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Executive Cover-Up

When President Nixon at a news conference on January 31 promised a precise statement concerning the use of executive privilege, he assured reporters: "The general attitude I have is to be as liberal as possible in terms of making people available to testify before Congress, and we are not going to use executive privilege as a shield for conversations that might be just embarrassing to us."

Now that the promised statement has been issued, it turns out to be vague rather than precise, restrictive rather than liberal in its effect, and designed to protect the President from grave political embarrassment rather than to assist him in the exercise of his proper official duties.

Executive privilege is comparable to the impoundment of funds. It is one of those Presidential powers which is implicit rather than spelled out in the Constitution. Its boundaries are inherently difficult to define. Presidents have traditionally used it sparingly, reserving it for a last line of defense when a Congressional committee has overreached itself. A decent respect for the comity that should prevail between equal branches of the Government has normally controlled its use.

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Unfortunately, as in the impoundment controversy, President Nixon now seeks to exploit the necessary vagueness in this constitutional domain and to nail down as unchallengeable authority what is more wisely left flexible and loose.

Even worse, he is trying to extend the coverage of this doctrine in two significant ways. First, he would include not only members of the White House staff but also former members. No time limit is set on their alleged immunity from Congressional cross-examination. Secondly, he claims for Cabinet members who hold dual appointments as "Presidential counselors" the privilege of refusing to testify on that portion of their work which involves their White House duties.

These ambitious claims of a right to secrecy are novel and specious. Once individuals cease to be members of the White House staff, they cannot carry with them into private life the privilege of routinely "declining a request for a formal appearance before a committee of the Congress." Contrary to the President's statement, this is not a "well-established precedent." It is wholly unfounded.

Similarly, a Cabinet officer has always been regarded in normal constitutional practice as responsible not only for administering his own department but also for advising the President on broad issues of public policy. It is specious to assert that simply because the President has conferred on some of his Cabinet members the additional rank of "Presidential counselor" that he also confers on them some special added immunity. The duties of Cabinet members and Presidential counselors are so intertwined that any distinction in the degree of confidentiality and trust between the two positions can only be arbitrary and artificial.

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The saddest aspect of this latest institutional wrangle between the President and the Congress is that Mr. Nixon is asserting such arrogant claims in so unworthy an affair. It is impossible to avoid the suspicion that the President is trying to cover up White House involvement in the ugly campaign of political sabotage and espionage which climaxed in the Watergate raid.

The assertion that executive privilege protects former Presidential aides, for example, looks very much like an effort to protect Dwight Chapin, the former Presidential appointment secretary, and perhaps former Attorney General John Mitchell and former Secretary of Commerce Maurice Stans from Congressional interrogation concerning their responsibility for the Watergate episode and related activities.

When President Washington first invoked the concept of executive privilege to protect the confidentiality of the diplomatic negotiations leading up to the Jay Treaty in 1796, a squalid political intrigue such as the Watergate affair was the furthest thing from his mind. When executive privilege is invoked in an apparent effort to cover up blatant political wrongdoing, the office of the Presidency is demeaned and this nation's constitutional practice is debased.