

Rule Cited By St. Clair Nonexistent

By John P. MacKenzie
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Presidential lawyer James D. St. Clair cited a nonexistent legal rule last week he said it was improper for the House Judiciary Committee to draw an unfavorable inference from President Nixon's claim of executive privilege.

St. Clair, saying he had "looked up the law this morning," told newsmen last Thursday that he based his legal argument on a proposed rule of evidence for federal courts passed by the House in February and awaiting Senate action.

The President's lawyer, protesting a committee warning that Mr. Nixon was hurting his own cause by withholding evidence from the impeachment inquiry, said he hoped committee members would look up the law and reverse their stand on the question.

But members of the committee pointed out yesterday that the rule, No. 513 in the voluminous proposed new code of federal evidence, is not part of the bill that passed the House.

"He'd better read the law," said William L. Hungate (D-Mo.), chairman of a House Judiciary subcommittee that drafted the bill. "If there's anything that's clear about the rules of evidence, it's that the entire privilege section is out of it."

Rep. Lawrence J. Hogan (R-Md.) agreed with Hungate that the House bill did not support St. Clair's argument. He added that the validity of the President's claim of executive privilege was itself an issue within

the power of the committee to judge.

Hungate and Hogan were interviewed after they and Rep. David W. Dennis (R-Ind.) testified before the Senate Judiciary Committee seeking Senate approval of the evidence rules.

The privilege section of the code was scrapped because it was too controversial, Hungate said. "More than half of the protests were about the privilege section", which included proposals about executive privilege, national security secrecy, newsmen's immunity from grand jury subpoenas and others, he noted.

Sen. Sam J. Ervin Jr. (D-N.C.), the only committee member present during most of the day's hearing, told Hungate he was "particularly pleased that the rules on privileges have been deleted" because some of them would have drastically changed the law. He said he hoped the Senate would move soon to enact most of the House bill.

After the hearing Ervin said he remains convinced that an invalid claim of executive privilege does indeed give rise to the judgment that a President who withholds evidence would be damaged by that evidence.

St. Clair said yesterday that he had learned this week that Rule 513 had been deleted from the rules approved by the House but he said this did not weaken his argument.

The House bill now calls on judges to follow existing law, but that was not a basic change in the effect of Rule 513, since that rule was itself a statement of existing law, St. Clair said.

The rules, which are being redrafted following Congress' rejection of a code offered by the Supreme Court in 1972, would give the nation's federal courts their first uniform guidelines governing admissibility of evidence in criminal and civil trials. Currently federal judges base their often conflicting rulings on evidence on the laws of their states.