

COUNSEL TO NIXON TELLS SENATE UNIT HE WON'T TESTIFY

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Presidential Policy Is Cited
—Dean Offers to Answer
Written Queries on Gray
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WASHINGTON, March 14 — John W. Dean 3d, President Nixon's chief legal counsel, declined today an invitation to appear before the Senate Judiciary Committee in connection with the nomination of L. Patrick Gray 3d, Mr. Nixon's choice to become director of the Federal Bureau of Investigation.

In a letter to Senator James O. Eastland, Democrat of Mississippi, chairman of the committee that tendered the invitation yesterday, Mr. Dean cited as ground for his refusal a statement by the President on Monday that all members of his personal staff would decline to make such appearances before Congress.

He agreed, however, to accept and answer written questions from the committee that were directly related to the Gray nomination, but offered no assurance that he would answer any he found unrelated.

Some Democrats Unsatisfied

Several of the committee's Democratic members immediately termed Mr. Dean's response "unacceptable" and were reported to be gathering support for an attempt to keep the nomination from going to the Senate floor unless the White House changed its mind.

"We need Mr. Dean's testimony under oath and in full, not polished written responses that have been edited and re-edited through White House channels," Senator John V. Tunney of California declared following receipt of the White House letter.

Mr. Tunney, the most persistently outspoken advocate of the need for an appearance of Mr. Dean, presented a motion, approved yesterday in the committee by a unanimous vote, to "invite" him to testify.

Watergate Questioning

Mr. Tunney and other Democrats have said that they want to question the presidential aide on a number of matters relating to the the Watergate case raised earlier in testimony by Mr. Gray. The case in question involved the break in and bugging last June at the Democratic National headquarters in the Watergate office building here.

Mr. Dean was selected by the President last summer to determine whether there had been any involvement of White House staff members in the Watergate bugging and Mr. Gray has testified that he sent to Mr. Dean in that capacity numerous reports from the F.B.I.'s own investigation of the matter.

Several committee Democrats have questioned Mr. Gray's judgment in passing the reports to Mr. Dean, and have noted allegations that the Presidential counsel had close ties to two of the men indicted for conspiring to bug telephones in

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the Democratic party's headquarters.

Senator Robert C. Byrd, the majority whip and a member of the Judiciary Committee, who has announced his intention to oppose Mr. Gray's confirmation, told the Senate today that he believed the committee "ought to stand by" its decision to call Mr. Dean.

Another Democrat, Birch Bayh of Indiana, added that Mr. Nixon "has done a great disservice to Mr. Gray by refusing to allow Mr. Dean to appear," and Sam J. Ervin Jr. of North Carolina noted drily that it was "impossible to cross-examine a written answer."

Informed committee sources said that the committee's Democratic majority might be able to prevent the approval of Mr. Gray's nomination, or even to defeat it, in view of the position taken by the White House today.

This might be done, they said, despite the fact that Sen-

ator Eastland has consistently favored Mr. Gray to head the F.B.I., of which he has been acting director for the last 10 months.

But a committee aide, noting that Mr. Eastland, has also said that he would not vote to subpoena Mr. Dean formally said that he was "not sure we have the votes" to approve such a move. "Even if we did," he added, "a lot of people feel that the final crunch ought more properly to come in the Ervin committee."

Ervin Inquiry Planned

He referred to a select Senate committee headed by Ervin that is expected to begin a broad investigation of the Watergate affair sometime in May.

The only question mark among the committee's eight remaining Democratic members is Senator John L. McClellan of Arkansas, but he has a counterpart on the minority side in Charles McC. Mathias Jr., a liberal Republican from Maryland.

It was suggested by a committee staff member that, rather

than voting the nomination up or down, the Democrats might move to table it until the Ervin committee has completed its work, probably sometime in early 1974. The effect of such a move would almost certainly be to force the White House to withdraw Mr. Gray's name.

The committee's vote to call Mr. Dean, taken in a closed session yesterday, was never strongly opposed by the seven Republican members, although one of them, Senator Edward J. Gurney of Florida, offered amendments, all rejected, that would have limited the scope of Mr. Dean's testimony.

Republican sources said they knew of little, if any, pressure exerted on their members by the White House to oppose the invitation to Mr. Dean, despite the President's strong opposition of the day before.

The committee canceled a scheduled session today after a second witness invited yesterday, a Washington lawyer, Thomas Lumbard, withdrew his decision of last night to appear. Mr. Lumbard, a former Treasury and Justice Department attorney, said today that he had done so after deciding that his testimony would be "of marginal importance."

Two others invited yesterday, Judith Hoback of Palm Beach, Fla., and Thomas E. Bishop, a former assistant director of the F.B.I., also declined to testify.

Mrs. Hoback, a former employe of the Finance Committee to Re-elect the President, reportedly told the committee that her appearance would represent a personal hardship. Mr. Bishop, who retired as head of the F.B.I.'s crime records division earlier this year, gave no reason for declining.

The hearings are expected to continue next week, when Mr. Gray will return and complete his testimony.

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