

## Venue Change Won in Nixon Tax Case

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WASHINGTON, April 16—The two men charged with assisting in the preparation of false tax returns for former President Richard M. Nixon and Mrs. Nixon won the right today to be tried separately in their home towns rather than together in Washington, as the special Watergate prosecutor had wished.

It was the first change of venue to be granted in the long line of Watergate cases.

More significant, the ruling by Judge Oliver Gasch of the United States District Court here will, unless reversed on appeal, deprive the prosecution of various advantages, including the possible advantages of a joint trial.

Some advantages are logistical—requiring witnesses to appear only once, for example. But others can sometimes affect the outcome of a case—in a joint trial, for instance, one co-defendant might in the course of his defense injure the defense of the other defendant.

### Appeal Considered

A spokesman for the prosecution said tonight that the office was considering an appeal.

Judge Gasch, who announced his ruling in a 12-page opinion filed at the courthouse this afternoon, based his decision on a statute that allows for change of venue upon request of the defendant in certain types of cases.

Both defendants—Frank DeMarco Jr., a lawyer in Los Angeles, and Ralph G. Newman, a appraiser in Chicago—had contended that their case came within the statute. The special

prosecutor had argued that the provision was not applicable.

Basically, the statute provides for a change of venue if four conditions are met: The offense involves use of the mails; it is one of a certain group of offenses in the Internal Revenue Code; the prosecution was begun in a district other than the district of the defendant's residence, and the transfer motion is filed within 20 days after arraignment.

### Major Dispute

A major point of dispute between the defendants and the prosecution was the meaning of the first condition, involving use of the mails.

The prosecution interpreted this to mean, as Judge Gasch phrased it today, "The mailing by the taxpayer of his return to the I.R.S." But the defendants and Judge Gasch took a broader view, maintaining that it included as well the use of mails described in the indictment, such as the mailing of an affidavit to Mr. DeMarco at the behest of Mr. Newman.

Mr. Newman and Mr. DeMarco were indicted last Feb. 19, charged with conspiracy to fraud and other crimes in connection with the Nixon tax returns.

At the heart of the indictment was Mr. Nixon's disputed gift to the National Archives of his pre-presidential papers. According to the charges, both men knew that the gift was not made before a change in the tax laws prohibiting deductions for such gifts, but nevertheless prepared documents showing the contrary.

Mr. DeMarco was indicted on three counts, each of which carries a maximum penalty upon conviction of five years

in prison and a \$10,000 fine. Mr. Newman was indicted on two counts, one of which carries a maximum five-year prison sentence and the other, a maximum three-year term. Each count also involves a possible maximum fine of \$10,000.

Judge Gasch gave no indication of when the trials would begin. If his opinion withstands appeal and the trials are transferred, the judges in the courts to which the cases are sent would presumably set the trial date.