

Watergate Background

The Watergate scandal was one of the worst political scandals in American history. It resulted in the resignation of the president, Richard M. Nixon, under threat of impeachment and the conviction of several high-ranking members of his administration. Watergate takes its name from the break-in at the Democratic National Committee (DNC) headquarters in the Watergate apartment and office complex in Washington, D.C., in June 1972, but the scandal spread, as other illegal activities were made public. This scandal continued until the summer of 1974, when Nixon resigned from office.

The activities that would fall under the umbrella term "Watergate" began early in the Nixon administration. In 1969, Nixon approved wiretaps on the phones of government officials and reporters in an attempt to discern the source of news leaks about activities in Vietnam. In 1971 a special investigations unit was formed to plug news leaks. Dubbed the "plumbers," they broke into the office of Dr. Lewis Fielding looking for information to be used in the espionage trial against the psychiatrist of Daniel Ellsberg, the Rand Corporation analyst who had leaked the Pentagon Papers to the *New York Times*. Also in 1971, Attorney General John N. Mitchell and John Dean, counsel to the president, met to discuss the need to obtain political intelligence for the Committee for the Re-Election of the President (CREEP). In 1972 Mitchell resigned as attorney general to accept the position as director of the committee. Shortly thereafter a plan was approved to break into the DNC headquarters to secure campaign strategy documents and other materials. The deputy director of the committee, Jeb Magruder, later testified that Mitchell had approved a plan developed by G. Gordon Liddy, the chief plumber, to break into the Watergate complex. Mitchell denied this. It has never become clear who ordered the operation or what the conspirators hoped to find.

On June 17, 1972, five men were arrested at the DNC headquarters, including the security coordinator for the committee, James McCord. The burglars were adjusting surveillance equipment they had installed in May when they were caught. Immediately a cover-up began. Magruder destroyed documents and gave false testimony to investigators. The White House blocked an FBI inquiry, declaring that it was a national security operation undertaken by the CIA.

Mitchell resigned from his post on July 1, 1972, citing personal reasons. From the original investigation only the five burglars, plus Liddy and E. Howard Hunt, were indicted. In January all seven were convicted, but the cover-up was beginning to unravel. In March 1973 U.S. District Court judge John Sirica received a letter from McCord charging that witnesses had committed perjury at the trial. He went on to implicate Dean and Magruder. Dean and Magruder broke under questioning and offered

testimony that implicated White House and Nixon campaign officials. Dean testified that Mitchell had approved the break-in with the knowledge of White House domestic adviser John Ehrlichman and chief of staff H. R. Haldeman.

In May 1973 Senator Sam Ervin (D-N.C.) opened a special Senate committee investigation into the affair. At the same time, Attorney General Elliot L. Richardson appointed Archibald Cox, Jr., as special prosecutor to investigate the entire affair. Cox soon uncovered widespread evidence of political espionage, illegal wiretaps, and influence peddling. In July 1973 it was revealed that Nixon had secretly recorded conversations in the White House since 1971. Cox sued to obtain the tapes. On October 20, 1973, Nixon ordered Richardson to fire the special prosecutor. Richardson refused and resigned; his assistant, William Ruckelshaus, refused and was fired. Finally, Solicitor General Robert Bork fired Cox. This became known as the "Saturday Night Massacre." It led to calls for Nixon's impeachment, and the House of Representatives began an impeachment investigation.

Following Nixon's firing of Special Prosecutor Archibald Cox, in April 1974 Nixon appointed a new special prosecutor, Leon Jaworski. Upon assuming office, Jaworski subpoenaed 64 tapes needed for the trials resulting from the indictments. Nixon refused to comply with the subpoena and proposed a compromise in which he offered to provide edited transcripts in place of the actual tapes. The 1,254 pages of transcripts contained embarrassing material, including a large number of presidential deleted expletives; they were also inaccurate and incomplete. The inaccuracies were exposed when the House Judiciary Committee released its version of the tapes.

U.S. District Court judge John Sirica, who had issued the original subpoena, rejected the transcripts as unacceptable and reissued an order for the original tapes. James St. Clair, the head of Nixon's Watergate defense team, appealed Sirica's ruling to the Court of Appeals. Jaworski, wishing to expedite the process, appealed directly to the Supreme Court. The Court agreed to hear the case, *United States v. Nixon*, on July 8, 1974.

Nixon's case rested on two issues. First, the administration questioned the judiciary's jurisdiction in subpoenaing the tapes, citing separation of powers. Second, the administration cited executive privilege, the need for the protection of communication between high government officials and their advisers. The Court unanimously rejected both claims in a ruling on July 24, 1974. On the first point, the Court cited *Marbury v. Madison* (1803), which affirmed the power of judicial review. As for the second point, Chief Justice Warren Burger argued that neither separation of powers nor the need for confidential communication allowed for absolute presidential privilege of immunity from the judicial process.

On August 5, 1974, the transcripts were released, including one particularly damaging to Nixon, in which he discussed using the CIA to obstruct the FBI investigation of the Watergate break-in. These tapes led to the indictments of Haldeman, Ehrlichman,

Mitchell, Charles Colson, Robert Mardian, and Kenneth Parkinson for conspiring to cover up the Watergate scandal. Colson pleaded guilty to charges stemming from the Fielding break-in and the cover-up charges were dropped. Ultimately, Haldeman, Ehrlichman, and Mitchell were found guilty.

Facing a congressional vote on impeachment, Nixon announced his resignation on the evening of August 8, 1974, to be effective the next day at noon.

Information taken from: Korasick, John. "Watergate scandal." In Critchlow, Donald T., and Gary B. Nash, eds. *Encyclopedia of American History: Contemporary United States, 1969 to the Present*, Revised Edition (Volume X). New York: Facts On File, Inc., 2010. *American History Online*. Facts On File, Inc.

Watergate Background Worksheet

Define the following terms from the reading:

1. Impeachment

2. The “plumbers”

3. CREEP

4. Perjury

5. Political espionage

6. "Saturday Night Massacre"

7. subpoena

8. separation of powers

9. judicial review

10. indictment

U.S. v. Nixon (1974)

History of the Case

Seven men involved in the Watergate break-in, a break-in of the Democratic National Committee's headquarters located in the Watergate complex, were indicted by a federal grand jury. President Richard Nixon was named by the grand jury as an unindicted co-conspirator. Archibald Cox, who had been appointed as special prosecutor to investigate the Watergate affair, obtained a subpoena that required President Nixon to deliver to the district court tape recordings of his meetings with various assistants. The president released certain edited versions of the tapes to the public, but refused to yield the full transcripts to the district court. Both Cox and the president filed special petitions to have the issue heard immediately by the U.S. Supreme Court.

Summary of Arguments

President Nixon argued that the courts lacked the power to compel production of the tapes. He asserted that because the dispute was between the president and the special prosecutor, it was purely an executive branch conflict not subject to judicial resolution. He also argued that it was for the president, not the courts, to ascertain the scope of the executive privilege. Finally, President Nixon contended that even if the Court were the proper branch to decide the scope of the privilege, the need for executive confidentiality justified the application of the privilege in this case.

The government contended that even if the Court were to acknowledge the existence of an executive privilege, the need for evidence in this criminal trial outweighed that privilege.

Decision

The Supreme Court, in an opinion written by Chief Justice Burger, held that the tapes had to be turned over to the district court for an in-chambers inspection by the judge. Chief Justice Burger argued that this controversy was appropriately before the Court, rather than within the president's discretion, because "it is the duty of the courts to say what the law is." Here, the position of special prosecutor had been intended to be highly independent, thus the Court was justified in resolving the conflict between Cox and the president. Chief Justice Burger asserted that the executive privilege flows

from the Constitution and the Court is the ultimate interpreter of that Constitution; consequently, it was for the Court and not the president to define the scope of the privilege. He then determined that the privilege was merely presumptive, rather than absolute; thus, it might be overcome in certain cases by the "legitimate needs of the judicial process." Chief Justice Burger then proceeded to balance the interests of the president and the prosecution.

He began by noting that the president's right to secrecy was different from that of an ordinary individual: "A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately." Nonetheless, Cox had proven that the tapes were relevant to the government's case and "[t]he need to develop all relevant facts in the adversary system is both fundamental and comprehensive." Chief Justice Burger asserted that the claim of privilege did not rest on the ground that the tapes contained military or diplomatic secrets; thus, it was appropriate to subordinate the privilege to the search for truth in a criminal trial. He was quick to note that this decision was based on a unique set of facts. The president had asserted only a "generalized interest in confidentiality," while the specific need for relevant evidence in a criminal trial is a requirement of the Fifth Amendment's guarantee of due process.

Chief Justice Burger noted that in conducting the inspection of the president's tapes, "the District Court has a very heavy responsibility to see to it that Presidential conversations . . . are accorded that high degree of respect due the President of the United States." Even under the circumstances, President Nixon's communications were to receive "the greatest protection consistent with the fair administration of justice."

Aftermath

Twelve days after the decision, the president made an abridged transcript of the tapes available to the public. Fifteen days after the decision, President Nixon resigned.

Significance

While the outcome of the case was unfavorable to President Nixon, *United States v. Nixon* expanded the power of the presidency. This was the first time the Supreme Court acknowledged that an executive privilege exists; the decision thus resolved decades of controversy over the constitutionality of that privilege.

Source: Hartman, Gary, Roy M. Mersky, and Cindy L. Tate. "United States v. Nixon." *Landmark Supreme Court Cases*. New York: Facts On File, Inc., 2004. *American History Online*. Facts On File, Inc.

TRANSCRIPT OF A RECORDING OF A
MEETING BETWEEN THE PRESIDENT
AND H.R. HALDEMAN IN THE OVAL
OFFICE ON JUNE 23, 1972 FROM
10:04 TO 11:39 AM

HALDEMAN:

okay -that's fine. Now, on the investigation, you know, the Democratic break-in thing, we're back to the-in the, the problem area because the FBI is not under control, because Gray doesn't exactly know how to control them, and they have, their investigation is now leading into some productive areas, because they've been able to trace the money, not through the money itself, but through the bank, you know, sources - the banker himself. And, and it goes in some directions we don't want it to go. Ah, also there have been some things, like an informant came in off the street to the FBI in Miami, who was a photographer or has a friend who is a photographer who developed some films through this guy, Barker, and the films had pictures of Democratic National Committee letter head documents and things. So I guess, so it's things like that that are gonna, that are filtering in. Mitchell came up with yesterday, and John Dean analyzed very carefully last night and concludes, concurs now with Mitchell's recommendation that the only way to solve this, and we're set up beautifully to do it, ah, in that and that...the only network that paid any attention to it last night was NBC...they did a massive story on the Cuban...

PRESIDENT: That's right.

HALDEMAN:thing.

PRESIDENT:Right.

HALDEMAN: That the way to handle this now is for us to have Walters call Pat Gray and just say, "Stay the hell out of this...this is ah,business here we don't want you to go any further on it." That's not an unusual development,...

PRESIDENT: Um huh.

HALDEMAN: ...and, uh, that would take care of it.

PRESIDENT: What about Pat Gray, ah, you mean he doesn't want to?

HALDEMAN: Pat does want to. He doesn't know how to, and he doesn't have, he doesn't have any basis for doing it. Given this, he will then have the basis. He'll call Mark Felt in, and the two of them ...and Mark Felt wants to cooperate because...

PRESIDENT: Yeah.

HALDEMAN: he's ambitious...

PRESIDENT: Yeah.

HALDEMAN: Ah, he'll call him in and say, "We've got the signal from across the river to, to put the hold on this." And that will fit rather well because the FBI agents who are working the case, at this point, feel that's what it is. This is CIA.

PRESIDENT: But they've traced the money to 'em.

HALDEMAN: Well they have, they've traced to a name, but they haven't gotten to the guy yet.

PRESIDENT: Would it be somebody here?

HALDEMAN: Ken Dahlberg.

PRESIDENT: Who the hell is Ken Dahlberg?

HALDEMAN: He's ah, he gave \$25,000 in Minnesota and ah, the check went directly in to this, to this guy Barker.

PRESIDENT: Maybe he's a ...bum.

PRESIDENT: He didn't get this from the committee though, from Stans.

HALDEMAN: Yeah. It is. It is. It's directly traceable and there's some more through some Texas people in--that went to the Mexican bank which they can also trace to the Mexican bank...they'll get their names today. And pause)

PRESIDENT: Well, I mean, ah, there's no way... I'm just thinking if they don't cooperate, what do they say? They they, they were approached by the Cubans. That's what Dahlberg has to say, the Texans too. Is that the idea?

HALDEMAN: Well, if they will. But then we're relying on more and more people all the time. That's the problem. And ah, they'll stop if we could, if we take this other step.

PRESIDENT: All right. Fine.

HALDEMAN: And, and they seem to feel the thing to do is get them to stop?

PRESIDENT: Right, fine.

HALDEMAN: They say the only way to do that is from White House instructions. And it's got to be to Helms and, ah, what's his name...? Walters.

PRESIDENT: Walters.

HALDEMAN: And the proposal would be that Ehrlichman (coughs) and I call them in

PRESIDENT: All right, fine.

HALDEMAN: and say, ah...

PRESIDENT: How do you call him in, I mean you just, well, we protected Helms from one hell of a lot of things.

HALDEMAN: That's what Ehrlichman says.

PRESIDENT: Of course, this is a, this is a Hunt, you will-that will uncover a lot of things. You open that scab there's a hell of a lot of things and that we just feel that it would be very detrimental to have this thing go any further. This involves these Cubans, Hunt, and a lot of hanky-panky that we have nothing to do with ourselves. Well what the hell, did Mitchell know about this thing to any much of a degree?

HALDEMAN: I think so. I don 't think he knew the details, but I think he knew...

PRESIDENT: You call them in. Good. Good deal! Play it tough. That's the way they play it and that's the way we are going to play it.

HALDEMAN: O.K. We'll do it...

PRESIDENT: When you get in these people when you...get these people in, say: "Look, the problem is that this will open the whole, the whole Bay of Pigs thing, and the President just feels that" ah, without going into the details...don't, don't lie to them to the extent to say there is no involvement, but just say this is sort of a comedy of errors, bizarre, without getting into it, "the President believes that it is going to open the whole Bay of Pigs thing up again. And, ah because these people are plugging for, for keeps and that they should call the FBI in and say that we wish for the country, don't go any further into this case", period!

(Information taken from:
http://www.nixonlibrary.gov/forresearchers/find/tapes/watergate/trial/exhibit_01.pdf)

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John Woolley and Gerhard Peters

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GERALD FORD

XXXVIII President of the United States: 1974-1977

61 - Proclamation 4311 - Granting Pardon to Richard Nixon
September 8, 1974

By the President of the United States of America
A Proclamation

Richard Nixon became the thirty-seventh President of the United States on January 20, 1969 and was reelected in 1972 for a second term by the electors of forty-nine of the fifty states. His term in office continued until his resignation on August 9, 1974.

Pursuant to resolutions of the House of Representatives, its Committee on the Judiciary conducted an inquiry and investigation on the impeachment of the President extending over more than eight months. The hearings of the Committee and its deliberations, which received wide national publicity over television, radio, and in printed media, resulted in votes adverse to Richard Nixon on recommended Articles of Impeachment.

As a result of certain acts or omissions occurring before his resignation from the Office of President, Richard Nixon has become liable to possible indictment and trial for offenses against the United States. Whether or not he shall be so prosecuted depends on findings of the appropriate grand jury and on the discretion of the authorized prosecutor. Should an indictment ensue, the accused shall then be entitled to a fair trial by an impartial jury, as guaranteed to every individual by the Constitution.

It is believed that a trial of Richard Nixon, if it became necessary, could not fairly begin until a year or more has elapsed. In the meantime, the tranquility to which this nation has been restored by the events of recent weeks could be irreparably lost by the prospects of bringing to trial a former President of the United States. The prospects of such trial will cause prolonged and divisive debate over the propriety of exposing to further punishment and degradation a man who has already paid the unprecedented penalty of relinquishing the highest elective office of the United States.

Now, Therefore, I, Gerald R. Ford, President of the United States, pursuant to the pardon power conferred upon me by Article II, Section 2, of the Constitution, have granted and by these presents do grant a full, free, and absolute pardon unto Richard Nixon for all offenses against the United States which he, Richard Nixon, has committed or may have committed or taken part in during the period from January 20, 1969 through August 9, 1974.

In Witness Whereof, I have hereunto set my hand this eighth day of September, in the year of our Lord nineteen hundred and seventy-four, and of the Independence of the United States of America the one hundred and ninety-ninth.

GERALD R. FORD

Citation: Gerald R. Ford: "Proclamation 4311 - Granting Pardon to Richard Nixon," September 8, 1974. Online by Gerhard Peters and John T.

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Watergate Primary Source Worksheet

I. *U.S. v. Nixon* (1974)

- a. What were the three reasons that Nixon gave for refusing to turn over the White House tapes?

- b. What do these reasons illustrate about Nixon's understanding of the division of power within the federal government?

- c. How did Nixon's argument illustrate his ideas about the power of the presidency?

- d. What did Chief Justice Burger say about the origins of executive privilege? How does this origin justify his decision about Nixon releasing the tapes?

- e. Explain Burger's statement, "A President and those who assist him must be free to explore alternatives in a way many would be unwilling to express except privately." How did the court interpret executive privilege?

- f. Do you agree with this analysis that *United States v. Nixon* expanded the power of the presidency? Why or why not?

II. Transcript of White House Tapes, June 23, 1972 – conversation between President Nixon and Chief of Staff H.R. Haldeman. (Note: Pat Gray is the Acting Director of the FBI, and Mark Felt is the Associate Director of the FBI. Helms is the Director of the CIA and Walters is the Deputy Director of the CIA)

- a. Haldeman tells Nixon, "the FBI is not under control." Why does the FBI need to be controlled?

- b. What is Nixon's plan for dealing with the FBI's investigation of the Watergate break-in?

c. What does this excerpt imply about the relationship between the FBI and the CIA?

d. What does this tape reveal about Nixon's view of his power as the president?

e. Why is this tape called the "Smoking Gun" tape?