

Today

By David Lawrence

JFK BOOK DISPUTE NOT NEW TO WASHINGTON

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WASHINGTON — Irrespective of whether the much-talked-about book containing conversations with Mrs. John F. Kennedy is or is not published, many people may be surprised to learn that this same question has arisen before between members of a President's family and book publishers. In almost every case, publication of the text of communications has been prevented.

Once a President wrote a series of letters to a woman friend. They were the subject of much unfounded gossip, and a book company got permission from the recipient to publish them in full. The letters themselves were concerned entirely with public events and were not really personal. But lawyers for the widow of the President who wrote the communications intervened, and the book was never published.

In another instance, the editor of a daily newspaper, who had retired and was writing a book of recollections, included a single letter that happened to be of no nationwide interest but was a part of his biography. Lawyers, however, for the widow of the President who had written the original letter served notice that, to give permission to publish would lead other persons to do the same thing. The text was then omitted.

The theory applied in these instances is based on age-old common law. The writer of a letter has a "right of property in the letter superior to that of the person to whom the letter is sent" and is entitled to a remedy against unauthorized publication, especially if the letter has any "literary value." This doesn't mean that it has to meet a particular standard of quality, but merely that any letter which it could be financially remunerative for some-

one else to publish in a book or in any other way remains the property of the writer who signed the missive. The recipient can still retain property rights in the manuscript itself and can sell it to someone else as an antique or memento, but even then nobody can publish it without the consent of the person who signed the original letter.

What then, it may be asked,

is the right of an individual who provides personal but historical information on a tape, rather than on paper? The tape itself is the property of the person for whom the recording was made, but the words are owned by whoever spoke them in the recording. While a tape or letter sent through the mails or delivered in person remains the physical property of the recipient, the writer or speaker retains a property right in the words themselves.

In the case of the tape made by the widow of the late President Kennedy, the legal controversy may turn on what was permitted by the contractual arrangement between Mrs. Kennedy and the author of the book. If all property rights have been waived, the publishers would be free to issue their book or magazine articles. When a dispute arises as to whether approval was or was not actually given, the courts must decide the case on the basis of sworn testimony as to the facts.

A legal point that could come up is whether Senator Robert F. Kennedy at any time said to the author of the book that "The Family" wouldn't object to its publication and whether such a statement constituted an approval of the manuscript and also covered all the words spoken in the tape recording participated in by Mrs. Kennedy.

What is not quite so clear, on the other hand, is the legal problem that arises when the press learns of the content of a newsworthy letter, especially one written by a President of the United States or by a member of his family. Lawyers familiar with this aspect have usually advised clients that, if the content of a letter is to be mentioned in the press, it has to be in such a form that it doesn't repeat the exact language used. The points that make news can be revealed, but not the phrases or the wording, lest this be the basis for a charge of plagiarism or of alleged theft of "literary property."

Newspapers presumably could publish the gist of such letters or communications, but would run the risk of denials that the whole truth wasn't being set forth. Such publicity could impair the reader's confidence in the published report.