

# Executive Privilege: A Needless Confrontation

Economic czar Kenneth Rush's refusal to testify before Congress came on the direct orders of President Nixon and over the strenuous backstage objections of Treasury Secretary William Simon.

Simon was alone in opposing Mr. Nixon's wishes. There is no sign that Rush, the President's old law professor and supposedly his peer, offered any objection to invoking executive privilege. All this deeply distresses many senior Republicans in Congress and some high administration officials as well.

Their distress is twofold: first, they had hoped the 64-year-old Rush, though unlettered in economics, would resist the President's more self-destructive impulses; second, for Mr. Nixon to insist on a broad interpretation of executive privilege during the impeachment crisis shows he has learned little from Watergate.

Claiming executive privilege because Rush is a confidential presidential adviser not confirmed by the Senate is a tenuous argument apart from Watergate. Rush is a counselor, Mr. Nixon's Cabinet member without portfolio, given policy authority over two officials — Secretary Simon and budget director Roy Ash — who testify before Congress. He is, therefore, vastly more than a personal adviser.

But with White House transcripts revealing extensive Oval Office discussion of misusing executive privilege,

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many friends of the administration feel Mr. Nixon should now invoke it only when absolutely necessary. Ken Rush testifying before Congress clearly does not meet that test.

There are signs Rush did not originally consider his job a cloistered one. In private conversations just after coming from the State Department, he talked of having to spend much time testifying on Capitol Hill. But he received different marching orders from the President when Sen. William Proxmire (D-Wis.), chairman of the Joint Economic Committee, called on Rush to testify.

In a White House meeting on executive privilege, Rush offered no dissent to the President's wishes. Only Simon did, in the blunt manner that has made him anathema to the President's senior staff.

The ensuing Rush-Proxmire impasse has started Rush off on a ludicrous wrong foot, in the view of thoughtful Republicans. "We are reassured that the President has appointed a first-class economic coordinator in Mr. Rush," Rep. Barber Conable (R-N.Y.)

chairman of the Republican Policy Committee, recently told the House, "but already he is involved in a somewhat silly confrontation with the Joint Economic Committee as to procedural matters."

Still worse, it reveals the rigidity of Mr. Nixon's mind-set. It suggests he still cannot accept Congress as a coordinate branch of government but views the executive branch as inherently superior. Accordingly, in the Rush appointment, Mr. Nixon is up to his old pre-Watergate tricks: giving supervisory functions to a confidential aide who cannot be interrogated by Congress.

His main supervisory function, referring disputes between Simon and Ash, has been difficult enough for Rush his first month. Ash's Office of Management and Budget believes Rush was trapped into approving Simon's takeover of the new Cabinet Committee on Energy. Earl Butz, the quick-witted Secretary of Agriculture, had commanded policy decisions in the livestock crisis until Rush asserted his authority.

Doubt remains that Rush ultimately will be the administrator's dominant economic figure. The bureaucracy paid close attention to a recent decision by Charles Cooper, a National Security Council staffer and one of the most gifted economists in government service. After declining an offer to become Rush's deputy, Cooper signed on as Simon's Assistant Secretary for International Affairs.

Attempting to control federal spending, the one dynamic economic policy pursued by the administration, is clearly Simon's policy — undertaken over the objections of Ash but with enthusiastic endorsement from Rush. Indeed, Ash has faded quickly. Having failed to become, first, Secretary of the Treasury and then economic coordinator, Ash may be gone after completion of the next budget in January.

But key Republicans on Capitol Hill want the President himself fully engaged in the Rush-Simon fight against spending. In the same House speech bemoaning the "silly confrontation" over executive privilege Conable urged Mr. Nixon to address a "confused and troubled" economic situation with the same intensity that he does foreign affairs. If Mr. Nixon should follow that advice and give the substance of economic policy a higher priority than escaping the scrutiny of Congress, it would be the first time during six years of power.