

# Court of Appeals Calls for a 3-Judge Panel to Study The Legal Issues of Ownership of Nixon Documents

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WASHINGTON, Feb. 14 — The United States Court of Appeals decided today that a panel of three judges should take up certain legal issues surrounding the ownership of Richard M. Nixon's tape recordings and documents without being bound in any way by a Federal judge's recent precedent-making ruling that the Government owned almost all the material.

In effect, the Court of Appeals gave the three-judge panel the opportunity to decide the issue of ownership all over again. The court, however, did not dictate that the panel do so.

The court's decision came in a 59-page decision filed late this afternoon. It was the latest ruling in a series by both the appeals court and the lower court, all stemming from a complex tangle of litigation involving lawsuits by former President Nixon and others, legislation by Congress and subpoenas by the Watergate special prosecutor.

Like the litigation from which

it stems, today's ruling is complex. The dimensions of the ruling and the ultimate outcome of the dispute over who may own and control the documents remain unclear.

Technically, the decision by the Court of Appeals today extends the stay that it imposed on the ruling by United States District Judge Charles R. Richey on Jan. 31, the day that Judge Richey issued his opinion.

### 'Privilege' Ruled Out

The court criticized Judge Richey, at great length, for releasing his decision in the face of what the Court of Appeals contended was the knowledge that the court wanted him to delay the matter, pending reso-

lution of the issue about the special three-judge panel.

Judge Richey ruled that almost all the 42 million documents, including tape recordings, papers and other items assembled during Mr. Nixon's five years in the White House, belonged to the Government. He held that Mr. Nixon could not exercise any claims of executive privilege over them to keep them secret because he was no longer President.

The Court of Appeals imposed the stay initially because of the possibility that Judge Richey should have, but had not, referred to a special three-judge panel a challenge by Mr. Nixon to the constitutionality

of a Congressional enactment regarding the Nixon documents.

In the interim, at Judge Richey's request, a three-judge panel has been appointed by the Chief Judge of the United States District Court here—a panel composed of Judge Richey and two judges of the Court of Appeals, Carl McGowan and Edward A. Tamm.

As a result of today's ruling, the panel will now take up at least the preliminary issue of whether the circumstances require or justify a ruling by a three-judge panel.

### Ruling Is Not Signed

The ruling was issued without signature by the three judges who handled the matter on behalf of the full court, Appeals Court Judges Spotswood Robinson 3d and Malcolm R. Wilkey and Senior Circuit Court Judge Walter Bastian.

The ruling also provided a means for the special prosecutor to get materials it needs from the Presidential documents, despite the stay. It also gave Mr. Nixon something of a victory. Mr. Nixon, through his attorney, Herbert J. Miller, had asked that the Congressional legislation be tested before a three-judge panel.

Whether the decision will ultimately lead to a Nixon victory it is impossible to tell, for, according to lawyers involved in the matter, there are a number of ways in which the case could develop and end with a ruling similar if not identical to Judge Richey's.

The issue of ownership of the materials has been of special concern to the Watergate special prosecution. In the fall, the prosecution issued subpoenas for several dozen White House tape recordings and for scores of other documents.

The prosecution considered these materials necessary for the continuation of its work in the various investigations and cases that still remain open.