

# Hearing Shunned By Dean

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## Aide to Nixon Instead Offers Written Reply

By Carl Bernstein and Bob Woodward

Washington Post Staff Writers

Citing the doctrine of executive privilege, presidential counsel John W. Dean III yesterday formally refused an invitation to testify in the Senate confirmation hearing on the nomination of L. Patrick Gray III to be director of the FBI.

Dean's refusal put the White House on a collision course with Democratic members of the Senate Judiciary Committee who have vowed to block Gray's nomination unless Dean testifies about matters pertaining to the Watergate case.

Both Republican and Democratic sources on the committee said privately yesterday that Dean's refusal had placed Gray's nomination in serious jeopardy and predicted an extremely close vote on reporting the nomination to the Senate floor. Leaders of the move to call Dean as a witness said they believe they can block the nomination in committee.

Dean's refusal to testify had the immediate effect of intensifying Democratic opposition on the committee and shifting the focus of the Gray confirmation hearings away from the nominee and closer to the issues of executive privilege and the White House role in the FBI's Watergate investigation.

Senate Majority Whip Robert C. Byrd (D-W.Va.), one of the leaders of the move to call Dean, took the Senate floor to denounce the White House for claiming executive privilege "in such a questionable area."

"Mr. Dean's testimony before the Judiciary Committee is vital to any considered, collective committee judgment on the proper conduct of the FBI investigation of the Watergate break-in and Mr.

Gray's fitness to be director of the bureau," Byrd said. He added:

"Without the testimony of Mr. Dean relating to these and many other unresolved questions, the Judiciary Committee has before it a record that is incomplete. . . . If the President is going to invoke the doctrine of executive privilege in such a questionable area as this—and by so doing, close the door on information needed by the Senate—the Senate ought to refuse to give its consent to the nomination."

Sen. Birch Bayh (D-Ind.), who during the confirmation hearings has praised Gray's personal integrity while questioning whether the White House interfered with the FBI's Watergate probe, said yesterday: "I think the President has done a great disservice

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to Mr. Gray by refusing to allow Mr. Dean to appear before the Judiciary Committee.

"Since the President has refused to allow Mr. Dean to testify . . . I think the committee would be derelict in its duty to the Senate and the people of the country if it gives any further consideration to the Gray nomination," Bayh added.

Dean's refusal to testify was contained in a two-paragraph letter to Judiciary Committee Chairman James O. Eastland (D-Miss.), a supporter of the Gray nomination. Dean did offer to reply in writing to the committee's questions, which Eastland described as "better than getting nothing."

The chairman urged that "we . . . give it a try and see what information we get."

However, other members of the 9-to-7 Democratic majority on the committee were understood to be unanimous in rejecting Dean's offer, and Republican Charles McMathias (R-Md.) was also expected to reject it.

Sen. John L. McClellan (D-Ark.), who with Mathias holds the crucial swing votes on the committee, said Dean's offer to supply written answers "is just not sufficient for the committee's need to interrogate witnesses."

McClellan said that he has not made up his mind whether to vote for or against the nomination of Gray, who has been

acting director of the FBI since May 3, 1972.

Clellan said. "It has become more a question of the quality of his judgment, because there has not been much—or anything—that has really called his integrity into question."

A spokesman for Mathias said the Maryland senator too has not decided how he will finally vote on the nomination.

Despite unfavorable odds, Republicans on the committee indicated that their next move will be to try to win acceptance of Dean's offer to answer questions in writing.

A spokesman for Hugh Scott (R-Pa), the Senate Minority Leader, said that, "If the majority wants to pursue the matter in good faith—rather than making waves—they should accept this offer."

"Under the restrictions of executive privilege, Mr. Dean's offer is a pretty good deal for the committee," he added. "Mr. Gray's nomination as a presidential appointee is before the Judiciary Committee unanimously appointed by the Senate to investigate political espionage is the place to examine the Watergate case—not the Judiciary Committee."

That special investigating committee, headed by Sen. Sam J. Ervin (D-N.C.), is not scheduled to make its final report until next February.

Leaders of the movement to call Dean as a witness in Gray's confirmation hearings have argued that unless Dean testifies Gray's qualifications cannot be evaluated until the Ervin committee has made its final report.

If those Democrats cannot win the eight votes necessary to block the Gray nomination outright, they are expected to attempt to hold it in abeyance until after the Ervin committee has completed its work. Success in this, members of both parties have said, would probably force the President to withdraw the nomination.

Meanwhile, Eastland announced the hearings on Gray's nomination will resume at 10:30 a.m. Tuesday with the nominee again on the witness stand.

It was also announced that

Thomas Lumbard, a former assistant U.S. attorney here who was scheduled to appear before the committee yesterday, had declined to testify.

Lumbard, who provided volunteer legal advice last year to the White House on campaign finances, has said that Dean and Watergate bugging conspirator G. Gordon Liddy worked closely together in the months before the break-in at Democratic National National headquarters on June 17, 1972. Lumbard said yesterday he would furnish the committee with a letter describing his knowledge of the relationship between Dean and Liddy.

As an indication of what appears to be growing congressional concern about the issue of executive privilege, Reps. William S. Moorhead (D-Pa.) and John E. Moss (D-Calif.) charged yesterday that the President's claim is the "most arrogant form of claim of executive privilege made by any chief executive in the history of this nation."

Rep. Paul N. McCloskey Jr. (R-Calif.), a Nixon administration critic, urged the Senate "to exercise the congressional contempt power if Mr. Dean refuses to appear. Similarly, I suggest that we consider exercising the power of the purse to cut off Mr. Dean's salary should his refusal continue," McCloskey said.