

# Hill Also Asserts 'Privilege' on Data

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It was a bit of Senate routine, a minor resolution handled without debate or dissent—but the issue behind that formality is one of the central controversies in the Watergate case.

The issue is the privilege of one branch of the government to withhold something sought by another branch. President Nixon is not alone in asserting that prerogative.

Congress also reserves that privilege for itself, and while it normally grants requests from the courts, it maintains the right to withhold material when it chooses.

It is the congressional equivalent of the executive privilege President Nixon is invoking in his battle to withhold White House tape recordings and documents sought by the courts and by House impeachment investigators.

The matter before the Senate the other day was hardly momentous. By resolution, it authorized a Senate Judiciary Committee aide to give a federal court evidence about the panel's rules of procedure. In doing so, the resolution restated the doctrine of control over Senate documents and over the testimony of senators or aides about legislative business:

"... By the privileges of the Senate of the United States, no evidence under the control and in the possession of the Senate of the United States can, by the mandate of process of the ordinary courts of justice, be taken from such control or possession but by its permission."

The requirement that the Senate itself decide whether

to yield materials to outsiders is written into its rules, and covers employees as well as senators. The House reserves similar prerogatives.

Mr. Nixon is arguing that he is entitled to the same discretion over White House documents and tapes on grounds of executive privilege. That is a key part of his argument against subpoenas from the federal courts and the House Judiciary Committee.

## News Analysis

There are differences. Executive privilege is an implied power based on precedent, not on law. Congress has something in writing: the Constitution. Article I, Section 6 says that members of Congress "shall not be questioned in any other place" for speech or debate on the floor.

In rejecting subpoenas from the House committee for material it wants as impeachment evidence, Mr. Nixon noted that each branch of Congress maintains that it alone will judge what, if anything, it will yield in response to demands from the courts.

While the Supreme Court is to rule on White House materials sought by the prosecution for the Watergate trial, that appeal does not involve the unanswered demands of the House committee.

Meanwhile, its prerogatives restated by resolution, the Senate has permitted Peter M. Stockett Jr., staff director of its Judiciary Committee, to file in court evidence that committee rules permit a single senator to take sworn testimony.