

On the Nation's Memory

By James Reston

WASHINGTON, Sept. 26—Partly as a result of former President Nixon's illness, the Senate of the United States is now acting quickly to give the Government control over his tape recordings and other official documents, which could be destroyed under the Ford-Nixon agreement in the event of Mr. Nixon's death.

This is a delicate and even painful subject, but it is important to the historical record and therefore the memory of the nation. Also, the tapes and papers are vital to the men on trial in the Watergate and related cases, and to the Congress which is studying legislation to prevent the abuses that led to the Watergate scandals.

Without reference to the Congress, the Ford Administration on Sept. 8, 1974, agreed that all materials relating to Mr. Nixon's tenure as President should be regarded as his personal property, with certain qualifications accepted by Mr. Nixon.

Under the terms of the agreement, the former President stated that he would donate a substantial portion of the materials to the Federal Government at some point in the future. Other provisions of the Ford-Nixon agreement were as follows:

1. Mr. Nixon would control access to the materials; any requests for access to them, whether by court subpoena or other legal process, must be referred to him.

2. Mr. Nixon has the right to withdraw any materials (except tape recordings) from deposit, after three years from the date of the agreement, for any purpose. As the report of the Senate subcommittee of the committee on government operations states, "pre-

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sumably this right to withdraw also encompasses the right to destroy any papers or materials he wishes."

3. In a separate provision, Mr. Nixon agreed to donate tape recordings to the Federal Government on Sept. 1, 1979. This agreement states, however, that this future gift is subject to the condition that all tapes in the Government's custody "shall be destroyed at the time of Mr. Nixon's death or on Sept. 1, 1984, whichever event shall first occur."

4. Finally, the agreement provides that, in any event, Mr. Nixon can direct the Administrator to destroy any tapes Mr. Nixon chooses after the gift becomes effective in 1979.

To change those terms, the Government operations subcommittee has now voted 9-to-0 for a bill that would: "(1) Protect and preserve the tape recordings of conversations and other materials prepared . . . between Jan. 20, 1969, and Aug. 9, 1974 . . . (2) make them available for use by the Watergate special prosecution force and for access by the public under regulations promulgated by the administrator of General Services, who would retain custody and control of such tapes and other materials; and (3) make them available to Richard M. Nixon, or his designees, for copying or any other purpose consistent with the administrator's regulations."

It should be clear what this bill—(S-4016) does not attempt to do. It does not pass judgment on the question of "ownership" of the tapes and documents. Nor does it try to define new regulations for handling Presidential papers in the future. This is a special bill to deal with the special and unusual circumstances of the Nixon documents.

The indications are that Senator Mike Mansfield, who introduced the original bill, will call it up for a vote within the next couple of weeks and that it will be passed. The question then will be whether President Ford will sign it, thereby wiping out his original deal with Mr. Nixon.

Even if he vetoed it, the chances are that the Congress would pass it over the veto, for even many members who agreed with Mr. Ford's pardon of Mr. Nixon, are outraged by the thought that the key records of these past five historic years could be mutilated or destroyed by Mr. Nixon or his heirs.

Because of the urgency of the question, the present Senate bill may have to be amended to protect genuine security interests and defend the reputations of officials or citizens from false charges that may appear in letters to or from the former President and his aides.

In the last few days, the bill has been changed to assure that no documents should be released if (a) the Watergate prosecutor certifies that disclosure would impair an individual's right to a fair and impartial trial; or (b) if a court of competent jurisdiction finds that disclosure would be prejudicial.

What the Senate is doing here, in effect, is to insist on the Government's right of eminent domain, and even if the courts were to hold that Mr. Nixon had property rights to the tapes and other documents, provision is made in the bill to pay fair value for the material and retain it in the Government's possession.

Thus, the bill is not denying Mr. Nixon access to the tapes and documents, but merely taking them into "protective custody" and insisting that he should not deny access to others in the future, who will scarcely believe the contents of this strange epoch in our history, even if they have the documents before them.