

Mr. Nixon's False Claim

Determination of the custody, ownership and disposition of Richard M. Nixon's White House documents and tapes must be guided by a recognition that the materials at issue are not the ordinary records of a former President. These include evidence of the improper and often illegal actions that forced Mr. Nixon to resign in order to avoid impeachment.

That special circumstance cannot be ignored in any assessment of Mr. Nixon's recent legal efforts to reassert his and his family's sole right to decide "what is private and what is personal and what is political and what is embarrassing, what is national security" amid those documents—and what is to be released.

In lengthy depositions which ranged from the self-serving to the merely fatuous, the former President once again labored to create the impression that he had only the protection of the Presidency at heart. According to him, it was solely for this reason that he challenged the constitutionality of the Presidential Recordings and Materials Preservation Act of 1974. It nullified his earlier agreement with President Ford that would have allowed Mr. Nixon to control access to the documents.

Mr. Nixon and his lawyers tried to bolster their case by exploiting the many ambiguities that do exist with regard to ownership of Presidential papers. In the absence of previous legal guidelines, Presidents had treated all their White House files as personal property until Franklin D. Roosevelt initiated the custom of depositing White House papers in libraries created under the National Archives. Though voluntary and unrelated to the question of ownership, the procedure was followed by all of Mr. Roosevelt's successors.

Few would challenge Mr. Nixon's claim that the privacy of personal documents is not abrogated by a man's accession to the White House. But Mr. Nixon's legal maneuvers to gain control over his documents and tapes seek deliberately to obscure the uniqueness of his case. His archives cannot be viewed without realization that they include the very documents being sought by committees of Congress, the Special Prosecutor and individual litigants as an essential source of evidence on dangerous abuse of governmental power, as well as on charges of criminal activities and obstruction of justice.

In a manner that characterized his public posture during the stonewalling days of the Watergate cover-up, Mr. Nixon once again pretends that his privileges as a former President are unaffected by his role as an unindicted co-conspirator. There will be ample opportunity for Congress, the courts and the Public Documents Commission established by the 1974 legislation to define the property rights of future Presidents with regard to their White House files. That task cannot properly be assigned to Richard Nixon.