

The Tape Tug-of-War

Fuller column, same date - filed
W/gate.

THE INSTANT President Nixon proclaimed "I am not a crook" he probably knew he had armed posterity with words it would delight in turning against his historical standing. But he could not have anticipated that in 1975 the U.S. government would proclaim, in effect, that he was, is, and is likely to remain a crook.



The government recently did that in a court in Washington where Mr. Nixon is waging an uphill battle to gain custody of his presidential tapes and documents. The Justice Department argued that "Mr. Nixon would not be a trustworthy custodian, even temporarily," of these materials.

Mr. Nixon is challenging the constitutionality of a statute enacted last December to make those materials government property.

The Justice Department cited the destruction of 18½ minutes of subpoenaed tape, and what the Department politely called "material differences" between Mr. Nixon's transcripts and what the tapes actually contained.

Mr. Nixon's argument is, at bottom, this: All previous Presidents enjoyed an absolute property right in their presidential materials, a right that evolved over the years as a result of the nation's indifference to the disposition of such materials. But that argument is not quite accurate, and is quite irrelevant.

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CONGRESS FIRST MANIFESTED this concern by making appropriations for the purchase of documents of Washington, Jefferson, Madison and Monroe. Since the 1930s — the advent of presidential government and presidential libraries — the government's concern has become more important and systematic.

Mr. Nixon argues (among other things) that the new statute deprives him of property without due process. The Justice Department argues that presidential materials "are affected with a unique public interest" and that the statute is a reasonable exercise of Congress' authority to protect them.

The statute is called the Presidential Recordings and Materials Preservation Act. The trouble with the dispute between Mr. Nixon and the government is that both sides seem to share the assumption, implicit in the statute's title, that all such "recordings and materials" should be preserved.

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THE 42 MILLION PAGES of documents should be preserved, but the tapes of 5,000 hours of conversations are another matter. The tapes are splendid symbols of the Watergate culprits' indifference to other people's sensitivities and right to privacy.

The tapes should be destroyed.

Historical scholarship is a serious matter, but like another serious matter, national security, it is not an excuse for snooping on innocent Americans.