

OPINION

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Another look at privilege issue

THE U.S. SUPREME COURT'S unanimous decision against President Nixon on the issue of executive privilege is so important to the conduct of the nation's affairs that it merits further comment. Legal scholars will of course be debating its impact for years.

Something very important in the decision was largely missed or underemphasized in the quick news analyses that followed its July 24 issuance. This was the fact that, while President Nixon lost his specific case of the subpoenaed tapes, the institution of the Presidency gained.

THIS IS TRUE BECAUSE the Court went to great lengths to emphasize the existence of and need for a broadly based right of confidentiality in the White House. Thus the unanimous Court established the unquestionable right of future Presidents to confidentiality in the delicate fields of foreign affairs and national security. The decision also dealt a death blow to HR 12462, a pending bill that attempts to circumscribe the presidential right of confidentiality in relation to Congress.

President Nixon had claimed an absolute right of confidentiality, or executive privilege. He had argued that he alone must be the judge of what material in his possession should be treated as confidential.

But the Court, after asserting jurisdiction over the question, ruled that an absolute right did not exist and that the requirements of criminal justice were paramount over the President's right of confidentiality.

THE COURT SPECIFICALLY found, however, that a presidential right of confidentiality has constitutional underpinnings. "The privilege is fundamental," said the Court, "to the operation of government and inextricably rooted in the separation of powers under the Constitution."

As if to emphasize the importance and scope of executive privilege, the opinion used such language as this:

"The interest in preserving confidentiality is weighty and entitled to great respect. . . ."

"It is . . . necessary in the public interest to afford presidential confidentiality the greatest protection consistent with the fair administration of justice."

THUS THE COURT SUGGESTED very strongly, without ever saying so, that the right of presidential privilege is paramount in all situations other than those involving the administration of criminal justice.

Past Presidents have all asserted this broad right. Future Presidents can now assert it without arousing the kinds of conflict and controversy that have marked the issue from the beginning of the Republic. An issue almost 200 years old has been decided by a unanimous Court in a manner that is all but definitive.