

# Court to Review Nixon's Claim to Tapes and Papers

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The Supreme Court agreed yesterday to hear former President Nixon's claim that only he may decide what happens to White House tape recordings and documents accumulated during his presidency.

Set for review next year and decision by June was a U.S. District Court ruling last January upholding the 1974 law that gave the government custody of the material and called for eventual public access to much of it.

"For the entire two centuries of this nation's existence every President of the United States has had and has exercised sole and complete control over the disposition of the confidential materials accumulated by him and his staff while in office," Nixon's lawyers told the court in seeking review. "Congress departed from that unbroken tradition in order to deprive one particular former President of that right," they said.

Opposing the Supreme Court review, Solicitor General Robert H. Bork said Nixon was raising major issues of executive power that were not ready for court action. "For almost two centuries these issues, and others like them, have been left to be accommodated by the ebb and flow of political forces," he said.

Even if Nixon loses this round and the Supreme Court denies his claim; public access to the material is a long way off. Another lawsuit over the details of the government's program of screening the materials is considered certain.

Thus, it appeared likely that Nixon, who is writing his memoirs, will be the first to make use of the material for historical purposes. Under the lower court's orders, Nixon maintains access to the documents and tapes and has the right to reproduce them for his own use.

Groups of writers, editors, histori-

ans and lawyers are supporting the Justice Department in its defense of the constitutionality of the 1974 law. They go farther than the department in contending that even before the law was enacted, the public and not the occupant of the White House was the rightful owner.

Nixon's lawyers also are resisting public distribution of those White House tapes played for the jury that convicted some of his top aides of conspiracy in the Watergate cover-up. The U.S. Court of Appeals ruled last month that no matter what becomes of other memorabilia of the Nixon administration, those tapes are in the

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public domain. A separate petition for Supreme Court hearing is expected in that case.

Herbert J. Miller Jr. and other lawyers representing Nixon told the court that the 1974 law is unconstitutional on its face as a violation of the principle of separation of powers and presidential privilege, an invasion of Nixon's personal right of privacy and free speech and a denial of his right to equality before the law.

Bork countered that the lower court correctly rejected each argument. Congress often regulates executive branch conduct and frequently tells presidents what they may do, he said. He called it premature to assume that the professional archivists authorized to screen the material will breach executive privilege.

As for invading Nixon's personal privacy, Bork said Nixon during his presidency was "the quintessential public figure" whose "voluntary decision to seek the presidency relinquished any privacy interest in the way he conducted that office and administered the public trust."

Recalling Nixon's program of preserving historical evidence by means of the tapes, Bork said that purpose "could be fulfilled only by allowing individuals other than (Nixon) to have access to them."

And, as for Nixon's claim that he was being singled out for discriminatory treatment, Bork replied that Nixon "is the only President to resign. This alone distinguishes him." Noting that the House Judiciary Committee found "untrustworthy" Nixon's transcripts of key tapes, Bork said Congress had a right to question Nixon's "reliability as a custodian."

Bork played a personal role in the tapes controversy when he fired individuals other than [Nixon] to have Watergate Special Prosecutor Archibald Cox on orders from Nixon in October, 1973, after Cox insisted on access to particular recordings.

The solicitor general, a former Yale law professor, is expected to return to academic life next year and the argument will be carried on by his successor in the Carter administration.