

# President Held to Have Wide Power on Pardon

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American Presidents have such broad powers to grant pardons and reprieves that they may discriminate among citizens and are free to place conditions on clemency, the Supreme Court said yesterday.

In a 6-to-3 ruling, the court gave the widest latitude to the chief executive when he exercises his prerogative of forgiving individuals and commuting prison terms.

The decision, which came in a military court-martial case, was issued at a time of continuing debate over executive clemency and some challenges to the way it has been used by President Ford. Although it did not end the controversy about when the pardon power should be invoked, it laid to rest any remaining questions about the sweep of that power.

At issue before the court

was whether President Eisenhower had the constitutional power in 1960 to commute the death sentence of Maurice Schick, an Army master sergeant convicted in Japan for the brutal murder of an 8-year-old girl, and to add the condition that Schick never be paroled.

Chief Justice Warren E. Burger, tracing the clemency power directly to the royal power of English kings, said the authority was so sweeping that it "cannot be modified, abridged or diminished by the Congress."

Burger, writing for the majority, sustained Schick's conditional reprieve and said his only recourse would be another appeal to the President himself.

See PARDON, A7, Col. 1

## PARDON, From A1

Schick, now an inmate at the Lewisburg federal penitentiary, has served 20 years in prison. If he were under a conventional life sentence, he would have been eligible to seek parole five years ago.

Lawyers for Schick argued that the commutation itself rested on the validity of the underlying death sentence. But only Justices Thurgood Marshall, William O. Douglas and William J. Brennan Jr. voted to overturn the life sentence on the basis of the 1972 ruling that halted all executions in the United States.

Burger said that only by executive grace did Schick live long enough to see the 1972 ruling and he could not now complain about the same clemency that prolonged his life.

As for the potential discrimination in so sweeping a power, Burger said, "Individual acts of clemency inherently call for discriminat-

ing choices because no two cases are the same." Individual treatment was "the very essence of the pardoning power."

Any court-imposed restrictions "would tend to inhibit the exercise of the pardoning power," Burger said. "Considerations of public policy and humanitarian impulses" supported the broad interpretation, permitting "the attachment of any condition which does not otherwise offend the Constitution," Burger said.

Burger was joined by Justices Potter Stewart, Byron R. White, Harry A. Blackmun, Lewis F. Powell Jr. and William H. Rehnquist.

The opinion confirmed interpretations prevailing when President Ford pardoned Richard M. Nixon in September, but critics of that action questioned its timing rather than Mr. Ford's authority. The Nixon pardon was unconditional.

A lawsuit by former Teamster president James R. Hoffa challenges the condition imposed by Nixon that Hoffa stay out of union office. Hoffa claims also that he was not advised of that condition before leaving prison.

Mr. Ford's program of clemency for Vietnam war draft resisters and military deserters includes pardons for individuals already punished and the use of prosecutorial discretion to drop charges of selective service law violations against individuals not yet prosecuted.

In another case, the court dealt a setback to lawyers for consumer groups and the poor as it ruled, 6 to 3, that a customer service disconnection by a utility cannot be the basis for a suit under federal laws designed to safeguard citizens against arbitrary government action.

Justice Rehnquist said civil rights laws do not apply to such disputes because the utility action is not "state action."



1954 Photo

**MAURICE SCHICK**  
... plea rejected

He said the fact that Metropolitan Edison Co. of York, Pa., was state-regulated, had a "partial monopoly" on electricity service and was permitted by state law to cut off a customer's power without notice did not amount to action by the state government sufficient to trigger the federal law.

Justices Marshall, Douglas and Brennan again dissented.