

# Nixon Loses Bid to Control Tapes

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Richard M. Nixon yesterday lost his court bid to regain control over access to the 42 million documents and 880 White House tape recordings from his 5 1/2 years as President.

In upholding the constitutionality of a congressional act that provides for initial screening of the Nixon material by government archivists, a three-judge federal panel indicated concern over the possibility that Nixon might destroy or alter the materials

if he controlled access to them.

In a cautiously worded section of a 105-page legal opinion, the court cited previous public accounts of Nixon's alleged involvement in the Watergate scandal that resulted in his resignation Aug. 9, 1974, and pardon on Sept. 8, 1974. The judges said:

"The court finds . . . that Congress had ample reason to mandate screening by government archivists rather than control by Mr. Nixon, who lacks their expertise and disinterestedness."

Attorneys representing

Nixon said the ruling will be appealed to the Supreme Court. Yesterday's ruling blocks the material from being screened pending appeals.

Attorney Herbert J. Miller Jr., who represents Nixon in the tapes case, said he was "obviously disappointed by the decision."

He said the congressional act was a "complete departure from our nation's 200-year tradition concerning a President's right to control as he deems appropriate the material he accumulates while in office . . . (and) is a

constitutionally impermissible incursion by Congress into the function and the office of the presidency."

Yesterday's ruling is the latest and most definitive of a series of judicial opinions growing out of the complex litigation over the Nixon materials.

Shortly after Nixon resigned, he and then General Services Administrator Arthur F. Sampson worked out an agreement under which Nixon would share control of

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the access to his presidential materials.

The Watergate Special Prosecutor's Office objected to the agreement, which was never implemented, because the prosecutors wanted access to some of the materials for their investigations. Nixon filed a suit to force implementation of the original agreement.

Meanwhile, Congress in December, 1974, passed the Presidential Recordings and Materials Preservation Act to provide for government control of access, and Nixon challenged the constitutionality of that statute in court.

U.S. District Court Judge Charles R. Richey ruled in the original suit last January that the materials belonged to the government and not to the former President.

However, the effectiveness of his ruling was blocked by the federal appeals court, which said the matter of the constitutionality of the congressional act should be decided first.

Yesterday's ruling by U.S. Circuit Court Judges Carl McGowan and Edward Tamm and District Court Judge Aubrey E. Robinson Jr. dealt solely with the constitutionality of the act and not with the ultimate question of ownership of the materials.



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AUBREY E. ROBINSON JR.

. . . judges who concurred with Carl McGowan in tapes ruling

Nixon claimed the act was unconstitutional because it violated the separation of powers doctrine; infringed his personal right to privacy, free speech and free association; amounted to an illegal search and seizure; and punished him illegally because it was personally directed at him and no one else.

Although the court generally accepted some of Nixon's arguments concerning his right to privacy and possible claims of presidential privilege, it said the legislative objectives of the act were more important than those claims.

The "infringement upon presidential confidentiality caused by screening by

trained and discreet government archivists . . . is very slight," the judges said.

The judges indicated that the President's individual claims could be considered more properly after the regulations implementing the act were put into effect. There are no such regulations now.

That finding prompted one attorney involved in the case to say there could be a "lifetime of litigation" over the materials if the ruling is allowed to stand.

The opinion, written by Judge McGowan, conceded that the act focused solely on Nixon but said there is no indication that the act was meant to punish him.

"It seems inevitable that

Congress would, sooner or later, address itself to the formulation of a uniform policy with respect to the disposition of the papers of presidents and other significant functionaries of the federal government," McGowan said.

Nixon's term as President "ended under extraordinary circumstances which have themselves become an important fact of our national history, and which brought sharply into focus the need for Congress to make a start upon the articulation of a coherent policy of records preservation," McGowan added.

He said the decision to start with Nixon "was surely not an irrational determination."

The judges said the presidential materials legislation served an "important" interest by maintaining a complete and accurate historical record, assuring the availability of materials that might be needed in future presidential decisions, informing the public on Watergate and ensuring that the materials would be available for future legislative investigations of judicial proceedings.

"Because of the manner in which personal materials are intermingled with official ones, comprehensive screening represents the only feasible manner of protecting these important interests," the judges said.