

Landmark U.S. Supreme Court Case Study

United States v. Nixon | 1974 | Page One

Adapted from Oyez.org http://www.oyez.org/cases/1970-1979/1974/1974_73_1766, Streetlaw.org http://www.streetlaw.org/en/landmark/cases/united_states_v_nixon#Tab=Overview, Law.com <http://constitution.laws.com/supreme-court-decisions/major-cases-us-v-nixon> and <http://www.thefreedictionary.com/executive+privilege>

Essential Question of the Case:

Is the President's right to protect certain information, using his "executive privilege" power, completely protected from judicial review?

Background

In 1972, five burglars broke into the Democratic National Committee headquarters, the national office of the Democratic Party. There, party members make decisions relating to political campaigns. They also decide how they will raise money to help Democratic candidates.

The burglars were caught. Later, investigators discovered that President Nixon and his aides were involved in the burglary. They had hired people to break into the offices. They wanted to get information that would help Nixon get re-elected. Investigators discovered that the president and his aides had committed other illegal acts, too.

The president must follow the rule of law. If he breaks the law, he can be put on trial. Since President Nixon broke the law, the federal government decided to prosecute, or bring legal action against him. The government gathered evidence against him. They discovered that President Nixon had a tape recorder in the Oval Office. He taped most of what happened in his office. The tapes included conversations he had with his aides.

The prosecutor in the case believed that the tapes probably had information about the illegal things President Nixon and his aides had done. He asked President Nixon to turn over the tapes. Nixon refused. A federal judge told him he had to give the tapes to the prosecutor.

The president appealed the decision to the U.S. Circuit Court of Appeals. The prosecutor asked the U.S. Supreme Court to hear the case instead. That Court agreed to hear the case.

President Nixon's lawyers argued that the president's tapes were protected by executive privilege, the belief that conversations between the president and his aides are private. Nixon argued that there are times when these discussions need to be kept private to protect the country. Other times, privacy is needed to protect the advisors. They need to be able to give the president advice without worrying about being criticized by other people. That way, they can be honest with the president. Their honest opinions help the president make decisions.

The lawyers who argued on behalf of the United States said that the tapes were necessary to prove that the president had committed a crime. They argued that justice in this criminal case was more important than protecting the privacy of the president and his aides. Therefore, President Nixon should turn over the tapes.

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United States v. Nixon | 1974 | Page Two

Executive Privilege - The principle that members of the executive branch of government cannot legally be forced to reveal their confidential communications when it could negatively affect the operations or procedures of the executive branch.
The term executive privilege is not in the Constitution. However the concept of separation of powers, the idea that each branch has separate and distinct functions and powers, is expressed through the role and function of each branch as outlined in Articles I, II, and III of the Constitution.

Constitutional Principle Related to the Case

Decision & Impact

In a unanimous decision, the Court ruled in favor of the United States and against President Nixon. Chief Justice Burger wrote the opinion for the Court and concluded that presidents do enjoy a constitutionally protected executive privilege, but that the privilege was limited. The Court decided that, in this case, the President's interest in keeping his communications secret was not more important than providing a fair trial with all available facts.

President Nixon's attorneys first argued that the concept of separation of powers prevented the Supreme Court from hearing this case at all. They claimed that, because the judicial and executive branches are separate, each with its own functions, the judicial branch should not be allowed to interfere with the functioning of the executive branch. The Court rejected this argument, responding that the case raised a constitutional question, and therefore clearly fell within the functions of the judicial branch as interpreter of the Constitution. To support this ruling, the justices cited the Court's decision in *Marbury v. Madison*, in which the Court declared that "it is the province and duty of the judicial department to say what the law is."

President Nixon's lawyers also argued that the Court should find the president was entitled to absolute executive privilege. This meant that he could not be forced to reveal any of his confidential communications unless he chose to. The Court acknowledged that the president was entitled to a degree of executive privilege but this privilege was limited. In this case, President Nixon's interest in keeping his communications secret conflicted with the interests of the judicial branch in providing a full and fair trial. A fair trial required release of all facts and relevant information. The justices argued that the interests of the president must be balanced against the interests of the judicial branch when these interests conflict.

This case was the first time that the Supreme Court provided a limitation to the executive branch by restricting the powers that the president can use. This case set the precedent that being president does not make one above the law.