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Airing the Watergate Tapes

THE FEDERAL COURT of Appeals here has reaffirmed basic principles of open government by ruling that the tapes played in the Watergate cover-up trial may be copied, broadcast and publicly distributed. The tapes are public records, the court held, because they have been played in open court and transcripts have been widely circulated. In Chief Judge David L. Bazelon's words, the public's right to inspect and copy such records is "precious" and "fundamental."

The court put great weight on the fact that the taped conversations have already been so widely publicized. Thus a majority of the appellate panel disagreed with District Judge John J. Sirica's view that airing the tapes themselves might seriously prejudice any future retrials of the Watergate defendants. The court found no merit at all in former President Nixon's claim that the tapes should be withheld in order to spare him and his former associates further embarrassment and invasions of privacy. Judge Bazelon noted rather tartly that no legitimate privacy interests were involved; the additional embarrassment Mr. Nixon might incur, the judge said, "is largely that which results whenever misconduct or questionable conduct is exposed."

The ruling does raise the possibility that copies of the tapes may be marketed in overly commercial or undignified ways. A desire to avoid this had led District Judge Gerhard Gesell to reject a distribution plan proposed by broadcasters and a recording company in January 1975. We sympathize with that concern; there is nothing appealing about the prospect

that the tapes might be packaged and peddled like rock-music hits. Nevertheless, we see no lawful way to restrict uses of materials that are in the public domain. As the appellate court said in a footnote last week, "the court's power to control the uses" of the tapes after copies are released "is sharply limited by the First Amendment."

Overall, the decision buttresses the principle that the public, as well as judges and juries, is entitled to the best evidence in a case. When that evidence is submitted on paper, it is available to be read; when it is taped, it should be equally available to be listened to. Transcripts cannot convey the tones, inflections, emphases and even ambiguities that have been captured on tape. This sensible approach would also enable radio and television to play a larger informing role by broadcasting important trial exhibits that have been taped or filmed.

In addition to the legal principles involved, there are compelling public policy reasons for enabling the public to listen to these particular tapes. Because the impeachment process was aborted by Mr. Nixon's resignation, and the pardon precluded any trial of the former President, the crucial evidence bearing on his complicity in obstructing justice has actually been heard only by a few citizens—primarily those who were able to squeeze into Judge Sirica's courtroom during the cover-up trial. The tapes may be subject to several interpretations, as Mr. Nixon and his defenders maintain. Releasing the tapes will not resolve every point of dispute, but will enable each citizen to reach his own conclusions on the basis of the best evidence available.