

## Court Declines to Review Kerner Case

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WASHINGTON, June 17—The Supreme Court declined to review today the criminal convictions of Otto Kerner that were based on a conspiracy to assist racing interests while he was Governor of Illinois.

The high court thus avoided deciding an issue that is similar to one of President Nixon's defenses against efforts to impeach him.

When he was indicted and convicted on charges involving his service as Governor, Mr. Kerner was a judge of the United States Court of Appeals for the Seventh Circuit, the first sitting Federal appellate judge in the nation to be convicted on criminal charges.

On his appeal, Mr. Kerner maintained that he could not be convicted of any crime until after he had been removed from his judicial office by Congress, impeached by a majority of the House and convicted by a two-thirds vote of the Senate.

President Nixon has also taken the position that he enjoys constitutional immunity—from criminal prosecution, civil process or even identification as an unindicted co-conspirator—by virtue of his office.



Associated Press  
Otto Kerner

The President's lawyers have repeatedly argued that he can be impeached only by Congress and removed from office on charges that amount to an indictable crime, rather than merely failure to take care that the laws are enforced or poor

judgment in assembling a reliable staff.

In the Kerner case, Solicitor General Robert H. Bork maintained in a brief that impeachable officials are subject to criminal prosecution while in office.

Today's Supreme Court decision could have been based on the fact that Mr. Kerner did not raise the impeachment issue at his trial, rather than on the Justices' belief that Mr. Kerner's position was not valid. Ordinarily, such an issue cannot be raised for the first time on appeal, as Mr. Kerner did.

Mr. Kerner and Theodore J. Isaacs, former director of the Illinois Department of Revenue, were sentenced to three years in jail and a \$50,000 fine each after conviction for conspiracy, bribery, mail fraud, tax evasion and filing false tax returns.

Basically, the charges centered on evidence that the Governor and Mr. Isaacs had received stock in both harness and flat track corporations for about a fifth of its value in return for favorable treatment for the racing owners in dates assigned their tracks and tax legislation.