

The House-Kissinger Battle Over Contempt: A

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WASHINGTON, Dec. 14 — "We were looking right down the barrel of a gun," a high White House official said. He was talking about a threatened Congressional contempt citation against Secretary of State Henry A. Kissinger for having refused to produce documents, describing covert foreign operations, that had been demanded by the House Select Committee on Intelligence. The test of will between the White House and Congress was resolved last week when the Ford Administration agreed to supply the committee with the information it sought without handing over the subpoenaed documents.

The contempt recommendation was dropped. Both sides made claims of modest victory. But the compromise was difficult for President Ford, who had to make a decision involving a further erosion of what he reportedly viewed as already weakened Presidential power and the need of his Administration to function adequately on a day-to-day basis in foreign and domestic policy.

The President and his advisers, according to a well-placed White House source, said they were confident that they had a strong case and would win a contempt fight in the courts, though there is little legal precedent in the courts on the issue. Several advisers are reported to have urged the President to fight.

Several advisers are reported to have urged the President to fight. Mr. Ford is said to believe that the Presidential prerogative of withholding confidential advice by members of his Administration was badly eroded by the Watergate scandals and the abuses of President Nixon and other Administrations that have recently come to light.

Steady Loss Feared
In the White House view, the bit in its teeth after forcing the resignation of Mr. Nixon-VCoxtioning to chew away at the right of Presidential confidentiality in decision-making. One lawyer formerly in the White House counsel's office said that the Administration had "bent over backwards" to avoid an assertion of executive privilege in its dealings with Congress following the Watergate affair.

In fact, the refusal to hand over to the House committee the documents on covert foreign activities was the first time President Ford had claimed executive privilege since taking office in August 1974. Mr. Ford is reported to have invoked this privilege only after the demand by the House committee had been exhaustively examined.

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and Confidentiality

The White House staff concluded that the President's claim of confidentiality, which involved, among other documents, recommendations on national security by Secretaries of State to Presidents, would almost certainly have been upheld in a court test with Congress.

The staff director of the House committee, Searle Field, conceded when asked by a reporter that the courts might well have upheld the claim of executive privilege for communications between Secretaries of State and Presidents. He added that he thought the committee could have won on the other documents involving exchanges between lower ranking officials of the executive branch.

The President and his advisers are reported to have thought seriously about letting the House committee follow through on its contempt citation against Mr. Kissinger. Because they are said to have

thought they had such a strong case, a White House counterattack, they felt, might restore some of the eroded Presidential authority.

Mr. Ford pondered the issue during his recent trip to Peking. Then upon his return to Washington, he decided to avoid a direct challenge to Congress, to yield at least partly to the House committee, and to agree to a compromise that could be regarded as face-saving by both sides. He did so, according

to reports, because he feared that a victory in this case might not have been worth the cost.

As one White House official noted, Mr. Ford is not given to confrontation to begin with, particularly with his old colleagues in the House. But there were reported to have been two reasons for the President's decision to avoid a battle in the courts. One was the fear that, even if the battle were won, there

would be a shadow over Secretary Kissinger and the conduct of American foreign policy while the case was being fought. In line with this thinking there was some fear that the courts would have decided the case on a technicality, without addressing the constitutional issue documents.

The White House believed that the subpoena for the documents had been so badly drawn that the courts might have given the Ford Adminis-

tration its victory but might also have left the shadow hanging permanently over Mr. Kissinger. According to one White House source, Mr. Kissinger asked the President to sidestep a showdown with Congress.

The other reason the President opted for a compromise was his view of the position of his Administration in relationship to Congress. As an unelected minority President, Mr. Ford faced a majority of better than 2 to

1 against him in Congress. Insofar as he has been able to conduct policy at all in the face of such opposition, he has done so by a careful and skillful manipulation of forces and interests on Capitol Hill.

The Democratic majority in Congress is by no means unified, and the White House is staying to avoid partisan antagonism that would solidify Democratic opposition to Administration policies.

A knowledgeable White House

source said that to have gone to the courts "would have been like kicking a sleeping mule." The President thus decided it would be better to let sleeping mules lie and avoid stirring partisan passions on Capitol Hill, even if it meant passing up a seemingly promising opportunity to reassert in a bold way a key Presidential privilege.

Despite the perception by some in the White House of a need to redress a loss of

Presidential strength in the balance of power with Congress, the constitutional issue was put in abeyance by a compromise. But some members of the Administration are convinced that this issue will have to be fought eventually.

"Congress is now demanding total access to the decision-making process," one White House aide said. "It can't go on this way indefinitely."

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