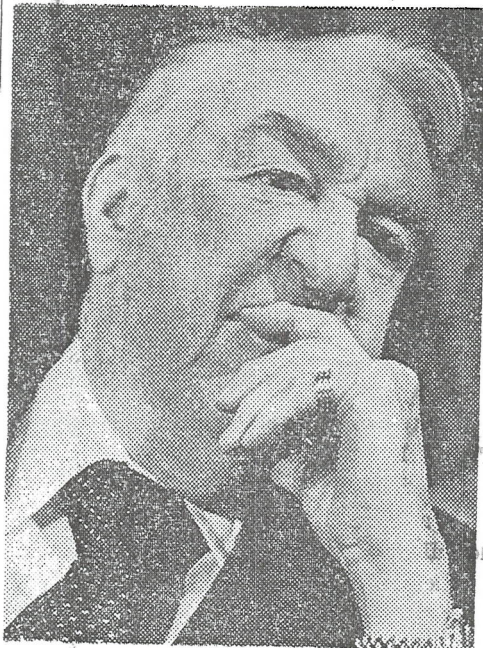


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Kleindienst Sees Wider Executive Shield



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Senator Sam J. Ervin Jr., left, listening to Attorney General Richard G. Kleindienst testify before three Senate subcommittees meeting to consider executive privilege.

By ANTHONY RIPLEY
 Special to The New York Times

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

Appearing before three Senate subcommittees meeting jointly to consider the executive privilege question, the At-

torney General testified that 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.

He was pressed on the matter by Senator Edmund S. Muskie, Democrat of Maine who is acting chairman of the joint subcommittees.

"Under your definition, Congress has no power to command the production of the testimony of anyone in the executive branch in any circumstances?" Senator Muskie asked.

"If the President so com-

Continued on Page 17, Column 1

SEE ALSO
 RPPA 10 APR 73

Continued From Page 1, Col. 4
 mands," Mr. Kleindienst replied.

Senator Sam J. Ervin Jr., Democrat of North Carolina, said to the Attorney General: "You concede Congress does have power to gather information for legislation. But Congress cannot get that information from the executive branch unless the President O.K.'s it."

Mr. Kleindienst replied that he preferred to put it "conversely"—that no information would be supplied if the President denied it, adding that "99 per cent" of the time the executive branch cooperates with Congress.

'All Kinds of Remedies'

"You've got all kinds of remedies," Mr. Kleindienst suggested, noting that Congress could "cut off our funds, abolish most of what we can do or impeach the President."

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."

He said that the testimony had implied Congress was "a bunch of boobs" and that if it did not act, "then they deserve the contempt the White House obviously has for them."

"The power to withhold testimony," he said, is "the power to strangle Congress."

Mr. Kleindienst said that he thought criminal matters, such as the Watergate investigation, were "uniquely the province of the judiciary."

"For crime there can be no haven," he said. "And the White House has stated that even the President's close personal aides will respond to grand jury inquiry."

'Time for Showdown'

Clark M. Clifford, former Secretary of Defense and adviser to Presidents, said that "the time has come for a showdown."

He said that the Watergate affair "and subsequent political subversions present clear issues," and proposed that a witness be subpoenaed to appear. Failure to respond to the

subpoena would result in the matter being turned over to the courts.

He said that the President could "properly" preserve confidential relationships as Chief Executive, as Commander in Chief of the armed forces and as chief ceremonial officer of the nation. But his fourth role, as "political leader of his party," should be open to Congressional inquiry, Mr. Clifford said.

Executive privilege, he said, should allow a President confidentiality if it is in the national interest. But he added that keeping figures in the Watergate investigation from testifying went against the national interest. The Watergate case involved the breaking into and bugging of the Democratic national headquarters.

The three subcommittees are parts of the Judiciary Committee and the Government Operations Committee.

They are considering an amendment to the rules of Congress, proposed by Senator Ervin, that would require officers or employes of the executive branch to appear and produce all documents unless the President submits in writ-

ing a statement of executive privilege. Because it is a rule of operation rather than a law, it would require no Presidential approval.

Senator Fulbright has introduced a bill with roughly similar requirements. However, if his bill is passed by the Congress, it could be vetoed by the President.

Survey on Privilege

Senator Ervin's staff several weeks ago began a detailed survey of the Congress in an attempt to find out how many times executive privilege had been used since Jan. 1, 1964. Thus far, the staff reported, 164 cases have been cited.

Most cases involved a refusal to appear or testify, rather than a flat statement of executive privilege.

Senator Charles McC. Mathias Jr., Republican of Maryland, said that he was "reluctant to see a kind of final confrontation" between Congress and the President.

"It's an admission that the goodwill that has sustained our antique Constitution has failed," he said.

Senator Muskie said, "I think we're pushed to action by the quantum jump executive privilege has taken in this Administration."

Arthur S. Miller, a law professor at George Washington University who is a consultant to Senator Ervin's subcommittee, said that he felt Congress should enact a law outlining executive privilege, rather than merely submitting the issue to the courts. Without such a law, he said, the courts would, in effect, be asked to write it.

"We'll have a showdown if necessary," Senator Ervin said.