

NYTimes AUG 13 1973  
Two Nixons and the Tapes

To the Editor:

This is to express my admiration for and a tentative reservation about the Aug. 3 Op-Ed article of my colleague and friend Charles L. Black, "Mr. Nixon, the Tapes, and Common Sense."

It is important indeed at a time when the passion for having Everything Revealed in the area of political life runs high in the United States that disinterested persons should have the courage to say that there are some things that must remain confidential. Among those things, surely, are the counsel and advice that the President seeks and gets to assist him in decisions appropriate to the Presidency.

It seems to me, however, that Professor Black has overlooked a distinction which Senator Ervin has consistently and carefully made. The distinction is between Mr. Nixon as President of the United States and Mr. Nixon as a candidate for nomination and election to the office of President. It is clear indeed that confidentiality is appropriate for Mr. Nixon in the former role. It is not at all clear that it is an appropriate privilege for him to have in the latter.

It may indeed be true that in the records in the White House there is a considerable intermingling of Mr. Nixon's communications. It does seem to me, however, that the mere word of the White House that such communications are all inextricably intermingled will under present circumstances be viewed as self-serving.

Perhaps Professor Black and his numerous keen-minded colleagues at the Yale Law School could devote their considerable ingenuity to working out some acceptable means for sifting the communications of candidate Nixon from those of President Nixon.

In the end, this may prove to be impossible. I am sure it would be difficult. But in this matter, it might be well to remember the aphorism of that great philosopher Benedict Spinoza: "All excellent things are as difficult as they are rare."

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