**United States v. Nixon (1974)**

**Historical Background**

The early 1970s was a time of growing distrust in the National Government. The Pentagon Papers exposed the intentional deception of the American people about Vietnam. Americans were shocked when the National Guard opened fire at a Kent State University protest following President Nixon's authorization for the United States to attack Cambodia. Four students were killed. Nixon would soon add more fuel to the fire, attempting to cover up illegal actions by himself and his administration.

**Circumstances of the Case**

In June 1972, five men armed with cameras and bugging equipment were arrested inside the Democratic National Committee's offices in the Watergate complex in Washington, D.C. Police soon discovered that the burglars worked, directly or indirectly, for the Committee to Re-Elect the President. President Nixon and leaders of his campaign denied any connection with the incident.

The five men were convicted of burglary, along with E. Howard Hunt, Jr., a former Nixon aide, and G. Gordon Liddy, a lawyer for the Committee to Re-elect the President. Shortly afterward, the presiding judge received a letter from one of the convicted men. It spoke of payoffs to the burglars in return for their silence—the men had perjured themselves to protect others involved in the break-in.

In 1973, a Senate select committee began an investigation, and it became clear that top members of the Nixon administration were involved in a cover-up of the break-in and several other illegal actions. It was also discovered that Nixon had installed a taping system that automatically recorded all of his conversations with his advisors. A special prosecutor appointed to probe the Watergate scandal subpoenaed the tapes. Nixon refused to release them, claiming they were protected under executive privilege. Nixon eventually released some of the tapes, but portions of them had been erased. Finally, another special prosecutor asked the United States Supreme Court to compel Nixon to release all of the tapes in their entirety.

**Constitutional Issues**

Does the separation of powers created by the Constitution provide the President with an absolute power to withhold information from other branches of government? If the power is not absolute, should President Nixon be able to claim executive privilege under the aforementioned circumstances? Does the separation of powers allow for the settlement of this dispute to reside in the executive branch or should it be settled by the judicial branch? Does the claim of executive privilege damage the precedent set by the 5th Amendment, which ensures due process?

**Arguments**

**For the United States:** The President's power to claim executive privilege is not an absolute one. Executive privilege may not be invoked to deny the courts access to evidence needed in a criminal proceeding. This is a dispute that can properly be heard in the federal courts.

**For President Nixon:** The constitutional scheme of separation of powers grants to the President the privilege of withholding information from the other branches of government. Furthermore, this power is absolute, and it is vital where high-level communications are involved. In addition, this dispute should be resolved within the executive branch, not by the courts.

**Decision and Rationale**

The Court ruled unanimously that President Richard Nixon had to surrender the tapes. Chief Justice Warren Burger delivered the opinion of the Court. Burger wrote, “The impediment that an absolute, unqualified [executive] privilege would place in the way of the primary constitutional duty of the Judicial Branch to do justice in criminal prosecutions would plainly conflict with the function of the courts under Art[icle] III.”

Burger then turned his attention to the damage that a privilege of confidentiality would cause to citizens' constitutional rights: “The right to the production of all evidence at a criminal trial similarly has constitutional dimensions. The Sixth Amendment explicitly confers upon every defendant in a criminal trial the right 'to be confronted with the witnesses against him' and 'to have compulsory process for obtaining witnesses in his favor.' Moreover, the Fifth Amendment also guarantees that no person shall be deprived of liberty without due process. It is the manifest duty of the courts to vindicate those guarantees, and to accomplish that it is essential that all relevant and admissible evidence be produced.” The Court made it clear that the President could not withhold evidence from an ongoing criminal prosecution of another person simply because he was the President.

Several days before, the House Judiciary Committee had approved three articles of impeachment. On August 9, 1974, Nixon became the first President in U.S. history to resign from the presidency. He did so in order to avoid going through the likely prospect of being impeached by the full House of Representatives and convicted by the Senate.