

ATTORNEY GENERAL KLEINDIENST EXPLAINING ADMINISTRATION'S STAND ON EXECUTIVE PRIVILEGE IN CAPITOL HEARING

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Rising Emotions Over Money and Secrecy

"Frightening."
 "Contemptuous."
 "Amazingly arrogant."

THOSE sharp words from Senators and Congressmen reflected the rising emotions in Washington as the Administration and the Congress held fast to their collision course over Richard Nixon's drive to expand the power of his presidency. At issue were two quite distinct matters: 1) Nixon's determination to decide how federal tax money will be spent, and 2) his desire to protect the entire Executive Branch against congressional scrutiny. More specifically, the latter argument centered on his attempt to keep all White House officials, past or present, from being publicly grilled about the Watergate political espionage scandal.

Last week Attorney General Richard Kleindienst expanded even further the President's already unprecedented claim for Executive privilege. Testifying before an unusual joint hearing by three House and Senate subcommittees, Kleindienst asserted that Congress has no power to hear from any one of the 2,500,000 federal employees if it subpoenas him and the President tells him not to appear. The Attorney General insisted that the doctrine involved "an enduring constitutional value" extending almost back to the Constitution's birth. But as Maine Democrat Edmund Muskie, keeping his short temper carefully in check, asked for legal precedents and a more precise history of the doctrine, Kleindienst turned vague and sarcastic, referring to Muskie's "piercing questions."

Asked the incredulous Muskie: "The Congress has no power at all to command testimony from the Executive departments?" Replied Klein-

dienst: "If the President of the United States so directs."

Muskie: "Do we have the right to command you to testify against the will of the President?"

Kleindienst: "If the President directs me not to appear, I am not going to appear."

Muskie: "Does that apply to every appointee of the Executive Branch?"

Kleindienst: "I'd have to say that is correct."

If Congress does not like that situation, Kleindienst added, it can always "cut off our funds, abolish most of what we can do or impeach the President." But, asked North Carolina Democrat Sam Ervin, how could the President be impeached if no one in the Executive Branch could be compelled to testify or supply evidence in the impeachment proceedings? Answered Kleindienst, in an amazing interpretation of proper legal procedure: "You don't need facts to impeach a President."

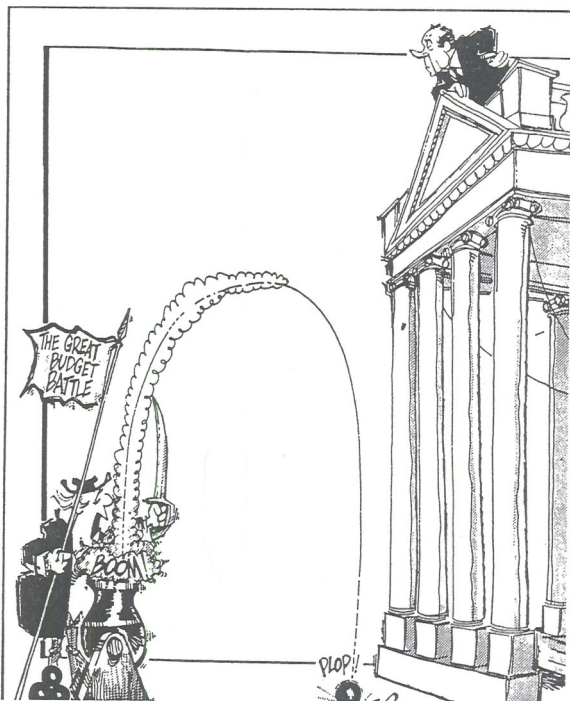
Some Senators were outraged. "I've never heard anybody talk like that before," fumed Arkansas Democrat J.W. Fulbright. "He seemed to be taunting us. He implied that we are a bunch of boobs." Muskie termed Kleindienst's theory "an unprecedented and frightening claim of the scope of the President's power." A House Republican leader took the unusual step of appearing before the Senate subcommittees to assail Kleindienst's testimony. Illinois' John B. Anderson, chairman of the House Republican Conference, charged that Kleindienst was "provocative and contemptuous of Congress" and that his views "border on contempt for the established law of the land." Pennsylvania's Democratic Congressman William Moorehead testified, too, calling Klein-

dienst "amazingly arrogant" and his views "monarchical or totalitarian."

Harvard Law Historian Raoul Berger told the hearing that Executive privilege is "a myth" with no precedent in English parliamentary procedure or in the Constitution and that Congress is "the highest grand jury in the land" with power to call anyone before it. The Administration was treating Congress "like office boys," he said, adding: "You'll be treated that way until you stand up on your hind legs and kick them in the slats."

Hovering over the hearings was the fight over whether Ervin's select Senate committee can force White House

"Fire, er, one . . ."





SENATOR MUSKIE AT HEARING
Outrage and incredulity.

aides to testify publicly on the Watergate affair. Negotiations to try to break the impasse on this issue were under way between the committee and the White House, but there was no indication of how the matter might be compromised.

Republicans continued to complain that the President's failure to reveal whatever he or his aides know about that wiretapping operation was seriously hurting the party. With the kind of vehemence he normally directs at Democrats and liberals, Arizona Senator Barry Goldwater complained: "The Watergate. The Watergate. It's beginning to be like Teapot Dome. There's a smell to it. Let's get rid of the smell." The issue, he told the *Christian Science Monitor*, gets down to "Can you trust Dick Nixon?" Later Anne Armstrong, Counsellor to President Nixon, told a group of Washington newsmen that she agreed with Goldwater's claim that Watergate was hurting fund-raising efforts by the Republican National Committee and could hamper G.O.P. candidates in the 1974 elections.

Despite all this furor, the President was making gains on another front. He was winning his battle with Congress over budget priorities. Last week the House, by the wide margin of 51 votes, failed to override a bill that Nixon had vetoed on grounds that it was inflationary—the second such failure in two weeks. The bill would have required the Secretary of Agriculture to spend \$120 million previously appropriated by Congress to finance water and sewer systems in rural areas. Noting that the sewer bill had originally passed the House 297 to 54 and that 80 Republicans had switched their votes to sustain the veto, House Speaker Carl Albert complained: "I've never seen a President who had so many people tamed, like puppy dogs on a chain."

Neither side in the budget battle could claim any adherence to lofty prin-

ciples, however. Under congressional pressure, the Administration reversed itself and agreed to release some \$415 million in aid to school districts that have large numbers of federal employees, including servicemen, living in them. Some of these districts are relatively wealthy, and every President since Dwight Eisenhower has tried to cut this program.

Nixon was not doing well in the courts on either his claim that he can end programs initiated by Congress or that he can refuse to spend money authorized by it. Federal Judge William B. Jones ruled in a Washington district court that the Administration's dismantling of the Office of Economic Opportunity was "unauthorized by law, illegal and in excess of statutory authority." The President has no power, said the judge, "to refuse to execute laws passed by Congress with which he disagrees." The ruling, important in enunciating a principle, may have no practical effect because the agency has already been severely curtailed, and Nixon will probably refuse to revive it even if Congress appropriates more money after OEO's funds run out in June.

This decision was similar to that of a three-judge Court of Appeals panel in Missouri, which decided two weeks ago that Nixon had no authority to refuse to spend money appropriated by Congress for highway construction on such "remote and unrelated" grounds as the need to check inflation. The Administration can appeal this unfavorable decision but might follow the court order to spend the money rather than risk a possible broader ruling against impoundment by the U.S. Supreme Court.

While the court skirmishes continued, Congress took a first and far more fundamental step to gain a greater influence over the budget, and thus over national spending priorities. A special Senate and House study group recom-

mended that each body of Congress form its own budget committee to set overall spending limits at the beginning of each session and to allocate funds for specific purposes within that limit. The committees would also set tax rates to pay for the programs or determine what kind of budget imbalance would be permitted. Most important, these committees would be served by a joint staff that could analyze or counter the budget data and recommendations of the massively equipped Executive departments and the White House-based Office of Management and Budget. Since these new committees would curtail the independence of many powerful committee chairmen, intense debate is expected when Congress considers the reforms later this year. Yet some such attempt to control its own spending and taxing procedures is needed if Congress expects to seriously challenge the President's so far successful attempt to seize greater control over the federal purse.

The Tariff Trade-Off

As if he were not already embroiled with Congress on enough issues involving Executive power, President Nixon last week sent to Capitol Hill a bill that would transfer to the White House much of the authority that Congress traditionally has exercised over U.S. trade policy. If it passes, the President, acting on his own, could:

- ▶ Raise or lower tariffs on Japanese cameras, German cars or almost any other foreign goods.

- ▶ Impose quotas on foreign goods—Italian shoes, for example—in order to protect an import-threatened American industry.

- ▶ Order a temporary surcharge on imports from countries that run a persistent surplus in trade with the U.S.

- ▶ Decree that goods from Communist countries be let into the U.S. under tariffs no higher than those levied against the merchandise of America's traditional trading partners.

Nixon argues persuasively that he needs the new power in order to negotiate from strength at world-trade talks beginning in September. He will get an argument from protectionist Congressmen who want to require, rather than merely permit, higher tariffs or quotas on imports that threaten the prosperity of U.S. industries. The President prudently proposed to give Congress a veto over the way he might exercise many of the new trade powers that he is requesting. In a typical example, if he decided to grant "most-favored-nation" tariff status to imports from the Soviet Union, either House or Senate could overrule him by a majority vote within 90 days. That might well happen, since many Congressmen are opposed to giving Russian goods most-favored-nation treatment until the Kremlin drops its tax on Jews emigrating to Israel.

PRESIDENTIAL AIDE ARMSTRONG



WALTER BENNETT