

## UNITED STATES V. NIXON (1974)

Beginning with George Washington, several Presidents have asserted the right to withhold information from Congress or from a court. The right of the President to do this has come to be called executive privilege. Presidents have often made such claims in the area of foreign affairs. In 1974, however, President Richard Nixon claimed executive privilege for another reason.

In the spring of 1972, employees of President Nixon's reelection committee burglarized the Democratic Party headquarters in the Watergate office complex and planted illegal electronic bugging equipment. Eventually, seven of Nixon's top aides, including former Attorney General John Mitchell, were indicted for their role in planning the "Watergate Break-in" (as it came to be known) and for obstructing justice by trying to cover up their actions. During Senate hearings on the break-in and the cover-up a White House security aide made known that secretly recorded tapes of Nixon's conversations with his aides existed. These would have revealed the extent of the involvement in Watergate by Nixon and his aides. Nixon was issued a subpoena, an order by a court to produce witnesses or documents for use as evidence in a trial. A special prosecutor, Archibald Cox, had requested the U.S. District Court in Washington to issue one for the White House tapes and related material to use as evidence in the criminal investigation of the break-in.

President Nixon refused to surrender the tapes. He gave three reasons for this: 1) the principle of executive privilege protected his private conversations from such a subpoena; 2) many past Presidents had used executive privilege; 3) allowing the courts to obtain the tapes would destroy separation of powers and weaken the presidency.

The special prosecutor and the President went to the Supreme Court in order to resolve this disagreement. The constitutional issue facing the Court was: did separation of powers and executive privilege prevent the courts from requiring the President to turn over confidential material needed as evidence in a criminal trial?

The Supreme Court ruled unanimously (9 to 0) against President Nixon. The Court ordered Nixon to turn over the tapes and other documents to the trial court for use as evidence.

Thus, the Supreme Court rejected the claim that either separation of powers or executive privilege could make the President immune from the judicial process. The Court's ruling established the precedent that, unless important military or diplomatic secrets affecting national security were involved, the need to insure a fair trial outweighed the doctrine of executive privilege. The decision limited the use of executive privilege by holding that a President could not use it to prohibit disclosure of criminal conduct.

At the same time, the Court's decision acknowledged the constitutionality of executive privilege, if it ~~were used for military or diplomatic secrets. Since the Constitution does not mention executive privilege,~~ until the Court reached this decision legal scholars had frequently debated whether any real constitutional basis supported the idea.

In *United States v. Nixon*, Chief Justice Warren Burger, a Nixon appointee, said Presidents and their aides must be free to consider alternatives as they make decisions. In order to do so, they must possess the confidence to express themselves freely without fear that the public will gain access to their ideas. Thus, Burger wrote, "executive privilege is fundamental to the operation of government and firmly rooted in the separation of powers under the Constitution."

Nixon obeyed the Court's decision and turned over the tapes to the special prosecutor. The tapes revealed that Nixon himself had committed a number of crimes in office and had participated in the cover-up. When the content of these tapes became known, even Nixon's strongest supporters in Congress believed that he could no longer stay in office. Impeachment was inevitable. Nixon became the first American President to resign on August 8, 1974.

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## WORKSHEET - UNITED STATES V. NIXON

1. What does executive privilege allow Presidents to do?
2. What is a subpoena? Who asked the Federal District Court to issue a subpoena? What was he seeking and WHY?
3. What were the three reasons why Nixon would not surrender the tapes?
4. What was the constitutional issue in this case? BE SURE YOU WORD THIS AS A QUESTION!
5. Why would Presidents and their aides need confidentiality in performing their duties?
6. What did the Court order Nixon to do in their decision? What was the vote?
7. Which of the following statements are true about the decision?
  - a. The Court ruled that there is no constitutional basis for executive privilege.
  - b. ~~The Court said that the need for evidence in a criminal trial is greater than the need for executive privilege.~~
  - c. The Court said that the effect of the Constitutional is to make executive privilege unlimited.
8. In what way did the Court's decision put limits on executive privilege?
9. In what way did the Court's decision strengthen executive privilege?
10. Overall, do you think the decision strengthened or weakened the Presidency?