Executive privilege

From Nixon press conference 2 Mar 73 (NYT 3 Mar 73, filed Nix Ad):

Q. 18 - Mr. President, yesterday at the Gray hearings, Senator Tunney suggested he might ask the committee to ask for John Dean to appear before that hearing to talk about the Watergate case and the F.B.I.-White House relationship. Would you object to that?

A. Of course.

Q. Why?

A. Well, because it is executive privilege. I mean you can't - I, of course - no President could ever agree to allow the counsel to the President to go down and testify before a committee. On the other hand, as far as any committee of the Congress is concerned, where information is requested that a member of the White House staff may have, we will make arrangements to provide that information, but members of the White House staff, in that position at least, cannot be brought before a Congressional committee in a formal hearing for testimony. I stand on the same position every President has stood on.

See also Ziegler statement 30 Mar 73 - NYT 31 Mar 73.

to uphold the Senate.

Executive privilege

From policy statement on executive privilege, 12 Mar 73 (NYT 13 Mar 73):

Executive privilege will not be used as a shield to prevent embarrassing information from being made available but will be exercised only in those particular instances in which disclosure would harm the public interest.

(In this statement Nixon refers to an earlier one, "the procedures set forth in my memorandum of March 24, 1969." Do not have.)

From Nixon press conference, 15 Mar 73 (NYT 16 Mar 73):

Mr. Dean is counsel to the White House staff. He has, in effect, what I would call a double privilege, the lawyer-client relationship, as well as the Presidential privilege. And in terms of privilege, I think we could put it another way. I consider it my constitutional responsibility to defend the principle of separation of powers. .... I am not going to have the counsel to the President of the United States testify in a formal session before the Congress. However, Mr. Dean will furnish information when any of it is requested, provided it is pertinent to the investigation.

.....

If the Senate feels at this time that this matter of separation of powers ... if the Senate feels that they want a court test, we would welcome it. Perhaps this is the time to have the highest court of this land make a definitive decision with regard to this matter. I am not suggesting that we are asking for it. But I would suggest that if the members of the Senate ... decide that they want to test this matter in the courts, we will, of course, present our side of the case, and we think that the Supreme Court will uphold as it always usually has, the great constitutional principle of separation of powers rather than

Executive privilege

Washington, April 10 - Attorney General Richard G. Kleindienst appeared today to widen the Administration's definition of executive privilege to cover 2.5-million employes of the executive branch of the Government.

Appearing before three Senate subcommittees [parts of the Judiciary Committee and the Government Operations Committee] meeting jointly to consider the executive privilege question, the Attorney General testified that the Congress had no power to order any employe of the executive branch to appear and testify before Congress if the President barred such testimony.

He suggested repeatedly that if Congress wished to remedy the situation it could cut off funds to the executive branch or impeach the President. He also suggested that the question could be settled by a Presidential election.

.....

Senator J.W. Fulbright, Democrat of Arkansas, testified later in the day and said of Mr. Kleindienst, "I never heard anybody talk like that before." He said that the Attorney General had "dared you to do something about it."

.....

NYT 11 Apr 73, Anthony Ripley

.....

Repeatedly Kleindienst suggested that the only real limits on the President's powers, in a confrontation with Congress, are those imposed by public opinion and the electorate. But he said Congress does have "a remedy" if it doesn't like the way those powers are being exercised.

"If it feels he is exercising power like a monarch," Kleindienst told the senators, "you could conduct an impeachment proceeding."

over-A

.....

WXP 11 Apr 73, George Lardner Jr.

Also KPFA News, 10 Apr 73, transcript

(A)- .....

Insisting that there were no limits on the privilege doctrine, short of a constitutional amendment, Kleindienst explicitly repudiated at one point the House testimony last week of Deputy Assistant Attorney General Mary C. Lawton.

Designated as the administration's official spokesman before the House Government Information Subcommittee, she took the stand that White House aides such as ... Dean ... could not use the privilege to steer clear of any direct congressional investigation of wrong doing on their part.

Kleindienst said he disagreed with Miss Lawton and pointed out, after a quick huddle with an aide, that she "modified her answer" before the same House subcommittee at an afternoon session.

"She'd gotten her marching orders?" Muskie said sarcastically, touching off a round of laughter in the hearing room.

Kleindienst waited until the laughter subsided and said in flat, deliberate tones:

"Ha. Ha. Ha. . . . I'm sure you give your staff marching orders, too, Senator Muskie."

.....

WXP 11 Apr 73, George Lardner Jr.

See file for expressions of "utter shock and dismay" by members of Congress. Rep. Williams Moorhead of Pennsylvania (12 Apr): "I submit that this is a doctrine of monarchial origin at best, or at worst a totalitarian dogma espoused by banana republic dictatorships." (KPFA News, 12 Apr 73.)

Executive privilege

From text of Nixon statement on ground rules for Ervin committee, 17 Apr 73 (NYT 18 Apr 73):

I have two announcements to make. ....

The first announcement relates to the appearance of White House people before the Senate Select Committee, better known as the Ervin Committee.

For several weeks, Senator Ervin and Senator Baker and their counsel have been in contact with White House representatives John Ehrlichman and Leonard Garment. They have been talking about ground rules which would preserve the separation of powers without suppressing the fact.

I believe now an agreement has been reached which is satisfactory to both sides. The committee ground rules as adopted totally preserve the doctrine of separation of powers. They provide that the appearance by a witness may, in the first instance, be in executive session, if appropriate.

Second, executive privilege is expressly reserved and may be asserted during the course of the questioning as to any questions.

OVER - B

.....

All members of the White House staff will appear voluntarily when requested by the committee. They will testify under oath and they will answer fully all proper questions.

.....

From statement, 22 May 73 (text, NYT 23 May 73):

Executive privilege will not be invoked as to any testimony concerning possible criminal conduct or discussions of possible criminal conduct* including the Watergate affair and the alleged coverup.

*over - C

See also Christopher Lydon, NYT 23 May 73, p. 29: "Nixon Ends Insistence That Executive Privilege Bars Testimony by His Staff; Will Not Invoke Doctrine On Possible Illegal Acts".

OVER - A

(A)- Lydon (datelined 22 May): "President Nixon abandoned today his once adamant insistence that 'executive privilege' should keep his personal staff from having to testify before Congress about the Watergate scandal."

(B) - Ervin says White House aides can legitimately claim executive privilege when they appear before the committee - but only if they are asked about matters involving direct communication with the President himself.

Spokesman for Weicker says Nixon's statement is in accord only with an initial set of guidelines approved by the committee [16 Apr], that later the guidelines were revised to exclude the possibility of executive privilege, and that Weicker would not accept executive sessions.

WXP 17 Apr 73, Woodward and Bernstein
NYT 18 Apr 73, R.W. Apple Jr.

(C)- , in the matters presently under investigation,

Executive privilege

From answers to two questions, press conference 26 Oct 73 (text, WXP 27 Oct 73):

.... The matter of the tapes has been one that has concerned me because of my feeling that I have a constitutional responsibility to defend the office of the presidency from any encroachments on confidentiality which might affect future Presidents in their abilities to conduct the kind of conversations and discussions they need to conduct to carry on the responsibilities of this office.

.... We have waived executive privilege on all individuals in the administration. It has been the greatest waiver of executive privilege in the whole history of this nation. And as far as any other matters are concerned, the matters of the tapes, the matters of presidential conversations, those are matters in which the President has a responsibility to defend this office, which I shall continue to do.

Executive privilege

Judge Sirica (29 Aug 73) orders Nixon to make tapes* available to him for decision on their use by a grand jury; does not agree with Nixon "that it is the executive that finally determines whether its privilege is properly invoked. The availability of evidence, including the validity and scope of privileges is a judicial decision."

Presidential aides announce that Nixon "will not comply with the order."

SFC [NYT] 30 Aug 73

*of nine conversations dated between 20 Jun 72 and 15 Apr 73.

Nixon announces, through Wright in Sirica's court (23 Oct 73), that he will "comply in all respects with the order of August 29 as modified by the order of the Court of Appeals," and will release the tapes to Sirica. Story say "The White House must also submit, with sharply limited exceptions, any memoranda, papers, transcripts or other writings related to the nine meetings and conversations at issue between the President and his advisers."

SFC [WXP] 24 Oct 73

Executive privilege claimed for Haig. See entry in Chronology 2 May 74 - Haig (Rebozo/Hughes).

See editorial, WXP 3 May 74, a review of historical record of the position taken by seven previous Presidents: "Each has articulated a position 180 degrees in opposition to the position Mr. Nixon seeks to maintain .... "

See column by Tom Wicker on Supreme Court decision on Nixon tapes and other records (24 Jul 74). "The Court established for the first time what it called at one point the 'constitutional underpinning' of the doctrine of executive privilege. .... The problem is that, in the doctrine of executive privilege now certified by the Supreme Court to have 'constitutional underpinnings,' a President apparently could determine the scope of that area of secrecy for himself, and the privilege he asserted

(over)

for it would be absolute - except in the unlikely event that it came into conflict with a higher, competing interest. It is possible even to read the Burger decision as saying that had Mr. Nixon been able to claim that the tapes concerned 'military, diplomatic or sensitive national security secrets,' the privilege he could claim for them would have outweighed 'the fundamental demandsof due process of law in the fair administration of criminal justice.'"

NYT 26 Jul 74, Tom Wicker

Separation of powers "involves the theory that the executive, legislative and judicial branches of the government, established separately by the Constitution, do not have the power to encroach on each other's jurisdictional territory, in order to maintain a balance of authority among them."

Executive privilege "is the rationale invoked by presidents when they refuse to divulge to Congress or the courts private internal communications between the chief executive and his aides or among those aides, on the theory that some preliminary confidentiality is essential to any government."

SFC 24 Jul 73 [NYT], Warren Weaver Jr.]

Executive Privilege (Interpretation, comment) Incomplete listing.

12 Apr 73 - Raoul Berger, WXP - filed Nix Ad

13 Apr 73 - Clark R. Mollenhoff, NYT - filed Nix Ad

16 Apr 73 - Fred M. Hechinger, NYT - filed Watergate

28 Jul 74 - Carrie Johnson (on Supreme Court ruling) - WXP.