

Mr. President, there was some comment upon that statement. The Senator from Illinois [Mr. Dirksen], who also is a member of the Committee on the Judiciary, had this to say, as his statement appears on pages 1168 and 1169:

"Senator DIRKSEN. First, Mr. Chairman, for the record, I want to observe with respect to this question of privilege that insofar as I know, and I carefully examined that long memorandum which was submitted to the Committee on Government Operations when the same question arose, that the memorandum goes back all the way to the days of George Washington when he refused to make available certain information on the ground that there was a constitutional separation of powers.

"That memorandum has been kept up to date insofar as I know by every Attorney General under every administration, since that time. And what actually happens is that in every administration the Attorney General simply adds to what is already in the file and submits it to the Congress."

I may say, parenthetically, that the present Attorney General and his predecessors have not added to that memorandum any comment or any incident since 1953. So the story of the suppression of public information by the executive under the false plea of executive privilege has not yet been told. I promise it will be told. I return to the statement by the Senator from Illinois [Mr. Dirksen]:

"So that it is a privilege that derives from the Constitution, not from a statute, and that no matter what powers Congress may delegate to an independent agency of Government by statute, in my judgment it still does not affect or vary the privilege."

I emphasize this paragraph:

"It can be argued that the complexities of today would make it desirable that something be done about it. And, frankly, the matter has been under consideration by different Members of the Senate since the question arose.

"But it is still a constitutional privilege as such, so it is not modified by any statute or any delegation of power that the Congress may make."

EXPANSION OF THE CLAIM OF PRIVILEGE

Mr. President, my comment upon that statement is that we are not dealing here with the effectiveness of any particular step. We are dealing here with a frank attempt to expand the claim of privilege by confirming the nomination of a person who claimed privilege to conceal the facts about a contract which the Department of Justice has characterized as invalid and in violation of law.

I remember very well the Teapot Dome case, because Teapot Dome is in my State. I remember very well how the then Secretary of the Interior, Mr. Albert B. Fall, sought to conceal evidence about his exchange with very important oilmen of the day, principally Mr. Doheny. But the Court in that case paid no attention to Mr. Fall's claim of privilege. It was clearly stated that if anything like fraud was involved, there could be no claim of privilege. That is perfectly obvious. I do not say fraud is involved in this instance; but there is a remarkable story of special privilege; and, particularly, since that special privilege eventuated in an invalid contract, there is no right on