

Conflicting Court Orders

on Nixon

Papers

Washington

A federal judge ruled yesterday that millions of documents accumulated during the Nixon Administration, including the celebrated Watergate tapes, belong to the government, not to former President Nixon.

But the sweeping decision of United States District Judge Charles R. Richey was blocked only hours later by the U.S. Court of Appeals, which called an unusual Saturday hearing to decide

whether Richey should be ordered to reconsider.

The appeals court stayed ended a confusing day of rapid-fire orders that kept attorneys and reporters sprinting back and forth from Richey's chambers to the appeals court in the federal courthouse here.

Richey led off with his decision, which he signed before dawn yesterday after an all-night work session. At 10 a.m., the appeals court, apparently unaware that Richey's ruling was ready, issued an opinion gently suggesting that he withhold it because he had not shown that he had jurisdiction over the case in the first place.

Still in ignorance of the appeals court intervention, Richey went ahead and released his opinion at 11 a.m. The appeals judges acting at the request of Mr. Nixon's attorneys, then suspended his decision and announced their special Saturday session.

The largely procedural dispute centers on the question of whether Richey, rather than acting alone, should have allowed the far-reaching constitutional questions to be decided by a three-judge district court.

At today's hearing, the appeals judges will decide whether to order Richey to request the convening of a three-judge panel.

If Richey, in an attempt to keep his historic ruling intact refuses to let two more judges be called into the case, his refusal is appealable. And if he decides a three-judge court is warranted, its ruling could very

well move his own, though he would be one member of the tribunal.

Richey's initial ruling, besides settling the question of ownership of presidential papers, also rejected Mr. Nixon's claim that he could continue to invoke the principle of executive privilege even after he left office.

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Only sitting presidents may assert the privileges, Richey held.

Although the decision kept the Watergate tapes in the government's possession, Richey, at the same time refused to grant reporters, scholars, historians and the general public access to them.

Richey said that while records generated by most federal departments and government agencies are open to public scrutiny through the Freedom of Information Act, Congress in that law specifically placed White House documents beyond the public's reach.

His decision would mean that prosecutors and perhaps government archivists would be the only people permitted to view the records and listen to the tape recordings

made by Mr. Nixon and his aides in the White House.

Richey did not decide whether access to the tapes might be obtained under the Presidential Recordings and Materials Preservation Act, passed by Congress in December.

Richey's ruling, the first court decision in history to deal squarely with the ownership of presidential documents, would bind all future Presidents if it survives on appeal.

In its decision, the appeals court said Richey, rather than rushing to rule on the ownership and privilege questions, should have given priority consideration to Mr. Nixon's challenge to the constitutionality of the law en-

acted by Congress in December.

Mr. Nixon's complaint, pending before Richey for six weeks, was not resolved by yesterday's ruling, which did not touch on the constitutionality of the new law.

Holding that the former President's constitutional challenge was "inexorably involved" with the issues that were decided yesterday, the appeals court said Richey should have consolidated them and determined whether they should have been heard by a three judge federal court.

As it was, Richey's decision already encompassed a tangled set of suits and countersuits filed by Mr. Nixon, the Watergate special prosecutor, several members of Congress, columnist Jack Anderson, and groups of reporters, historians and political scientists. It took Richey 16 pages simply to

explain who all the parties were.

Mr. Nixon led off by saying the court should force the government to abide by the agreement worked out on September 8, the day President Ford granted him an unconditional pardon.

That agreement called for the tapes and other records of the Nixon era to be stored in a facility near San Clemente and permitted the former President eventually to destroy all the recordings.

Amid public protests, Mr. Ford reneged on the agreement and decided in November that the special prosecutor's office should have enough access to finish its investigations.

In its suit, the prosecutor's office argued that Mr. Ford's decision and the December law, by specifying that the General Services Administration was to retain custody

of the documents, dealt a death blow to the original tapes agreement.

The new statute, the prosecutor also said, rendered Mr. Nixon's claims to ownership moot. The former President retaliated with a separate suit, the one Richey has yet to act on, contending the law is unconstitutional.

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JUDGE RICHEY
99-page ruling