

Nixon's Power Grab

By Tom Wicker

On the same day that President Nixon made the reasonable and necessary proposal that he be given executive power to raise or reduce tariffs, his Attorney General made the unreasonable and absurd claim that all 2.5-million Federal employes could be directed by the President not to testify before Congress. There could hardly be a better illustration of how the need for strong executive government, which no one can dispute, can be perverted into an open grab for imperial powers.

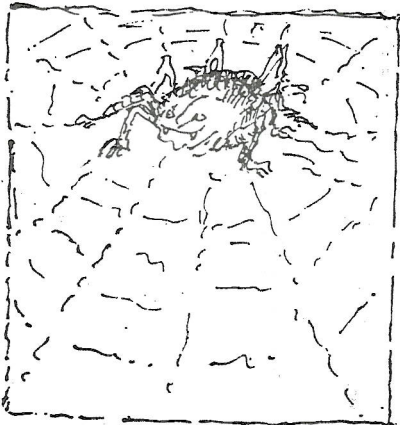
The low intellectual and constitutional level of Mr. Kleindienst's astonishing performance is not hard to demonstrate, as in the following examples:

As the Attorney General would have it, if a Federal employe—say a postmaster in Colorado—were summoned by a Congressional committee to tell it how (or if) the mails were going through in his part of the country, the postmaster could not do so if the President directed him not to.

It is probably true that in such a ridiculous instance no President would so order the postmaster. But that does not alter the case, because the President under the Kleindienst doctrine could order him not to testify. The plain meaning of that is that any President would have the right to determine what Congress could and could not hear from Federal employes. One can be absolutely certain, for example, that no Pentagon accountant, in that case, would ever tell a Congressional committee about a cost overrun on a new aircraft or submarine.

Again, suppose some Federal employe is ordered by the President not to testify before Congress, and refuses to do so with the impunity Mr. Kleindienst claims. Later, as frequently hap-

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pens, the employe leaves the Federal service and writes a book about his

experience. Does the Attorney General claim that he could stop the man from writing the book? Or that what he might put into a book, Congress had no right to hear?

Or what about instances in which a President would wish to appoint a Federal employe to a Federal position requiring confirmation by the Senate—as just recently happened in the case of L. Patrick Gray and several of the second-term Cabinet members? Does the Attorney General of the United States seriously claim that, if Mr. Nixon so ordered, these Federal employes could invoke executive privilege to avoid confirmation hearings, and damn the Constitution? That is implicit in his fatuous claim, and it does no good to argue that Congress certainly would refuse to confirm a nominee who was ordered to take such a stand; the question is the President's power to claim executive privilege, not the practical political consequence of his doing so.

That is true, too, of Mr. Kleindienst's arrogant prescription for Congress' "remedies" for what it might regard as too much executive privilege. These "remedies" were to cut off funds to the executive branch, to impeach the President, or to defeat him at the next election.

Suppose, for example, Mr. Nixon continues to refuse to let his counsel, John Dean, testify in the Watergate case. Congress decides to take action. According to Mr. Kleindienst, it could either impeach Mr. Nixon or cut off all funds to the executive branch; but for such a relatively limited offense, neither of these sweeping "remedies" makes sense or would ever be practical. They are more like going to war over the outcome of a soccer game, and to all intents and purposes are not remedies at all for the limited kind of offense likely to be an issue.

As for electing another President in protest against executive privilege, Congress and the nation would have to wait nearly four years in the present case, and even then there would be no punishment for Mr. Nixon, who cannot run again anyway—unless Mr. Kleindienst also has a doctrine for surmounting that constitutional problem.

The thought is chilling. For by now it is clear that these Nixon men are not merely trying to cover up whatever responsibility they may have for the Watergate affair. They are the same men who have gone to unprecedented lengths to seize the power of the purse from Congress, who are conducting unauthorized war in Cambodia in contradiction of the President's own pledges, who are trying to make it a felony to disclose almost any foreign policy or national defense information and another felony to publish it.

Until thwarted in the Supreme Court, these same men claimed the unlimited right to wiretap and bug anyone they accused of domestic subversion, and imposed the first prior restraint on publication in American history. Is there any limit to the raw and unchecked power they seek?