

Sec. 3—Legislative, Diplomatic, and Law Enforcement Duties of the President

gued that the Impeachment Clause necessarily required indictment and trial in a criminal proceeding to follow a successful impeachment and that a President in any event was uniquely immune from indictment, and these arguments were advanced as one ground to deny enforcement of the subpoenas running to the President.⁸⁰⁵ Assertion of the same argument by Vice President Agnew was controverted by the government, through the Solicitor General, but, as to the President, it was argued that for a number of constitutional and practical reasons he was not subject to ordinary criminal process.⁸⁰⁶

Finally, most recently, the Court has definitively resolved one of the intertwined issues of presidential accountability. The President is absolutely immune in actions for civil damages for all acts within the “outer perimeter” of his official duties.⁸⁰⁷ The Court’s close decision was premised on the President’s “unique position in the constitutional scheme,” that is, it was derived from the Court’s inquiry of a “kind of ‘public policy’ analysis” of the “policies and principles that may be considered implicit in the nature of the President’s office in a system structured to achieve effective government under a constitutionally mandated separation of powers.”⁸⁰⁸ Although the Constitution expressly afforded Members of Congress immunity in matters arising from “speech or debate,” and although it was silent with respect to presidential immunity, the Court nonetheless considered such immunity “a functionally mandated incident of the President’s unique office, rooted in the constitutional tradition of the separation of powers and supported by our history.”⁸⁰⁹ Although the Court relied in part upon its previous practice of finding immunity for officers, such as judges, as to whom the Constitution is silent, although a long common-law history exists, and in part upon historical evidence, which it admitted was fragmentary and ambiguous,⁸¹⁰ the Court’s principal focus was upon the fact that the President was distinguishable from all other executive officials. He is charged with a long list of “supervisory and policy responsi-

⁸⁰⁵ Brief for the Respondent, *United States v. Nixon*, 418 U.S. 683 (1974), 95–122; *Nixon v. Sirica*, 487 F.2d 700, 756–58 (D.C. Cir. 1973) (en banc) (Judge MacKinnon dissenting). The Court had accepted the President’s petition to review the propriety of the grand jury’s naming him as an unindicted coconspirator, but it dismissed that petition without reaching the question. *United States v. Nixon*, 418 U.S. at 687 n.2.

⁸⁰⁶ Memorandum for the United States, Application of Spiro T. Agnew, Civil No. 73–965 (D.Md., filed October 5, 1973).

⁸⁰⁷ *Nixon v. Fitzgerald*, 457 U.S. 731 (1982).

⁸⁰⁸ 457 U.S. at 748.

⁸⁰⁹ 457 U.S. at 749.

⁸¹⁰ 457 U.S. at 750–52 n.31.