

Executive Privilege—The *Reynolds*, *Nixon*, *In Re Sealed*, and *Clinton* Cases

Introduction

The Constitution divides powers among three branches of government. It also provides for a system of checks and balances where each branch has the ability to ensure that no one branch becomes more powerful than the others. Presidents can veto legislation; the Congress can override the President's veto. Congress alone can declare war; the President is the commander in chief. Congress authorizes and funds executive agencies; these agencies largely are under the President's directives. Congress can pass legislation; the federal courts can use judicial review to declare laws unconstitutional and thus "null and void."

One of the ways the President has sought to establish its independence is through asserting executive privilege. Throughout American history Presidents have claimed executive privilege when Congress requested information or subpoenaed documents from the executive branch. The roots of executive privilege can be seen as early as the 1790s. When Congress requested information from the President relating to the disastrous St. Clair military expedition (1791) and the negotiation process of the controversial Jay Treaty (1796), George Washington refused to comply with their requests. When faced with a subpoena from Chief Justice John Marshall in the trial of Aaron Burr, President Thomas Jefferson asserted he reserved the right to decide what papers were of public interest. Consequently, he refused to release the information or attend and testify against Burr. President Andrew Jackson invoked executive privilege refusing to supply certain documents when Congress sought information related to the withdrawal of government funds from the Second Bank of the United States. Although not explicitly mentioned in the Constitution, the Supreme Court has repeatedly affirmed executive privilege as a critical feature of the separation of powers system.

The bulk of precedents determining the extent of executive privilege have been generated by modern presidents asserting the independence of the executive branch. After WW II President Harry S Truman enacted policies that blocked congressional investigations into national security problems within the federal government. Executive employees were also barred from testifying before congressional committees. Truman's efforts effectively ended the confrontation and the matter was not definitely resolved. In 1954, President Dwight D. Eisenhower invoked executive privilege maintaining that his staff should not provide any information without exception regarding internal meetings, conversations, or written communications within the White House. Additionally, as the Army-McCarthy Hearings unfolded, Eisenhower ordered employees at the Department of Defense to refuse to testify before congressional committees, reasoning that in doing so, he was ensuring the candid and honest exchange of ideas and advice that executives need to make informed decisions. Perhaps the most important precedent for the formal, legal legitimacy for executive privilege comes from this time period, *United States v. Reynolds* (1953). In a case involving the request of documents associated with a request to produce accident reports of a top secret air force experiment, Chief Justice Fred M. Vinson wrote "the essential question is whether there was a valid claim of privilege. . . . We hold that there was."

The reality of most scenarios where executive privilege is invoked is somewhat like a game of cat and mouse. The first steps are often political maneuvers by Congress and the President. Congress requests certain information and the President makes a calculated decision and often sidesteps the issue or offers some of the requested information with some limits. George Washington eventually released the requested information to Congress, but only to the Senate reasoning that the House was not privy to the documents since it had no treaty-making power. If presidents refuse to cooperate with requests from the legislature, Congress often makes a calculated

decision as to whether it wants to issue subpoenas or take the matter to the courts. If it does so, presidents then often formally invoke executive privilege. The issue then becomes a legal issue and can ultimately become a constitutional matter, as was the case in *United States v. Nixon* (1974). Congress had requested information from President Richard Nixon. He refused the requests. Congress eventually subpoenaed tapes that would shed light on the Watergate break-in and cover-up. Nixon again refused, but eventually complied after the Supreme Court reached a unanimous decision authored by Chief Justice Warren Burger. The Court ordered Nixon to release the tapes to Congress. Nixon did so and later resigned when faced with impeachment.

As the size and scope of the executive branch has expanded, presidents have thousands of individuals that are their employees. Consequently, recent considerations of executive privilege have evolved to include questions of the extent of the privilege; specifically, whether it applies to those who work for the President. Presidents Bill Clinton, George W. Bush, and Barak Obama have all claimed executive privilege for themselves and their advisors. Clinton's claims involved a congressional request for information about the dealings of his Secretary of Agriculture Mike Espy culminating in *In Re Sealed Case*. In 1997, while facing a civil suit stemming from his conduct while governor of Arkansas, President Clinton invoked executive immunity from prosecution while serving as President. Justice John Paul Stevens' opinion in *Clinton v. Jones* is used extensively in this script. In 2004, President Bush invoked executive privilege and refused to disclose the details of Vice President Dick Cheney's meetings with energy executives. The Obama administration invoked executive privilege when Congress sought information from Attorney General Eric Holder concerning a failed gun policy which purposely allowed licensed firearms dealers to sell weapons to illegal buyers, hoping to track the guns to drug dealers and arrest them in Mexico.

Supreme Court Cases Used in Script

United States v. Reynolds, 345 US 1 (1953)

United States v. Nixon, 418 US 683 (1974)

Clinton v. Jones, 520 US 681 (1997)

In re Sealed Case. No. 96-3124. 121 F.3d 729, 326 U.S. App. D.C. 276 (1997)

Central Constitutional Issues in Cases Used in Script

United States v. Reynolds, 1953

Can civilians use a federal statute to assert their right to access a military report? Can the Secretary of the Air Force assert that a military report is privileged information? What constitutes a military secret?

United States v. Nixon, 1974

Did the constitutional principle of powers and the tradition of executive privilege prevent the courts from requiring the President to turn over materials needed in a criminal trial?

Clinton v. Jones, 1997

Can a sitting president assert immunity from prosecution in a civil case stemming from actions before assuming office? What constitutes related and unrelated duties of the office of the President?

In Re Sealed Case, 1997

How far does executive privilege extend to advisors of the President? What types of communications within the executive branch are considered privileged?

Roles in Script–6 (L–large role; M–medium role)

Moderator (L)

Chief Justice Warren E. Burger (L)

Justice Steven G. Breyer (M)

Justice John Paul Stevens (M)

Chief Justice Fred M. Vinson (L)

Judge Patricia Wald (D.C. Circuit Court) (M)

The Script

Moderator: Greetings to all our guests. We are privileged to have with us today several members from the federal judiciary who have written decisions relating to a topic of considerable debate throughout our history. We welcome Chief Justice Fred M. Vinson, Chief Justice Warren Burger, Justice John Paul Stevens, Justice Steven Breyer, and Judge Patricia Wald.

The Justices: [Hello. Thank you. It's a pleasure to be here. Etc.]

Moderator: Let's begin our discussion with a simple question. What exactly is executive privilege?

Wald: [Simply put,] executive officials have claimed a variety of privileges to resist disclosure of information . . . they felt was crucial to fulfillment of the unique role and responsibilities of the executive branch of our government.

Moderator: Has this always been the case that the executive branch withholds information from Congress?

Wald: Debate over the President's ability to withhold confidential information from Congress has occurred since the early years of our nation, when President George Washington discussed with his cabinet in 1792 how to respond to a congressional inquiry into the military misfortunes that <plagued>¹ General St. Clair's expedition.

Moderator: I see. So, there are precedents from the very first administration for this practice.

Wald: [Yes. Another] early instance . . . came in the course of the House's investigation into why Alexander Hamilton had deposited into the Bank of the United States certain funds intended to pay off the foreign debt.

Moderator: What specifically did Congress want?

Wald: The House sought to know Hamilton's authority for this act, to which Hamilton replied that he would not provide any instructions President Washington had given him, because "[t]hat question must, then, be a matter purely between the President and the agent, not examinable by the Legislature."

Moderator: It sounds like he was invoking the separation of powers principle.

Wald: [Yes.]

Moderator: It would seem that Congress and the President are at a stalemate.

Burger: In the performance of assigned constitutional duties, each branch of the Government must initially interpret the Constitution, and the interpretation of its powers by any branch is due great respect from the others.

Moderator: But, this is an impasse. Can these conflicts be resolved? Doesn't Marshall's famous statement about the role of the courts apply here?

Burger: [Yes.] Many decisions of [the] Court . . . have <explicitly>² reaffirmed the holding of *Marbury v. Madison*, that "it is emphatically the province and duty of the judicial department to say what the law is."

Moderator: Is this judicial supremacy?

Burger: Our system of government requires that federal courts on occasion interpret the Constitution in a manner at variance with the construction given the document by another branch.

Moderator: Does the Constitution **require** that courts function in this way or is it more a matter of convenience?

Burger: Deciding [these issues] is a delicate exercise in constitutional interpretation.

Moderator: And I presume that makes it the job of the courts?

Burger: [Yes. It] is a responsibility of [the Supreme] Court as ultimate interpreter of the Constitution.

Moderator: We have been discussing some basic principles up to this point. Let's turn to specific cases. Chief Justice Vinson can you briefly give some background on the *Reynolds* case of 1953?

Vinson: [An] aircraft had taken flight for the purpose of testing secret electronic equipment, with four civilian observers aboard. While aloft, fire broke out in one of the bomber's engines. Six of the nine crew members and three of the four civilian observers were killed in the crash.

Moderator: How are these events related to our discussion of executive privilege?

Vinson: The widows of the three deceased civilian observers brought . . . suits against the United States.

Moderator: What were these widows seeking in these suits?

Vinson: The [widows] moved, under Rule 34 of the Federal Rules of Civil Procedure, for production of the Air Force accident investigation report and the statements . . . taken in connection with the investigation.

Moderator: I can see how the executive branch might be a bit nervous about revealing military information since the Air Force is under the authority of the Executive.

Vinson: [Yes.] The Government moved to <suppress>³ the request, claiming that these matters were privileged against disclosure.

Moderator: What was the basis for the Air Force refusing to release the accident report?

Vinson: [The Air Force said the Federal Rule of Civil Procedure] compels production only of matters “not privileged.”

Moderator: So in essence they said this information was protected information and the Rules of Civil Procedure did not apply.

Vinson: [Exactly.]

Moderator: So, what was the Court’s decision?

Vinson: When the Secretary of the Air Force lodged his formal “Claim of Privilege,” he invoke[d] the privilege against revealing military secrets . . . [and] asserted that the material could not be furnished without seriously hampering national security, flying safety, and secret military equipment.

Moderator: Is there precedent for such an action?

Vinson: [Yes. This] privilege . . . is well established in the law of evidence.

Moderator: OK. But, is it well-established in regards to this situation? There is no trial here just a simple request for information from a government agency.

Vinson: Judicial experience with the privilege which protects military and state secrets has been limited in this country.

Moderator: Then how does a justice decide this issue if there isn’t a lot of precedent?

Vinson: Judicial control over the evidence in a case cannot be <abandoned>⁴ to the <whim>⁵ of executive officers. Yet we will not go so far as to say that the court may automatically require a complete disclosure. . . . It may be possible . . . that there is a reasonable danger that compulsion of the evidence will expose military matters which, in the interest of national security, should not be divulged.

Moderator: So, some sort of balancing test is needed.

Vinson: [It was] a time of vigorous preparation for national defense; air power is one of the most potent weapons in our defense. Newly developing electronic devices [had] greatly enhanced the effective use of air power.

Moderator: But, aren’t there compelling reasons motivating these requests for information about the accident?

Vinson: When the formal claim of privilege was filed by the Secretary of the Air Force, [and the] possibility that military secrets were involved, there was certainly a sufficient showing of privilege to cut off further demand for the documents.

Moderator: So there should be an automatic deference to the Executive Branch?

Vinson: Even the most compelling necessity cannot overcome the claim of privilege if the court is ultimately satisfied that military secrets are at stake.

Moderator: So I take it that in the *Reynolds* case, the Court decided to accept this claim of privilege?

Vinson: [Yes. The] formal claim of privilege, made [by the Secretary of the Air Force] under the circumstances of this case, [had] to prevail.

Burger: However, . . . the need for confidentiality of high-level communications . . . cannot sustain an absolute, unqualified Presidential privilege of immunity . . . under all circumstances.

Moderator: I think this is a good point to have Chief Justice Burger join our discussion. The Watergate Tapes case were in large part a controversy involving materials President Nixon sought to keep from congressional investigators.

Burger: [Thank-you.]

Moderator: Before we get into the nitty-gritty, we need a little background on the events leading up to this case.

Burger: On March 1, 1974, a grand jury of the United States District Court . . . returned an indictment charging seven named individuals with various offenses, including conspiracy to defraud the United States and to obstruct justice. . . . The grand jury [also] named the President as an unindicted coconspirator.

Moderator: And these indictments were the result of congressional and special prosecutor investigations into the cover up activities of the White House in regards to the break in of the Democratic National Headquarters at the Watergate Complex.

Burger: [That's right.]

Moderator: And in the midst of all this, there was a tussle between Congress and President Nixon over tape recordings made in the oval office.

Burger: [Correct]

Moderator: This seems pretty simple. Having access to these tapes would shed light on the extent of the President's knowledge about the cover up activities of his advisors.

Burger: [Correct]

Moderator: And I remember, the special prosecutor issued a subpoena forcing the President to release these tapes?

Burger: [That's right.] This subpoena required the production . . . of certain tapes, memoranda, papers, transcripts, or other writings relating to certain precisely identified meetings between the President and others.

Moderator: And the President resisted?

Burger: [Yes, partially.] The President publicly released edited transcripts of 43 conversations; portions of 20 conversations.

Moderator: And . . . ?

Burger: [One day later] the President's counsel filed . . . a motion to quash the subpoena accompanied by a formal claim of privilege.

Moderator: So in other words, President Nixon was saying he had complied with the requests and additional information was privileged and he would not release it?

Burger: [Yes. A U.S. District Court then ordered] the President . . . or employee with custody or control of the documents or objects subpoenaed to deliver to the District Court the originals of all subpoenaed items.

Moderator: And I take it that on appeal it went to the Supreme Court?

Burger: In support of his claim of absolute privilege, the President's counsel [argued there] is the valid need for protection of communications between high Government officials and those who advise and assist them; the importance of this confidentiality is too plain to require further discussion.

Moderator: I suppose that makes sense.

Burger: Those who expect public dissemination of their remarks may well temper candor with a concern for appearances . . . to the <damage>⁶ of the decision-making process. Candid, objective, blunt or even harsh opinions [are often necessary] in Presidential decision-making.

Moderator: True. But isn't this case different? There were criminal investigations going on. Does this make President Nixon's claim of executive privilege a bit of a stretch?

Burger: [Exactly.] The <obstacle>⁷ an absolute, unqualified privilege . . . plainly conflicts with the function of the courts.

Moderator: And I presume that courts would potentially need this information as they proceeded with their trials?

Burger: [Well said.] We have . . . an adversary system of criminal justice in which the parties contest all issues before a court of law. The need to develop all relevant facts in the adversary system is fundamental.

Moderator: And by that you mean the system by which there are two sides operating within pre-established rules in a court of law?

Burger: [Yes.] The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence.

Moderator: So for you, in this instance, it was more than a simple claim of executive privilege. It was about evidence and criminal procedure.

Burger: [Yes.] In this case, the President challenge[d] the . . . production of materials for use in a criminal prosecution; he [did] so on the claim that he [had] a privilege against <revealing>⁸ confidential communications. He [did] not place his claim of privilege on the ground they are military or diplomatic secrets.

Moderator: And then your decision ruled against President Nixon?

Burger: [Yes.] We conclude[d] that, when . . . asserting privilege as to subpoenaed materials sought for use in a criminal trial is based only on the generalized interest in confidentiality; it cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice. [The claim of privilege] must yield to the demonstrated, specific need for evidence in a pending criminal trial.

Moderator: Let's turn our attention to *Clinton v. Jones*. Justice Stevens wrote the majority opinion and Justice Breyer submitted a concurring opinion in that case.

Stevens: [Paula Jones], a private citizen, [sought] to recover damages from the [President] based on actions allegedly taken before his term began.

Moderator: When he was the governor of Arkansas?

Stevens: [Yes.] The President submitted that in all but the most exceptional cases the Constitution requires federal courts to defer such litigation until his term ends and that, in any event, respect for the office warrants such a stay.

Moderator: A stay means in this instance a delay in the legal proceedings.

Stevens: [Correct.]

Moderator: And what was the basis of Ms. Jones' suit?

Stevens: She allege[d] that a [state trooper] persuaded her to . . . visit the Governor in a hotel, where he made sexual advances that she <strongly>⁹ rejected. She further claimed that her superiors . . . subsequently dealt with her in a hostile and rude manner, and changed her duties to punish her for rejecting those advances.

Moderator: And President Clinton's response was to ask for a stay?

Stevens: He . . . filed a motion to dismiss on grounds of Presidential immunity, and requested the court to defer all other pleadings and motions.

Moderator: I take it that he argued immunity meant he could not be bothered with a legal proceeding?

Breyer: [Yes.]

Moderator: So, at this point of the story we aren't at the Supreme Court level yet.

Stevens: [Yes.] The District Judge denied the motion to dismiss on immunity grounds and ruled that . . . the case could go forward, but ordered any trial stayed until the end of petitioner's Presidency. Although she . . . held that "the President has absolute immunity from civil damage actions arising out of the execution of official duties of office," she was not convinced that a President has absolute immunity from civil causes of action arising **prior** to assuming the office.

Moderator: So the President filed an appeal?

Stevens: [Yes. The President's counsel] argued that this . . . created serious risks for the institution of the Presidency.

Moderator: What were these alleged "serious risks" for the institution of the Presidency?

Stevens: As a starting premise, [the President] occupies a unique office with powers and responsibilities so vast and important that the public interest demands that he devote his undivided time and attention to his public duties.

Moderator: OK. I think we would all agree on that point.

Stevens: [And] given the nature of the office—the doctrine of separation of powers—places limits on the authority of the Federal Judiciary to interfere with the Executive Branch that would be transgressed by allowing this action to proceed.

Breyer: [But,] distraction and distortion are . . . important ingredients of that potential public harm. Indeed, a lawsuit that significantly distracts an official from his public duties . . . as can a threat of potential future liability. . . . It may well be that the trial of this case cannot take place without significantly interfering with the President's ability to carry out his official duties.

Moderator: So his job is too important to be distracted with a legal proceeding therefore, he gets immunity?

Stevens: [Well . . . yes and no.]

Moderator: OK. Give us the "yes" answer.

Stevens: Public servants represent the interest of society as a whole. . . . The societal interest in providing such public officials with the maximum ability to deal fearlessly and impartially with the public at large has long been recognized as an acceptable justification for official immunity.

Moderator: So a proceeding like a trial may have impact on the public if the government official can't fully and effectively do his job.

Breyer: [Yes. Jefferson noted that the Executive would be powerless] “if he were subject to the commands of the [Court] & to imprisonment for disobedience; if the several courts could bandy him from pillar to post, keep him constantly trudging from north to south & east to west, and withdraw him entirely from his constitutional duties?”

Stevens: The point of immunity for such officials is to <prevent>¹⁰ an atmosphere of intimidation that would conflict with their resolve to perform their designated functions in a principled fashion.

Moderator: And the “no” answer?

Stevens: The principal rationale for affording certain public servants immunity from suits arising out of their official acts is inapplicable to **unofficial** conduct.

Moderator: So, it does apply if the actions in question are connected to the functions of the job. Whereas, immunity does not apply if the actions are private; or as you say “unofficial” conduct not directly connected to the office.

Stevens: [Yes.]

Moderator: Is there any precedent for presidents being subject to legal action while in office?

Stevens: Sitting Presidents have responded to court orders . . . with sufficient frequency that such interactions . . . can scarcely be thought a novelty.

Moderator: So, for instance?

Stevens: President Monroe responded to written interrogatories. President Nixon—as noted above—produced tapes in response to a subpoena. . . . President Ford complied with an order to give a deposition in a criminal trial, and President Clinton [himself] has twice given videotaped testimony in criminal proceedings. . . . Moreover, sitting Presidents have also voluntarily complied with judicial requests for testimony. President Grant gave a lengthy deposition in a criminal case . . . and President Carter similarly gave videotaped testimony for use at a criminal trial.

Breyer: [However,] since 1960 . . . the number of civil lawsuits filed annually in Federal District Courts has increased from under 60,000 to about 240,000. . . . An increasingly complex economy has led to increasingly complex sets of statutes, rules and regulations that often create potential liability with or without fault.

Moderator: So, if the President does not have immunity he is a “sitting duck” so to speak?

Breyer: [If] such lawsuits may proceed against a sitting President, the consequence . . . is that a sitting President, given the visibility of his office, could well become “an easily identifiable target for suits for civil damages.”

Moderator: But, we still have not adequately addressed the issue of immunity for personal actions not specifically associated with the performance of their office.

Stevens: [But, if] the Framers of the Constitution had thought it necessary to protect the President from the burdens of private litigation; we think it far more likely that they would have adopted a categorical rule.

Moderator: So, in this case, the Court decided against President Clinton's request for immunity?

Stevens: [Yes.] Other than the fact that a trial may consume some of the President's time and attention . . . we decided the District Court may have given undue weight to the concern that a trial might generate unrelated civil actions that could conceivably <hinder>¹¹ the President in conducting the duties of his office. . . . But no such impingement upon the President's conduct of his office was shown here.

Moderator: So in other words, it's a tough job and presidents should be able to handle it?

Stevens: Although scheduling problems may arise, there is no reason to assume that the . . . Courts [would not be able] to accommodate the President's needs . . . of giving the utmost deference to Presidential responsibilities.

Moderator: Judge Wald, you have been patiently waiting. Could you quickly brief us on the Espy case involving President Clinton's secretary of agriculture?

Wald: [Yes. There were] allegations that Espy . . . improperly accepted gifts from individuals and organizations with business before the U.S. Department of Agriculture. . . . These allegations led to the appointment of an Independent Counsel . . . to investigate.

Moderator: And as I recall President Clinton took some sort of action in this matter.

Wald: [Yes. He] . . . directed the White House Counsel to . . . advise [him] on whether he should take executive action against Espy. On October 3, 1994, Espy announced his resignation.

Moderator: Well, it sounds like this should be the end of the matter.

Wald: [Well, not exactly. Later] a grand jury issued a subpoena [seeking] all documents on Espy and other subjects of the [initial] investigation.

Moderator: So the courts wanted a lot more documentation?

Wald: [Yes.]

Moderator: Did the White House comply?

Wald: [Yes and no.] The White House produced a log . . . that indicated that 84 documents were withheld on grounds of the deliberative process privilege.

Moderator: What exactly is deliberative process privilege?

Wald: Materials [that reveal] the President's deliberations—as, for example, when the President decides to pursue a particular course of action, but asks his advisers to submit follow-up reports so that he can monitor whether this course of action is likely to be successful.

Moderator: But, the number of individuals giving advice to the President could number in the hundreds or perhaps even thousands.

Wald: [Exactly. The issue then is whether] the privilege only extends to direct communications with the President, or does it extend further to include communications that involve his chief advisers? And if [so] how far down into his circle of advisers does it extend?

Moderator: Well what did your court decide?

Wald: A . . . case can . . . be made for extending the presidential communications privilege beyond those materials with which the President is personally familiar.

Moderator: So deliberation privilege is justifiable?

Wald: [Yes.] The need to provide sufficient elbow room for advisers to obtain information from all knowledgeable sources, the privilege must apply both to communications which these advisers <asked for>¹² and received from others as well as those they authored themselves.

Moderator: I see we are nearly out of time. I cannot help but conclude that the courts have not consistently decided this issue?

Stevens: The lines between the powers of the three branches are not always neatly defined. As Madison explained, separation of powers does not mean that the branches ought to have no <interest>¹³ in, or no controul over the acts of each other.

Breyer: [And, as Joseph Story] wrote in his *Commentaries*: “There are . . . incidental powers, belonging to the executive department, which are necessarily implied [and] must necessarily be included the power to perform them, without any obstruction or impediment whatsoever.

Wald: [And,] the President himself must make decisions relying substantially . . . on the information and analysis supplied by advisers. . . . Without protection . . . advisors may . . . forego obtaining comprehensive [information] for fear of losing deniability.

Burger: [Yes, indeed.] The President's need for complete <honesty>¹⁴ and objectivity from advisers calls for great deference from the courts. . . . But this presumptive privilege must be considered in light of our historic commitment to the rule of law.

Moderator: And with that we conclude our discussion. I think all of us would agree that this issue is sure to surface again. As we can see it is far from a settled issue. Hopefully some of the ideas expressed here can be used for future controversies involving this idea of executive privilege. On behalf of our panel, good night and good luck.

Endnotes

¹ beset

² unequivocally

³ quash

⁴ abdicated

⁵ caprice

⁶ detriment

⁷ impediment

⁸ disclosure

⁹ vehemently

¹⁰ forestall

¹¹ hamper

¹² solicited

¹³ agency

¹⁴ candor

Pedagogical Materials

T-Chart for Notes– Executive Privilege

Instructions: As students listen to the scripted conversation, they should take notes using the T-Chart below to organize and summarize the key ideas from the *Reynolds*, *Nixon*, *Clinton* and *In Re Sealed* cases.

	Reynolds	Nixon	Clinton	In Re Sealed
Background Information				
Central Issue				
Decision				

Review Questions–Executive Privilege

1. In each case, what does the President want considered privileged information?
2. What are the arguments made by individuals or Congress in these cases that justify their request to have access to information from the Executive Branch?
3. In each case, how does the idea of separation of powers apply?

Discussion Questions–Executive Privilege

1. In your view, does it matter what type of information being requested matter as to whether it should be considered privileged?
2. Do you think if advisors knew their communication with the President can be accessed by Congress it would have an impact on their advice to the President?
3. Should executive privilege apply to advisors to the President’s advisors and not just the President?
4. To what extent, is the *Nixon* case different than the other cases?