

United States v. Nixon / President Clinton: The President as Defendant—Answer Key

Although a sitting president has immunity from litigation arising from actions performed in their official capacity, that immunity does not extend to actions arising from their private conduct nor does it allow them to postpone litigation while in office.

The issue of executive privilege took front stage when President Bill Clinton was sued for actions alleged to have occurred before he was president. Paula Jones filed a civil suit in 1994, alleging that President Clinton propositioned her in a Little Rock hotel room three years earlier, when he was governor of Arkansas and she was a low-level state employee. She sought damages for “willful, outrageous, and malicious conduct” arising from the allegations of sexual harassment and sexual assault.

President Clinton’s attorneys argued that the trial should be postponed while he was in office because the litigation would distract him from his presidential duties. In December 1994, a federal District Court judge ruled that a trial could not take place while Clinton was in office because of the potential interference with official duties. The U.S. Court of Appeals for the Eighth Circuit reversed the District Court’s decision.

Clinton appealed to the U.S. Supreme Court. The Court agreed to hear the case to decide whether civil litigation against an incumbent president must in all but exceptional cases be delayed until after they leave office. President Clinton’s legal team raised two main arguments in support of its position that the case should be postponed. First, they argued that constitutional immunity for a president’s official actions extends to their unofficial conduct. Second, they argued that the separation of powers doctrine, which ensures that none of the three branches of government infringes on another, forbids a trial judge to force a sitting president to defend themselves in a lawsuit.

The Court rejected both of Clinton’s arguments. In a 9 to 0 decision in May 1997, the Court ruled that Jones could move forward with her sexual harassment lawsuit because nothing in the Constitution allows a sitting president to postpone a private civil damages lawsuit while they are in office. The Court thought it was unlikely the case would burden Clinton’s time. Without commenting on the merits of Jones’ case, the Court said she is entitled to her day in court.

A majority of the Court was un-persuaded by the concern that a failure to postpone private litigation would be an invitation to excessive litigation. They rejected the notion that “our decision will generate a large volume of politically motivated harassing and frivolous litigation.” Writing for the Court, Justice Stevens said: “If the past is any indicator, it seems unlikely that a deluge of ... litigation will ever engulf the Presidency.” The opinion noted that only three sitting presidents—Theodore Roosevelt, Harry Truman, and John F. Kennedy—had been defendants

in civil litigation involving their actions prior to taking office, and those cases were all either quickly dismissed or settled.

Only Justice Breyer wrote a separate concurring opinion to express his concerns about a president being subjected to harassing litigation. “[P]redicting the future is difficult, and I am skeptical,” he said.

Questions to Consider

1. Many commentators discuss the increasing litigiousness (willingness to sue) in American society. If Americans today are more likely to sue, is the Court correct in dismissing concerns that a sitting president may be tied up in litigation that interferes with their duties? (In tackling this issue, research the impact that Paula Jones’ allegations had during Clinton presidency.)

Student answers will vary. In rejecting the need for delay, the Court in *Clinton v. Jones* cited an extremely small number of suits filed against sitting presidents for private actions. However, since 1960, when the last civil damages lawsuit was filed against a sitting president, the number of civil lawsuits filed annually in Federal District Court has surged. Additionally, an increasingly complex economy and a corresponding increase in complex statutes, rules, and regulations have created potential liability with or without fault. Thus the Supreme Court's look to the past trends may have limited applicability today. Additionally, some commentators have also worried about the prospect of future civil cases that are politically motivated and brought about solely as a means of character assassination.

It is unlikely that the Supreme Court could have predicted the effects that the news media frenzy, independent counsel investigation, and impeachment proceeding arising out of the Jones litigation had on the Clinton presidency. These events proved not only a distraction for the President but also impacted his stature and authority. In his autobiography, *My Life*, President Clinton criticized the Court's decision to allow the case to go forward: "The Court said that adopting a principle of delay involving a President's unofficial acts could cause harm to the other party in the suit, so the Jones's suit should not be delayed. Besides, the Court said, defending the suit would not be unduly burdensome or time-consuming for me. It was one of the most politically naive decisions the Supreme Court had made in a long time."

2. The Court was in part motivated by a concern for Paula Jones’ rights as the injured plaintiff. What might be the consequence if a person whose injuries were caused by a president had to wait four or even eight years before having their day in court?

Student answers will vary. Although the right to a "speedy trial" is guaranteed in criminal proceedings and not civil cases, victims have an interest in adjudicating their cases and receiving compensation in a timely manner. Additionally, delay can place undue burdens on a plaintiff in bringing a case, such as the availability of key pieces of the evidence and the ability of witnesses to recall important information. One could argue that plaintiffs should not be penalized simply because their injuries were caused by a person elected to high public office. They should be treated the same as any other plaintiff who claims injuries and seeks redress in the courts.