

Post 8/21/75 The Future of Presidential Files

ONCE AGAIN former President Nixon has promised to release some of the tapes and papers of his presidency "as expeditiously as possible." Once again he has coupled the pledge with the assertion that he alone should have the power to decide what should be released and what should be kept confidential. And once again he has couched his claim of exclusive control in institutional terms. He is fighting to protect the principle of confidentiality, Mr. Nixon said in a sworn deposition, not only for "my own tenure in office as an individual but for the office of the presidency in the future."

All of this sounds much like a summer re-run of a show that was unimpressive enough the first time around. Mr. Nixon made the same arguments, of course, back when he was trying to keep some crucial tapes and papers from the special prosecutor, the Watergate grand juries and the House Judiciary Committee. He even repeated his case for confidentiality on April 29, 1974, when he announced a "major unprecedented exception" and released the White House transcripts—the ones that turned out to be so doctored and incomplete.

It was Mr. Nixon's own record—the nature of the documentary evidence, and the persistent attempts to conceal or destroy it—that led Congress to pass the law placing the Nixon tapes and papers in protective public custody and ordering the early release of materials bearing on Watergate. As Mr. Nixon has argued in challenging this law, it is a sharp departure from traditional practices under which the papers of Presidents have been regarded as their private property. But that approach, better defined by custom than by law, has remained tenable in recent decades only because successive chief executives have recognized the large national interest in preserving and eventually releasing a full, accurate record of their administrations. The key to the whole arrangement has been an assumption of good faith. In Mr. Nixon's case, his own conduct has made that assumption hazardous at best.

Thus Congress acted properly in asserting public control over the tapes and papers of the Nixon years. This does not mean that, if the law is upheld by the courts, the 900 or so reels of tape and 42 million documents should instantly become public property in the sense of being opened up in their entirety for general scrutiny. The matter of confidentiality is a legitimate and com-

plicated one that should not be brushed aside just because Mr. Nixon has abused the term. No doubt all those boxes and crates of records contain many documents, especially those bearing on aspects of Watergate, that ought to be released as soon as they can be located and organized. But there are also, no doubt, some things that relate purely to Nixon family matters; some items bearing on national security, properly defined; some materials that, if released at once, could damage individuals, including some third parties who may have been discussed; and some records of candid deliberations that ought to be withheld until current controversies have faded and partisan tempers have cooled.

Mr. Nixon is correct, therefore, in stating that some "delicate judgments" will have to be made. The question is who ought to make them. The former President should certainly play a role in these decisions, but in our view his should not be the sole or entirely controlling voice. Nor, for that matter, should the task be turned over to officers of a succeeding administration whose judgments might be colored by partisan or personal interests. The wisest course is to entrust major responsibility to disinterested archivists whose trusteeship is enlightened by professional standards and experience. The Congress chose that method last year by directing the National Archives to propose access policies for the Nixon materials. Those recommendations, now being considered by Congress, in general reflect the kind of sensitivity required to accommodate both specific claims of confidentiality and the general interest in orderly disclosure of as much material as possible.

The pending litigation, when finally resolved, should determine the status of the Nixon papers and tapes. What will remain is the difficult task of setting future policies. Congress last year established a commission of experts to recommend new rules for the preservation and use of presidential records and the files of all other federal officials as well. That panel has not yet started its work, however, because President Ford has unaccountably failed to make four nominations. Those posts should be filled speedily. The advent of the bicentennial makes this an especially appropriate time to consider how the records of the nation's elected leaders should be preserved and protected from now on.