

# High Court to Hear Nixon Bid for Tapes

Washington

The Supreme Court agreed yesterday to hear former President Nixon's claim that he alone may decide what happens to White House tape recordings and thousands of documents from his presidency.

A U.S. District Court ruling last January upholding the 1974 law that gave the government custody of the material and called for eventual public access to much of it is scheduled for Supreme Court review next year and a decision by June.

"For the entire two centuries of this nation's existence every president of the United States has had and has exercised sole and complete control over the disposition of the confidential materials

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accumulated by him and his staff while in office," Mr. Nixon's lawyers told the court in seeking review. "Congress departed from that unbroken tradition in order to deprive one particular former president of that right."

Opposing review, Solicitor General Robert Bork said Mr. Nixon is raising major issues of executive power that were not really for court action. "For almost two centuries these issues, and others like them, have been left to be accommodated by the ebb and flow of political forces," he said.

Even if Mr. Nixon loses this round in the Supreme Court, public access to the material is a long way off. Another lawsuit over the details of the government's program of screening the materials is considered certain.

Under the lower court's orders, Mr. Nixon maintains access to the documents and tapes and has the right to reproduce them for his own use.

Groups of writers, editors, historians and lawyers are supporting the Justice Department in its defense of the constitutionality of the law. They go further than the

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department in contending that even before the law was passed, the public and not the occupant of the White House was the rightful owner.

Mr. Nixon's lawyers are also resisting public distribution of those White House tapes played for the jury that convicted his top aides of conspiracy in the Watergate coverup. The U.S. Court of Appeals ruled last month that no matter what becomes of other administration memorabilia, those tapes are in the public domain. A separate petition for a Supreme Court hearing is expected in that case.

Herbert J. Miller Jr. and other lawyers for Mr. Nixon told the court that the 1974 law is unconstitutional on its face as a violation of the principle of separation of powers and presidential privilege, an invasion of Mr. Nixon's personal rights of privacy and free speech and a denial of his right to equality before the law.

Bork countered that the lower court correctly rejected each argument. Congress often regulates ex-

ecutive branch conduct and frequently tells presidents what they may do, he said. He called it premature to assume that the professional archivists authorized to screen the material will breach executive privilege.

As for invading Mr. Nixon's personal privacy, Bork said Mr. Nixon during his presidency has "the quintessential public figure" whose "voluntary decision to seek the presidency relinquished any privacy interest in the way he conducted that office and administered the public trust."

Recalling Mr. Nixon's own design of preserving historical evidence by means of the tapes, Bork said that purpose "could be fulfilled only by allowing individuals other than (Mr. Nixon) to have access to them."

And as for Mr. Nixon's claim that he was being singled out for discriminatory treatment, Bork replied that Mr. Nixon "is the only president to resign. This alone distinguishes him." Noting that the House Judiciary Committee found "untrustworthy" Mr. Nixon's version of the transcript of key tapes, Bork said Congress had a right to question Mr. Nixon's "reliability as a custodian."

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