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Preserving Presidential Records

A SOUND SENSE of the public interest underlies last week's decision by a three-judge federal court here upholding the constitutionality of the law that placed former President Nixon's tapes and papers in protective government custody. The court affirmed the importance of preserving the basic record of the Nixon presidency. At the same time, the panel did not casually dismiss Mr. Nixon's claims of privacy and presidential privilege. Instead, the judges found that those claims would not be unduly compromised by archivists' screening of the 42 million pages of documents and 880 reels of tape. The whole question of opening the records to the public was deferred—prudently, in our view—until the regulations called for by the law have been composed.

As the court recognized, the law does depart sharply from past practices. That is, however, not a defect at all, because there has always been a large element of risk in the custom of regarding presidential papers as private property that each ex-President could use, sell or dispose of as he wished. That shaky system has been shored up in recent decades by the growth of presidential libraries. Even so, a reassessment of the policy has been overdue. Mr. Nixon's situation precipitated congressional action by dramatizing the dangers inherent in the old approach. The circumstances of his resignation, and his many attempts to conceal and manipulate evidence of misdeeds, amply support the judgment that, as the court put it last week, "Mr. Nixon might not be a wholly reliable custodian of the materials at issue."

While depriving Mr. Nixon of substantial control over the tapes and papers, the law does not deny him opportunities to argue that certain materials should not be publicly released. Concerns for privacy and confidentiality should not be totally discounted just because Mr. Nixon has so abused the terms. Like the papers of other Presidents, the Nixon records no doubt include some materials on private family affairs; documents affecting legitimate interests of national security; and some candid communications about public policy that ought to be embargoed for a while.

Through long experience, the nation's archivists have developed dispassionate standards for dealing with such sensitive materials. Congress has encouraged that approach to the Nixon documents. However, given the general level of contentiousness, especially about the tapes, it seems inevitable that a number of disputes over access to Mr. Nixon's records will wind up in court. If so, it would be best for the judiciary to proceed cautiously, as Judges McGowan, Tamm and Robinson did last week, rather than issuing sweeping pronouncements—either for privilege or for public release—which may turn out to be unwise. Too much deference to private sensitivities, for instance, could keep important records from the public for too long. On the other hand, flinging open all of the files at once could discourage future Presidents and their staffs from keeping accurate, complete records for historical purposes at all.

The entire problem of presidential records is now in a transitional stage. In this as in so many other areas, Mr. Nixon's performance has provoked a reassessment of long-standing policies. Some new standards will emerge as the tangled litigation over the Nixon records runs its course; Mr. Nixon's attorneys have already announced their intention to appeal last week's decision to the Supreme Court. Meanwhile, a national commission on federal records policies has finally been organized. Its report could give valuable guidance to Congress. But this is not a subject to be settled hastily. It is far too important, and the interests involved are too complex.