

Preserving Documents And Federal Records

I will name the presidential appointees to the "Public Documents Commission" as quickly as possible.
—President Ford, Dec. 19, 1974

President Ford gave that assurance nearly five months ago upon enactment of the Presidential Recording and Materials Preservation Act. In signing the bill, which created the National Study Commission on Federal Records and Documents of Federal Officials, the President also accepted Congress' decree rejecting his agreement with former-President Nixon regarding the disposition of Nixon's White House papers and tapes. But while the congressional members of the commission, and those of design-

Rep. Mezvinsky (D-Iowa) is one of four congressional appointees to the National Study Commission on Federal Records and Documents of Federal Officials.

ated professional organizations of historians and archivists, have been named, President Ford has yet to name the three presidential appointees who require confirmation by the Senate. Because one of the President's appointees is to serve as chairman of the commission, Mr. Ford's procrastination has paralyzed the commission before it had a chance to even begin its important work.

Although the concept has neither been set by law nor tested in the courts, every President from George Washington through Lyndon Johnson has regarded materials accumulated while in office as his personal property, to use or dispose of as he saw fit. Indeed, Richard Nixon is attempting to perpetuate that tradition through a current court challenge to the constitutionality of the law which denies him such absolute control of presidential records.

The notion that Presidents own presidential papers has led to erratic treatment of these primary historical documents: some have been lost; some stolen; some sold for profit; many given to the public, of which some have been sealed for years; and some destroyed.

Because the public attention focused on this issue is largely due to the Watergate scandal, it is instructive to recall the fate of Warren G. Harding's presidential papers. Following his death, as Harding's reputation was sinking into the Teapot Dome scandal, his wife, Florence, set about burning much of his correspondence as part of a campaign of destruction and suppression aimed at preventing further degradation of her husband's name. Although some of Harding's papers that were spared the torch are now accessible to the public, one collection, held by the Library of Congress, is sealed until the year 2000.

The Harding papers present an extreme case, but this is far from the sole instance of abuse of the traditional discretionary right of Presidents and their heirs to dispose of presidential papers. In recent years, such docu-

ments have received better treatment; the papers of Hoover through Johnson are deposited (with restrictions on their use stipulated by the Presidents) in the presidential library system of the National Archives. But there is no law requiring preservation of such documents or in any way prohibiting a recurrence of the Harding-like pilferage.

It was the absence of legal guidelines governing this area that required Congress to protect the Nixon papers and tapes. Having intervened in this particular case, Congress could then have retreated, leaving the disposition of future presidential papers to future Presidents and relying on future Congresses to step in if and when circumstances demanded. Instead, Congress

decided to seek a responsible national policy for the control, disposition and preservation of papers, tapes and other documents prepared by and for Presidents and other federal officials, including congressmen. Toward this end, the Presidential Recording and Materials Preservation Act established an independent, 17-member commission to study problems with respect to the

records of federal officials and make specific recommendations for legislation and other appropriate rules and procedures regarding such documents.

The task before the commission is immense and the goal is twofold: (1) to preserve federal records to the maximum possible extent and (2) to assure the broadest and earliest practicable accessibility to these documents. But these can be conflicting aims and this fact accentuates the complexity of the questions before the commission. While proposals for quick public examination of presidential papers are generally applauded, such provisions could serve to stifle the keeping of records or encourage their destruction. With this in mind, the commission must consider whether restrictions are necessary to ensure that events of historical significance are recorded and preserved. If restrictions are deemed necessary, the commission must determine how to balance the need for confidentiality with the public's right to know. Furthermore, in considering restrictions on access to presidential papers, the commission will have to determine who will stipulate such restrictions. If it is left to the President to decide what will and will not become public, would we encourage the Chief Executive to purge his papers in order to present history with a partial, sanitized record of an administration?

In our concern for preserving the accuracy of the historical record, the commission must also resolve the questions of whether an ex-President has the right to delegate literary rights of political scientists and discriminating against others.

A central issue in all of these questions is the yet to be resolved definition of the term *presidential papers*. To what extent are materials prepared by the White House staff to be in-

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cluded in this category? Can presidential papers be separated, as some suggest, into groupings designed *personal*, *public* and *political*? What safeguards are necessary to protect individual privacy and prevent political exploitation of sensitive papers?

Clearly, it seems that each issue raised in the complicated maze looming before the commission leads to another, equally important question. As a House appointee to the commission, I am eager to begin work on the challenging and demanding task before us. But, unfortunately, we cannot begin.

The law establishing the commission requires that its final report and recommendations be submitted to Congress and the President by March 31, 1976, with the hope that necessary legislation might be approved before the close of the 94th Congress.

The burden is clearly on President Ford to move swiftly to fulfill his five-month-old pledge to select the presidential appointees "as quickly as possible."