

Muskie Claims New 'Privilege' Rules a 'Haven'

By George Lardner Jr.
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Sen. Edmund S. Muskie (D-Maine) charged yesterday that the White House's new guidelines on executive privilege seem designed to bar any congressional or grand jury inquiry into the President's own conduct.

Muskie protested that the guidelines, issued last week, are even more sweeping in a crucial area—that of alleged wrongdoing at the White House—than Attorney General Richard G. Kleindienst's controversial assertions last month.

Kleindienst, who is stepping down as Attorney General, maintained in Senate testimony April 10 that executive privilege could be invoked to block congressional testimony by any federal employee, even in impeachment proceedings.

Muskie said that Kleindienst at least indicated that the presidential privilege "ended at the threshold of the judicial system, when an inquiry into criminal conduct was involved."

Alluding to the Watergate scandal, Muskie said, "allegations of criminal conduct are precisely at issue now. The newest White House guidelines go beyond the Attorney General's statement and force us to wonder whether, after all, a haven is being built for certain crimes."

The guidelines were promulgated May 3 in what the White House described as an expression of President Nixon's wishes "that the invocation of executive privilege be held to a minimum."

They state that past and

present members of the President's staff should invoke the privilege "only" when questioned about:

- Conversations with the President.
- Conversations among White House staff members "involving communications with the President."
- Presidential papers, including "all documents produced or received by the President or any member of the White House staff in connection with his official duties."

The guidelines also state that the privilege should be invoked to prevent disclosure of those matters whether the questioning comes from the FBI, the Senate's Watergate investigating committee, or a grand jury.

A White House official subsequently told The Washington Post that the new guidelines would in no way prevent anyone from testifying about an alleged crime.

Muskie was not impressed. Opening a new round of hearings on the privilege doctrine as chairman of the Senate Inter-governmental Relations Subcommittee, he noted that the guidelines make "no exception... with regard to allegations of criminal conduct." By contrast, he said,

Kleindienst assured the Senate in his testimony that "for crime there can be no haven."

"Maybe they, don't think that needs repetition," a spokesman for Muskie said later. "Maybe it's just sloppy drafting. But the effect is still confusing."

Adding his protests, Sen. Harold E. Hughes (D-Iowa), the first witness at yesterday's Senate hearing, recalled Mr. Nixon's statement April 17 that no high administration official, past or present, would be given immunity from prosecution in the Watergate case. Hughes called it "inconsistent and wrong for the President" to do that "and yet grant this blanket immunity from testifying on documents which flow into or out of the White House."

Muskie also took sharp exception to another section of the new May 3 guidelines stating that witnesses would be prevented from testifying about "matters relating to national security," not by the privilege doctrine, but by "laws prohibiting the disclosure of classified information."

Calling that "gratuitous and misleading," Muskie said only two laws specifically prohibit disclosure of "classified information," one dealing with cryptographic and communication intelligence and the other involving disclosures to foreign agents or members and officers of Communist organizations.

AT a House Government Information Subcommittee hearing on the same issue, Assistant Attorney General Robert Dixon acknowledged under questioning by Rep. Paul N. McCloskey (R-Calif.) that the new guidelines were written by the White House without consultation with the Justice Department.