

Committee for the Suit Against Government Misconduct

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For Release: March 11, 1980

FEDERAL APPEALS COURT GIVES RICHARD NIXON EXTRA-LEGAL RIGHTS TO
IMMEDIATE APPEAL OF DENIAL OF ABSOLUTE IMMUNITY FOR CRIMES

On March 11, 1980, the Second Circuit Court of Appeals ruled in favor of Richard Nixon's right to appeal a decision made by Federal District Judge Morris Lasker last November. Lasker had denied Nixon's motion to dismiss a major lawsuit filed against him for damages incurred while he directed and participated in COINTELPRO, the illegal counterinsurgency program designed to destroy the Black liberation movement and other progressive struggles in this country.

Nixon, John Mitchell, L. Patrick Gray (former head of the FBI), and other high-ranking government officials are named as defendants in Clark v. U.S.A., a \$100 million lawsuit for damages resulting from over 10 years of ongoing counterintelligence abuses. The plaintiffs have all been named as targets of illegal activities in federal indictments against L. Patrick Gray, Edward Miller, and Mark Felt. Legally, the defendant in such a case has the right to appeal only after trial, but Assistant U.S. Attorney William Hibsher argued that Nixon as a former president should be afforded absolute immunity to prosecution for crimes he committed and directed while in office. What this argument amounts to, according to plaintiffs, is the "protection of the office of the presidency to stand above the law."

Plaintiffs' counsel, Jonathan Lubell, argued that plaintiffs' constitutional rights have been and continue to be violated and that even the president must be held accountable for crimes he committed. But the three-judge panel, after several minutes of oral argument and counterargument, came to a decision that allows Nixon to appeal at this point in the proceedings. This decision was made not only to defend Nixon from his responsibility for his crimes, but to protect the office of the presidency itself from accountability for its ongoing counterinsurgency program.

The Justice Department is caught in a blatant conflict of interest in this case. Having indicted former high-ranking FBI officials Kearney, Gray, Miller, and Felt for illegal COINTELPRO activities against targets who've subsequently filed in Clark v. U.S.A., the Justice Department has refused to proceed with the criminal prosecution and are instead DEFENDING Nixon and the FBI in the Clark suit.

The government also requested a stay of all proceedings against Nixon, attacking plaintiffs' right to pursue their suit for damages and an end to ongoing COINTELPRO attacks against them. The Court of Appeals ruled against Nixon's motion to stay all proceedings until the Supreme Court decides whether to hear arguments in a related case.

Plaintiffs plan to fight to keep Nixon as a defendant in the suit because as Commander-in-Chief during the period in question, he is at the heart of the case.