
United States v. Nixon (1974)

Vocabulary

grand jury Group of people who review the evidence against an accused person and decide whether it is sufficient to justify a criminal charge.

indictment Formal charge made by a grand jury when they believe there is sufficient evidence that a person has committed a crime.

subpoena Court order requiring a person to appear as a witness or supply testimony.

executive privilege Right of the President and other high officials of the executive branch to withhold information from Congress and from the courts.

Reviewing the Case

On March 1, 1974, a **grand jury** of the District Court for the District of Columbia issued **indictments** for seven men who were members of President Richard Nixon's White House staff and workers in his re-election campaign. They had been implicated in the cover-up of the previous summer's break-in at the Democratic National Committee headquarters in the Watergate building. The main charge against them was "conspiracy to obstruct justice." The charge also named President Nixon himself as an "unindicted co-conspirator" in the crimes.

The case marked a new stage in the ongoing events surrounding the Watergate break-in and the White House cover-up that followed. Earlier, the same grand jury had indicted the Watergate burglars themselves. Earlier investigations had revealed that presidential conversations with White House staff members during the past several years had been recorded on tape. These conversations were vital evidence in the trials of the seven accused conspirators. Nixon, however, said the tapes were in his personal custody.

In mid-April, Leon Jaworski, the special prosecutor handling the Watergate case, asked the district court to **subpoena** all tapes, papers, transcripts, and other writings

that related to meetings between the President and others on specific dates concerned in the coming trial. This was the second set of tapes requested from the President in the course of the Watergate investigation.

On April 30, President Nixon released edited transcripts of the taped meetings in question but refused to turn over the originals or copies of the original tapes. His lawyers then moved that the court cancel the subpoena for any more material. They based their challenge on two grounds: **executive privilege** and the violation of separation of powers the subpoena represented.

Nixon's lawyers claimed that executive privilege was absolute. Therefore, no court had the right to order a President to release information—only the President himself could order the release of the material. The lawyers contended that if a President could not keep private the "confidential conversations" and other communications between himself and others, people would be reluctant to speak frankly about important matters. They did not argue that the tapes contained classified information or military secrets that would affect foreign policy or national security—merely that personal presidential conversations must be confidential or else the presidency itself would be weakened.

They also argued that the special prosecutor, appointed by the President, was part of the executive branch. Therefore, said the lawyers, the dispute was all within the executive branch. The courts did not have a role in it.

District Court Judge John Sirica rejected these arguments. He ruled that the President was required to comply with the subpoena and turn over the tapes. While the court agreed that executive privilege was valid, it said the privilege had limits. In fact, the U.S. Court of Appeals had earlier ruled against absolute presidential privilege regarding the tapes. Further, the court said, it was the judiciary's function to determine what the law was, not—as the President's case sug-

gested—a right of the executive branch.

Nixon's attorneys appealed, and through a series of legal maneuvers, the case went to the U.S. Supreme Court. The issue before the Court: Can the district court order the President of the United States to turn over information he considers to be privileged information?

The Court ruled unanimously that the President had to turn over the tapes to District Court Judge John Sirica, who would review the material and rule on the admission of relevant information that would not endanger national security. Essentially the Court affirmed the original district court decision. It agreed that executive privilege was a necessary and vital tool of the President but noted it was not absolute. Referring to the landmark 1803 case of *Marbury v. Madison*, the Court repeated the ruling that it is "the province and duty of the judicial department to say what the law is."

That is, the President, as part of the executive branch, could not define the law relating to executive privilege. That was the job of the courts. No one, not even the President, was above the law. The Court also acknowledged that confidentiality was necessary but said that it too must give way to the rule of law. In this case, the evidence was necessary to ensure a fair trial for the Watergate defendants.

Chief Justice Warren Burger wrote the unanimous opinion of the Court:

A President's acknowledged need for confidentiality in the communications of his office is general in nature; whereas the constitutional need for production of relevant evidence in a criminal proceeding is specific and central to the fair adjudication

[settlement] of a particular criminal case. . . . Without access to specific facts a criminal prosecution may be totally frustrated. The President's broad interest in confidentiality of communications will not be vitiated by disclosure of a limited number of conversations . . . shown to have some bearing on the pending criminal cases.

We conclude that when the ground for asserting privilege as to the subpoenaed materials sought for use in a criminal trial is based only on the generalized interest in confidentiality, it cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice. . . .

This decision had great consequences for the U.S. government: the Court ruled on July 24 that President Nixon was required to turn over the tapes. Within a few days, the House of Representatives began impeachment proceedings against Nixon, and on August 9, he resigned. The tapes had provided what many referred to as the "smoking gun"—clear proof that the President had not only known about the cover-up of criminal activities by his staff and supporters but had in fact ordered it. The evidence from the tapes helped convict those on trial.

Richard Nixon was the first President in history to resign the office. While many people hoped that he would be tried for crimes against the government, others feared such a trial would divide the country even further. Before any criminal charges were brought, President Gerald Ford, believing it would help the country return to normal more quickly, issued a presidential pardon to the former President.

Name _____ Date _____

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Elements of the Case

Directions: Fill in the appropriate information for each of the following elements of this case.

1. State the issue before the Supreme Court in this case.

2. What facts of the case were presented to the Court?

3. What was the decision of the Court? What was the rationale behind it?

4. What was the effect of the decision?

Evaluation of the Case

Directions: Use your own judgment to evaluate the justices' decision and state your opinion of that decision.

1. Do you agree with the Supreme Court's decision in this case? Or, should President Nixon have been allowed to keep the tapes secret? Explain.

2. What is your opinion of the concept of "executive privilege," which has evolved by custom, not law? How might a President abuse this privilege? Was this case an example?

3. What did this decision demonstrate about the separation of powers in American government? How did it reflect the principle of "judicial review"?
