



Those Nixon Tapes

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THERE is an ironic twist to the latest brouhaha over the notorious Nixon tapes.

Richard Nixon is battling to prevent sale of the tapes as phonograph records and tape cassettes for private profit, and the Supreme court has agreed to hear the former President's plea to keep the tapes off the market.

And yet, when Nixon owned and operated the Justice Department, he repeatedly winked at and even encouraged illegal leaks of grand jury testimony to stir up public opinion against individuals he perceived as enemies of his brand of law and order. He also saw to it that members of his administration peddled rumors, some of them based on fact, injurious to numerous political opponents.

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IN THE first place, the tapes — running 16 to 22 hours after editing — were played for the Watergate jury and for courtroom spectators. Transcripts, which were not introduced in evidence, were widely sold in book form.

The tapes had been subpoenaed by the Watergate prosecution as evidence in the trial of two former Nixon aides, H.R. Haldeman and John D. Ehrlichman, and former Attorney General John Mitchell. All three were convicted. Ehrlichman is serving a sentence in Arizona; Haldeman and Mitchell have asked for a new trial.

After the trial, Judge Gerhard Gesell approved release of the tapes because, he said, the publishing of court

exhibits "reaches far back into our common law and tradition." But Judge John Sirica, who presided over the trial, held back release pending appeals by the defendants. The U.S. Court of Appeals here ruled 2 to 1 that the tapes should be made available.

Nixon has appealed on two points: That the tapes were subpoenaed in an unwarranted intrusion on Executive privilege, and that in upholding delivery of the tapes to the prosecution the Supreme Court in 1974 nevertheless concluded that a President does have a general right to keep his conversations confidential.

Nonsense, said the appeals court.

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SO THE Supreme Court was forced to stake the case, simply to establish a precedent. It must decide whether the tapes are Nixon's private property protected by the doctrine of Executive privilege, only temporarily yielded under judicial order, or whether the right to inspect and copy records — even of Presidential conversations — is fundamental to common law in a criminal case heard in public.

Thus, the business only sounds crazy. To be sure, millions of people have read the transcripts in newspapers and books. But that's immaterial. This is a case that involves the historic conflict between the people's right to know and the President's right — as elected Chief Executive — to decide how much should be known about what he and his aides talk about in secrecy.