

LEGISLATIVE COUNSEL  
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93D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT  
2d Session } { No. 93-1507

PRESIDENTIAL RECORDINGS AND MATERIALS  
PRESERVATION ACT

NOVEMBER 27, 1974.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

Mr. HAYS, from the Committee on House Administration,  
submitted the following

REPORT

[To accompany S. 4016]

The Committee on House Administration, to whom was referred the bill (S. 4016) to protect and preserve tape records of conversations involving former President Richard M. Nixon and made during his tenure as President, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment strikes out all after the enacting clause and inserts a substitute text which appears in italic type in the reported bill.

PURPOSE OF THE BILL

The purpose of the bill is twofold:

- (1) to preserve the materials relating to the Presidency of Richard M. Nixon and to provide appropriate access to them; and
- (2) to establish an independent commission to study the disposition of records and documents of all Federal officials.

COMMITTEE ACTION

S. 4016 was passed by the Senate on October 4, 1974, and referred to the Committee on House Administration on October 7, 1974.

The Subcommittee on Printing of the Committee on House Administration held public hearings on H.R. 16902 and other bills relating to the handling of records and documents of Federal officials, including the disposition of the Presidential materials of former President Richard M. Nixon. The hearings were held on September 30 and October 4, 1974.

The subcommittee marked up S. 4016 in public sessions on November 19, 1974, and ordered the bill reported on that day by unanimous voice vote. The full committee marked up the bill in public session on November 26, 1974.

The full committee, on November 26, 1974, by a vote of 20 to 0, ordered the bill reported to the House with an amendment.

### BACKGROUND

The disposition and preservation of documents and records of public officials is a matter of continuing importance, particularly to historians, political scientists, and other scholars who have a special interest in preservation of the historical records of the Nation. The disposition of public documents has taken on immediate significance because of the uncertainty regarding the preservation of the tapes and other materials relating to the Presidency of Richard M. Nixon, materials which could provide a full and accurate account of the series of events that have come to be known as "Watergate".

It is unnecessary to recount here the events of "Watergate". It is sufficient to observe that these events led to the approval by the Judiciary Committee of the House of Representatives of three articles of impeachment charging former President Nixon with (1) obstruction of justice; (2) abuse and misuse of Presidential powers; and (3) the failure to comply with congressional subpoenas to produce tapes and other materials necessary to the impeachment inquiry. In the face of these unanimous recommendations, Mr. Nixon resigned from office. These events also resulted in the investigation, prosecution, and conviction of high-ranking executive department officials, including several close aides of former President Nixon, for crimes relating to "Watergate".

Information included in the materials of former President Nixon is needed to complete the prosecutions of Watergate-related crimes. This information is necessary so that the Special Prosecutor may expeditiously conclude his work. This information is necessary to provide defendants in these criminal actions material which may be necessary for their defenses, and information necessary to provide the American people with a complete and accurate account of "Watergate".

But beyond the importance of the Watergate-related material, there is a legitimate public interest in gaining appropriate access to materials of the Nixon Presidency which are of general historical significance. The information in these materials will be of great value to the political health and vitality of the United States. It will permit the American people to understand the events of this important 5½ year period, and to pass on to their legislative representatives any mandates for change in the course of events as for reform of governmental institutions.

Despite the overriding public interest in preserving these materials and for providing appropriate access to them, Mr. Arthur F. Sampson, Administrator of General Services, entered into an agreement on behalf of the Federal Government (see Appendix) which, if implemented, could seriously limit access to these records and could result in the destruction of a substantial portion of them.

#### NIXON-SAMPSON AGREEMENT

On Sunday, September 8, 1974, President Ford announced a full and unconditional pardon of Mr. Nixon. A few hours later Philip Buchen, Counsel to the President, announced an agreement between former President Nixon and Mr. Sampson regarding the disposition of some 42 million documents and materials relating to the Nixon Presidency.

A legal opinion of September 6, 1974, prepared by Attorney General William Saxbe, took the position that the tapes and other materials of the Nixon Presidency were the private property of Mr. Nixon.

Included within the scope of the agreement is Mr. Nixon's Presidential historical materials as defined in section 2101 of title 44, United States Code. It apparently covers material generated by and collected in the White House and Executive Office Buildings, and includes the recordings, papers, and memoranda produced and collected by Mr. Nixon, by members of his staff, and by staff members of Offices in the Executive Office of the President.

In the agreement, Mr. Nixon asserts that he retains "all legal and equitable title to the materials, including all literary property rights."

The agreement provides that the materials are to be transferred to California for deposit in a GSA facility for at least three years until a permanent depository may be established. The cost of storage is to be assumed by the Federal Government.

Access to the materials would be controlled by Mr. Nixon, who would have absolute veto power over persons who could review the tapes and records.

Although the agreement appears to set forth Mr. Nixon's intention to donate the materials to the Federal Government at some point in the future, it permits Mr. Nixon to withdraw "any or all of the materials" (other than the tapes) after three years for any purpose. This arrangement would permit Mr. Nixon to remove and destroy any of these documents if he wishes to do so.

The agreement further provides that the tape recordings shall remain on deposit until September 1, 1979. Although the agreement purports to donate the tapes to the United States, it allows Mr. Nixon to destroy any of these tapes after September 1, 1979. Further, it provides that the donation of this material is to be based on the condition that the "tapes shall be destroyed at the time of Mr. Nixon's death or on September 1, 1984, whichever event shall first occur."

Thus, the agreement gives Mr. Nixon total control over all the materials and the records of his Administration. It allows him to have access to the materials but excludes others from reviewing these records. By allowing Mr. Nixon to destroy all of the materials, the agreement ignores the public interest in preserving them. It ignores the legitimate continuing need for these materials in many judicial proceedings, including some in which U.S. law enforcement will be frustrated and individual rights impaired if the materials are unavailable to the courts. It ignores the needs of Congress and executive agencies for continued use of the documents in the process of government. And it ignores the needs of historians, political scientists, and other scholars for the information these materials contain on the events of recent years and the workings of our government.

The Special Prosecutor expressed serious reservations about the agreement, and it was determined that none of the materials would be removed from their present locations pending further discussion among Mr. Nixon, the Special Prosecutor, and the White House.

On October 15, 1974, Mr. Nixon brought suit in the United States District Court of the District of Columbia to force Messrs. Sampson, et al., to carry out the provisions of the depository agreement. Several other private parties, including historians, journalists, and scholars, filed, independent actions to block implementation of the agreement. Other parties, including the Special Prosecutor, have moved to intervene as parties in these actions.

The cases were consolidated and a temporary restraining order was issued on October 22, 1974, blocking the Ford Administration from giving Mr. Nixon custody of the materials. This order, with certain subsequent amendments, also gives the Special Prosecutor, defendants in "Watergate" cases, and Mr. Nixon access to the materials.

On November 11, 1974, Senator Ervin, Chairman of the Senate Government Operations Committee, and Senators Nelson and Javits, Chairman Hays and Mr. Brademas filed a memorandum of amici curiae urging the court to maintain the status quo by extending the order until the Congress considered this legislation. Extensive briefs were filed by all the parties in this action in support of motions for preliminary injunctions and oral arguments were heard on November 15 and November 18, 1974.

#### DESCRIPTION OF BILL

This legislation would nullify the Nixon-Sampson agreement of September 7, 1974, and would provide that the Federal Government retain custody of the Nixon tapes and Presidential materials. The bill would also establish a 17-member commission to study the disposition of the documents of all Federal officials.

#### TITLE I—PRESERVATION OF PRESIDENTIAL MATERIALS OF MR. NIXON

Title I provides that, notwithstanding any other provision of law or any agreement, the Administrator of GSA shall retain custody and complete control of all tapes, papers, documents, and other materials of general historical significance relating to the Presidency of Richard M. Nixon.

The tape recordings include all conversations recorded beginning June 20, 1969, and ending August 9, 1974, which (1) include former President Nixon or individuals who were employed by the Federal Government, and (2) were recorded in the White House or in the Executive Office Buildings or Offices of the former President at Camp David, Maryland, Key Biscayne, Florida, or San Clemente, California.

This title would give the Federal Government custody of all papers, documents, memoranda, transcripts, and other objects and materials which constitute the historical materials of Mr. Nixon as defined in section 2101 of title 44, United States Code.

The material would be immediately available for use in judicial proceedings, either by subpoena or other legal process. Production of material in these proceedings would be subject to any "right, defenses,

or privileges" which the Federal Government or any person may raise. A request for access to the material by the Special Prosecutor would be given priority over other requests.

Mr. Nixon, or any person whom he may designate, may have at all times access to the material for any purpose.

The legislation takes no position on the question of ownership of the materials prior to enactment of this title; however, in the event a court determines that this legislation deprives any person of private property without "just compensation", this legislation authorizes the payment of such sums as may be deemed necessary by an appropriate United States court.

To guard against the destruction or removal of any of the materials, the bill provides that none of the materials shall be destroyed, except as may be provided by law. It requires that the materials be maintained within the metropolitan area of Washington, D.C., and provides that the Administrator shall issue at the earliest possible date regulations to protect the material from loss or destruction and to prevent access to the material by unauthorized persons.

The bill directs the Administrator to submit to the Congress, within 90 days after the enactment of the measure, regulations that would provide public access to the tape recordings and other material. These regulations would insure access to material related to "Watergate" as well as material of general historical significance. In preparing these regulations, the Administrator shall take into account the following factors: (1) the need to provide a full accounting of the events of "Watergate"; (2) the need to make the materials available in judicial proceedings; (3) the need to limit general access to material relating to national security; (4) the need to protect every individual's right to a fair and impartial trial; (5) the need to protect any individual's opportunity to assert any legal or constitutional right or privilege which may limit general access to the material; (6) the need to provide public access to material of general historical significance in a manner consistent with procedures that have been used to provide public access to materials of former Presidents; and (7) the need to return to Mr. Nixon purely personal materials, which are not of general historical value.

In the enumeration of criteria to be applied by the Administrator in establishing guidelines for the management of materials referred to in section 101, the committee added in subparagraph (5) the term "privilege" to "legally or constitutionally based rights" as grounds for limitation of access. The committee's purpose is to recognize the legitimacy of the doctrine of executive privilege as stated in the July 24, 1974, ruling of the Supreme Court in *United States v. Nixon, President of the United States, et al.*

None of the considerations above enumerated are intended to limit access by the public, otherwise granted by the Freedom of Information Act.

Section 105(a)(6) of this legislation is intended to underscore the concern of the committee that the public be given access to the tapes and other materials of the Nixon Presidency of general historical significance as well as to the materials related to "Watergate." Access under this subsection is to be provided in a manner comparable to procedures that have been followed by Presidents in providing access to their materials. Although it is recognized that some former Presi-

dents have imposed broad restrictions on access to their materials, it is understood that most, and particularly most recent former Presidents, have exhibited an interest in preserving the material intact and providing early public access to the material.

Thus, former President Franklin C. Roosevelt recognized the importance of this approach:

I have been taking the advice of many historians and others. Their advice is that material of that kind [i.e., Roosevelt's papers] ought not to be broken up, for the future. It ought to be kept intact. It ought not to be sold at auction; it ought not to be scattered among descendants. It should be kept in one place and kept in its original form because Presidential papers and other public papers have been culled over during the lifetime of the owner, and the owner has thrown out a good deal of material which he personally did not consider of any importance which, however, from the point of view of factual history, may have been of the utmost importance. *The Public Papers and Addresses of Franklin D. Roosevelt* 630 (1941).

This attitude was also exhibited by former President Dwight D. Eisenhower. During hearings before the Subcommittee on Printing, John Eisenhower, who has continuing responsibility for maintaining the late President's papers, stated:

Since we finished on my father's memoirs and I left Gettysburg, I have been involved on a continuing basis with my responsibilities in trying to get those documents out of Abilene into the public domain. Our philosophy is the quicker the Presidential papers can be gotten out into the public domain the more advantageous it is to the former President.

Where restrictions have been imposed by former Presidents, they have been generally limited to matters of national security. It is not the purpose of this section to authorize Mr. Nixon to place restriction on overs to the materials. Any restrictions would be imposed by current government officials in accordance with existing legal authorities and procedures.

The legislation provides that the regulations shall take effect 90 days after submission to the Congress, unless disapproved by a resolution of either House of the Congress. If the committee to which the regulations are referred has not reported a resolution of disapproval within 60 days after their submission to the Congress, any Member may initiate a resolution of disapproval. This title provides that any Member may by resolution discharge the committee of further consideration of the regulations. Such a discharge motion would be privileged and a resolution of disapproval would be in order if the discharge motion succeeds. The effect of this provision would be to permit a vote of disapproval by the whole House, if appropriately raised, 60 days after the relevant committee has had an opportunity to review the regulations.

To assure an expeditious resolution of a challenge to any provision of the title, the bill would vest in the United States District Court for the District of Columbia exclusive jurisdiction to hear any challenge to the legal or constitutional validity of any pro-

vision of that title or any regulations issued thereto. This legislation provides that such a challenge shall be heard by a three-judge panel, with direct appeal to the United States Supreme Court. Any challenge shall be considered a priority matter by both courts, requiring immediate consideration and resolution.

It is the intent of the committee that this section not apply to litigation now pending in which access to the material relating to the Nixon Presidency under the Freedom of Information Act and title to the material in issue. But rather, it is intended to apply to actions filed subsequent to enactment of this title.

#### *Historical materials*

This title would give the United States custody of all the Presidential "historical material" of Richard M. Nixon. Section 2101 of title 44, United States Code, provides that the term "historical material" includes "books, correspondence, documents, papers, pamphlets, works of art, models, pictures, photographs, plots, maps, films, motion pictures, sound recordings, and other objects or materials having historical or commemorative value." It is understood that these materials include not only memoranda, letters, and other documents generated by Mr. Nixon, but also all documents and material produced or collected by aides to the former President and officials employed in Offices of the Executive Office during the Presidency of Mr. Nixon.

#### *Private ownership*

The legislation takes no position on the ownership of these materials prior to enactment of this title. The committee believes that at this time the resolution of the question of prior ownership is a matter most appropriately left for the judiciary to decide.

Nevertheless, the committee believes it has the authority to pass legislation concerning the disposition of the Nixon Presidential materials. If the material is already public property, the bill is simply an exercise of the congressional power under Article IV of the Constitution to dispose of the property of the United States—one of the basic constitutional grants of authority to the Congress.

If the material is private property, the legislation would, if necessary, exercise the power of eminent domain. This power to take property is also vested in the Congress, although the authority to determine "just compensation" belongs to the judicial branch.

Moreover, even if these materials are private property, the Federal Government may take "protective custody" of material which is necessary for the continuing use of the Federal Government where it is in the public interest to do so. According to Attorney General Saxbe's opinion:

None of the considerations above enumerated is intended to limit access by the public otherwise granted by section 552 of title 5, United States Code (the Freedom of Information Act).

Historically, there has been consistent acknowledgment 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 \* \* \*. 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. (Citation omitted.) 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. (Op. of the Att'y Gen., September 6, 1974, pp. 9-10.)

Clearly, it is in the public interest to preserve the materials and to provide access to the materials for judicial proceedings to expeditiously complete the prosecution of Watergate-related crimes and to permit the just resolution of other adjudications requiring access to the materials. Clearly, it is in the public interest to provide general public access to the materials to assure a full and accurate account of "Watergate" and to provide a basis for legislation and executive action to prevent future "Watergates" and clearly it is in the public interest to safeguard the historical record of the Presidency during the last five and one-half years.

#### TITLE II—NATIONAL STUDY COMMISSION ON RECORDS AND DOCUMENTS OF FEDERAL OFFICIALS

Title II would establish an independent commission to study the handling of records and documents of all Federal officials. Federal officials would include elected officials, members of the Federal judiciary, and other appointed officers of the government.

The 17-member commission would be composed of two Members of the House of Representatives; two Senators; three appointees of the President, selected from the public on a bipartisan basis, the Librarian of Congress; one appointee each of the Chief Justice of the United States, the White House, the Secretary of State, the Secretary of Defense, the Attorney General, and the Administrator of General Services; and three other representatives, one each appointed by the American Historical Association, the Society of American Archivists, and the Organization of American Historians.

The commission would be directed to make specific recommendations for legislation and recommendations for rules and procedures as may be appropriate regarding the disposition of documents of Federal officials. The final report is to be submitted to the Congress and the President by March 31, 1976.

The Subcommittee on Printing held two days of hearings on legislation relating to the disposition of documents of Federal officials. Testimony during these hearings indicated that the issues relating to the disposition of these documents are so varied and complex that a comprehensive study would be warranted to develop specific recommendations that could be used by the Congress in considering permanent legislation affecting documents of all Federal officials.



The issues that should be considered by the commission are both philosophical and procedural. They include a review of procedures to insure maximum preservation of useful historical material and procedures to assure earliest practicable accessibility of these historical materials to scholars for their use and interpretation. The commission should also consider the extent to which procedures for gaining early access to these materials may affect the willingness of officials to preserve to the maximum extent useful historical matter.

Other issues that should be considered include: (1) the nature of public documents as an adequate documentation of the work of government officials; (2) the disposition of records created by appointed officials such as cabinet officers, White House staff and members of the Federal judiciary; (3) a discussion of a consistent policy regarding records created within the Executive Office of the Presidency; (4) the role of elected officers as they generate and retain files reflecting both politics and public administration; (5) whether personal and truly political matters could be separated from matters of official jurisdiction in public administration; (6) whether the inclusion of political files would inhibit political activities in any way; (7) circumstances under which general public access to materials should be allowed and appropriate procedures to provide such access; (8) the need to protect certain materials for personal, political, or national security reasons; and (9) whether legislation would encourage officials to purge files while still in office.

The bill would establish a commission that would include the leading authorities on, and persons with principal responsibilities for, the disposition of historical records. This commission would ensure the exchange of ideas among experts in the field and lead to highly professional recommendations which will be necessary if the Congress is to legislate intelligently in this area.

Dr. James B. Rhoads, Archivist of the United States, in his testimony in support of the proposal, stated:

\* \* \* we strongly support the call for a study commission to examine the foundations of historical evidence and the presumptions about what should be kept and how best to preserve it to serve the needs of the future. Our archival problems are both philosophical and procedural; a study commission can be a good approach to solving them \* \* \*.

Dr. Rhoads went on to observe that:

Study commissions have often overcome great difficulties in organizing governmental efforts in the past. The creation of a national archives system was brought about by the efforts of a number of study commissions; the Brownlow Committee of 1936-40 established the Executive Office of the President and approved the efficiency of the Executive branch; and the Hoover Commissions of 1949 and 1955 overhauled the whole organization of the Executive branch to make it more responsive to the demands of a changed society. I am confident that this study commission can meet with the same level of success in an area of equal complexity.

## CONCLUSION

It is the opinion of the committee that this legislation meets the public interest of preserving the tapes and materials of the Presidency of Richard M. Nixon and that it provides appropriate access to these materials for use in judicial proceedings and for legitimate use by the public. The committee also believes that the bill will constructively contribute to the development of a uniform national policy regarding the handling of the documents and records of all Federal officials.

## SECTION-BY-SECTION SUMMARY OF THE BILL

### SHORT TITLE

The first section provides that this legislation may be cited as the "Presidential Recordings and Materials Preservation Act".

### TITLE I--PRESERVATION OF PRESIDENTIAL RECORDINGS AND MATERIALS

#### DELIVERY AND RETENTION OF CERTAIN PRESIDENTIAL MATERIALS

##### *Watergate tape recordings*

Section 101(a) provides that, notwithstanding any other law or agreement reached under section 2107 of title 44, United States Code, any Federal employee in possession shall deliver to the Administrator of General Services (hereinafter in this summary referred to as the "Administrator") all original tape recordings of conversations which (1) were recorded by any officer or employee of the Federal Government; (2) involve former President Richard M. Nixon or other individuals who were employed by the Federal Government at the time of the conversation; (3) were recorded in the White House or in certain other offices of Mr. Nixon; and (4) were recorded during the period beginning January 20, 1969, and ending August 9, 1974.

##### *Retention of historical materials*

Section 101(b) provides that, notwithstanding any other law or agreement reached under section 2107 of title 44, United States Code, the Administrator shall receive and retain all papers, documents, memorandums, transcripts, and other objects and materials which constitute the Presidential historical materials of Mr. Nixon, covering the period beginning January 20, 1969, and ending August 9, 1974.

Section 101(b) also defines the term "historical materials" as having the meaning given it by section 2101 of title 44, United States Code. Section 2101 provides that such term includes books, correspondence, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, motion pictures, sound recordings, and other objects or materials having historical or commemorative value.

#### AVAILABILITY OF CERTAIN PRESIDENTIAL MATERIALS

##### *Prohibition of destruction*

Section 102(a) provides that none of the tape recordings or other materials referred to in section 101 (hereinafter in this summary re-

ferred to as "recordings or materials") shall be destroyed, except as may be provided by law.

*Use in judicial proceedings*

Section 102(b) provides that, notwithstanding any other provision of title I of this legislation, any other law, or any agreement reached under section 2107 of title 44, United States Code, the recordings or materials shall be made available for use in any judicial proceeding or otherwise subject to court subpoena or other legal process immediately upon the date of enactment of title I of this legislation, subject to any rights, defenses, or privileges which the Federal Government or any person may invoke.

Section 102(b) also provides that priority shall be granted to any request of the Office of Watergate Special Prosecution Force for the recordings or materials.

*Access by Mr. Nixon*

Section 102(c) provides that Mr. Nixon, or any person he designates in writing, shall have access to the recordings or materials for any purpose, subject to regulations issued by the Administrator under section 104 of this legislation.

*Access by executive agencies*

Section 102(d) provides that any agency or department in the executive branch of the Federal Government shall have access to the recordings or materials for lawful Government use, subject to regulations issued by the Administrator under section 104 of this legislation.

COMPENSATION

*Payment for deprivation of property*

Section 103 provides that if any court of the United States determines that any provision of title I of this legislation deprives any individual of his property without just compensation, then compensation shall be made to such individual from the Treasury of the United States.

*Determination of property rights*

Section 103 also provides that the provisions of title I of this legislation shall not be construed as making any determination with respect to any private property right of title to the recordings or materials, if any such right existed before the date of enactment of title I of this legislation. The committee does not intend this legislation to make any decision, determination, or other rule with respect to the existence or extent of any such private property rights. It is the opinion of the committee that the question of private property rights with respect to the recordings or materials should be left for determination by an appropriate court.

REGULATIONS TO PROTECT CERTAIN TAPE RECORDINGS AND OTHER MATERIALS

Section 104 provides that the Administrator shall issue regulations to protect the recordings or materials from loss or destruction and to prevent access to the recordings or materials by unauthorized persons.

Custody of the recordings or materials shall be maintained in Washington, District of Columbia, or its metropolitan area, unless custody at another location is necessary to carry out the provisions of title I of this legislation.

REGULATIONS RELATING TO PUBLIC ACCESS

*Submission of regulations*

Section 105(a) requires the Administrator to submit to each House of the Congress, no later than 90 days after the date of enactment of title I of this legislation, a report proposing and explaining regulations to provide public access to the recordings or materials. Such regulations are required to take into account the following factors: (1) the need to inform the public regarding the truth with respect to the Watergate affair; (2) the need to make the recordings or materials available in judicial proceedings; (3) the need to prevent or restrict general access to information relating to national security; (4) the need to protect the right of individuals to a fair trial; (5) the need to protect the right of any party to challenge access to the recordings or materials on legal or constitutional grounds; (6) the need to provide public access to materials of general historical significance with respect to the Presidency of Mr. Nixon, as well as to those materials related to the factor described in (1), in a manner which is consistent with procedures which have been used to provide public access to materials of former Presidents; and (7) the need to give to Mr. Nixon those tape recordings and other materials which are not likely to be related to the factor described in (1) and are not otherwise of general historical significance.

*Congressional review of regulations*

Section 105(b)(1) provides that regulations proposed by the Administrator under section 105(a) shall take effect 90 legislative days after they are submitted to the Congress, unless either House of the Congress disapproves such regulations by resolution during the 90-legislative-day period. The Congress may disapprove all the regulations which are submitted at the same time by the Administrator, or the Congress may disapprove some of the proposed regulations while accepting others. In the latter case, those regulations which are not expressly disapproved would take effect after the 90-legislative-day period.

Section 105(b)(2) provides that the Administrator may not issue any regulation or any change in any regulation if such regulation or change has been disapproved by either House of the Congress.

Section 105(b)(3) provides that subsection (b) shall apply to any change in any regulation proposed by the Administrator.

Section 105(b)(4) provides that section 105(b)(5) is enacted by the Congress as an exercise of the rule-making power of the House of Representatives, with recognition that the House may change such rules at any time.

Section 105(b)(5) provides that any resolution introduced in the House of Representatives under section 105(b)(1) shall be referred to a committee by the Speaker of the House.

Paragraph (5) also provides that if the committee to which such resolution has been referred does not report any resolution relating to a proposed regulation or change within 60 days after submission of such

proposed regulation or change, then it shall be in order to move to discharge the committee from further consideration of any resolution introduced under section 105(b)(1) which relates to such proposed regulation or change.

Paragraph (5) also provides that such motion may be made only by a person favoring the resolution, and the motion shall be privileged. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

Paragraph (5) also provides that if the motion to discharge is agreed to or disagreed to, then it may not be renewed.

Paragraph (5) also provides that when the committee has reported, or has been discharged from consideration of, a resolution introduced in the House under section 105(b)(1), it shall be in order to move to proceed to the consideration of such resolution. The motion shall be privileged, an amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

Paragraph (6) provides that for purposes of section 105(b), the term "legislative days" does not include any calendar day on which both Houses of the Congress are not in session.

*Recordings or materials given to Mr. Nixon.*

Section 105(c) provides that, on and after the date upon which regulations proposed under section 105(b) take effect, the provisions of title I of this legislation shall not apply to recordings or materials given to Mr. Nixon under section 105(a)(7).

JUDICIAL REVIEW

*Exclusive jurisdiction; three-judge court*

Section 106(a) provides that the District Court for the District of Columbia shall have exclusive jurisdiction to hear legal or constitutional challenges to title I of this legislation or to any regulation issued under title I. Subsection (a) requires that any such challenge be heard by a three-judge district court in accordance with the procedures established by section 2284 of title 28, United States Code, with the right of direct appeal to the Supreme Court. Subsection (a) also requires that priority be given to such challenges on court dockets.

*Savings provision*

Section 106(b) provides that if any provision of title I of this legislation or any regulation issued under title I is held unconstitutional or invalid, such holding shall not affect the validity or enforcement of any other provision of title I or regulation issued under title I.

PARTICIPATION IN CERTAIN COURT ACTIONS

Section 107 provides that the Committee on Government Operations of the Senate and the Committee on House Administration of the House of Representatives may appoint counsel to intervene in any case or proceeding which involves (1) the ownership, compensation for any taking, or other similar rights to or in, the recordings of materials; or (2) any challenge to the legal or constitutional validity or any provision of title I of this legislation or of any regulation issued under the authority granted by title I. Each such committee may take such action by acting jointly or separately.

The committee intends that this provision shall serve to assure that legal and constitutional issues in the two types of cases described in the preceding paragraph are raised, developed, and presented in an effective fashion. Section 107 provides each committee with an opportunity to intervene in cases and proceedings if either committee determines that such intervention is necessary to assure a proper and adequate presentation of the issues.

#### AUTHORIZATION OF APPROPRIATIONS

Section 108 authorizes to be appropriated such sums as may be necessary to carry out the provisions of title I of this legislation.

#### TITLE II—PUBLIC DOCUMENTS COMMISSION

##### SHORT TITLE

Section 201 provides that title II of this legislation may be cited as the "Public Documents Act".

##### ESTABLISHMENT OF STUDY COMMISSION

Section 202 amends chapter 33 of title 44, United States Code, by adding section 3315 through section 3324.

##### DEFINITIONS

Section 3315 contains the following definitions, which are defined for purposes of section 3315 through section 3324:

1. The term "Federal officials" is defined to mean the President, the Vice President, any Senator, Representative, Delegate, or Resident Commissioner, or any officer of the executive, judicial, or legislative branch of the Federal Government.
2. The term "Commission" is defined to mean the National Study Commission on Records and Documents of Federal Officials.
3. The term "records and documents" is defined to include handwritten and typewritten documents, motion pictures, television tapes and recordings, magnetic tapes, automated data processing documentation, and other records which reveal the history of the Nation.

##### ESTABLISHMENT OF COMMISSION

Section 3316 establishes the National Study Commission on Records and Documents of Federal Officials (hereinafter in this summary referred to as the "Commission").

##### DUTIES OF COMMISSION

Section 3317 requires the Commission to study problems and questions with respect to control, disposition, and preservation of records and documents of Federal officials. The Commission is required to develop recommendations with respect to such problems and questions. The study is required to include consideration of (1) whether the historical practice with respect to Presidential records and documents should be rejected or accepted, and whether such practice should be made applicable with respect to all Federal officials; (2) the relation-

ship of the findings of the Commission to the provisions of chapter 19 of title 44 (relating to depository library program), section 2101 through section 2108 of title 44 (relating to archival administration), and other Federal laws relating to control, disposition, and preservation of records and documents of Federal officials; (3) whether the findings of the Commission should affect control, disposition, and preservation of records and documents of agencies within the Executive Office of the President created for short-term purposes; (4) the recordkeeping procedures of the White House Office; (5) rules which should apply to control, disposition, and preservation of records and documents of Presidential task forces, commissions, and boards; (6) criteria for determining the scope of materials which should be considered the records and documents of Members of the Congress; (7) the privacy interests of individuals who communicate with Federal officials; and (8) any other problems which the Commission considers relevant to carrying out its duties.

#### MEMBERSHIP

##### *Selection of members*

Section 3318(a) provides that the Commission shall be composed of the following 17 members: (1) one Member of the House of Representatives appointed by the Speaker of the House upon recommendation by the majority leader; (2) one such Member appointed by the Speaker upon recommendation by the minority leader; (3) one Member of the Senate appointed by the President pro tempore of the Senate upon recommendation by the majority leader of the Senate; (4) one such Member appointed by the President pro tempore upon recommendation by the minority leader; (5) one Justice of the Supreme Court, appointed by the Chief Justice of the United States; (6) one person employed by the Executive Office of the President or the White House Office, appointed by the President; (7) three appointed by the President (no more than two of which may be of the same political party), by and with the advice and consent of the Senate, from persons who are not officers or employees of any government and who are qualified to serve on the Commission by virtue of their education, training, or experience; (8) one representative of the Department of State, appointed by the Secretary of State; (9) one representative of the Department of Defense, appointed by the Secretary of Defense; (10) one representative of the Department of Justice, appointed by the Attorney General; (11) the Administrator of General Services or his delegate; (12) the Librarian of Congress; (13) one member of the American Historical Association, appointed by the counsel of such Association; (14) one member of the Society of American Archivists, appointed by such Society; and (15) one member of the Organization of American Historians, appointed by such Organization.

##### *Vacancies*

Section 3318(b) provides that a vacancy in the Commission shall be filled in the same manner as the original appointment was made.

##### *Continuation of membership*

Section 3318(c) provides that if a Member of the Congress serving on the Commission leaves the Congress, or if a person appointed to the Commission from persons not officers or employees of any government becomes such an officer or employee, the Member or person may

continue as a member of the Commission for 60 days after his change in status.

*Duration of membership*

Section 3318(d) provides that members of the Commission shall be appointed for the life of the Commission.

*Pay; travel expenses*

Section 3318(e) provides that members of the Commission shall serve without pay. Subsection (e) also provides for travel expenses and per diem allowances for members of the Commission, except that the per diem is not extended to members of the Commission who are full-time officers or employees of the United States or Members of the Congress.

*Chairman*

Section 3318(f) provides that the President shall designate the Chairman of the Commission from among members appointed by the President under section 3318(a)(1)(G).

*Meetings*

Section 3318(g) provides that the Commission shall meet at the call of the Chairman or a majority of the members of the Commission.

DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS

*Director*

Section 3319(a) provides that the Commission shall appoint a Director who shall be paid under the rate in effect for level V of the Executive Schedule (5 U.S.C. 5316).

*Additional personnel*

Section 3319(b) provides that the Commission may appoint and fix the pay of such additional personnel as it deems necessary.

*Temporary and intermittent services*

Section 3319(c) authorizes the Commission to procure temporary and intermittent services. In procuring such services, the Commission shall seek to obtain advice and assistance from constitutional scholars and members of the historical, archival, and journalistic professions.

*Assistance from Federal agencies*

Section 3319(d) provides that the heads of Federal agencies are authorized to detail personnel to the Commission.

POWERS OF COMMISSION

Section 3320 authorizes the Commission to hold hearings and receive testimony and evidence. Any member or agent of the Commission may take any action which the Commission may take, upon authorization by the Commission.

Section 3320 also authorizes the Commission to secure information from any department or agency of the United States, if such information is necessary to enable the Commission to carry out its functions.

SUPPORT SERVICES

Section 3321 requires the Administrator of General Services and the Archivist of the United States to provide services and assistance to the Commission.



REPORT

Section 3322 requires the Commission to transmit a report detailing its findings and recommendations to the President and to each House of the Congress no later than March 31, 1976.

TERMINATION

Section 3323 provides that the Commission shall terminate 60 days after transmitting its report under section 3322.

AUTHORIZATION OF APPROPRIATIONS

Section 3324 authorizes to be appropriated such sums as may be necessary to carry out section 3315 through section 3324.

TECHNICAL AMENDMENT

Section 203 makes a technical amendment to the table of sections for chapter 33 of title 44, United States Code.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 44.—UNITED STATES CODE

\* \* \* \* \*

Chapter 33.—Disposal of Records

*Sec.*

- 3301. Definition of records.
- 3302. Regulations covering lists of records for disposal, procedure for disposal, and standards for reproduction; approval by President.
- 3303. Lists and schedules of records to be submitted to Administrator of General Services by head of each Government agency.
- 3303a. Examination by Administrator of General Services of lists and schedules of records lacking preservation value; disposal of records.
- 3308. Disposal of similar records where prior disposal was authorized.
- 3309. Preservation of claims of Government until settled in General Accounting Office; disposal authorized upon written approval of Comptroller General.
- 3310. Disposal of records constituting menace to health, life, or property.
- 3311. Destruction of records outside continental United States in time of war or when hostile action seems imminent; written report to Administrator of General Services.
- 3312. Photographs or microphotographs of records considered as originals; certified reproductions admissible in evidence.
- 3313. Moneys from sale of records payable into the Treasury.
- 3314. Procedures for disposal of records exclusive.
- 3315. *Definitions.*
- 3316. *Establishment of Commission.*
- 3317. *Duties of Commission.*
- 3318. *Membership.*
- 3319. *Director and staff; experts and consultants.*
- 3320. *Powers of Commission.*
- 3321. *Support services.*
- 3322. *Report.*
- 3323. *Termination.*
- 3324. *Authorization of appropriations.*

\* \* \* \* \*

**§ 3315. Definitions**

*For purposes of this section and section 3316 through section 3324 of this title—*

*(1) the term "Federal official" means any individual holding the office of President or Vice President of the United States, or Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States, or any officer of the executive, judicial, or legislative branch of the Federal Government;*

*(2) the term "Commission" means the National Study Commission on Records and Documents of Federal Officials; and*

*(3) the term "records and documents" shall include handwritten and typewritten documents, motion pictures, television tapes and recordings, magnetic tapes, automated data processing documentation in various forms, and other records that reveal the history of the Nation.*

**§ 3316. Establishment of Commission**

*There is established a commission to be known as the National Study Commission on Records and Documents of Federal Officials.*

**§ 3317. Duties of Commission**

*It shall be the duty of the Commission to study problems and questions with respect to the control, disposition, and preservation of records and documents produced by or on behalf of Federal officials, with a view toward the development of appropriate legislative recommendations and other recommendations regarding appropriate rules and procedures with respect to such control, disposition, and preservation. Such study shall include consideration of—*

*(1) whether the historical practice regarding the records and documents produced by or on behalf of Presidents of the United States should be rejected or accepted and whether such practice should be made applicable with respect to all Federal officials;*

*(2) the relationship of the findings of the Commission to the provisions of chapter 19 of this title, section 2101 through section 2108 of this title, and other Federal laws relating to the control, disposition, and preservation of records and documents of Federal officials;*

*(3) whether the findings of the Commission should affect the control, disposition, and preservation of records and documents of agencies within the Executive Office of the President created for short-term purposes by the President;*

*(4) the recordkeeping procedures of the White House Office, with a view toward establishing means to determine which records and documents are produced by or on behalf of the President;*

*(5) the nature of rules and procedures which should apply to the control, disposition, and preservation of records and documents produced by Presidential task forces, commissions, and boards;*

*(6) criteria which may be used generally in determining the scope of materials which should be considered to be the records and documents of Members of the Congress;*

*(7) the privacy interests of individuals whose communications with Federal officials, and with task forces, commissions, and boards, are a part of the records and documents produced by such officials, task forces, commissions, and boards; and*

(8) any other problems, questions, or issues which the Commission considers relevant to carrying out its duties under section 3315 through section 3324 of this title.

**§ 3318. Membership**

(a)(1) The Commission shall be composed of seventeen members as follows:

(A) one Member of the House of Representatives appointed by the Speaker of the House upon recommendation made by the majority leader of the House;

(B) one Member of the House of Representatives appointed by the Speaker of the House upon recommendation made by the minority leader of the House;

(C) one Member of the Senate appointed by the President pro tempore of the Senate upon recommendation made by the majority leader of the Senate;

(D) one Member of the Senate appointed by the President pro tempore of the Senate upon recommendation made by the minority leader of the Senate;

(E) one Justice of the Supreme Court, appointed by the Chief Justice of the United States;

(F) one person employed by the Executive Office of the President or the White House Office, appointed by the President;

(G) three appointed by the President, by and with the advice and consent of the Senate, from persons who are not officers or employees of any government and who are specially qualified to serve on the Commission by virtue of their education, training, or experience;

(H) one representative of the Department of State, appointed by the Secretary of State;

(I) one representative of the Department of Defense, appointed by the Secretary of Defense;

(J) one representative of the Department of Justice, appointed by the Attorney General;

(K) the Administrator of General Services (or his delegate);

(L) the Librarian of Congress;

(M) one member of the American Historical Association, appointed by the counsel of such Association;

(N) one member of the Society of American Archivists, appointed by such Society; and

(O) one member of the Organization of American Historians, appointed by such Organization.

(2) No more than two members appointed under paragraph (1)(G) may be of the same political party.

(b) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(c) If any member of the Commission who was appointed to the Commission as a Member of the Congress leaves such office, or if any member of the Commission who was appointed from persons who are not officers or employees of any government becomes an officer or employee of a government, he may continue as a member of the Commission for no longer than the sixty-day period beginning on the date he leaves such office or becomes such an officer or employee, as the case may be.

(d) Members shall be appointed for the life of the Commission.

(e)(1) *Members of the Commission shall serve without pay.*

(2) *While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses in the same manner as persons employed intermittently in the service of the Federal Government are allowed expenses under section 5703(b) of title 5, United States Code, except that per diem in lieu of subsistence shall be paid only to those members of the Commission who are not full-time officers or employees of the United States or Members of the Congress.*

(f) *The Chairman of the Commission shall be designated by the President from among members appointed under subsection (a)(1)(G).*

(g) *The Commission shall meet at the call of the Chairman or a majority of its members.*

**§ 3319. Director and staff; experts and consultants**

(a) *The Commission shall appoint a Director who shall be paid at a rate not to exceed the rate of basic pay in effect for level V of the Executive Schedule (5 U.S.C. 5316).*

(b) *The Commission may appoint and fix the pay of such additional personnel as it deems necessary.*

(c)(1) *The Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS-15 of the General Schedule (5 U.S.C. 5332).*

(2) *In procuring services under this subsection, the Commission shall seek to obtain the advice and assistance of constitutional scholars and members of the historical, archival, and journalistic professions.*

(d) *Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist it in carrying out its duties under sections 3315 through 3324 of this title.*

**§ 3320. Powers of Commission**

(a) *The Commission may, for the purpose of carrying out its duties under sections 3315 through 3324 of this title, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidences as the Commission may deem desirable.*

(b) *When so authorized by the Commission, any member or agent of the Commission may take any action which the Commission is authorized to take by this section.*

(c) *The Commission may secure directly from any department or agency of the United States information necessary to enable the Commission to carry out its duties under section 3315 through section 3324 of this title. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.*

**§ 3321. Support services**

(a) *The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services and assistance as the Commission may request.*

(b) *The Archivist of the United States shall provide to the Commission on a reimbursable basis such technical and expert advice, consultation, and support assistance as the Commission may request.*

**§ 3322. Report**

*The Commission shall transmit to the President and to each House of the Congress a report not later than March 31, 1976. Such report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation, administrative actions, and other actions, as it deems appropriate.*

**§ 3323. Termination**

*The Commission shall cease to exist sixty days after transmitting its report under section 3322 of this title.*

**§ 3324. Authorization of appropriations**

*There is authorized to be appropriated such sums as may be necessary to carry out section 3315 through section 3324 of this title.*

\* \* \* \* \*

APPENDIX

NIXON-SAMPSON AGREEMENT RELATING TO PRESIDENTIAL MATERIALS

SEPTEMBER 6, 1974.

Hon. ARTHUR F. SAMPSON,  
*Administrator, General Services Administration,*  
*Washington, D.C.*

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 or 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 any appropriate written authorization from 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,

(Signed) RICHARD NIXON.

Accepted by: Arthur F. Sampson, /s/ Arthur F. Sampson 9/7/74,  
Administrator, General Services Administration.



J.C.  
LEGISLATIVE COUNSEL

Calendar No. 1425

93D CONGRESS } SENATE } REPORT  
2d Session } No. 93-1181

PRESERVATION, PROTECTION, AND PUBLIC ACCESS  
WITH RESPECT TO CERTAIN TAPE RECORDINGS AND  
OTHER MATERIALS

SEPTEMBER 26, 1974.—Ordered to be printed

Mr. ERVIN, from the Committee on Government Operations,  
submitted the following

REPORT

[To accompany S. 4016]

The Committee on Government Operations, to which was referred the bill (S. 4016) to protect and preserve recordings of conversations involving former President Richard M. Nixon and made during his tenure as President, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is in the nature of a substitute.

PURPOSE AND PROVISIONS

The purpose of S. 4016, as amended, is to (1) protect and preserve tape recordings of conversations, and other materials, recorded or prepared in the White House, the Executive Office Building, and certain other specified places, between January 20, 1969 and August 9, 1974; (2) make them available for use by the Special Watergate Prosecution Force and for access by the public, under regulations promulgated by the Administrator of General Services who would be required to retain custody and control of such tapes and other materials; and (3) make them available to Richard M. Nixon, or his designees, for copying, or any other purpose, consistent with the Administrator's regulations.

In order to accomplish these objectives, the Committee amendment directs the Administrator of General Services, notwithstanding the agreement or understanding he entered into with former President

Nixon on September 6, 1974,\* pursuant to section 2107 of title 44, United States Code, or any other law, to obtain or retain complete possession and control of all tape recordings of conversations, and all papers, documents, memorandums, and transcripts, which meet certain stated conditions.

With respect to tape recordings, the Committee amendment covers all recordings of conversations recorded or caused to be recorded by a Federal officer or employee between January 20, 1969 and August 9, 1974, which (1) involve former President Nixon and/or others who, at the time of the conversation, were Federal employees; and (2) were recorded in the White House, the Executive Office Building in Washington, D.C.; Camp David, Maryland; Key Biscayne, Florida; San Clemente, California; or any other place.

The papers, documents, memorandum, and transcripts are those which constitute the Presidential historical materials of Mr. Nixon, as defined in section 2101 of title 44, United States Code, covering the period between January 20, 1969 and August 9, 1974.

In order to insure the safety and preservation of the tape recordings, and other materials, the committee amendment provides that they cannot be destroyed except as the Congress may provide. In order to insure their availability for use in judicial proceedings, including court subpoena and other legal process, prior to the promulgation by the Administrator of General Services of his required regulations governing access thereto, all of these recordings, and other materials, are required to be made available for such uses immediately upon the date of enactment of this Act, and requests for access to them by the Special Watergate Prosecution Force is specifically given priority over any other requests.

In order to insure the safety, preservation, and availability of all of the materials, as well as access by the public, the Administrator of General Services is required to promulgate reasonable regulations to assure their protection from loss, destruction, or access by unauthorized persons, and custody of all such materials must be maintained in Washington, D.C., except as may otherwise be necessary to carry out the purposes of the Act.

The Committee amendment further requires that the regulations promulgated by the Administrator *must* provide that (1) that all tape recordings, and other materials, shall be made available for use in judicial proceedings or otherwise subject to court subpoena or other legal process, and that information relating to national security *can only* be disclosed for such purposes; (2) that there shall be public access to the tape recordings, and other materials, unless the Office of Special Watergate Prosecution Forces certifies in writing, or a court of competent jurisdiction determines, that such disclosure or access is likely to impair an individual's right to a fair and impartial trial; and (3) that Mr. Nixon, or any person whom he may designate in writing, shall at all times have access to the tape recordings, and other materials, provided that such access is consistent with the Administrator's regulations.

In order to protect Mr. Nixon's property, or other legal rights, if any, in the tape recordings and other materials, the Committee amendment provides two specific remedies: First, it authorizes payment of

\* See agreement at p. 7.

just compensation by the Administrator from funds in the Federal Treasury to any individual found by a Federal court of competent jurisdiction to have been deprived of private property by the provisions of this Act; second, it vests in the United States District Court for the District of Columbia exclusive jurisdiction to hear challenges to the legal or constitutional validity of any provision of the Act. It provides further that such challenges shall be heard by a three-judge court, with the right of direct appeal to the United States Supreme Court, and requires that such challenges shall be treated by both courts as priority matters to be given immediate consideration and resolution.

#### BACKGROUND

The "Watergate affair," as it is popularly known, involved a far-ranging series of illegal and abusive activities engaged in by individuals employed by or associated with the Federal Government during Richard M. Nixon's tenure as President. The publicly available facts are well known and need not be discussed in detail here. It is sufficient to note that more than three dozen people have been indicted for Watergate-related crimes. Many of these crimes are now being prosecuted by the Office of Special Watergate Prosecution Force in the Federal courts.

It has been widely reported, and is generally believed to be true, that President Nixon's papers, tape recordings, and other materials contain additional evidence relating to the Watergate crimes. It is also believed, based on papers and tape recordings already made public, that those still undisclosed tapes and papers would provide considerable information to explain the evolution, planning, implementation, and cover-up of the Watergate affair. For these reasons, it was hoped that ultimate access to the Nixon papers and tapes would be of particular importance to the defendants being prosecuted for Watergate crimes, to the Office of Special Watergate Prosecution Force, and to the American people. These materials would enable all to know the full truth of the Watergate affair. Moreover, the Congress, the executive branch, and others could take actions to help insure that the Watergate affair remain an aberration of our past and not a prologue to our future.

On September 8, 1974, President Ford announced that the White House had negotiated an agreement between former President Nixon and the Federal Government concerning the disposition of the papers, tape recordings, and other materials relating to his tenure in office. The agreement was made pursuant to 44 U.S.C. 2101, et seq., and was signed by Mr. Nixon and Arthur Sampson, Administrator of General Services.

The agreement presumes that all materials relating to Mr. Nixon's tenure as President are his private property. Under its terms, Mr. Nixon stated that he would donate a substantial portion of these materials to the Federal Government at some point in the future. The agreement further provides that all those materials shall be kept in the custody of the Federal Government at a storage facility near Mr. Nixon's home in California.

Other provisions of the agreement are that—

- (1) Mr. Nixon will control access to the materials; any requests for access to them, whether by court subpoena or other legal process, must be referred to him.

(2) Mr. Nixon has the right to withdraw any materials (except tape recordings) from deposit after 3 years from the date of the agreement for any purpose; presumably, this right to withdraw also encompasses the right to destroy any papers or materials he wishes.

(3) In a separate provision, Mr. Nixon agreed to donate the tape recordings to the Federal Government on September 1, 1979. The agreement states, however, that this future gift is subject to the condition that all the tapes in the Government's custody "shall be destroyed at the time of Mr. Nixon's death or on September 1, 1984, whichever event shall first occur."

(4) Finally, the agreement provides that, in any event, Mr. Nixon can direct the Administrator to destroy any tapes Mr. Nixon chooses *after* the gift becomes effective in 1979.

The net effect of these provisions is to place the tape recordings in imminent danger of destruction. In the event of Mr. Nixon's death, all the tapes would have to be destroyed. The agreement also requires the Office of Special Watergate Prosecution Force, as well as any other litigant, to file with Mr. Nixon any request for access to the tapes and other materials. This, in turn, raises the strong possibility that the prosecution of the Watergate crimes could be marked by protracted delays in obtaining evidence, since it is quite possible that Mr. Nixon might resist some or perhaps all of that Office's request for information. Moreover, the agreement suggests that Mr. Nixon, or his designees, could start destroying all the papers and materials (other than the tapes) by 1977.

The ultimate destruction of the tapes, coupled with the difficulties in obtaining access to the other Nixon materials, would be a fundamental violation of public policy. To begin with, prosecutors, defendants, and the courts probably would be deprived of crucial evidence bearing on the defendants' innocence or guilt of the Watergate crimes for which they stand accused. Moreover, the American people would be denied full access to all facts about the Watergate affair, and the efforts of Congress, the executive branch, and others to take measures to prevent a recurrence of the Watergate affair may be inhibited. The Nixon-Sampson agreement, then, bears not only on our system of justice; it also bears on the viability of our constitutional system of government.

#### LEGISLATION AND COMMITTEE ACTION

The importance and urgency of this matter explains the Committee's decision to act expeditiously on S. 4016 and to amend it as heretofore noted.

The Committee is of the opinion that no hearings are needed on this legislation. The events and facts surrounding the Watergate affair have been aired fully in hearings conducted by the House Committee on the Judiciary, the Senate Select Committee on Presidential Campaign Activities, and other congressional bodies. Likewise, the facts surrounding the negotiation of the agreement, as well as the agreement itself, are a matter of public record.

The legislation does not take any position with respect to the ownership of Mr. Nixon's tapes, papers, and other materials. First of all, it is not clear that Congress can make a retroactive ruling as to

whether these tapes and materials are or are not public property. The question of ownership here is pre-eminently a matter of law for the courts to decide. In any case, it is not necessary to decide the question of ownership in order to have the Federal Government assume complete possession and control of the Nixon tapes and papers.

If the materials are public property, then Congress is merely exercising its powers under Article IV of the Constitution to dispose of public property.

If the materials are private property, then the Congress is merely taking "protective custody" of them for critically important public business. The Attorney General's opinion, which President Ford relied on in negotiating the Nixon-Sampson agreement, acknowledges that the Federal Government can take possession and complete control of presidential materials in certain circumstances. According to that opinion, such "protective custody" would be justified by clear and important public purposes:

Historically, there has been consistent acknowledgment 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. . . . 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. (Citation omitted.) 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. (Op. of the Att'y Gen., September 6, 1974, pp. 9-10.)

Any taking authorized by S. 4016 clearly qualifies under the Attorney General's opinion. The materials involved include information relating to the Watergate affair. This information probably will be critical in any judicial determinations of the innocence or guilt of individuals accused of Watergate crimes. The information probably will be critical also in the decisions of Congress and the executive branch as to what actions by each are necessary to prevent future abuses comparable to the Watergate affair. In short, the Nixon materials are needed for continued use in the processes of government.

If a court should decide that the legislation would in any way deprive Mr. Nixon, or anyone else, of private property, provision is then made to have him paid just compensation<sup>1</sup> for the loss of any such

<sup>1</sup> It is traditionally the province of the courts to determine what would constitute "just compensation." Therefore, the legislation does not seek to appraise the value of the materials involved.

property right. The payment of such just compensation will render any "taking" under the legislation as constitutional.<sup>2</sup>

CONCLUSION

The Committee concludes that legislation must be enacted promptly to protect and preserve the papers, documents, memorandums, tape recordings, and transcripts originating during the presidency of Richard M. Nixon in order that all facts about the Watergate affair may be made available to the American people and to the courts, prosecutors, and individuals involved in trials arising therefrom. S. 4016, as amended, will provide such adequate protection and preservation.

ROLLCALL VOTE ON FINAL PASSAGE

In compliance with section 133 of the Legislative Reorganization Act of 1946, as amended, rollcall votes taken during Committee consideration of this legislation are as follows:

FINAL PASSAGE: Ordered reported: 8 yea—0 nays.

Yeas:	Nays:
Muskie	None
Ribicoff	
Metcalf	
Chiles	
Huddleston	
Percy	
Javits	
Ervin	
(Proxy)	
Jackson	

<sup>2</sup> The Federal Government has an inherent power of "eminent domain" which allows it to take private property. There are, however, two basic criteria if this "taking" is to be constitutional and proper: the taking must be necessary to serve a public purpose, and just compensation must be paid to any individual who is deprived of property. *United States ex rel T.V.A. v. Welch*, 327 U.S. 546 (1946); *Backus v. Fort Street Union Depot Co.* 169 U.S. 557 (1898).

APPENDIX

NIXON-SAMPSON AGREEMENT RELATING TO PRESIDENTIAL MATERIALS

SEPTEMBER 6, 1974.

HON. ARTHUR F. SAMPSON,  
*Administrator, General Services Administration,*  
*Washington, D.C.*

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.

(7)

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 or 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 any appropriate written authorization from 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.

10

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,

(Signed) RICHARD NIXON.

Accepted by: Arthur F. Sampson, /s/ Arthur F. Sampson 9/7/74,  
Administrator, General Services Administration.

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