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Editorials

Kleindienst and Privilege Issue

IN HIS TESTIMONY before an unusual joint session of three Senate subcommittees, Attorney General Richard Kleindienst has dropped an off-hand bomb of megaton range into the White House-Congress conflict over executive privilege.

His bland assertion that the quality of executive privilege is not strained, but falls upon Cabinet officers, White House aides, and 2.5 million other federal employees alike, had his audience rolling in the aisles in agonies of disbelief, indignation and sheer horror. Senator Muskie called it "frightening." Senator Fulbright moaned: "He is taunting us" and Senator Ervin kept repeating that any White House aide who defies a subpoena from his Watergate investigating committee will wind up in the cooler.

There were imputations that delusions of "royal prerogative" and "the divine right of kings" are tainting this democracy. Kleindienst retorted that any time Congress feels the President is "exercising power like a monarch," it can try impeachment — but Senator Ervin wondered how, if under the Kleindienst doctrine the President would forbid all witnesses to testify.

THIS ENTIRE MATTER lies deep in the legal twilight zone because the Constitution ignores executive privilege entirely, the statutes have never nailed it down, and all Presidents have used it to shield their advisors from congressional grilling. Its current use is being defended on grounds that it is implicit in the separation of powers.

Though President Nixon has dared Congress to carry the dispute into court, the apparent belief of Congressmen is the White House will modify its stiffnecked attitude and let a few of the 2.5 million tell the Senate what they know about Watergate. This opinion stems from the fact that numerous Republicans, including Senator Barry Goldwater, are complaining that unless the White House acts to clear up the Watergate affair promptly, the party, its candidates and its ability to attract contributions will all be severely hurt.

Meanwhile, there is cause to believe that the Attorney General may have stretched the blanket of executive privilege too far, and to wonder just why he did it.