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Nixon Remarks on Executive Privilege

WASHINGTON, March 11¹²
—Following are excerpts from a statement issued today by President Nixon on his use of executive privilege:

The doctrine of executive privilege is well established. It was first invoked by President Washington, and it has been recognized and utilized by our Presidents for almost 200 years since that time.

The doctrine is rooted in the Constitution, which vests "the executive power" solely in the President, and it is designed to protect communications within the executive branch in a variety of circumstances in time of both war and peace.

Without such protection, our military security, our relations with other countries, our law enforcement procedures and many other aspects of the national interest could be significantly damaged and the decision-making process of the executive branch could be impaired.

The general policy of this Administration regarding the use of executive privilege during the next four years will be the same as the one we have followed during the past four years: 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.

'Pledged to Openness'

During the first four years of my Presidency, hundreds of Administration officials spent thousands of hours testifying before committees of the Congress. Secretary of Defense Laird, for instance, made 86 separate appearances before Congressional committees, engaging in over 327 hours of testimony.

By contrast, there were only three occasions during the first term of my Administration when executive privilege was invoked anywhere in the executive branch in response to a Congressional request for information. These facts speak not of a closed Administration but of one that is pledged to openness and is proud to stand on its record.

Requests for Congressional appearances by members of the President's personal staff present a different situation

and raise different considerations. Such requests have been relatively infrequent through the years, and in past Administrations they have been routinely declined.

I have followed that same tradition in my Administration, and I intend to continue it during the remainder of my term.

Under the doctrine of separation of powers, the manner in which the President personally exercises his assigned executive powers is not subject to questioning by another branch of government. If the President is not subject to such questioning, it is equally inappropriate that members of his staff not be so questioned, for their roles are in effect an extension of the Presidency.

Loss of Candor Feared

This tradition rests on more than constitutional doctrine: It is also a practical necessity. To insure the effective discharge of the executive responsibility, a President must be able to place absolute confidence in the advice and assistance offered by the members of his staff. And in the performance of their duties for the President, those staff members must not be inhibited by the possibility that their advice and assistance will ever become a matter of public debate, either during their tenure in government or at a later date. Otherwise, the candor with which advice is rendered and the quality of such assistance will inevitably be compromised and weakened.

What is at stake, therefore, is not simply a question of confidentiality but the integrity of the decision-making process at the very highest levels of our government.

As I stated in my press conference on Jan. 31, the question of whether circumstances warrant the exercise of executive privilege should be determined on a case-by-case basis.

In making such decisions, I shall rely on the following guidelines:

1. In the case of a department or agency, every official provided that the performance before the Congress, provided that the performance of the duties of his office will not be seriously impaired thereby. If the official believes that a Congressional request for a particular docu-

ment or for testimony on a particular point raises a substantial question as to the need for invoking executive privilege, he shall comply with the procedures set forth in my memorandum of March 24, 1969. Thus, executive privilege will not be invoked until the compelling need for its exercise has been clearly demonstrated and the request has been approved first by the Attorney General and then by the President.

2. A Cabinet officer or any other governmental official who also holds a position as a member of the President's personal staff shall comply with any reasonable request to testify in his non-White House capacity, provided that the performance of his duties will not be seriously impaired thereby. If the official believes that the request raises a substantial question as to the need for invoking executive privilege, he shall comply with the procedures set forth in my memorandum of March 24, 1969.

3. A member or former member of the President's personal staff normally shall follow the well-established precedent and decline a request for a formal appearance before a committee of the Congress. At the same time, it will continue to be my policy to provide all necessary and relevant information through informal contacts between my present staff and committees of the Congress in ways which preserve intact the constitutional separation of the branches.