

# Congress Prepares to Rest

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Congress is preparing to take another legislative swipe at the power of the presidency, this one aimed at winnowing out "executive privilege" as a way to withhold White House information from the legislative branch.

A measure with bipartisan sponsorship, approved yesterday, 24 to 16, by the House Government Operations Committee, would force the President to provide a personal explanation within 30 days when he invokes "executive privilege."

The House or Senate, if either body were unsatisfied with his reasons, could then initiate a civil suit in federal

court to determine whether the denial of information met "a compelling national interest."

The measure is likely to renew the constitutional debate over presidential powers which surrounded the war powers bill enacted last year over President Nixon's veto. Sponsors think another veto is likely and that the same votes can be assembled to override it.

But the bill is also under attack from some liberals who insist that Congress should not even concede the existence of "executive privilege" by legislating on it, an argument which parallels what some of them also said against the war powers bill.

The Senate has already enacted a similar bill with slightly different mechanics. It was passed quietly in late December without debate. The House measure is co-sponsored by Rep. John Erlenborn (R-Ill.) and William Moorhead (D-Pa.), and 41 others.

"The problem," said Arlenborn, "has been that the only way we could test executive privilege was to hold the President in contempt of Congress. That is such an awesome weapon and so abrasive that the Congress just hasn't done it. What we've done, in effect, is to allow the President to invoke executive privilege and, in the process, he defines it."

"We have opposition from both sides," said Moorhead. "The liberals are saying we shouldn't legislate at all because the Constitution already gives us more power, while conservatives think that we're impairing the power of the President. Then there's the

great unwashed middle which thinks this bill really is progress."

Rep. John Moss (D-Calif.), one of the leading opponents, argues that the measure implicitly grants the President a right to refuse information which is not provided by the Constitution. Both Government Operations Chairman Chet Hollifield (D-Calif.) and the ranking Democrat, Rep. Jack Brooks (D-Tex.), opposed the measure in committee yesterday, so it will face considerable difficulty in clearing the House.

The proper remedy to claims of executive privilege, Moss said, is simple—"a plain stiffening of the congressional spine and a little bit of guts to stand up to the Executive Branch as aggressively as the Executive has stood up to Congress."

The most familiar clash between White House and Congress has come over the appearance of White House

## strict Executive Privilege

aides who normally refuse to appear before congressional committees, even though they may be more powerful in policy decisions than the Cabinet officers who do testify.

The legislation would require these aides to show up and, if they refused to answer questions on any subject, the President would have to explain why in writing. The bill doesn't mention "executive privilege" by name and doesn't attempt to define what might be worthy reasons for refusing to disclose White House information.

The rationales could range from the traditional claim of the President's need to enjoy confidential advice from his staff to special instances where diplomatic or military strategy would be jeopardized by disclosure. In any case, the U.S. District Court here would be assigned the job of determining the scope of executive

privilege on a case-by-case basis.

In recent years, according to a study by the Library of Congress, the use of executive privilege has increased dramatically, but that might be partly attributable to the fact that President Nixon has faced a Congress controlled by the other party while Presidents Kennedy and Johnson enjoyed majority support in Congress.

According to the study, Nixon, Kennedy and Johnson all promised that "executive privilege" would only be invoked by each of them personally — but officials in all three administrations ignored that pledge and claimed the protection without explicit authority from the President. Usually, agency officials simply refused to testify before congressional inquiries.

Under Kennedy, he used it once himself and lesser officials used it three times with-

out his imprimatur, according to the study. Johnson never used it personally, but others in his administration invoked it twice on their own.

During President Nixon's first four years, he claimed executive privilege four times himself. Other agencies outside the White House, from the Pentagon to the Cabinet Committee on Opportunities for the Spanish Speaking, have refused testimony or documents on 15 occasions. Executive privilege has been invoked again in the President's Watergate defense during his second term.

The proposed legislation states that the House or Senate would initiate the civil legal test by a resolution declaring that the congressional need for the disputed information "outweighs the grounds cited by the President for withholding the information or testimony." The judge plans an open house Satur-

could examine the papers in secret in order to determine which branch of government would prevail.

The bill also makes an exception of impeachment matters. It states that under no circumstances can a President conceal any information which the House or Senate considers relevant to an impeachment investigation or trial.