

Mr. Kleindienst in Wonderland

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It was a fantastic scene. There was the Attorney General of the United States, telling a panel of Senators in all seriousness that he believed the President has a right to forbid any of the 2½ million employees of the federal government to testify before Congress — even in impeachment proceedings or in the investigation of a crime. It was too much even for those who have gotten accustomed to being astounded on a regular basis by administration claims of sweeping executive power.

One who refused to swallow his indignation was Rep. John B. Anderson, the thoughtful chairman of the House Republican Conference. In a hastily-scheduled appearance before the same Senate hearing the next morning, Rep. Anderson stressed "in the strongest terms possible my utter shock and dismay" at Mr. Kleindienst's testimony. He declared:

His statement was not only unnecessarily provocative and contemptuous of the Congress, but, more importantly, it contained such an alarming and dangerous expansion of the notion of executive privilege, that I can see only one course of action . . . The Attorney General has thrown down the gauntlet; if this Congress is to preserve even a semblance of integrity and independence, it must act immediately to nullify the sweeping claim of executive power asserted by the Attorney General.

Rep. Anderson put it exactly right. Mr. Kleindienst's assertion strikes at the heart of the constitutional power — indeed, the obligation — of the legislative branch to inquire into the operations of the government and oversee the enforcement of the laws. There was arrogance enough in President Nixon's recent pronouncement that executive privilege extends not only to confidential communications between the chief executive and his closest advisers, but also to all of the other activities of present and former members of the White House staff. But even that presumption pales beside Mr. Kleindienst's view — sanctioned as "administration policy" by White House spokesman Ronald Ziegler — that the President is at liberty to block any congressional inquiry into any legal or extra-legal activ-

ity of anyone on the federal payroll, whether or not the President is directly involved. Mr. Ziegler maintained that Attorney General Kleindienst's testimony "related to broad principles and was not addressed to specific matters." But this administration is so purposeful in its grasp of principle that it is hard not to suspect a scheme afoot not only to frustrate the Senate's Watergate inquiry, but also to ward off other probes of matters as yet unexplored.

Mr. Kleindienst's performance lays bare the hypocrisy of the administration's oft-professed desire to cooperate with Congress. Indeed, the Attorney General seemed to be spoiling for a fight. He declared several times that Congress could contest his view of executive privilege by cutting off funds for the executive branch or trying to impeach the President. For impeachment, he asserted — in the most astonishing statement of an astonishing day — Congress would not need "facts" or "evidence," but just the votes. Such gross pragmatism, in tune with other recent administration views, suggests a cold calculation that, no matter how extreme the provocation, Congress is too disorganized or too deferential to mount an effective institutional defense.

It is ominous when the chief legal officer of the government displays such contempt for the basic principle of government by law. Many inside and outside the Congress share the apprehension voiced by Republican Sen. Charles Mathias when he said, "I am reluctant to see any kind of final confrontation . . . which would be an admission that the element of goodwill which has sustained this antique Constitution of ours so long has finally failed." Yet there is precious little goodwill around the White House these days, and unilateral forbearance by the Congress may produce only greater imbalances in the exercise of power. Reactions such as Rep. Anderson's call for immediate enactment of curbs on executive privilege are heartening. "I didn't come over here [to the hearings] to be heroic," the congressman told reporters. The times are even stranger than we thought if it is judged heroic to stand up for the constitutional scheme of government.