



Judicial Decision-Making and the Constitution

OVERVIEW:

The goal of this activity is to understand how judges make decisions through the interpretation and application of law. In this lesson, students will apply the United States Constitution and United States Supreme Court precedent to a real case scenario. Students will explore the separation of powers between the three branches of the federal government and evaluate the scope of executive privilege afforded to the President of the United States.

OBJECTIVES:

Upon successful completion of this activity, students will be able to:

- Explain the concept of separation of powers and describe how each of the three branches of government operates to check the power of the other two so that no one branch has unlimited power;
- Apply the doctrine of federal separation of powers to a specific case study; and
- Weigh complex issues relating to the scope of power of the executive branch.

MATERIALS NEEDED:

- PowerPoint Presentation
- Court Decisions (for facilitator only)
- United States v. Nixon/Handout A
- Supreme Court Case Study Form/Handout B
- Constitutional Question/Handout C

TIME REQUIRED:

90 minutes recommended. Can be shortened or lengthened. Can also be divided into two lessons.

NEXT GENERATION SUNSHINE STATE STANDARDS:

Grades 6-8:
SS.7.C.3.12

Grades 9-12:
SS.912.C.3.10



ACTIVITIES:

This handout will be used in conjunction with the PowerPoint presentation titled: “Limitations of the American Presidency: United States v. Nixon, 418 U.S. 683 (1974).”

1. **Slide 1:** Introduce yourself and let the students know that they will be given an opportunity to act like judges and decide an actual issue that was decided by the United States Supreme Court.
2. **Slides 2-6:** Ask the students to name the three branches of government. Explain to the students the duties and responsibilities of each branch. With regard to the executive branch, let students know that this branch encompasses more than just the President and the Vice President. There are also a number of executive agencies that are part of this branch, such as the Department of Agriculture and the Department of Defense. Further, federal law enforcement officers (such as the United States Marshal) are part of the executive branch.
3. **Slides 7-12:** Let the students know that Florida government is also made up of the legislative, executive, and judicial branches. Tell the students that, like in federal government, state law enforcement officers and agencies, such as the Department of Environmental Protection and the Department of Health, are part of the executive branch. The individuals in the executive branch photo are Attorney General Pamela Jo Bondi; Adam Putnam, Commissioner of the Florida Department of Agriculture; Governor Rick Scott; and Jeff Atwater, Chief Financial Officer of the Department of Financial Services.
4. **Slide 13:** Ask the students what documents created the three branches of federal and state government. **Answer:** These branches were created by the United States Constitution and the Florida Constitution.
5. **Slide 14:** Ask the students whether one branch of government is superior to the others.
6. **Slides 15-19.** After revealing that the answer to this question is “no,” inform the students that the United States Constitution created a government system of checks and balances, such that no one branch of the federal government has more power than the other two. Give examples of the checks on power that each branch exercises over the others.
7. **Slide 20:** Let the students know that the United States Constitution does not have an express separation of powers clause. In contrast, the Florida Constitution does contain an express provision. Have the students read the provision from the Florida Constitution.
8. **Slides 21-22:** Ask the students what happens when one branch of government claims another is exceeding its constitutional authority. Explain the concept of judicial review, which was institutionalized by the Supreme Court of the United States in the decision Marbury v. Madison, 5 U.S. 137 (1803). The power of judicial review allows the



judiciary to review acts of the legislative and executive branches and invalidate those that violate the United States Constitution. Under Marbury v. Madison, the decision of the United States Supreme Court on these matters is final.

9. **Slides 23-24:** Ask the students if there is any conduct by the executive branch that is immune or insulated from judicial review. After revealing that the answer is “yes,” describe the concept of executive privilege. Executive Privilege is a power possessed by the President of the United States and other members of the executive branch allowing them to refuse to comply with subpoenas from the legislative and judicial branches on matters that are wholly within the executive branch. Explain to the students that a “subpoena” is a formal document that orders someone to appear before a government entity at a specific time to provide testimony.
10. **Slides 25-35:** Begin preparing the students to decide a real case that was previously decided by the United States Supreme Court. To help the students understand the concept of separation of powers with regard to the executive branch, discuss the decisions in United States v. Reynolds, Youngstown Sheet & Tube Co. v. Sawyer, and C & S Airlines v. Waterman S.S. Corp.
11. **Slides 36-37:** Discuss the relevant facts of the case under review, Nixon v. United States. Refer the students to Handouts A (facts of the case) and B (student worksheet).
12. **Slides 38-29:** Present, for the first time, the constitutional question that they must decide. Refer the students to Handout C.
13. **Slides 40-44:** Allow the students to individually answer the questions. Then, divide participants into groups of five to simulate an actual Supreme Court conference.
 - Select a Chief Justice in each group to maintain order and lead discussions. The remaining participants are associate justices.
 - The Chief Justice will poll the associate justices to determine the final decision of the Court. Encourage the students to try and reach a unanimous court decision. Give the students at least 10-15 minutes to discuss.
 - Have each group’s Chief Justice come to the front of the classroom and present the decision of their court.
 - Tally responses and compare the differences between the groups.
14. **Slides 45-47:** Debrief with the actual U.S. Supreme Court decision. In a unanimous decision, the Supreme Court of the United States affirmed the decision of the federal district court that the subpoenaed tapes were not covered by executive privilege. The Court rejected the President’s claim of executive privilege, concluding that a generalized interest in confidentiality as to matters of the executive branch was insufficient to outweigh the “demonstrated, specific need for evidence in a pending criminal trial.”

Conclude by thanking the students for their attention and participation.



COURT DECISIONS: FOR THE FACILITATOR

The federal district court first concluded that the judiciary, not the President, determines whether a claim of executive privilege is valid. The district court held that the special prosecutor made a sufficient showing to rebut the President's assertion that the recordings were privileged. Therefore, the district court ordered that the tapes be examined by the court *in camera* (outside the presence of the parties). The district court stayed (suspended) its examination of the recordings pending appellate review. The President appealed the district court's order to the District of Columbia Circuit Court of Appeals. However, the special prosecutor filed a petition for certiorari review with the United States Supreme Court. The Supreme Court granted the petition for review.

DO NOT ANNOUNCE UNTIL CONCLUSION OF THE ACTIVITY:

In a unanimous decision, the Supreme Court of the United States affirmed the decision of the federal district court that the subpoenaed tapes were not protected by executive privilege. The Court concluded that a generalized interest in confidentiality as to matters of the executive branch was insufficient to outweigh the "demonstrated, specific need for evidence in a pending criminal trial."



United States v. Nixon

On June 17, 1972, five men broke into the Democratic National Committee's offices located in the Watergate Complex in Washington, D.C. The men were arrested, charged with conspiracy, burglary, and violation of federal wiretapping laws, and convicted of the crimes. After an investigation, all of the men were found to have connections to President Richard Nixon's campaign for re-election.

Intense media coverage focused on the break-in, which led to Congressional hearings on the matter. A number of high-ranking executive officials resigned. President Nixon authorized the Attorney General to appoint a Special Prosecutor—independent of the Department of Justice—to investigate the Watergate scandal.

Between May and August 1973, the Senate held hearings during which former Nixon officials testified with regard to the Watergate scandal. During those hearings, it was revealed that a recording system had been installed in the Oval Office as well as other rooms in the White House. The Special Prosecutor subpoenaed (ordered the President to produce) those recordings to prove that President Nixon and his staff had abused their power and broken the law, but Nixon refused to comply, relying on his executive privilege as President of the United States. President Nixon only released to the Special Prosecutor edited transcripts and shortened versions of the tapes. It was eventually determined that an 18.5-minute portion of one tape had been erased while it was in the exclusive custody of the White House.

The Special Prosecutor filed a motion with the federal district court asking that the court compel President Nixon to produce the full recordings. Nixon responded by filing with the district court a motion to quash (reject) the Special Prosecutor's request. President Nixon again raised a claim of executive privilege.



Case Study/Supreme Court Conference

I. What are the Facts? _____

II. State the Issue to be Decided: _____

III. Arguments For Petitioner/Appellant: _____

IV. Arguments For Respondent/Appellee: _____

V. What Would You Decide? _____

VI. Reasons/Evaluation: _____

VII. Mock Supreme Court Conference Decision: _____

VIII. Actual Decision of the Court: _____



Issue Presented

Does the separation of powers doctrine preclude the production of materials that may be relevant to a pending criminal investigation where the President raises a claim of executive privilege?