

Editorials

FBI Nomination Hits a Roadblock

CONFIRMATION OF L. Patrick Gray III as director of the FBI has hit a roadblock in the form of one more skirmish in the continuing war of executive privilege versus the investigative power of Congress.

In a tactful attempt to avoid a showdown, the Senate Judiciary Committee voted to invite rather than subpoena John W. Dean, President Nixon's chief counsel, to testify about his relations with Gray during the FBI investigation into the Watergate bugging affair. Dean promptly and politely declined, and the prospects are that the committee will now sit on the nomination to see what hatches.

The committee had turned to the invitation device out of respect for President Nixon's general assertion that it would be "inappropriate" for any of his aides, past or present, to subject themselves to congressional questioning, and, in particular that "No President could ever agree to let the President's counsel go down and testify before a committee."

THUS MEMBERS OF THE COMMITTEE were inspired to retort that in the performance of the Senate's constitutional duties of "advise and consent", it was bound to discover the facts and complete the record before voting to confirm or reject the President's nomination of Gray.

It may well be that as matters have turned out, the White House has torpedoed its own nomination. Various senators have said that they cannot and will not approve Gray under existing conditions and that, if the FBI is to have a new leader, the President will have to name somebody else.

There is a possibility, some say, that the impasse may bring about a court ruling on a constitutional question that has existed ever since George Washington refused to inform Congress about a treaty, and thereby established the unwritten law of executive privilege, which numerous Presidents have since invoked. Its application in the present instance has mystified some congressmen who note that it came only a few weeks after the President had enunciated a policy of "liberality" in making members of his staff available to Congress and stated that executive privilege would not be exercised "as a shield against conversations that might be just embarrassing for us."

THEY HAVE LIKEWISE WONDERED why he vigorously opposes legislation to protect the sources of newsmen while invoking executive privilege to protect sources of his aides.