

Kleindienst: No Limit To Executive Privilege

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Attorney General Richard G. Kleindienst, in a sweeping assertion of executive prerogatives, declared yesterday that the President has the power to forbid federal employees from testifying before Congress under any circumstances—including impeachment.

Testifying before an unusual joint session of three Senate subcommittees, Kleindienst maintained that the doctrine of executive privilege could properly be invoked even in the face of congressional investigations of alleged wrongdoing by White House aides.

"This is a power relegated to the President of the United States alone," Kleindienst said of executive privilege. Under it, he declared, the President "logically" has the authority to block congressional demands for any document within the executive branch as well as the testimony of any of its 2½ million federal employees.

Sen. Edmund S. Muskie (D-Maine), chairman of the Senate Subcommittee on Intergovernmental Relations, called the Attorney General's claims "frightening."



RICHARD G. KLEINDIENST
... no exceptions

"No Administration in the history of this country has ever asserted the concept (of executive privilege) as you have today," Muskie told him.

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.

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

Sen. Sam Ervin (D-N.C.), chairman of the Subcommittee on the Separation of Powers,

protested that even here, under Kleindienst's standards, impeachment of a President would be impossible "because he could forbid all of the witnesses from going to court."

"You put a nice question," Kleindienst agreed. But, he insisted, "You don't need facts to impeach a President. You don't need evidence to impeach a President. No, sir, you don't."

Ervin pointed out that the Constitution makes the Chief Justice the presiding officer in any presidential impeachment trial to guarantee its fair conduct under the rules of evidence.

Kleindienst disagreed and said the Chief Justice could be impeached, too, if he got in the way. All Congress needs, the Attorney General insisted, is the votes.

"He seemed to be taunting us," Sen. J. William Fulbright (D-Ark.) told newsmen later.

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 counsel to the President John W. Dean III 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 givey our staff marching orders, too, Senator Muskie."

Acknowledging that the Watergate controversy has put a sharp edge on questions of

comity between the executive and the legislative branches, the Attorney General assured the senators that "for crime, there can be no haven." But he maintained that the determination of alleged violations in the Watergate case was "uniquely the province of the judiciary." He reminded the subcommittee that the White House has said that even Mr. Nixon's close aides "will respond to grand jury inquiry."

"The Congress of the United States, in my opinion, was not set up or created to investigate or prosecute for crimes," Kleindienst said.

He stopped well short, however, of conceding that executive privilege can be overridden even by the courts.

"The question is academic," Kleindienst insisted. He said simply that "no President, in my opinion, is going to withhold his closest aides from criminal justice" and said he doubted that any President would ever try to do so.