

ABROAD AT HOME

By Anthony Lewis

BOSTON, Sept. 15—The controversy over the pardon has until just now kept attention away from a related matter: the agreement made with Richard M. Nixon on the handling of the papers and tapes accumulated while he was in the White House. It is an astonishing legal document.

When Mr. Nixon left, President Ford and his Government had custody of the materials. Mr. Nixon had a claim of title in due course, but in the meantime officials could get at the files in the White House as needed for public business.

Now those necessary rights of official control and access have been virtually abandoned. They were given away by those who negotiated the agreement, supposedly on behalf of the United States. Consider these extraordinary provisions:

1. The Government agrees to provide secure storage space for the materials near San Clemente, at public expense. But no one may enter the storage area without the personal approval of Mr. Nixon, who will have a key "essential for access," given to him "alone as custodian of the materials."
2. Another key will also be needed to get into the area. It will be held by the Archivist of the United States, or his designee, but the agreement gives them no clear right to enter the space, not even to watch what Mr. Nixon may do there. Any request for access made to the Archivist, even by officials, "shall be referred" to Mr. Nixon.
3. Mr. Nixon agrees to produce items in response to court subpoenas, subject to any claims of privilege he may make. This is of course no concession, since he would have to respond to subpoenas no matter what any agreement said. The limitation of assured official access to what can be gained by subpoena is in fact a severe restriction on the rights of the Watergate Special Prosecutor. He was originally assured cooperation in access to relevant White House documents without the need for court action.
4. If a subpoena is issued for certain documents or tapes, Mr. Nixon would presumably look for them in the files. If he then reports that he cannot find them, there is no provision for an independent search or supervision by any third party.
5. A special provision for the White House tapes says that all of them shall be destroyed at the time of Mr. Nixon's death or on Sept. 1, 1984, "whichever event shall first occur."

That means that if Mr. Nixon were to die next week, the tapes would be destroyed even though some were essential to pending criminal cases. After Sept. 1, 1979, he may order any specific tapes destroyed.

By such provisions Mr. Nixon could achieve in disgrace what he could not in office—the frustration of the special prosecution force. For it needs access to the Nixon White House file not only for the forthcoming cover-up prosecution and other cases but for the final report that it must make to Congress.

Some information on the crimes and abuses of power that most deeply concern the public may be found only in those Nixon files. There are, for example, the attempts to misuse the Internal Revenue Service, the secret wiretapping and the activities of the Plumbers. The prosecutors had requests for specific materials pending with the Ford White House when the agreement to give Mr. Nixon custody was suddenly sprung on them.

In sum, that agreement on the Nixon files is about as even-handed as one negotiated between victor and vanquished—with the United States in the posture of vanquished. And the way it was arranged is just as scandalous as the terms.

No Justice Department lawyer played any part in the business or even saw the document before it was approved. The negotiator for the United States was a private lawyer of no great reputation, Benton L. Becker, whom Mr. Ford happens to know. The Special Prosecutor's office has made clear that it wanted to be consulted on the terms. It was not.

The agreement took the form of a letter of proposal for Mr. Nixon dated Sept. 6. It was signed and accepted the very next day by the Administrator of the General Services Administration, Arthur F. Sampson. That is the same Mr. Sampson who was appointed by Mr. Nixon, who approved the spending of \$17 million in Government funds at Mr. Nixon's houses and who last week told Congress that Mr. Nixon should now be given large sums so he "can maintain a creative presence as an adviser in national and international life."

The whole affair raises deep questions about what kind of legal advice President Ford has had. But the immediate problem is the agreement. It is one so contemptuous of the national interest, and perhaps even in violation of the law dealing with Presidential libraries, that Mr. Ford should now declare it void. If the President does not act, Congress has the plain power and duty to vindicate the public interest in these public materials.