

SENATE PANEL BID REJECTED BY KLEIN

White House Aide Declines
to Testify on Press

By WALTER RUGABER

Special to The New York Times

WASHINGTON, Sept. 27—The Nixon Administration's chief of information has declined an invitation to appear before a Senate subcommittee that is scheduled to begin hearing tomorrow on freedom of the press.

Herbert G. Klein, director of communications for the executive branch, in effect invoked executive privilege in refusing to testify before the Subcommittee on Constitutional Rights.

Senator Sam J. Ervin Jr., the panel chairman, has said that Government officials will be questioned about "the nature, the scope and the reasons for whatever Government control and regulation of the printed and broadcast press now exist."

Meanwhile, the American Civil Liberties Union issued a report charging the Government with attacks on the press that constituted "a massive Federal-level attempt to subvert the letter and the spirit of the First Amendment."

Mr. Klein informed Senator Ervin, it was disclosed, that he would not be a witness before the North Carolina Democrat's subcommittee on the ground that he was "a member of the immediate staff of the President."

It has been regularly held that under the Constitution officials of one branch of government — typically the legislative — cannot force testimony or information from those of another, coequal branch — typically the executive.

Called 'Very Peculiar'

The Nixon Administration is particularly sensitive about this executive privilege nowadays because of efforts by the Senate Foreign Relations Committee to question Henry A. Kissinger, Mr. Nixon's national security adviser.

Mr. Klein was in Anchorage with the President today and could not be reached for comment on his refusal to come before the Ervin panel.

The Senator's aides asserted that executive privilege was not an issue. They said Mr. Klein had merely been "invited" — not ordered — to "come and talk about press-government relations and how they look from the White House and to outline the Government's position.

A spokesman for Mr. Ervin, who noted that Mr. Klein was the only one among those invited to testify who had declined to do so, voiced "disappointment" over the move.

Another aide called it "very peculiar in light of the Justice Department's desire to subpoena everyone in Congress who knows anything about the Pentagon papers."

This was a reference to Federal attempts to question an aide to Senator Mike Gravel, Democrat of Alaska, in connection with the disclosure of the Pentagon history of American involvement in the war in Vietnam.

Senator Ervin said the hearings would take up the "increased use" of subpoenas to require reporters to testify and produce their notes and the problem of reconciling "national security" with the First Amendment prohibition against prior restraints on the press.

First Witnesses

He also listed inquiries into the use of false press cards by Government investigators and "the increasing amount of Government control and influence" over radio and television news. The Senator added:

"Over and above these four particular issues lies another, more general and more serious one. That is the growing deterioration of the relationship between the press and the Government."

Witnesses scheduled for the opening session tomorrow include Senator James B. Pearson, Republican of Kansas; Representative Charles W. Whalen Jr., Republican of Ohio; Harding F. Bancroft, executive vice president of The New York Times, and Norman Isaacs of the Columbia School of Journalism.

The Civil Liberties Union report, entitled "The Nixon Administration and the Press: The Engineering of Restraint," was written by Fred Powledge, a freelance writer.

"The history of governmental interference with the press has spanned several recent national Administrations," Mr. Powledge wrote. "But they [Federal assaults] have been mounted with greater intensity and frequency during the present Administration."

Mr. Powledge also found a "subtle tendency . . . of the press itself to pull back; to consider the controversiality of its actions before it takes them, and then, in some cases, not to take those actions — to engage in self-censorship."

NY Times 9/28/71 p. 16 C1