

# United States v. Nixon

By Anthony Lewis

WASHINGTON, July 24 — There is the drama of externals, and there is the drama that arises from the situation. It was the latter that gripped the chamber of the Supreme Court as the Chief Justice announced the decision in *United States v. Nixon*.

For seventeen minutes he calmly expounded what seemed at times like a patient lesson in American history and government. Courts owe the greatest deference to a President, he said; but on the meaning of the Constitution they have the last word, not he. It remains true, as Chief Justice Marshall said in *Marbury v. Madison* in 1803, that it is "emphatically the province and duty" of the Court "to say what the law is."

The opinion and its delivery were impressive in part because they were so stripped of any external excitement, so without stridency or provocation or hubris. All was measured, professional, stately. It was the law, offering us once again that reassurance of constitutional order that we require of it in this turbulent country.

In the institutional sense, the Supreme Court performed at its best in this case. It was unanimous. It was clear. It was prompt but not hasty. The opinion carefully touched every necessary legal base—and said nothing about the unnecessary. And the opinion was by Warren E. Burger, whom President Nixon chose to be Chief Justice of the United States.

The decisive result of the case of the President's tapes adds to the feeling that the last act of Richard Nixon's drama is at hand. After the long delay in the impeachment process, there is in the air of Washington this week the sense that it is all coming together. The Republicans in Congress are slipping from the ties of loyalty to Mr. Nixon. And in the White House there is visibly taking hold the shattering realization that this President is going to be impeached.

The Supreme Court decision bears no direct or formal relationship to impeachment. Indeed, the opinion wisely did not mention the word impeach or refer to the process pending on the other side of Capitol Hill. The Justices had made it plain at the argument that they regarded all that as a political question, beyond their authority.

Nevertheless, the decision inevitably affects the impeachment proceedings. Psychologically, it must damage the President's case: for the Court showed that other institutions of Government may respect the Presidency without accepting the extreme arguments of a particular incumbent or trembling in awe at his claims.

But it is just as important to understand what the Supreme Court did not

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do. It lent no comfort to the notion that the courts can be a vehicle for supplying evidence to the impeachment process—or that the House Judiciary Committee should make this decision the occasion for another long delay to seek further evidence.

*United States v. Nixon* is a criminal case, and the Chief Justice's opinion relied fundamentally on the constitutional value of evidence for the system of criminal justice. The White House tapes under subpoena must be scrutinized by Judge John Sirica before delivery of relevant portions to the special prosecutor, Leon Jaworski. Chief Justice Burger went out of his way to say that Judge Sirica should give no material to anyone else.

Thus there is nothing in the decision to offer hope to the Judiciary Committee that it could obtain more tapes from the courts or the special prosecutor at any early date. The committee could of course press its own subpoenas to the President once again, but the question then would be how long it would wait for an answer. It has taken the White House weeks to answer previous letters, and officials say these tapes have not yet even been transcribed.

Delay is now the last best hope of the President and his counsel, James St. Clair. On the evidence, they are losing the case. The slow, massive accumulation of facts by the House Judiciary Committee has finally had its effect in the committee.

Politically, too, it is becoming more difficult to vote in the teeth of that evidence. The defection of a Nixon loyalist, Representative Lawrence J. Hogan of Maryland, was a painful blow to the President's men. More and more Republicans in Congress, in their exposed position, may believe they can find safety by voting together in substantial numbers for impeachment.

There is no argument for delay in terms of fairness to Mr. Nixon. It is he who has repeatedly told the committee that it has all the evidence it needs. He would long since have provided anything exculpatory on the tapes—as Mr. St. Clair suddenly produced a snippet in his closing remarks. Any further tapes can be used at the Senate trial.

The strongest answer to any call for delay, now that the committee has entered the stage of decision, is simply the need of this country to finish with Watergate. Americans have been extraordinarily patient these last two years, but now their yearning for an end is tangible. It is up to Congress to show that, like the Court, it can perform its function with deliberate decisiveness.