under court order to allow it to object on grounds of national security or "any other privilege."

Then Mr. Nixon discussed his requirements for then controversial White House tape recordings. They will be deposited in California, too. And on Sept. 1, 1979, they will be donated to the government, although Mr. Nixon will still have access to the tapes and may at any time order specific tape recordings destroyed.

Mr. Nixon agreed that no reproductions of tapes shall be made without mutual agreement between him and the government.

"Access to the tapes shall be limited to myself, and to such persons as I may au-

thorize from time to time in writing," he wrote using the same language as he used in restricting access to the papers.

"No person may listen to such tapes without my written prior approval."

In the event of a subpoena or court order, the same procedure will be followed as that required for the documents.

Mr. Nixon did not specify a time when he would donate portions of the materials to the government. Before anything is donated, he wrote, he will 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," Mr. Nixon said. "If necessary, to fulfill this task, I will request that you (Sampson) designate certain members of the Archivist's staff to assist in this review under my direction."

The right of Mr. Nixon to own his materials is well established in legislation and by the actions of previous Presidents, according to the Saxbe opinion.

There have been alterations of the concept of full ownership by ex-President or their estates in the past, Saxbe said. President Truman temporarily retained certain papers belonging to President Franklin D. Roosevelt because they involved questions of national security related to World War II, for example.

Saxbe said that "precedent demonstrates that the governmental interests" such as national security "can be protected in full conformity with the theory of ownership on the part of the ex-President."

The question of Mr. Nixon's access to White House materials sparked the first obvious friction between Ford administration aides and members of Mr. Nixon's staff last month.

J. Fred Buzhardt, a former counsel to President Nixon, was fired by Mr. Ford after the Nixon aide apparently decided to deliver materials to Mr. Nixon without approval from Mr. Ford last month. Mr. Ford replaced Buzhardt with Buchen.

Nixon administration records covered by the new agreement are still the subject of litigation. Defendants in the Watergate cover-up trial, including former top aides to Mr. Nixon, have subpoenaed White House materials.

In addition, U.S. District Judge Fred Nicol in Minnesota ordered any transfer of materials to Mr. Nixon blocked on Aug. 15 on the grounds that they might be needed in the Wounded Knee trial.

Buchen said yesterday that any transfer of the materials to the California depository would be held up until such legal matters are resolved.