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The law professor and the English language education specialist plan to use a similar discourse analysis scaffold to teach the students how to analyze a typical exam question – the “problem question”<sup>99</sup> and write an IRAC answer. In such an exam question, the student is presented with a description of events, the length of which could be from one-half a page to more than a page. The student must then give “legal advice to one or more of the parties concerned, often forecasting what the decision of the court will be.”<sup>100</sup> The questions left yet to be determined are: How much scaffolding is needed in the form of these Reading Guides? Should a whole course be developed around using them, or should the students be weaned off them; if so when, and when should the more traditional law student reading guide, the case brief, be added?<sup>101</sup>

## V. CONCLUSION

In conclusion, the well-developed body of ESP literature is not especially instructive for students who arrive at U.S. law schools ready to embark on an LLM, an advanced-standing JD, or SJD degree, as much of it is written by scholars who are not trained in law. International students matriculated in U.S. law schools would benefit more from a content-based approach, which would blend substantive instruction in law with discourse analysis. The literature on this approach is scarce, however. This paper has described one course in which a law professor and a English language education specialist teamed up to create reading guides for leading U.S. legal decisions to be used in the early part of the semester by international LLM and foreign exchange students. While more work needs to be done in the areas of assessment and transitioning

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99. See generally Howe, *supra*, note 42 (analyzing how law students and professors answer the “normal” law school exam question).

100. Howe, *supra* note 42, at 219.

101. See, e.g., *How to Write a Case Brief for Law School: Excerpt Reproduced from Introduction to the Study of Law: Cases and Materials*, LEXISNEXIS <https://www.lexisnexis.com/en-us/lawschool/pre-law/how-to-brief-a-case.page> (last visited Feb. 19, 2021).

the students away from this scaffolding, joint language specialist-law professor reading guides may be a promising way to help the influx of L2 students into U.S. law schools.

**APPENDIX A: READING GUIDE OF U.S. V. NIXON;  
MATERIAL IN RED IS IN THE TEACHER'S VERSION ONLY**

*U.S. v. Nixon* Reading Guide

**Directions: Complete the vocabulary activities that follow, then read the 3 excerpts from *United States v. Nixon*. Complete the exercises below each excerpt.**

**I. Vocabulary: Study the definitions of the following legal terms.**

**adjudicate:** To rule on judicially. (Noun: adjudication)

**delegate:** To give part of one's power or work to someone in a lower position. (Noun: delegate or delegation)

**due process:** In criminal law, the constitutional guarantee that a defendant will receive a fair and impartial trial. In civil law, the legal rights of someone who confronts an adverse action threatening liberty or property.

**in camera:** Latin, meaning in a judge's chambers. It refers to a review by a judge outside the presence of a jury and the public. In private.

**jurisdiction:** The legal authority of a court to hear and decide a certain type of case.

**justiciability:** The condition of being appropriate for adjudication by a court.

**prosecute:** To charge someone with a crime. A *prosecutor* tries a criminal case on behalf of the government. (Noun: prosecution)

**subpoena:** A command, issued under a court's authority, to a witness to appear and give testimony. (Can be used as a noun or verb)

**waive:** To abandon a claim, privilege, or right. (Noun: waiver)

**Complete the following sentences with a legal term defined above.**

1. The Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case.
2. Judges may harbor due process concerns for defendants who claim they need access to foreign evidence.
3. Victims... were jailed when they failed to comply with a subpoena for their testimony.
4. Courts must refuse to recognize a foreign judgment if the foreign court lacked personal jurisdiction over the defendant.
5. The government may request an in camera hearing to determine the "use, relevance, or admissibility" of classified information before a trial.
6. Federal courts must decline to adjudicate matters deemed more appropriate for political than judicial decisionmaking.
7. A person may waive his or her Fourth Amendment rights, but that waiver must be voluntary as determined by the totality of the circumstances.
8. Some environmental statutes delegate federal authority to tribes and thus permit tribal regulations promulgated under the statute.
9. Very few cases have actually been litigated; federal judges wisely often refuse on justiciability grounds even to consider cases.



**II. Excerpt 1: Read the following excerpt and answer the questions below.**

**Justiciability.** In the District Court, the President's counsel argued that the court lacked **jurisdiction** to issue the **subpoena** because the matter was an intra-branch dispute between a subordinate and superior officer of the Executive Branch, and hence not subject to judicial resolution. That argument has been renewed in this Court with emphasis on the contention that the dispute does not present a "case" or "controversy" which can be **adjudicated** in the federal courts. The President's counsel argues that the federal courts should not intrude into areas committed to the other branches of Government. He views the present dispute as essentially a "jurisdictional" dispute within the Executive Branch which he analogizes to a dispute between two congressional committees. Since the Executive Branch has exclusive authority and absolute discretion to decide whether to **prosecute** a case, it is contended that a President's decision is final in determining what evidence is to be used in a given criminal case. Although his counsel concedes that the President has delegated certain specific powers to [a] Special Prosecutor [appointed specifically to investigate the Watergate scandal], he has not "**waived** nor **delegated** to the Special Prosecutor the President's duty to claim privilege as to all materials . . . which fall within the President's inherent authority to refuse to disclose to any executive officer." Brief for the President 42. The Special Prosecutor's demand for the items therefore presents, in the view of the President's counsel, a political question under *Baker v. Carr*, 369 U. S. 186 (1962), since it involves a "textually demonstrable" grant of power under Art. II.

**Main Ideas:** *Answer the following main idea questions based on the excerpt above. Use your own words in your responses.*

**1. What is the main argument of the president's attorney on the issue of justiciability?**

The main argument is that this case should not be heard by the Court because it is a dispute within the

Executive branch between the special counsel and the president.

**2. List three reasons why the president's attorney is making such an argument.**

(1) it is not a case or controversy; rather it is an inter-branch dispute; (2) because the executive branch decides whether to prosecute, the head of the executive branch (i.e., the president) has the final authority as to what evidence to use in prosecutions; (3) even though certain powers of the president were delegated to the special prosecutor, the president didn't waive his right to claim privilege.

**Text Analysis: Answer the following questions based on the excerpt above.**

**1. Reread the following sentence:** *In the District Court, the President's counsel argued that the court lacked jurisdiction to issue the subpoena because the matter was an intra-branch dispute between a subordinate and superior officer of the Executive Branch, and hence not subject to judicial resolution.*

**What does Chief Justice Burger mean by "intra-branch dispute"? Why is that relevant?** An intra-branch dispute refers to a dispute between one branch of government (executive, legislative, or judicial) with another branch. This is relevant because often intra-branch disputes are not "justiciable" – that is, a court will not hear them.

**2. Consider the following sentence:** *He views the present dispute as essentially a "jurisdictional" dispute within the Executive Branch which he analogizes to a dispute between two congressional committees.*

**What analogy is being made here? Why?**

The analogy is that a dispute between a special prosecutor and a president is an intra-executive branch dispute just like a dispute between 2 congressional

committees is an intra-legislative branch dispute. Just like a court would not hear an intra-legislative dispute, so this Court should not hear the intra-Executive branch dispute.

**3. Paraphrase the following sentence so that it could be understood by someone who has never studied law.**

*Since the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case, it is contended that a President's decision is final in determining what evidence is to be used in a given criminal case*

Because the Executive Branch alone has the power to decide whether to bring a criminal case, the President, as head of the Executive Branch, has the final say in deciding what evidence can be used in a criminal case.

**4. Analyze the structure of the following sentence:**

*Although his counsel concedes that the President has delegated certain specific powers to [a] Special Prosecutor [appointed specifically to investigate the Watergate scandal], he has not "waived nor delegated to the Special Prosecutor the President's duty to claim privilege as to all materials . . . which fall within the President's inherent authority to refuse to disclose to any executive officer."*

**To whom does "his" refer in the first sentence? Underline the adverb clause (beginning with the word "although"). What function does this clause serve in the sentence?**

- "His" refers to the president.
- An adverb clause is a group of words that function as an adverb. The clause can modify verbs, adverbs and adjectives by telling when, where, why, how, how much and under what condition. They begin with a subordinating conjunction (such as "after," "if," "because" and "although") and they contain a subject and a predicate. Here, the adverb clause is: Although his counsel concedes that the President has delegated certain

specific powers to [a] Special Prosecutor [appointed specifically to investigate the Watergate scandal]

- Function: It's a concession.

**5. Re-read the following sentence:** *The Special Prosecutor's demand for the items therefore presents, in the view of the President's counsel, a political question under Baker v. Carr, 369 U. S. 186 (1962), since it involves a "textually demonstrable" grant of power under Art. II.*

**Why does Chief Justice Burger mention *Baker v. Carr* in this sentence?**

The Justice cites to *Baker v. Carr* as support for the president's argument that, under the standards of *Baker v. Carr*, the question of whether to respond to the subpoena is a non-justiciable political question. In the U.S., both parties cite to precedent (previous cases) to lend support for their arguments.

**III. Excerpt 2: Read the following excerpt and answer the questions below.**

In support of his claim of absolute privilege [of confidentiality] the president's counsel urges two grounds. \*\*\* The first ground is the valid need for protection of communications between high Government officials and those who advise and assist them in the performance of their manifold duties. \*\*\* The second ground asserted by the President's counsel in support of the claim of absolute privilege rests on the doctrine of separation of powers. \*\*\* However, neither the doctrine of separation of powers nor the need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances. The President's need for complete candor and objectivity from advisers calls for great deference from the courts. However, when the privilege depends solely on the broad, undifferentiated claim of public interest in the confidentiality of such conversations, a confrontation with

other values arises. Absent a claim of need to protect military, diplomatic, or sensitive national security secrets, we find it difficult to accept the argument that even the very important interest in confidentiality of Presidential communications is significantly diminished by production of such material for *in camera* [private judicial] inspection with all the protection that a district court will be obliged to provide.

**Main Ideas: Answer the following main idea questions based on the excerpt above. Use your own words in your responses.**

1. What is the president's argument about "absolute privilege"?

The president argues that the president has the complete right to declare his communications private.

2. What are the two grounds on which the president is claiming absolute privilege?

(1) "the valid need for protection of communications between high Government officials and those who advise and assist them in the performance of their manifold duties" and (2) the doctrine of separation of powers.

3. Why does Chief Justice Burger "find it difficult to accept the argument"?

Because an *in camera* inspection will sufficiently protect the confidentiality of the president's communications.

**Text Analysis: Answer the following questions based on the excerpt above.**

1. Analyze the structure of the following sentence:  
*However, neither the doctrine of separation of powers nor the need*

*for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances.*

**What is the function of "however" at the beginning of this sentence?**

The use of "however" means that what follows contrasts with the previous statement. However can show a contrast or a concession.

**Underline the subject of the sentence. What is the function of "neither... nor..." in the subject? What is the function of the phrase "without more" in this sentence?**

The neither/nor construction connects two or more negative statements. Here, it connects two subjects or "compound subjects": (1) the doctrine of separation of powers and (2) the need for confidentiality of high-level communications.

The subject of the sentence is: neither the doctrine of separation of powers nor the need for confidentiality of high-level communications

**2. Paraphrase the following sentences:** *The President's need for complete candor and objectivity from advisers calls for great deference from the courts. However, when the privilege depends solely on the broad, undifferentiated claim of public interest in the confidentiality of such conversations, a confrontation with other values arises.*

The court pays deep respect to the president's argument that he needs total frankness and a lack of bias from his advisors deserves. However, this argument here is less persuasive because it is based on a vague assertion that the public has an interest in such confidentiality; therefore, other arguments may be more persuasive.

**3. Consider the following sentence:** Absent a claim of need to protect military, diplomatic, or sensitive national security secrets, we find it difficult to accept the argument that even the very

*important interest in confidentiality of Presidential communications is significantly diminished by production of such material for **in camera** [private judicial] inspection with all the protection that a district court will be obliged to provide.*

**The adverb clause underlined above modifies the main clause. What is the purpose of the adverb clause in this sentence? Why might the information be necessary?**

The purpose of the clause is to set out the circumstances under which a claim of presidential confidentiality would be a winning argument, but it says those circumstances are not present here. This information is necessary to set out a complete ruling in the case; it could also serve the purpose of signifying to the president's attorneys how to come back and make a winning argument.

**IV. Excerpt 3: Read the following excerpt and answer the questions below.**

In this case, we must weigh the importance of the general privilege of confidentiality of Presidential communications in performance of the President's responsibilities against the inroads of such a privilege on the fair administration of criminal justice. The interest in preserving confidentiality is weighty indeed, and entitled to great respect. However, we cannot conclude that advisers will be moved to temper the candor of their remarks by the infrequent occasions of disclosure because of the possibility that such conversations will be called for in the context of a criminal prosecution.

On the other hand, the allowance of the privilege to withhold evidence that is demonstrably relevant in a criminal trial would cut deeply into the guarantee of due process of law and gravely impair the basic function of the court. \*\*\* Without access to specific facts, a criminal prosecution may be totally frustrated. The President's broad interest in confidentiality of communications will not be vitiated by disclosure of a limited number of conversations preliminarily shown to have some bearing on the pending criminal cases.

We conclude that, when the ground for asserting privilege as to subpoenaed materials sought for use in a criminal trial is based only on the generalized interest in confidentiality, it cannot prevail over the fundamental demands of **due process** of law in the fair administration of criminal justice. \*\*\*

**Main Ideas: Answer the following main idea questions based on the excerpt above. Use your own words in your responses.**

- 1. Per Excerpt 3, what is the court's responsibility in this case?** To balance the president's argument about privilege against the interests of a fair criminal trial.
- 2. What are the two sides of the argument?** The president's argument is that he has a general right to keep his communications private; the government argued that it had the right to seek evidence from the president that was "demonstrably relevant" in a criminal trial.
- 3. On which side does the court rule? Why?** The court held in favor of the special prosecutor seeking the communications and against the president. The reason was because the president asserted only a "general" privilege; that is, not one based on a "need to protect military, diplomatic, or sensitive national security secrets. This general claim does not trump a defendant's right to due process in a criminal proceeding.

**Text Analysis: Answer the following questions based on the excerpt above.**

- 1. Paraphrase the following sentence.** *We cannot conclude that advisers will be moved to temper the candor of their remarks by the infrequent occasions of disclosure because of the possibility*



*that such conversations will be called for in the context of a criminal prosecution.* The Court does not believe that the president's advisors will be less frank even if they know that their comments might in rare circumstances be made into evidence in a criminal trial.

**2. Analyze the structure of the following sentence:** *On the other hand, the allowance of the privilege to withhold evidence that is demonstrably relevant in a criminal trial would cut deeply into the guarantee of due process of law and gravely impair the basic function of the court.*

**What is the function of "on the other hand" at the beginning of the sentence?**

"On the other hand" shows a contrast that is the opposite of the previous statement.

**The adjective clause underlined above modifies a noun. What noun does it modify? Why is this information necessary?** The noun it modifies is "evidence." The clause serves to limit the types of evidence that can trump a general claim of presidential privilege.

**The allowance of privilege to withhold evidence would, *inter alia* "gravely impair the basic function of the court." Why?** One of the powers of the court is to issue subpoenas to produce evidence. Without evidence, "a criminal prosecution may be totally frustrated."

**3. Consider the following sentence:** *Without access to specific facts, a criminal prosecution may be totally frustrated.*

**In the context of the passage, explain what may cause a criminal prosecution to be "totally frustrated." What decision by the Court could prevent the defendant in a criminal prosecution from gaining access to these "specific facts?"** A prosecution will be frustrated if the parties do not have access to all relevant facts. Had the Court

held for the president, his assertion of privilege would have kept the documents from being inspected *in camera* by the judge for a determination of relevancy.

**4. Analyze the word choice in the following sentence:**

*The President's broad interest in confidentiality of communications will not be vitiated [impaired] by disclosure of a limited number of conversations preliminarily shown to have some bearing on the pending criminal cases.*

**What two antonyms (words with opposite meaning) are used here?**

Broad / limited.

N.b, some students may note confidentiality / disclosure

**Why might Chief Justice Burger have chosen to use these antonyms in his decision?** He is contrasting the wide range of the president's claim of privilege to the small number of documents that would need to be produced.