

Sec. 9—Powers Denied to Congress

Cl. 3—Bills of Attainder

cordings accumulated during the tenure of former President Nixon,¹⁸⁰⁸ the Court set out a rather different formula for deciding bill of attainder cases.¹⁸⁰⁹ The law specifically applied only to President Nixon and directed an executive agency to assume control over the materials and prepare regulations providing for ultimate public dissemination of at least some of them; the act assumed that it did not deprive the former President of property rights but authorized the award of just compensation if it should be judicially determined that there was a taking. First, the Court denied that the clause denies the power to Congress to burden some persons or groups while not so treating all other plausible individuals or groups; even the present law's specificity in referring to the former President by name and applying only to him did not condemn the act because he "constituted a legitimate class of one" on whom Congress could "fairly and rationally" focus.¹⁸¹⁰ Second, even if the statute's specificity did bring it within the prohibition of the clause, the lodging of Mr. Nixon's materials with the GSA did not inflict punishment within the meaning of the clause. This analysis was a three-pronged one: 1) the law imposed no punishment traditionally judged to be prohibited by the clause; 2) the law, viewed functionally in terms of the type and severity of burdens imposed, could rationally be said to further nonpunitive legislative purposes; and 3) the law had no legislative record evincing a congressional intent to punish.¹⁸¹¹ That is, the Court, looking "to its terms, to the intent expressed by Members of Congress who voted its passage, and to the existence or nonexistence of legitimate explanations for its apparent effect," concluded that the statute served to further legitimate policies of preserving the availability of evidence for criminal trials and the functioning of the adversary legal system and in promoting the preservation of records of historical value, all in a way that did not and was not intended to punish the former President.

The clause protects individual persons and groups who are vulnerable to nonjudicial determinations of guilt and does not apply

¹⁸⁰⁸ The Presidential Recordings and Materials Preservation Act, Pub. L. 93-526, 88 Stat. 1695 (1974), note following 44 U.S.C. § 2107. For an application of this statute, see *Nixon v. Warner Communications*, 435 U.S. 589 (1978).

¹⁸⁰⁹ *Nixon v. Administrator of General Services*, 433 U.S. 425, 468-84 (1977). Justice Stevens' concurrence is more specifically directed to the facts behind the statute than is the opinion of the Court, *id.* at 484, and Justice White, author of the dissent in *Brown*, merely noted he found the act nonpunitive. *Id.* at 487. Chief Justice Burger and Justice Rehnquist dissented. *Id.* at 504, 536-45. Adding to the impression of a departure from *Brown* is the quotation in the opinion of the Court at several points of the *Brown* dissent, *id.* at 470 n.31, 471 n.34, while the dissent quoted and relied on the opinion of the Court in *Brown*. *Id.* at 538, 542.

¹⁸¹⁰ 433 U.S. at 472. Justice Stevens carried the thought further, although in the process he severely limited the precedential value of the decision. *Id.* at 484.

¹⁸¹¹ 433 U.S. at 473-84.