

The Presidential Privilege

In agreeing to hear former President Nixon's claim that he alone should be entitled to decide the fate of his White House tapes and documents, the Supreme Court will in effect turn its attention to two separate issues.

The first question involves that historic blurred line between private ownership and public interest in the matter of Presidential records. The second and far more limited question deals with the insistence by Richard M. Nixon that these particular tapes and documents should be treated as though they were the product of an ordinary Presidency. This argument disregards Mr. Nixon's role as an unindicted co-conspirator in an unprecedented web of illegal actions and abuses of power.

Between Mr. Nixon and the tapes stands the Presidential Recordings and Materials Preservation Act of 1974, which nullified an earlier agreement with President Ford that would have allowed the former President to control the disposition of the documents. Last January, in response to Mr. Nixon's challenge, a three-judge Federal court unanimously upheld the act's constitutionality, declaring with considerable understatement that the former President might not be a "wholly reliable" custodian of documents that contain evidence not only of actions which are still involved in litigation but of impeachable offenses which are of crucial importance to those concerned with the protection, reform and study of American institutions.

Against these overriding considerations of the public

interest, Mr. Nixon's assertion of 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" is reminiscent of those Watergate stonewalling tactics that used the laws to protect official lawlessness. Mr. Nixon's lawyers argue speciously that Congress has departed from the tradition of allowing Presidents to exercise control over confidential documents "in order to deprive one particular former President of that right;" they thus obscure the fact that this particular President evaded impeachment only by his eleventh-hour resignation and escaped criminal prosecution only thanks to President Ford's untimely pardon.

Mr. Nixon's plea for the right to privacy is of little substance since the contents of his documents, like those of his predecessors, will be diligently protected by professional custodians and archivists. As for Mr. Nixon's right to use his documents in the preparation of his memoirs, no existing law would deny him access. At issue is only Mr. Nixon's fitness to determine which of the materials, which include first-hand information of his historic assault on the Presidency, are to be preserved.

Americans who respect the Presidency can only react with renewed dismay to any claim by Mr. Nixon that he remains the legitimate guardian of the high office whose trust he violated.