

Watergate file
Court Rules

For Nixon On Records

U.S. May Be Forced To Pay Millions for Keeping Papers, Tapes

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By Michael York
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A federal appeals court ruled yesterday that American taxpayers must pay former president Richard M. Nixon what could amount to millions of dollars in compensation for presidential papers and tape recordings that have been kept under government control.

In an extraordinary opinion, the U.S. Court of Appeals here by a 3 to 0 vote overturned a federal judge's ruling last year that the papers and tapes were the property of the American people and that the government does not owe Nixon any money for taking them.

The court held that Nixon was entitled to compensation for his papers under the "takings clause" of the Fifth Amendment, which provides that the government may not take a person's property without just compensation.

When Nixon resigned on Aug. 9, 1974, he planned to have his presidential papers, including tape recordings made of conversations in the Oval Office, shipped to his house in California. Before that could be done, however, President Gerald R. Ford's counsel, Philip W. Buchen, ordered that the papers be held because the Watergate special prosecutor might have issued further subpoenas.

The appeals court said yesterday that, "Upon reviewing the long and unbroken history relating to the use, control and disposition of presidential papers, we are convinced that Mr. Nixon had a well-grounded expectation of ownership. In the light of this history, we hold that Mr. Nixon, like every president before him, had a compensable property interest in his presidential papers."

Washington lawyer Martin D. Minsker, who represents Nixon, said

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he was "obviously pleased with the court's ruling" but declined further comment and declined to describe Nixon's reaction to the decision.

Nixon's presidential collection contains 42 million items, including tape recordings of most conversations conducted in the Oval Office, the Cabinet room, the Lincoln Sitting Room, the president's private office in the Executive Office Building and on telephones at Camp David. The secret voice-activated taping system was installed in February 1971 and operated until its existence was disclosed in 1973 to the special Senate committee investigating the Watergate scandal.

The tape recordings ultimately undid the Nixon defense in the scandal. One "smoking gun" tape, released after the Supreme Court ruled unanimously that Nixon must give the recordings to the special prosecutor, revealed Nixon discussing the coverup of the Watergate break-in. Nixon resigned four days after that tape was made public.

The political furor over a still-unexplained 18-minute gap in a particularly critical conversation between Nixon and aides shortly after the break-in contributed to congressional sentiment behind passage in 1974 of the Presidential Records and Materials Preservation Act, which directed the government to retain "complete possession" of Nixon's papers and recordings.

In this case, filed in 1980—Nixon's fourth legal challenge on ownership of the records—lawyers for the former president argued that because all previous presidents treated their papers as personal property after they left office, Nixon reasonably had the same expectation and must be compensated for being deprived of his rights.

Lawyers for the government argued that Nixon was only a custodian of the records, which legally were

U.S. property. In 1978, Congress made all future presidential papers property of the government.

The appeals decision, written by U.S. Circuit Judge Harry Edwards, appointed to the bench by President Jimmy Carter, agreed with Nixon. Although Edwards did not estimate how much compensation Nixon might expect, experts on historical documents said yesterday that amount would certainly be in the millions.

The case now goes back to U.S. District Judge John Garrett Penn for a trial on the issue of how much the records are worth. The government has the options of seeking a rehearing by the panel or asking the full appeals court to hear the case. It can also appeal to the Supreme Court.

Chris R. Coover, a vice president and manuscripts specialist at the New York-based appraisers Christie, Manson & Woods International Inc., said yesterday that the documents could bring bids as high as seven figures but added that it would be difficult to accurately estimate their value.

Charles W. Sachs, a Beverly Hills, Calif., film and audio recordings appraiser, said yesterday that Nixon's tapes could be worth between \$1.5 million and \$2.5 million.

In the appendix to yesterday's opinion, the court retraced the history of presidential documents to determine how important past presidents felt their papers were.

George Washington stored his papers at Mount Vernon and intended to construct a building to house them but died before it was completed. About 95 percent of the 35,000 documents in his collection are now in the Library of Congress.

By comparison, James A. Garfield destroyed numerous documents after he was shot in July 1881 and before he died 10 weeks later. Garfield's successor, Chester A. Arthur, burned most of his presidential papers in three large garbage cans, according to the opinion's appendix.

Staff writer Al Kamen contributed to this report.