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By TOM SEPPY

Associated Press Writer

WASHINGTON AP - The Senate Judiciary Committee refused today to either order or invite White House aides, especially Peter Flanigan, to come before the panel to give testimony in the controversy surrounding Acting Atty. Gen. Richard G. Kleindienst.

In an executive session, the committee refused in three different tie votes to subpoena the aides. It turned down also a motion to request Flanigan to appear in executive session.

Voting along partisan lines, the panel at first tied 6 to 6 on the proposal to subpoena Flanigan and other White House aides, said Chairman James O. Eastland, D-Miss., who abstained.

The committee tied 6 to 6 on a subsequent motion to limit the subpoenas to Flanigan and William Timmons and tied again 6 to 6 when the subpoena was limited to Flanigan alone.

The series of tie votes amounted to a victory for Republican members, since a majority is required for the issuance of subpoenas.

Voting for the issuance of the subpoenas in the three votes were Democratic Sens. Sam J. Ervin Jr. of North Carolina, Philip A. Hart of Michigan, Edward M. Kennedy of Massachusetts, Quentin N. Burdick of North Dakota, Robert C. Byrd of West Virginia, and John V. Tunney of California.

Opposed were Republicans Roman Hruska of Nebraska, Hiram L. Fong of Hawaii, Hugh Scott of Pennsylvania, Marlow W. Cook of Kentucky, Charles Mathias Jr. of Maryland and Edward J. Gurney of Florida.

Committee members absent were Democratic Sens. John L. McClellan of Arkansas and Birch Bayh of Indiana and Republican Sen. Strom Thurmond of South Carolina.

On the fourth vote to invite Flanigan to testify in an executive session, proposed as a compromise by Byrd, Eastland joined the West Virginia Democrat and Tunney and Cook in casting the affirmative votes but the rest were opposed.

The first two motions were proposed by Ervin and the third by Burdick.

Ervin said before the votes were taken that he will try to block Kleindienst's nomination to be attorney general unless the White House aides testify. He said:

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By TOM SEPPY

Associated Press Writer

WASHINGTON AP - Sen. Sam J. Ervin Jr., says he will try to block the nomination of Richard G. Kleindienst unless White House aides, particularly Peter Flanigan, are allowed to testify in the Senate Judiciary Committee's ITT investigation.

Ervin, a committee member said in an interview:

"I'm adamantly opposed to either the committee or the Senate taking any action whatsoever until these aides appear before the committee."

Ervin, regarded as an authority on constitutional law, said the Nixon administration claim that executive privilege covers communication between aides and people outside the White House is absurd.

Executive privilege is the doctrine the Nixon administration claims bars Congress from forcing executive-branch officials and aides to testify.

Ervin said he recognizes the need for executive privilege when it involves communication between White House aides and the president or between administration officials formulating policy.

"There is no justification whatsoever that executive privilege designed to protect the president has any weight with other employees and third persons dealing with matters of public record such as antitrust cases," said Ervin.

Ronald L. Ziegler, President Nixon's press secretary, repeated Tuesday that "I don't contemplate Mr. Flanigan testifying." He applied the same statement to White House aide William Timmons, another Nixon aide listed as a potential witness.

Kleindienst asked the Judiciary Committee to reopen hearings on his nomination to be attorney general after Columnist Jack Anderson published an International Telegraph & Telephone Corp. memo linking the out-of-court settlement of three antitrust cases with ITT's commitment to next summer's Republican National Convention.

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Sen. Robert C. Byrd of West Virginia, the assistant Democratic leader, told newsmen that if executive privilege is invoked to prevent Flanigan's appearance before the committee, he might vote against Kleindienst's nomination.

He said he would be influenced by Flanigan's refusal to appear or the refusal of his superiors to let him testify.

Byrd was asked if he would be satisfied if Flanigan submitted a statement rather than appear in person. Byrd replied it would depend on the statement.

Major Leader Mike Mansfield

Majority Leader Mike Mansfield, D-Mont., has suggested that Flanigan submit a statement if unwilling to testify. Republican Leader Hugh Scott of Pennsylvania has said he sees no reason why Flanigan should not submit a statement.

Byrd, like Scott, is a member of the Judiciary Committee. He said he would vote for Ervin's motion and, unless there was a change in the line-up since last week, this would make a tie and Ervin's motion would lose.

Although Byrd said it is "only proper" that the Senate give Kleindienst a verdict on his nomination, he said his verdict "may be greatly influenced by what Mr. Flanigan has to say."

The committee etc picking up
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The committee voted last Friday to expand the investigation to include Life magazine allegations that the Justice Department had obstructed justice in southern California when Kleindienst was deputy attorney general.

Henry E. Petersen, head of the department's criminal division, said Tuesday he thought U.S. Attorney Harry Steward acted improperly during federal investigation of a political contribution in San Diego in 1970 by not disqualifying himself. But Petersen said Steward was guilty of no criminal wrongdoing.

The specific case involved San Diego businessman Frank Thornton, a friend of Steward, and charges that a \$2,068 illegal political contribution had been funneled to Nixon's 1968 presidential campaign.

Thornton is an associate of San Diego millionaire C. Arnholt Smith, a friend and contributor to Nixon.

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At one point, Petersen asked Sen. John V. Tunney, D-Calif., if he wanted his opinion of whether the \$2,068 contribution was illegal.

"I think there was a violation of the law," Petersen said, but he called the Life story "scurrilous."

Petersen said there was no evidence to back up allegations that Steward suppressed the investigation, quashed a subpoena for Thornton or leaked information from the grand jury.

Petersen also said Kleindienst acted on career staff attorneys' recommendations to admonish Steward for not observing department procedures in failing to remove himself from the case.

"It was my conclusion that a dismissal of a United States attorney under these circumstances would not only have been unwarranted but also grossly unfair," said Petersen, who headed the department's investigation.

In another aspect of the investigation, Petersen told Sen. Edward M. Kennedy, D-Mass., he would need more time to answer a charge that the Justice Department is trying to hinder the committee's investigation.

Specifically, he said he needs the time to gain more facts about a criminal investigation into a possible Medicare fraud on the part of Dr. L. M. Radetsky, a Denver osteopathic cardiologist and one of two physicians who treated Dita D. Beard, ITT's ailing Washington lobbyist, when she was hospitalized in Denver last month.

Kennedy, in a letter to chairman James O. Eastland, D-Miss., said the committee relied heavily on Dr. Radetsky's expertise in its dealing with Mrs. Beard but the Justice Department never alerted the panel that the doctor was under investigation.

Petersen said he did not learn of the investigation until Tuesday morning.

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