

10 April 1973

[excerpt from tape telephoned from Washington]:

Kleindienst: In my opinion, Senator Muskie, If the President of the United States should direct me, or any other person on his staff, not to appear before a a Congressional committee to testify or to bring documents, that he has the constitutional power to do so, and that that person should not do it.

Muskie: Whatever the subject ?

Kleindienst: Yes sir.

Muskie: A crime ?

Kleindienst: Yes sir. More particularly a crime, because with respect to that, in order to safeguard the constitutional rights of putative defendants, we have a judicial system, a grand jury system, by which crimes are investigated to determine guilt or innocence and at the same time afford full constitutional protections.

Muskie: You would say that if a member of the President's staff ~~is~~ is alleged to have been guilty of committing a crime, whether or not in connection with his performance of duties to the President, that executive privilege can be invoked .....?

Kleindienst: If the President of the United States ....

Muskie: May I finish ? ....to protect him from testifying before a Congressional committee ?

Kleindienst: If the President of the United States directed a person on his staff who was accused of a crime to appear before a Senate committee with respect to an examination of that criminal conduct, that person, in my opinion, should not appear, and could not appear -- that the proper forum with respect to the inquiry with respect to criminal conduct is the judicial system and the grand jury system.

Muskie: The answer to my question is no ?

Kleindienst: The answer to your question is no.

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