

MODULE 6A

# Immunity from Suit and Impeachment

Nixon v. Fitzgerald · Clinton v. Jones · United States v. Nixon · impeachment · Lee v. Trump

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# Checks on presidential power

*Can the President be prosecuted? Sued? Removed?*

## CRIMINAL LIABILITY

- Presidential immunity?
- The Nixon grand jury was not sure.
- Answered in 2024.

## CIVIL LIABILITY

- Official acts: Nixon v. Fitzgerald.
- Unofficial acts: Clinton v. Jones.

## IMPEACHMENT

- The check the Constitution names.
- House impeaches. Senate tries.

*Each time the Court narrows one check, it leans on another.*

# Criminal liability: the question mark, answered

*Trump v. United States (2024): a former President and the criminal law.*

## CORE POWERS

- Absolute immunity.
- Pardons, removals, recognition.

## OTHER OFFICIAL ACTS

- At least presumptive immunity.
- Within the “outer perimeter.”

## UNOFFICIAL ACTS

- No immunity.

*Every tier starts with the same question: official or unofficial?*

# Civil liability: Nixon v. Fitzgerald

*A fired Air Force analyst sues the former President for damages.*

## THE PRESIDENT

- Absolute immunity from damages.
- For acts within the “outer perimeter” of his duties.

## GOVERNORS, SECRETARIES, AIDES

- Qualified immunity only.
- Harlow v. Fitzgerald, the same day.

“There remains the constitutional remedy of impeachment.”

*Absolute immunity, justified by a remedy that has never removed a President.*

# Clinton v. Jones: no immunity for private acts

*The facts happened before he was President. The suit came while he was.*

## THE SUIT

- Sexual harassment claim.
- Facts: before he was President.
- Suit: while he was.

## THE COURT

- Unofficial acts: no immunity.
- No postponement until he leaves office.

“Highly unlikely to occupy any substantial amount of petitioner's time.”

# From a civil suit to an impeachment

*The road on the right edge of my board.*

1

Jones sues

1994

2

No  
postponement

1997

3

Deposition:  
Lewinsky

1998

4

House  
impeaches

Dec. 1998

5

Senate acquits

Feb. 1999

*"Highly unlikely to occupy any substantial amount of petitioner's time."*

# United States v. Nixon: executive privilege

*Why a President may keep some communications confidential.*

## NATIONAL SECURITY

- State secrets.

## DELIBERATIVE PROCESS

- Candor.
- Openness.
- Advice before a decision.

## CRIMINAL INVESTIGATIONS

- Informants' identities.
- Law enforcement techniques.

*The privilege is real — and it is rooted in the separation of powers.*

# United States v. Nixon: the tapes

*The Special Prosecutor subpoenaed Oval Office recordings.*

## NIXON CLAIMED

- An absolute privilege.
- “I decide what is privileged.”
- The tapes are privileged.

## REJECTED

- The courts decide claims of privilege.
- In camera review.
- A balancing test.

## THE BALANCE

- A general claim: weak.
- A criminal trial's specific need: strong.

*“The generalized assertion of privilege must yield ...”*

# Watergate: a timeline

*From a break-in to a resignation, in twenty-six months.*

## 1972 - 1973

- June 17, 1972: the Watergate break-in.
- 1973: Senate hearings; the taping system revealed.
- Special Prosecutor Cox subpoenas the tapes.
- Oct. 20, 1973: the Saturday Night Massacre.

## 1974

- Mar. 1: seven aides indicted; Nixon named an unindicted co-conspirator.
- July 24: the Court orders the tapes produced.
- Late July: the House Judiciary Committee approves three articles.
- Aug. 9: Nixon resigns.

*Nixon was never impeached. He resigned before the House voted.*

# Impeachment: the process

*The House accuses. The Senate tries.*

## THE HOUSE

- Impeaches by majority vote.
- “Treason, Bribery, or other high Crimes and Misdemeanors.”

## THE SENATE

- Tries the case.
- The Chief Justice presides.
- Two-thirds to convict.

## THE JUDGMENT

- Removal and disqualification.
- Prosecution still possible.

*“Sole Power”: the courts will not review the Senate's trial.*

# Four impeachments, three Presidents

*None convicted.*

## IMPEACHED

- Andrew Johnson — 1868.
- Bill Clinton — 1998.
- Donald Trump — 2019.
- Donald Trump — 2021.

## NOT IMPEACHED

- Richard Nixon.
- Resigned in 1974, before the House voted.

*The Senate has never reached two-thirds against a President.*

# Current case: Lee v. Trump

*Was the President acting as office-holder, or as office-seeker?*

## IMMUNE

- Oval Office meeting with Michigan legislators.
- Two tweets during the riot.
- The Rose Garden video.

## NOT IMMUNE

- The Ellipse Speech.
- The call to Georgia's Secretary of State.
- Nearly every other tweet.

*Context, not content. On appeal; argument set for January 2027.*

# For discussion: the campaign speech

*A hypothetical. Every check on slide 2 is in play.*

## THE FACTS

- A President runs for re-election.
- Campaign-funded rally, White House lawn.
- Urges supporters to the state capitol.
- A guard is injured and sues.

## QUESTIONS FOR DISCUSSION

1. Official or unofficial?
2. Can the suit go forward now?
3. Can he be prosecuted later?
4. Can his drafts be subpoenaed?
5. Is it impeachable?

# Module 6A on one slide

*One line per check.*

## THE LINE, ONE CHECK AT A TIME

- Prosecution: core powers immune; unofficial acts not.
- Damages for official acts: absolute immunity (Fitzgerald).
- Unofficial acts: no immunity, no waiting (Clinton v. Jones).
- Privilege: real, but the courts decide it (Nixon).
- Impeachment: never yet a conviction.
- Lee v. Trump: office-holder or office-seeker, by context.

*Next — Module 7: the national government against the States.*

Next: Module 7 — Preemption of State and Local Laws. Readings on the course website.