

Executive Privilege Faces Test

By Morton Mintz

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The White House intends to invoke executive privilege to avoid disclosing papers that bear on whether the Internal Revenue Service was used to grant or deny tax exemptions for political reasons, the Justice Department said this week.

The statement came from Deputy Assistant Attorney General Richard M. Roberts in a hearing Wednesday before U.S. District Judge Charles R. Richey in a suit brought by the Center on Corporate Responsibility, Inc.

The hearing developed from the appearance of former presidential counsel John W. Dean III before the Senate Select Watergate Committee last month. He suggested the existence of the papers in testimony and in memos submitted to the committee.

Richey on July 6 ordered the government to produce papers relating to or mentioning the center that were in the possession of the White House on June 29.

Wednesday's hearing was on a request by the center's lawyer, Thomas A. Troyer, for a broadening of the order to include all White House materials relating to tax-exempt organizations.

Roberts, citing President Nixon's impoundment of Dean's papers, told Richey he was unable to comply even with the narrow July 6 order.

The prospect that Mr. Nixon will invoke executive privilege then developed in an exchange between Richey and Roberts.

"Maybe it's about time somebody met that issue head-on," Richey said. He directed Roberts and Troyer to prepare briefs for a hearing in 10 days on whether executive privilege properly applies in this case.

The White House should know that he is prepared to entertain an application by the center to compel production of the White House materials, Richey said. Meanwhile, he said, Roberts should try anew to get the White House to yield the documents voluntarily.

The center, a non-profit research group, tried for 2½ years to be ruled tax-exempt before filing a suit last May 2 to force the IRS to qualify it. The suit complained that the extreme delay had shut off contributions and all but killed it.

The center's review of the history of the case showed that the proposed exemption had been approved by the IRS staff without exception until it reached Deputy Chief Counsel Roger V. Barth.

Barth, whom the center refers to as "the White House man at the IRS," disapproved the exemption application, which was formally denied on May 16.