

The Nixon Documents

In approving an agreement which recognized former President Nixon's title to his White House tapes and documents, President Ford and his legal advisers followed a questionable precedent when it would have been most appropriate to re-examine it.

By custom, all former Presidents have been deemed owners of their Presidential papers. Presidents Eisenhower and Johnson donated their materials to the Government, received substantial tax deductions for them and then supervised their disposition in Presidential libraries bearing their names. The former Presidents got tax breaks for themselves while establishing monuments for their Administrations. In return, the American people got approximately the same access to the papers that they would have had if the papers had remained solely in the Government's possession.

Congressional critics of this practice, led by former Senator John J. Williams of Delaware, closed the tax loophole in the Tax Reform Act of 1969. One of their principal arguments went to the question of ownership. The papers, they argued, were produced by Government employes, on Government time, at Government expense, on materials owned by the Government. Thus, the notion of Presidential ownership was more a legal fiction based on custom and respect for the former Presidents than it was on logic.

Yet with some modifications, Mr. Ford has now followed precedent. Because of Watergate, it makes less sense in Mr. Nixon's case than it did in any of the others. Some of that material is currently being used by defendants in the forthcoming cover-up trial to prepare their defenses. It is not yet clear that other portions of the tapes or documents will not be needed for other investigations currently being pursued by Special Prosecutor Jaworski's office. Finally, much of the material must bear on other activities related to the Watergate scandals, though not directly connected to precise criminal offenses. The former President himself seems likely to be called as a pivotal witness in some, if not all, of the investigations.

In these circumstances, passing the materials to Mr. Nixon's control, under a joint custody arrangement between him and the Government, will permit him to assert claims of privilege as President Truman did after he was out of office.

President Ford has said that he wants to "seal" the Watergate book. That cannot be done by attempting to cover up the untold story, for Watergate was not simply a set of crimes or a series of scandals, but a fundamental threat to American democracy. Until the American people can work their way through all the facts of that threat, they will be unable fully to erect effective defenses against similar threats in the future. Only when such defenses are in place will Watergate be fully behind this country. Giving Mr. Nixon a further opportunity to impede that task is exactly the wrong way to "seal" the Watergate story.