

THE WATERGATE SCANDAL

In 1972, five burglars were caught breaking into the Democratic National Committee Headquarters at the Watergate Hotel and office complex in Washington, D.C. The burglars were adjusting surveillance equipment they installed earlier when they were caught. News investigations of the break-in revealed that the burglars were associated with the Committee for the Re-Election of the President (CREEP). This Republican committee was working to re-elect President Nixon. Immediately a cover-up began. The media revealed that the president and his aides asked the FBI not to investigate the break-in. Money found on the burglars were linked back to secret accounts used by CREEP.

The Director of CREEP destroyed documents and gave false testimony to investigators. The White House stated it blocked the FBI investigation, because the break-in was a national security operation undertaken by the CIA.

During the congressional hearings on the break-in scandal, it was revealed that President Nixon had installed a tape-recording device in the Oval Office. The special prosecutor in charge of the case wanted to get tapes of the Oval Office discussions to help prove that President Nixon and his aides had abused their power and broken the law. President Nixon tried to stop the special prosecutor from obtaining the tapes and even had him removed from his job.

A second special prosecutor, supported by the ruling of a federal district court judge, again requested the tapes. The president responded to this demand by releasing edited transcripts and shortened versions of the tapes. The transcripts contained embarrassing material, including a large number of presidential curses; they were also inaccurate and incomplete. Nixon was challenged in another federal district court case. The court ordered the president to respond to all of the special prosecutor's requests. The president appealed and this decision went to the Supreme Court of the United States.

- 1) What happened at the Watergate Hotel? Why is this important?**
- 2) Why did the Special Prosecutor want tapes from the Oval Office?**
- 3) What did Nixon do to the first Special Prosecutor?**

UNITED STATES V. NIXON – SUPREME COURT CASE

In front of the Supreme Court of the United States, in 1974, President Nixon's lawyers argued first that the case couldn't be heard in the courts because it involved a dispute within the executive branch only (*separation of powers*). Nixon's lawyers argued, second, that the president's **executive immunity and privilege** should protect the tapes. The concept of executive privilege, though not specifically detailed in the U.S. Constitution, is based on the constitutional principle of **separation of powers**. It provides a certain level of confidentiality of communication between the president and his aides, especially where defense and national security are concerned. Nixon's lawyers argued that Presidents' have absolute executive privilege based only on their **discretion** (*judgment*) and not on Congress' discretion.

The special prosecutor, representing the U.S. government, argued that executive privilege is not absolute. The prosecutor argued the confidentiality normally awarded a president and his aides had to give way to the demands of the legal system in a criminal case. To give the president absolute executive privilege, he claimed, would amount to an unchecked power that could undermine the rule of law (*checks and balances*).

1) How did President Nixon attempt to get rid of the Supreme Court case *United States v. Nixon*?

COURT DECISION

The Supreme Court unanimously (8-0) rejected both of Nixon's claims in a ruling in 1974. On the first point, the Court cited *Marbury v. Madison* (1803), which confirmed 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 (*being above the law*) from the judicial process. While the President's right to secrecy is different from that of an ordinary citizen, this evidence was relevant to a criminal trial, and not related to military or diplomatic secrets.

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. Facing a congressional vote on impeachment to take place the next day, President Nixon announced his resignation on the evening of August 8, 1974.

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 executive privilege exists.

1) Describe the Supreme Court's decision in the case of *United States v. Nixon*.

2) How did the Watergate Scandal expand the power of the Presidency?