

Correcting a Blunder

The decision by the Ford Administration to recognize former President Nixon's title to the tapes and documents of his Presidency, which looked bad enough when it was first announced, seems utterly indefensible now. Although the objections of the Special Prosecutor's office to the proposed arrangement were known to the Department of Justice, the final decision was made without participation by Mr. Jaworski or his representatives. Thus, the decision on the Nixon documents is of a piece with Mr. Ford's decision on the pre-emptive Nixon pardon. In each instance the decision was taken in virtual secrecy and with undue haste, without requisite consultation and without proper regard for the judicial process.

Unlike the pardon, however, the ruling on the tapes and documents can readily be corrected. Mr. Ford has already paused in the implementation of the agreement in order to try to alleviate the Special Prosecutor's concern that it will impede access to the material in the course of the Watergate trials and pending investigations and final reports.

There is serious question, however, whether any amended agreement which satisfies the over-riding public interest in these materials is likely to emerge from a White House which has been so protective of the former President and so careless with the public interest in the case of Richard Nixon. It is therefore reassuring that, while Mr. Ford is poised in mid-blunder, Senators Mike Mansfield and Jacob K. Javits have taken steps toward a solution of the problem through Congressional action.

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The most promising proposal, advanced by former Attorney General Ramsey Clark, rests on the analogy of the condemnation power conferred on the Department of Justice with respect to the physical evidence relating to the assassination of President Kennedy. Congress could enact a statute now, as it did then, empowering an appropriate official—in this case, Mr. Jaworski—to file suit vesting immediate title and possession in the United States.

Under such a statutory scheme, even if Mr. Nixon could demonstrate ownership of the materials, Congress, by exercising its power of eminent domain could appropriate them for the United States and provide just compensation to Mr. Nixon for loss of property. The same act could include the provision submitted by Senator Javitz, declaring all future Presidential and Vice Presidential papers to be property of the government.

While Congress is considering these proposals, it would be unconscionable for Mr. Ford to transfer custody of the materials to the former President. Congress, for its part, should recognize the urgency of resolving the issues of ownership, custody, and—under the improvident terms of Mr. Ford's agreement—even the very existence of this negative national treasure.