

United States v. Nixon / Background •—Answer Key

As you read the background summary of the case below, look for the **important vocabulary terms**. You can find definitions for these terms on the separate vocabulary handout.

In 1972, five burglars broke into 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 the candidates.

The burglars were caught. Later, **investigators** discovered that President Richard 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 President Nixon get re-elected. Investigators discovered that the president and his aides had committed other illegal acts too.

In the United States, the president has to follow the rule of law. If he breaks the law, he can be put on trial. Since President Nixon was accused of breaking the law, the federal government decided to investigate him and 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 said no. 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 Supreme Court of the United States to hear the case instead. The Court agreed to hear the case because it was so important.

President Nixon's lawyers argued that the president's tapes were protected by **executive privilege**. This is the belief that the conversations between the president and his aides are **confidential**. Sometimes, these discussions need to be private to protect the country. Other times, privacy is needed to protect the advisers. 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 to make decisions.

The lawyers for 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.

Questions to Consider

1. Why did the prosecutor want President Nixon's tapes?

The prosecutor in the case wanted the tapes because he believed that they contained conversations that described illegal activities of President Nixon and his aides.

2. Why would a president record his conversations in the Oval Office? Why do you think President Nixon taped his conversations when he was discussing illegal activities?

A president might want to record conversations in the Oval Office for a number of reasons. First, it is likely that many conversations are highly complex and yield many ideas on difficult topics. Perhaps a president would like to review conversations again to remind him of what was discussed. Another reason is that a president may want to have a record of events for memoirs after leaving office. Why President Nixon recorded conversations of illegal activities is difficult to answer. Perhaps he just assumed that there was no risk to doing so and many advantages to having a record of what was discussed during these difficult circumstances.

3. What is executive privilege? How could executive privilege help to keep the executive branch separate from the other branches of government?

Executive privilege gives the president a certain level of confidentiality in his communication with staff members to promote forthright discussions on issues, especially those dealing with national security. Separation of powers gives each branch of government a certain protection from the meddling of the other branches. Executive privilege, by granting a certain level of confidentiality to discussions, helps ensure that forthright conversations about difficult and controversial topics are not subject to scrutiny by other branches of government. It might make the participants in those discussions more willing to speak their mind, knowing they will not be the subjects of congressional or legal inquiry for their opinions.

4. Describe an example of a time when it would be important for a president to keep communications with aides confidential.

Student answers will vary but may include in matters of national security and defense, such as discussions about disrupting terrorist networks.

5. Who should decide when the communications between a president and presidential aides is made public, the president or the courts? Why?

Student answers will vary. The problem with granting this power to the courts is that the courts may not fully realize the importance of certain conversations to the national security. The problem with granting this power solely to the president is that it gives him the ability to conceal illegal acts.

6. Sometimes conversations the president has with aides might be needed for a criminal trial. If the president does not have to reveal what is said in these conversations, how could this affect the legal system?

Student answers will vary. Some, perhaps most, will say that if a president never has to reveal information needed for a criminal trial, this creates a system where the president is above the law, which was definitely not the intention of the framers of the U.S. Constitution. Others may say that "the executive power" includes both the power to decide whether to initiate prosecution in a criminal case and the power to protect confidential deliberations.