

U.S. JUDGE RULES GOVERNMENT OWNS NIXON DOCUMENTS

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But Appeals Court Suspends
the Order and Schedules
a Hearing for Today

EXECUTIVE PLEA DENIED

Ruling Says President Lost
Claim to Most Tapes
When He Left Office
NYTimes

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Special to The New York Times

WASHINGTON, Jan. 31—
Federal District Judge Charles
R. Richey ruled today that the
Government owns almost all of
the 42 million tapes, documents
and other items assembled dur-
ing Richard M. Nixon's five
years at the White House and
that Presidents are stripped of
claims of executive privilege
when they leave office.

Text of judge's summary
of decision, Page 10.

Judge Richey's order was
temporarily suspended a few
hours after it was issued. The
United States Court of Appeals
took the action, setting an un-
usual Saturday hearing on the
matter for 3 P.M.

In a 99-page opinion in
United States District Court,
Judge Richey said that the only
exceptions to government own-
ership of tapes and documents
were purely personal items. The
judge said that Mr. Nixon must
select such personal items but
that he would be forced to
defend his selection if chal-
lenged.

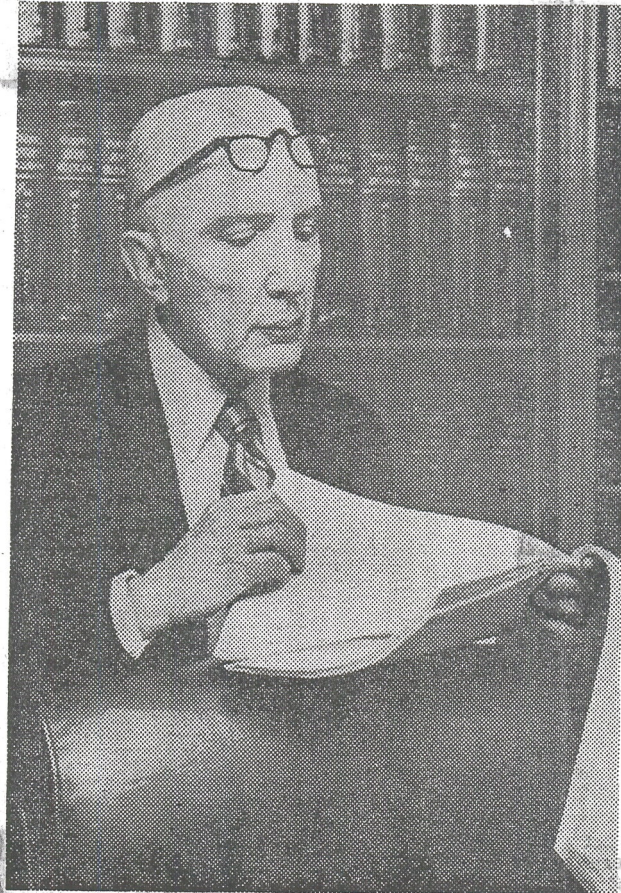
Old Practice Affected

The decision would reverse
the common practice going
back to George Washington of
allowing former Presidents to
keep their papers.

If the ruling stands, it is not
expected to affect the records
of other past Presidents be-
cause these records are in pub-
lic hands. However, scholars
and government experts say it
would be of importance to all
future historians and Presi-
dents.

Mr. Nixon's tapes and papers
are closely linked to the Wa-
tergate affair, which caused Mr.
Nixon to become the first Pres-

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The New York Times/George James

Judge Charles R. Richey with his ruling in the Nixon case

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ident in American history to
resign.

"To uphold former President
Nixon's claim of ownership
would be to place him above
the law as well as recognize
that he may assert a right to
the products of his office, which
would be to compare him to a
monarch. This the court can-
not do," Judge Richey wrote.

The Richey decision came in
response to four suits filed last
autumn following Mr. Nixon's
resignation Aug. 9 and the
agreement with Arthur G.
Sampson, head of the General
Services Administration, that
gave Mr. Nixon both ownership
and control of the documents.

The agreement, which also
provided for eventual destruc-
tion of the documents, was nul-
lified by Congress but ques-
tions of ownership and privi-
lege were not adjudicated until
today.

The major points made by
Judge Richey today were these:

¶A president is no exception
to the general rule that mater-
ials gathered or generated dur-
ing public service belong to the
Government.

¶Mr. Nixon's claim of own-
ership is contrary to the "nature
of the office" and the Constitu-
tion. There are no precedents,
despite historical practice. Con-
gress has not sanctioned such
ownership.

¶Under the Freedom of In-
formation act, under which two
of the suits were brought,
almost all executive branch
materials are official records.
The exceptions are personal

items and tapes and documents
between the President and his
small personal staff. The tapes
and documents may become
"Presidential Recordings and Ma-
terials Preservation Act of 1974."

¶Former Presidents cannot
assert claims of executive privi-
lege to protect the confidential-
ity of their office documents.
Only Presidents can make such
claims and the concept of privi-
lege itself "belongs to the
Government." Only President
Ford could claim privilege for
Mr. Nixon.

¶Mr. Nixon's Presidential
papers are of "uncalculable
value" and giving them to him
would constitute a violation of
the emoluments clause of the
Constitution that prevents Presi-
dents from enriching them-
selves while in office.

¶Mr. Nixon has a right to
privacy as does any other citi-
zen. Machinery is set up for
asserting this right on the docu-
ments and tapes. Mr. Nixon can
select the personal ones in
secret but the burden of proof
is on him if his choice is chal-
lenged, and the courts will
decide any disputes.

¶Mr. Nixon filed suit last
Oct. 17 to have his arrange-
ment with Mr. Sampson honored
by the Government. Three days
later, Jack Anderson, the col-
umnist, intervened and a group
headed by the Reporters Com-

mittee for Freedom of the Press
filed suit for access to tapes
and documents.

On Oct. 24, Lillian Hellman,
the playwright, and others filed
suit for access to the tapes.
Subsequently, former Senator
Sam J. Ervin Jr., Democrat of
North Carolina, Representative
Elizabeth Holtzman, Democrat
of Brooklyn, and others were
allowed to intervene as friends
of the court.

While the suits were pend-
ing, Congress passed the Presi-
dential Recordings and Mate-
rials Preservation Act, nullify-
ing the Nixon-Sampson agree-
ment.

The White House tapes and
documents had long been a
central point in the Watergate
affair and they brought on Mr.
Nixon's resignation. President
Ford's approval of the arrange-
ment between Mr. Sampson and
Mr. Nixon brought a harsh pub-
lic outcry, and the White
House backed off, modifying
the agreement.

In an opinion on Sept. 6, At-
torney General William B.
Saxbe ruled that the papers
were Mr. Nixon's personal
property when he left office,
with the exception of certain
"permanent files."

An 'Untenable Conclusion'

Judge Richey said today that
to sustain Mr. Nixon's asser-
tion that he personally owned
the documents and tapes, "It
must be found that an indi-
vidual President is distinguish-
able from other public serv-
ants."

"Such a conclusion, however,
is untenable as it is refuted by
the Constitution and the very
concept of the office of the
President," he said.

"The powers and duties of
the executive inure to the office
and not to any individual of-
ficeholder; for the President,
although elected to the highest
office in the nation, is but a
transient holder of the public
trust," Judge Richey continued.

Citing the possible monetary
value of Presidential papers,
Judge Richey argued that "it
was the intent of the framers
of the Constitution to prevent
the office of the President
from being a position of power
and profit" and that "they
sought to prevent the corrup-
tion of the office by removing
profit."

He quoted former Chief
Justice Oliver Wendell Holmes
in rejecting historical prece-
dent for Presidential own-
ership of papers. Holmes wrote
that it was "revolting" to have
no better reason for a rule of
law than mere "blind imitation
of the past."

Information Act Cited

Judge Richey said that under
the Freedom of Information
Act the executive office of the
President was included as a
Federal agency whose records
could be examined. However,
he said "the President's imme-
diate personal staff" was spe-
cifically excluded.