**What Secrets Are Protected Under a Claim of Executive Privilege?**

**Definition of Executive Privilege:** refers to the assertion made by the President or other executive branch officials when they refuse to give Congress, the courts, or private parties information or records which have been requested or subpoenaed, or when they order government witnesses not to testify before Congress. The assertion is based on the constitutional doctrine of separation of powers, though nothing in the Constitution expressly mentions **Executive Privilege**.

In United States v. Nixon (1974), the President's lawyers claimed that he had an absolute right of executive privilege. Since the power of executive privilege is not expressly stated in the Constitution, there was some controversy over this matter.
For years, Presidents had claimed executive privilege on the grounds that there was a need to protect military, diplomatic, or national security secrets. The prevailing thought was that a president cannot be forced to share with other branches of government certain conversations, actions, or information if sharing that information could place the United States foreign relations at risk. This "state secrets privilege" was generally accepted.

In the Supreme Court case of United States v. Nixon, Nixon's lawyers argued that executive privilege should extend to certain conversations between the president and his aides, even when national security is not at stake. They argued that in order for aides to give good advice and to truly explore various alternatives, they had to be able to be candid. If they were going to issue frank opinions, they had to know that what they said was going to be kept confidential.

In the opinion, the Supreme Court conceded that there is indeed a privilege for "confidential executive deliberations" about matters of policy having nothing to do with national security. This privilege is constitutionally based, deriving from the separation of powers. However, the Court held that this privilege is not absolute but can be overcome if a judge concludes that there is a compelling governmental interest in getting access to the otherwise privileged conversations, as in the case of the Nixon tapes.
**Directions:** Read each "secret" below. In the space to the left of the "secret" write "SS" for "state secrets" or "CED" for "confidential executive deliberations." To the right, mark "P" if you think the secret should be protected under executive privilege or "NP" if you think the secret would not be protected. Explain why you think the secret would or would not be protected.

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| State Secret (SS) or Confidential Executive Deliberation (CED)? | “Secret” | Protected by executive privilege (P) or not protected (NP) |
|  | The American ambassador to France has been having a secret affair with a single woman who is not his wife |  |
|  | The first lady forms a task force on health care and insists that records of all of her meetings with government officials and health care providers are kept secret. |  |
|  | A team of Marines is working secretly to train North Korean farmers to overthrow their government |  |
|  | Accused of wrongdoing, the President claims that his aides cannot be called to testify in grand jury proceedings |  |
|  |  Representatives from the United States and Russia have been meeting in secret to come up with a plan to reduce the spread of nuclear weapons |  |
|  | Members of the California National Guard receive secret information that terrorists are planning to attack the Golden Gate Bridge in San Francisco |  |
|  | The House Government Reform and Oversight Committee Requests Justice Department documents that are related to campaign finance abuses. |  |
|  | After pardoning several individuals, the President refuses to allow his top staff members to testify before a House panel investigating the pardons. |  |