

Statement of Robert M. Warner
Archivist of the United States
Before the Senate Foreign Relations Committee
January 12, 1981

Mr. Chairman and Members of the Committee:

My name is Robert M. Warner and I am Archivist of the United States. With me are Richard Jacobs of my staff and Steven Garfinkel, who serves as my counsel on the matter which brings me before the Committee today.

Yesterday evening the Committee, through its Chairman, served me with a subpoena, which called for me to appear before you at this time. The subpoena also called for me to produce at this time the archival log of tape-recorded presidential conversations between President Richard Nixon and General Alexander Haig which took place while General Haig served as Chief of the White House staff during the Nixon administration. I regret that, on the advice of counsel with which I concur, I am unable to produce the subpoenaed log at this time. However, I intend to produce the log as soon as it is lawful for me to do so. In the hope of clearing the remaining legal impediment as quickly as possible, I delivered to counsel for former President Nixon the first thing this morning a letter enclosing a copy of the subpoena and stating:

In accordance with the special access regulations that implement the Presidential Recordings and Materials Preservation Act, I am hereby notifying you that I intend to produce these materials to the Committee as quickly as the regulations permit. The regulations provide former President Nixon five working days in which to notify the Administrator of General Services of any claimed rights, privileges or defenses which may bar the production of these materials in response to the subpoena. In order that the National Archives and Records Service may release the materials to the Committee at once, I ask that you consider a waiver of these time limits.

Mr. Chairman and Members of the Committee, before I further address the legal problem of producing the subpoenaed log at this time, permit me to relate to you a synopsis of events at the National Archives which preceded my appearance here. By letters dated January 5 and 6, 1981, the White House requested that the National Archives survey its holdings in response to letters addressed to the President on December 30, 1980, and January 6, 1981, by Senator Pell of this Committee. In accordance with the same legal requirements which are at issue today, I immediately notified President Nixon's counsel of the White House requests. Although he objected to my announced intention to commence the surveys within a matter of hours, and threatened to seek injunctive relief in order to prevent them, our archivists completed the survey of the Nixon papers on January 7, and the survey of the Nixon tapes on January 8. Counsel for President Nixon received copies of these surveys on those dates, along with requests that he consider waiving the five working day timeframe during which he could object to their release to the White House. Mr. Nixon's counsel has not as yet responded.

Simultaneous with the survey of the Nixon tapes and papers, our archivists searched other collections within the National Archives to find materials responsive to Senator Pell's requests. I am pleased to report that this morning I transmitted to the White House copies of pertinent materials from among the records of the Watergate Special Prosecution Force. I further advised the White House that I had no objection to the immediate release of these documents to the Committee. I should note that on the advice of counsel, I ordered the processing archivists to excise those portions which are restricted from release by bars such as outstanding court orders or the Federal Rules of Criminal Procedure. In my opinion, these excisions will not seriously affect the value of these materials to the Committee. The White House has notified me that it will release these documents to the Committee as soon as the Justice Department advises that it is lawful to do so.

Mr. Chairman, following the Committee meeting on January 10, you contacted me and asked if I would voluntarily turn over the archival log of the recorded Nixon-Haig conversations for the period May 4 through July 12, 1973. I replied that I would be happy to do so if I first received the concurrence of the former President's counsel. My representatives met with him yesterday, but this meeting failed to produce an agreement. When you were so notified, you issued the present subpoena on behalf of the Committee.

The logs at issue are a portion of the complete listing produced by our archivists in the course of their continuing preparation of the Nixon tapes ultimately for public access. The processing archivist prepares these logs as he or she listens to the respective tape for the first time. The logs include the following information: the date, time, and location of the recorded conversation; the participants in the conversation; a brief listing of the subject matter of the conversation; information designed to assist the archivist in locating the conversation on the tape reel; and the archivist's preliminary observation of which portions of the conversation may require special protection against premature public access, as, for instance, topics pertaining to national security.

The extracted log of the Nixon-Haig conversations for the White House chief of staff period totals 680 pages. The 338 conversations to which it pertains add up to approximately one hundred hours of conversation. The relevant time period commences May 4, 1973, and ends July 12, 1973, after which time there were no more tape-recorded conversations prior to the dismantling of the White House taping system on July 18, 1973.

Mr. Chairman and Members of the Committee, the National Archives assumed custody of the Nixon tapes and papers under the terms of the Presidential Recordings and Materials Preservation Act, which Congress enacted in 1974. This Act required the Administrator of General Services, who heads our parent agency, to issue implementing regulations which adequately protect the rights, privileges and defenses of persons, including President Nixon, who may be adversely affected by the premature disclosure of these materials. Despite litigation which continues even today, both the Congress and the courts have scrutinized these regulations and endorsed their validity. It is these regulations which require that I may not release any Nixon tapes or papers, or materials expressly derived from them, without first giving the former President an adequate opportunity to object. The regulations establish five working days as the necessary timeframe when the demand is a subpoena. It is this timeframe that I have requested Mr. Nixon's counsel to waive. Unless and until he has responded favorably, I have no alternative but to obey the legal requirements of the statute and our own regulations. The Foreign Relations Committee subpoena marks the forty-fourth time our special access regulations have come into play, including numerous court subpoenas and orders. Not once has the National Archives done other than to follow the same rules I am following today.

Mr. Chairman, I thank you for the opportunity to explain the National Archives' position to the Committee. We will attempt to answer any questions you may have.