

Stay Backed In Action on Nixon Tapes

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The U. S. Court of Appeals yesterday continued to block indefinitely any action that would implement U. S. District Court Judge Charles R. Richey's opinion two weeks ago in which he ruled that the federal government owns presidential tapes and documents from the Nixon administration.

In continuing the stay of Judge Richey's order, the appeals court criticized the judge's haste in handing down the tapes opinion before taking up legal issues the panel wanted heard.

Yesterday's opinion was the latest move in a legal battle between the district court and appeals court over procedural issues in the numerous pending tapes cases, which themselves have become a legal labyrinth.

The current wrangle is over whether or not a three-judge court should be convened to consider former President Nixon's challenge to a law passed by Congress in December concerning the tapes.

When that law was passed, Nixon's attorneys immediately filed a request for a three-judge court to hear tapes cases pending before Richey. Over the next six weeks, Richey did not take any action on that request, indicating he would go ahead and decide first on the issues of ownership and privilege in connection with presidential materials.

On Jan. 28, Nixon's attorneys asked the appeals court to order Judge Richey to consider the three-judge request. At 10 a.m. on Jan. 31, the appeals court strongly suggested that Richey decide the three-judge court question before reaching the questions of privilege and ownership.

Richey publicly released his opinion at 11 a.m. that same morning, but claimed later that it had been filed with his court clerk at 2:30 a.m. that morning. The reason for the predawn filing, Richey explained, was that he had promised attorneys in the case he would rule by Jan. 31.

"We cannot accept Judge Richey's explanation of his action as ground for deviation from these well-settled principles," the appeals court ruled yesterday. The unanimous, un-



JUDGE CHARLES RICHEY
... his haste criticized

signed opinion came from U.S. Senior Circuit Judge Walter Bastian and Circuit Judges Spottswood Robinson III and Malcolm R. Wilkey.

Saying that Richey's version of the timing of his opinion differed with that of an appeals court clerk who had talked to him that morning, the appeals court said: "But irrespective of docketing (the time of filing), we deem the predawn 'filing' of Judge Richey's opinion to be of no conceivable legal or practical effect."

"We think it clear that a judge is under a duty not to so circumstance himself as to be unable to conform to directives of a higher court which, from plain appearances, might be imminent," the judges said in a 58-page opinion released late yesterday.

Since issuing his opinion, Judge Richey has asked for a three-judge panel to be appointed to determine whether there were substantial constitutional issues raised in the challenge to the congressional act.

Appointed to that panel with Judge Richey have been Circuit Judges Carl McGowan and Edward A. Tamm.

Three-judge federal courts generally are convened in cases questioning the constitutionality of legislation, and decisions from those courts are appealable directly to the Supreme Court. By contrast, single-judge opinions are appealed first through the U.S. Court of Appeals and then to the Supreme Court.