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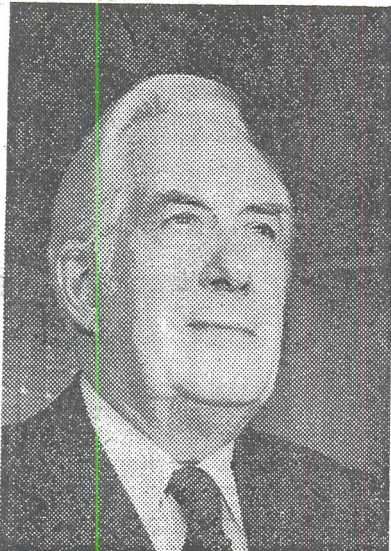
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## High Court Upholds Control Over Papers and Tapes of Nixon



The New York Times

Chief Justice Warren E. Burger



United Press International

Justice William J. Brennan Jr.

### 7-2 Vote Backs Law as Necessary Exception

By LESLEY JELSNER

Special to The New York Times

WASHINGTON, June 28—The Supreme Court upheld as constitutional today the 1974 law that gave the Government control over Richard M. Nixon's Presidential papers and tape recordings.

The Court, on a vote of 7 to 2, found that Mr. Nixon was "a legitimate class of one," subject to special treatment by Congress because of the possibility that his Presidential materials might otherwise have been destroyed.

Congress in 1974 was entitled to single out Mr. Nixon and treat his materials differently from those of all other Presidents, the Court said, because at the time only the Nixon materials demanded "immediate attention" and protection.

#### Opinion by Brennan

Justice William J. Brennan Jr. wrote the Court's opinion. Chief Justice Warren E. Burger and Justice William H. Rehnquist each filed harsh and detailed dissents.

"We, of course, are not blind to appellant's plea that we recognize the social and political realities of 1974. It was a period of political turbulence unprecedented in our history. But this Court is not free to invalidate acts of Congress based upon inferences that we may be asked to draw from our personalized reading of the contemporary scene or recent history," Justice Brennan wrote.

The Chief Justice, in a 41-page opinion, declared that the majority "has now joined a Congress, in haste to 'do some-

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thing,' and has invaded historic, fundamental principles of the separate powers of coequal branches of Government." The Burger opinion said, "To 'punish' one person, Congress—and now the Court—tears into the fabric of our constitutional framework."

There was no immediate comment from Mr. Nixon.

The Court's ruling came in a lawsuit filed by the former President on Dec. 20, 1974, the day after President Ford signed the bill. The suit challenged the constitutionality of the bill on several counts. The lower court in the case upheld the law by unanimous vote in January 1976.

The Supreme Court's decision today, upholding the lower court, ended this lawsuit. However, it does not mean that the Nixon materials will be available to the public soon and it does not mean that litigation over the materials has ended.

Regulations must still be approved by Congress to define the rules for public access. It is considered likely that Mr. Nixon will bring one or more lawsuits challenging these.

In addition, the materials—some 42 million documents and 880 tape recordings—must be screened by archivists, with purely personal materials taken out and returned to the former President and Mrs. Nixon.

The Court said in a footnote that the Government should "promptly disclaim any interest" in materials that it concedes are Mr. Nixon's "purely private communications," and deliver them to him.

Leon Friedman, a Hofstra Law School professor who represented a group of writers, historians and civil liberties advocates, said that it could be three to four years before anyone except Government officials sees the materials.

#### Reproduction of Tapes

The Court still has pending another case that may ultimately provide quicker public access to at least some Nixon tapes, the recordings that were used as evidence in the Watergate cover-up trials. In this case, Mr. Nixon has appealed to the Supreme Court from a lower court ruling that these tapes may be reproduced, broadcast and sold to the public in the form of records.

The Court, which ends its current term tomorrow, will hear argument in the cover-up trial tapes case in its next Court year, which begins in October.

The broader significance of the case—what it may mean for other Presidents, for instance—is also somewhat unclear.

The Brennan opinion stressed the singularity of the case, noting that it arose in "a context unique in the history of the Presidency."

Several Justices who joined in the majority judgment sought in concurring opinions to stress the uniqueness of the case even more.

Justice John Paul Stevens said he agreed that Mr. Nixon was a "class of one." But he said that he thought so in part because of two factors that the Brennan opinion had left "unmentioned"—that Mr. Nixon had resigned from office under "unique circumstances" and that



he had then accepted a pardon for offenses committed while in office.

"By doing so, he placed himself in a different class from all other Presidents," Justice Stevens wrote.

Justice Harry A. Blackmun, who said he agreed with "much" of the Brennan opinion and concurred in the judgment, wrote:

"It is my hope and anticipation—as it obviously is of the others who have written in this case—that this act, concerned as it is with what the Court describes as 'a legitimate class of one,' will not become the model for the disposition of the papers of each President who leaves office at a time when his successor or the Congress is not of his political persuasion."

Justice Lewis F. Powell Jr. also wrote a concurring opinion elaborating his view that the law had both limited "justification" and "objectives."

Justice Rehnquist took the opposite view. In his dissent, he contended that "today's decision countenances the power of any future Congress to seize the official papers of an outgoing President as he leaves the inaugural stand."

He said that the ruling thus threatened the ability of future Presidents to "receive candid advice and to give candid instructions," because of the inhibiting effect of the prospect that private communications might be made public.

#### Presidential Threat Seen

"This result, so at odds with our previous case law on the separation of powers, will daily stand as a veritable sword of Damocles over every succeeding President and his advisers," Justice Rehnquist wrote.

Chief Justice Burger, in his dissent, also discussed the possibility that today's decision could have an inhibiting effect. The law, he suggested, "may well be a 'ghost' at future White House conferences, with conferees choosing their words more cautiously because of the enlarged prospect of compelled disclosure to others."

The Chief Justice also noted, though, that it was possible that the holding will be limited to the Nixon case. "If so," he said, "it may not do great harm to our constitutional jurisprudence but neither will it enhance the Court's credit in terms of adherence to stare decisis," or precedent.

#### Law Viewed as Unique

Professor Friedman, discussing the case this afternoon, said that the 1974 law "really is a unique response for a unique situation."

The Reporters Committee for Freedom of the Press, which had also been in the case in support of the statute, issued a statement hailing the ruling and taking a somewhat broader view.

"This Supreme Court opinion is a historic victory for the public's right to know how this nation is governed and reaffirms the First Amendment principle that Government officials—no matter how high—remain accountable to the people and to history for their acts in office," the statement said.

Of the materials covered by the statute, some are still in Mr. Nixon's possession. The vast majority, though, are in the Washington area in Government custody. Many of the documents are in a suburban

warehouse and the tape recordings are in the White House complex.

The law was passed on an emergency basis in an effort to override an agreement that Mr. Nixon had worked out in September 1974 with the then Administrator of General Services, Arthur F. Sampson.

The agreement gave Mr. Nixon substantial control over the materials and also provided for the destruction of the tape recordings, either at Mr. Nixon's death or on Sept. 1, 1984, whichever should occur first.

The law, the Presidential Recordings and Materials Preservation Act, provides in its first title for the General Services Administrator to take control of the materials and to prepare regulations, of two kinds: for the processing and screening of the materials in order to return to the Nixons the purely personal items, and for determining the terms and conditions of eventual public access.

Another part of the act provides for future consideration of standards to be used for papers of subsequent Presidents.

Mr. Nixon challenged the law as violating five constitutional principles or protections. They were the principle of separation of powers; the Presidential privilege for confidential communications, which was recognized in the Supreme Court's 1974 ruling ordering Mr. Nixon to turn over certain subpoenaed tapes for use in the cover-up trial; Mr. Nixon's privacy interests; his First Amendment rights of association, and the prohibition against bills of attainder, or laws that determine guilt and inflict punishment on an individual without providing for a judicial trial.

#### Basis for the Legislation

The Supreme Court rejected all five arguments, finding that the statute was consistent with all the constitutional provisions.

The Court's identification of Mr. Nixon as a "legitimate class of one" came in its discussion of the bill of attainder argument. The Court noted that various previ-

ous Presidents already had their papers in Presidential libraries and that Mr. Nixon alone had entered into an agreement contemplating destruction of some materials.

"In short, appellant constituted a legitimate class of one, and this provides a basis for Congress's decision to proceed with dispatch with respect to his materials while accepting the status of his predecessors' papers and ordering the further consideration of generalized standards to govern his successors," the opinion said.

Justice Brennan's opinion, which was joined either in full or in large part by the six other Justices in the majority, and indeed seemed designed to sound sober and subdued.

At one point, however, in discussing Mr. Nixon's privacy contentions, the opinion does refer to some of the motivations that Watergate aroused. The Court found, basically, that substantial Government interests outweighed Mr. Nixon's privacy expectations regarding the materials.

Among those interests were "the desire to restore public confidence in our political processes by preserving the materials as a source for facilitating a full airing of the events leading to appellant's resignation, and Congress's need to understand how those political processes had in fact operated in order to gauge the necessity for remedial legislation."

#### Japan Color TV Exports Off in May

TOKYO, June 28 (UPI) — Japan's exports of color television sets in May totaled 411,976 units, down about 10,000 units from April, but up 4 percent from the year-earlier level, the Japan Electronics Industry Association reported. Shipments to the United States in May amounted to 239,234 units, down about 16,000 units from April, the association said.

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